Submission No 3

INQUIRY INTO ELECTRONIC CONVEYANCING (ADOPTION OF NATIONAL LAW) AMENDMENT BILL 2022

Name: Dale Turner

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SUBMISSION to Portfolio Committee No 4 Legislative Council NSW Parliament

Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022

Dear Committee, I trust my submission assists in the consideration of what is a complex and important evolution in the practice of conveyancing law in NSW and the national econveyancing system. I express my gratitude to Committee Members for the opportunity to make the views of an experienced practitioner available to Committee Members and welcome any questions or providing further information to Committee Members.

A summary of my qualifications, experience and membership of conveyancing committees' is provided at end of submission.

Yours faithfully, Dale Turner 9 March 2022.

1 Competition

The Government has stated that the importance of the Bill being examined by the committee is competition. That is, there is a public benefit in the breaking of the monopoly presently held by Property Exchange Australia (PEXA) as the only approved Electronic Network Operator (ELNO) facilitating the Electronic Lodgement Network (ELN).

No one in industry is against the objective of competition. That said, 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.

Conveyancers and solicitors (subscribers) are more concerned with the additional risks, security, regulatory and an administration perspective than an objective of competition for the sake of competition.

Many subscribers question the Government's purpose in breaking the monopoly of PEXA (which like the former Land Titles Office was a government held body), when alternatives such as the [1]Hub interoperability model" could be easier, faster and less complex to implement. Many subscribers question why the same competition principal and operation of "interoperability" has not been applied by the NSW Government to the NSW Land Registry, which by the granting of a "concession" for NSW land titling services, created a monopoly for the benefit of a privately owned company.

Indeed, the subsequent failure of the [2]Government and Office of Registrar General, to comply with their undertaking to the industry and the Minister's undertaking to the Parliament, to provide Information Notices with *"the same information as previously provided for in the paper Certificates of Title*", has created a question as to whether the delivery of the complex and as of yet, largely unknown regulation system of interoperability in conveyancing, will provide a secure, efficient and cost effective system.

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[1] Directions Paper on proposed eConveyancing interoperability regime 6 February 2019 4.2 Hub-based interoperability Under the hub model, each ELNO is required to establish a single connection to a central platform or hub. Through the hub, each ELNO is able to access each of the other ELNOs without establishing its own link to them. As each new ELNO enters the market, it only has to establish a single link to the hub to gain access to the existing ELNOs and the existing ELNOs do not need to do anything further to gain access to the new ELNO.

[2] Minister's second reading speech, REAL PROPERTY AMENDMENT (CERTIFICATES OF TITLE) BILL 2021. Hansard Legislative Assembly– 17 March 2021.*"Therefore, schedule 1 to the bill introduces a requirement for the Registrar General to issue a new document called an information notice to customers. This notice will contain the same information that a person would ordinarily receive had they been issued with a certificate of title."*

However, whatever government's view on the competition benefits of interoperability, **the dealing with the most important, expensive, and legally complex purchase, sale or securing an interest in real property, that people make in their lives, competition in and of itself, must not be the only consideration.**

2 Econveyancing

Much has changed with the [3]implementation of electronic conveyancing in demonstrating the effect of the shift from 'paper' to econveyancing, his Honour Kunc J in the matter of *Guirgis v JEA Developments Pty Limited [2019] NSWSC 164*, observed (at paragraph) [19]

"To appreciate the Court's concerns…, **it is necessary to set out the relevant statutory provisions**. **These have become somewhat complex with the introduction of electronic conveyancing**." And at [39] and [42]):

"As New South Wales' conveyancing system moves ***to a completely electronic platform, the role of conveyancers and solicitors, … becomes all the more important.*** *Ordinary members of the public are, in practical terms, no longer able to lodge caveats without the intervention of a 'Subscriber'...* ***The requirement to give the requisite representations and certifications operates to confer on them the role of a guardian at the gate."***

The consequences of not fulfilling the obligations and responsibilities of representations and certifications, have in turn been demonstrated in the matter of *Perebo Pty Ltd v. Wayville Residential Investments Pty Ltd [2019] SASC 35*, which concerned the effect on the validity and registration of an "electronic" mortgage that had been lodged in the ELN despite the fact that the solicitor for the mortgagee had incorrectly certified that the mortgagee held a mortgage in the same form as that which was lodged for registration.

The [4]Three Pillars of econveyancing, Verification of Identity, Right to Deal and Client authorisation are the responsibility of a subscriber. If a subscriber certifies that an electronic dealing, such as a transfer, mortgage or any other interest in land has been done, other than the specific exceptions provided for in the Real Property Act, then it has been done. **Consequently, it is the subscriber, being the 'guardian at the gate' who enables registration of an indefeasible interest on the Land Register.**

If *Perbo Pty Ltd*, had been in the paper system, the party who had not been a mortgagor may have had an action against the Torrens Assurance Fund. However, in the new econveyancing system, **the Registrar General is entitled to rely on the certification of a subscriber to the electronic network as if a party had signed a paper dealing, and the party making a claim has no recourse but that of having to battle with the subscribers PI insurance**.

Consequently, in econveyancing,

- Members of the public have no access to the econveyancing system
- It is the subscriber who determines the choice of an ELNO

[3] EC commenced in 2010 with the creation of PEXA by Governments through COAG. The first E conveyance was in 2014 and EC was mandated in NSW for all transactions in 2019.

[4] Office of Registrar General's Website https://www.registrargeneral.nsw.gov.au/property-and-conveyancing/eConveyancing

- It is the subscriber who verifies, certifies, and signs an electronic document such as a transfer of land, as if the transferee, transferor mortgagee, mortgagor, lessee, lessor and so on, had signed that document in paper.
- [5]the status of an electronic registry instrument in econveyancing has the same effect as if were in the form of a paper document,
- There is no requirement to look behind conveyancers or solicitors, signature
- once the document is registered indefeasibility, created by the subscribers' signature, has taken effect, and
- in the event of error, fraud or negligence, the only recourse for the public is the practitioner's professional indemnity Insurance.

(This is why the Minister has been able to claim that there has been no claim against the Torrens Assurance Fund since the commencement of econveyancing. The claims are against solicitors and conveyancers having the inevitable consequence of increasing the professions PI insurance premiums which in turn will increase conveyancing costs).

3 Electronic Lodgement Network (ELN) and Electronic Lodgement Network Operators (ELNO)

The ELN is a complex system that has taken many years to develop with multiple interfaces including multiple subscribers, financial institutions, government authorities facilitating not only transfers and interest in land titles, but payment of taxes and duties, vast amounts of private information and the transfer of hundreds of millions of dollars every working day.

ELNO's are private or public owned companies, who are invisible to the public and have a **shareholder interest** with responsibilities and obligations to limit regulatory, attribution and liability costs. However, **conveyancers and solicitors** (representative subscribers), have a **stakeholder interest,** with a fiduciary-duty of care, professional standards, and obligations and responsibilities to clients, to econveyancing and conveyancing practice.

The Electronic Lodgement Network (ELN) does not provide a conveyancing service. Its function is to facilitate the preparation of registry instruments, the settlement of the funds and the lodgement of instruments with the land registry to complete conveyancing transactions and there seems, at times to be a conflation between the two different distinct roles of subscribers and ELNO's.

It is the subscriber, who in addition to acting for their client in the conveyance, is responsible for verification, certification, preparation of and electronic signing of registry documents, checking documentation, [6]revenue assessment, compliance, direction, and transfer of monies. In fact, all of the relevant statutory provisions that "*have become somewhat complex with the introduction of electronic conveyancing."* are the subscribers' responsibility.

Compliance and monitoring of these functions are governed by the Model Operating Rules (MOR) and subscribers are separately licensed and [7] (incongruously differently) regulated, the Office of the Registrar General (NSW), (ORG), is responsible for the compliance and

[5] S 7 (1) Electronic Conveyancing National Law

[6] Duty is assessed by the subscriber through the Electronic Duties Return which is one of the interfaces in the ELN.

[7] Conveyancers in NSW are currently licensed and regulated by Fair Trading at a substantially different and lower standard than solicitors for what the NSW Supreme Court and the Legal Services Commissioner have said is the same legal work with the same duty of care and legal practice standards.

monitoring of subscribers and the MOR. However, the ORG has delegated that regulatory function to the privately owned NSW Land Registry.

There are two different types of subscribers,

- Representative subscribers (solicitors and licensed conveyancers) who represent other parties.
- Principal subscribers who represent themselves, that is financial institutions and government agencies

In a "normal" transaction of a sale and purchase there are usually four subscribers. The conveyancer or solicitor (representative subscriber) acting for the vendor, purchaser, and the financial institutions (principal subscriber) acting for the discharging and the incoming mortgagee. However, there are often multiple transactions each depending upon the other for the successful settlement of the one before to ensure settlement. In that regard there are numerous subscribers and financial institutions representing various parties with numerous interests, all ensuring all of the necessary procedures of their client's particular interests are followed and all regulatory and other requirements have been complied with in a chain of transactions.

A failure in any one of these requirements along the chain will mean a delay and perhaps the "falling over" or "going pear shaped" (as it is referred to in the vernacular), of a settlement and consequently a chain of settlements. **The consequences of a failed settlement are people locked out of houses, apartments, retirement villages, furniture in moving trucks, damages for breach of contract, additional mortgage interest, taxes, rates and charges, monies withheld from settlements and consequently anxious and angry clients and a substantial amount of work for representative subscribers in reorganising settlements and ensuring that any damage to clients are kept at a minimum.**

Presently, much of these actions take place in one fully approved ELNO, which allows for all subscribers to work and converse within an electronic workspace, unique to the land being the subject of a transaction, but common to the subscribers and financial institutions. The question of "interoperability" does not presently arise and any "outage" or missing monies or failure of the system is attributable to the ELNO and, is more often than not quickly resolved, and the [8]conveyance, if usually a few hours later, is settled.

With the approval of additional ELNO's it is essential that they all operate in the ELN on the principal of interoperability.

4 Interoperability

The power of the ORG to waive the interoperability requirements under s 15 are too wide, need to be prescriptive and only be granted where it can be demonstrated that a waiver, must not compel, another subscriber having to become a member of, or use, another ELNO.

"Interoperability" means the interworking of the ELN in a way that enables:

[8] However, there was an outage on 30 June 2021 resulting in settlement rolling into the following day which aside from the "usual" problems resulting from a delayed settlement left a number of parties with a Tax liability which if the properties would have settled on the due settlement date would not have arisen.

(a) A subscriber using an ELNO (the first subscriber) to complete a conveyancing transaction that involves a subscriber using another ELNO without the first subscriber having to be a subscriber to the other ELNO, and

(b) The preparation of a registry instrument or another document in electronic form using data from different ELNO's.

Without interoperability the econveyancing system will be analogous to a multiple gauge railway system.

Consequently, **the industry has agreed interoperability must be a requirement for approval as an ELNO.**

Without seamless "interoperability" **if one ELNO goes down all go down.** All the functions of all subscribers to a transaction would need to recreate and re-perform all functions in a newly created workspace.

If this happens on the day of or near settlement, it would be impossible to undo and recomplete all these functions in such a short space of time and other subscribers whose ELNO was not at fault, would likely not agree to do so without the subscriber having to pay any fees and a cost to any other subscriber for their additional work and time.

And until the settlement can be rescheduled people would be left in moving trucks, locked out of houses, retirement villages or nursing homes, or left without the proceeds of a sale. Who would pay the penalties, interest, storage and accommodation, liquidated damages and the list goes on?

In order to ensure an appropriate level of consumer protection the Bill therefore provides s18A ELNO required to establish and maintain interoperability.

(1) A person approved as an ELNO under section 15 must, in accordance with the operating requirements, establish and maintain interoperability between the ELN operated by the person and each ELN operated by another ELNO.

However,

s(2) The Registrar may waive compliance with the interoperability requirement if the Registrar is satisfied that granting the waiver is reasonably necessary in all the circumstances.

(3) A waiver under subsection (2) may— (a) be total or partial, and

(b) apply to particular persons approved as an ELNO under section 15 or particular classes of those persons, and

(c) apply generally or be limited in its application by reference to specified exceptions or factors, and (d) apply indefinitely or for a specified period, and (e) be unconditional or subject to conditions or restrictions.

The provision that the ORG may fully and permanently waive the interoperability requirements, is of significant concern to subscribers. There may be, in some instances, waivers that may be applicable to ELNO's. For example, a financial institution refinancing to another financial institution or an intergovernmental transaction.

However, any waiver from "interoperability" where a subscriber is or can be in connection with providing a service for a representative subscriber, will result in a subscriber having to subscribe to an ELNO of which they do not have membership. Inevitably, where a principal

subscriber's ELNO has a waiver, that ELNO will use their dominant position to compel the representative subscriber to use the financial institutions principal subscriber's ELNO. Consequently, there is no competition only an abuse of market power by the financial institutions.

5 Operational Requirements and liability

Subscribers are concerned as to how operational requirements will be formed, what role ELNO's play in their formation and their application and regulation in the real-time day to day conveyancing world of people, property, money, moving trucks, mortgage interests, tax liabilities, liquidated damages, compensation, notices to complete, time of the essence contracts and the lists goes on.

Operational requirements are defined in the act as rules as defined under s22. And in turn Division 3 s22 provides a list of requirements and participation agreements required for ELNO's enabling them to work with each other in the econveyancing system.

These requirements include things such as

• interoperability agreements between ELNO's,

• resolution of disputes between ELNO's and subscribers or clients of subscribers.

• Standards of data, integration, liability

• Participation in an industry code

• Insurance

• Fees and charges and so on…

Without these agreements, rules or an industry code with dispute resolutions, attribution, insurance, standards and so on, econveyancing cannot successfully operate.

Of particular concern to subscribers are the resolution of disputes between ELNO's and subscribers and clients of subscribers, participation in an industry code, fees, charges, and insurance.

Problems or delays in a conveyancing transaction can be both timely and expensive and the complexities of attribution will be, as described in the **ORG Directions-Paper-on-proposed-eConveyancing-interoperability-regime**,

"…if the outcome of the root cause analysis cannot be agreed between the ELNOs, there should be an expeditious, efficient and independent dispute resolution process capable of dealing with disputed questions of fact and law. The Government considers that this role is not appropriately undertaken by the Registrar General, given his supervisory functions over ELNOs and that, as an executive officer, he or she is not necessarily equipped to perform a semi-judicial role."

However, when a settlement is delayed and there is no fast, and preferably real time mechanism for attribution, resolution, compensation to clients and subscribers, the costs and damages can quickly become extensive and expensive. Professional independent advice and communication from representative subscribers to clients is essential in resolving and limiting the damages caused by delays that will inevitably occur, in the econveyancing system. Such costs would need to consider, moving and storage, accommodation, revenue and tax penalties, interest on mortgages, rate and water adjustments additional searches, liquidated damages, breach of contract and the additional costs and time of subscribers

incur in having to recalculate and reorganised the settlements, early possession agreements… and the list goes on.

6 Liability

Subscribers are concerned that the cost of any levy and or the cost of premiums will increase the costs of conveyancing and policy limitations will leave gaps in the amounts and types of claims that will be paid when the inevitable claims against the insurance or scheme arise and their clients or the subscribers, suffer a loss as a result of any limitations.

The ORG "Directions Paper on proposed eConveyancing interoperability regime 6 February 2019", under the heading liability advises,

"The Government has sought advice from its insurance advisers, Willis Towers Watson (WTW), on whether ELNOs would be able to obtain private insurance consistent with the above principles for an interoperability liability regime." WTW went on to advise,

"…that they do not anticipate the information exchange component of interoperability is likely to cause significant concern for the insurance market… However, WTW advises that the interoperability model could contain risks not ordinarily assumed by insurers:

- *Reliance principle: the models assume ELNOs rely on the data provided by the other ELNO. This principle may be inconsistent with insured entities' obligation to take reasonable steps to prevent loss and may remove existing checks and balances; and*
- *Claims paid, regardless of fault: insurers may baulk at the requirement to provide what could amount to a financial guarantee; and*
- *Consequently, require higher deductibles, higher premiums and increased policy limits."*

Possible models are provided by WTW that includes various suggestions of insurance and associated regulation. However, given the above advice of difficulties in obtaining the required insurance with likely higher deductibles, premiums and policy limits, another possible solution proposed by WTW is,

"A state Fund established to provide a first response to consumers and subscribers – similar to the Torrens Assurance Fund (TAF). *The fund could operate in a similar manner to the TAF or could be modified to provide a first response to consumers only (with recovery rights available against ELNOs) or be reinsured or backed by an excess of loss insurance program to reduce the capital required to support the fund.* ***The paper then suggests that the fund can be funded by a levy on ELNOs or on consumers/subscribers****."*

The establishment of a State Fund "similar" to the TAF paid for by a levy on consumers or subscribers, or any access to the TAF, when such a fund additional to the TAF does not exist in the present econveyancing system will add more costs to econveyancing and <u>should not be a solution</u> to liability arising from claims against an ELNO.

Conveyancers and solicitors, notwithstanding the shift in econveyancing to their role as "guardians of the gate," to the NSW Land Register, do not have access to the Torrens Assurance Fund or have not had to establish a State Fund to cover liabilities when a claim arises that would have preciously been met by the Torrens Assurance Fund. Conveyancers and solicitors have regulated approved insurance schemes and ELNO's should be no different. If the costs of obtaining the insurance necessary to meet the operating requirements has higher deductibles, premiums and policy limits that is an operational

matter for the ELNO's and not a requirement that should be paid for by the subscribers or consumers in levies or additional conveyancing costs. Which ever way, by a levy creating a funding pool or by insurance with high premiums, deductibles and policy limits, which ELNO's will want in turn to reflect limitations on attribution and claims in the operational rules, it would appear that the advice to the Government on obtaining what is a new and until now, not required fund or insurance, will increase the cost of conveyancing.

7 Compliance examinations and monitoring ELNO's

The Australian Registrars' National Electronic Conveyancing Council (ARNECC) website advises that,

"Registrars in each State and Territory undertake a range of compliance monitoring and enforcement activities. These activities include:

- *Compliance Examinations of Electronic Lodgment Network Operators (ELNO) and Subscribers to an ELNO as provided for in the Electronic Conveyancing National Law (ECNL)*
- *Compliance Assessments of ELNOs on application and prior to their being approved to operate Annual Reviews of ELNOs while they are approved to operate Certifications by ELNOs and by Independent Experts engaged by ELNOs Compliance Monitoring generally of ELNOs and of Subscribers.*

The purpose of these activities is to maintain the integrity of Title Registers and community trust in the process of conveyancing in each State and Territory."

However, the act only provides for a compliance examination of an ELNO if a complaint is received by the Registrar or on the Registrar's own initiative. There is no requirement for regulatory compliance monitoring.

Earlier, in the development of econveyancing, it was envisaged that a new body would be set up to regulate and monitor ELNO's. However, that proposal would have required that land dealings would need to be levied for the funding of that body. That would have required an increase in conveyancing fees and was rejected. Consequently, it was thought by subscribers, that the Registrar's of each jurisdiction would be responsible, as they are for subscribers, for monitoring compliance.

Numerous stakeholders have advised the Minister of the necessity for ELNO's, in addition to compliance examinations, to be monitored for "operational requirements," "participation agreements" and the yet to be established "industry code."

It has been argued that compliance monitoring by a regulatory authority will not be necessary as this can be achieved with an IT compliance monitoring model.

However, in line with ARNECC's requirements, a constant oversight of how data is processed, stored handled and restricted for use ~~of~~ in the operation of the ELNO must be in place.

Regulators must place fines on simple violations of operational requirements and significant penalties must apply for accumulated compromise violations resulting in an ELNO's failure to put proper protections in place. Any violation of private data including the extent and the nature of the information, must be made public and where necessary the operation of the ELNO suspended until appropriate remedies are put in place and monetary settlements paid.

A more rigorous and pro-active role must, in the absence of a regulatory body for ELNO's, be played by the [9]Registrar Generals Office and any delegation of these regulatory powers must only be given to a third unrelated party.

It is only by utilising both manual and automated monitoring that data privacy is maintained, and compliance standards necessary *to ensure the integrity of Title Registers and community trust in the process of conveyancing."*

8 Anticompetitive Behaviour, conflicts of interest and the Public Benefit

ELNO's will hold vast amounts of private information on members of the public and of subscribers. ACCC and others have warned that the act will allow for ELNO's to vertically integrate to offer downstream services such as conveyancing services, then it is necessary to have in place robust functional separation requirements or ring fencing.

The amendment bill and the act, despite these warnings being brought to the Ministers attention has been ignore.

ARNECC, ACCC and IPART in numerous consultations have provided feedback on the concerns with the ability of ELNO's to provide Subscriber (downstream) services.

ACCC have, since the bill was introduced, commenced an investigation into the proposed purchase of a 43% shareholding in PEXA by Dye and Durham's proposed acquisition of Link Administration. Link provides related services including, data management, property information services, searching, manual settlement, stamp duty calculations, lodgement, and registration services. A copy of the ACCC investigation into the proposed purchase is attached. It would appear that Link do not at this point provide a conveyancing service. However, Dye and Durham will acquire vast amounts of private and commercial information and would be well placed to exploit these advantages if it were in a position to provide an end to end conveyancing service.

In supporting e-conveyancing, many key industry stakeholders have placed considerable trust in ARNECC's ability to regulate an important independent function underpinning the national economy. ELNO's, without tacit approval of private citizens, will be collecting and storing vast amounts of personal information on people and companies and on the operations of subscribers. Consequently, ELNO's will use this information for unfair and anti-competitive advantages. However, the Act, despite these warnings, overlooks this situation and without a disqualification of a subscriber becoming an approved ELNO, ELNO's with their shareholder profit objectives will use these unfair advantages to provide an 'end-to-end service' to the public.

These positions of anti-competitive behaviour, erosion of trust & conflicts of interest are supported in the following statements.

The original ARNECC discussion paper "Proposed Electronic Conveyancing National Law" (page 2) which noted:

[9] "The Office of the Registrar General is managing the concession to ensure integrity, security, performance and availability of the NSW land titles system through a range of oversights, rules and directions, quality assurance and strong engagement with stakeholders. And is responsible for the policy and legislative framework that supports the registration of land titles, dealings with land, conveyancing and property development in NSW." Office of Registrar General's Website. https://www.registrargeneral.nsw.gov.au/

"The NECDL ELN will essentially be a "web-based hub for parties to a conveyancing transaction to electronically prepare and settle the transaction and to electronically lodge the documents for registration at the appropriate land registry."

The Australian Competition and Consumer Commission (ACCC) in its submission to the Inter-Governmental Agreement (IGA) Issues Paper (February 2019), stated that:

"Vertical integration by ELNOs into related parts of the supply chain has the potential to raise concerns in this industry." The ACCC went on to write that:

''The ACCC's preferred regulatory structure is complete vertical separation between ELNO and downstream providers, as it removes the incentive to discriminate both on price and non-price terms…if an ELNO is permitted to vertically integrate to offer downstream services such as conveyancing services, then it is necessary to have in place robust functional separation requirements or ring fencing."

August 2019 Report by Independent Pricing and Regulatory Tribunal (IPART) noted that:

"Vertical integration may lead to efficiencies in the eConveyancing process, which will ultimately benefit consumers, vertical integration also has the capacity to stifle competition in upstream and downstream markets. ***If an ELNO chooses to supply the upstream or downstream service, it may have a distinct advantage over its upstream or downstream competitors. That is, without appropriate regulations to prevent it from doing so, the ELNO could:***

• Reduce prices to gain market share in the upstream or downstream market

• Recover the costs of providing the upstream or downstream service through the prices it charges for core ELNO services (unless the regulatory framework prevents it from doing so)."

Without regulatory protections in place, ARNECC will potentially restrict its ability to apply future controls as noted in July 2018 by Cristina Cifuentes Commissioner ACCC, in writing to the Secretary Environment and Planning Committee (VIC) noting that in relation to transparency of regulation as it applies to privatisation of the Land Registry,

"Attempting to impose a sound regulatory structure after the assets have been transferred to private ownership and operation is inevitably more complex and potentially impossible compared with a well thought out and implemented regime pre-transfer."

The issues of not effectively regulating vertical integration in a monopolistic or duopolistic market is well documented in reports such as:

• The Hilmer Review (1993)

• The Australian Competition and Consumer Commission Submission to the Productivity Commission Review of National Competition Policy Arrangements (2004) and

• The Productivity Commission Inquiry into Competition in the Australian Financial System report (2017).

ACCC Chair Mr Rod Sims, has on many occasions expressed the view that Governments need to take great care in establishing robust regulation where a monopoly or privatisation of a public asset is concerned.

Mr Sims comments are relevant here as there are many parallels between privatisation and regulating the behaviours of an ELNO (see Minister's second reading speech Hansard

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"I listen to Rod Sims all the time. If he had a podcast, I would listen to that as well."

The ACCC's perspective in Competition in the Australian energy market is a further example of where the concerns of vertical integration and expansion with respects to control of the supply chain are examples of the need for appropriate reform and regulation. Example of regulation: Part XIB of the Competition and Consumer Act 2010 (CCA) serves as a guide to developing the law for competition in electronic conveyancing. Part XIB of the CCA was introduced in the 1990's in similar circumstances to that of the developing electronic conveyancing market. There was an economic need for a dynamic market in the telecommunications industry that was dominated by a monopoly.

There was little incentive for a privatised monopoly to co-operate with the introduction of competition and s46 of the CCA was not sufficient to address the specific circumstances or importance. The introduction of the ability for a regulator to issue competition notices and disclosure directions to enable swift intervention when anti-competitive conduct was 12 suspected, or the competition rule was breached. It also reversed the onus of proof to the offending party. The current situation of attempting to introduce interoperability into the electronic conveyancing market is similar in scope and due to the urgency of getting competition up and running and the intricacies and co-operation required to do that. In the absence of Part XIB as a suitable model as to anticompetitive behaviour in the econveyancing market, a disqualification from subscribers or a related entity to a subscriber should be disqualified for approval as an ELNO.

Although not the subject of the amendment Bill, the Electronic Conveyancing National Law (ECNL) should be amended to prevent the potential for anti-competitive behaviours & conflicts of interest between ELNO's & subscribers.

9 Independent assessment of security, reliability and operational compliance

Prior to the full operational commencement of interoperability, the system should be tested for security, reliability and operational compliance. An outage due to unforeseen circumstances in the application of interoperability would have far reaching and long lasting consequences and likely result in a loss of public confidence in the econveyancing system, conveyancing law practitioners and most importantly the integrity of the Land Register.

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1. I, Dale Tuner, am currently a Licensed Conveyancer and was granted a license by the Law Society NSW in 1992 and have held a Conveyancers License since that time.

2. I qualified as a Conveyancer after sitting exams set by the Conveyancers Licensing Committee, which at the time was a part of the Attorney General's Department and qualified for the holding of an 'unrestricted' Conveyancers License after completing property law courses at Western Sydney University and Macquarie University Law and Practice, where I have the honour of the annual Dux of Conveyancing Property Law award being named after myself as a recognition of my contribution to the profession.

3. I have been a member of the NSW Premiers Conveyancing Committee, the Conveyancers Licensing Committee, and a member of the Education and Disciplinary Sub-Committee, the

Property Services Council (Office of Fair Trading) and numerous other Committees or in an advisory capacity with respect to numerous conveyancing, property and ancillary or consequential legislative issues.

4. I have held the positions of President of the National Australian Institute of Conveyancers, President of the NSW Australian Institute of Conveyancers. I have been awarded as a Fellow of the AICNSW and I have prepared numerous papers & submissions on conveyancing and the Conveyancers Profession which has at times included Members of NSW Parliament, Government Ministers, the NSW Land Registry and the Office of the Registrar General of NSW.

5. I am currently a member of Macquarie University Conveyancing Property Law Advisory Committee.