Law Council
OF AUSTRALIA

Office of the President

17 October 2024

Ms Jenny Cottnam
Chair
Australian Registrars' National Electronic Conveyancing Council
C/- PO Box 2222
MIDLAND WA 6936

By email: chair@arnecc.gov.au

Dear Ms Cottnam

Model Operating Requirements—Consultation Draft Version 7.01

1. The Law Council of Australia appreciates the opportunity to provide feedback to the Australian Registrars' National Electronic Conveyancing Council (**ARNECC**) on Consultation Draft Version 7.01 of the Model Operating Requirements (**Draft MOR**).

2. I acknowledge the assistance of the Law Society of New South Wales in the preparation of this submission.

*MOR 5.4—Electronic Lodgment Network Operator (**ELNO**) Service Fees*

3. We strongly support Draft MOR 5.4.7, which effectively limits the ability for an ELNO to charge a Subscriber more for an interoperable transaction than a non-interoperable transaction. Draft MOR 5.4.7 states:

> *In charging ELNO Service Fees, an ELNO must ensure that the ELNO Service Fees for an Interoperable Electronic Workspace are not greater than the ELNO Service Fees for an Electronic Workspace that is not an Interoperable Electronic Workspace.*[1]

4. We note that this change implements Recommendation 8(b) of the 2023 Final Report into the Interoperability pricing for ELNOs, conducted by the New South Wales Independent Pricing and Regulatory Tribunal Review.[2]

5. Apart from considerations about behavioural impacts of any fee differential, this certainty in pricing for consumers and Subscribers is welcome from a practical perspective.

MOR 5.9—Interoperability Fees

6. We suggest that, given the current pause in the development and implementation of interoperability, consideration should be given to extending the timeframes specified in Draft MOR 5.9.

[1] ARNECC, *Model Operating Requirements* (Consultation Draft Version 7.01) 31.
[2] New South Wales Independent Pricing and Regulatory Tribunal, *Interoperability pricing for Electronic Lodgment Network Operators* (Final Report, June 2023) 28.

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7. For example, Draft MOR 5.9.1 sets a maximum interoperability fee for the period 1 July 2024 to 30 June 2025. However, interoperability is not yet operational, and is unlikely to be operational by 30 June 2025.

8. In addition, under Draft MOR 5.9.3, the Consumer Price Index (**CPI**) cap on increases to the interoperability fee will only be in place from 1 July 2025 to 30 June 2026. We similarly suggest that, given the likely interoperability implementation timetable, the period during which the CPI cap is in place should be extended.

MOR 10.3—Data Standards

9. Whilst we appreciate that all ELNOs must use the same version of the data standard for interoperable conveyancing transactions, we note that the land registries control what version of the data standard is operating. State revenue offices and financial institutions also need to co-ordinate when upgrading to a new data standard.

10. Accordingly, we suggest that Draft MOR 10.3.4 should be reframed in terms of an ELNO using best endeavours to utilise the version of the data standard specified by the Registrar. Ultimately, moving to a new data standard requires a co-ordinated effort amongst all the impacted parties, and this is not within the control of the ELNOs.

Contact

11. Thank you again for the opportunity to contribute to this consultation. Should you require further information or clarification, please contact Natalie Cooper, Senior Policy Lawyer, [redacted].

Yours sincerely



Greg McIntyre SC
President