

Interoperability between Electronic Lodgment Network Operators

Second Progress Report to NSW Parliament

June 2024



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

Published by the Office of the Registrar General

registrargeneral.nsw.gov.au

First published: June 2024

Copyright and disclaimer

© State of New South Wales through the Office of the Registrar General 2024. Information contained in this publication is based on knowledge and understanding at the time of writing, June 2024, and is subject to change. For more information, please visit registrargeneral.nsw.gov.au/copyright.

Contents

1	Introduction.....	1
1.1	Registrar’s message.....	2
1.2	Recent developments.....	2
1.3	Purpose of report.....	2
1.3.1	Scope of the reform.....	2
1.4	Background to this report	2
2	Interoperability Progress Update Key Program Areas.....	4
2.1	Update on delivery of interoperability to market.....	5
2.1.1	Successful Day 1 transactions.....	5
2.1.2	ARNECC settled a timetable for interoperability	5
2.1.3	ARNECC has approved the scope for Releases 1, 2 and 3.....	5
2.1.4	ARNECC has approved key guiding principles for interoperability	5
2.2	Security progress report.....	6
2.2.1	Security is of critical importance to the reform	6
2.2.2	Cyber security reviews	6
2.2.3	Health check.....	7
2.3	Regulatory framework progress update	7
2.3.1	Stakeholder feedback on the Electronic Conveyancing National Law.....	7
2.3.2	Updates to the Model Operating Requirements	7
2.3.3	Enhancing enforcement.....	7
2.3.4	Insurance review	8
2.3.5	Review of separation requirements.....	8
2.4	Program governance and stakeholder engagement.....	8
2.4.1	Ministerial forums	8
2.4.2	Interoperability Industry Panel.....	8
2.4.3	ARNECC interoperability working groups and committees.....	9
2.4.4	Fit-for-purpose governance and consultation	9
2.5	Pricing review by NSW Independent Pricing and Regulatory Tribunal (IPART).....	9
2.6	Development of an industry code for eConveyancing payment	10
2.7	NSW Productivity Commission Market Study on eConveyancing.....	10
3	Appendices.....	11
3.1	Appendix A - Terminology.....	12
3.2	Appendix B - Letter to Ms Abigail Boyd, MLC	13
3.3	Appendix C - Health Check summary	14
3.4	Appendix D - Agenda and report from Interoperability Industry Panel 26 March 2024	15
3.5	Appendix E - ARNECC interoperability intellectual property guidelines.....	16
3.6	Appendix F - ARNECC interoperability governance structure.....	17

1

Introduction

1.1 Registrar's message

In the 12 months since the 2023 progress report, the interoperability program has achieved some significant milestones.

I acknowledge the contribution 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 and my colleagues in the NSW government and at the Australian Registrars' National Electronic Conveyancing Council (ARNECC).



Danusia Cameron
Registrar General

1.2 Recent developments

On 11 June 2024, relevant Ministers and their representatives met to review the progress of interoperability and eConveyancing reforms, to support a sustainable, competitive market structure for eConveyancing. A Ministerial Statement will be published on ARNECC's website shortly.

NSW is working with ARNECC colleagues on appropriate steps following Ministers' review of the interoperability reform.

1.3 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 and progress since the May 2023 Progress Report.

Interoperability is a national reform lead 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 as the preferred means of achieving effective competition in the eConveyancing market following extensive stakeholder consultation and expert advice and reports.

1.3.1 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.

Some stakeholders have raised concerns about the scope of interoperability, and the ability of the reform to achieve the goal of equivalent experience.

1.4 Background to this report

Electronic conveyancing describes the systems and processes for the electronic lodgement of registry instruments and settlement of associated financial transactions to complete a conveyancing transaction. Electronic conveyancing replaces traditional paper-based processes which involved the lodgement 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 ECNL establishes a national framework for electronic conveyancing. 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.

2

Interoperability Progress Update | Key Program Areas

2.1 Update on delivery of interoperability to market

2.1.1 Successful Day 1 transactions

On 12 September 2023, the reform reached a significant milestone with the successful delivery of the Day 1 transactions.

The Day 1 transactions were two refinance transactions relating to properties in Queensland and involving the ELNOs Property Exchange Australia Limited (PEXA) and Sympli Australia Pty Limited (Sympli).

The Day 1 transactions demonstrated that the technical solution developed by ELNOs can deliver on its objective – enabling electronic lodgement networks to interoperate in order to complete an electronic conveyancing transaction.

2.1.2 ARNECC settled a timetable for interoperability

At a Ministerial Forum on 9 November 2023, Ministers reaffirmed their support to build an interoperability solution as soon as possible while minimising risk to the ecosystem. Ministers welcomed the finalisation of timelines for Releases 1, 2 and 3 which provided assurance to industry and other stakeholders.

NSW Operating Requirements Version 7 (which is consistent with the ARNECC Model Operating Requirements) came into effect on 28 March 2024 and introduced provisions establishing the timetable for interoperability capability to be ready for market. This timetable for interoperability is set out below and appears in Operating Requirement 5.2.2:

- *On or before 31 July 2025*
Release 1 - limited refinance functionality for a small number of financial institution subscribers.
- *On or before 31 December 2025*
Release 2 - complete refinance functionality to all subscribers
Release 3 - full interoperability functionality across all documents to all subscribers.¹

More information on the updates to the Model Operating Requirements is available at Section 2.3.3.

2.1.3 ARNECC has approved the scope for Releases 1, 2 and 3.

As noted above, the NSW Operating Requirements provide for interoperability functionality to be delivered to market over three releases. ARNECC has approved the scope for Releases 1, 2 and 3 and has continued to refine the scope in consultation with ELNOs, financial institutions and other stakeholders.²

2.1.4 ARNECC has approved key guiding principles for interoperability

Alongside the approved scope for Releases 1, 2 and 3, ARNECC has published guiding principles for interoperability.³

¹ See NSW Operating Requirement 5.2.2:
https://www.registrargeneral.nsw.gov.au/__data/assets/pdf_file/0005/1286744/NSW-Operating-Requirements-Version-7.pdf

² See ARNECC Statement on Scope: <https://www.arnecc.gov.au/wp-content/uploads/2023/11/ARNECC-Statement-Scope-for-interoperability-releases-settled.pdf>

³ Available here: <https://www.arnecc.gov.au/wp-content/uploads/2023/11/Key-Guiding-principles-as-approved-by-ARNECC-002.pdf>

The principles include that: interoperability must maintain or enhance the customer experience; enable competition; allow for innovation; and that the security and integrity of the eConveyancing system must be maintained at all times.

The guiding principles were adopted to promote transparency and provide stakeholders with clarity on the objectives and the principles of the reform.

2.2 Security progress report

NSW has continued to work with ARNECC to ensure the process of transitioning to and maintaining interoperability is secure, including that:

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

2.2.1 Security is of critical importance to the reform

The program team has planned detailed design, build and testing phases for the approximately 60 APIs required for interoperability, providing the opportunity to identify technical issues and risks in a non-production environment.

The APIs are built to be secure by design and the program team considers issues such as the need to protect against data leaks, data breaches and unauthorised access as they create the APIs and supporting documentation. Accordingly, in designing the APIs, the program team considers security factors, and this approach would be refined through the development of security-related Non-Functional Requirements. During the technology build, each ELNO is expected to apply its own security measures in line with their obligations and security posture. Once built, the APIs and integrations with third parties will be tested as part of the program's planned security review process.

ARNECC has a comprehensive test plan in which it monitors ELNOs' testing of APIs individually and together, and ensures issues identified during testing are tracked and resolved. Testing for the first tranche of APIs commenced in December 2023.

ELNOs are also 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).

2.2.2 Cyber security reviews

Cyber security reviews were initially scheduled to occur at the following program milestones:

1. completion of the Release 1 Design
2. completion of Release 1 Build prior to go-live
3. end of Release 3 Build prior to go-live.

Following an independent review of the security requirements of the overall eConveyancing regulatory framework, the program has brought forward the date for the initial review to a stage when the conceptual design for Release 1 is complete. This review will be a baseline security review.

2.2.3 Health check

The interoperability program is subject to ongoing health checks, independent assessments, and readiness reviews at key points of the program.

Since the 2023 progress report, the NSW Department of Customer Service ICT Assurance team has completed a second health check. A summary of this health check and its recommendations is available at **Appendix C**.

2.3 Regulatory framework progress update

The regulatory framework for interoperability continues to evolve to support the policy objectives of the program.

2.3.1 Stakeholder feedback on the Electronic Conveyancing National Law

In March 2024, ARNECC held meetings with the stakeholders that provided feedback on the Electronic Conveyancing (Adoption of National Law) Amendment Bill in 2021 and 2022. As the reform has made significant progress since the feedback was initially provided, these meetings enabled ARNECC to give stakeholders an update on how key concerns are being addressed and provided all parties with an opportunity to close off issues and highlight key issues moving forward.

2.3.2 Updates to the Model Operating Requirements

The updated NSW Operating Requirements (version 7) took effect on 28 March 2024. 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 enforceable dates for developing interoperability functionality so that it is ready for market
- establishing a requirement for ELNOs to publish an interoperability framework
- establishing a requirement for ELNOs to enter into bilateral agreements to address interoperability matters.

ARNECC will review and publish updated guidance notes to reflect the changes in version 7 and assist ELNOs to understand their obligations.

2.3.3 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.

Outside of 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.

In November 2023, ARNECC published a consultation paper setting a framework for the national enforcement regime.⁴ The consultation paper proposed that Registrars' enforcement powers be expanded to include:

⁴ Available here: <https://www.arnecc.gov.au/wp-content/uploads/2023/12/National-Enforcement-Framework.pdf>

- 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.

ARNECC is currently considering stakeholder feedback received in response to the consultation paper.

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

2.3.4 Insurance review

ARNECC has commissioned an independent review of the insurance provisions in the regulatory framework to review the insurance that ELNOs and subscribers to ELNOs should maintain. This review will build on the insurance analysis previously commissioned by the NSW Office of the Registrar General and address any risks associated with the changes brought about by interoperability and the impact of interoperability on ELNOs. The review commenced in April 2024.

2.3.5 Review of separation requirements

MOR 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 arms' 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 at MOR 5.6 to ensure that it is fit-for-purpose and achieves ARNECC's policy and regulatory objectives. The review commenced in May 2024.

2.4 Program governance and stakeholder engagement

Key aspects of the interoperability program are developed collaboratively with stakeholders to design the most effective solution for industry and the community. The program also continues to have regular engagement with industry more broadly.

2.4.1 Ministerial forums

NSW convenes Ministerial forums with Commonwealth, State and Territory Ministers and representatives from the Australian Competition and Consumer Commission, to monitor progress of the interoperability program. As noted above at paragraph 1.2, the most recent Ministerial Forum occurred on 11 June 2024. Ministerial Statements for each forum are published on ARNECC's website.

2.4.2 Interoperability Industry Panel

The Registrars from NSW and South Australia co-chair the national Interoperability Industry Panel. The panel is a consultative body established to ensure thorough industry engagement across Australia to implement a national interoperability solution.

The panel convenes quarterly, and the agenda and report from the most recent panel meeting held on 26 March 2024 is available at **Appendix D**.

At this meeting, industry was provided with the Interoperability Intellectual Property Guidelines developed by ARNECC. These guidelines are intended to assist with industry consultation and aid stakeholder awareness of the intellectual property principles that may need to be considered to

facilitate an effective interoperability model, and how the model has been designed with these in mind. A copy of the guidelines is available at **Appendix E**.

The guidelines emphasise that the APIs are being designed, built and tested without the need for any party to disclose their intellectual property or commercially sensitive information. The core information needed is data elements and descriptions of functionality at a high level.

Industry was also provided with updates on technical progress, the updates to the Model Operating Requirements and Model Participation Rules to cater for interoperability and ARNECC's progress on addressing stakeholder feedback from targeted consultations on the ECNL.

2.4.3 ARNECC interoperability working groups and committees

Stakeholders engage in the program through a variety of ARNECC committees and working groups. ELNOs are members of and actively engage in all interoperability technical and program management working groups, and also have a forum to meet with ARNECC to discuss issues at the executive level.

The Interoperability Stakeholder Committee was established to focus on stakeholder-facing aspects of implementation. This provides stakeholders such as banks, state revenue offices, and land registries with an opportunity to engage closely with aspects of the program which will interact with their business functions. The committee considers issues and activities related to stakeholders who need to integrate from a technical perspective.

The Interoperability Design Committee continues to design the APIs required for the technical solution.

The ARNECC Interoperability Steering Committee is the central point for discussion on progress across all ARNECC interoperability working groups and committees. It acts as a consultative body to provide strategic feedback to these groups, and as a conduit between these groups and ARNECC. It ensures that ARNECC remains apprised of progress milestones and any project risks or issues.

2.4.4 Fit-for-purpose governance and consultation

ARNECC continues to review and adjust the program governance structure to ensure it meets the requirements for the current stage of the program. The current governance structure is available at **Appendix F**.

2.5 Pricing review by NSW Independent Pricing and Regulatory Tribunal (IPART)

Since the last progress update, IPART has completed the Review of Interoperability Pricing for Electronic Lodgment Network Operators. This review investigated a national pricing regulatory framework for interoperable electronic conveyancing transactions between ELNOs. The final report was published on 29 August 2023 and can be viewed on IPART's website.⁵

IPART made a number of recommendations, and the key recommendations are summarised below:

- ELNOs be permitted to charge other ELNOs certain fees for performing lodgement and settlement functions in an interoperable transaction (interoperability transaction fees), with the level of fees to be set out in the Model Operating Requirements and based on cost-recovery principles.
- The interoperability transaction fees should be regulated for a period up to 18 months after the interoperability reform is complete, at which time there should be a further review.

⁵ Available at: https://www.ipart.nsw.gov.au/documents/final-report/final-report-interoperability-pricing-electronic-lodgment-network-operators-june-2023?timeline_id=15108

- ELNOs should negotiate the practical arrangement of interoperable transaction fees through interoperability agreements, including the frequency and method of payment.

ARNECC is considering the IPART recommendations as part of the periodic updates to the Model Operating Requirements.⁶

2.6 Development of an industry code for eConveyancing payment

In June 2021, the Council of Financial Regulators (CFR) and ACCC supported an industry code being jointly developed by ELNOs and financial institutions under the governance of the eConveyancing Payments Steering Committee facilitated by AusPayNet. On 31 August 2023, AusPayNet's board approved the eConveyancing Payments Industry Code (Industry Code) for the financial settlement aspects of eConveyancing.

The 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.

In their March meeting, the CFR discussed the Industry Code and called on banks and eConveyancing platform providers to adopt the Industry Code and for it to be activated within the next three months.⁷ ARNECC is progressing updates to the Model Operating Requirements to require ELNOs to participate in and comply with the Industry Code, once it is activated.

2.7 NSW Productivity Commission Market Study on eConveyancing

The NSW Productivity Commission is conducting a study on the current structure of the eConveyancing market, which will examine:

- the effectiveness of competition in the eConveyancing market
- the best ways of promoting long-term competition, building on the current interoperability reform
- the resources (including sources of funding), governance, and regulatory structures needed to ensure a sustainable and long-term competitive eConveyancing market.

The market study final report will be published by the NSW Productivity Commission.

⁶ The current Model Operating Requirements (version 7) are available from the ARNECC website at: https://www.arnecc.gov.au/publications/model_operating_requirements/

⁷ The CFR's statement is available here: [Media Release Number: 2024-01 – Quarterly Statement by the Council of Financial Regulators – News – Council of Financial Regulators \(cfr.gov.au\)](#)

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.

Day 1 transaction is a limited scope refinance relating to property in Queensland between the two ELNOs currently operating in the electronic conveyancing market, Property Exchange Australia Limited (PEXA) and Sympli Australia Pty Ltd (Sympli).

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 eConveyancing Payments Industry Code 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 transactions fees are the fees for performing lodgement 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

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

3.3 Appendix C - Health Check summary

Purpose

This document is a summary of the independent health check undertaken on behalf of the NSW Government and administered by the Department of Customer Service. The project sponsor was the NSW Registrar General.

The stakeholders interviewed as part of the health check during October 2023 included staff from the Office of the Registrar General, ARNECC members, the ARNECC Interoperability Program Director and his team, Electronic Lodgment Network Operators, the Australian Institute of Conveyancers, the NSW Law Society and the Australian Banking Association.

The final report was issued on 29 February 2024.

Scope of the review

The NSW Office of the Registrar General is implementing ongoing and independent health checks to review the risks and status of the national roll-out of interoperability. The health checks will be used to inform Ministers and ARNECC, and may be used to inform industry, and guide ongoing decision-making. This is the second of a series of ongoing health checks.

This review focused on the following areas, with a view to assessing the confidence that the Program will achieve its stated objectives within the planned timeframe:

- business case and stakeholders
- review of current phase
- governance
- risk management
- recommendations from prior review.

For the avoidance of doubt, the health check did not consider the merits of the government's policy of introducing a competitive market for electronic lodgment network operators nor the legislation to enable this policy.

Assessment:

The purpose of the health check was to assess the risks and current status of the interoperability reform against its stated objectives. The Health Check Report provides a delivery confidence assessment of "Medium – Low". This points to the need for refinements in how the program is run; noting that this score is an improvement on the "Low" confidence assessment of the first health check assessment.

Report recommendations and ORG response:

The Report notes that there have been improvements in resourcing and governance for the program since the first health check. The report recommends the project:

- map, manage and report on key dependencies for the program outcomes to be achieved
- create a "transformational capability" within ARNECC to drive stakeholder engagement
- define and agree on milestone dates for each release at a granular level, showing all stakeholder dependencies
- increase central capability within ARNECC including solution architect support
- conduct independent expert security reviews at a transaction, data and business transaction level

- seek re-affirmation of the program from Ministers to provide direction to ARNECC, including national rollout deadline and business outcomes to be achieved (which can be achieved through the Ministerial Forums)
- place more focus on major risk areas and their mitigations and build contingency in the program schedule with reference to key risks.

ORG is working with the ARNECC Interoperability Program team to ensure these recommendations are implemented.

Next Assurance Review

The Review Team recommended that health checks be conducted approximately every 6 months to align with key project events or milestones. The times should be confirmed once the program schedule is revised, suggested triggers for a review are listed below:

- readiness for industry-wide testing
- readiness for rollout.

3.4 Appendix D - Agenda and report from Interoperability Industry Panel 26 March 2024

INTEROPERABILITY INDUSTRY PANEL

AGENDA

Time Tuesday 26 March 2004, 3:00pm to 4:00pm (AEDT)

Location Meeting to be held via Microsoft Teams. You can join the Microsoft Teams meeting by clicking the '**Join Microsoft Teams Meeting**' link in the email invitation.

Agenda items

AEDT

- | | | |
|---|--|---------------------------------|
| 1. Acknowledgement of Country and Welcome | Jenny Cottnam,
SA Registrar-General | 3:00pm – 3:05pm
(5 minutes) |
| 2. ARNECC update | Danusia
Cameron, NSW
Registrar General
and ARNECC
Chair | 3:05pm – 3:10pm
(5 minutes) |
| 3. Interoperability Program update | David Backley,
Interoperability
Program Director | 3:10pm – 3:15pm
(5 minutes) |
| 4. Focus area: the interoperability project and intellectual property | Sarita Walpola,
Director,
Regulation &
Compliance, NSW
ORG | 3:15pm – 3:20pm
(5 minutes) |
| 5. Regulatory update – ECNL and MOR | Leanne Hughes,
Director, Policy
and Litigation,
NSW ORG | 3:20pm – 3:25pm
(5 minutes) |
| 6. eConveyancing Payments Industry Code | Andy White,
AusPayNet CEO | 3:25pm – 3:35pm
(10 minutes) |
| 7. NSW Productivity Commission (PC) Review on eConveyancing | Geraldine Carter,
PC | 3:35pm – 3:40pm
(5 minutes) |
| 8. Feedback from representatives | All - led by
Danusia Cameron | 3:40pm – 3:55pm
(15 minutes) |
| 9. Summing up and next steps | Jenny Cottnam | 3:55pm – 4:00pm
(5 minutes) |

Attendees

NSW Department of
Customer Service

NSW Office of the
Registrar General
(NSW ORG)

SA Office of the
Registrar General (SA
ORG)

Titles Queensland
(Titles QLD)

Landgate WA

Government

Natasha Mann, Deputy Secretary, Better Regulation Division/Fair Trading
Commissioner

Danusia Cameron, Registrar General (Joint Chair)
Leanne Hughes, Director, Litigation & Policy
Sarita Walpola, Director, Regulation & Compliance

Jenny Cottnam, Registrar General (Joint Chair)
Tracy Nelson, E-Conveyancing Specialist
Mina Powell, Manager ICT and Innovation

Liam DeGroot, Principal Regulation Lawyer
Steve Smith, Business Consultant

Brad McBride, Acting Registrar of Titles

Lawyers

Law Council of
Australia

Philip Argy, Chair, National Electronic Conveyancing
System Committee, Law Council of Australia
Mark Swan, Special Counsel, Mills Oakley Lawyers
John Farrell, Senior Policy Lawyer, Law Council of Australia

Conveyancers

Australian Institute of
Conveyancers

Fran Andrews, Vice President (NSW)
Michelle Hendry, National Councillor (SA)

Australian Institute of
Conveyancers (NSW
Division)

Chris Tyler, CEO

Australian Institute of
Conveyancers (SA
Division)

Carmel Noon, CEO

Banks and Financial Associations

Australian Banking
Association

Emma Penzo, Head of Economic Policy
Ellen Choulman, Director, Policy
Mitchell Frater-Baird, Policy Analyst (Economy)

Australian and New
Zealand Banking
Corporation (ANZ)

Corey Stephens, Digital Settlements Lead
Chris Newham, Senior Manager, Customer Settlements Lead
Joanne Ong, Payments Industry Manager
David Ireland, Senior Advisor, Government Relations and Policy

Bendigo and Adelaide
Bank Limited

Terry Secombe, Manager, Strategy and Implementation

Commonwealth Bank
of Australia

Lauren Fine, Executive Manager White Label Product and Frontline
Support Home Buying
Daniel Grendon, Transformation Strategy Manager
Courtney Horseman, Product Owner, Retail Home Lending Operations

Macquarie Bank	Susan Attapallil, Senior Manager
National Australia Bank	Nicole Akatos, Head of Settlement Transformation Alicia Crossett, Head of Specialised Execution Stephen Joy, Technology Architect Carl Cheng, Head of Home Ownership Transformation
Westpac/St George	Ashley D'Cruz, Executive Manager, Mortgage Operations Customer & Industry Transformation Subbu Balakrishnan, Chief Engineer, Mortgage Technology
Mortgage and Finance Association of Australia	Naveen Ahluwalia, Head of Policy and Legal
Customer Owned Banking Association	Mark Nguyen, Chief of Policy
Australian Finance Industry Association	Sebastian Reinehr, Policy Director

ELNOs / Potential ELNOs

PEXA	Les Vance, Group Chief Operating Officer Alice Morrison, Chief Legal and Governance Officer Elizabeth Muhlebach, General Manager, Regulatory Affairs
Sympli	Philip Joyce, CEO Joanne Tseng, Chief Legal & Governance Officer
Lextech	Jack Meredith, CEO

Observers

NSW Office of the Registrar General (NSW ORG)	Stephen Shehadie, Managing Lawyer, Regulation & Compliance Blake Garcia, Senior Lawyer, Regulation & Compliance Gillian Capel, Senior Lawyer, Regulation & Compliance
Access Canberra	Fred Arugay, Acting Senior Director
Australian Competition and Consumer Commission	Katie Young, Director, Infrastructure & Transport, Access & Pricing Infrastructure Regulation Division Luke Sheehan, Assistant Director, Infrastructure & Transport, Access & Pricing
Independent Pricing and Regulatory Tribunal (NSW)	Julie Soai, Analyst Courtney Barry, Principal Analyst James Diment, Director, Legal
Land Services SA	Brenton Pike, Chief Executive Officer Steve Wilden, Business Transformation Manager Michael Kinnane, Chief Information Officer
Land Services WA	Vaughan Castine, Chief Technology Officer

Land Use Victoria	Jane Allan, Manager, Legal & Deputy Registrar of Titles
Lawcover	Jennifer McMillan, Manager, Practice Support Services
Law Society of NSW	Richard Harvey, Chair of the Law Society's Property Law Committee Anthony Cahill, Member of the Law Society's Property Law Committee
Lexon Insurance (Queensland)	Tracy Skellern, Deputy Risk Counsel
Northern Territory Government	Ahmed El-Ali, Director, eConveyancing
NSW Land Registry Services	Jacqueline Monk, Head of Legal Pete Chen, Director, Enterprise Project Management Office
NSW Treasury	Anthony Rush, Director, Competition and Regulation
Queensland State Revenue Office	Mark Rogers, Director, Duties and Grants Fraser Lane, Director Client Operations
Revenue NSW	Filiz Ketenci, Director, Duties Mark Morris, Manager Tax – DCS RNSW Duties Stakeholder Management
Revenue SA	Kelly Tattersall, Deputy Commissioner
SA Department for Trade and Investment	Sally Smith, Executive Director, Planning and Land Use Services
Office of the SA Minister for Trade and Investment, Housing and Urban Development, Planning	Gemma Wallace, Senior Advisor
State Revenue Office Victoria	Paul McKee, Program Manager, Revenue Management System Modernisation
Tasmania Land Titles Office	Robert Manning, Recorder of Titles Troy Britton, Policy Officer
WA Office of State Revenue	Greg Hancock, Director Adam Campbell, Assistant Director
Australian Payments Network	Andy White, CEO Andy Leigh, Senior Business Analyst

Advisors

Program advisors	Greg Channell, eConveyancing expert
Program Director	David Backley

Program Manager

Kim Rosewall

Proposed Future Meeting Dates

Future meetings will be held via teleconference:

- 25 June 2024
- 24 September 2024
- 10 December 2024

If you do not have an invitation for these meetings, please contact ARNECC at ARNECCadmin@landgate.wa.gov.au.

Interoperability between ELNOs: implementing the national solution

National Interoperability Industry Panel – Update

26 March 2024

Problem Statement for Interoperability

In a multi-ELNO environment, subscribers should be able to transact efficiently and securely while only subscribing to the ELNO(s) they choose. Any interoperability solution should be able to be applied at a national level, rather than solving for a particular jurisdiction.

ARNECC is working closely with industry to introduce a national interoperability regime which will address the problem statement and be implemented in accordance with the regulatory timetable now incorporated in the Model Operating Requirements. (See Attachment 1 for a diagram of the Interoperability regime.)

The Interoperability Program (IOP), through its various Committees and Working Groups (see Attachment 2) continues to make significant progress in developing the regime.

ARNECC is keen to ensure we have the right level of engagement and support to deliver this important outcome for all Australia.

Key ARNECC Updates

Since we met in December 2023, ARNECC has:

- appointed Chris Williams as its new Executive Officer
- held a strategy session in Canberra focussing on cyber security. This included a session with the National Office of Cyber Security
- updated the Model Operating Requirements (MOR) to include the Dates for Interoperability Releases 1, 2 and 3
- updated the Model Participation Rules (MPR) to cater for Interoperability
- met with stakeholders to discuss their comments on the Electronic Conveyancing National Law (ECNL). We are also working through the feedback received on the proposed enforcement regime following the receipt of submissions in February 2024.

Key IOP Updates Since December 2023

The IOP continues to make significant progress:

- Design is progressing to schedule, with 7 of 11 tranches completed and baselined
- Build is progressing to the agreed individual schedules of the Electronic Lodgment Network Operators (ELNOs)
- The second round of Joint Integrated Testing (JIT) is underway and progressing well
- The IOP's approach to scope and design is to enable stakeholders to request features that are necessary to ensure the Program will be fit for purpose without infringing intellectual property rights.

IOP Status Update – Release 1



Key Milestones				
ID	Key Milestones	Status	Planned End Date	Comments
M1-R1-01	Design Complete	In Progress	11 June 24	Overall design is currently tracking slightly behind schedule
M1-R1-01a	Tranche 1	Complete	8 Jun 23	
M1-R1-01b	Tranche 2	Complete	12 July 23	
M1-R1-01c	Tranche 3	Complete	15 Aug 23	
M1-R1-01d	Tranche 4	Complete	19 Sept 23	
M1-R1-01e	Tranche 5	Complete	24 Oct 23	
M1-R1-01f	Tranche 6	Complete	28 Nov 23	
M1-R1-01g	Tranche 7	Complete	16 Jan 24	Currently being baselined (expect to be complete before 24/03/24)
M1-R1-0h	Tranche 8	In Progress	21 Feb 24	expected to be in baseline review before 24/11/24
M1-R1-01i	Tranche 9	Not Started	27 Mar 24	Delayed – time to complete under review
M1-R1-01j	Tranche 10	Not Started	6 May 24	May be delayed – time to complete currently under review
M1-R1-01k	Tranche 11	Not Started	11 Jun 24	
M1-R1-02	Build Complete	On Watch	9 May 25	
M1-R1-02a	Tranche 1	Complete	10 Oct 23	
M1-R1-02b	Tranche 2	Complete	31 Jan 24	
M1-R1-02c	Tranche 3	In Progress	17 Jun 24	T3 & 4 swapped in build phase
M1-R1-02d	Tranche 4	In Progress	09 Apr 24	T4 & 3 swapped in build phase
M1-R1-02e	Tranche 5	In progress	30 Jul 24	
M1-R1-02f	Tranche 6	Not Started	8 Oct 24	
M1-R1-02g	Tranche 7	Not Started	5 Nov 24	
M1-R1-02h	Tranche 8	Not Started	17 Dec 24	
M1-R1-02i	Tranche 9	Not Started	8 Apr 25	
M1-R1-02j	Tranche 10	Not Started	8 Apr 25	
M1-R1-02k	Tranche 11	Not Started	9 May 25	
M1-R1-03	Test Complete	In Progress	10 Jun 25	
M1-R1-04	JIT 1 included T1	Complete	05 Feb 24	12 defects identified in JIT 1, all minor defects

Legend

NOT STARTED

IN PROGRESS

ON WATCH

OVERDUE

COMPLETE

IOP Status Update – Release 1 (Cont'd)

Key Milestones				
ID	Key Milestones	Status	Planned End Date	Comments
M1-R1-03	JIT 2 includes T2 & 4	In Progress	07 Jun 24	Started on time 11/03/24 includes T2 & 4
M1-R1-04	Release 1 Go Live	On Track	31 July 25	

How the Interoperability Program Addresses IP

ARNECC has developed Intellectual Property Guidelines to assist with consultations and aid stakeholder awareness of the intellectual property principles that may need to be considered to facilitate an effective interoperability model, and how the interoperability technical solution is being designed with these in mind.

A copy of these Guidelines is included with this pack.

Each party is responsible for managing and protecting their own IP and confidential information and parties are encouraged to seek their own legal advice if they have concerns.

Regulatory update – ECNL Amendments

Electronic Conveyancing (Adoption of National Law) Amendment Act 2022 (NSW)

ARNECC has continued to consider feedback received from earlier consultations on non-enforcement matters that remained outstanding following passing of the *ECNL Amendment Act 2022 (NSW)*.

We have recently engaged with stakeholders on their feedback and appreciate the views and opinions that have been expressed.

Introduction of enforcement provisions to the ECNL

In February 2024 we received stakeholder feedback on the proposed changes to the enforcement provisions within the ECNL. Stakeholder feedback has centred on key themes, including:

- guidance on relevant factors for issuing of remedial directions and commencement of civil proceedings
- clarification of the limited application of criminal offences that underpin infringement notices
- safeguards and limitations on proposed powers to publish information about non-compliance
- national consistency and safeguards regarding multiple proceedings for the same non-compliance

These are not exhaustive lists of the matters raised during consultation still under consideration.

Next Steps: ARNECC's response to the feedback will be finalised and incorporated as appropriate in the upcoming second ECNL Amendment Bill and supporting Decision Regulatory Impact Statement.

Regulatory Update – Updates to the MOR and MPR

New Version 7 of the MOR:

The following milestones for interoperability capability to be ready for market have now been included in Version 7 of the Model Operating Requirements (MOR) published in February 2024:

- On or before 31 July 2025, ELNOs must design build and test all technical and functional capability for and implement limited refinance functionality for a small number of financial institution subscribers (**Release 1**).
- On or before 31 December 2025, ELNOs must design, build and test all technical and functional capability for:
Release 2 - complete refinance functionality to all subscribers.
Release 3 - full interoperability functionality across all documents to all subscribers.

These provisions are included in updated jurisdictional Operating Requirements and will take effect from late March 2024 in NSW and Qld. The timelines have been carefully selected following industry consultation. ARNECC will continue to work with stakeholders to ensure these dates are met.

New Version 7 of the MPR:

- The MPR have been updated to cater for Interoperability
- This includes changes to the Client Authorisation in Schedule 4
- Version 7 of the Client Authorisation must be used on and from 28 March 2024

Regulatory Update – eConveyancing Payments

The eConveyancing Payments Industry Code and ELNO Compliance

ARNECC supports the enlivening of the eConveyancing Payments Industry Code and the key role it plays in the regulation of financial settlement. ARNECC welcomes the Council of Financial Regulators' recent statement, where it has called on Banks and ELNOs to adopt the Code and for it to be activated within three months.

ARNECC is currently reviewing the timing for incorporating the Industry Code in the MOR to support adoption and compliance.

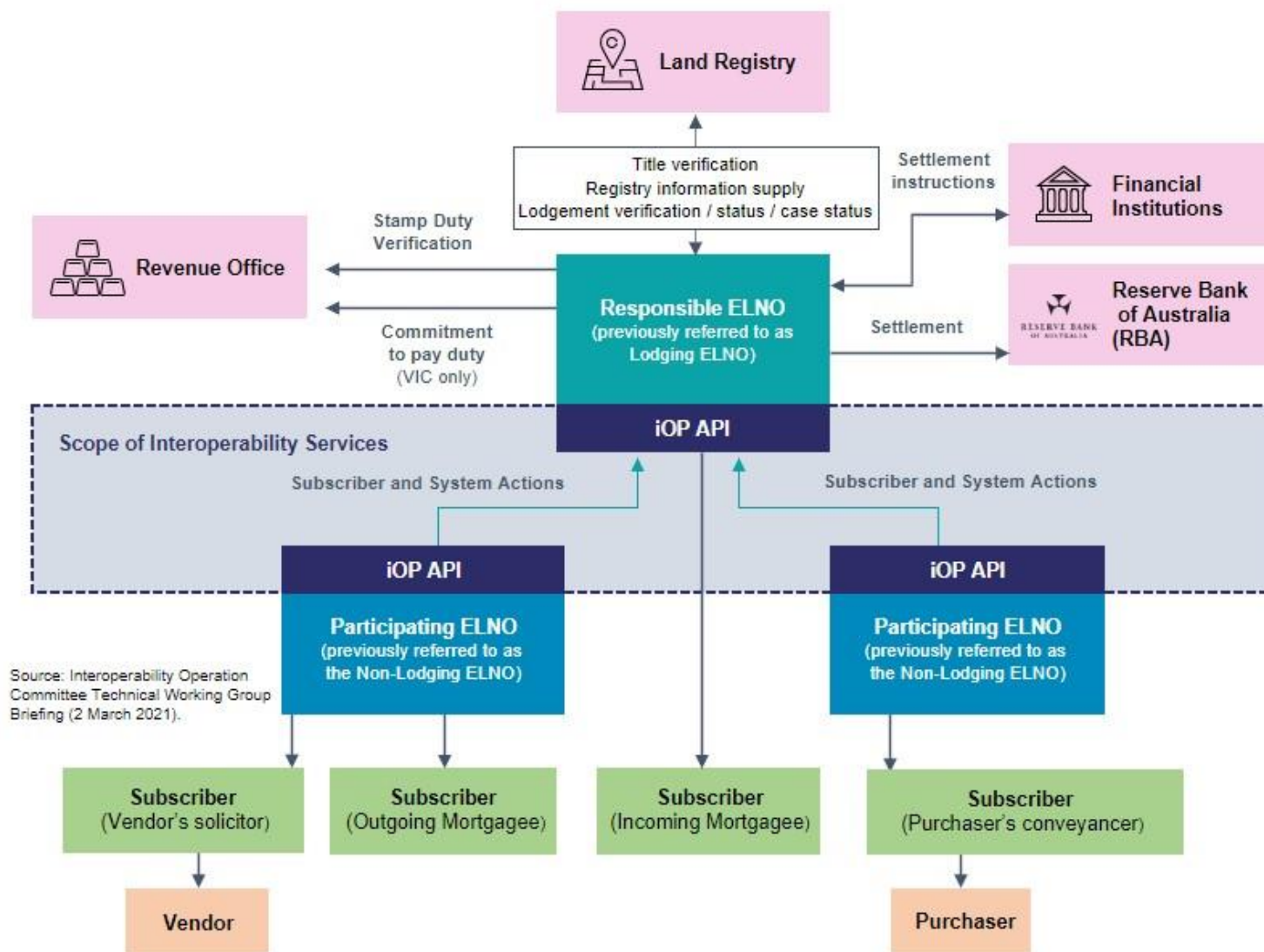
Working with Industry

Thank you for your ongoing contribution and support.

The ultimate objective for interoperability is that it must serve the interests of all Subscribers including conveyancers, lawyers and financial institutions and their clients or customers as the end users of the service.

For updates, please contact ARNECC at ARNECCAdmin@landgate.wa.gov.au

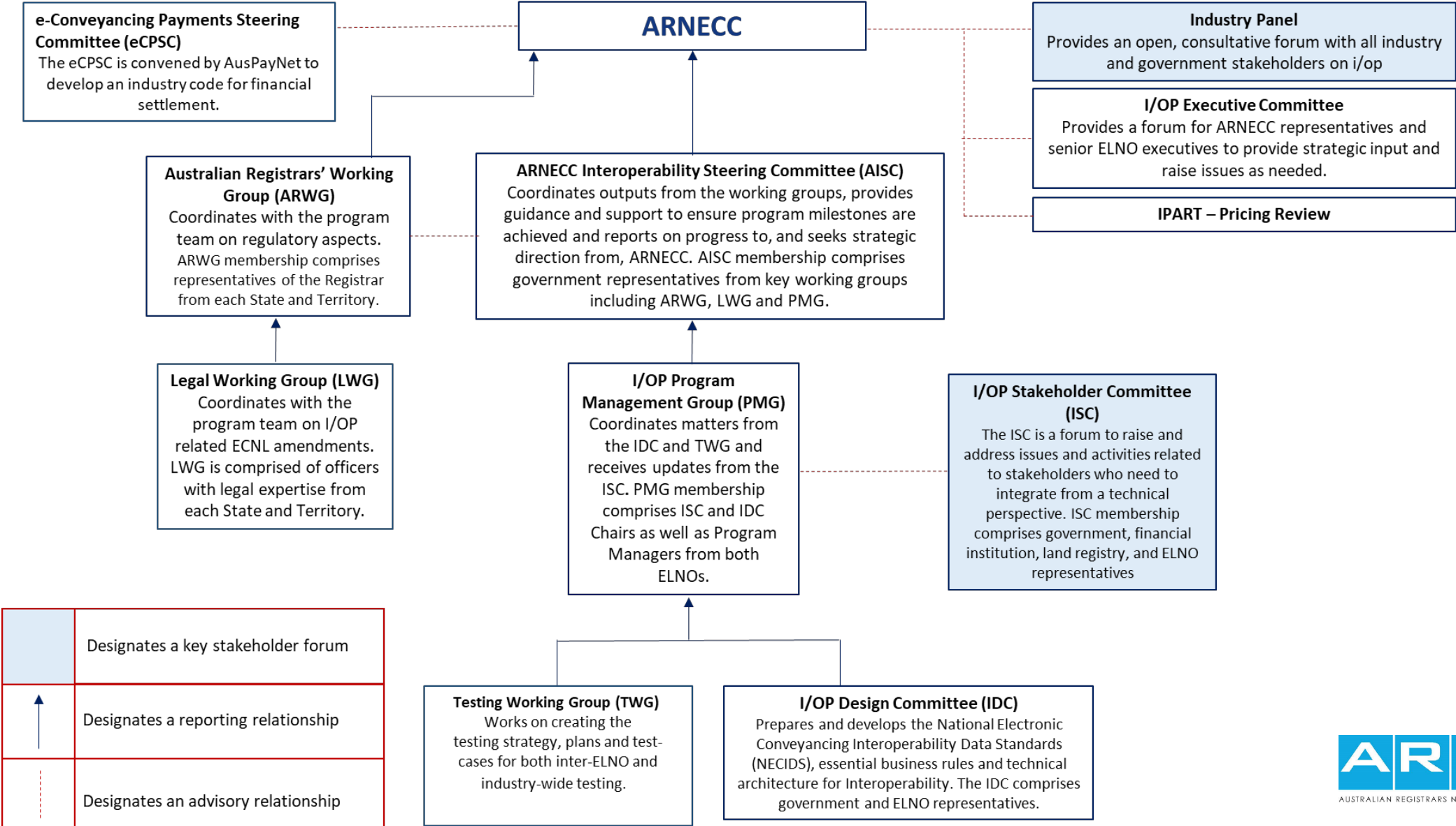
Attachment 1 - The technical solution for interoperability



Attachment 2 - Interoperability Committees and Working Groups



Interoperability industry panel



3.5 Appendix E - ARNECC interoperability intellectual property guidelines

Interoperability – Intellectual Property Guidelines

Why do we need these guidelines?

The Australian Registrars' National Electronic Conveyancing Council (**ARNECC**) is continuing to consult with industry stakeholders as part of its implementation of the Electronic Conveyancing National Law (**ECNL**) and to facilitate an interoperability model between Electronic Lodgment Network Operators (**ELNOs**).

These guidelines are intended to assist with consultations and aid stakeholder awareness of the intellectual property principles that may need to be considered to facilitate an effective interoperability model, and how the interoperability model has been designed with these in mind.

ARNECC encourages a good faith collaboration approach to these consultations, based on open communication and an appropriate sharing of information to enhance competition and innovation in this space. The stakeholders participating in this program represent various sectors of the property market, including competing ELNOs, conveyancers, lawyers and financial institutions.

It is important to ensure that any discussions between stakeholders in the context of this process do not inadvertently give rise to any risk of infringement of intellectual property rights.

These guidelines provide general information in relation to some relevant intellectual property matters. These guidelines are not intended to be an exhaustive guide, nor do they constitute legal advice on any particular matter. Stakeholders wishing to understand how the law applies in a particular situation should seek their own independent legal advice.

1 General principles

- Each stakeholder is **responsible** for understanding any intellectual property rights and confidential information they might have in the context of interoperability.
- Set out below are some general statements of law.
- The most relevant potential species of intellectual property in this context is copyright, which is governed by the *Copyright Act 1968* (Cth) in Australia. Copyright comes into existence automatically when a copyright “work” is created, and registration is not required.
- **Australian copyright law protects, relevantly:**
 - **literary works** (text works) such as articles, novels, reports and relevantly here, tables, forms, computer programs and compilations. In relation to compilations, the original selection and arrangement of material may be protected separately from the individual items contained in the compilation;
 - **artistic works** such as drawings, paintings, graphics, sculpture, architectural plans, plans, maps and photographs;
- Whether or not a work is protected by copyright will also depend on whether or not the human creators/ authors of the works can be identified and whether or not the work is **original** (that is, not a mere copy and the creators/ authors used a sufficient level of intellectual effort and judgement to create the work).
- **Australian copyright law does not protect:**
 - ideas, rather, it protects the way those ideas are expressed, such as in the form of original literary works including compilations and computer programs;
 - facts, information or raw data;

- names, titles, short descriptions, or anything that could be considered “de minimis”; or
- the functionality of computer programs, only the form in which it is expressed, i.e., the underlying source code.
- **Confidential Information:** for information to be considered ‘confidential’, it must have the necessary quality of confidence and not be within the public knowledge.
 - **Basic functionality requirements** which are primarily driven by the process of paper / electronic conveyancing are unlikely to amount to intellectual property or confidential information.
- Interoperability requires participants to exchange **unintelligent data** such as, a flag, a document number, or a figure determined by the type of conveyancing instrument or document.
 - For example, during the design process, an ELNO may request a new data flow to cater to a new feature it is developing (without divulging details of the functionality of the new feature). In ARNECC’s view, this would be a reconciliation of the data required and would not be a sharing of intellectual property rights or any other confidential information.
- **User interface:** to the extent the interface is determined by the nature of the conveyancing transaction, instrument or document and therefore lacks the requisite originality, it is unlikely to be protected by copyright. However any form of *original* design, colours or layout of a particular interface is likely to be protected and should not be copied. ELNOs should design the look and feel of their own interfaces from a visual design point of view.
- **Third parties:** ensure that any third party rights are considered and dealt with appropriately.

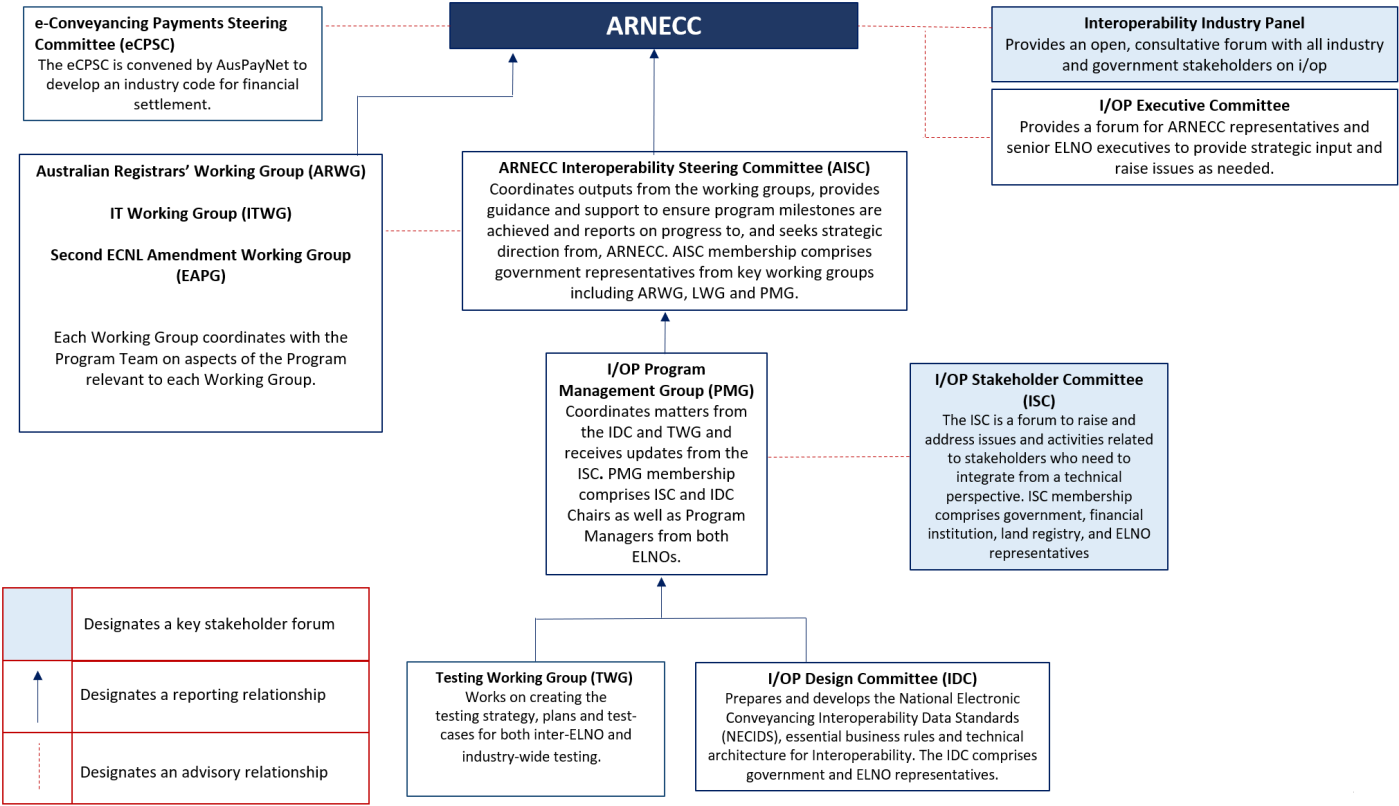
2 Do’s and Don’ts

The following guidelines should be considered by stakeholders during the consultation process:

Do	Don’t
✓ Share basic descriptions of functionality required to achieve interoperability, as driven by the requirements of electronic conveyancing	✗ Share complex business processes or information structures not required to achieve interoperability with other stakeholders
✓ Discuss and share simple unintelligible data as required to achieve interoperability, such as a flag, document number or a figure determined by the conveyancing transaction	✗ Disclose or exchange any source code underpinning an ELNO’s platform or functionality
✓ Design your own user interface independently, with reference to the functionality and features driven by eConveyancing workflows	✗ Copy any original design, style, colours, images, text, and arrangement of an ELNO’s platform interface when designing your own user interface
✓ Design your own backend technology and code to implement any functionality / features required for interoperability, based on existing observable features or functions of the eConveyancing market	✗ Decompile or reverse-engineer the source code of any other ELNO’s platform
✓ Exchange industry ideas on appropriate requirements and features for interoperability	✗ Seek to obtain commercially sensitive information from other stakeholders
✓ Seek appropriate warranties from third parties in relation to the ability to use any intellectual property	✗ Seek to obtain access to any other ELNO’s backend proprietary technology while developing your own technology
✓ Seek legal advice on intellectual property issues if you are unsure	✗ Assert any rights in relation to things which are unprotected by copyright or other forms of intellectual property

Dated: 19 March 2024

3.6 Appendix F - ARNECC interoperability governance structure



Office of the Registrar General

McKell Building
2-24 Rawson Place
Sydney NSW 2000

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

