

Submission
No 6

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

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Office of the Registrar General

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The Hon. Mark Banasiak MP
Chair
Portfolio Committee No.4 – Customer Service and Natural Resources
Parliament House
SYDNEY NSW 2000
Email: portfoliocommittee4@parliament.nsw.gov.au

Dear Mr Banasiak,

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

Thank you for the opportunity to make a submission to the Inquiry into the *Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022* (the Bill).

The NSW Office of the Registrar General (ORG) oversees the electronic conveyancing market in NSW. The NSW Registrar General is also a member of the Australian Registrars' National Electronic Conveyancing Council (ARNECC), the body established to facilitate the implementation and ongoing management of the regulatory framework for electronic conveyancing of real property in Australia.

NSW ORG is involved in all aspects of the reform that supports the Bill. This submission clarifies issues raised for consideration in the Legislative Assembly; it also provides the Committee with materials that have been developed over four years of consultation with industry on the reform.

The NSW Registrar General and technical experts from his team are available to give evidence at a hearing, to provide further context and detail on this reform and the Bill.

We recommend that the Committee:

- **Support** the Bill in its current form.
- **Note** this Bill enables a mandatory obligation for Electronic Lodgment Network Operators (ELNOs) to interoperate, use secure, government held and curated data standards and participate in an industry code to strengthen financial regulation.
- **Note** having this Bill in place now signals all state and territory governments' commitment to a national interoperability regime, and to require and justify the effort and resources required by stakeholders to refine and then finalise the interoperability system, before interoperable transactions commence in the second half of 2023.
- **Note** state and territory ministers have committed to introducing further amendments to the Electronic Conveyancing National Law (ECNL) before interoperability is rolled out.

Please find attached:

- **Tab A** – a list of issues identified by stakeholders as part of this reform, and the solutions that are in place to address these
- **Tab B** – a chronology of key events
- **Tab C** – a project implementation timetable overview
- **Tab D** – an index of materials that relate to the reform supporting this Bill, including reports and reviews from 2018 onwards; Ministerial Statements; a summary of the forums established to consult and work with industry for the reform; documents provided as part of stakeholder consultation; and reform industry working group outputs.
- **Tab E** – letter from the Law Council of Australia, the Australian Banking Association and the Australian Competition and Consumer Commission (ACCC) confirming the national importance of having this Bill in place immediately.

Publication of this submission

This submission can be published under the name of the NSW Registrar General, but excluding any material expressly designed as confidential.

Looking ahead

This is an historic and important reform for Australia. Australia leads the world in eConveyancing, and interoperability is the next step for this industry. Over the last three years, ARNECC (including all Registrars), has undertaken a highly collaborative process with industry stakeholders in developing the interoperability model. Everyone has had a voice, including lawyers, conveyancers, the banks, the ELNOs, the land registries, the state revenue offices and the ACCC. While there has not always been agreement, much progress has been made as the industry process is incrementally building the interoperability model and strengthening financial regulation.

This Bill represents the next important building block in this process. It is a necessary prerequisite to complete the detailed regulatory framework, and provide certainty to industry. We anticipate that with a statutory framework in place that this Bill enables, the important issues of detailed design raised by some stakeholders will be worked through in the existing collaborative process, to support a new industry code to strengthen financial regulation and before interoperability is rolled out in the second half of 2023.

Yours sincerely

Jeremy Cox
Registrar General

Date: 11 March 2022

Tab A – Issues and Solutions

In his recent speech to the National Press Club,¹ Australian Competition and Consumer (ACCC) Chair Mr Rod Sims noted:

"Perhaps the most recent example [of privatising infrastructure] is State governments creating a monopoly in electronic property conveyancing that is now called Pexa, and then selling it. The way Pexa now operates, as that existing monopoly, makes life very hard for would be competitors."

The interoperability reform is needed to fill that regulatory gap.

Property Exchange Australia Ltd (PEXA) – originally called National E-Conveyancing Development Limited – got a head start in the electronic conveyancing (eConveyancing), with substantial support from government. Conveyancers, legal practitioners and banks also shared their time and substantial expertise over many years. Uniquely, its business was supported by government mandates.

Governments did not sell their shares expecting a wholesale monopoly – rather from the very outset of the national eConveyancing reform, it was anticipated that there would be competing Electronic Lodgment Network Operators (ELNOs), and accordingly, the original legislation provided for more than one ELNO. The form that competition needed to take was left to the future to work out.

The Regulation Impact Statement of 2013 makes this clear:

"National E-Conveyancing Development Limited (NECDL), a company established by the New South Wales, Victoria, Queensland and Western Australian governments, is expected to become the first ELNO once the ECNL is in place. However, the legal framework does not preclude other organisations from applying to become an ELNO.

Should other ELNOs be approved in the future, interoperability may need to be provided for in the operating requirements. However, interoperability will be facilitated by the fact that all ELNOs will be required by the operating requirements to use a data standard set by ARNECC for data communications between themselves and the land registries."²

After several inquiries and reviews, including by NSW's Independent Pricing and Regulatory Tribunal (IPART) and the ACCC, there is broad consensus that, without interoperability between ELNOs, competition will not happen.

This Tab set out a list of issues identified by stakeholders as part of this reform, and the solutions that are in place to address these.

¹ The speech was given on 23 February 2022; a transcript of the speech is available here: <https://www.accc.gov.au/speech/agenda-to-boost-australia%E2%80%99s-economic-prosperity-and-fairness>

² Introduction of the Electronic Conveyancing National Law, Regulation Impact Statement for Decision, published by ARNECC, February 2013

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Issue 1: currently, eConveyancing is effectively a monopoly market

eConveyancing has been a success, replacing paper with electronic forms. However, the ELNO market has evolved with a single dominant operator, PEXA, established with Government, and help from conveyancers, legal practitioners and banks, between 2010 and 2018, and which benefits from government mandates to use its systems. In early 2018, a second operator, Sympli Australia Pty Ltd (Sympli), announced its intention to enter the ELNO market. In 2018 it was approved as an ELNO. It is currently rolling out across Australia.

Under the current system, all parties to an eConveyancing transaction need to be on a single ELNO. This means that PEXA benefits from network effects: lawyers and conveyancers will be reluctant to move to Sympli because they are then 'cut out' from conducting transactions with the bulk of practitioners who are already on the PEXA platform. As a result, it is very difficult for a competitor to gain market share.

This is a common challenge in networked or technology platform businesses, and for example, explains the entrenched market position of Microsoft operating systems or the Apple iOS mobile system.

Solution: The interoperability reform is designed to enable effective competition among ELNOs. Interoperability means that a lawyer or conveyancer connected to one ELNO can engage in transactions with practitioners connected to a different ELNO.

It is a complex reform, with technology and regulatory aspects; and like many reforms, it impacts entrenched interests, for the benefit of the community. However, the basic concept of making different platforms or networks interconnect with each other is not new: it is a basic requirement in the telecommunications industry, in electricity and gas networks, and in railway systems.

Issue 2: whether other market structures (such as a wholesale / retail structure) should be considered, instead of interoperability

There are examples of wholesale / retail markets in other parts of Australia's economy – for example, telecommunications, electricity and ports. Some market participants have suggested that this structure is appropriate in the ELNO market.

Solution: In 2018 and 2019, the NSW Office of the Registrar General (ORG) worked with stakeholders to review different market structures, including through hosting industry forums. In late 2019, the ACCC also reviewed the implications of a wholesale / retail market. Their report is available here:

<https://www.accc.gov.au/system/files/Letter%20to%20ARNECC%20Chair%20and%20state%20and%20territory%20policy%20agencies%20-%20December%202019.pdf>

A wholesale / retail model was not supported because:

The second ELNO, Sympli, was already investing as a second wholesale provider during the time of the review (i.e. there was already the opportunity of competition at both wholesale and retail levels).

The ACCC noted:

- 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
- 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.

A wholesale / retail model would require interoperability between the wholesale ELNO and retail ELNOs.

In addition, adopting a wholesale / retail model would fundamentally change what an ‘ELNO’ is, and would require a substantial re-write of the current regulations.

ARNECC has also dismissed this model.

Currently, the concept of an ELNO is that it stretches from subscribers through to land registries, revenue offices and banks – the wholesale / retail model would cut this in half. It is also not clear which segments of the market would remain contestable, which would be a monopoly. There would be a significant amount of detail to work through to develop and apply this model.

To date, no other entity has approached the NSW Government wanting to be a ‘retail’ ELNO, where one ELNO provides the wholesale layer. Developing this structure would therefore be speculative, rather than reflecting the reality of where the market has preferred to invest (as seen in the entrance of Sympli, who is a second wholesale provider).

A wholesale / retail model also gives rise to a new set of difficult competition risks. The monopoly wholesaler can leverage its power over the inputs for which it is the sole supplier to advantage its own associated retail arms, or to expand into neighbouring markets, such as value added services or even to set up its own conveyancing services. To address these risks, the wholesale / retail model in other markets has generally been accompanied by requirements that the monopoly operate as a ‘wholesale-only’ business and have no direct

or indirect stake in retail businesses that compete with its wholesale customers. An example of this 'structural separation' requirement is NBN Co.

Therefore, any wholesale/retail model for eConveyancing would need to consider further restructuring, for example, including considering requiring an existing wholesale ELNO to divest its current ELNO subscriber base and its recently acquired interests in land information business, and to operate only as a 'vanilla' wholesale ELNO.

Issue 3: that submissions on the draft Bill remain unaddressed

In late 2021, a copy of the draft Bill was made available to ELNOs and peak bodies, who provided comments on the draft. Ministers have confirmed to stakeholders that their views will be considered in further amendments to be introduced before interoperability is rolled out (please refer to the Ministerial Statement, available here: <https://www.arnecc.gov.au/wp-content/uploads/2022/01/Ministerial-Statement-January-2022.pdf>)

Solution: Given the complexity of this reform, a decision was made to stage the reform across a series of amendments to the ECNL. This Bill is only the first stage and sets out the necessary foundation for the subsequent technical and regulatory developments. In doing so, it enables further development while providing stakeholders with the certainty necessary for the reform to proceed. For example, the Bill sets out a broad framework, enabling a mandatory obligation for ELNOs to interoperate, participate in an industry code to strengthen financial regulation and the use of secure, government-owned and curated data standards. Once the high-level legislative obligation is in place, ARNECC will complete the iterative process of developing the detailed subsidiary regulatory instruments, including via the National Industry Interoperability Panel.

Later this year, this government intends to introduce further amendments to ECNL to introduce an enforcement regime to underpin the ECNL and to address the outstanding stakeholder feedback ARNECC received in the consultation on this Bill.

Employing the staged approach allows this Government to proceed with introducing regulatory certainty and sets expectations, while allowing for further engagement with stakeholders to clarify, expand upon, and implement feedback.

This Bill is important now to give industry confidence to commit to updating their systems to support interoperability going live in the second half of 2023, as agreed by all states and territories. This includes ELNOs, but also financial institutions and land title registry operators and State Revenue Offices.

Issue 4: whether the interoperable solution will be ready by the timetable set by Ministers

In October 2021, Ministers set a timetable to deliver interoperability. This included introducing the amendments to the legislation in February, undertaking a first transaction in third quarter 2022, and commencing the implementation of interoperability by mid-2023. Ministers' statement is available here: <https://www.arnecc.gov.au/wp-content/uploads/2022/01/Ministerial-Statement-January-2022.pdf>

Solution: A key risk to the timetable is that in mid-November 2021, PEXA ceased participating in and withdrew from most interoperability working groups and committees. This has had a significant impact on developing the technical solution for interoperability, and the implementation program: meetings of the Interoperability Operations Committee (IOC) and the Interoperability Implementation Committee (IOC) have been paused.

Tab C sets out a high-level implementation plan, and draws out the impacts of non-participation in the industry consultation process (Redacted).

The absence of a clear statutory mandate for interoperability reduces industry incentives to participate. This Bill represents the next incremental step in building the interoperability model and helps reinforce to all stakeholders that the current de facto monopoly, or some different version of monopoly, is not acceptable as a matter of public policy.

Interoperability will not go live before all relevant ICT assurance reviews, cyber security tests and system readiness approvals have been satisfied. The timetable provides an industry wide target for multiple parties to schedule their work. However, the timetable provides for, and allows sufficient time for, all necessary regulatory instruments to be properly consulted and finalised before full interoperability becomes operational.

Issue 5: whether the details of the interoperability reform have been sufficiently addressed

Solution: Detailed regulatory controls were consulted with industry in 2021.

Consistent with the original framework for the ECNL, the legislation sets out a high-level approach, which is supplemented by national 'Model Operating Requirements' (MOR) and 'Model Participation Rules' (MPR). ARNECC has updated the draft MOR and MPR to reflect changes for interoperability, and has published these for stakeholder review. Copies are available on ARNECC's website:

https://www.arnecc.gov.au/resources/consultation/model_operating_requirements/ and https://www.arnecc.gov.au/resources/consultation/model_participation_rules/

In addition, the MOR require ELNOs to enter into an interoperability agreement. The requirements of this are listed in the MOR, and were discussed with ELNOs and peak bodies at the ELNO interoperability agreement working group, which met from May 2021. Authority for ARNECC to make these required changes is dependent upon the changes effected by the current Bill.

The Interoperability Data Standard will play a central role in the regulatory framework. As part of the National Industry Interoperability Panel framework, the Interoperability Operations Committee (IOC), made up of technical experts from government and ELNOs, is developing the standard, essential business rules and technical architecture for interoperability. Regulatory requirements are directly encoded into the operating system of regulated entities. Therefore, much of the detail of how interoperability will work, how documents are generated and checked by subscribers, and how data is verified for accuracy, will be specified in the Interoperability Data Standard. The more effective vehicle in a technology environment to design and implement regulatory requirements is directly through the system specifications. The ECNL and the MOR include the 'hooks' which are used to give the Interoperability Data Standard the force of law, without having to repeat in these regulatory instruments the detail which will be addressed in the Interoperability Data Standard.

The approach of incrementally building the interoperability model through a collaborative process between ARNECC and industry stakeholders is consistent with the history of the national eConveyancing reform. That the statutory framework does not address the detail of interoperability does not mean that this detail will not be addressed before interoperability is rolled out. Rather, as with the rules and procedures developed for the first round of eConveyancing, the detail design is best addressed by the registrars and other industry stakeholders through the ARNECC processes (e.g. national regulations) because they have the specialist knowledge required to effectively address those issues of detail.

Without the clear statutory mandate for interoperability enabled by this Bill, the collaborative industry process will be more difficult.

Issue 6: whether the draft Bill reflects a national approach

The eConveyancing reform has been designed as a national approach, and so it is important that the interoperability reform also applies nationally.

Solution: The changes to the legislation will take effect nationally. The ECNL is an applied law scheme. This means changes to the NSW Act are implemented automatically in the ACT, Queensland, Tasmania and Victoria. Other jurisdictions (South Australia, Western Australia and the Northern Territory) will adopt the same changes with additional steps.

All state and territory governments provided the required formal approval before NSW introduced the Bill.

Issue 7: whether stakeholders support the Bill

Solution: When the Bill was introduced to the Legislative Assembly, letters of support were provided by the Australian Banking Association (ABA) and the Law Council of Australia (LCA). A copy of each letter in support is attached at **Tab E** (Redacted). As these letters have not been publicly released, they should be kept confidential.

The ACCC has published a letter in support of the Bill going ahead:

<https://www.accc.gov.au/system/files/ACCC%20letter%20to%20ARNECC%20regarding%20ECNL%20bill%2018%20February%202022.pdf>

The Australian Institute of Conveyancers (AIC) supports interoperability and would like the Bill to include a prohibition on ELNOs conducting conveyancing businesses. While the Bill does not include such a prohibition, under existing provisions in the national Model Operating Requirements it is unlawful for ELNOs to use their systems to an unfair advantage in performing any functions associated with providing conveyancing services (further detail is at issue 13). Provisions in the MORs will be supported by new, stronger enforcement arrangements in a second round of changes to the ECNL, intended to be introduced later this year.

In the past three years, this reform has drawn on ACCC's competition expertise and its strong support for a competitive market. The ACCC is familiar with the risks of ELNOs using their positions to engage in conduct that has the purpose, effect or likely effect of substantially lessening competition in a market. In addition, as interoperability will help sustain ELNO competition, conveyancers will have greater influence over ELNO's decision making—for example, by choosing to subscribe to the ELNO that is behaving in the best interests of the conveyancing sector.

AIC has raised other matters including security, managing misapplied funds, and consumer protections. AIC is a key stakeholder and NSW ORG is working with AIC to provide further detail on these components of the Bill and the steps following the Bill to develop the national MORs, ELNO Interoperability Agreements, data standards and the strengthened enforcement regime. Information in response to AIC's specific matters is included in the rest of this document (for example: Issue 8 (security), Issue 9 (misapplied funds) and Issue 10 (consumer protections)).

Consultation and co-design with industry since 2018

NSW ORG has been consulting on competition in eConveyancing since 2018 (please refer to 'Chronology of the reform' in **Tab B**). NSW ORG initially sought industry views on the most appropriate market structure, and considered a number of different models, working with peak bodies, ELNOs and government. Since then, NSW has supported ARNECC leading this reform nationally. Currently, the project works with stakeholders through a national industry panel, which is supported by committees focusing on technology, implementation and regulation.

Tab D at Part C provides more detail on the consultation forums and working groups.

At this stage of the reform, with well-developed national consultation mechanisms, it is unhelpful to other industry and state, territory and federal government organisations that parties have gone outside this process seeking endorsement of models without bringing the information to industry and government participants via the agreed national industry consultation framework.

A clear statutory mandate for interoperability as enabled by this Bill will provide incentives for all stakeholders to stay within the national consultation process and make positive contributions to the design of interoperability.

Issue 8: whether interoperability creates greater risk of fraud and cyber security breach

Some stakeholders have raised concerns that the interoperability approach may create greater risk of fraud and reduce the resilience of the overall system for cyber security attacks.

Solution: ELNOs already interact with land registries, revenue offices, banks and the Reserve Bank of Australia through secure APIs (Application Programming Interface). Interoperability is being designed in such a way to ensure the security and integrity of the eConveyancing process is maintained.

The backbone of interoperability is a set of purpose-built APIs, governed by a data standard which will determine how ELNOs exchange data to complete interoperable transactions. The data standards are being designed using a 'Reg Tech' approach — regulatory requirements are directly encoded into the data standards that regulated entities must use. Subscribers can be assured that compliance and consistency with regulatory requirements are, in a sense, 'automated'. The 'enforcement loop' is then completed by the Model Operating Requirement for ELNOs to use the interoperability data standard.

The data standard will be owned and controlled by state governments and will establish technical standards and minimum-security requirements to ensure that interoperable transactions are secure. The APIs through which ELNOs will communicate with each other are being designed to be at least as secure as the existing connections.

The interoperability data standards, along with existing national eConveyancing data standards, will be housed and curated in a Government entity (NECDS Ltd). This gives ARNECC greater control than regulators in other industries where the technical and operational requirements of interoperability are developed by an industry association. For example, as owner and licensor of the data standard, ARNECC, through NECDS Ltd, will have direct control over the content and use of the data standard.

The regulatory framework for eConveyancing requires ELNOs to maintain robust security arrangements for their systems and for independent annual reviews of those arrangements. These requirements will apply to an ELNO's systems for establishing and maintaining interoperability with other ELNOs.

Currently, if the incumbent ELNO 'goes offline', most property transactions stop in Australia. With interoperability, effective competition is enabled—and with more than one ELNO, Australia has more options for keeping open electronic lodgment and settlement if a sole operator goes offline for an extensive period of time, making Australia's property sector more resilient.

Issue 9: whether the reform risks consumer funds being misplaced

Solution: The Bill introduces a critical step to strengthening the regulatory oversight of financial settlement. This includes providing a better framework for the investigation and resolution of misdirected funds or transactional failures. Clarifying and strengthening financial regulatory oversight was a key recommendation of the 2019 Review of the eConveyancing Intergovernmental Agreement.³

The Bill will give Registrars the power to determine operating requirements mandating ELNOs' participation in an industry code for financial settlement. The Code will require process and accountabilities for tracking and resolving misapplied or unapplied funds. Without the Bill, there is no legislative obligation for ELNOs to be part of this key component of the regulatory framework.

The Bill formalises direct engagement with Australian Payments Network Limited (AusPayNet) on financial settlement. There will be a common industry wide outcome, rather than bank-by-bank differences, which can frustrate conveyancers and lawyers.

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.

Commonwealth regulators (Council of Financial Regulators (CFR), being Reserve Bank of Australia, Australian Securities and Investment Commission and Australian Prudential Regulatory Authority), expect the industry to have completed the code by September 2022, subject to any necessary authorisations by the ACCC. The CFR statement is available here: <https://www.cfr.gov.au/news/2021/mr-21-03.html>

Work had been scheduled to commence in February 2022, but has been delayed since the Interoperability Operational Committee has been paused.

³ Dench McClean Carlson - Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law (December 2019) – available here: <https://dmcca.com.au/iga-review/>

Issue 10: whether this reform increases risks to people buying and selling a home

Government and industry are equally focused on ensuring that the structure that delivers competition does not also increase the risk to those buying and selling a home – their greatest asset.

Solution: Customers' data is safe. The existing secure eConveyancing regulatory framework will remain, and ELNOs and Subscribers will continue to be subject to both privacy laws and data- protection related obligations.

The Model Operating Requirements will place restrictions on the disclosure, storage and use of information received from another ELNO involved in the interoperable electronic workspace. There is a set procedure for managing any possible or actual data breaches. Additionally, ELNO Cloud Service Providers must manage data in accordance with an information security system that complies with in-force International Security Standards and data is required to be held and processed on servers within Australia and so remains subject to Australian Privacy Laws.

Further, interoperability agreements between ELNOs will need to include an acknowledgement by each ELNO that it will comply with the Privacy Laws in relation to any Personal Information sent or received in relation to interoperable electronic workspaces and cooperate in the investigation and resolution of any privacy complaints relating to any interoperable lodgment cases. Those agreements must also include a process for the timely and effective management of any security risks that may impact interoperable electronic workspaces/platforms, including but not limited to cyber security risks.

In addition, each State and Territory in Australia provides a guarantee as an integral part of the Torrens system: security has always been a prime concern for eConveyancing generally and continues to be so with the advent of a competitive ELNO market.

Risks and mitigations have been reviewed extensively by industry, as an integral part of developing the regulatory and technical solutions for the interoperability reform. Importantly, both current ELNOs have contributed to this risk analysis, drawing on their experience operating in the market. Other industry representatives – including lawyers, conveyancers and banks – have also contributed to the work of identifying risks, and designing appropriate technical and regulatory means to address these.

Issue 11: that delays with the reform entrench the current monopoly, and may inhibit further investment by others

In mid-November 2021, the incumbent ELNO ceased participating in the working groups for the reform, including the committee designing the interoperability data standard due its concerns with the direction of the reform. The data standard underpins the technology for interoperability, as the counterpart to the regulatory changes. Governments and industry are concerned a single participant has this level of control over a market, or the ability to stop developing competitive frameworks. ARNECC is working with the incumbent ELNO on the issues it has raised, asking they return to the reform immediately, while these issues are being addressed as part of the reform program.

The success of interoperability is reliant on the participation of a number of parties and their willingness to make relevant changes and comply with the regulatory framework. Constructive working relationships is a desire from all parties, working through the agreed national industry panel framework, which is reporting to all states and territories via ARNECC.

Solution: It is common for an existing monopoly to have the most knowledge and expertise about how industry processes and systems work, and is often the de facto maker of industry standards, its co-operation is essential to plan for market entry by competitors. A clear statutory mandate for competition requires the incumbent ELNO to explain to its shareholders that it must comply with the legal framework agreed by all states and territories and supported by the ACCC, and peak bodies, to open-up the ELNO market for competition with interoperability.

This is important to require and justify the effort and resources required by all stakeholders. For example, in the case of the incoming ELNO (Sympli), this Bill give its investors' confidence about the regulatory regime, and to commit to resourcing its complete roll-out across Australia. For financial institutions and land registries, the Bill also provides the regulatory certainty for these organisations to include in their forward business plans and technology roadmaps, provisions for necessary system changes.

Therefore, it is important that the Bill go ahead in its current form, to provide certainty to industry and minimise further delays. Further amendments to the ECNL will be considered as part of the further round of consultation on the Bill already foreshadowed by Ministers (please see 'Issue 3: that submissions on the draft Bill remain unaddressed'). Delays in the reform entrench the incumbent's position.

Delays extend the time it takes for new entrants to join the market and become operational – and to become effective competitors to the incumbent ELNO. Delays also create commercial uncertainty about the regulatory environment for all of industry.

Issue 12: whether this reform creates benefits for the user of the system

Solution: The Bill will introduce a requirement to interoperate. The underlying purpose of interoperability is to bring competition to the ELNO market – to provide choice for consumers, put more downward pressure on prices than a regulated price, lowering cost of property transactions in Australia, and requiring ELNOs to earn their customers – through competing on quality of service, and new offerings.

Without interoperability, all subscribers must use the same ELNO to complete a transaction. This creates network effects which entrench the incumbent ELNO's de facto monopoly, which creates barriers to effective competition.

With interoperability, subscribers have a choice as to which ELNO is best for them. They will not need to pay for, or learn and operate, different ELNO interfaces.

Effective competition forces ELNOs to earn their customer – to ask 'what does the customer want'. A monopoly can operate on a 'take it or leave it basis'.

ELNO fees are a relatively small proportion of the costs of a conveyance (e.g. for purchaser, who is paying stamp duty). However, this is still a cost that is passed on to transacting parties such as a home buyer, or absorbed by subscribers. Due to the high volume of transactions, the potential benefit to the community of downward pressure on pricing is significant. The reform's Regulation Impact Statement⁴ quantifies some of these benefits.

ACCC and IPART support effective competition as the best solution to deliver lower prices, and innovation, over the long term. In a monopoly operator environment there is little incentive 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 processing requirements, instead of reflecting the needs and wants of potential consumers.

Effective competition could drive competitors to compete on new services and uplift their own platforms – to earn and keep subscribers – through innovation such as more efficient user interfaces and enhanced service quality.

Stakeholders in NSW have consistently identified the need for a greater focus on competition and consumer safeguards. It has been a fundamental principle of public policy for all governments since the Hilmer Report⁵ that competition promotes the long-term interests of consumers, and the national economy.

Competition among ELNOs is a cornerstone of the NSW Government's eConveyancing reforms and is crucial to the success of the mandated use of an ELNO in NSW.

⁴ ARNECC – Regulation Impact Statement – Options for promoting competition in the market for electronic lodgment network operators (December 2021): <https://www.arnecc.gov.au/wp-content/uploads/2021/12/Interoperability-RIS-December-2021.pdf>
⁵ Hilmer Report 1993 – National Competition Policy, Report by the Independent Committee of Inquiry

Issue 13: whether governments should focus on ensuring ELNOs do not enter the conveyancing market

Some stakeholders have raised concerns that ELNOs (or related entities of ELNOs) will use their unique position to enter the conveyancing market – drawing on the data available to them through the electronic lodgment network.

Solution: The MOR include ‘separation’ provisions which require the ELNO to maintain separate customer relationships from any other entity providing service – in other words, the downstream service provider cannot take advantage of the ELNO service provider’s customer contacts or relationships. In addition, the ELNO service provider must deal with the non-ELNO service provider on an arms’ length basis and in a manner which does not confer an unfair commercial advantage on the downstream service provider. These provisions are designed to ensure that ELNOs do not obtain any special advantage, as a result of their role as an ELNO.

These provisions will be strengthened by the enforcement regime, intended to be introduced later this year.

Tab B – Chronology of the reform

2010	National eConveyancing Development Ltd (NECDL) established with Government (later becoming PEXA).
2011/2012	States and Territories sign Intergovernmental agreement (IGA).
October 2013	First electronic transaction in NSW.
2014	NECDL changed its name 'Property Exchange Australia Limited' (PEXA).
July 2016	NSW announced a first phase of transactions for paperless conveyancing.
February 2017	NSW announced mandated time frames for all standard property transactions in NSW to be conducted electronically and all Certificates of Title to be phased out in favour of e-Titles by 1 July 2019. <ul style="list-style-type: none"> • This was based on extensive consultation and was endorsed by financial institutions, practitioners, and other stakeholders.
October 2018	All paper certificates of titles held by banks converted to electronic titles. As part of further consultation with industry, the remaining paper titles to be cancelled by mid-2021 as part of legislative amendments to move to a paperless conveyancing system.
December 2018	PEXA sold to CBA, Morgan Stanley and Link. The sale proceeds were \$1.6bn. State Governments sell all shares.
1 July 2021	PEXA's ultimate holding company floated on the Australian Stock Exchange, with an enterprise value of around \$3.3 billion.
October 2021	In NSW, 100 per cent of all possible lodgments were electronic. This is a significant increase from just 7.7 per cent in January 2017.

Interoperability and competition, key dates:

17 July 2017	Letters from NSW to IGA ministerial counterparts regarding competition concerns and seeking a review of the IGA.
January 2018	Sympli announces intention to enter the ELNO market.
15 February 2018	ARNECC letter to Sympli supporting interoperability.
May 2018	Minister invites IGA ministerial counterparts to a forum with industry, seeking support to look at important aspects of the reform and work with industry to achieve this.
October 2018	Corporate advisory firm, Dench McClean Carlson (DMC) begin independent review of eConveyancing IGA.
4 December 2018	NSW hosts forum with other jurisdictions, ELNOs, law societies, conveyancing peak bodies, banks, ACCC, Reserve Bank of Australia, about ELNO competition.
January 2019	NSW's Independent Pricing and Regulatory Tribunal (IPART) publishes the final terms of reference for a review of pricing regulation of eConveyancing services in NSW.
14 February 2019	NSW hosts second industry forum where there is general support for further work on interoperability.

<p>March to July 2019</p>	<p>NSW Office of Registrar-General (ORG) convenes industry working groups (a technical and operations group, and a regulatory working group) to identify issues that need to be solved for interoperability, under independent chair Dr Nicholls.</p> <p>Attendees include the NSW Law Society, the Australian Institute of Conveyancers (NSW and SA), the major four banks, PEXA, Sympli, NSW Land Registry Services, the private sector operator of the SA land titles registry, IPART, iCare and other insurance bodies. The ACCC is an observer.</p> <p>The final report of the independent chair of the interoperability working groups circulated to industry group members in late July.</p>
<p>September 2019</p>	<p>NSW ORG engages Gilbert + Tobin to provide advice on the next phase of developing a national, industry endorsed model for interoperability - working alongside the South Australian Registrar and from December 2019, with the Queensland Registrar of Titles.</p> <ul style="list-style-type: none"> • This builds on the Dr Nicholls, IPART and other relevant work and includes the detailed legal, operational and technical framework, including national rules and standards. • NSW and SA convene and jointly chair an industry panel comprising the Law Council of Australia, the Australian Institute of Conveyancers, the Australian Bankers Association (now Australian Banking Association), and the major four banks, ELNOs and the Queensland Titles Office. Observers include the ACCC, Access Canberra, the Northern Territory Government, Tasmania Land Titles Office and State Revenue Offices. The panel meets every 6 weeks. • ORG meets with individual stakeholder groups including the NSW Law Society, the NSW land registry, the QLD and SA land registries, banks, revenue offices and ELNOs to understand and address individual stakeholder concerns.
<p>2 October 2019</p>	<p>Law Council of Australia write to the Minister outlining its support for a national approach to ensuring interoperability and competition in the eConveyancing market.</p>
<p>29 November 2019</p>	<p>IPART publish final report, including estimating cost of several interoperability models.</p>
<p>2 December 2019</p>	<p>ACCC publish a report on the eConveyancing market reform to assist ARNECC noting the eConveyancing market is not a natural monopoly, interoperability is a pro-competitive market model and that a national approach is ideal but not essential.</p>
<p>19 December 2019</p>	<p>DMC publish final IGA review report. Key regulatory issues identified in the DMC IGA review are: competition; oversight of financial settlement in eConveyancing; and an effective enforcement regime.</p>
<p>27 December 2019</p>	<p>The Commonwealth Assistant Treasurer writes to all States noting the ACCC's preference for a nationally consistent approach to the eConveyancing market and the need for policy makers to support the market's transition to competition.</p>
<p>January 2020</p>	<p>ARNECC announced it was undertaking a market study. ARNECC's market study was superseded by Centre for International Economics' (CIE) cost benefit analysis.</p>

14 February 2020	Interoperability is raised at the inter-governmental Deputy Heads of Treasury meeting, in preparation for being discussed at the Council on Federal Financial Relations (CFFR).
10 June 2020	<p>NSW and SA hold a roundtable with fellow Ministers to hear from ACCC Chair, Mr Rod Sims, the Law Council, the Australian Banking Association and Australian Institute of Conveyancers and legal and technical experts. This forum framed interoperability as a productivity issue that needs to be addressed, by all jurisdictions.</p> <ul style="list-style-type: none"> • Ministers from all States and Territories attended either in person or through a representative. Victoria was unable to attend. • Industry peak bodies expressed strong support for interoperability. • Ministers agreed to re-convene later in 2020, to consider a more detailed regulatory and technical regime for interoperability.
August 2020	<p>The following reports were released:</p> <ul style="list-style-type: none"> • CIE's cost-benefit-analysis on interoperability, commissioned by NSW. • Independent technology expert final report, drawing on work of the industry interoperability technical working group from April – June. • Wills Towers Watson insurance report on interoperability.
7 September 2020	<p>NSW and SA hold a roundtable with fellow Ministers to decide on market structure.</p> <ul style="list-style-type: none"> • NSW, SA, WA and Qld supported updating legislation by mid-2021 to require interoperability among ELNOs to deliver effective market competition, with the aim of having interoperability in place as soon as practicable, and by the end of 2021. All other jurisdictions noted their support in principle – noting that ministerial changes in Tas, ACT and NT mean they cannot provide definite support now, but 'don't want to stand in the way'. • Ministers supported released a statement informing the market that ministers have asked ARNECC to work with industry and existing ELNOs to further develop the regulatory and technical approach within these timeframes. • Following the roundtable, ARNECC agreed to endorse the industry panel as an ARNECC working group, as the main vehicle for consulting with stakeholders on this reform.
11 September 2020	The CFFR, comprising the Commonwealth, State and Territory Treasurers, support the principle of interoperability standards between online lodgement platforms to pave the way for a competitive eConveyancing market by 2021.
7 December 2020	<p>NSW and SA hold a roundtable with fellow Ministers for a progress update and sought a further update in March to check progress with achieving the mid-2021 target for updating legislation to require interoperability.</p> <ul style="list-style-type: none"> • Attendees were Commonwealth Minister for Superannuation, Financial Services and the Digital Economy, Commonwealth Assistant Treasurer, State and Territory Ministers or their representatives, ACCC Chair, Registrars and jurisdictional officials.

	<p>Ministers and their delegates noted ARNECC has reached consensus on a number of the key design requirements and agreed to continue to work toward the following:</p> <ul style="list-style-type: none"> • March 2021: release draft amendments to the ECNL for consultation and finalise data standards and business rules; • By mid-2021: submit Bill to NSW Parliament subject to jurisdictional Cabinet approval.
March 2021	ARNECC publish a paper on the technical model that is being developed by PEXA, Sympli and government.
May 2021	PEXA, Sympli and government finalise a draft version 1 of the National eConveyancing Interoperability Data Standards (the NECIDS). ARNECC announces the first interoperable transaction, being a refinance between two financial institutions, two ELNOs, and one landowner in relation to property in Queensland.
June 2021	<p>Interoperability implementation committee is established between ELNOs and government.</p> <p>Council of Financial Regulators (Reserve Bank of Australia, Australian Securities and Investments Commission and Australia Prudential and Regulatory Authority) support addressing issues relating to financial settlement with an industry code, to be developed jointly by ELNOs and financial institutions, facilitated by Australian Payments Network Limited (AusPayNet). The Council expects the work to be complete by September 2022, subject to any necessary authorisations by ACCC.</p>
1 July 2021	<p>NSW and SA hold a roundtable for fellow Ministers to give a progress update. Ministers acknowledged:</p> <ul style="list-style-type: none"> • the progress made on facilitating interoperability to date, through development of the technical framework and designing of the regulatory regime, • that the timeframe of end of 2021 for the first interoperable transaction may be impacted by implementation of the ECNL and development of the technical solution, together with the requirement for consultation with governments and industry, • the goal to release the draft ECNL to industry for feedback in third quarter 2021, with the first interoperable transaction occurring by first quarter 2022.
July 2021	ARNECC releases Version 7 of the Model Operating Requirements (MOR) and version 7 of the Model Participation Rules (MPR) for stakeholder consultation. Amendments to the MOR, MPR and ECNL, will comprise the regulatory regime around interoperability.
September 2021	PEXA presents to ARNECC the results of its implementation impact assessment. The results show PEXA's timeframe for the first interoperable transaction is third quarter 2022. This timeframe implies interoperability is not available in the market until around 2025.
29 October 2021	<p>State and Territory Ministers publish a statement supporting the implementation timetable for interoperability as follows:</p> <ul style="list-style-type: none"> • February 2022: NSW to introduce changes to the national law into NSW Parliament, • 3rd Quarter 2022: ELNOs to conduct a 'Day 1' transaction in Queensland – this will be a limited scope re-finance, not available in the market generally.

	<ul style="list-style-type: none"> • Mid-2023: All interoperable transactions functional, with roll-out commencing in jurisdictions in the second half of 2023.
November 2021	<p>ARNECC provides the draft ECNL amendment bill to key stakeholders for consultation; and releases Version 7.1 of the MOR for stakeholder consultation.</p> <p>PEXA ceased participating in key reform workstreams – initially to focus on providing feedback to the draft ECNL amendment bill and MOR Version 7; and then due to concerns with the interoperability reform process.</p>
28 January 2022	<p>State and Territory Ministers publish statement confirming that the draft ECNL amendment bill will be introduced into NSW parliament in late February 2022, and that stakeholder comments will be considered in a further set of amendments.</p> <p>ARNECC continues to progress changes to the regulatory framework by:</p> <ul style="list-style-type: none"> • reviewing stakeholder feedback on the MOR and MPR and preparing second drafts for further industry consultation. • developing an enforcement regime. <p>In 2021, ARNECC published a position paper on proposed changes to the ECNL to give Registrars greater enforcement powers. Significant further work is required to develop and finalise the enforcement regime; and jurisdictions have different views on scope and approach. This regime was therefore decoupled from the interoperability amendments so as not to delay the interoperability reform. Further amendments to the ECNL to introduce an enforcement regime will be introduced separately.</p>
February 2022	<p>Work on the ELNO / financial institutions industry code is scheduled to commence, led by AusPayNet – this is delayed as a result of the Interoperability Operational Committee being paused.</p>
22 February 2022	<p>The amendment Bill passes the NSW Legislative Assembly (Lower House) and referred to the Portfolio Committee No. 4 which is due to provide its report on 8 April 2022.</p>

Tab C – Implementation plan

Note: this document is confidential

(Redacted)

Tab D - Interoperability reform – index of key materials

Part A – Reports, reviews and consultation materials

Part B – Ministerial Forums and Statements

Part C – Stakeholder consultation and project governance. This is subdivided into:

- Stakeholder consultation and project governance led by NSW
- Stakeholder consultation and project governance led by NSW and SA
- Stakeholder consultation and project governance led by ARNECC
- Payments Working Group
- eConveyancing Regulation Working Group

Part A – Reports, reviews and consultation materials

- Dr Rob Nicholls Report (2019) – Interoperability between ELNOs (July 2019):** in March – July 2019, the NSW Government held industry working groups, under an independent chair, Dr Rob Nicholls. The purpose of the working groups was to inform decisions about the way forward with interoperability. The outcome of these working groups was set out in Dr Nicholls' final report (the report is available on request).
- NSW Independent Pricing and Regulatory Tribunal (IPART) - Review of the Pricing Framework for Electronic Conveyancing Services in NSW (November 2019):** the NSW Government commissioned IPART to undertake an assessment of the state of the eConveyancing market and recommend an appropriate pricing regulatory framework – available here: <https://www.ipart.nsw.gov.au/Home/Industries/Special-Reviews/Reviews/Electronic-Conveyancing/Pricing-regulation-of-electronic-conveyancing-services-in-NSW/29-Nov-2019-Final-Report/Final-Report-Review-of-pricing-framework-for-electronic-conveyancing-services-in-NSW-November-1>
- Dench McClean Carlson (DMC) - Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law (IGA) (December 2019):** ARNECC commissioned DMC to review the IGA – available here: <https://dmcca.com.au/iga-review/>
- ACCC Report on eConveyancing Reform (December 2019):** The ACCC prepared this paper to assist ARNECC and the relevant state and territory policy makers in their consideration of e-conveyancing and the design of the emerging market – available here: <https://www.accc.gov.au/system/files/EO%20-%20Correspondence%20-%20review%20of%20the%20InterGovernmental%20Agreement%20for%20an%20Electronic%20Conveyancing%20National%20Law%20-%20Signed%20by%20Cristina%20Cifuentes%2026%20March%202019.PDF>
- Mr Glenn Archer - Identifying a preferred technology model to support a national interoperable eConveyancing marketplace (August 2020):** Independent Tech Expert, Mr Glenn Archer was commissioned to chair the Interoperability Technical Working Group, and to leverage the insights from this working group to identify a preferred technical model for interoperability (the report is available on request).
- Centre for International Economics (CIE) - Cost Benefit Analysis (September 2020):** NSW ORG commissioned CIE to undertake a cost-benefit-analysis comparing the net benefits of an interoperability solution, against stronger price regulation, and the base-case of standalone

ELNOs – available here: <https://www.thecie.com.au/publications-archive/the-impact-of-covid-19-on-australias-economic-landscape-p5ksj>

- g. **ARNECC - Interoperability Model overview (March 2021)** – available here: <https://www.arnecc.gov.au/wp-content/uploads/2021/08/interoperability-model-overview.pdf>
- h. **ARNECC - Changes to enforcement powers in the Electronic Conveyancing National Law (May 2021)** – available here: <https://www.arnecc.gov.au/wp-content/uploads/2021/08/changes-enforcement-powers-ecnl-april-2021.pdf>
- i. **ARNECC - Position Paper – Changes to the Electronic Conveyancing National Law – (April 2021)** – available here: <https://www.arnecc.gov.au/wp-content/uploads/2021/08/changes-electronic-conveyancing-national-law-april-2021.pdf>
- j. **ARNECC – Model Operating Requirements:**
Version 7 of the MORs published for consultation on 14 July 2021
Version 7.1 of the MORs published for consultation on 8 November 2021 – available here: https://www.arnecc.gov.au/resources/consultation/model_operating_requirements/
- k. **ARNECC – Model Participation Rules (Version 7 Consultation Draft published 9 August 2021)** – available here: https://www.arnecc.gov.au/resources/consultation/model_participation_rules/
- l. **ARNECC – Draft in-confidence amendments to the Electronic Conveyancing National Law (November 2021)** provided to Law Council of Australia, Australian Institution of Conveyancers, Australian Banking Association and ELNOs
- m. **ARNECC – Regulation Impact Statement – Options for promoting competition in the market for electronic lodgment network operators (December 2021):** <https://www.arnecc.gov.au/wp-content/uploads/2021/12/Interoperability-RIS-December-2021.pdf>

Part B – Ministerial Forums and Statements

Ministerial Forums were held on the following dates:

- 10 June 2020
- 7 September 2020
- 7 December 2020
- 1 July 2021
- 29 October 2021
- 28 January 2022

Ministers published the following Statements:

- 12 March 2021 - Government and industry partnership to develop a national interoperability specification for Australia's eConveyancing system, available here: <https://www.arnecc.gov.au/wp-content/uploads/2021/08/joint-government-industry-statement-12-03-21.pdf>
- 1 July 2021 – Progress with a competitive market structure in the eConveyancing market – joint Ministerial and ACCC statement, available here: <https://www.arnecc.gov.au/wp-content/uploads/2021/08/joint-ministerial-accs-statement-1-july-2021.pdf>
- 29 October 2021 – Ministerial direction on implementation dates to deliver a secure national interoperability regime and effective competition, available here: <https://www.arnecc.gov.au/wp-content/uploads/2021/10/Ministerial-Statement-October-2021.pdf>
- 28 January 2022 – Ministerial statement on amending the Electronic Conveyancing National Law to deliver a secure national interoperability regime and effective competition, available here: <https://www.arnecc.gov.au/wp-content/uploads/2022/01/Ministerial-Statement-January-2022.pdf>

Part C – Stakeholder consultation and project governance

Stakeholder consultation and project governance lead by NSW:

Dr Nicholls working groups: In 2019, NSW established stakeholder forums to consider technical and regulatory aspects of interoperability. These were convened under an independent Chair, Dr Rob Nicholls. The stakeholders included: PEXA; Sympli; Lextech/Purcell Partners; GlobalX; Australian Institute of Conveyancers (National and NSW Division); NSW ORG; the major four banks; the NSW Law Society; NSW Land Registry Services; Land Services SA; Lawcover and Revenue NSW.

In addition, contributions were made by other bodies and observers including: Australian Competition and Consumer Commission (ACCC), Australian Institute of Conveyancers (SA Division), Australian Stock Exchange Limited, Dench McClean Carlson, Law Institute of Victoria, NSW's Independent Pricing and Regulatory Tribunal (IPART), NSW iCare, Queensland Law Society and SA Office of Registrar General.

Agendas, meeting packs and minutes of meeting are available for the following meetings:

a. Interoperability Regulatory Working Group

- 27 March 2019
- 30 April 2019
- 11 April 2019
- 16 May 2019

b. Interoperability Technical and Operations Working Group:

- 27 March 2019
- 30 April 2019
- 11 April 2019
- 16 May 2019

Stakeholder consultation and project governance lead by NSW and SA:

NSW / SA Industry Panel - In December 2019, the New South Wales and South Australian Registrars convened a National Industry Panel, to address the problem question:

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

Members included NSW and SA Registrars, the Queensland Titles Office, representatives from the Australian Banking Association, Australian Institute of Conveyancers, Law Council of Australia and ELNOs. The ACCC was an observer to this consultation process.

The governance structure was designed to achieve the following outcomes:

- NSW / SA develop a solution that can be adopted by all jurisdictions, including a comprehensive set of materials that can be used as the basis for legislative and regulatory change;
- inform Australian Registrars’ National Electronic Conveyancing Committee (ARNECC) of all progress and support ARNECC with its decision making;
- ensure implementation is national and considers different state and territory regimes; and
- complement and build on other reviews and reports on this subject written over the previous 18 months, including the Nicholls July 2019 report; the ACCC December 2019 eConveyancing reform report; the IPART November 2019 pricing report; and the DMC December 2019 review of the Intergovernmental Agreement.

The terms of reference, as well as agendas, meeting packs and minutes of meeting, are available for the following meetings:

- 10 December 2019
- 5 February 2020
- 29 April 2020
- 10 June 2020
- 16 September 2020

Interoperability Technical Working Group (ITWG) – from February 2020: The ITWG was established in February 2020 under the national interoperability industry panel convened by the New South Wales and South Australian governments, to identify potential technology approaches for interoperability in a multi-ELNO environment. Independent Chair Mr Glenn Archer was engaged to consult with industry and prepare a report of setting out potential technical approaches for interoperability.

Stakeholder consultation and project governance led by ARNECC:

ARNECC National Interoperability Industry Panel – The Industry Panel was formed to address the following question (this forum was previously the NSW / SA Industry Panel).

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

The Industry Panel is made up of Registrars or their nominees and jurisdictional experts, representatives from the Australian Banking Association, Australian Institute of Conveyancers, Law Council of Australia, ELNOs, the major four banks and a number of other banks. The ACCC is an observer to this consultation process. The full terms of reference for the Industry Panel are available here: https://www.registrargeneral.nsw.gov.au/_data/assets/pdf_file/0009/927423/Iop-Industry-Panel-Terms-of-Reference-Oct-20.pdf⁶ and a list of Industry Panel meetings and materials is included in the Attachment.

Agenda, meeting packs and minutes of meeting are available for the following meetings:

- 28 October 2020
- 16 December 2020
- 3 February 2021
- 16 March 2021
- 5 May 2021
- 28 July 2021
- 1 December 2021
- 15 March 2022 (agenda and meeting pack only)

Interoperability Operations Committee – from January 2021: The IOC was established as a subordinate working group of the ITWG and, since July 2021 reports directly to the Industry Panel. The IOC prepares and develops the National Electronic Conveyancing Interoperability Data Standards (NECIDS), essential business rules and technical architecture for Interoperability. It is chaired by government and both operating ELNOs are members.

Meetings are held twice per week; the terms of reference, agendas, meeting packs and minutes of meeting are available (these materials are confidential). Meetings have been paused.

Interoperability Implementation Committee (IIC) – from May 2021: The IIC is a forum to raise and address issues and activities required for the implementation of the interoperability reform. The IIC is chaired by government; both operating ELNOs are members, as is the ABA and the four major banks.

Meetings are held once per week; the terms of reference, agendas, meeting packs and minutes of meeting are available (these materials are confidential). Meetings have been paused.

The IIC has formed the Testing Working Group (TWG) to create the testing strategy, plans and test-cases for both inter-ELNO and industry-wide testing. Members of the TWG are government and operating ELNOs.

ELNO Interoperability Agreement Working Group – from May 2021: The working group was established in May 2021. It focuses on identifying matters to be dealt with in ELNOs’ bilateral contracts and corresponding provisions in the MOR. It is chaired by government; members are

⁶ The Industry Panel is reviewing an updated version of the Terms of Reference at its meeting on 15 March 2022. Once finalised, the updated Terms of Reference will be available on the website of the New South Wales Office of the Registrar General.

government, operating ELNOs, the Law Council of Australia, the Australian Institute of Conveyancers, the Australian Banking Association, and independent advisors.

Meetings were held on the following dates; the terms of reference, agendas, meeting packs and minutes of meeting are available (these materials are confidential):

- 7 May 2021
- 30 June 2021
- 10 August 2021
- 8 September 2021
- 23 November 2021
- 14 December 2021

Payments Working Group

In addition, the Australian Banking Association and NSW ORG held a number of workshops with the major four banks to identify and consider payments issues related to interoperability. Meetings were held on the following dates:

- 11 June 2020
- 25 June 2020
- 17 July 2020
- 3 September 2020
- 5 November 2020
- 10 December 2020
- 2 February 2021
- 29 March 2021

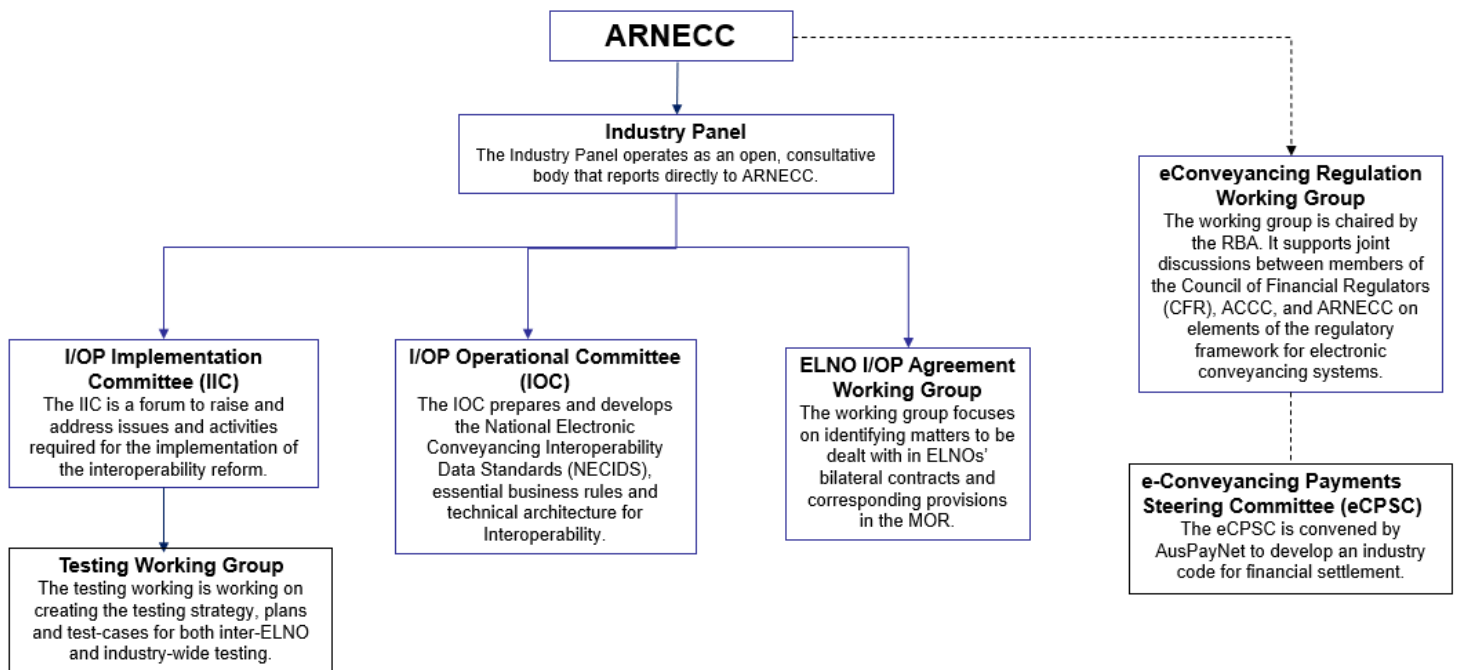
eConveyancing Regulation Working Group

From August 2020 to May 2021, ARNECC attended the eConveyancing Regulation Working Group, chaired by the Reserve Bank of Australia. The Australian Securities and Investments Commission was also a member of this working group, and the ACCC was an observer.

Meetings were held on the following dates:

- 27 August 2020
- 8 October 2020
- 19 November 2020
- 17 December 2020
- 11 February 2021
- 25 March 2021
- 29 April 2021
- 27 May 2021

The following chart sets out the current governance structure:



Tab E – letters in support

Copies of the following letters are attached (see next pages) – these letters are confidential.

- Letter from the Law Council of Australia dated 9 February 2022 (Redacted)
- Letter from the Australian Banking Association dated 11 February 2022 (Redacted)

The letter in support from the Australian Competition and Consumer Commission dated 18 February 2022 is available here:

<https://www.accc.gov.au/system/files/ACCC%20letter%20to%20ARNECC%20regarding%20ECNL%20bill%2018%20February%202022.pdf>