

Annexure A

SUMMARY OF CLAYTON UTZ AND PwC CONSULTATIVE PROCESS AND FINDINGS

Brief and Duration

Clayton Utz and PwC were engaged in January 2010 to identify and evaluate possible solutions and implementation strategies to provide the necessary functionality and risk management currently provided by the CT in a concurrent electronic and paper conveyancing process, and to recommend a preferred solution. The work extended over two and a half years with extensive industry consultation, concluding in July 2012 with PwC's comparative economic appraisal of solution options.

Purpose

The purpose of the work was to ensure that a thorough analysis of the current role of the CT in conveyancing transactions and of the options for change was available to inform an evidence-based determination of the best solution for the future.

Process

The work was undertaken in stages, starting with an environment review and proceeding through definition of purpose and performance objectives to identification and comparative evaluation of possible solutions. At each stage, extensive industry consultation was conducted by both personal interviews and questionnaires as well as by drawing upon relevant published and unpublished material. Five separate reports were produced describing what was done and containing and analysing the information collected⁵.

Findings

The work defined the purpose of an acceptable solution as:

to provide a reliable means for an entitled party to control dealings in a land title by giving or withholding consent to registration of those dealings, and for the Land Registry and relying parties to verify that the entitled party consents to the registration of those dealings in an environment of concurrent electronic and paper conveyancing processes,

identified 9 relevant performance objectives for the solution as:

- 1) *evidence at least as reliable as that obtained through current practice for the Land Registry to verify that the entitled party consents to registration*
- 2) *means at least as reliable as current practice for the Land Registry to verify that the entitled party consents to registration*
- 3) *means at least as reliable as current practice for parties to verify that the entitled party consents to registration*
- 4) *at least the same level of assurance as current practice to entitled parties that the Land Registry will not register relevant dealings without the entitled party's consent*
- 5) *at least the same level of protection as current practice for acquiring parties in the settlement-lodgment gap*
- 6) *minimum change to paper conveyancing practices*
- 7) *procedurally simple and efficient for electronic transactions*
- 8) *at least a neutral cost/benefit effect for each key stakeholder group compared with current practice*
- 9) *adaptable for use nationally without significant adjustment*

and identified 7 solution options (ranked from best to least in order of their assessed performance against the above objectives) as:

- a) *optional No-CT for a restricted class of entitled parties and CAC CTs for all other titles*
- b) *optional No-CT for a restricted class of entitled parties and non-CAC CTs for all other titles*
- c) *CAC CT for all titles used in all transactions (both paper and electronic)*
- d) *optional No-CT for any entitled party and CAC CTs for all other titles*
- e) *abolition of all CTs*
- f) *optional No-CT for any entitled party and non-CAC CTs for all other titles*
- g) *non-CAC CT for all titles used in all transactions (both paper and electronic).*

The solution option identified as the preferred solution was:

Optional No-CT for a restricted class of entitled parties (eg APRA-regulated financial institution ELN Subscribers) and CAC CTs for all other titles

The comparative economic appraisal of the solution options confirmed the preferred solution as having a positive and the greatest net benefit to the conveyancing industry driven by the reduced cost of No-CT and CAC-CTs, and the reduced risk of CAC CTs and of restricted availability to No-CT.

Adoption

The preferred solution identified by this work formed the basis of the Proposed Solution set out in this paper.

⁵ The reports are published at http://necnsw.lpi.nsw.gov.au/home/story_1/certificate_of_title_consultation.