

Future of eConveyancing in South Australia

Initial Stakeholder Consultation Report Summary

The Office of the Registrar-General conducted an initial consultation program with a range of stakeholders on whether further mandating of electronic conveyancing (eConveyancing) should occur in South Australia and, if so, on what timetable.

The 27 stakeholders who engaged in the consultation program provided clear majority opinions on the two principal questions for consultation: does industry support further mandating? And, if so, over what timeframe?

Does industry support further mandating of eConveyancing?

The majority of stakeholders supported further mandating primarily for the purpose of industry clarity and certainty of process.

These stakeholders believe the future of conveyancing is electronic, regardless of their experience with eConveyancing so far, or their opinion of PEXA. Even those practitioners who have had issues with eConveyancing, such as settlement delays, business inefficiencies, PEXA system issues or trouble receiving PEXA support, see eConveyancing as inevitable.

In light of this, many businesses are investing in PEXA training and adapting their business

systems to account for eConveyancing, while carrying out their normal business activities.

As such, businesses are currently burdened with inefficiencies associated with running dual paper and electronic processes with no timeframes as to when these inefficiencies will be resolved. Many are also frustrated by the lack of take up by other practitioners which hampers their ability to transact. These are key drivers for stakeholder support for further mandating.

Further mandating over what time frame?

The majority of stakeholders consulted want to see a phased in approach for further mandating, with at least three months of lead time.

To allow for those stakeholders who have not yet transacted electronically and those who need to make business changes, most stakeholders want to see a staggered approach to mandating with an appropriate lead-time for preparation.

Most proposed beginning with further mandating of stand-alone dealings, then dealings in series and, finally, multi-party transactions.



Stakeholders noted that attention should be paid to the dates when these mandates are designated to avoid particularly busy periods for conveyancing e.g., start of the financial or calendar year.

Industry concerns

A number of concerns were raised about any further mandating in the current environment.

Even those stakeholders who wanted to see further mandating identified a range of common concerns with eConveyancing.

These concerns include:

- **PEXA:** customer service capabilities; system capacity; delays in resolving serious issues; system outages; and, its role as a monopoly service provider.
- **Fraud and online security:** the risks associated with unauthorised access to subscribers' eConveyancing accounts.
- **Impacts on jobs and businesses:** consolidation of settlement into the eConveyancing environment, with anticipated efficiencies reducing business and job opportunities.
- **Delays caused by financial institutions:** lack of consistency of process across financial institutions, and failure to follow PEXA guidelines in relation to timeframes.
- **Practitioner training and education:** more education and support for industry to implement eConveyancing.
- **Value to customers:** client perception of value for money from the eConveyancing process.
- **Additional ELNOs:** interoperability; choice of ELNO; regulation concerns; and, questions about transparency of fees and charges and cost capping.

Next steps

The Office of the Registrar-General has released a [survey](#) to collect further feedback from industry and will meet with stakeholders at a half-day forum on 22 August 2018. The forum will be used to discuss concerns and put to industry a range of options for further mandating of eConveyancing, including timeframes, dealing options and training and education strategies.

The forum is open to any interested parties, for further details and to RSVP please click [here](#).

Feedback from this forum will be used to guide the Registrar-General's advice to the Minister regarding the future of eConveyancing in South Australia. Outcomes from this process are anticipated by late 2018.

Further information

All enquiries can be directed to DPTI.RegistrarGeneral@sa.gov.au



Stakeholder Consultation Report



Further Mandating of Electronic Conveyancing in South Australia

Commercial and Legal Services Division

Office of the Registrar-General

Prepared by: Office of the Registrar-General

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Executive Summary

The Office of the Registrar-General conducted a consultation program with a range of stakeholders on whether further mandating of electronic conveyancing (eConveyancing) should occur in South Australia and, if so, on what timetable.

A total of 27 stakeholders engaged in the consultation program, including: registered conveyancers; legal practitioners; settlement agents; industry associations; and, existing and potential electronic lodgement network operators (ELNOs).

Practitioner and industry body stakeholders reported a varied experience with eConveyancing. Primary contributing variables to experience were largely focused around four factors: geographical location (regional practitioners were much more likely to support eConveyancing); network effect issues (transacting electronically relies on widespread eConveyancing uptake); system downtime; and, frustration with delays caused by lenders.

Nonetheless, the majority of these stakeholders indicated general support for further mandating of eConveyancing in South Australia. The primary incentive behind this support was the desire for industry certainty; the majority of stakeholders reported feeling that eConveyancing was inevitable and they were simply waiting for a timeframe to implement the business process changes required to facilitate the change. Common benefits of a mandate anticipated by stakeholders included: the frustrations dealing with the current dual processes of paper and electronic; the desire to retain consistency across state jurisdictions, particularly in regard to financial institutions; and, the belief eConveyancing will provide significant efficiencies once a critical mass of subscribers is reached due to network effects.

Most stakeholders who indicated support for further mandating recommended a staged approach, beginning with stand-alone dealings, then dealings in series and finally multi-party transactions. A three to six month lead time prior to beginning further mandating was preferred, with no mandating deadlines set at the start of the financial or calendar year. Stakeholders wanted the mandating process to be spread out enough to allow them to integrate new business processes and obtain any support they may need.

Stakeholders who were supportive of further mandating also had concerns, including: PEXA's capacity to process the additional transactions; PEXA's customer support being overwhelmed; the impact of PEXA system outages being magnified; the lack of experience among practitioners causing complications and delays; online security; and, whether consumers will feel they are getting any benefit for the additional fees.

Stakeholders who did not support further mandating of eConveyancing had three primary concerns: the impact on specific areas of the market, particularly settlement agents; the potential anti-competitiveness of mandating eConveyancing while a monopoly situation exists in the ELNO market; and, the perceived conflicts of interest around ownership of the current ELNO, PEXA.

It is clear that the majority of stakeholders who provided feedback to the Office of the Registrar-General see the digitisation of the conveyancing process as inevitable, and can appreciate the potential benefits eConveyancing could offer to both the industry and the community. It is on this basis that those stakeholders who indicated their support for further mandating of eConveyancing did so. It is clear, however, that this support is predicated on the concerns raised being raised, considered and resolved where possible.

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The views, thoughts and opinions expressed in this report are solely those of the stakeholders consulted, and do not necessarily reflect the views, thoughts or opinions of the Office of the Registrar-General or the Government of South Australia.

1 Purpose

This Stakeholder Consultation Report (the Report) presents the findings of a stakeholder consultation program (the Consultation Program) undertaken by the Office of the Registrar-General in order to inform the decision making process concerning the direction of eConveyancing in South Australia.

The purpose of undertaking the Consultation Program was to seek the views of stakeholders in the conveyancing industry regarding eConveyancing, and whether they believe further mandating should occur and if so, what the timetable should be.

As there are many stakeholders, with different views, the Consultation Program was designed to gather as much information as possible. The responses presented in this report provide the Office of the Registrar-General with insight into industry perspectives regarding further mandating of eConveyancing, and will be an important resource in the decision making process going forward.

2 Scope and Method

Initially, approximately 30 stakeholders were emailed an invitation to either attend a consultation session with the Office of the Registrar-General, in person or via teleconference, or provide written feedback to a series of questions contained in the invitation email.

These stakeholders were targeted to represent a broad selection of views from industry regarding further mandating of eConveyancing.

Additional written feedback was also invited and invitees were welcome to forward the invitation to other interested parties. The invitation was forwarded on to a significant number of other recipients by PEXA and other invitees.

Of the 27 stakeholders who engaged in the consultation program:

- five stakeholders provided feedback via email;
- 18 stakeholders provided feedback in person; and,
- four stakeholders provided feedback via teleconference.

For those stakeholders who attended a consultation session, or were consulted via teleconference, a set list of questions were drawn up depending on the type of stakeholder. These questions appear in blue in each stakeholder response section below.

Stakeholder responses to questions during both in person consultation and teleconferences were recorded by hand (not verbatim), and have been consolidated into a table (Appendix A) prior to a broad content theme analysis being undertaken and then presented in this Report.

3 Stakeholder Responses

3.1 Practitioner Responses

What is your experience to date with electronic conveyancing and the PEXA platform?

Stakeholders' experience with eConveyancing so far has been varied. Primary contributing variables to experience were largely focused around four factors: geographical location; network effect issues; system downtime; and, frustration with lenders.

Conveyancers located regionally were much more likely to express a positive experience with eConveyancing than those located in the CBD, near the Lands Titles Office. Regional conveyancers noted that eConveyancing gave them more time to work on a file because there was no postage time and gave them more control over the file because they did not have to outsource settlement to an agent. In contrast, conveyancers located within the CBD did not experience these benefits, and were more likely to be neutral or express a negative opinion when describing their eConveyancing experience in regards to time savings and file control.

The effectiveness and efficiency benefits of eConveyancing rely on the 'network effect', where its value to users is proportionate to the number of subscribers transacting on the platform. A conveyancing transaction cannot be completed electronically unless all parties are eConveyancing subscribers and want to transact electronically. Accordingly, the majority of stakeholders consulted identified the lack of eConveyancing take up by other practitioners as a major hindrance on their ability to transact electronically. Most stakeholders felt a positive network effect would not be achieved unless practitioners were made to transact electronically, as perceived barriers to change currently outweigh perceived benefits.

Feedback from stakeholders identified mixed experiences regarding PEXA system outages, processing delays and errors. Some stakeholders described frequent system outages affecting transactions and settlements, long processing delays during file lodgement (especially at times when the eastern states were at peak activity), and system errors requiring re-entry of data. Others had not experienced outages, delays or errors affecting their transactions.

The majority of stakeholders consulted had experienced frustrations dealing with lenders via the eConveyancing platform, particularly at the settlement stage. Primary complaints included: lenders delaying provision of final payout figures until the last moment resulting in online settlements being delayed; lack of responses to 'Conversations' in PEXA; lenders not following PEXA guidelines; and, different lenders having different processes. It was suggested by one practitioner that the capability to revert to paper should exist, so if issues arise with the electronic platform transactions could be completed manually. Many stakeholders noted the additional stress involved in electronic settlements, particularly where a sale and purchase was occurring on the same day, due to delays caused by financial institutions. Some however, said the PEXA platform made interacting with the lenders easier, communication more efficient than via phone and settlement times more flexible and easier to manage.

What has your experience with PEXA been like?

- **Have resolution of issues and response times been efficient?**

Overall stakeholders held a positive overall opinion of PEXA's customer service standard, but were also generally concerned about the impact of increasing take-up on the capacity of PEXA's two local customer service personnel to continue providing high level support.

Most stakeholders reported experiencing efficient resolution of issues and thorough, effective customer service support particularly by the local PEXA customer support personnel. Others however, stated long wait times on the customer service phone line of up to 40 minutes and some described being given different advice depending on the customer service representative they spoke to. There were examples of concerning incidents where subscribers experienced substantial delays in obtaining information and updates about serious transaction issues from PEXA.

Some stakeholders indicated that when issues with the eConveyancing process or PEXA platform were brought to the attention of PEXA they were resolved, or a work around was established, in the following PEXA release. However, many also noted the significant investment in training and business system and process changes required to operate on PEXA, and the ongoing nature of these due to constant enhancements on the platform.

- **Do you find the 'Workplace' sufficient?**

PEXA's lack of integration with existing business systems creates an environment where stakeholders are often required to duplicate data entry in both electronic and paper platforms. Several stakeholders noted that this was inefficient and presented challenges to their business processes, and in some cases these internal business restrictions were the primary barrier to eConveyancing take up in their business.

The use of USBs as digital certificates to confirm a trusted user and enable settlement was a common frustration. There was concern that loss or failure of a USB could cause significant delay to settlement, and that the USBs were not compatible with all mobile devices. It was noted that this is an inelegant method of preserving digital security, and it was felt a two factor authentication process should replace it.

Minor issues with the PEXA Workspace included: the lack of a save or print button so documents could be saved to practitioner files or emailed to clients, and the absence of system generated notifications specifying incomplete fields or errors, which leaves subscribers to investigate why their Workspace is not progressing.

Do you support eConveyancing being mandated?

Most stakeholders supported further mandating of eConveyancing. The primary motive behind this support was the desire for industry certainty; the majority of stakeholders reported feeling that eConveyancing was inevitable and they were simply waiting for a timeframe to implement the business process changes required to facilitate the change. Many reported that they would not begin imbedding these changes until there was a clear timeframe for them to follow.

Those who did not support further mandating of eConveyancing believed that it would cost jobs and businesses, that mandating eConveyancing while there is a monopoly provider was

a bad idea and that there were too many perceived conflicts of interests around PEXA. Settlement agents were particularly concerned about the impact on their business as they stand to be significantly affected by the online settlement process, while other practitioners noted they may require less staff due to the anticipated efficiencies that would be delivered by eConveyancing.

Further mandating of eConveyancing while there is a monopoly provider was also identified as a potential issue, some stakeholders were concerned about how fees and charges would be constrained without competition in the market. Combined with the market monopoly concerns, some stakeholders also noted apprehension around the circumstances of PEXA's ownership, which they feel creates the perception of undue influence from the big four banks and those state governments who are financially invested in PEXA.

Concerns were also raised that ARNECC was not designed or equipped to be the regulatory body for the eConveyancing industry, particularly in respect of the ELNO market, and that a more suitable regulatory body should be established.

What do you feel the benefits of a mandate are?

The business certainty that comes with mandating electronic lodgement and settlement of real property dealings, is seen by stakeholders as the most significant benefit of a mandate. Certainty, and a clear timeframe, will allow stakeholders to invest in the business processes, personnel and training changes they will need to successfully implement eConveyancing. A clear timeframe ensures practitioners have the opportunity to ensure their systems and business practices will support eConveyancing, and it will give practitioners who need to make major changes to their operations meaningful deadlines.

Stakeholders also feel it will provide clarity of process for everyone involved in the conveyancing transaction, which, they believe, will ultimately improve turnaround times for files and improve outcomes for clients.

Other common benefits of a mandate anticipated by stakeholders included: removing the frustrations of dealing with the current dual processes of paper and electronic; the desire to retain consistency across state jurisdictions, particularly in regard to financial institutions; and, the belief eConveyancing will provide significant efficiencies once the volume of subscribers and transactions on the platform generate a positive network effect.

What negative impacts do you think mandating may have?

Stakeholders identified several negative impacts that they felt may result from mandating electronic lodgement and settlement of real property dealings. Major concerns include: PEXA's capacity to process the additional transactions; PEXA's customer support being overwhelmed; the impact of PEXA system outages being magnified; the lack of experience among practitioners causing complications and delays; online security; and, the fear that consumers will not feel they are getting any benefit for the additional fees.

The concern that a lack of experience among subscribers will cause delays and issues with transactions and settlement was a very common fear among stakeholders. Many felt the burden of educating and training other practitioners would fall on those practitioners who had invested the time and money in developing their eConveyancing skills. This concern was

commonly identified alongside the apprehension regarding PEXA's capability and capacity to provide the amount of customer service anticipated to be required to support further mandating.

Fear of online fraud was another common concern, particularly considering recent well publicised events. This concern is primarily focussed around online security risks relating to unauthorised access to PEXA Workspaces for nefarious purposes, including fraudulent transfer of funds and fraudulent registration of titles.

Another element of this concern was the potential that eConveyancing could make it harder to identify historic incidents of fraud. This claim is based on the fact that the number of documents physically executed by the client in an eConveyancing transaction is significantly less than in the paper environment and thus, the number of signature instances for comparison and authentication are reduced.

Due to the consolidation of the settlement process into the online environment, mandating eConveyancing will see those practitioners who rely on outsourced settlements for the core of their business made redundant. This is a significant and legitimate concern for those agents who built their business around facilitating settlements as this element of the conveyancing market will no longer exist if eConveyancing is fully mandated.

Additionally, it was noted that the conveyancing industry in general may see a contraction in practitioners as those unwilling to adopt the process required to undertake eConveyancing will retire, sell their business and or merge with other practices.

Commonly, stakeholders pointed out that it was hard to 'sell' PEXA to their clients, and obtain the requisite PEXA transaction fee, because they themselves were not currently confident that clients would get value for their money. Some said they couldn't guarantee to their client that using PEXA would be faster, that settlement would definitely occur on a specific date, or even electronically, due to their previous experience using the platform. Prior to mandating stakeholders expressed a desire to see the electronic platform operate at least as well as the paper platform.

If further mandating were to go ahead, how much lead time do you think you need?

Stakeholders commonly indicated that a relatively short lead time for further mandating was required, that a phased in approach should continue to be used and that mandating dates need to be carefully considered to fall outside busy conveyancing periods.

Most practitioners identified a lead time of three to six months as ideal, particularly where a phased in approach is used. Several stakeholders wanted mandating to occur ASAP and others thought a lead time of 12 – 18 months would be appropriate to allow those who did not want to operate in the electronic platform to make other arrangements e.g., merge or sell their business and / or retire.

The majority identified a phased in approach to mandating as the best approach; beginning with more simple stand-alone dealings to allow eConveyancing to be integrated into internal business systems, followed by dealings lodged in series, and finally more complex multi-party transactions.

Virtually all practitioners identified timeframes during the year where setting new mandating dates would be highly inconvenient. These timeframes include the beginning of the financial year and the beginning of the calendar year, with mid-August or mid-February preferred.

A small number of practitioners noted that they did not think further mandating should occur prior to any additional ELNOs joining the marketplace with PEXA, as they were uncomfortable with the idea of being mandated to use a private company that operates as a monopoly provider.

How do you think more ELNOs in the market will affect the industry?

Stakeholder thoughts around additional ELNOs in the market focused on: uncertainty about interoperability between platforms and which party would choose the ELNO to transact through; concern regarding the additional investment in learning and development required to operate on new platforms; fears around additional licencing or subscription fees; belief that the 'big four' banks will only use PEXA; and, support for the fact PEXA would no longer be a monopoly.

When this question was put to stakeholders their first response whether one party would be able to operate on PEXA while other parties to the transaction operated on a different ELNO. Stakeholders noted that if there is no interoperability between ELNOs, the decision as to who chooses which ELNO will be used to facilitate the dealing will be a significant one. Many thought this choice would be taken out of the practitioner's hands and would be decided by the banks.

It concerned stakeholders that they may have to learn each new conveyancing platform, integrate additional new business processes into their internal systems, and pay additional subscriber or licencing fees to operate on each platform, just to maintain their businesses.

Several stakeholders said they did not believe the banks would use a platform other than PEXA, considering the time, effort and money they have invested in developing processes and interfaces with PEXA. Some also noted that the 'big four' banks had little incentive to use another ELNO considering they were shareholders of PEXA.

There was general positivity overall from stakeholders however, at the thought of additional ELNOs in the market to disrupt PEXA's monopoly. Most were interested in the potential opportunities competition could offer, including improved ease of use and cheaper fees.

Do you have other industry concerns which you would like to raise?

Other industry concerns raised by stakeholders included: whether the Registrar-General has a clear legislative power to mandate eConveyancing; unease about how much expertise practitioners require to deal with visas; Commonwealth Government requirements creating additional data entry; desire to see legislation to prohibit conveyancers representing both sides of a transaction; and, concern over the amount of responsible duties practitioners now have.

A small number of stakeholders mentioned a perception in the industry that the Real Property Act was not explicit enough in providing the Registrar-General with the power to mandate eConveyancing.

At least three stakeholders brought up the topic of visas. These stakeholders felt that they did not have the expertise to determine if the visa they had before them was a legitimate visa, nor did they feel they could confidently determine whether the visa conditions were relevant to the conveyance.

Several stakeholders noted that additional Commonwealth Government obligations were imposing data entry requirements that necessitate the re-entry of data already captured via the ELNO platform. Many suggested the Commonwealth should be able to obtain this data via the ELNO rather than having the practitioner upload it twice. This was one of many new responsibilities placed on practitioners by State and Commonwealth Governments, particularly over the last two to three years, the number of which practitioners noted was becoming burdensome.

One stakeholder indicated their desire to see legislative change prohibiting the practice of conveyancers representing both sides to a transaction. The stakeholder believes the risk of conflict of interest in these situations is too high, and that there is an unacceptable risk the practitioner cannot represent the best interests of both parties.

Is there anything you need from the Office of the Registrar-General or Land Services SA to facilitate the change to eConveyancing?

Stakeholders overwhelmingly want more training and support, along with a clear timeline of anticipated changes.

There was general agreement that more industry support, training and education was key to facilitating further eConveyancing changes. One stakeholder was clear in their opinion that this training and education should come from government, as government is the body making the legislative amendments and driving the policy change. Another stakeholder mentioned how useful it had been to undertake eConveyancing training that covered all perspectives of a transaction e.g., vendor, purchaser and lender aspects.

A key point raised was that industry and the public need to have confidence in the eConveyancing system. In order to achieve this confidence, one stakeholder noted that they wanted to see government take responsibility for ensuring the standards and integrity of the eConveyancing market.

Do you feel communication regarding the changes has been clear and timely?

This was an optional question that was asked only a handful of times. Responders said the industry received ample communication and support about changes in the industry from the AIC, and that customer service and support from PEXA was 'great'.

Do you think the industry is positioned to absorb further change in the form of mandating?

This was an optional question that was asked only a handful of times. Responders said industry was used to change and had been adapting to eConveyancing for long enough that they just wanted 'to get on with it'.

Others expressed concerns with 'change fatigue' given the number of changes within the industry in recent years.

3.2 Industry Body Responses

What has the experience of your members been to date with the eConveyancing process?

Industry bodies said their members had experienced issues with the eConveyancing process, ranging from unmet expectations to concerns safeguarding trust accounts. However, they do feel their members want to embrace technology driven changes in the industry.

Of key concern to industry bodies, was members' fears about safeguarding trust accounts from unauthorised access but also the additional administrative burden of requiring two people to log into PEXA to authorise a payment.

Members had also reported expectations of eConveyancing making lodgement and settlement more efficient being left unmet, whether due to a lack of take up, delays caused by other practitioners or a fundamental lack of platform efficiency.

Subscriber fees were also considered a hindrance to both eConveyancing take up and positive eConveyancing experiences.

What have your members' experience with PEXA been like? Have resolution of issues and response times been efficient?

Industry bodies expressed their members' frustration with the loading applied for transacting on multiple titles, but overall they felt their members were happy with PEXA customer service support.

Members were not happy with the loading on simple dealings where multiple titles are involved, such as caveats, as the jump from one title to two or more is quite substantial.

Do your members support mandating eConveyancing?

All industry bodies said their members were generally supportive of mandating eConveyancing, with some feeling it should happen as soon as possible.

Clear timeframes to implement new system processes and to establish business certainty were strong themes for those members who wanted to see a mandating schedule as soon as possible. Industry bodies said their members felt the move to eConveyancing was inevitable and the longer South Australia waits the more out of step we become with industry in east coast states.

What do your members feel the benefits of a mandate are?

Industry bodies said their members anticipated benefits of mandating include: remaining competitive with interstate colleagues; knowing a clear timeline for business; and, the

anticipated efficiencies they feel eConveyancing will deliver when uptake is sufficient to produce a positive network effect.

Members expressed the primary benefit of mandating as the clear timeframe that this decision would provide. Knowledge of lead time and deadlines were seen as key to supporting the transition and bedding down the new business processes.

What do your members feel the barriers to a mandate are?

Barriers to mandating expressed to industry bodies by their members included: the lack of competition in the ELNO market; loss of work for some conveyancers; the shutting out of self-represented parties; and, PEXA's capability and capacity to provide customer support.

Members were concerned about mandating while PEXA has a monopoly on the ELNO market. Fears related to what that would mean for both prices and innovation, but also the costs of switching, in terms of business investments already made, if or when new ELNOs enter the market.

Another concern was the loss of work smaller conveyancers and settlement agents would experience. Some thought the larger end-to-end service providers would end up dominating the industry at the cost of smaller businesses.

The issue of self-represented parties being shut out of the conveyancing process, and the fairness of this, was raised by one industry body.

PEXA's capability and capacity to deal with the additional load of transactions, as well as provide support to industry during the mandating process, was a common concern among members from different industry bodies. Some members had experiences with what seemed like capacity issues when trying to transact through PEXA, particularly around peak transaction times in the Eastern states.

If mandating were to go ahead, how much lead time do you think your members need to prepare?

Most industry bodies said their members wanted to see a lead time of no longer than 12 months, with a minimum of six months, in combination with a staged approach incorporating stand-alone dealings first and more complex transactions once businesses are comfortable.

They noted a general feeling from their experience that the longer practitioners are given to implement eConveyancing the longer they would take.

One industry body was keen to see the concerns their members had resolved prior to any further mandating timeframes being established.

How do you think more ELNOs in the market will affect the industry?

Industry bodies felt there were many unanswered questions around the addition of more ELNOs to the market, including: is the market big enough; how will ELNOs be regulated; will they all provide the same services; who gets to choose which ELNO will be used for each transaction; and, if the addition of new ELNOs will cause barriers to transactions?

A common theme was who would regulate the ELNO market and how they would do this. Most industry bodies were concerned with the possible disruption new ELNOs could create in the market without clear regulatory guidelines and a strong enforcement programme. In this context, disruptions were described as barriers to efficient business.

As with practitioners, industry bodies expressed concern about which party would be able to choose the ELNO platform that a transaction would take place on. The party whose choice this is could be in the position of receiving considerable time and cost savings that would need to be absorbed by the other parties.

Do you have other industry concerns which you would like to raise?

Primary concerns raised by industry bodies on behalf of their members related to the role and function of the Australian Registrars' National Electronic Conveyancing Council (ARNECC) and the desire to see industry involved in the upcoming review of the Intergovernmental Agreement (IGA), which provides the basis for the regulatory framework for national electronic conveyancing in Australia.

Most industry bodies noted that ARNECC was not designed or equipped to be the regulatory body for the eConveyancing industry, particularly in respect of the ELNO market, and that they were keen to see a more suitable regulatory body established.

Is there anything your members need from the Office of the Registrar-General or Land Services SA to facilitate the change to electronic conveyancing?

As with consultation undertaken with practitioners directly, industry bodies wanted to see more training and support for their members, they also wanted assistance to resolve the eConveyancing and mandating concerns their members had identified.

These concerns were centred on trust account issues and payment authorisations, and the fairness issues related to removing the option of self-represented parties to conduct conveyances and related dealings.

3.3 Electronic Lodgement Network Operator Responses

What is your perspective on mandating of the electronic settlement and lodgement process?

The ELNO and potential ELNOs are generally supportive of mandating eConveyancing. They believe it would benefit those in the industry who feel hamstrung by other users who are not transacting electronically. However, the primary difference between the existing ELNO and the potential ELNOs are the mandating timeframes. PEXA supports further mandating as soon as possible, while the potential ELNOs think mandating prior to their entry into the ELNO market will make it much harder to get a return on their investment. They believe the incumbent ELNO will have the benefit of the network effect and they, as the new ELNOs, will find it challenging to 'churn' customers to their product.

What has in your experience impacted the uptake of electronic conveyancing in South Australia and nationally?

The ELNO and potential ELNOs identified a number of issues they believed had impacted on the uptake of eConveyancing in South Australia and nationally, including: the transparency of eConveyancing; the 'bespoke' approach to mandating by each state; and, a lack of confidence in the efficiency and reliability of the platform in the market.

One ELNO said they believed the transparency of eConveyancing, where all parties to the transaction could see who was holding the matter up, made some practitioners uncomfortable using the platform.

Another perspective was that the different approaches to implementation eConveyancing, and mandating eConveyancing specifically, across Australia had hindered uptake due to the adverse impact on the network effect required to make eConveyancing effective.

It was also suggested that the lack of uptake was due to the fact stakeholders were not convinced by the efficiency and reliability of the current platform and, as such, there was an absence of market confidence in eConveyancing.

What are your future expectations of a multi-platform market for electronic conveyancing?

The ELNO and potential ELNOs expectations of a multi-platform market primarily revolved around one topic, the requirement for the data standards and interface specification issues to be resolved at a national level. They saw this as a key issue because they did not want to see bespoke clauses in each states' operating requirements and they were keen to ensure a competitive electronic lodgement network market structure.

The ELNO and potential ELNOs believe the data specification and system interface issues are hindering market development and clarity. They would like to see these issues resolved at a national level in a manner that ensures the conditions ELNOs are operating under are clear across all jurisdictions.

Do you have other concerns which you would like to raise?

Other concerns raised by the ELNO and potential ELNOs were primarily how a competitive ELN market could be established. Potential ELNOs believe the structure of a competitive ELN market should be established prior to mandating further eConveyancing, and that the upcoming review of the Intergovernmental Agreement should be used to bed this down.

Industry have raised some concerns about mandating, what do you see as possible issues?

The ELNO and potential ELNOs had other concerns specifically about mandating, including: data security, particularly in relation to email fraud; industry unrest; a lack of understanding of mandating impacts; and, the likelihood of banks interfacing with new ELNOs.

Unauthorised access to eConveyancing transactions was a common theme among these stakeholders, all pointed out that it was an area of specific concern that needed to be addressed by thorough security measures.

The potential ELNOs stated that levels of industry unrest in states where mandating has been undertaken, or is planned to be undertaken, demonstrates the concern of practitioners in the industry. They believe practitioners are particularly concerned about how the market will work when they are mandated to transact through a private monopoly.

Potential ELNOs also suggested that those states and territories who have not yet mandated eConveyancing have the opportunity to learn from the negative impacts of the mandating process of those states that have.

Potential ELNOs are very concerned that the banks will not invest the time, effort and money into developing the business processes required to interface with ELNOs other than PEXA. They see this as a potentially significant impact on the competitiveness of the ELN market.

4 Conclusion and Next Steps

Conclusion

There were clear commonalities from a sufficient number of stakeholders to gather majority opinions on the two principle questions for consultation: does industry support further mandating? And, if so, over what timeframe?

- **The majority of stakeholders support further mandating primarily for the purpose of industry clarity and certainty over process.** The majority of stakeholders consulted believe the future of conveyancing is electronic, regardless of their experience with e-conveyancing so far, or their opinion of PEXA. Even those practitioners who have had issues with eConveyancing, such as settlement delays, business inefficiencies, PEXA system issues or trouble receiving PEXA support, see eConveyancing as inevitable. In light of this, many businesses are investing in PEXA training and adapting their business systems to account for eConveyancing, particularly for those dealings that have already been mandated, while carrying out their normal business activities. As such, businesses are currently burdened with inefficiencies associated with running dual paper and electronic processes with no timeframes as to when these inefficiencies will be resolved. Many are also frustrated by the lack of take up by other practitioners which hampers their ability to transact electronically.
- **The majority of stakeholders want to see a phased in approach for further mandating, with at least three months of lead time.** To allow for those stakeholders who have not yet transacted electronically and those who need to make wholesale business changes, most stakeholders want to see a staggered approach to mandating with an appropriate lead-time for preparation. The mandating process should begin with further mandating of stand-alone dealings, then dealings in series and eventually multi-party transactions. Attention should be paid to the dates when these mandates are designated to avoid particularly busy period for conveyancing e.g., start of the financial or calendar year.

However, there were many common concerns regarding further mandating of eConveyancing from stakeholders:

- **PEXA:** Concerns exist around customer service capacity and system processing capacity if transactions increase sharply due to mandating. Delays in getting advice and support for serious issues has been identified as a key stakeholder concern. The impact of system outages on transactions, and in particular settlements, and who is liable for any losses occurring as a result seem unclear. There are also concerns about mandating eConveyancing while there is a private monopoly provider in the market.
- **Fraud and online security:** Raised by several stakeholders, this issue is a relevant concern for all stakeholders transacting electronically. Unauthorised access to an eConveyancing transaction can lead to the fraudulent registration of titles or misappropriation of money.
- **Impacts on jobs and businesses:** The consolidation of the settlement process into the online environment will see those practitioners who specialise in settlements lose significant work. EConveyancing, once fully implemented, is anticipated to bring major efficiencies to business, which may also cause a reduction in administrative work and associated jobs in the industry.
- **Delays caused by financial institutions:** Many stakeholders noted the lack of consistency of process between financial institutions transacting electronically, and their lack of observance of the PEXA guidelines and timeframes. This causes uncertainty and delays in the eConveyancing environment, particularly in regard to settlement.
- **Practitioner education and training:** Several stakeholders believed mandating would put additional pressure on those practitioners who had eConveyancing experience as they would have to 'hand hold' those who did not. Those practitioners felt they would be unfairly burdened by the unprepared practitioners and want to see more education and support for practitioners if further mandating is rolled out.
- **Value to customers:** Whether the client will perceive value for their money, considering the additional fee for transacting electronically, was also a concern. Many weren't sure there was any additional value to the client yet, considering the lack of network effect.
- **Additional ELNOs:** A key concern regarding the introduction of additional ELNOs was interoperability issues, and whether different parties to the transaction could be on different ELNOs, and if not, which party would choose the ELNO.

A list of issues and matters associated with these concerns has been drawn up by the Office of the Registrar-General to be investigated, clarified and, wherever possible, resolved.

Next steps

The Office of the Registrar-General will meet with stakeholders at a half-day forum on 22 August 2018 to put to them a range of options for further mandating eConveyancing including timeframes, dealing options, and training and education strategies.

Feedback from this forum will be used to guide the Registrar-General's advice to the Minister regarding the future of eConveyancing in South Australia. Outcomes from this process are anticipated by November 2018.

5 Appendices

Appendix A: Consolidated table of stakeholder engagement responses

Practitioners

What has your experience been to date with the electronic conveyancing process?

- Size of operation and proximity to LTO makes a difference on usefulness of eConveyancing.
- Can't ask client to pay for a product that offer no additional benefits to them – have not seen the efficiencies or cost savings yet.
- Online settlements are delayed due to the banks – lack of responses to 'conversations', differing processes between banks.
- PEXA system downtimes delay process – capacity issues? What happens when more people come on board?
- Processing times on PEXA can be lengthy.
- Did think it was easier and faster at the beginning but delays getting worse.
- Much more efficient when done electronically if everything goes through correctly.
- Easier to work with the banks via PEXA than in paper – banks respond to conversations and invitations faster than via the phone.
- Looks like there is undue influence, which affects people's perception of PEXA.
- Practitioners feel like 'crash test' dummies.
- Some regional practitioners eager to use PEXA because they feel they have more control over the settlements – otherwise have to outsource settlement to someone in Adelaide – considering this PEXA fee is fine because have to pay a settlement agent otherwise.
- Gives regional conveyancers more time to work on file because no postage time.
- Lack of take up by other practitioners stifling network effect –won't use PEXA until made to.
- eConveyancing process is not as easy as PEXA make out.
- Biggest concern with PEXA is fraud and security.
- Lenders are working to their own timeline rather than PEXA's e.g. not accepting invitations, not replying to conversations, settlement dates being pushed out for no reason, not providing indicative payout figures and providing final payout figures at the last moment.
- Often have to get the customer involved to escalate the matter with the other financial institution.

- PEXA processing slow after 11:30am when the east coast comes online – capacity issues?
- People, and banks in particular, are slow in responding to invitations.
- Better dealing with the banks because can just settle online don't have to go back to the settlement room.
- Settlements have been delayed as the date seems to be more flexible in PEXA - generally due to banks.
- Occasional PEXA glitches.
- Documents sometimes get stuck in verifying stage – have to delete and reload.
- Some banks don't respond to conversations on PEXA and can be hard to contact via phone.
- Banks capacity to provide information in a timely manner huge sticking point.
- Different banks have different requirements.
- Less paperwork using PEXA.
- Other subscribers don't follow the PEXA workflow which causes confusion and throws out other subscribers' processes.

What has your experience with PEXA been like? Have resolution of issues and response times been efficient?

- PEXA are addressing issues subscribers inform them of.
- Long wait times on the phone contacting PEXA 30 – 40 minutes.
- Great customer support from PEXA.
- Where there are issues, PEXA generally implement a work around in the next release.
- Slow to get money that has been incorrectly directed back.
- PEXA very responsive to issues.
- PEXA support will be overwhelmed when mandating comes in.
- PEXA sell is not reality - not making things easier.
- Two weeks to resolve issue where Westpac lodged two discharges.
- Different PEXA support people giving different advice.
- Overall experience has been positive but requires significant investment in process changes – endless training and workflow changes.

Do you find the workplace sufficient?

- Lack of integration with internal business systems/processes presents challenges.
- Workspace is good, intuitive interface.
- USBs create issues.
- PEXA doesn't plug into existing business systems – too much duplication and switching between paper and electronic, very inefficient.
- Can't complete settlement in paper if issues arise morning of settlement in PEXA.
- Streamlines file handling.
- Primarily internal bus restrictions that impact take up.
- PEXA does not integrate with other systems, so a lot of data entry is required.
- PEXA needs a 'save' or 'print' button on its platform, so docs can be saved to practitioner files or emailed to clients.
- There are no messages from PEXA if you have made an error in the workspace, have to try and work it out yourself as to why the lodgement isn't progressing – not very intuitive.

Do you support electronic settlement and lodgement being mandated?

- Yes, would like to get to 100% electronic and go cross jurisdictional.
- Yes, just waiting for mandating to happen, would like a specific date to determine transition timeframe.
- Yes, means it is a certain thing. Industry needs a timetable.
- Yes, however, system has to be as good as the one we have now or better.
- Yes, it's a done deal.
- Yes, industry has had sufficient time to adjust.
- Yes, dual process is too difficult.
- No, will close businesses, and bad idea to mandate something where banks have a financial interest in the monopoly. There is at least a perception of undue influence due to PEXA ownership situation. How will PEXA fees be managed? Who pays for issues caused by PEXA?
- Yes, prefer to have no choice because selling PEXA is challenging.
- Yes, it will eventually provide enormous benefits but if the current problems continue costs will outweigh benefit.

- Yes, need to see more uniformity across the states particularly regarding financial institutions.

What do you feel the benefits of a mandate are?

- Paperless lodgement and settlement.
- Certainty for industry.
- Make eConveyancing easier to use – network effect.
- Allows regional firms greater control and visibility over their files and eliminates the need to engage a settlement agent.
- It will streamline processes and save practitioners time.
- Provides clarity of process for all participants meaning improved turnaround times.

What negative impacts do you think mandating may have?

- Settlement teams will be out of work.
- Older practitioners will leave the industry.
- PEXA will not have capacity to support new subscribers and their issues.
- Mandating has caused stress and tension.
- Concern about monetary cost of eConveyancing on vulnerable people in the community.
- Lose industry connections – not spending time in the settlements room.
- Impact of power outages / system downtime on clients.
- Many people won't know what they're doing and settlements may fall over – fuelling the 'PEXA doesn't work' attitudes.
- People are scared of fraud.
- Scared about telling clients the cost of eConveyancing.
- Housing trusts, defence housing and public trustee don't have budget to pay PEXA fee. Need timeframe to include costs in contracts.
- Need PEXA training to support PEXA changes.
- How will cross jurisdictional issues be dealt with?
- Hard to sell to the consumer – doesn't end up being more efficient or less costly.
- Impacts on jobs and businesses.

- Harder to identify fraud online.
- Currently more issues with PEXA than with paper.
- The lack of a nationally consistent approach to eConveyancing is a significant issue for participants.
- If conveyancers aren't trained properly can cause a lot of complications - practitioners who don't know what they're doing will put pressure on those who do.

If mandating were to go ahead, how much lead time do you think you need to prepare?

- Wait until new ELNOs are on board.
- Need three - six months lead-time.
- Six month timeframe preferred.
- Not January or July – August or February preferred.
- Sooner rather than later – do stand-alone dealings first and the rest in six months.
- 12-18 months, six months too short – industry need to feel more engaged, August next year would be best.
- Mandate ASAP, industry has had long enough – will always leave it to the last minute anyway.
- Mandate ASAP, do the stand-alone dealings first and then wait to see how NSW goes with the four party transactions in terms of capacity.
- Three to six months should be plenty of time.
- Need series to be mandated – no point doing stand-alone dealings when they need to be lodged in series.
- Do stand-alone dealings first and then simple settlements. Don't mind how long lead in is just don't mandate in a busy time.
- The longer the timeframe you give the longer people will be complaining for.
- Don't want to fall behind the eastern states too far and don't want to have to adopt their models.
- Mandate everything at once, practitioners have had long enough to get on board.
- Need a staged approach to integrate the new processes into the internal business systems. Slow approach will build confidence.
- Mandate ASAP, three to six months should be long enough but want staged approach so smaller firms have time to learn new processes - liked the VOI implementation process.
- Sooner you mandate the better because people won't change unless they are made to.

- Need significant lead in so people can decide what they want to do – sell business, retire, merge etc
- Need a very considered and staged approach, simple transactions first.
- Give people enough time to get their heads around it.
- Should be a capability to revert to paper if issues arise that make the transaction risky to do electronically.

How you think more ELNOs in the market will affect the industry?

- Concern choice of ELNO would be taken out of practitioner hands.
- Uncertainty about benefit of additional ELNOs - would have to wait and see if fees are better, ease of use is better etc.
- Concern over whether you would need to train in and subscribe to each?
- No issue with data being in different work spaces.
- Not a bad idea to have purchaser pick the ELNO because it will be their bank settling.
- Don't want to have to learn three - four more platforms.
- Data security is top of mind.
- Good that PEXA will not be a monopoly anymore.
- Problematic if they all had a subscription fee.
- Can't imagine the banks would put more time, effort and money into learning or interfacing with more ELNOs.
- Practitioners won't want to carry anymore licencing fees for ELNOs.
- Banks can't be seen to be favouring one ELNO over another.
- Not good to see the market split over too many platforms.
- Want the best service for the cheapest cost.
- Don't want too much power in the hands of the banks.
- Interested to see what else can be offered by other ELNOs.
- Biggest worry about additional ELNOs is transparency around fees, who pays what where?
- eConveyancing platform should be owned by the government.
- Banks will make a deal with a platform and they will go with them. Even if can't be seen to be anti-competitive behind the scenes they will have a preference for a platform.
- Feel people will stay on the platform they learn on.
- Still won't be a free market, who will control fees they charge?

Do you have other industry concerns which you would like to raise?

- A reduction in the registration fee would get more people involved.
- There's an argument out there that is not a clear legislative power to mandate.
- Industry should be considered as 'responsible' considering the amount of responsibility duties registered conveyancers have e.g. can't certify copies but a postal workers can.
- Seven year review of the IGA is critical – establish appropriate regulatory body.
- Want to see requisitions dealt with electronically rather than in paper.
- After five years of change, need certainty on the way forward.
- Conveyancers need consistent auditing to be reminded about VOI requirements.
- Would like to see legislative change to prohibit conveyancers working for both sides of a transactions.
- VOI for elderly sometimes a problem as they don't have licences, hard to get them to a JP etc.
- Commonwealth Government should get all the data they need from ELNOs rather than the practitioner uploading it twice.
- Issues around practitioners required knowledge of visas.
- Having trouble getting advice for complex matters when ringing customer service.

Is there anything you need from the ORG / LSSA to facilitate the change to electronic conveyancing?

- A timeframe to work to.
- More education, training and support from LTO – RevenueSA style.
- Industry and public need to have confidence in the electronic system.
- Want to see the government take responsibility for ensuring standards and the integrity of the market.
- Training on specific documents, and good to see the perspective from the other side of the equation.
- Training and education should be delivered by government - by the people changing the legislation.
- Conveyancers need help with all the changes – training and support.

Do you feel communication regarding the changes has been clear and timely?

- Yes – enough communication and support for industry, AIC lay it on a platter for members.
- PEXA do a great job with their customer service and support.

Do you think the industry is positioned to absorb further change in the form of mandating?

- Yes – there is an appetite among the medium size conveyancers to get on with it
- There has been two years of continuous change in the industry, it's the new normal.

Industry Bodies

What has the experience of your members been to date with the electronic conveyancing process?

- Administrative burden around having to have two people log into PEXA to authorise a payment.
- Issues around safeguarding trust accounts balanced with PEXA requirements - major issue for many legal firms.
- Have to embrace technology driven changes.
- Un-met expectation that electronic should be quicker.
- Bringing down fees for PEXA would be a great incentive to get people on board – even for a while.

What have your members' experience with PEXA been like? Have resolution of issues and response times been efficient?

- Doing caveats – there's loading for multiple titles, the cost associated with the jump from one title to two titles is quite substantial.
- PEXA have been very proactive in assisting lenders to move forward with eConveyancing.

Do your members support mandating eConveyancing?

- All members in support and very keen to get on with it.
- Yes, feel like it is inevitable just need to know timeframes.

- Yes to resolve the multiple processes jurisdictionally.

What do your members feel the benefits of a mandate are?

- Practitioners in SA remain competitive with interstate colleagues.
- Timeframe – yes, how far and how fast.
- Want to know the process upfront and even if we get the details later.
- Ultimately quicker, easier and will minimise data entry.
- Knowledge of lead time and consultation period around the timeline.
- Knowledge around timeframes and lead time will help bed down new processes.

What do your members feel the barriers to a mandate are?

- Conveyancing business may lose work.
- Shuts out self-represented people.
- No competition in the ELNO market.
- Expensive to use.
- Phone and training - PEXA will struggle with demand and there may be significant delays.
- Struggling to fill the spaces with experience.
- The end to end user – Info, GobaX end up the big players.

If mandating were to go ahead, how much lead time do you think your members need to prepare?

- No longer than 12 months, the longer people are given the longer they will take.
- Would like to see it all done at once but can appreciate the need for a staged approach.
- Minimum six months, up to 12 months due to changes required in banking systems.
- Somethings need sorting first – the trust account issues and self-represented party issues.

How do you think more ELNOs in the market will affect the industry?

- Banks need a central point for transformation, don't want a distraction - distractions are barriers.
- How well can it be done – seamless and less errors – there has already been a lot of work around financial settlements.
- ARNECC have a role in promoting all conveyancing without promoting one over others.
- What services will the other ELNOs provide?
- Is the market big enough to hold more than one ELNO?
- How to manage ELNOs and their needs, to be addressed and managed.
- Main issue is who gets to choose?

Do you have other industry concerns which you would like to raise?

- Should there be a more suitable regulatory body other than ARNECC which is not designed to be a regulatory body.
- Role and function of ARNECC needs to be addressed and its position needs to be re-considered.
- Industry should be involved in the IGA review.

Is there anything your members need from the ORG / LSSA to facilitate the change to electronic conveyancing?

- Assistance to resolve the trust account issues and determine impact on self-represented parties.

Existing and Potential Electronic Lodgement Network Operators (ELNOs)

What is your perspective on mandating of electronic settlement and lodgement process?

- Industry want mandated electronic settlement – they feel hamstrung by other users who are not using eConveyancing.
- Industry want a clear, staggered timeframe for mandating. Need enough time to establish processes.
- Not opposed to mandating in principle. There will always be a portion of the market opposed to change. There may be a point where mandating is necessary to get the network across the line. But the real issue is getting a product that delivers value.
- The mandating time tables have improved uptake – combination of regulatory pressure and a better product.

- Fully support mandating eConveyancing and support that occurring in a transaction by transaction approach, but don't support mandating of eConveyancing while there is only one ELNO operating as incumbent will have the network effect and make it much harder for new ELNOs to get return on investment.
- Need to determine the interoperability issues with PEXA prior to mandating at least.

What has in your experience impacted the uptake of electronic conveyancing in South Australia and nationally?

- The transparency of eConveyancing – exposes subscribers in 'gory' detail. Users can see who is holding up each stage of the process.
- Bespoke approach taken by each state to implementing mandating - the uptake of eConveyancing requires a networked approach.
- Clearly industry weren't convinced of the efficiency and weren't convinced about reliability.
- If there was market confidence then that would drive uptake, shouldn't need mandating.

What are your future expectations of a multi-platform market for electronic conveyancing?

- Want to see issues with data standards and interface specs dealt with in a national forum, in a manner that resolves the problems and clarifies the conditions ELNOs are operating under.
- Don't want to see bespoke clauses in each States operating requirements.
- There is a need to act around market structure, so there is not a dominant market player.

Do you have other concerns which you would like to raise?

- The Registrar-Generals should determine what they want out of the market in terms of competition before handing over the bargaining chip (of mandating to PEXA).
- Review of the IGA may lead to better understanding of how the competitive market should operate.

Industry have raised some concerns about mandating, what do you see as possible issues?

- Takes the banks a long time to bed down new processes and accept new players. There is no benefit for the banks to integrate with another ELNO.

- Mandating has led to higher levels of industry unrest – NSW, Vic, WA – practitioners are concerned about how the market will work in a post mandating world.
- Things that have come to light due to mandating in other states:
 - Not everyone finds PEXA efficient and many don't find PEXA more efficient than paper
 - Did not understand the difficulties that ARNECC and the Registrar-Generals have over data standards
 - Did not know how competition would work in this industry.
- Now Registrar-Generals in the states that haven't put out a timetable are free to see how these things pan out.
- Potential security issues, particularly around email fraud e.g. practitioners accepting instructions via email and how they validate these instructions.