



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: JD:GL: 656912
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18 October 2012

The Hon. Greg Pearce, MLC
Minister for Finance and Services
Governor Macquarie Tower
Level 36, 1 Farrer Place
SYDNEY NSW 2000

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Dear Minister,

Electronic Conveyancing (Adoption of National Law) Bill 2012 ("Bill")

I am writing to you at the request of the Law Society's Property Law Committee ("Committee"), which is comprised of experienced and specialist property law practitioners, drawn from the ranks of the Law Society's members, who act for various stakeholders in the conveyancing process.

The Law Society has for many years supported the creation of an electronic conveyancing system, anticipating benefits and efficiencies for all participants in the conveyancing process and the community at large. The Committee has been extensively involved in stakeholder consultation, through its own liaison with Land and Property Information and as a constituent member of the Law Council of Australia's National Electronic Conveyancing System ("NECS") Working Group.

The Committee is concerned that the Bill has been introduced in to the New South Wales Parliament while several fundamental issues have not yet been satisfactorily resolved, such as the problematic drafting of the attribution rule, the failure of the Bill to address financial settlement and the definition of "digital signature".

The Committee considers that the current form of the attribution rule, in particular the basis upon which a subscriber can repudiate the subscriber's digital signature as set out in clause 12(4) is confused and unworkable. (The attribution rule is contained in the Appendix to the Bill, *Electronic Conveyancing National Law* at clause 12.)

This issue of attribution is critical in determining whether legal practitioners are being asked to accept uninsurable risks in participating in electronic conveyancing. Until this issue is resolved the Committee is unable to support the Bill.

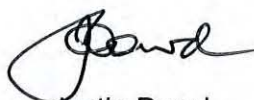
I understand that the Law Council will also write to you to express similar concerns. The Law Council of Australia's NECS Working Group has recently written to the Australian Registrars' National Electronic Conveyancing Council stating that it does not consider that the Bill is ready to be submitted to the legislature and that it cannot support the Bill in its current form.

The Committee appreciates that the Bill is being introduced to facilitate the proposed rollout of the first release of the electronic platform in the second quarter of 2013. The Committee is concerned however that adopting the Bill in its current form without satisfactorily resolving such fundamental issues as the attribution rule jeopardises the ability of the profession to participate in the proposed electronic conveyancing system. This will severely limit the uptake and utility of the system which is disappointing given the resources and time spent in consultation to date.

The Committee urges you to defer further action in relation to the Bill until these issues are resolved.

Your officials may find it convenient to direct any queries about this letter to Gabrielle Lea, Policy Lawyer for the Property Law Committee on (02) 9926 0375 or by email to gabrielle.lea@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Justin Dowd', written in a cursive style.

Justin Dowd
President