

The Hon. Lindsay Tanner, MP
Minister for Finance and Deregulation
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

6th August 2008

Dear Minister,

**RE: BRCWG ON THE INTRODUCTION OF A NATIONAL ELECTRONIC
CONVEYANCING SOLUTION**

By way of introduction the Information Brokers and Law Stationers Association (IBLSA) represents 12 member companies including all of the major Information Brokers in Australia.

We are a major stakeholder in the move to EC and this is recognised by our holding a seat on the NECS 'National Steering Committee' (NSC) since that committee's inception.

IBLSA's current role in the conveyancing process

Collectively, we estimate that IBLSA members provide services to 100% of lenders and 25,000 solicitors and conveyancers nationally. Put another way, this means that our members handle in excess of 95% of all information searches performed nationally and attend 30% of all property settlements.

Our members provide purpose built rooms in Brisbane, Sydney, Melbourne and Perth to facilitate settlement and are integral to supporting the existing manual process. In NSW some of our members are licensed to the Office of State Revenue to provide Electronic Duties Returns and nationally we provide services to have documents assessed for duty, and subsequently stamped.

Many of our clients have already taken the decision to strategically outsource to IBLSA members, functions relating to settlement, stamping and registration to achieve lower costs and eliminate the need to maintain multiple systems or interfaces. They have chosen to provide the work uniformly to an intermediary (invariably an IBLSA member) that in turn is capable of dealing with the differences in turn is capable of dealing with the differences in all of the jurisdictions.

It is widely acknowledged that even with an electronic model in place in a mature state, there will be a significant number of transactions that will be 'exceptions' requiring manual support.

If, by design, Electronic Conveyancing (EC) makes the role of an intermediary uncommercial, the clients IBLSA members currently service will not only have to develop systems and processes to support the new electronic environment, they will also be forced to re-introduce eight manual processes to replace those currently perform by our members. Therefore the role of intermediaries as a stakeholder to ensure success of EC should not be underestimated.

IBLSA welcomes the introduction of EC

It is important to note that members of the IBLSA welcome the introduction of a national EC solution as 'inevitable' and believe that our members are well positioned to play a crucial role in its introduction and uptake.

We do, however, recognise there is significant variation in functionality of the two solutions currently under consideration. Even so, our members are agnostic to the system finally selected and implemented.

- ECV has been designed to support a single jurisdiction, and to become a national solution will require modification to allow either multiple instances to be networked, or a single instance to support multiple jurisdictions. The design accommodates jurisdictional differences and may be deployed quickly in Victoria to meet the March 2010 target.
- NECS is a *concept* for a national solution, rather than a *defined* solution and is primarily driven by NSW. Whilst the NECS concept is publicly positioned as having support from all jurisdictions, it is clear to IBLSA from our involvement in the NSC meetings and correspondence we are privy to, that both Victoria and Queensland are not active supporters of the NECS concept which requires the removal of jurisdictional differences for it to succeed. It is by definition, a far more ambitious project than ECV and given its current status, we believe it is highly unlikely that a NECS solution could be delivered by March 2010.

Commercial viability of EC is vital to IBLSA members

Providing the solution is commercially viable, IBLSA members will play a critical role in facilitating the transition from a manual to electronic environment by providing cost effective and innovative solutions to our clients.

However the commercial aspects of both EC solutions currently do not make financial sense as they deliver "savings" by "increasing" the cost of Conveyancing during the migration to an electronic solution. For example, Victoria recently increased the cost of all paper documents as a means of making an online transaction more attractive. The result is that ECV has processed just one transaction in approximately 12 months since its launch.

What is the expected take-up rate of EC ?

To be able to calculate a commercial return an assumption needs to be made as to how fast industry will adopt the new system, and how fees will flow. The original assumptions documented in the NFM were flawed, and have now been partially

corrected after input from the IBLSA. There are however, a number of issues outstanding, not the least of which is a clearer definition of the role to be played by a LSP and a sizing of the market that they will compete in.

These commercial issues apply to both EC solutions as neither has an adoption strategy; "We shall build it and they will come" appears to be the prevailing attitude. As such, both solutions risk becoming "white elephants" should they fail to attract use. The negative press received by Victoria to date would then be repeated at a National level.

The issue of the rate of take-up has been tabled to the NSC by the IBLSA as a critical issue¹, however has yet to be addressed.

The Risk Assessment performed by Clayton Utz also commented that "Implementation of the NECS may take far longer than initially indicated leading to distrust and industry fatigue" and also identified 15 other non-project related risks² that have not been addressed.

What savings will EC actually deliver to the community ?

Both EC solutions claim huge savings to the community as a result of their use, however we have seen nothing to substantiate these claims as the functionality delivered by EC will not significantly alter the Conveyancing process.

The report published by the Allen Consultancy Group on Conveyancing costs in Victoria sized the industry at less than \$300M³. Assuming similar costs in other jurisdictions the entire market could be expected to be in the order of \$900M. Of this market, less than 10% of the costs fall within the scope of EC, and savings to the community in the early years are likely to be less than \$1M thus making justification of the investment required very difficult indeed.

It needs to be recognised that the total conveyancing process includes a number of steps which will remain outside of the proposed EC system. "Electronic Conveyancing" is then, something of a misnomer as it is essentially confined to a Settlement and Lodgement system covering the LR and RO transactions.

It is our expectation that in the short term, Conveyancing costs may increase as participants manage additional processes and systems and the entities providing the solution attempt to recover their costs from a small number of transactions.

Further, when savings do occur they may not pass to the purchaser or vendor of the property. The major beneficiaries are likely to be the Banks.

NECS v ECV

The requirements for a national solution are far from complete, and the documents that have been produced to date by NECS and ECV could not be used by any systems integrator to commence the build of a solution, or an alteration to the ECV system; there are simply too many open questions that could significantly alter the design.

¹ IBLSA paper submitted to the NSC on 22 February 2008.

² Risk Assessment of the National Electronic Conveyancing System, Section 2.5

³ The Regulation of Conveyancing Services in Victoria – June 2005

The process used by ECV and NECS to resolve these open questions and reach a common view as to the scope of an EC solution has failed. Both camps are firmly entrenched in their views.

The IBLSA has been frustrated by an apparent degree of enmity between some NSC members. On most occasions that any NSC member has offered constructive criticism of the NECS project, that person is dismissed as protecting a self interest rather than seen to be attempting to contribute to the desired outcome. The NSC is essentially non-functional and in our view new governance arrangements are urgently needed.

The resources available to the National Electronic Conveyancing Office (NECO) to research issues are minimal; much of the documentation produced to date has been authored by a single consultant engaged by NSW and NECO and tends to be Land Registry centric.

Heavy reliance on the voluntary National Project Team (NPT)

In the view of IBLSA, there is now an overly optimistic reliance on the voluntary industry based National Project Team (NPT) to work through the issues to produce an agreed Requirements Document by the end of 2008. The NPT however has only recently formed and has met just three times to date.

At the last NPT meeting, representatives of the ABA and non-Bank lenders failed to attend; the representative from the Revenue Office attended for only part of the session by teleconference; and the representative of the Land Registries was unable to present to the NPT as scheduled because his members could not give prior agreement on the content of their presentation. With the exception of the IBLSA member there was a limited understanding of the commercial issues at stake.

Status of NECS documentation

To date we understand that all documents that have been produced by NECO are "draft" in status and appear to have been prepared in isolation by NECO staff, without detailed consultation with all stakeholders.

The documents are centered on the needs of Land Registries (LR) and do not meet the commercial needs of lawyers, lenders, or Licensed Service Providers (LSPs) with regard to payment mechanisms. The documents also fail to address practical issues of implementation; ie focus on core functionality, and then target State based differences with a defined sequence of implementation.

To our knowledge the only changes to the draft documents that have been made in the past 18 months is as a direct result of challenges made by the IBLSA to the Funding Model, and the insistence from the Revenue Office that they will not be charged a fee.

Participation from IBLSA members should be integral to any EC solution

IBLSA members wish to participate in an EC solution by becoming LSPs as defined by NECS, but only on the assumption that it is commercially viable to do so.

A LSP will provide the user interface to the EC solution and will provide commercial terms contracted with their clients. It is in our interest to ensure that the EC solution works for our clients, and that the entire Conveyancing process can be sustained during and after the migration to EC.

As most of our members are also Information Brokers with licensed access to various government databases including various state Land Titles offices, IBLSA members are equally concerned that the final EC solution does not erode an already competitive market.

To say that we are frustrated with progress to date is a gross understatement, and there is a real concern that the BRCWG Workgroup is not aware of the issues we have openly tabled.

While both NECS and ECV appear to recognize the need for a LSP, their lack of appreciation and understanding of the full scope of services provided by a LSP is of concern. In an attempt to create a common understanding, the IBLSA has tabled the following assumptions to the NSC and NPT:

1. For a LSP to invest in EC there needs to be a financial return. This requires the definition of a sustainable market and the formal licensing of all participants.⁴
2. The majority of transactions to NECS will be performed via a LSP⁵
3. As Financial Institutions are party to most transactions, the assumption is that the majority will access NECS via a LSP.⁶
4. In order to establish a beachhead and promote the use of EC the LSP needs to recruit and support "early adopters". This requires the EC system to fully support LSP requirements from the outset.
5. For a Subscriber to access NECS via a LSP there must be definitive advantages to the Subscriber, such as, the ability to populate or refresh the EC workspace using data purchased during the due diligence phase of the transaction, or, to provide a customised interface aligned with the Subscribers work processes or systems.
6. The LSP must also hold an Information Brokerage license with the relevant Land Registry⁷ in order to pre-populate data.
7. A LSP may also be a Subscriber to act on behalf of any other Subscriber including a Financial Institution.
8. Subscribers accessing EC via a LSP will have no direct interface to the EC system. The EC system will provide the plumbing, the LSP will control how it looks and behaves.
9. As stated previously, the IBLSA remains agnostic to the choice of EC system implemented to support a National Solution. Our view is that the EC system which provides the plumbing for a National System could be built from scratch or, could be an enhancement of an existing system, be it the Victorian system or some other.

⁴ The provision of a Web Service direct to a Subscriber who is not also a LSP would appear to dilute the Market.

⁵ NFM 8.2.2 – "The maximum penetration of LPS in-scope transaction business is projected at 55% after 10 years.

⁶ This appears at odds with the schematic published in the NBM that shows Financial Institutions having a direct relationship with NECS.

⁷ Any pre-population of data will have a revenue impact on the LR, and technical requirements on LR, LSP and EC systems.

The impact of these 9 assumptions is not truly reflected in the documentation produced to date, nor widely understood by certain elements of the industry. NECO however has acknowledged the above assumptions are consistent with the NBM⁸.

Despite numerous attempts from the media to generate a public debate and criticism of the various public initiatives, the IBSA has maintained that Electronic Conveyancing is a good initiative and that any differences to the approach should be privately resolved.

The IBSA would welcome an opportunity to meet with the BRCWG team, and be actively engaged in delivering this important industry change. We therefore look forward to your response.

Yours faithfully

A handwritten signature in purple ink, appearing to read 'BP', with a stylized flourish at the end.

Brian Parker
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⁸ Agenda item 6, April 2008 NSC meeting