



Property Law Reform Alliance

2 August, 2004

Mr Warwick Watkins
Registrar General
Land and Property Information NSW
GPO Box 15
SYDNEY NSW 2001

Dear Mr Watkins,

The Property Law Reform Alliance appreciates the opportunity to respond to the discussion paper: *Electronic Settlement, Electronic Lodgement, and Automatic Registration of Real Property Dealings in NSW*.

Our responses to the questions are listed below.

Our Details

The Property Law Reform Alliance (PLRA) is a coalition of legal and industry organisations which are committed to the reform of property law and procedures in Australia.

Members include:

- Australian Property Institute
- Australian Property Law Group of the Law Council of Australia
- Law Society of ACT
- Law Society of NSW
- Master Builders Australia
- Mortgage Industry Association of Australia
- Property Council of Australia (including the Shopping Centre Council of Australia)

Correspondence to be sent:

c/- Paul Waterhouse
PLRA Secretariat
Level 1, Property Council of Australia House
11 Barrack Street
SYDNEY NSW 2000

- Real Estate Institute of Australia
- Urban Development Institute of Australia

PLRA's major goal is the development of a Model Real Property Act, which will outline leading practice regulation and processes for possible adoption by State and Territory jurisdictions.

As the Alliance has been established by stakeholders committed to greater national harmony of property law, it does not have any government representatives, but aims to negotiate with legislators once a model Act has been developed.

Our Overall Views

The PLRA is supportive of the proposal by the Department of Lands to pursue electronic settlement, lodgement, and registration.

We consider the potential benefits of such a system to be:

- an efficient and cost-effective means of undertaking property transactions;
- reduced holding, opportunity, and administration costs due to faster processing times; and
- incidental reforms to the process of lodging and settling property transactions.

As the ultimate reform and harmonisation of property laws and practices nationally is the primary focus of the PLRA, we are pleased that electronic lodgement and settlement is being considered.

However, we strongly urge the Department to monitor other proposed systems and ensure that there is consistency in the approaches taken.

Comments on Other Submissions

The PLRA has sighted drafts of submissions from:

- The New South Wales Law Society;
- Law Council of Australia; and
- Mortgage Industry Association of Australia.

All of whom are members of the Alliance.

We generally support those submissions and make the following specific comments:

National Consistency

- As business transactions are increasingly being made nationally and internationally, it is essential that Australia move to a more consistent set of property laws.
- Electronic conveyancing is a golden opportunity to facilitate this process, and any systems should aim to be consistent with those in other jurisdictions.
- Accredited users of the system should be able to be accredited nationally, without the need for additional training or accreditation requirements.

- To this end the PLRA notes with dismay the inconsistent terminology and concepts between the New South Wales and Victorian electronic conveyancing proposals. This is counterproductive to national consistency.
- While the PLRA accepts that there are regional differences between Australian jurisdictions, most of these differences are historical in origin and should eventually be discarded in favour of “leading practice” solutions. Any electronic conveyancing system should be sufficiently adaptable to cater for regional variations.

Efficiency

- An electronic system must be more efficient and more cost effective for the public than the system it replaces. It should not be pursued with the intention of adding to the administrative responsibilities of accredited users or transferring cost or risk away from government.
- An electronic system should be able to do everything currently done by the paper based system.

Protecting Against Fraud

- The PLRA is concerned that there may be difficulties ensuring the identity of customers and clients and their authority to deal.
- This is the single most important issue facing electronic conveyancing (and all electronic commerce). The recent experience in New South Wales with forgery of paper titles shows how difficult it is to prevent fraud in this area, and cost-effective safeguards are needed if the conveyancing system becomes electronic.
- It is therefore imperative that the means of identifying the principals and their right to deal are simple, cost-effective, national and not geographically exclusive. The criteria used to confirm identity should not be more stringent than that required merely to replace the identity verification provided by the paper title.
- The system cannot rely upon the accredited users personally knowing their customers or clients, or requiring them to personally attend their respective offices – e.g. a financier in Darwin must be able easily to identify a borrower who is resident in Hobart, who is mortgaging land in Perth, but temporarily holidaying in New Zealand.
- Similar cost-effective and efficient processes are needed to identify corporations and their officers, including foreign corporations.

10.3 Our Views about Particular Features

- **Direct lodgement/certification or lodgement/certification through agents?**

As flexibility is of paramount importance in the facilitation of property transfers, both options should be made available in an eConveyancing system.

Methods to ensure appropriate identification could include the process used by the post office for Australian passports, which could result in the production of a simple form of digital signature to enable identification.

- **Electronic settlement now or when the industry is ready?**

PLRA sees more advantage in financial settlement than in electronic lodgement although there are clearly advantages in both.

Ideally, however, there should be a window available while the industry becomes used to the idea of both electronic lodgement and settlement.

Lodgement and settlement should therefore be introduced as a combined package, but not be made mandatory until the industry has accepted and adopted the process.

- **Mandatory or optional use of electronic facilities?**

As an interim measure, both lodging and settling electronically should be voluntary, until such a time as the system can be reviewed to ensure its efficacy.

The economic and marketing pressures on practitioners will ensure that the system should be an overwhelming success if the electronic system is well defined and implemented.

Consideration could be given to making the system mandatory after it has demonstrated its beneficial use by take up by the majority of participants, so long as the mandatory system can perform all the tasks of a paper based system.

If both lodgement and settlement are eventually to become mandatory, it should only occur once the system has become user-friendly and should be subject to staged implementation, leaving out complicated transactions and self-conveyancers.

- **Extent of government involvement in implementation?**

PLRA believes that the land registry and all the essential or practical elements and infrastructure required for amendment to the title register are core functions of government.

There is certainly an ongoing role for government in this process as a natural stakeholder in the property law arena and as a provider of the infrastructure within which property transactions are effected.

However, the accredited users of the system should be able to adapt that core electronic infrastructure to enable it to interface with their own internal systems.

The NSW and other systems should ensure the development of common communication protocols for eConveyancing software so that participating systems could transfer information, similar to the work being carried out by the Development Assessment Forum's electronic DA project.

Regardless of whether such a protocol is introduced, however, the Government should continue to guarantee the status of the register and ensure that indefeasibility of title is not compromised by this form of delivery.

The PLRA hopes that the information contained in our submission is of interest to the Department. If you wish to discuss our comments further, please do not hesitate to contact Murray McCutcheon on (03) 8602-9204 or Paul Waterhouse on (02) 9033-1956.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, sweeping curve that starts on the left, rises slightly, and then extends horizontally to the right.

Murray McCutcheon
Chairman