Submission No 13

INQUIRY INTO COMPETITION REFORMS IN ELECTRONIC CONVEYANCING

Organisation: PEXA

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PEXA submission

to

NSW Legislative Council Select Committee to inquire into competition reforms in electronic conveyancing in NSW

September 2025

Executive summary

PEXA is Australia's world-leading real time digital property lodgment and settlement platform, connecting all parties involved in property transactions: legal and conveyancing firms, financial institutions, land titles offices, and state revenue offices. By replacing paper processes with its electronic solution, PEXA has streamlined how properties change hands, delivering cost savings and efficiencies across Australia

PEXA operates the only comprehensive eConveyancing platform in Australia, covering all States and Territories and almost all transaction types. It is also building a market-leading eConveyancing platform in the United Kingdom. These platforms are the only full-service operating eConveyancing platforms in the world.

PEXA's eConveyancing platform now delivers net productivity improvements to the Australian economy of \$390m per year, increasing the size of the economy by \$480m per year. It reduces the costs of conveyancers, financial institutions, and government agencies, with savings ultimately passed on to consumers. PEXA continues to innovate to further digitise the conveyancing process, reducing the costs of conveyancers and financial institutions even more.

Within total conveyancing industry costs (excluding bank mortgage processing costs) of around \$2.7 billion a year, eConveyancing revenues are small – around \$316 million. The buyer and seller in a typical transaction pay only \$141 each to PEXA: this pricing has not increased in real terms since it was set in 2014; and is subject to IPART review.

IT incidents in eConveyancing are relatively rare. PEXA conducts around 1.2 million property transactions per year. In the past financial year, PEXA experienced 93 Severity 2 and Severity 3 incidents, and 8 of these led to 576 transactions failing to settle on the scheduled date. The majority of these incidents (72 out of 93) were caused by problems with the various third-party systems to which PEXA connects. Transactions may not proceed if they are affected by an incident with the IT system of a financial institution, land titles office or state revenue office to which the PEXA platform connects. Nevertheless, every incident causes issues for customers, and PEXA is committed to ensuring the resiliency of its own system, and working with partner institutions to improve the resilience of their systems, and to resolving incidents as quickly as possible. Service standards for ELNOs are already set by the Model Operating Requirements, and by operating agreements with each land registry.

The only other licensed ELNO in Australia that has built an eConveyancing platform is Sympli, a joint venture of ATI Global and ASX. ATI Global is the largest supplier in adjacent eConveyancing markets. It provides online property-related search (largely through Infotrack), and Practice Management Services to conveyancers and lawyers (largely through LEAP and Smokeball). Its revenues in these markets without price regulation are substantial larger than PEXA's eConveyancing revenues. ASX is the operator of Australia's largest equity clearing and settlement business. ATI Global and ASX are not start-up businesses; they are large players with deep pockets, that have invested heavily in regulatory management, hoping that government intervention in eConveyancing will gift them a commercial advantage. To promote such intervention, Sympli has engaged in an ongoing campaign of misinformation about PEXA's business to promote its commercial interests at the expense of the public interest.¹

Advocacy from ATI Global and ASX through Sympli was a significant influence on attempts to impose interoperability on eConveyancing. The interoperability project always faced significant hurdles as its proponents substantially under-estimated its complexity and costs, and significantly overestimated its

¹ PEXA, 28 July 2025, "Statement on eConveyancing Industry Misinformation", https://www.pexa-group.com/content-hub/news/pexa-statement-on-econveyancing-industry-misinformation/

potential benefits. Subsequent decisions to increase the scope of the interoperability project, again the consequence of Sympli's advocacy, have further increased the complexity and cost. This scope creep may also lack legislative foundation, and would require PEXA to surrender its intellectual property without just compensation. Most recently, again as the consequence of Sympli's advocacy, regulators have started to examine even more models for competition in eConveyancing; it is not yet clear whether these will be adopted, or whether they will use any of the interoperability work from the past five years, which has cost PEXA well over \$22.5m to develop. The "practitioner first" model appears to be an attempt by Sympli and Infotrack to use regulatory intervention to gain almost all of the practitioner revenue from eConveyancing while leaving PEXA to bear most of the cost. It would be highly anti-competitive for the upstream market in practice management systems and bulk conveyancing where the ATI Global group already has a dominant market position that it can leverage to its advantage in the downstream eConveyancing market.

With the experience of the past five years, it is now clear that interoperability will cost far more than it could possibly deliver. These costs are about to be passed on to consumers. IPART has previously found that ELNOs like PEXA are entitled to include the costs of interoperability in the fees that they charge subscribers.

While the NSW Productivity and Equality Commission posited hypothetical scenarios in which PEXA's actions might reduce competition between banks, PEXA has never in fact engaged in the suggested conduct – and was not even asked by the Commission if it had done so. Such conduct is contrary to PEXA's business model, and in any case is already prevented by both competition law and industry regulation under the Model Operating Requirements.

We ask that the Committee considers the benefits that PEXA has delivered, and continues to deliver, to Australia, including consistently high customer satisfaction ratings. We ask that the Committee focuses on competitive outcomes that encourage investment, innovation and enhancements to customer experience while not encroaching on the IP rights of PEXA or unfairly providing access to third parties to PEXA's decade of investment in its platform and in building its business, which has created the market for eConveyancing.

1 Context

PEXA (Property Exchange Australia) welcomes the opportunity to make this submission to the NSW Legislative Council Select Committee to inquire into competition reforms in electronic conveyancing in NSW.

This submission begins with some context for the inquiry. This includes some background about PEXA's business, the nature of eConveyancing, the regulatory framework, the industry structure of eConveyancing, digital conveyancing, and the broader property conveyancing industry.

1.1 PEXA's business

PEXA is a listed Australian company that operates the world's leading digital property settlement platform. PEXA connects legal and conveyancing firms, financial institutions, land titles offices, and state revenue offices, facilitating their interactions in preparing for and conducting a property settlement. PEXA's platform replaced traditional paper-based processes with secure, reliable, and efficient electronic lodgment and settlement of property transactions.

PEXA supports a broad range of participants in the property market. These include 345 state and local governments and agencies, more than 160 financial institutions, over 10,000 conveyancers and lawyers, and over 70 property developers. By serving them, in the past year PEXA has supported more than a million consumers to buy or sell a property, or to take out a new mortgage.

PEXA employs over 900 people in Australia and the UK, mostly working on the platform and in customer support. PEXA is also focused on a positive impact on our community, has achieved its commitment to net zero carbon emissions by 2025 and is committed to reducing homelessness with a partnership with Homes for Homes.

Total eConveyancing revenues are small (~\$316 million per year) relative to these productivity benefits, and relative to total conveyancing costs of around \$2.7b per year (not including bank mortgage processing costs). PEXA's business generates revenue based on transaction volumes and types, with fees payable upon completion of settlements. The buyer and seller in a typical transaction pay only \$141 each to PEXA: this pricing has not increased in real terms since it was set in 2014; and is subject to IPART review.

The long-term interests of Australian consumers in the eConveyancing sector are already safeguarded through a comprehensive regulatory framework governing ELNOs. This includes mandated pricing controls, service level requirements, specific restrictions on vertical integration, operating standards dictated by national rules, and contractual obligations that ELNOs must adhere to in each state and territory jurisdiction.

In particular, regulatory obligations require PEXA to demonstrate 'Service Reliability' during Service Availability Hours for: no less than 99.8% during core hours (6:00am – 10:00 pm); and not less than 99% during noncore hours (10:00 pm to 6:00 am). Less than 1 in 2,000 transactions do not occur on the scheduled day because of disruptions on PEXA's platform, with the majority of disruptions caused by partner platforms.

In addition to complying with the strong regulatory framework, PEXA is focused on its customers, continuing to invest in excellent customer experience, operational excellence, and taking its unique proprietary technology IP to international markets.

- Customer Focus: PEXA innovates to drive customer satisfaction and an improved customer
 experience, and has introduced a variety of tools for customers including PEXA Plus, PEXA
 Projects, PEXA Planner, PEXA Key, and PEXA Tracker. Innovations are informed by regular and
 extensive stakeholder engagement to drive industry transformation and growth. Regular
 customer surveys indicate customer satisfaction (CSAT) of 87% which is high relative to most
 service industry providers.
- Operational Excellence: PEXA's operations are supported by a robust IT infrastructure, ensuring
 high availability, reliability, and security through a strong focus on risk management and
 regulatory compliance. Each year PEXA invests more than \$34 million back into its platform.
- International Opportunity: PEXA has unique IP which can solve a problem that exists in many international jurisdictions. With its first mover advantage PEXA is already well progressed in building a platform and business in the UK to leverage its Australian experience to improve the property transaction industry in the UK.

PEXA has spent more than \$650 million establishing and maintaining the eConveyancing market and PEXA's platform. PEXA is proud to have built a revolutionary platform that has transformed the Australian conveyancing system for users and consumers, building greater trust into most Australians' biggest investment decision – buying a home. In doing so, PEXA has created globally valuable IP. PEXA continues to build, collaborate, and continuously improve its platform.

PEXA continues to support competition, but the path to competition needs to be carefully considered ensuring that it focuses on the best consumer outcomes while promoting investment and innovation.

PEXA understands why its competitor Sympli, co-owned by ATI Global and ASX, would promote government intervention to require functionally equivalent interoperability, as a means to facilitate its entry into the eConveyancing market and leverage the work and risks undertaken by others. It is not clear that these interventions will ultimately benefit consumers; rather they appear to be driven primarily by a desire to create a business model for an entity jointly owned by ATI Global which already has dominant positions in a number of related businesses, particularly property search and practice management software,² and ASX which has a dominant position in equity clearance and settlement but is subject to a current inquiry by regulators concerned about its ability to maintain stable, secure and resilient critical market infrastructure.³

PEXA proactively manages the valuable intellectual property created as it built its Australian operations. These IP rights have substantial economic value that PEXA is entitled to protect under Australian law.⁴ PEXA has a responsibility to its shareholders to safeguard the IP owned by the enterprise when it was privatised, as well as the IP it has subsequently developed, and to provide an economic return on these IP assets.

PEXA submits its views to the NSW Legislative Council Select Committee as an opportunity to share PEXA's experience and insights from its decade long journey to date, to increase awareness of the eConveyancing landscape, and to highlight its many customer and consumer benefits. PEXA asks that the Committee does not conflate concerns about how PEXA was privatised with how PEXA operates as a listed Australian technology business with valuable IP to protect.

² Discussed further below section 1.5

³ ASIC, "Media release: ASIC launches Inquiry into ASX", https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2025-releases/25-103mr-asic-launches-inquiry-into-asx/

⁴ IP Australia (2024) *Australian IP Report 2024*, https://ipaustralia.gov.au/tools-and-research/professional-resources/data-research-and-reports/australian-ip-report-2024/Chapter-7-Copyright

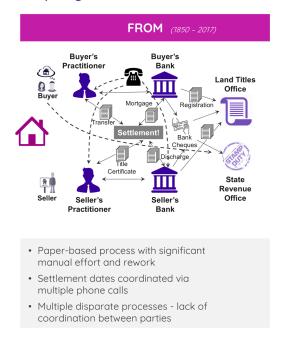
1.2 What is an eConveyancing platform

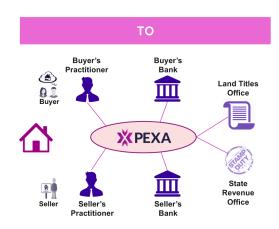
Until the mid-2010s, property transacting remained a mainly manual, paper-based process based around a static, point in time, exchange of legal title for consideration. Over the past 15 years, the PEXA platform has been developed and rolled out as the global pioneer of electronic conveyancing, or eConveyancing. As a result, many conveyancing processes have been digitalised. These have replaced cumbersome manual preparation, fixed unreliable in-person settlement meetings, and physical lodgment of errorprone documents to government agencies. Instead, eConveyancing provides increasingly automated preparation, automatically checked, real-time flexible electronic settlements, and automatic electronic lodgment. The change benefits home buyers and sellers, conveyancers, financial institutions, and government agencies.

Today, PEXA is the leading Electronic Lodgement Network Operator (ELNO) in Australia and the world. It provides a platform that enables conveyancers and financial institutions to interact electronically to create and lodge the documents required to formally transfer property on behalf of their customers. The platform also ensures that the transfer of money occurs simultaneously with the authorisation to transfer property. The platform authorises money transfers and sends appropriate documentation to land registries and government revenue offices. Instead of conveyancers meeting in rooms, exchanging documents and cheques, and then physically lodging documents and cheques at a land titles office, a revenue office and a financial institution, all of these interactions occur electronically as illustrated in Figure 1.

Figure 1: Comparison of paper-based conveyancing and eConveyancing

Property Settlement in Australia





- Central solution for coordination between parties
- Single source of truth
- Digital registration and settlement avoids manual steps and rework

The scale of the activity facilitated is very large: the PEXA platform processes more than 20,000 family home settlements per week – which is why it has been designated as Critical Infrastructure under the Security of Critical Infrastructure Act 2018.

Australia is the only country in the world with such a mature electronic system for property conveyancing. The jurisdiction closest to following Australia's example is the UK, where PEXA is leveraging its unique Australian innovations to shift the UK market from paper to digital conveyancing, launching PEXA's ambition to be the leading global eConveyancing business.

By switching property transfer transactions from paper to digital, and incorporating the related payments, PEXA's platform has substantially reduced the costs of the wider conveyancing market. With the recent addition of the Northern Territory to the PEXA platform, eConveyancing is now a comprehensive national system for Australia. The benefits of eConveyancing have grown as the system has become more comprehensive, and as PEXA has continued to innovate to further reduce the costs of conveyancers and financial institutions, as described further in section 3.1.

As well as creating a platform that connects those involved in conveyancing, PEXA has built a platform that can enable "delivery versus payment", effectively mimicking the exchange of a cheque in return for the formal legal transfer of title to other assets, such as businesses and cars. As the Australian payments system looks to phase out cheques (with potentially substantial productivity improvements), a digital solution for delivery versus payment more generally is becoming a pressing issue.

1.3 The history of eConveyancing

eConveyancing has an unusual history. The exchange business model that PEXA operates today was originally designed and created by all States and Territories, in combination with major financial institutions. It was subsequently privatised, when the States and Territories transferred all of their intellectual property in the enterprise to PEXA. Australia's eConveyancing industry is now the clear leader for the world.

Previous attempts to implement eConveyancing in Australia before 2008 had failed. These included a substantial initiative of the Victorian Government which built a digital platform. These initiatives failed to gain the critical mass of users (both conveyancers and financial institutions) that is crucial to gaining efficiencies through eConveyancing. Initiatives failed to attract sufficient users largely because many users were multi-jurisdictional and were unwilling to migrate to an online process unless it was nationally consistent.

States and Territories agreed in 2008 to create a single national electronic system for eConveyancing. When they agreed a national law for eConveyancing in 2011, they also created a new entity, National EConveyancing Development Limited (NECDL), jointly owned by the States and Territories. Subsequently, major financial institutions subscribed for shares and became co-owners of this entity. The purpose of NECDL was to build a digital platform for electronic conveyancing and to drive participation by government authorities, financial institutions, and conveyancers.

All parties involved saw the opportunity for substantial productivity savings if conveyancing was largely conducted online rather than with traditional processes involving physical documents and signatures, cheques, and face to face settlement meetings. The nation-wide electronic platform was also an opportunity to streamline the differing requirements of multiple legal jurisdictions into a homogenous property settlement process. This helped financial institutions to build nation-wide operational platforms, increasing their efficiency. It also encouraged the development of national conveyancing firms and practice management systems, while retaining many of the distinctive features of the property and revenue collection laws of each individual State and Territory.

NECDL, ultimately renamed PEXA, set its initial prices in order to induce banks and conveyancers to incur the significant up-front costs of converting from paper to electronic processes. At the time, widespread take-up was far from assured. Some governments eventually mandated all participants to adopt eConveyancing, but they did so only after substantial take up made such mandates politically palatable.

Governments have effectively limited PEXA prices so that they have never increased in real terms since they were first set in 2014.⁵ This is a significant contrast to other parts of the property transaction industry. For example, new platforms for property advertising initially set low prices to induce adoption, and once they had established a network substantially increased their prices.⁶

PEXA's success is not only due to being a first mover or government mandates to move to eConveyancing. PEXA has progressively entered each State, so there has been opportunity for other ELNOs to enter the market in States and Territories where PEXA's platform was not widely established. For example, by 2020 PEXA had less than 30% penetration in Queensland, and no presence in Tasmania, ACT or NT. ASX/ATI Group's Sympli had commenced building its platform in 2018. Nevertheless, Sympli did not invest to acquire material market share in Queensland, Tasmania, ACT or NT. The difficulties (and costs) of successfully building an eConveyancing business are substantial.

Once PEXA had largely created an eConveyancing industry in Australia, building both a usable platform, and driving widespread adoption, it was privatised in 2019 as governments sold their shares in the entity, and assigned their intellectual property in eConveyancing, to a private consortium. This consortium sold down their interests in PEXA through an IPO in 2021.

Overall, eConveyancing is one of the great success stories of cooperative federalism. eConveyancing is all-but universal. Net productivity savings are estimated to be larger than total eConveyancing industry revenues. Australia is home to PEXA, which is now being exported as a world first and the world-leading eConveyancing platform. PEXA's platform plays a major role in making Australia's conveyancing industry the most efficient and secure in the world. The broader conveyancing industry strongly supports the eConveyancing system, and has proactively worked with PEXA to progressively add functionality and enhancements to the platform that enables further productivity gains for banks and conveyancers.

The importance of PEXA's network and the broader eConveyancing ecosystem was marked when it was designated as Critical Infrastructure under the Security of Critical Infrastructure Act.

The consequence of this history is that PEXA is a privatised, regulated entity with a strong network that currently provides comprehensive eConveyancing services in Australia. There are inevitable concerns that PEXA might misuse its market power, but its ability to do so is already tightly constrained by regulations that limit its prices, govern its provision of services in other parts of the conveyancing value chain, and require minimum standards from its operations.

1.4 Digital conveyancing industry structure

The eConveyancing platform that PEXA operates is only one part of an digital conveyancing industry value chain. As part of transferring land, a series of digital platforms and systems interact. There are no clear dividing lines that pre-determine which functions should be part of which system.

Digital systems that facilitate conveyancing, in addition to the systems of ELNOs such as PEXA, also include:

- The electronic systems operated by lawyers and conveyancers (many of which are 'Practice Management Systems (PMS)' supplied by third parties);
- The electronic systems operated by financial institutions (many of which are supplied by third parties);
- The electronic systems operated by mortgage processors engaged by financial institutions;

⁵ See further, section 3.1

⁶ See footnote 19.

- Electronic systems that conduct searches in relation to property transactions, including both land title searches, and searches of other land-related information such as planning, land tax, and council rates; and
- Other electronic services related to settlement and lodgment such as VOI, market data, esigning, client onboarding and contract finalisation.

Property search services include title queries which use information ultimately sourced from a Titles Registry (disclosing the current owner, mortgagee, title dimensions, and any encumbrances) and other property searches (such as rates notices and payment status, land tax liabilities, and planning overlays). PEXA estimates that the Total Addressable Market for Property search in Australia is over \$400m per year, ⁷ larger than the eConveyancing market. PEXA does not currently provide property search services.

1.5 ATI Group market position and conduct

In the broader Australian digital conveyancing value chain, Australian Technology Innovators Pty Limited (ATI) – Sympli's 50 per cent owner - is the market-leading provider of both Practice Management Software for lawyers and conveyancers, and of Information Search Services. ATI directly or indirectly controls a wide range of entities in PMS and property search markets, as shown in Figure 2. PEXA estimates that ATI's share of the PMS market is ~60% nationally and ~80% in NSW/QLD. ATI Group also has a high share of the Property Search segment of the Information Search Services market,⁸ and InfoTrack (part of ATI Group) is the largest provider of property search services in Australia.

Figure 2: ATI Global's owned or affiliated entities in the eConveyancing industry



Source: PEXA analysis of company websites and ASIC filings

⁷ See footnote 20

⁸ ATI Global owns and operates market leading InfoTrack, as well as alternative Information Search Service providers - TriSearch and Creditor Watch. Through these entities, ATI Global is able to provide a full suite of Information Search Services (i.e. company, property and personal information searches). Practitioner firms generally favour full-service Information Search Service providers, such as those provided by ATI Global. However, unlike ATI Global, alternative service providers are not fully integrated across the entire conveyancing workflow technology stack.

ATI has substantial market power across this value chain:

- ATI has more than 50% market share in many segments;
- There are often significant switching costs for a conveyancer to move to a different practice management system; and
- PEXA understands that ATI only allows its practice management platform subsidiaries to digitally integrate with property search providers also controlled by ATI.

The convenience of a search service integrated with their practice management system may significantly influence practitioners' choice of property search provider – particularly as the costs of property searches are often passed on to end-consumers as disbursements.

Unlike the specific regulations that apply to PEXA as an ELNO, there are no specific regulations that limit the vertical integration of ATI's businesses, and its prices are not specifically regulated even though the practice management system and property search markets are highly concentrated.

The Model Operating Requirements that govern ELNOs prevent PEXA from providing property search services that interact with its ELNO unless the property search business is separated from PEXA's ELN. Ironically the separation rules substantially *reduce* potential competition in the broader eConveyancing industry, by limiting PEXA's entry as a plausible competitor into the search market in which ATI is the largest supplier.

As discussed further below in section 4.8, there is a significant danger that regulatory interventions to the market structure of ELNOs may *reduce* competition upstream. They may provide the ATI - Infotrack — Sympli corporate group an unfair advantage over other providers of practice management systems, property search, or bulk conveyancing services. While the MOR rules effectively prevent an ELNO such as PEXA from self-preferencing an upstream related entity, these rules do not effectively prevent an upstream entity (such as the ATI Group entities LEAP and Smokeball) from self-preferencing a downstream related ELNO (such as Sympli). Such an outcome may also be anti-competitive because it would create unfair advantages for *practitioners* that use ATI Group companies over practitioners that use other practice management systems, property search, or bulk conveyancing services.

1.6 ATI Group regulatory interventions

ATI Group and its subsidiaries Infotrack and Sympli have been conducting an ongoing misinformation campaign aimed at denigrating PEXA's business, in the hope that this will lead to regulatory intervention favouring Sympli's entry to the eConveyancing market.

Some of the regulatory interventions of ATI Group are evidenced by submissions to the recent Senate Economics References Committee Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing. Submissions to this Inquiry by Infotrack and Sympli, which ATI Global owns and part-owns, may have the effect of encouraging regulatory intervention to prevent vertical integration by PEXA into the parts of digital conveyancing in which ATI is the largest entity, while enabling self-preferencing by companies owned by ATI into Sympli. The list of regulatory interventions by ATI companies revealed by submissions to the Senate Committee includes:

 Multiple submissions by Sympli and Infotrack to ACCC that PEXA has made baseless claims about PEXA's intellectual property in order to prevent competition in eConveyancing;⁹

⁹ Sympli, Submission to Senate Economic References Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, paras 32-34; evidence of representative of Infotrack, Transcript, Senate Economic References Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, p.24

- Claims by Sympli to APRA that banks face risks if interoperability does not proceed, and that there are risks from a single point of failure in eConveyancing;¹⁰
- Claims by Sympli to ASIC that it should intervene around the use of statutory trust accounts and AFSL exemptions held by PEXA;¹¹ and
- Claims by Sympli to RBA that it should intervene to guide the interoperability program scope, and that there are 'risks of a impacted workflows [sic] in eConveyancing not being addressed'¹²

PEXA notes that, according to evidence given by ACCC representatives, and the Sympli submission to the Senate Inquiry, none of the Commonwealth regulators contacted are actively taking these claims further. It is a reasonable inference that this is because they are without substance. The evidence that Sympli's claims are without substance was detailed in PEXA's submissions and evidence to the recent Senate inquiry. The behaviour of Sympli and other members of the ATI Group in making baseless claims against its competitor to a variety of regulatory bodies is in effect a form of regulatory harassment.

Consistently with these previous regulatory interventions, Sympli and Infotrack have made a number of allegations about PEXA's conduct in their submissions to the Senate Committee. As discussed in PEXA's supplementary submissions to the Senate Inquiry, Sympli and Infotrack have not provided any actual evidence to back up vague allegations, and none in fact exists.

Such behaviour is an abuse of government processes, such as parliamentary privilege. It has a significant impact in damaging PEXA's business and reputation. It also has an ongoing impact on PEXA staff who work tirelessly for their customers.

Sympli and Infotrack have also been conducting a misinformation campaign that aims to create the impression that PEXA's system is unreliable, and that consequently regulators should intervene to ensure the success of Sympli's network as an alternative. ¹³ This campaign has misattributed incidents to PEXA's system, exaggerated their impacts, and claimed incorrectly that a second network would reduce the risks (when it would in fact increase the risks of IT incidents – see below section 4.4)

1.7 ELNOs in the context of the property transaction industry

ELNOs are only a relatively small part of the conveyancing industry, and an even smaller part of the overall property transaction industry.

Total ELNO revenues in Australia in 2024-25 (primarily earnt by PEXA, with the remainder received by ASX/ATI Group's Sympli) were around \$316m.¹⁴ The total costs of transacting property are much larger, as illustrated in Figure 3. These other costs are generally rising much faster than CPI; whereas eConveyancing prices, which are capped by regulation, have not risen by more than CPI since 2014.

¹⁰ Sympli, Submission to Senate Economic References Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, paras 36-37.

¹¹ Sympli, Submission to Senate Economic References Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, paras 38-40.

¹² Sympli, Submission to Senate Economic References Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, paras 41-43.

¹³ PEXA, 28 July 2025, "Statement on eConveyancing Industry Misinformation", https://www.pexa-group.com/content-hub/news/pexa-statement-on-econveyancing-industry-misinformation/

¹⁴ PEXA exchange revenues were \$314m: PEXA (2025) *Annual report 2024-25*. Sympli reported revenues were \$0.2m in 2022-23. Sympli financials have not been published by ASIC since 2022-23 possibly because Sympli's workforce is now smaller than the threshold that triggers public reporting. Sympli undertook 1.1% of all electronic lodgments in NSW in 2024-25: NSW Registrar-General, responses to Questions on Notice, Senate Economic References Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing

16 0.3 0.4 14 2.0 12 1.3 10.0 10 8 6 2 0 Advertisements Conveyancers / Real estate Property eConveyancing search agency lawuers

Figure 3: Residential property transaction costs 2022-23 \$ billion

Other services related to Australian real estate transactions include:

- Real estate agency services for sale of residential property (around \$10b, with estimated revenues per transaction between \$18,000 in Brisbane and \$33,000 in Sydney),¹⁵ and for at least 20 years these revenues have risen substantially faster than CPI.¹⁶
- Conveyancing services to prepare for and execute property transactions (at least \$2b, with combined revenue from buyer and seller typically at least \$4,000 per transfer and the better estimate is that they average more than this).¹⁷
- Advertisements for sale of property (around \$1.3b, implying revenues of more than \$2,000 per transaction),¹⁸ and these revenues have escalated substantially in recent years.¹⁹

¹⁵ Based on Jarden (2023) "Breaking down housing turnover"; about 500,000 dwellings per year are transferred in Australia: ABS, *total value of dwellings Cat 6432.0, Table 2.* IBIS World estimate that Real Estate Agency Franchise industry revenue was \$14b in 2023; the majority of this would be for residential property sales.

¹⁶ Between 2003 and 2020, real estate prices increased by 109%, roughly tracking the 114% increase in dwelling prices, but much faster than increases in consumer prices (47%) and wages (68%). Since 2020 (perhaps influenced by Covid-19), real estate prices have diverged from dwelling prices to track closer to consumer prices and wages.

¹⁷ Quotations from Conveyance.pro for handling a property sale of \$1.2m with a \$600,000 mortgage in Victoria identified 25 conveyancers with a median indicative price of \$950 (which excludes disbursements). RS Law Group (June 2024) estimate that conveyancing fees are typically \$2,000 to \$2,500 for each of the buyer and seller. Jarden estimates that typical solicitor fees (for both parties combined) for a house transaction in Sydney, Melbourne and Brisbane are between \$7,500 and \$10,000 (probably including disbursements): Jarden (2023) "Breaking down housing turnover".

¹⁸ REA revenues for Property and online advertising for residential property in Australia in 2023 were \$804m. (REA Group, *Annual Report 2023*, p.41). Domain Group revenues for residential property advertising in Australia in 2024 were \$266m (Domain Group, *Annual Report 2024*, p.103). A minority of this revenue would be for rental advertisements.

¹⁹ Industry participants claim that high market shares have enabled REA Group and Domain.com to increase prices for property advertising: Sarah Martin, "'The bear at the door': estate agents say they fear speaking out about realestate.com.au 'price gouging'", *The Guardian* 19 September 2024, <a href="https://www.theguardian.com/australia-news/2024/sep/19/the-bear-at-the-door-estate-agents-say-they-fear-speaking-out-about-realestatecomau-price-gouging; Sarah Martin, "Why News Corp's realestate.com.au can put fees 'up and up and up', according to ex-CEO", *The Guardian* 23 September 2024 https://www.theguardian.com/australia-news/2024/sep/23/simon-baker-realestate-com-au-fees-news-corp-ntwnfb.

- Property search (likely to be more than \$0.4b,²⁰ with the revenue per transfer from all parties typically around \$785).²¹
- eConveyancing (both transfers and refinances) (\$0.3b,²² with the revenue per transfer is typically \$141 for the buyer and seller, and \$122 for both of the banks if a mortgage is discharged and taken out, so that the total revenue from all parties to a transaction is typically not more than \$404).²³
- Bank fees and charges for taking out and discharging a mortgage, which can be up to \$600 and \$400 respectively,²⁴ although these fees are often waived and effectively incorporated into the financial institution's margin on the loan.

It is beyond the scope of this submission to investigate in detail whether there is market dominance in markets for real estate advertisement, real estate search, practice management software, property search and bulk conveyancing that allows the exercise of market power, either through pricing or through vertical integration to related markets. PEXA notes that the ACCC is investigating the online real estate advertisement market, and has issued a notice to REA to provide information regarding its offerings. Wherever that investigation leads, the size of these markets, participants with dominant market share, unregulated prices, and relatively little regulatory oversight suggests that far more consumer welfare may be at stake than with eConveyancing platforms such as PEXA, which has regulated prices and substantial regulatory oversight. As a result, there is correspondingly more scope to improve productivity and reduce consumer costs in every part of the conveyancing value chain other than eConveyancing.

Poor regulation of eConveyancing could actually lead to *increased* total consumer costs. Because ELNO revenues are only a fraction of total conveyancing costs, complexities introduced by requiring PEXA's platform to be interoperable will likely *reduce* total productivity across the wider property transaction industry. The benefits of innovation in eConveyancing to other participants in eConveyancing is likely to be much larger than any plausible productivity improvement in ELNO operation.

To contextualise eConveyancing fees in the broader property exchange industry, consider the costs for an individual buyer and seller. The median Australian property price is approx. \$985,900 (ABS, Dec 2024) with an average transaction cost of \$81,500. PEXA's electronic lodgement and settlement fee is ~0.3% of these transaction costs as illustrated in Figure 4:

²⁰ This top down estimate is based on ATI Australian search revenue of around \$447m: ATI Global Legal Search revenue across all jurisdictions is \$616m (ATI Global Ltd Financial Report, p.27); of which £94m (=AUD169m) was Conveyancing searches in the UK (Infotrack Ltd Financial Report, p.12,22). A minority of the Australian search revenue is for company searches; some is for titles searches; the majority is for conveyancing related non-titles searches such as rates and water. ATI has a large share of the total Australian search market. The next largest participant in the Australian property search market is Dye & Durham, which has group revenue of \$167m in 2023 (Dye & Durham Holdings Pty Ltd Financial Report, p.20), although this includes some UK revenue, equity accounted revenue and revenue from PMS solutions broader than property search.

A bottom up estimate also suggests a total addressable market for property search of around \$400m based on 500,000 residential property transactions per year with average property search revenue per transaction of \$785 (see footnote 21).

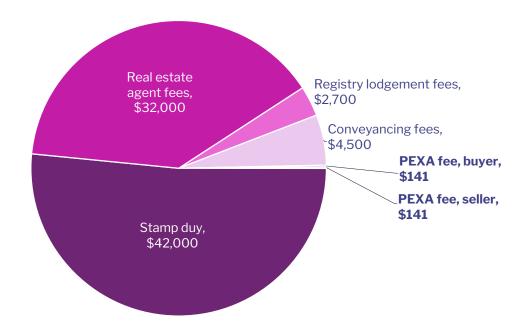
²¹ A typical transfer in Victoria requires register search (\$7.80), Title plan (\$7.50), Land tax (\$29.13), Local council (\$41.01), and Water (\$35.16); an estimated 50% of transactions seek building approval certificates (\$32.82 and \$32.82), and 25% of transactions seek VicRoads search (\$7.78); Each of these searches will typically be done twice per transaction – once in preparing the vendor's statement and once prior to settlement. Based on ATI's financials, the markup from Landata prices (cost of goods sold) to property search provider price is 100%, implying property search revenue per transaction of \$785.

²³ Assumes the seller discharges a mortgage and the buyer takes out a mortgage. Costs can be slightly higher in less common situations such as deceased estates, or where a caveat has been lodged: PEXA, PEXA Pricing Schedule effective from 1 July 2024, https://www.pexa.com.au/pricing/

²⁴ Financial institution websites.

²⁵ Nassim Khadem, "ACCC probes real estate giant REA Group amid price gouging allegations as property costs soar" 10 June 2025, *ABC News* https://www.abc.net.au/news/2025-06-10/accc-probes-property-giant-rea-group-on-price-gouging-consumers/105381838.

Figure 4: Proportion of property transfer costsBased on mean dwelling price of \$958,900; 100% of transaction costs = \$81,500



Notes: Stamp duty based on average for PEXA platform for 2025; Registry lodgments based on average registry fees for mean dwelling price; Conveyancing fees based on RS Law Group estimate (June 2024); Real estate fees include advertising (0.5% to1.0% of sale price according to Open Agent estimate Aug 2024); and Agent commission (2%-3% of sales price according to Network Exchange Realty Jan 2025).

The direct cost to a buyer and seller for completing a property transaction on PEXA's network is \$140.58 (incl GST). The fee has been price regulated since PEXA's inception and has only ever increased by CPI. The price differential between PEXA and the only other operating ELNO, ASX/ATI Group's Sympli, for a property transfer is about \$10, equivalent to 7.5% of the eConveyancing fee, and 0.01% of the total transaction fee. Because the eConveyancing fee is so small, reductions in eConveyancing costs cannot be material to overall transaction costs or housing affordability.

1.8 Regulation of eConveyancing

eConveyancing is regulated under a cooperative legislative scheme between all States and Territories.

As the result of a COAG initiative, all States and Territories agreed to the Electronic Conveyancing National Law Agreement in 2011, which aimed to set up consistent business practices and regulation for eConveyancing across legally disparate jurisdictions. The Agreement also set up an industry regulator, composed of the Registrar General of the Land Registry in each jurisdiction, the Australian Registrars' National Electronic Conveyancing Council (ARNECC).²⁶

Pursuant to this Agreement, the *NSW Electronic Conveyancing (Adoption of National Law) Act 2012* provided the text of the Electronic Conveyancing National Law. Legislation in all States and Territories adopted this National Law, which authorised the electronic signature and lodgment of documents for property transactions, the approval of Electronic Lodgment Networks, and the determination of rules to govern the industry.

Pursuant to the National Law, ARNECC has devised Model Participation Rules and Model Operating Requirements (MOR), for Subscribers (conveyancers, banks, etc.) and ELNOs respectively, that manage

²⁶ See https://www.arnecc.gov.au/wp-content/uploads/2021/08/IGA for an Electronic Conveyancing National Law.pdf

testing, change management, and set standards, eligibility criteria and requirements for system capability, security, risk, monitoring and reporting. The MOR set strict operating transparency and accountability requirements for ELNOs such as PEXA. The MOR also substantially constrain behaviour by limiting vertical integration between ELNOs and other parts of the conveyancing industry, and regulating prices for an ELNO's Service Fees.

The MOR limits vertical integration by requiring an ELNO to formally separate if offering Downstream or Upstream Services (DUS), i.e. offering a service that accesses, integrates with, or uses information from an ELN, but which does not enable the preparation and lodging of registry instruments and other documents in electronic form for lodging under the land titles legislation.²⁷ PEXA does not offer any DUS, and consequently PEXA has not separated its business or developed a formal separation plan. In about September 2024, ARNECC commissioned Synergies Consulting to conduct a review of the Separation requirements which has not yet been released.

As an ELNO, PEXA also has contractual operating agreements with each land registry in each State and Territory, and applicable revenue offices. These impose substantial obligations and costs on PEXA, in addition to the MOR, for operations, performance, reporting and governance. In addition, WA, Victoria and Tasmania Revenue Offices have agreements with PEXA that also impose charges on PEXA of around \$900,000 in 2025-2026.

Payments that are facilitated by the PEXA platform are also subject to oversight by the Reserve Bank of Australia. PEXA is a member of the Reserve Bank Information and Transfer System (RITS), and must meet RBA requirements to maintain that membership.

1.9 Current regulatory oversight of eConveyancing

eConveyancing is attracting a great deal of regulatory scrutiny. It is currently the subject of:

- This NSW inquiry by Select Committee of the Legislative Council;
- A Senate Standing Committee on Economics Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing;
- An ARNECC review of functional requirements for interoperability;²⁸
- An ARNECC review to update the Cost Benefit Analysis of interoperability, as well as the Cost Benefit of four other potential market models;²⁹
- An ARNECC Review of the eConveyancing regulatory framework,³⁰ and
- An IPART review of eConveyancing pricing.

²⁷ Model Operating Rules, cl.2.1.2, definition of "Downstream or Upstream Service".

²⁸ ARNECC, "Interoperability – ARNECC statement on next steps",

https://www.registrargeneral.nsw.gov.au/news/interoperability-arnecc-statement-on-next-steps; ARNECC "2025 Review Project Update", https://www.arnecc.gov.au/wp-content/uploads/2025/07/ARNECC-Announcement-2025-Reviews-Project-Update-23-July-2025.pdf

²⁹ ARNECC "2025 Review Project Update", https://www.arnecc.gov.au/wp-content/uploads/2025.pdf; ARNECC, "Cost-benefit Analysis – Terms of Reference", https://www.arnecc.gov.au/wp-content/uploads/2025/07/Cost-Benefit-Analysis-Terms-of-Reference.pdf

³⁰ ARNECC "2025 Review Project Update", https://www.arnecc.gov.au/wp-content/uploads/2025/07/ARNECC-Announcement-2025-Reviews-Project-Update-23-July-2025.pdf

This is a significant investment of regulatory resources for an industry with turnover of less than \$350m per year. It is surprising when there is little evidence of material customer or consumer concern about eConveyancing service quality (with PEXA customer satisfaction at 87%) or unreasonable eConveyancing pricing (in contrast to other parts of the property transaction industry).³¹

It is unclear what public policy purpose such an elevated level of regulatory scrutiny is designed to serve. There is no obvious need for regulatory intervention to improve customer or consumer outcomes in the absence of material customer and consumer concerns. Instead this degree of scrutiny appears to be focused primarily on identifying a viable business model for a competitor to PEXA.

³¹ See above, section 1.7

2 The impact of outages on property settlements, including home buyers and small businesses

PEXA has a robust network, as the result of significant investment and a diligent approach to cybersecurity. While any incident is regrettable, a clear majority of incidents that affect customer settlements are the result of issues with one of the many systems to which PEXA connects. Because property conveyancing inherently involves many different entities – buyer, seller, mortgage institutions, payment banks, the titles office, the revenue office, the ATO and the Reserve Bank – issues with the system of any one entity can delay settlement.

2.1 Continued investment

PEXA has continued to invest in its platform to improve system resilience and reliability, to maintain system security, and to innovate to meet customer needs (which generally leads to productivity improvements). Over the past 3 years, PEXA has invested an average of \$34 million capex each year in its Australian platform. In FY25, PEXA invested about \$34 million capex in platform architecture, system security and exchange enhancements. The impact of these investments on customers and Australia's property transaction industry is described in the following sections.

2.2 Security

PEXA is diligent on cyber security and has not experienced any major breaches. PEXA implements defence-in-depth network, cloud, and endpoint security measures, data protection practices, and identity access management.

PEXA and the PEXA Exchange are certified to a globally recognised ISO/IEC 27001:2022 standard (also known in Australia as AS/NZS ISO/IEC 27001:2023) which is the best-known standard for information security management systems (ISMS). The PEXA Exchange maintains a Service Organisation Control Standard (SOC) type 2 certification as well. Responding to growing cyber-security threats, PEXA's security budget has grown by around 30% per year for the past few years.

During the 2024-2025 financial year, PEXA detected and blocked over 6.5 million intrusion attempts across the group. The volume of cyber intrusion attempts was four times larger than in the previous year, consistently with trends affecting other IT platforms. As the Exchange platform is listed as Critical Infrastructure, PEXA does not publicly disclose further metrics, but internally it tracks additional cyber security and compliance metrics which include:

- cyber incidences/near misses;
- critical vulnerabilities reported;
- reportable data breaches; and
- phishing simulation click-rates.

2.3 Incidents

ARNECC's regulatory framework for eConveyancing sets high standards for ELNO performance, including minimum requirements for operational and system performance. PEXA takes its obligations seriously to maintain a resilient system for the benefit of all stakeholders, including the end consumers who are represented by their conveyancer or solicitor on the PEXA platform. Over the past year PEXA's platform has remained operational at all times, has not experienced a full network outage, and consequently PEXA

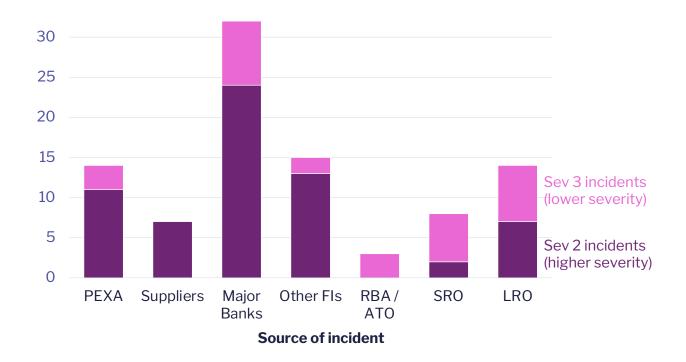
reported 100% uptime.³² However, a limited number of transactions were disrupted by incidents that affected a particular class of transactions. Most of these disruptions were the consequence of platforms operated by other stakeholders which PEXA does not control.

2.3.1 The causes of incidents

The PEXA Exchange operates within a broad ecosystem of integrated platforms, comprising the systems of Land Titles Offices (LTOs), State Revenue Offices (SRO), and financial institutions, including the Reserve Bank of Australia (RBA). For a typical property transfer with four parties (representatives for the buyer and seller; Mortgagee on Title; and Incoming Mortgagee), the workflow depends on services supported by a number of systems in that broader eConveyancing network, to complete the transaction. These services include stamp duty verification with the revenue office, title activity checks against the land register, and the processing of payment instruction files with integrated banks. If these services are disrupted, they can interrupt multiple stages of the transaction workflow. Such disruptions can affect the timing of scheduled settlements.

In the 12 months from July 2024 to June 2025, PEXA customers experienced 93 platform incidents of which 14 were driven by the PEXA platform while 79 were driven by partner platforms (for example banks, SROs, or Land Registries), as shown in Figure 5. These incidents often delayed settlements for a few hours, but the vast majority were resolved so that transactions proceeded on the scheduled date. PEXA processed more than 1.2 million settlements in 2024-2025; of these, only 576 transactions did not settle on the intended day due to an incident, and of these the vast majority were settled on the subsequent day.

Figure 5: Number of eConveyancing incidents, by cause of incident July 2024 - Jun 2025



³² An incident in August 2025 led to some customers being unable to access transactions that were in flight; PEXA is in discussions with the NSW Registrar General about whether this technically constitutes an "outage"; irrespective of its classification PEXA is committing resources to prevent similar problems recurring.

The small number of transactions delayed to the next day or later reflects a very robust and resilient platform. Contrary to the misleading public statements of an Infotrack representative, there is no evidence that as a result of an incident, "Many [families] won't be able to [move into their homes] this weekend", 33 nor is there any truth to media reports that "families have been left stuck between homes and stranded on the street due to repeat outages". 4 In the very rare situation that settlement is delayed materially due to PEXA's platform and causes material inconvenience, PEXA provides compensation based on the circumstances on a case by case basis. In the 2024-25 financial year, PEXA provided compensation of around \$13,000 to 10 customers in such circumstances.

A clear understanding of incidents has not been assisted by an ongoing campaign of misinformation conducted by PEXA's competitor, Sympli and its related company, Infotrack.³⁵ Sympli has commercial motivations to overstate problems with PEXA's service, both to attract customers, and to encourage regulatory intervention that will benefit Sympli's interests at the expense of PEXA's interests and the public interest. Sympli has implied that all the incidents with eConveyancing are a consequence of problems with PEXA's system,³⁶ ignoring the information published on PEXA's website about the causes of incidents. Blaming PEXA for many of these service disruptions is like blaming a restaurant that can't settle a bill because their bank's payment system is down; it is outside of the restaurant's control. This campaign of misinformation is ongoing. Most recently, an Infotrack representative posted that there was "A Bank-PEXA issue today in Queensland... This is a significant single point of failure".³⁷ Replies pointing to detail on PEXA's website that indicated that this was an issue caused by a Bank of Queensland were deleted from the post, and the post was not amended to acknowledge that the single point of failure was the Bank's system – it would have equally affected all functional ELNOs.

It should be noted that settlements can also be delayed for commercial reasons, such as the buyer failing to arrange finance by the settlement date specified in the contract for sale. Obviously, an eConveyancing platform has limited ability to resolve these issues. In PEXA's experience between 15% and 20% of all property transactions do not settle on their originally scheduled date for such reasons.

PEXA has recently had a number of incidents due to the introduction of a "mobile signing" service that enabled conveyancing practitioners to sign off a transaction using a mobile phone. This both provided flexibility, and provided additional access if a practitioner's standard computer network was not functioning. There were a number of incidents because of failures in the system provided by a PEXA supplier. PEXA was obliged by regulation to use this supplier as they have "Gatekeeper accreditation", and it is a relatively small provider that experienced some capacity issues. PEXA is currently participating in a Federal Government review to Gatekeeper accreditation and hopes that changes in regulations will result in more choice of suppliers for mobile services with greater resilience.³⁸

https://www.linkedin.com/feed/update/urn:li:activity:7350282894273040384/

³³ Jerome B, 11 July 2025, "This was PEXA today", *Linkedin*,

³⁴ Pike, E, 11 July 2025, "Stranded': Homebuyers caught in property platform PEXA's outages", *Daily Telegraph*, https://www.dailytelegraph.com.au/%2fnews%2fnsw%2fstranded-homebuyers-caught-in-property-platform-pexas-meltdown%2fnews-story%2f985cdd2dda1bd8dfa33aa7af72333341

³⁵ This misleading campaign, and the facts correcting the record, are documented in PEXA, "Statement on eConveyancing Industry Misinformation, 28 July 2025, https://www.pexa-group.com/content-hub/news/pexa-statement-on-econveyancing-industry-misinformation/

³⁶ For example, Jerome B, LinkedIn post, https://www.linkedin.com/posts/jeromeboutelet-longweekend-activity-7337248514294300672-IKBu?

³⁷ Jerome B, https://www.linkedin.com/posts/jeromeboutelet_econveyancing-competition-outages-activity-7359494254815010817-Mu9k

³⁸ MOR cl.7.6 mandates the use of Gatekeeper certificates for digital signing. The number of suppliers of Gatekeeper certificates is limited and falling because alternative technologies are overtaking Gatekeeper. PEXA is unable to move to alternatives until the MOR is amended or the Gatekeeper accreditation regime is amended.

Nevertheless, every incident or outage is regrettable. PEXA systematically publishes updates on its website in real time about incidents, including information (where available) on the cause of the incident. PEXA systematically analyses all incidents to identify improvement opportunities for the future. PEXA has also recently commissioned an independent review of the resilience of its network to assist with investment decisions to enhance resilience of the entire network.

2.3.2 eConveyancing incidents compared to paper conveyancing

The rare inability to settle a property transaction on the appointed day using eConveyancing should be compared to the outcomes of the physical process that eConveyancing replaced. When settlements were disrupted because of inconsistencies between documents or payments that were noted at a physical settlement, the transaction was often delayed at least until the next day because of the time required to obtain physical documents and approvals for changes. Such inconsistencies are much less likely today because PEXA's system generates documents centrally, ensuring that they are consistent, automatically checks for other inconsistencies, and flags any problems well before settlement.

eConveyancing has also dramatically reduced the number and cost of lodgment errors. With the paper-based process, around 15% to 20% of transactions lodged with the titles office were "requisitioned" — meaning errors were detected that required correction before registration could proceed. This created considerable manual handling for both the titles office and the parties involved, particularly financial institutions. It also left buyers and sellers uncertain about completion until the issues were resolved. Today, fewer than 1% of transactions lodged through PEXA's ELN are requisitioned. The platform automatically restricts the submission of incorrect information and enforces consistency across documents — for example, ensuring the purchaser's name on the transfer precisely matches the owner's name on the mortgage registration.

2.3.3 Interoperability and system resilience

If interoperability proceeds, incidents will be more frequent, and will be resolved more slowly, as discussed below in section 4.4.

2.3.4 Regulatory management of incidents

Registrars already have ample powers over incident management. ELNOs are required to meet the Performance Levels specified in the MOR, and to monitor performance against them.³⁹

Additional performance, reporting and governance requirements are imposed by the contractual operating agreements between PEXA and the land registry in each State and Territory. PEXA believes that it is in the public interest for such requirements to be added to the MOR rather than included in operating agreements so that they are more transparent to users, consistent between States and Territories, and transparently apply to all ELNOs.

³⁹ Model Operating Requirements, cl.11; Schedule 2.

3 Current pricing and opportunities to drive competition via pricing action

3.1 The benefits of eConveyancing with PEXA relative to prices

PEXA's prices for eConveyancing services are reasonable and capped by regulation. PEXA's prices have never increased in real terms since they were set in 2014. That initial pricing was set when PEXA had relatively little market power: prices had to be sufficiently low to induce the critical mass of banks and conveyancers to incur the significant up-front costs of converting from paper to electronic processes. In the early stages of the reform, it was particularly hard to induce banks and conveyancers to do so because they would only get a return on their investment in the conversion if most others converted as well.

After that initial pricing was set in 2014, prices were capped by a government agreement that bound the government-owned entity. ⁴⁰ In the revision of the Model Operating Requirements introduced in 2018, before privatisation in 2019, governments formally regulated ELNO pricing so that an ELNO could not increase its prices in real terms beyond the levels that had been initially set in order to induce adoption. ⁴¹ PEXA's prices were also reviewed by IPART in 2019, which found that "PEXA's current prices are reasonable". ⁴² IPART recently began another review of eConveyancing prices, due to report by June 2026. ⁴³

eConveyancing has delivered substantial productivity benefits, mainly to other participants in the conveyancing process, whose costs are far higher than eConveyancing fees. 44 Conducting conveyancing online rather than with traditional processes involving physical documents and signatures, cheques, and face to face settlement meetings delivered substantial productivity benefits to reduce the costs of conveyancers and banks. The nation-wide electronic platform also streamlined the differing requirements of multiple legal jurisdictions into a homogenous property settlement process, helping financial institutions to build nation-wide operational platforms, and increasing their efficiency. It also encouraged the development of national conveyancing firms and practice management systems, while retaining many of the distinctive features of the property and revenue collection laws of each individual State and Territory.

Since the introduction of eConveyancing, PEXA has continued to invest in innovations on its platform, further reducing the costs of other participants in the conveyancing process. The investments have improved on-day settlement (an average improvement of 5 percentage points in the largest 5 states over the past 3 years). The costs of delayed settlement to end-purchasers (including removalist fees, additional work leave, and emotional stress) are arguably more costly than PEXA's total fee. Similarly, the impact of delayed settlements to financial institutions and conveyancers (including rework, additional manual handling, and recalculation and re-entry of settlement moneys) are likely to be much larger than PEXA's total fees.

⁴⁰ Price increases were limited to CPI through confidential operating agreements between registrars and PEXA: Dench McClean Carlson (2019), *Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law*, https://dmcca.com.au/iga-review/, p.87.

⁴¹ MOR cl 5.4.3, introduced by MOR Version 5, published December 2018.

⁴² IPART, Review of the pricing framework for electronic conveyancing services in NSW.

⁴³ IPART 2025, Review of electronic Lodgment Network Operator service fees: Call for submissions, https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Call-for-submissions-paper-Review-of-Electronic-Lodgment-Network-Operator-service-fees-19-August-2025.PDF

⁴⁴ see above section 1.7.

Functionality improvements that have delivered efficiencies to conveyancers and financial institutions over the past few years include:

- Platform functionality for better experience and greater efficiency:
 - AutoBalance, which automatically adjusts payment amounts within tolerances set by subscribers so that transactions go ahead without users having to manually change and reapprove payment instructions: this minimises failed settlements which create inconvenience for buyers and sellers, and rework for subscribers;
 - Linked Settlements, so that one transaction doesn't settle unless another specified transaction also settles: this improves workflow management within a Subscriber's practice;
 - Ready-to-book, which automatically sets a settlement date for non time-critical settlements such as refinances: this reduces the costs of inter-Subscriber communications to set a settlement time;
 - Mobile signing, which allows subscribers to authorise a settlement with their mobile phone
 rather than requiring a desktop: this limits security risks associated with credential sharing that
 can occur with a physical USB signing device; makes it easier for Subscribers to accommodate
 last-minute changes; and provides a work-around for users when desktop systems fail, thus
 minimising delayed settlements;
 - PEXA projects, which enables developers to manage bulk transactions (for example multiple transfers from a single development): this reduces the transaction time and costs for developers and their conveyancers; and
- Complex settlement support, which enables additional controls and secure exchange through the PEXA platform of non-property asset information (e.g. bank guarantees) for complex settlements for commercial, industrial and agricultural businesses.
- Features to improve security:
 - PEXA Key which enables vendors to submit their account details for receipt of funds directly into the ELNO platform: this reduces risks of email compromise, external interference, and data entry error; and
 - Solicitor Mortgage Discharge Authority, which ensures that a solicitor can only lodge a
 mortgage discharge if properly authorised to do so by the relevant financial institution: this
 reduces the risk of fraud.
- Tailored operational information:
 - PEXA Planner, which provides a financial institution with an overview of all current transactions, those responsible, and current status: this increases operational efficiency in financial institutions; and
 - PEXA Tracker, which allows authorised third parties (such as mortgage brokers or real estate agents) to see the current status of a transaction: this enables them to identify potential issues, and to act promptly on settlement.

PEXA has also added functionality to service additional smaller volume jurisdictions, adding Tasmania, ACT and NT to its platform over the past three years.

By switching property transfer transactions from paper to digital, and creating nationally consistent processes, PEXA's platform has substantially reduced the costs of the wider conveyancing industry. The benefits of eConveyancing have grown as the system has become more comprehensive to operate in all Australian jurisdictions.

A recent study by ACIL Allen found that PEXA's eConveyancing platform delivers net productivity improvements to the Australian economy of \$390m per year, increasing the size of the economy by \$480m per year. It reduces the costs of conveyancers, financial institutions, and government agencies, with savings ultimately passed on to consumers. PEXA continues to innovate to further digitise the conveyancing process, reducing the costs of conveyancers and financial institutions even more.

PEXA's customer satisfaction is very high at 87% overall. Its customers believe that PEXA consistently delivers high quality of service (85% for Practitioners and 96% for Financial Institutions) and has a positive influence on the industry (85% for Practitioners and 92% for Financial Institutions). PEXA's Brand Trust score is 9.0 (out of 10) for Practitioners and 9.1 for Financial Institutions. Key drivers of Brand Trust are outstanding account management, customer support, a proactive approach to problem solving and listening and responding to feedback. These outcomes for PEXA are very high relative to outcomes for providers in other service industries.

3.2 Pricing and competition

The terms of reference for this inquiry ask about "opportunities to drive competition via pricing action". Pricing does not usually drive competition; rather the theory is that competition can lead to lower prices.

Competition should not be an end in itself. The rationale for competition is that it can create pressure for competitors to reduce their costs, to reduce their prices, and to innovate. However, competition does not always deliver these benefits, and does not always do so in a way that the benefits outweigh the costs.

Evaluating the value of interoperable competition between ELNOs must assess:

- How much is competition likely to reduce price?
- How much is competition likely to promote innovation?
- What are the collateral impacts of introducing competition?

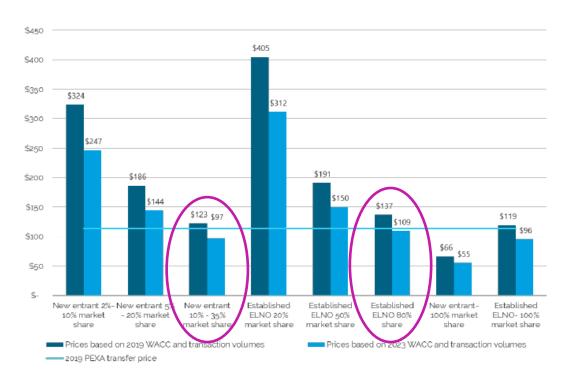
Overall, interoperable competition between ELNOs is likely to:

- Result in little if any price reduction indeed IPART's modelling suggests that in some scenarios it may lead to price *rises* (See Figure 6);
- Reduce innovation;
- Increase participant costs by undermining network effects that benefit participants;
- Increase industry fixed costs (which would ultimately be passed back to consumers);
- Undermine uniform national pricing, disadvantaging smaller conveyancers and smaller financial institutions; and
- Undermine universal access to services by encouraging cherry-picking between jurisdictions and transaction types.

The purpose of regulatory intervention should not be to create a business model for a competitor to PEXA. Regulators should only intervene if it is necessary to further a public interest. Further regulatory intervention to artificially create a business model for a competitor to PEXA is likely to harm the public interest, however much it serves the vested interests of the competitor.

If Australia already had two fully functioning ELNOs, then interoperability might deliver consumer benefits. However, in practice, regulators have attempted to introduce interoperability with the hope that it would facilitate the entry of a new ELNO and drive down prices. The intervention required will increase eConveyancer and participant costs, reduce functionality (increasing the costs of participants), and increase complexity (making incidents and service disruptions more likely). These costs are greater than any plausible reduction in eConveyancing prices. This was implicitly acknowledged by IPART in its 2024 study of inter-ELNO pricing. On its modelling for a benchmark efficient ELNO, as shown in Figure 6, a new entrant ELNO's costs could only sustainably offer prices cheaper than PEXA's current prices if it gained between 10-35% market share; and as the established ELNO, PEXA would need to *raise* its prices to sustain its efficient cost base unless it retained at least 80% market share. On IPART's own modelling, the only scenarios in which an efficient ELNO would have prices lower than PEXA's current prices are those in which the new entrant ELNO has 100% market share.

Figure 6: IPART Illustrative prices for a benchmark efficient ELNO Transfer with financial settlement inc GST, \$2018-19



Source: IPART (2023) Interoperability pricing for Electronic Lodgment Network Operators, Final Report, p.64

In any case, IPART's modelling significantly understates the costs of an efficient ELNO. Its modelling fell short because it depended on an external cost consultant modelling outside-in the costs of a full-service eConveyancing platform when PEXA's eConveyancing platform remains first-in the world, one of a kind, and the only appropriate model to use. Consequently, the consultant's outside-in estimates were based on an extremely limited knowledge of the internal functionality of an eConveyancing platform. By contrast, when modelling efficient costs in any other industry (including water, public transport, local government, commercial passenger vehicles, retail electricity services, electricity networks, ports and rail access, gas pipelines, and the national broadband network), State and national pricing regulators (including IPART) use as the key reference point the actual costs of the relevant utility. As a result of the limited basis for the modelling, the consultant's costs were so different from actual costs that they are clearly unreliable: they were ten times less than PEXA's costs in Australia, PEXA's costs in the United Kingdom, and Sympli's costs in Australia to date. Such outside-in modelling with limited reference to real-world experience distorted the baseline for eConveyancing prices. PEXA will be addressing this in the current IPART pricing review.

Based on the operational experience of PEXA in Australia, PEXA in the UK, and ASX/ATI Group's Sympli (to date the only substantial new entrant in Australia), the fixed costs of building, maintaining and enhancing an ELNO transaction engine are more than \$320 million, with ongoing costs of around \$34 million per year. These are only the platform costs – there are significant other costs involved in establishing and running the first successful ELN business in a market, particularly in persuading and assisting customers to convert from paper-based to electronic conveyancing.

- To build and maintain the Australian Exchange platform, PEXA has already invested more than \$650 million, excluding General and Administrative expenses.
- To build and operationalise an eConveyancing platform for the UK market, PEXA has invested more than \$209 million⁴⁵ and PEXA expects to invest more as this platform is still being expanded rapidly, and has yet to convert most customers from paper-based to digital processes.
- To build its eConveyancing platform in an established eConveyancing market, ASX and ATI Group have spent more than \$160m in Sympli,⁴⁶ and Sympli's platform falls well short of a full-service platform,⁴⁷ only offering to facilitate transfers (i.e. a property purchase) in NSW (although volumes appear to be very small), and not providing any functionality in many jurisdictions. This limited functionality is reflected by limited revenues the most recently published figure was annual revenue in 2022-23 of less than \$250,000 per year,⁴⁸ and Sympli has less than 1% market share of eConveyancing.⁴⁹

There is no evidence that eConveyancing prices are a significant concern. In PEXA's customer surveys, price is not a significant factor, with customers more focused on seeking further functionality improvements. Only 16% of practitioners rank price in their top 3 concerns; whereas more than 50% rank security of transactions, ease of use, and on day settlement in their top 3 concerns. The lack of customer concern about eConveyancing prices also reflects that eConveyancing prices are relatively small, and have never increased in real terms. By comparison, Practice Management System prices, and property-related search prices paid by conveyancers are larger, and have increased materially over the past decade.

⁴⁵ This is PEXA's net cash investment to June 2025, including both capex and net operating costs, and excludes investment and operating outcomes for Smoove and Optima businesses which are upstream of PEXA's ELNO, but which contribute to building momentum for eConveyancing adoption across the UK market.

⁴⁶ Evidence of Sympli representative, Transcript, Senate Economics References Committee Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, September 2025, p.20. Analysis of Sympli Financial Statements for 2017-18 to 2022-23 indicates a cumulative investment of \$130m. Sympli financials have not been published by ASIC since 2022-23 possibly because Sympli's workforce is now smaller than the threshold that triggers public reporting. According to ASIC filings by Sympli's two shareholders, ASX and ATI Group, they have invested another \$34.4m since June 2023.

⁴⁷ See NSW Productivity and Equality Commission (2024), eConveyancing market study, p.21

⁴⁸ Sympli (2023) *Financial Statements Year Ended 30th June 2023*, p.8. Sympli accounts for subsequent financial years are not publicly available.

 ⁴⁹ Evidence of Sympli representative, Transcript, Senate Economics References Committee Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, September 2025, p.20
 ⁵⁰ Nature, PEXA Brand Research FY 26

4 NSW commitment to deliver interoperability to the market by December 2025, including the status of the reform, the process for execution and the transparency of progress

4.1 Original assessment of interoperability

The interoperability program had good intentions, aiming to promote competition and therefore create pressure to reduce costs and prices and promote innovation. It aimed to promote competition and overcome the network effect inherent to eConveyancing by allowing a customer to choose any ELNO, but nevertheless conduct a transaction with a customer that chose another ELNO. PEXA participated in the interoperability program, assisting in the design of a regime that aimed to enable interoperation between multiple fully functioning networks.

However, those good intentions ignored the real-life difficulties of implementing interoperable eConveyancing in practice. In its submission to IPART in 2019, PEXA noted that the proposed reform:⁵¹

- Understated the real and substantial risk of errors when multiple ELNOs connect;
- Ignored the substantial costs for financial institutions, land registries and State revenue offices
 as they re-designed their systems for interoperability and connected to additional ELNOs (which
 PEXA estimated at \$71m to \$130m)
- Understated the costs to PEXA (which PEXA estimated at \$25m to \$30m)
- Ignored the significant additional fraud and cybersecurity risks;
- Had been proposed without a sound understanding of the technical operations and financial and legal implications of eConveyancing.

It is now apparent that interoperability is likely to increase costs, reduce innovation, and overall create problems far greater than any issues that it resolves. As detailed below, the costs of interoperability include the substantial costs of developing the required additional functionality, the unintended constraints on innovation because the model of interoperability being pursued effectively requires all ELNs to have similar functionality, and the reliability and security risks created by an increased number of interfaces and connections and lack of clear responsibility. The reasons why interoperability is not overall in the public interest are outlined in PEXA's submission to the Senate Economics References Committee inquiry into micro-competition opportunities in eConveyancing.⁵²

4.2 The history of interoperability for eConveyancing

In 2018, the NSW Government first took steps to assess whether ELNOs should be required to be "interoperable".⁵³ The theory was that a conveyancer or financial institution would be able to use any ELNO to input information and authorise transactions, even if other parties to that conveyancing transaction used other ELNO platforms. A model for interoperability, the Responsible ELNO model, was later developed with oversight from ARNECC. Under the Responsible ELNO model, multiple ELNOs would

⁵¹ PEXA, 2019, Response to IPART draft report: Review of the pricing framework for electronic conveyancing services in NSW, https://www.ipart.nsw.gov.au/sites/default/files/documents/online-submission-property-exchange-australia-ltd-j.-schmitt-3-oct-2019-172500000.pdf, p.5-6

⁵² PEXA, Submission to Senate Economics References Committee Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, March 2025, Section 6.

⁵³ Dominello (2018), "Public the priority in eConveyancing", *The Australian <u>https://www.theaustralian.com.au/business/legal-affairs/public-the-priority-in-eConveyancing/news-story/3cec1a1c6c7c77ba882b66eb966511dc*; Office of the Registrar General, NSW (2019), *Directions Paper on proposed eConveyancing interoperability regime*,</u>

https://www.registrargeneral.nsw.gov.au/__data/assets/pdf_file/0019/571240/Directions-Paper-on-proposed-eConveyancing-interoperability-regime.pdf , p.5

interact to exchange information and authorisations between participants necessary to execute the transaction. When property transactions settled, the "Responsible ELNO", determined by business rules, would lodge the documents with land registries, and process the associated financial settlement through its platform.

Interoperability was formally mandated by amendments to the Electronic Conveyancing National Law and Model Operating Requirements in 2022.⁵⁴ ARNECC established an Interoperability Program to facilitate design of the technology solution for Interoperability, and to resolve the broader governance and regulatory issues that arise as a result of the interoperability regime. The implementation schedule for Interoperability aimed to commence in New South Wales and Queensland, with functionality phased over three release stages. No schedule has been set for rollout to other jurisdictions. As discussed further below in section 4.6, the scope of the interoperability project was substantially extended in 2023.

Despite its doubts about the public value of interoperability, PEXA was legally obliged to work with ARNECC's program team, and other stakeholders, to try and implement interoperability. PEXA committed substantial resources to working with ARNECC to design interoperability (including specifying around 52 APIs), and building IT functionality consistent with this design. PEXA participated in over 260 three-hour design workshops conducted by ARNECC representatives. This IT functionality enabled the completion of Day 1 Transactions (a limited scope refinance relating to property in Queensland involving PEXA and Sympli) on 12 September 2023. This was an intensively supervised single transaction that was completed. At this point substantial work remained to define all of the APIs required for refinances to enable the broad operation of interoperable refinances.

However, the experience of the Day 1 test transaction left stakeholders with significant concerns that the interoperability functionality designed and implemented to date would not fulfil their requirements. As a result, in June 2024, ARNECC announced that the Interoperability Program would be paused because the banking industry had raised issues in relation to the Interoperability Program that were beyond the remit of States and Territories to address effectively. On behalf of ARNECC, Titles Queensland investigated issues with the Interoperability Program. In February 2025, ARNECC announced that:⁵⁵

- Stakeholders only supported interoperability provided it does not result in significant changes to their existing processes, increase risks or increase costs;
- An in-depth review of the functional requirements for interoperability would develop a
 functional scope for interoperability capable of maintaining an equivalent subscriber experience
 for interoperable and non-interoperable transactions; and
- An updated cost benefit analysis would be commissioned to test whether the direct connect interoperability model continues to be the most appropriate model.

While the reviews of functional requirements and cost benefit are underway, the Interoperability Program remains paused. This pause has now lasted 14 months, and will presumably remain in place until completion of the reviews recently commissioned by ARNECC. This will delay any implementation of interoperability even further.

⁵⁴ Electronic Conveyancing (Adoption of National Law) Amendment Act 2022 (NSW), Sch 1, cl.6; Model Operating Requirements, Version 7, cl.5.7-5.8.

⁵⁵ ARNECC (2025), "Next steps on interoperability", https://www.arnecc.gov.au/wp-content/uploads/2025/02/Next-Steps-on-Interoperability-19-Feb-2025.pdf

The Australian Banking Association recently submitted to a Senate inquiry that it had repeatedly highlighted "deficiencies in the scope of the program, the lack of functionality that interoperability will deliver, and the consequent worse outcomes for consumers". ⁵⁶ Westpac recently noted in a submission to that Senate inquiry that: ⁵⁷

The Australian Banking Association has consistently asked for detailed information on the scope, design and implementation of critical financial settlement items that are required for transactions to occur successfully under the interoperability model. This information has not been provided to banks.

In addition to the current lack of clarity around financial settlement, there are gaps in assurance and documentation regarding the management of key elements, such as technology changes, daily settlement processes, cybersecurity risks, and operational or platform-related issues, with the same level of reliability and certainty as the existing system. There is also no clearly defined process for managing ongoing innovation or coordinating changes across Electronic Lodgment Network Operators (ELNOs) and subscribers in a multi-ELNO environment.

Without this clarity, it is not possible to conduct a full analysis of the interoperability costs associated with the interoperability program. Until these issues are resolved, Westpac is concerned that settlements in an interoperable environment may be disrupted, increasing financial risk and the likelihood of customers being impacted by delayed settlements.

Overall, interoperability has proven much more challenging than expected. This has led to repeated failures to meet interoperability schedules and a blow-out in the original 2 year timeline to a current estimate of a 9 year timeline, as discussed in section 4.5.1 and 4.6.6.

4.3 Economic problems with interoperable competition between ELNOs

Overall, interoperable competition between ELNOs is likely to:

- Result in small if any price reduction;
- Reduce innovation;
- Increase participant costs by undermining network effects that benefit participants;
- Increase industry fixed costs (which would ultimately be passed back to consumers);
- Undermine uniform national pricing, disadvantaging smaller conveyancers and financial institutions; and
- Undermine universal access to services by encouraging cherry-picking.

4.3.1 The impact of interoperability on price

eConveyancing's regulatory framework means that interoperable competition between ELNOs is an ineffective way to reduce prices.

⁵⁶ Australian Banking Association, Submission to Senate Economics References Committee Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, March 2025, p.6

⁵⁷ Westpac, responses to Questions on Notice, Senate Economic References Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing.

PEXA's current fees are based on its initial pricing from 2014, which has never increased in real terms (see above section 3.1). IPART reviewed ELNO pricing in 2019 and concluded that PEXA's pricing was reasonable, 58 suggesting that big price reductions as a result of competition are unlikely.

ASX/ATI Group's Sympli is currently pricing at PEXA's prices less a discount of almost exactly 8% on all items,⁵⁹ which also suggests that large price reductions are unlikely as a result of competition. Sympli has set this pricing even though it is not a full-service network, unlike PEXA that has made many lower return investments in transaction types and jurisdictions with lower volumes. As Sympli's business continues to have substantial cash outflows,⁶⁰ it is not yet clear whether Sympli's current pricing is sustainable in the long-term.

4.3.2 Innovation and standardisation

Innovation in eConveyancing can deliver substantial benefits. But while competition in most industries usually increases innovation, competition through interoperability is likely to stifle innovation in eConveyancing because participants value standardisation so highly.

Box 1: Back end innovation and standardisation in practice – the Autobalance case study

In recent years, PEXA developed a range of special features to improve the productivity of conveyancing participants. These features are not *required* to complete transactions. Instead they provide automation and integration that reduce manual workloads for ELNO customers.

For example, PEXA introduced an Autobalance function, which enables funding providers to pre-set maximum acceptable variances in final settlement amounts when they authorise payment instructions. The feature allows automatic adjustments in cases where mortgage payouts or require equity contributions vary slightly due to late changes in inputs (eg rates payable). Without this tool, participants would need to manually change and reapprove payment instructions, often under critical time pressures. Autobalance reduces administrative costs and also contributes to more transactions settling on time, benefiting consumers.

Autobalance relies on data that can originate from several transaction participants. While this data could (if collected) be exchanged between ELNOs, the Autobalance feature also relies on some users accepting minor variations to settlement amounts determined by the ELNO using proprietary algorithms and processes embedded within the ELNO platform.

If participants use different ELNOs, this function will be degraded unless all ELNOs implement it in the same way with the same business rules. Otherwise participants who rely on this function would need to create a manual back-up process to support interoperable transactions, adding to operating costs and increasing the risk of delayed or failed settlements.

⁵⁸ IPART (2019) Review of the pricing framework for electronic conveyancing services in NSW, https://www.ipart.nsw.gov.au/Home/Industries/Special-Reviews/Reviews/Electronic-Conveyancing/Pricing-regulation-of-electronic-conveyancing-services-in-NSW/29-Nov-2019-Final-Report/Final-Report-Review-of-pricing-framework-for-electronic-conveyancing-services-in-NSW-November-1; since then PEXA's pricing has not increased in real terms even though it has introduced significant platform enhancements.

⁵⁹ Compare Sympli (n.d.) "Our pricing" https://www.sympli.com.au/pricing/ and PEXA (n.d.) "PEXA pricing Schedule Effective from 1 July 2024" https://www.pexa.com.au/pricing/

⁶⁰ See footnote 46.

Many of the recent innovations in eConveyancing (see the examples above at section 3.1) facilitate collaboration between transaction participants. This collaboration typically depends on standardisation so that all participants have common functionality. For example, the Autobalance feature requires a high degree of standardisation to reduce failed settlements and deliver efficiencies to all parties to a conveyancing transaction (see Box 1).

eConveyancing facilitates collaboration between unrelated parties to efficiently execute complex transactions. Each transaction participant is highly reliant on other participants to complete discrete steps so that consistent documentation is produced and information related to the transaction is shared in a timely way. The lodgement instruments and financial settlement instructions created on the ELNO must collectively fulfil a wide range of requirements for lending, transacting, lodgement and settlement. These requirements originate from multiple sources (eg registries, revenue offices, laws, policies and duties of lenders and practitioners) but they fall differently onto each participant.

If one participant uses an ELNO with an alternate processing approach, other participants may be involuntarily impacted if the alternate process does not result in consistent processing, documentation and information flow. Inconsistencies can be highly disruptive for large organisations such as financial institutions that are seeking to standardise and streamline the processing of their transactions. It will also lead to confusion and inefficiencies for smaller organisations that do not have the scale to cope with similar transactions having different processing paths due to the platform choices made by other participants.

Inconsistency can also disrupt advice, guidance and error rectification conducted by platform operators. If there is a problem with a transaction using a single ELNO, all participants are viewing the same interfaces and using the same business rules. They can each obtain assistance from the same source and they can freely communicate with each other. In a multi-ELNO transaction, participants will be viewing different interfaces, using different specialist terminology with different business rules, and they will each be contacting a different help centre.

For these reasons, titles offices, revenue offices, financial institutions, and conveyancers generally value standardisation highly given the costs of maintaining alternative processes. Innovations are typically only of value of them if they are simultaneously adopted by all ELNOs.

The potential costs of differences in wholesale eConveyancing processes have become more apparent to key users of ELNOs over the past 12 months. These users now all argue publicly that the 'back end' of ELNOs' functions should be standardised, and PEXA is unaware of any significant firm in the eConveyancing industry that argues otherwise. Even the new entrant, ASX/ATI Group's Sympli, now argues that the back end should be standardised, and innovation confined to customer services and user interfaces.⁶¹

However, competition makes it difficult to get both standardisation and innovation. A new feature will only be standardised if it is adopted by all ELNOs. If standardisation is required, there is little incentive for one ELNO to innovate because it will be required to make the innovation available to its competitors. If all back end features are standardised, then by definition competitors will simply duplicate back end infrastructure, albeit with the additional costs, complexities and risks of interconnection.

⁶¹ Presentation given by Sympli (Chief Legal & Governance Officer) to the Registrars of Title conference in October 2023.

4.3.3 Increased fixed costs

The costs of introducing competition to wholesale eConveyancing would be high.

The fixed costs of additional ELNOs are high relative to industry revenue, as discussed above in Section 3.2.

Although the NSW Productivity and Equality Commission claimed that the existence of a second ELNO is evidence that the cost barriers to entry are surmountable,⁶² PEXA notes that this is only true if the new entrant proves to be financially viable – and the Commission did not examine the publicly available financials of the new entrant.

The costs to some participants of creating functionality to interact with multiple eConveyancers are also high relative to the benefits of ELNO competition. If there are multiple ELNOs, then financial institutions and conveyancers would need to ensure that their platforms interacted efficiently with whichever eConveyancing platform was used by the other parties to the transaction. The costs of adapting systems in this way are likely to be substantial, even if ELNO platforms are highly coordinated.

The costs to regulators of additional wholesale ELNOs are also substantial. Wholesale competition requires that public regulators take on a number of functions previously performed by PEXA, which will add to the overall cost of eConveyancing, and which may be passed on to consumers if regulators and governments are not prepared to absorb the costs. For example, maintenance of the National eConveyancing Data Standards (NECDS) has been passed from PEXA to a government entity, which has now imposed a levy of approximately \$3 million per year, which ELNOS are entitled to recover through raising charges to users to recoup the cost.⁶³

4.3.4 Undermining universal access to service due to cherry-picking

Some eConveyancing services, jurisdictions and customer segments are not economic to serve, and are effectively cross-subsidised by larger volume services, jurisdictions and customer segments.

New wholesale ELNOs have economic incentives to cherry-pick the most profitable jurisdictions and transactions. ⁶⁴ Cherry-picking may lead to ELNOs not servicing less profitable jurisdictions and transactions, and this may put commercial pressure on PEXA to exit unprofitable markets if competitor ELNOs are not required to also provide universal coverage within a realistic time frame. IPART has acknowledged the problem of cherry-picking, but declined to address it through inter-ELNO pricing, and ARNECC has not yet defined any mechanism likely to deter this selective approach in practice. Although the MOR requires that all ELNOs provide universal coverage, these provisions are difficult to enforce, and in practice new entrants may seek to operate while providing much less than universal coverage for an extended period. ⁶⁵

⁶² NSW Productivity and Equality Commission (2024), eConveyancing market study, p.26

⁶³ See MOR, cl.5.4.4(c)-(d)

⁶⁴ IPART (2023) Interoperability pricing for Electronic Lodgment Network Operators, Final Report, pp. 66-67.

⁶⁵ See PEXA (2023) Submission to IPART, Draft Report into Interoperability pricing for ELNOs, p.19-21.

4.4 Additional risks due to interoperability

Interoperability introduces substantial additional risks to eConveyancing.

For most Australians, property is their largest asset, and property transactions are the largest monetary transactions in their lives. Individuals, and society more broadly, have zero tolerance for loss associated with these transactions. eConveyancing has improved security compared to paper-based dealings and to date has an exemplary record. Maintaining security and national confidence in eConveyancing is essential to a large number of economic and social outcomes. Recognising this importance, in 2023 the Department of Home Affairs recognised the PEXA Exchange as 'Critical Infrastructure' under the Security of Critical Infrastructure Act. The designation as 'critical infrastructure' imposes enhanced security obligations that PEXA is currently implementing.

4.4.1 Multiple ELNO risks and resilience

When interoperability was first developed, it was asserted that competition would increase resilience because if one ELNO experienced an outage, users could easily switch to another to complete their transaction. However, as design work has proceeded it has become apparent that interoperability reduces resilience because in any transaction involving more than one ELNO, if one ELNO is down, then all are down. In practice, participants will be unable to switch to another ELNO during outages or disruptions because documents and details that are in flight are contained within each ELNO. Transactions can only proceed if each and every ELNO participating in a transaction is operating and connected to all participants involved. With more ELNOs involved in a transaction, the opportunity for failure increases.

4.4.2 Settlement failures

Interoperability increases the risk of settlement failures because the level of technical complexity is much higher, and valuable automation tools may be degraded or become non-functional if they are not implemented by all ELNOs. It will take longer to fix each failure because there will be no longer be a central body with the skills, responsibility or authority to expedite resolution of failed settlements, missing funds or technical outages. Responsibility will be distributed, leading to significant delays, confusion and frustration across the ecosystem.

Interoperability also reduces resilience because it depends on the continued functioning of more than 60 individual APIs between ELNOs. If any one of these APIs has a defect or communications impediment, then all interoperable transactions may be impacted.

4.4.3 Cyber risks

A report prepared independently for PEXA by Cyber CX, found that the risks of tampering / repudiation, information disclosure and non-availability risks would also be greater in a multi-ELNO environment. These risks include:

- Inter-ELNO message spoofing to commit financial fraud, because it would be harder for an ELN
 to verify or trust that messages purporting to be from the subscriber of another ELN are in fact
 from a valid subscriber that is properly authorised to represent the party for which they have
 digitally signed documents;
- Proceeding with transactions processed by a subscriber whose authority has been revoked, because it would be harder for an ELN to verify whether a subscriber's authority has been revoked by another ELN;

⁶⁶ ARNECC (2021), Regulation Impact State: Options for promoting competition in the market for electronic lodgment network operators, p.15. CIE (2020) Addressing market power in electronic lodgment services, p.44-45

- A data breach in one ELNO impacting other ELNOs (e.g. an ELN may share personal information across a workspace to another ELNO, which then discloses that information in a data breach);
- Reduced incentives to adequately invest in protecting data because the weakest ELNO would effectively set the standard of vulnerability for all other ELNOs; and
- A greater cyber-attack surface, particularly the additional gateways for inter-ELNO transactions, which would be vulnerable to interference by foreign governments or criminal organisations.

The multi-ELNO environment also reduces control over these risks because there would not be a single organisation responsible for:

- Centralised coordination responsible for identifying and resolving transaction failures and outages, and investigating and mitigating the root causes to prevent future outages; and
- Centralised oversight and control of data to adequately monitor and discover fraud and tampering.

Further risks are introduced because PEXA has been designated as Critical Infrastructure, and other ELNOs not so designated are likely to be weaker links in the network. This may lead to ELNOs designated as Critical Infrastructure imposing additional requirements before they trust transactions (data and information) from ELNOs not designated as Critical Infrastructure. This would add further complexity and cost to eConveyancing.

4.5 Implementation problems with interoperability

Interoperability between ELNO systems turned out to be a great deal more complicated than interoperability between traditional networks such as telecommunications. An ELNO does not just convey information from one subscriber (a conveyancer or a bank) to another. The information that subscribers interact with is extensively processed by the ELNO's platform to create compliant and consistent registrable instruments, to ensure settlements are authorised, reliable and secure, and to increase the efficiency of interactions between parties to the transaction.

A large number of issues have arisen in practice as ARNECC attempted to implement its Interoperability Program.

4.5.1 IT design and timeline

Regulators have consistently **under-estimated the complexity** of implementing interoperability, and therefore the time required to do so, in part because regulators do not have a full understanding of the functionality of eConveyancing systems.

The **increase in the complexity of the IT systems** to implement interoperability is illustrated by the required number of APIs (Application Programming Interfaces) required for implementation. ARNECC's early presentations suggested 5 APIs would be needed. ARNECC now estimates that more than 70 will be required.⁶⁷ PEXA has attended over 260 three-hour design workshops conducted by ARNECC to design the APIs and data standards needed to make the original scope of interoperable eConveyancing operational. Even after this effort, the design is far from complete: only 32 of the 52 APIs identified for Release 1 have been baselined.

⁶⁷ ARNECC, Ministerial Forum: National Electronic Conveyancing – Towards a sustainable, competitive national electronic conveyancing market (28 February 2023), https://www.arnecc.gov.au/wp-content/uploads/2023/03/Ministers-Statement.pdf. ('ARNECC, Ministerial Forum February 2023'), p. 1

Because the scope of the original interoperability program turned out to be significantly more complex than originally expected, the time to implement has been much greater than originally forecast, as shown in Figure 7. What was originally estimated to be a 15-month project blew out to an estimated 5-year project – and that estimate was itself optimistic. When all jurisdictions committed to interoperability reform in September 2020, they expected an operable system within 15 months, by December 2021. In June 2024 – almost 4 years after the interoperability program commenced – ARNECC's official estimate was that interoperability would still not be operative in Queensland and NSW for another 18 months (i.e. December 2025 – this was before the Interoperability Program was paused).

PEXA's view was that the amended timetable was still not realistic. There were substantial unresolved scope issues detailed further below in section 4.6. While detailed planning had been completed for interoperable <u>refinances</u> by July 2025, to the best of PEXA's knowledge no detailed project plan had been prepared for implementing and delivering interoperable <u>transfers</u> by December 2025. On its face this timetable was improbable: it implied that the delivery of interoperable <u>refinances</u> required a further 12 months (and a total implementation period of 2 years), but the implementation of interoperable <u>transfers</u> would occur less than 6 months later, even though transfers are inherently much more complex eConveyancing transactions than refinances.

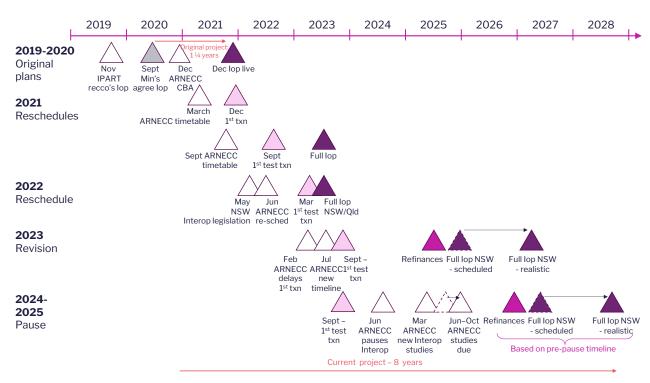


Figure 7: Timeline for implementation of original scope of interoperability

Note: This timeline is based on the original scope for interoperability. If 'functional equivalence' scope is added to interoperability, then the timeline will extend further, as discussed below in section 4.6.6.

⁶⁸ PEXA Commission Submission, p.25

4.5.2 Trust accounts

There are significant issues with trust accounts in an interoperable environment.

Solicitors' trust accounts, and the authorisation of payments from them, are heavily regulated. It is not clear that a Responsible ELNO can validly process a payment from a solicitor's trust account if it has not been directly authorised by the solicitor to do so, but is merely relying on the solicitor's authorisation to another ELNO.

Multiple entities, including PEXA have made numerous submissions to ARNECC on this topic. The issues of reliance and non-repudiation remain unresolved.⁶⁹

4.5.3 Financial settlement management

Approximately \$3b in payments flows through PEXA's eConveyancing platform each day. In a multi-ELNO environment, governance is required to assign responsibility for and resolve issues with failed, unauthorised, or misdirected payments.

Currently, no government regulator is responsible for payments through eConveyancing platforms. Under the proposed approach, there will be no government body for subscribers to approach for help with a failed transaction and no single ELNO would be clearly accountable. There would also be no formal assignment of liabilities between parties and no government body accountable for the overall performance and security of financial flows in eConveyancing.

Before interoperability is implemented, a regulatory regime to govern financial settlements in an interoperable environment needs to be investigated, designed, and procured.

4.5.4 Other operational issues

A range of operational issues arise with interoperability that have not been considered in detail because the interoperability program has focused on defining the required IT capability. These operational issues include

- Users opening and commencing work on a workspace on different ELNOs, leading to multiple workspaces for the same matter;
- · Changes to invitation processing; and
- Settlement reconciliation processing.

⁶⁹ See NSW Office of the Registrar General (ORG), Handling of funds in an interoperable ELN environment, a developed for the joint NSW/SA Interoperability Project (authored by ORG before ARNECC took carriage in late 2020), 17 January 2020; NSW Office of the Registrar General (ORG), Trust accounting and interoperability Circulation, 17 June 2021; Law Council of Australia, Submission to the Parliamentary Inquiry into Electronic Conveyancing (Adoption of National Law) Amendment Bill, https://www.parliament.nsw.gov.au/lcdocs/submissions/77859/0009%20Law%20Council%20of%20Australia.pdf (sections 12-18), 11 March 2022; NSW Parliament Legislative Council, Customer Service and Natural Resources, Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022, Portfolio Committee No.4 Report no. 51, April 2022; PEXA Submission to ARNECC, Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 (Amendment Bill): Feedback Issues requiring further clarification from stakeholders, 9 June 2022; anonymised responses in Feedback to ARNECC's Consultation Draft of MPR version 7 (https://www.arnecc.gov.au/wp-content/uploads/2024/01/Model-Participation-Rules-Version-7-Consultation-Draft-7-Feedback-Table.pdf) (Row 13) raises the concern that change to the regulatory framework is "necessary to support trust account authorisation and reliance", January 2024

4.5.5 Governance issues

Interoperability introduces substantial new operational issues if transactions involving multiple ELNOs fail. Failures might be caused by unforeseen format changes, atypical transactions, NECDS upgrades, or system outages or participant system outages (particularly land registries, revenue offices, and financial institutions). A central governance regime is required to ensure that such issues are resolved between ELNOs.

Similarly, in an interoperable environment, centralised mechanisms that coordinate all ELNOs and other participants are required to maintain business continuity, to restore failed services, and to manage crises.

Each jurisdiction also needs to manage the process of uplift to new versions of the NECDS. Central management is required to enable each State to test and then implement a new version of the NECDS. If NECDS are transferred to NECDS Co, then NECDS Co will need to manage this function.

NECIDS upgrades will also need to be centrally managed and coordinated. These upgrades will be significantly more complex if there are multiple ELNOs.

Central governance regimes need to be designed and resolved to deal with these issues before interoperability is implemented in practice. This work remains outstanding.

4.6 Scope expansion – "functional equivalence"

One of the primary challenges for the interoperability program is that the scope has shifted over time, and has never been settled. When the scope of a large project is not defined clearly, it is common for timeframes and costs to blow out, as they have with interoperability.

4.6.1 ARNECC decision to expand scope in 2023

Even though the original scope of the interoperability program turned out to be significantly more complex than originally expected, regulators chose to substantially expand the scope of the program in 2023, as shown in Figure 8, to add the requirement that interoperability provide "functional equivalence" (also defined in regulator statements as an "equivalent Subscriber experience" and in the MOR as providing "equivalent... performance").

Figure 8: Changes in scope for interoperability program

	2019 original scope: Basic eConveyancing functions	2023 expansion: "Functional equivalence"	2025 CBA 4 new models inc "Practitioner Choice"	Future changes
Motivation	Customers will only choose Sympli if transaction works even if other customers choose PEXA	Extra functionality needed to minimise transaction failures and to keep automated functionality working in interoperable txns	Banks concerned with interoperability; Sympli lobbies for new "Practitioner first" model	Incorporate new PEXA innovations to work in interoperable transactions
Formal definition	Interoperability "enables" a subscriber "to complete" a conveyancing transaction (National Law June 2022)	 Similar customer experience for interoperable and non- interoperable txns Interoperability must provide "Equivalent Performance" (MOR 7, Jan 2024) 	 4 new models proposed Practitioner Choice model specified in just 113 words 	No process specified to incorporate future innovations
Functionality	Functionality necessary for an interoperable transaction	Function list identified by Sympli: "contested items"	PEXA provides all true ELNO functionality unless buyer and seller both use Sympli and no mortgage	Future innovations by any ELNO
Examples	Invitations, workspaces, titles, documents, attachments, financial line items, messaging	 Status indicators: E.g. Ready for surplus, authority for shortfall Orchestration: E.g. events triggers, alerts Collaboration: E.g. Document sharing, Loan docs received Enhanced features: E.g. Autobalance, Linked settlements, Ready to book, PEXA Planner 		Tracker for broker
Legal issues	par	(A has substantial IP claims, ticularly internal business rules I implementation design		Subject to future IP claims

The original scope for interoperability as envisaged in 2019, and then legislated in 2022, was to enable:⁷⁰

- 'a subscriber using an ELN (the **first subscriber**) to complete a conveyancing transaction that involves a subscriber using another ELN without the first subscriber having to be a subscriber to the other ELN'; and
- the preparation of a registry instrument or other document in electronic form using data from a different ELN'.

⁷⁰ Enshrined in the definition of 'interoperability' in *Electronic Conveyancing National Law*, s.2.3, as amended in 2022.

Under the original scope, interoperability was effectively defined as the functionality *necessary* to enable an interoperable transaction. Discussions at the time centred around functions such as invitations, workspaces, titles, documents, attachments, financial line items, and messaging.

Regulators attempted to substantially increase the scope of the interoperability program mid-flight in November 2023. ARNECC decided, without engagement with PEXA, and without a regulatory impact assessment, that interoperability "must maintain or enhance the customer experience", 71 and ARNECC recently described this aim as providing an "equivalent subscriber experience for interoperable and non-interoperable transactions". 72 ARNECC amended the MOR to require that interoperable transactions provide "Equivalent... Performance". 73 As a result, ARNECC added to the interoperability program a variety of PEXA features that were not required for lodgement, but which were said to be needed for what financial institutions described as "functional equivalence". 74

Adding this functionality to the interoperability program aimed to reduce failures and automate functionality, particularly in bank systems. Interoperability was no longer just about enabling a transaction to proceed with multiple ELNs; instead it required that whatever functionality was available on one ELN would work the same way if another ELN was also involved. This new definition appears to proceed on the basis that "whatever PEXA's platform does, should be interoperable".

Although Sympli has recently argued that the interoperability program always included a functional equivalence requirement, ⁷⁵ this was clearly not the understanding of those working on the program. The APIs scoped and workshopped before 2023 did not include the functionality required to deliver it – and in general the APIs that would be necessary have still not been scoped, let alone designed in detail.

4.6.2 Contest over additional interoperability scope

PEXA and ASX/ATI Group's Sympli have contested whether a number of PEXA's existing functions should be included within the scope of interoperability (known as "contested scope items"). There may also be other PEXA functions ("unincluded items") that have not been included within the scope of interoperability and are not contested items, which will have the consequence that an interoperable transaction will provide less functionality to Subscribers than PEXA's current non-interoperable system.

In general, contested and unincluded items are not *necessary* for lodgment or settlement. Most of them manage functions internal to a specific Subscriber, manage direct interactions between Subscribers, or manage interactions between a Subscriber and a body (such as the ATO) that is not a land registry, revenue office or financial institution, prior to lodgment and settlement occurring. In most cases, PEXA developed them in response to customer need after PEXA had built the basic functionality that enabled lodgment and settlement of a conveyancing transaction.

Contested scope items include:

- Attachments (allowing Subscribers to share non-lodgement documents such as rates notices through the eConveyancing platform);
- Linked settlements (managing simultaneous settlements and linked sequential transactions);

⁷¹ ARNECC (2023), *Scope for interoperability releases settled*, https://www.arnecc.gov.au/wp-content/uploads/2023/12/ARNECC-Statement-Scope-for-interoperability-releases-settled.pdf

⁷² ARNECC (2025), "Next steps on interoperability", https://www.arnecc.gov.au/wp-content/uploads/2025/02/Next-Steps-on-Interoperability-19-Feb-2025.pdf

⁷³ MOR 5.7.7(b), introduced by version 7 of the MOR in January 2024.

⁷⁴ See for example Australian Banking Association submission to Senate inquiry, p.3

⁷⁵ Sympli, Supplementary Submission to Senate Economics References Committee Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, p.17

- Autobalance (calculating and automatically updating minor variations to settlement payments within prescribed limits so that transactions can proceed without re-authorisation see Box 1 in section 4.3.2);
- Ready to book (automatically setting a settlement date for refinances based on financial institution parameters and other factors); and
- Automated messaging and orchestration (e.g. automatic messages to a Subscriber based on activity or status of other participants that either prompt automated activity on the Subscriber's system, or alert the Subscriber to intervene manually).

Despite PEXA's arguments (outlined below in sections 4.6.4-5) that these contested scope items are beyond legislative power, would require PEXA to surrender intellectual property without just compensation, and would create substantial operational issues, ARNECC approved a scope for the technical solution for interoperability in October 2023',⁷⁶ in a statement headed 'Scope for interoperability releases settled'.⁷⁷ An amendment to the Model Operating Requirements in January 2024 required that an ELNO must 'ensure that the standard of performance of its ELN in an Interoperable Electronic Workspace is equivalent to the performance of its ELN in an Electronic Workspace that is not an Interoperable Electronic Workspace.'

This scope creep created a large number of issues. As indicated in ARNECC's submission to the Senate Committee in 2025, ARNECC 'has been unable to design a scope for interoperability that is acceptable to all ELNOs and industry participants.'⁷⁸

4.6.3 Further consideration of contested scope in 2025

Following the pause in the interoperability program in July 2024, and a review of interoperability on behalf of ARNECC conducted by Titles Queensland in 2024-2025, ARNECC commissioned a 'Functional Requirements review' to consider the intellectual property, legislative power, and operational issues raised by the additional functional equivalence scope imposed in 2023.⁷⁹ This review is currently underway.

4.6.4 Legislative power

The legislative provisions that mandate interoperability may not be a sufficient basis for ARNECC to require the inclusion of the contested scope and unincluded items in the scope of interoperability. Legislation requires interoperability between Electronic Lodgment Networks (ELN).⁸⁰ An ELN is defined as "an electronic system that enables the lodging [and preparation] of registry instruments and other documents in electronic form for the purposes of the land titles legislation".⁸¹ However, the contested scope items are generally functions that are *not* required to lodge or prepare registry instruments – it is quite possible to do so without them. Instead the contested scope items generally facilitate interactions between participants that are incidental to, and usually occur prior to, lodgment and settlement.

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⁷⁶ ARNECC Submission to Senate Economics References Committee Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, para.74.

⁷⁷ ARNECC statement (2023), 'Scope for interoperability releases settled', www.arnecc.gov.au/wp-content/uploads/2023/12/ARNECC-Statement-Scope-for-interoperability-releases-settled.pdf

⁷⁸ ARNECC Submission to Senate Economics References Committee Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, para.75.

⁷⁹ ARNECC (2025), "2025 Reviews Project Update" https://www.arnecc.gov.au/wp-content/uploads/2025/07/ARNECC-Announcement-2025-Reviews-Project-Update-23-July-2025.pdf

⁸⁰ Electronic Conveyancing National Law, s.18A.

⁸¹ Electronic Conveyancing National Law, s.13.

4.6.5 Intellectual property

Adding functional equivalence to the scope of interoperability created new issues for PEXA's IP. Seeking functional equivalence to enable competition is akin to requiring that Google share its algorithms with Microsoft in order to help Microsoft to compete more effectively because consumers and advertisers would get the same search results on all search engines.

Many of the contested scope and unincluded items embody PEXA's intellectual property. To make many of them interoperable, PEXA would need to disclose confidential information, and interoperable transactions may depend on other ELNOs using PEXA's proprietary intellectual property. PEXA is not prepared to surrender its intellectual property unless it is compensated on just terms. To the extent that the interoperability legislation requires PEXA to disclose or allow the use of intellectual property, it would only be valid if PEXA was provided with compensation on just terms.

There is no merit in Sympli's claim that many of PEXA's innovations were not innovative or new because they are similar to steps in paper-based conveyancing.⁸² This is analogous to the claim that there is no innovation in Google's search function for business contact details because the same function could be performed using the yellow pages.

In fact, in the agreements that sold PEXA to private ownership, State and Territory governments specifically warranted that the sale included all intellectual property necessary to continue to operate the PEXA platform. PEXA has since further developed that intellectual property by its own investment.

PEXA's system comprises valuable intellectual property. Clearly, PEXA and other ELNOs own copyright in the software underpinning their eConveyancing platforms under the *Copyright Act 1968* (Cth). In addition, PEXA and other ELNOs own valuable intellectual property rights in their confidential information in the form of 'know-how' and trade secrets in respect of 'back-end' information, complex process-flows and decision logic developed in respect of their respective platforms.

If the interoperability reform requires PEXA to exchange a significant amount of confidential data and know-how to enable another ELNO to facilitate the maintenance of that functionality, this would:

- allow a competing ELNO to simply replicate PEXA's technology; and
- be detrimental to innovation as it would enable competing ELNO's to replicate PEXA's technology rather than develop their own bespoke features.

For example, PEXA's system includes a transaction orchestration engine that incorporates inputs from subscribers, and ensures the generation of internally consistent outputs, resolving any discrepancies between inputs from subscribers. The complex business rules to do so were developed for each transaction type. They were not formalised as part of paper-based conveyancing processes, and many of them have no paper-based analogy.

⁸² Sympli, Submission to Senate Economics References Committee Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, March 2025, para 19; Sympli, Supplementary Sympli, Submission to Senate Economics References Committee Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, June 2025, p.10; Transcript, Senate Economics References Committee Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, September 2025, p.19

In addition, PEXA has added to its system over the past few years a substantial number of innovations to facilitate subscriber workflow, improve security and provide tailored operational information (see section 3.1), such as the Autobalance function (see Box 1 in section 4.3.2). PEXA's implementation of these functions incorporates a broad range of confidential business rules and IT approaches. Many of these features are novel, confidential to PEXA and are the result of considerable investment that is protected by intellectual property rights. The expansion of the scope of interoperability to deliver 'functional equivalence' was designed precisely to capture many of these innovative features. For example, in order to enable interoperable functionality:

- for Autobalance, PEXA would need to reveal what internal business rules it has devised for that functionality about when an autobalance will and will not be permitted;
- for Linked settlements, PEXA would need to reveal how it has designed the payment flows for those links where multiple designs are possible; and
- for Ready to book and other automated bank functionality, PEXA would need to reveal the business rules and conditions that govern which automated messages are sent to financial institutions, and when those messages are sent.

At a more holistic level, it is implausible that PEXA has no substantial IP claims in a large and complex IT system that has cost many hundreds of millions of dollars to develop, and which supports an eConveyancing system that lacks analogies around the world – except in jurisdictions such as the UK, where PEXA is trying to introduce it.

4.6.6 Time implications of additional functional equivalence scope

The additional scope of functional equivalence adds substantially to the costs and complexity of interoperability, and will consequently further extend the costs and timelines which are already substantially greater than the original estimates. As shown in Figure 9, PEXA's high level estimate is that the additional scope of functional equivalence will take an additional 18 months to design, build, test, and implement. This estimate may well extend further with additional investigation. On this basis, the interoperability project would take 9 years to implement.

2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 Dec 2019-2020 Interop live Original Nov Sep Min agree plan IPART recco Interop to Interop March Dec 2021 ARNECC timetable 1st txn Reschedules Sept Sept Interop ARNECC t'table 1st test txn 2022 Jun Mar Interop transfers Reschedule ARNECC resched 1st test txn NSW/Qld 2023 Revision Sept -Re-finances Interop transfers Interop transfers Jul ARNECC new timeline 1st test txn in prod NSW - sched 2024-2025 Sept -Mar Oct-Nov Jun Re-Interop Interop Pause 1st test ARNECC Titles Q ARNECC finances tranfers transfers NSW txn pause Interop studies NSW - sched - realistic studies likely Based on pre-pause timeline 2023-2025 Additional ARNECC 'equiv Study reports Interop transfers Equiv exp scope 'equivalent likely
Current project - 9½ year exp'scope NSW - realistic NSW - realistic experience' scope

Figure 9: Timeline for implementation of functional equivalence scope of interoperability

Note: Assumes that scope studies conclude and ARNECC makes decision to proceed in December 2025, recommencing Interoperability program, and development of functional equivalence functionality. PEXA high level estimate that functional equivalence scope will require 18 months to design, build and test – may well extend further with more detailed investigation.

4.7 Overall cost-benefit of interoperability

The original cost-benefit analysis of interoperability completed by the Centre for International Economics in 2020 only found limited benefits. The study concluded that interoperability would deliver net present value benefits of \$84m over 10 years, 83 equivalent to less than \$10m per year. Even if true, this is a very small return relative to the complexity of the reform, and it did not propertly account for the increased costs to ELNOs, banks, land titles offices, RBA, ATO and regulators, and the increased cost of governance required for a multi-ELNO industry.

The assumptions in the Centre for International Economics report, particularly its assumptions about the costs of building an eConveyancing platform, were contested at the time.

It has become clearer with the passage of time that many of the original assumptions that underlay the cost-benefit analysis of about interoperability have been contradicted by real world experience:

- The interoperability system is more complex and expensive to deliver than first expected, and timelines and costs are continuing to blow out;
- Interoperability will not promote greater innovation because it has emerged that standardisation is essential to the effectiveness of back end functionality;
- The interoperable system will have less, not more, functionality than PEXA's current platform and change requests will also be significantly more complex, requiring ARNECC to oversee and co-ordinate operational aspects of changes across ELNOs;

⁸³ Centre for International Economics (2020), Addressing market power in electronic lodgment services: Cost-benefit analysis

- Interoperability will have substantial impacts on participants as it has emerged that many will need to modify their systems to accommodate the systems of new entrants;
- Issues with financial settlement regulation have emerged that will be difficult to resolve;
- The interoperable market creates an unstable industry structure not originally identified, including unresolved problems of cherry picking, free-riding and self-preferencing;
- Security and stability will be worse, not better and a full end-to-end security assessment of interoperability still has not been completed; and
- Legal issues have become more obvious, not least that ARNECC's objectives for interoperability
 will only be workable if ARNECC is prepared to impose obligations on PEXA that go beyond the
 authorising provisions for interoperability and compel PEXA to surrender its intellectual
 property for which it would need to be compensated.

Even if it is efficient for users to employ different ELNOs, the additional costs of interoperability may outweigh the benefits.

Introducing interoperability has resulted in substantial costs to PEXA, and to other stakeholders. Up to June 2025 PEXA has spent \$22.5m on interoperability, with significant work still required to deliver a fully functioning system. PEXA estimates that it will spend a further \$38m on interoperability over the period to June 2030. This is well in excess of ARNECC's estimates of costs, but a similar order of magnitude to PEXA's initial estimates in 2019 of the costs of introducing interoperability. ⁸⁴ Unlike PEXA's initial estimates in 2019, PEXA's current estimates of the future costs of interoperability take into account the substantial increase in scope introduced in 2023 that require that interoperable transactions operate on an "equivalent basis", delivering an 'equivalent experience' so that the user experience is identical, whether or not a transaction is interoperable.

These costs (including the costs of reviewing the scope of interoperability) will ultimately be borne by consumers. PEXA incurred costs as a result of its legal obligation to participate in ARNECC's interoperability program. Consequently, PEXA is entitled to recover these costs, and they should be included in the cost base when assessing regulated prices for eConveyancing. PEXA intends to include the historic and estimated future costs of assisting in the design of interoperability, and building systems to deliver it in its estimates of efficient operating expenditure and capital expenditure in its pricing submission to IPART.

IPART has previously recommended that "the costs of establishing and maintaining interoperability should be recovered from an ELNO's subscribers through ELNO service fees." If PEXA's costs are amortised over five years amongst all subscribers, then the additional costs would be approximately \$10 per transaction. While PEXA supports the principle of nationally consistent pricing, if these costs were amortised over five years amongst NSW and Queensland subscribers only (on the basis that these were the only jurisdictions that committed to interoperability), then the additional costs would be approximately \$19 per transaction. The additional costs of interoperability would be even higher if the costs of other ELNs are included.

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⁸⁴ See PEXA, Response to IPART Draft Report: Review of the Pricing Framework for Electronic Conveyancing Services in NSW, https://www.ipart.nsw.gov.au/sites/default/files/documents/online-submission-property-exchange-australia-ltd-j.-schmitt-3-oct-2019-172500000.pdf, p.5-6

⁸⁵ IPART, (2023), *Interoperability pricing For Electronic Lodgment Network Operators: Final Report*, https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Final-report-Interoperability-pricing-for-Electronic-Lodgment-Network-Operators-June-2023.PDF, p.15

⁸⁶ Based on PEXA's estimated costs of \$60m, and 1.2m transactions per year.

The costs of regulating an interoperable market are materially higher. Interoperability also increases cybersecurity risks and transaction failure, which could impose extremely high costs on users (see above section 4.4).

4.8 2025 proposals to further change the scope of interoperability

In 2025, ARNECC indicated that it would re-evaluate the cost benefit of interoperability. As part of this evaluation, ARNECC signalled the potential for further changes to the scope of the interoperability program.

In July 2025, ARNECC issued a Terms of Reference for a Cost-benefit Analysis,⁸⁷ that requested analysis not only of the direct-connect interoperability model, but four other market structures including:

- A "practitioner choice" model
- An enterprise service bus (ESB) between ELNOs
- A wholesale/retail or hub-ELNO model
- An enterprise service bus (ESB) between all connected entities

Even though the description of these structures is extremely high level (the longest description of any one of these structures runs to 113 words), ARNECC has asked that their costs and benefits be assessed, and it appears that ARNECC may decide to pursue one of them in preference to the direct connect interoperability model. The potential impacts of these models on industry costs and market shares remain very uncertain.

The "practitioner choice" model proposed by ARNECC appears to reflect Sympli's recent announcement calling for a practitioner-first initial release of interoperability. To date, consistent with Sympli's position, the interoperability program has explicitly prioritised refinances. Because refinances involve banks and do not involve a transfer of title, it has been a "financial institutions first" model. The shift in priorities for the interoperability program to "practitioner first" is consistent with Sympli failing to engage enough financial institutions as potential customers for interoperable refinance transactions, and now seeking to have regulators re-define the interoperability program, in the hope that ATI Group entities will be able to self-preference their practitioner customers to use the Sympli gateway.

A practitioner-first model would be a substantial shift in priorities for the interoperability program. Much of the work completed to date – which has focused on refinances that do not involve practitioners would not be used in a practitioner-first model. Instead, the interoperability program would have to shift to focus on transfers (which are inherently more complex than refinances). The shift in priorities is only plausible if Sympli is in fact proposing that almost all of the eConveyanicng functions continue to be performed on PEXA's platform with minimal reference to Sympli's platform – which is inconsistent with Sympli's claim that it should receive almost all of the practitioner's Subscriber Fee for an interoperable transaction.

⁸⁷ ARNECC, Cost-benefit Analysis – Terms of Reference, https://www.arnecc.gov.au/wp-content/uploads/2025/07/Cost-Benefit-Analysis-Terms-of-Reference.pdf

⁸⁸ Sympli, Sympli calls on Government to enable choice through a 'practitioner-first' interoperability release, 6 June 2025.

It is unclear whether under the practitioner-first model:

- a Participating ELNO is just a post-box collecting most of the subscriber fee without materially contributing to the orchestration of the transaction; or
- there are substantial interactions between subscribers on different ELNO platforms that will
 raise virtually all of the problems encountered with the current direct connect interoperability
 model.

On the first view, a Participating ELNO collects information from practitioners and passes this to the PEXA platform. PEXA's platform would then manage the interactions between subscribers, creating the relevant documents; controlling permissible entries, flagging any inconsistencies, and notifying participants of relevant changes of state in the workspace (via the Participating ELNO postbox where the subscriber uses the Participating ELNO.) Under this model, the Participating ELNO would not perform functions materially different to practice management systems that already integrate through APIs directly to PEXA's platform, effectively bypassing PEXA's user interface. Sympli envisages⁸⁹ that for its services it would receive the entirety of the Subscriber Transfer Fee (Sympli currently charges \$130) less the Default RELNO charge (set by IPART at \$6.80) even though the Sympli system would provide almost none of the functionality required for the transaction. This is effectively a request for regulatory intervention and pricing that would give the Participating ELNO a substantial and unfair price advantage over other practice management systems that have no claim on the Subscriber Fee. In effect, it would also be a large and arbitrary regulatory transfer of value from PEXA to Sympli. There is no reason why a Participating ELNO performing this limited postbox function should be entitled to any of the practitioner Subscriber Fee.

While ARNECC's diagram for the Practitioner Choice model suggests that all ELNOs are providing significant functionality, this obscures the reality. If the model is redrawn to focus on interoperable transactions, then it appears that the 'Participating ELNO' is not providing significant functionality, and is effectively a postbox. The commercial reality is that PEXA is a full service ELNO able to service nearly all types of transactions in all jurisdictions, and there is only one other ELNO, Sympli, which only publicly offers transfers in NSW – where it services just 1.1% of transactions. As a result, in practice PEXA will be the Responsible ELNO for all interoperable transactions, and there will never be a third ELNO.

⁸⁹ Sympli Supplementary Submission, p.3, fn.5

ARNECC "Practitioner Choice" model Reality for interoperable transactions RO RO Subscribers

Figure 10: Activity under ARNECC's 'Practitioner choice' model for an interoperable transaction

Practitioners (Lawvers ELNO 2 ELNO 2 (Participating) (Participating) Subscribers Subscribers ELNO1 ELNO1 (Responsible) FI NO 3 (Participating) Ba1nks (for Banks (for settlement) settlement)

Source: ARNECC, Cost-benefit Analysis – Terms of Reference, Model 2

It is possible that in this postbox model, the Participating ELNO, unlike practice management systems, might register practitioners, authenticating both the firm and the individual conveyancer. While this is theoretically possible, it is a very small fraction of ELNO operation, and not obviously an area where innovation would deliver substantial customer value, whilst it would add considerable complexity to PEXA's operations, and create opportunities for fraud that might be costly to control.

On the second view, a Participating ELNO would also create documents and interact (via the Responsible ELNO) with other subscribers to the transaction. The unique features of the Responsible ELNO would be its connections with banks as mortgagees, banks as transaction institutions, land registries, revenue offices, and other government agencies such as the ATO. This model would encounter almost all of the difficulties that have been raised with the current direct connect interoperability model. Almost none of these difficulties are a consequence of the final lodgment of documents and the final transfer of funds at the conclusion of a transaction. Instead, they are almost all a consequence of PEXA's functionality that facilitates interactions between participants before the actual transaction occurs. Often this functionality depends on business rules developed by PEXA, whose operation depends on the status and actions of different parties – including buyers and sellers (who may be using the Participating ELNO) and financial institutions (who will be using the Responsible ELNO). For example, some automatic messages to mortgage banks from PEXA's platform depend on the actions and status of the buyer and seller. The development of direct connect interoperability has found that managing these interactions when different ELNOs are involved often creates cumbersome additional operational requirements, and may only be feasible if PEXA discloses system functionality that is its intellectual property. In any case, the Responsible ELNO would continue to be responsible for the vast majority of the functionality in the transaction, but nevertheless Sympli is proposing that it would earn the majority of the revenue.

The Practitioner First model – and the pricing that Sympli has proposed for it – would lessen effective competition in other parts of the conveyancing value chain. The MOR rules that limit PEXA's ability to self-preference upstream into practice management systems do *not* limit ATI Group's ability to self-preference downstream from practice management systems into an ELNO.

The Practitioner First model would create a significant advantage for a practice management system (like LEAP and Smokeball) and a bulk conveyancer (like Settle IT) that were related to an ELNO (like Sympli). Other practice management systems and bulk conveyancers would integrate directly with PEXA using existing systems, but would receive none of the Subscriber fee. By integrating with PEXA via Sympli, the ATI Group would receive substantially more revenue, even though PEXA effectively only provided the same integration functionality to LEAP/Settle IT/Sympli that it provided to other practice management systems and bulk conveyancers. ATI Group entities already have a dominant position in practice management systems, and the regulatory intervention suggested for Practitioner First would provide them with a regulatory advantage not available to other practice management systems, substantially lessening competition in this market. The regulatory structure would also give Settle IT and other bulk conveyancing systems related to the ATI Group a substantial advantage relative to their competitors. There is no policy justification for an intervention in the eConveyancing market that effectively reduces competition in the much larger markets for practice management systems and bulk conveyancing.

4.9 Other pathways for competition in eConveyancing

Whether or not interoperability is ultimately successfully implemented, and whatever the form of that interoperability, competition may emerge in the eConveyancing market in other ways. eConveyancing is a relatively new market; the technology is evolving, and business models and service offerings are also evolving.

For example, new entrants might focus on offering eConveyancing for a discrete set of simpler transactions such as single party transactions, or refinances. This would compete with PEXA's offerings for these simpler transactions, without requiring investment in the full functionality that PEXA offers.

Around 15% of eConveyancing transactions only involve only one party. These include lodgement or discharge of a mortgage with a property that the customer already owns, lodgement of caveats and "residual" transactions (such as a transfer to a deceased estate). These single-party transactions could be competitively offered by a new entrant even if it did not interoperate with PEXA.

A larger opportunity would be to provide refinance capability to the five largest financial institutions. A new entrant would be able to service most eConveyancing refinance transactions even if did not interoperate with PEXA provided that both financial institutions were customers

PEXA notes that in theory such specialised offerings are not permitted by the current MOR, which requires all ELNOs must be "full service" ELNOs that enable lodgment of <u>all</u> major instruments (such as transfers, mortgages, caveats, and priority notices) in all jurisdictions. ⁹⁰ In practice, however, ARNECC has permitted Sympli to offer much less than a full service for many years so long as it has a Business Plan to move to a full service offering at some point in the future. Given the current uncertainty of market structure it is possible that ARNECC may remove the full service requirement in the MOR at any time.

The full-service requirement was designed to prevent cherry-picking, but it has also had the effect of limiting entry of competitor ELNOs to Sympli with business models that did not depend on regulatory intervention and interoperability.

⁹⁰ Model Operating Requirements, cl.5.2.1

Changes in technology might provide further opportunities for competition in eConveyancing. eConveyancing is fundamentally a disruptive industry: PEXA disrupted the paper conveyancing industry through investment in the technology that enables eConveyancing. This technology has continued to evolve since its development. Given the rapid development of technology in eConveyancing, it may be that competition arises because a competitor to PEXA develops new technologies or new systems. For example, in online classified markets, early technology disruptors in seemingly attractive market positions are facing new business models and technology that in a short period challenge their position. ⁹¹ There are also examples in the property industry of new business models and technology emerging such as fractional ownership and real estate tokens, ⁹² that may create opportunities for eConveyancing competitors.

⁹¹For example: ASK SEK: Seek's Employment Hero spat shows the disruptor is becoming disrupted (AFR 21 June 2025)

⁹² For example, https://www.khaleejtimes.com/business-technology-review/fractional-ownership-and-real-estatetokens-the-new-wayto-own-property

The Registrar General's enforcement powers under the NSW Electronic Conveyancing Enforcement Act 2022 to compel electronic lodgment network operators to comply with the reform

The Registrar General already has sufficient power to compel ELNOs to cooperate in trying to implement interoperability. The failure to deliver the original scope of interoperability is not a consequence of PEXA's delay. Rather it is a consequence of a reform that is in fact much more difficult to operationalise than envisaged by its original proponents (see section 4.1).

PEXA in fact has a culture of compliance and conformity with its regulators. Despite the complexity of the regulatory regime, and scrutiny by titles registrars in eight states and territories, as well as scrutiny from financial services regulators, regulatory concerns with PEXA's compliance are minimal.

A bigger stick would not have accelerated the implementation of the original scope of interoperability. No matter how big the stick, no horse can be made to jump over the ocean. The implementation problems with interoperability are considerable (section 4.5), were under-estimated by its original proponents, and Sympli – the party with a vested interest in the program – continues to downplay them even as they are increasingly appreciated by financial institutions (section 4.2).

ARNECC's decision to expand the scope of interoperability to provide "functional equivalence" (section 4.6) has created additional issues.

- The additional functional requirements (still being defined) further increase the complexity of the design, build, and operation of an interoperable system and will further extend the interoperability project (section 4.6.6).
- There are also significant questions about whether the extension of scope, effectively mandated by the subordinate legislation, is within the power of the authorising Act (section 4.6.4).
- Designing interoperability on an Equivalent Basis (while maintaining current functionality) can
 only be practically achieved if PEXA surrenders some of its intellectual property. The legislation
 provides no mechanism for providing PEXA with appropriate compensation for providing its
 intellectual property, and consequently the provisions are beyond power when they purport to
 compel PEXA's compliance with the interoperability program including its extended scope.

PEXA is legally obliged to protect its shareholders' interests in its intellectual property. The intellectual property created in the initial development of PEXA was expressly transferred by State and Territory governments to the new shareholders of PEXA in the initial privatisation. Since then, PEXA has created significant additional intellectual property, particularly in functionality that enables cooperation between parties prior to settlement (section 4.6.5).

The recommendations of the NSW Productivity and Equality Commission's Jun-24 eConveyancing Market Study

PEXA believes that taken as a whole, the NSW Productivity and Equality Commission Market Study on eConveyancing is not an adequate basis for regulatory conclusions or policy decisions. As shown in the response (attached as Appendix 1 of this submission) that PEXA provided to the Commission and the NSW Government in October 2024, there are significant issues with the Commission's methodology.

The Commission's process fell short of good practice with:

- Limited guidance on scope and issues;
- Unpublished submissions;
- No draft or interim report for comment;
- Adverse observations made without providing an opportunity for submission on the specific issue;
- Broad and far-reaching recommendations that are inappropriate given the limited process; and
- A misunderstanding of the regulatory regime governing eConveyancing, which practically prevents PEXA from acting as suggested in a number of hypothetical examples posed by the Commission. (For example, the Commission suggested that PEXA might bundle eConveyancing with legal and conveyancing advice, price discriminate in favour of larger banks, and share data with banks about their competitors' mortgage pricing:⁹³ the Commission provided no evidence that PEXA had engaged such conduct (and it does not); and did not consider the substantial regulatory safeguards that prevent such conduct (both specific to eConveyancing and through generally applicable competition law).

The substance of the Commission's report is accordingly lacking. The Commission's evidence and reasoning fell short of good practice. As shown in PEXA's response, the market study contains numerous examples of inadequate reasoning, conclusions drawn without sufficient evidence, conclusions drawn using selective evidence, conclusions drawn with no reference to submissions that provided relevant contrary evidence and reasoning, and recommendations made without considering cost/benefit and proportionality.

None of the substantial criticisms contained in PEXA's response to the Commission have ever been answered. PEXA provided the response to both the NSW Government and the Commission. A letter to PEXA from the NSW Government indicated that the criticisms were a matter for the Commission. A letter to PEXA from the Commission indicated that the criticisms were a matter for the NSW Government as the report had been finalised. The failure to engage on the substantive issues raised is unlikely to promote good policy making and therefore should not be the basis of any further policy decisions.

⁹³ NSW Productivity and Equality Commission (2024), eConveyancing market study, sections 4.3, 6.3, 6.4

7 The relationship between the banks and the monopoly network, and any other related matter.

PEXA regularly communicates with financial institutions because they are substantial PEXA customers. Many of the functions added to the PEXA platform in the past decade have been added at the request of financial institutions, and they have delivered substantial processing savings to financial institutions.

While there are unfounded allegations that PEXA's actions *might* have reduced competition in the mortgage market, there is no evidence whatsoever that PEXA has in fact behaved in the ways described. Apart from the imperative of complying with relevant competition law, and requirements in the MOR that all subscribers of a given class are treated on an equivalent basis, PEXA has a general approach of ensuring that its pricing and conduct do not favour any customer over another in a way that might reduce competition.

For example, the NSW Productivity and Equality Commission questioned whether PEXA price discriminates by charging different banks different service fees. It noted that PEXA might do so, and if it did this might reduce competition between banks in the mortgage market. It recommended that ARNECC require regular and detailed reporting on differential service fees. ⁹⁴ The detailed discussion of this issue implied that this was a significant issue in practice.

Because of the Commission's process, it published an analysis and recommendation that potentially implied that PEXA's behaviour was reducing competition in the mortgage market without first giving PEXA an opportunity to provide evidence about its behaviour.

If PEXA had been given such an opportunity, it would have provided evidence to the Commission **that PEXA charges the same price to all subscribers** – whether large or small – for the same transaction type on the PEXA Exchange as set out in its pricing policy which is publicly available on PEXA's website.

Similarly, the Commission implied that PEXA could share data with a bank, in a manner that increased the risk of coordinated mortgage pricing. ⁹⁵ If asked, PEXA would have confirmed **that it does not provide any subscribers (banks or otherwise) with sensitive information of other subscribers and complies with the express provisions of the Model Operating Requirements regarding** the use of data that prohibit the sort of conduct discussed by the Commission. PEXA would also have noted that it has previously proposed to governments an open data framework with appropriate privacy protections.

There have also been implications that PEXA has threatened financial institutions to prevent them cooperating with the interoperability program. ⁹⁶ There is no evidence for this claim. PEXA has written to financial institutions respectfully requesting that PEXA's intellectual property is not shared with other parties, including regulators, in accordance with standard commercial practice, and in accordance with contractual arrangements between PEXA and financial institutions, and a copy of this correspondence is attached (Appendix 2).

⁹⁴ Market study, p.38

⁹⁵ Market Study, p.27

⁹⁶ E.g. Sympli, Submission to Senate Economics References Committee Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, March 2025, p.3-4

8 Conclusion

PEXA acknowledges the presence of a well-resourced and well-connected competitor in the eConveyancing sector. Rather than focusing on developing a compelling service offering, this competitor has directed substantial investment into regulatory processes and strategy, with the aim of securing regulatory intervention that would allow it to benefit unfairly from PEXA's long-term investments.

When it entered the market, there were opportunities to build an Electronic Lodgment Network Operator (ELNO) that could attract customers through superior functionality and pricing, particularly in greenfield segments of the eConveyancing market that were not yet serviced. Instead, the competitor chose to focus on well-established markets where PEXA had already invested heavily and successfully delivered value. Unable to compete on service, customer experience or functionality, it has turned to regulatory intervention as a substitute for commercial success.

This strategy has been accompanied by campaigns seeking to question the resilience and usability of PEXA's network. The language of "promoting competition" and "single point of failure" has been used to frame these calls for intervention. However, the underlying effect is an attempt to use regulation to remedy a corporate strategy failure, rather than to deliver better outcomes for customers.

While such intervention might increase this competitor's profitability, the immediate impact has been to introduce additional costs into the eConveyancing system – costs which will ultimately be borne by consumers. These measures also risk undermining system functionality, potentially increasing conveyancing costs in the long run. There is no guarantee that home buyers and sellers in NSW will benefit from the proposed regulatory changes.

PEXA respectfully asks that the Committee:

- Recognise the success of eConveyancing The system is a success story of intergovernmental
 cooperation, delivering more efficient, lower-cost, and more reliable conveyancing services to
 millions of Australians each year.
- Acknowledge existing consumer protections Consumers are already well-protected under the
 current regulatory framework that limits prices and vertical integration and sets service
 standards. Additional interventions are therefore unnecessary and risk creating inefficiencies
 without delivering tangible benefits.
- Recommend service requirements be consolidated in the Model Operating Requirements –
 setting service requirements through operating agreements that may not be consistent between
 ELNOs and jurisdictions, and are not readily available to the public, is undesirable for a national
 system. Service requirements should be set consistently and publicly through the Model
 Operating Requirements that apply to all ELNOs and in all jurisdictions.
- **Recognise that competition already exists** The current framework permits competition in eConveyancing without the need for additional, interventionist regulation.
- **Reconsider interoperability** While well-intentioned, subsequent analysis has demonstrated that interoperability is unlikely to be cost-effective and should not be pursued further.
- Avoid "Practitioner First interoperability" Such a model would risk lessening competition in practice management services and among bulk conveyancers. It would also enable free-riding on PEXA's investments, diverting revenue to competitors while requiring PEXA to shoulder the majority of functionality and infrastructure delivery.
- Note the absence of guaranteed consumer benefit There is no clear evidence that home buyers and sellers in NSW would benefit from the proposed regulatory changes, while there is a strong likelihood of higher costs and reduced system efficiency.

- Consider the value of intellectual property PEXA's IP reflects years of investment, innovation and industry collaboration. It is a critical national asset that should be recognised and safeguarded in policy deliberations.
- **Recognise PEXA's privatisation context** PEXA was privatised on the basis that there was no requirement or expectation to share its intellectual property with competitors. Any regulatory settings must respect this foundation.

In short, PEXA believes that a balanced regulatory approach—one that builds on the demonstrated strengths of the current system, respects the value of intellectual property, and preserves consumer protections—will best serve consumers, practitioners and governments.

Appendix 1: Productivity Commission response



Property Exchange Australia LtdABN 92 140 677 792

PEXA response

to

NSW Productivity Commission Market study on eConveyancing

18 October 2024

Executive summary

The NSW Productivity and Equality Commission (the Commission) announced in December 2023 that it would conduct a market study on eConveyancing. It published its market study on 1 July 2024.

The Commission approached eConveyancing on the basis that it had evolved into a market with a single privately owned provider with very high market share, which inherently raised competition issues that might require further regulatory intervention.

General concerns

There were three methodological issues with the Commission's analysis of the market:

- Its recommendations were not based on rigorous cost-benefit analysis.
 - In analysing the **benefits** of further regulatory intervention, the Commission primarily identified *potential* scenarios that would be problematic, but provided little or no evidence that these scenarios had materialised or were likely to do so. PEXA's view is that many of the scenarios identified would involve conduct that would be unlawful under either general competition law or specific eConveyancing rules, and the chances of any of the scenarios arising in practice is very low.
 - In analysing the costs of further regulatory intervention, the Commission provided no analysis of the financial costs to government or industry (which would presumably be passed on to consumers), and no analysis of the potential impacts on eConveyancing innovation.
- Where the report did provide evidence, it was generally qualitative, based on assumptions about the commercial motivations of ELNOs, and how these would influence ELNO behaviour, without analysis of whether this behaviour had in fact occurred.
- The report provided minimal evidence from stakeholders that could support the Commission's assumptions that PEXA's conduct had been, or might be, improper. Where such claims were made, it was not transparent (because stakeholder submissions were not public) whether stakeholders had evidence to support these claims. These limited claims are generally contradicted by the evidence that is publicly available.

Nevertheless, the Commission proposed substantial additional regulatory intervention into eConveyancing. While the Commission acknowledged that this would have costs, it left it to future processes to quantify them. Principles of regulatory proportionality suggest that a heavy-handed regulatory approach should not be adopted unless it is the only means possible to avoid substantial costs. That is not the case with eConveyancing.

A more proportionate response would be one that responds where evidence of actual or impending misconduct has emerged. Such an approach would be much lower cost and have less impact on industry innovation. It would involve oversight processes, including input from stakeholders, that review industry developments and assess whether more interventionist approaches are required in the light of actual rather than hypothetical behaviour.

PEXA is committed to working with ARNECC to an appropriate approach for eConveyancing, which minimises costs to consumers, and rapidly implements responses to real problems if and when they emerge.

Detailed concerns

PEXA also has more detailed concerns with the Commission's market study – including the process of producing the study; conclusions reached without sufficient evidence; the selective use of evidence; failure to consider submissions providing relevant contrary evidence and reasoning; and particular recommendations that did not consider cost/benefit or proportionality of government intervention relative to the importance of the public policy issue.

The Commission's **process** was inadequate to make wide-ranging conclusions and recommendations. The Commission provided limited guidance as to the study scope, limited opportunities for input, and did not issue a draft report or interim findings. Adverse inferences were drawn without providing PEXA with an opportunity to answer the specific suggestions made. A process that fell short of good practice led to conclusions that were inadequately grounded in good evidence and reasoning.

The Commission's investigation of **market structure** concluded that eConveyancing has an unsatisfactory monopoly structure which allows vertical integration and excessive profits. However, in concluding that there was **no natural monopoly**, the Commission failed to analyse the user benefits of a single network and did not consider the costs of interoperability. It also concluded that competition was viable based on the existence of a second Electronic Lodgement Network Operator (ELNO), without examining its viability.

In concluding that the market structure of eConveyancing could **affect adjacent markets**, the Commission did not provide evidence of vertical integration in practice. While it suggested a number of potential ways that an eConveyancer might attempt to affect adjacent markets, none of these have been utilised in practice, which suggests that the current regulatory regime is operating satisfactorily.

In concluding that **profits were excessive**, the Commission used unsuitable comparators for EBITDA margins, and did not indicate why it had not used as comparators other publicly listed online network businesses that would appear to be more comparable to PEXA and its eConveyancing business. In calculating PEXA's economic costs, the Commission did not incorporate relevant costs and applied an inappropriate cost of capital given the history of eConveyancing. In concluding that PEXA had captured the value of productivity benefits, the Commission did not analyse shifts in the costs, prices, and revenues of conveyancers, banks, and government agencies such as land registries and revenue offices, which are the major beneficiaries of the efficiencies created by eConveyancing.

Besides the inadequate evidence and reasoning for its recommendation that the Australian Competition and Consumer Commission (ACCC) should conduct an immediate pricing review, the Productivity and Equality Commission did not mention IPART's recent recommendation that a pricing review should commence in July 2025.

The Commission concluded that eConveyancing could become a more competitive market through interoperability. However, the Commission relied on previous studies without referring to or analysing submissions that these previous studies were unreliable. The Commission did not consider any of the substantial practical problems with interoperability, including the loss of incentives and ability to innovate (because most innovations will only work if replicated by all interoperable ELNOs), the costs and practical difficulties of building interoperability functionality, the increased cybersecurity risks, the increased risks of transaction failure, and the additional costs of regulation. The significance of these issues was illustrated by ARNECC's decision to pause the Interoperability Program shortly after the Commission completed its report.

The Commission also concluded that a more gradual market-driven approach through a **ladder of investment** was not a viable means to introduce more competition to eConveyancing. This conclusion was based on studies of the European telecommunications market conducted between 2004 and 2010. While citing these studies, the Commission ignored more recent studies that came to the opposite conclusion

cited by PEXA and published between 2014 and 2019. The Commission did not provide evidence or explanation for ignoring these more recent studies and preferring the earlier studies.

In considering **market regulation**, the Commission concluded that there was no reason for an explicit Universal Service Obligation or for uniform pricing between jurisdictions. However, the Commission's conclusions were based on assumptions that extending eConveyancing to additional jurisdictions would cost much less than PEXA's actual experience. If these cost estimates were correct, they beg questions about why the new entrant has not developed functionality for most jurisdictions given the commercial opportunity that such low costs would imply.

The Commission drew adverse inferences about **PEXA's conduct**. Contrary to natural justice principles, none of these issues was drawn specifically to PEXA's attention, nor was PEXA given any opportunity to answer the claims made. If PEXA had been given the opportunity it would have shown that these claims were not supportable.

- The Commission implied that delays to interoperability were largely due to stakeholder opposition
 to the reform even though PEXA met the deadline for the test transaction in September 2023 and
 was on track to meet the deadlines set for July 2025. It did not analyse the substance of evidence
 provided by PEXA that the primary cause of delay was that interoperability has been much more
 difficult to implement than envisaged by its proponents.
- The Commission recommended that if PEXA fails to provide ARNECC with a formal legal basis on which it claims IP, it should immediately be referred to the ACCC for investigation. However, the Commission did not examine the information that PEXA had provided to ARNECC about its IP claims and the legal basis for them.
- The Commission questioned whether PEXA price discriminated between banking subscribers. If asked, PEXA would have confirmed that it charges the same price to all subscribers whether large or small for the same transaction type on the PEXA Exchange, as set out in its pricing policy which is publicly available on PEXA's website.
- The Commission implied that PEXA could share data with a bank, increasing the risk of coordinated mortgage pricing. If asked, PEXA would have confirmed that it does not provide any subscribers (banks or otherwise) with sensitive information of other subscribers and complies with the express provisions of the Model Operating Requirements regarding the use of data that prohibit the sort of conduct discussed by the Commission.

The Commission concluded that **ARNECC** faces challenges as a regulator because it lacks powers, resources and expertise. The Commission recommended consideration of providing the ACCC with market oversight and monitoring powers, adding to ARNECC's activities, and licensing of ELNOs as payment services providers. It also recommended new industry levies to fund these additional ARNECC and ACCC functions and the maintenance of the National Electronic Conveyancing Data Standards. Good practice for policy development involves assessment of the potential costs and impacts of regulatory intervention relative to the policy objectives. However, the Commission provided no analysis of whether the suggested regulation and levies were appropriate and proportionate for an industry with a total addressable market of approximately \$300m per year.

The Commission suggested that if interoperability is not pursued, governments should consider a specific **eConveyancing access regime** requiring wholesale access to ELNO data, services and products, priced at the currently efficient costs to develop. However, the Commission provided no analysis of whether this regime was practical, did not consider how its pricing proposals would affect innovation in an industry that is still at a relatively early stage of development, and did not consider whether using current efficient costs is a fair approach when those costs have been enabled by the higher historic costs that PEXA needed to incur to build knowhow and a user network.

1 History and context

eConveyancing has an unusual history.

The industry was created as the result of cooperation between governments (particularly the land titles offices in all States and Territories), major financial institutions, and other key investors. They created a new entity designed to build a digital platform for electronic conveyancing and to drive participation by government authorities, financial institutions, and conveyancers. All parties involved saw the opportunity for substantial productivity savings if conveyancing were largely conducted online rather than with traditional processes involving physical documents and signatures, cheques, and face to face meetings.

Previous attempts in Australia to implement eConveyancing had failed. Around the world, Australia's eConveyancing industry is the clear leader. The jurisdiction closest to following Australia's example is the UK, where PEXA is the leading player in trying to shift the market from paper to electronic conveyancing.

PEXA set its initial prices in order to induce banks and conveyancers to incur the significant up-front costs of converting from paper to electronic processes. In the early stages of the reform, it was particularly hard to induce banks and conveyancers to do so because they would only get a return on their investment in the conversion if most others converted as well. At the time, widespread take-up was far from assured. Some governments eventually mandated all participants to adopt eConveyancing, but they did so only after substantial take up made such mandates politically palatable.

Once this new entity had largely created an eConveyancing industry in Australia, building both a usable platform, and driving widespread adoption, it was privatised in 2019 as governments sold their shares in the entity to a private consortium. This consortium sold down their interests in PEXA through an IPO in 2021.

Around the time of privatisation in 2019, governments also regulated PEXA's pricing so that it could not increase in real terms beyond the levels that had been initially set in order to induce adoption. This is a significant contrast to other parts of the conveyancing industry. For example new platforms for property advertising initially set low prices to induce adoption, and once they had established a network substantially increased their prices.¹

Overall, the introduction of eConveyancing has been a substantial success. Net productivity savings are estimated to be larger than total eConveyancing industry revenues. eConveyancing is all-but universal. The industry strongly supports the new system, and has proactively worked with PEXA to progressively add functionality to the platform that enables further productivity gains for both banks and conveyancers.

The consequence of this history is that PEXA is a privatised entity with a strong network that currently provides almost all eConveyancing services in Australia. There are inevitable concerns that PEXA might use its market power, but its ability to do so is already tightly constrained by regulations that limit its prices, and govern its provision of services in other parts of the conveyancing value chain.

After the Commission completed its report, regulators decided to pause the interoperability program in July 2024 in the light of stakeholder concerns. This program was originally intended to promote greater competition between ELNOs. As of October 2024 the program has not resumed.

¹ Industry participants claim that high market shares have enable REA Group and Domain.com to increase prices for property advertising: Sarah Martin, "'The bear at the door': estate agents say they fear speaking out about realestate.com.au 'price gouging'", *The Guardian* 19 September 2024, https://www.theguardian.com/australia-news/2024/sep/19/the-bear-at-the-door-estate-agents-say-they-fear-speaking-out-about-realestatecomau-price-gouging; Sarah Martin, "Why News Corp's realestate.com.au can put fees 'up and up and up', according to ex-CEO", *The Guardian* 23 September 2024 https://www.theguardian.com/australia-news/2024/sep/23/simon-baker-realestate-com-au-fees-news-corp-ntwnfb.

2 Methodology

2.1 Cost benefit analysis

There are significant issues with the Commission's methodology. Its conclusions are not justified by cost-benefit analysis. The reasoning that underlies much of the market study was that:

- Hypothetical scenarios can be constructed in which eConveyancers might misuse market power to impair consumer welfare;²
- Because eConveyancers have commercial incentives to misuse market power, these hypothetical scenarios can only be avoided through explicit and specific regulatory intervention;
- Therefore substantial additional regulatory intervention is required.

However, actual regulatory intervention, with actual costs, should not be based on hypothetical scenarios unless there is a high probability that those scenarios will otherwise occur, causing material losses. Otherwise significant actual costs will be incurred for the minimal benefit of avoiding unlikely or immaterial losses.

In order to assess the probability of scenarios occurring it is relevant to look at:

- All of the **likely influences** on an eConveyancer's conduct (because it is reasonable to infer that an eConveyancer will act according to the balance of *all* of the factors that influence it); and
- The **history** of the eConveyancer's conduct (because it is reasonable to infer that past conduct is a plausible guide of future conduct, in part because it provides evidence of how an eConveyancer balances all the factors that influence it).

There are many influences that may discourage an eConveyancer from misusing market power:

- The potential damage to the eConveyancer's reputation may be unacceptably large relative to the gain;
- The gain to the eConveyancer from the misconduct may be small;
- The conduct may be proscribed by general competition law;
- Other forces (such as pressure from customers that would be adversely affected) may dissuade the eConveyancer from the misconduct; and
- The culture of the eConveyancer may be to promote the public interest.

The history of eConveyancing indicates that the probability of misuse of market power is low. The Commission outlined hypothetical examples of the potential misuse of market power (discussed in more detail in the remainder of this paper) including the possibility of:

- Bundling with legal and conveyancing advice (section 4.3);
- Capture of benefits and failure to pass on cost reductions (section 4.4.3);
- Price discrimination in favour of larger banks (section 6.3); and
- Provision of price information to encourage coordinated mortgage pricing (section 6.4).

<u>None</u> of the hypothetical scenarios outlined by the Commission has occurred. For the past ten years PEXA has been the only eConveyancer of any scale. The absence of any *actual* examples of the misuse of market power is therefore powerful evidence that the probability of occurrence in the future is also low.

² Examples discussed in the remainder of this paper include

The Commission did not consider existing obligations – both under the Model Operating Requirements which regulate eConveyancing and under general competition law – which would prohibit the conduct in the hypothetical scenarios.

Even if the hypothetical scenarios outlined by the Commission did occur, the Commission produced minimal evidence that these scenarios would materially affect the public interest.

There is inherently little benefit in preventing conduct that is unlikely to occur.

By contrast, more intrusive regulation has substantial and actual costs. As discussed in more detail in sections 7.2-7.3, the additional regulatory powers suggested by the Commission will require material additional resourcing, that is likely to be large relative to an industry that has a total addressable market of approximately \$300m per year. More intrusive regulation is likely to stifle innovation in a relatively new industry with a track record of rapid innovation over the past 10 years that has delivered substantial productivity benefits larger than the total industry revenues.

The Commission did not explicitly attempt any form of cost-benefit analysis in its market study. Its implicit methodology also failed to compare costs and benefits. Consequently the Commission lacked the basis required by principles of public policy to recommend, as it did, substantial shifts in the regulatory regime.

2.2 Consideration of relevant analysis

On a number of issues, the Commission's market study ignored substantial evidence presented in PEXA's submission without explaining why that evidence was ignored even though it was *prima facie* relevant.

Principles of policy development require that it should consider all of the available relevant evidence. Issues on which the Commission drew contrary conclusions without referring to explicit submissions by PEXA, or providing any substantial analysis of them include:

- PEXA's market position was principally the consequence of eConveyancing mandates, rather than PEXA's substantial expenditure to establish widespread useage of its platform (section 4.2);
- The costs of building an eConveyancing platform are more reliably established by the theoretical outside-in estimates of AECOM and Deloitte, rather than the actual costs of PEXA and Sympli (section 4.4.2)
- The costs of interoperability were as originally assumed, rather than examining the much larger costs incurred in practice (section 4.5.2)
- There are no substantial issues in implementing interoperability, rather than examining unresolved issues with financial settlement regulation, cherry-picking, free-riding, self-preferencing, and legal issues such as the compelled surrender of PEXA's intellectual property (section 4.5.3)
- There is no need for universal service obligations because all jurisdictions are economic to serve based on the theoretical outside-in estimates of AECOM, rather than the actual costs of PEXA (section 5.1)
- Delays to the Interoperability Program should primarily be ascribed to stakeholder opposition, rather than underestimation of the complexity of implementation, increases in scope and insufficient program management by regulators (section 6.1)
- PEXA had not provided the basis of its claims that implementing interoperability would compromise its intellectual property, rather than acknowledging PEXA's attempts to engage regulators on these issues (section 6.2)

Because the Commission failed to consider PEXA's submissions in even a cursory way on such a broad range of issues, the Commission's recommendations were not based on all of the relevant factors.

3 Process

There are significant issues with the process used by the Commission in preparing its market study.

In lieu of formal terms of reference, the Commission provided limited information about the scope of its study and the issues it would cover. The only guidance that it published was that it would examine:

- The effectiveness of competition in the eConveyancing market
- the best ways of promoting long-term competition, building on the current interoperability reform
- the resources (including sources of funding), governance, and regulatory structures needed to ensure a sustainable and long-term competitive eConveyancing market.

The study will not be reviewing current interoperability reforms but will focus on further evolutions of competition.

Based on the Commission's broad questions, PEXA provided a 22-page submission with a 13-page appendix. However, the Commission's study covered a range of issues even though it was not obvious to external parties that these would be part of its brief given the broad questions that it had published.

The Commission provided PEXA with limited opportunities to participate in the inquiry process. The Commission conducted a single two-hour meeting with PEXA, followed up with a single inquiry to PEXA about its historic IT costs without providing context for the reason for the inquiry. The Commission did not publish any submissions made to the market study. The Commission did not issue a draft report or any interim findings on which it could have invited submissions. PEXA was given no opportunity to make submissions about the recommendations or the reasoning on which the Commission relied. Instead the Commission proceeded directly to publishing a 63-page final market study in June 2024.

Despite a process that provided limited opportunity for meaningful industry input, the final market study contained 18 far-reaching recommendations including an immediate price review, a transfer of responsibility for market oversight to ACCC, an industry levy to pay for ARNECC and ACCC regulatory activities without consideration of the costs involved relative to the policy objectives, and consideration of new access regimes.

The market study made a number of suggestions that PEXA may have behaved inappropriately, and recommended investigation and potential sanctions. Contrary to the principles of natural justice, these suggestions were not put to PEXA, and if they had been, PEXA would have been able to produce powerful evidence that they lacked any foundation (see further section 6 below).

The shortcomings with the Commission's process are reflected in numerous errors of fact, material omissions, and inadequate reasoning in the market study, as detailed in the rest of this paper.

4 Market structure

4.1 Natural monopoly

The Commission concluded that eConveyancing is not a natural monopoly. The Commission correctly defined a natural monopoly as a situation in which it is most economically efficient to have a single supplier of a product or service in a market.³ The Commission concluded that "there is no robust evidence suggesting that an ELNO would be a natural monopoly."⁴

In analysing whether eConveyancing was a natural monopoly, the Commission only examined whether the upfront costs are a barrier to entry. It found that the existence of a second ELNO was strong evidence that eConveyancing is not a natural monopoly.⁵

However, the Commission's one paragraph analysis of how theories of natural monopolies apply to eConveyancing overlooked several issues.

- A market may be a natural monopoly, irrespective of the supplier's fixed costs, if the benefits to users of a single supplier are greater than if users employ multiple suppliers. Users may benefit if a single supplier reduces user costs by efficiently facilitating interactions between all users. For example, PEXA provides a common format and platform that facilitates the exchange of documents and information about settlement adjustments between users. In this environment, users of an ELNO bear additional costs if another user uses a different ELNO.
- Assuming that it is potentially efficient for users to employ different ELNOs, the Commission did not consider the additional costs of interoperability, which regulators have assumed is needed to promote eConveyancing competition. The Commission did not reference PEXA's submission, which disclosed that these costs are likely to be high: PEXA has already spent \$25-\$30m, bank participants may need to spend \$10m each, and there are substantial non-technical costs. The costs of regulating an interoperable market are materially higher. Interoperability also increases cybersecurity risks and transaction failure, which could impose extremely high costs on users.
- The existence of a second ELNO is weak evidence that barriers to entry are surmountable unless
 the second entrant is financially viable and the Commission did not examine its publicly available
 financials.

4.2 Role of eConveyancing mandates

The Commission asserted that PEXA's market position in eConveyancing was advantaged by eConveyancing mandates. It did not note that those mandates were only issued once PEXA had already expended significant resources to establish widespread usage of its platform amongst conveyancers and banks, as PEXA specifically pointed out in a submission to the Commission. 10

The Commission also did not note that PEXA's market position in Queensland was gained even when another ELNO had an opportunity to enter simultaneously, and before there was a government mandate.

³ NSW Productivity and Equality Commission (2024), *eConveyancing market study* https://www.productivity.nsw.gov.au/market-study b. 2024), *eConveyancing market study* https://www.productivity.nsw.gov.au/market-study p. 25.

⁴ Market study, p.26.

⁵ Market study, p.26.

⁶ Shapiro and Varian (1998), Information Rules

⁷ PEXA, Submission to NSW Productivity Commission Market study on eConveyancing (2024) (hereafter PEXA Commission Submission", p.26.

⁸ PEXA Commission Submission, p.3.

⁹ Market study, p.41.

¹⁰ PEXA Supplementary Commission Submission, p.9

Sympli commenced its build in 2018 when PEXA's share of transactions in Queensland was relatively low. Sympli had opportunities to enter the Queensland market while PEXA had minimal presence, but did not do so. PEXA subsequently increased the volume of its transactions in Queensland so that by the time a government mandate was issued, PEXA had already converted around 80% of conveyancing transactions from paper to its platform and the government mandate had relatively little impact on Queensland econveyancing transaction volumes. If the Commission had noted this history, it would have concluded that PEXA's conversion of paper conveyances to eConveyancing in Queensland was primarily the result of strong service proposition rather than the government mandate.

4.3 Vertical integration

The Commission concluded that a lack of competition in eConveyancing could adversely affect adjacent markets through vertical integration. It found that this was of particular concern because the provision of eConveyancing services could be bundled with related products such as the provision of legal and conveyancing advice. The Commission noted the specific provisions in the Model Operating Requirements (MOR) that aim to limit vertical integration, but cited without contradicting the concerns of stakeholders that these arrangements may not be sufficient. 12

The Commission did not provide any evidence that PEXA was vertically integrating in practice. Nor did the Commission examine ways in which vertical integration by Sympli shareholders with its ELNO might impact competition. The Commission did not provide PEXA with an opportunity to provide evidence which it had available to demonstrate that it had been careful to avoid vertical integration, and in particular does not provide, and has no intention of providing, legal or conveyancing services.

Whether or not there is in fact vertical integration, the Commission assumed that interoperability is the best way to address it, and did not consider whether alternative interventions might be more efficient ways to ensure vertical integration did not destroy value. For example, the Commission did not consider whether there were provisions of the MOR that should be strengthened, possible alternative reporting and monitoring arrangements, and possible dispute resolution and enforcement mechanisms.

4.4 Excessive profits

4.4.1 Comparisons

The Commission concluded that PEXA was earning "very high profits". It based this conclusion by comparing the EBITDA margin of PEXA to four IT and technology companies listed on the ASX.¹³

However, the Commission provided no information as to why it selected these particular comparators, so they appeared arbitrary. As shown by the Commission's own analysis. PEXA's EBITDA margin is similar to the EBITDA margins of two of the comparators selected by the Commission, which operate carsales.com.au and Domain. PEXA's EBITDA margin is substantially greater than the two other comparators selected by the Commission: Camplify and Frontier Digital Ventures, which are different in many respects from PEXA, carsales and Domain. They have substantially smaller revenues, and operate relatively niche businesses (respectively campervan space and online marketplaces in developing Asian countries). The Commission provided no reason for selecting these two niche businesses over other comparators with businesses that would seem to have more similarities to PEXA. Analysis of more relevant comparators would have shown that the EBITDA margin for the PEXA Exchange (of 57% in the

¹¹ Market study, p.26

¹² Market study, p.27

¹³ Market study, p.30-31

Commission's report) was not particularly high relative to companies such as the ASX itself (part owner of Sympli) (62%), Xero (31%), Seek (43%), and REA (57%).¹⁴

4.4.2 Platform costs and revenues

The Commission concluded that PEXA was earning revenues above its economic cost (including a reasonable rate of return on capital). It suggested that PEXA's costs to build an ELNO were substantially lower than \$182m on the basis that PEXA had not provided any detailed breakdown of its costs, the estimate was higher than the written-down value of the platform in PEXA's accounts, and was materially higher than outside-in estimates by AECOM and Deloitte.¹⁵

PEXA was not asked by the Commission to provide a detailed breakdown of its historic costs. The Commission did not recognise that PEXA had previously provided its historic annual revenues and costs through the phase of building the online eConveyancing market and platform in a submission to IPART which the Commission cited. The Commission also did not consider PEXA's costs of establishing the eConveyancing market, which required a very substantial education, sales and marketing effort to encourage conveyancers and financial institutions to move from established paper-based processes to online processes. Although the Commission noted that mandated eConveyancing increased the use of eConveyancing, It did not note that these mandates were only issued because PEXA had already built a critical mass of users (see above section 4.2). The Commission made no reference to PEXA's efforts and costs to create this critical mass, which were detailed in PEXA's supplementary submission to the Commission and in a public submission by PEXA to IPART. As these costs are not IT-related, accounting treatment typically required that they be expensed rather than capitalised. The Commission also did not consider costs subsequently incurred by PEXA to increase the functionality of eConveyancing to create additional productivity benefits for users.

The Commission's reliance on the accounting value of PEXA's platform was misplaced because it failed to acknowledge the difference between accounting asset values and reasonable investment. Accounting often applies standard rules to depreciate or write down investments well in advance of earning the associated revenues. The written-down accounting value can therefore diverge substantially from the reasonable historic cost of investment that is relevant to calculating a reasonable return.

The Commission's reliance on the cost estimates by AECOM and Deloitte was misplaced, because the Commission did not note that:

- These were purely theoretical outside-in estimates not based on experience;
- AECOM has since revised its cost estimates upwards;¹⁹

¹⁶ PEXA (2023), Submission to IPART Draft report on Interoperability pricing For Electronic Lodgment Network Operators, https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Online-Submission-PEXA-Name-suppressed-29-Mar-2023-111755818.PDF, p.9; and further information provided in *PEXA Supplementary Commission Submission*

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¹⁴ Based on company annual reports using latest available full financial year; excludes non-core, one-off, and non-recurring items, and post IFRS 16 leases treatment.

¹⁵ Market study, p.30-31

¹⁷ Market study, p.16-17

¹⁸ PEXA (2022) Submission to IPART's First Issues Paper in connection with its review of Interoperability Pricing for Electronic Lodgment Network Operators, https://www.ipart.nsw.gov.au/sites/default/files/cm9 documents/Online-Submission-Property-Exchange-Australia-Ltd-%28PEXA%29-A.-Gerraty-12-Aug-2022-204110148.PDF p.5-8

¹⁹ IPART (2023), Interoperability pricing For Electronic Lodgment Network Operators: Final Report, https://www.ipart.nsw.gov.au/sites/default/files/cm9 documents/Final-report-Interoperability-pricing-for-Electronic-Lodgment-Network-Operators-June-2023.PDF, Appendix D

- Much higher costs have been incurred by Sympli building its incomplete eConveyancing platform in Australia;20 and
- Much higher costs have been incurred by PEXA building an incomplete eConveyancing platform in the UK.21

The Commission did not reference, and did not address PEXA's submission that explicitly raised these issues.²²

The Commission concluded that even if it assumed an up-front capital cost of \$182m, PEXA's internal rate of return was significantly above its commercial costs of capital. In calculating a reasonable return on capital, the Commission assumed a cost of capital of 12 per cent.²³

However, the Commission did not consider whether a discount rate of 12 per cent was an appropriate cost of capital to apply to PEXA's high risk investments in the earlier years of eConveyancing. PEXA invested much of its capital when it was far from clear that PEXA would succeed in shifting conveyancing from paper-based processes to online processes. Australia is the only country in the world that has largely completed this shift, and the only other country to have made progress is the UK, largely due to PEXA's entry into the market. This suggests that shifting a market from paper to electronic conveyancing is uncertain and high risk. The cost of capital for high risk investments where there is a substantial risk of total failure is typically far higher than 12 per cent. Although PEXA's view on this issue had been outlined in previous public submissions, ²⁴ PEXA did not make detailed submissions to the Commission on this question because it was not obvious that the appropriate rate of return on historic high risk investments was at issue given the Commission's broad brief.

4.4.3 Benefit capture by ELNOs

The Commission concluded that the significant productivity benefits due to the shift to eConveyancing were likely captured by ELNOs in the form of above normal profits as well as by conveyancers.²⁵

However, the Commission did not calculate what proportion of the productivity benefits were captured by ELNOs relative to financial institutions, government agencies and conveyancers. PEXA's current pricing is based on its initial pricing plus CPI increases. That initial pricing had to be sufficiently low to attract a critical mass of financial institutions and conveyancers to shift from paper-based to online conveyancing. It is thus quite possible that financial institutions, conveyancers, and government agencies such as land registries and revenue offices captured much of the productivity benefit, and the Commission adduced no evidence to disprove this hypothesis. Without analysing how costs and revenues have evolved along the full supply chain, the Commission had inadequate evidence to draw conclusions about which entities captured the productivity benefits of eConveyancing.

The Commission pointed to ongoing price increases in line with CPI as evidence that PEXA had either not improved efficiency, or not passed on cost efficiencies to consumers. ²⁶ However, the Commission did not

²⁰ PEXA (2023), Submission to IPART Draft report on Interoperability pricing For Electronic Lodgment Network Operators, https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Online-Submission-PEXA-Name-suppressed-29-Mar-2023-111755818.PDF, p.9, also noted in PEXA Commission Submission, p.13

²¹ PEXA (2023), Submission to IPART Draft report on Interoperability pricing For Electronic Lodgment Network Operators, https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Online-Submission-PEXA-Name-suppressed-29-Mar-2023-111755818.PDF, p.9

²² PEXA Commission Submission, p.18

²³ Market study, p.31

²⁴ PEXA (2023), Submission to IPART Second Issues Paper on Interoperability pricing For Electronic Lodgment Network Operators, https://www.ipart.nsw.gov.au/sites/default/files/cm9 documents/Online-Submission-PEXA-Name-suppressed-11-Nov-2022-170253003.PDF, p.34

²⁵ Market study, p.31

²⁶ Market study, p.31

consider the improvement in on-day settlement (which have averaged 5 percentage points in the largest 5 states over the past 3 years). The costs of delayed settlement to end-purchasers (including removalist fees, additional work leave, and emotional stress) are manifestly much larger than PEXA's total fee. Similarly, the costs of delayed settlements to financial institutions and conveyancers (including rework, additional manual handling, and recalculation and re-entry of settlement moneys) are likely to be much larger than PEXA's total fees.

The Commission also did not consider PEXA's ongoing investment in the platform, which has increased PEXA's costs while delivering far greater efficiencies to conveyancers and financial institutions. Functionality improvements over the past few years include Auto Conversations, Attachments, Ready to Book, Linked Settlements and Autobalance.²⁷ The Commission also did not consider whether PEXA's average costs have been increased as it added functionality to service additional smaller volume jurisdictions.

The Commission provided no analysis of whether conveyancing prices to consumers have reduced and service improved as the result of higher financial institution and conveyancer productivity as they adopted eConveyancing and as PEXA continued to increase platform functionality. Without such an analysis it is difficult to see how the Commission could conclude that consumers have not shared in the significant productivity benefits of eConveyancing.

4.4.4 Recommended pricing review

Based on its inadequate analysis of industry profits, the Commission recommended that there should be an *immediate* review of eConveyancing price control arrangements.²⁸ Not only was there unsatisfactory evidence and reasoning for this recommendation, the Commission did not mention IPART's conclusion in 2019 that PEXA's pricing was reasonable,²⁹ or IPART's recommendation (published just 7 months before the Commission's report) that a pricing review should not commence until July 2025.³⁰

4.5 Introducing competition to eConveyancing

4.5.1 Materiality of competition

The Commission concluded that "even a small reduction in the price of eConveyancing services would be material given the eConveyancing mandates coupled with high transaction volumes". In support of this assertion, the Commission noted the total volume of eConveyancing transactions and their property settlement value of \$814b. 31 While emphasising this much larger figure, the Commission made no reference to the total value of eConveyancing revenues, which are much more relevant because they are the only revenues that would be materially affected by eConveyancing prices. EConveyancing industry revenues in 2022-23 were \$263m, less than 0.04% of property settlement value, as PEXA emphasised in its submission to the Commission. 32 If the Commission had paid more attention to total eConveyancing revenues, then it would have been difficult to conclude that even large reductions in eConveyancing prices would be material to individual consumers, housing markets or the economy.

²⁹ IPART (2019) Review of the pricing framework for electronic conveyancing services in NSW,

²⁷ Further detail on this functionality is beyond the scope of this paper, but Autobalance was described in more detail in *PEXA Commission Submission*, p.9

²⁸ Market study, p.32

https://www.ipart.nsw.gov.au/Home/Industries/Special-Reviews/Reviews/Electronic-Conveyancing/Pricing-regulation-of-electronic-conveyancing-services-in-NSW/29-Nov-2019-Final-Report/Final-Report-Review-of-pricing-framework-for-electronic-conveyancing-services-in-NSW-November-1; since then PEXA's pricing has not increased by more than CPI.

³⁰ IPART (2023), Interoperability pricing For Electronic Lodgment Network Operators: Final Report, https://www.ipart.nsw.gov.au/sites/default/files/cm9 documents/Final-report-Interoperability-pricing-for-Electronic-Lodgment-Network-Operators-June-2023.PDF, p.61. This date applies in the absence of a variety of other circumstances that are unlikely ³¹ Market study, p.25.

³² PEXA Commission Submission, p.4

If the Commission had focused on eConveyancing revenues, it would also have needed to consider whether differences in eConveyancing prices would be so small that they would not motivate consumers to shop around for different conveyancers, and consequently would not impose competitive discipline for conveyancers to lower their prices, and consequently would not be passed on to individual consumers.

4.5.2 Benefits of interoperability

The Commission accepted without analysis previous estimates by the Centre for International Economics (CIE) that interoperability would deliver net present value benefits of \$84m,³³ which was the foundation of its conclusion that interoperability should proceed.

The Commission did not refer to PEXA's submissions that the CIE's assumptions in its 2020 study had substantially under-estimated the costs of interoperability as demonstrated by practical experience,³⁴ eroding the projected total benefit of interoperability, and the Commission did not analyse the CIE estimates itself.³⁵ The Commission provided no reason for relying on CIE's assumptions when more recent evidence was available in a submission to the Commission, nor did it suggest that additional information from practical experience suggested the need for a fresh cost-benefit analysis of interoperability.

4.5.3 Overall desirability and feasibility of interoperability

The Commission concluded that interoperability was a desirable reform, and that ARNECC should develop and publish without delay a detailed industry roadmap to launch interoperability by December 2025, with penalties if ELNOs failed to meet milestones.³⁶

In reaching this conclusion the Commission did not refer to the evidence provided in PEXA's submissions that interoperability would not provide the benefits assumed in the CIE study. PEXA's submission showed that although it had cooperated in trying to implement interoperability because it had been mandated by government, nevertheless the reform would rather than encourage innovation, would increase risk, had unresolved issues with financial settlement regulation, introduced unresolved problems with cherry-picking, free-riding and self-preferencing, and raised unresolved legal issues, not least the compelled surrender of PEXA's intellectual property.³⁷ All of these substantial issues were detailed in PEXA's submission, and not countered in the Commission's report.

The Commission's conclusion that interoperability should be launched by December 2025 – and that PEXA should be fined if it did not meet this milestone – was also not based on sufficient evidence. Detailed planning had been completed to implement interoperable refinances by July 2025. However, it appears that the Commission did not request a detailed project plan for implementing and deliver interoperable transfers by December 2025, and to the best of PEXA's knowledge such a plan does not exist. Without such documentation there was no basis for the Commission to conclude that the December 2025 milestone was achievable. If the Commission had actively considered the project timetable it should have sought further evidence as to why on the ARNECC schedule the delivery of interoperable refinances required a further 12 months (and a total implementation period of 2 years), but the implementation of interoperable transfers would occur less than 6 months later, even though transfers are inherently much more complex eConveyancing transactions than refinances.

The materiality of these problems was illustrated when ARNECC decided to pause the interoperability program at about the same time as the Commission report had been completed. ARNECC indicated that

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³³ Market study, p.28.

³⁴ PEXA Commission Submission, p.7

³⁵ Market study, p.28.

³⁶ Market study, p.35.

³⁷ PEXA Commission Submission, p.8-14

its decision was particularly influenced by issues raised by financial institutions.³⁸ Financial institutions had first raised these issues with ARNECC in November 2023, and even though they were sufficiently substantial for ARNECC to pause the interoperability program in July 2024, they were not mentioned or addressed by the Commission.

4.5.4 Review of ladder of investment alternative

The Commission did refer to PEXA's suggestion that instead of implementing a "big bang" interoperability reform, regulators should consider a more gradual "ladder of investment" approach to reform.³⁹

PEXA suggested a "ladder of investment" approach in December 2023, in response to ARNECC's request for analysis of an alternate model. However, the Commission concluded that it was not viable based on studies of the European telecommunications market, conducted between 2004 and 2010, which it described as "recent studies". However, the Commission made no reference to the studies on the same topic, published between 2014 and 2019, included in PEXA's submission to the Commission, which came to the opposite conclusion and gave no explanation for preferring the earlier studies over the more recent ones referred to in PEXA's submission. ⁴¹

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³⁸ ARNECC 2024, *Ministerial Forum: National eConveyancing*, https://www.arnecc.gov.au/wp-content/uploads/2024/06/Ministers-Statement-Forum-11-June-2024.pdf

³⁹ Market study, p.28; PEXA Commission Submission, p.16

⁴⁰ Market study, p.28

⁴¹ PEXA Commission Submission, p.25

5 Market regulation

5.1 Universal service obligation

The Commission concluded that there was no need for specific payments to ELNOs to provide eConveyancing services for lower volume transaction types and jurisdictions (USO payments), partly on the basis that it was premature to request them when no review had been undertaken to establish that they were needed, ⁴² and partly on the basis that all jurisdictions are economic to serve. ⁴³

The first basis for concluding that there is no need for a USO payment is somewhat circular – the Commission's logic implies that it is premature to request USO-style arrangements – or the review on which they would be based – unless such reviews have already been conducted. As PEXA pointed out in its submission, IPART explicitly acknowledged that a competitive market may create incentives to cherry-pick the most profitable jurisdictions and transactions, but relied on ARNECC's claims that the MOR for all ELNOs to provide universal service would be effective.⁴⁴ However, as PEXA has consistently pointed out, ARNECC had not been proactive in requiring new entrants such as Sympli to provide comprehensive services. As the Commission's own analysis shows, the new entrant Sympli, after 6 years, is providing no more than minimal services in any State.⁴⁵

The Commission's conclusion that all jurisdictions are economic to serve was based on its assumption that services could be extended to Tasmania for \$317,000, based on AECOM's 2019 report. This is far less than the actual cost incurred by PEXA. The Commission did not refer to PEXA's submission to the Commission that the AECOM estimates were not credible – AECOM's estimates were based on outside-in analysis with minimal actual experience of the eConveyancing industry, and they lack credibility because they imply that a comprehensive eConveyancing platform can be built for \$8m, when this is more than ten times lower than the actual costs incurred by PEXA in Australia, PEXA in the UK, and Sympli in Australia.

5.2 Uniform pricing

PEXA agrees with the Commission's analysis that nationally consistent pricing is not a regulatory requirement.⁴⁸ However as a matter of practice PEXA charges the same price nationally and charges the same price to all subscribers for the same transactions on the PEXA Exchange irrespective of the size of their business or their location. PEXA considers this pricing structure is consistent with the original intent of the national eConveyancing legislation, promotes inclusion and does not favour larger lawyers, conveyancers or financial institutions thereby supporting competition and diversity in those markets.

The Commission advocated allowing ELNOs to adapt their pricing framework as the market evolves, ⁴⁹ and advocated allowing ELNOs to charge different prices in different jurisdictions. ⁵⁰ However, in coming to this conclusion, the Commission did not analyse whether there might be policy motivations for encouraging nationally consistent pricing. For example, it did not refer to the discussion in IPART's 2023 report, citing PEXA's submission, that nationally consistent pricing (with implicit cross-subsidies from jurisdictions with larger populations to jurisdictions with smaller populations) "may also reflect the preference of ARNECC,

⁴² Market study, p.36

⁴³ Market study, p.32-33

⁴⁴ IPART, (2023), Interoperability pricing For Electronic Lodgment Network Operators: Final Report, https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Final-report-Interoperability-pricing-for-Electronic-Lodgment-Network-Operators-June-2023.PDF, p.67

⁴⁵ Market study, p.21

⁴⁶ Market study, p.33

⁴⁷ PEXA Commission Submission, p.13

⁴⁸ Market study, p.37

⁴⁹ Market study, p.38

⁵⁰ Market study, p.37

as an intergovernmental body made up of States and Territories, for fiscal equalisation principles that so far as possible deliver an equivalent level of government services to residents of different states".⁵¹ Without considering these policy arguments, there was insufficient basis to conclude that on balance it would be a desirable outcome to allow ELNOs to charge different prices in different jurisdictions.

5.3 Access regime for digital platforms and eConveyancing

The Commission recommended that specific consideration should be given to creating a specific access regime for digital platforms, and extending Part XIB of the *Competition and Consumer Act 2010* (which governs the telecommunications industry) to eConveyancing platforms.⁵² The Commission reasoned that these regimes had been designed to deal with industries where technology was evolving quickly.

Effectively administering Part XIB requires substantial resources. The ACCC has two branches, each reporting to a General Manager, one responsible for "Mobiles, Transmission & Consumer" and the other responsible for "Communications Markets & Advocacy". This level of resourcing appears appropriate for an industry with revenues over \$40b per year.⁵³ The Productivity and Equality Commission did not consider whether this level of scrutiny and government resourcing was appropriate to an industry with a total addressable market of approximately \$300m per year.

5.4 Pricing in a non-interoperable environment

The Commission indicated that if interoperability does not proceed, then government should set wholesale access charges for eConveyancing services. It indicated that these prices should "reflect the efficient costs of developing an ELNO at the time of setting the wholesale charges, not legacy costs". 54

The Commission provided no analysis for why prices in this scenario should be set on the basis of current knowledge rather than historic costs. The Commission did not consider whether this approach, sometimes applied to sectors that are operating with relatively "steady state" technology, should be applied to a sector such as eConveyancing where capability and services are still evolving rapidly. It also did not consider whether it was appropriate for a sector where investment primarily generates intellectual property rather than physical assets, and has not obvious cost benchmark.

The Commission also did not consider that in the scenario it outlined, the only functional eConveyancing platform in the world would be that operated by PEXA. Current knowledge, and the network of users, would only be available because of PEXA's historic investments. It would be manifestly unfair for all users (including consumers) to benefit from the knowledge and network gained through PEXA's historic investments without PEXA having the opportunity to earn a fair return on those investments. It would mean that PEXA would be uniquely penalised for its past investments, and would allow any new ELNO to free-ride on PEXA's past investments.

⁵¹ IPART, (2023), Interoperability pricing For Electronic Lodgment Network Operators: Final Report, https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Final-report-Interoperability-pricing-for-Electronic-Lodgment-Network-Operators-June-2023.PDF, p.66

⁵² Market study, p.53-54

⁵³ Telstra revenues were \$23b in 2023-24 (Telstra, *Annual Report 2024*, https://www.telstra.com.au/content/dam/tcom/about-us/investors/pdf-g/telstra-annual-report-2024.pdf); Optus revenues were \$7b in 2023-24 (Singtel, *Annual Report 2024*, https://www.optus.com.au/content/dam/optus/documents/about-us/media-centre/annual-reports/2024/Singtel Annual Report 2024.pdf, p.105); TPG Telecom revenues were \$5b in 2023 (TPG Telecom, *Annual Report 2023*, https://www.tpgtelecom.com.au/sites/default/files/asx-announcements/TPGTelecom-FY23Annualreport FINAL 20230313.pdf, p.10)

⁵⁴ Market study, p.63

In suggesting that prices should be set on the basis of current knowledge, the Commission also did not consider how it would affect PEXA's incentives to continue to innovate with features that enhance the productivity of conveyancers and financial institutions, as discussed above in section 4.4.3.

6 Criticisms of PEXA

The Commission made a number of observations and recommendations that unfairly reflect poorly on PEXA. As shown in this section, PEXA was not given an appropriate opportunity to respond specifically to these issues before the Commission made and published its conclusions.

6.1 **Interoperability Program delays**

The Commission concluded that delays to implementing interoperability were in part due to stakeholder opposition.⁵⁵ The Commission did not investigate any other cause of delay. While noting PEXA's claims that delays were due to the complexity of implementation, the Commission did not include any detail, and immediately followed the bare outline of PEXA's claim with seven paragraphs in which the Commission discussed PEXA's possible commercial motivations for opposing interoperability. This created the false impression that delay was the result of PEXA's deliberate obstruction rather than inherent difficulties or regulatory problems. This impression was reinforced because the Commission did not discuss any of the explanations for the delay which PEXA had detailed in its submission to the Commission and in other public submissions, including:

- Under-estimation of the complexity of implementing interoperability, and therefore the time required to do so, in part because regulators do not have a full understanding of the functionality of eConveyancing systems;
- The increase in the complexity of the IT systems to implement interoperability as measured by the required number of APIs (Application Programming Interfaces) – from ARNECC's original estimate of 24 APIs to more than 70 now estimated;⁵⁶
- The substantial increase in scope to the interoperability program introduced by ARNECC in November 2023, without engagement with PEXA, and without a regulatory impact assessment, when ARNECC decided that interoperability "must maintain or enhance the customer experience",57 and added to the program a variety of PEXA features that were not required for lodgement, but which were said to be needed to provide what financial institutions described as "functional equivalence";58
- ARNECC's insufficient management of the interoperability program, which focused on the technology build, but did not put in place mechanisms to manage the significant changes to industry governance and processes;59 and
- The implications of the designation of PEXA (and its eConveyancing system) as critical infrastructure in September 2023 by the Department of Home Affairs. 60

The Commission's recommendation that ARNECC develop and publish a detailed industry roadmap to launch interoperability by December 2025⁶¹ was necessarily based on the belief that it was possible to develop and launch a functional and secure interoperable system by December 2025. However, the Commission provided no analysis to show that this was possible, did not explain how the issues raised by PEXA and the wider industry could be overcome, and did not inquire as to whether this timetable was

⁵⁵ Market study, p.34

⁵⁶ See PEXA (2023), Submission to IPART Draft report on Interoperability pricing For Electronic Lodgment Network Operators, https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Online-Submission-PEXA-Name-suppressed-29-Mar-2023-111755818.PDF, p.4.

⁵⁷ ARNECC (2023), Scope for interoperability releases settled, https://www.arnecc.gov.au/wp-content/uploads/2023/12/ARNECC- Statement-Scope-for-interoperability-releases-settled.pdf

⁵⁸ PEXA Commission Submission, p.10

⁵⁹ PEXA Commission Submission, p.13

⁶⁰ PEXA Commission Submission, p.11

⁶¹ Market study, p.35

feasible (see above section 4.5.3). The Commission did not reference that when it published its report, the date scheduled for a fully functional interoperable system was further off (18 months to December 2025 for Qld and NSW) than when all jurisdictions committed to interoperability reform in September 2020, expecting an operable system within 15 months by December 2021. While the Commission detailed the six months in which PEXA withdrew from key technical design and implementation working groups, the Commission did not provide any explanation of what had caused much longer delays. The Commission also did not consider whether any further delays should be expected in light of this experience.

The Commission recommended that failure to meet key milestones should be enforced by pursuing financial penalties against ELNOs.⁶³ Such a recommendation could obviously have adverse impacts on PEXA, particularly if it failed to meet milestones that were never achievable. The Commission's process meant that PEXA was never given an opportunity to demonstrate that it had not been responsible for the bulk of historic delays, or to demonstrate that a launch of full interoperability by December 2025 was not practically achievable given the currently desired scope. The Commission also did not note that PEXA had met all key milestones including the September 2023 test transaction and that PEXA was on track, prior to the June 2024 pause by ARNECC, to implement interoperable refinancing transactions in July 2025. The Commission's approach implied that these financial penalties should be levied against PEXA even if the delay was partly or wholly due to the actions of other entities beyond PEXA's control.

6.2 Intellectual Property

The Commission noted PEXA's IP claims over a number of components of its service offering. ⁶⁴ The Commission did not attempt to analyse the validity of those claims or the feasibility of implementing interoperability consistent with objectives announced by ARNECC without contravening PEXA's IP. It recommended that PEXA be required to "provide ARNECC with a formal legal basis on which it claims IP", which implied that PEXA had not provided ARNECC with a formal legal basis for those claims. ⁶⁵ It recommended that if PEXA failed to provide this basis then ARNECC should "immediately refer" PEXA to the ACCC for investigation for misuse of market power, implying that PEXA's conduct raised significant suspicions of unlawful conduct. PEXA was given no opportunity to provide evidence to the Commission that PEXA's legal advisers had already provided documentation to ARNECC explaining PEXA's claims to IP.

The Commission also asserted that ARNECC has sought "to understand the nature and scope of the incumbent's IP claims". 66 It is unclear on what evidence the Commission based this assertion. Again, if PEXA had been alerted that this question was at issue it would have produced evidence to show that ARNECC's primary attempt to engage with PEXA's claims to IP was a letter from its lawyers dated 19 February 2024, claiming that PEXA had no intellectual property that was being infringed. On 2 May 2024, PEXA proposed a process through the Interoperability Executive Committee (the most senior level governance committee for the interoperability program, chaired by ARNECC and with executive representation from PEXA and Sympli) which included PEXA providing case studies of functionality where PEXA claimed IP. PEXA provided timely input to the terms of reference for this investigation, and indicated that it would be happy to participate, but ARNECC discontinued the process when ARNECC paused its Interoperability program in June 2024.

Again, because of the Commission's process, it published a recommendation that potentially impugned PEXA's reputation without first giving PEXA an opportunity to provide evidence that it had supplied documents to substantiate its IP claims such that it was not reasonable to imply that PEXA had failed to fully comply with its legal obligations.

⁶² PEXA Commission Submission, p.25

⁶³ Market study, p.35

⁶⁴ Market study, p.40

⁶⁵ Market study, p.41

⁶⁶ Market study, p.63

6.3 Differential pricing

The Commission questioned whether PEXA price discriminates by charging different banks different service fees. It noted that PEXA might do so, and if it did this might reduce competition between banks in the mortgage market. It recommended that ARNECC require regular and detailed reporting on differential service fees.⁶⁷ The detailed discussion of this issue implied that this was a significant issue in practice.

Because of the Commission's process, it published an analysis and recommendation that potentially implied that PEXA's behaviour was reducing competition in the mortgage market without first giving PEXA an opportunity to provide evidence about its behaviour.

If PEXA had been given such an opportunity, it would have provided evidence to the Commission that it charges the same price to all subscribers – whether large or small – for the same transaction type on the PEXA Exchange as set out in its pricing policy which is publicly available on PEXA's website.

6.4 Price information encouraging coordinated mortgage pricing

The Commission implied that PEXA could share data with a bank, in a manner that increased the risk of coordinated mortgage pricing.⁶⁸ If asked, PEXA would have confirmed that it does not provide any subscribers (banks or otherwise) with sensitive information of other subscribers and complies with the express provisions of the Model Operating Requirements regarding the use of data that prohibit the sort of conduct discussed by the Commission. PEXA would also have noted that it has previously proposed to governments an open data framework with appropriate privacy protections.

6.5 Process issues

The Commission's market study made specific observations and implications about PEXA's behaviour, but not about the behaviour of other market participants. In these circumstances the Commission should have held additional consultations with PEXA to alert it to these potential observations and implications, and to provide it with an opportunity to respond. Whether or not its conduct was legally invalid, in failing to do so, the Commission contravened the underlying principles of natural justice that a person should be given an understanding of issues about which an adverse finding might be made and an opportunity to respond before such an adverse finding is made.⁶⁹

Such considerations are reflected in the standard process of the Commonwealth Productivity Commission, which typically produces a Draft Report for consultation before publishing a Final Report. It is disappointing, given the nature of its market study, that the NSW Productivity and Equality Commission did not follow a similar process.

The Commission's failure to provide PEXA with an appropriate opportunity to respond to the draft observations of the market study has resulted in PEXA needing to produce this response.

⁶⁷ Market study, p.38

⁶⁸ Market Study, p.27

⁶⁹ FAI Insurances v Winneke [1982] HCA 26

7 Industry governance

7.1 ARNECC challenges as a regulator

PEXA agrees with the Commission's conclusion that ARNECC is challenged as a regulator.⁷⁰ ARNECC has limited formal regulatory, compliance and enforcement powers; requires 75% consensus amongst the States and Territories to act; has limited resources and funding; and lacks expertise in technology, competition, and financial settlement.⁷¹

7.2 New regulatory responsibilities

The Commission recommended a variety of additional regulatory infrastructure for eConveyancing, including:

- Regular meetings of ARNECC and the Council of Financial Regulators, also attended by the ACCC;⁷²
- Additional ARNECC activities enabled by additional resourcing;⁷³
- Additional responsibilities for the ACCC to undertake ongoing market monitoring, compliance and enforcement in respect of market structure, interoperability and access, data standards, price controls and regulatory reporting;⁷⁴ and
- Licensing ELNOs as payment services providers.⁷⁵

Good practice for policy development involves assessment of the potential costs and impacts of regulatory intervention relative to the policy objectives.

However, the Commission did not consider whether these additional regulatory activities, taken together, were appropriate and proportionate for an industry with a total addressable market of approximately \$300m per year. It would be considerably more regulatory oversight than exists for many other industries with much greater complexity and revenues.

The Commission also did not consider how such a regulatory regime might impact innovation, a key objective that the interoperability program was intended to promote. Innovation might well be discouraged by overlapping responsibilities and additional regulation. Innovation stifled by additional regulation might well impose significant net costs on the community because opportunities would be missed to improve the efficiency of conveyancers and financial institutions. Most of the benefits of eConveyancing innovation are realised through efficiencies and lower operating costs for conveyancers and banks where the opportunities for cost savings are inherently much larger. As PEXA pointed out in its submission (but the Commission did not note in its report), ELNO costs are substantially less than 10% of conveyancer costs, and 1% of overall transaction costs (not including stamp duties).⁷⁶

7.3 Additional regulatory fees

The Commission recommended that there should be a number of additional fees for eConveyancing regulation, including:⁷⁷

⁷⁰ Market study, p.40

⁷¹ Market study, p.43-44

⁷² Market study, p.45-46

⁷³ Market study, p.46

⁷⁴ Market study, p.46

⁷⁵ Market study, p.50

⁷⁶ PEXA Commission Submission, p.4

⁷⁷ Market study, p.46, 48-49

- Fees for the costs of ARNECC's ongoing activities (many of which do not relate directly to eConveyancing);
- Fees for the costs of ACCC eConveyancing marketing oversight and monitoring; and
- Fees for the costs of licencing NECDS intellectual property.

The Commission did not estimate the quantum of these fees. Consequently it did not consider whether these additional fees (and the activities they fund) were justified relative to the additional benefits. With a total addressable market of only \$300m, it is quite possible that any reduction in consumer costs as a result of additional regulatory oversight would be more than offset by the additional regulatory costs which would ultimately be passed on to consumers.

8 Conclusion

Taken as a whole, the Commission's market study is not an adequate basis for substantial regulatory intervention.

As described above in section 2, there are significant issues with the Commission's methodology. As described above in section 3, its process fell short of good practice with:

- Limited guidance on scope and issues
- Unpublished submissions
- No draft or interim report for comment
- Adverse observations made without providing an opportunity for submission on the specific issue
- Broad and far-reaching recommendations that are inappropriate given the limited process

The Commission's evidence and reasoning also fell short of good practice. As shown in section 4 to section 7, the market study contains numerous examples of inadequate reasoning, conclusions drawn without sufficient evidence, conclusions drawn using selective evidence, conclusions drawn with no reference to submissions that provided relevant contrary evidence and reasoning, and recommendations made without considering cost/benefit and proportionality.

Appendix 2: PEXA letter to financial institutions regarding intellectual property



17 April 2023



Re: Interoperability Implementation Considerations

At the Interoperability Implementation Committee meeting on Monday 27th March 2023, following concerns raised by some banks about the impacts of Interoperability on their operational processes and controls and current user experience, ARNECC asked you, and the Operations teams from the other major banks, to work with the ABA and the Program Management Group to inform ARNECC on those impacts.

PEXA encourages you to participate constructively and openly in this process.

As we approach the initial test transactions in September, it is important that ARNECC has a considered view of the impacts, as we all want to ensure that regulatory changes are designed and implemented in a way that preserves the safety, effectiveness and efficiency of the property settlement ecosystem and does not have unanticipated adverse impacts on industry participants. Your active engagement in this process will help in that regard.

In considering and discussing with ARNECC the impacts on you and your operating processes and controls, we encourage you to focus not only on the current proposed scope for Interoperability Day 2 release 1, but also anticipated impacts of future phases (including broader refinances and sale & purchase) based on your understanding to date. This would include impacts outside the direct transactional activity such as incident management, reconciliations and operational controls, settlement certainty and operational efficiencies.

We provided you with information in November 2022 to assist your understanding of interoperability and are happy to provide you with further information if that would be useful. It is, however, important that you provide ARNECC with your own perspective of the impacts, their nature and significance.

We note that Interoperability has a defined regulatory scope limited to certain fields and functions necessary for lodgement activities. Through collaboration with you and other industry participants over many years, PEXA currently offers many additional features and functions beyond the scope of Interoperability that remain proprietary to PEXA.

We ask that, in participating in the current process, you do so in a way that provides ARNECC with an understanding of the impacts on your processes and business objectives but without disclosing the detailed working of the PEXA system in a way which could provide our proprietary knowledge or intellectual property to our competitor.

Yours sincerely,

