Submission No 10

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

Organisation: PEXA Group

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ABN 23 629 193 764 | PEXA Group Limited

The Hon Mark Banasiak MLC
Chair
Portfolio Committee No. 4 – Customer Service and Natural Resources
Parliament House
Sydney NSW 2000

Correspondence lodged by Portfolio Committee submission portal

11 March 2022

Dear Mr Banasiak,

Thank you for the opportunity to comment on the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022. Please find attached our submission. We look forward to appearing before the Committee on Thursday 17 March 2022.

Yours sincerely,

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Chief Operations Officer

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Property Exchange Australia Ltd

Submission for the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022

PEXA Group Limited, operator of the world's first digital property exchange platform, welcomes the opportunity to make a submission to the Portfolio Committee No. 4 relating to the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 (the Bill).

1. Overview

PEXA's submission aims to help the Committee see the unintended consequences of the draft legislation it is considering. PEXA recommends either critical amendments now or (preferably) withdrawal of the Bill to enable it to address the wide range of gaps that the Government has already said are needed in a second bill. To be clear, PEXA's primary goal is maintaining a safe and secure e-conveyancing ecosystem. PEXA is not opposing the intensification of competition.

E-conveyancing has delivered significant advantages for the Australian property sector – saving consumers and small businesses money and time, and boosting security and reliability. E-conveyancing kept the Australian property sector thriving during COVID (Appendix 1).

However, the legislation before the Committee (if passed without amendment) will degrade performance and put the system at serious risk. The Bill, and the inadequate arrangements in place for implementation, will lead to an extended period of delayed or failed property settlements commencing from next year. There will be a significant impact to home buyers and sellers, and the 10,000 legal and conveyancing firms and ~150 financial institutions that rely on a safe, secure and efficient e-conveyancing system.

The Bill is exceptionally high level, delegating critical decision-making to unelected officials without installing the processes and accountabilities that normally apply to significant economic reforms. The Australian Registrars National Electronic Conveyancing Council (ARNECC) was established to regulate lodgement of documents with land registries. However, the Bill will empower ARNECC to attempt transformational economic reform in a domain where it has not been provided with the necessary resources or expertise to do so safely. Further to disruptions for home buyers and sellers, the current trajectory will result in a locked-in duopoly with constrained innovation, higher costs, and significantly more exposure to outages and cyber fraud.

At a minimum, PEXA strongly recommends that the Bill be amended to provide critical protections. Home buyers and sellers should be protected via an independent assurance of industry and government readiness prior to any change commencing. The industry should be protected by mandating orthodox rule-making processes of consultation and impact analysis before decisions are made. Amendments are also needed to ensure that better models of competition are not excluded from the future.

A more prudent way forward with less risk would be for this Bill to be rejected in its current form, and for ARNECC to immediately appoint a credible economic regulator, such as the Australian Competition and Consumer Commission (ACCC), to conduct a structured analysis to quantify the core 'problem' that is perceived to exist. The Government has already signaled that a second bill is required, providing time for the regulator to also complete a systematic evaluation of options that could generate net

benefits and avoid increased risk and costs. PEXA has for many years requested this work to be done, however, to our knowledge this analysis has never been prepared.

2. The proposed legislation is not fit-for-purpose, with feedback from consultation ignored

The draft legislation was anticipated to be published for consultation in early 2021, however, this slipped by more than nine months. In November 2020, prior to drafting the Bill, ARNECC published a discussion paper acknowledging several key issues that remained to be resolved, such as the inclusion of financial settlement, price controls and enforcement. Industry feedback identified additional crucial gaps in the position paper, such as the adequate definition of interoperability and the provision for consumer protections in a competitive market. Industry requested further consultation once those matters were better understood by ARNECC.

Government instead proceeded with drafting a Bill, and it was not until 12 months later that select stakeholders received the draft legislation in November 2021, requesting submissions by 24 November 2021. Although this allowed little time for industry to respond, PEXA understands that many stakeholders provided considerable feedback on the Bill. PEXA noted serious concerns regarding the rule-making process and the lack of review rights for ELNOs and industry, together with an unviable pricing structure. PEXA understands that the representatives of lawyers and conveyancers have highlighted other gaps, and that the government has conceded that more work is required. It is therefore disturbing that all this feedback has been set aside, with the Bill presented to the New South Wales Parliament remaining unchanged since consultation.

3. Amendments needed to protect home buyers and sellers

ARNECC has consistently underestimated the significance and complexity of this reform. It is highly constrained as a body as it comprises representatives from all states and territories, each of which has very limited resources and highly specialised expertise. These limitations manifest as consistently missed timelines, cost and resource requirement underestimations, inadequate analysis and poor stakeholder management (Appendix 2).

ARNECC is a committee of land registrars that was never established to regulate property transactions. Members and their staff have long and deep experience in receiving and processing documents that securely record changes in property ownership, but they have not been resourced and are not experienced in financial settlement or the performance of the collaborative processes of lawyers and conveyancers that precede document lodgement. Critically, they have not been established as economic regulators equipped to design and execute a highly complex competition reform.

PEXA has sought to fill the knowledge gap, and our experts contributed over 1,000 hours in 2021 to advance the detailed design for interoperability. Together with the officials and industry, an aggressive timeline for interoperability implementation was prepared in readiness for a Ministerial roundtable. Ministers rejected the working group timeline and arbitrarily removed 30 weeks (equivalent of 30% of the timeline) from the build and test phases, with no plan or evidence of feasibility. A zero allowance has been made for change management for banks and practitioners. Government also rejected a call for an independent readiness and feasibility review.

Committee members will be well aware of the consequences of large technology change processes proceeding without proper planning and quality assurance. For example, the one-day Australian

Securities Exchange (ASX) outage in November 2020, as part of the ASX CHESS reform, had a significant impact on shares trading. Post incident reviews confirmed that even extensive preparations and testing within a very large project budget proved insufficient. By comparison, the investment by government in managing the interoperability transition lacks the most basic quality assurance and planning processes. Infrastructure that is critical for the Australian property sector and home buyers and sellers is clearly being put at grave risk from error, defect, cyber-attack and a lack of processes for fault detection and recovery across multiple providers. A summary of the increased cyber risk of the proposed model is shown in Appendix 4.

It would be easy for some to suggest that PEXA is scaremongering. However, PEXA has built a unique, world first system over the last decade, and is acutely aware of the challenges of completing thousands of property transactions across the complex web of registries, revenue offices, lawyers, conveyancers and banks. Even a minor breakdown in this process results in the relocation of families due to a delayed or failed settlement. The risks and consequences are clear, and PEXA is concerned there is no process in place to confirm whether or not the industry and government will be ready.

There is a false assumption that interoperability will solve for issues like those faced by the ASX, delivering greater resilience to property transactions so homebuyers and sellers are not impacted if one ELNO is offline. This is incorrect. With interoperability, if one system goes down, all systems are impacted.

Recommendation

The Bill should be amended to require governments to commission an independent expert to assess the preparations by government and private entities for interoperability. Further, the appointed expert should provide a public assurance of readiness and safety prior to changes going live.

4. The rulemaking and review provisions also require amendments to protect the industry

ARNECC was established to regulate lodgement of documents with land registries. The current legislation allows for registrars in each jurisdiction to set lodgement related rules without any consultation or right of review. This essentially mirrors the pre-digital world where the registrars stood behind a counter and rejected any documents that did not meet requirements.

The Bill grants extraordinary unconstrained powers for ARNECC to regulate the activities of lawyers, conveyancers, lenders and ELNOs that precede lodgement, in areas where ARNECC has no expertise – notably financial settlement and preparatory collaboration. Under the proposed legislation these powers can be exercised without consultation or impact assessment, even to the extent of changing words, phrases or dollar values in commercial agreements between competitors.

ARNECC has not been resourced to regulate the work that banks, practitioners and ELNOs do prior to lodgement, or to design and execute a highly complex competition reform. Throughout the planning stages of this reform, ARNECC has consistently demonstrated why proper rule-making processes that apply almost everywhere else in government must be mandated.

The New South Wales government has long recognised that rule-making by officials must be guided by processes, and ultimately be subject to parliamentary disallowance if found inadequate. The *Subordinate Legislation Act 1989* sets out requirements that apply to the making of regulations, by-

laws or ordinances. Officials must follow requirements for public consultation, options and impact assessment analysis, and consideration of feedback prior to decision-making.

The Bill provides a loophole for ARNECC to avoid these requirements by describing its subordinate regulations as 'operating requirements'. The Bill therefore enables officials to unilaterally change matters such as payment terms, agreed prices and assignment of roles and liabilities at will and without consultation. The uncertainty this creates is significant, and therefore damaging. PEXA is not aware of such extraordinary provisions operating elsewhere in the Australian economy.

Unfortunately, PEXA has experienced many recent examples of what happens in the absence of mandated rule-making processes. An example of note is ARNECC's approach to pricing of services to be provided between competitors.

ARNECC first published a draft rule that said that ELNOs should set their prices for servicing each other in the same way they set prices for ordinary users. Then, without explanation, ARNECC published a new draft rule stating that ELNOs must provide their core services to each other at zero cost. This was contrary to the earlier published advice from IPART, ACCC and Sympli that said cost-based prices should apply. In response to strong feedback, ARNECC then circulated a two-page list of six proposed options for how inter-ELNO prices should be resolved, seeking feedback within 24 hours. ARNECC confirmed that it had not conducted any analysis of the potential impacts of any of its approaches to pricing. Third-party access to private infrastructure (i.e. internet, railways, ports) is a complex area of economic regulation and PEXA has made a substantive response recommending the ACCC should be asked to conduct the required analysis, which would include a robust process for stakeholder engagement.

Given that the Bill leaves almost all of the market design and execution for subsequent rule-making by officials, it is critical that proper processes are developed to protect the entire eco-system. For example, issues like consumer protection, cyber security, liability management, insurance and even the scope of ARNECC's role as regulator, remain to be addressed.

In Appendix 2, we also highlight other important amendments that should be made if the legislation is to proceed at this time. In particular, the definition of 'interoperability' should be amended so that it does not prevent more and diverse types of competition in the future. Although it has been suggested that new competitors could innovate with specialised offerings, the current approach requires all competitors to fully duplicate PEXA's coverage and infrastructure, which has already led a potential third ELNO to abandon its plans. This also locks out innovators who might like to utilise some of PEXA's (or Sympli's) infrastructure to offer services to specialised market segments.

Recommendation

The Bill should be amended to require that all significant, non-administrative, changes to Operating Requirements be made via a structured process that requires ARNECC to:

- describe the problem it seeks to solve;
- develop and publish options and analysis of efficacy and potential impacts;
- publicly consult with potentially impacted parties; and
- take feedback into account before making decisions.

5. The deeper problems with interoperability – fact vs fiction

After a year of multi-organisational collaboration, and the detailed design and analysis of ARNECC's preferred interoperability model, it is now clear that many of the hopeful assertions about interoperability are categorically not true, as evidenced below.

5.1 Stifled innovation and dual processing caused by interoperability

For ELNOs to interoperate, they must share workspace data. This is the basic data that all ELNOs must collect and package for lodgement of documents. However, in collaboration with industry, PEXA has developed a range of settlement and lodgement productivity tools that require additional types of data. More than 10,000 members, ranging from large law firms to small one-person conveyancers, rely on these features and services for their day-to-day business.

Under the current model, should another ELNO not have the same innovative features, then that feature would not be supported in an interoperable transaction and must be disabled. Unless all ELNOs agree to develop and offer the same features, and to make these features available to all users at the same time, value-add enhancements cannot benefit ELNO customers. This will result in:

- Loss of important bespoke PEXA features like automated GST withholding, auto balancing of settlement funds and a range of workflow management tools.
- Dual processes for users – organisations will have to develop and train staff for additional work-arounds when critical features are not available because a transaction is interoperable. Their staff will also experience confusion and cost when trying to solve problems with counterparts who are using a different ELNO with different data entry screens and processes.
- An ongoing deterrent to further innovation, as mirroring requirements removes competitive advantage and the business case for investment in new features.

5.2 A more fragile network, as when one ELNO is down, all will be down

The complex interactions between the ELNOs, and the duplicated connections with registries, revenue offices and financial institutions multiply the potential points of failure in the network, greatly increasing the likely frequency of incidents or outages.

Key points that are frequently misunderstood are that:

- In an interoperable transaction, if one ELNO has an outage then that transaction cannot proceed – one down, all down.
- If a single ELNO transaction is impacted by an outage, the other ELNO's services can only be used if all participants are also subscribers to that other ELNO and agree to restart their work in the other ELNO from the beginning.

Interoperability has been promoted as boosting resilience generally and specifically without requiring users to subscribe to multiple services. These propositions are both clearly untrue.

5.3 Consumer choice will not be delivered via interoperability

Consumers do not choose ELNOs; consumers choose lawyers, conveyancers and lenders to help them execute their home purchase or sale. An ELNO is a software service chosen by businesses to help them deliver services for their clients. PEXA's market research confirms that most consumers are unaware of what an ELNO is, or that they indirectly use one whenever they buy or sell property. The small cost of the ELNO's service is simply one minor line item of the lawyer or conveyancer's bill.

As shown in Table 1, this cost is one of the very smallest components of the total cost of a property transaction.

Table 1 - Key buyer and seller transaction costs* (2022)

	NSW, Feb 2022
Median Capital City House Price	**$1,420,000**
Stamp Duty (Buyer)	$62,117
Real Estate agent commission (Seller)	$31,950
Lawyer/Conveyancer Fees (Buyer and Seller)	$3,600
Title and Other search (Buyer and Seller)	$429
PEXA Fees (Buyer and Seller)	$236
Registry Lodgement Fees (Buyer)	$148
Total Transaction Costs	**$98,479**
Total Transaction Costs (% of House Price)	*6.9%*
PEXA fees/transaction costs	***0.24%***

**Note: exclusive of removalists fees, staging costs, lender fees, and auction costs.*

Acknowledging that consumers do not choose, there have also been incorrect arguments that practitioners will benefit from choice. What is not widely understood is that under ARNECC's interoperability model, even when a practitioner chooses an ELNO, their choice is limited to the front-end interface. The ELNO that provides the substantive service (transaction hosting, interaction with registries, revenue office and financial institutions, settlement orchestration, payment instructions and lodgment) is chosen by the incoming lender (or buyer's representative if there is no lender).

This will mean that most of the 'choice' will be in the hands of one of the major banks. Users will find that lodgement and payment instructions are executed on their behalf by an entity they have not selected, and with whom they may have no commercial arrangement.

5.4 ELNO operation and pricing is already strictly regulated

All ELNOs, including PEXA, are subject to stringent regulatory measures designed to protect consumers from price increases, and provide equal access to the e-conveyancing network. PEXA's prices were reviewed by the NSW IPART and found to be reasonable and appropriate.

PEXA is currently subject to:

- regulated pricing, which prevents ELNOs from raising prices above annual CPI increases and prevents price discrimination within categories of subscribers;
- obligations for ELNOs to provide equivalent access to third-party service providers;
- separation obligations with respect to upstream and downstream services; and
- other non-discrimination obligations.

5.5 Is there a positive cost vs benefit for Australian consumers?

At a practitioner level (lawyers and conveyancers), the current e-conveyancing system already delivers cost reductions of $66 per transaction. The interoperability cost benefit analysis conducted in 2020 by the Centre for International Economics reported a potential net benefit of $4 per transaction. Given that the analysis was of a different model of interoperability than is now proposed, assumed a

seamless implementation process, and was prior to discovery that far greater complexity is required than envisaged, this benefit estimate should not be considered statistically superior to zero.

Following the detailed industry workshops held throughout the year, all participants agreed the ARNECC-preferred model for interoperability was far more complex than originally envisaged, with the technical build of the model more than tripling from ARNECC's initial estimates of 24 APIs to upwards of 80 APIs.

It is now clear that the current interoperability reform is being pushed forward in the absence of accurate understanding of how it would work and what is going to happen unless the approach is changed. There is a gross imbalance between almost negligible possible benefits and almost certain significant negative impacts.

E-conveyancing is a small industry sector providing a critical service where there is zero tolerance for failure. Australian home buyers and sellers are having their most important financial transaction, and often their life savings, being put at risk to potentially gain the equivalent savings of one cup of coffee.

6. The best pathway forward for home buyers and seller and the property eco-system

PEXA welcomes competition and has been actively competing within the sector with another, heavily backed platform provider since 2018. PEXA has invested strongly to not only build a platform tailored to its users, but also in additional features and support services that lawyers, conveyancers and financial institutions now rely on. The consequences of getting this wrong will impact hundreds of thousands of Australians every year.

PEXA recommends that a proper review of alternatives to interoperability should be immediately commissioned by an experienced economic regulator. This review should consider potential wholesale and retail models, and a thorough comparative analysis prior to progression of legislation.

Should this not be possible and the legislation proceeds in the near term, PEXA has recommended amendments to provide critical protections for home owners and the industry

PEXA thanks the Committee for its consideration, and would be pleased to provide any additional information that would assist.

- END -

Appendix 1: About PEXA and the introduction of e-conveyancing in Australia

PEXA was formed in 2010 to fulfil the Council of Australian Governments' (COAG) initiative to deliver a single, national e-conveyancing solution to the Australian property industry. It assists members – such as lawyers, conveyancers and financial institutions – to lodge documents with Land Registries and complete financial settlements electronically.

PEXA's unique platform has enabled Australia's property sector to not just exist, but boom during the pandemic. While many countries stalled to a halt during restrictions, Australia's property market hit record highs – with housing settlements rising to an aggregate value of $688.7 billion in 2021 – equal to one-third of Australia's $2 trillion gross domestic product.

More than 80% of all property transfers and 95% of all refinances nationally are handled on the PEXA Exchange platform, and 10,000 lawyers and conveyancers, together with ~150 financial institutions, now rely on PEXA as critical infrastructure for the safe, secure and efficient settlement of thousands of home loans and refinances every day.

As crucial infrastructure to Australia's largest asset class - the $9 trillion residential property sector - PEXA takes its responsibilities seriously and has adopted a conservative and highly risk averse stance. Given that each transaction is life changing for its participants, there is zero tolerance for error.

The company is driven to deliver the best possible experience for all users, and that requires an unwavering focus on security, customer service and digital innovation. PEXA conducted independent brand research in December 2021, receiving the following feedback from its users:

- achieved an 8.9/10 rating for brand trust from members (PEXA Brand Trust 2021)
- > 92% of financial institutions and 84% of practitioners agree PEXA delivers a "high quality of service"
- > 91% of financial institutions and 80% of practitioners agree PEXA is "constantly innovating".

PEXA has publicly supported competition within e-conveyancing, and there have been two candidate additional Electronic Lodgement Network Operators (ELNOs) since 2018. PEXA's current competitor, Sympli, is owned by two major organisations who are dominant in their respective fields – the Australian Securities Exchange (the sole Australian shares trading exchange that has publicly rejected interoperability in equities) and Infotrack, a market leader for title searches and associated software. The second candidate ELNO has declined to enter the market following assessment of the regulatory framework and proposed requirement to interoperate with other ELNs.

The current legislation creates the framework for electronic lodgement across Australia. The National Law was initiated under the same Intergovernmental Agreement which led to the incorporation of PEXA by governments. The New South Wales, Victoria, Queensland and Western Australian governments were shareholders in PEXA for years, concluding with a profitable sale of their interests to the private sector in 2018. PEXA was successfully listed on the Australian Stock Exchange in 2021.

Appendix 2: The Bill is not fit for purpose and requires amendment

1. Amendments are required

Stakeholders, including PEXA, provided feedback suggesting changes to the Bill. While PEXA has not seen the responses from other stakeholders, we are aware that the Australian Institute of Conveyancers has advocated for consumer protections and safeguards against fraud being included in the Bill. PEXA agrees that the inclusion of consumer protections is critical.

Additionally, PEXA proposes the Bill should be amended to address the following:

- Redefine interoperability: At present the proposed definition will foreclose other models for interoperability (beyond a direct connections model). The definition would not enable the pursuit of a less complex, less risky 'wholesale-retail' model for interoperability.
- Provide critical protections for homeowners via the insertion of a process for independent assurance of industry and government readiness prior to any change commencing.
- Remove the ability for Registrars to make Operating Requirements relating to specification of commercial terms between ELNOs or relating to prices charged by ELNOs.
- Remove reference to a Registrar specifying requirements or standards for financial settlement (given the Bill makes clear Registrars will not be responsible for financial settlement).
- Provide that each ELNO has a duty to disconnect from interoperability in the event of systemic issues, imminent risk of fraud or cyber-attack, or prolonged degradation of service.
- Include standard rule-making processes that will apply to the making of Operating Requirements or Participation Rules by Registrars (public consultation, regulatory impact statements, be subject to parliamentary scrutiny and assess for human rights compatibility).
- Include avenues for review of decisions to make an Operating Requirement or Participation Rule and decisions made pursuant to an Operating Requirement or Participation Rule.
- Update the meaning of Responsible Tribunal to be the relevant jurisdictional Civil and Administrative Tribunal.

2. The government has already acknowledged that a second bill is needed, so there is time to get the enabling legislative settings right

The proposed Bill has been rushed to implementation, ignoring critical stakeholder feedback, with a view to mandating interoperability prior to the completion of the regulatory framework.

In the absence of a rigorous quantitative and qualitative assessment of the risks, costs and benefits of the version of interoperability that will be mandated under this Bill, there is a material risk the Bill will erode or compromise the benefits and efficiencies of the existing electronic conveyancing service and ecosystem. The existing e-conveyancing system generates significant benefits for all participants and is highly regulated to protect consumers, meaning there is adequate time to get the enabling legislative settings right.

The proposed ECNL Bill is intended as enabling legislation to intensify competition and thus create better outcomes for consumers and the property industry. However, the Bill is not consistent with this

goal. If implemented in its current form, it will almost certainly lock in a duopoly with higher ongoing costs and risks, while systematically stifling innovation. It also risks harming Australian consumers and property industry practitioners that rely on the safe, effective and highly regulated e-conveyancing system that exists today.

The ECNL Bill is exceptionally high level and:

- confers sweeping powers on unelected officials (Registrar Generals) to make rules on technical, economic and financial matters beyond the scope of their expertise or resources/ capacity; and
- contains no procedural guardrails or restraint on these powers (such as rulemaking consultation requirements, rights of appeal and merits review).

Significant concerns raised by industry and consumers with respect to the draft version of the Bill have not been addressed. Indeed, the version of the Bill being considered by this Parliamentary Committee remains wholly unchanged from the consultation version of the Bill, which was the subject of extensive feedback.

If implemented, the Bill will have the effect of constructing a regulatory edifice much larger and more complex than is required, burdening the regulator (ARNECC and the Registrars) with powers they do not have the resources, expertise or capacity to administer.

More broadly, there also remains significant unresolved issues as to whether the model of interoperability that the ECNL Bill will empower registrars to mandate is even workable from a technical, commercial and consumer safety perspective.

The unnecessary haste introduces grave risks for consumers and more broadly the Australian property sector, which is a fundamental pillar of the Australian economy. Based on PEXA's decade of operation and experience, if implemented we foresee:

- persistent interruptions and delays in property settlements caused by an overly complex regulatory system, where no single regulatory body will be accountable;
- greater cyber security risks;
- the emergence of an entrenched duopoly that is less able to innovate and more exposed to failure and cyber fraud, with higher costs for consumers and industry; and
- The reintroduction of dual processes across industry

None of these outcomes are consistent with the intent of this reform, and for these reasons, the ECNL Bill should not be made into law.

The consultation on interoperability that has occurred has been conducted in a siloed and non-cohesive way, resulting in entrenched factual fallacies that have grossly overestimated the benefits of interoperability, while fundamentally underestimating the reform's risks, ongoing costs and workability. PEXA has asked repeatedly for a systematic quantification of the 'problem' that is thought to exist and robust analysis of options that could generate net benefits and avoid harm. To PEXA's knowledge this has never been done.

3. Specific issues with the ECNL Amendment Bill

3.1 Interoperability as proposed under the Bill will only apply to some aspects of e-conveyancing

The regulatory framework for interoperability needs to support the development and implementation of the required technical solutions. This includes lodgement, financial settlement and related functions (e.g. settlement preparation and duty verification).

However, the regulatory framework proposed under the ECNL Amendment Bill only contemplates some aspects of this ecosystem. In particular, the definition of 'interoperability' in the Bill is limited to requiring 'interoperability between ELNs for completing conveyancing transactions and preparing instruments for lodgement.'

There is a risk the Bill's definition of interoperability will in effect lock in a duopoly and a 'direct connections' model of interoperability, given it assumes an ELN must be connected to another ELN and have its own integration infrastructure with other key stakeholders. This will lead to the following:

- Material barriers to further ELNO entry as there are significant costs in establishing integrations. LEXTECH, a potential third ELNO, has strongly opposed interoperability on this basis.
- Competition will only be possible at the retail user interface level, as the new definition of interoperability contemplates a high degree of uniformity in ELN lodgement capabilities. This will also stymie investment, further innovation, and efficiencies in critical lodgement capabilities. Ironically, while competition will only be possible at the retail user interface level, the definition does not enable the emergence of a wholesale-retail model, which could deliver better outcomes for consumers and innovation serving market niches or specialised functions.
- Potential anti-competitive outcomes relating to Sympli's shareholder, InfoTrack, via the creation of additional monopolies in related markets (i.e. legal and conveyancing software and search services), which have not been assessed.

3.2 The Bill will confer extraordinary powers on ARNECC and the Registrars to regulate beyond competencies and experience

ARNECC was established to oversee lodgement and registration of instruments under land titles legislation. Despite this, section 22 of the Bill confers sweeping powers on Registrars to introduce new economic and commercial operating requirements on a range of subject matters beyond their expertise, experience, and capacity, including technical requirements, separation of ELNO services and fees charged by ELNOs.

Registrars do not have the resources or relevant expertise in areas necessary to develop rules proposed in section 22 of the Bill. This is acknowledged by:

- The Regulatory Impact Statement (RIS) which recognises that the Registrars' primary role is overseeing lodgement and registration of registry instruments under the land title legislation. It highlights that the Registrars lack expertise in financial settlement and payment systems, noting such expertise will be critical for supporting the regulatory framework for interoperability.

- Similarly, Dench McClean Carlson's review of the Intergovernmental Agreement for an ECNL highlighted stakeholder consensus that ARNECC has insufficient skills and resources to manage matters requiring regulation and governance, outside of the land titles component.

3.3 The Bill lacks necessary procedural safeguards to restrain the powers of Registrars

The scope of the proposed powers of Registrars is not limited by normal procedural safeguards (including procedures they must follow to create new Operating Requirements, or rights of review or appeal to challenge decisions) that would normally apply to even the most qualified regulator.

This form of unrestrained regulatory power is particularly problematic in a technical and complex industry like e-conveyancing, where the consequences of regulatory error are heightened. For example, under the Bill, one or more Registrars could mandate the insertion of a poorly conceived clause into commercial agreements between competitors without explanation, consultation, or review, which may result in unforeseen consequences to industry or consumers. This power could be used whether or not competitors had agreed an alternate form of agreement, to reassign responsibilities or to reassign prices between competitors. This would likely serve as a disincentive to new or emerging competition, further entrenching a duopoly.

3.4 ARNECC and the Registrars have a flawed history of rulemaking under the MOR and MPR

ARNECC and the Registrars have demonstrated that legislative procedural guardrails on its rulemaking powers are required.

Empowering ARNECC and the Registrars to unilaterally develop and implement rules is hazardous given the history of poorly conceived rules being introduced following inadequate consultation. Industry has already experienced instances where ARNECC and the Registrars have introduced poorly conceived operating rules, illustrating their lack of knowledge and expertise on a range of critical subjects. PEXA has included tangible examples below:

3.4.1 ARNECC's guidance and consultation on MOR V.5 was lacking

ARNECC initially published a draft of MOR version 5 (including proposals to require separation of ELN services from other services ELNOs may provide, requirements for ELNs providing integration and price controls), but provided industry with no explanation or rationale as to the proposed new rules despite the fact many of the changes would have significant impacts to e-conveyancing operators.

ARNECC eventually acknowledged that "*significant revisions*" needed to be made to MOR 5, and that a second round of consultation, plus an industry engagement event, were necessary. Even today, the drafting of operating requirements relating to separation (introduced in version 5 in 2018) remains confusing, however Registrars have been unable to respond to repeated submissions from industry about the inadequacy and ambiguity of the provisions over several years. It remains the case that neither ARNECC nor industry understand the objective or the operation of these provisions.

3.4.2 ARNECC's service fee proposal

In May 2021, ARNECC confirmed its position that ELNOs will charge each other cost-based fees for services provided, with power to regulate pricing until the market matures.

In July 2021, ARNECC proposed a form of Operating Requirements whereby ELNOs would publish their Interoperability Service Fees and update them according to a public pricing policy (as is the case with all ELNO service fees).

Unexpectedly, in November 2021, ARNECC moved to prohibit ELNOs from charging Interoperability Service Fees, with no consultation, economic analysis or considered rationale for significant regulatory intervention. In other words, ELNOs would be required to provide their core service to their competitor *for free*. Following strong opposition, ARNECC released a 'pricing options paper', which was not supported by any analysis as to the options suggested.

An Interoperability Service Fee is the fee chargeable by one ELNO to another ELNO in an interoperable transaction to compensate it for the additional risk it undertakes in an interoperable transaction, and the use of its technical lodgement and settlement infrastructure.

It is a critical economic component under the Responsible ELNO model of interoperability, which led to industry and Governments agreeing to develop technical solutions to implement interoperability. In the absence of this fee, as ARNECC proposed under MOR version 7.1, the commercial viability of this model is non-existent. It also undermines industry and private sector confidence in ARNECC to make commercial rules.

Given this demonstrable lack of basic understanding of price regulation, the Bill is deeply concerning given it confers unrestrained powers to Registrars to unilaterally impose price controls without fundamental procedural safeguards and protections.

Furthermore, conferring legislative power on ARNECC and the Registrars to interfere in economic and commercial matters, including in relation to private commercial agreements between competitors, will have a chilling effect on continued investment in e-conveyancing. It will also disincentivise potential entrant ELNOs to enter the industry in the face of regulatory uncertainty.

3.5 Additional processes must be implemented in the ECNL to ensure appropriate procedural safeguards and accountability

In New South Wales, it is long recognised that rulemaking by officials must be guided by due processes, and ultimately be subject to parliamentary disallowance if found wanting. For instance:

- the Subordinate Legislation Act 1989 sets out requirements that apply to the making of regulations, by-laws or ordinances; and
- officials must follow the requirements of guidelines for public consultation and preparation of regulatory impact statements.

However, by calling its regulations "operating requirements", Registrars are able to circumvent ordinary rule-making processes, allowing the development and implementation of high impact regulations without any consultation or analysis.

E-conveyancing has matured to become an essential service for the Australian economy, requiring careful consideration when settings are proposed to be changed. If the Bill is to proceed, the Registrar's unconstrained rule making powers must be subject to ordinary requirements such as: publication of objectives and options considered, impact assessment, consultation with affected parties and opportunities for review.

3.6 Registrars should not have the power to determine certain types of rules under section 22

Given the limitations outlined throughout section 3 of this appendix, the Registrars and ARNECC should not have the power to make the following types of Operating Requirements, as proposed by the Bill:

- Section 22(2)(b)(a) - Registrars should not have the power to specify "standard provisions" in interoperability agreements, as this involves dictating the terms of commercial contracts between private sector entities.
- Section 22(2)(cc) - Registrars should not have the power to specify fees and charges payable to an ELNO. This would enable excessive power in a regulatory field in which the Registrars have no relevant experience. Relevant Operating Requirements should be strictly limited to appropriate matters such as:
    - the publication of fees; and
    - the establishment of a pricing policy, which sets out a process for ELNO fee increases.
- Section 22(2)(ce) - The industry code should be developed by relevant industry participants (including ELNOs and financial institutions) in consultation with financial regulators. PEXA queries whether Registrars should be given any role relating to compliance with such a Code, given their lack of experience and expertise relating to financial services regulation.

4. The Bill requires amendment to protect homeowners from the risks of rushed implementation

4.1 A more considered approach is required to avoid far-reaching consequences for homeowners

PEXA has spent more than 10 years implementing e-conveyancing and supporting adoption by the industry.

In recent years, there has been an inexplicable rush to introduce interoperability into this unique and emerging ecosystem. While PEXA fully supports and welcomes competition in e-conveyancing, this rush to introduce interoperability has been defined by inadequate planning and analysis.

It is now abundantly clear that unless a more considered and staged approach to implementation of interoperability is adopted, there is likely to be very significant disruptions to e-conveyancing and the broader property market. The foreseeable negative effects of rushing a large-scale infrastructure transformation project, such as interoperability, include:

- <u>Industry wide confusion</u>
    - Property lawyers and conveyancers, the majority being low margin small businesses, will struggle to manage this significant change without the appropriate timeframe and change management support.
    - Practitioners and financial institutions are heavily reliant upon stable efficient and effective technology, and have invested in training staff to manage both the system and enquiries.
    - The adoption of dual processes will lead to:
        - Increased operational costs
        - User frustration
        - Protracted and difficult client calls for support and problem solving

- Delayed settlements.

- Home buyers and sellers to be impacted
  - Failed or delayed settlements as a result of industry confusion will lead to thousands of families being unable to move into their home as planned.
    - Home buyers and sellers will have possessions stuck in moving vans, at cost
    - Home buyers and sellers will need to stay in hotels, or elsewhere, at cost.

A tangible example is the outage of the Australian Securities Exchange (ASX) in November 2020 as part of the ASX's implementation of the CHESS reform. The outage left thousands unable to trade. IBM's review into the incident found:

"Factors suggested the ASX Trade system was not ready to go-live, considering ASX's near zero appetite for service disruption. This was the case even though the formal implementation readiness processes were completed and verified by multiple parties without objection to go-live … There were gaps in the rigour applied to the project delivery risk and issue management process expected for a project of this nature, and risk and issue management, project compliance to ASX practices, project requirements and the project test strategy/planning did not meet accepted industry practices." [1]

A similar outage to e-conveyancing would affect 5,000 families seeking to settle their property transactions. This would harm the reputation of electronic conveyancing as a safe and trustworthy service, which may have unintended consequences to the wider economy. To date, the NSW Government has rejected PEXA's call for even the most rudimentary assessment and certification of readiness.

4.2 This reform program must learn from the ASX incident, and other rushed technical reforms

An e-conveyancing transaction is far more complicated than ASX trades. Rather than a two-party transaction where the trading platform provider acts as either buyer or seller, e-conveyancing typically brings together four parties, with not only a buyer and seller represented in a transaction, but also banks taking or releasing mortgage interests. Unlike share trades that are settled days later (commonly referred to as a "T+2" arrangement), e-conveyancing transactions are settled in real-time, with ownership changes, releases of mortgage and new mortgage instruments lodged as part of settlement execution.

The IBM findings following the ASX outage suggests that the ASX did establish a risk appetite, requirements for verifications, and had established processes for large scale projects, albeit with gaps in application. Those same features have not been established by ARNECC in its transformation proposal, and PEXA's prior requests for an independent readiness review have been rejected.

It is extraordinary that even minimum expectations for a robust project plan have not been met by ARNECC. Even much smaller and less significant transformation planning should include a definition of a clear project goal and stakeholder needs, establishment of a risk appetite statement and appropriate regular risk assessments, a project scope statement, a detailed project schedule including

[1] Sourced from ZDNet article (23 August 2021), 'IBM finds ASX outage the result of trade platform not being ready for go-live', https://www.zdnet.com/article/ibm-review-finds-asx-outage-the-result-of-system-not-being-ready-for-go-live/

task durations, dependencies and appropriate lee-way for uncertain tasks, clear governance structures, with defined roles and responsibilities, a quality assurance plan, change management considerations, test planning, checkpoints and readiness verifications.

4.3 The already announced timeline is unsupported by evidence and entirely unfeasible

The Minister has announced that full interoperability can be available nationally, within the next 16 months. This announcement has been made despite the fact there are many outstanding issues, including:

- the APIs necessary to enable interoperability have not been fully designed (the complexity and volume of APIs required to facilitate interoperability have been found to be far more complex, time consuming and costly to solve for);
- impacts of interoperability on users and integrated parties have not been identified;
- the commercial interoperability agreements between ELNOs are yet to be negotiated or settled;
- the considerable change management plans required to educate stakeholders to safely transition and update operational and customer support processes are yet to be developed; and
- no connectivity has been established between ELNOs.

4.4 Interoperability equates to complex technical system reform, and is not a small 'add-on'

It has taken PEXA 11 years to roll out e-conveyancing to five state jurisdictions and the Australian Capital Territory.

Sympli, who has been developing its platform for over three years, is yet to leave the pilot phase and commence transacting within a live environment. Notwithstanding promises to be live in the market since 2018, there has been no announcement or indication that Sympli has in fact completed settlement transactions between unrelated parties. Given this status, it is inconceivable that the two ELNOs could develop safe full-scale interconnections to support interoperability to be capable of supporting all transactions nationally, in less than two years.

PEXA has not seen any evidence from ARNECC, or any of its experts, that a 30 June 2023 date is achievable. When PEXA raised concerns with that date, it was confirmed to be a "top down" timeline from a Ministerial level. ARNECC's revised December 2021 plan, underpinning the Ministers' timeline, focuses solely on technology delivery and misses other key elements required for successful transformation. The plan is plagued with unachievable dates and durations, and does not accurately identify dependencies for achieving stated targets.

For instance, the plan makes no allowance for change management for affected stakeholders, in particular financial institutions. Since 2018, financial institutions have been erroneously advised that the implementation of interoperability will have no impact to their day-to-day workings. In fact, stakeholders will need time to learn, transition, update operational processes, update transactional processes and update customer support processes.

PEXA had nominated an aggressive, but achievable schedule to deliver the 'Day 1' (test refinance transaction) capability. This estimate was based upon partial build of APIs at a delivery rate of approximately 1.5 weeks per API (noting that partial build would support a test transaction, to prove

a concept, but then would require subsequent strengthening work to ensure robust and resilient transaction handling capability before going into production). This build rate was then arbitrarily doubled, without explanation, cutting the effective build delivery rate to 0.7 weeks per API. Further, the revised plan allowed no time or resources for the thousands of staff across hundreds of organisations to alter computer systems, amend procedures and retrain team members. The top-down timeline fails to recognise that PEXA processes more than 350,000 transactions per month. This fact greatly increases the risk profile to PEXA, and importantly its users, associated with implementing interoperability. It is critical that additional time is worked into the timeline to ensure that transactions can continue to occur on time, efficiently and securely.

In PEXA's view, it is reckless for Ministers to impose a date for implementation of interoperability in the absence of reviews and assurances that the functionality is safe and effective. To rush implementation by reference to an arbitrarily set date without these necessary checks and balances poses grave risks to consumers, many of whom are transacting their life savings through the e-conveyancing system.

4.5 A readiness certification is essential

To protect consumers, as well as the conveyancers, lawyers and the financial sector that services homeownership, legislation must include a requirement for readiness certification before a timeline is determined. This should involve an independent third-party review of the scope and planning assumptions, estimating methodology, dependencies, risks, and contingency used to derive the proposed timeline. It would also involve assessment of the readiness of all the major parties to perform their modified roles. This must be supported by evidence to confirm that the date is realistic, reasonable and achievable by all stakeholders, and importantly will not cause harm to market participants (including ELNOs, end-consumers or those responsible for the integrity of Titles Registers).

The critical purpose of the review is the public provision of certification, provided from an informed and independent perspective, that Australia's safe and secure property settlement system will not be put at risk by the commencement of interoperability. This is a standard requirement for many industry-wide transformation projects.

Failure to provide an independent readiness certification will inevitably lead to criticism when the negative market impacts resulting from a rushed implementation of interoperability are scrutinised and reviewed. Community and industry must be able to continue to trust that property transactions are safe and reliable.

5 In summary – it is critical to get legislative settings right from the outset

While PEXA appreciates the Government's resolve to enhance competition in e-conveyancing, the acceleration of the Bill on the basis of a flawed RIS brings into question whether the Bill is really in the best interests of the end consumer. E-conveyancing is not an information technology sector where learning through error is acceptable.

The e-conveyancing market is a real-time system that critically supports the $9 trillion Australian property market, which in turn underpins the health of the national economy. It is now seen as essential service for the Australian property sector. Even a small number of failed transactions can result in consumers losing their entire life savings, eroding national confidence in the sector.

As a result, PEXA has outlined the enormous risks in accelerating any regulatory intervention which will endanger the stability and reliability of the e-conveyancing ecosystem.

Ultimately, the significant and ongoing time and costs required to introduce interoperability, which are not adequately reflected in the RIS or the CIE's cost benefit analysis[2], highlight the critical importance of taking a careful and considered approach to introducing regulation that mandates interoperability.

Rather than progressing the Bill at this time, the best course of action would be to reject it and ask the government to task a credible economic regulator to conduct an open-minded analysis, being clear on the perceived problem(s) and systematically evaluating the logical range of potential solutions.

Although there have been various reviews and reports funded by the NSW Government and ARNECC, none have comprehensively considered the costs, risks, benefits and impacts of all available models. A refreshed analysis of costs and benefits, with input across all impacted network participants – financial institutions, land registries, revenue offices, conveyancers and ELNOs, should be conducted prior to the introduction of regulation to mandate interoperability.

PEXA considers the ACCC should be asked to do this work, as part of two-yearly market reform reviews, as was recommended in the Dench McClean Carlson's 2019 Review of the Intergovernmental Agreement for an ECNL.

[2] The Centre for International Economics (CIE) (1 September 2020), 'Addressing market power in electronic lodgment services - Cost-benefit analysis' (Final Report)

Appendix 3 – The deeper problems with interoperability

In the second reading debate for the Bill, the Minister claimed that interoperability will provide consumers with choice of ELNO, enhance the potential for innovation and result in systems working together seamlessly.

"Requiring ELNOs to interoperate will bring certainty to the market and will invite new players to the sector. Ultimately, interoperability will allow consumers to choose an ELNO that best suits their needs with confidence that the electronic conveyancing systems will be able to work together seamlessly."

The Minister's words paint an attractive high-level vision. However, after more than a year of detailed design and analysis, it is now clear that many of the early hopeful assertions about the benefits and impacts of interoperability are not true.

For example, consumers will not exercise a choice of ELNO. Consumers choose banks, lawyers and conveyancers to help them buy or sell property. Just as a consumer does not exercise choice in their conveyancer's title search supplier or the bank used by their lawyer for their trust fund, choice of ELNO is a business decision made by their practitioner.

The notion of choice for practitioners is also problematic. While practitioners would be able to use the ELNO through which they enter transaction data, under the ARNECC model the ELNO that provides the substantive service will be chosen by the incoming lender (or buyer's representative if there is no lender). This means most of the 'choices' will be made by the major banks and that in many cases the ELNO that executes the transaction, lodges documents and issues payment instructions will not be in a contractual relationship with the lawyer or conveyancer who is representing the home buyer or seller.

This is just one example of the clear gap between attractive high-level concepts (eg 'choice') and facts. Other examples relating to resilience, security and efficiency are presented below. These examples support the need for systematic analysis by an experienced economic regulator to test the 'problem' and evaluate options that could generate positive net benefits that justify acceptance of new risks.

1. **The benefits delivered by the current e-conveyancing ecosystem through PEXA**

PEXA was created to provide a "*…single national electronic conveyancing facility [that] would provide a convenient electronic way for legal practitioners, conveyancers, financial institutions and mortgage processors …*" to complete lodgement and financial settlement (Intergovernmental Agreement).

Put simply, PEXA's mission was, and still is, to provide a safer and more efficient way to transact property nationally for Australian consumers. PEXA now sees more than 85% of all land transactions nationally completed online.

The original intentions and objectives of e-conveyancing included: increased efficiency, certainty of settlement, reduced transaction errors and reduced risk of fraud. E-conveyancing under PEXA has delivered on all these objectives, enhancing speed of transactions and delivering substantial and ongoing cost savings to users.

1.1 Innovation

PEXA has invested strongly in innovation since inception and continues to do so. PEXA has built the e-conveyancing ecosystem from the ground up, thereby revolutionising an entire industry. PEXA's most innovative solutions are features which support the seamless interaction and collaboration between transaction participants, including functions relating to balancing financial settlement, auto balancing settlement figures, and preparing taxation payments.

Following the rise of compromised emails between homeowners and their practitioners, PEXA has developed an application to support secure communications between practitioners and their clients, called PEXA Key.

1.2 Pricing

From commencement, PEXA has contractually agreed to limit price increases to CPI, and does so without locking subscribers into contractual terms or volume commitments. Additionally, PEXA has set a national competitive price which applies equally to all subscribers, regardless of frequency of use or volume of transactions.

In 2019, IPART found: "that PEXA's existing prices were reasonable compared to all modelled scenarios."[3]

PEXA's prices provide a level playing field for the entire industry and ensure that the smaller volume subscribers (whether practitioners or financial institutions) are not paying more, which allows them to better compete for consumers' business.

PEXA is not aware that ARNECC has performed any analysis of the sector impacts when competition inevitably leads to differential pricing between high and low volume jurisdictions and transaction types, reflective of their different costs.

2. Interoperability places the benefits e-conveyancing at risk

The introduction of e-conveyancing under PEXA has led to:

- A single national system for settling property transactions safely and efficiently
- Time and cost savings
- Net industry benefits
- Improved security and reduced risk of fraud
- Continuous innovation
- High customer satisfaction

The following table compares benefits generated for industry following PEXA's introduction, compared to proposed benefits and/or unexpected ramifications of interoperability.

[3] IPART NSW (November 2019), '*Review of the pricing framework for electronic conveyancing services in SNW – Final Report*' (pg. 5)

	Benefits via existing e-conveyancing model	Proposed implication of interoperability
Innovation	Continuous innovation for the past decade	Reduction in innovation compared with today, because ELNOs must mirror and duplicate functionality
Industry benefits	More than $288M of annual benefits, and delivers up to $66 savings per transaction compared with paper conveyancing	Proposed $8.4M per annum over the next ten years, equivalent to $4 per transaction. Assumes a much simpler model of interoperability, smooth transition and no new cyber fraud impacts.
Price	Reasonable, capped, transparent	Aims to put pressure on price, but imposes substantial ongoing capital and operating costs that will ultimately be recouped from users
Security	Reduction in fraud. For example, NSW's Torrens Assurance Fund previously paid out $1.5m pa+	There will be a reduction in overall network security as documented by independent security experts
Customer service	High levels of customer satisfaction (NPS: 60+) and Brand trust score of 8.9	Industry confusion, with no central body to aid support in real time
Efficiency	Removed physical settlement room and saved 3.5h+ per transfer – around 60-70% of total time.	Re-introduction of dual processes

3. The costs of interoperability have been understated.

PEXA has developed significant experience in scoping, estimating and implementing secure and reliable solutions for e-conveyancing. Based on this experience, it is easy to underestimate the complexity and costs of solutions within this dynamic, and technical sector. The build of the technical platform for the PEXA exchange cost more than 300% of the original estimate.

Importantly, the CIE CBA, on which the RIS relies, acknowledges that its own study relied on 'preliminary cost estimates', which may change and that costs in general are 'uncertain'. Further, cost estimates of a number of key stakeholders (including state revenue offices and financial institutions) were not included in CIE's analysis.

This significantly undermines the reliability of that study and therefore the RIS, particularly given CIE's CBA only considered one model of interoperability – the phased ESB model, which industry and government are no longer pursuing. The work was completed prior to the more recent design work which has confirmed that the build task and complexity is significantly more than envisaged. Early champions said that 24 APIs would be needed, whereas this is now known to be 80 – 120.

4. Interoperability will not enhance innovation

Innovation to meet the existing and emerging needs of industry has been a guiding principle for PEXA since inception. PEXA strongly believes ongoing innovation will be stifled if ELNOs can only compete

on price, as opposed to the range of useability, security and other key attributes that PEXA's current members strongly value.

Interoperability, as currently conceived, will stifle material and non-superficial innovation. A requirement to connect ELNs at the wholesale layer will require ELNOs to maintain consistent data models, workspace models, operating models and financial settlement models.

The key to the success of e-conveyancing is the collaboration and orchestration of activities in multi-party transactions. Like any multi-faceted resource coordination, a central orchestration service is required to manage the sequencing and orchestration of activities. This is similar to:

- A single building site manager must coordinate trades on site, engaging the roofing contractor to commence after the walls are built; or
- A single air traffic control tower manages the sequence of aircraft departures and arrivals at an airport.

The adopted model of interoperability is analogous to setting up two or more air traffic controllers and allowing each pilot to choose which one to use – it can be done but it is enormously complex and has a high risk of ending badly.

PEXA's innovative functionality for auto-balancing settlement proceeds illustrates how implementation of interoperability between ELNs will stymie innovation in e-conveyancing.

This is a consumer-focused innovation, led by PEXA, that addresses market concerns about readiness for settlement, lack of process orchestration between parties and concerns about being 'chained' to the workspace on the day of settlement just in case final details of payments between parties need to be adjusted. It enables automatic calculation and change, provided required inputs from other PEXA subscribers have been completed.

This function, like many other innovative features PEXA has developed, is only effective if all transaction participants are using the same feature. As such, the feature would only be available in PEXA-only transactions, leading to dual processes and confusion for industry. The alternative - making every innovative feature an industry-wide standard would destroy the business cases for investing in further innovation.

In a properly constructed competitive market, firms are motivated to invest to deliver more for their customers and hence grow their businesses. In the interoperable world that has been proposed, no responsible businesses would deploy scarce capital to generate new features that will only work if they are gifted to their competitor.

5. Interoperability, as defined, will not promote effective competition

The CIE CBA cites the ACCC as being concerned '*… there is a risk that a complicated market structure may entrench a duopoly and prevent additional future market entrants.*'

Indeed, one of the emerging competitors, LEXTECH (owned by Purcell Partners) has strongly opposed the proposed form of interoperability noting, '*its only achievement in the current market situation is destined to be having increased costs and risks for ELNOs as well as fees and risks for Subscribers, and imposed an additional cost burden on new market entrants. The concept of interoperability as a driver of competition misunderstands both the nature of conveyancing and the current market situation.*'

Although publicly supporting competition in e-conveyancing, PEXA believes that the ACCC has never closely assessed the economic case for interoperability. In particular, neither the ACCC or any other regulator has critically assessed the asserted downsides of network effects in this small industry nor the cost of multi-homing which have underpinned calls for the proposed model of interoperability that the Bill will likely lock in. Nor, has the ACCC considered risks or concerns raised by key stakeholders (including potential new entrants (LEXTECH), the Australian Institute of Conveyancers (AIC) who represents the interests of e-conveyancing customers i.e. conveyancers), or PEXA the chief architect of e-conveyancing services.

It is of concern that ARNECC has pursued a model requiring duplication of all infrastructure by all ELNOs, and has never evaluated a wholesale-retail structure among many other models that work well in other industries.

The cost and complexity of delivering interoperability as proposed, with the requirement to develop and test connections with each existing ELNO, will raise barriers to entry for prospective ELNOs. Having already deterred the only known candidate third entrant, there is very little prospect of another, resulting in a long term duopoly. PEXA understands that there has also been no analysis of potential market structures.

Under a duopoly, Sympli will be incentivised to exploit its vertical integration advantage, which may result in the creation of additional monopolies in much larger related markets (such as PMS software and information service broking markets). Indeed, both the ACCC and the CIE have acknowledged this as a concern, yet, neither the CIE, the ACCC, nor any other regulator have assessed the risks of this model of interoperability (which will be established under this Bill) establishing a duopoly with anti-competitive vertical integration effects.

It is PEXA's strong view, that if the proposed model only offers the prospect of competition and innovation at the user interface level, then other potential markets structures that also offer that prospect (plus more) are worth exploring in further detail. If the design and implementation of other potential market structures will involve less complexity, and therefore carry lower cost and risk in terms of implementation, then these options must be more appropriate to pursue.

6. The idea of enabling 'choice' is not reality

In an interoperable e-conveyancing ecosystem, the choice afforded to users will be low. The choice will not be exercised by consumers, rather it is the user (i.e. subscriber firms and banks) that select which ELNO they subscribe to. Consumers will have no more input into the decision than in selecting which software provider their conveyancer uses.

Choosing which ELNO to subscribe to amounts to selecting the ELN where data is entered. There is no choice about which system will actually perform the transaction, as this is determined by the model. Under the Responsible ELNO model, the ELN selected by the 'Responsible Subscriber' will be the Responsible ELNO in a transaction, unless that ELNO lacks the required functionality to process the transaction at hand. The Responsible Subscriber is typically an incoming lender, unless a purchaser is self-financing, in which case, the purchaser's practitioner serves as Responsible Subscriber.

This is where the notion of 'choice' can become misleading as, regardless of which ELNO a subscriber chooses, the ELNO actually used for lodgement and settlement will be determined by an agreed protocol, with no subscriber input. Put simply, subscribers will be unable to select an ELNO on the

features most likely to be important to them—for example, the reliability of lodgement execution, the security and/or speed of the settlement solution, the orchestration features (which will likely be descoped), availability of same-day funds under the settlement model, or the orchestration of lodgement and settlement, including any resilience measures built into the execution.

7. In summary - a more ordered and careful approach is required

This appendix highlights that the presumptive benefits of interoperability are misconceived.

PEXA considers that a key reason why these risks and speculative benefits have not been properly assessed to date is due is because there has never been a systematic analysis of the 'problem' and the best 'solutions'. There has been a consistent push to advance a 'solution' that suits one aspiring ELNO, backed by a company that dominates adjacent markets.

In its IGA Review, Dench McClean Carlson (DMC) recommended:

"In order to support a competitive electronic network lodgment operator ("ELNO") market, the minimum conditions for safe and effective competition must be established. The electronic lodgment networks ("ELNs") provide the systems by which financial transactions deal with the major (and sometimes only) asset of many Australians. Failed transactions in this environment whether by accident or fraud have significant impact. The e-conveyancing systems manage transactions for an Australian property market that has a capitalization value of approximately $6-7T. It is very important that Australians have confidence in these systems that governments have licensed or, in three states, mandated for use.

Interoperability has proven to be a complex challenge and we are not recommending any immediate solution. We have provided our view that the shallowest interoperability approach provides the best chance of developing an acceptable model with reasonable costs and risks."

PEXA agrees with the above findings. The DMC IGA Review, commissioned by ARNECC, has been the most robust review of e-conveyancing to date, in terms of both the degree to which industry was effectively consulted (with appropriate timelines) and its thoroughness in exploring all the associated issues in the e-conveyancing market. DMC approached the issue holistically and without a predetermined solution in mind.

PEXA considers that before legislation can be introduced, a competent economic regulator must now undertake the recommended holistic review to weigh the potential benefits of each potential market structure for e-conveyancing against the associated risks and costs, including the implications for the Australian property market and broader economy. Importantly, proposed market structures should be tested against the current e-conveyancing ecosystem, to ensure no dilution of the protections and benefits currently afforded to users and Australian consumers. The review should define the requisite conditions for safe and effective competition, and propose a clear pathway forward.

Appendix 4: Technical issues, platform and cyber security risks stemming from implementation of interoperability

Two key assumptions relating to the benefits of interoperability are:

- A degree of increased cyber risks is acceptable given the benefits of interoperability (indeed, the CIE CBA considered '… the risks of interoperability would need to be over 60 per cent higher for interoperability to not be viable'); and
- Interoperability will result in better network resilience.

Both these assumptions are fundamentally flawed. Considering Australians use e-conveyancing to transfer their life savings or primary asset, PEXA does not agree with CIE's assessment, and the reality is that interconnected ELNs introduce additional failure points for conveyancing transactions (and therefore reduced network resilience).

Significant consumer risks relating to cyber security and network resilience have not been adequately considered in the rush to introduce interoperability.

1. Platform security

The focus on network safety and security in e-conveyancing is paramount. PEXA has an unwavering focus on protecting consumers, practitioners, banks and other participants in the system. However, cyber security is each network participant's responsibility and the additional cyber attack surfaces outside PEXA's control that are introduced through a mandate for interoperability present a substantial risk to end consumers.

Fraud is an ongoing concern within e-conveyancing in light of the increasing frequency and sophistication of cybercrime. Given the size of the property market, property transactions have become a prime target for hackers and fraudsters with smaller firms, often legal and conveyancing businesses, the primary targets. Each failure or fraud in property settlement typically results in substantial hardship for individuals and families.

There are already attacks on all parts of the e-conveyancing ecosystem, with a particular focus on the links with the lowest levels of cyber defence. Were a hacker to gain control of PEXA's exchange during the peak Friday afternoon settlement period, close to $2 billion could be compromised within a single 30-minute settlement window.

To mitigate this risk, PEXA spends a significant proportion of its annual budget on cyber defence to ensure we have the most up to date cyber safety tools and capability. We are also constantly introducing new initiatives to improve security, and where possible, that of subscribers.

Well-received initiatives relating to security include the following:

- Multi-factor authentication enhancements, as set out in PEXA's standard operating environment requirements and security policy, with which all subscribers are required to comply;
- Creation of 'PEXA Key' as a secure communication channel between practitioners and clients to reduce reliance on unsecure email systems for sensitive instructions; and

- Whitelisting for larger subscribers

However, this shield of security is inevitably going to be at risk following the introduction of new ELNs into the ecosystem, especially if those ELNs don't have the same level of expertise and investment in security measures. PEXA anticipates a mandate for interoperability will require cyber security expenditure to increase significantly, which could also lead to industry to underspend to the detriment of consumers.

The government has been almost exclusively focused on protection of the titles register

Following the IGA Review, DMC noted that "*lower prices should not come at the expense of lesser quality…the opportunity to save $50 will not recompense consumers if the financial settlement process leads to additional risk*" (Dench McClean Carlson 2019).

In circumstances where the actual estimated net benefit of interoperability amounts to less than $4 per transaction, it is even more important that the security of the network not be degraded in the pursuit of interoperability.

In 2019, the NSW government commissioned Kinetic IT to review the security arrangements for interoperability. Kinetic IT appeared not to have been briefed on financial settlement and focused entirely on the lodgement and land registry component of a property transaction. Financial settlement is in fact where the greatest risk arises for a consumer and the Australian Institute of Conveyancers has demanded better consumer protections be included in the Bill.

The Independent Chair[4] agreed that there could be other risks in the process of financial settlement which would require further analysis and should form part of the future risk and liability work.

Following Kinetic IT's 2019 review, PEXA suggested two further security-related reviews be undertaken:

- Commissioning of a broader cybersecurity review by a leading and prominent security brand that has global capability. This report should provide an objective assessment of security threats, transparent to the readers. Critically, the report also needs to assess controls (current and future models) and determine the residual risk between the models.
- Commission a Data Privacy Impact Assessment to consider the proposed models and any potential issues around control and sharing of personal information

PEXA is committed to helping the industry better understand the potential vulnerabilities, and as neither of the above recommended reviews were pursued by ARNECC, PEXA commissioned a deep analytical report by PwC in 2020.

The report revealed that a move to a data exchange hub or bilateral interoperability market structure – as advocated by some – heightens cyber security and operational risks. The reform introduces multiple, dispersed identity repositories and financial settlement paths. Below is a summarised overview of the four key risk areas (and associated changes to Risk Rating) outlined in the PwC report, that require greater attention:

[4] Report by the Independent Chair of the Interoperability Working Groups (25 July 2019), 'Interoperability Between ELNOs – Final Report'

Increased residual Privacy risk (Information Disclosure) - 'Medium to High'

- With interoperability, personally identifiable information would be stored by multiple parties with varying cyber security maturity.
- End-to-end transaction flows will become more complex, leading to increased difficulty protecting data.

Increased residual risk of Tampering – 'Medium to Extreme'

- Interoperability introduces increased complexity in protecting the integrity of records throughout the end-to-end property settlement process.
- The most immediate example of this style of attack pertains to BlueScope steel, which was hit by a ransomware attack, causing a worldwide shutdown of operations.

Increased residual risk of Financial Fraud – 'Medium to High'

- Interoperability introduces increased complexity of verifying, or implications of trusting, that inter-ELNO messages have not been spoofed; are from a valid subscriber whose authority has not been revoked; and that the subscriber is authorised to represent the party for which they have digitally signed the documents.
- This is not dissimilar to credit card fraud, albeit typically with much higher value attached.

Increased residual Reputational Risk (Denial of Service) – 'Low to Medium'

- Operational impacts become more likely as the complexity and length of the settlement chain increases.
- Resolving delays becomes more difficult as the chain now involves multiple parties and the impacted bank may have no direct relationship with the ELNO party at fault.
- A privacy breach or transaction delay is likely to reflect on the participating financial institution, not just the at fault ELNO.

ARNECC has acknowledged receipt of these disturbing findings but has not undertaken analysis or regulatory design to mitigate the greatly increased risks.

2. Network Resilience

PEXA acknowledges that network resilience is a critical requirement of the e-conveyancing ecosystem. To date, PEXA has invested in and established secure and stable cloud environments and mature and tested processes for business continuity and disaster recovery. PEXA has demonstrated its reliability and availability, and its systems are regularly audited.

As part of the push for interoperability, some have claimed that network resilience will be enhanced. This is not the case.

Network resilience is an end-to-end challenge, as any break in the value chain can interrupt the successful completion of a transaction. If one ELN were 'down' or unavailable, subscribers would not be able to complete their preparations in the other ELN. Under the proposed interoperability model, an available ELN could not simply pick up a transaction and execute it as subscribers to one ELN can only interact with the other ELN via the interoperability connectors. Subscribers cannot log-in to the available ELN and perform tasks, unless they have a subscription to that other ELN. For a transaction

to be completed in only one available ELN, all subscribers must already be subscribed to that available ELN, must all agree to recommence the transaction, and must all move to the available ELN to start over.

The reality is that introducing another ELN system into the interconnected network for a transaction introduces a further point of dependency and therefore potential failure which could delay transactions. If one ELN became unavailable, all transactions involving that ELN, whether as a standalone platform, or utilising interoperability, would be interrupted.

This is of particular concern for PEXA, as PEXA has good reason to argue it will be the 'available' and affected ELN in this hypothetical scenario. PEXA's platform, availability, reliability and scalability are tested and well-proven. A request to interoperate asks PEXA to connect its proven and reliable platform to an untried system, which could have serious consequences for transacting parties.

3. In summary – controls must be in place for new entrants

ARNECC does not have cybersecurity or financial settlement expertise, and is yet to engage with a consideration of cybersecurity risks relevant to financial settlement transactions. It is clear that Registrars will not accept responsibility for an inexperienced ELNO failing to deliver the appropriate security and mitigation controls, ultimately increasing the risk of serious implications for home buyers and sellers.

It is strongly recommended that prior to the commencement of interoperability, all entrants into the market must be required to prove the security and reliability of its platform, and that ARNECC is equipped with sufficient resources to perform an oversighting role.

Appendix 5 – Why interoperability has not been introduced in the share market and how competition has been advanced using other policies

1. **Interoperability has never been implemented in an industry like e-conveyancing**

PEXA notes that interoperability in the mobile telecommunications industry is often cited as an analogy to e-conveyancing.

However, the telecommunications industry is fundamentally different to e-conveyancing meaning these comparisons are misplaced. Mobile telecommunication customers switching between rival networks involves only two parties at any one time, two networks, one transaction type and no transfer of funds. The data transfers are not reliant on absolute accuracy and do not carry the risks and liabilities that e-conveyancing does. Interoperability in mobile telecommunications presents a much simpler situation that has no comparison to e-conveyancing.

There are far greater risks, including to houses and livelihoods, if interoperability does not work properly in e-conveyancing. PEXA believes there is no comparable situation to e-conveyancing where interoperability has either enabled or aided competition.

2. **Interoperability was found not to be appropriate for the equities trading service industry after deep and extended analysis by Government and industry**

Effective competition has emerged in the equities trading service industry without interoperability. ASX Limited previously had a monopoly on providing the infrastructure needed for the trading, clearing and settlement of ASX-listed shares.

Notwithstanding the fact that extensive work was carried out by numerous competent regulators over many years (including considering the implementation of interoperability), interoperability was not introduced in the Australian equities trading service industry as a means of improving competition. Yet despite this, effective competition emerged. Chi-X, the first competing digital trading venue entered the market in 2011, and has now emerged as an effective and vigorous competitor with a share of the clearing and equities trading service market of around 15%.

Government and the e-conveyancing industry could accept the significant learnings from the experience and extensive costs the equities trading service industry incurred in designing and advocating for an interoperable market structure that ultimately proved redundant.

While transactions in the Australian equities trading service market are less complex than an e-conveyancing transaction, useful guidance can be taken from the extent of the consultation and preparation that was undertaken to explore the development of a framework to facilitate competition in settlement and clearing services. During this process, regulatory requirements and mechanisms were subject to careful consideration and public consultation processes at each stage of development.

Ultimately, interoperability was found to introduce an unacceptable level of complexity, risk and cost to industry and end users, particularly in relation to the legal uncertainty as to who would be liable in the event an interoperable trade went wrong.

A multi-homing market structure, like e-conveyancing currently has, was found to be the most suitable, cost effective and safe market structure for the equities trading service industry and effective competition emerged on this basis. PEXA submits that the emergence of effective competition in the equities trading service industry provides an appropriate analogy for the e-conveyancing industry where PEXA believes effective competition will emerge once Sympli is able to offer mainstream services.

In order to demonstrate the extent of the consultation and preparation required in respect of determining an appropriate market structure for the equities trading service market, which we note is less complex than e-conveyancing because it involves transactions between sophisticated and high credit worthy counterparties who are supported by significant collateral, we have outlined some of the reviews undertaken by the Council of Financial Regulators (CFR) and the ACCC on the Australian equities trading service market. This process ultimately ensured the development of a safe and effective regulatory framework for the benefit of consumers, and has not created a regulatory environment that either put consumers at greater risk, or eroded the benefits that consumers in the Australian equities trading service market have come to enjoy pursuant to the efficiencies that technology has provided.

- In October 2011, the CFR released a consultation paper on proposals to enhance the supervision of Australia's financial market infrastructure (5) and to develop further analysis of competition issues.
- In June 2012, the CFR and the ACCC released a discussion paper on competition in clearing and settlement of Australian cash equities (6).
- In December 2012, the CFR released a 'Conclusions Report', which made recommendations to Government on how to approach competition in the clearing and settlement of cash equities (7). The CFR found that making changes to support competition would involve significant costs; and that the benefits of competition were not readily quantifiable. The CFR concluded that these concerns did not rule out the prospect of competition developing, but acknowledged that it was not the appropriate time for changes that would have further cost implications for industry, especially given market conditions and pressures on participants to cut costs. Accordingly, the CFR recommended that any decision on a licensing application from

[5] Council of Financial Regulators, 'Review of Financial Market Infrastructure Regulation – Consultation Paper' (October 2011), http://archive.treasury.gov.au/documents/2201/PDF/CFR_review_of_FMI_regulation_issues.pdf.

[6] Council of Financial Regulators, 'Competition in the clearing and settlement of the Australian cash equity market – Discussion Paper' (June 2012), https://treasury.gov.au/sites/default/files/2019-03/Australian_cash_equity_market_Discussion_Paper.pdf.

[7] Council of Financial Regulators, 'Competition in Clearing Australian Cash Equities: Conclusions' (December 2012), https://treasury.gov.au/sites/default/files/2019-03/Competition-in-clearing-and-settlement-of-the-Australian-cash-equity-market.pdf.

a CCP be deferred for two years, which was accepted by the Government in February 2013 (8).

- In February 2015, the CFR and the ACCC commenced a review of the policy position on competition in the clearing cash equities market (9). Conclusions were published in June 2015 finding that there should be openness to competition, that even if open, it may take a while to emerge, and that the regulators should have the power to deal with an ongoing monopoly (10). The Government endorsed these recommendations in March 2016.
- In October 2016, the CFR and the ACCC released two policy statements in response to the CFR's conclusions: (1) 'Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia' (Regulatory Expectations); and (2) 'Minimum Conditions for Safe and Effective Competition in Cash Equity Clearing in Australia' (Minimum Conditions (Clearing)).
- In March 2017, the CFR and the ACCC released a consultation paper (March 2017 Consultation Paper (11)), which sought views on whether the prospect of competition in the settlement of cash equities in Australia may have increased, and invited feedback on the development of policy guidance for such competition. In September 2017, the CFR released a policy paper in response to the March 2017 Consultation Paper (Safe and Effective Competition Policy Paper (12).
- In parallel with the publication of the Safe and Effective Competition Policy Paper, the CFR and the ACCC published the 'Minimum Conditions for Safe and effective Competition in Cash Equity Settlement in Australia' (Minimum Conditions (Settlement)) (13) which provided a set of controls for competition in the settlement of cash equities in Australia aimed at addressing risks.

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8 Council of Financial Regulators, 'Introduction of the ASX Code of Practice for Clearing and Settlement of Cash Equities in Australia' (18 July 2013), https://www.cfr.gov.au/news/2013/mr-13-04.html.

9 The Hon. Josh Frydenberg MP, *Review of Competition in clearing Australian cash equities,* http://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/review-competition-clearing-australian-cash-equities. *See,* Council of Financial Regulators, 'Review of Competition in Clearing Australian Cash Equities – Consultation Paper' (February 2015), https://www.cfr.gov.au/publications/consultations/2015/review-of-competition-in-clearing-australian-cash-equities/pdf/review-of-competition-in-clearing-australian-cash-equities.pdf.

10 Council of Financial Regulators, 'Review of Competition in Clearing Australian Cash Equities: Conclusions' (June 2015), https://treasury.gov.au/sites/default/files/2019-03/C2015-007_CFR-ConclusionsPaper.pdf.

11 Council of Financial Regulators, 'Safe and Effective Competition in Cash Equity Settlement in Australia – A Consultation Paper by the CFR' (March 2017), https://www.cfr.gov.au/publications/consultations/2017/safe-and-effective-competition-in-cash-equity-settlement-in-australia/pdf/consultation-paper.pdf.

12 Council of Financial Regulators, 'Safe and Effective Competition in Cash Equities Settlement in Australia: Response to Consultation' (September 2017), https://www.cfr.gov.au/publications/consultations/2017/safe-effective-competition-response/pdf/response-to-consultation.pdf.

13 Council of Financial Regulators, 'Minimum Conditions for Safe and Effective Competition in Cash Equity Settlement in Australia – A Policy Statement by the CFR' (September 2017), https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2017/minimum-conditions-safe-effective-competition/pdf/policy-statement.pdf.

- In September 2017, in light of the work involved in the Minimum Conditions (Settlement), the CFR made amendments to the:
- Minimum Conditions for Safe and Effective Competition in Cash Equity Clearing in Australia (originally published in September 2016); (14) and
- Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia (originally published in 2016 (15)).

- In July 2018, the CFR and the ACCC commenced work with the Government to develop legislative changes that would provide ASIC and the ACCC with the powers necessary to enforce the CFR's Regulatory Expectations and Minimum Conditions (Clearing).

As noted above, over approximately a 10-year period numerous reviews were carried out in relation to market structure reform in the cash equities service industry. These regulatory reviews resulted in industry and government incurring significant expense, only for effective competition to emerge without interoperability. We also note that those reviews had adequate regard to the risks and costs associated with interoperability. Ultimately, a multi-homing market structure was found to be the safest, most cost effective and efficient market structure.

3. Effective competition will emerge in e-conveyancing without interoperability, just as it has in the cash equities service industry

Effective competition has emerged in the equities trading service industry without interoperability. ASX Limited previously had a monopoly on providing the infrastructure needed for the trading, clearing and settlement of ASX-listed shares. The government undertook reforms to enable competition, by setting regulatory requirements and minimum conditions, but did not introduce interoperability, and in 2011, Chi-X, the first competing trading venue entered the market. Chi-X has since achieved around 15% share of the market, despite no interoperability.

PEXA submits that, as it has in the equities trading service industry, effective competition will emerge in e-conveyancing without interoperability. Sympli has only recently entered the market and is not yet fully operational. Once fully operational, Sympli will be able to gain greater share of the market and emerge as an effective competitor as the costs of multi-homing in e-conveyancing are analogous to the cash equities service industry.

The emergence of competition without interoperability in the equities trading services industry has delivered significant benefits to consumers as CIE acknowledges in the CIE Final Report (16).

- **Significantly lower prices**. Although Chi-X's market share was modest, competition caused large immediate fee reductions, both offered by the new entrant and reduced by the incumbent provider. Once Chi-X announced its intention to enter the market, ASX Limited significantly cut its trade execution fee by 46% and its fee for on-market crossing and off-

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14 Ibid.

15 Council of Financial Regulators, 'Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia' (September 2017), https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2016/regulatory-expectations-policy-statement/pdf/policy-statement.pdf.

16 The Centre for International Economics (CIE) (1 September 2020), 'Addressing market power in electronic lodgment services - Cost-benefit analysis' (Final Report), p 76.

market crossings by 33%. When Chi-X entered, it also undercut ASX Limited's now reduced fees. For example, its trade execution fee was either 20% or 60% lower than ASX Limited's fee, depending on the type of trade.

- **Improved product quality**. Competition led trading venues to improve the quality of their services through innovation. ASIC reports that competition 'was accompanied by the introduction of a range of new trading platforms, products and order types on both the ASX and Chi-X markets.' For example, although Chi-X focuses on facilitating trading of ASX-listed shares, it now lists a variety of its own products not available on the ASX. These include Transferable Custody Receipts, which allow Australian investors to gain exposure to individual US shares.

In addition, by maintaining the existing market structure (backed by regulation and the establishment of minimum conditions for safe and effective competition), the established security and safety measures were preserved for the benefit of end users, while great cost and expense was avoided in developing new measures that interoperability would have required.

We note all of these factors apply in e-conveyancing and therefore there is a strong argument in favour of allowing an opportunity for effective competition to emerge in e-conveyancing without mandating interoperability.

PEXA understands that ARNECC has not conducted market structure or competition analysis, as did the Council of Financial Regulators, on which to base its decision that what is considered too risky and costly for traders of shares is acceptable to impose on buyers and sellers of homes.