

INQUIRY INTO COMPETITION REFORMS IN ELECTRONIC CONVEYANCING

Organisation: InfoTrack
Date Received: 15 October 2025

InfoTrack Submission to NSW Select Committee on Competition Reforms in Electronic Conveyancing

15 October 2025

1. Introduction and executive summary

- 1.1. Thank you for the opportunity for InfoTrack to provide a submission to the NSW Parliament Select Committee on Competition Reforms in Electronic Conveyancing (**Inquiry**).
- 1.2. InfoTrack is a leading Australian technology provider delivering digital solutions across the legal, conveyancing, and financial services sectors.
- 1.3. InfoTrack is also a co-owner of Sympli, a joint venture with the ASX, established to provide competition in the electronic conveyancing market.
- 1.4. As the Inquiry members will be aware, eConveyancing transactions in Australia were initially facilitated through a government-owned Electronic Lodgement Network Operator (**ELNO**), which was subsequently fully privatised in 2019. This ELNO is Property Exchange Australia Ltd (**PEXA**), which accounts for approximately 99% of all digital property transactions across Australia¹ and has approximately 20,000 subscribers using its platform a week to settle property transactions.²
- 1.5. The current regulatory framework within which PEXA and other nascent ELNOs operate suffers from a number of deficiencies, arising primarily from:
 - (a) a lack of clarity as to the remit of state and federal Governments in driving forward key reforms that are critical to competition in eConveyancing markets;
 - (b) challenges the Australian Registrars National Electronic Conveyancing Council (**ARNECC**) faces with its structure, as well as its composition as a council of Registrars that currently do not have the necessary expertise nor resources to oversee the eConveyancing market as a whole (particularly in respect of the financial settlement and competition components of regulation); and
 - (c) gaps and uncertainties in the drafting and application of the *EConveyancing National Law* (**ECNL**), the Model Operating Requirements (**MOR**) and the Model Participation Rules (**MPR**) (together, the **EConveyancing Laws**), and the structural conditions of the eConveyancing market³ that make it practically

¹ Please see https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/Economicdynamism/Report/Chapter_10_-_Interoperability (at [10.13]).

² Please see <https://www.pexa.com.au/company/>.

³ That is, reliance on one monopoly ELNO which has the ability and incentive to use its market power to its own commercial advantage.

difficult to effectively enforce and audit compliance with the eConveyancing regime.

1.6. **Proposed Recommendations:** InfoTrack requests that the following proposed reforms and actions be considered and, where appropriate, recommended by the Inquiry:

- (a) **Interoperability:** That the NSW Government encourage ARNECC to publish the findings arising from the ARNECC Reviews as soon as possible and the NSW Government to then convene a ministerial forum to enable a decision regarding next steps for interoperability to be communicated publicly in 2025 (see paragraphs [2.17]-[2.21]).
- (b) **NSW Enforcement Powers:** That the NSW Registrar General should consider issuing a direction for ELNOs to comply with directions relating to interoperability and consider use of enforcement powers in case of contravention (see paragraph 6]). InfoTrack notes that the NSW Registrar General has enforcement powers under the *Electronic Conveyancing Enforcement Act 2022* (NSW) (**Enforcement Act**) which could be used to compel ELNOs to deliver interoperability.
- (c) **MOR:** that ARNECC is encouraged to implement amendments to the MOR to add a definition of “available” to Schedule 2 (Performance Levels) of the Model Operating Requirements to align with industry standards and include the ability to access and use the core functionality of the ELN including the ability to complete the transfer and registration of a property (please see paragraph [3.8]-[3.14]).
- (d) **Practitioner-first:** That the NSW Government should consider publicly supporting the implementation of a ‘practitioner-first’ release which will bring competition to the legal and conveyancing market by offering choice as an interim step towards interoperability (see paragraph [4]).
- (e) **NSW Productivity and Equality Market Study (Market Study):** That the NSW Government should urgently consider implementing recommendations from the NSW Productivity Commission’s market study particularly recommendations 2, 3 and 17. InfoTrack notes that the Market Study made recommendations to the NSW Government which have yet to be implemented (see paragraph [7]).
- (f) **ACCC consultation:** Noting ARNECC’s current constitution and the absence of a national enforcement regime, the NSW Government should consider consulting with, and encouraging ARNECC to consult with, the ACCC to assess whether there have been any breaches of the Competition and Consumer Act 2010 (Cth) arising from PEXA conduct including in relation to: (i) the letters sent by PEXA to the major banks making unsubstantiated claims relating to intellectual property, leading to the Banks’ withdrawal from the reform; and (ii)

the fact that interoperability has not been implemented, despite Interoperability being endorsed by experts and legislated by the NSW Parliament (see paragraph [8]).

- 1.7. InfoTrack also requests that the proposed reforms set out at Schedule 1 also be considered and, where appropriate, recommended by the Inquiry.

2. Introduction

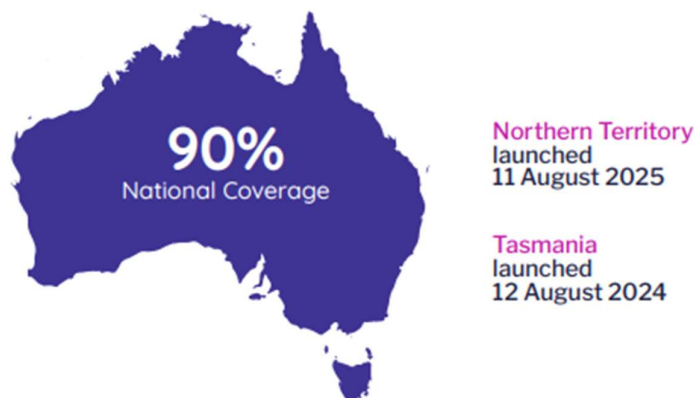
PEXA remains a highly concentrated monopoly

- 2.1. PEXA remains a highly concentrated monopoly in Australia's \$1 trillion eConveyancing market. The monopoly now accounts for approximately 99% of all digital property settlements nationwide and 90% of the conveyancing market with residual paper settlements being the next 10%. The only other competitor, Sympli, has less than 1% of the market, with a potential third ELNO, Lextech, exiting the market on 13 May 2025⁴.
- 2.2. eConveyancing began as an Australian Government initiative, with State Governments and banks being joint shareholders in the NECDL, which was subsequently renamed to Property Exchange Australia Limited (**PEXA**). PEXA became wholly privately owned in January 2019, when state governments sold their interests in the company to Link Group, Morgan Stanley Infrastructure Inc, and the Commonwealth Bank of Australia (**CBA**). Today, the largest shareholder of PEXA is CBA, and PEXA is a publicly listed company on the Australian Stock Exchange with a market capitalisation of approximately 2.86 billion in September 2025.
- 2.3. eConveyancing was mandated in Australian States and Territories from around 2016 when there were no competitors to PEXA. This effectively meant that all parties concerned in the provision of eConveyancing services (including financial institutions, lawyers, and conveyancers) were required to become subscribers to PEXA in order to comply with the mandate. The eConveyancing mandate led to a surge in eConveyancing transactions and the rapid uptake of the services of PEXA Exchange. Relevantly, interoperability was not mandated at the same time, nor was it at the time PEXA commenced operations as PEXA operated the only ELN.
- 2.4. As there were no competitors to PEXA, it enjoyed a singular status as the only available ELNO and due to that legacy, PEXA became the gatekeeper of all relevant data standards, artefacts and processes required for eConveyancing and interoperability, as explained further in this section.
- 2.5. PEXA's market share has now expanded into all States and Territories following its launch in the Northern Territory and Tasmania. It is now a truly national monopoly with

⁴ See <https://www.lawyersweekly.com.au/biglaw/42088-lextech-withdraws-from-elno-race-backs-plexa-s-efficiency-and-reliability>

dominance across the entire country and represents a ‘honeypot’ of data by the Commonwealth Government⁵. The risk to industry, homebuyers and the economy in the form of higher fees, less choice and outages has been explored by experts such as the ACCC and the NSW Productivity and Equality Commission⁶.

Figure [1] – PEXA's eConveyancing transaction coverage in Australia as of August 2025



Source: PEXA Group FY25 Annual Report⁷

PEXA expanding into the UK and Australian Investment

2.6. Given PEXA have saturated the Australian market, they have recently expanded into the UK, launching its first product in 2022. PEXA is now leveraging its monopoly profits in Australia to enter into the UK market. This revenue is being funnelled overseas to PEXA UK rather than being spent on improvements for customers at home. This is shown in PEXA's recent results which show that they recently spent \$33.87m⁸ in capex on their exchange whilst spending about \$200m to expand into the UK.⁹

Experts have agreed on interoperability and competition

2.7. The lack of interoperability has been a major barrier to competition. Currently, all parties involved in a property transaction must use the same ELNO, which entrenches PEXA's monopoly – this is called the network effect. Sympli was created in 2018 as a competitor to PEXA, however after nearly 7 years competition has not emerged. The ACCC in 2019 discussed the risk of entrenching a monopoly in that “*further delays in*

⁵ InfoTrack meeting with Department of Home Affairs, August 2025

⁶ ACCC, *ACCC Report on e-conveyancing market reform*, December 2019

NSW Productivity and Equality Commission, *eConveyancing market study*, 2024

⁷ See <https://www.pexa-group.com/investor-centre/asx-announcements/> p.20.

⁸ See PEXA ASX Announcements, PEXA Group FY25 Results Announcement: <https://www.pexa-group.com/investor-centre/asx-announcements/>

⁹ Chanticleer, *Australian Financial Review*, PEXA's offshore venture shows much-needed proof of life: <https://www.afr.com/chanticleer/pexa-s-offshore-venture-shows-much-needed-proof-of-life-20240511-p5jcuc>

progressing the development of an appropriate market structure will fragment the national market and/or entrench a monopoly service provider model.”¹⁰

- 2.8. A number of expert studies found that competition in this market would lead to benefits for consumers and industry, and that interoperability is the best way to do this:
- a) **ACCC report on eConveyancing market reform¹¹:** In 2019 the ACCC determined that the alternative to competition is an entrenched monopoly with forgone opportunities for innovation, lower costs and improved quality of service. It also found that interoperability was the preferred approach. The ACCC have also recommended complete vertical separation between and ELNO and upstream and downstream providers.¹²
 - b) **NSW Productivity Commission White Paper 2021:** Found that the solution to an entrenched monopoly is interoperability, which should be supported by NSW Government as a matter of urgency.¹³
 - c) **IPART – Review of the Pricing Framework for Electronic Conveyancing Service in NSW:** The report found that the eConveyancing market is highly concentrated and that interoperability would improve competition in the eConveyancing market. It was also recommended that a *“direct connection between the two current ELNOs be implemented as soon as possible to promote competition”¹⁴*.
 - d) **The Centre for International Economics – Addressing market power in electronic lodgment services:** Cost benefit analysis found that interoperability is likely to deliver the largest net benefits of the options considered, estimated at around \$83.6 million in net present value terms over 10 years in NSW, using a discount rate of 7 per cent.¹⁵

NSW leadership – legislation and enforcement powers

- 2.9. NSW have traditionally played a leadership role in this reform. In 2022, the NSW Parliament facilitated competition in this market, legislating interoperability between ELNOs. In May 2022, the NSW Parliament passed the *Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022* which amended the Electronic Conveyancing National Law (**ECNL**) to mandate interoperability between Electronic Lodgement Network Operators (**ELNOs**) such as PEXA and Sympli. ELNOs remain

¹⁰ ACCC, *ACCC Report on e-conveyancing market reform*, December 2019, p.1

¹¹ ACCC, *ACCC Report on e-conveyancing market reform*, December 2019

¹² ACCC, *ACCC submission to the ARNECC Issues Paper: Review of the Separation Regime in Operating Requirements 5.6*, October 2024

¹³ NSW Productivity and Equality Commission, *Productivity Commission White Paper 2021: Rebooting the Economy*, 2021, p.119

¹⁴ NSW Productivity and Equality Commission, *Review of the pricing framework for Electronic Conveyancing Services in NSW*, 2019, Recommendation 4

¹⁵ The Centre for International Economics, *Addressing market power in electronic lodgment services*, 1 September 2020, p.54

legally required to work together to enable data exchange to enable industry and homebuyers a choice in which ELNO they use to settle property.

2.10. NSW Parliament then set up enforcement powers for the NSW Registrar General. In November 2022, the NSW Parliament subsequently passed the *Electronic Conveyancing Enforcement Bill 2022*. This legislation enhanced the NSW Office of Registrar General's compliance and enforcement powers to govern ELNO behaviour until such time that a national regime was developed. This includes a penalty regime with fines of up to \$10 million for non-compliance.

2.11. In November 2023, the scope for interoperability releases were settled by ARNECC. The scope refers to the data elements that must be shared by ELNOs in an interoperable transaction. This followed a series of stakeholder consultation workshops, where it worked closely with both ELNOs, PEXA and Sympli.¹⁶

December 2025 set as deadline and NSW commitment to deliver

2.12. The Australian Registrar's National Electronic Conveyancing Council (**ARNECC**) who currently oversees the competition reform released a statement in November 2023, with agreement from State and Territory ministers and the Federal Government that NSW and QLD would enable interoperability on or before 31 December 2025.¹⁷

2.13. In September prior to this announcement and following successful Day 1 Transactions¹⁸, the NSW Minister responsible for this reform, the Hon. Jihad Dib MP, Minister for Customer Service and Digital Government reiterated the NSW Government's commitment: *"The Minns Government is fully committed to this critical reform and achieving this milestone is the result of significant work and collaboration over several years across jurisdictions."*¹⁹

ARNECC pauses reform and PEXA send letter to major banks

2.14. Following a Ministerial Forum in June 2024, ARNECC paused the interoperability program claiming that 'significant issues were raised by the banking industry'. This followed a Ministerial Statement which stated that *"recent issues that have been raised by the banking industry in relation to the Interoperability Program, and that some of these are beyond the remit of States and Territories to address effectively"*²⁰ and stated that these issues would be raised with the Commonwealth Government and regulators. Following this the NSW Minister wrote to the Federal Government to seek support for intervention; however, no response was received from the Treasurer.

¹⁶ ARNECC, *ARNECC Statement – Scope for interoperability releases settled*, November 2020

¹⁷ ARNECC, *Ministerial Forum: National eConveyancing Towards a sustainable, competitive national eConveyancing market*, November 2023

¹⁸ In September, Day 1 Transactions were successfully completed allowing for 2 properties to be refinanced in Queensland, testing the interoperability technical solution developed by ELNOs over several years.

¹⁹ <https://www.nsw.gov.au/media-releases/new-era-of-econveyancing>

²⁰ ARNECC, *Ministerial Forum: National eConveyancing*, 11 June 2024

- 2.15. It was revealed in July 2024, by the Sydney Morning Herald in the article titled, *The bank threat that killed off competition in Australia's \$800b property monopoly that "Australia's major banks were warned they risked breaching the intellectual property rights of Australia's \$800 billion electronic property settlements giant PEXA, a move that proved decisive in delaying the launch of its rival Sympli"*. The article further details that a letter was sent to PEXA in December 2023 as the banks prepared to cooperate with requests from ARNECC to introduce competition.
- 2.16. ARNECC had requested specific information on functions provided by PEXA. The letter below referred to a meeting between the banks and ARNECC, with PEXA claiming intellectual property over those functions. A month later, the banks withdrew from workshops due to claims of intellectual property.

Figure [2] – PEXA's letter to the major banks – circa December 2023

Access to PEXA Exchange Intellectual Property for ongoing IOP discovery work

I wanted to reach out to you following a meeting we understand was held between the Australian Banking Association (ABA), banking representatives and ARNECC in late November regarding the ongoing Interoperability program roll out.

We are aware ARNECC requested that the banks provide detailed information about several select PEXA functions. This meeting followed the Ministerial Forum in which the ABA reflected concerns in the sector that there should be no loss of functionality or features developed by PEXA for the banks in the introduction of interoperability.

We appreciate you have and should continue to advise the regulator on the outcomes you are seeking in an interoperable regime and the gaps in functionality of which you are concerned.

However, PEXA has intellectual property rights over those important functions that we have developed in consultation with our lending institution customers over the past decade. It is not reasonable that you are being asked to outline the functionality of those systems to the regulator, especially as this could lead to disclosure of our company's intellectual property.

Please be assured we are in ongoing discussions with ARNECC over what is required in scope and would kindly ask you to refer ARNECC to us on those matters.

If you have any questions, please do not hesitate to reach out to our General Manager, Integration and Optimisation, Kate Camilleri

ARNECC Reviews announced and 'Practitioner-first' release

- 2.17. Following the pause a further review was announced in February that ARNECC was due to commission two further reviews (**ARNECC reviews**):
- (a) a functional requirements review to determine a functional scope for interoperability; and
 - (b) an updated cost benefit analysis to test whether direct connect interoperability continues to be the most appropriate model.
- 2.18. In July 2025, it was announced that the ARNECC reviews would conclude in late October 2025. Government would use these reviews to inform decisions regarding next steps for interoperability and competition reform.
- 2.19. Sympli as part of the reviews has suggested that the initial phase of interoperability could be a 'practitioner-first release'. **This means that the major banks would remain on PEXA in the short term, whilst Sympli would provide choice for tens**

of thousands of lawyers and conveyancers across Australia. Whilst this is a major compromise, this would be a significant stepping stone before full interoperability and would seek to negate many of the bank issues raised previously. InfoTrack also notes that a similar solution suggested by PEXA which they have now withdrawn.²¹

2.20. InfoTrack as well as industry have been calling for a decision to be made this year on the next steps on the implementation of interoperability and competition reform. The NSW Government has traditionally played the role of convening a ministerial forum.

2.21. **Recommendation:** InfoTrack requests that the NSW Government considers convening a ministerial forum once the findings from the ARNECC Review have been published to enable a decision regarding next steps for interoperability to be communicated to industry by the end of 2025.

3. Impact of outages on property settlements – homebuyers and small business

PEXA as a single point of failure and interoperability increasing resiliency

3.1. Given PEXA is the only ELNO that can settle property in Australia, experts have expressed concern about the risk of a single point of failure²². Given that eConveyancing has been mandated in NSW, if PEXA suffers an outage or a cyber-attack there is no way for property to be settled in NSW. This is the same situation across Australia, with paper settlements no longer enabled for industry.

3.2. In their recent submission to the Senate Hearing, ARNECC explained that with competition comes greater resiliency in the market:

“Resilience: A sole ELNO market creates a single point of failure. A multiplicity of ELNOs creates redundancy because if one ELNO goes down, subscribers can switch. In addition, competitive pressure would be more likely to result in a more secure and resilient offering as subscribers would likely select the more secure and resilient system.”²³

3.3. PEXA are one of a few stakeholders to claim that interoperability may increase the risk of failed settlements, showing little evidence. In contrast, the single point of failure that PEXA presents has been established by experts and the regulator.

Impact of outages on homebuyers and small business

3.4. PEXA's claim of maintaining 100% uptime is incongruous with the self-reported fact that the PEXA platform has sustained over 95 outages from February 2024 to January

²¹ Economics References Committee, *Micro-Competition Opportunity – PEXA evidence*:
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p?query=Id%3A%22committees%2Fcommsen%2F28963%2F0000%22>

²² ARNECC, *ARNECC Submission to Micro-Competition Inquiry*, 2025, p.9 and Department of Home Affairs, *Department of Home Affairs submission to the Inquiry into Micro-Competition Opportunities*, 2025, p.4

²³ Ibid.

2025, which have impacted homebuyers across Australia, including instances where conveyancers and lawyers were unable to complete property transactions.²⁴ According to PEXA's published 'System Incident History'²⁵, the PEXA platform has been directly responsible for:

- (a) 1 "National Full Service Outage";²⁶
- (b) 10 "significant service disruptions";²⁷ and
- (c) 6 'partial service disruption this year'.²⁸

PEXA in their FY2025 results also confirmed that service disruptions have increased by almost 15% this year, which shows an upward trend in terms of outages.²⁹

3.5. Significant events impacting settlements also include:

- a) *30 June 2021* – PEXA experienced a highly publicised outage on 30 June 2021 which prevented users from being able to log in to the PEXA ELN on the last day of the financial year for a period of 1 hour and 45 minutes.³⁰
- b) *16 May 2024* – Mobile signing issue which resulted in users being unable to sign off on property settlements for several hours. PEXA estimate this impacted less than 10 percent of settlements. However, this claim alone means that hundreds of settlements and thousands of people across would have been impacted.³¹
- c) *24 April, 2025*: PEXA reported an incident which impacted access to the platform for one hour. This outage caused PEXA to breach the monthly Service Reliability Performance Level.³²
- d) *13 August – 2025* – PEXA experienced an outage where users were unable to access the exchange for 112 minutes.³³

²⁴ Daily Telegraph, 'Stranded': Homebuyers caught in property platform PEXA's outages, July 2025.

²⁵ <https://status.pexa.com.au/history>

²⁶ **National Full Service Outage:** An incident which results in all customers being unable to use PEXA's national network. As defined at <https://status.pexa.com.au/history>

²⁷ **Significant Service Disruption:** An incident which causes specific services to not be available, which results in limited functionality for customers as a result of a PEXA issue or a Third Party Interconnected Network issue or outage. As defined at <https://status.pexa.com.au/history>

²⁸ **Partial Service Disruption:** An incident which causes intermittent issues or a slower than usual service, as a result of a PEXA or Interconnected Third Party Network issue. <https://status.pexa.com.au/history>

²⁹ PEXA, *Annual Report 2025 – PEXA*, p.18

³⁰ Colin Kruger, *Lacklustre debut for PEXA's \$3bn IPO after operational glitch*, 2021: <https://www.smh.com.au/business/markets/lacklustre-debut-for-pexa-s-3b-ipo-after-operational-glitch-20210701-p585uh.html>

³¹ Annie Kane, *E-conveyancing competition calls intensify after PEXA 'issue'* May 2025 with over 700,000 property settlements in 2024

³² NSW Registrar General Questions on Notice, Answer 5: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Micro-CompetitionEconvey/Additional_Documents?docType=Answer%20to%20Question%20on%20Notice

³³ See PEXA Monthly Dashboard – August 2025: <https://www.pexa.com.au/static/media/2025/09/PEXA-Monthly-Dashboard-August-2025-v01.00-sm-1757543801.pdf>

- 3.6. Media reports have also shown the significant financial and emotional impacts on home buyers and small businesses from PEXA outages this year. In July 2025, the Daily Telegraph in their article *'Stranded': Homebuyers caught in property platform PEXA's outages* reported that *'dozens of families have been left stuck between homes and stranded on the street amid repeated outages plaguing Australia's dominant property settlement platform...PEXA'*³⁴. In this report, the article noted that one elderly couple in their 80s, were stranded outside of their new home, unable to move in, for more than five hours in February when an outage struck during their sale. The President of the Australian Institute of Conveyancers NSW, Ann Ferguson said the system goes down *'far too often'* citing the several outages experienced on PEXA.
- 3.7. It is therefore clear from these reports that PEXA outages have already impacted home buyers and small businesses. More significant is that a full-blown PEXA national outage has the potential to grind all property settlements to a halt. This is shown through further research by Agile Market Intelligence³⁵ which demonstrates that a national outage occurring on a Friday has the possibility of costing Australian homebuyers and sellers a cumulative total of up to \$5 million per day in additional costs and fees including removalist rescheduling, temporary accommodation, storage, additional fees and mortgage interest.

PEXA performance reporting – Model Operating Requirements

- 3.8. As noted at paragraph 3.4 above, PEXA's claim of 100% uptime is incongruous with the self-reported history of outages. This incongruity stems from, at least in part, the inadequacy of Schedule 2 of the ARNECC Model Operating Requirements (**MOR**) in appropriately defining availability to prevailing industry standards.
- 3.9. Schedule 2 of the MOR does not define "availability" and merely states the service level for service availability and service reliability as follows:
- Service Availability: The ELNO System **must be available** to its Subscribers (including those services dependent on functionality needing external communications and systems except when those external communications or systems are not available) for 24 hours per day, seven days per week and 52 weeks per year, exclusive of Scheduled Maintenance, to be assessed monthly.*
- Service Reliability: The ELNO System must be available for: (a) not less than 99.8% during Core Hours; and (b) not less than 99% during Non-Core Hours, assessed monthly.*

³⁴ Daily Telegraph *'Stranded': Homebuyers caught in property platform PEXA's outages*, July 2025.

³⁵ Agile Market Intelligence, *What if Friday fails?*, 2025

- 3.10. It was recently reported by the NSW Office of Registrar General in their response to the Senate Inquiry into Micro-competition Opportunities that PEXA reported at least 50 outages since 2024, impacting its services in NSW.³⁶
- 3.11. It is not clear how PEXA continues to claim 100% uptime³⁷ in the instances where an outage prevents the core functionality of the ELN from being useable – being the transfer and settlement of real property. InfoTrack notes that the definition of availability included in APRA's CPS 234, which sets out the Prudential Standards for Information Security, is "*accessibility and usability when required*".
- 3.12. In any event PEXA does not meet this criterion. Its reported system incident history indicates multiple "significant service disruptions" in the first 6 months of 2025 as well as a number of "partial service disruptions". Accordingly, the "100% uptime" metric cited by PEXA appears to be a misrepresentation of the operation of PEXA Exchange; while PEXA may be "available", access to PEXA Exchange³⁸ without an ability to transact and settle is meaningless to Australians, and such outages should not be downplayed as mere "minor service disruption[s]".
- 3.13. Furthermore, the existing regulatory framework does not adequately equip ARNECC with enforcement powers in instances where the Model Operating Requirements (**MOR**) or Electronic Conveyancing National Law (**ECNL**) is breached. PEXA is not required to compensate users where it breaches the service availability or reliability requirements set out in the MOR.
- 3.14. **Recommendation:** InfoTrack submits that the Inquiry to consider recommending the to ARNECC that a definition of "available" is added to Schedule 2 (Performance Levels) of the Model Operating Requirements to align with industry standards and include the ability to access and use the core functionality of the ELN including the ability to complete the transfer and registration of a property.

4. NSW Pricing powers and opportunities to drive competition

PEXA's profit margins and price increases

- 4.1. Despite pricing regulation, PEXA's profitability has continued to grow. According to the NSW Productivity Commission PEXA is earning very high profits even relative to several other IT and technology companies listed on the ASX.³⁹

³⁶ NSW Registrar General Questions on Notice, Answer 3: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Micro-CompetitionEconvey/Additional_Documents?docType=Answer%20to%20Question%20on%20Notice

³⁷ PEXA, *How PEXA is delivering on safety, reliability, and efficiency*, March 2025: <https://www.pexa-group.com/content-hub/news/how-pexa-is-delivering/>

³⁸ Noting that on some occasions, incidents have also included login and multi-factor authentication service issues. See for example <https://status.pexa.com.au/incidents/wjhw5tkql169>.

³⁹ NSW Productivity and Equality Commission, *eConveyancing market study*, 2024, p.30

- 4.2. PEXA continue to earn regulated and unregulated profits in the absence of genuine competition in the ELN market.
- 4.3. PEXA's financial results in FY25 indicate there has been no competitive erosion of its profits. PEXA Group's revenue rose by 16% to \$393.6 million⁴⁰, while operating costs increased by just 2%⁴¹, resulting in a 21% jump in EBITDA⁴².
- 4.4. Moreover, the lack of competition means that PEXA faces no pricing pressure, allowing it to maintain high margins— its Exchange division reported an EBITDA margin of 55% in the FY25 financial year and a gross margin of 88.3%.⁴³ PEXA also reported that they made \$17.8 million in interest alone from holding on to source funds through their exchange.⁴⁴
- 4.5. In terms of ELNO service fees, PEXA has increased their fees by CPI each and every year given there is no competitive pressure to not do so. Since 2018, PEXA fees have increased by almost 30% for consumers and subscribers.⁴⁵ This has included growing its non-ELN revenue which now represents 15% of its total business revenues⁴⁶.

Pricing caps alone are insufficient to drive competition

- 4.6. The NSW Productivity Commission also found that the price control arrangements have allowed ELNOs to set prices at levels that do not reflect their underlying costs. The arrangements also allow ELNOs to increase prices with no requirement to improve efficiency or pass on the benefits to consumers.⁴⁷

⁴⁰ See PEXA ASX Announcements, PEXA Group FY25 Results Announcement: <https://www.pexa-group.com/investor-centre/asx-announcements/>

⁴¹ See PEXA ASX Announcements, PEXA Group FY25 Results Announcement: <https://www.pexa-group.com/investor-centre/asx-announcements/>

⁴² See PEXA ASX Announcements, PEXA Group FY25 Results Announcement: <https://www.pexa-group.com/investor-centre/asx-announcements/>

⁴³ See PEXA ASX Announcements, PEXA Group FY25 Results Announcement: <https://www.pexa-group.com/investor-centre/asx-announcements/>

⁴⁴ See PEXA Annual Report 2025, p.101: <https://www.pexa-group.com/investor-centre/asx-announcements/>

⁴⁵ Since mandating was announced in NSW in 2017, PEXA fees for a single-title transfer increased 27.4% (from \$107.80 in FY17 to \$137.39 in FY25).

⁴⁶ PEXA, PEXA Group announces strong FY24 results, August 2024: <https://www.pexa-group.com/content-hub/news/pexa-announces-stronger-fy24-results/>

⁴⁷ NSW Productivity and Equality Commission, *eConveyancing market study*, 2024, p.31

- 4.7. CPI caps alone are insufficient to drive competition, especially when the incumbent can leverage scale, data, and network effects to grow revenue faster than costs.⁴⁸ InfoTrack is concerned that a monopolistic, vertically integrated ELNO may share information, staff or systems between related entities in order to stifle or frustrate competition developing in the eConveyancing market or across related markets. Such an ELNO may:
- (a) deny or hinder competitors from across relevant supply chains, access to certain data or services;
 - (b) only offer access at higher prices, provide a reduced service quality, or provide services to market participants under less favourable conditions compared to those offered to its own related party;
 - (c) leverage the access that it has to the market in its entirety which other participants cannot access (or can only access at a later point in time for a fee); and
 - (d) gain advantages from its position across related markets through access to information about how their competitors operate (including greater visibility of their intellectual property, processes and customers).
- 4.8. The CPI cap also applies only to certain core transaction fees and does not limit PEXA's ability to increase prices for ancillary services or benefit from rising transaction volumes and nor does it impact PEXA's unregulated revenue streams. For example, there is no price regulation on PEXA other services or companies under its remit such as PEXA Digital Growth which may yield high profits in the future and further allow them to entrench their monopoly in this market.
- 4.9. In short, as expected price regulation has not curbed profits because it does not address the broader market dynamics that allow PEXA to extract increasing value from a captive user base. NSW Government have pricing powers which should be used.

NSW Registrar General pricing powers are available - CPI-Factor

- 4.10. Under the NSW general licence conditions, an ELNO may increase its service fees once each financial year. As stated, the conditions impose an annual price increase gap of CPI factor, with the factor set each year by the Registrar General.
- 4.11. The CPI factor is a mechanism to allow the Registrar General to '*adjust the price cap in line market conditions*'⁴⁹. This factor is to be determined in line with any review of the electronic conveyancing market by IPART. Since 2018/2019, this factor has been set at 0 meaning that ELNOs have been able to increase their fees by CPI each year.

⁴⁸ PEXA's operating costs have only increased by 2%, whilst maintaining high profits.

⁴⁹ See: <https://www.registrargeneral.nsw.gov.au/regulator/approval-conditions>

Using CPI-Factor for a 'pricing freeze' to drive competition

- 4.12. This CPI factor could be used by the NSW Government, together with other measure, as a lever to incentivise PEXA to deliver interoperability to the ELN market and enable competition within the ELN market. Should PEXA be allowed to sustain its monopoly, it will have no incentive to innovate or find efficiencies, removing the opportunity for lower prices, better quality products and services, and choice for Australian consumers.
- 4.13. We urge the NSW Registrar General to use the CPI factor to apply a 'pricing freeze' on all ELNO service fees until interoperability is delivered and operational within the ELN market, meaning, in effect that ELNOs could not increase settlement fees until the interoperability reform has been delivered to the market.
- 4.14. Freezing ELNO service fees through the CPI factor mechanism, together with other measures recommended in this submission, would create a strong financial incentive for PEXA to accelerate the delivery of interoperability. With fee increases capped at zero in real terms, PEXA would face limited revenue growth from its existing dominance in the ELN Market. This constraint would encourage the company to support and implement interoperability reforms that open the market to competition, enabling it to compete on service quality and innovation rather than price control. In effect, the pricing freeze, together with other measures, would shift the commercial incentive from maintaining a monopoly to enabling a more dynamic and competitive ecosystem.
- 4.15. **Recommendation:** The NSW Registrar General should use available pricing powers to place a 'pricing freeze' on all ELNO fees until interoperability is delivered.

5. NSW Commitment to deliver competition by December 2025

- 5.1. In September, the NSW Minister responsible for this reform, the Hon. Jihad Dib MP, Minister for Customer Service and Digital Government reiterated the NSW Government commitment: *"The Minns Government is fully committed to this critical reform and achieving this milestone is the result of significant work and collaboration over several years across jurisdictions."*⁵⁰ This included updating the MOR to require ELNOs to build, test and implement interoperability by December 2025, starting first with NSW and QLD.

PEXA have worked to undermine interoperability reforms

- 5.2. The lack of interoperability continues to protect PEXA's first mover advantage, and the network effects generated from its monopoly status and by its ecosystem of related services.

⁵⁰ <https://www.nsw.gov.au/media-releases/new-era-of-econveyancing>

- 5.3. PEXA, as the incumbent monopoly, has no incentive to deliver interoperability to the ELN Market – and appear to be working against it. Given the loss of market share and profit competition would mean for their shareholders and the need to fund their overseas expansion, PEXA's actions to date have been to raise objections and barriers to interoperability without offering solutions, indicating a willingness to slow down competition rather than accelerate its implementation. For example, in a recent annual report PEXA went as far as listing 'competition' as an additional risk, overstating potential cyber and security risks that it may bring to their exchange⁵¹.
- 5.4. As the Inquiry may be aware, on 16 November 2023, ARNECC released a statement indicating that the scope for interoperability releases had been settled (**ARNECC Approved Scope**). PEXA contests certain items⁵² within the ARNECC Approved Scope, on the basis that:
- (a) the items are outside of the defined scope of interoperability and not within the remit of ARNECC; and
 - (b) any expansion of scope to include such items will infringe PEXA's intellectual property.
- 5.5. As was reported by the *Sydney Morning Herald* in July 2024, PEXA also wrote a letter to the banks in December 2023 which led to the major banks withdrawing from the interoperability workshops, leading to the pause of the reform in June 2024.⁵³ Without further Government intervention, there is no incentive for PEXA to engage in further interoperability reform.

Support for 'practitioner first' and need for a decision by NSW Government in 2025

- 5.6. The ARNECC reviews as discussed above were first anticipated to be completed by mid-2025 but given delays are now slated to be completed in late October 2025. InfoTrack has advocated for the NSW Government to hold a ministerial forum this year

⁵¹ See PEXA Annual Report 2025, p. 56: <https://www.pexa-group.com/investor-centre/asx-announcements/>

⁵² These include Autobalance, Common indicators for transactions (which provide indicators of common requirements or agreements for settlements between participants in a workspace – e.g., loan documents received by an incoming mortgagee or discharge authority received by the discharging mortgagee), Attachment management, Trust account as source account (this refers to the use of trust accounts as source funds for the purpose of ELNO transaction settlement), Linked lodgments (supports other properties that are to be used as collateral – without this item, financial institutions would need to have a process outside the ELN platform to flag that the linked lodgment case must be lodged), Express Refinance, Reconciliation of transactions between Responsible ELNO and Participating ELNO (which supports requirements from financial institutions where a payment is not processed correctly due to erroneous account details or errors in the payments process – this supports financial institution processes to ensure that funds are directed to the correct recipient), International disbursements (which refers to collection of international financial institution details to process an international payment through SWIFT or IBAN), ATO GST withholding tax requirement (for which an API service is published and provided to ELNOs to integrate and streamline the forms and payments required for the transaction), and ELN source accounts (which relates to the ability for a purchaser or vendor's representative to use their ELN's source account in a workspace).

⁵³ Colin Kruger, *The bank threat that killed off competition in Australia's \$800b property monopoly*, July 2024, <https://www.smh.com.au/business/companies/the-bank-threat-that-shook-up-australia-s-800b-property-monopoly-20240724-p5jw9h.html>

to enable a decision for industry clarity. NSW as the Government that passed the national model legislation has traditionally organised these ministerial forums.

- 5.7. Without a decision this year, it is likely that InfoTrack, as a shareholder in Sympli, will reassess their continued investment in Sympli. Without Sympli in the market, the NSW Government will need to consider the costly regulation of a monopoly and impact on the consumer.
- 5.8. InfoTrack supports the wholesale/retail "practitioner first" model proposed by Sympli as an interim step towards interoperability as it will deliver limited competition in the legal practitioner market. However, interoperability must continue to be pursued with urgency because this model does not resolve:
- (a) the significant competition issues arising from the absence of interoperability – PEXA will continue to have access to 100% of the data being transacted through the Electronic Lodgment Network (ELN);
 - (b) the squeeze on competition in other adjacent markets including data and digital services;
 - (c) competition in non-practitioner ELN markets (i.e., banking); and
 - (d) the platform resilience issues arising from the absence of interoperability – PEXA's monopoly infrastructure will continue to be a single point of failure under a practitioner first model.
- 5.9. InfoTrack also encourages the NSW Government and other State and Territory Governments to support a 'practitioner-first' release as the first phase of interoperability. This will enable choice for tens of thousands of practitioners and be a stepping stone towards full interoperability.
- 5.10. **Recommendation:** InfoTrack recommends that the NSW Government considers:
- (a) encouraging ARNECC to release and publish the findings arising from the ARNECC Reviews as soon as possible; and
 - (b) then, following that release, convening a ministerial forum to enable a decision regarding next steps for interoperability to be communicated publicly in 2025.

6. NSW Registrar General Enforcement Powers

NSW Enforcement Powers and NSW Operating Requirements

- 6.1. As discussed above, the *Electronic Conveyancing Enforcement Act 2022* (NSW) commenced on 14 November 2022 (**Enforcement Act**). This Enforcement Act enhanced the NSW Office of Registrar General's enforcement powers to govern ELNO compliance with the ECNL until such time that a national regime was developed.

- 6.2. If the NSW Registrar General reasonably believes the ELNO has contravened or is contravening a requirement imposed by or under the ECNL, the powers of the NSW Registrar General include:
- (a) **Enforceable undertakings:** Accepting and enforcing enforceable undertakings given by an ELNO, including to apply to the Supreme Court for an order directing the ELNO to comply with the enforceable undertaking;
 - (b) **Remedial directions** – this is a written direction to an ELNO if the Registrar reasonably believes the ELNO has contravened or is contravening a requirement imposed by or under the ECNL; and
 - (c) **Enforcement orders** – the Registrar may apply to the Supreme Court for an order under this section if the Registrar reasonably believes an ELNO has contravened an enforcement provision.
 - (i) If the Court is satisfied the ELNO has contravened the enforcement provision, the Court may make an order that the ELNO pay to the State an amount not exceeding the maximum amount.
 - (ii) Maximum amount is \$10,000,000, and a further \$250,000 for each day of a continuing contravention.
- 6.3. The NSW Registrar General also has powers under the NSW Operating Requirements to direct ELNOs to comply with directions. Under Section 5.3(i), the Registrar General, ELNOs must: *“comply with any reasonable direction given by the Registrar for the purpose of these Operating Requirements”*. The Registrar General issued a direction under NSW Operating Requirements 5.3(i) in May 2025 to direct ELNOs to comply with the ARNECC Reviews.

NSW Registrar General must use enforcement powers once decision is made

- 6.4. The NSW Registrar General must issue a direction using its powers under the NSW Operating Requirements to ELNOs to comply with the outcomes of the ARNECC Reviews with a date once a Ministerial decision has been made. If this is not done, there is no compulsion on ELNOs to deliver the outcomes of the reviews, and this will lead to further delays in the interoperability reform.
- 6.5. The NSW Registrar General should also consider the use of further remedial and enforcement orders if ELNOs do not comply with this direction to implement the outcomes of the ARNECC reviews. These powers have sat idle for two years.
- 6.6. **Recommendation:** Following any direction from a ministerial forum in relation to mandating the implementation of interoperability, the NSW Registrar General should consider issuing a direction for ELNOs to comply with directions relating to interoperability and consider use of enforcement powers in case of contravention.

7. NSW Productivity and Equality Commission Market Study

NSW Productivity Commission findings and recommendations

7.1. The NSW Productivity Commission in their market study found that the eConveyancing market is not effectively competitive with competitors facing a high barrier to entry. The market study also made some recommendations which InfoTrack supports. InfoTrack asks that the NSW Government implement the following urgently:

- (a) **Recommendation 2 – Industry Road Map:** ARNECC to develop and public a detailed industry road map to achieve the launch of interoperability.
- (b) **Recommendation 3 – Regulatory requirements on ELNOs:** ARNECC or individual registrars to impose regulatory requirements on all ELNOs to meet specific key milestones to achieve interoperability including pursuing financial penalties under the *Enforcement Act*.
- (c) **Recommendation 17 – Competition Review:** State and territory governments should refer concerns about the absence of effective competition in the eConveyancing market to the Australian Government's Competition Review.

7.2. **Recommendation:** The NSW Government should urgently consider implementing recommendations from the NSW Productivity Commission's Market Study, particularly recommendations 2, 3 and 17.

8. Relationship between banks and the monopoly

8.1. When eConveyancing was originally mandated in 2017-18, there was no competitor to PEXA and consequently, the major banks were originally mandated to use PEXA to enable eConveyancing. There has not been any demonstrable shift in PEXA's market share with the banks despite the emergence of Sympli. This is particularly significant given the Commonwealth Bank is now PEXA's largest shareholder with more than 25% ownership of the platform. Below are some issues to consider in the relationship between banks and PEXA.

PEXA letters to the banks

8.2. As discussed above, the major banks each received a legal letter from PEXA in December 2023, claiming that their further participation in the interoperability reforms could impinge on PEXA's intellectual property, claims which are unsubstantiated. This eventually led to the major banks withdrawing from the interoperability working group and raising issues which led to the pause of the interoperability program. It is disappointing that the NSW Government have so far folded to bank pressure rather than delivering competition to this market. It is also disappointing that the banks withdrew from the interoperability reform process in the face of unsubstantiated claims regarding interoperability without testing those claims – an action which had and the ultimate effect of substantially lessening competition.

Banks retain a significant single point of failure with PEXA – APRA CPS 230

- 8.3. Property settlement is currently considered a ‘critical operation’ by the major banks, yet they rely on a single provider to do this. Without interoperability the major banks have no redundancy if there was a full national outage – property transactions would grind to a halt. Interoperability would allow lawyers and conveyancers to switch to use Sympli in the case of an outage as currently there is no backup.
- 8.4. The Australian Prudential Regulation Authority (**APRA**) Prudential Standard *CPS230 – Operational Risk Management*⁵⁴, which became effective in July 2025, has the main goal to ensure that entities are resilient to operation risks and disruptions. An APRA-regulated entity must effectively manage its operational risks, maintain its critical operations through disruptions, and manage the risks arising from service providers.
- 8.5. In the case of property settlements, PEXA presents a significant supplier risk to the banks in the case of a national outage. It is InfoTrack’s view that APRA should review and consider these risks in line with CPS 230.

Banks are blocking competition for small business

- 8.6. Major banks have limited the adoption of Sympli with no bank currently accepting invites on Sympli to complete property transfers. This has effectively blocked lawyers and conveyancers from using Sympli regardless of interoperability.
- 8.7. Although some banks have begun integrating with Sympli, widespread adoption remains slow. For example, Commonwealth Bank has completed less than a dozen standalone transactions on the Sympli platform whilst many other banks have not enabled this at all. Without interoperability, it seems unlikely that the banks would support a second network unless required to do so.
- 8.8. Interoperability offers a cost-effective solution to enable tens of thousands of practitioners to use an alternative. The other option is for the banks to enable ‘multi-homing’ which is a costlier exercise for the banks. **Ultimately the banks must either support interoperability or multi-homing to enable choice.**
- 8.9. **Recommendation:** The NSW Government should consider consulting with, and encouraging ARNECC to consult with, the ACCC to assess whether there have been any breaches of the Competition and Consumer Act 2010 (Cth) arising from PEXA conduct including in relation to: (i) the letters sent by PEXA to the major banks making unsubstantiated claims relating to intellectual property, leading to the Banks’ withdrawal from the reform; and (ii) the fact that interoperability has not been implemented, despite Interoperability being endorsed by experts and legislated by the NSW Parliament.

⁵⁴ APRA, *Prudential Standard CPS 230 – Operational Risk Management*, July 2025

9. Conclusion: Competition needs to be delivered to this market

- 9.1. InfoTrack thanks the Select Committee for the opportunity to provide this submission to the Inquiry. InfoTrack is keen to support the many calls from industry for choice and competition in the eConveyancing market. The NSW Government should continue to play a leadership role and deliver competition as legislated by NSW Parliament.

Schedule 1

1. Proposed further recommendations

- 1.1. For the reasons set out in this submission, InfoTrack believes that the underlying public policy elements of the existing regulatory framework governing the eConveyancing industry should be embedded more firmly in statutorily binding terms. This Schedule provides a summary of the proposed legislative amendments as discussed in this submission that InfoTrack suggests the Inquiry consider recommending.
- 1.2. **ENCL Reforms:** To address the material competition and privacy issues that are present currently in the eConveyancing and related markets, InfoTrack believes that the Inquiry should consider recommending amendments to the ECNL such that:
- (a) existing ELNOs must not share information/data with related upstream or downstream entities that would not be available to new entrants without a related ELNO business;
 - (b) ELNOs are obliged to provide non-discriminatory access to all users and to interact with all participants on equal terms. Such access should include equal treatment on price and non-price terms, including in relation to quality, reliability and timeliness of service, and equal dissemination of information to all participants;
 - (c) effective ring-fencing obligations are implemented;
 - (d) vertical integration between PEXA's ELN and activities in DUS and/or related markets is expressly prohibited, to address commercial incentives to self-preference and/or leverage a dominant position in the eConveyancing market to drive unregulated profits;
 - (e) compliance with all privacy laws and laws relating to document and information collection, storage and retention, as well as any necessary enhanced privacy protections in an interoperable environment are expressly provided for in the ECNL rather than being relegated to the MOR;
 - (f) ARNECC is empowered to take a more active role in driving forward the interoperability program including specifying what "Interoperability Agreement Matters" should comprise;
 - (g) the financial and settlement aspects eConveyancing transactions are expressly regulated, requiring compliance with the eConveyancing Payments Industry Code (which is not yet operational and should be prioritised).

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- 1.3. **MOR:** Moreover, the Inquiry should consider recommending amendments to the MOR such that:
- (a) there is greater clarity as to the definition of "DUS", including a non-exhaustive, indicative list of services based on such services already offered by ELNOs, while allowing scope for goods and services that may be offered in the future, such as anti-money laundering and counter terrorism financing compliance services;
 - (b) there is explicit guidance as to the information/data that falls within the remit of regulation in respect of the requirement noted above at [1.2(a)], noting that the approach should take into account that there may be emerging markets related to eConveyancing that cannot yet be foreseen;
 - (c) there is explicit regulation of categories of data in respect of which use should be strictly limited, including by giving further consideration to the drafting of MOR 7.4.2;
 - (d) the circumstances in which approval for ELNOs to offer value-added services should be granted, noting the information asymmetry that exists in the eConveyancing and related/adjacent markets.