

PEXA submission to the review of National Competition Policy



Revitalising Australia's National
Competition Principles, reform agenda
and governance arrangements

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1. PEXA's response to the Treasury Consultation Paper

PEXA Group welcomes this opportunity to contribute to the Government's Revitalisation of Australia's National Competition Policy (NCP), as set out in The Treasury's Consultation Paper.

PEXA is well placed to contribute to this review of the NCP. PEXA has worked in close collaboration with regulatory and revenue agencies at all levels of government, over several decades. PEXA's own evolution can provide a useful blueprint for the successful development of competitive, productivity-enhancing digital technologies for Australian businesses. PEXA's unique digital exchange has grown from a Government Business Enterprise (GBE) initiated by COAG into an ASX listed company. It has evolved within the context of a tightly regulated, multi-jurisdiction environment and in close collaboration with multiple other GBEs.

This evolution means that PEXA's experiences and insights are highly relevant to the review of the National Competition Principles and the development of a new ten-year National Competition Reform Program, which is likely to include a focus on '*Leveraging the economic opportunities of data and digital technology*' (reform theme 5 in the NCP Consultation Paper).

PEXA would like to offer the following suggestions to this Review of the NCP. Further detail and supporting evidence are provided in the attached appendices.

1.1 Revitalising the National Competition Principles: adding clarity and purpose

Clarify when and how each of the Principles apply to GBEs, and when they cease to apply

PEXA notes that the Competition Principles were originally designed to apply to Government agencies and GBEs. Clarity of application of the Competition Principles to GBEs is particularly important for business entities that have transitioned from GBE-status to privately owned or publicly-listed companies. For example, application of the Access Principle, the Prices Oversight Principle and the National Significance Test can be complex and uncertain for former GBEs that retain large physical or digital networks and have demonstrated network benefits (that is, they offer additional value to users if all other users employ the same platform). It is important that these considerations are specifically addressed prior to transition from Government to private ownership, in order to provide certainty for investors in these businesses and their customers.

The number and variety of former GBEs is larger than it once was, so this clarity of coverage is needed at a broad level, rather than being managed on a case-by-case basis.

Clarify the primary purpose of each Competition Principle

PEXA agrees with the Treasury Consultation Paper (p. 27) that greater clarity of purpose is required in the Competition Principles. A stated purpose would go a long way towards identifying the situations that each Principle is designed to address. PEXA agrees with the Harper Report recommendation to explicitly recognise that the ultimate objective of all competition policy is to promote long-term benefits for consumers and to improve community wellbeing.¹ An updated version of this objective could be usefully couched within an ESG framework, to ensure that 'community wellbeing' is defined in a way that captures environmental and social as well as economic 'wellbeing'.

Competition Principles should promote competition through 'consumer empowerment'

PEXA agrees with the Treasury Consultation Paper's suggestion that consumer empowerment through information, data access and informed decision-making should be explicitly promoted by the Competition Principles (p. 29).

In practice, we see strong synergies between this recommended objective and Treasury's suggestion for a new Principle to 'facilitate competition through data sharing' (p. 30). Adding both of these new Principles would greatly assist in modernising Competition Policy so that it remains relevant and 'fit for purpose' in an age of rapidly expanding digital services.

Competition Principles should promote competition through market design and regulation

PEXA agrees with the Treasury Consultation Paper's suggestion that market design, regulatory oversight and stewardship should foster competition, wherever possible (p. 30). This is particularly relevant in the context of newly emerging services and markets in the digital services sector that have been identified as requiring oversight and/or regulation.

In setting out this objective, the Principles should clearly state that the ultimate purpose of promoting competition is its long-term benefits to consumers and community well-being. The Principles must clearly state that the promotion of competition in newly emerging services and markets is a means to an end, and not a final objective in its own right. Regulation impact assessments and regulatory design for new markets should be conducted rigorously and to take account of all identified costs and benefits to consumers as well as to service providers and other stakeholders.

¹ Harper, P Anderson, S McCluskey, M O'Bryan, *Competition Policy Review – Final Report*, Australian Government Treasury, March 2015, p 96. Cited in Treasury Consultation Paper, p. 27.

1.2 National Competition Reform Agenda: leveraging the economic opportunities of data and digital technology

Leveraging the economic opportunities of data and digital technology

PEXA strongly supports the Treasury's recommended long-term objective of 'leveraging the economic opportunities of data and digital technology' through competition reform (p. 40).

We see clear and direct synergies between this Reform Agenda theme and the Treasury's proposals to extend the Competition Principles to include 'consumer empowerment' and 'facilitating competition through data sharing'.

With regard to digital technologies, the competition reform agenda should aim to improve Australia's competitive position relative to other global economies, as well as fostering competition within Australia. The latest IMD world competitiveness rankings (2024) indicate that Australia has plenty of room to improve its global competitiveness – and economic productivity – in digital services. In 2024, Australia ranked 21st of 67 larger economies for scientific infrastructure (up from 22nd in 2023) and 23rd for technological infrastructure (up from 32nd in 2023). The IMD rankings confirm our technological infrastructure for digital applications remains uncompetitive due to:

- 'mobile phone costs' (53rd of 67 countries),
- 'internet speeds' (50th),
- 'communications technologies' (45th) and
- 'investment in telecommunications' (40th).

On the other hand, the IMD rankings confirm that Australia's regulatory environment is a source of strength. Australia ranked relatively well with regard to 'institutional and regulatory infrastructure', with 'law and regulations that encourage enterprise competitiveness' ranked 15th and 'adaptability of government policy' ranked 17th.² This suggests our regulatory settings can and should step up to support reforms that boost our national digital competitiveness.

The complex role of data-sharing in a competitive economy

PEXA agrees with the Productivity Commission's (PC's) finding that greater data sharing between the public and private sectors would help to improve businesses productivity, consumer decision-making and community wellbeing. The PC also recommended the Australian Government work to enable greater government data-sharing in order to aid

² IMD *World Competitiveness Yearbook 2024: Competitiveness Profile, Australia* (Aug 2024).

research and boost product innovation. Any public-private data-sharing and access however, must always be subject to stringent privacy and security considerations.³

For example, PEXA sees clear pathways to achieving some benefits in Australia's trillion-dollar property market, through greater access (in a confidentialised and aggregated form) to property-related data owned by government agencies. Greater access to public-sector property data would assist public, private and academic entities to conduct evidence-based, real-time research to address housing affordability, housing supply and homelessness, all of which are urgent national policy priorities.

In the case of data that is held or owned by private businesses and entities however, PEXA cautions that rigorous, independent regulation impact assessments and detailed cost-benefit analysis must be conducted before encouraging or requiring private-sector businesses to share disaggregated individual consumer data with each other. The costs associated with building systems, processes and safeguards that can authorise and share individuals' data in a secure and appropriate way are often substantial, and are often under-estimated prior to commencement. These costs may not be justified by the benefits to end-users, if there is not significant consumer demand for the information or services that the data-sharing enables. Therefore, potential future demand must be comprehensively and genuinely assessed as part of the cost-benefit assessment.

History tells us that policy-makers and regulators should not simply assume that there will be significant consumer demand for products that depend upon service providers sharing data with one another, merely because the technologies to do so seem to be possible. The recent performance of the 'Open Banking' platform enabled by the Consumer Data Right is a case in point. A review of Open Banking by Accenture in 2024 (for the ABA) found that four years after Open Banking was first launched, only 0.3% of banking customers had accessed it in order to switch accounts or loans as intended. Accenture found that the Open Banking system provided low benefits to a very small number of consumers and no viable business-use cases for new applications. This was in contrast to the huge cost of building it – estimated at more than \$1.5 billion over six years, with large costs incurred by financial institutions and regulators. Based on these numbers, the AFR concluded that Open Banking "*risks turning into a White Elephant*".

Of greater concern to competition reform, Accenture found evidence that Open Banking's "*compliance burdens and complexity are inhibiting competition outcomes*" by disadvantaging smaller lenders and imposing proportionately higher costs onto them (relative to their business size). This suggests that Open Banking may have been counter-productive to the objectives of

³ Productivity Commission, *5-year Productivity Inquiry: Volume 4 - Australia's Data and Digital Dividend*, 2023, p 56. Cited in Treasury Consultation Paper, p. 41.

industry-level competition reform, due to the large operational and compliance costs imposed on all financial service providers, regardless of their size and resources.⁴

These experiences illustrate that poorly designed requirements for private businesses to share their customer data with other businesses could discourage future investment and innovation in data collection and management systems. This risk is higher if data-sharing requirements can be imposed retrospectively on proprietary data systems and/or impose large costs.

1.3 Institutional and Governance Arrangements

Federal and state government agency roles and responsibilities require greater attention at the very earliest stages in the design of any new competitive markets, for the sake of all consumers and stakeholders. The recent pause in ARNECC's eConveyancing Interoperability Program – after more than six years of intensive, expensive work by ARNECC and stakeholders – is a salutary example of the importance of early attention to:

- Rigorous, realistic cost-benefit analysis;
- comprehensive assessment of assumptions and risks AND the regular updating of those assessments (e.g. when new technologies or evidence become available);
- clear and logical governance roles and responsibilities;
- the technical and operational capabilities of regulators;
- the risks involved in complex industry-transformation programs; and
- the specialist skills required to successfully design and deliver policy objectives.

ARNECC's Ministerial Forum announced its halt to the development of National eConveyancing Interoperability in a letter to stakeholders and markets in June 2024 (Appendix A).

⁴ James Evers, "Banks spent \$1.5b on account switching. No one is using it", *Australian Financial Review*, 3 July 2024. <https://www.afr.com/companies/financial-services/banks-spent-1-5b-on-account-switching-no-one-is-using-it-20240702-p5jqei>

2. PEXA's story: from COAG GBE to ASX listed company

PEXA Group is well placed to contribute to this review of the NCP. PEXA has worked in close collaboration with regulatory and revenue agencies at all levels of government, over several decades. We are working to improve competition and productivity for all property businesses and consumers, through the full implementation of national eConveyancing.

PEXA's own (ongoing) evolution can provide a useful blueprint for the successful development of productivity-enhancing digital technologies for Australian businesses. PEXA's unique digital exchange has grown from a Government Business Enterprise (GBE) initiated by COAG into an ASX listed company. It has evolved within the context of a tightly regulated, multi-jurisdiction environment and in close collaboration with multiple other GBEs. This evolution means that PEXA's experience and insights are highly relevant to this timely review of the National Competition Principles and the development of a new ten-year National Competition Reform Program, which will focus on '*Leveraging the economic opportunities of data and digital technology*' (reform theme 5 in the NCP Consultation Paper).

2.1 PEXA commenced as a COAG initiative to reform Australian property conveyancing

PEXA originated as the National Electronic Conveyancing Development Ltd (NECD) in 2010, which was formed from a 2008 COAG initiative to move Australia away from a complex, disjointed model of paper-based property conveyancing, with every state and territory running their own system, to a single national digital conveyancing platform that is accessible to all property conveyancing professionals nationally.

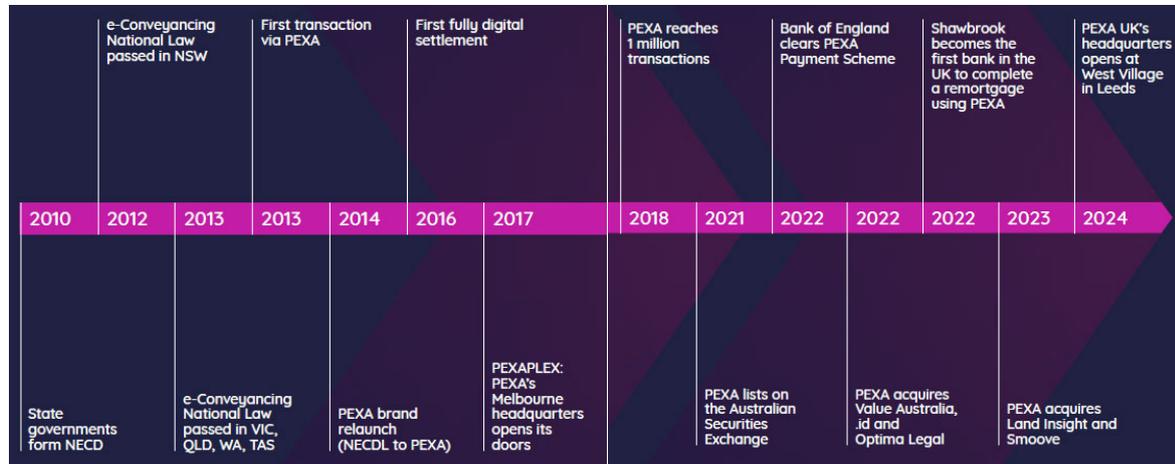
Establishing a national eConveyancing platform has been enormously complex, from a technical and regulatory perspective. But it has, by any reckoning, been successful, with Australia today acknowledged as a world-leader in e-conveyancing and PEXA recognised as a unique digital success story that is now taking its homegrown technology overseas. PEXA's e-conveyancing platform held Australia in a good stead during the COVID-19 pandemic disruptions, when other countries struggled to maintain property market activity.

Over the course of this journey, PEXA's ownership model has evolved from a government-owned enterprise in 2010, to joint public-private ownership, to an ASX listed company in 2021.

In 2024, PEXA is now very close to finally realising COAG's original ambition to deliver a single, national e-conveyancing solution to all Australians. Seven of Australia's eight jurisdictions are now digitally integrated for e-conveyancing, with the first transactions now being processed in Tasmania. The Northern Territory is preparing to commence e-conveyancing during FY26. In

total, it will have taken over 10 years to enable access to digital services for all eight of Australia’s jurisdictions.

Figure 1: COAG’s NECD evolved into PEXA Group, an ASX listed company. 2010 to 2024



2.2 Benefits of PEXA eConveyancing

It’s hard to remember how cumbersome the old paper-based system was, but what once took weeks – with the chance of errors every step of the way and the final settlement on a house handled in person in a room of lawyers – now takes a matter of minutes in a seamless, simple and secure digital workspace. PEXA’s platform has become the backbone of the Australian property market, handling more than 90% of all property sales and mortgage refinances.

For users of the PEXA platform, The benefits of electronic conveyancing include:

- efficiency and time saving,
- increased transparency,
- reduced fraud and errors; and
- faster and more reliable processing.

When the benefits to government, industry and consumers of e-conveyancing were measured in 2020, they were estimated at a net \$240 million per year, and that was before e-conveyancing was mandated in Queensland or expanded in other states.

As of 2024, more than 16 million transactions worth a total of \$3 trillion have passed through the Exchange, which is directly connected into six land registries and state revenue offices nationally, as well as the Reserve Bank of Australia. More than 160 financial institutions and around 10,000 legal and conveyancing firms rely on PEXA every day for the effective settlement of real property. Most importantly, around 20,000 families per week settle their homes through the PEXA Exchange.

Consistent with the original COAG vision for a unified national eConveyancing platform, PEXA charges the same fee for each transaction type on the PEXA Exchange, regardless of the jurisdictional location of the property, the number of transactions or the type of subscriber – from small regional conveyancers to large city legal firms and from small community banks to the major banks. We believe this flat fee structure is important, in order to facilitate inclusion and entry into the legal/conveyancing and finance markets and to avoid tilting those markets in favour of large firms or finance providers. For end consumers, this means their eConveyancing costs are not affected by their choice of bank, lawyer or conveyancer. Fees on the PEXA Exchange are heavily regulated and typically move only with CPI, ensuring they remain affordable for home buyers and sellers.

As the facilitator of transactions worth millions of dollars every day, ensuring the security and resilience of our exchange and our ability to manage increasingly sophisticated and constantly evolving cybersecurity risks remain our highest priority. PEXA maintains 100% platform availability across business hours, while continuing to invest in new services that improve the customer experience.

In recognition of the benefits of eConveyancing, the PEXA property exchange was designated as national ‘critical infrastructure’ by the Commonwealth Government’s Cyber and Infrastructure Security Centre in 2023. PEXA is proud to join the ranks of vital national assets whose security and resilience are paramount for the country’s economic wellbeing. This designation places additional reliability, security and reporting requirements on PEXA’s property exchange operations. It also adds a further layer of regulatory complication to the practical implementation of competitive interoperability between multiple ELNOs in Australia’s property and mortgage markets.

In addition to creating the PEXA Exchange and establishing eConveyancing in Australia, PEXA has a proud reputation for working innovatively and collaboratively with our customers (banks, lawyers and conveyancers) and industry regulators, to improve outcomes and efficiency for property market participants, for consumers and for the Australian economy as a whole. As an example, PEXA is currently working directly with stakeholders and regulators to develop efficient solutions for the implementation of the Federal Government’s planned extensions of Anti-Money Laundering and Counter-Terrorist Financing (AML and CTF) legislation to ‘Tranche 2’ entities. PEXA is aiming to improve the efficiency and efficacy of the desired regulatory outcomes while also reducing the cost and impact of these reforms, particularly on our small business customers. PEXA is drawing upon its own technical eConveyancing expertise, as well as the experience of similar reforms in international jurisdictions.

2.3 Competition reform and Interoperability in Australian eConveyancing

PEXA is currently the only Electronic Lodgement Network Operator (ELNO) operating at scale in Australia. The legal framework for developing and operating eConveyancing within Australia is overseen by ARNECC, under the auspices of a COAG intergovernmental agreement. Since 2018, ARNECC has attempted to implement 'Interoperability' in eConveyancing. This program involves mandating complex inter-connections between multiple ELNOs in order to promote the development of multiple platforms and a 'competitive' new industry. As of 2024, there have been only two licenced ELNOs – PEXA and Sympli – and just two pilot transactions conducted. These pilot transactions highlighted the high level of resources, complexity and costs of Interoperability for all participants, including ARNECC, financial institutions and regulators.

After many years – and millions of dollars – invested in the development of ELNO Interoperability by ARNECC, industry stakeholders, financial institutions and regulators, ARNECC's Ministerial Forum formally halted the Program in June 2024 (see Appendix A)⁵. This halt was expressed to be primarily due to regulatory and jurisdictional concerns, but industry stakeholders have repeatedly pointed to functional impacts and to cyber and technical risks, that are costly and potentially insurmountable.

Given the huge cost and complexity of duplicating ELNO exchange infrastructure and securely linking exchange networks, it is not clear that seeking to promote competition through interoperability between multiple ELNOs will deliver a service that users value, or that it will deliver greater consumer benefits than the additional costs. It is now clear to all stakeholders in this process that eConveyancing Interoperability:

- is more complex than originally envisaged, from a technical and regulatory perspective;
- is more costly to develop, implement and maintain for both providers and users (for example, it requires a high number of new APIs to be maintained by all parties);
- provides smaller cost savings to end-users, and may even prove to be more expensive;
- carries greater cybersecurity and reliability risks for providers and users;
- does not have the support and confidence of key stakeholders in industry.

For the property industry more broadly, the long timeframe and extensive resources invested in attempting large-scale complex industry transformation has proved counter-productive to competition-enhancing reform in other parts of the property industry value chain. In particular, it has delayed the retail interface of eConveyancing between user systems (such as Practice Management Software) and back-end ELNO functionality. It is likely that retail interfaces offer much larger opportunities for industry-wide productivity improvement than interoperability.

More detail about eConveyancing Interoperability is included in the Appendixes attached.

⁵ ARNECC Ministerial Forum, *National eConveyancing*, 11 June 2024. Attached in full as Appendix A.

3. Abbreviations

ACCC	Australian Competition and Consumer Commission
ASX	Australian Stock Exchange
ARNECC	Australian Registrars' National Electronic Conveyancing Council
COAG	Council of Australian Governments
ELNO	Electronic Lodgement Network Operator
GBE	Government Business Enterprise
IGA	Intergovernmental Agreement
IPART	Independent Pricing and Regulatory Tribunal
NCP	National Competition Policy
NECD	National Electronic Conveyancing Development Ltd
PC	Productivity Commission
PEXA	Property Exchange Australia
RBA	Reserve Bank of Australia

Thank you to the Chair and the Committee for the invitation to participate at this standing committee inquiry. Thank you also for the permission to table a short written document to enable the use of this time more effectively.

With your permission, Chair, I'll make a short opening statement before taking questions from the Committee.

PEXA is a new company established by COAG to create electronic conveyancing in Australia

PEXA was a Council of Australian Governments initiative to create a national electronic conveyancing system that provided a more efficient, reliable, resilient and secure system of property transfer in Australia.

Initially owned by a number of State Governments and some leading banks, PEXA, in just 10 years, has transformed the process of property purchase and sale in Australia.

As a creation of COAG, key principles on which electronic conveyancing was established were to provide a national exchange platform covering all States and Territories and that the price charged for each type of transaction should be consistent across the country and all users so that smaller jurisdictions and smaller organisations were not disadvantaged.

PEXA has delivered, and continues to deliver, on these principles:

- Since our first transaction in late 2013, the PEXA Exchange now operates in all States and Territories other than Tasmania and the Northern Territory. In that time the PEXA Exchange has facilitated more than 16 million property transactions with a value of over \$3 trillion. We are actively working with the Tasmanian Government to introduce e-conveyancing to Tasmania in financial year 2025 and have had early discussions with the Northern Territory Government.

- Our pricing continues to provide a standard fee for each transaction type regardless of the State or Territory to which the transaction relates and whether the subscriber is in the city or the regions or whether it is a major corporation or a small business.

The principles of inclusion and consistency remain core for PEXA.

Benefits of electronic conveyancing

PEXA's Exchange now provides a reliable, resilient and secure infrastructure to efficiently execute property transactions across the country. System availability was 100% during business hours over the 2023 financial year.

Electronic conveyancing has delivered significant benefits to consumers, Governments and property industry participants over the 10 years since our first transaction. This was particularly evident during COVID where electronic conveyancing continued reliably and enabled record volumes of transactions to be safely and securely completed – a far cry from what would have occurred under the old process of paper-based transfers, bank cheques passed across the table in a settlement room.

The benefits of electronic conveyancing include:

- efficiency and time saving,
- increased transparency,
- reduced fraud and errors; and
- faster and more reliable processing.

A report by KPMG commissioned by the NSW Government in 2018 found that, even with the state of PEXA's Exchange platform back then:

- e-conveyancing had reduced the time legal practitioners and conveyancers needed to work on a transaction by 60%-70%; and
- administrative and incidental cost savings, including travel, couriers and bank cheques that were eliminated, offset the vast majority of the PEXA fee – indeed an elimination of bank cheques alone covered about two-thirds of the PEXA fee.

Since then, PEXA has continued, in collaboration with our customers, to innovate and drive further improvements to make the PEXA Exchange platform even more robust and create further efficiencies through the industry.

PEXA recognises the responsibility which comes as the operator of critical infrastructure. So in addition to our own innovation and development, we also recognise the need to collaborate and to allow others to innovate leveraging the PEXA Exchange platform.

This includes allowing our customers and companies such as providers of practice management software for lawyers and conveyancers to integrate with the Exchange through APIs to provide a even better and more seamless experience. PEXA takes the approach that access to those APIs should be available on a non-discriminatory basis to enable broad innovation and choice.

Market Structure

e-conveyancing has a total addressable market of \$300 million. This is relatively small compared to other infrastructure style markets in the country. By way of comparison the two largest companies in the telecommunications industry had combined revenue of approximately \$29 billion in the 2022 financial year.

Since 2018, there have been two licenced Electronic Lodgement Network Operators: PEXA and Sympli.

Sympli is a joint venture of two large organisations, each of which is larger than PEXA and each of which is dominant in their respective fields:

- the Australian Stock Exchange (with a market capitalisation of around \$11bn compared to PEXA's \$2bn); and
- the ATI Group which is the dominant provider of practice management software solutions to lawyers and conveyancers.

As with any industry and new business, a stable regulatory environment with proper regulatory oversight and considered policy development is important for certainty and confidence.

Inter-operability was not policy when PEXA was founded or when the PEXA Exchange was being built. As a result, the design and architecture of the PEXA Exchange did not contemplate inter-operability and the current design of inter-operability will cut across many aspects of the design of the PEXA Exchange.

Given the now critical role of the PEXA Exchange, changes to the Exchange and to e-conveyancing policy need to be designed and managed conscious of the importance of maintaining reliability, resilience and security of e-conveyancing.

It is important to note that while inter-operability is now topical in the context of e-conveyancing policy, it is not a widely used model, either here in Australia or internationally.

In large part, that is because it is complex to implement – particularly in embedding into pre-existing systems – and to oversee.

Indeed, in a submission to the Council of Financial Regulators' Review of *"Competition in Clearing Australian Cash Equities"* in 2015 the Australian Stock Exchange (who owns 50% of Sympli) specifically stated that:

“Interoperability does not seem to be a feasible option for Australia. No other single market has been fragmented by regulatory design to then be ‘pieced back together’ through interoperability.” [Page 6]

and described inter-operability as involving:

“a new and complex market structure, with highly uncertain outcomes for the financial system, the industry and end-investors”. [page 5]

In the context of the complexity of inter-operability, the Australian Stock Exchange noted the relatively small scale of the Australian market for equities clearing and other factors which it submitted weighed in favour of other models for the market and competition. These submissions made in the context of equities settlement which is simpler than e-conveyancing.

The reality is that inter-operability is far more complex to design, execute and build than was represented and assumed at the start. That is why it is taking time. That is why, even to get to this early stage of two pilot transactions in September 2023, ARNECC’s interoperability program has had to consider over 120 change requests. PEXA supports a reliable, resilient and secure e-conveyancing market.

It supports innovation, including making integration available to others (customers and providers of other services) on a non-discriminatory basis so they can innovate and help support further efficiencies and better experience for our customers, for consumers and the community.

And we welcome competition on the basis of fair and considered policy.

We also respect the role of the regulator. Clear stable policy and regulation and effective regulators are critical for investment, particularly in infrastructure such as e-conveyancing.

However, in this case we are concerned decisions and expectations have not been based on a full appreciation and critical analysis of the issues. That is becoming clearer as we approach the pilot transactions. After all, that is the very reason you do a pilot.

It is now clear that the complexity, the time required, the cost and the impact on industry stakeholders are all significantly greater than originally assumed and that the resources required of all industry participants, including ARNECC, to implement the regime and that will be required to administer it on an ongoing basis are also greater than originally assumed.

We think that the pilot transaction in September provides a sensible time for a proper review of the policy. However, unless and until there is a review and change of policy, PEXA will continue to deliver and to constructively participate in the interoperability program.

PEXA submission

to

NSW Productivity Commission Market study on eConveyancing

12 March 2024

Study scope

The NSW Productivity Commission announced in December 2023 that it would conduct a market study on eConveyancing.

The NSW Productivity Commission indicated that its study will examine:

- The effectiveness of competition in the eConveyancing market

This submission by PEXA addresses each of these questions in turn.

- 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 Commission indicated that the study will not be reviewing current interoperability reforms but will focus on further evolutions of competition.

1 The effectiveness of competition in the eConveyancing market

1.1 The purpose of competition

In general, competition is “effective” when it serves a public policy purpose. Competition is primarily effective because it either reduces prices for consumers, or promotes innovation that is valued by consumers, and these are more valuable than any collateral impacts. Competition is *not* an end in itself.

Evaluating whether competition is “effective” in eConveyancing must therefore assess:

- How much is competition likely to reduce price?
- How much is competition likely to promote innovation?
- What are the collateral impacts of introducing competition?

It is helpful to distinguish between:

- “**wholesale**” functions in eConveyancing that require close integration with the enablers of conveyancing, particularly titles offices, State revenue offices and financial institutions; and
- “**retail**” functions in eConveyancing that primarily integrate with representatives of individual transactors such as conveyancers.

As the remainder of this submission will show, in the wholesale portion of eConveyancing:

- Competition between electronic lodgement network operators (ELNOs) is unlikely to reduce prices by much in the overall scheme of conveyancing costs because PEXA’s current prices are already small relative to overall conveyancing costs and property transaction costs;
- Competition between ELNOs is unlikely to promote much innovation because many of the participants (particularly titles offices, stamp duty offices and banks) value consistency in eConveyancing, and would only value innovations simultaneously adopted by all ELNOs; and
- The collateral costs of introducing competition to the wholesale portion of eConveyancing would be substantial because:

- The fixed costs of creating additional ELNOs are high relative to industry revenue
- The costs of creating interoperability functionality which is needed to overcome network effects are high relative to the benefits of ELNO competition
- The costs to some participants of creating functionality to interact with multiple ELNs are high relative to the benefits of ELNO competition
- Interoperable functionality introduces additional points of entry, increasing cybersecurity risks that have potentially catastrophic consequences
- Interoperable functionality introduces increased risk of transaction failure, which can impose very high costs on Subscribers relative to ELNO payments.
- Wholesale competition requires that public regulators take on a number of functions previously performed by PEXA and add further capability to manage the more complex environment and extensive scope arising from interoperability, which will add to the overall cost of eConveyancing, which must ultimately be passed on to consumers.

By contrast, increasing competition in other parts of the eConveyancing industry, particularly in the integration between conveyancing practice management software systems and any wholesale provider of eConveyancing ELNO services, is likely to result in significant productivity improvement, particularly in the operations of conveyancers and financiers.

1.2 Defining the eConveyancing industry

Up until the early 2010s, property transacting remained a mainly manual, paper-based process. Over the past decade many elements of conveyancing have been digitalised. We are interpreting the ‘eConveyancing industry’ to encompass the activities that enable electronic processing of property transactions and financing in Australia.

On this basis, the eConveyancing industry includes ELNOs and many of the activities of lawyers, conveyancers, lenders, mortgage brokers, real estate agents, and those that supply the electronic tools and platforms they use. Land registries and revenue offices also play critical roles. Together, these parties and platforms facilitate electronic processing of conveyancing transactions, property lending, other types of property dealings, and lodgements of property records with title registrars. These services are provided for consumers, business and governments who buy, own, sell or refinance property.

Key eConveyancing industry participants include:

- 13k small and some larger conveyancers and law firms serving diverse markets.
- 46k real estate agencies employing more than 87k real estate sales agents.
- Four major banks, several smaller banks with a presence throughout the country and a large number of other financial institutions, credit unions and mutuals providing and discharging mortgage-backed property financing. Many loans are originated by ~9k mortgage brokers.
- More than 10 providers of digital practice management software platforms relied on by lawyers, conveyancers, and agents.
- Two electronic lodgement network operators (ELNOs) authorised to electronically settle and lodge transfer, refinancing and other property dealings.
- Six land registries and five revenue offices (with Tasmania preparing to join later this year and Northern Territory commencing 2025-26).

1.3 ELNOs in the context of eConveyancing and conveyancing

Electronic lodgement network operators (ELNOs) are only a relatively small part of the eConveyancing industry, and an even smaller part of the overall conveyancing industry.

Total ELNO revenues in Australia in 2022-23 (primarily earned by PEXA, with the remainder received by Sympli) were \$263m.¹ The costs and revenues of other participants in electronic conveyancing are not available, but include many of the activities of conveyancers, banks, practice management software providers, land registries and revenue offices. The total costs of transacting property are much larger.

Across all parties to a transaction, PEXA's fees as an ELNO (assuming the highest cost case in which the seller discharges a mortgage and the buyer takes out a mortgage) are \$380.² Typical conveyancer revenues (from buyer and seller) are at least \$4,000 per transaction and the better estimate is that they average more than this.³ Typical financier costs are hard to assess because financiers often absorb some or all of the transaction costs in interest charges. In addition, costs are incurred by other participants in eConveyancing transactions including land registries and revenue offices. More broadly, property transaction costs also include the costs of marketing, sale and purchase management (typically provided by real estate agents and related platforms). Jarden estimates that listing costs are around \$4,000 for a median house in Brisbane Melbourne and Sydney, and real estate agent fees are between \$18,000 in Brisbane and \$33,000 in Sydney.⁴ Overall, this implies that ELNO costs are substantially less than 10% of conveyancer costs, and 1% of overall transaction costs (not including stamp duties).

Because ELNO revenues are only a fraction of total conveyancing costs, complexities introduced by requiring PEXA's platform to be interoperable can reduce productivity, or forgo the opportunities for productivity improvement in the wider property transaction industry that are much larger than any plausible productivity improvement in ELNO operation. This is illustrated by the historic impact of eConveyancing on the wider conveyancing market. In 2019-20, eConveyancing was estimated to reduce conveyancing costs (and increase productivity) by \$290m, almost double PEXA's total revenues of \$155m.⁵ At the time eConveyancing had 72% penetration, and only 27% penetration in Queensland. Since then, eConveyancing penetration has increased as participation became near-universal in established markets, and as PEXA's platform expanded to operate in more Australian jurisdictions. It is very likely that productivity in conveyancing has improved proportionately.

As the remainder of this section shows, while the introduction of interoperability for wholesale eConveyancing will almost certainly reduce productivity, greater competition for the retail functions of eConveyancing is likely to improve productivity by encouraging interventions that reduce conveyancer costs. Competition may also enable more open data sharing that would reduce the costs to consumers of inflated prices for reselling title information and that would generate benefits from providing homeowners and borrowers with real time national data about the property market.

¹ PEXA (2023) *Annual report 2022-23*. Sympli reported revenues were \$0.2m.

² \$132 each for buyer and seller, and \$66 for each financier.

³ Quotations from Conveyance.pro for handling a property sale of \$1.2m with a \$600,000 mortgage in Victoria identified 25 conveyancers with a median indicative price of \$950 (which excludes disbursements). In PEXA's experience, most conveyancers charge considerably more. Jarden estimates that typical solicitor fees (for both parties combined) for a house transaction in Sydney, Melbourne and Brisbane are between \$7,500 and \$10,000 (probably including disbursements): Jarden (2023) "Breaking down housing turnover".

⁴ Jarden (2023) "Breaking down housing turnover"

⁵ Avsar S and Horton D, *The Net Economic Value of eConveyancing in FY20*.

1.4 The effectiveness of competition for wholesale eConveyancing services

The NSW Productivity Commission has indicated that it does not intend its market study to examine current interoperability reforms, and instead intends to focus on further evolutions of competition. However, PEXA's view is that this approach is not appropriate or coherent because current interoperability reforms will delay, if not postpone indefinitely, further evolutions of competition.

1.4.1 Inherent barriers to effective competition for wholesale eConveyancing

Competition is not effective for wholesale eConveyancing services because the industry has inherent features that reduce the benefits and increase the costs of competition. As shown in Table 1, wholesale eConveyancing has high fixed costs, there are network effects that are uneconomic to overcome, universal service obligations are difficult to deliver in practice with multiple wholesalers, and multiple wholesalers substantially increase risks.

Table 1: Inherent barriers to realising the benefits of competition in wholesale eConveyancing

Barrier to realising the benefits of competition	Application to wholesale eConveyancing
<p>High fixed costs would be incurred in duplicating the infrastructure required to deliver the wholesale part of the value chain.</p>	<p>The eConveyancing market has high fixed costs. IPART’s Final Report shows that industry costs would be lower with only one wholesaler,⁶ and this conclusion would be reinforced if IPART’s analysis were adjusted to take into account evidence that the fixed costs of building an ELNO transaction engine are in the order of \$182 million.⁷</p>
<p>There are network effects (where the value of the services to consumers is higher the more other consumers use the same platform). AND</p> <p>It would add excessive costs to overcome these network effects through interoperability (i.e. links between wholesale platforms where customers use different wholesalers)</p>	<p>The eConveyancing market exhibits network effects: the platform is more valuable to conveyancers if more conveyancers also use the platform. AND</p> <p>Current interoperability reforms were intended to reduce the barrier to entry created by network effects, but the costs to ELNOs and banks to implement interoperability are much higher than originally thought, and on the information now available the additional costs of interoperability are greater than the benefits of wholesale competition.</p>
<p>There is a policy goal to provide universal access to services for consistent prices (i.e. a universal service obligation, or ‘USO’). AND</p> <p>Some services, jurisdictions or customer segments are not economic to serve (and so must be ‘cross-subsidised’); AND</p> <p>There is no cost-effective practical way to regulate to ensure that at least one competitor provides universal access.</p>	<p>EConveyancing aims to result in consistent national pricing;⁸ AND</p> <p>Lower volume jurisdictions and transaction types are more expensive to service; AND</p> <p>New wholesale ELNOs have economic incentives to cherry-pick the most profitable jurisdictions and transactions.⁹ IPART has acknowledged the problem of cherry-picking, but declined to address it through inter-ELNO pricing, and ARNECC has not yet defined any mechanism likely to deter cherry-picking in practice.¹⁰</p>
<p>Multiple wholesalers unacceptably increase risks</p>	<p>Additional wholesalers, and interoperability between them, create many additional points of entry,¹¹ and the costs of cybercrime are very high for eConveyancing, which depends on reliability and trust</p>

⁶ See below, section 1.4.2

⁷ See below, section 1.4.5

⁸ Model Operating Requirements, version 6.2, clause 5.2 require ELNOs to enable lodgement of all registry instruments and other electronic documents capable of lodgement in all jurisdictions, with consistent national pricing.

⁹ IPART (2023) *Interoperability pricing for Electronic Lodgment Network Operators, Final Report*, pp. 66-7.

¹⁰ As set out in PEXA (2023) Submission to IPART, Draft Report into Interoperability pricing for ELNOs, p.19-21, MOR requirements that all ELNOs provide universal coverage are difficult to enforce, and in practice new entrants may seek to operate while providing much less than universal coverage for an extended period.

¹¹ See below, section 1.4.4

1.4.2 Competition will fail to reduce wholesale eConveyancing costs

The attempts to impose interoperability to promote wholesale eConveyancing competition despite these problems is likely to *increase* overall costs to consumers, defeating one of the key purposes of introducing competition for wholesale eConveyancing services.

When interoperability was first proposed, the net benefits to consumers were small after taking into account the additional costs of another wholesale platform, and interoperability. When the original assumptions are revised with the benefit of current knowledge, it is apparent that interoperable wholesale competition for eConveyancing services will impose net additional costs on consumers, as well as arbitrarily aiming to transfer value from PEXA to a new entrant.

A cost-benefit review by CIE¹² in 2020 estimated that the 10-year NPV benefits of interoperability would be \$84m which equates to less than 3% of industry revenue expected over the period, or about \$3 per billing event. The assumptions for the CIE study were made before selecting a particular interoperability model. Relative to the best information now available, the study substantially under-estimated the costs, timelines and complexity of interoperability, and the costs of building a new ELNO.

- The CIE report assumed that the capital costs for ELNOs to enable direct connection interoperability would be \$15m for PEXA (and \$5m for Sympli) but PEXA will have spent in excess of \$16m by end of FY24 and expects that its overall costs to build interoperable functionality will exceed \$30m.
- The CIE report also failed to take into account the costs of interoperability for related parties (including Financial Institutions, Land Title Registries and State Revenue Offices). It is now apparent that to implement interoperability, banks and other stakeholders will incur significant capital costs to reconfigure their systems and internal processes.
- The CIE report significantly under-estimated the capital cost of building a new ELNO. Its theoretical outside-in estimate that core ELNO capability can be built for between \$4.5 and \$5.2 million is not credible in the face of lived experience that it costs around \$182 million to build an ELNO.¹³

As a result a properly updated cost-benefit analysis is almost certain to show that interoperability will overall destroy value.

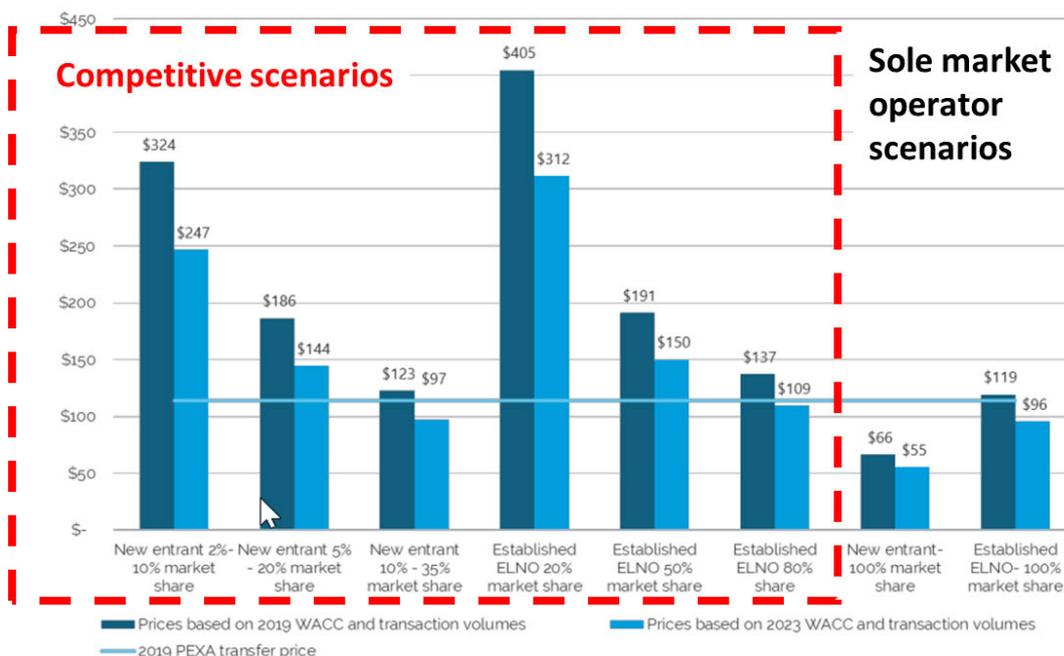
IPART's work on interoperability from June 2023 (reproduced in Figure 1) also suggests that overall ELNO costs will be higher in all competitive scenarios than if there is a single ELNO, presumably because building an ELNO has high fixed costs relative to industry revenue. On IPART's analysis, the only scenario in which a benchmark efficient ELNO is likely to charge prices materially lower than PEXA's current prices is where a new entrant entirely displaces PEXA to become a monopoly provider – and the primary driver of this outcome is that the new provider takes the entire benefit of PEXA's development of eConveyancing technology and participation without paying for it. Even this analysis is flawed as it appears to under-estimate the fixed costs of building an ELNO.

¹² CIE: Addressing market power in electronic lodgement service https://www.thecie.com.au/s/CIE-Final-report-Addressing-market-power-in-electronic-lodgment-services_CBA-01092020.pdf

¹³ See below section 1.4.5

Figure 1: IPART estimates of efficient ELNO pricing of ‘transfer with settlement’, FY19

Figure 6.1 Illustrative prices for a benchmark efficient ELNO (transfer with financial settlement) (\$2018-19) including GST



Source: IPART (2023) *Interoperability pricing for Electronic Lodgment Network Operators, Final Report*, p.64.

1.4.3 Competition will fail to improve wholesale eConveyancing innovation

The current approach to wholesale competition for eConveyancing is also very unlikely to deliver substantial innovation – indeed it is more likely to inhibit innovation.

The nature of wholesale eConveyancing requires a highly consistent process in which innovation is unlikely to be helpful unless it is simultaneously adopted by all participants.

Wholesale eConveyancing facilitates collaboration between unrelated parties to efficiently execute complex transactions. Each transaction participant is highly reliant on other participants to complete discrete steps, to produce consistent documentation, and to share transaction data in a timely way. The lodgment instruments and financial settlement they jointly create must collectively fulfil a wide range of requirements for lending, transacting, lodgment and settlement. These requirements originate from multiple sources (eg registries, revenue offices, laws, policies and duties of lenders and practitioners) but they fall differently onto each participant.

If the purpose of competition is to promote innovation, then it is expected that each competitor will develop what they think is the best model, sequencing, terminology and interfaces for their target groups of users.

However, if one participant uses an ELNO with an alternate processing approach, other participants may be involuntarily impacted if the alternate process does not result in consistent processing, documentation and information flow. Inconsistencies can be highly disruptive for large organisations such as financial institutions that are seeking to standardise and streamline the processing of their transactions. It will also lead to confusion and inefficiencies for smaller organisations that do not have the scale to cope with similar transactions having different processing paths due to the platform choices made by other participants.

Inconsistency can also disrupt advice, guidance and error rectification conducted by platform operators. If there is a problem with a transaction using a single ELNO, all participants are viewing the same interfaces and using the same business rules. They can each obtain assistance from the same source and they can freely communicate with each other. In a multi-ELNO transaction, participants will be viewing different interfaces, using different specialist terminology with different business rules, and they will each be contacting a different help centre. In the current environment, PEXA refers to Land Titles Offices or State Revenue Offices for clarification on more complex matters, and interacts closely with them to work through the issues. These interactions will be more complex if different ELNOs address the same issue to different people within the Titles Office or State Revenue Office, so that the ELNOs may receive inconsistent advice.

The potential costs of differences in wholesale eConveyancing processes have become more apparent to key users of ELNOs over the past 12 months. These users now all argue publicly that the wholesale ‘back end’ of ELNOs’ functions should be standardised, and PEXA is unaware of any significant firm in the eConveyancing industry that argues otherwise. Even the new entrant, Sympli, now argues that the back end should be standardised, and innovation confined to customer services and user interfaces.¹⁴

Box 1: Back end innovation and standardisation in practice – the Autobalance case study

In recent years, PEXA developed a range of special features to improve the productivity of conveyancing participants. These features are not *required* to complete transactions. Instead they provide automation and integration that reduces manual workloads for ELNO customers.

For example, PEXA introduced an Autobalance function, which enables funding providers to pre-set maximum acceptable variances in final settlement amounts when they authorise payment instructions. The feature allows automatic adjustments in cases where mortgage payouts or require equity contributions vary slightly due to late changes in inputs (eg rates payable). Without this tool, participants would need to manually change and reapprove payment instructions, often under critical time pressures. Autobalance reduces administrative costs and also contributes to more transactions settling on time, benefiting consumers.

Autobalance relies on data that can originate from several transaction participants. While this data could (if collected) be exchanged between ELNOs, the Autobalance feature also relies on some users accepting minor variations to settlement amounts determined by the ELNO using proprietary algorithms and processes embedded within the ELNO platform.

If participants use different ELNOs, this function will be degraded unless all ELNOs implement it in the same way with the same business rules. Otherwise, participants who rely on this function would need to create a manual back up process to support interoperable transactions, adding to operating costs and increasing the risk of delayed or failed settlements.

¹⁴ Presentation given by Sympli (Chief Legal & Governance Officer) to the Registrars of Title conference in October 2023.

However, if all back-end features are standardised, then by definition competitors will simply duplicate back-end infrastructure, albeit with the additional costs, complexities and risks of interconnection.

Nevertheless, ARNECC has tried to promote for wholesale eConveyancing the benefits of both innovation (so that ELNOs can have different features) and standardisation (so that users have a consistent experience whether they participate in a standard or an interoperable transaction). ARNECC has tried to mandate this outcome by:

- Increasing the scope of interoperability to include various PEXA features that are part of the existing eConveyancing experience (although the features specified are not sufficient to maintain the full experience of PEXA customers)
- Introducing a principle of “functional equivalence” which requires that customer enjoy a consistent experience between interoperable and non-interoperable transactions.

Unfortunately this compromise faces technological, legal and logical hurdles that cannot be overcome by requirements inserted into the eConveyancing operating rules.

ARNECC’s functional equivalence principle requires that features such as PEXA’s Autobalance function feature (described above) operate when multiple ELNs participate in a transaction. To do so, ELNs will need to operate identical business rules and process flows for each feature. For example, all ELNOs will need to program their system to undertake the exact same dance steps as currently undertaken by PEXA to deliver the Autobalance feature. This requires that the ELNO with the innovation shares the business rules and process flows, and that all ELNOs build corresponding features so that participants provide the right inputs at the right time, and these are processed in the same way.

There are significant problems with ARNECC’s approach.

- The approach removes the incentives for an ELNO to innovate. Any innovation for wholesale eConveyancing would need to be shared with all other ELNOs, which would dissipate any benefit of differentiation.
- New ELNOs would be unable to make strategic trade-offs to build some features but not others; instead, they would effectively be required to build functionality to mirror all of PEXA’s features, reducing the incentive to build their own.
- The approach may well be beyond ARNECC’s power. It appears that ARNECC accepts that it is not empowered to require any participant to disclose its intellectual property. While ARNECC has asserted that PEXA can and should facilitate functional equivalence without disclosing intellectual property, functional equivalence can only be delivered in practice if PEXA shares its detailed business rules and process flows, which PEXA believes are part of its intellectual property. PEXA has requested that ARNECC articulate how it believes functional equivalence can be delivered without disclosing intellectual property, but ARNECC has not yet responded. PEXA’s lawyers are in the process of again writing to ARNECC setting out these issues in more detail asking ARNECC to explain its position.

The model of wholesale eConveyancing being pursued is also likely to slow the adoption of innovative features. The model of interoperability being implemented is likely to promote cherry-picking as new entrants focus on high-volume jurisdictions and transactions. The model of inter-ELNO fees recommended by IPART will not substantially reduce the incentives for cherry-picking. Although in theory all ELNOs are required by the Model Operating Rules to implement comprehensive functionality, ARNECC is unlikely to enforce this requirement in practice for an

extended period of time, if ever.¹⁵ Consequently, ELNOs will have little incentive to implement functionality for new lower volume jurisdictions and transaction types.

The pursuit of wholesale eConveyancing competition is also crowding out the development of retail eConveyancing competition, as discussed below in section 1.5.

Consequently, competition for wholesale eConveyancing is likely to *reduce* innovation.

1.4.4 Competition in Wholesale eConveyancing will increase risk

For most Australians, property is their largest asset, and property transactions are the largest monetary transactions in their lives. Individuals, and society more broadly, have zero tolerance for loss associated with these transactions. eConveyancing has improved security compared to paper-based dealings and to date has an exemplary record. Maintaining security and national confidence in eConveyancing is essential to a large number of economic and social outcomes. Recognising this importance, in 2023 the Department of Home Affairs recognised the PEXA Exchange as ‘Critical Infrastructure’ under the *Security of Critical Infrastructure Act*. The designation as ‘critical infrastructure’ imposes enhanced security obligations that PEXA is currently enacting.

A representative of the Australian Bankers Association recently indicated in an ARNECC forum that 30% of settlements could fail if interoperability proceeds as currently proposed. Settlement failures are more likely because the level of technical complexity is much higher, and valuable automation tools may be degraded or become non-functional if they are not implemented by all ELNOs. It will take longer to fix each failure because there will be no longer be a central body with the skills, responsibility or authority to expedite resolution of failed settlements, missing funds or technical outages. Responsibility will be distributed, leading to significant delays, confusion and frustration across the ecosystem.

In the UK's fragmented industry, PEXA consumer research found that one third of buyers and sellers experience unexpected delays with 8% reporting ill-health as a result. This would be unacceptable in Australia where 82% of four-party property transactions achieve on-day settlement.¹⁶

A report prepared independently for PEXA by security experts, found that the risks of tampering / repudiation, information disclosure and non-availability risks would also be greater in a multi-ELNO environment. These risks include:

- Inter-ELNO message spoofing to commit financial fraud, because it would be harder for an ELN to verify or trust that messages purporting to be from the subscriber of another ELN are in fact from a valid subscriber that is properly authorised to represent the party for which they have digitally signed documents.
- Proceeding with transactions processed by a subscriber whose authority has been revoked, because it would be harder for an ELN to verify whether a subscriber's authority has been revoked by another ELN.
- A data breach in one ELNO impacting other ELNOs (e.g. an ELNO may share personal information across a workspace to another ELNO, which then discloses that information in a data breach)
- Reduced incentives to adequately invest in protecting data because the weakest ELNO would effectively set the standard of vulnerability for all other ELNOs.

¹⁵ See PEXA (2023) *Submission to IPART, Draft Report into Interoperability pricing for ELNOs*, p.19-21.

¹⁶ PEXA internal statistics, February 2023.

- A greater cyber-attack surface, particularly the additional gateways for inter-ELNO transactions, which would be vulnerable to interference by foreign governments or criminal organisations.

The multi-ELNO environment also reduces control over these risks because there would not be a single organisation responsible for:

- Centralised coordination responsible for identifying and resolving transaction failures and outages, and investigating and mitigating the root causes to prevent future outages.
- Centralised oversight and control of data to adequately monitor and discover fraud and tampering.

When interoperability was first developed, it was asserted that competition would increase resilience because if one ELNO experienced an outage, users could easily switch to another to complete their transaction.¹⁷ However, as design work has proceeded it has become apparent that competition *reduces* resilience because in any transaction involving more than one ELNO, if one ELNO is down, then all are down. In practice, participants will be unable to switch to another ELNO during outages or disruptions because documents and details that are in flight are contained within each ELNO. Transactions can only proceed if each and every ELNO participating in a transaction is operating and connected to all participants involved. With more ELNOs involved in a transaction, the opportunity for failure increases.

Interoperability also reduces resilience because it depends on the continued functioning of more than 60 individual APIs between ELNOs. If any one of these APIs has a defect or communications impediment, then all interoperable transactions will be impacted.

Further risks are introduced because PEXA has been designated as Critical Infrastructure, and other ELNOs not so designated are likely to be weaker links in the network. This may lead to ELNOs designated as Critical Infrastructure imposing additional requirements before they trust transactions (data and information) from ELNOs not designated as Critical Infrastructure. This would add further complexity and cost to eConveyancing.

1.4.5 The failure of wholesale eConveyancing competition in practice

PEXA remains Australia's only full-service ELNO despite governments committing to interoperability reform in Sept 2020, expecting an operable system within 15 months by Dec 2021. A fully functional interoperable system is now officially not expected for another 2 years in December 2025 in Qld and NSW. PEXA (and others) believe that a fully functional interoperable system will not in fact be delivered until much later. After several years of developing its system, the only other licensed ELNO is currently processing a relatively small number of non-interoperable refinance transactions, and does not generally offer its services to the public.

Interoperability has turned out to be much more difficult, costly, and time-consuming to implement than was expected when the reform began, and it is creating substantially greater risk than was originally foreseen.

PEXA suggests that wholesale eConveyancing competition has failed in practice because it pursued an interoperability approach. With the benefit of hindsight and current knowledge, this was a sub-

¹⁷ ARNECC (2021), *Regulation Impact State: Options for promoting competition in the market for electronic lodgment network operators*, p.15. CIE (2020) *Addressing market power in electronic lodgment services*, p.44-45

optimal means to promote competition, and incorrectly concluded that the benefits of competition would outweigh the costs. In addition, the execution of the reform has been sub-optimal.

Most fundamentally, interoperability focused on facilitating a new entrant into parts of the eConveyancing value chain where there are high barriers to realising the benefits of competition (see above section 1.4.1).

Wholesale eConveyancing also took a big bang approach to reform that pre-committed to competition across the value chain.

- The precommitment is long – on the current ambitious timetable the reform will commence full operation 2 years from today, and over 5 years from when jurisdictions decided to pursue interoperability (noting PEXA’s view that the current timetable is not backed by detailed analysis and is implausible).
- The precommitment from new participants is large: the new ELNO has already spent over \$95m, and PEXA estimates (based on its own experience) that the IT costs for building a full-service ELNO that can participate in all parts of the eConveyancing value chain is in the order of \$182 million (noting there are significant other costs involved in establishing a successful ELNO business).¹⁸
- The pre-commitment from other industry participants is significant: PEXA expects to spend \$25-\$30m building interoperability functionality, and bank participants will need to spend substantial resources to each building integration infrastructure for the new ELN). PEXA and other stakeholders are incurring significant costs and will continue to incur further costs on non-IT deliverables.¹⁹ For instance, PEXA estimates that the non-tech costs of negotiating the contractual framework between ELNOs, Subscribers, settlement institutions, Land Registries and Revenue Offices are in excess of \$7 million.²⁰

¹⁸ PEXA (2023) *Submission to IPART, Draft Report into Interoperability pricing for ELNOs*, p.9-10. While the view expressed in IPART, *Interoperability pricing for Electronic Lodgement Network Operators: Final Report*, p.52-53 is that IPART can rely on theoretical outside-in estimates by Deloitte and AECOM that an eConveyancing platform can be built for \$8m, this is simply not credible: it is more than ten times lower than the actual costs incurred by PEXA in Australia, PEXA in the UK and Sympli in Australia. And contrary to IPART’s claim that this development cost must be too high because it implies a per-transaction cost roughly half-way between current prices for a transfer and a refinance transaction, this is roughly the average development cost that would be expected in an industry with very high fixed costs. IPART’s analysis also depends on the assumed payback period, which, in IPART (2019) *Review of the Pricing Framework for Electronic Conveyancing Services in NSW, Final Report*, p. 46 was stated to be only 2 years. In this context, PEXA notes that its platform is not cash positive after 10 years, let alone providing a return on capital: PEXA (2023) *Submission to IPART, Draft Report into Interoperability pricing for ELNOs*, p.27.

¹⁹ Non-IT deliverables will include activities to project manage the IT build, to work with ARNECC to design interoperability technical specifications, to update PEXA’s system for APIs, to develop network stability and governance arrangements, to test and implement each interoperable transaction in each jurisdiction, to develop a new risk and liability allocation regime, and subsequently insurance, to develop and negotiate the interoperability agreement between ELNOs, to develop and implement a new complaint and dispute resolution framework (as interaction is now required with other participating ELNOs), to train and support ELNO staff and subscriber staff to use multiple ELNOs, to assess and monitor broader network’s cybersecurity (because additional APIs create additional points of vulnerability), to undertake incident management (Business Continuity Plans, Root-Cause Analysis, and incident reports) with other ELNOs, to participate in an end-to-end security assessment not conducted to date and which is critical to minimising risks of change such as increased cyber security risks to consumers and industry participants: see PEXA (2023) *Submission to IPART, Draft Report into Interoperability pricing for ELNOs*, p.13-14.

²⁰ PEXA (2023) *Submission to IPART, Draft Report into Interoperability pricing for ELNOs*, p.9.

This big-bang approach also meant that to deliver net benefits, the implementation of the reform would need to be consistent with the original assumptions over many years. It is inherently difficult to predict the impacts of complex change over several years.

Unfortunately, with the benefit of hindsight many of the original assumptions about wholesale eConveyancing competition have been contradicted by real world experience:²¹

- The interoperability system is more complex and expensive to deliver than first expected, and timelines and costs are continuing to blow out;
- Interoperability will not promote much innovation because it has emerged that standardisation is essential to the effectiveness of back end functionality;
- The interoperable system will have less, not more, functionality than PEXA's current platform and change requests will also be exponentially more complex requiring ARNECC to oversee and co-ordinate operational aspects of changes across ELNOs;
- Interoperability will have substantial impacts on participants as it has emerged that many will need to modify their systems to accommodate the systems of new entrants;
- Issues with financial settlement regulation have emerged that will be difficult to resolve;
- The interoperable market creates an unstable industry structure not originally identified, including unresolved problems of cherry picking, free-riding and self-preferencing;
- The execution and oversight of interoperability requires substantial additional capability and resourcing of the regulator (ARNECC), which has not been forthcoming to date (see Section 3);
- Security and stability will be worse, not better – and a full end-to-end security assessment of interoperability still has not been completed by ARNECC; and
- Legal issues have become more obvious, not least that ARNECC's objectives for interoperability will only be workable if ARNECC is prepared to impose obligations on PEXA that go beyond the authorising provisions for interoperability and compel PEXA to surrender its intellectual property without compensation.

As a result, in the light of current knowledge, it is almost inevitable that implementing interoperability will destroy value and reduce productivity, while imposing significant opportunity costs.

The reform has also not been tightly executed. ARNECC is notionally responsible for overseeing the reform, but it is composed of the heads of the land titles office in each jurisdiction, and has a rotating part time chairperson supported by an executive assistant. Various interjurisdictional part time working groups support ARNECC. The interoperability reform itself has been overseen by one part time program director with support from an assistant and test manager, even though industry participants are expending tens of millions of dollars to implement its requirements.

PEXA understands that ARNECC has recently hired an additional resource to supervise regulatory aspects of interoperability reform. While welcome, this remains well short of the regulatory resources that PEXA believes will be required for a fully implemented interoperable system, as discussed in section 3.

The lack of regulatory project management has contributed to the slow progress of interoperability. In addition, no end-to-end risk assessment has been commissioned, let alone implemented. Five

²¹ See PEXA *Letter to ARNECC Re ARNECC Interoperability timetable*, 28 June 2023

commencement dates have been announced, usually with little supporting planning or analysis, and all but one have been missed.

PEXA submits that the appropriate response is not to double down on wholesale eConveyancing competition. Nor can future reform focus on further evolutions of competition and simply assume that interoperability will successfully implement efficient wholesale eConveyancing competition. Such an approach would build on foundations of sand.

1.5 The effectiveness of competition for retail eConveyancing services

There are better prospects for retail eConveyancing competition to be effective in increasing productivity, but to date there has been little competition in practice.

Retail eConveyancing could provide better electronic integration between conveyancing and financial institution systems with PEXA's systems, substantially improving productivity and reducing costs. The integration would potentially enable better subscriber workflow management and management control. It should reduce processing time and reduce errors and risks through double handling and re-keying of information.

Retail eConveyancing might also allow retailers to build their own tailored workflows and user experiences. By providing user interfaces specifically tailored to particular market segments, such as family law, probate administration or mortgage lending, retailers could align eConveyancing processes more precisely with the processes required for specific market segments. Retailer innovation might design better workflows than PEXA has developed on its platform.

The potential productivity gains from integrating PEXA's system with new entrants are likely to be much larger than any improvements in ELNO efficiency as a result of wholesale eConveyancing competition. Whereas conveyancer costs include substantial labour for each transaction, PEXA is a straight-through electronic processor in which the marginal labour for a routine transaction is minimal. Consequently, there is substantial opportunity to compress conveyancer labour costs through increased electronic processing, whereas wholesale eConveyancing has far less cost than can be compressed in this way.

However, to date there has been little retail eConveyancing competition. In practice, it has been crowded out by attempts to introduce wholesale eConveyancing competition. It is difficult in practice to deliver both reforms at once.

- ELNOs would simultaneously have to build interoperability functionality (requiring interactions with back-end participants and other ELNs) and build new functionality in parallel so that all ELNOs meet requirements to interact with new retail entrants.
- A new entrant ELNO would have to do this while simultaneously also replicating PEXA's end-to-end functionality.
- Regulators, including ARNECC, would have to build simultaneously the regulatory framework for interoperability and the regulatory framework for retail eConveyancing.

2 The best ways of promoting long-term competition, building on the current interoperability reform.

The current approach to industry reform has assumed a binary choice between two extreme market structure positions – regulating the entire industry as a natural monopoly; or attempting to provide end-to-end competition which is unlikely to be effective or efficient.

As outlined in the previous section, the current interoperability approach:

- has turned out to be much more difficult, costly, and time-consuming to implement than was expected when the reform began,
- cannot deliver the benefits of lower prices or innovative products/services to customers and consumers,
- has significantly greater collateral impacts than were originally foreseen, and
- is creating substantially greater risks than were originally foreseen.

PEXA submits that a ‘ladder of investment’ approach would better achieve policy objectives through the introduction of competition. PEXA has outlined its position on the matter in a letter to ARNECC on eConveyancing reform (December 2023). The letter is attached in **Appendix A** and sets out:

- The reasons why a ‘ladder of investment’ approach to eConveyancing is likely to create more public value than the current approach that prioritises interoperability (section 1);
- The design of a ladder of investment for interoperability to facilitate the early entry of new retail competitors (section 2); and
- The practical steps required to implement a ladder of investment approach for eConveyancing (section 3).

However, PEXA submits that it would not be appropriate to adopt a ladder of investment approaching building on the current interoperability reform as that would compound the challenges in the current interoperability model. PEXA notes that the NSW Productivity Commission has no sound basis to conclude that the current interoperability reform is an appropriate starting point. It is further from delivery today than when it was first announced.

The ladder of investment approach is necessarily proposed as an alternative rather than an additive to the current sub-optimal approach to interoperability reform. Even if interoperability were a high-quality reform proceeding according to plan, it would not make sense to press ahead with it while simultaneously pursuing a ladder of investment approach.

Firstly, the two approaches are incoherent:

- The ladder of investment approach assumes that some retail competition is worthwhile, but whether more extensive competition should be pursued will be determined over time in the light of experience; by contrast interoperability assumes that full wholesale competition should be pursued immediately;
- The ladder of investment focuses regulatory effort and participant investment where it is most likely to work and adapts over time; interoperability commits in advance to large regulatory effort and participant investment, hoping that it is well-directed.

Second, it is difficult in practice to deliver both reforms at once for the reasons outlined in the previous section 1.5

3 Question 3: The resources (including sources of funding), governance, and regulatory structures needed to ensure a sustainable and long-term competitive eConveyancing market.

Substantial resources are required to govern and regulate an effective eConveyancing industry. Even more resources are required to govern and regulate an interoperable wholesale eConveyancing industry.

3.1 Current governance

Although eConveyancing is nominally regulated by ARNECC, most industry participants are regulated by other bodies. Historically, land registrars were responsible for maintaining accurate registers of interests in land. The work of lawyers, conveyancers, lenders, brokers and agents remains generally outside registrars' scope, and is regulated by other State or Commonwealth bodies.

The desire for electronic lodgement of property dealings with registries led to legislation that enabled registrars to regulate the creation of ELNOs, which they authorise to lodge documents with their registry. This is consistent with registrars' longstanding duty to protect the integrity of each registry.

EConveyancing proved its value well beyond document preparation and lodgement, to enable simultaneous financial settlement and a range of related tasks. This innovation has been driven by industry and has delivered large productivity and security gains for all.

Under the ladder approach that PEXA has proposed, eConveyancing should expand its productivity benefits even further, to enable digital integration with agents, brokers and other services that property owners require.

However, the capacities and capabilities of registrars have not been extended by governments to enable them to regulate financial settlement or eConveyancing as a whole. Their authorising legislation specifically prevents them from incurring any liability should their regulation of financial matters fail consumers.

3.2 Ongoing governance required by interoperability

The current interoperability reform creates the need for a much larger bureaucracy and locks in higher costs for consumers.

Interoperability exposes a significant gap in regulatory coverage and consumer protection, primarily around financial settlement. The gap in regulatory coverage has been managed to date because PEXA is a central player linked to all participants and it has carefully negotiated contractual arrangements with all of them. Interoperability, however, proposes such large changes to this framework that major stakeholders have expressed a loss of confidence that could only be addressed by major changes in approach. Although ARNECC currently assumes that these issues can be addressed through bilateral agreement between ELNOs, this would be inadequate because these agreements only operate between the relevant ELNOs and can't bind other parties such as customers of another ELNO. It would be even less tenable in an environment with more than two ELNOs.

Under the interoperability model it is proposed that financial settlements are to be governed by a voluntary industry Code. The Code's purpose is to protect the financial institutions and ELNOs who

subscribe to it. However, consumers and practitioners have no standing under the Code and no other organisation is proposed that they could approach for assistance or redress if their transaction fails. This is unlikely to be satisfactory because property transactions are central to economic stability, and any property transaction is usually very large relative to the balance sheet of the participating households.

PEXA's view is that this approach to financial settlement is unacceptably risky because the broad confidence that underpins the stability of eConveyancing could be lost if even a small percentage of transactions fail and are not promptly remediated. At present, PEXA is at the centre of every transaction, connected to all participants. If something goes wrong, there is a single clearly accountable party with the knowledge and connectivity to fix it. Under interoperability, there is no central coordinator. A loss of confidence will impose significant economic costs across a broad base of industry and consumers. Regaining that confidence will be arduous, representing a major setback after a decade of exceptional positive progress.

Many highly specialised functions that have, to date, been performed by PEXA will need to be assumed by public bodies in an interoperable environment. Some are detailed below. The movement of these functions into public bodies is likely to increase administrative costs and also add compliance costs for industry. It is also likely to slow decision-making, creating a barrier to pro-competition initiatives.

PEXA's view of the regulatory resources required to effectively deliver an interoperable eConveyancing industry is detailed below. This highlights the huge step-up in sophistication and capacity that would be required to deliver a competition reform as challenging as interoperability. It is not conceivable that all jurisdictions could allocate the resources required to adequately perform all of the functions below – a consolidated centralised regulatory capacity would be essential. PEXA's analysis implies that maintaining a regulatory operating system as detailed in Table 3 will require ongoing annual resources of around \$8m per annum (Table 2). The following estimates are based on PEXA's experience. The NSW Productivity Commission should supplement these estimates with discussions with regulators that operate public functions similar to those proposed such as APRA and ASIC.

Table 2: Estimated regulatory costs of managing interoperability

Function	Resources required (FTE)	Annual cost (\$m per yr)
National Regulator	10	\$2.5m
Technical Stewardship & Standards	8	\$2.0m
Economic Regulation & Market Supervision	6	\$1.5m
Cyber security, data protection and privacy oversight	8	\$2.0m
Total	32	\$7.5m

Note: Costs estimated at an average fully loaded cost of \$250k per annum.

Table 3: Regulatory resources required for a competitive eConveyancing industry

Area	Indicative ongoing resourcing
<p>A consolidated national regulator for financial settlement</p> <p>A national regulator is needed to play both a strategic and an operational role in overseeing financial settlement.</p> <p>Strategically, the regulator would outline, consult on and design financial oversight requirements applicable to eConveyancing (eg AML, KYC etc).</p> <p>Operationally, the regulator would respond in real time to failed transactions and direct rapid remediations where this was not progressing satisfactorily in the proposed disaggregated market framework. It would also take regulatory steps to enforce restitution orders and help protect consumers or practitioners who have been harmed by delays or losses not of their making.</p> <p>A national body is proposed because ELNOs (and practitioners) are currently subject to separate regulatory rules and decision-making in every state and territory where they operate.</p> <p>A body separate to ARNECC is proposed because ARNECC is a volunteer committee with a rotating part time chairperson supported by an executive assistant and various interjurisdictional part time working groups. A comparison with the resources of ASIC and APRA, responsible for financial settlements through the banking system, suggests that these arrangements are inadequate for regulating financial settlement.</p> <p>ARNECC’s current resourcing also leads to slow decision-making, with even minor approvals regularly taking more than a year and legislative change much longer.</p> <p>There are many examples where states and territories vest their authority to establish a nationally coordinated capability, such as regulation under the Australian Consumer law. ARNECC is proposing a variant of this to establish NECDS Pty Ltd to manage the eConveyancing data standards on behalf of all jurisdictions.</p>	<p>10 FTE</p>
<p>Technical stewardship and standards setting</p> <p>To date, PEXA has developed and sustained the national eConveyancing data standards (NECDS). This involves discovery and documentation of registrars’ requirements for lodgement, which change over time to serve governments’ changing laws and policies. PEXA also coordinates and supports system upgrades across the ecosystem to maintain connectivity as the standards change.</p> <p>Five years ago, ARNECC agreed to acquire the standards from PEXA so that it could take on the role in a competitive market. However, with fragmented national governance ARNECC has not been able to complete the acquisition or establish the necessary functions.</p> <p>The role will expand considerably under interoperability, because interoperability depends on extensive complex standards and ELNO adherence to them. Management of risk also requires greater standardisation of version upgrades across State and Territory land titles offices (many of which are privatised entities). ARNECC also envisages that ELNOs will be able to innovate to offer differentiated experiences to its customers that will often depend on the cooperation of competing ELNOs’. A well-resourced regulator will be required to</p>	<p>8 FTE</p>

Area	Indicative ongoing resourcing
<p>coordinate ELNOs as innovations may impose costs and duties on other ELNOs, and there may be significant conflicts over intellectual property when the regulator attempts to deliver ARNECC’s principle of functional equivalence</p> <p>In its letter to the then Chair of ARNECC, dated August 3, 2021, PEXA advised that:</p> <p><i>“For the sake of the industry relying on a stable and well-maintained data standard, NECDS Co needs to be adequately resourced and capable of undertaking not just the curation activities performed by PEXA today, but curation of the other artefacts proposed to be maintained by NECDS Co, such as the NECIDS, interface specifications and document definitions. Based on our experience in the admittedly simpler pre-competitive environment, this will require a dedicated staff of at least 6-8 FTE and a suitable governing board.”</i></p>	
<p>Economic regulation and market supervision</p> <p>IPART’s work has surfaced the complex challenges of economic regulation in the highly constrained interoperable ELNO market. Ongoing expert resources will be needed to undertake detailed market and pricing analysis, design, monitoring and adjustment. In addition to continuing analysis of inter-ELNO pricing and Subscriber pricing, the economic regulator will need to determine how to resolve currently internalised cross subsidies that deliver consistent national pricing which will be unsustainable given the cherry-picking enabled by interoperability. It will also have to determine how to reconcile demands for consistent pricing with the ability of large users of ELNOs (eg major banks and panel law firms) to demand lower prices than smaller competitors.</p> <p>The regulator will also need to regulate inter-ELNO pricing as market shares evolve, as the sustainability of an ELNO could be seriously harmed by any ill-informed pricing decisions. Given their significance, such matters are likely to be significantly contested and decision-makers will need high quality analysis and advice.</p>	6 FTE
<p>Cyber security, data protection and privacy oversight</p> <p>Cyber security is a real risk for eConveyancing. Actual financial losses have already arisen through weaknesses in the connections between consumers and their lawyer or practitioners (e.g. email hacking giving false payment directions).</p> <p>To date ARNECC has only had a minor roles in ensuring cyber security. Banks have exceptionally strong cyber governance and part of this requires counterparties to meet their standards (CPS230 - Operational Risk Management, CPS234 - Information Security, CPS231 Outsourcing / 3rd Parties and in some instances ISO/IEC 27001 - Information security, cyber security and privacy protection). PEXA has been positioned at the centre of each transaction and has taken responsibility for limiting the attack surface and for limiting, controlling and monitoring third party access to the exchange.</p> <p>In an interoperable environment where no single ELNO is responsible for monitoring overall risks, and every ELNO is exposed to the vulnerabilities of the weakest ELNO, much stronger regulatory oversight will be required.</p>	8 FTE

Area	Indicative ongoing resourcing
<p>With PEXA having been designated as critical infrastructure under the SOCI Act, the onus on regulatory supervision of parties connecting to the PEXA system to ensure the objectives of that Act are met and maintained will be significant.</p> <p>This body will also need much greater resources than those possessed by ARNECC to regulate the reuse of property related data and privacy protections.</p>	

3.3 Change management resources for interoperability implementation

In addition, substantial additional resources from regulators and industry costing around \$22.5m over three years will be required to assist participants to implement interoperability reform. These resources would be in addition to the substantial resources required for ELNOs and titles offices to build systems capable of interoperable operation (see above section 1.4.5).

The current high level of confidence in eConveyancing has been hard won over a decade through multiple and well resourced change management processes. Introduction of interoperability was promoted initially as ‘unobservable’ for participants in a transaction, and hence to date there has been no recognition or resourcing for further change management.

Detailed design work since conducted has shown that interoperability will be highly visible to transaction participants. Each ELNO is expected to comply with core standards for data exchange but is also expected to compete to offer innovative interfaces and ways of working. Hence, participants in interoperable transactions will be dealing with counterparties who are looking at different screens, following different business rules and using different specialised language.

Even if a practitioner stays with a familiar ELNO, their counterparty can choose not to, imposing change on them involuntarily.

Large banks have already confirmed that under the interoperable competition model that they will need to establish parallel teams and processes to manage interoperable and non-interoperable transactions differently. This will also be true for smaller lenders and practitioners. There are over 13,000 small and large subscriber businesses with over 30,000 users who will need to be educated and supported through a multiyear change process.

This change process cannot be managed by ELNOs alone. Even though there is only a single ELNO, when a new jurisdiction is enabled for eConveyancing, PEXA works collaboratively with the Registrar and Commissioner to lead and educate the conveyancing community in the implementation of change. In an interoperable environment, central leadership and education from the owners of the reform (for example for new functions and processes to manage multi-ELNO financial settlement incidents and disputes) will be required. While ELNOs will educate their customers regarding transaction processing changes resulting from transactions becoming interoperable within their ELN, ELNOs cannot lead or educate customers on new processes required to support other ELN functions. Across the domains intersecting multiple ELNs, independent regulator led leadership and education may be required to manage ongoing operational change.

Regulatory resources likely to be required for an industry transformation program include a Programme Manager, a Programme Co-ordinator, a Change Manager, a Quality Assurance Lead, a Legal Lead, a Customer Relationship Manager, and a Government Relations Manager.

Based on its experience of implementing the original eConveyancing reforms, while noting that interoperability is a less complex change for many participants, PEXA estimates that across the industry around 30 people will be required for 3 years to assist participants to navigate the changes and respond to inevitable confusion. Some of these resources (PEXA estimates around 5 FTE) will need to be employed by government in order to ensure consistent messaging between providers and to provide independent assurance about the change.

PEXA notes that the additional dead-weight regulatory costs as a result of interoperability are larger than the productivity gains originally projected. The size of the regulatory resources required is another reason to reconsider the interoperable approach.

Conclusion

The current ELNO industry is relatively small and its size and prices are already capped. Its current service is popular and with it Australia leads the world. The problem that interoperability seeks to solve has never been articulated. The cost efficiencies in wholesale e-Conveyancing, which appear to be the major target of reform, are inherently small – they were originally estimated at around \$3 per transaction. The costs of reform that have now become apparent are much larger.

There are further productivity gains to be generated in electronic settlement and lodgement, however, through alternative models of competition reform using the low risk ladder of investment approach. Continuation of the current path, unless changed, will lead (as one banking sector leader has said) to ‘catastrophe’. Significant disruption to property settlements and home lending is now entirely foreseeable.

PEXA thanks the NSW Productivity Commission for the opportunity to highlight the seriousness of the current situation and suggests that the unavoidable extra costs and negative impacts on customers that are in prospect mean that changing course must be the priority recommendation of your review.

Les Vance
Chief Customer & Commercial Officer
PEXA

Appendix A: PEXA letter to ARNECC on eConveyancing industry reform

Thank you to the Chair and the Committee for the invitation to participate at this standing committee inquiry. Thank you also for the permission to table a short written document to enable the use of this time more effectively.

With your permission, Chair, I'll make a short opening statement before taking questions from the Committee.

PEXA is a new company established by COAG to create electronic conveyancing in Australia

PEXA was a Council of Australian Governments initiative to create a national electronic conveyancing system that provided a more efficient, reliable, resilient and secure system of property transfer in Australia.

Initially owned by a number of State Governments and some leading banks, PEXA, in just 10 years, has transformed the process of property purchase and sale in Australia.

As a creation of COAG, key principles on which electronic conveyancing was established were to provide a national exchange platform covering all States and Territories and that the price charged for each type of transaction should be consistent across the country and all users so that smaller jurisdictions and smaller organisations were not disadvantaged.

PEXA has delivered, and continues to deliver, on these principles:

- Since our first transaction in late 2013, the PEXA Exchange now operates in all States and Territories other than Tasmania and the Northern Territory. In that time the PEXA Exchange has facilitated more than 16 million property transactions with a value of over \$3 trillion. We are actively working with the Tasmanian Government to introduce e-conveyancing to Tasmania in financial year 2025 and have had early discussions with the Northern Territory Government.

- Our pricing continues to provide a standard fee for each transaction type regardless of the State or Territory to which the transaction relates and whether the subscriber is in the city or the regions or whether it is a major corporation or a small business.

The principles of inclusion and consistency remain core for PEXA.

Benefits of electronic conveyancing

PEXA's Exchange now provides a reliable, resilient and secure infrastructure to efficiently execute property transactions across the country. System availability was 100% during business hours over the 2023 financial year.

Electronic conveyancing has delivered significant benefits to consumers, Governments and property industry participants over the 10 years since our first transaction. This was particularly evident during COVID where electronic conveyancing continued reliably and enabled record volumes of transactions to be safely and securely completed – a far cry from what would have occurred under the old process of paper-based transfers, bank cheques passed across the table in a settlement room.

The benefits of electronic conveyancing include:

- efficiency and time saving,
- increased transparency,
- reduced fraud and errors; and
- faster and more reliable processing.

A report by KPMG commissioned by the NSW Government in 2018 found that, even with the state of PEXA's Exchange platform back then:

- e-conveyancing had reduced the time legal practitioners and conveyancers needed to work on a transaction by 60%-70%; and
- administrative and incidental cost savings, including travel, couriers and bank cheques that were eliminated, offset the vast majority of the PEXA fee – indeed an elimination of bank cheques alone covered about two-thirds of the PEXA fee.

Since then, PEXA has continued, in collaboration with our customers, to innovate and drive further improvements to make the PEXA Exchange platform even more robust and create further efficiencies through the industry.

PEXA recognises the responsibility which comes as the operator of critical infrastructure. So in addition to our own innovation and development, we also recognise the need to collaborate and to allow others to innovate leveraging the PEXA Exchange platform.

This includes allowing our customers and companies such as providers of practice management software for lawyers and conveyancers to integrate with the Exchange through APIs to provide a even better and more seamless experience. PEXA takes the approach that access to those APIs should be available on a non-discriminatory basis to enable broad innovation and choice.

Market Structure

e-conveyancing has a total addressable market of \$300 million. This is relatively small compared to other infrastructure style markets in the country. By way of comparison the two largest companies in the telecommunications industry had combined revenue of approximately \$29 billion in the 2022 financial year.

Since 2018, there have been two licenced Electronic Lodgement Network Operators: PEXA and Sympli.

Sympli is a joint venture of two large organisations, each of which is larger than PEXA and each of which is dominant in their respective fields:

- the Australian Stock Exchange (with a market capitalisation of around \$11bn compared to PEXA's \$2bn); and
- the ATI Group which is the dominant provider of practice management software solutions to lawyers and conveyancers.

As with any industry and new business, a stable regulatory environment with proper regulatory oversight and considered policy development is important for certainty and confidence.

Inter-operability was not policy when PEXA was founded or when the PEXA Exchange was being built. As a result, the design and architecture of the PEXA Exchange did not contemplate inter-operability and the current design of inter-operability will cut across many aspects of the design of the PEXA Exchange.

Given the now critical role of the PEXA Exchange, changes to the Exchange and to e-conveyancing policy need to be designed and managed conscious of the importance of maintaining reliability, resilience and security of e-conveyancing.

It is important to note that while inter-operability is now topical in the context of e-conveyancing policy, it is not a widely used model, either here in Australia or internationally.

In large part, that is because it is complex to implement – particularly in embedding into pre-existing systems – and to oversee.

Indeed, in a submission to the Council of Financial Regulators' Review of *"Competition in Clearing Australian Cash Equities"* in 2015 the Australian Stock Exchange (who owns 50% of Sympli) specifically stated that:

“Interoperability does not seem to be a feasible option for Australia. No other single market has been fragmented by regulatory design to then be ‘pieced back together’ through interoperability.” [Page 6]

and described inter-operability as involving:

“a new and complex market structure, with highly uncertain outcomes for the financial system, the industry and end-investors”. [page 5]

In the context of the complexity of inter-operability, the Australian Stock Exchange noted the relatively small scale of the Australian market for equities clearing and other factors which it submitted weighed in favour of other models for the market and competition. These submissions made in the context of equities settlement which is simpler than e-conveyancing.

The reality is that inter-operability is far more complex to design, execute and build than was represented and assumed at the start. That is why it is taking time. That is why, even to get to this early stage of two pilot transactions in September 2023, ARNECC’s interoperability program has had to consider over 120 change requests. PEXA supports a reliable, resilient and secure e-conveyancing market.

It supports innovation, including making integration available to others (customers and providers of other services) on a non-discriminatory basis so they can innovate and help support further efficiencies and better experience for our customers, for consumers and the community.

And we welcome competition on the basis of fair and considered policy.

We also respect the role of the regulator. Clear stable policy and regulation and effective regulators are critical for investment, particularly in infrastructure such as e-conveyancing.

However, in this case we are concerned decisions and expectations have not been based on a full appreciation and critical analysis of the issues. That is becoming clearer as we approach the pilot transactions. After all, that is the very reason you do a pilot.

It is now clear that the complexity, the time required, the cost and the impact on industry stakeholders are all significantly greater than originally assumed and that the resources required of all industry participants, including ARNECC, to implement the regime and that will be required to administer it on an ongoing basis are also greater than originally assumed.

We think that the pilot transaction in September provides a sensible time for a proper review of the policy. However, unless and until there is a review and change of policy, PEXA will continue to deliver and to constructively participate in the interoperability program.