



The Hon Mr Mark Banasiak, MLC  
Chair  
Portfolio Committee No 4 - Customer Service and Natural Resources  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

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Dear Chair

**Re: Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022**

Thank you again for the opportunity for the Office of the Registrar General (ORG) to participate in the NSW Legislative Council's Portfolio Committee No 4 – Customer Service and Natural Resources Committee's Inquiry into the *Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022*.

**NSW Government Response**

Please find a copy of the NSW Government response to the Committee's Report.

The Response details how issues raised in the Inquiry are or will be addressed before interoperability is rolled out.

The *Electronic Conveyancing National Law* is an applied law scheme, part of an Intergovernmental Agreement (IGA) signed by all states and territories. NSW is the host state for the legislation and must enact legislation in a form agreed by IGA parties. We have shared a draft of this Response with all jurisdictions, who are committed to the actions laid out in the Response. All jurisdictions have agreed to this current Bill.

Please do not hesitate to contact me should you require further information.

Yours sincerely

Jeremy Cox  
**NSW Registrar General**

10 May 2022



PORTFOLIO COMMITTEE NO. 4 - CUSTOMER SERVICE AND NATURAL RESOURCES

## Government Response

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



## Acknowledgement

The Government thanks:

- Portfolio Committee No.4 – Customer Service and Natural Resources for its inquiry into the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022
- witnesses who appeared at the inquiry and the individuals and organisations who contributed written submissions
- Australian Banking Association, Australian Institute of Conveyancers, Law Council of Australia, Electronic Lodgement Network Operators (ELNOs) and the Australian Competition and Consumer Commission for their substantial time and resources contributing to the national interoperability regime in the last four years.

The Government welcomes the unanimous support for competition in the eConveyancing industry as reported in this inquiry.

Before interoperability is available to consumers, the Government has committed to:

- having in place safeguards to protect consumers, including the financial industry code
- an independent assessment of readiness to be developed and finalised well in advance of the commencement of interoperability
- Office of the Registrar General reporting to the Legislative Council on findings and recommendations from independent security reviews and ICT readiness/health checks
- working with industry via the existing National Industry Interoperability Panel to inform the public about this reform, and associated safeguards and protections.

The Government confirms all states and territories have committed to a second bill, foreshadowed for introduction later in 2022 to introduce a stronger enforcement regime, and to provide a pathway for further amendment to the *Electronic Conveyancing (Adoption of National Law) Act 2012* to address any outstanding details or stakeholder concerns.

## Context for response

This is an historic and important reform for Australia. Australia leads the world in eConveyancing, and interoperability is the next step for this industry.

A critical role of government is to create environments where businesses thrive and innovate, while maintaining consumer protections. This means removing impediments to competition. Interoperability, by reducing the network effect held by the incumbent ELNO, will create the conditions for effective national competition. In turn, this will require ELNOs to compete for customers by delivering better services, or passing on savings, or on reputation—for example, for the fewest outages. It will provide choice for Subscribers as to which ELNO is best for them—without having to be signed up to multiple ELNOs.

In the last four years, governments have led a collaborative process with stakeholders. Since 2019, the Australian Registrars' National Electronic Conveyancing Council (ARNECC) has overseen a national industry process developing the technical and regulatory regime. Much progress has been made in incrementally building a national interoperability model.

This Bill represents the next building block in this national process. With a statutory framework that this Bill enables, the steps to finalise the regulatory and technical framework, will be completed in this collaborative process—before interoperability is rolled out in NSW.

## Response

The ECNL is an applied law scheme, part of an Intergovernmental Agreement (IGA) signed by all states and territories. NSW is the host state for the legislation and must enact legislation in a form agreed by IGA parties. All jurisdictions have agreed to this current Bill.

**Table 1** has responses to the two recommendations in the Inquiry Report. The responses identify how issues raised in the Inquiry are or will be addressed before interoperability is rolled out. While this is a NSW response, all jurisdictions have committed to these actions.

**Recommendation 1:** That the LegCo 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.

- **Supported. The Government notes the critical importance of passing the Bill in its current form, without amendment.**
  - The information below lists each of the issues raised in the Report, and how these are being addressed in the existing reform program, or will be addressed, before interoperability is rolled out.
  - The Government supports the Report's Finding that a second bill, foreshadowed for introduction later in 2022, is the pathway for further amendment to the *Electronic Conveyancing (Adoption of National Law) Act 2012* and for any outstanding details to be addressed. All state and territory governments have confirmed their support for a second Bill to address outstanding concerns (please refer **Tab A**).
  - As the Bill is part of an applied law scheme governed by an Intergovernmental Agreement, an amendment to any part of this Bill would need to go back to all states and territories to approve the amendment before it is re-introduced in NSW. This will take approximately six months. ARNECC (being the council of state and territory regulators) confirms the alternative of making changes to the NSW application Act would:
    - detract from national uniformity,
    - potentially substantially delay the interoperability reform, and
    - increase the cost for governments and stakeholders in the duplicated processes (please refer **Tab B** from ARNECC).
- **These reforms are at a critical stage, providing an opportunity for effective competition.** Without this Bill:
  - **The incumbent ELNO** has no statutory obligation to interoperate. Interoperability removes the network effect held by the incumbent, which is a substantial barrier to any rival business
  - **The incoming ELNO's** investors may lose confidence in the regulatory regime
  - **Financial institutions** and **Land Registries** will be less likely to commit to changes in 2022/23 business plans, delaying implementation.
- **Tab C** provides a high-level summary of the next steps once this Bill has been passed, enacting a statutory obligation for ELNOs to interoperate and participate in the financial industry code.

Issue (paragraph # refers to Inquiry report)	Government action to address this issue
<p><b>Need for an assessment of system readiness to address concerns about security, risk and resilience</b> (paragraphs 2.33, 2.34, 2.76)</p>	<ul style="list-style-type: none"> <li>• A series of independent assessments—covering safeguards on system readiness, change management and resilience of the overall system to cyber security risks—<b>will commence in May 2022</b>. ARNECC has consulted ELNOs and national peak bodies on the terms of reference for the first review. They will cover areas such as: <ul style="list-style-type: none"> <li>○ Implementation timeframe risk and technology risks, for example, data privacy and cyber security risks</li> <li>○ Oversight of system resilience and mitigating the risk of system failure</li> <li>○ System readiness, including a high-level review of deployment approach (eg test planning and quality assurance), the status of ICT system readiness for ELNOs, Land Registries, State Revenue Offices and financial institutions</li> <li>○ Operational readiness, including a high-level review of the status of operational readiness for Registrars, ELNOs, Land Registries, State Revenue Offices, financial institutions and Subscribers</li> <li>○ Consideration of project governance (roles and responsibilities to deliver the project, resource allocation, time management and process management)</li> <li>○ Consideration of stakeholder management and impact of new ICT environments and capabilities, including end-user Subscribers (including conveyancers, lawyers and financial institutions), State Revenue Offices, government staff, private sector operators of land registries (where applicable), consumers and technology providers</li> <li>○ Identification of impacts across stakeholders, including consumer impacts and consideration of how the change will affect stakeholders, expected acceptance or resistance and actions required to move to new ways of working.</li> </ul> </li> <li>• The Registrar General has committed to reporting to NSW Parliament findings and recommendations of these reviews before interoperability is available to customers in NSW.</li> <li>• A dedicated independent security review will also be commissioned as part of the reform, when the technology solution is sufficiently developed for effective scrutiny.</li> </ul>
<p><b>System resilience and the risk of system failure. The committee believes that the risk of system failure should</b></p>	<ul style="list-style-type: none"> <li>• Interoperability will not go live before all relevant ICT assurance reviews, cyber security tests, and system readiness approvals, have been satisfied (please refer above).</li> <li>• Other consumer safeguards and protections in the regulatory framework include: <ul style="list-style-type: none"> <li>○ Extensive testing of interoperability as part of the implementation process – between ELNOs, land title registries, banks, in accordance with a Registrar-approved Test Plan</li> </ul> </li> </ul>

<p><b>be minimised, with the RG to do an assessment of readiness</b> (paragraphs 2.40, 2.76)</p>	<ul style="list-style-type: none"> <li>○ Ongoing vulnerability assessment and penetration testing</li> <li>○ Requirements that operating and technical requirements be in place for the safe and reliable operation of each ELN in the course of interoperability</li> <li>○ ELNOs are required to have an agreement in place for the timely and effective identification and rectification of any fault, issue or <b>failure</b> affecting interoperability or the provision of any interoperability service.</li> </ul> <ul style="list-style-type: none"> <li>● The focus areas for the independent health checks and readiness assessments include oversight of system resilience and mitigating the risk of system failure. ARNECC and the Registrar General’s assessment of readiness will draw on the recommendations arising from those health checks.</li> </ul>
<p><b>The financial industry code requires significant development and finalisation before the launch of interoperability, for consumers to be adequately protected. The committee believes that consumers should feel comfortable there is adequate protection of their finances.</b> (paragraphs 2.47, 2.51, 2.77)</p>	<ul style="list-style-type: none"> <li>● In May, Australian Payments Network Limited will commence work on the Industry Code with financial institutions and ELNOs, under the process endorsed by Commonwealth Council of Financial Regulators to strengthen financial regulation.</li> <li>● The Industry Code will address consumer and operational requirements including: contribution and disbursement of funds, misapplied/unapplied funds, technical and security requirements, mistaken payments, liability in the event of fraud, and protection of data and privacy.</li> <li>● This process is scheduled to be completed by the end of 2022. The ACCC will then take up to 6 months to review the Industry Code. The Code will be in place before interoperability is available to customers in NSW.</li> </ul>
<p><b>The industry code does not address the issue where a family loses their savings because a transaction</b></p>	<ul style="list-style-type: none"> <li>● The Industry Code will address operational requirements such as clearing (including contribution and disbursement of funds, and misapplied/unapplied funds), technical and security requirements, mistaken payments, liability in the event of fraud, and protection of data and privacy.</li> <li>● The existing regime includes compensation provisions:</li> </ul>

<p><b>went wrong. At the moment PEXA indemnifies participants</b> (paragraph 2.51)</p>	<ul style="list-style-type: none"> <li>○ ELNOs are required to hold insurance in accordance with Requirement 4.7 of the Model Operating Requirements. This includes professional indemnity, fidelity and public and product liability insurance. Subscribers are also required to be insured, in accordance with Rule 4.4 of the Model Participation Rules. Where a fraud occurs as a result of the fault of the Subscriber, the Subscriber's clients can seek compensation through the Subscriber's professional indemnity insurance. or fidelity funds operated by the regulators of legal practitioners and conveyancers.</li> <li>○ In limited circumstances, the loss of funds by a vendor are guaranteed by the ELNO Vendor Guarantee. All ELNOs in NSW are required to provide a Vendor Guarantee (Clause 9.1 of the NSW ELNO Conditions of Approval).</li> <li>● Fraudulent misdirection of funds has occurred as a result of email fraud (this issue is not confined to eConveyancing). Email fraud can occur because of malicious hacking of a Subscriber's or their client's email account. In addition to the insurance requirements noted above, there are several tools that Subscribers can use to avoid misuse of email and to securely obtain correct account details for the deposit of funds. Regulatory protections include: <ul style="list-style-type: none"> <li>○ ELNOs are required to have in place a Subscriber security policy, which includes processes to promote cybersecurity and secure use of email; and to provide training to Subscribers to comply with the policy</li> <li>○ Subscribers are required to comply with the ELNO's security policy and to ensure that all users are adequately trained in cybersecurity matters, including secure use of the ELN and email communications</li> <li>○ ELNOs are required to have their security policies annually certified by an independent expert, to ensure the policy remains fit-for-purpose and meets industry standards.</li> </ul> </li> <li>● The Model Operating Requirements and Model Participation Rules include protections and processes around the use of digital certificates – including ensuring that Subscribers can un-sign documents in the event of suspected fraud, and reporting/notification requirements between ELNOs and Subscribers in relation to compromised security items.</li> </ul>
<p><b>Risk of fraud</b> (paragraph 2.40)</p>	<ul style="list-style-type: none"> <li>● Interoperability builds on the existing secure eConveyancing framework, which has seen a significant reduction in fraud-related cases, compared with previous paper-based conveyancing transactions.</li> <li>● There is no increased risk from fraud from interoperability because: <ul style="list-style-type: none"> <li>○ each ELNO must comply with the relevant security and fraud mitigation requirements in the operating requirements – including maintaining stringent Subscriber onboarding processes such as verification of identity and ongoing compliance checks</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ The Interoperability data standard, for communications between ELNOs, will include security requirements ensuring those connections (APIs) are at least as secure as current APIs with Land Registries, State Revenue Offices, the Reserve Bank and financial institutions.</li> <li>● The State Government will compensate individuals (registered proprietors) for a loss suffered as a result of fraud or error in registration under the existing Torrens Assurance Fund.</li> </ul>
<p><b>There will not be certainty over which provider is liable in the case of fault</b></p> <p>(paragraph 2.43)</p>	<ul style="list-style-type: none"> <li>● Delayed settlements can be due to activities of ELNOs, Subscribers and their clients, Land Registries, State Revenue Offices and financial institutions. There is no single compensation regime for delay or failure of a settlement – liability and remedies depend on who was responsible for the delay, common law, and different contract conditions in various jurisdictions.</li> <li>● With interoperability, mandatory agreements between ELNOs will include a process for the timely and effective identification and rectification of any fault, issue or failure affecting interoperability or the provision of any interoperability service, and for expeditiously determining the root cause of an issue between ELNOs.</li> <li>● To assist in this process, the technology solution (via API service calls) will require all transactions to be recorded and tracked to allow ELNOs to fulfil their audit obligations.</li> </ul>
<p><b>Pricing and the approach to ELNOs servicing each other. The committee calls on ARNECC to clarify its position on inter-ELNO fees</b></p> <p>(paragraphs 2.20, 2.75)</p>	<ul style="list-style-type: none"> <li>● The process for an independent review of inter-ELNO pricing review has already commenced. An independent State pricing/economic Tribunal will work with ELNOs, other stakeholders, Treasuries and the ACCC via a 10-month review to inform ELNO fee pricing policy. The independent tribunal will consult with ELNOs and other stakeholders on a publicly available draft terms of reference.</li> <li>● Subject to consultation, the Tribunal will investigate and make recommendations on areas such as: <ul style="list-style-type: none"> <li>○ whether fees should be charged by the Responsible ELNOs to Participating ELNOs for the lodgment and settlement services it provides in an interoperable transaction</li> <li>○ whether the Tribunal should identify appropriate pricing principles to apply to setting any such ELNO fees, and if so, such pricing principles; or whether the Tribunal recommends a method or level of price for 2023-24 and a method for reviewing and adjusting the price in the future</li> <li>○ any amendments to the national regulations required to support the most appropriate way to apply the principles or formula, as applicable.</li> </ul> </li> <li>● Subject to consultation, the Tribunal will consider issues such as: <ul style="list-style-type: none"> <li>○ commercial flexibility requirements for ELNOs</li> </ul> </li> </ul>



	<ul style="list-style-type: none"> <li>○ costs incurred by different participants in an interoperable transaction and who should bear these costs</li> <li>○ the symmetry of the interoperable transaction market</li> <li>○ avoiding unnecessary regulatory or administrative burdens on ELNOs or other participants in an interoperable transaction</li> <li>○ additional ELNOs potentially entering the market over the next 1-5 years.</li> </ul>
<p><b>Whether interoperability is the best model for encouraging and increasing competition</b> (paragraph 2.6)</p>	<ul style="list-style-type: none"> <li>• The interoperability model has been developed since 2019 with industry in response to the following problem statement that was agreed by all industry and government participants in 2019: <ul style="list-style-type: none"> <li>○ <b><i>“In a multi-ELNO environment, subscribers should be able to transact efficiently and securely while only subscribing to the ELNO(s) they choose”.</i></b></li> </ul> </li> <li>• Relevant independent reviews and working groups that have contributed to identifying and developing the model best suited to addressing this problem include: Nicholls Review (2019); Review of the Intergovernmental Agreement (IGA), Dench McClean Carlson (2019); Pricing regulation of electronic conveyancing services in NSW, IPART (2019); ACCC report on eConveyancing market reform (2019); Centre for International Economics Addressing market power in electronic lodgment services (Cost benefit analysis) (2020); Interoperability Technical Report, Mr Glen Archer (2020); and insurance reviews by Willis Towers Watson (2019 and 2020).</li> <li>• <b>ARNECC, with industry, have considered numerous models since 2019, to address this problem</b> <ul style="list-style-type: none"> <li>○ <b>Multiple standalone ELNOs (current operating model where no interoperability exists):</b> <ul style="list-style-type: none"> <li>▪ A standalone ELNO market is at risk of defaulting to a monopoly, as network effects make it very difficult for competitor ELNOs to obtain a sustainable share of the market.</li> <li>▪ This model involves increases in costs and complexity for both Subscribers and ELNOs—for example, duplicity in record keeping, ongoing management and review of participation agreements, compliance obligations, staff training costs, costs associated with digital certificates, and the costs with using a less familiar user interface.</li> <li>▪ Subscribers would also have to agree which ELNO to use for a transaction involving multiple users, or the regulator would need to establish rules for determining which party chooses the ELNO that all must use.</li> </ul> </li> <li>○ <b>Price regulation</b> <ul style="list-style-type: none"> <li>▪ This involves a heavier cost of regulation, likely default to a monopoly and less pressure on ELNOs to innovate. This model would also not create the same downward pressure on prices that competition does.</li> </ul> </li> <li>○ <b>Wholesale retail model</b></li> </ul> </li> </ul>

- This would involve one 'wholesale' ELNO connected to Land Registries, State Revenue Offices, the Reserve Bank of Australia, financial institutions, and then new retail ELNOs connecting to this wholesale ELNO, and offering services directly to Subscribers.
- The ACCC raised areas of concern:
  - Government would need to mandate the exit of one ELNO with appropriate compensation and that ELNO's existing connections to Land Registries, State Revenue Offices and some banks would need to be de-commissioned
  - Both PEXA and the Sympli user interfaces would then need to connect to the infrastructure ELNO – this will be expensive and disruptive
  - Chilling effect on future investment in eConveyancing
  - Lack of incentive for the monopoly wholesale (infrastructure) ELNO to innovate
  - Costs associated with regulation are higher
  - More risks to competition from vertical integration
  - It would also require a form of interoperability between the wholesale ELNO and retail ELNOs.
- **Interoperability between ELNOs**
  - This model had lower costs and higher benefits relative to all other models. The Centre for Independent Economics concluded that interoperability is likely to deliver the largest benefit of the options considered. It estimated interoperability would generate a net present value of around \$83.6 million over 10 years using a discount rate of 7 years.
- **Several technical models have been considered by industry and experts**
  - In 2020, Mr Glenn Archer, former Commonwealth Government CIO, with ELNOs, government and industry experts, examined three technical options:
    - Distributed ledger technology (blockchain)
    - Enterprise Service Bus (ESB)
    - Direct connection.

	<ul style="list-style-type: none"> <li>○ Models were assessed against criteria such as: their technical feasibility (eg workflow integration, legacy risk, standards based, minimise disruption in transition); potential to promote competition (eg scalability, ability to innovate, ability to add/delete ELNOs, barrier to entry) and security.</li> <li>○ The report recommended the pragmatic solution of direct connection between the current ELNOs to establish interoperability in the short term.</li> </ul>
<p><b>Vertical integration concerns</b> (paragraph 2.11)</p>	<ul style="list-style-type: none"> <li>● National regulations require organisations that provide an ELN maintain separation between ELN and non-ELN services either by creating a separate entity or an independent business unit for the ELN. An ELNO: <ul style="list-style-type: none"> <li>○ must deal with the non-ELN service provider (either a separate entity or business unit within the ELNO) on an arm's length basis and without conferring an unfair commercial advantage on the non-ELN service provider. It must be able to stand-alone</li> <li>○ cannot maintain any special relationship, advantage or support from or to the non-ELN part of the organisation.</li> </ul> </li> <li>● This form of separation is designed to put the separated entity on the same footing as any other third-party business that might seek to enter new markets.</li> <li>● With sustainable competition, competitors in the downstream market will have one or more alternative providers, so conveyancers can influence ELNO business decisions—for example, if an ELNO offers an eConveyancing service they could choose the alternative.</li> <li>● The ACCC has been closely involved in this reform, has developed a deep understanding of this industry, and is committed to a competitive market.</li> </ul>

<p><b>Whether downward pressure on prices will flow from competition</b></p> <p>(paragraphs 2.17, 2.75)</p>	<ul style="list-style-type: none"> <li>ELNO fees are a cost that are passed on to transacting parties (e.g. home buyers) or absorbed by Subscribers. Due to the high volume of transactions, the potential benefit to the community of downward pressure on pricing is significant. For example, the cost benefit analysis by Centre for International Economics found that price regulation has significant limitations and is unlikely to deliver the same price benefits as effective competition.</li> <li>IPART also supported effective competition as the best solution to deliver lower prices, and innovation, over the long term.</li> <li>With monopoly digital platforms and scale, prices tend to be set above marginal costs. Competition brings effective downward pressure on prices toward being equivalent to marginal costs. These lower prices/fees as a result of competition are in effect a net wealth transfer from the monopoly operator to the customer and community.</li> <li>Sympli has published lower fees than PEXA (the table below shows prices for single titles). If Sympli sustains its presence in the market, PEXA will need to lower its fees or deliver a superior quality service to justify its higher pricing to the market.</li> </ul> <table border="1" data-bbox="745 639 1480 831"> <thead> <tr> <th></th> <th>PEXA</th> <th>Sympli</th> </tr> </thead> <tbody> <tr> <td>Transfer</td> <td>\$117.92</td> <td>\$100.02</td> </tr> <tr> <td>Mortgage</td> <td>\$44.22</td> <td>\$21.59</td> </tr> <tr> <td>Discharge of mortgage</td> <td>\$21.34</td> <td>\$13.64</td> </tr> <tr> <td>Mortgage with financial settlement</td> <td>\$59.07</td> <td>\$29.55</td> </tr> </tbody> </table>		PEXA	Sympli	Transfer	\$117.92	\$100.02	Mortgage	\$44.22	\$21.59	Discharge of mortgage	\$21.34	\$13.64	Mortgage with financial settlement	\$59.07	\$29.55
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Mortgage with financial settlement	\$59.07	\$29.55														
<p><b>Whether the benefits of interoperability would be eclipsed by complexity</b></p> <p>(paragraph 2.26)</p>	<ul style="list-style-type: none"> <li>The interoperability model of direct connection by APIs between ELNOs has been chosen to minimise complexity and impact on Subscribers, who will be able to use their chosen ELNO without regard to whether a transaction is being conducted on a single ELN or across multiple ELNs.</li> <li>Every transaction will have a designated Responsible ELNO to perform lodgment and settlement – this will minimise impact on connected parties such as Land Registries, State Revenue Offices and financial institutions, who will receive lodgment and settlement instructions from the Responsible ELNO in the same way as currently occurs in a single-ELN transaction.</li> <li>The alternative of multiple standalone ELNOs would create far more complexity for Subscribers, as they would need to subscribe to multiple ELNOs and navigate complex business rules to determine which ELNO parties must use for a given transaction to proceed.</li> </ul>															

<p><b>Whether interoperability would bring innovation</b></p> <p>(paragraphs 2.29, 2.75)</p>	<ul style="list-style-type: none"> <li>• Interoperability—by enabling competition—incentivises ELNOs to innovate in order to earn their customers. Interoperability is an innovative policy to remove impediments to a competitive market, by overcoming the network effect which heavily favours the incumbent provider.</li> <li>• In the absence of competition, there is little incentive for the incumbent monopoly provider to innovate with the exception of the development of new services for which a fee could be charged. This means that a platform is at risk of reflecting the minimum the operator needs to meet its own requirements, instead of reflecting the needs of potential consumers.</li> <li>• Effective competition would drive competitors to compete not just on new services, but also uplifting its own platform – to earn and keep Subscribers – through innovation such as more efficient user interfaces and enhanced service quality.</li> <li>• Similarly, as ELNOs compete for a more targeted market-share, the products and services offered could themselves be tailored to different segments of the market. Subscribers could then choose the ELNO that best caters for their needs.</li> <li>• A critical innovation is that Subscribers do not have to subscribe to more than one ELNO. Members of the conveyancing and legal professions have a choice as to which ELNO is best for them, and are not required to be signed up to multiple ELNOs.</li> <li>• Interoperability is driving innovation across industries more generally also with a focus on consumer protections: <ul style="list-style-type: none"> <li>○ <b>Airline industry:</b> International Civil Aviation Organisation is progressing a global interoperable aviation framework to enable ground-ground, air-ground, and air-air exchange of information among all aviation stakeholders</li> <li>○ <b>Train networks:</b> The Australian Rail Industry is developing interoperability for trains to move safely, efficiently, and effectively from one network to another so networks, assets, systems, and processes are mutually interdependent</li> <li>○ <b>Digital health:</b> Interoperability is being developed to better connect health services, supporting the exchange of high-quality, secure patient information between healthcare providers and the systems they use</li> <li>○ <b>Mining:</b> Interoperability is helping accelerate information exchange between technologies used to manage, coordinate, monitor and control fleets of autonomous and manually operated mining equipment.</li> </ul> </li> </ul>
<p><b>The current Bill leaves gaps, including enforcement</b></p> <p>(paragraph 2.57)</p>	<ul style="list-style-type: none"> <li>• An enforcement regime is being developed, working with each State and Territory’s Justice departments. In May 2021, ARNECC published the outline of the enforcement regime, which includes introducing additional powers for Registrars including undertakings, directions, financial penalties and stronger investigative powers.</li> <li>• ARNECC will shortly begin consulting with government stakeholders on a detailed enforcement proposal, before progressing to broader industry consultation by around mid-2022.</li> </ul>

	<ul style="list-style-type: none"> <li>• ARNECC has been addressing enforceability issues in a parallel process to interoperability. As such, the current Bill was never intended to address enforcement. Instead, enforcement is to be the subject of a second Bill amending the ECNL scheduled for late 2022. All state and territory Ministers have committed to this second Bill.</li> <li>• It is ARNECC's intention that the enforcement regime will be in place prior to the implementation of interoperability scheduled to begin in mid-2023.</li> <li>• The second Bill also provides an opportunity to address any other changes to the ECNL agreed with industry in ongoing consultation on the implementation of Interoperability.</li> </ul>
<p><b>The timeline is not safe and will not deliver the benefits that have been claimed</b> (paragraph 2.65)</p>	<ul style="list-style-type: none"> <li>• The timetable for the rollout of interoperability has been developed collaboratively by all state and territory Ministers (with endorsement of federal Ministers), with involvement of ELNOs, national peak bodies and regulator the ACCC.</li> <li>• The National Interoperability Industry Panel has an implementation working group that brings together all parties for an industry wide detailed rollout plan. This group had submissions from ELNOs and others.</li> <li>• The timeline will allow sufficient time for all necessary regulatory instruments to be properly consulted and finalised before full interoperability becomes operational. Interoperability will not go live before all relevant ICT assurance reviews, cyber security tests and system readiness approvals have been satisfied.</li> </ul> <p><b><i>Time for the banks to change their computer systems and operational procedures</i></b></p> <ul style="list-style-type: none"> <li>• The Program Manager – Interoperability Implementation Working Group is working with the Australian Banking Association and financial institutions towards the Day 1 transaction (being a limited scope refinance in Queensland), followed by the rollout of interoperability.</li> <li>• This includes briefings to assist banks assess the changes they will need to make, and the impact of those changes on their resources. This will help inform the timetable for banks, in the context of the overall timetable of rollout scheduled from mid-2023.</li> </ul>

**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.

**Response:**

- **Partially support**
- **Support the NSW Office of Registrar General providing a report to the Legislative Council assessing the readiness of the system before interoperability is rolled out and including an update at the time the Second Bill is presented to the Legislative Council**
- **Do not support** waiting until the industry code is finalised before the Legislative Council consider the Second Bill because:
  - The Industry Code is not likely to be complete until the end of 2022, and not ready to be implemented until after the ACCC has reviewed the Code, which will take up to six months.
  - The Second Bill will include provisions updating the national enforcement regime necessary to support eConveyancing more generally along with outstanding matters raised by stakeholders not included in the first Bill. This second Bill is not tied to the completion of the Industry Code, but is necessary to strengthen consumer protections and safeguards for the eConveyancing framework more generally.
- Instead, the Government **supports** the Legislative Council considering the second Bill as soon as it has been prepared by ARNECC and approved by all states and territories for introduction into the NSW Parliament.

## Tab A – State and Territory Ministers letter to the NSW Legislative Council Portfolio

### MINISTERS RESPONSIBLE FOR ELECTRONIC CONVEYANCING IN AUSTRALIA INTERGOVERNMENTAL AGREEMENT FOR AN ELECTRONIC CONVEYANCING LAW

The Hon Mr Mark Banasiak, MLC  
Chair  
Portfolio Committee No 4

Dear Chair

#### **Re: Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022**

We are writing in response to the NSW Legislative Council's Portfolio Committee No 4 – Customer Service and Natural Resources inquiry into the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 (ECNL), currently in the Legislative Council.

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.

This Bill is the first of two sets of amendments. It is proposed that both will be enacted before interoperability is rolled out later in 2023.

#### **The current Bill in front of you**

This first Bill sets out the high-level legal framework to facilitate interoperability.

This Bill gives Registrars the power to require ELNOs to **interoperate**. Interoperability aims to enable effective competition by removing network effects and allowing Subscribers to use the electronic lodgment network of their choice. The Bill also brings Registrars new powers to require ELNOs to participate in a financial industry code being developed by Australian Payments Network Limited, with Electronic Lodgment Network Operators (ELNOs) and financial institutions in consultation with broader industry.

This first Bill is necessary now to require and justify the considerable effort and resources required by industry and government to participate in the implementation of the interoperability reform.

#### **The second Bill is proposed to be introduced before interoperability is live**

Ministers have already indicated to stakeholders that feedback from the 2021 ECNL consultation will be considered further, with more time for ARNECC to properly consider this, potentially leading to further amendments.

The second Bill therefore provides the pathway for amendments to the ECNL in consideration of stakeholder feedback, without risking further delays

#### **Next steps**

Given the nature of legislation being an applied law scheme, any proposed amendments now to this first Bill will need to be reviewed by all states' and territories' executive before



returning to the NSW Parliament. This could take a significant time – noting some jurisdictions have elections this year.

The ACCC has been clear that further delay will heighten barriers to entry to the market.

Introducing this first round of ECNL changes now provides confidence to industry to keep working on this reform by signalling all governments commitment, while allowing more time in which to further refine and then finalise the interoperability system, before interoperable transactions commence.

This letter is signed **on behalf of all state and territory ministers** responsible for electronic conveyancing in Australia, under an Intergovernmental Agreement for an Electronic Conveyancing Law (as listed below). South Australia was unable sign the letter due to caretaker conventions.

Yours sincerely

**The Hon. Victor Dominello MP**

Minister for Customer Service and Digital Government

Date: 10 March 2022

**The Hon Shane Rattenbury, MLA, Australian Capital Territory** Attorney General, , Minister for Consumer Affairs, Minister for Water, Energy and Emissions Reduction, Minister for Gaming **The Hon Selena Uibo MLA, Northern Territory** Attorney General, Minister for Justice, Minister for Treaty and Local Decision Making, Minister for Aboriginal Affairs, Minister for Parks and Rangers, **The Hon Scott Steward MP, Queensland** Minister for Resources, **The Hon Jacqui Petrusma MP, Tasmania** Minister for Parks, Minister for the Prevention of Family Violence, Minister for Police, Fire and Emergency Management, **The Hon John Carey MLA, Western Australian** Minister for Lands, Minister for Housing Minister for Homelessness, Minister for Local Government, **The Hon Richard Wynne, MP, Victorian** Minister for Planning. **South Australia** is in caretaker mode.



AUSTRALIAN REGISTRARS NATIONAL ELECTRONIC CONVEYANCING COUNCIL

The Hon. Mark Banasiak, MLC  
Chair  
Portfolio Committee No. 4 - Customer Service and Natural Resources  
Parliament House  
**SYDNEY NSW 2000**

Email: [portfoliocommittee4@parliament.nsw.gov.au](mailto:portfoliocommittee4@parliament.nsw.gov.au)

Dear Chair

**Re: Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022  
– steps required for any amendments to the Bill and NSW Application legislation**

Thank you for the opportunity for ARNECC to provide a submission, and for inviting me to represent ARNECC as a witness, during the Committee's inquiry into the *Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022*.

I am writing with further information on the process jurisdictions would require under the existing National Applied Law Scheme, and the Intergovernmental Agreement for an Electronic Conveyancing National Law (IGA) signed by all Australian states and territories, for considering any amendment to the current Bill, or the related NSW Application Act.

ARNECC wanted to share this information with the Committee following PEXA's supplementary submission recommending changes to the NSW amending legislation to require in NSW: (1) system readiness testing for interoperability, and (2) a new process for introducing changes to the national operating requirements in NSW.

We confirm in both cases, the following steps would be required in order to maintain national uniformity and ensure proper stakeholder consideration, consistent with the IGA, 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.
3. Most jurisdictions will require executive approval (including Cabinet approval in some cases).

This national process, via the National Applied Law Scheme, and under the guidance of the IGA, is designed to avoid the situation of jurisdictions having multiple different requirements for regulating electronic conveyancing ie both national and local requirements. This is to ensure national consistency, which is of benefit to all stakeholders, and avoids jurisdictional divergence. It also avoids each jurisdiction having to separately conduct consultation with many of the same stakeholders (for example, Australian Banking Association, Australian Institute of Conveyancers, Law Council of Australia, and Electronic Lodgment Network Operators), before adopting and applying changes to law, and new Operating Requirements or Participation Rules at the state or territory level.

Australian Registrars National Electronic Conveyancing Council

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Both the Operating Requirements and the Participation Rules, which in most jurisdictions are legislative instruments, contain an amendment process which includes national stakeholder consultation. ARNECC follows an agreed national Stakeholder Consultation Framework ([www.arnecc.gov.au/wp-content/uploads/2021/08/arnecc-stakeholder-engagement-framework.pdf](http://www.arnecc.gov.au/wp-content/uploads/2021/08/arnecc-stakeholder-engagement-framework.pdf))

The impact of the proposed changes to the NSW Application Act would include:

- a) detracting from national uniformity,
- b) potentially substantially delaying the interoperability reform, and
- c) increasing the cost for governments and stakeholders in the duplicated processes.

We note the requirements PEXA is seeking to include in the NSW Application Act are already part of ARNECC's existing work program. ARNECC has committed to system readiness tests to occur before interoperability goes live. ARNECC will consider the proposal to update the approach to rule making for the national Operating Requirements and Participation Rules, as part of the current consultation for the second round of changes to the *Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022*. This will be progressed via the existing national consultation process, so all jurisdictions, and stakeholders, are part of this approach.

We hope this information is helpful in your considerations. Please do not hesitate to contact me on \_\_\_\_\_ should you wish for further information on state and territory governments' commitment to a national approach.

Your sincerely

Bruce Roberts  
**Chair**  
**Australian Registrars' National Electronic Conveyancing Council**

30 March 2022

**Tab C – High-level summary of governance forums and approximate dates to inform progress with interoperability implementation**

Date	Milestone
May 2022	<ul style="list-style-type: none"> <li>• <b>Financial industry code</b> working groups commence, chaired by AusPayNet with ELNOs and financial institutions; peak bodies, ARNECC, Reserve Bank of Australia and ACCC as observers</li> <li>• <b>ARNECC health check commences</b>, focusing on assurance of the national reform (ongoing through reform)</li> <li>• <b>NSW health check</b>, focusing on assurance for interoperability development and rollout in NSW. <i>[Note - This is the first in a series of NSW assurance reviews. Further reviews will be scheduled to meet project milestones]</i></li> <li>• <b>Interoperability Operational Committee</b> recommences with both ELNOs, with weekly meetings to develop APIs until full set of APIs have been developed.</li> <li>• <b>Interoperability Implementation Committee</b> and <b>Testing Working Group</b> recommence with both ELNOs, with weekly meetings focusing on the implementation plan and testing</li> <li>• <b>Ongoing discussion with stakeholders</b> on ECNL amendments; and developing enforcement regime.</li> </ul>
June 2022	<ul style="list-style-type: none"> <li>• <b>Ministerial Forum</b>, with Ministers from each state and territory, the ACCC, both ELNOs and peak bodies (the Law Council of Australia, the Australian Institute of Conveyancing and the Australian Banking Association). Ministers and industry will review progress with technical and regulatory framework, and risks to current agreed timetable and system readiness.</li> <li>• <b>National interoperability industry panel</b> – quarterly meeting</li> </ul>
September 2022	<ul style="list-style-type: none"> <li>• <b>National interoperability industry panel</b> – quarterly meeting</li> <li>• <b>Day 1 transaction</b> – limited scope refinance, in Queensland <i>[Note – timing may change, due to delay in technical work since November 2022]</i></li> <li>• <b>Potential Ministerial Forum</b>: update on progress with regulatory and technical framework and second Bill, and outcomes of ARNECC health review</li> </ul>
November 2022	<ul style="list-style-type: none"> <li>• <b>ECNL amendments</b> – second set of amendments is tabled in NSW Parliament. <i>[Note – it is proposed that amendments to consider stakeholder comments to the ECNL and an enforcement regime be tabled before the financial industry code is finalised; please refer to comments to Recommendation 2].</i></li> </ul>
December 2022	<ul style="list-style-type: none"> <li>• <b>Financial industry code</b> draft is complete. ACCC review commences.</li> <li>• <b>National interoperability industry panel</b> – quarterly meeting</li> <li>• <b>Potential Ministerial Forum</b>: update on progress with regulatory and technical framework and second Bill</li> </ul>
February 2022	<ul style="list-style-type: none"> <li>• <b>Security review</b> - potential security review</li> </ul>
March 2023	<ul style="list-style-type: none"> <li>• <b>National interoperability industry panel</b> – quarterly meeting</li> <li>• <b>Potential Ministerial Forum</b>: update on progress with regulatory and technical framework and second Bill and outcomes of health checks and system readiness reviews</li> </ul>
June 2023	<ul style="list-style-type: none"> <li>• <b>Financial industry code</b> ACCC review completes.</li> <li>• <b>National interoperability industry panel</b> – quarterly meeting</li> </ul>