

28th June 2017



Productivity Commission
Rosalyn Bell
Email: financial.system@pc.gov.au

Dear Ms. Bell,

Re: Complaint against Landgate's action in mandating the use of PEXA in Western Australia - Competition in the Australian Financial System

As the Executive Officer of the WA Division of the Australian Institute of Conveyancers (AICWA), I represent 250 small to medium business owners and their 1000 employees who advocate for consumers in the process of purchasing and selling a homes.

AICWA wishes to bring to your attention an issue that may have relevance to the current enquiry into Competition in the Australian Financial System. The issue is in regards to the treatment of the Registrar of Titles and Landgate of our members through the consultation period and their failure to respond to any of the concerns that have been raised in relation to their issue of a requirement that all property sales must be processed via an electronic settlement platform (PEXA) from 1 December 2107.

PEXA, a privately owned and operated company, is the only electronic settlement platform currently in operation. Landgate is a 14.3% shareholder of PEXA and, according to its annual reports, has independently invested approximately \$39m to date. Landgate, represented by the Registrar of Titles, also holds the chairperson role with the Australian Registrars' National Electronic Conveyancing Council (ARNECC) who is the regulator for PEXA.

The AICWA's opposition to Landgate's mandating is based on the following concerns:

- Mandating forces increased cost to consumers
- Doesn't deliver the promised efficiencies
- Creates a situation whereby a single Electronic Lodgment Network Operator (ELNO) has a monopoly
- Denies consumers choice
- Will result in job loses

We are adamant that halting any move to mandate electronic conveyancing is in the public's best interest, and strongly believe neither our members, nor consumers, should be forced into a position where they will incur higher costs at the mercy of a single monopolistic provider. It is especially concerning that the regulatory requirements for managing a monopolistic provider are still being reviewed by the regulator whilst this action is taken.

We have asked the Registrar of Titles to put the mandate on hold until all regulatory reviews have been completed and that the concerns and very relevant issues raised by the industry have been addressed.

It is clear we need to act quickly to ensure the e-conveyancing market works for consumers, now and in the future.

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The WA Government appears to be acting outside of the interest of West Australians, by significantly supporting a private company whose significant stake holding can be traced to the four big banks.

The PEXA system and the regulatory environment is still very immature. This is evidenced by PEXA not attracting take up through its ability to deliver the promised economic benefits to West Australians and the limited capacity to manage a variety of property transfers. By PEXA's own omission only 1.8% of property transfers are currently being lodged via its platform.

AICWA is adamant that if electronic conveyancing and PEXA can deliver the benefits then it will not require mandating. Mandating in this instance and under these circumstances is not conducive to a competitive environment that will drive efficiencies and create benefits to West Australians.

We believe there are considerable issues with conflicts of interest on the position of Landgate and the Registrar of Titles, Jean Villani and their approach to issuing the mandate for electronic settlement. We also believe that there are considerable competition issues that need to be addressed in the electronic settlement marketplace by ARNECC and we are pleased to see that they have issued a notice that they are undertaking a regulatory review for this purpose. However, given these concerns the WA Registrar of Titles and Chairperson of ARNECC is continuing with the mandate timeline of 1 December, 2017.

Mandating was never supported by either the WA State Government and its then Minister for Lands Terry Redman nor was it supported by other State jurisdictions, COAG or ARNECC. It begs the question why is mandating now necessary and who is driving this outcome?

AICWA believe the community would be alarmed to learn, if mandating proceeds, that the Government will benefit financially from being complicit in allowing the big four banks, Link Group and Macquarie to profit at the expense of taxpayers.

Mandating makes the Government appear complicit in creating a system that has no incentive to improve its service proposition to win the hearts and minds of the community or its price for the value it delivers.

Our concerns are of such significance that we have continued our discussions with the ACCC following the submission of a formal complaint.

We do believe the matter is of increasing importance given the impact mandating the use of PEXA in WA could have nationally. We hope your department will concur with our assessment of the situation and broaden the scope of your enquiry to investigate this matter.

Yours sincerely,

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Executive Director
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