

2 February 2017



Financial Crime Section
Transnational Crime Branch
Criminal Justice Policy and Programmes Division
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Australian Institute
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South Australian Division

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Dear Sir/Madam

Consultation Paper – ‘Legal practitioners and conveyancers: a model for regulation under Australia’s anti-money laundering and counter-terrorism financing regime’.

I write on behalf of the Australian Institute of Conveyancers (SA Division) Inc. (AICSA) in response to your consultation paper titled ‘*Legal practitioners and conveyancers: a model for regulation under Australia’s anti-money laundering and counter-terrorism financing regime*’.

The AICSA is the peak body in South Australia representing the conveyancing profession. The AICSA provides advice and support to both members of the public and those working in the conveyancing profession as well as representing the profession on an education committee to ensure an adequate level of education and standards are maintained.

AICSA has a membership of 588 people representing registered conveyancers, students, non-conveyancing professionals and staff. Its membership includes almost every significant firm of registered conveyancers and law firms undertaking conveyancing in South Australia. The majority of conveyancing firms are small businesses or sole practitioners. It is very confidently estimated that its members are involved in more than 90% of all conveyancing transactions other than single mortgages, discharges and re-finances. Conveyancers perform a pivotal role in the South Australian economy with the consideration of property transfers in South Australia from December 2015 to December 2016 totalling \$19 billion¹.

The AICSA supports, in principle, measures that address and combat money laundering and counter terrorism financing (AML/CTF), however, the AICSA considers release of the consultation paper to be precipitous and without due consideration, research into and understanding of measures being implemented by the Australian Taxation Office (ATO) and through the Australian Registrars’ National Electronic Conveyancing Council (ARNECC). Additionally, consultation and an understanding of the regulatory framework and requirements in each State and Territory should have been obtained prior to drafting the consultation paper. Each of these steps would have provided a more informed paper and one that AICSA and our interstate counterparts could have better addressed.

¹ <https://www.sa.gov.au/topics/housing-property-and-land/land-services-industry/plan-and-document-enquiries/property-market-statistics>

Notwithstanding the above, AICSA provides the following comments for your consideration:

Qualifications and Licensing

In all States and Territories conveyancers are required to obtain qualifications prior to becoming licensed or registered by the relevant State Government agency and hold professional indemnity insurance if they are carrying on the business of a conveyancer. In South Australia you must obtain an Advanced Diploma in Conveyancing. In some states, such as Victoria, conveyancers must work for a minimum period, following completion of their qualification, prior to obtaining a licence to carry on business.

Attachment A outlines the qualifications required in each State and Territory, along with requirements for Professional Indemnity Insurance, Continuing Professional Development (CPD) and progress of Electronic-conveyancing (E-Conveyancing) reforms.

Continuing Professional Development

Although not all States/Territories mandate CPD, given the increasing complexity of conveyancing laws and the need to ensure compliance with growing reporting obligations, the AICSA would be supportive of the AGD proposing to the State Regulators that certain training must be fulfilled by all conveyancers on an annual or biennial basis.

This proposal would ensure a high understanding of the risks faced in the property industry as well as the rules and obligations around preventing and mitigating fraud. Required training would include Verification of Identity and Verification of Authority, amongst other relevant topics such as the international standards for AML/CTF.

AICSA would be happy to work with the AGD, as a consultant, to identify what should be included in the Advanced Diploma in Conveyancing and what should be included in any proposed ongoing CPD requirements to ensure relevance, consistency and to avoid unnecessary regulatory and financial burden to conveyancers.

Electronic Conveyancing

The establishment of National E-Conveyancing is an initiative of the Council of Australian Governments (COAG) to provide a single national electronic conveyancing system for use throughout Australia. The development and implementation of e-conveyancing has required the most significant reforms to land administration since the Torrens System was created in the early days of the colony of South Australia.

The Australian Registrars National Electronic Conveyancing Council (ARNECC) is the body established to facilitate the implementation and ongoing management of the regulatory framework for electronic conveyancing of real property in Australia. AICSA would highly recommend the Attorney-General's Department (AGD) consult with ARNECC on this proposal as AICSA considers much of the concerns can be addressed through mechanisms already in place. Under the Electronic Conveyancing National Law, Subscribers are required to comply with Participation Rules made by the Registrar in each State and Territory, the Model Participation Rules have been determined by ARNECC for promulgation by each

Registrar before coming into effect in that jurisdiction².

South Australia is the first State to fully implement the new regulatory framework for both paper and electronic transactions. Attachment A shows at what stage each State and Territory is at with respect to implementation. Verification of Identity (VOI), for example, was introduced into South Australia in 2013 with all remaining measures implemented on 4 July 2016. Further, relevant measures, include the introduction of Verification of Authority (VOA) or otherwise known and the right to deal and Priority Notices. All three measures are strong mechanisms to assist in the identification and combat of fraud or terrorist activities through property transactions.

Under VOI a Conveyancer must take reasonable steps to verify identity as well as verifying every signatory of a Client Authorisation. The Registrar-General's VOI requirements specifies a 'Standard' for reasonable steps as a face-to-face in-person interview, presentation of genuine, current and original prescribed documents, along with the copying and retention of those documents. The VOI must be carried out by the Conveyancer or an authorised Identity Agent. Practitioners not only need to verify the identity of their clients but also verify the client's authority (VOA) to enter into the conveyancing transaction. A conveyancer must securely retain supporting evidence of the VOI and VOA for at least 7 years from lodgement of an instrument/document with the Lands Titles Office. Supporting evidence includes any evidence supporting VOI, VOA and the Client Authorisation and must demonstrate compliance with prescribed requirements.

In South Australia the Registrar-General has also introduced a Priority Notice (PN). The PN is a notification of intended dealings with land, which is lodged with the Registrar-General and noted in the Register. A PN would prevent the registration of inconsistent dealings with the subject land (with some exceptions), for 60 days from the date of lodgement.

The AICSA considers a significant proportion of the dealings undertaken by conveyancers would fall within the FATF simplified customer due diligence measures. Notwithstanding, we also consider the standard and requirements that form the VOI and VOA would meet if not surpass that expected under those measures.

AICSA would suggest AGD obtain a clearer understanding of the measures being implemented around Australia for E-conveyancing (on a State by State basis) prior to making any recommendations.

ATO Regulatory Changes

The Australian Taxation Office (ATO) has implemented significant reforms to the property industry over the past two years, these are addressed briefly below. However, prior to this discussion, AICSA considers the AGD should look closely at options for information sharing across Commonwealth agencies. It is apparent from the depth and breadth of these recent reforms that the ATO is already collecting much of the data being sought by AGD to address the AML/CTF risk.

Rather than add further regulatory burden to the many small and medium businesses that comprise the conveyancing and legal profession; accessing information already being collected and managed by the Commonwealth would seem to be a logical and worthwhile option. One option would be to establish, either formally or in practice, a similar structure to that of the Australian Charities

² Relevant legislation includes the *Real Property Act 1886* and the *Electronic Conveyancing National Law (South Australia) Act 2013*

and Not For Profit Commission (ACNC). This would provide both the ATO and AGD with significant benefits. In the absence of a body like the ACNC, the AICSA would recommend the two agencies enter into some type of Memorandum of Understanding to enable sharing of the collected information, rather than requiring conveyancers and solicitors to provide transaction information to multiple agencies.

ATO - Strengthening Australia's Foreign Investment Framework

These reforms, driven by the ATO, commenced from 1 July 2016 and make changes to the Commonwealth's Foreign Acquisitions and Takeovers Legislation. These reforms represent the most significant changes to the framework in over 40 years. The proposed reforms include:

- The ATO being given the responsibility to regulate foreign investment in residential real estate.
- Stricter penalties make it easier to pursue foreign investors that breach the rules. Criminal penalties have increased from \$90,000 to \$135,000 for individuals – Third parties who knowingly assist a foreign investor to breach the rules are now subject to civil and criminal penalties.
- Development of a non-public land register of foreign owned land. An agricultural land register with information provided directly to the ATO by investors commenced on 1 July 2015.
- A comprehensive modernisation of the foreign investment legislation which reduces system complexity and compliance costs for investors.

Capital Gains Tax for Foreign Residents

The reforms introduce a new regime that imposes non-final withholding obligations on transactions involving the disposal of 'taxable Australian real property' (TARP) by foreign residents. The purpose of the regime is to assist in the collection of foreign residents' capital gains tax (CGT) liabilities.

Commencing from 1 July 2016, a purchaser of a TARP from a foreign resident is required to remit 10% of the gross proceeds to the Commissioner of Taxation on account of the foreign resident's Australian tax liability on the disposal. These reforms affect all real property assets with a sale price over \$2million. The Vendor, whether they be a foreign resident or not, is required to obtain a clearance certificate from the ATO prior to settlement of the property.

Third party reporting

The reforms amend Schedule 1 to the *Taxation Administration Act 1953* to improve taxpayer compliance by increasing the information reported to the Commissioner of Taxation by a range of third parties. The Schedule creates a new reporting regime requiring third parties to report on a number of transactions types, including:

- transfers of real property;
- transfers of securities; and
- transfers of units in unit trusts.

The reforms apply to transactions that occur on or after 1 July 2016. The reforms are being implemented in South Australia from April 2017. The Lands Titles Office and/or Revenue SA will be providing the additional data to the ATO. This will require conveyancers and solicitors to collect additional data

and provide this to the relevant reporting agency.

Conclusion

Like our interstate counterparts, AICSA has chosen not to address the 'Discussion Questions' in the Consultation Paper. Rather AICSA consider AGD should, in the first instance, ascertain the detail and level of reporting at a Commonwealth and State level discussed above.

Additionally, with the commencement of E-Conveyancing reforms nationally, conveyancers are now required to undertake detailed verification checks on their clients, maintaining records of these checks and supporting documents for a minimum of seven years.

AICSA is not convinced further regulation would be required to meet the standard for mitigating the AML/CTF risk. We believe regulatory measures are already in place that can be leveraged to the benefit of the AGD's goals and purpose in this respect.

Notwithstanding the above statement, AICSA does consider compulsory CPD assist in increasing conveyancers' knowledge and awareness of the risks and their understanding of their obligations under the greater regulatory regime. AICSA would be happy to work with AGD on this concept.

AICSA appreciates the opportunity to provide a submission on this very important issue. AICSA welcomes further discussion on any of the above points, or AML/CTF generally.

Yours sincerely



Rebecca Hayes
Chief Executive

State/Territory	Licensed/Registered	Government Regulator	Legislation	Has electronic settlement commenced?	VOI* & VOA* Paper	VOI & VOA Electronic	Client Authorisation From	Compliance Examination	PI Insurance	Qualification required as a prerequisite for licensing	Is CPD compulsory?
SA	Yes	Consumer & Business Services	Conveyancers Act 1994, Conveyancers Regulations 2010	Yes	Yes required for all transactions	Yes required for all transactions	Yes, required for all transactions	South Australia's Lands Titles Office has commenced compliance audits for paper and electronic conveyances	Compulsory scheme under the Conveyancers Act 1994. Scheme approved by the Commissioner for Consumer Affairs annually.	Yes, a person must complete the Advanced Diploma in Conveyancing	No. AICSA runs a CPD program and approximately 100 Members obtain CPD status annually.
VIC	Yes	Consumer Affairs Victoria	Conveyancers Act 2006 and Regulations	Yes	VOI required for all transactions	VOI & VOA required for all electronic transactions	Not yet – May 2017	Land Registry undertakes VOI audits	Compulsory Master Policy under Conveyancers Act 2006 approved by Minister for Consumer Affairs	8 units of competency as set out in the National Training Package (although this is currently under review and we are pressing for the Advanced Diploma of Conveyancing to be the qualification).	Not under the Conveyancers Act 2006. However AICVIC requires all members to complete 10 hours of CPD per annum. CPCs must complete the 10 hours in order to maintain their status. (again this is under review)

											and we are arguing that CPD should be compulsory).
WA	Yes	Department of Commerce and Consumer Protection	Settlement Agents Code of Conduct (2016), Settlement Agents Act (1981)	Yes	VOI for vendor/seller only	For All	For all	It is believed that the regulator (Department of Commerce) will manage compliance audits for electronic lodgements	Compulsory scheme under the Settlement Agents Act (1981)	Yes, a person must complete the Diploma in Conveyancing and be deemed suitable by the Department of Commerce in order to obtain their license. In some cases a licences may be issued within the first 12 months or require a period up to 24 months before a license is issued	Yes, AICWA delivers a CPD program consisting of 2 core units (2 points each) and 2 electives (2 points each). All licensed settlement agents must complete within a calendar year a minimum of two core units and one elective. The CPD program and approval to deliver training is managed by the Department

											of Commerce.
NSW	Yes	NSW Fair Trading	Conveyancer's Licensing Act 2003, Conveyancer's Licensing Regulation 2015, Conveyancing (Sale of Land) Regulation 2019 Conveyancing Act 1919	Yes	Yes, required for all transactions	Yes, required for all transactions	Yes, required for all transactions	?	Compulsory scheme under the Conveyancer's Licensing Act 2003. Scheme approved by the Commissioner for Fair Trading	Yes, a person must complete an approved course as detailed by Office of Fair Trading	Yes As detailed by Office of Fair Trading
TAS	Yes	Department of Justice (Consumer, Building and Occupational Services)	Conveyancing Act 2004	No – October 2017	No	No	No		Individual policies.	Yes, a person must complete either (i) Conveyancing – Law and Practice Course, Macquarie University; (ii) Associate Degree in Law (Paralegal Studies), Southern Cross	No. AIC (Tas) runs a <u>CPC</u> program.

										<p>University;</p> <p>(iii) Bachelor of Business (Property), University of South Australia;</p> <p>(iv) Advanced Diploma of Financial Services (Conveyancing), Advanced Diploma of Conveyancing, or Diploma of Conveyancing</p> <p><u>And</u></p> <p>a course, relating to Tasmanian local requirements for conveyancing work, as the Director may from time to time determine (this is the</p>
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											“bridging course” we are currently having developed by Wayne).	
NT	Yes	Licensing NT under the umbrella of the Department of the Attorney-General and Justice Northern Territory Government	Agents Licensing Act	No. Note: I’m not able to give you an indication as to when it is likely to commence	No. Note: I am aware some firms have introduced VOI.	No	No. Although practitioner obtain an Authority to Act from clients	No	Compulsory under the Act	Yes, a person must complete the Advanced Diploma in Conveyancing	No. AICNT runs a CPD program and approximately 17 Members obtain CPD status annually.	
QLD	Not Applicable there are no licensed Conveyancers in QLD											
ACT	Not Applicable there are no licensed Conveyancers in the ACT											

VOI – Verification of Identity as required under ARNECC’s Model Participation Rules v.3

VOA – Verification of Authority (or Right to Deal) as required under ARNECC’s Model Participation Rules v.3

Compliance Examination - compliance audits for paper and electronic conveyances as required by ARNECC’s Model Participation Rules v.3.