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LeadPoint DMS
Digital Mortgage Services

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Mr Brenton Pike
Chair
Australian Registrars National
Electronic Conveyancing Council
By Email: chair@arnecc.gov.au

With copies to: Australian Bankers' Association
Law Council of Australia NECS Committee
Mortgage and Finance Association of Australia
Property Exchange Australia Ltd
Senator the Hon George Brandis QC, Commonwealth Attorney-General
The Hon Yvette D'Ath, QLD Attorney-General
The Hon Gabrielle Upton, NSW Attorney-General
The Hon Michael Mischin MLC, WA Attorney-General
The Hon Martin Pakula, VIC Attorney-General
The Hon John Rau, SA Attorney-General
The Hon Vanessa Goodwin, TAS Attorney-General
The Hon John Elferink MLA, NT Attorney-General

BY EMAIL

Dear Sir

I refer to the ARNECC Strategic Statement issued January 2016.

The Statement is obviously critical to the success of ARNECC in achieving its Charter to develop, implement and manage the regulatory framework for a national system of electronic conveyancing.

ARNECC is leading this effort and all industry participants are looking to ARNECC for leadership and vision regarding the transition to electronic conveyancing.

Whilst I wish to congratulate ARNECC on its significant achievements to date, there is still one impediment to establishing a fully electronic conveyancing system as a true alternative to the current paper system: **Digital mortgages.**

Law makers, registrars and industry leaders must promote and adopt fully digitized mortgage and security instruments. Conveyancing contracts and loan agreements can be formed and executed in digital form, but Titles Registry mortgage documents cannot. Unless mortgage documents can be formed and executed in digital form (without paper), electronic conveyancing will remain nothing more than a duplication (and complication) of the existing/continuing paper system.

The costs and burden of duplication explain the very poor industry take up of PEXA's electronic conveyancing exchange. As you have noted, a low take-up rate of less than 5 percent of in-scope transactions being completed electronically is disappointing and must be of great concern to all stakeholders.

The PEXA Digital Property Report prepared by Price Waterhouse Coopers in 2015 notes that of the 2.5 million transactions lodged with LTOs in NSW, VIC, QLD, and WA in 2013, 676,968 were mortgages (page 8). Clearly, not many mortgages are being completed in the PEXA.

ARNECC has expressed that "*there is now some urgency for encouraging an acceleration of its take-up*", and has outlined that it will focus its effort and resources on three (3) key priorities (out of six (6) listed priorities for the next twelve (12) months).

Disappointingly, none of ARNECC's priorities mention adopting digital mortgage options.

The reason Lenders and their Representative Subscribers have not enthusiastically embraced "electronic conveyancing" is because the current LTO legislative framework simply doesn't support current initiatives to fully digitize mortgage transactions.

The process Lenders are currently laboring with is outlined below:

Loan Application	Digital and Paperless -----------→	Document Production	**Paper only** ------------→ V.O.I & Witnessing	Digital and Paperless ------------→	PEXA

The continuing requirement that mortgages **MUST** be printed, signed and witnessed, in the same manner they have for the past 150 years, when everything else before and after the creation of a mortgage can be digital and paperless, is in my view, extraordinary and unacceptable in the digital era. It is the only "electronic transaction" that requires a party and a witness to wet sign a piece of paper. Why?

The cost to Lenders and borrowers associated with this 19^{th} century process are significant, and in my view represents a significant disincentive and barrier to the take-up of mortgage transactions in the PEXA.

The Electronic Transactions Act 1999 (Cth) and the National Consumer Credit Protection Act 2009 has for many years provided a framework for mortgages to be served and entered into electronically for those borrowers who choose to "opt-in" to using e-commerce technologies.

In my respectful submission, ARNECC should forthwith take action to put in place the legislative framework to allow mortgagors to enter into and "sign" a mortgage "electronically" or "digitally" using E-signature software presently available in the marketplace. The process is secure, the data is encrypted in transit and at rest, and has strong authentication and audit trails to ensure the security of the transaction; more so than the paper and face to face VOI processes.

The model could be similar to that adopted for VOI; i.e. the risk will remain with the Lender and it will ultimately be up to the Lender to decide what "reasonable steps" to take to identify the mortgagor and to obtain a valid and enforceable digital mortgage; one that can be uploaded into the PEXA to proceed to electronic settlement and registration; i.e. a seamless digital paperless mortgage transaction.

Lenders may also choose to provide borrowers and mortgagors with a Digital Certificate following the VOI and loan approval process as part of their customer experience and service offering. The Digitial Certificate could be used to accept and sign the Lender's loan and security documentation, including mortgages, immediately following electronic service. No doubt a competitive and truly digital mortgage market will deliver options that best meet their customers rapidly evolving needs and expectations.

A recent "Housing Wire" publication in the US noted:

> "*With major industry influencers like Fannie Mae, Freddie Mac and the Consumer Financial Protection Bureau affirming the benefits of eClosings and eMortgages more strongly this past year, lenders have the support they need to move forward with full digitization of the closing process.*
>
> *While lenders are expected to benefit tremendously from eClosings, title and settlement companies are beginning to lead the way. This makes sense, considering their in-depth knowledge of the closing process and the fact that they are the ones ultimately insuring the transactions. Plus, they are able to offer a variety of closing methods to borrowers including hybrid, electronic or traditional paper processes, empowering consumers to select the method that best meets their needs".*
>
> *Once eClosings and the eMortgage become the standard, lenders will benefit from the operational efficiency, risk reduction and cost-saving benefits*".

Why is this obvious initiative not available to mortgagees and their customers now, or at the very least be a priority in ARNECC's Strategic Statement? Presently it doesn't even rate a specific mention!

We note and welcome ARNECC's introduction of a National Mortgage Form (NMF) later this year, however it still imposes a costly and slow paper and face to face process that belongs to another era.

ARNECC, and no doubt PEXA, have identified that they must make it more attractive for mortgagees to use the PEXA. The option of a digital mortgage that will seamlessly integrate into the PEXA will be very attractive to both mortgagees and their customers. Our Lender clients repeatedly tell us that when the paper mortgage is removed, they intend to actively encourage borrowers to "opt-in" to receive and enter into loan and mortgage documents electronically and to invest in the digital technologies that are presently available to achieve this process. Until then, they appear more focused on presently available customer experience initiatives.

The FSI Report highlighted a national federated digital identity as a key to improving the efficiency of digital identity processes as well as to minimize the costs and regulatory burden of customer authentication for financial services firms. The FSI Report also said that by introducing a national digital identity framework, reliance on paper-based mechanisms could be reduced, making the process more secure and convenient for customers and more efficient for governments and banks. The Government accepted this recommendation and has directed its Digital Transformation Office to develop the trusted digital identity framework.

ING Direct responded to the FSI Report and the Governments' response by stating:

> "*Customers expect to be able to access goods and services easily and quickly via digital channels and banking is no different. The days of relying on paper and face to face transactions should be over and a trusted digital identity is a key point of the customer value chain*" (Lisa Claes, Executive Director of Customer Delivery, ING Direct).

We are in the digital era now, and the finance industry and Government has responded by digitising processes and removing paper. However ARNECC seems to be of the view that paper mortgages and execution procedures from a bygone era remain viable and acceptable.

In my respectful view, ARNECC's lack of action on this important issue creates a significant barrier to the increased take-up of mortgage transactions in the PEXA.

Accordingly, we strongly encourage ARNECC to prioritize the delivery of a regulatory framework to facilitate the creation of a digital mortgage thereby creating a paperless and seamless pathway to completing digital paperless mortgage transactions in the PEXA.

We also respectfully submit to you that the time to deliver this obvious reform is **NOW**, and that you ignore vested interests that may not support its introduction until a time that best suits them. ARNECC must honour its Charter and deliver a digital solution to the market as soon as possible.

Yours faithfully
LEADPOINT
Digital Mortgage Services

David Maher
Legal Practitioner Director