

National Electronic Conveyancing System

Western Australian Industry Workshop

23 April 2009

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National Electronic Conveyancing System Western Australian Industry Workshop

Agenda

12:35 **Vision for Landgate**

Paul Whyte
Acting Chief Executive
Landgate

12:45 **Update on NECS**

Craig Mariano
Manager Special Projects
Landgate

13:00 **Legislative Update**

Bruce Roberts
Registrar of Titles
Landgate

13:20 **Break**

13:30 **Workshop**

Craig Mariano
Manager Special Projects
Landgate

Simon Libbis
Executive Director
National Electronic Conveyancing Office

15:00 **Break**

15:15 **Workshop – Continued**

16:00 **Close Workshop**

Vision for Landgate

Paul Whyte
Acting Chief Executive
Landgate

Vision for Landgate

To provide an environment that allows our customers to interact with us in a seamless manner.

Landgate's iLAND Project -

- **integrated business solutions**

The NECS perspective-

- **The increasing demand across industry for integrated online services**

Vision for Landgate

So what does this mean to you?

- **an online environment where you will be able to conduct all the processes required for the conveyancing of land**
- **access to a greater number of functions (making your life easier)**

Your participation now is vital to ensure we provide for your needs

Update on National Electronic Conveyancing System (NECS)

Craig Mariano
Manager Special Projects
Landgate

What is NECS?

Australia's joint government and industry project to create an efficient and convenient online facility for completing conveyancing transactions and lodging land title dealings for registration

NECS Objectives

- **Single electronic interface for conveyancing in all States and Territories**
- **Reduce the costs of property transactions**
- **Provides a platform to simplify the State and Territory property laws relating to land registration**

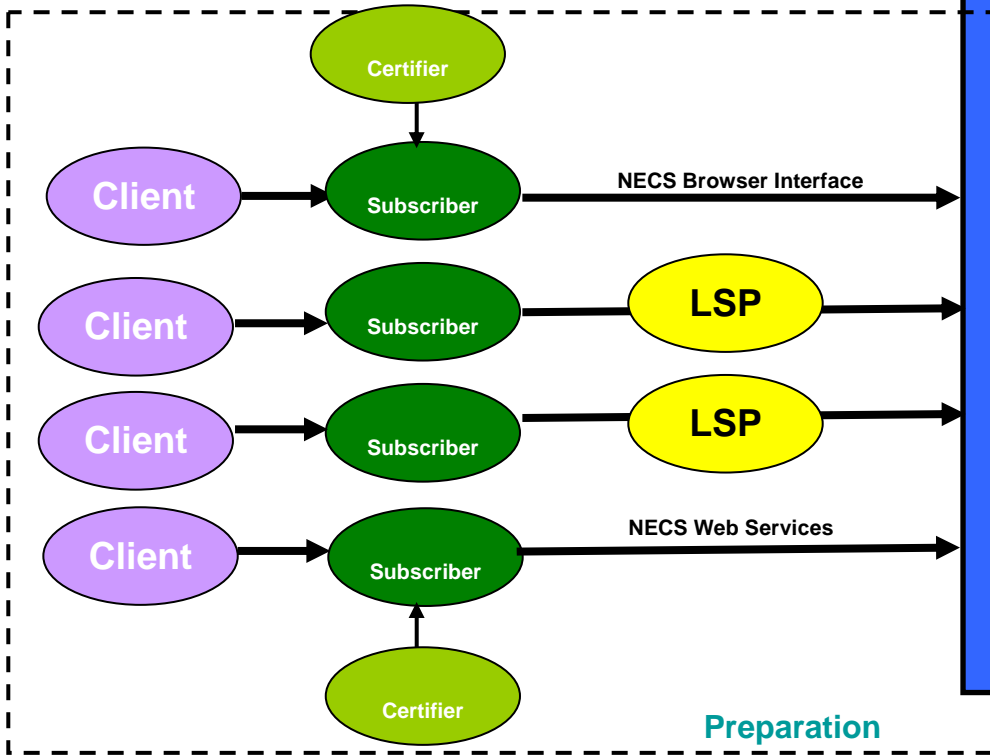
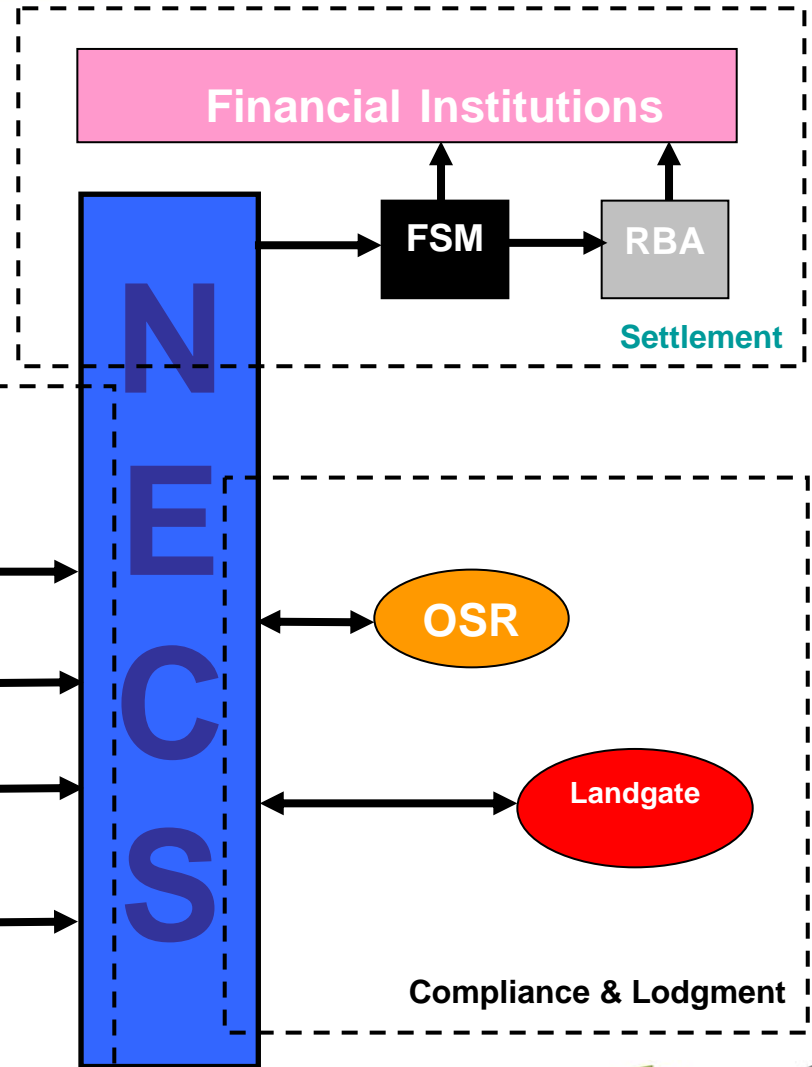
Update on National Electronic Conveyancing System

Key dates

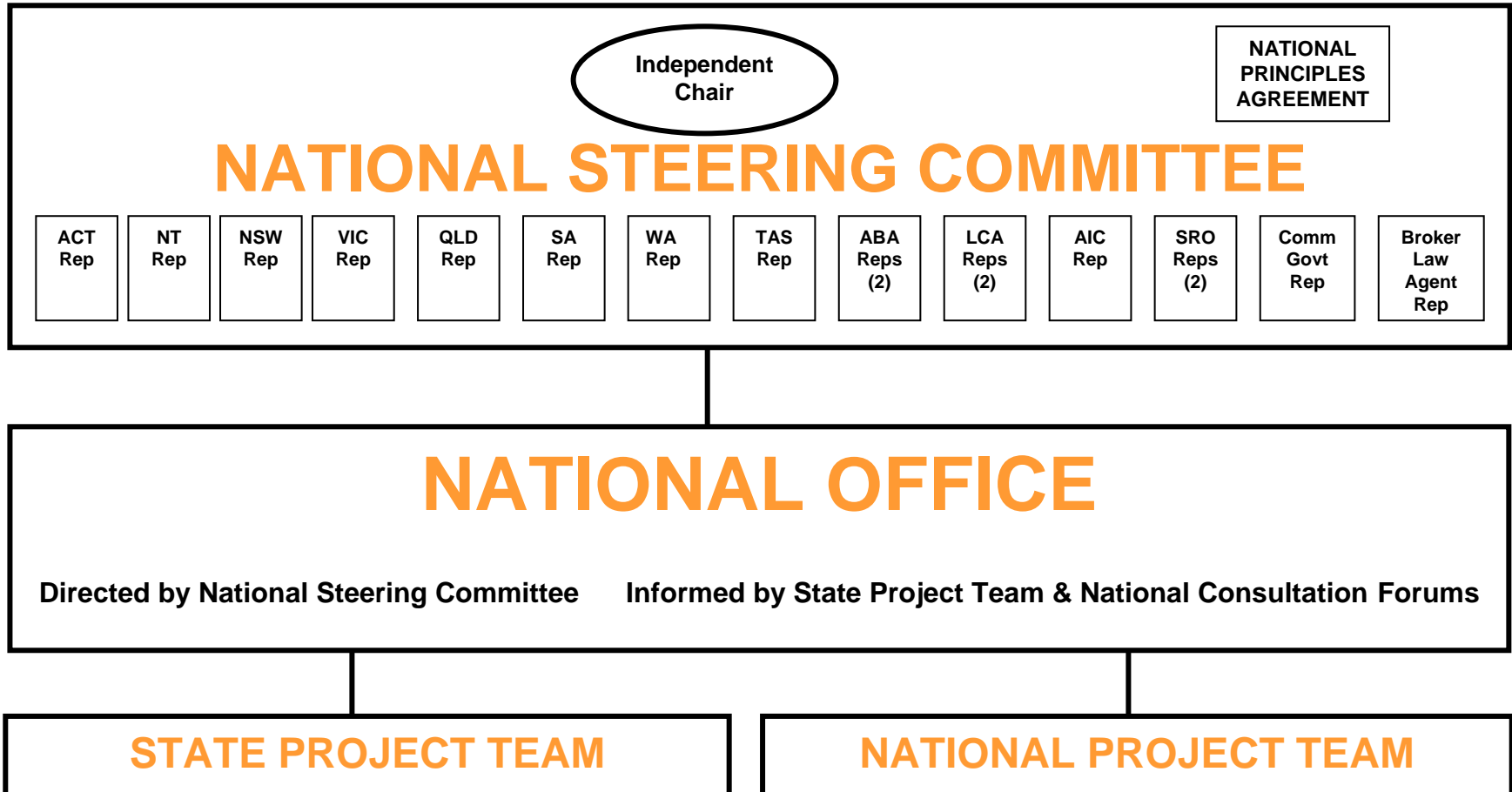
- **2009-10**
 1. **Council of Australian Governments (COAG) to agree the form of the new legal entity by mid 2010**
 2. **States and Territories agree governance for the new entity by mid 2010**
- **2010-11**
 1. **States and Territories subject to settling funding establish new entity and appoint Board by Sept 2010**
 2. **States and Territories agree nationally uniform business processes by Sept 2010**
 3. **States and Territories enact any necessary legislative changes and complete all related transitional arrangements by early 2011**
- **2011-12**
 1. **States and Territories commence the new e-conveyancing system by end 2011**

Update on National Electronic Conveyancing System

NATIONAL BUSINESS MODEL RELATIONSHIPS



CURRENT GOVERNANCE RELATIONSHIPS



National Project Team

Members are drawn from industry and government stakeholders

Objectives

- **Role is to make recommendations to the National Steering Committee on**
 - 1) business requirements,**
 - 2) supporting arrangements and**
 - 3) implementation issues for NECS.**
- **Complements the State Project Team (SPT) already working in each jurisdiction to ensure a consistent approach to Land Registry requirements.**

National Project Team Membership

- **Gayle Nancarrow**, Australian Institute of Conveyancers
- **Neil Brown**, Australian Bankers Association
- **Adrian Rose**, Information Brokers and Law Stationers Association
- **Murray McCutcheon**, Law Council of Australia
- **Steve Wilden**, Land Registries
- **Jon Denovan**, Mortgage and Finance Association of Australia
- **Chris Evans**, Mortgage Processors
- **Justin Toohey**, Professional Indemnity and Fidelity Fund Insurers
- **Richard Jolly**, Revenue Offices

WA's Industry Stakeholder Advisory Group Membership

- **David Clark** – Law Society of WA
- **Chris Martin** – Law Society of WA
- **Steve Fathers** – Scott Ashwood
- **Judith Pinczuk** – Australian Institute of Conveyancers WA Inc
- **John Clarey** – Australian Institute of Conveyancers WA Inc
- **Sue Taylor** – Independent Settlement Agents Association
- **Valerie Haskins** – Settlement Agents Supervisory Board
- **Geoff Couper** – Settlement Agents Supervisory Board
- **Amy Sullivan** – Bankwest
- **Andrew Hamilton** – Office of State Revenue
- **Landgate staff**

Questions / Comments?

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Legislative Update

Bruce Roberts
Registrar of Titles
Landgate

Legislative Update

- **National Business Model**
- **National Legal Framework:**
 - **State Project Team**
 - **NECO consultancy: May 09**
 - **Identify powers and rights: the bucket approach:**
 - Legislation
 - Subsidiary legislation (regulations; administrative notice; professional conduct rules)
 - Contract
 - Common Law

Legislative Update

- **Consistent Legislation**
 - States to identify existing legislation affected
 - Identify generic issues across jurisdictions
 - Work collaboratively on base set of consistent legislative provisions. Eg:
 - authorisation of ELNP (Electronic Lodgment Network Provider)
 - criteria for authorisation
 - requirements of Users
- **Identify State specific legislative changes**
 - TLA, Settlement Agents Act, other Acts and subsidiary legislation
- **Consultation on Legislative Changes**

Legislative Update

- **All this by when?**
 - **SPT timetable on Legal Framework: Oct 09**
 - **COAG timetable:**
 - “legislative changes and transitional arrangements by early 2011”
 - **NECS operative by end 2011.**

Legislative Update

Questions / Comments?

Short Break

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Workshop

Craig Mariano
Manager Special Projects
Landgate

Simon Libbis
Executive Director
National Electronic Conveyancing Office



NATIONAL ELECTRONIC CONVEYANCING SYSTEM

**Western Australia Industry Workshop
National Project Team Papers**

23 April 2009

By

Simon Libbis

Executive Director,

National Electronic Conveyancing Office



MORTGAGE COUNTERPARTS

Issue: Land Registries currently have different approaches to the signing of mortgages in paper. There should be a consistent approach to signing mortgages in NECS in the interests of all stakeholders.

Options:

1. Mortgagor only signs electronic instrument
2. Mortgagee only signs electronic instrument and certifies that mortgagor has signed, with witness attestation, a paper copy of the mortgage and the mortgagee has retained the signed paper copy
3. Both mortgagee and mortgagor sign separate electronic instruments
4. Mortgagee signs for both parties and certifies that CIV has been conducted on and a CA has been obtained from the mortgagor

NPT Resolution: Option 4 General agreement that mortgagee signs for both parties and note that issues of responsibility and liability need to be considered in the development of the Legal Framework for NECS



INSTRUMENT CERTIFICATION

Issue: The nature and extent of certifications provided by Certifiers is critical in assuring Land Registries that all relevant business practices have been properly undertaken by Subscribers.

Options:

1. Correctness of all information in the instrument
2. CIV: the Subscriber has properly carried out and securely retained records of identity verification as prescribed by the Land Registry
3. CA: The Subscriber holds a properly completed and signed Client Authorisation agreement for the transaction as prescribed by the Land Registry
4. SE: The Subscriber has obtained, verified, properly considered and securely retained originals or copies of all supporting evidence for the transaction and instrument as prescribed by the Land Registry
5. Instrument being in compliance with all legal requirements

NPT Resolution: Accepted the proposed instrument certifications, subject to review of the final wording of each certification statement



FEE PAYMENTS

Issue: The electronic business environment of NECS demands that all fees incurred by industry participants in using NECS be paid by electronic means. Arrangements for fee payment in NECS need to suit industry business requirements and the nature of the fees themselves. The types of fees are NECS fees, lodgment fees and information fees.

Options:

1. Settlement Disbursement + Direct Debit
2. Settlement Disbursement + Direct Debit or Direct Credit/B-Pay
3. Settlement Disbursement for lodgment fees only + Direct Debit or Direct Credit/B-Pay for the rest
4. Direct Debit or Direct Credit/B-Pay
5. Direct Debit only

NPT Preference: Option 2 is the preferred option as giving the most flexibility for industry



SETTLEMENT DISBURSEMENTS

Issue: NECS Risk Assessment identified the obtaining and transcribing of BSB and Account Numbers by Subscribers and Users acting for them in using NECS as a significant risk of error or fraud. Listed are options for dealing with the risk of loss from errors and fraud.

Options:

- 1.Account Details – greater risk for Subscribers
- 2.Payee Names – requires changes to bank systems
- 3.Dual Certifications – reduces Subscriber risk
- 4.Payee Names & Dual Certificates
- 5.Trust Accounts – two-stage process delays payments
- 6.Subscribers Choice – provides greatest flexibility

NPT Initial View: Option 1 appears to be the only viable option with work to be done on strategies to mitigate risk



CHAIN SETTLEMENT OPTIONS

Issue: NECS has a separate workspace for each transaction. It is necessary to be able to link workspaces in a chain of transactions. Consideration needs to be given to the best way to handle the simultaneous settlement of a chain of linked transactions.

Options:

1. Standalone

- Workspaces linked for simultaneous settlement only
- Bridging finance still required

2. Disbursement

- Cleared funds passed between workspaces
- Only additional funds for each workspace authorised
- Bridging finance not required

3. Consolidated

- Workspace settlement schedules consolidated
- Sources and disbursements netted
- Net sources only authorised by settlement funders

NPT Resolution: Option 2 is considered to be the best option



CLIENT AUTHORISATIONS

Issue: The CA agreement is a critical risk mitigation requirement for land registries and those using NECS. Requirements for Subscribers to obtain written authority to represent a party to a transaction in NECS have been produced in a draft Client Authorisation template.

3 Components of a CA:

- Content (including certifications and authorisations wording)
- Terms and conditions (including definitions)
- Completion guide

NPT Resolution: Accept the concept of the draft CA agreement subject to review of the final working, consistency with the finally agreed CA arrangements, the ability to complete the Agreement without seeing the client and implementation with statutory backing



CLIENT AUTHORISATION AGREEMENT

CLIENT AUTHORISATION AGREEMENT		Meaning of Words Used in the Agreement & Guide	Explanatory Material means general written information about NECS and its use, features, functions and obligations brought to the attention of Transacting Parties and their Representative(s)	CLIENT AUTHORISATION AGREEMENT COMPLETION GUIDE
<p>To be completed and signed in ink preferably using a ballpoint pen. For assistance see Completion Guide or call 1800 000 000</p>				
CLIENT DETAILS	NAME			
	ADDRESS	TRANSACTIONING PARTY 1 <i>(must always be completed)</i>		
	PHONE			
	CONTACT PERSON			
TRANSACTION DETAILS	NAME	TRANSACTIONING PARTY 2 <i>(use additional forms if more than 2 parties)</i>		
	ADDRESS			
	PHONE			
	CONTACT PERSON			
TRANSACTION DETAILS	PROPERTY ADDRESS	TRANSACTIONING PARTY 1 <i>(including State or Territory)</i>		
	TITLE REFERENCES			
	TRANSACTION TYPE	<input type="checkbox"/> SALE <input type="checkbox"/> PURCHASE <input type="checkbox"/> MORTGAGE <input type="checkbox"/> DISCHARGE <input type="checkbox"/> OTHER		
	SPECIAL INSTRUCTIONS	<i>(use for describing other transaction types or stating the duration of the authority)</i>		
SUBSCRIBER DETAILS, CERTIFICATION AND SIGNING	NAME	SUBSCRIBER <i>(must always be completed)</i>		
	ADDRESS			
	<p>I CERTIFY that:</p> <p>(a) the identity and authority of the person(s) whose signature(s) appear(s) below have been verified in accordance with the Prescribed Requirements; and</p> <p>(b) this Agreement was signed by each of the Transacting Parties or their respective Representatives in my or my Agent's presence.</p>			
	<p>By each Transacting Party making up the Client if natural persons</p> <p>I CERTIFY that:</p> <p>(a) I am the person named above as a Transacting Party or Transacting Party Representative; and</p> <p>(b) I have the legal authority to instruct the Subscriber in relation to the Transaction; and</p> <p>(c) I have received the Explanatory Information on Client Authorisation Agreements; and</p> <p>I AUTHORISE the Subscriber to act as my agent in NECS to:</p> <p>(a) sign documents on my behalf by affixing a digital signature to each document;</p> <p>(b) lodge the documents to be lodged electronically for registration with the relevant Land Registry;</p> <p>(c) authorise any financial settlement involved in the Transaction to be effected, unless I instruct otherwise; and</p> <p>(d) do anything else necessary in NECS to complete the Transaction.</p>			
CLIENT AUTHORISATION AND SIGNING	PARTY 1	DATE	CAPACITY	SIGN HERE
	PARTY 2	DATE	CAPACITY	SIGN HERE
	PARTY 1 REP	DATE	CAPACITY	SIGN HERE
	PARTY 2 REP	DATE	CAPACITY	SIGN HERE

Subscriber Certification

I CERTIFY that: (a) the identity and authority of the person(s) whose signature(s) appear(s) below have been verified in accordance with the Prescribed Requirements; and (b) this Agreement was signed by each of the Transacting Parties or their respective Representatives in my or my Agent's presence.

Client Certification and Authorisation

I CERTIFY that: (a) I am the person named above as a Transacting Party or Transacting Party Representative; (b) I have the legal authority to instruct the Subscriber in relation to the Transaction; and (c) I have received the Explanatory Information on Client Authorisation Agreements; and

I AUTHORISE the Subscriber to act as my agent in NECS to: (a) sign documents on my behalf by affixing a digital signature to each document; (b) lodge the documents to be lodged electronically for registration with the relevant Land Registry; (c) authorise any financial settlement involved in the Transaction to be effected, unless I instruct the Subscriber otherwise; and (d) do anything else necessary in NECS to complete the Transaction

Participation Rules means the rules applying and committed to by Subscribers in choosing to use NECS to complete Transactions

jurisdiction in which the Property is situated. You and We submit to the non-exclusive jurisdiction of the courts of that place.

together with any known details

with completing the Client Authorisation Agreement is available during business hours on weekdays by calling 1800 XXXXXX.



DIGITAL SIGNATURE CERTIFICATE TYPE

Issue: The fundamental purpose of DSCs is to provide certainty as to identity, security, authentication and non-repudiation in electronic transaction. The type of DSC mandated in NECS needs to be considered.

Options:

1. Parent Organisation DSCs only
2. Organisation DSCs only (with CIV for child certificate holders)
3. Individual DSCs only
4. Organisation and Individual DSCs

NPT Resolution: Option 2 was agreed, being the use of Organisation DSCs with specific responsibility on subscribers to undertake CIV checks on child certificate holders



CLIENT IDENTITY VERIFICATION

Issue: CIV is the requirement of Subscribers identifying parties to a NECS transaction. Its intention is to provide confidence in the identity of the transacting party and that party's entitlement to deal with the land

Options:

1. Purpose built standard – suited to the specific risks in land title registration
2. FTRA's 100-point standard – under the Cth Financial Transactions Report Act 1988
3. Attorney-General's Gold Standard – developed as part of the Cth Government's National Identity Security Strategy
4. AGIMO's Gatekeeper Standard – developed to support the Cth Government's revised digital signature certificate authentication framework

NPT Resolution: CIV standard for NECS should be purpose-built to facilitate electronic property transactions and developed from current banking industry practice under AML.



THANK YOU – Any Questions?

For more information on this presentation or any aspect of National Electronic Conveyancing, please contact:

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Close Workshop

Craig Mariano
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