



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEE NO. 4

Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022

Report 51

April 2022

4



Portfolio Committee No. 4 - Customer Service and Natural Resources

Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022

Ordered to be printed 8 April 2022 according to Standing Order 231

New South Wales. Parliament. Legislative Council. Portfolio Committee No. 4 - Customer Service and Natural Resources. Report no. 51.

Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022

“April 2022”

Chair: The Hon. Mark Banasiak MLC



A catalogue record for this
book is available from the
National Library of Australia

ISBN 978-1-922543-58-5

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Terms of reference

That:

- (a) the provisions of the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 be referred to Portfolio Committee No. 4 for inquiry and report,
- (b) the bill be referred to the committee upon receipt of the message on the bill from the Legislative Assembly,
- (c) the committee report by 8 April 2022, and
- (d) on the report being tabled, a motion may be moved immediately for the first reading and printing of the bill.

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 22 February 2022.¹

¹ *Minutes*, NSW Legislative Council, 22 February 2022, pp 2927-2928.

Committee details

Committee members

Hon Mark Banasiak MLC	Shooters, Fishers and Farmers Party	<i>Chair</i>
Hon Scott Barrett MLC*	The Nationals	
Ms Abigail Boyd MLC**	The Greens	
Hon Taylor Martin MLC	Liberal Party	
Hon Peter Poulos MLC	Liberal Party	
Hon Peter Primrose MLC	Australian Labor Party	
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* The Hon Scott Barrett MLC replaced the Hon West Fang MLC as a substantive member of the committee from 1 March 2022.

** Ms Abigail Boyd MLC substituted for the Hon Emma Hurst MLC from 8 March 2022 for the duration of the inquiry.

Chair's foreword

The Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 seeks to introduce a legislative requirement for electronic lodgement network operators (ELNOs) to interoperate, as part of a two-part reform of the eConveyancing system. The bill also makes a number of further amendments relating to delegation, compliance examination and information sharing between the Registrars of each State and Territory, in order to strengthen oversight.

As part of this report, the committee has made a number of findings on the implementation of interoperability. Firstly, the committee found that there is unanimous support for competition in the electronic conveyancing industry. All participants in the inquiry told the committee that competition would bring benefits to the industry, with many suggesting that interoperability was the best means to achieve this. These same stakeholders identified potential benefits such as lower prices, improved customer service experience and greater innovation in support of this view.

Notwithstanding the fact that many spoke in favour of bringing interoperability into the eConveyancing space, the committee found that stakeholders held valid concerns around the resilience of the system. Primarily, this related to the 'readiness' of the system to go-live on the proposed mid-2023 launch date. The committee also found that the industry code – intended to provide a framework for the regulatory oversight of financial settlement – was an area requiring significant development and finalisation prior to the launch of interoperability, in order for consumers to be adequately protected.

Finally, in recognition of the fact that a second bill has been foreshadowed as a part of this two-stage reform, the committee found that this latter bill could provide a pathway for outstanding stakeholder concerns to be addressed. To ensure that both the Parliament and stakeholders can feel confident in the robustness of the overall reform, the committee has recommended that the House consider the second bill only after the industry code has been finalised and the House has received a report from the Office of the NSW Registrar General assessing the readiness of the system.

On behalf of the committee, I would like to thank all who participated in the inquiry, and who provided submissions, contributed to the online questionnaire and attended the virtual hearing. I would also like to thank the secretariat for their assistance, and committee members for their considered contributions to this process.

I present the report to the House and call on members to consider and address the concerns identified by stakeholders as set out in this report during debate in the House.



Hon Mark Banasiak MLC

Committee Chair

Findings

- Finding 1** **23**
There is unanimous support for competition in the electronic conveyancing industry.
- Finding 2** **24**
Stakeholders hold valid concerns around the resilience of the system. Further safeguards to protect consumers, including the industry code and an assessment of readiness by the NSW Office of the Registrar General, should be developed and finalised well in advance of the commencement of interoperability.
- Finding 3** **24**
A second bill, foreshadowed for introduction later in 2022, has been suggested as a pathway for further amendment to the *Electronic Conveyancing (Adoption of National Law) Act 2012* and for any outstanding details to be addressed.

Recommendations

Recommendation 1

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That the Legislative Council proceed to debate the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.

Recommendation 2

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That the Legislative Council consider the second bill, referred to in Finding 3, only after the industry code has been finalised and the Legislative Council has received a report from the NSW Office of the Registrar General assessing the readiness of the system.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 22 February 2022.

The committee received 21 submissions and one supplementary submission.

An online questionnaire was also conducted which received 4 responses.

The committee held one public hearing via videoconference on 17 March 2022.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, correspondence, tabled documents and answers to questions.

Chapter 1 Overview

This chapter provides an overview of the current electronic conveyancing system in New South Wales, along with proposed reforms to the system considered since 2018. It also outlines the background and purpose of the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, and gives an overview of the bill's provisions.

Overview of current eConveyancing system

- 1.1** Electronic conveyancing, commonly referred to as eConveyancing, is the digital completion of conveyancing transactions involving real property. In New South Wales, eConveyancing is governed by the Electronic Conveyancing National Law (ECNL), implemented in 2012 via an Appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012*.
- 1.2** The ECNL establishes a 'high-level framework' for the operation of eConveyancing.² Within this system, Electronic Lodgment Network Operators (ELNOs) provide the means, known as an Electronic Lodgment Network (ELN), for transacting parties or their representatives to collaborate electronically to complete conveyancing transactions.³ Mr Dale Turner, National Councillor, Australian Institute of Conveyancers (AIC) described how conveyancers – the primary users, or 'subscribers' – use ELNOs to complete these transactions:
- ...[Y]ou are interfacing with software that allows you to conduct a whole series of practical things within the [conveyancing] system itself... it interfaces with State Revenue...it allows you to interface with the New South Wales land registry. It allows you to interface with the financial institutions...and, of course, it allows you to interface with the other party's conveyancer or solicitor. It allows you to prepare the electronic documents and to put the financial statements within the system.⁴
- 1.3** Under the ECNL, the Registrar, the official responsible for land registry functions in each State and Territory, may establish operating requirements for ELNOs and rules around their use of an ELN.⁵ These requirements and rules are known, respectively, as the Model Operating Requirements (MORs) and Model Participation Rules (MPRs) and are based on model provisions developed by the Australian Registrars' National Electronic Conveyancing Council (ARNECC).⁶ The MORs regulate a number of operational aspects of the eConveyancing system including system security and integrity, minimum system requirements and compliance

² Victor Dominello, Second reading speech: Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, 15 February 2022.

³ Australian Registrars' National Electronic Conveyancing Council (ARNECC), *Electronic Lodgment Network Operators*, www.arnecc.gov.au/resources/links/electronic_lodgment_network_operators/

⁴ Evidence, Mr Dale Turner, National Councillor, Australian Institute of Conveyancers, 17 March 2022, p 17.

⁵ *Electronic Conveyancing (Adoption of National Law) Act 2012*, ss 22 – 23.

⁶ *Electronic Conveyancing (Adoption of National Law) Act 2012*, s 24; Victor Dominello, Second reading speech: Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, 15 February 2022.

obligations.⁷ The MPRs apply to an ELNO's subscribers and determine the rules they must comply with to be registered with an ELNO.⁸

- 1.4** ELNOs are approved by the registrar in each State and Territory to operate in that jurisdiction. To be approved as an ELNO, providers must meet the qualifications for approval set out in the MORs.⁹
- 1.5** There are currently two ELNOs approved for operation in New South Wales. The first is Property Exchange Australia Ltd (PEXA), formerly known as the National E-Conveyancing Development Ltd. Initially established in 2010 by a coalition of State governments to deliver 'a single, national e-conveyancing solution to the Australian property industry',¹⁰ PEXA was later sold to the private sector in 2018.¹¹ A second ELNO, Sympli Australia Pty Ltd (Sympli), was approved in 2018.¹²
- 1.6** According to PEXA, more than 80 per cent of all property transfers and 95 per cent of all refinances nationally are currently handled on their exchange platform, with 10,000 lawyers and conveyancers, together with approximately 150 financial institutions using their system.¹³ Evidence from Mr Philip Joyce, Chief Executive Officer, Sympli, is that Sympli has 'less than 1 per cent of the market today, doing a very defined subset of transactions'.¹⁴

Proposed reform to the system through interoperability

- 1.7** Under the current system, all parties to an eConveyancing transaction are required to use the same ELNO.¹⁵ While neither the legislation nor the MORs limit the number of ELNOs that may operate,¹⁶ the incumbent ELNO, PEXA, has been described as having a 'monopoly' over the current system.¹⁷ This issue will be explored in further detail in chapter 2.
- 1.8** Since the approval of a second ELNO, Sympli, in 2018, various stakeholders, including industry and government, have considered areas for reform in the eConveyancing system, with a focus on competition through interoperability.

⁷ Office of the Registrar General, *NSW Operating Requirements for Electronic Conveyancing*.

⁸ Australian Registrars' National Electronic Conveyancing Council, *Model Participation Rules*, https://www.arnec.gov.au/resources/consultation/model_participation_rules/

⁹ *Electronic Conveyancing (Adoption of National Law) Act 2012*, s 15.

¹⁰ Submission 10, PEXA Group, Appendix 1, p 1.

¹¹ Submission 10, PEXA Group, Appendix 1, p 1.

¹² Submission 11, Sympli Australia Pty Ltd, p 1.

¹³ Submission 10, PEXA Group, Appendix 1, p 1.

¹⁴ Evidence, Mr Philip Joyce, Chief Executive Officer, Sympli Australia Pty Ltd, 17 March 2022, p 22.

¹⁵ Submission 6, Office of the Registrar General, p 3.

¹⁶ Victor Dominello, Second reading speech: Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, 15 February 2022.

¹⁷ Submission 3, Mr Dale Turner, p 1; Submission 6, Office of the Registrar General, p 3; Submission 11, Sympli Australia Pty Ltd, p 3; Evidence, Mr Bruce Roberts, Chair, Australian Registrars' National Electronic Conveyancing Council, 17 March 2022, p 4.

- 1.9** As explained by the Hon Victor Dominello MP, Minister for Customer Service and Digital Government, interoperability refers to 'a connection between ELNOs' back-end systems for the exchange of conveyancing transaction data', allowing a customer connected to one ELNO to engage in a conveyancing transaction with a customer connected to a different ELNO.¹⁸
- 1.10** In late 2018 and early 2019, the NSW Office of the Registrar General convened a number of forums with key industry stakeholders,¹⁹ canvassing views on interoperability and the most appropriate market structure for the eConveyancing system.²⁰ Reports published by the Independent Pricing and Regulatory Tribunal of NSW (IPART) and Australian Competition and Consumer Commission (ACCC) in late 2019 also explored the benefits of interoperability, particularly its effect on competition, as well as costs associated with various models.²¹
- 1.11** By September 2020, relevant Ministers from New South Wales, South Australia, Western Australia and Queensland supported updating legislation to require interoperability among ELNOs, with the remaining jurisdictions giving in principle support. A ministerial statement was released informing the market that work would begin with industry and ELNOs to further develop the regulatory and technical approach to interoperability. At the same time, the Council of Federal Financial Relations, comprising Commonwealth, State and Territory Treasurers, supported the principle of interoperability standards between online lodgement platforms to pave the way for a competitive eConveyancing market.²²
- 1.12** In October 2020, the National Industry Interoperability Panel (the Industry Panel) was endorsed by ARNECC – comprised of State and Territory Registrars – as the main forum for consulting with stakeholders to consider interoperability from a national perspective. Designed to ensure 'extensive industry engagement', the Industry Panel is composed of registrars or their nominees and jurisdictional experts, representatives from the Australian Banking Association, AIC, Law Council of Australia, ELNOs, the major four banks and a number of other banks. The ACCC is an observer to this consultation process.
- 1.13** The Industry Panel has and continues to convene a number of committees and working groups in order to identify and address issues associated with the implementation of interoperability. This includes reviewing the technical solution to interoperability, developing data standards and business rules, as well as identifying matters to be dealt with in the MORs.²³

¹⁸ Victor Dominello, Second reading speech: Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, 15 February 2022.

¹⁹ Stakeholders included State and Territory Registrars, electronic lodgement network operators (ELNOs), law societies, conveyancing peak bodies, banks, the Australian Competition and Consumer Commission and the Reserve Bank of Australia.

²⁰ Submission 6, Office of the Registrar General, p 10, 17.

²¹ Submission 6, Office of the Registrar General, p 18. See Independent Pricing and Regulatory Tribunal of NSW, *Review of the pricing framework for electronic conveyancing services in NSW*, Final Report, November 2019; Australian Competition and Consumer Commission, *ACCC report on E-conveyancing market reform*, 2 December 2019.

²² Submission 6, Office of the Registrar General, p 19.

²³ Submission 8, ARNECC, p 3.

Background to the bill

- 1.14** In October 2021, the relevant Ministers responsible for electronic conveyancing in each State and Territory and their respective representatives met to discuss progress on the national interoperability reform. At that meeting, all ministers agreed to New South Wales introducing changes to the ECNL into the NSW Parliament in February 2022, with relevant federal ministers endorsing this timeframe.²⁴
- 1.15** In January 2022, the ministers released a joint statement confirming that amendments to the ECNL to require interoperability would be introduced into the NSW Parliament the following month, describing it as a 'key milestone to deliver a secure national interoperability regime and effective competition'.²⁵
- 1.16** According to the statement, changes to the New South Wales Act are implemented automatically in the Australian Capital Territory, Queensland, Tasmania and Victoria. The remaining jurisdictions, South Australia, Western Australia and Northern Territory, would need to take separate steps.²⁶

Referral of the bill

- 1.17** The Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 was introduced in the Legislative Assembly on 15 February 2022 by the Hon Victor Dominello MP, the Minister for Customer Service and Digital Government. It was agreed to by the Legislative Assembly on 22 February 2022 without amendment.
- 1.18** Prior to its introduction in the Legislative Council, the bill was reviewed by the Selection of Bills Committee on 22 February 2022. The committee recommended that the bill be referred to Portfolio Committee No. 4 – Customer Service and Natural Resources for inquiry and report, with the reporting date set for 8 April 2022.²⁷

Overview and purpose of the bill

- 1.19** The Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 seeks to make a number of amendments to the *Electronic Conveyancing (Adoption of National Law) Act 2012*, including the introduction of a legislative requirement for ELNOs to interoperate.²⁸ The bill also makes a number of further amendments relating to delegation, compliance examination

²⁴ *Ministerial Statement on amending the Electronic Conveyancing National Law to deliver a secure national interoperability regime and effective competition*, <https://www.arnecc.gov.au/wp-content/uploads/2022/01/Ministerial-Statement-January-2022.pdf>

²⁵ *Ministerial Statement on amending the Electronic Conveyancing National Law to deliver a secure national interoperability regime and effective competition*, <https://www.arnecc.gov.au/wp-content/uploads/2022/01/Ministerial-Statement-January-2022.pdf>

²⁶ *Ministerial Statement on amending the Electronic Conveyancing National Law to deliver a secure national interoperability regime and effective competition*, <https://www.arnecc.gov.au/wp-content/uploads/2022/01/Ministerial-Statement-January-2022.pdf>

²⁷ Selection of Bills Committee, NSW Legislative Council, Report No. 55 (2022), p 2.

²⁸ Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, cl 6.

and information sharing between Registrars designed to strengthen oversight in recognition of the national nature of the legislation.²⁹

- 1.20** The bill is the first piece of a two part reform which seeks to enable competition between ELNOs, with a second bill to implement an enforcement regime currently being developed by ARNECC.³⁰ It is proposed that both bills will be enacted before interoperability is rolled out later in 2023.³¹
- 1.21** Under the bill, the requirement to interoperate is contained in proposed section 18A. Section 18A would require any person approved as an ELNO, in accordance with the MORs, to establish and maintain interoperability between their ELN and those operated by other ELNOs.³² It also empowers the NSW Registrar General to waive compliance the interoperability requirement if the Registrar deems it reasonably necessary in the circumstances.³³
- 1.22** Mr Jeremy Cox, the NSW Registrar General explained to the committee how interoperability would function in practice:
- [T]he model is such that there will be a responsible ELNO—and that ELNO is responsible for lodging transactions with registries and settling transactions with the financial institutions—and then there will be a participant ELNO. Interoperability means a subscriber can be on any without having to be on both.³⁴
- 1.23** In addition to introducing a legislative requirement for interoperability, the bill also seeks to expand the matters that the MORs can regulate under section 22. In particular, the bill seeks to allow the MORs to require ELNOs to enter into interoperability agreements and to prescribe the types of matters that must be included within them, including standard provisions for such agreements.³⁵ The bill would also allow the MORs to establish technical and operational requirements for an ELN, as well as to make requirements around fees and charges payable to an ELNO.³⁶
- 1.24** The bill also grants Registrars new powers to require ELNOs to participate in a financial industry code. According to the submission from the Ministers responsible for electronic conveyancing in Australia, this code is currently being developed by Australian Payments Network Limited, ELNOs and financial institutions in consultation with broader industry.³⁷ Stakeholder views on the code are explored in further detail in chapter 2.

²⁹ Victor Dominello, Second reading speech: Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, 15 February 2022.

³⁰ Victor Dominello, Second reading speech: Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, 15 February 2022.

³¹ Submission 20, Ministers responsible for electronic conveyancing in Australia, under an Intergovernmental Agreement for an Electronic Conveyancing Law, p 1.

³² Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, cl 6.

³³ Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, cl 6.

³⁴ Evidence, Mr Jeremy Cox, NSW Registrar General, 17 March 2022, p 5.

³⁵ Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, cl 10.

³⁶ Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, cl 10.

³⁷ Submission 20, Ministers responsible for electronic conveyancing in Australia, under an Intergovernmental Agreement for an Electronic Conveyancing Law, p 1.

Chapter 2 Key issues

This chapter outlines the key issues raised by stakeholders in the course of the inquiry. The chapter commences with an exploration of evidence received on the importance of competition in the eConveyancing industry, including the role of the bill in creating legal certainty in order to encourage this. It also considers how interoperability might facilitate the desired increase in competition, before exploring the effect of interoperability on pricing and innovation in the industry. The chapter then explores consumer and practitioner safeguards within the bill, with a particular focus on perceived areas of weakness in the bill, including the potential for system failure under interoperability. The chapter concludes with an examination of the nature of the reforms of which the bill forms part and the timeframe for their implementation, as well as looking at the risks associated with delaying the bill.

Competition, pricing and innovation

2.1 This section explores the bill's effect on competition, pricing and innovation within the eConveyancing industry. The impact on subscribers and customers – in particular, who might benefit most as a result of increased competition under the bill – also forms part of this section.

Competition and interoperability

2.2 During the inquiry, stakeholders expressed consensus support for competition in the eConveyancing industry.³⁸ For example, Property Exchange Australia (PEXA) stated that it 'fully supports and welcomes competition' in eConveyancing.³⁹ The Law Council of Australia and the Australian Banking Association (ABA) likewise noted their support. Reflecting this consensus, Mr Dale Turner, National Councillor, Australian Institute of Conveyancers (AIC) asserted that 'no one in industry is against the objective of competition', while the submission from Sympli Australia Pty Ltd (Sympli) argued that the industry 'had been calling for competition for years'.⁴⁰

2.3 For a number of inquiry participants, the desired increase in competition would be facilitated through the bill in its mandating of interoperability.⁴¹ For example, Mr Bruce Roberts, Chair of the Australian Registrars' National Electronic Conveyancing Council (ARNECC) told the committee that the bill's introduction of interoperability 'brings effective competition' to the

³⁸ Submission 3, Mr Dale Turner, p 1; Submission 6, Office of the Registrar General, p 15; Submission 9, Law Council of Australia, p 1; Submission 11, Sympli Australia Pty Ltd p 5; Submission 12, Australian Competition and Consumer Commission, p 1; Submission 10, PEXA, p 7 and Appendix 1, p 1.

³⁹ Submission 10, PEXA, p 7 and Appendix 1, p 1.

⁴⁰ Submission 3, Mr Dale Turner, p 1; Submission 11, Sympli Australia Pty Ltd p 5.

⁴¹ Submission 9, Law Council of Australia, p 1; Submission 11, Sympli Australia Pty Ltd p 5; Submission 12, Australian Competition and Consumer Commission, p 1; Submission 6, Office of the Registrar General, p 15; Submission 19, NSW Productivity Commission, p 1.

market.⁴² Similarly, Ms Fiona Landis, Executive Director, Policy, ABA asserted that without interoperability, 'it is unrealistic to think meaningful competition will develop'.⁴³

2.4 Indeed, a number of stakeholders argued that the legal certainty brought by the bill would provide prospective ELNOs with the confidence to enter the market and pursue interoperability, thereby increasing competition. As the Minister stated, mandating interoperability in the bill will 'bring certainty to the market and will invite new players to the sector.... allow[ing] further work to continue with the confidence that government supports the process'.⁴⁴

2.5 This view was shared by stakeholders such as the NSW Registrar General, Sympli, Australian Competition and Consumer Commission (ACCC), ASX Ltd and member of the Interoperability Operational Committee, Mr Greg Channell.⁴⁵ On this issue, Sympli stated:

Stakeholders have been hesitant to invest resources into progressing interoperability without a clear legislative mandate. Some stakeholders have refused to fully engage with interoperability without legislation in place. The passage of the ECNL Bill will provide stakeholders with confidence to make these investments and motivate stakeholders to engage with the industry processes.⁴⁶

2.6 In contrast, stakeholders such as PEXA suggested that interoperability did not necessarily represent the best model for encouraging and increasing competition. Rather, PEXA's submission described the cost and complexity of delivering interoperability as making it more difficult for prospective electronic lodgement network operators (ELNOs) to enter the market, resulting in a 'long term duopoly' of PEXA and Sympli.⁴⁷

2.7 When asked about the risk of a monopoly simply being traded for a duopoly, the ACCC acknowledged that 'there is a risk that reform may not deliver the intended competitive outcome'. However, it also asserted that, notwithstanding this risk, it remained critical for certain deficiencies in the market to be addressed, including 'existing regulatory gaps...and an appropriate regulatory framework'.⁴⁸ Regulation is discussed in further detail later in the chapter.

Alternative market structures

2.8 The committee received some evidence around other potential market structures, namely a 'wholesale retail' model, that could be pursued in place of an interoperability model. The NSW Productivity Commission submission describes a 'wholesale-retail model' as:

⁴² Evidence, Mr Bruce Roberts, Chair, Australian Registrars' National Electronic Conveyancing Council 17 March 2022, p 3.

⁴³ Evidence, Ms Fiona Landis, Executive Director, Policy, Australian Banking Association, 17 March 2022, p 15.

⁴⁴ Victor Dominello, Second reading speech: Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, 15 February 2022.

⁴⁵ Submission 6, Office of the Registrar General, p 6; Submission 11, Sympli Australia Pty Ltd, p 1, 2; ; Submission 12, Australian Competition and Consumer Commission, p 2; Submission 14, ASX Ltd, p 1; Submission 17, Mr Greg Channell, p 2.

⁴⁶ Submission 11, Sympli Australia Pty Ltd, p 10.

⁴⁷ Submission 10, PEXA group, Appendix 2, p 16.

⁴⁸ Answers to questions, Australian Competition and Consumer Commission, 25 March 2022, p 12.

... one in which a monopolist ‘infrastructure ELNO’ provides back-end services such as title lodgement and financial settlement to ‘retail ELNOs’. Both the infrastructure ELNO and the retail ELNOs then compete in providing front-end services to conveyancers, solicitors, and financial institutions.⁴⁹

2.9 The submission goes on to dismiss the model as a viable alternative to the interoperability reforms proposed, noting that analyses by both the ACCC and Independent Pricing and Regulatory Tribunal of NSW (IPART) found the model ‘would likely have higher costs and lower benefits compared to the interoperability model’.⁵⁰ The NSW Office of the Registrar General made similar observations about the unsuitability of this model, noting that the ACCC had found that:

- if government chose a wholesale-retail model, they would need to mandate the exit of Sympli from the market – raising the further question of how compensation to Sympli would be funded
- this would have a “chilling” effect on future investment in eConveyancing
- the ACCC does not, in principle, support proposals that unwind the emergence of competition
- there would be a lack of incentive for the monopoly wholesale (infrastructure) ELNO to innovate
- risks to competition from vertical integration of a monopoly infrastructure ELNO.⁵¹

2.10 In contrast, PEXA noted that an equivalent risk assessment for interoperability had never been conducted, asserting that if other models ‘involve less complexity, and therefore carry lower cost and risk in terms of implementation, then these options must be more appropriate to pursue’.⁵²

Vertical integration

2.11 The issue of ‘vertical integration’ – whereby an ELNO expands into the conveyancing market to provide end-to-end services – was also raised by a number of witnesses, including representatives from the AIC and PEXA.⁵³ These stakeholders expressed concern that the bill might facilitate the creation of additional monopolies in related markets, such as conveyancing and search services. In her evidence, Ms Michelle Hendry, Vice President, AIC echoed the organisation’s submission that this issue needed to be addressed in legislation, stating:

Our key concerns are financial settlement, resolution of claims and disputes, an enforcement regime, compliance, cost and, importantly to both conveyancers and consumers, the ability for vertical integration—an ELNO competing with conveyancers and lawyers, their subscribers, by providing end to end services. As warned by the ACCC, vertical integration would be anti competitive and contrary to the public’s interest.⁵⁴

⁴⁹ Submission 19, NSW Productivity Commission, p 19.

⁵⁰ Submission 19, NSW Productivity Commission, p 19.

⁵¹ Submission 6, Office of the Registrar General, p 4.

⁵² Submission 10, PEXA group, Appendix 2, p 16.

⁵³ Evidence, Ms Michelle Hendry, Vice President, Australian Institute of Conveyancers, 17 March 2022, p 15; Submission 10, PEXA group, p 4.

⁵⁴ Evidence, Ms Michelle Hendry, Vice President, Australian Institute of Conveyancers, 17 March 2022, p 15.

- 2.12** Similarly, Mr Dale Turner, National Councillor with the AIC, remarked that while it would not be an issue for an ELNO to provide ancillary services such as title searches, 'where it becomes problematic is where an ELNO would also be able to provide a conveyancing service'.⁵⁵
- 2.13** These concerns were put to representatives from Sympli during the hearing, noting that one of the co-owners of the company is involved in property title reselling and legal practice management. In response, Mr Joyce emphasised the clear distinction between this company and Sympli set in regulation:
- Yes, we are owned by the ATI group, the ASX and staff. The ATI group do offer information broking services. In the law there is a clear separation between the companies. That is enshrined in the regulation.⁵⁶
- 2.14** Mr Joyce also rejected the idea that Sympli would move into the conveyancing space on the basis that 'it would be a strategic disaster for us to compete with the customers we want to serve'.⁵⁷
- 2.15** Mr Richard Harvey, Chair, Property Law Committee, Law Society of New South Wales asserted that while the issue had been considered, this bill was not the place for discussion to be had.⁵⁸ This view aligned with the submission of the NSW Office of the Registrar General, which noted that current 'separation' provisions in the MORs – which require an ELNO to maintain separate customer relationships from any other entity providing service – would be strengthened by the enforcement regime introduced later in the reforms.⁵⁹
- 2.16** In response to written questions from the committee, the ACCC also referred to the current regulatory framework as requiring this separation, as well as the ACCC's own role in 'promoting competition' under the *Competition and Consumer Act 2010*.⁶⁰

Pricing

- 2.17** Many stakeholders identified flow-on benefits from the introduction of competition through interoperability, including improved customer service experience and a downward pressure on prices.⁶¹ For example, the Office of the Registrar General stated that 'effective competition forces ELNOs to earn their customer – to ask "what does the customer want"'.⁶²

⁵⁵ Evidence, Mr Dale Turner, National Councillor, Australian Institute of Conveyancers, 17 March 2022, p 16.

⁵⁶ Evidence, Mr Philip Joyce, Chief Executive Officer, Sympli, 17 March 2022, p 24.

⁵⁷ Evidence, Mr Philip Joyce, Chief Executive Officer, Sympli, 17 March 2022, p 24.

⁵⁸ Mr Richard Harvey, Chair, Property Law Committee, Law Society of New South Wales, 17 March 2022, p 10.

⁵⁹ Submission 6, NSW Office of the Registrar General, p 16.

⁶⁰ Answers to questions, Australian Competition and Consumer Commission, 25 March 2022, p 9.

⁶¹ Submission 9, Law Council of Australia, p 1; Submission 11, Sympli Australia Pty Ltd p 5; Submission 12, Australian Competition and Consumer Commission, p 1; Submission 6, NSW Office of the Registrar General, p 15; Submission 19, NSW Productivity Commission, p 1.

⁶² Submission 6, NSW Office of the Registrar General, p 15.

2.18 On the effect on pricing, the NSW Productivity Commission submission cited an independent cost-benefit analysis on interoperability commissioned by the NSW Registrar General which found that mandating interoperability had 'the highest net benefit compared to retaining the status quo and increased price regulation'. The submission stated:

The analysis found that while capital and operational costs for ELNOs would likely increase by \$22.2 million and \$18.9 million, this would be more than offset by a \$94 million benefit of reduced transaction costs and a \$30.8 million dollar benefit from time savings and product improvements for consumers.⁶³

2.19 Evidence received from PEXA, however, suggested that the current eConveyancing system already delivers significant cost reductions at the practitioner level, and questioned the potential net benefit reported in the cost benefit analysis commissioned by the NSW Registrar General. According to PEXA:

The interoperability cost benefit analysis conducted in 2020 by the Centre for International Economics reported a potential net benefit of \$4 per transaction. Given that the analysis was of a different model of interoperability than is now proposed, assumed a seamless implementation process, and was prior to discovery that far greater complexity is required than envisaged, this benefit estimate should not be considered statistically superior to zero.⁶⁴

2.20 Separately, stakeholders also discussed the approach to pricing for ELNOs servicing each other. PEXA suggested that the approach to pricing under the proposed new system was still uncertain, citing various changes in position on the topic by ARNECC. For example, PEXA's submission refers to a draft rule by ARNECC that instructed ELNOs to set prices for servicing each other (known as inter-ELNO fees) in the same way they set prices for ordinary users.⁶⁵ According to PEXA, this was then replaced by a second draft rule that called instead for ELNOs to provide core services 'at zero cost'.⁶⁶

2.21 When asked about this issue at the hearing, Mr Roberts, Chair, ARNECC told the committee that ARNECC had agreed to investigate the topic further and was 'looking at the potential for the ACCC to assist us in the development of those pricing principles'.⁶⁷ These pricing principles 'would establish a mechanism to create a pricing regime between ELNOs for inter-ELNO fees, that is, the fees that they can charge each other for electronic conveyancing transactions'.⁶⁸ Mr Roberts did not comment on the fees that might be charged to subscribers or customers.

2.22 Mr Jeremy Cox, NSW Registrar General elaborated on the evidence provided by Mr Roberts, stating that this fee is 'an incurred cost by the ELNO. It is not necessarily passed on to the subscriber—that is a choice—but the ELNOs will still need to compete on prices'.⁶⁹

⁶³ Submission 19, NSW Productivity Commission, p 2.

⁶⁴ Submission 10, PEXA, pp 6-7.

⁶⁵ Submission 10, PEXA group, p 4

⁶⁶ Submission 10, PEXA group, p 4

⁶⁷ Evidence, Mr Bruce Roberts, Chair, Australian Registrars' National Electronic Conveyancing Council 17 March 2022, p 5.

⁶⁸ Evidence, Mr Bruce Roberts, Chair, Australian Registrars' National Electronic Conveyancing Council 17 March 2022, p 5.

⁶⁹ Evidence, Mr Jeremy Cox, NSW Registrar General, 17 March 2022, p 5.

Impact of competition on subscribers and customers

- 2.23** There were a variety of views as to who would benefit most as a result of increased competition. At the hearing, Mr Brendon Harper, Policy Director with the Australian Banking Association suggested that different participants in the system might benefit in different ways:

If you think of it from a customer's perspective—so that is the people looking to go into the houses—competition should drive down costs, so that will be the benefit for them. The subscribers are the people actually connecting into the ELNOs... For the subscribers, we would hope that increased competition would drive innovation and would increase customer service.⁷⁰

- 2.24** For Mr Philip Argy, Chair, National Electronic Conveyancing System Committee, Law Council of Australia, it was those users of the system 'who do not do day in, day out conveyancing' who were most likely to benefit through the system improvements competition would bring:

Infrequent users really need much more user-friendly interfaces, and competition offers the strong likelihood that those users will be much better catered for than with the current system, which is really geared to people who eat, sleep and breathe conveyancing every day.⁷¹

- 2.25** Mr Richard Harvey, Chair, Property Law Committee, Law Society of New South Wales identified subscribers – that is, lawyers or conveyancers acting for the parties to the transaction – as benefiting in the sense that incompatibility between their ELNO choices would no longer be able to frustrate a transaction:

Think in the conveyancing transaction, I am acting for the vendors, you are acting for the purchaser. I am on Sympli, you are on PEXA. Who determines which of those networks is going to be used, because without interoperability you can only use one of them? So you are going to end up with this ridiculous contractual impasse between two different practices saying, "No, I am on Sympli; you must use Sympli," and the purchaser is saying, "No, I'm on PEXA; we have to use PEXA." Without interoperability you are going to have that very basic problem. It just would not work without interoperability.⁷²

- 2.26** In contrast, Mr Dale Turner, National Councillor, Australian Institute of Conveyancing questioned whether the benefits for subscribers would instead be eclipsed by the complexity and demands of interoperability, pointing in particular to any financial gains:

Most practitioners are of the view that any financial benefits which may accrue from interoperability will largely, if not wholly, be swallowed up with additional complexity, regulatory and administrative requirements.⁷³

- 2.27** According to others, such as Sympli, the financial benefit of increased competition would be seen by customers, as price reductions would be passed on by conveyancers. When asked

⁷⁰ Mr Brendon Harper, Policy Director, Australian Banking Association, 17 March 2022, p 17.

⁷¹ Mr Philip Argy, Chair, National Electronic Conveyancing System Committee, Law Council of Australia, 17 March 2022, p 12.

⁷² Mr Richard Harvey, Chair, Property Law Committee, Law Society of New South Wales, 17 March 2022, p 12.

⁷³ Submission 3, Mr Dale Turner, p 1.

whether this downward pressure on prices would actually be felt by homebuyers, or whether it would simply go to lawyers and conveyancers as increased profit, Mr Philip Joyce, Chief Executive Officer, Sympli responded:

The industry protocol is that most fees from conveyancers pass straight through to homebuyers. So this is money straight into mum and dad's pockets... Given it is a competitive market for conveyancing services, I would be pretty confident that there would be a huge market pressure to pass those fees on.⁷⁴

- 2.28** In commenting on whether conveyancers would indeed pass any savings onto consumers, the ACCC responded that it would be 'a matter for those businesses', but noted that 'businesses typically operate in relatively competitive markets and competitive markets can be expected to deliver benefits in terms of price and/or service to end consumers'.⁷⁵

Innovation

- 2.29** Many stakeholders also referred to an increase in innovation as a likely consequence of increased competition through interoperability.⁷⁶ The ACCC stated that 'interoperability will facilitate competition, which will foster innovation and provide improved services', while the NSW Productivity Commission identified the reforms of which the bill forms part of as 'the best way to drive innovation'.⁷⁷

- 2.30** In contrast, PEXA challenged the idea that the bill would increase innovation, stating that 'the new definition of interoperability contemplates a high degree of uniformity in [Electronic Lodgement Network] lodgement capabilities'.⁷⁸ Explaining this position further at the hearing, Mr Simon Smith, Chief Operating Officer, PEXA, stated that the definition of 'interoperability' under the bill actually mandated a uniformity across future ELNOs, effectively stymying innovation:

...[W]hat we worry about in this bill is that it locks in only one particular form of competition extension... The only kind of ELNOs we can have, have to be exactly the same as PEXA... Other forms of innovation... have been ruled out by the legislation. The bill is locking in just two, exactly the same.⁷⁹

- 2.31** The committee received limited evidence on what this innovation might look like in practice. When asked how innovation might feature in a practical sense, Mr Philip Joyce, Chief Executive Officer, Sympli replied that a confluence of technology, service and value is what makes an 'innovative offering':

⁷⁴ Evidence, Mr Philip Joyce, Chief Executive Officer, Sympli, 17 March 2022, p 22.

⁷⁵ Answers to questions, Australian Competition and Consumer Commission, 25 March 2022, p 19.

⁷⁶ Submission 11, Sympli Australia Pty Ltd p 2,5; Submission 6, NSW Office of the Registrar General, p 15; Evidence, Mr Tass Liveris, Chair, Law Council of Australia, 17 March 2022, p 13; Evidence, Mr Dale Turner, National Councillor, Australian Institute of Conveyancers, 17 March 2022, p 17.

⁷⁷ Submission 19, NSW Productivity Commission, p 3.

⁷⁸ Submission 10, PEXA group, Appendix 2, p 4

⁷⁹ Evidence, Mr Simon Smith, Chief Operating Officer, Property Exchange Australia, 17 March 2022, p 29.

The way I think about that is in three ways. Number one, we have got newer technology. We have the ability to create a user experience and deliver what customers want, which largely is efficiency and time back to run their business. There are a number of ways of doing that through the platform and through the workflow. We also believe we can do that through service. Again, as you heard from the AIC and others, a fundamental part of this is giving certainty and service to mums and dads and helping conveyancers do that. So there is service proposition.

Lastly, there is delivering value. Again, it is a matter of public record that we are significantly cheaper than the current incumbent. So a mixture of innovation on the platform, the service proposition and value makes that an innovative offering, and that is without even contemplating what additional ELNOs allow us to do and design as innovative for the market as a whole, particularly as it pertains to increased redundancy and resiliency.⁸⁰

System safeguards and regulatory oversight

- 2.32** This section explores consumer and practitioner safeguards within the bill, with a particular focus on perceived areas of weakness, including the potential for system failure under interoperability. Solutions to these issues are also considered, including the appointment of an independent regulator and the suitability of an industry code to provide regulatory oversight of financial settlements.

Safeguards on system readiness and change management

- 2.33** During the inquiry, various stakeholders agreed that safeguards on system readiness and change management, in one form or another, were necessary in the implementation of interoperability.⁸¹
- 2.34** One possibility canvassed amongst all witnesses at the hearing was the idea of an independent regulator being appointed to perform an assessment of system readiness, in order to address industry and consumer concerns about cybersecurity and risk.
- 2.35** In response to this proposition, some witnesses, such as representatives from the AIC and PEXA were strongly in support of the idea. For example, Mr Dale Turner, National Councillor, AIC, described an independent assessment as an opportunity to give 'confidence to both consumers and to subscribers that the system is fully operable'.⁸² Evidence from Mr Simon Smith, Chief Operating Officer, PEXA, along with the company's submission, also strongly favoured this proposal, calling for the bill to be amended to 'include an independent expert assessment of readiness across the ecosystem'.⁸³

⁸⁰ Evidence, Mr Philip Joyce, Chief Executive Officer, Sympli, 17 March 2022, p 25.

⁸¹ Submission 10a, PEXA, p 3, 4; Submission 6, NSW Office of the Registrar General, p 7; Evidence, Mr Dale Turner, National Councillor, Australian Institute of Conveyancers, 17 March 2022, p 16.

⁸² Evidence, Mr Dale Turner, National Councillor, Australian Institute of Conveyancers, 17 March 2022, p 16.

⁸³ Evidence, Mr Simon Smith, Chief Operating Officer, PEXA, 17 March 2022, p 26; Submission 10, PEXA group, p 3.

- 2.36** Other respondents, such as representatives from ARNECC, the NSW Office of the Registrar General, the ABA and Sympli questioned the need for an independent regulator. For example, Ms Fiona Landis, Executive Director, Policy, ABA highlighted the lack of clarity around the role the additional regulator would have, and the risk that such a position might further complicate 'an already complex space'.⁸⁴
- 2.37** Mr Philip Joyce, Chief Executive Officer, Sympli noted that a number of 'tests and readiness hurdles' had already been identified as needing to be in place before the system went live.⁸⁵
- 2.38** Finally, Mr Jeremy Cox, NSW Registrar General suggested that the role of an independent regulator was already intended to be performed by ARNECC, who '...before interoperability is rolled out, [will] employ or engage independent assessments of ICT security and system readiness'.⁸⁶ Mr Bruce Roberts, Chair of ARNECC, added that who creating a further independent regulatory body – in addition to ARNECC – might lead to 'particular legal issues'.⁸⁷
- 2.39** Meanwhile, representatives from the Law Council of Australia and Law Society of New South Wales reiterated their desire that the bill not be delayed, suggesting that issues of system readiness and further technical aspects of the reform would be better addressed in the next stages of reform, a view shared in part by Mr Joyce from Sympli.⁸⁸

System resilience and risks of failure

- 2.40** System resilience and the risk of system failure was also raised during the inquiry, with some stakeholders raising concerns that interoperability may create greater risk of fraud and reduce the resilience of the overall system to cyber security attacks. There were two views regarding the risks of failure under the current bill and the potential impact interoperability would have on the resilience of the system.
- 2.41** On one hand, the NSW Office of the Registrar General asserted that the system would be more resilient with interoperability, as 'with more than one ELNO, Australia has more options for keeping open electronic lodgement and settlement if a sole operator goes offline for an extensive period of time'.⁸⁹
- 2.42** Sympli also referred to the benefits of interoperability on system resilience, contending that the continuation of 'a monopoly' placed the system at greater risk, as evidenced by the crash of the system on 30 June 2021. Mr Joyce told the committee:

Interoperability significantly improves the security of the eConveyancing system by removing the single-point-of-failure network that we have today. As we saw very clearly

⁸⁴ Evidence, Ms Fiona Landis, Executive Director, Policy, Australian Banking Association, p 16.

⁸⁵ Evidence, Mr Philip Joyce, Chief Executive Officer, Sympli, 17 March 2022, p 23.

⁸⁶ Evidence, Mr Jeremy Cox, NSW Registrar General, 17 March 2022, p 4.

⁸⁷ Evidence, Mr Bruce Roberts, Chair, Australian Registrars' National Electronic Conveyancing Council 17 March 2022, p 3.

⁸⁸ Evidence, Mr Tass Liveris, Chair, Law Council of Australia, 17 March 2022, p 10; Mr Richard Harvey, Chair, Property Law Committee, Law Society of New South Wales, 17 March 2022, p 13; Evidence, Mr Philip Joyce, Chief Executive Officer, Sympli, 17 March 2022, p 22.

⁸⁹ Submission 6, Office of the Registrar General, p 11.

last year when the PEXA system crashed on 30 June, having only one network in the sector makes the whole system vulnerable if that one network fails. Interoperability improves infrastructure resiliency by providing a golden opportunity for redundancies to be built into eConveyancing.⁹⁰

- 2.43** On the other hand, Ms Michelle Hendry, Vice President, Australian Institute of Conveyancers, argued that rather than making the system less vulnerable, more ELNOs through interoperability would create confusion around which provider was liable in case of fault. She offered an alternative view of the system crash on 30 June as an example:

We had only one ELNO and we were lucky enough to resolve those issues quickly with that ELNO... For that to occur while two ELNOs are interoperating could only create significant concerns with respect to resolving any claims or disputes as to whose fault that was at that time of the outage.⁹¹

- 2.44** Echoing his colleague's concerns, Mr Dale Turner, National Councillor, Australian Institute of Conveyancing acknowledged that the question was 'really a technical question with cybersecurity... there is a view that with the more openings into the system, the more difficult and complex that security issue becomes'.⁹²

- 2.45** Mr Simon Smith, Chief Operating Officer, PEXA made similar comments, asserting that 'if you have got two [systems], that is more points of failure'.⁹³ Mr Smith said that this was based on an increase in the number of transactions that would need to occur successfully:

Every transaction depends on a chain of everything going right between about 10 different computer systems; only, in an interoperable transaction, there is going to be 20.⁹⁴

- 2.46** Separately, the NSW Office of the Registrar General commented on how best to ensure interoperable transactions were secure. They referred to the development of 'data standards' which would establish technical standards and minimum-security requirements to ensure that interoperable transactions are secure.⁹⁵ These data standards would be housed and curated in a Government entity, NECDS Ltd, 'giving ARNECC greater control than regulators in other industries where the technical and operational requirements of interoperability are developed by an industry association'.⁹⁶

Regulation by industry code

- 2.47** The regulatory oversight of financial settlements through an industry code was also raised by stakeholders during the inquiry, with many expressing concerns. Under the bill, the Registrar

⁹⁰ Evidence, Mr Philip Joyce, Chief Executive Officer, Sympli, 17 March 2022, p 21.

⁹¹ Evidence, Ms Michelle Hendry, Vice President, Australian Institute of Conveyancers, 17 March 2022, p 16.

⁹² Evidence, Mr Dale Turner, National Councillor, Australian Institute of Conveyancers, 17 March 2022, p 16.

⁹³ Evidence, Mr Simon Smith, Chief Operating Officer, PEXA, 17 March 2022, p 28.

⁹⁴ Evidence, Mr Simon Smith, Chief Operating Officer, PEXA, 17 March 2022, p 28.

⁹⁵ Submission 6, NSW Office of the Registrar General, p 11.

⁹⁶ Submission 6, NSW Office of the Registrar General, p 11.

would be granted the power to require the participation and compliance of an ELNO in an industry code for financial settlement.⁹⁷

2.48 As chapter 1 notes, this code is currently being developed. Once finalised, the 'self-regulatory' code will operate between ELNOs and financial institutions and will set out the process for tracking and resolving misapplied or unapplied funds within a transaction.⁹⁸ According to Mr Bruce Roberts, Chair of ARNECC, a 'self-regulatory' code was determined by the Council of Financial Regulators to be the best solution to the regulation of conveyancing transactions.⁹⁹

2.49 However, the submission of the Law Society of NSW notes that while the industry code will play a role in ensuring the completion of an interoperable transaction, 'more fundamental changes', including legislative amendment of definitions within the existing ECNL, are required to ensure all aspects of a transaction – particularly financial settlement – are appropriately regulated.¹⁰⁰ The Society's submission also called for the code to clarify how subscribers might access claims and dispute processes on behalf of their clients.¹⁰¹

2.50 The Australian Institute of Conveyancers expressed concern about the potential for 'incremental risk' to be introduced if there were any timing gaps between the commencement of interoperability and the commencement of the industry code, which they believe should be mandatory.¹⁰² The AIC argued:

...there should not be a period where an ELNO is interoperable and the framework for investigation and resolution as to misdirected funds or transactional failures has not been established.

Participation in the Industry Code should be mandated and a condition of an ELNO's approval to operate.¹⁰³

2.51 Mr Simon Smith, Chief Operating Officer at PEXA expressed concern over the fact that even with an industry code, certain aspects of conveyancing transactions might remain outside the regulatory domain of the Registrars:

[The] critical point about the code is that it is not a regulator. Financial settlement is outside of the domain of the registrars. It is an area they do not regulate now and that they do not really understand... Even the existence of the code does not solve the problem that there is no-one standing there to make good if a family loses their life savings because a transaction went wrong. At the moment PEXA indemnifies participants and will look after them, but all of that is based on an informal agreement that is in place between ourselves and the banks.¹⁰⁴

⁹⁷ Submission 6, NSW Office of the Registrar General, p 12.

⁹⁸ Submission 6, NSW Office of the Registrar General, p 12.

⁹⁹ Evidence, Mr Bruce Roberts, Chair, Australian Registrars' National Electronic Conveyancing Council 17 March 2022, p 2.

¹⁰⁰ Submission 4, Law Society of NSW, p 2.

¹⁰¹ Submission 4, Law Society of NSW, p 3.

¹⁰² Submission 13, Australian Institute of Conveyancers, p 1.

¹⁰³ Submission 13, Australian Institute of Conveyancers, p 1.

¹⁰⁴ Evidence, Mr Simon Smith, Chief Operating Officer, PEXA, 17 March 2022, p 27.

- 2.52** When asked if there was a backstop or assurance fund to provide consumer protection around the financial settlement aspect, Mr Jeremy Cox, NSW Registrar General responded that while the current scheme does not provide this, the proposed new industry code 'will go much more clearly to those accountabilities...who is accountable for what and tracking those.'¹⁰⁵ The submission of the NSW Office of the Registrar General further explained:

The Code will deal with consumer protection issues on the financial side (consumer protection is already addressed on the titling side by the Torrens Assurance Fund). This Bill completes the “enforcement loop” by requiring compliance with the Code.¹⁰⁶

Nature of reform and timeline

- 2.53** In addition to considering the various issues raised by the bill, stakeholders discussed the nature of the reforms of which the bill forms part and the timeframe for its implementation. This section examines that discussion, as well as stakeholder views on amending the bill and the impact of this on its passage.

Stakeholder views on the nature of reforms

- 2.54** As noted in chapter 1, the bill proposes to amend the Appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012* to mandate 'interoperability' between ELNOs as part of a 'two-phase' reform, with a second bill to be introduced later in the year to finalise requirements before interoperability goes 'live' in 2023. As noted in the Minister's second reading speech, the detail of the operational requirements for ELNOs will be contained in the Model Operating Requirements (MORs). The committee received evidence on the benefits and shortfalls of both the two-phase nature of the reform, as well as the level of detail to be included in the MORs.
- 2.55** While acknowledging there are some outstanding issues, participants recognised the benefit of a two- phase approach in providing opportunity to be consulted and details to be finalised by the second bill. For example, Ms Fiona Landis, Executive Director, Policy at the Australian Banking Association, who described the bill as 'pragmatic' told the committee:
- We have some minor concerns that we have raised with ARNECC. But, given there is this bill and there will be a future bill, we think that the process gives us adequate opportunity to be consulted and to put forward our views.¹⁰⁷
- 2.56** Similarly Mr Tass Liveris, President of the Law Council of Australia suggested that matters such as definitions – both new and existing – should be refined, but that this was better dealt with in the next stages of reform. He reiterated that in his view, there was nothing in the current bill that warranted its delay and that that the bill proceed as is, without amendment.¹⁰⁸
- 2.57** Other stakeholders seemed more concerned around the matters left for determination in the second bill, particularly the enforcement regime. The submission from PEXA notes that the

¹⁰⁵ Evidence, Mr Jeremy Cox, NSW Registrar General, 17 March 2022, p 7.

¹⁰⁶ Submission 6, NSW Office of the Registrar General, p 12.

¹⁰⁷ Evidence, Ms Fiona Landis, Executive Director, Policy, Australian Banking Association, p 18.

¹⁰⁸ Evidence, Mr Tass Liveris, Chair, Law Council of Australia, 17 March 2022, p 11.

current bill contains a broad range of gaps, including around enforcement – a sentiment echoed by Ms Michelle Hendry, Vice President, Australian Institute of Conveyancers at the hearing.¹⁰⁹ While neither stakeholder identified the specific enforcement issues that were lacking, both expressed disappointment that these issues had not been addressed to date, given they were initially raised in a discussion paper published by ARNECC.¹¹⁰

- 2.58** PEXA representatives, including Mr Simon Smith, Chief Operating Officer, PEXA, also identified weaknesses in the decision to leave the detail to the MORs, rather than the bill itself. Mr Smith told the committee that this approach 'leaves almost all of the substantive decisions to unelected officials', with the effect being that confidence in the system is undermined.¹¹¹ In practice, PEXA's submission argued that this would allow these officials to unilaterally change matters 'such as payment terms, agreed prices and assignment of roles and liabilities at will and without consultation'.¹¹² To remedy this, Mr Smith called for the MORs to be dealt 'as if they were regulations',¹¹³ - that is, subject to the requirements of the *Subordinate Legislation Act 1989*.
- 2.59** Other stakeholders appeared to share concerns around the latitude given to the MORs under the reform. For example, Mr Dale Turner, National Councillor, Australian Institute of Conveyancers expressed concern around the lack of insight into how the MORs would be formed, what role ELNOs would play in their formation as well as how they would be applied and regulated.¹¹⁴ When asked at the hearing if the Australian Institute of Conveyancers had been consulted around the industry code, proposed to be created under the MORs, both representatives confirmed they had had no involvement.¹¹⁵

Timeline of reform

- 2.60** The timeline of the reform was also a significant focus for nearly all stakeholders. As noted in chapter 1, the bill and the larger reform of which it forms part, have been described as the product of over three years of analysis and review.¹¹⁶ The joint submission from the Ministers responsible for electronic conveyancing in Australia identified 2023 as the roll out date for

¹⁰⁹ Supplementary submission 10a, PEXA, p 1; Evidence, Ms Michelle Hendry, Vice President, Australian Institute of Conveyancers, 17 March 2022, p 15.

¹¹⁰ Submission 10, PEXA group, p 2; Evidence, Ms Michelle Hendry, Vice President, Australian Institute of Conveyancers, 17 March 2022, p 15.

¹¹¹ Evidence, Mr Simon Smith, Chief Operating Officer, PEXA, 17 March 2022, p 27.

¹¹² Submission 10, PEXA group, p 4.

¹¹³ Evidence, Mr Simon Smith, Chief Operating Officer, PEXA, 17 March 2022, p 28.

¹¹⁴ Submission 3, Dale Turner p 6.

¹¹⁵ Evidence, Mr Dale Turner, National Councillor, Australian Institute of Conveyancers, 17 March 2022, p 16; Evidence, Ms Michelle Hendry, Vice President, Australian Institute of Conveyancers, 17 March 2022, p 16.

¹¹⁶ Victor Dominello, Second reading speech: Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, 15 February 2022; Evidence, Mr Bruce Roberts, Chair, Australian Registrars' National Electronic Conveyancing Council 17 March 2022, p 2; Submission 11, Sympli Australia Pty Ltd, p 2.

interoperability.¹¹⁷ The Office of the Registrar General referred to the implementation of interoperability as commencing 'by mid-2023'.¹¹⁸

2.61 Many stakeholders, including representatives from the Law Council of Australia, Law Society of New South Wales, Office of the Registrar General and Australian Banking Association, were clear in their view that the bill should proceed without delay to ensure timeframes were met.¹¹⁹ Emphasising that the reforms had been 'a very long time coming', Mr Tass Liveris, President of the Law Council of Australia, told the committee when asked what the practical ramifications of missing the 2023 timeframe might be, that simply 'interoperability will not be achieved'. He explained:

The major ramification of [missing the timeframe] is that interoperability will not be achieved... That would not be a good outcome because, as we have spoken about, all the benefits and features that interoperability will have on the market, on consumers, on legal practices, on investment and on all those types of things... we will lose that opportunity if the passage towards interoperability is not facilitated and this opportunity is not taken.¹²⁰

2.62 In response to written questions from the committee, the ACCC also cautioned against deviating from the timeline, asserting that delays to the bill 'will hamper the rollout of not only interoperability but other related reform processes', for example:

...the development of an enforcement regime for ELNOs and Subscribers, and the payments and financial settlement industry code being developed by AusPayNet... delays to these processes will affect multiple jurisdictions.¹²¹

2.63 Moreover, the ACCC was cited by the Ministers responsible for electronic conveyancing in Australia as being 'clear that further delay will heighten barriers to entry to the market'.¹²²

2.64 However, for PEXA, the proposed timeframe for interoperability by mid-2023 raised significant concerns. The company's submission described the bill as 'rushed to implementation, ignoring critical stakeholder feedback, with view to mandating interoperability prior to the completion of the regulatory framework'.¹²³

2.65 Expanding on this at the hearing, PEXA's Chief Operating Officer Mr Simon Smith told the committee that 'interoperability in its current form and on its current timetable is not safe and it will not deliver the grand-sounding benefits you are hearing about'.¹²⁴ Noting these issues, PEXA called for the bill to be rejected in its current form and for ARNECC to immediately

¹¹⁷ Submission 20, Ministers responsible for electronic conveyancing in Australia, p 1.

¹¹⁸ Submission 6, NSW Office of the Registrar General, p 10.

¹¹⁹ Evidence, Mr Tass Liveris, Chair, Law Council of Australia, 17 March 2022, p 13; Evidence, Ms Fiona Landis, Executive Director, Policy, Australian Banking Association, p 20.

¹²⁰ Evidence, Mr Tass Liveris, Chair, Law Council of Australia, 17 March 2022, p 13.

¹²¹ Answers to questions, Australian Competition and Consumer Commission, 25 March 2022, p 3.

¹²² Submission 20, Ministers responsible for electronic conveyancing in Australia, p 2.

¹²³ Submission 10, PEXA group, Appendix 2, p 2.

¹²⁴ Evidence, Mr Simon Smith, Chief Operating Officer, Property Exchange Group, 17 March 2022, p 26.

appoint an economic regulator, such as the ACCC, to complete a systematic evaluation of options.¹²⁵

Amending the bill

2.66 Meanwhile, various stakeholders supported the bill in its current form, including the Ministers responsible for electronic conveyancing in Australia who urged:

As Ministers responsible for electronic conveyancing in Australia, under an Intergovernmental Agreement for an Electronic Conveyancing Law, **we confirm all state and territory Governments support the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 in its current form.**

This Bill follows extensive stakeholder engagement, first by NSW and South Australia, and then by, the **Australian Registrars' National Electronic Conveyancing Council** (ARNECC), comprising Registrars (or their nominees) responsible for land titles in each jurisdiction.¹²⁶

2.67 The Ministers, along with stakeholders from the legal industry as well as ELNO Sympli, maintained that the bill, as part of an applied law scheme, could not be changed without the consent of other States and Territories, and therefore raised concerns about potential delays and implications if the bill were amended.¹²⁷

2.68 According to the joint submission from the Ministers responsible for electronic conveyancing in Australia, any amendments to the bill would 'need to be reviewed by all states and territories executive before returning to the NSW Parliament'.¹²⁸

2.69 In correspondence to the committee, Mr Bruce Roberts, Chair, ARNECC, set out the steps that would need to be followed for the bill to be amended, in order to maintain national uniformity and ensure proper stakeholder consideration, consistent with the Intergovernmental Agreement for an Electronic Conveyancing National Law, and national applied law scheme format:

1. Any changes to the current Bill, or the NSW amending legislation, would first need to be considered by ARNECC. ARNECC may decide to undertake targeted consultation on the proposed changes with national industry bodies.
2. Amendments would need to be drafted under the direction of the Parliamentary Counsel's Committee (PCC) and will be dependent on their timetabling and priorities. All Parliamentary Counsels in each jurisdiction would also need to be consulted and sign off on the amended Bill.

¹²⁵ Submission 10, PEXA group, p 1.

¹²⁶ Submission 20, Ministers responsible for electronic conveyancing in Australia, p 1.

¹²⁷ Submission 10, Sympli Australia Pty Ltd, p 8; Evidence, Mr Tass Liveris, Chair, Law Council of Australia, 17 March 2022, p 13; Submission 20, Ministers responsible for electronic conveyancing in Australia, p 1.

¹²⁸ Submission 20, Ministers responsible for electronic conveyancing in Australia, p 1.

3. Most jurisdictions will require executive approval (including Cabinet approval in some cases).¹²⁹

2.70 Similar evidence was received from representatives from the Law Council of Australia, with Mr Tass Liveris, Chair, Law Council of Australia explaining:

The additional complication, and I suggest the basis for the Committee to proceed with particular caution in terms of further amendments, is that as this bill is not a sole initiative of the New South Wales Parliament, as it comes out of the years-long deliberations of ARNECC and all the State and Territory governments, amendments would not only need to be agreed at a multi-governmental level but the process becomes considerably unwieldy.¹³⁰

2.71 Indeed, Mr Philip Argy, Chair, National Electronic Conveyancing System Committee, Law Council of Australia referred to the ECNL as a 'very, very unusual animal'.¹³¹ He described the wider implication at a national level were the bill amended by the New South Wales Parliament:

... other States and Territories automatically adopt those changes, and so the intergovernmental agreement, which has resulted in this national law, requires that every word, if not every comma, in a bill be discussed and approved by each of the jurisdictions.¹³²

2.72 Finally, noting that the New South Wales Parliament has the 'technical autonomy' to amend the bill, Mr Argy suggested that 'as a matter of comity' it should not interfere with the words as:

'...to change one word of the bill would require it to go back to each of the eight States and Territories and have that change approved. That would take a long time, and that is our great fear.'¹³³

¹²⁹ Correspondence from Mr Bruce Roberts, Chair, Australian Registrars' National Electronic Conveyancing Council, to Chair, 30 March 2022.

¹³⁰ Evidence, Mr Tass Liveris, Chair, Law Council of Australia, 17 March 2022, p 12.

¹³¹ Submission 20, Ministers responsible for electronic conveyancing in Australia, p 1.

¹³² Evidence, Mr Philip Argy, Chair, National Electronic Conveyancing System Committee, Law Council of Australia, 17 March 2022, p 14.

¹³³ Evidence, Mr Philip Argy, Chair, National Electronic Conveyancing System Committee, Law Council of Australia, 17 March 2022, p 14.

Committee comment

- 2.73** The Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 seeks to introduce a legislative requirement for electronic lodgement network operators (ELNOs) to interoperate, as part of a two-part reform of the eConveyancing system. In doing so, it implements the result of many years of work involving State and Territory Ministers, members of the Australian Registrars' National Electronic Conveyancing Council (ARNECC) and a number of key industry players including the Australian Banking Association, Australian Institute of Conveyancers, Law Council of Australia, ELNOs and the Australian Competition and Consumer Commission (ACCC). The committee recognises the work and effort involved in this process, particularly in securing a national agreement over the contents of the reform.
- 2.74** Throughout the inquiry, it became clear that there is unanimous support for competition in the eConveyancing industry. Most asserted that the industry would benefit from the increase in competition expected from ELNOs being able to interoperate. The committee agrees that through interoperability, an improved customer service experience, lower prices and greater innovation are all positive outcomes that, if realised, have the potential to bring various benefits to users, subscribers and participants across the industry.

Finding 1

There is unanimous support for competition in the electronic conveyancing industry.

- 2.75** On pricing, the committee believes it is important that any financial benefit to come from the implementation of interoperability, particularly a reduction in prices, is passed on to customers, and not simply absorbed as increased profit by conveyancers. The committee also calls on ARNECC to clarify its position on a pricing regime for inter-ELNO fees. On innovation, the committee acknowledges the argument that interoperability drives innovation and improved services but notes the limited evidence received in this regard, particularly with respect to practical examples. Further, the committee notes the assertion from Property Exchange Australian (PEXA) that interoperability under the bill could in fact limit further innovation by requiring uniformity across future ELNOs.
- 2.76** The committee acknowledges that a number of stakeholders believe that safeguards on system readiness and change management are necessary components in the implementation of interoperability. The committee notes that there are contrasting views on the effects interoperability may have on the resilience of the overall system, as well as the need for an independent regulator to assess the readiness of the system. On balance, the committee is inclined to agree that the potential benefits of interoperability outweigh the risks. However, the committee believes the risk of system failure should be minimised, with an assessment of readiness by the NSW Office of the Registrar General taking place before interoperability commences, to ensure stakeholders can take confidence in the readiness of the system.
- 2.77** One area of unresolved concern was the regulatory oversight of financial settlement under the proposed industry code. Various stakeholders told the committee of their concern that the code, which is still in the process of being drafted, might not appropriately regulate all aspects of a transaction – in particular, financial settlement. The committee believes that consumers should feel comfortable that there is adequate protection of their finances throughout the entire conveyancing process. To this end, the committee believes development and finalisation of the

industry code should be prioritised, well in advance of the commencement of interoperability, in a manner than ensures it regulates all aspects of a transaction.

Finding 2

Stakeholders hold valid concerns around the resilience of the system. Further safeguards to protect consumers, including the industry code and an assessment of readiness by the NSW Office of the Registrar General, should be developed and finalised well in advance of the commencement of interoperability.

- 2.78** The committee acknowledges that the majority of stakeholders believe the bill should proceed without delay to ensure timeframes are met, noting that extensive work has taken place over many years with deep engagement across the sector to arrive at the current reform. However, the committee also recognises that stakeholders, including the Australian Institute of Conveyancers (AIC) and PEXA, hold significant concerns about gaps in the current bill, including around enforcement.
- 2.79** There is a strong case, as articulated by representatives from the legal profession and supported by the evidence presented by ARNECC, that the bill should proceed without amendment, notwithstanding these concerns. This view is supported by the fact that a second bill, foreshadowed for introduction later in 2022, has been suggested as providing a pathway for further amendment to the law and for any outstanding details not covered by this first bill to be addressed. While the committee recognises the concerns of both the AIC and PEXA as valid, the committee finds it compelling that the two-stage nature of the reform will indeed resolve any outstanding issues, including in the area of enforcement.
-

Finding 3

A second bill, foreshadowed for introduction later in 2022, has been suggested as a pathway for further amendment to the *Electronic Conveyancing (Adoption of National Law) Act 2012* and for any outstanding details to be addressed.

- 2.80** On balance, the committee recommends that the Legislative Council proceed to debate the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.
-

Recommendation 1

That the Legislative Council proceed to debate the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.

- 2.81** Noting the concerns about security and system readiness raised by many stakeholders, the committee also recommends that the House consider the second bill, referred to in Finding 3, only after the industry code has been finalised and the House has received a report from the Office of the Registrar General assessing the readiness of the system.

Recommendation 2

That the Legislative Council consider the second bill, referred to in Finding 3, only after the industry code has been finalised and the Legislative Council has received a report from the NSW Office of the Registrar General assessing the readiness of the system.

Appendix 1 Submissions

No	Author
1	Paul Bollen
2	Mr Thomas Hugh Walker
3	Dale Turner
4	The Law Society of NSW
5	Name suppressed
6	Office of the Registrar General
7	NSW Land Registry Services
8	Australian Registrars' National Electronic Conveyancing Council (ARNECC)
9	Law Council of Australia
10	PEXA Group
10a	PEXA Group
11	Sympli Australia Pty Ltd
12	Australian Competition & Consumer Commission
13	Australian Institute of Conveyancers
14	ASX Limited
15	Dench McClean Carlson Pty Ltd
16	Australian Banking Association (ABA)
17	Mr Greg Channell
18	Mr Richard Bootle
19	NSW Productivity Commission
20	Ministers responsible for electronic conveyancing in Australia, under an Intergovernmental Agreement for an Electronic Conveyancing Law
21	Technology Council of Australia

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Thursday 17 March 2022 Virtual hearing via videoconference	Mr Bruce Roberts	Chair, Australian Registrars' National Electronic Conveyancing Council
	Mr Jeremy Cox	NSW Registrar General
	Ms Danusia Cameron	Director of Regulation, Compliance and IT, Office of the Registrar General
	Mr Tass Liveris	President, Law Council of Australia
	Mr Phillip Argy	Chair, National Electronic Conveyancing System Committee, Law Council of Australia
	Mr John Farrell	Senior Policy Lawyer, Law Council of Australia
	Mr Richard Harvey	Chair, Property Law Committee, Law Society of New South Wales
	Ms Michelle Hendry	Vice President, Australian Institute of Conveyancers
	Mr Dale Turner	National Councillor, Australian Institute of Conveyancers
	Ms Fiona Landis	Executive Director Policy, Australian Banking Association
	Mr Brendon Harper	Policy Director, Australian Banking Association
	Mr Philip Joyce	Chief Executive Officer, Sympli
	Ms Joanne Tseng	Chief Legal and Governance Officer, Sympli
Mr Simon Smith	Chief Operating Officer, Property Exchange Australia (PEXA)	
Ms Amy Gerrat	Chief Regulatory Officer, Property Exchange Australia (PEXA)	

Appendix 3 Minutes

Minutes no. 56

Thursday 24 February 2022

Portfolio Committee No. 4 – Customer Service and Natural Resources

Members' Lounge, Parliament House, Sydney at 1.31pm

1. Members present

Mr Banasiak, *Chair*

Mr Harwin (*substituting for Mr Fang*)

Mr Martin

Mr Primrose

Mr Poulos (*via teleconference*)

Mr Veitch

2. Apologies

Ms Hurst

3. Inquiry into the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022

3.1 Terms of reference

The committee noted the following terms of reference referred to by the House on 22 February 2022.

That:

- (a) the provisions of the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 be referred to Portfolio Committee No. 4 for inquiry and report,
- (b) the bill be referred to the committee upon receipt of the message on the bill from the Legislative Assembly,
- (c) the committee report by 8 April 2022, and
- (d) on the report being tabled, a motion may be moved immediately for the first reading and printing of the bill.

3.2 Proposed timeline

Resolved, on the motion of Mr Veitch: That the committee adopt the following timeline for the administration of the inquiry:

- 11 March 2022 – closing date for submissions and online questionnaire (2 weeks)
- 17 March 2022 – hearing
- 1 April 2022 – circulation of Chair's draft report
- 5 April 2022 – report deliberative
- 8 April 2022 – report tabling.

3.3 Stakeholder and witness list

Resolved, on the motion of Mr Martin: That the following stakeholders be invited to make a submission and/or appear as a witness at the hearing:

- NSW Department of Customer Service
- NSW Registrar General
- Australian Registrars' National Electronic Conveyancing Council
- Australian Competition and Consumer Commission

- Property Exchange Australia (PEXA)
- Sympli Australia
- Law Council of Australia
- Australian Institute of Conveyancers
- Australian Banking Association
- Real Estate Institute of Australia
- National Interoperability Panel
- Interoperability Operational Committee
- Independent Pricing and Regulatory Tribunal
- Centre for International Economics
- Dr Rob Nicholls, Chair, 2019 Interoperability Working Group
- Mr Glenn Archer, Chair, 2020 Interoperability Technical Working Group
- Titles Queensland
- NSW Land Registry Services
- NSW Treasury
- NSW iCare
- Legal commercial law and competition expert project adviser
- eConveyancing expert project adviser
- Mr Jay Kennedy, Account Director, Willis Towers Watson

3.4 Post-hearing responses

The committee noted that there is insufficient time for stakeholders to provide answers to questions on notice or supplementary questions.

Resolved, on the motion of Mr Primrose: That transcript corrections and clarifications to evidence be provided within 48 hours of the receipt of the transcript by the witness.

3.5 Online questionnaire

Resolved, on the motion of Mr Veitch: That the committee conduct an online questionnaire to capture individuals' views with the following questions and preamble:

On 22 February 2022, the NSW Legislative Council's Portfolio Committee No. 4 – Customer Service and Natural Resources commenced an inquiry into the Electronic Conveyancing (Adoption of National Law) Bill 2022.

The object of this Bill is to amend the Electronic Conveyancing National Law (ECNL) set out in the Appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012*. The ECNL provides the basis for a national scheme for the electronic lodgment and processing of conveyancing transactions. The proposed amendments to the ECNL include amendments to—

- (a) require Electronic Lodgment Network Operators (ELNOs) to ensure an Electronic Lodgment Network (ELN) operated by the ELNO is interoperable, meaning it may be used—
 - (i) by a subscriber to complete conveyancing transactions involving a subscriber to an ELN operated by another ELNO without requiring the subscriber to be authorised to use both ELNs, and
 - (ii) to prepare documents in electronic form using data from different ELNs, and
- (b) enable the Registrar to waive the requirement specified in paragraph (a) (the *interoperability requirement*) in certain circumstances, and

- (c) enable ELNOs and financial institutions to rely on digital signatures created for a registry instrument or other document in certain circumstances, and
- (d) provide that certain matters, including matters relating to the interoperability requirement, may be included in requirements determined by the Registrar relating to the operation of ELNOs and the provision and operation of ELNs (*operating requirements*), and
- (e) allow the Registrar to conduct an investigation to determine compliance with the interoperability requirement.

Further information about the inquiry, including the terms of reference, can be found on the committee's [website](#).

As part of the inquiry, the committee is seeking public comment on the bill through the following questions. Responses are due by [date].

Responses may be used in the committee's report. Names and contact details of respondents will not be published. The questionnaire will take approximately 5 minutes to complete.

1. Please enter your contact details.

Name:

Email address:

Postcode:

2. Are you a resident of NSW? Select one of these options:
 - a. Yes
 - b. No

3. Position on the bill:

The object of the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 is to amend the Electronic Conveyancing National Law (ECNL) set out in the Appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012*. The ECNL provides the basis for a national scheme for the electronic lodgment and processing of conveyancing transactions. The proposed amendments to the ECNL include amendments to—

- (a) require Electronic Lodgment Network Operators (ELNOs) to ensure an Electronic Lodgment Network (ELN) operated by the ELNO is interoperable, meaning it may be used—
 - (i) by a subscriber to complete conveyancing transactions involving a subscriber to an ELN operated by another ELNO without requiring the subscriber to be authorised to use both ELNs, and
 - (ii) to prepare documents in electronic form using data from different ELNs, and
- (b) enable the Registrar to waive the requirement specified in paragraph (a) (the *interoperability requirement*) in certain circumstances, and
- (c) enable ELNOs and financial institutions to rely on digital signatures created for a registry instrument or other document in certain circumstances, and

- (d) provide that certain matters, including matters relating to the interoperability requirement, may be included in requirements determined by the Registrar relating to the operation of ELNOs and the provision and operation of ELNs (*operating requirements*), and
- (e) allow the Registrar to conduct an investigation to determine compliance with the interoperability requirement.

Based on your own understanding and the description above, what is your position on the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022? Select one of these options:

- a. Support
 - b. Partially support
 - c. Support with amendments
 - d. Oppose
4. *Based on the response selected at question 3, the respondent will be directed to a customised question asking them to explain their position on the bill:*
- a. Please explain why you support the bill (max 300 words)
 - b. Please explain why you partially support the bill (max 300 words)
 - c. What amendments would you like incorporated? (max 300 words)
 - d. Please explain why you oppose the bill? (max 300 words)
5. Do you have any other comments (max 300 words)

Resolved, on the motion of Mr Primrose: That the committee not accept pro formas.

3.6 Questionnaire report

Resolved, on the motion of Mr Veitch: That the secretariat prepare a summary report of responses to the online questionnaire for publication on the website and use in the report, and that:

- only responses from NSW participants will be analysed in the report
- the committee authorises the secretariat to publish the questionnaire report on the inquiry website unless any member raises an objection to publication via email
- individual responses be kept confidential on tabling.

3.7 Advertising

The committee noted that all inquiries are advertised via Twitter, Facebook, stakeholder emails and a media release distributed to all media outlets in New South Wales.

Facebook posts may be boosted or advertised. The focus of advertising will be to encourage participation in the online questionnaire rather than submissions. Therefore, apart from an email to nominated stakeholders, the submission process will not be publicly advertised.

4. Adjournment

The committee adjourned at 1.36pm, until Monday 7 March 2022 (Budget Estimates hearing – Customer Service and Digital Government)

Laura Ismay
Committee Clerk

Minutes no. 61

Thursday 17 March 2022

Portfolio Committee No. 4 – Customer Service and Natural Resources

Via Webex, at 8.53 am

1. Members presentMr Banasiak, *Chair*

Mr Barrett

Ms Boyd (substituting for Ms Hurst for the duration of the inquiry)

Mr Poulos

Mr Primrose

Mr Veitch

2. Correspondence

The committee noted the following items of correspondence:

Received

- 4 March 2022 – Email from Mr Steve Smith, Chair, Interoperability Operational Committee (IOC) to the Chair, declining the invitation to make a submission on behalf of the IOC
- 8 March 2022 – Email from Ms Tess Vickery, Office of the Hon Emma Hurst MLC, Animal Justice Party to the secretariat, advising that Ms Boyd will be substituting for Ms Hurst for the duration of the inquiry into the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022
- 10 March 2022 – Email from Ms Anna Neelagama, Chief Executive Officer, Real Estate Institute of Australia, to the Chair, declining the committee's invitation to appear at the hearing on 17 March 2022
- 10 March 2022 – Email from Mr Tom Marshall, Assistant Director, Government Relations and Advocacy, Australian Competition and Consumer Commission to the Chair, declining the committee's invitation to appear at the hearing on 17 March 2022.

3. Inquiry into the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022**3.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submissions nos. 1-4, 7-17.

Resolved, on the motion of Mr Martin: That the committee authorise the publication of submission no. 18.

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of submission no. 19.

3.2 Partially confidential submissions

The committee noted that the following submission was partially published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 5.

Resolved, on the motion of Mr Primrose: That the committee keep the following information confidential, as per the request of the author: names and/or identifying information in submission no. 5.

Resolved, on the motion of Mr Poulos: That the committee authorise the publication of submission no. 6, with the exception of 'Tab C – Implementation Plan' and 'Tab E – Letters in support' which are to be kept confidential, as per the request of the author.

3.3 Written questions to the Australian Competition and Consumer Commission

The Chair referred to the correspondence received from the Australian Competition and Consumer Commission (ACCC) on 10 March 2022 in which the ACCC declined to appear at the hearing on 17 March 2022 but also offered to respond to any questions from the committee in writing.

Resolved, on the motion of Mr Veitch: That the Chair circulate proposed written questions for the ACCC to the committee, with the committee to provide any comment or additional questions within 24 hours.

3.4 Online questionnaire summary report

The committee noted that the online questionnaire report was published by the committee clerk in accordance with the committee's resolution of 24 February 2022.

3.5 Allocation of questioning

The committee noted that, as per the resolution establishing the committee, the sequence of questions to be asked at hearings is to alternate between opposition, crossbench and government members, in that order, with equal time allocated to each, unless the committee resolves otherwise.

3.6 Livestream and recording of hearing

Resolved, on the motion of Mr Barrett: That the committee agree to record the hearing on 17 March 2022, and that this recording be placed on Parliament's Youtube channel as soon as practicable after the hearing.

3.7 Photo for social media

Resolved, on the motion of Mr Veitch: That the secretariat take a screenshot of the committee during its deliberative for the purposes of publishing on social media.

3.8 Public hearing

Witnesses were admitted via video link.

The committee proceeded to take evidence in public.

The Chair made an opening statement regarding the broadcasting of proceedings, virtual hearing etiquette and other matters.

The following witnesses were sworn and examined:

- Mr Bruce Roberts, Chair, Australian Registrars' National Electronic Conveyancing Council
- Mr Jeremy Cox, NSW Registrar General
- Ms Danusia Cameron, Director of Regulation, Compliance and IT, Office of the Registrar General.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Tass Liveris, President, Law Council of Australia

- Mr Phillip Argy, Chair, National Electronic Conveyancing System Committee, Law Council of Australia
- Mr John Farrell, Senior Policy Lawyer, Law Council of Australia
- Mr Richard Harvey, Chair, Property Law Committee, Law Society of New South Wales.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Michelle Hendry, Vice President, Australian Institute of Conveyancers
- Mr Dale Turner, National Councillor, Australian Institute of Conveyancers
- Ms Fiona Landis, Executive Director Policy, Australian Banking Association
- Mr Brendon Harper, Policy Director, Australian Banking Association.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Philip Joyce, Chief Executive Officer, Sympli
- Ms Joanne Tseng, Chief Legal and Governance Officer, Sympli.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Simon Smith, Chief Operating Officer, Property Exchange Australia (PEXA)
- Ms Amy Gerraty, Chief Regulatory Officer, Property Exchange Australia (PEXA).

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 12.32 pm.

4. Adjournment

The committee adjourned at 12.33 pm until Friday 25 March 2022, site visit to RSPCA and Animal Welfare League.

Laura Ismay
Committee Clerk

Draft minutes no. 65

Tuesday 5 April 2022

Portfolio Committee No. 4 – Customer Service and Natural Resources

Mogo rest area, Tomakin Road, Mogo, at 8.15 am

1. Members presentMr Banasiak, *Chair*Mr Veitch, *Deputy Chair* (Timber and forest products inquiry)

Mr Barrett

Ms Boyd (from 10.50 am until 11.10 am)

Mr Field (until 10.00 am and from 11.10 am)

Mr Martin (from 10.50 am until 11. 10 am)

Mr Poulos

Mr Primrose

2. Inquiry into the long term sustainability and future of the timber and forest products industry**2.1 Site visit**

The committee toured various sites in compartment 146 of Mogo State Forest. The tour was led by:

- Joslyn van der Moolen, Committee Member and Forest Working Group Member, Coastwatchers, and Community Liaison Officer, Friends of the Forest (Mogo)
- Nick Hopkins, Committee Member and Forest Working Group Member, Coastwatchers, and Community Liaison Officer, Friends of the Forest (Mogo)
- Julie Morgan, Volunteer, Birdlife Australia
- Sean Dooley, National Public Affairs Manager, Birdlife Australia
- Professor David Lindenmayer, Australian National University.

Mr Hopkins tendered the following document:

- Coastwatchers Association pamphlet – Save Mogo's Forests.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 30 March 2022 – Letter from Mr Bruce Roberts, Chair, Australian Registrars' National Electronic Conveyancing Council, to the Chair, regarding steps required for any amendments to the Bill and NSW Application legislation (eConveyancing inquiry)
- 17 March 2022 – Email from Mr Blair Beaton, Chief Strategy Officer, ASX Ltd to the Chair, regarding evidence given by Mr Simon Smith, Chief Operating Officer, PEXA during the hearing on 17 March 2022 (eConveyancing inquiry)
- 18 March 2022 – Email from Mr James Adler, Legal Counsel, Sympli to the Chair, regarding statements made by representatives of PEXA during the hearing on 17 March 2022 (eConveyancing inquiry)
- 21 March 2022 – Email from Ms Deirdre Rose, Frontier Economics to the committee, attaching report by Frontier Economics and Professor Andrew Macintosh, ANU entitled 'Comparing the value of alternative uses of native forests in Southern NSW', dated 30 November 2021 (Timber and forest products inquiry)
- 24 March 2022 – Email from Mr Jared Zak, Principal Solicitor, Dott & Crossitt Solicitors to the committee, regarding Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 (eConveyancing inquiry)

- 29 March 2022 – Email from Ms Anna Waters, Executive Services Officer, Eurobodalla Shire Council, to the secretariat, declining the invitation for the Council to appear at the hearing on 5 April 2022 (Timber and forest products inquiry).

4. **Draft minutes**

Resolved, on the motion of Mr Primrose: That draft minutes nos. 62 and 63 be confirmed.

5. **Inquiry into the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022**

5.1 **Publication of correspondence on inquiry webpage**

Resolved, on the motion of Mr Veitch: That the committee publish on the inquiry webpage the following correspondence previously noted:

- 30 March 2022 – Letter from Mr Bruce Roberts, Chair, Australian Registrars' National Electronic Conveyancing Council, to the Chair, regarding steps required for any amendments to the Bill and NSW Application legislation
- 17 March 2022 – Email from Mr Blair Beaton, Chief Strategy Officer, ASX Ltd to the Chair, regarding evidence given by Mr Simon Smith, Chief Operating Officer, PEXA during the hearing on 17 March 2022
- 18 March 2022 – Email from Mr James Adler, Legal Counsel, Sympli to the Chair, regarding statements made by representatives of PEXA during the hearing on 17 March 2022
- 24 March 2022 – Email from Mr Jared Zak, Principal Solicitor, Dott & Crossitt Solicitors to the committee, regarding Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022.

5.2 **Answers to questions from the Australian Competition and Consumer Commission**

Resolved, on the motion of Mr Barrett: That the committee authorise the publication of the answers to questions received from the Australian Competition and Consumer Commission on 25 March 2022, and that these answers be published on the inquiry webpage.

5.3 **Letter from the NSW Registrar General**

Ms Boyd tabled a letter from Mr Jeremy Cox, NSW Registrar General, regarding the commitment to reporting to Parliament on security and progress with interoperability, received on 4 April 2022.

Resolved, on the motion of Ms Boyd: That the committee publish on the inquiry webpage the letter from Mr Jeremy Cox, NSW Registrar General, regarding the commitment to reporting to Parliament on security and progress with interoperability, received on 4 April 2022.

5.4 **Recording of the report deliberative**

Resolved, on the motion of Mr Veitch: That the report deliberative meeting be recorded through Webex for the purposes of the secretariat cross-checking amendments following the meeting only, with the recording to be deleted after this use.

5.5 **Consideration of Chair's draft report**

The Chair submitted his draft report, entitled 'Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022', which, having been previously circulated, was taken as being read.

Resolved, on the motion of Ms Boyd: That paragraph 2.75 be amended by omitting 'notes the evidence from Property Exchange Australia (PEXA) and inserting instead 'notes the assertion from Property Exchange Australia (PEXA)'.
'

Resolved, on the motion of Ms Boyd: That Finding 2 be amended by omitting 'including an independent assessment of readiness and the industry code' and inserting instead 'including the industry code and an independent assessment of readiness by the Office of the Registrar General'.
'

Mr Veitch moved: That the following new recommendation be inserted after Recommendation 1:

'Recommendation X

That the House consider the second bill only after the House has received a report from the Office of the Registrar General and the industry code has been finalised'.

Question put.

The committee divided.

Ayes: Mr Banasiak, Ms Boyd, Mr Primrose, Mr Veitch.

Noes: Mr Barrett, Mr Martin, Mr Poulos.

Question resolved in the affirmative.

Resolved, on the motion of Ms Boyd: That:

The draft report, as amended, be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, tabled documents, report on the online questionnaire, answers to questions, and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The secretariat is tabling the report on Friday 8 March 2022.

The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

6. Inquiry into the long term sustainability and future of the timber and forest products industry

6.1 Public submissions

The committee noted that submission 232 was published by the committee clerk under the authorisation of the resolution appointing the committee.

6.2 Answers to questions on notice and additional information

The committee noted that the following answers to questions on notice and additional information were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Answers to questions on notice from Snowy Valleys Council, received 24 February 2022
- Answers to questions on from Greater Hume Shire Council, received 2 March 2022
- Additional information from Mr Michael Kingwill, received 7 March 2022.

6.3 Tendered documents from site visit with Western Murray Land Improvement Group

Resolved, on the motion of Mr Veitch: That the committee accept and publish the following documents tendered by the Western Murray Land Improvement Group during the site visit on 7 February 2022:

- Barapa Barapa villages of the Pollack
- Joint Indigenous Group - Koondrook-Perricoota – Statement of significance
- Koondrook-Perricoota Forest Flood Enhancement Project – Terms of reference
- Koondrook Perricoota Alliance & Sub-Committees – Terms of Reference, July 2021
- Western Murray Land Improvement Group – Koondrook Perricoota Working Group - Terms of reference
- Western Murray Land Improvement Group – Organisation overview
- Western Murray Land Improvement Group – Koondrook-Perricoota Forest community visioning outcomes
- Western Murray Land Improvement Group - KP Group of Forests Collaborative Project List
- Western Murray Land Improvement Group - Koondrook-Perricoota Forest Wetland 'Hotspots' Assessment, June 2021
- Western Murray Land Improvement Group - Koondrook Perricoota Little Forest Traditional Flow Environmental Water Planning Case Study, October 2021.

6.4 Tendered documents from site visit in Eden and Moruya

Resolved, on the motion of Mr Veitch: That the committee accept the following documents but defer consideration of publication until the secretariat has checked the documents for issues of confidentiality and adverse mention:

- Overview of Pentarch Forestry: Eden, tendered by Mr Charlie Fisher, Regional Manager, Pentarch.
- South East Timber Association – Information pack, tendered by Mr Peter Rutherford, Secretary, South East Timber Association
- Information pack, tendered by Mr Vic Jurskis, Forest Ecologist, Silviculturist and Researcher
- Document, 'Landscapes must be managed', tendered by Mr Vic Jurskis, Forest Ecologist, Silviculturist and Researcher
- Coastwatchers Association pamphlet – Save Mogo's Forests, tendered by Mr Nick Hopkins, Member and Forest Working Group Member, Coastwatchers Association.

6.5 Public hearing

Witnesses were admitted.

The committee proceeded to take evidence in public.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Anthony McMahon, Chief Executive Officer, Bega Valley Shire Council.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Julie Taylor Mills, Committee member, South East Region Conservation Alliance
- Ms Lisa Stone, Committee member, South East Region Conservation Alliance
- Mr Sean Dooley, National Public Affairs Manager, BirdLife Australia.

Ms Stone tendered the following documents:

- Media Article, Lucy Cormack and Nick O'Malley, '\$20m loss: native forest logging last year cost NSW taxpayers \$441 per hectare', *Sydney Morning Herald*, 15 March 2022

- Media Article, Andrew Brownbill, 'Native forest logging makes bushfires worse – and to say otherwise ignores the facts', *The Conversation*, 20 May 2021
- Letter from Ms Tracey Mackey, Chief Executive Officer, Environment Protection Authority to Mr Gary Barnes, Secretary, Department of Regional NSW and Mr Anshul Chaudhary, Acting Chief Executive Officer, Forestry Corporation NSW, dated 22 September 2020, regarding FCNSW report entitled 'Environmental Impacts and Implications for Timber Harvesting NSW State Forests'
- Document, 'Why do politicians continue to defy public opinion'
- Extract from 2020 Review of CIFOA standards for mitigating logging impacts in burnt NSW Forests
- Executive Summary from 'Final report on Advice on Coastal IFOA operations post 2019-2020 wildfires', Natural Resources Commission, June 2021.

Ms Taylor-Mills tendered the following document:

- Summary presentation on report, 'Southern and Eden RFA: Economics of native forest harvesting', Frontier Economics and Professor Andrew Macintosh, Australian National University, 23 September 2021.

Mr Dooley tendered the following document:

- Report, 'Bird and Nature Tourism in Australia: KBAs in Danger Case Study Report 2022', Dr Rochelle Steven, BirdLife Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Nick Hopkins, Community Liaison Officer, Friends of the Forest (Mogo) and Coastwatchers Committee Member and Forest Working Group Member, Coastwatchers Association Inc.
- Ms Joslyn van der Moolen, Coastwatchers Committee Member and Forest Working Group Member, Coastwatchers Association Inc. and Community Liaison Officer, Friends of the Forest (Mogo).

Mr Hopkins tendered the following documents:

- Living in Eurobodalla, 'MTBs on a roll at Mogo', January to March 2021
- Environment Protection Authority, 'Current Investigations', 25 February 2022
- Document, 'Forestry Corporation NSW breaching – some recent media releases'
- Photograph, 'Typical hollow bearing tree felled in Mogo State Forest in 2020 – one of 70 reported to the EPA'
- Photograph, 'Currowan fire survivor: this Greater Glider typifies the threatened species decimated by Black Summer'.

Ms van der Moolen tendered the following document:

- Fact sheet, 'Forests: Worth more standing', A Beyond Zero Future for South East NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Stephen Dadd, Executive Director, Allied Natural Wood Enterprises/Pentarch Forestry
- Mr Charlie Fisher, Regional Manager, Allied Natural Wood - Enterprises/Pentarch Forestry
- Mr Peter Rutherford, Secretary, South East Timber Association
- Mr Vic Jurksis, Forest Ecologist, Silviculturist and Researcher, South East Timber Association.

Mr Rutherford tendered the following document:

- Answer to question on notice from Mr Primrose during site visit on 4 April 2022.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 2.45 pm.

6.6 Tendered documents from public hearing

Resolved, on the motion of Mr Veitch: That the committee accept and publish the following documents tendered during the public hearing:

- Summary presentation on report, 'Southern and Eden RFA: Economics of native forest harvesting', Australian National University, 23 September 2021, tendered by Ms Julie Taylor Mills, South East Region Conservation Alliance
- Report entitled 'Bird and Nature Tourism in Australia: KBAs in Danger Case Study Report 2022', Dr Rochelle Steven, BirdLife Australia, tendered by Mr Sean Dooley, BirdLife Australia
- Living in Eurobodalla, 'MTBs on a roll at Mogo', January to March 2021, tendered by Mr Nick Hopkins, Friends of the Forest Mogo and Coastwatchers.
- Environment Protection Authority, 'Current Investigations', 25 February 2022, tendered by Mr Nick Hopkins, Friends of the Forest Mogo and Coastwatchers.
- Document, 'Forestry Corporation NSW breaching – some recent media releases', tendered by Mr Nick Hopkins, Friends of the Forest Mogo and Coastwatchers.
- Photograph, 'Typical hollow bearing tree felled in Mogo State Forest in 2020 – one of 70 reported to the EPA', tendered by Mr Nick Hopkins, Friends of the Forest Mogo and Coastwatchers.
- Photograph, 'Currowan fire survivor: this Greater Glider typifies the threatened species decimated by Black Summer', tendered by Mr Nick Hopkins, Friends of the Forest Mogo and Coastwatchers.
- Fact sheet, 'Forests: Worth more standing', A Beyond Zero Future for South East NSW, tendered by Ms Joslyn van der Moolen, Coastwatchers and Friends of the Forest Mogo.
- Answer to question on notice from Mr Primrose during site visit on 4 April 2022, tendered by Mr Peter Rutherford, South East Timber Association.

Resolved, on the motion of Mr Primrose: That the committee accept and publish the following documents tendered by Ms Lisa Stone, South East Region Conservation Alliance:

- Media Article, Lucy Cormack and Nick O'Malley, '\$20m loss: native forest logging last year cost NSW taxpayers \$441 per hectare', Sydney Morning Herald, 15 March 2022
- Media Article, Andrew Brownbill, 'Native forest logging makes bushfires worse – and to say otherwise ignore the facts', The Conversation, 20 May 2021
- Letter from Ms Tracey Mackey, Chief Executive Officer, Environment Protection Authority to Mr Gary Barnes, Secretary, Department of Regional NSW and Mr Anshul Chaudhary, Acting Chief Executive Officer, Forestry Corporation NSW, dated 22 September 2020, regarding FCNSW report entitled 'Environmental Impacts and Implications for Timber Harvesting NSW State Forests'
- Document, 'Why do politicians continue to defy public opinion'
- Extract from 2020 Review of CIFOA standards for mitigating logging impacts in burnt NSW Forests
- Executive Summary from Final report on Advice on Coastal IFOA operations post 2019-2020 wildfires, Natural Resources Commission, June 2021.

7. Adjournment

The committee adjourned at 2.48 pm until *sine die*.

Peta Leeman and Laura Ismay
Committee Clerks

