



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: JC:lb:1301138
Direct Line: 9926 0202

21 April 2010

NECS in NSW Industry Consultation Feedback
Land and Property Management Authority
DX 17 SYDNEY

By email: NECSinNSW@lands.nsw.gov.au

Dear Sir,

Land Registry Transaction Services for Conveyancing

I am writing to you at the request of the Law Society's Property Law Committee (Committee).

The Committee appreciates the opportunity to comment on the issues raised in the Consultation Paper: Land Registry Transaction Services for Conveyancing as part of the stakeholder consultation for the "NECS in NSW" program.

If you wish to discuss the Committee's responses in the attached submission, please contact Ms Liza Booth, Executive Member, Property Law Committee by telephone on 9926 0202 or by email to liza.booth@lawsociety.com.au.

Yours faithfully,


Mary Macken
President

Encl

NECS in NSW Consultation Paper

Issue 1 – Requirements for Land Registry Transactions Services

1.1 Do conveyancing industry participants prefer -

- consistency and compatibility between paper-based and electronic instrument templates, searches and compliance assurance to facilitate industry systems having the option of automated production of registry instruments in either medium, or
- development of new LR Transaction Services for electronic conveyancing specific to the electronic conveyancing workspace environment?

Committee's comments

The Committee considered that electronic templates should mimic paper instruments. When entering information in a NECS workspace, members are not anticipating that the information on the screen will look the same as for a paper based template but the instrument should be available in a printable form which does look the same as the form used in the paper based system. This will assist practitioners operating concurrently in both environments.

1.2 Do the five services (1. registry instrument templates; 2. Registry Information; 3. Title Activity Check; 4. publication of compliance assurance rules; 5. Lodgment Verification service) satisfy industry practitioners' and financial institutions' need for Land Registry Transaction Services required for conveyancing using an electronic business environment?

Committee's comments

These services appear to satisfy industry practitioners' and financial institutions' needs, as presently identified, for Land Registry Transaction Services. Additional services may be identified at a future time.

1.3 Are the identified development objectives for LR Transaction Services appropriate (1, Automated preparation and compliance assurance processing; 2. Transitional development of systems; 3. Paper-based registry instruments compatible with electronic conveyancing)? If not, what other Land Registry objectives for Transaction Services need to be achieved for implementation of electronic conveyancing?

Committee's comments

Yes. The identified development objectives for LR transaction services are appropriate.

Issue 2 – Requirements for exchange of information and compliance assurance rules.

- 2.1 The NSW Land Registry proposes to develop new Transaction Services (e.g. registry instrument forms, Registry Information, Title Activity Check, Lodgment Verification) using the National Electronic Conveyancing Data Standard. Do conveyancing industry participants support this development, and are there any special considerations or requirements that need to be taken into account to meet industry's needs for these products?

Committee's comments

Yes, as identified in the National Business Model until the system is more mature and the need for additional services may be identified.

- 2.2 Does publication of Land Registry compliance assurance business rules in natural English for conveyancing industry participants to apply in its own systems satisfy industry needs for acquiring automatable transactions assurance rules? Do industry practitioners and financial institutions have any specific requirements for communication of Land Registry compliance assurance rules?

Committee's comments

The Committee noted that this is ultimately an IT question which is relevant to supplying an IT interface with NECS. It may be that the majority of practitioners will access NECS through a browser rather than a direct internet connection. The system should be able to be used with software packages commonly used by stakeholders. There shouldn't be a requirement for additional software installation on a user's computer as a result of that user requiring access to NECS.

In relation to the second part of the question, industry practitioners would appreciate an "error message" identifying to that party which field is in error.

Issue 3 – Implementation strategy for LR Transaction Services

- 3.1 Do conveyancing participants support the channel delivery strategy for LR Transaction Services where the new LR transactions services are available through licensed Information Brokers with the required delivery infrastructure? If not, how should the strategy be changed?

Committee's comments

Yes, on the basis that this will enable the broadest possible range of Conveyancing practitioners to participate in NECS. The Committee is not aware of details of any feasible alternatives to enable the Committee to comment further.

- 3.2 Do conveyancing industry participants support the Land Registry proposal for progressive development of products for Land Registry Transaction Services concurrently with implementation of electronic conveyancing? How could this proposal be improved?

Committee's comments

Yes, as such progressive development will provide the benefits set out in paragraph

6.5, particularly :

- collaboration on implementation and
- progressive development of systems necessary for electronic conveyancing rather than a "big bang" approach

- 3.3 Is it likely industry practitioners and financial institutions will utilise the products 1 to 5 (1. registry instrument schema and data standards; 2 XML Registry Information; 3. Title Activity Check; 4. Transaction Assurance Business Rules; 5. Registry instrument compliance assurance) for paper-based conveyancing concurrently with implementation of electronic conveyancing? If so, are there any specific implementation requirements that need to be addressed?

Committee's comments

The Committee considered that the only situation in which they may be interested in utilising these products would be in the scenario where the system would enable the inclusion of a paper transaction in a chain that is otherwise entirely based on settlements through NECS.

Issue 4 – Requirements for registry instrument templates

- 4.1 Do conveyancing industry participants support the NSW Land Registry approach of using a common schema to ensure consistency across all instrument types and simplify the extensibility of electronic conveyancing to all instrument types?

Committee's comments

The Committee members support the use of a common schema to ensure consistency across all instrument types.

- 4.2 Can industry practitioners and financial institutions use a common standardised registry instrument template for each registry instrument type? This means eliminating forms customised for a specific industry practitioner or financial institution. Are there any special requirements necessary to achieve this goal?

Committee's comments

Yes. The Committee does not see the need for the use of registry instruments customised for use by practitioners or institutions licensed to use them.

- 4.3 Operative Words on each instrument type will be standardised for all users for paper and electronic environments. Can industry practitioners and financial institutions work with this constraint, or will it be necessary to incorporate a limited size (say 500 characters) variable data field for terms and conditions to be associated with the Operative Words?

Committee's comments

The Committee considers that there may be the need for an additional text field with a limited capacity as discussed on page 37 of the paper. The members noted that the limit suggested on page 37 of the paper "500 characters" appeared to be adequate.

- 4.4 How much time will financial institutions require to transition to standardised Operative words on NSW registry instruments?

Committee's comments

This is a question that only the financial institutions can answer.

- 4.5 In what formats should the NSW Land Registry produce its new registry instrument templates e.g. XHTML or XML compliant MS Word or Adobe Acrobat?

Committee's comments

The Committee considers that the new registry instrument templates should be in XHTML but that wider options such as XML compliant MS Word and Adobe Acrobat should also be available.

- 4.6 Will industry practitioners and financial institutions use the NSW LR's new XML forms in their in-house systems, or will they use the LR schema to build their own templates?

Committee's comments

The Committee anticipates that industry practitioners (and financial institutions) will want to develop their own templates. Most practitioners will use, probably at least initially, NSW LR's new XML forms.

Issue 5 – Requirements for Registry Information

- 5.1 What data content is required in a Registry Information product? - Is the information set indicated as "Essential" in the Requirements column in Appendix D sufficient? Industry participants are invited to provide justification of any varied or additional data requirements specification for inclusion in Registry information (see section 7.2 for details of scope of Registry Information).

Committee's comments

As a general comment, the Committee considers that the information indicated as "essential" in the requirements column in Appendix D, is sufficient. If it was to be expanded, it should cover any additional information required for the eNOS.

- 5.2 When is it envisaged industry participants will need/use Registry Information:
- 5.2.1 in the business environment for
- electronic conveyancing only, or
 - both electronic and paper based conveyancing?

- 5.2.2 at what point in the workflow will it be used
- prior to creating or using a NECS Workspace or
 - only in a NECS Workspace
 - in the industry participant's system for both electronic and paper-based transactions?

Committee's comments

5.2.1 The Committee members suggest that they would envisage industry participants using registry information for electronic conveyancing only.

5.2.2 The consultation paper states on page 40 that:

"Land Registry analysis of the conveyancing process indicates that conveyancing industry participants currently purchase a title search for each transaction" and then carry this forward as reference information throughout the conveyancing process".

As a result it would be used prior to creating or using a NECS workspace and could be used by an industry participants' system for both electronic and paper based transactions as the vendor disclosure requirements for both are the same.

The Committee noted in answer 5.2.1 that its members considered that as a matter of choice, industry participants may choose to use Registry Information only in electronic conveyancing.

- 5.3 Should the Land Registry digitally sign the Registry Information for authentication purposes?

Committee's comments

Yes.

- 5.4 Should a purchaser be entitled to take Registry Information into a NECS Workspace?

Committee's comments

Yes, for the reasons stated in the paper.

- 5.5 Should a conventional search be bundled with Registry Information?

Committee's comments

Yes. It is noted on page 41 of the paper that Registry Information will include, from the first release of the product, all the information currently contained in an existing format of title search. There does not appear to be any reason to bundle these products.

- 5.6 Should a Title Activity Check Subscription be bundled with Registry Information?

Committee's comments

- 5.6 Should a Title Activity Check Subscription be bundled with Registry Information?

Committee's comments

Yes, it should be a product bundling option available to industry participants. See below (6.3/6.4).

- 5.7 Should the information search customer self-determine product bundling (i.e. a Conventional Title Search, Registry Information, and Title Activity Check Subscription individually or together) at time of ordering?

Committee's comments

Yes.

Issue 6 – Requirements for Title Activity Check

- 6.1 For what reasons would the NSW Land Registry proposal for a reactive Title Activity Check not be suitable?

Committee's comments

No reasons are advanced. The current environment requires that industry practitioners make the necessary check.

- 6.2 What information should be contained in the Title Activity Report received in response to a request for a Title Activity Check?

Committee's comments

The Committee considers that the necessary information is that specified in paragraph 2 (c) on page 43, namely, a Boolean Yes/No, the date / time of each change, and the dealing / plan number for each change on the Land Title.

- 6.3 What is the appropriate subscription period and limit on number of calls to the Land Registry for a TAC product?

AND

- 6.4 Should the start time/date for the TAC be:

- (a) auto specified by the date/time of the purchase/issue of the TAC product,
or
- (b) specified by the purchaser in the purchase request for the TAC.

Committee's comments

The TAC subscription should run from no earlier than the time at which the Registry Information is imported into a NECS workspace. Given that the electronic system is supposed to closely follow the paper based system, it is necessary to look at what happens in the paper system.

A vendor buys a title search, and warrants that, at the date of contract, the information in that search is current and correct.

The TAC is not something that the vendor requires but is something the purchaser will wish to buy, as it mirrors:

- the update search many purchasers' representatives undertake immediately after exchange of contracts, and
- the final search undertaken immediately before completion.

The addition of a TAC in the week before completion would be of assistance both to vendor and purchaser, to alert them to changes in the title which need to be addressed before the final search (lodgement TAC) is done at the time of settlement. In the light of this, the purchaser should determine when the subscription will start.

This may have implications for how the cost of the TAC subscription is charged for and/or allocated or adjusted between vendor and purchaser.

6.5 Should the TAC Subscription be bundled with Registry Information?

Committee's comments

This should be optional.

6.6 Is the proposed product structure reasonable? If not, why not?

Committee's comments

Option A on page 41 is redundant, otherwise Yes.

Issue 7 – Requirements for compliance assurance

7.1 Are the Land Registry compliance assurance services listed in 1.2 and 2.1 to 2.4 above sufficient and useful for (a) electronic conveyancing, (b) paper-based conveyancing? If not, how could the proposed services be improved?

Committee's comments

See the answers to 1.2 and 2.1 to 2.4. The Committee has not identified any additional services required at the present time.

7.2 Do conveyancing industry participants support a transition approach to development and implementation of a Land Registry compliance assurance service? If not, what strategy of implementation should be used by the NSW Land Registry?

Committee's comments

Yes. It will be of assistance if all services being introduced in connection with NECS are introduced in a staged manner, particularly in connection with paper transactions (once again avoiding the 'big bang' approach).

- 7.3 Would conveyancing industry participants use a verification Lodgment Verification transaction service for paper-based registry instruments?

Committee's comments

Only if it is made available as an option for practitioners to 'vet' the way in which instruments have been completed and not imposed a precondition to lodging documents in a paper transaction.

- 7.4 What content and format of compliance feedback is required by conveyancing industry participants for advice of compliance assurance of transaction?

Committee's comments

The Committee considers that a "warning error message" to the party entering the data depicting the field where the error occurs would be useful.

Issue 8 – Requirements for delivery of documents

- 8.1 Does the Land Registry need to return original registered mortgage documentation to the mortgagee? If so, why?

Committee's comments

The Committee notes that mortgage duty in NSW will not be completely abolished until 1 July 2012. There may be some difficulties for mortgagees which need to "upstamp" mortgages if an original registered mortgage is not returned to the mortgagee while mortgage duty remains current.