

**Submission  
No 19**

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

**Organisation:** NSW Productivity Commission  
**Date Received:** 16 March 2022

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

Dear Mr Banasiak,

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

I welcome the opportunity to make a submission to the Inquiry into the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 (the Bill).

The NSW Productivity Commission is focused on economic reforms that boost productivity, employment, and income. A key driver of those outcomes is effective competition among businesses, which both incentivises innovation and lowers prices for consumers.

The Bill constitutes an important piece of economic reform, and the NSW Productivity Commission strongly supports it in its current form. In the NSW Productivity Commission White Paper (2021), I recommended that the NSW Government support the implementation of interoperability in the NSW eConveyancing market, as a matter of urgency.

The changes enabled by the Bill will benefit consumers by enhancing competition in an important national market. The interoperability model that the Bill will enable is the result of a thorough analytical and consultative process and has wide-ranging support. There are substantial risks associated with any delays to implementing it.

**Interoperability will provide large benefits to consumers**

The interoperability reforms contained within the Bill will enable effective competition among Electronic Lodgement Network Operators (ELNOs), reduce prices and enhance service quality. All property transactions in New South Wales must be lodged electronically, and every person or business that buys or sells a property will benefit from this Bill.

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An independent cost-benefit analysis commissioned by the NSW Registrar General, with the support of other states and territories, found that mandating interoperability had the highest net benefit compared to retaining the status quo and increased price regulation.<sup>1</sup> The analysis found that while capital and operational costs for ELNOs would likely increase by \$22.2 million and \$18.9 million, this would be more than offset by a \$94 million benefit of reduced transaction costs and a \$30.8 million dollar benefit from time savings and product improvements for consumers.

### **The reforms have been rigorously evaluated and have wide-ranging support**

The proposed interoperability reforms are the culmination of four years of extensive analysis and consultation involving technical, legal and economic experts across Australia. They are supported by all jurisdictions and the eConveyancing regulator, ARNECC.

The interoperability reforms have been considered by the Australian Competition and Consumer Commission (ACCC) and the Independent Pricing and Regulatory Tribunal (IPART) who have determined that the reforms under consideration are the best way forward. Industry stakeholders have been extensively consulted, and interoperability has the support of the Law Council of Australia, the Australian Institute of Conveyancers, and the Australian Banking Association.

### **A ‘wholesale–retail’ model is not the way forward**

A ‘wholesale–retail’ model is one in which a monopolist ‘infrastructure ELNO’ provides back-end services such as title lodgement and financial settlement to ‘retail ELNOs’. Both the infrastructure ELNO and the retail ELNOs then compete in providing front-end services to conveyancers, solicitors, and financial institutions.

Both the ACCC<sup>2</sup> and IPART<sup>3</sup> have found this model lacking compared to the reforms proposed. The independent cost-benefit analysis referred to above similarly stated that the ‘wholesale-retail’ model would likely have higher costs and lower benefits compared to the interoperability model. All three papers noted that the absence of competitive pressure for infrastructure services would result in less innovation and higher overall prices. Conversely, there would be no benefit from avoided upfront capital costs as both PEXA and Sympli have already established their competing infrastructure.

Such an approach would fail to deliver competition and innovation benefits of the same magnitude as mandating interoperability between ELNOs. Adopting this model would also effectively penalise Sympli for entering and investing in the market in good faith.

### **There is substantial risk from delay**

The interoperability reforms are the culmination of a national process, and their content has been agreed by the national eConveyancing regulator (ARNECC) and Ministers from each participating jurisdiction. As this Bill has been established as the best possible path to reform, even minor changes at this stage could result in lengthy and damaging delays.

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<sup>1</sup> The Centre for International Economics 2020, *Addressing market power in electronic lodgment services*.

<sup>2</sup> ACCC 2019, *Report on e-conveyancing market reform*.

<sup>3</sup> IPART 2019, *Review of the Pricing Framework for Electronic Conveyancing Services in NSW*.

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Any delay in the passage of these reforms risks the benefits to consumers from competition, as new ELNOs (including Symplic) are unlikely to be able to sustain a presence in the market. The alternative to competition is an entrenched monopoly that requires regulation, which is complex and costly.

In aggregate, these reforms have a substantial weight of evidence behind them and represent the best way to drive innovation and lower prices for conveyancing services.

Yours sincerely

**Peter Achterstraat AM**  
**NSW Productivity Commissioner**

*16 March 2022*

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