

27 January 2021

Our ref: LP-MC

Matthew Sedgwick  
Data Economy Unit  
Treasury  
Langton Cres  
Parkes ACT 2600  
By email: [e-Invoicing@treasury.gov.au](mailto:e-Invoicing@treasury.gov.au)

Dear Mr Sedgwick

**Options for mandatory e-Invoicing adoption by businesses**

Thank you for the opportunity to provide feedback in response to the consultation on “Options for mandatory e-Invoicing adoption by businesses”. Thank you also for accepting our submission after the original due date.

The Queensland Law Society (QLS) is the peak professional body for Queensland’s legal practitioners. We represent over 13,000 legal professionals, many of whom operate businesses and many of whom represent businesses.

Due to the time available to review the consultation paper and consider the issues and, as some of the matters raised by the paper are outside of QLS’s remit, we have limited our comments to a few key points.

**Concerns about making e-invoicing mandatory**

We hold concerns about mandating the adoption of e-invoicing by business. Many of these concerns have been identified by the paper under “Potential disadvantages” of option 1 (phase in requirement for all business). These are:

- *A mandate could impose significant regulatory costs on businesses. Some businesses that process low volumes of invoices and don’t use business software or systems may find adopting e-Invoicing to be more challenging and/or expensive. Some businesses may not have the funds to invest in e-Invoicing even when there is a positive return over time, noting that:*
  - *The cost of e-Invoicing adoption will depend on the business and the provided services.*
  - *Many businesses will need to invest time and resources to understand e-Invoicing and changes to their software or systems.*
  - *These adoption costs are generally already deductible under the tax system.*

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- *Mandating e-Invoicing for businesses at this point in time may limit the number of software providers to only those that can be ready quickly.*

The consultation paper suggests that any mandate will extend so far as requiring business to have the capability to e-invoice, but not necessarily to use this capability when dealing with other businesses, i.e. a business will still be able to issue and receive invoices in another way. This approach may create some confusion about a business's compliance obligations.

The purpose of this legislative reform (however achieved within constitutional requirements and existing statutes), as outlined in the paper, will be to increase the use of e-invoicing in Australia. We agree that if a business has incurred the costs of and associated with the software, it will likely use it and accordingly, our concerns outlined below should be considered prior to any reform.

### *Costs to law firms as businesses – impacts on small / micro law firms, local communities and large firms*

Many law firms provide services predominantly to individuals, but will occasionally provide services to business. A significant number of QLS members operate small or micro law firms and may struggle with the costs of transitioning to an e-invoicing system. These businesses will also need to incur the costs of training staff to use the new systems, together with other administrative costs such as updating clients. A mandate would require these businesses to do so even if only a small percentage of their client-base are businesses, making it more difficult to justify the cost (and noting that they will then need to operate multiple systems) to accommodate non-business clients who lack the capacity to received e-invoices.

Additional regulatory burdens should not be imposed without understanding of their impact. The imposition of new costs on law firm businesses can result in access to justice concerns, particularly in rural and regional areas. For example, additional costs and compliance burdens may render a firm less able to offer pro bono services or to undertake Legal Aid work at a reduced cost.

While lawyers already operate within a highly regulated framework, these concerns are not unique to our profession. If adoption of e-invoicing is made mandatory, any consequences of non-compliance, such as financial penalties, will be particularly concerning when a business has economic constraints that prevent it from compliance.

Another concern arises for small firms using practice management programs to raise invoices which then sync to their accounting software. In these circumstances, it is not the accounting software that generates the invoice, rather it is the practice management software. Accordingly, practice management software may also need to be updated to be compatible with Peppol. There should be specific consultation with providers of these platforms to ensure they are aware of proposed legislative reforms and able to accommodate these changes.

This is also likely an issue for many professional practices, not just lawyers.

In addition, we are aware that this requirement may also be challenging for larger firms and their clients, given many institutional clients have invested considerably in their own, specific e-invoicing platforms, as have the firms in ensuring compatibility of their own systems. These businesses may see little benefit in transitioning to a new system under Peppol.

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### *Competition concerns*

Prescribing a particular system/platform may raise competition issues where, as noted in the paper, only limited providers can currently offer a product which is able to utilise Peppol. There are also concerns that a mandatory scheme may lead to a lack of innovation in these products and potentially inflated costs. Ensuring there is appropriate capacity to facilitate competition and a regulatory structure to support competition are important considerations in any mandating decision.

Potential competition issues must be considered and determined before introducing a mandate. It will be very difficult to address such issues after a mandate, once businesses have been obliged to sign up with a small number of Peppol-enabled providers.

A mandate should not be introduced without allowing sufficient time for a greater number of providers to develop a Peppol-enabled product. Otherwise, businesses will be obliged to sign up to one of the small number of providers presently able to offer such a product. Once a business incurs the cost of e-invoicing software with a particular provider, the business will often be disinclined to switch to a new provider, even if there is greater choice at a later time.

A salient example comes from the ongoing conversation about competition in the e-conveyancing market for the benefit of end users. This debate has arisen in the context of:

- a number of States around Australia mandating e-conveyancing at a time when one operator held a monopoly;
- a second operator now seeking to enter the market; and
- the need for certainty about the future structure of the market, to support consumers in electing which platform to use and ensuring competition is available in the future.

The ACCC has published a number of materials analysing the competition issues arising in the electronic conveyancing market,<sup>1</sup> concluding that policy makers need to implement a pro-competition market. Otherwise, it is unlikely that new entrants will be able to sustain a presence in the market, with the following result:

“This will leave a monopoly that will need robust regulation for the sake of the interests of stakeholders and end-users. The alternative to competition in this market is an entrenched monopoly, likely with forgone opportunities for innovation, lower costs and improved quality of service. Further, the regulation of a monopoly is a complex, timely and costly process, and is a sub-optimal result.”<sup>2</sup>

We recommend that competition issues be given careful consideration before deciding to mandate the introduction of e-invoicing.

If a mandate is proposed, it is critical to allow a reasonable transitional period with sufficient information and education to allow software providers to update their products so that business

<sup>1</sup> <https://www.accc.gov.au/about-us/consultations-submissions/accc-submissions#electronic-conveyancing>

<sup>2</sup> Australian Competition & Consumer Commission, *ACCC report on e-conveyancing market reform*, 2 Dec 2019, at page 3, Executive Summary; available at <https://www.accc.gov.au/system/files/Letter%20to%20ARNECC%20Chair%20and%20state%20and%20territory%20policy%20agencies%20-%20December%202019.pdf>

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will not be in breach, but also to allow more providers more time to enter and remain in the market. This approach would also ensure that businesses have a greater choice of providers, thereby fostering competition and the associated benefits of “innovation, lower costs and improved quality of service” identified by the ACCC.

### *Impact of mandating on clients (businesses and individuals)*

It is important to highlight that clients might also elect to receive a hard copy invoice for a number of reasons. This may include an inability to access a computer or the internet or because a hard copy invoice can be more easily read and/or understood. Whilst we appreciate that any mandate would apply to businesses and not impose the obligation to necessarily issue invoices in this way, any potential flow on impact for individuals who may not have compatible software to receive e-invoices or who simply elect to receive hard copy invoices for the reasons outlined, must be considered to ensure that individuals are not disadvantaged.

Related to this issue is the need to ensure that business, and other groups and individuals, who are not intended to be captured by this reform are not inadvertently caught. For example, is it the policy intent to capture workers in the ‘gig economy’ who are required to operate under an ABN? If this is not the intention of the Government’s policy, then caution will need to be taken to ensure there are no unintended consequences in this regard.

For these reasons, QLS supports the Government adopting a non-regulatory approach to e-Invoicing adoption by business.

### **Compliance with *Legal Profession Act 2007 (QLD)***

The consultation paper outlines factors affecting adoption of e-invoicing by business and asks for information on what other factors should be considered when mandating Peppol e-invoicing for businesses.

For law practices operating in Queensland who are bound by the *Legal Profession Act 2007 (QLD)* (LPA), there are additional considerations. Section 330 of the LPA sets out the requirements for bills. Subsection (7) of this provision requires that “a bill may be given to a client electronically if the client consents to the bill being given electronically.” Should e-invoicing be mandated (i.e. legislated by the Commonwealth Government, noting the constitutional restrictions outlined in the paper), there will potentially be a conflict for a lawyer when their clients have not provided their consent to receive an e-invoice.

Should e-invoicing became mandatory, changes will need to be made to the LPA, and possibly to other State legislation. Discussions should be held between the jurisdictions to ensure business is able to comply with the scheme and with other regulatory requirements which might apply in a particular industry.

### **Security concerns**

Some of our members have expressed a concern that requiring all businesses in Australia to use a single e-invoicing platform (whether administered by the ATO or someone else) makes it

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a prime target for hacking. This is an additional concern for business if they are required to opt into this system.

Businesses and other affected parties, including lawyers who will need to advise their business clients, will need further information about how these risks are being mitigated. Consideration should also be given to the type of information contained in an invoice. For example, an invoice from a law firm will typically include specific details of the client's legal matter. Both the firm and the client will want certainty as to the security of this information.

### Benefits of e-invoicing

Notwithstanding the concerns we have raised, there are clear benefits of business-to-business e-invoicing and many of our members already have adopted this process. To enable an increase in voluntary adoption, QLS would be happy to consult with the Government on what resources we can make available to our members to best equip them to elect to transition to these systems when it is in their best interests to do so.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED]

Yours faithfully



Elizabeth Shearer  
**President**