

## The end of the paper trail

Lawyers Weekly article

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The national E-conveyancing project will eventually transform the way property transactions are completed. Angus Kidman investigates the project and the implications for law firms

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While technology has sped up many processes for the typical law firm, so far it has had relatively little impact in the world of conveyancing, where a wealth of paper documents and complex processes remains the norm. That could change dramatically following the introduction of the National Electronic Conveyancing System (NECS), a joint government and industry project to automate the conveyancing process.

The NECS managing office has been in operation for a year now, but recent developments have accelerated the pace of transition. A pilot scheme has launched in Victoria, which will likely serve as the model for other states, and detailed implementation plans for the scheme are expected to be completed by the end of the year. The NECS will cover registering and confirming changes of ownership and associated payments.

Beyond the reduction in physical paperwork and delays associated with exchanging documents, one clear advantage of a national e-conveyancing model is that it will make cross-border transactions easier. "An additional benefit of a national e-conveyancing system is that it could facilitate the simultaneous settlement of sale contracts where the purchase of a property in Melbourne, for example, is conditional on the sale of a property in Sydney," Andrew Perry, a then special counsel at Gadens Lawyers in Sydney (now director, legal and technology, at consultancy legal.consult), noted in a June 2005 commentary on the proposal.

"Because the system will operate across state boundaries, the conveyance of the Sydney and Melbourne properties could occur simultaneously once all the parties have their finance in order and have had their agreement to the relevant transaction certified."

Importantly, the NECS won't impact on every exchange in a typical property purchase. Preparation and exchange of contracts, background investigatory work, and insurance and loan documentation are not covered by the scheme, and will continue to be handled as they are currently.

### National impact

Nonetheless, the conversion to electronic conveyancing will have an impact far beyond legal firms, and has been welcomed by other businesses involved in the sale of property.

The banking industry is watching with particular interest. "It is important that we have nationally consistent processes for all participants to follow in property conveyancing, otherwise the advantages of electronic conveyancing will not be fully realised," David Bell, chief executive of the Australian Bankers Association (ABA), said in a statement on the project earlier this year.

Much of that interest is due to the possibility of increased competition. Forrester Research has predicted that the general global trend towards electronic conveyancing will see banks and other businesses take a greater role in the conveyancing process, presenting a challenge to the traditional role of law firms in this area. Seven ABA member banks are participating in the current Victorian e-conveyancing pilot.

Victoria's pilot scheme, EC, is expected to form the basis of the national model. The project, which commenced in late August, is being jointly developed by the existing Victorian Land Registry and the newly created Land Exchange, which is managing the project. Technology firm SFE is developing the backend technology systems for EC. Victorian Planning Minister Rob Hulls estimates that e-conveyancing could save consumers in his state \$100 million.

Even at this early stage, the Victorian EC plans have attracted some criticism. "The EC project has developed rapidly and incrementally, with many operational details of the scheme yet to be settled," said Dr Pam O'Connor, associate professor in the faculty of law at Monash University, in a lecture examining the benefits of e-conveyancing in June this year. "This had made it difficult for interested members of the public to get a fix on what is happening." O'Connor argues that the rapid pace of development means the regulatory framework for the project is likely to prove "inadequate" (see storage p22).

## How it will work

Many of the finer details of how the NECS will work won't be finalised until after the detailed implementation plans are completed towards the end of this year. But the basic model has been established and early experience from the Victorian pilot gives some guide.

In a typical NECS transaction, an authorised user will create a workspace for an individual transaction after completing preliminary activities with the client. That workspace will then be "completed" by the authorisation of the relevant documents, a process that will likely involve other parties. A "completed" workspace will include signage and authorisation for all relevant transactions.

The general principles underlying the project have already been established in a series of documents that could informally be referred to as "the four Ns". The National Business Model (NBM) defines the key business roles that will exist in the e-conveyancing system and the business rules that bind them. The intention is that there will be core business rules that apply to all conveyancing, and then state and territory-specific additions to cover the differing legislation and associated duties and costs in each locality.

A draft of the NBM already exists, but isn't expected to be finalised until November 2007. The National Governance Arrangements (NGA) define how the project will be controlled. The NECS is overseen by a National Steering Committee, which includes legal and registry representatives from each state and territory, as well as representatives of information brokers and other industry parties.

The Committee first met in November 2005 and is headed by Les Taylor, former chief solicitor for the Commonwealth Bank.

Day-to-day operations are handled by the National Electronic Conveyancing Office, which has been in operation for a year and is headed up by executive director Simon Libbis, previously the Registrar-General for South Australia. Individual state project teams will plan for local rollouts.

The National Implementation Strategy (NIS) outlines how the project will be put into practice. This is still being finalised, but the current implementation strategy does not envision full enactment of the scheme until 2010.

The National Operational Description (NOD), first published in draft form in July, provides in-depth information on how the project would work, including specifying the interchange technology (the NEC Data Standard) to be used.

The NEC Data Standard will be based on XML, which allows relatively easy integration with external systems. Digital certificates, which will provide an electronic alternative to current signature arrangements, will comply with the existing set of Gatekeeper standards used by government agencies.

Given the complexity of the NECS model, only large law firms are likely to be in a position to customise their existing technologies to work with the new systems. Licensed service providers (LSPs) — third parties that provide access to the NECS on a contract basis are expected to emerge and provide more cost effective access for smaller firms.

In order to hammer out the detail of how the NECS will operate and identify potential problems, the project intends to consult extensively with the legal and financial industries, primarily through electronic means. Online forums, accessible from the main NECS site ([www.necs.gov.au](http://www.necs.gov.au)), allow interested parties to discuss the impact of the proposed changes.

The forums were launched in late July, and cover four key areas: potential users, lodgement rules, access rules, and settlement rules. A key topic for discussion will be how risk will be distributed and managed under the new arrangements.

A referee system is being used to ensure that all participants are genuinely involved in the industry, minimising the chances of unproductive participants or forum "spam" messages. The forums are expected to remain active until at least November.

## What choice do you have?

Currently, there are no plans to make use of the NECS compulsory. Conventional paper-based settlement models will continue to be an option, although in practice, clients who engage a lawyer to handle their conveyancing may come to expect the speedier option of electronic settlement.

Such models are also likely to be cheaper to implement in the long run, once the initial cost of setting up electronic systems has been recovered.

Different approaches are being taken in other countries. For instance, in the UK, which has a similarly-scoped project for introducing e-conveyancing, the possibility of compulsory electronic transactions by 2009 has been mooted. However, the lack of state-based complications there simplifies the prospect of introducing a national system and then making it mandatory.

One argument for maintaining the paper-based system is that it will provide a fallback if the electronic systems are unavailable due to technology failure, even though the NECS calls for extensive redundancy and backup systems to be designed into the project.

Another argument for sticking with paper is that it will provide an easier option to allow do-it-yourself conveyancing for individuals who want to handle the transaction themselves. O'Connor notes that the UK legislation on e-conveyancing has specific requirements that the system allow for such access, but there are currently no similar provisions in Australia: "The compliance costs in being a subscriber will likely be high enough to discourage casual users from applying."

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