

Modernising Business Communications – Improving the Technology Neutrality of Treasury Portfolio Laws

PEXA Submission, 26 February 2021

1 Introduction

We write in response to the Consultation Paper of the Commonwealth Treasury entitled ‘Modernising Business Communications – Improving the Technology Neutrality of Treasury Portfolio Laws’ dated December 2020 (the Paper).

We thank the Commonwealth for the opportunity to make this submission.

The adoption of digital technologies by Australian consumers and businesses is ongoing and has been undoubtedly fast tracked by the COVID-19 pandemic. As technology evolves, so does the need for individuals and organisations to be able to meet legal and regulatory requirements using technology.

The Paper¹ highlights multiple areas of possible reform that might best improve the technology neutrality of Treasury portfolio laws² and focuses specifically on Commonwealth legislation.

In our response, we focus on the issue of electronic signatures and digital verification of identity (VOI), as it is the subject we are best able to comment on given the role that we play in electronic conveyancing across Australia.

PEXA is an Electronic Lodgement Network Operator (ELNO), that was born out of the 2008 Council of Australian Governments’ (COAG) meeting which agreed that the paper-based property settlement process needed to be modernised. Not unlike the topics raised by this Paper, PEXA is an example of what can be achieved by Governments and private organisations alike, when it is agreed that change is needed to update and streamline certain practices so that Australian consumers and businesses can benefit from new and emerging technologies. Our purpose is to bring efficiencies to property transactions through the adoption of technology and continuous innovation.

Our experience shows us that even though there are jurisdictions that facilitate property transactions nearly entirely digitally, consumers and businesses still have paper based regulatory requirements that are at odds with the rest of the process (being entirely electronic). In particular, the requirement for physical signatures on documents and the verification of identity of clients at multiple points in the process of a property transaction that results in an onerous duplication of processes and subsequent inefficiencies.

Our submission focuses on electronic conveyancing and how the process of property transactions is impacted by signature and VOI requirements.

¹ Source: The Australian Government the Treasury ‘Modernising Business Communications – Improving the Technology Neutrality of Treasury Portfolio Laws’.

² Source: The Australian Government the Treasury ‘Modernising Business Communications – Improving the Technology Neutrality of Treasury Portfolio Laws’.

2 Importance of Verification of Identity in Electronic Conveyancing

Electronic Conveyancing and ELNOs are regulated by the Australian Registrars' National Electronic Conveyancing Council (ARNECC). To ensure the security and integrity of electronic conveyancing platforms, there are processes in place to ensure that only authorised persons are able to access the platform, and Subscribers³ have strict obligations to ensure that their users and clients are correctly identified, to ensure the legitimacy of their actions on the platform.

As a part of the onboarding process to register Subscribers, PEXA must ensure the individual or business meets the required eligibility criteria and must take steps to verify the identity of Subscribers. Individual consumers are not able to register as Subscribers to the PEXA platform, and therefore must be represented by a law firm or, subject to the laws in a jurisdiction, a conveyancer.

Previously, in paper based property transactions, each party would sign their own registry instruments to execute transactions, usually, with their physical signatures witnessed by a qualified witness. By comparison, in an electronic settlement, the appointed Representative Subscriber digitally signs instruments on behalf of their clients. The digital signature is supported by written evidence of instructions, and verification of the client's identity. For financial institutions that are included in property transactions, a mortgage cannot be digitally signed by a mortgagee in PEXA unless they have a mortgage document that has been granted by the mortgagor on the same terms as the PEXA mortgage. The granting of the mortgage by the mortgagor (borrower) can be achieved either via a physical signature or, in some cases, subject to any regulatory constraints, an electronic signature of the borrower.

Verifying the identity of the Subscriber and the end client is essential to the integrity of electronic conveyancing where digital signatures replace witnessed physical signatures. Although essential from a risk management perspective, the VOI requirement can be costly, onerous, and in some instances repetitive for the client.

3 Opportunities for Greater Efficiencies

ARNECC prescribes a VOI standard that is recommended (but not mandatory) to show that a Subscriber has taken reasonable steps to verify their client's identity. Identity Agents⁴ are commonly used to complete VOIs at the required standard (face to face regime). The cost differs by service and provider, but a commonly used option is Australia Post, where clients can attend an Australia Post outlet to have their identity verified by an Australia Post employee at a cost of \$49. This cost is paid by consumers and is additional to conveyancing legal fees.

In addition to the cost of the VOI itself, the time needed to arrange a VOI as well as the preparation must be considered when assessing the cost of compliance. Arranging for a physical VOI to be

³ Subscribers must be registered with an ELNO and can include lawyers and conveyancers, financial institutions, and government bodies.

⁴ Identity Agents include companies like ZipID, Australia Post, GlobalX, that hold the relevant insurances and are authorised to conduct verifications of identities on behalf of others.

undertaken can be difficult for clients and can cause delays to the conveyancing process when a VOI is needed in order for a matter to progress.

In addition to a VOI for electronic settlement purposes, there are ordinarily additional VOI requirements that need to be met for financial institutions when borrowing funds. Under the current regulatory framework, a VOI cannot be reused by different organisations, which leads to duplication of the consumer's requirement to demonstrate their identity for a property transaction.

4 Electronic Signatures

Electronic signatures are already accepted in some jurisdictions, with the *Electronic Transactions Act 1999* (ETA) existing at a Commonwealth level to facilitate electronic commerce and demonstrate a clear policy intention to enable electronic transactions. In considering a broader acceptance of electronic signatures, and removing the various exemptions to the ETA, we agree that the provisions of section 10 of the ETA should be used as the basis for considering the future, broader acceptance of electronic signatures more generally, including by way of the Proposed Principles outlined in the Paper.

The Proposed Principles provide for the following:

- ensuring that the electronic method of a signature provides, at least, an equally reliable indication of the person's identity and their intention in respect of the document; and
- where a signature is given to an individual or a business, that individual or business must consent to the use of that method to verify identity and receive agreement.

The first of these principles is important in being able to securely accept electronic signatures for more types of business and consumer transactions and being able to digitally verify the identity of a person at the time of signing is fundamental to their validity, safety and security. The second principle is easily addressed by businesses confirming their agreement to accept electronic signatures as methods of signing agreements.

Provided that there can be a reliable way to verify identity, electronic signatures remove the real world issues that arise when needing to obtain physical signatures on documents. Since the COVID-19 pandemic, more people are working from home, less people are travelling, and postage delays are sometimes experienced. Businesses may operate with directors across states, and people can own or purchase property even when living overseas or out of State. Without doubt, being able to settle property electronically did much to ensure that despite physical distances and limitations, settlements and refinances could still take place safely.

As mentioned previously, the process of verifying a person's identity is usually an 'in person' practice, and, in electronic conveyancing, is achieved through the VOI process. As technology evolves and more efficient ways of conducting business are expected, a trusted digital identity solution would reduce compliance costs, increase efficiency, and enhance customer experience by providing a more seamless digital workflow, which may result in faster customer acquisition processes and consistent customer data.

5 Digital Verification of Identity

Certainty of a person's identity is a key enabler to securely transacting online with trusted parties. A Digital Identity is a direct electronic representation of identity that can be reusable and enables a person or other entity to prove who they say they are.

A Digital ID with sufficient assurances (e.g., checking existing government databases, or checking transactional history) has the potential to replace physical identification techniques and indeed the incentive to hold a Digital ID will increase with the rising volume of services accessed digitally.

6 Security Considerations

A move to accepting digital VOIs could not be made until there is certainty that they could be relied upon. In considering the change, we must all be mindful of the risk of fraud and take steps to ensure that digital identity verifications are as reliable, or more reliable, than the current in person process. When using technology solutions in any capacity, it is the responsibility of all parties to a digital transaction to ensure that their cyber security is sufficient, and they are alert to potential risks.

In a future state of potentially entirely digital transactions, there must be high levels of assurance applied to Digital IDs (e.g., using document verification services) to ensure that the potential risk of fake identities being created is addressed.

As a part of ongoing support of electronic conveyancing, ARNECC has stated that it is "closely monitoring what is happening in the digital identity space and recognises that VOI standards need to evolve, especially in light of technological advances."⁵

With the right technology and policy and legal reform, an accessible, Commonwealth Government sponsored digital identity service would not only provide efficiencies, but also bolster confidence in digital transactions and enable greater certainty in the link from an electronic signature to a verifiable identity. Online banks are already trialling entirely digital home loan processes, from initial application and verifying identity, to the signing of mortgage documents. The innovation and move to provide consumers with digital solutions is well underway.

7 Conclusion

The various topics raised by the Paper are all significant areas where change will allow business communications in Australia to evolve and embrace new technologies. Legislation that is overly prescriptive becomes prohibitive over time when it does not change as the environment that surrounds it does.

Electronic conveyancing and its regulatory framework were developed specifically to enable the use of technology, with VOIs being the most fundamental aspect of an electronic conveyance. Other

⁵ ARNECC, Position Statement Digital VOI
https://www.arnecc.gov.au/__data/assets/pdf_file/0008/1491497/position-statement-digital-voi.pdf

regulations that impact property transactions (e.g., execution of deeds, mortgages) and require physical witnessed signatures continue to be a cause of inefficiencies and delays for affected parties.

COVID-19 has proven that it is possible for businesses to effectively operate and communicate digitally. The short-term legislative changes that were put in place in response to the pandemic have been effective and should be considered as longer term solutions.

A Commonwealth legislated and provided voluntary digital identity framework would provide far greater confidence for businesses to introduce a wider range of 100% digital services, and for citizens and other businesses to use them. States could then recognise this service in their own laws and systems.

We see the development of a national Digital ID solution as the next step in the evolution of electronic conveyancing as Australia continues to embrace technology and consumers grow to expect seamless digital interactions with all services.

Regards,

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

Amy Gerraty

General Manager, Regulatory Affairs