

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

**Organisation:** Australian Registrars' National Electronic Conveyancing Council  
(ARNECC)

**Date Received:** 11 March 2022

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

Dear Mr Banasiak

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

The Australian Registrars' National Electronic Conveyancing Council (ARNECC) welcomes the opportunity to make a submission to the Inquiry into the *Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022* (the Bill).

ARNECC is responsible for the facilitation of the implementation and ongoing management of the regulatory framework for electronic conveyancing of real property in Australia. It is constituted under an Intergovernmental Agreement (IGA) among the State and Territory Governments. ARNECC membership comprises the Land Titles Registrars (or their nominee) from each Australian State and Territory. A copy of the IGA entered to in 2011 is found here: [https://www.arnecc.gov.au/regulation/intergovernmental\\_agreement/](https://www.arnecc.gov.au/regulation/intergovernmental_agreement/).

ARNECC's principal functions are to:

- Advise the State and Territory Governments on any proposed changes to the Electronic Conveyancing National Law (ECNL).
- Develop and publish Model Operating Requirements (MOR) and Model Participation Rules (MPR) as provided for in the ECNL.
- Provide authoritative advice to the State and Territory Governments about matters relating to electronic conveyancing.
- Ensure that, as far as is practicable, business practices with respect to electronic conveyancing are consistent when implemented by the Registrars in each jurisdiction.

Other work undertaken by ARNECC relevant to the purpose of this Bill are:

- Facilitate a competitive market between Electronic Lodgment Network Operators (ELNOs).
- Work with the Council of Financial Regulators (CFR) to clarify the regulatory framework for financial payments and settlements.
- Continue to review and further develop an enforcement regime for ELNOs and Subscribers.

Each ARNECC member reports to their Minister, and the Ministers from States and Territories have been meeting at Ministerial Forums since June 2020 for key decisions on the interoperability reform. Recent Ministerial Statements are publicly available at ARNECC's website, as follows:

- 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>
- 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>
- 1 July 2021 – Progress with a competitive market structure in the electronic conveyancing 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>
- 12 March 2021 - Government and industry partnership to develop a national interoperability specification for Australia's electronic conveyancing system, available here: <https://www.arnecc.gov.au/wp-content/uploads/2021/08/joint-government-industry-statement-12-03-21.pdf>

This letter provides an overview of the extensive consultation undertaken by ARNECC in relation to the interoperability reform; and of ARNECC's contribution to discussions regarding regulation of financial settlement by ELNOs.

The National Interoperability Industry Panel is a forum convened by ARNECC.

### **Competition reform and industry consultation**

In 2018, ARNECC commissioned a review of the electronic conveyancing market, under the provisions of the IGA. This review identified (among other issues) competition issues that required further consideration. A copy of the 2019 IGA review (final report) is available here: <https://dmcca.com.au/wp-content/uploads/2019/12/IGA-Review-Final-Report-19-12-18.pdf>.

In October 2020, the then national interoperability industry panel that had been convened under the auspices of the New South Wales and South Australian governments, became an ARNECC forum, known as the National Industry Interoperability Panel (the 'Industry Panel').

The Industry Panel was formed to address the following:

“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 designed to ensure extensive industry engagement on this question. It 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 Australian

Competition and Consumer Commission (ACCC) is an observer to this consultation process. The full terms of reference for the Industry Panel are available here: [Interoperability industry panel terms of reference Oct 20 \(nsw.gov.au\)](https://www.nsw.gov.au/interoperability-industry-panel/terms-of-reference);<sup>1</sup> and a list of Industry Panel meetings and materials is included in the Attachment.

The Industry Panel has convened a number of committees and working groups, to work with industry to address the problem statement set out above. These comprise:

- The Interoperability Technical Working Group (ITWG) – The ITWG was established in February 2020 under the 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. As part of the Industry Panel work, the scope of the ITWG was expanded to involve a comprehensive review of the technical solution. The ITWG was disbanded in July 2021 following completion of its work. Members of the ITWG included government representatives (from jurisdictions' Office of Registrar General or equivalent), industry peak bodies, financial institutions and both operating ELNOs.
- The Interoperability Operational Committee (IOC) – The IOC was established in January 2021 as a subordinate working group of the ITWG. 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 an ARNECC nominee and both operating ELNOs are members.
- Interoperability Implementation Committee (IIC) – The IIC was established in May 2021. It is a forum to raise and address issues and activities required for the implementation of the interoperability reform. The IIC is chaired by a project manager engaged by NSW Office of the Registrar General; both operating ELNOs are members, as is the ABA and the four major banks.

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 representatives (from the jurisdiction's Office of Registrar General or equivalent) and operating ELNOs.

- ELNO Interoperability Agreement working group – 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 an executive of the NSW Office of Registrar General; members are government representatives (from jurisdictions' Office of Registrar General or equivalent), operating ELNOs, the Law Council of Australia, the Australian Institute of Conveyancers, the Australian Banking Association, and independent advisors.

The terms of reference for these committees and working groups are attached as Tab A. Tab B sets out a list of meeting materials.

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<sup>1</sup> 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.

In addition, ARNECC members have published the following papers in relation to the interoperability reform. These papers have then been presented to industry at the Industry Panel meetings.

- Interoperability Model overview (published March 2021) - <https://www.arnecc.gov.au/wp-content/uploads/2021/08/interoperability-model-overview.pdf>
- Position Paper – Changes to the *Electronic Conveyancing National Law* (published April 2021) <https://www.arnecc.gov.au/wp-content/uploads/2021/08/changes-electronic-conveyancing-national-law-april-2021.pdf>
- Position Paper - Changes to enforcement powers in the Electronic Conveyancing National Law (published May 2021) - <https://www.arnecc.gov.au/wp-content/uploads/2021/08/changes-enforcement-powers-ecnl-april-2021.pdf>
- Model Participation Rules (Version 7 Consultation Draft published 9 August 2021) - [https://www.arnecc.gov.au/resources/consultation/model\\_participation\\_rules/](https://www.arnecc.gov.au/resources/consultation/model_participation_rules/)
- Model Operating Requirements (Version 7.0 Consultation Draft published 14 July 2021) – [https://www.arnecc.gov.au/resources/consultation/model\\_operating\\_requirements/](https://www.arnecc.gov.au/resources/consultation/model_operating_requirements/)
- Model Operating Requirements (Version 7.1 Consultation Draft published 8 November 2021) - [https://www.arnecc.gov.au/resources/consultation/model\\_operating\\_requirements/](https://www.arnecc.gov.au/resources/consultation/model_operating_requirements/)
- Regulation Impact Statement (published December 2021) - <https://www.arnecc.gov.au/wp-content/uploads/2021/12/Interoperability-RIS-December-2021.pdf>

The Bill requires ELNOs to interoperate with each other (see proposed new section 18A) and permits Registrars to determine operating requirements relating to interoperability, including requiring ELNOs to enter into bilateral agreements relating to interoperability and the matters to be covered by those agreements, and requiring ELNOs to use a specified data standard to complete interoperable conveyancing transactions (see proposed new section 22(2)(ba) and amended section 22(2)(c)).

### **Financial settlement review**

The 2019 IGA review also recommended that the ELNO approval process include further requirements relating to financial settlement.

From August 2020 to May 2021, ARNECC attended the E-Conveyancing 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.

In June 2021, the CFR published a statement noting that the working group had identified areas where current arrangements could be strengthened to ensure effective competition, improve customer outcomes and reduce risk. The statement also noted that the CFR and ACCC supported addressing these areas through an industry code, to be developed by Australian Payments Network Limited. The full statement is available here:

<https://www.cfr.gov.au/news/2021/mr-21-03.html>.

The Bill permits Registrars to determine operating requirements relating to participation by an ELNO in a scheme for an industry code and compliance by an ELNO with that code (proposed new section 22(2)(ce)).

### **Further consultation on the ECNL and developing the enforcement regime**

In January 2022, Ministers released a statement (referred to above), confirming that while the basic requirement for ELNOs to interoperate is included in this Bill, stakeholders have provided important feedback during ARNECC's 2021 ECNL targeted consultation, which must be properly considered. Ministers confirmed this would occur in 2022, along with the consideration of an enforcement regime, with further amendments to the Bill to be introduced at a later date.

### **Publication of this submission**

This submission can be published under the name of ARNECC, but excluding any material expressly designated as confidential.

Yours sincerely

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

11 March 2022

**Tab A – Terms of reference**

The current Terms of Reference for each of the following committees and working groups is attached. These materials are confidential.

- Interoperability Technical Working Group
- Interoperability Operational Committee
- Interoperability Implementation Committee
- ELNO Interoperability Agreement Working Group
- E-Conveyancing Regulation Working Group

## Tab B: Index of meeting materials

*The following materials are available upon request. All are confidential.*

**ARNECC National Interoperability Industry Panel** – [Agendas, meeting packs and minutes of meeting available for the following panel 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)

### **Committees and Working Groups of the Industry Panel:**

- **Interoperability Technical Working Group – from October 2021** [Agendas, meeting packs and minutes of meeting are available for meetings from October 2021 – July 2021. These meetings were generally held every 2 - 4 weeks]
- **Interoperability Operational Committee – from January 2021** [Agendas, meeting packs and minutes of meeting are available for meetings from January 2021 – present. These meetings are scheduled twice per week. ]
- **Interoperability Implementation Committee – from May 2021** [Agendas, meeting packs and minutes of meeting are available for meetings from May 2021 – present. These meetings are scheduled weekly. ]
- **ELNO Interoperability Agreement Working Group – from May 2021** [Agenda, meeting packs and minutes of meeting available for the following meetings]:
  - 7 May 2021
  - 30 June 2021
  - 10 August 2021
  - 8 September 2021
  - 23 November 2021
  - 14 December 2021

**E-Conveyancing Regulation Working Group 2021** - [Agendas, meeting packs and minutes of meeting are available for the following meetings]:

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