

Interoperability between Electronic Lodgment Network Operators

Third Progress Report to NSW Parliament

June 2025



Acknowledgement of Country

The Office of the Registrar General acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

Interoperability between Electronic Lodgment Network Operators Progress Report to NSW Parliament

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Introduction

1.1 Registrar's message

In the 12 months since the 2024 progress report, the interoperability reform has entered into a review phase, in response to financial settlement and scope issues raised by the banking industry.¹ The Australian Registrars' National Electronic Conveyancing Council (**ARNECC**) has placed the interoperability program technical work on hold,² and has announced further reviews into the reform.

At the time of writing, these reviews are getting underway – a functional requirements review relating to the scope and technical solution for interoperability, and an updated cost benefit analysis – which will inform the next steps for the reform.

In the meantime, my office will continue to engage with the Commonwealth for assistance. I welcome the Commonwealth Senate's Inquiry into micro-competition opportunities in the Australian economy in relation to eConveyancing, due for report in September 2025. I expect this will provide an opportunity for further engagement on these issues at the Commonwealth level.

I acknowledge the significant efforts of Titles Queensland in leading this review work, supported by the NSW Government, and the ongoing contribution to the reform made by the Law Council of Australia, Australian Institute of Conveyancers, Australian Banking Association and financial institutions, Electronic Lodgment Network Operators, land registries and revenue offices, as well as my colleagues in the NSW government and at ARNECC.



Danusia Cameron
Registrar General

1.2 Purpose of report

The purpose of this report is to update the NSW Parliament on critical security aspects of the national reform to facilitate interoperability between Electronic Lodgment Network Operators (**ELNOs**) in the electronic conveyancing industry, and progress with other key developments in the reform. This report highlights key activities since the May 2024 Progress Report, as updated by the Addendum to that Report dated August 2024.

Interoperability is a national reform led by ARNECC. It is intended to enable different ELNO systems to communicate with each other, meaning customers will have a choice of which ELNO they use. Interoperability aims to create an environment that promotes the innovation of new products and improved services, lower prices and a higher quality user experience.

Interoperability was identified in 2021 as the preferred means of achieving effective competition in the eConveyancing market following extensive stakeholder consultation and expert advice and reports.³

¹ See Ministerial Statement published 26 June 2024: <https://www.arnecc.gov.au/wp-content/uploads/2024/06/Ministers-Statement-Forum-11-June-2024.pdf>.

² See ARNECC Statement dated 20 September 2024: <https://www.arnecc.gov.au/wp-content/uploads/2024/09/ARNECC-Interoperability-Statement-20092024.pdf>.

³ See Ministerial Statement published 12 March 2021: <https://www.arnecc.gov.au/wp-content/uploads/2021/08/joint-government-industry-statement-12-03-21.pdf>

1.2.1 Scope of the reform

Interoperability is intended to provide subscribers with equivalent experience, whether their transaction is a single-ELNO transaction or whether the transaction is interoperable.

As mentioned above, some stakeholders have raised concerns about the scope of interoperability, and the ability of the reform to achieve the goal of equivalent experience.

1.3 Background to this report

Electronic conveyancing describes the systems and processes for the electronic lodgment of registry instruments and settlement of associated financial transactions to complete a conveyancing transaction. Electronic conveyancing replaces traditional paper-based processes which involved the lodgment of paper documents and exchange of cheques for financial settlement.

Electronic conveyancing in NSW is governed by the Electronic Conveyancing National Law (**ECNL**), being uniform national legislation applied in NSW by the *Electronic Conveyancing (Adoption of National Law) Act 2012*. The national policy and regulatory framework for electronic conveyancing is administered by ARNECC, a council of Registrars established under an Intergovernmental Agreement for an Electronic Conveyancing National Law.

In February 2022, the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 was referred to the Portfolio Committee No.4 – Customer Service and Natural Resources, for inquiry and report. The Committee published its Report in April 2022.

On 30 March 2022, the then NSW Registrar General wrote to Ms Abigail Boyd MLC, in her role as a member of the Committee, confirming that the NSW Registrar General would report to the Parliament on critical security aspects of the interoperability reform, and progress with other key aspects of the Bill (**Appendix B**).

Specifically, the NSW Registrar General committed to the following reports being tabled to Parliament:

1. Security report

Before interoperability is made available generally to customers in NSW – key findings and recommendations from the Program’s ICT readiness/health checks and independent security reviews.

2. Progress reports

Each anniversary of the assent of the Bill until interoperability is made available generally to customers in NSW – progress reports covering key program workstreams relating to the technical solution, regulatory framework, stakeholder participation and project implementation, as well as updates on the implementation of a stronger financial settlement oversight regime for eConveyancing.

On 12 May 2022, Ms Abigail Boyd MLC tabled the Registrar General’s letter during the Second Reading Debate of the Bill. On 6 June 2022 the Bill received assent, introducing the ELNO interoperability requirement in the Electronic Conveyancing National Law.

The first Progress Report to NSW Parliament was tabled in June 2023. The second Progress Report to Parliament was tabled in June 2024, with an Addendum to that Report being tabled in September 2024.

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Interoperability Progress Update | Key Reform and Related Aspects

2.1 Update on preparations for the delivery of interoperability to market

The last Progress Report noted the work undertaken by ARNECC to prepare for the delivery of interoperability up to May 2024. The August 2024 Addendum to the last Progress Report noted ARNECC's statement regarding issues raised by the banking industry, and the consequential pause of the design, build and test work.

NSW anticipates that the review program of work will determine next steps for the reform.

Updates on the review program of work will be published on ARNECC's website.⁴

2.2 Recent Developments

In the second half of 2024, Titles Queensland, with the support of NSW, conducted a joint targeted review of the challenges impacting the reform for ARNECC members, drawing on extensive stakeholder consultation.

This review was based on consultation with over 74 individual stakeholder representatives, including peak industry bodies, and gathered feedback from stakeholder meetings, written reports and submissions. Stakeholder insights fell into three key categories:

- *Verification*: verify the goals, benefits, costs and resources for the interoperability reform
- *Process*: identify the best path to implement interoperability, taking into account stakeholders' views
- *Governance*: identify the best path for ongoing procedures regarding governance, regulation and change.

Overall, most stakeholders consulted continue to support interoperability and the underlying principle of competition, provided it does not result in significant changes to their existing processes, increased risks or increased costs.

On 19 February 2025, ARNECC released a statement containing key insights from that targeted review and stakeholder engagement, and immediate next steps to inform future direction of the reform (**Appendix C**).⁵ The immediate next steps involve the commissioning by ARNECC of reviewers to undertake:

- a review of the functional requirements for interoperability; and
- an updated cost benefit analysis of the reform

More detail on these reviews is set out below.

Currently there are two ELNOs operating in NSW. In May 2025, a third potential ELNO, Lextech, announced that it was withdrawing from the national market.

In December 2024, Lextech Pty Ltd had been assessed as meeting the requirements of the Model Operating Requirements that meant it could commence negotiations for approval to provide and operate as an ELNO with each State and Territory Registrar. Following the December 2024 assessment, Lextech did not commence negotiations to operate in NSW; at the time of Lextech's withdrawal, it did not have approval to operate as an ELNO in NSW and was not offering ELNO services to customers.

⁴ See <https://www.arnecc.gov.au/>.

⁵ See ARNECC Statement dated 19 February 2025: <https://www.arnecc.gov.au/wp-content/uploads/2025/02/Next-Steps-on-Interoperability-19-Feb-2025.pdf>.

2.2.1 Functional requirements review

The functional requirements review involves an in-depth review of both ELNOs' functionality, with the goal of developing a functional scope for interoperability that seeks to maintain an equivalent experience for Subscribers in interoperable and non-interoperable transactions. The reviewer may also engage with financial institutions, legal and conveyancing practitioners and other Subscribers (or their respective industry representative bodies) in relation to the review.

2.2.2 Cost benefit analysis

The updated cost benefit analysis will test whether the direct connect interoperability model continues to be the most cost-effective model. The scope of the review will include a comparison of the costs and benefits of a direct connect interoperability model against several alternative cases, including that of the current market structure of multiple non-interoperable ELNOs. The review will also consider any changes to the assumptions underlying the original analysis undertaken in 2020 and provide updated estimates of the implementation costs for interoperability.

2.2.3 Regulatory support of functional requirements review

To support this review, the NSW Registrar General has issued to each Electronic Lodgment Network Operator (ELNO) a binding direction under Operating Requirement 5.3(i), requiring ELNOs to participate in and support the review, including by providing relevant data and information.

Should ELNOs not comply with this regulatory measure, the Registrar is empowered to take enforcement action under the *Electronic Conveyancing Enforcement Act 2022* (NSW).

2.3 Security progress report

NSW and ARNECC remain committed to ensuring the process of transitioning to and maintaining interoperability will be secure, including that:

- the system meets agreed security protocols; and
- transactional integrity across the ecosystem is maintained and not diminished by interoperability.

2.3.1 Security is of critical importance to the reform

Prior to the June 2024 pause, the program team had developed a detailed plan for the design, building and testing of Application Programming Interfaces (APIs) that made security a primary focus. This plan reflects the following aspects of ARNECC's approach to security and testing:

- APIs should be secure by design against data leaks, breaches and unauthorised access
- APIs should be tested first in a non-production environment to identify technical issues and risks before they are capable of impacting customers
- APIs and integrations with third parties should be tested via program-wide security reviews in addition to the security processes applied by individual ELNOs.

Further detail is provided in the May 2024 Progress Report.

As mentioned in that report, ELNOs continue to be subject to security, testing and reporting requirements under the Electronic Conveyancing National Law and the Operating Requirements. These requirements include:

- maintaining a fit-for-purpose Information Security Management System which is subject to regular review by an independent expert
- taking reasonable steps to ensure that data supplied to any system connected to the Electronic Lodgment Network is free from viruses, corruption and any other condition that may compromise those systems

- that the computer infrastructure forming part of the ELNO system must be located within Australia
- implementing appropriate procedures and controls to detect actual and possible data breaches
- arranging vulnerability assessments and penetration testing at least once per year
- ensuring any cloud service provider to the ELNO maintains an information security program that complies with ISO 27001 (or successor or equivalent standards).

2.3.2 Health checks

The interoperability program has been subject to ongoing health checks, independent assessments, and readiness reviews at key points of the program. The May 2024 Progress Report mentions the last health check, undertaken by the NSW Department of Customer Service ICT Assurance team.

NSW anticipates that the review program of work that is underway will guide the resumption of any technical work and health checks or readiness reviews of such work in the future.

2.4 Regulatory framework progress update

The regulatory framework for interoperability has evolved to support the policy objectives of the program.

2.4.1 Regulatory settings applying to ELNOs

NSW is reviewing the regulatory settings for ELNOs, given the significance of the eConveyancing market for the economy and customers; and given the benefits of competition have not yet been realised. In April 2025 NSW commenced consultation on updates to the ELNO approval conditions. The proposed amendments enhance the existing provisions regarding technology and business resilience, and customer service.

2.4.2 Enhancing enforcement

ARNECC is developing a national enforcement framework for broader enforcement powers under the ECNL. NSW continues to work collaboratively with other jurisdictions on this regime and expects a draft Bill in early 2026.

Outside NSW, Registrars currently have limited powers to address non-compliance by ELNOs and subscribers – being suspension, termination or the issue of directions with respect to matters arising under the operating requirements.

It is proposed that Registrars' enforcement powers be expanded to include:

- enforceable undertakings
- remedial directions
- financial penalties including civil penalties (for ELNOs and subscribers) and infringement notices (for subscribers)
- the power to publish information about non-compliance and enforcement.

As noted in the May 2023 Progress Report, NSW introduced broader enforcement powers through the *Electronic Conveyancing Enforcement Act 2022* (NSW).

2.4.3 Updates to the Model Operating Requirements

The updated NSW Operating Requirements (version 7.1) took effect on 9 May 2025.⁶ They are based on the Model Operating Requirements published by ARNECC and provide a framework to incentivise the efficient delivery of the reform.

Key updates in the operating requirements include:

- establishing an interoperability fees framework, in line with the recommendations and findings of the NSW Independent Pricing and Regulatory Tribunal 2023 review report on interoperability pricing for ELNOs
- introducing National Electronic Conveyancing Data Standard version handling, in preparation for interoperability
- introducing obligations for ELNOs to become a member of the Industry Code for eConveyancing Payments, and to comply with that Code once it takes effect.

2.4.4 Insurance review

ARNECC has commissioned an independent review of the insurance provisions in the regulatory framework, which included a review of the insurance that ELNOs and Subscribers must maintain. This review builds on the insurance analysis previously commissioned by the NSW Office of the Registrar General and addresses risks associated with the changes brought about by interoperability and the impact of interoperability on ELNOs.

Drawing on the findings of this review, ARNECC will consider appropriate updates for the Model Operating Requirements.

2.4.5 Separation requirements review

Model Operating Requirement 5.6 establishes a separation regime which requires that an ELNO intending to provide services in an upstream or downstream market must do so through a separate entity or business unit and deal with that separate entity or business unit on an arm's length, commercial basis. The separation regime aims to prevent an ELNO operating with an unfair competitive advantage in an upstream or downstream market.

ARNECC has commissioned a review of the separation regime to ensure that it is fit-for-purpose. ARNECC will consider any updates to the Model Operating Requirements arising from this review.

2.5 Governance and stakeholder engagement

The interoperability program has been developed in close consultation with stakeholders; the objective is to ensure the design is the most effective solution for industry and the community.

2.5.1 Ministerial forums

NSW has convened Ministerial forums with Commonwealth, State and Territory Ministers and representatives from the Australian Competition and Consumer Commission to monitor progress of the interoperability program. The most recent Ministerial Forum occurred on 11 June 2024. Ministerial Statements for each forum are published on ARNECC's website.⁷

⁶ See https://www.registrargeneral.nsw.gov.au/__data/assets/pdf_file/0008/1363139/Tab-B-NSW-Operating-Requirements-Version-7.1.pdf.

⁷ See: <https://www.arnecc.gov.au/>.

2.5.2 Interoperability Industry Panel

The national Interoperability Industry Panel is a consultative body established to provide industry a forum to provide input on the national interoperability solution.

Up to late 2024, the panel convened quarterly. Noting the review work underway, it is anticipated that the next industry panel meeting will be held once the functional requirements review and cost benefit analysis are complete, and that ARNECC will contact key stakeholders in due course.

2.5.3 Future updates to project governance

Following completion of the current ARNECC reviews, as part of recommencing the design, build and test work for interoperability, ARNECC will also review the project governance structure and the role of industry in project governance for the reform.

In February 2025, ARNECC presented a potential future state governance structure to industry. This would facilitate additional participation by financial services experts and Commonwealth regulators and agencies, as appropriate.

Noting that this structure would be subject to further development in consultation with key stakeholders, the proposal includes the following elements:

- a Steering Committee comprised of selected regulatory sponsors, to act as the ultimate decision-making forum to provide strategic direction and oversight, and to provide updates to ARNECC
- a Program Board comprised of representatives from ARNECC, industry, ELNOs and other regulators.
- a Program Team comprised of a Program Director/Project Manager overseeing a Test Manager and a Change and Communications Manager.
- a Regulatory Advisory Working Group and Interoperability Advisory Working Group, to advise relevant regulators and inform the Program Team.

2.6 ELNO Service Fees review by NSW Independent Pricing and Regulatory Tribunal (IPART)

IPART is due to commence a review into ELNO Service Fees in mid-2025 under stage 2 of the terms of reference published in January 2023 (**Appendix D**).

This review will consider whether ELNO Service Fees should continue to be regulated and, if so, whether a regulated method or level of price should apply, as well as future adjustment and review processes for ELNO Service Fees.

The Office of the Registrar General considers this review to be timely given the importance of price regulation for customers, that competition in the eConveyancing market is yet to be achieved and noting that IPART last reviewed ELNO Service Fees in 2019.

2.7 Development of an industry code for eConveyancing payments

The Industry Code for eConveyancing Payments (**Industry Code**) is a self-regulatory code to which ELNOs and financial institutions will be bound. The Industry Code specifies technical and operational requirements to ensure that all parties involved in electronic conveyancing financial transactions have a common set of rules and mutually understood obligations.

Since the May 2024 Progress Report, Australian Payments Network Ltd (**AusPayNet**) has published information explaining the history of the Industry Code, the scope and benefits of the Code and the relevant governance structures that are in place.⁸

On 21 March 2025, AusPayNet announced that the Industry Code is open for membership to industry participants. AusPayNet stated that:

The Industry Code specifies security-related compliance obligations, standardises elements of the process for settling e-Conveyancing payments and establishes a process for managing mistaken or incomplete payments between Industry Code participants. It will apply to e-Conveyancing transactions by single Electronic Lodgment Network Operators (ELNO) and to interoperable (multiple ELNO transactions) when these become available.⁹

The Operating Requirements now include obligations for ELNOs to become a member of the Industry Code, and to comply with that Code once it takes effect.¹⁰ These requirements took effect from 9 May 2025 under NSW Operating Requirements Version 7.1.

2.8 Commonwealth inquiries and reviews relevant to competition in the eConveyancing market

2.8.1 Senate Inquiry into micro-competition opportunities in the Australian economy in relation to e-conveyancing

On 12 February 2025, the Senate referred to the Senate Economics References Committee an Inquiry into micro-competition opportunities in the Australian economy in relation to eConveyancing. The Office of the Registrar General welcomes this important Inquiry.

The ARNECC and the NSW Registrar General submissions to that Inquiry are at **Appendix E**.

To date, 19 submissions have been published, together with one response.¹¹ These were submitted by peak bodies (Australian Banking Association, Law Council of Australia), industry (Property Exchange Australia Limited (PEXA), Sympli Australia Pty Limited (Sympli), InfoTrack Pty Limited, the Commonwealth Bank, Regional Australia Bank), government or quasi-government entities (NSW Productivity and Equality Commission, ARNECC, NSW Office of the Registrar General, Titles Queensland, Tasmania Land Titles Office) and individuals (including practising lawyers and conveyancers).

2.8.2 National Competition Review

Late last year, Commonwealth, State and Territory Treasurers signed two agreements to revitalise National Competition Policy. Among other things, the agreements outline the first steps of a 10-year competition reform program, supported by the \$900 million National Productivity Fund. Interoperability was not in the first tranche of national reforms, but future reform tranches are planned for late 2025, mid-2027 and mid-2030.

NSW Treasury is working with the Office of the Registrar General and other stakeholders to identify actions to progress interoperability for potential inclusion in a future reform tranche.

⁸ See [The eConveyancing Payments Industry Code | Australian Payments Network](#) 18 September 2024.

⁹ See [AusPayNet launches e-Conveyancing Payments Industry Code | Australian Payments Network](#).

¹⁰ See https://www.registrargeneral.nsw.gov.au/_data/assets/pdf_file/0008/1363139/Tab-B-NSW-Operating-Requirements-Version-7.1.pdf, Operating Requirement 5.3(m).

¹¹ See https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Micro-competition/Submissions.

3

Appendices

3.1 Appendix A - Terminology

APIs means Application Programming Interfaces. APIs provide the means for ELNOs to communicate electronically with each other.

ARNECC means the Australian Registrars' National Electronic Conveyancing Council. ARNECC is constituted by an Intergovernmental Agreement signed by all State and Territory governments and is the body established to facilitate the implementation and ongoing management of the regulatory framework for electronic conveyancing of real property in Australia.

Australian Payments Network Ltd (AusPayNet) is the self-regulatory body and industry association for payment systems in Australia.

ECNL is the Electronic Conveyancing National Law. A uniform national legislation applied in NSW by the *Electronic Conveyancing (Adoption of National Law) Act 2012*.

ELNOs means Electronic Lodgment Network Operators. ELNOs provide the means for transacting parties or their representatives to collaborate electronically to complete conveyancing transactions. There are two ELNOs currently operating in the electronic conveyancing market, Property Exchange Australia Limited (PEXA) and Sympli Australia Pty Ltd (Sympli). A third ELNO, Lextech Pty Ltd, has progressed in its' application to operate as an ELNO.

Industry Code is the self-regulatory Industry Code for eConveyancing Payments facilitated by AusPayNet for financial settlement aspects of eConveyancing, to which ELNOs and financial institutions will be bound.

Interoperability (between ELNOs) is a connection between ELNOs that allows a customer connected to one Electronic Lodgment Network to engage in a conveyancing transaction with another customer who is connected to a different ELN.¹

Interoperability between ELNOs is a national reform, led by ARNECC. It is intended to facilitate competition in the electronic conveyancing market, with resulting benefits for participants in electronic conveyancing processes, such as downward pressure on prices, improved quality in services and innovation.

Interoperability fees are the fees for performing lodgment and settlement functions in an interoperable transaction.

Model Operating Requirements are the model requirements for ELNOs developed and approved by ARNECC from time to time. They are adopted by the NSW Registrar General in the form of the NSW Operating Requirements.²

Subscribers refers to a person or business authorised to complete electronic conveyancing transactions using an ELNO.

¹ More information is available from the NSW Office of the Registrar General website: <https://www.registrargeneral.nsw.gov.au/regulator/interoperability>

² The NSW Operating Requirements are available here: <https://www.registrargeneral.nsw.gov.au/publications/nsw-operating-requirements>

3.2 Appendix B – Letter to Ms Abigail Boyd, MLC

Ms Abigail Boyd, MLC
Parliament House
Macquarie Street
SYDNEY NSW 2000

Via email: abigail.boyd@parliament.nsw.gov.au

Dear Ms Boyd

Re: Committee Portfolio Committee No. 4 – Commitment to reporting to Parliament on security and progress with interoperability

Thank you for the opportunity for the Office of the Registrar General (ORG) to provide a submission, and for inviting me and Ms Cameron to represent ORG as witnesses, during the Committee's inquiry into the *Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022*.

I am writing to confirm the NSW Registrar General will report to the Parliament on critical security aspects of the reform, and progress with other key aspects of the Bill. The NSW Registrar General will table the following reports to Parliament:

Security report

- a. Before interoperability is made available generally to customers in NSW – key findings and recommendations from the Program's independent security reviews, and ICT readiness/health checks.

Progress reports

- b. Within 12 months of the assent of this current Bill, and each year afterwards until interoperability is made available generally to customers in NSW – progress reports covering key program areas of technology, regulations, stakeholder participation and project implementation, as well as an update on the implementation of a stronger financial settlement oversight regime for eConveyancing.

This avoids the impact of delays that would result from amending the current Bill, or the associated NSW amendment legislation. Any such amendment, even if the focus is NSW only, would still require a review from the Australian Registrars' National Electronic Conveyancing Council (ARNECC) and potentially State and Territory executive approval (including some Cabinets). We anticipate this could take many months; and PEXA may not re-join this reform until a Bill is passed. The potential impact is Sympli's investors, financial institutions and land registries would lose confidence; and the opportunity to introduce competition for the benefit of consumers may pass.

Thank you again for considering the Bill and this proposed approach for reporting to Parliament on security and progress with this important reform. Please feel free to share this letter with your colleagues on the Committee.

Yours sincerely

Jeremy Cox
NSW Registrar General
30 March 2022

3.3 Appendix C - ARNECC Statements

ARNECC Statement dated 19 February 2025

ARNECC Statement dated 20 September 2024

Next Steps on Interoperability

ARNECC supports competition amongst Electronic Lodgment Network Operators (ELNOs) in the Australian eConveyancing market. For this reason, ARNECC commenced its Interoperability Program (the Program) several years ago.

Overview of the interoperability reform

The interoperability reform aims to establish a technical and regulatory framework for the interworking of Electronic Lodgment Networks (ELNs) to facilitate the exchange of conveyancing transaction data, to enable a Subscriber to one ELN to complete a conveyancing transaction with a Subscriber (or Subscribers) using a different ELN.

The aim is to facilitate competition in the marketplace with the goal of better outcomes for Subscribers and transacting parties, including greater choice, improved services and innovation and lower prices.

Current status

ARNECC paused the design, build and test working groups for the Program in June 2024 given the significant issues that had been raised by the banking industry.

Since then, ARNECC has continued to engage with Commonwealth regulators. In addition, Qld and NSW being the first jurisdictions scheduled to roll out interoperability, commenced a joint project to investigate the issues that were raised and assess possible next steps. This review involved extensive engagement with industry to understand concerns and help determine the way forward. In December 2024 the stakeholder and review team insights and recommendations were presented to ARNECC.

Key insights included:

- Most stakeholders consulted continue to support competition generally and interoperability specifically provided it does not result in significant changes to their existing processes, increase risks or increase costs.
- Further work is required to finalise a functional scope for any interoperability program which will maintain an equivalent subscriber experience for interoperable and non-interoperable transactions, with subscriber feedback and engagement beyond ELNOs required.
- Given the previous cost benefit analysis was conducted in 2020, it is appropriate to refresh the cost benefit analysis to confirm that the current interoperable model remains the best and most cost-effective model.

- An uplift in governance of projects is required to facilitate any further analysis and to ensure appropriate risk management and decision making.

A number of other stakeholder insights were also recorded around the scope of the Program, potential operational issues and the broader regulatory environment.

Next steps

ARNECC is undertaking the following immediate steps to inform future direction:

- ARNECC is commissioning an in-depth review of the functional requirements for interoperability. This will involve an independent consultant engaging with ELNOs and Subscribers to develop a functional scope for interoperability that are necessary to maintain an equivalent subscriber experience for interoperable and non-interoperable transactions.
- ARNECC is commissioning an updated cost benefit analysis to test whether the direct connect interoperability model continues to be the most appropriate model. This review will take place at the same time as the functional requirements review.
- ARNECC will create a new governance structure to oversee the review program of work.

ARNECC is aiming for the reviews, which will be used to inform decision making regarding next steps for the interoperability reform, to conclude by mid-year. ARNECC anticipates that the outcomes of these reviews will also assist with more detailed discussions with Commonwealth regulators.

ARNECC is separately undertaking a review of the eConveyancing regulatory framework to address stakeholder concerns raised during the review.

ARNECC will engage with all relevant stakeholders (including other regulatory agencies) as needed in undertaking the reviews.

ARNECC appreciates industry's continued support in these matters.

ARNECC will advise industry of any further decisions regarding the outcome of its reviews in due course.

Dated 19 February 2025

ARNECC's Decision on Interoperability

ARNECC supports competition amongst Electronic Lodgment Network Operators (ELNOs) in the Australian eConveyancing market.

Several years ago, ARNECC commenced its Interoperability Program to enable greater competition amongst ELNOs. ARNECC achieved considerable progress in developing interoperability with the support and collaboration of many stakeholders across the industry. However, as noted in the Ministers' Statement of 26 June 2024, significant issues were raised by the banking industry as part of this program of work. It is clear that the Interoperability Program faces significant challenges in delivering a solution that will be acceptable to industry and achieve its purpose of promoting competition without these issues being resolved.

As a result, ARNECC has paused the design, build and test working groups for the Interoperability Program and stood down the Interoperability Project Team for the time being.

Individual jurisdictions will continue to analyse and research options and the issues identified. As the two jurisdictions scheduled to implement interoperability first, NSW and Qld are undertaking work in this space and considering the implications of the pause of the design, build and test work of the Interoperability Program and next steps for the reform.

ARNECC continues to monitor these developments and will advise industry of any further decision regarding the Interoperability Program in due course.

Dated 20 September 2024

3.4 Appendix D – Terms of Reference – ELNO Service Fees for ELNOs

TERMS OF REFERENCE

Interoperability pricing for Electronic Lodgment Network Operators and ELNO Service Fees for Electronic Lodgment Network Operators

I, Victor Dominello, Minister for Digital, Minister for Customer Service, under section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992* (the Act), request the Independent Pricing and Regulatory Tribunal (Tribunal) to investigate and report on a pricing regulatory framework for interoperable transactions between Electronic Lodgment Network Operators (ELNOs) in accordance with this Terms of Reference.

Context

Electronic conveyancing is a system which provides for the lodgment of electronic instruments with Land Registries using an Electronic Lodgment Network (ELN). Registrars approve entities to operate ELNs and they are known as ELNOs. The two current ELNOs also facilitate the associated financial settlement of conveyancing transactions.

Today, all parties to a conveyancing transaction must subscribe to the same ELN to complete the transaction. This is because ELNs are not yet interoperable: they cannot exchange information, or ‘talk’ to each other, to complete a transaction. With more than one ELNO now operating, interoperability aims to permit subscribers (conveyancers, lawyers and financial institutions) to use the ELN(s) they choose, while other parties may use a different ELN.

All states and territories support the principle of requiring interoperability between ELNs in the Electronic Conveyancing National Law (ECNL).

To support implementation of interoperability, with the approval of all States and Territories, the NSW Parliament enacted proposed changes to the national law on 6 June 2022 (to apply in all States and Territories).

The Model Operating Requirements (MORs) are being updated to include provisions on interoperability. In particular, the interoperability regime proposes the role of Responsible ELNO, which will interact with Land Registries and Revenue Offices, and perform the transaction Settlement and Lodgment. Other ELNOs hosting subscribers in the transaction are designated as Participating ELNOs. More information is available here: <https://www.arnecc.gov.au/wp-content/uploads/2021/08/interoperability-model-overview.pdf>

It is proposed that the MORs include provisions on Interoperability Service Fees, being fees charged by an ELNO to another ELNO or to a Subscriber in relation to:

- (a) establishing and maintaining Interoperability with the other ELNO; and
- (b) carrying out the functions of the Responsible ELNO.

The first task

The Tribunal should investigate and make recommendations on:

- 1) Whether fees should be charged by the Responsible ELNO to Participating ELNOs for participation in an interoperable transaction, and whether and how any such fees should be passed on to subscribers.
- 2) Whether:
 - a) a negotiate-arbitrate model should apply to setting any such ELNO fees, and if so, the pricing principles that should apply under such model; or
 - b) a regulated method or level of price should apply to setting any such ELNO fees, and if so, what that method or level should be for 2023-24 and a method for reviewing and adjusting the price in the future.
- 3) Any amendments to the MORs required to support the most appropriate way to apply the principles or formula, as applicable.

In investigating and making recommendations regarding the fees, the Tribunal should consider:

- a) Supporting and promoting competition through ELNO interoperability pricing.
- b) Promoting ongoing investment by ELNOs.
- c) Costs (including operating and relevant capital costs) and risks incurred by different participants in an interoperable transaction and who should bear these costs.
- d) The current and evolving structure of the interoperable transaction market, with additional ELNOs potentially entering the market over the next 1-5 years.
- e) Avoiding unnecessary regulatory or administrative burdens on ELNOs or other participants in an interoperable transaction.
- f) Any other matter the Tribunal considers relevant.

The second task

- 1) The Tribunal is further requested to investigate and make recommendations on ELNO service fees, including:
 - a) Whether such fees should continue to be regulated.
 - b) If continued regulation is recommended, whether a regulated method or level of price should apply to ELNO service fees, and if so:
 - i. what that method or level of price should be; and
 - ii. when that method or level of price should apply, following delivery of the Tribunal's final report on the second task.
 - c) Future adjustment and review processes for ELNO service fees.

In investigating and making these additional recommendations, the Tribunal should consider:

- a) Supporting and promoting competition in the ELNO market.
- b) Promoting ongoing investment by ELNOs.
- c) Efficient costs of providing eConveyancing services.
- d) Equitable access to eConveyancing services for customers across Australian jurisdictions.
- e) Reasonable prices for eConveyancing services for customers across Australian jurisdictions.
- f) The current and evolving structure of the eConveyancing market.
- g) Avoiding unnecessary regulatory or administrative burdens on ELNOs.
- h) Any other matter the Tribunal considers relevant.

Process and timeframe

The Tribunal is directed to commence work on the second task when the following occurs, whichever is the soonest:

- 1. Six months after Day 2 functionality is available to facilitate interoperable transactions
- 2. The Australian Registrars' National Electronic Conveyancing Council (ARNECC) notifies IPART that an ELNO has applied to ARNECC under the price adjustment mechanism in the MORs to change its Pricing Table because a change in law has given rise to a change in the ELNO's operating costs
- 3. 1 July 2025, or
- 4. ARNECC notifies IPART it is to commence work on the second task.

The Tribunal will provide progress briefings to ARNECC at key timetable milestones, as well as upon request by ARNECC.

The Tribunal will also consult with the public, including the key stakeholders listed below, in undertaking its review, including through releasing a draft report, and provide a final report to the Minister on the first task by 30 April 2023 and the second task by 12 months after the Tribunal commences work on it.

The Tribunal will consult with these key stakeholders:

- Economic regulators from other Australian jurisdictions
- Treasuries from other Australian jurisdictions
- ARNECC nominees/Registrars
- ELNOs
- ELNO subscriber representatives
- Australian Competition and Consumer Commission

The final reports will be made publicly available on the Tribunal's website.

3.5 Appendix E – ARNECC and NSW ORG submissions to the Senate Inquiry into micro-competition opportunities in the Australian economy in relation to e-conveyancing



Submission to Senate Economics References Committee

Inquiry into micro-competition opportunities in the Australian economy relating to e-conveyancing

From Australian Registrars' National Electronic Conveyancing Council (ARNECC)

Introduction

1. The Australian Registrars' National Electronic Conveyancing Council (ARNECC) thanks the Committee for this Inquiry and for providing ARNECC with the opportunity to make a submission.
2. ARNECC welcomes any inquiry into opportunities for competition in relation to electronic conveyancing.
3. ARNECC wishes to participate throughout the Inquiry and is willing to assist the Committee where required. ARNECC can provide additional information if requested. ARNECC trusts that this submission will assist the Committee to look at particular issues and opportunities that ARNECC considers to be of national significance.
4. In this submission, ARNECC sets out background on the electronic conveyancing industry and how it is regulated and then draws out areas for improvement which would assist the development of competition in the industry.

PART 1 – BACKGROUND

About ARNECC

5. The Australian Registrars' National Electronic Conveyancing Council (ARNECC) is the council established to facilitate the implementation and ongoing management of the regulatory framework for electronic conveyancing of real property in Australia. ARNECC was established in 2011.
6. ARNECC is constituted under an Intergovernmental Agreement (IGA) among the States and Territory Governments.¹ ARNECC membership comprises the Land Titles Registrars (or their nominee) from each Australian State and Territory.
7. Each Australian State and Territory has its own land titles registry that records the owner of the land in that State or Territory and applicable interests in land such as mortgages over

¹Intergovernmental Agreement for an Electronic Conveyancing National Law, available online at https://www.arnecc.gov.au/regulation/intergovernmental_agreement/

the land and registrable leases, in accordance with land titles legislation in that State or Territory.

8. The State and Territory officials who have responsibility for each jurisdiction's Land Registry function are:
- New South Wales – Registrar General
 - Victoria – Registrar of Titles
 - Queensland – Registrar of Titles
 - Western Australia – Registrar of Titles (and/or other officer of the Land Registry nominated by the Chief Executive of the Western Australian Land Information Authority trading as Landgate)
 - South Australia – Registrar General
 - Northern Territory – Registrar General
 - Australian Capital Territory – Registrar General
 - Tasmania – Recorder of Titles.

(Each of the above are referred to as a "Registrar" for the purposes of this submission.)

9. The Commonwealth Government does not operate or regulate a Land Registry and accordingly, does not have representation at ARNECC.
10. ARNECC is not a legal entity but a Council of members. Its deliberations are governed by a Charter² adopted and varied by the unanimous vote of its members. ARNECC meets frequently and relies on funding from State and Territory Governments to perform its functions.
11. While ARNECC is a Council of the Registrars (or nominees) of the eight State and Territories across Australia, any decisions made by ARNECC must be implemented through the Registrar of each jurisdiction.
12. Further details about ARNECC and resources relating to electronic conveyancing are available on ARNECC's website located at www.arnecc.gov.au.

Principal functions of ARNECC

13. The principal functions of ARNECC are to:

² ARNECC Charter, available online at <https://www.arnecc.gov.au/wp-content/uploads/2024/06/ARNECC-Charter-approved-13-June-2024.pdf>.

- Advise the State and Territory Governments on any proposed changes to the Electronic Conveyancing National Law (ECNL).
- Develop and publish Model Operating Requirements (MOR) and Model Participation Rules (MPR) as provided for in the ECNL.
- Provide authoritative advice to the States and Territories about matters relating to electronic conveyancing.
- Ensure that, as far as is practicable, business practices with respect to electronic conveyancing are consistent when implemented by the Registrars in each jurisdiction.

Electronic Conveyancing National Law (ECNL)

14. The Electronic Conveyancing National Law (ECNL) governs the provisioning and operation of electronic conveyancing in Australia. The ECNL is implemented by separate legislation in each State and Territory.
15. The ECNL was first implemented in NSW as an Appendix to its *Electronic Conveyancing (Adoption of National Law) Act 2012*. Thereafter, the ECNL was implemented in other States and Territories as either application or corresponding legislation. Application legislation is an Act that adopts the Appendix to the NSW legislation. Corresponding legislation is an Act that is essentially the same as the Appendix to the NSW legislation. All States and Territories have now applied the legislation or proclaimed corresponding legislation. A full list is available here:

https://www.arnecc.gov.au/regulation/electronic_conveyancing_national_law/
16. To be clear, there is not one national Electronic Conveyancing law, but eight laws (adopted in each State and Territory) that are, in effect, substantially identical. There is no Commonwealth electronic conveyancing law.
17. A principal concept in the ECNL is the Electronic Lodgment Network (ELN).
18. An ELN is an electronic system that enables the lodging of registry instruments and other documents in electronic form with the Land Registry of a jurisdiction for the purposes of the land titles legislation in each relevant State and Territory.³
19. An ELN may also enable the preparation of registry instruments and other documents in electronic form for lodging under the land titles legislation in each relevant State and Territory.⁴

³ E.g. Electronic Conveyancing National Law (Queensland) s 13(1).

⁴ Ibid s 13(2).

20. The ECNL, being the legislation enacted by each of the States and Territories, focusses on the preparation and lodgment of documents in electronic form with that State's or Territory's Land Registry.
21. Each Registrar may provide and operate an ELN.⁵ At present, only Victoria does this. Each Registrar or other delegated entity may also approve a person as an Electronic Lodgment Network Operator (ELNO) to provide and operate an ELN.⁶ At present, ARNECC members work together so that an ELNO is approved to operate on a jurisdiction-by-jurisdiction basis until its services are available nationally.
22. Presently, there are two operating ELNOs, Property Exchange Australia Limited (PEXA) and Sympli Australia Pty Ltd (Sympli). If a person wishes to use an ELN to prepare and lodge registry instruments in electronic form with the relevant Land Registry, that person will enter into a participation agreement with the ELNO to use that ELNO's ELN to do so (becoming a Subscriber).⁷
23. The ECNL was amended in June 2022⁸ to include provision for the Registrars to determine operating requirements in relation to specific matters relating to associated financial transactions, being:
- the technical and operational requirements for an ELN, including, without limitation, data standards and other requirements relating to interoperability, for example, data standards with respect to associated financial transactions,⁹ and
 - participation by an ELNO in a scheme for an industry code relating to associated financial transactions and compliance by an ELNO with that code.¹⁰
24. The ECNL was also amended at this time to provide that the mere fact that the operating requirements include provisions relating to the following matters does not make the Registrar responsible for the regulation or conduct of associated financial transactions:
- data standards relating to those transactions, and
 - participation by an ELNO in a scheme for an industry code relating to those transactions and compliance by an ELNO with that code.¹¹

⁵ Ibid. s 14.

⁶ Ibid. s 15.

⁷ Ibid. s 3 (Definitions), s 22(2), 26(1).

⁸ [*Electronic Conveyancing \(Adoption of National Law\) Amendment Act 2022 \(NSW\)*](#).

⁹ E.g. ECNL (Queensland) s 22(2)(c).

¹⁰ Ibid. s 22(2) (c6).

¹¹ Ibid. s 40(2).

Model Operating Requirements (MOR) and Model Participation Rules (MPR)

25. Operating Requirements apply to ELNOs.¹² Participation Rules apply to the Subscribers to ELNs.¹³
26. The Model Operating Requirements (MOR) are developed and published by ARNECC. The MOR are currently in version 7.1, published in February 2025 and available at:
https://www.arnecc.gov.au/publications/model_operating_requirements/
27. The MOR are model requirements developed by ARNECC; however they have no legal effect. Registrars determine Operating Requirements under section 22 of the ECNL, and in doing so, are to have regard to the MOR. Under section 24 of the ECNL, the Registrars are to have regard to the desirability of maintaining consistency with ARNECC's MOR. The Registrars for each State and Territory have determined Operating Requirements for their jurisdiction that are substantially the same as the MOR.
28. Under section 27 of the ECNL, a Registrar may grant a waiver from compliance with any of their jurisdiction's Operating Requirements where it is considered reasonable to do so in all the circumstances. Waivers may be granted for a particular ELNO or for all or a class of ELNOs if there is more than one ELNO.
29. Waivers are requested by applying to ARNECC if the waiver is relevant to the Operating Requirements in more than one State or Territory, or to the Registrar in the particular State or Territory when the waiver is relevant to Operating Requirements in that single jurisdiction only.
30. Accordingly, even though ARNECC seeks to maintain consistency across jurisdictions, and the ECNL and the Operating Requirements are substantially the same for each jurisdiction, there can be differences between jurisdictions with respect to waivers.
31. The ECNL also provides for the determination of Participation Rules by the Registrar in each State and Territory based upon Model Participation Rules (MPR) developed by ARNECC.¹⁴
32. The current version of the MPR developed by ARNECC, version 7, published in January 2024 are available at: <https://www.arnecc.gov.au/publications/model-participation-rules/>.

Fees and Payments

33. Each ELNO charges Subscribers fees to access and use that ELNO's ELN.¹⁵ Typically, Subscribers are conveyancers, lawyers and financial institutions.
34. As an example, for the purchase of a residential property, a simplistic summary of the fees paid is the following:

¹² Ibid. s 22.

¹³ Ibid. s 23.

¹⁴ Ibid.

¹⁵ Fees are charged in accordance with an ELNO's pricing policy, as per OR 5.4: ELNO Service Fees.

- a) The purchaser pays fees to the purchaser's conveyancer or lawyer. These fees cover the conveyancer's or lawyer's use of an ELN. The conveyancer or solicitor has a participation agreement with the ELNO providing the ELN on which the conveyancer or lawyer will transact. The conveyancer or lawyer pays fees to the ELNO to use the ELN (ELNO Service Fees).
- b) The ELNO arranges settlement and electronic lodgment of the transfer with the relevant Land Registry. The ELNO pays search and lodgment fees to the Land Registry (and passes on those fees to their Subscribers, who pass them onto the parties to the transaction as disbursements).

Note that the search and lodgment fees paid to the Land Registry are different to the ELNO Service Fees.

- 35. The fees charged by an ELNO to its Subscribers are set by the ELNO according to a publicly available, equitable and transparent pricing policy but are subject to price caps set by ARNECC. To date, these price caps have generally allowed an annual price increase capped at CPI. The NSW Independent Pricing and Regulatory Tribunal (IPART) has conducted reviews of pricing for ELNOs in 2019¹⁶ and 2023.¹⁷ The current CPI cap arrangements were introduced in 2019.

Financial Settlement

- 36. The MOR require that lodgment not take place unless financial settlement of a conveyancing transaction (when relevant) is irrevocable.
- 37. Both presently operating ELNOs (PEXA and Sympli) offer their Subscribers the ability to undertake the financial settlement of a conveyancing transaction through their systems. The electronic settlement of property transactions was mentioned in the IGA as an element of "National E-Conveyancing".¹⁸
- 38. A 2019 review of the IGA identified gaps in relation to the regulation of financial settlement.¹⁹ A working group comprising of Council of Financial Regulator agencies, with the ACCC and Registrars attending as observers, recommended addressing these gaps through a self-regulatory industry code.²⁰ The eConveyancing Payments Industry Code was developed by the Australian Payments Network (AusPayNet) and approved by the AusPayNet Board on 31 August 2023.²¹

¹⁶ See <https://www.ipart.nsw.gov.au/Home/Industries/Special-Reviews/Reviews/Electronic-Conveyancing/Pricing-regulation-of-electronic-conveyancing-services-in-NSW>

¹⁷ See <https://www.ipart.nsw.gov.au/Home/Industries/Special-Reviews/Reviews/Electronic-Conveyancing/Review-of-interoperability-pricing-for-Electronic-Lodgment-Network-Operators>

¹⁸ Intergovernmental Agreement (n 1) 2.3A, 9.4.54.

¹⁹ Dean McClean Carlson, *Final Report: Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law* (2019), available online at <https://www.arnecc.gov.au/wp-content/uploads/2021/08/iga-review-final-report.pdf>

²⁰ [Media Release Number: 2021-03 – Quarterly Statement by the Council of Financial Regulators – News – Council of Financial Regulators](#)

²¹ [The eConveyancing Payments Industry Code | Australian Payments Network.](#)

Change

39. Over the last ten years, the electronic conveyancing environment has changed. For example, PEXA started as a government-owned and run company; it is now a public corporation without government involvement or ownership.²² Originally, there was a single ELNO; there are now additional and proposed new ELNOs in the ecosystem.²³ Some jurisdictions have private operators of their titling functions, with private company objectives.
40. The operations of ELNOs are continually evolving. The functionality provided by ELNOs has experienced significant change in the last ten years.
41. As the ECNL focusses on the preparation and lodgment of documents in electronic form with the relevant State's or Territory's Land Registry, the ECNL does not encompass all aspects of electronic conveyancing or the activities that currently form part of it, such as, for example, the regulation of all aspects of financial settlement.
42. Many of the involved parties (e.g. the financial industry, revenue offices and the conveyancing/legal profession) have been involved in the work of ARNECC in various degrees and ways over the years to support the facilitation and implementation of electronic conveyancing. These parties have also separately been involved in their own work directly with the ELNOs to review and implement their requirements relating to associated financial transactions and other services. ARNECC has not been involved in these components.

PART 2 – COMPETITION

43. ARNECC understands that the Inquiry relates to competition opportunities in respect of electronic conveyancing in Australia. The Inquiry uses the term "micro-competition" which is open to different meanings. This submission discusses competition broadly, and opportunities with respect to competition between ELNOs in relation to their ELNs.

Historical Context

44. In the early days of electronic conveyancing in Australia, the Registrars focused on the development of an ELN and establishing the legal, legislative, contractual and risk frameworks as well as creating the systems across Australia in Land Registries that could accept electronic data as opposed to paper lodgments.²⁴ Once that was done, attention turned to developing use of the ELN so that it could be shown that there was a market for ELNOs. It was recognised at that stage that an ELNO market was possible and that there could be another ELNO that could bring competition.
45. Additionally, there were significant efforts over years directed towards industry stakeholders (for example, financial institutions, conveyancers, lawyers and settlement agents) regarding

²² <https://www.pexa-group.com/about/history/>.

²³ <https://www.sympli.com.au/>.

²⁴ ARNECC, *Introduction of the Electronic Conveyancing National Law Regulation Impact Statement for Decision (2012)*, available online at <https://oia.pmc.gov.au/sites/default/files/posts/2012/07/02-electronic-conveyancing-RIS-201207231.pdf>

the industry change from paper to electronic transactions.²⁵ At the time of establishing the first ELNO, there was no competitor seeking to build another ELNO.²⁶

The Benefits of Competition

46. ARNECC understands that competition is a driving force in a healthy economy, and that competition brings a wide range of benefits to both consumers and society as a whole. Key advantages of competition are generally understood by ARNECC to include:
47. Benefits for Consumers:
- *Lower Prices:* When businesses compete, they strive to offer the most attractive prices to customers. This often leads to lower prices for goods and services, making them more affordable and accessible.
 - *Greater Choice:* Competition encourages businesses to differentiate their products and services. This results in a wider variety of options for consumers, allowing them to find products that better match their needs and preferences.
 - *Improved Quality:* In a competitive market, businesses are constantly seeking ways to improve the quality of their offerings to attract and retain customers. This leads to better quality products and services, giving consumers greater value for their money.
 - *Innovation:* Competition fosters innovation as businesses strive to develop new and improved products, services, and technologies. This leads to a dynamic marketplace with constant advancements that benefit consumers.
 - *Increased Efficiency:* To remain competitive, businesses must operate efficiently and minimize costs. These efficiencies can translate into lower prices for consumers and a stronger overall economy.
48. Benefits for Society:
- *Economic Growth:* Competition promotes economic growth by encouraging businesses to be more productive, innovative, and responsive to consumer needs. This leads to increased investment, job creation, and overall prosperity.
 - *Resource Allocation:* Competition helps to allocate resources efficiently by ensuring that they are directed towards the most productive uses. This leads to a more efficient economy and greater overall well-being.
 - *Greater Productivity:* Competition encourages businesses to improve their productivity by adopting new technologies, streamlining processes, and investing in employee training. This leads to a more productive workforce and a stronger economy.

²⁵ <https://www.arnecc.gov.au/resources/presentations/>.

²⁶ Sympli were assessed as meeting ARNECC's Schedule 3, Category 1 requirements on 29 June 2018. Purcell Partners Pty Ltd was assessed as meeting the Schedule 3, Category 1 requirements on 21 May 2018. Lextech Pty Ltd (an entity associated with Purcell Partners) was assessed as meeting the Schedule 3, Category 1 requirements on 14 December 2023.

The Benefits of Competition in respect of electronic conveyancing

49. A stable, national electronic conveyancing market is critically important to the Australian economy. Critical to achieving this goal is ensuring the regulation of electronic conveyancing is effective, and that it facilitates competition.
50. In all States and Territories where it has been implemented, electronic conveyancing has become the main lodgment channel for conveyancing transactions. In its 2024 Annual Report, PEXA reported that 89% of property transactions nationwide were conducted through its system, with over 15,000 transactions (on average) taking place each day in Australia, worth around \$3.5 billion per day²⁷. Purchasing a property is the largest transaction most Australian residents undertake in their lifetime.
51. As discussed above, there can be multiple ELNs, each operated by an ELNO. ARNECC considers that an electronic conveyancing regulatory framework that allows for competition between ELNOs may have benefits for consumers and for society. These benefits are likely to include:
 - *Choice*: Competition leading to a variety of offerings. Thus, a Subscriber can choose the best ELN for them, based on the factors that are important for that consumer.
 - *Price competition*: Competition between ELNOs may lead to lower prices.
 - *More features and better useability*: Competition is not just about price. An ELNO may have a higher priced offering but with more features or superior quality. Alternatively, if pricing is similar, ELNOs may innovate to provide an ELN with the better features.
 - *Better customer service*: Competition between ELNOs may lead to better customer service.
 - *Resilience*: A sole ELNO market creates a single point of failure. A multiplicity of ELNOs creates redundancy because if one ELNO goes down, subscribers can switch. In addition, competitive pressure would be more likely to result in a more secure and resilient offering as subscribers would likely select the more secure and resilient system.
52. In relation to resilience for example, it is noted that PEXA publishes details about its outages and incidents at <https://status.pexa.com.au/history> which demonstrates that 100% uptime is not guaranteed for this critical system. There have been instances where Subscribers have been unable to complete transactions due to issues associated with an ELN, while in other cases Subscribers may be impacted by issues associated with financial institutions' systems.

For example:

 - The PEXA ELN experienced a highly publicised outage on 30 June 2021 which prevented subscribers from being able to log in to the PEXA ELN on the last day of the financial year for a period of 105 minutes.²⁸ Information published on the PEXA website and reporting by PEXA to Registrars shows that PEXA customers have experienced a range of unplanned outages in the last 12 months, some due to PEXA and others due to third parties such as

²⁷ PEXA Group Limited Annual Report 2024, 23.

²⁸ See https://www.pexa.com.au/staticly-media/2022/09/30_June_2021_statement-sm-1664414475.pdf

financial institutions. These could involve delays to settlement for people transacting in land, and therefore, can have significant impact.

- The Sympli ELN had an unplanned outage lasting 165 minutes on 13 September 2023.²⁹
- There are also outages and technical issues that arise due to the complexity of the electronic networks to which the ELNs are a part. For example, between November 2024 and January 2025, PEXA released outage alerts stating that several Payment File Response service issues were impacting transactions. Some of these related to particular financial institutions.

53. Electronic conveyancing mandates by some jurisdictions mean that the majority of land title transactions are now occurring through electronic conveyancing in some jurisdictions.³⁰ Reliance on electronic systems would make it practically impossible to revert to paper transactions, should a disaster event occur.

The Current Situation regarding Competition between ELNOs

54. There are two operating ELNOs in Australia, each with their own ELN. A third organisation, Lextech Pty Ltd, has been assessed as meeting the Schedule 3, Category One requirements of the Operating Requirements, enabling it to commence negotiations for approval to provide and operate an ELN as an ELNO with each State and Territory Registrar.
55. PEXA was the original ELNO and operated for many years without competition. PEXA has the dominant market share and now provides services in all jurisdictions other than the Northern Territory, where it is planning to launch later this year.
56. Sympli is a relatively new entrant. Sympli has low market share. Sympli has been approved to operate in five jurisdictions.
57. In its 2024 Annual Report, PEXA stated that it conducted about 89% of the total Australian conveyancing market, an increase from 88% in FY23.³¹ As an unlisted entity, Sympli does not publish an Annual Report, and its lodgment numbers are confidential. However, Sympli currently operates with a limited number of document types available; for example, Sympli only lodges transfers in New South Wales and not in other States or Territories.³² As transfers make up the majority of lodgments for both PEXA and paper conveyancing, Sympli's lodgment numbers are likely to be considerably lower than both PEXA and paper lodgments. (Paper lodgments are decreasing but still constitute up to 25% of transactions depending on jurisdiction, and at present constitute all transactions in the Northern Territory.)
58. As stated above, PEXA and Sympli each operate a separate ELN. Their ELNs are stand-alone, and do not currently interoperate. This means that all parties to a transaction must be subscribed to the same ELN for the transaction to proceed. For example, for a typical

²⁹ See <https://www.sympli.com.au/wp-content/uploads/Sympli-MOR-Cat-4-September-2023-Report-1.pdf>

³⁰ Currently Victoria (2018), Western Australia (2018), South Australia (2020) and New South Wales (2021) have mandated eConveyancing for all general transactions. Queensland has mandated eConveyancing for some transactions (2023). The ACT and Tasmania do not mandate eConveyancing.

³¹ [PEXA Annual Year Report 2024](#)

³² <https://www.sympli.com.au/services/>

sale of a residential home, there are potentially four parties to the transaction: the seller, the seller's lender, the buyer and the buyer's lender. Each party or their representative must subscribe to and use the same ELN to complete an electronic conveyancing transaction.

59. A dominant player has a competitive advantage due to network effects, which occur where market conditions favour dominant providers with a larger network of customers. A new consumer (for example, a new law firm or new financial institution) when selecting an ELNO, is more likely to select PEXA because most other parties to an electronic conveyance are likely to be using the PEXA ELN. A PEXA Subscriber is unlikely to move to Sympli (even if they preferred the Sympli service) because likely counterparties are with PEXA not Sympli, and Sympli does not provide all the documents they will wish to lodge.
60. Subscribers are unlikely to have accounts with both PEXA and Sympli, because doing so adds complexity and cost. For example, additional training would be required for staff to manage different processes on the two ELNs.³³ Moreover, most ELNs interface with other computer systems used by Subscribers, and it is costly and complex for a Subscriber to implement and maintain multiple interfaces.³⁴
61. Different reports have come to different conclusions on the position of there being a natural monopoly, but there is consensus that network effects exist.
62. In a 2019 report *Final Report - Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law*,³⁵ it is stated:

"5.13 An ELN has some natural monopoly like characteristics primarily attributable to two key factors. Firstly, there is the essential infrastructure like nature of the financial payment and settlement services which require extensive financial sector collaboration and investment to develop. It likely has sufficient capacity to process all transactions requiring associated financial settlement with little or no benefit to justify the costs of duplication.

5.14 Secondly, since an ELN has strong positive network effects, multiple ELNs fragment the network and reduce the value to subscribers who can only transact with a subset of other subscribers who are on the same network. Absent other factors, this tends to drive subscribers to the largest network."
63. However, a 2024 report from the NSW Productivity and Equality Commission³⁶ (PEC) found that competition is beneficial and can be supported by the eConveyancing market but there are barriers to entry. The PEC's market study found that the eConveyancing market is not a natural monopoly and that competition would be beneficial, both to the eConveyancing market and to other related sectors. This market study also noted the strong network effects of the eConveyancing market.³⁷

³³ Feedback received from stakeholders, Dean McClean Carlson Report (n17) 158-166.

³⁴ Ibid.

³⁶ <https://www.productivity.nsw.gov.au/sites/default/files/2024-06/20240628-econveyancing-market-study.pdf>

³⁷ Ibid. section 3.3.1.

64. Given these strong network effects, PEXA is operating as a near-monopoly incumbent in the national electronic conveyancing market.

Competition Between ELNs

65. As stated above, ARNECC supports competition amongst ELNOs in the Australian electronic conveyancing market.
66. Recognising the challenges faced by new entrant ELNOs in obtaining Subscribers and market share due to the issues identified above, ARNECC commenced the interoperability reform several years ago in an effort to facilitate effective competition amongst ELNOs and promote Subscriber choice.
67. The interoperability reform aims to establish a technical and regulatory framework for the interworking of ELNs. It is designed to facilitate the exchange of conveyancing transaction data between ELNs, to enable a Subscriber of one ELNO to complete a conveyancing transaction with a party (or parties) using a different ELN.³⁸
68. By enabling Subscribers to conduct an electronic conveyancing transaction using different ELNs, interoperability is anticipated to facilitate competition by removing network effects. Provided that each ELNO facilitates the same range of transactions, this should increase competition by enabling Subscribers to transact on their ELN of choice, regardless of the ELN used by other Subscribers in the transaction. This may also support greater competition and innovation in markets other than core electronic conveyancing services, such as with respect to value added services particularly data products that use land information.
69. A key principle of the interoperability reform is to minimise the impact on Subscribers by ensuring that an ELNO provides equivalent functionality and services across its interoperable and single-ELN transactions.³⁹

ARNECC's Interoperability Program

70. In June 2022 ARNECC introduced changes to the ECNL and the MOR to assist establishing interoperability between ELNs (see section 18A of the ECNL). The reviews and decisions which led to the legislative changes are outlined in the Regulation Impact Statement.⁴⁰ Section 18A of the ECNL requires an ELNO to establish and maintain interoperability between its ELN and the ELN of each other ELNO, in accordance with the Operating Requirements (ORs).
71. OR 5.7.7 requires an ELNO to:
- a) interoperate with all ELNOs on an Equivalent Basis; and
 - b) ensure that the standard of performance of its ELN in an Interoperable Electronic Workspace is equivalent to its performance in a standalone Electronic Workspace.

³⁸ E.g. ECNL (Queensland) s 18A.

³⁹ OR 5.7.7.

⁴⁰ <https://www.arnecc.gov.au/wp-content/uploads/2021/12/Interoperability-RIS-December-2021.pdf>

72. ARNECC has also published *Key Guiding Principles for Interoperability*. See <https://www.arnecc.gov.au/wp-content/uploads/2023/11/Key-Guiding-principles-as-approved-by-ARNECC-002.pdf>
73. ARNECC established the ARNECC Interoperability Program to assist ELNOs with the design of interoperability, including to develop the National Electronic Conveyancing Interoperability Data Standard (NECIDS) to enable interoperability.
74. ARNECC approved a scope for the technical solution for interoperability in October 2023. See <https://www.arnecc.gov.au/wp-content/uploads/2023/12/ARNECC-Statement-Scope-for-interoperability-releases-settled.pdf>
75. Financial institutions (as Subscribers) have indicated that the ARNECC approved scope will not be sufficient to achieve the equivalence between Interoperable and standalone Electronic Workspaces.⁴¹ ARNECC has relied on ELNOs and industry participants to provide information and, due to the issues raised, has been unable to design a scope for interoperability that is acceptable to all ELNOs and industry participants. In 2024 ARNECC developed IP Guidelines to assist industry address these issues.
76. The ARNECC approved scope includes functions across the full process for an electronic conveyancing transaction. This includes functions to facilitate preparation and lodgment of a document, and functions related to the financial aspects of a transaction e.g. preparation of instructions to disburse funds.
77. On 11 June 2024, relevant State and Territory Ministers and their representatives met to review the progress of the electronic conveyancing reforms, to support a sustainable, competitive market structure for electronic conveyancing. The State and Territory Ministers acknowledged that while considerable work had been undertaken by ARNECC and ELNOs and other stakeholders within the Interoperability Program, the Interoperability Program faced significant challenges in being able to proceed. The Ministers emphasised the importance of Commonwealth assistance and stated that they would raise these issues with the Commonwealth Government and regulators. The statement released from this Ministerial Forum provides:
- "State and Territory Ministers also noted recent issues that have been raised by the banking industry in relation to the Interoperability Program, and that some of these are beyond the remit of States and Territories to address effectively. While reiterating their support for competition in the marketplace, State and Territory Ministers acknowledged the progress of the Program faces significant challenges without these issues being resolved by the relevant parties. The Ministers will raise these issues with Commonwealth Government and regulators."⁴²
78. As a result, on 20 September 2024, ARNECC announced the pause of the design, build and test working groups for the Interoperability Program and stood down the Interoperability Project Team.

⁴¹ See Australian Banking Association submission of 9 February 2024 located at:

<https://www.ausbanking.org.au/wp-content/uploads/2024/02/20240209-ABA-submission-to-the-ECNL.pdf>

⁴² See <https://www.arnecc.gov.au/wp-content/uploads/2024/06/Ministers-Statement-Forum-11-June-2024.pdf>

79. Since then, New South Wales and Queensland conducted a joint project to investigate the issues that were raised, inclusive of intellectual property claims made and assessed possible next steps. The review involved extensive engagement with industry to understand concerns and help determine the way forward.
80. The outcome of this review included ARNECC undertaking:
- a) a functional review of interoperability to ascertain if interoperability can be achieved in light of the intellectual property claims referred to above; and
 - b) a cost/benefit analysis to review the cost of implementing interoperability against the likely benefits. ARNECC expects that the outcome of the above reviews will assist in determining the next steps for the reform.⁴³

Challenges with Implementing Interoperability

81. While ARNECC has supported interoperability as a way to enhance competition amongst ELNOs, ARNECC also recognises the significant challenges with implementing interoperability as a means of delivering competition within the industry.
82. This submission will now briefly discuss some of the challenges with implementing interoperability that are relevant to the Inquiry. These challenges highlight the limitations with the current regulatory framework for the electronic conveyancing ecosystem and how they impact competition.

Authority of ARNECC and its members

83. Generally speaking, ARNECC promotes consistency across the jurisdictions in the regulation of the lodgment of registry instruments and other documents in electronic form for the purposes of each State and Territory's land titles legislation. ARNECC has a remit for national consistency but must rely on each State and Territory to reach agreement on relevant aspects of the Registrars' regulatory framework and to exercise their powers consistently. ARNECC is not a regulator.⁴⁴
84. While ARNECC's members (i.e. each Registrar or their nominee) have clear regulatory authority and expertise in electronic conveyancing processes relating to the preparation and lodgment (and subsequent registration) components of a conveyancing transaction, ARNECC's members have specific and limited powers to regulate, and do not have the necessary experience in relation to, the financial aspects of conveyancing transactions and other associated services. One might ask whether another regulator also has such powers or is best placed or better experienced to regulate some or all of these functions.
85. The second reading speech for the Electronic Conveyancing (Adoption of National Law) Bill 2012 (NSW)⁴⁵ noted that "The network will also facilitate the financial settlement of electronic conveyancing transactions. However, this aspect of the operation of a network is not mentioned in the national law as it is subject to existing regulatory oversight by the

⁴³ See <https://www.arnecc.gov.au/wp-content/uploads/2025/02/Next-Steps-on-Interoperability-19-Feb-2025.pdf>

⁴⁴ From the ARNECC Charter: 'ARNECC has no authority additional to that of its individual members'.

⁴⁵ <http://bulletin/prod/parlment/hansart.nsf/V3Key/LC20121017014>

Reserve Bank or by the Australian Securities and Investments Commission.” There is clear delineation between elements of an electronic conveyancing transaction which relate to the preparation and lodgement of documents and elements which relate to financial settlement.

86. ARNECC refers to *Final Report - Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law* (discussed above), at section 1.23:

“Our understanding is that the RBA is the relevant regulator for the financial settlement process, ASIC for payment systems and consumer protection in the payment systems environment, and the Australian Competition and Consumer Commission (‘ACCC’) for market regulation. It remains unclear which regulator, if any, is responsible for oversight of Delivery versus Payment in the property settlement process.”

87. There is currently no single regulator with a clear remit to oversee an end-to-end electronic conveyancing transaction, and with clear authority to effectively regulate all participants in the electronic conveyancing ecosystem. Similarly, if regulation of the end-to-end electronic conveyancing transaction rests with several regulators, their roles and remit are not clearly defined, and there has been no overall analysis to ensure all activities within electronic conveyancing that need to be regulated are regulated, and if so, by whom.

The need for cooperation of all key participants in the electronic conveyancing market

88. As discussed above, Subscribers to ELNs are predominantly conveyancers, lawyers and financial institutions. These stakeholders have an interest in competition reform.
89. Most stakeholders consulted as part of the recent investigation into the interoperability program continue to support competition, including interoperability and its underlying principles, provided it does not result in significant changes to their existing processes, increase risks or increase costs. For example, financial institutions do not wish that changes to ELNs (that will arise when interoperability is introduced) will cause their “on time” transaction settlement rates to decrease. The major banks and the Australian Banking Association (ABA) are not satisfied that their current high rates for settling on time would be maintained under interoperability.
90. There is a need for either expanded regulatory oversight or broader industry support for the implementation of interoperability or other competition reforms.

PART 3 – ISSUE FOR THIS INQUIRY TO CONSIDER

91. ARNECC sets out below specific matters that it believes the Inquiry should consider.
- A. Identifying the appropriate Regulator(s) for electronic conveyancing processes
92. ARNECC recommends that the Inquiry consider who are the most appropriate regulators and decision makers in respect of the different aspects of the national electronic conveyancing ecosystem (including the implementation and regulation of mechanisms such as interoperability as discussed above).
93. In this regard, ARNECC refers to *Final Report - Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law* (discussed above), at section 7, which

discusses future organisational models for regulation, governance and management. This report also warns:

"Future organisation models for effective regulation, governance and in some cases management eg national consistency agenda, require more resources to ensure a robust system for the future. With the addition of more ELNOs and potential interoperability arrangements, resource requirements will increase further."

94. There is no regulator who has end-to-end oversight for electronic conveyancing throughout Australia. ARNECC's role in regulating ELNOs and the participation of Subscribers in electronic conveyancing transactions is designed to ensure the accuracy, quality and integrity of transactions reflecting dealings in interests in land and their subsequent registration. ARNECC is mindful that the electronic conveyancing environment includes other activities such as the management and disbursement of settlement funds and the payment of stamp duty to Revenue Offices on relevant transactions. ARNECC recognises that these activities need to occur safely and securely, and that ELNOs' systems and processes need to ensure that is the case. However, the regulation of these activities also intersects with the roles of other regulatory bodies, including financial and conveyancer/lawyer regulators. Accordingly, there is a need for greater involvement and coordination amongst regulators to provide comprehensive and more effective regulation of the end-to-end electronic conveyancing processes and to close any regulatory gaps that may currently exist.

B. Reviewing the Regulation of Key Participants to facilitate change

95. It is apparent that any program of change to introduce competition within the electronic conveyancing industry requires the cooperation of key participants such as financial institutions, conveyancers and lawyers. To successfully achieve that cooperation, the involvement of other regulatory bodies, including competition and financial regulators is required. ARNECC recommends that the Inquiry consider the key participants required to enable change and ensure there is clear and appropriate regulation of those parties so competition can be introduced in a timely manner.

C. Reviewing the Competition Oversight of ELNOs

96. ARNECC recommends that the Inquiry identify and consider any gaps in the regulatory framework to ensure there is appropriate oversight of the conduct of the near current monopoly incumbent (which has strengthened its market position over time) and in managing other existing and future ELNOs and their interactions.
97. As noted earlier, ARNECC is a council consisting of State and Territory regulators who have defined powers. ARNECC promotes national consistency but cannot regulate nationally. To be clear, ARNECC is not a regulator and has no direct powers to regulate or enforce. The Committee should consider an appropriate regulator that has power to regulate in respect of competition in trade and commerce or financial settlement across jurisdictions. There are aspects of electronic conveyancing that are within the remit of other regulatory bodies.
98. The State and Territory Registrars have powers limited to their State and Territory. As mentioned above, for the purposes of electronic conveyancing, these powers focus on providing an environment that maintains integrity, quality and accuracy in the preparation and lodgment of registry instruments and other documents in electronic form with the Land Registry pursuant to the applicable State or Territory land titles legislation.

99. To facilitate competition throughout the whole electronic conveyancing ecosystem, thought needs to be given to how regulation can be achieved through multiple regulators working together to ensure all relevant aspects of electronic conveyancing and the activities of participants within the industry are appropriately and effectively regulated.
100. Commonwealth support and involvement will be critical for both the future success of any program to introduce competition and as part of an uplifted national regulatory approach.

D. Other Alternatives

101. ARNECC considers it would be very helpful if the Inquiry considered alternative ways to introduce competition in the electronic conveyancing market. Additionally, the Inquiry could consider investigating stronger monopoly regulation to provide a robust framework to manage a market with a dominant incumbent.

PART 4 – CONCLUSION

102. ARNECC welcomes the Inquiry.
103. The implementation of electronic conveyancing has been a successful initiative that has several benefits. Over time, the functionality and complexity of ELNs and associated systems has expanded to encompass more than the preparation of documents and lodgment of documents with Land Registries.
104. Currently, there is a risk that participants in the electronic conveyancing industry may take advantage of a perceived lack of clarity over who regulates which activities within the electronic conveyancing ecosystem. The question arises whether existing regulation is sufficient to ensure all relevant activities are appropriately regulated. Given the importance of electronic conveyancing to the national economy, ARNECC believes this Inquiry presents an ideal opportunity to review the regulatory framework. This includes considering the important role federal competition, banking and corporate regulators should play.
105. Today, electronic conveyancing effectively has a monopoly provider, and competition issues will only get more complex to resolve as time goes on. For regulation to be effective, and for competition in any form to be successful, ARNECC considers that Australia needs the right regulators who have the remit required to come together with clarity on their roles to jointly regulate all aspects of the electronic conveyancing ecosystem. ARNECC has been meeting with the member agencies of the Council of Financial Regulators (CFR), but much more is needed.
106. ARNECC supports competition in respect of electronic conveyancing and believes this Inquiry is an important step towards introducing the changes needed to the regulatory framework to better facilitate competition. ARNECC is happy to assist the Inquiry further as needed.



Office of the Registrar General

Our Reference: BN-01200-2025

Committee Secretary
Senate Standing Committees on Economics
Department of the Senate

Via email: economics.sen@aph.gov.au

Dear Committee Secretary,

Submission – Micro-competition opportunities in e-conveyancing

The NSW Office of Registrar General oversees e-conveyancing in NSW, including by licensing Electronic Lodgment Network Operators (ELNOs) in NSW and working with Registrars of all States and Territories through the Australian Registrars National Electronic Conveyancing Council (ARNECC), to develop nationally consistent regulation of ELNOs.

NSW supports effective competition in the ELNO market. To achieve this outcome, as well as to support the e-conveyancing reform more broadly, NSW considers there would be strong benefits from greater Commonwealth involvement, particularly in relation to market design and structure, and in the oversight of banks' participation in the e-conveyancing system and competition reform.

ARNECC's submission to the Committee describes how Registrars have sought to enable competition in the ELNO market since the entrance of a second ELNO in 2019. As work on the interoperability reform progressed, the issues noted above have become increasingly prominent; in particular, the banking industry have highlighted their concerns about the adequacy of the technical scope of interoperability.

State and Territory Ministers considered these issues at Ministerial Forum in June 2024 and noted that some of them are beyond the remit of States and Territories to address effectively. In response, ARNECC paused the design, build and test groups for interoperability and undertook a review of the reform. In February, ARNECC announced its next steps to inform the future direction of the reform and NSW continues to work with ARNECC on these actions.

NSW welcomes the Senate inquiry into this important issue. We would be pleased to provide further assistance to the Committee as it considers opportunities for competition among ELNOs, and the NSW Registrar General is available if this would be of benefit to the Committee.

We understand that this submission will be made publicly available.

Yours sincerely

Danusia Cameron
Registrar General

Date: 2025-03-21

Office of the Registrar General

McKell Building
2-24 Rawson Place
Sydney NSW 2000

T: 1300 318 998
W: registrargeneral.nsw.gov.au
