

**Submission  
No 17**

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

**Name:** Mr Greg Channell

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The Hon. Mark Banasiak MP  
Chair  
**Portfolio** Committee No.4 – Customer Service and Natural Resources  
Parliament House  
SYDNEY NSW 2000  
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Dear Mr Banasiak,

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

I thank you for the invitation to make a submission to the Inquiry into the *Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022* (the Bill). I am happy for my submission to be published though the next section covering my credentials as an electronic conveyancing expert are perhaps not necessary.

By way of introduction, I have been associated with electronic conveyancing in NSW since inception of the project. I am a Solicitor and eConveyancing Consultant and have over 38 years experience providing legal and policy advice to the NSW Registrar General, land registry and to the conveyancing industry.

I worked for the Registrar General from 1983 to 2017 holding many roles including managing claims against the Torrens Assurance Fund, investigation and advice on the registrability of a wide range of land dealings and responsibility for the enactment of a wide variety of land and conveyancing related legislation in NSW (including reform of the Torrens Assurance Fund and electronic conveyancing).

I was the legal adviser to the Registrar General on the implementation of Electronic Conveyancing (from 2002 til leaving the Office of the Registrar General in 2017). In that capacity I was a member of the Australian Registrars' Working Group (ARWG) and its predecessor, the States' Project Team, and was the NSW delegate on the ARNECC Regulatory Compliance group, reviewing compliance by PEXA and applications by potential ELNOs. I also chaired the ARWG Legal Subgroup (from its inception in 2010 until 2017) that developed the legal and regulatory framework to support National Electronic Conveyancing and was the instructing officer for Parliamentary Counsel on the Electronic Conveyancing National Law and responsible for assisting its passage in NSW.

I drafted the Intergovernmental Agreement for an Electronic Conveyancing National Law (IGA) that created ARNECC as a regulator for electronic conveyancing and provided for the enactment and management of the Electronic Conveyancing National Law as a national applied law scheme.

Since taking a redundancy in 2017 I have written and presented training seminars on eConveyancing including the mandating program in NSW and Cybercrime for the Law Society, Office of the Registrar General, AIC NSW and PEXA and worked as a consultant on electronic conveyancing. I have been involved in the development of interoperability as both a Law Society representative in various forums and, since November 2019, as a part time consultant to the Office of the Registrar General.

I am a member of the Interoperability Operational Committee (IOC) that comprises representatives from Government, PEXA and Sympli that has been developing the Interoperability Data Standard, including requirements for data security between ELNOs.

I am also a long term and current member of the NSW Law Society's Property Law Committee (since 2010) member of that Committee's EConveyancing subcommittee and was formerly also a member the Legal Technology Committee (2009 to 2016).

I would be happy to give evidence at a hearing, to provide further context or answer any questions the Committee may have.

I consider that Interoperability is an important and necessary reform in electronic conveyancing. The eventual need for this reform was noted in the Decision RIS for the "Introduction of the Electronic Conveyancing National Law" published in February 2013 which, after noting that the legal framework for electronic conveyancing did not preclude additional ELNOs, stated "Should other ELNOs be approved in the future, interoperability may need to be provided for in the operating requirements."

Now, with the advent of a second ELNO and potentially a third currently considering entering the market, a practical solution is becoming urgent.

I support the enactment of the *Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022*. It is true that the Bill as drafted does not resolve all of the issues raised by stakeholders during the extensive consultation that has occurred to date on an appropriate model for interoperability and a transition to a competitive ELNO market. However, the Bill is just one element of this process with amendments to follow to other parts of the legal framework supporting national electronic conveyancing, like the Operating Requirements that provide more detailed rules for ELNOs, as well as the introduction of new limbs to that framework such as the proposed Industry Code to regulate financial settlement that is being developed by AusPayNet, and a new data standard and business rules for inter ELNO communications.

I am aware that some stakeholders are concerned that the proposed Bill does not address all of their issues.

However, the proposed Bill enables resolution of those issues by:

- Requiring ELNOs to interoperate.
- providing all stakeholders certainty that interoperability will be introduced. This certainty is necessary for potential ELNOs to continue to invest in development, and for other stakeholders such as land registries, Revenue Offices and Financial Institutions who will be required to assess and make any necessary system changes and to participate in substantial testing to ensure that interoperable transactions are completed efficiently and securely.
- Providing clear authority for the Registrar Generals to amend the Operating Requirements require ELNOs to;
  - cover certain necessary matters, including facilitating resolution of disputes and client issues, in interoperability agreements between them,
  - participate in the proposed industry code regulating financial settlement, and
  - apply and use the new data standard, including requirements on system performance and security.

Far from neglecting the resolution of all issues raised by stakeholders the Bill puts in place the framework necessary for those issues to be resolved while still allowing for proposals to be refined with further consultation as other elements of the revised legal framework are drafted and finalised.

I am also aware that one stakeholder has, at this late stage, proposed a different model for interoperability from the one that has been worked on. Without going into the pros and cons of the suggested wholesaler/retailer model I would like to point out that all stakeholders have expended considerable effort on the design of the current model, with the Interoperability Operations Committee, comprising a number of representatives from each operating ELNO as well as government representatives, meeting on average for 8 hours per week during 2021 and has made substantial progress on defining the Interoperability data standard.

The IOC, of which I am a member, has completed specification of all APIs required for the initial Interoperable transactions, proposed to be refinance transactions, these comprise approximately one third of all required API methods as well as considerable work on business rules and security requirements. Also, both ELNOs have undertaken considerable assessment, design and build based on the elements of the data standard work completed so far.

Another of the concerns that has been raised concerns security of Interoperability. Currently an ELNO must maintain secure connections between itself and many other organisations, in particular with land registries, Revenue Offices and with Banks. Those connections are required to be highly secure and regularly tested and an ELNO's security arrangements are required to be independently assessed annually. The current design of the security arrangements for transmission of data between ELNOs will ensure that the connection between ELNOs is at least as secure as those current connections addressing issues such as verifying the source of data, guaranteed message delivery and ensuring the integrity of the data.

In summary, Interoperability is a major, and necessary development in national electronic conveyancing. Considerable work has been undertaken with all stakeholders to define the current model with significant input by both operating ELNOs as well as from all stakeholders. There is yet a great deal of work to be undertaken before interoperable transactions become a daily occurrence and the current Bill, while it may not resolve all stakeholder concerns, is a necessary step along the way and in fact is necessary to enable many of those issues to be resolved.

Yours faithfully

Gregory D Channell

11 March 2022