

Submission
No 21

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

Organisation: Technology Council of Australia
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The Hon Mark Banasiak MLC
Chair
Portfolio Committee No. 4 – Customer Service and Natural Resources
Parliament House
Sydney NSW 2000

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

Thank you for the opportunity to make a submission for the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022. This submission is made by the Technology Council of Australia (the TCA), Australia's peak industry body for the tech sector.

The Australian tech sector is a key pillar of the Australian economy, contributing \$167 billion to the Australian economy annually, and employing 861,000 people. This makes the tech sector equivalent to Australia's third-largest industry, behind mining and banking, and Australia's seventh-largest employing sector.

With over 100 member organisations, including leading Australian software as a service and platform companies, multinational companies, and venture capital and investment advisory firms, the TCA represents a diverse cross-section of the Australian tech ecosystem. We appreciate the opportunity to support practical and actionable legislation that encourages competition, whilst ensuring regulatory requirements are clear and practical.

At the outset: Our guiding principles

The TCA believes Australia can and should be a world leader in ensuring the safe and trustworthy development and adoption of technology products and services. To do this, we need a regulatory environment that is proportionate and predictable, interoperable with other jurisdictions, and that consistently follows a set of best practice regulatory principles.

The TCA accordingly recommends the following five guiding principles for best practice policy development in the digital economy:

- **Informed and coordinated policy development:** ensuring policy-makers have sufficient time, stakeholder input and expertise to make informed decisions avoids unintended consequences.
- **Proportionate and targeted:** regulatory interventions should be proportionate and targeted towards the objectives they are seeking to achieve, while minimising unintended consequences.
- **Practical and predictable:** Premature regulatory interventions can disproportionately impact emerging business models and start-ups. Conversely, an extended period of regulatory uncertainty can forgo opportunities and exacerbate risks in the interim.
- **Integrated and interoperable:** very few policy questions are unique to Australia or particular states and territories. Regulation should take global frameworks into account and strive towards harmonisation and interoperability where practicable.
- **Future focussed and holistic:** being a leading digital economy means that Australia should aim to be an economic and innovation leader by encouraging the responsible and early introduction and deployment of technologies. This must actively take the positive economic and social benefits of being a global innovator.

The TCA recognises open competition as essential to achieving Australia's innovation and growth potential. For this reason, we strongly support ambitious and timely action to enhance the

interoperability of the eConveyancing market. However, further consideration is needed to ensure regulatory requirements are precise, practical and predictable.

The TCA **recommends**:

- That the committee develops clear, practical principles-based legislative guidance on interoperability and dispute resolution requirements.
- That the committee gives consideration to the costs of compliance, to ensure requirements do not unintentionally impede rather than support competition.

TCA comments on specific aspects of the Electronic Conveyancing (Adoption of National Law) Amendment Bill

As noted above, the TCA strongly supports momentum to deliver a more open and competitive eConveyancing market. We also recognise past ACCC advice that more rapid adoption of interoperability legislation will lead to greater benefits.

However, we remain concerned that in its current form, the regulatory impact of this legislation is ambiguous and is ultimately deferred to Registrars-General. Crucially, this approach means the economic benefits of interoperability are delayed in practical terms, while locking in significant regulatory uncertainty for new and existing operators.

As drafted, the Bill defines ‘interoperability’ as a subscriber being able to:

- transact with users of other Electronic Lodgment Networks (ELNs), and
- prepare documents using data from other ELNs.

If the Bill were passed as proposed, Registrars-General would be tasked with developing specific interoperability and dispute resolution requirements on a case by case basis. We recommend that the committee give consideration to further refine what these requirements would entail across the board. Consistent with our principle of practical and predictable regulation, this will ensure requirements are clear and consistent.

While we acknowledge that some flexibility is needed for case-by-case operational differences, an additional principles-based layer of detail would promote much-needed consistency and clarity. Further, we strongly encourage such a referral to include open and good-faith collaboration with industry to ensure requirements are practical and avoid unintended consequences.

The TCA recommends considering factors including the following in designing these details.

Consumer data protection

The legislated requirement for ELN subscribers to be capable of preparing documents using data from other networks particularly appears to require broad-based sharing of sensitive user information. In considering these requirements, it will be vital to consider how best to balance user consent and data privacy with these objectives. For example, the TCA recommends considering:

- which specific pieces of information are required for both a minimum and optimal level of interoperability,
- how to require user consent into sharing these types of information (and discretion about whether to share specific details and not others), and
- what data security standards are appropriate to cover information sharing between ELNs.

Proprietary information

In assessing interoperability, it is important to distinguish between untreated information pertaining to a user and data that is the result of commercially-motivated investment by eConveyancing platforms. Noting the fundamental goal of this reform is to enhance competition, it is essential that interoperability requirements avoid unintentionally diluting private sector incentives to invest in new services for their customers.

Regulatory costs and cost recovery

Implementing this regime may involve costs for the businesses affected, including costs of investments in data infrastructure, staff and security measures. This risks creating a barrier to entry in the eConveyancing sector, which would undermine the goal of this reform effort.

The TCA recommends considering the merits of a cost-recovery model where Government contributes to the costs that businesses incur to deliver Government's regulatory objectives. Relying solely on cost recovery between firms will either:

- create barriers to entry as incumbents pass on costs of information sharing to new entrants, or
- if cost recovery is restricted through regulation (as is within the power of Registrars-General), force businesses to internalise regulatory burden.

Dispute resolution

As drafted, legislation is also non-prescriptive about the dispute resolution requirements that Registrars-General may impose on market participants. Clear processes, expectations and rights of appeal should be embedded into legislation. Committee consideration in consultation with industry would ensure these requirements are proportionate and practical.

Transparent consultation

In considering issues including those outlined, it is essential that industry is consulted in good faith. This applies both in the initial design of principles that are embedded into legislation, and the case-by-case determinations made by Registrars-General informed by these principles. For example, we recommend considering requiring Registrars-General to publish draft decisions and allow opportunity for public comment.

Thank you for the opportunity to make this submission.

Yours sincerely,



Kate Pounder
CEO
Tech Council of Australia