Supplementary Submission No 13d

INQUIRY INTO COMPETITION REFORMS IN ELECTRONIC CONVEYANCING

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PEXA's third supplementary submission

to

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

March 2026

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PEXA thanks the Committee for the opportunity to provide this Third Supplementary Submission to aid it in its inquiry. The purpose of this Submission is to respond, and where appropriate correct, statements made by witnesses in the Committee's hearing of 19 February 2026. It should be read in conjunction with PEXA's previous submission and evidence to the Committee.

1. The ARNECC Reports do not recommend interoperability

It was asserted at the hearing by a witness and others that the two ARNECC Reports recommend interoperability.[1] This incorrect interpretation of the Reports can only be reached through reading them both selectively and in isolation. Neither Report recommends proceeding with the interoperability program. As has been set out in PEXA's January Supplementary Submission, both identify material technical complexity, functional compromise, and implementation risk.

The Cost Benefit Analysis (**CBA**), which considered new models for the eConveyancing market, states that Direct Connect, Direct connect via Practitioner-choice, and Monopoly Regulation, were the only models to deliverer a positive economic benefit, with the greatest of these, Direct Connect, producing an incredibly marginal $16 million over the 20-year time horizon (less than $1 million per year for the whole $330 million per annum industry). Of these three potential 'positive' economic benefit models, the Functional Requirements Review (**FRR**) found that Interop Direct Connect (analogous with CBA's Direct Connect and the ultimate stage of CBA's Direct connect via Practitioner-choice) was found to be "not feasible".

Alternatives, such as a Hub-ELNO model were found to be feasible in the FRR (while still carrying a significant implementation risk of 5-10% of On Day Settlement failures, approximately 10,000 per month). However, this was also being found to be the "worst" option at achieving "Likelihood of meeting desired outcomes" in the FRR and would produce a *negative* net economic impact on the industry, according to the CBA. Similarly, the Industry ESB and the Inter ELNO ESB were considered to be the 'best' models as determined by the FRR (although rated 'Most Complex' and 'High Complexity' respectively, as well as 'Highest Cost' and 'High Cost') – but both of these models were found by the CBA to have a negative economic impact on the market.

As such, reading the Reports together it is clear that only the status quo, a regulated national network, will deliver economic benefits to the industry without carrying the risks identified in the FRR.

2. The Reports do not conclude interoperability will improve competition and innovation

It was asserted by some witnesses that interoperability will improve competition and innovation.[2] The evidence to this point was consistently framed in terms of theoretical principles. The substantial fact base set out in the two ARNECC reports, particularly the FRR, was ignored. When reviewed, the independent expert evidence in the FRR and CBA does not support that assertion.

The FRR states explicitly that while there may be a viable technical pathway to ELNO interoperability under some interoperability models (although, as above, not one that will deliver net benefits to the eConveyancing system), "this pathway may not achieve all outcomes as originally envisioned in relation to competition and innovation."[3]

[1] Hansard, Select Committee on Competition Reforms in Electronic Conveyancing, Parliament House Sydney, 19 February 2026, Mr Philip Joyce, 35.
[2] Ibid, Mr Philip Joyce, 35, Mr James Endres, 16, Mr Rob Nicholls, 13.
[3] *Functional Requirements Review*, 6.

The Functional Requirements Review similarly expressly states: "Innovation benefits may be illusory if interoperability requires functional equivalence to be defined such that all ELNOs must have the same or similar features."[4] It further observes: "Conceptually, as the level of standardisation increases … the less opportunity exists for innovation by individual ELNOs and increased competition across the sector."[5]

The loss of innovations was, in fact, a key thematic of the FRR. It noted that:

- "Implementation of functional equivalence is likely to have a negative impact on innovation,"[6] and
- "Functional equivalence … is not achievable without a level of standardisation that removes the opportunities for innovation and competition."[7]

As Mr Warwick Sweeney stated to the Committee, "the more we standardise to achieve functional equivalence, the less opportunity there is for innovation and competition."[8]

Both Reports also make clear that competition may not eventuate even if interoperability is pursued. The FRR states that: "There is no guarantee that successful implementation of an interoperable system will result in an increase in competition."[9] Similarly, the CBA states of the Direct Connect model: "there is a risk [under the Direct connect model] that the ability for it **t**o deliver competitive outcomes in the long-term may not be achievable due to the time and costs involved."[10]

Accordingly, the Reports do not conclude that interoperability will necessarily improve competition, and they are clear that interoperability will result in reduced innovation.

3. The Reports confirm functional degradation and settlement risk

It was suggested that PEXA's claim that interoperability will degrade service quality is unsubstantiated.[11] That assertion is directly contradicted by the FRR and the evidence provided by the witnesses representing the banks.

The FRR makes clear that the implementation of interoperability will necessarily involve compromise. It states that: "Changes will break things. Participants in an IOP transaction will likely have a loss of some functionality, at least compared to a transaction taking place today."[12] It recognises that "Functional equivalence broadly defined [*that is, the current functionality*] will not be possible for any model," and that "IOP will have an impact on user experience."[13]

The FRR acknowledges that achieving interoperability in a way that preserves performance metrics will require acceptance of "a degradation in practitioner experience and a short-term impact on On-Day/Time Settlement metrics"[14], a figure one financial institution interviewed for the Review stated potentially lead to a 5% to 10% drop in successful On Day Settlements – or up to 10,000 every month.

[4] Ibid, 44.
[5] Ibid.
[6] Ibid, 8.
[7] Ibid, 7.
[8] Hansard, Select Committee on Competition Reforms in Electronic Conveyancing, Parliament House Sydney, 19 February 2026, Warwick Sweeney, 4.
[9] Functional Requirements Review, 9.
[10] *Economic analysis of reform options for the eConveyancing market*, Nous Group, December 2025, 3.
[11] Hansard, Select Committee on Competition Reforms in Electronic Conveyancing, Parliament House Sydney, 19 February 2026, Philip Joyce, 39.
[12] Functional Requirements Review, 8.
[13] Ibid.
[14] Ibid, 7.

They are conclusions reached by the independent technical review commissioned by ARNECC. The suggestion that degradation risk is theoretical or unsubstantiated is inconsistent with the independent findings.

4. The Functional Requirements Review confirms that PEXA holds intellectual property

It was asserted that PEXA does not have intellectual property and that its claims are unsubstantiated.[15] The FRR expressly records that it was required "to consider the impact of intellectual property ownership or confidential information claims made by ELNOs," and its findings confirming PEXA's claims are set out in the table on pages 33 and 34 of the FRR.

In its Executive Summary, the Review states: "PEXA raised IP and confidentiality concerns on certain known features that need to be resolved. We agree with some of PEXA's claims and disagree with other claims." The evidence of the Registrar General was that the reviewers thought that PEXA had a "legitimate claim" to IP/confidentiality over "five areas that would need to be addressed or worked around in order to deliver a solution." [16] Implementing interoperability in a way that does not degrade current functionality, and that respects PEXA's IP, is clearly not going to be straight-forward.

The FRR further states that where intellectual property constraints apply, alternative technical designs may be required, and that such alternatives "will increase the IOP implementation complexity." This is consistent with PEXA's evidence to the inquiry, and its position throughout the interoperability program. It also demonstrates conclusively that the existence of PEXA's IP is therefore not a matter of assertion, it is recognised in the independent review commissioned by ARNECC.

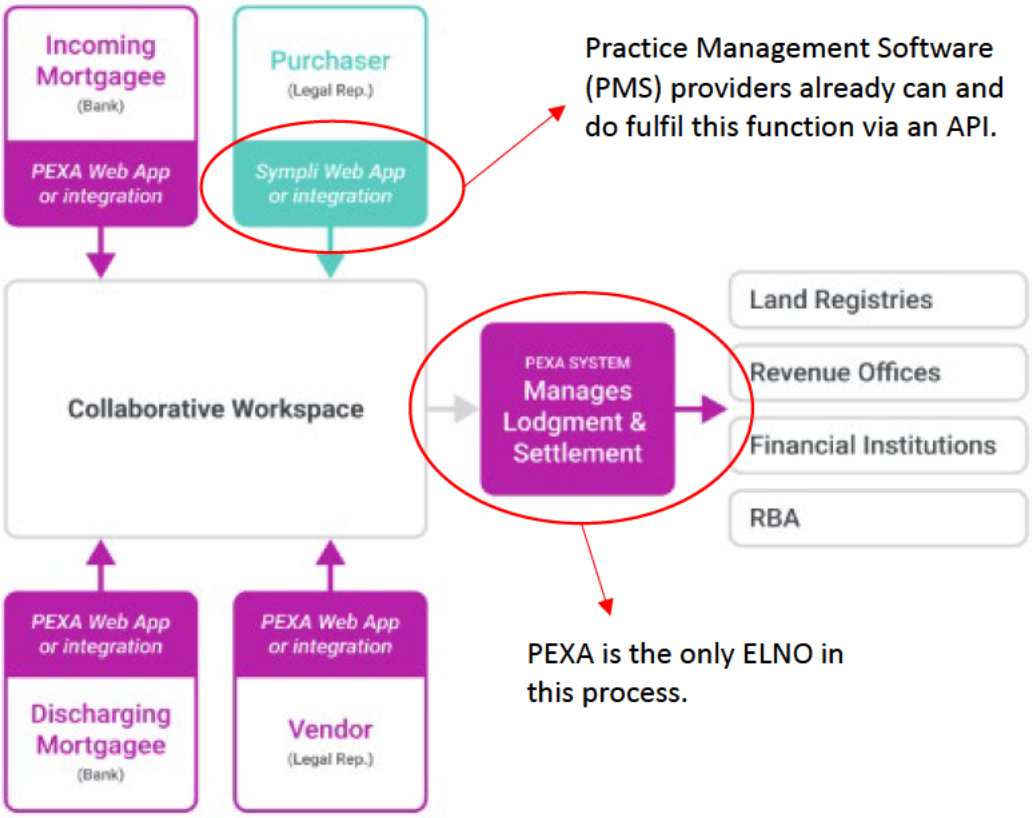
5. The "Prac First" model is not interoperability

It was suggested that "Prac First" is interoperability.[17] This does not reflect the available information on "Prac First". The FRR clearly characterises Model 3 (Practitioner First) as an interim model, not full interoperability. It states of "Prac First": "This, however, must be accepted as an interim release only with further work required to achieve full IOP and the desired market reform outcomes,"[18] – drawing a clear distinction between Practitioner First and "full IOP".

ELNO interoperability involves two independently functioning networks, mutual data exchange, and shared responsibility for core settlement and lodgement functions. Under Practitioner First, a single ELNO (PEXA) remains responsible for core transaction orchestration, while the other provides a user interface (see Figure 1 below). This alternative user interface is currently available via Practice Management Software, facilitated by PEXA's API, for no additional cost.

Accordingly, Practitioner First is not ELN-to-ELN interoperability as originally contemplated by ARNECC's reform program. It is, in reality, an access regime-style arrangement providing one industry participant with a regulatorily set, reduced cost price to utilise the settlement infrastructure developed by PEXA over a decade (see PEXA's letter to the Committee of October 2025 on "ATI First" for further information). Accordingly, as it is not interoperability, to implement "Prac First" would require new legislation, or amendments to existing legislation, across jurisdictions.

[15] Hansard, Select Committee on Competition Reforms in Electronic Conveyancing, Parliament House Sydney, 19 February 2026, Philip Joyce, 39.
[16] Ibid, Danusia Cameron, 49.
[17] Hansard, Select Committee on Competition Reforms in Electronic Conveyancing, Parliament House Sydney, 19 February 2026, Warwick Sweeney, 7, Philip Joyce, 35.
[18] Functional Requirements Review, 6.



Source: https://www.sympli.com.au/pathwaytointeroperability/ - marked up.

Figure 1.