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In-House Briefing Memorandum

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National Electronic Conveyancing

Conveyancing is to shortly go online nationally. All states and territories are now embracing the *Electronic Conveyancing (Adoption of National Law) Act 2013* (the Act). This national system is a response to resistance by practitioners, large national users and banks to the previous State-by-State online conveyancing models.¹

The Act has already been adopted in Queensland, Tasmania, New South Wales, Northern Territory and Victoria, while Western Australia and South Australia are expected to introduce it soon. The Council of Australian Governments (COAG) initiated this system in 2008 agreeing "that a national electronic conveyancing system would be implemented"². In 2010 COAG established the National E-Conveyancing Development Limited³ (NECDL), a corporation⁴ whose members include a number of State Governments and Australia's largest financial institutions⁵. NECDL is tasked with building the national E-Conveyancing system.

NECDL has developed the Property Exchange Australia (PEXA). PEXA is intended to operate like an online stock exchange for real property⁶, creating the infrastructure for real-time management online. It is expected to be fully operational by mid-2014, allowing for lodgement of caveats, transfers and notices and for the completion of settlement online.

The purpose of the national scheme is to enable electronic lodgement of data which, when lodged, authorises amendments to the Registers of Title. It also aims to allow for simultaneous financial settlement of conveyancing transactions. These changes are intended to make settlement faster and more efficient, bringing together a number of the time consuming and troublesome aspects of the traditional conveyancing settlement. The introduction of PEXA will not open online settlement to the public. Registered users must be qualified as a practising lawyer, a licensed conveyancer, a financial institution regulated by the Australian Prudential Regulation Authority or a government authority.

Registered users of PEXA are required to abide by and follow new 'Model Participation Rules' (the rules) which have been set by the newly established peak representative body of all State and Territory Title Registrars, the Australian Registrars National Electronic Conveyancing Council (ARNECC). The rules alter common conveyancing practices, particularly for Victorian practitioners. Two of the main alterations are the requirement that practitioners take reasonable steps to verify the identity of their client and must obtain their clients authorisation at the beginning of a conveyance given that the online system requires the practitioner to digitally sign the transfer and release settlement monies on the client's behalf.⁷ Both these alterations substantially increase the liability and responsibility of the registered user, who might for example be liable if their PEXA account became subject to fraud.

Though the rollout of PEXA and the national E-Conveyancing system are still in early days of development, clients and legal practitioners need to begin adjusting to these new dramatic conveyancing changes.

¹ McCutcheon, M., 2013. 'Farewell to Paper', *Law Institute Journal*, October, p.42

² The Council of Australian Governments (COAG) Minutes dated 29 November 2008

³ Business Regulation and Competition Working Group Report Card on progress of the 27 deregulation priorities - Response to COAG Reform Council (CRC) Report <http://www.coag.gov.au/sites/default/files/BRCWG_Report_27_deregulation_priorities.pdf> at [22]

⁴ Initially incorporated on behalf of Victoria, New South Wales and Queensland as a not-for-profit corporation limited by guarantee, n, 1

⁵ NECDL Website <<http://www.necd.com.au/AboutUs>> accessed 28 November 2013

⁶ NECDL Website <<http://www.necd.com.au/AboutUs>> accessed 28 November 2013

⁷ Proposed Model Participation Rules Draft 12, Oct 2012

<http://www.arnecc.gov.au/data/assets/pdf_file/0005/175415/121012_Model_Participation_Rules_-_MPR.pdf> accessed 28 November 2013

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