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Obj ref: 24/48844

Mr Peter Cain MLA

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

scrutiny@parliament.act.gov.au

Dear Mr Cain

I write in response to comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) in its *Scrutiny Report 41* in relation to the Disallowable instrument DI2024-29 being the Electronic Conveyancing National Law (ACT) Participation Rules 2024.

I thank the Committee for its comments seeking my advice as to the privacy implications of the instrument (DI2024-29).

The Committee has noted the differences between the human rights considerations contained in the explanatory statements made under sections 22 and 25 and sections 23 and 25 of the *Electronic Conveyancing National Law (ACT)*, respectively.

The first instrument mentioned by the Committee (DI2024-28) determines Electronic Conveyancing National Law (ACT) Operating Requirements (Operating Requirements) relating to operation of an Electronic Lodgment Network (**ELN**) by Electronic Lodgment Network Operators (**ELNOS**). ELNOS are the electronic platforms that facilitate electronic lodgment of land transactions.

The second instrument mentioned by the Committee (DI2024-29) determines Participation Rules for subscribers to an ELN in the ACT. The subscribers are the lawyers / banks / parties to the land transaction who sign up to the ELNOS in order to be able to lodge documents electronically. Currently, to complete a land transaction both subscribers need to be subscribed to the same ELNO. Work has recently been undertaken so that in future, land transactions will be able to be completed even where the subscribers subscribe to different ELNOS. The intention behind this is to require

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existing ELNOs to amend their systems so that they can communicate effectively with a different ELNO to complete a land transaction. This is referred to as “interoperability.” For multi-party transactions, interoperability would allow Subscribers to use the ELNO of their choosing, without having to subscribe to all ELNOs to complete a property transaction.

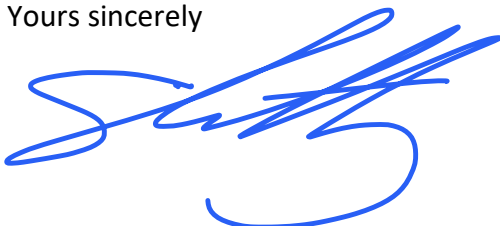
These proposed changes to the Participation Requirements are primarily future focused. They are intended to impose an obligation on ELNOs to perform interoperable transactions from late 2025 as per the Operating Requirements. The proposed changes do not change or increase the nature or scope of data or information provided, nor further engage privacy matters beyond what currently exists in a regular paper or electronic base land transaction. As such, these changes neither limit nor positively engage a person or subscribers right to privacy now or in the future.

It is important to also note:

- Interoperability does not require subscribers to provide any additional personal information to an Electronic Lodgment Network that is currently required for a land transaction and is publicly available from the land register;
- the Electronic Conveyancing National Law framework allows for the lawful collection and use of personal information, and imposes obligations on subscribers and ELNOs to protect that data; and
- only effects subscribers.

I once again thank the Committee for its comments and confirm that the Explanatory Statement has been updated to clearly articulate how the changes to the Participation Requirements engage the right to privacy. The revised Explanatory Statement will be tabled in the ACT Legislative Assembly on 4 June 2024.

Yours sincerely



Shane Rattenbury MLA
Attorney-General

23/5/24