



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: SW:vk:ElderLaw:555303

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Arun Kendall
Industry Policy
Australian Payments Clearing Association
Level 6, 14 Martin Place
SYDNEY NSW 2000

By email: consultation@apca.com.au

Dear Sir/Madam,

The role of cheques in an evolving payments system

Thank you for the opportunity to provide input into this consultation on the future of cheques.

The Elder Law & Succession (ELS) Committee, the Rural Issues (RI) Committee, the Property Law Committee and the Business Law Committee (the "Committees") of the Law Society of NSW have considered this issue and provide comments below. The RI Committee considers issues of relevance to practitioners in rural and regional New South Wales, and to their clients. The Business Law, PI and ELSC Committees review developments in the various fields of law and policy as they relate to their particular areas. These committees are comprised of experienced and specialist practitioners drawn from the ranks of the Society's members who act for the various stakeholders in their respective areas of law in this State.

The view of the Committees is that:

- the existing alternative payment systems are not an adequate substitute for the role that cheques perform;
- until there is a viable alternative payment system, cheques will continue to be a necessity, particularly for the elderly and people in remote locations; and
- phasing out cheques may have disproportionate impact on sections of the population which may already be vulnerable for reasons of age or incapacity; or to rural and remote populations to whom fewer services are available, or both.

The Property Law Committee notes particularly that while it is hoped that the majority of practitioners in the conveyancing field will participate in the anticipated National Electronic Conveyancing System (NECS), with its direct financial settlement system replacing settlement cheques, Government's stated intention of retaining the existing paper-based conveyancing system to operate in parallel with NECS means that transacting parties who are not NECS participants will need to be able to furnish or receive cheques on settlement.

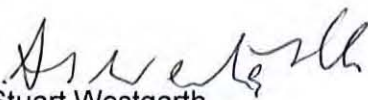
The RI and ELS Committees note that some country towns have only one or two banks (or sometimes no banks at all) which are likely to be at considerable distances from homes/properties. Also, older people tend to use cheques more frequently as it often is their only option. Not everyone in remote locations owns or has easy access to computers, and internet and mobile coverage is still not consistent in rural and remote locations. These factors can make online payment systems largely inaccessible for these people.

The RI and ELS Committees also identified ongoing issues of fraud. These issues particularly affect the elderly and people whose mental or physical capacity is compromised. The RI and ELS Committees' concern is that the potential for abuse may be increased if another person is "pushing the buttons" on behalf of an elderly or incapacitated person. The ELS Committee noted also the issue of increased vulnerability for elderly people in ATM queues, and the increased exposure to ATM skimming fraud for the elderly.

Finally, the RI and ELS Committees also identified the fact that there may be business issues raised in relation to phasing out cheques. It would be very difficult for rural practitioners to run their practices, and there may be implications for the distribution of deceased estates. The ELS Committee noted also that cheques can lead to a better audit trail.

Thank you once again for the opportunity to comment.

Yours sincerely,


Stuart Westgarth
President