SUBMISSION BY THE AUSTRALIAN INSTITUTE OF CONVEYANCERS TO THE AUSTRALIAN GOVERNMENT PRODUCTIVITY COMMISSION REVIEW OF MUTUAL RECOGNITION SCHEMES

The Australian Institute of Conveyancers (AIC) represents approximately 1500 Conveyancers throughout Australia who are operating under a licensing or registration system controlled by the respective State Governments of New South Wales, Victoria, South Australia, Western Australia, Northern Territory and Tasmania.

When mutual recognition legislation was introduced in 1993 it was anticipated that it would be beneficial to the public because it would enable professional conveyancers to move freely between all States and Territories, should they choose to do so. At that time, there was a clear shortage of professional conveyancers in New South Wales (where enabling legislation was being introduced), Tasmania, Queensland and the Australian Capital Territory ("ACT"). Unfortunately, despite the introduction of licensing for Conveyancers in New South Wales and Tasmania and, since 1st July 2008, Victoria, major stumbling blocks remain to the successful operation of the Mutual Recognition Act ("MRA") due to the fact that the Governments of Queensland and the ACT have refused to comply with National Competition Policy and have not introduced a licensing/registration system that would delivered those benefits to the public by enabling Conveyancers to move freely between all States and Territories throughout Australia.

Barriers to MRA

On page 2 of the current Review Paper it is noted that "MRA and TTMRA only apply to occupations for which some form of legislation-based registration, certification, licensing, approval, admission or other form of authorisation is required." However, for the truly successful implementation of MRA in Australia, pressure should be brought to bear on the Queensland and ACT Governments (and their Attorneys-General in particular) to introduce a licensing regime for Conveyancers in those jurisdictions.

One of the arguments used by the Government in Queensland is that the "occupation" simply does not exist in that State. That argument is completely erroneous. Conveyancers were licensed in Queensland prior to 1950 when all licensed conveyancers were given a solicitor's limited practicing certificate and the conveyancer's licence was abolished. Conveyancers still exist in Queensland but work within the offices of lawyers – as they do in the ACT. However, they are "prohibited" from working autonomously outside those offices and the penalties for doing so are enormous.

Real property registration systems and conveyancing transactions are fundamentally the same across Australia. More than 90% of those transactions are handled by registered Conveyancers in South Australia. That the public has embraced registered

Conveyancers in South Australia (where they have existed since 1860) demonstrates their efficiency and productivity. How is it that an occupation that handles those transactions does not also exist in Queensland?

The AIC has devoted many years and considerable resources in attempting to overturn this anomalous situation. However, the Queensland and ACT governments have repeatedly refused to tolerate the introduction of individually licensed Conveyancers because those licensed Conveyancers would provide much needed competition to the entrenched interests of the legal firms who are overly represented in the parliaments. That competition has, as shown by the introduction of licensed Conveyancers in New South Wales, resulted in very significant benefits to the consumer. No-one other than the entrenched legal firms benefit from the anti-competitive restrictions in Queensland and the ACT.

Mutual recognition therefore can only works in relation to those parts of Australia where licensing/registration systems occur that enable suitably qualified persons to undertake conveyancing work. The denial of public benefit and the reduced productivity in Queensland and the ACT should be addressed by the Commission.

Equivalence of Occupations

In addition to the above barrier for mutual recognition to successfully operate Australia-wide, there are anomalies in the legislation operating in the various jurisdictions. For example, Conveyancers in NSW and Victoria with "Full Licences" are able to do any "legal work" associated with or ancillary to the conveyancing transaction, including preparation of mortgages and leases. South Australian Conveyancers, although operating under slightly different wording in their legislation, has been accepted as being able to do similar work to Conveyancers in NSW and Victoria and therefore there is no barrier to mutual recognition between those States under the MRA.

However, Western Australia's legislation does not allow Conveyancers to undertake the full range of work allowed in NSW, Victoria and SA, despite the fact that the educational qualifications are of a similar standard. The MRA therefore does not work in WA and, similarly, Tasmania and NT have restrictions that do not match the other States for equivalence of occupation.

I believe that the COAG Skills Working Group is addressing the differences in licensing/registration regimes for Conveyancers throughout Australia which will assist. However, conveyancing work involves the performance of essentially legal work; hence, the AIC is concerned to ensure that there is no lowering of the educational requirements and other standards for Conveyancers to operate.

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Australian Institute of Conveyancers

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