



1 September 2011

E6, 75.7

The Honourable John Rau MP
Attorney-General
DX 336
ADELAIDE SA

Dear Mr Attorney

Electronic Transactions (Miscellaneous) Amendment Act 2011

Thank you for your letter of 4 August 2011 and the opportunity to provide further comments in relation to the above Act, which is yet to commence operation.

With regard to the numbered paragraphs in your letter, the Society's comments are as follows:

1. This paragraph concerns the new Section 14B of the Act, under which an electronic communication that is not addressed to a specific party but to the "world at large" is not to be considered an offer, but rather an invitation to make offers "*unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance*" (emphasis added).

You pose the example of a real estate agent advertising properties for sale or for rent on a web site. We agree that, in this situation, no binding contract should be formed by a person sending a message to the site expressing a wish to buy or rent one of the properties. However, the Society has serious concerns about the possibility that someone (whether an agent or not) could post a message on a web site offering to sell or rent a property and stating a clear intention to be bound in case of acceptance of the offer.

Based on the wording of Section 14B italicised above, and given the fact that this Section is not among those that are "disapplied" to land transactions under the Regulations, considerable confusion would arise as to the binding nature of the "contract" so created and the potential conflict with Section 26 of the *Law of Property Act 1936*.

2. This paragraph relates to new Section 14C of the Act which allows for contracts to be formed by interaction with automated message systems. The Society agrees that this provision should not have the effect of validating a land contract made in that way. In your letter, you state:

"Under property law, land contracts must be in writing and signed. That requirement cannot be met electronically because of Regulation 5."

However, Regulation 5 only relates to Part 2 of Division 2 of the Act. Section 14C is in Part 2A of the Act. Therefore Regulation 5 does not "disapply" Section 14C to land transactions.

3. This point relates to Section 14D, regarding the correction of errors in communications with electronic messaging systems. Again, we agree that this provision should have no application to land transactions. However, in view of the fact that there is no provision in the Regulations "disapplying" Sections 14C or 14D to land transactions, confusion remains as to the possibility that they may apply to land transactions.
4. This paragraph concerns Section 14E of the Act, under which Sections 7, 13, 13A and 13B are to apply to contracts in the same way as they would if the words "*for the purposes of a law of this jurisdiction*" were omitted. The Society agrees that Section 7 (1) is already "disapplied" to land transactions by Regulation 4. However, Sections 13, 13A and 13B are not "disapplied" to land transactions under the Regulations and, to the extent that the Act can be interpreted to permit land transactions to be effected by electronic means, those Sections could apply to them.

In summary, since the Regulations only "disapply" certain specified parts of the Act and not others, to land transactions, the implication remains that those other parts of the Act may apply to land transactions. This has the potential to cause considerable uncertainty and confusion as well as conflict with other laws regulating land transactions.

Accordingly, the Society maintains its view that the Regulations should at least state specifically that the new Part 2A does not apply to land transactions. Another, and perhaps preferable, alternative would be for the Regulations to exclude land transactions from the operation of all parts of the Act.

I trust these comments are of assistance. Please do not hesitate to contact me, should you require any further information.

Yours sincerely



Ralph Bönig
PRESIDENT