REPORT ON PROCEEDINGS BEFORE

PORTFOLIO COMMITTEE NO. 4 - CUSTOMER SERVICE AND NATURAL RESOURCES

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

UNCORRECTED

Virtual hearing via videoconference on Thursday 17 March 2022

The Committee met at 09:00.

PRESENT

The Hon. Mark Banasiak (Chair)

The Hon. Scott Barrett
Ms Abigail Boyd
The Hon. Taylor Martin
The Hon. Peter Poulos
The Hon. Peter Primrose
The Hon. Mick Veitch

* Please note:

[inaudible] is used when audio words cannot be deciphered
[audio malfunction] is used when words are lost due to a technical malfunction
[disorder] is used when members or witnesses speak over one another.

The CHAIR: Welcome to the hearing of the Portfolio Committee No. 4 inquiry into the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022. Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of the land on which Parliament sits. I also pay respect to Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginal people present.

Today's hearing is being conducted virtually, with all members of the Committee as well as witnesses attending remotely. I ask for everyone's patience through any technical difficulties we may encounter today. If participants lose their internet connection and are disconnected from the virtual hearing, they are asked to rejoin the hearing using the same link as provided by the Committee secretariat. Today we will be hearing from a number of stakeholders, including representatives from the Australian Registrars' National Electronic Conveyancing Council; the NSW Registrar General; legal, banking and conveyancing peak bodies; as well as two electronic lodgement operators. I thank everyone for making the time to give evidence to this important inquiry.

Before we commence I will make some brief comments about procedures. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcast guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. Therefore, I urge witnesses to be careful about comments you may make to the media or to others after you complete your evidence. I also note that we have witnesses appearing outside of New South Wales.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. Given the time frame for this inquiry, the Committee has resolved that there be no questions on notice or supplementary questions for this hearing.

Finally, I will make a few comments on virtual hearing etiquette to minimise disruption and assist our Hansard reporters. I ask Committee members to clearly identify who questions are directed to and I ask everyone to please state their name when they begin speaking. Could everyone please mute their microphones when they are not speaking and remember to turn their microphones back on when they are getting ready to speak. If you start speaking while muted, please start your question or answer again so that it will be recorded in the transcript. Members and witnesses should avoid speaking over each other so that we can all be heard clearly. Also to assist Hansard, I remind members and witnesses to speak directly into the microphone and avoid making comments with your head turned away.

Mr BRUCE ROBERTS, Chair, Australian Registrars' National Electronic Conveyancing Council, sworn and examined

Mr JEREMY COX, NSW Registrar General, affirmed and examined

Ms DANUSIA CAMERON, Director of Regulation, Compliance and IT, Office of the Registrar General, sworn and examined

The CHAIR: I now welcome our first witnesses. Would any of you like to make a short opening statement of no more than a few minutes?

BRUCE ROBERTS: I am currently in Perth and I wish to pay my respects to the Whadjuk Noongar people, who are currently the traditional landowners of the lands of the south-west of Western Australia. I wish to pay my respects to their Elders past, present and emerging. I thank the Committee for the opportunity to address them.

ARNECC is responsible for the rudimentary framework legislation and advising State and Territory governments on proposed changes to the Electronic Conveyancing National Law. The bill enacts the first set of statutory obligations following a program of work to enable competition between electronic operators, or ELNOs. It also strengthens the oversight of ELNOs and the financial systems that they operate and to provide for enforcement of regulatory framework. It is needed to enable [inaudible] of the detail of those solutions. In 2021, after three years of analysis of the different market structures, independent reports, including those of the agency IPART, and an independent cost-benefit analysis [inaudible] all the time working with the industry, the State and Territory governments agreed to a market structure [inaudible].

The bill requires [inaudible] between ELNOs and extends the registrar's authority to make national operating requirements, which are regulated. After much consideration of the options to strengthen oversight of the [inaudible], the Council of Financial Regulators, which includes APRA, ASIC, the RBA and Treasury, concluded that the best solution is a self-regulatory industry code [inaudible] developed with electronic operators and financial institutions under the Auspay network. The bill supports this outcome by enabling registrars to require ELNOs to participate in the code that is being developed in parallel. On [inaudible] Ministers [inaudible] the bill later this year to enact the enforceable provisions for the [inaudible] being rolled out. Any remaining [inaudible] requiring amendment of the national law can also be included in the second bill. This bill amends the national [inaudible], changes in your jurisdiction in New South Wales and implemented in other jurisdictions and, as required, all State and Territory governments have agreed to this bill.

ARNECC has and will continue to engage with all relevant stakeholders [inaudible] jurisdiction regulators, such as the ACCC and the Council of Financial Regulators to implement the reforms. ARNECC is also planning [inaudible] insurance review, cybersecurity [inaudible] that must be satisfied [inaudible]. However, we need this bill now. It is certainly required for [inaudible] ELNOs [inaudible] industry costs and reform. ARNECC again wants to thank the many stakeholders who have contributed a great deal of time and expertise to form this bill and [inaudible] as well. I look forward to working with those stakeholders on the bill. Thank you, Chair.

JEREMY COX: Thank you for giving me and the Office of the Registrar General time to present to you today. I am on the Central Coast, which is the home to the Darkinjung people. As you say, the Committee is on the Gadigal land and I pay my respects to all these lands and its people. The Office of the Registrar General is responsible for the oversight of the Torrens system of secure property rights in New South Wales. Of course, secure property rights are a hallmark of our economy. A person's title recorded in the registry provides State guaranteed [inaudible] secure basis for banks to lend money and for investment and growth. This makes the economy go round. Maintaining that security is an important factor in any reform, and this one is no exception. While the monetisation of land title is a foundation of a competent economy, we are inspired by this ancient, much deeper and timeless connection Indigenous people have with land. It is a meaning beyond the property right itself. It is an internal connection with our people and our land.

Our principal aim with this bill is a competitive ELNO market, with stronger oversight of eConveyancing payments that benefit the users of the system and our community. This bill is a necessary prerequisite, if you like, to putting detailed arrangements in place via national regulations, data standards and the financial industry code needed before rolling out interoperability. This bill is also necessary now to justify the resources needed to complete interoperability. With this bill, existing ELNOs must implement interoperability, justifying the commitment and resources this will require. For incoming ELNOs, the bill gives investors the confidence needed to resource development and rollout. For banks and land registries, the bill provides certainty, allowing commitment to any necessary system changes and process changes in their business plans and tech road maps.

The counterfactual without this bill is these critical organisations will find it much harder to plan confidently in the coming 12 to 24 months.

For practitioners—the lawyers and the conveyancers—this bill is the first building block to make sure that they have choice in their provider of eConveyancing services, that they will continue to be able to conduct transactions with practitioners who choose a different provider. The proposed data standard maintains security through a set of purpose-built APIs required to be at least as secure as the existing connections ELNOs already have with land registries, revenue offices, banks and the Reserve Bank of Australia. ELNOs will be subject to the same annual independent reviews of those and interoperability connections as they are now. Interoperability, by facilitating more than one ELNO in this market, brings effective competition, and that makes ELNOs look much more closely at participants' needs in order to compete for and earn their customers.

We cannot predict exactly what new services or products or other improvements competition will bring. However, we do know technology is changing rapidly and that competition creates a market force, an energy, an incentive to develop new ideas and new solutions to earn and keep customers, which is far more powerful than a monopoly with a mandate for all participants to use its services. However, without this reform, starting with this first bill now, experience has taught us—going back to the Hilmer reforms in the mid-1990s—that monopolies deliver sub-optimal outcomes for users and our community.

The current implementation timetable tries to balance wideranging industry views on the efficient introduction of interoperability. It allows time to finalise the regulations and the data standards, and time will be given to satisfy all the necessary ICT assurance reviews, cybersecurity and system readiness tests, before interoperability is rolled out. So, again, thank you to everyone involved in this reform, particularly the national industry panel for your generosity in time, expertise and your support and commitment to this reform in the last three to four years. The bill is a recognition of everyone's efforts, and an important milestone for all of us along the pathway to sharing the benefits of eConveyancing more widely. Thank you, Chair.

The Hon. PETER PRIMROSE: Before I begin, can I just say, for the sake of Hansard, given the number of acronyms being used, I propose to actually simply use the term. Rather than saying "ELNO", I am going to say E-L-N-O, when I can remember. I just have one question to begin with and then I will pass over to Mr Veitch. It does not actually have an acronym in it. Can I ask all witnesses, do you believe that an independent regulator appointed by the registrar to assess the readiness of participants and the interoperable system as a whole would help address industry and consumer concerns about cybersecurity and risk?

The CHAIR: Mr Roberts, did you want to start? Then we will go down the list.

BRUCE ROBERTS: Sure. Just give me a moment; I have some notes on this issue. Essentially, the role of an independent regulator of industry is in part already being played by the ARNECC committee. Essentially, what the committee does is to regulate the electronic conveyancing system. It provides a legal framework for that system. That is comprised in legislation and also in regulations. So, essentially, we already have a regulator of the industry, the ARNECC role, being carried out currently. If you are referring to the creation of an independent expert—a regulator outside of the industry—that is certainly a model that could operate. The problem that we have, though, is that each land registry is headed up by a land registrar who is an independent statutory officer and, therefore, is independent from the government regulator themselves. So any legal regime that would create an independent regulator would then have to deal with the requirements of the regulator in each State and Territory to regulate the [inaudible] of their own systems. I can see, actually, some significant legal issues with the proposition.

The Hon. PETER PRIMROSE: Excuse me, Mr Roberts; I am having real trouble hearing you. I notice that I can pick up what you are saying when you are speaking directly into what I assume is your microphone. Maybe if you could do that, please? Because I think what you are saying is very important.

BRUCE ROBERTS: Sure. So I will repeat my answer, if possible, then. Essentially what I am saying is that currently the ARNECC group is the regulator of electronic conveyancing across the States and Territories. It sets up the regulatory platform for the [inaudible], and also each land registrar in each State and Territory is an independent statutory officer. As an independent statutory officer, they make independent decisions. If we have a second entity which is overseeing those registrars, then I foresee particular legal issues in relation to fettering the decision-making of an independent statutory officer in maintaining the regulatory functions over the electronic conveyancing system. In fact, I would see it as a particularly significant legal issue, trying to get over that. Can you hear me?

The CHAIR: Yes, that was a lot better.

BRUCE ROBERTS: Okay.

The Hon. PETER PRIMROSE: Thank you. Mr Cox?

JEREMY COX: Thank you, Mr Primrose. Just extending from Bruce, in the absence of a separate independent regulator, if you like, in the context of security there are a couple of points to make. One is ARNECC will, before interoperability is rolled out, employ or engage independent assessments of ICT security and system readiness. So there will be a process where ARNECC, which comprises State and Territory representatives through their registrars from each jurisdiction, will determine an appropriately independent and technically able assessment of those things. I suppose my second point would be security is critical and paramount, obviously, to the success of interoperability. This reform has been organised around that to the extent to which all industry participants have come together to identify, from their perspectives as users of the systems or providers of the systems, where security risks exist, and then come up with remedies that have been either apportioned to the regulatory framework or the data specifications or the APIs.

On the APIs, in terms of the broader issue around making sure interoperability is secure, the backbone of interoperability is purpose-built APIs that will be governed by a data standard. That data standard will be held within a government-owned entity, which is being set up now, and so the security will be maintained and owned by government, and those APIs and the architecture around those APIs will be at a security level at least equivalent to the existing APIs that ELNOs have when they connect to banks or registries or revenue offices.

The Hon. PETER PRIMROSE: Thank you. Ms Cameron?

DANUSIA CAMERON: Just to add slightly to what Mr Roberts and Mr Cox have said, Jeremy has described the security around this project and it is an absolute goal of every participant involved in the project. The broader context is an ongoing focus on security within the existing regulatory framework. That includes reporting that ELNOs need to do themselves as well as ad hoc audits that the ARNECC commissions from time to time. So it is an ongoing focus of every aspect of land titles and the ELNOs. Thank you.

The Hon. MICK VEITCH: So what you are all saying is pretty interesting, I have to say. I just have a concern that when this is about to go live, as parliamentarians, legislators, we are going to [inaudible]. Would you be adverse at all to reporting back to the Parliament about an overview of the security risks and an analysis of the reliability of the system before we go live—just so that legislators are absolutely confident that this is actually good to go live?

The CHAIR: Sorry, Mr Veitch, we had trouble hearing you from our end. I do not know whether the witnesses even caught that. But I am assuming, from what I could make out, that you were trying to ask whether the witnesses would be prepared to table some technical advice about the security to Parliament. Is that what you were asking?

The Hon. MICK VEITCH: Yes, absolutely, Chair, to the Parliament before they go live.

The CHAIR: I will repeat it for the witnesses. Mr Veitch is asking whether you would be prepared to table the technical advice and I guess some assurity to the Parliament before it is about to go live that all these potential cybersecurity risks are catered or covered for. Mr Roberts, we will we start with you.

BRUCE ROBERTS: Yes, certainly. I think that should not be an issue for us. Obviously, as we have indicated, cybersecurity risks are key for this system and we have put in place every effort and [inaudible] into that. We see that to be something that we could incredibly easily provide to you. The only comment I would make is that in any system you can never anticipate everything, but with electronic [inaudible] our system.

The Hon. MICK VEITCH: One of the other concerns—it is a very real concern—is being raised by the Australian Institute of Conveyancers. It is foreshadowing the terrifying prospect of homebuyers and sellers being stuck on footpaths with all their belongings waiting for technical fixes between ELNOs and registries to be resolved. What safeguards are we building into the system to avoid this situation?

BRUCE ROBERTS: Essentially we face that risk already. The creation of interoperability is not really creating an undue, additional, unnecessary risk over and above what we are facing now. Electronic conveyancing requires the parties to get together online to meet and to essentially assure themselves that the documents that they have created are correct and that financial settlement then occurs. Essentially this is a risk that we face now, even with the monopoly on [inaudible]. All we are doing is adding one more ELNO into the [inaudible]. All of our workings and the data standards and the system development have been directed towards those ELNOs operating safely and securely at the time that they are required to do so.

The Hon. MICK VEITCH: Thanks. Can I just ask—

The CHAIR: That is your time, Mr Veitch.

The Hon. MICK VEITCH: Is it? Excellent.

The CHAIR: Yes, time flies when you are having fun. I might just pick up there. Mr Roberts, I will talk about the issue of inter-ELNO fees and the pricing structure that is going to be involved in this service. My understanding is that ARNECC has changed its position several times on these fees. I am wondering where we are at now with how the fee structure will look. On 14 July 2021 you suggested that ELNOs should set their own fees, and then four months later that changed, and then again in February 2022 you provided another six options. Where are we up to in terms of fees and prices? Let us be fair, price is one way that competitors differentiate themselves.

BRUCE ROBERTS: Pricing was the subject of consultation papers, which occurred last year. We put out a number of options to possible pricing regimes. As a result of the feedback that we received from industry on the pricing regime, and in particular from the current PEXA operator, we have agreed to do a further investigation into pricing and pricing principles. We are looking at the potential for the ACCC to assist us in the development of those pricing principles. If that is not possible, then we will look to one of the economic regulators around the country to assist us in developing those pricing principles to establish a mechanism to create a [inaudible] between inter-ELNO fees, that is, the fees that they can charge each other for electronic conveyancing transactions. This is quite significant and [inaudible] complex work we are doing with essentially what is an infrastructure asset for the whole country. Getting that pricing right is really important. I have to say that members of ARNECC's expertise, including myself, is not around economics and pricing. We will need assistance to develop that pricing model. Thank you.

The CHAIR: If we are not settled on pricing, and we are not really confirmed as to whether the different ELNOs will be able to discriminate in price or it will be a fixed price, how can we truly say there will be competition when essentially the conveyancers will be locked into one or the other, whether it be PEXA or Sympli at the moment, and it may be a fixed price? With that in mind, I think the competition argument is a bit of a furphy because there is no real competition, is there? If it is a fixed price and they are all performing the same service, the end consumer, being the person that is buying the house, does not really have competition, do they, if that is the case?

BRUCE ROBERTS: Price is one element of competition. Competition also is about more than one operator providing the service to the marketplace. If more than one operator provides the services, they can differentiate themselves in terms of the services that they provide to that marketplace. Price is only one differentiator. Perhaps if I could refer to Mr Cox's input to do with that response?

JEREMY COX: Thank you for the question. Thanks Chair. I think the critical point of clarification here is this is an inter-ELNO fee, which is a fee that will be determined around how interoperability works. Through an interoperability transaction, the model is such that there will be a responsible ELNO—and that ELNO is responsible for lodging transactions with registries and settling transactions with the financial institutions—and then there will be a participant ELNO. Interoperability means a subscriber can be on any without having to be on both, but the fee between the responsible and participant ELNOs is an incurred cost by the ELNO. It is not necessarily passed on to the subscriber—that is a choice—but the ELNOs will still need to compete on prices. The services they offer to the subscriber is not fixed. The incoming ELNO, it is something like 15 to 20—maybe it is best to ask them in terms of their pricing regime compared to the incumbent, but the fee between—

The CHAIR: Sorry, Mr Cox, I will just pick up on that. The data that I have received about that other fee you are talking about, it works out to be about 0.25 per cent of the total cost of buying an average home. We are potentially talking about a difference of $4 between two competitors. It is not a great price discriminator, would you agree? It is very discreet—

JEREMY COX: Sure. I would take the view that any reduction in price on property transactions is important. I agree with what you are saying in terms of the scale of a conveyance which includes property—stamp duty, for example—there is a smaller portion that goes to the cost of the title and competing between ELNOs. But what the modelling shows is if you look at the number or volume of transactions that occur in a day, a month or a year, that starts to add up to quite significant savings and net benefits to the economy. I cannot remember exactly, but I think it is in the order of $83 million with MPB with a discount rate of 7 per cent or something—or maybe it is over seven years.

But the point is there is an aggregate saving that comes from [inaudible] part raised is, in the absence of competition, price regulation will never get you to the point where savings from economies of scale or from digitalisation are passed on in the form of a net wealth transfer from the operator to the buyer or the community because price regulation is clumsy. It involves some attempt to focus on CPI but the marginal costs go down more quickly in some of these scaled networks. The advice from the ACCC and IPART, which ARNECC has taken on board, is very much that the motivations that come from interoperability because it supports effective competition will be the best driver of all the solutions of downward pressure on prices.

The CHAIR: Just quickly to you before—

JEREMY COX: [Disorder].

The CHAIR: Just quickly before I go to Ms Boyd to see whether she has questions, to you, Mr Cox, how much time has been allowed for banks to get their head around how they might need to change their computer systems? They are not truly interoperable at the moment. They do not interoperate with each other. A lot of the banks have their own separate systems. How much time is being allowed for them to make the necessary changes from their end so they can be compatible? That is another concern that has been raised.

JEREMY COX: That is a really important point. Part of the national industry panel process involves all industry participants, including banks, getting together to raise issues of concern and then coming up with solutions that deal specifically with those. Part of that national industry panel includes an implementation committee, which the banks are part of. The banks are directly informing the project about the time that they need to roll out interoperability, so there is a recognition that the system changes are required and they are part of that consultation process.

At the moment I suppose the key point there is that interoperability is still about 18 months away. This first bill provides some statutory obligation to create certainty, including for the banks to be able to lock in their road maps, to say, "Okay, it is going to happen and now we need to factor that in". It is the same issue for the registries. In the absence of this bill, it is harder for them to go to their boards and say we need to lock this in. That is important. But going to your point, firstly, they are part of the participatory framework, so they can provide the feedback around time. Secondly, they need that certainty through this bill to be able to make those plans.

Ms ABIGAIL BOYD: Good morning to you all. This question is probably best directed to you, Mr Cox. As Mr Banasiak was saying, there have been some concerns around the financial transactions aspect. My understanding at the moment is that with the Torrens Assurance Fund, if someone was to lose money in a transaction that was directly with the registrar, then they would be covered by that. When interoperability is put in place and there are transactions or money transferred between those entities, will that then also be covered by the Torrens Assurance Fund?

JEREMY COX: Not specifically, because the Torrens Assurance Fund covers property registered on the New South Wales registry in our case in New South Wales, but equally for other States and Territories. The Government backs that through the Torrens Assurance Fund. If a registered property is registered in error or suffers from some sort of fraudulent exercise in which the property is transferred unlawfully to somebody else, the State Government will back that through the Torrens Assurance Fund. Insofar as the financial settlement, that happens through the ELNO outside of that process, but there are a couple of really important points.

The financial settlement under the exact scenario you have raised has been an issue outside of interoperability. It was raised in the intergovernmental agreement review a few years back as part of a gap in regulation. As a result, ARNECC did bring together and really helpfully drew on the advice from the Council on Federal Financial Relations—being the APRA, ASIC, RBA et cetera—to come up with and agree on the ELNOs. It is a really positive outcome of this reform to set up through AusPayNet an industry code which will have a series of conditions which ELNOs need to comply with, and one of them goes to tracking and resolving misapplied or unapplied funds. That obviously applies for interoperability, but it also applies for the scenario you painted now, which can occur and is critical. What this bill does is it provides that statutory obligation for ELNOs to sign up to that industry code—or at least it requires that through regulations. That is a really important development.

The other consumer protection that I think is worth raising is around the means by which ELNOs are required to monitor, audit, report and follow transactions through an interoperable arrangement. I know a concern that has been raised, as you and others have, is, Will I lose sight of my transaction, given it is now going through a couple of ELNOs? There are a couple of really important points to make. Firstly, there is going to be a requirement for ELNOs to come up with an agreement that involves a requirement on both of them or all of them, depending on how many are involved, to cooperate in the investigation and resolution of any complaints. They have to have a process to have a timely rectification, if you like, of any failure affecting interoperability. That includes a root cause analysis, so that goes to the scenario of misapplied funds or "Where have my funds gone?"

Finally, a really important point to make too, which is a broader issue around consumer protection, is around privacy. ELNOs are required to maintain their cloud systems in Australia. That means they are subject to Australian privacy laws, and interoperability is no different to that too. These are really important points around consumer protection, certainly financial regulation and around security of the interoperability regime. Again, just to finish, the way we have come at this is to bring all the industry experts. It would be really worth raising with the other industry representatives to make sure that they are satisfied with the process. But what we have tried to do is bring them all into the room, identify from their perspectives where are the risks, and then let us move them

from the abstract to the real and identify remedies. If it is in the regulations, we will put it in the regulations. If it is in the data standards, we will build the data standards to be ongoing.

Ms ABIGAIL BOYD: So just to clarify—

The CHAIR: Sorry, Ms Boyd, that answer took a long while.

JEREMY COX: Sorry about that; that took too long.

The CHAIR: That is all right. Does the Government have any questions at all?

The Hon. TAYLOR MARTIN: If it is Government time, I am happy to cede back to Abigail and the crossbench to continue that line of questioning.

The CHAIR: Thank you, Mr Martin. Ms Boyd, do you want to continue with that clarification?

Ms ABIGAIL BOYD: Yes, I do. Thank you so much. That is useful to hear about the consumer protections around the financial settlement aspects. But in terms of having a backstop assurance fund if it all goes wrong and for whatever reason someone does lose money, is there any regulation anywhere that will provide that assurance for people to draw on?

JEREMY COX: That does not exist in the current regime, but the accountabilities through the financial settlement code, the self-industry code, will go much more clearly to those accountabilities—where there is the movement of finances through payments for property, who is accountable for what and tracking those. Then it will come to those organisations involved in the transaction that are responsible for that financial side. But a separate Torrens assurance fund or the like for that financial settlement and transaction is not envisaged by this reform or for eConveyancing more generally.

Ms ABIGAIL BOYD: Thank you, that is really useful. Ms Cameron, did you want to add something?

DANUSIA CAMERON: Thanks, Ms Boyd. I think there is also an issue between State and Commonwealth regulation here, because oversight of banks and the financial system sits with the Commonwealth—at ASIC, APRA, and the RBA is also involved. Essentially, the questions about an assurance fund would probably sit more within that jurisdiction. The beauty of the industry code is it brings enough oversight of financial regulation into what registrars can see, but they are not responsible for it. It is a self-regulatory code, so it is the best outcome that we could achieve working with those Commonwealth regulators.

The CHAIR: Mr Martin, do you have some questions?

The Hon. TAYLOR MARTIN: Yes. I will start with Mr Roberts. Could you give us a bit of an overview as to the governance of ARNECC, and particularly who ARNECC is accountable to?

BRUCE ROBERTS: Certainly. Essentially, the governance model is that we have the Australian registrars' national council. All Australian registrars report to their respective registers themselves. Underneath the Australian registrars' council we have the various committees, the implementation committees and the technical committees, that are made up of not only members of government and registrars and their technical experts but also key industry participants across the whole spectrum of electronic conveyancing. The funny little thing around the governance model is the collaborative approach that we have adopted over the past three to four years in order to bring to pass this legislative regime and this system. Essentially, we have these committees reporting to ARNECC and ARNECC then reporting to its Ministers through each registrar.

The Hon. TAYLOR MARTIN: Could you give us a bit of an idea as to which other government agencies ARNECC primarily work with already and which ones they will be working with going through this process?

BRUCE ROBERTS: Sure. I think we have mentioned in relation to financial settlement we have been working with key organisations such as the ACCC. We are also working with treasuries in each jurisdiction and each of our own central government agencies as well. For example, in New South Wales' case, it is not only Treasury but our finance department as well. At the national level, although it is not a regulator in the sense of electronic conveyancing, the Reserve Bank of Australia is a key participant that we are working with and that, of course, is involved in the netting of funds between ELNOs when settlement transactions occur.

So we are also working with other key bodies in States and Territories that regulate people in the marketplace. For example, in the case of separate agents employers, we are working with the Law Council of Australia and, with settlement agents, we are working with the Australian Institute of Conveyancers to bring them, essentially, a modern opportunity to avail themselves. I wonder if I could throw to Jeremy Cox to bring details, if I have missed any?

JEREMY COX: No, I do not think so, unless Mr Martin has anything further on that question I can add?

The Hon. TAYLOR MARTIN: All good and it is my understanding that PEXA is currently not attending the workshop groups to design the tech for interoperability and they have not in fact attended since the back half—back quarter—of last year. What is ARNECC doing to get PEXA back to the table for that particular part of the reform?

BRUCE ROBERTS: Yes, thank you. PEXA has raised a number of issues in relation to the reform and ARNECC has described how it will address each of those issues. So the first one is their concerns around our amendments to the legislation—the amendment to bringing part of the staged approach and process and the Minister's voluntary [inaudible] effectively [inaudible] to support those additional amendments to the legislation and to further engage with stakeholders in relation to the comments on the draft bill. On the question of pricing, ARNECC has indicated that it will be the economic regulator of the pricing. On the questions around timetable that PEXA has raised, this has really been around balancing the need for competition and [inaudible] development of the systems.

So the solution, I think, has been mentioned but it will not go higher unless we are assured that issues around security have been satisfied and capability have also been satisfied. PEXA has also raised the role of ARNECC in this whole reform. Essentially, ARNECC's role is to continue to work with the industry in finding ways of delivering documents that are setting up the data standards for the system. We have actually incorporated a company, which is essentially owned by all States and Territories, to issue licences to [inaudible] for those key data standards.

So, really, ARNECC has adopted a consistent position on all of the issues that PEXA has raised, both now and through the last three or four years. It is something that can be addressed concurrently and collaboratively in the development of the reform. The reform is sufficient for us to do that. We have sufficient time to do that. While PEXA has said that not all of these issues need to be settled before they return, it is true that it is not clear when they will return to the table and this an ongoing and enduring process, not only for ARNECC but also for industry. So, essentially, without the ability to enforce interoperability—which will be in the second set of amendments—it is difficult for ARNECC to bring PEXA to the table in a mandatory way, if they choose not to participate.

The CHAIR: Thank you, Mr Roberts. That is the end of the Government's time and our time with all three of you. Thank you very much for coming to us virtually and providing that information. It is very much appreciated. We will now bid you farewell and bring in our next lot of witnesses.

JEREMY COX: Thank you very much.

(The witnesses withdrew.)

Mr TASS LIVERIS, President, Law Council of Australia, sworn and examined

Mr PHILLIP ARGY, Chair, National Electronic Conveyancing System Committee, Law Council of Australia, affirmed and examined

Mr JOHN FARRELL, Senior Policy Lawyer, Law Council of Australia, affirmed and examined

Mr RICHARD HARVEY, Chair, Property Law Committee, Law Society of New South Wales, sworn and examined

The CHAIR: We now have with us representatives from the Law Council of Australia, the Chair of the national eConveyancing system committee and the Law Society of New South Wales. Welcome to you all. In the same order as being sworn or affirmed, would anyone like to make a short opening statement? If you could keep it to one or two minutes, that would be great. Is that someone from the Law Council?

TASS LIVERIS: Yes, thank you, Chair. We have a reasonably short opening statement I will run through. The Law Council of Australia welcomes the opportunity to appear before this Committee. The bill proposes amendments to the Electronic Conveyancing National Law, which provides the legislative underpinning of the national scheme for the electronic settlement and lodgement of conveyancing transactions. In particular, the bill proposes amendments to the ECNL to require interoperability between Electronic Lodgement Network Operators we call ELNOs. The Law Council strongly supports competition between ELNOs and considers interoperability to be a critical feature of the future of the eConveyancing market. In the Law Council's view, competition in this market will drive innovation for improved products and services for users and increase downward pressure on prices.

It will ensure that members of the legal profession have a choice as to which ELNO is best for them and will mean that they are not required to be signed up to multiple ELNOs. The Law Council is broadly supportive of the amendments proposed in the bill. The introduction of this bill is an important step in the process towards interoperability. It is also an indication to the sector that progress is being made towards the important goal of interoperability. Although further amendments, as set out in the attachment to the Law Council's submission, will be required to the national law before interoperability is fully achieved in 2023, the passage of the bill in its present form reflects an urgent imperative to legislatively mandate interoperability. This is necessary to signal to the market that investment in interoperability will not be futile.

It is important to note that the bill is not only an initiative of the New South Wales Government but is the considered outcome of the deliberations of Australian Registrars' National Electronic Conveyancing Council as well as by the relevant Ministers from each State and Territory. Against this background, scrutiny by the New South Wales Parliament should be approached with great care as any amendments proposed would need to be agreed at multiple national levels. It is the Law Council's view that any concerns with the bill and/or the national law ought to be addressed in the next bill that is already foreshadowed by ARNECC and the joint Ministers. The Law Council welcomes the joint Ministers' commitment to progressing further reforms to the national law and looks forward to participating in the ongoing consultation process. Thank you, Chair, and Committee members. We are happy to answer questions.

The CHAIR: Thank you. Mr Harvey, do you have a short opening statement?

RICHARD HARVEY: Thank you, Chair. Largely, we support the view of the Law Council, which of course is the organisation of which we are a constituent member. The Law Society's position is that we have long supported eConveyancing and the introduction of interoperability between ELNOs. Over a considerable period of time we have contributed to consultation to deliver the reform and we recognise that the bill is a necessary step in implementing interoperability. Interoperability will provide our members with the ability to conduct conveyancing transactions using the ELNO of their choosing, without the need to subscribe to every ELNO that may enter the market.

Our submission indicates to the inquiry our high-level concerns, however, that remain to be addressed. There are two levels of those. The first thing is that the proposed amendments to the ECNL may not sufficiently address the wide and varied components of interoperable transactions, particularly financial settlement of interoperable transactions. The regulation of financial settlement must be included as part of the revised regulatory framework for interoperability. This is a significant change required to the underlying approach of the bill and requires a number of technical amendments.

The second thing is the bill provides the registrars with powers to make model operating requirements regarding the resolution of disputes between an ELNO and subscribers or their clients. Where funds are misapplied, for example, a clear framework for the resolution of claims and disputes accessible by subscribers is

crucial. Given the proposed industry code operates between ELNOs and financial institutions only, the new power has an important role to play in enabling clarification of a subscriber's ability on behalf their clients to access claims and dispute processes. We look forward to further detail being provided on this and we are happy to answer any questions. Thank you, Chair.

The CHAIR: I will pass to Mr Primrose from the Opposition to start off the questions.

The Hon. PETER PRIMROSE: Thank you, Chair. This is a preliminary question to all witnesses but I might begin by asking Mr Liveris. Do you believe an independent regulator appointed by the registrar to assess the readiness of participants and the interoperable system as a whole would help address industry and consumer concerns about cybersecurity and risk?

TASS LIVERIS: The important issue with this bill is that it introduces interoperability into the primary legislation. That is the critical objective of the bill and that is what must take primacy in the Committee's deliberations. The other aspects of the bill that have been the subject of submissions by various stakeholders that suggests require further deliberation can be dealt with in the second, third and multiple stages of reforms that the Ministers have jointly referred to, but it is extremely important that the focus of this bill be disciplined to what it is intended to achieve, and that is to introduce interoperability into the primary legislation and make it functional in 2023. That is a key objective. It is not only a good objective but it is a necessary objective, and it is extremely important that we not lose sight of that in our discussions.

The Hon. PETER PRIMROSE: Would an independent regulator assist that?

TASS LIVERIS: We suggest that those types of issues can be considered in the next stages of reforms. At the moment this bill focuses on establishing interoperability, and so the types of discussions that might revolve around the particular question you asked are matters that we think can be dealt with down the line.

The Hon. PETER PRIMROSE: Thank you. Any other views from other witnesses, please?

PHILIP ARGY: Phillip Argy, Mr Primrose. Perhaps I might just supplement what President Liveris has said by indicating that I think over the course of the next year ARNECC will equip itself with some additional technical expertise, which will assist it to be the regulator as it currently is.

The Hon. PETER PRIMROSE: I might move on to my next question if no other witnesses have any comments, maybe beginning with Mr Liveris again. Do you hold concerns over ELNOs offering services such as information searches, broking services and specific conveyancing software solution and lodgement services?

TASS LIVERIS: The analogy that best fits in my mind about what interoperability means relates to telecommunications companies. It is like Telstra and Optus customers being able to phone each other. What this means—apart from the consumer benefits that I said in the beginning, the driving of innovation, the increased competition, improving products, providing consumers with that choice and enhancing that framework—is that legal practices will not have to be subscribing to multiple ELNOs and there will be direct and indirect cost savings that will flow to that. Oftentimes those cost savings will therefore mean that they are not passed to the consumer. But it is like suggesting that in order for a Telstra customer to phone an Optus customer, they have to subscribe to both. This is what this bill will eliminate—the requirement to subscribe to multiple ELNOs. That, as I said—and it is important to reinforce—needs to be the focus of the Committee's deliberations, because that is what this bill will introduce into the primary legislation: interoperability.

The Hon. PETER PRIMROSE: Anyone else?

RICHARD HARVEY: I think that the issue of vertical integration is something which has been considered by the professions over a period of time. But, as the other witnesses have said, this bill is not the place for that discussion to be had.

The Hon. PETER PRIMROSE: I note that the Law Council mentioned in its letter of support to the Minister a number of concerns you have raised about ARNECC. Can you detail these concerns, please?

TASS LIVERIS: We have raised issues that we think require scrutiny in the next stages of consultation and amendment that the ministerial statement has foreshadowed. The Minister has recognised that the reform is "complex" and "may require multiple regulatory amendments"—I am reading from the joint ministerial statement of 28 January 2022—and that the Ministers will meet again to coincide with the introduction of the first set of amendments. So we welcome that a further set of amendments are foreshadowed. The points that we have made, it needs to be emphasised, do not impede our primary position that the bill in its current form should pass.

We simply suggest that matters such as definitions—some of them pre-existing in the primary law already, I might add, some of them new definitions and some of them certain limits or ambiguities on liabilities of registrars and things of that sort—can be and should be refined, but they are matters that are appropriately dealt

with in the next stages of reform. They are not matters that we suggest for a moment justify an impediment to the passage of the bill. Indeed, we are not aware of any issue raised during the discussion process in relation to this bill that ought justify it being delayed.

The Hon. PETER PRIMROSE: Any other views or comments?

RICHARD HARVEY: I support what President Liveris said.

The Hon. PETER PRIMROSE: That is the end my questions. Thank you.

The CHAIR: Mr Veitch, do you have any questions?

The Hon. MICK VEITCH: Just the one, Chair. I hope I am coming through okay this time. Is it working?

The CHAIR: Yes.

The Hon. MICK VEITCH: Excellent. It has been suggested that it may be worthwhile and beneficial to the Parliament if the RG was to provide a statement that would clarify or provide certainty to the legislators that all risks have been assessed prior to going live. What are the views of both on that?

TASS LIVERIS: We do not take a view on that other than to reaffirm my evidence already given, and that is that we have scrutinised this bill in its current form and we think it should pass. We have footnoted that with some matters that need attention in the next stages of reform. They are important but they do not justify delaying the bill, and we will look forward to being involved in further rounds of consultation and amendment as the Ministers may see fit.

The CHAIR: I only really have one question because I think the Opposition has covered the other part. Mr Liveris, you stated in your previous answer to Mr Primrose that this first bill is about setting up the stages and setting up interoperability. But is it not true that the other potential competitor in this market simply has already had the ability to provide these services but has chosen not to? Is this bill really truly integral to providing that competition with Sympli? What is the hurdle that is stopping Sympli from providing these services already? Because my understanding is it has that facility but it has chosen not to. Is there something specific in the legal framework that is stopping it from providing that service at this point in time?

TASS LIVERIS: The issue is that currently it requires participants to subscribe to multiple ELNOs. As I said earlier, the best analogy in mind is as between telecommunications companies. If you are a Telstra customer, you can ring an Optus phone without also having to also subscribe to Optus. What interoperability will do requires the ELNOs to communicate with one another, and it then provides that ability for consumers—subscribers—to not have to subscribe to multiple ELNOs. What that will then do, probably, and why it is so critical, is it will increase competition, promote innovation, enhance services for users and result in better, cheaper products. It is ultimately about choice, and that is what is lacking at the moment, and that is what interoperability, at its core, will achieve.

The CHAIR: If I can clarify, it is more about the convenience of not having to sign up to two ELNOs, and that is what creates that choice? It is more about convenience to the end user. Is that what you are saying?

TASS LIVERIS: That is a part of it, but, with respect, that is not it only. It is more than just a matter of convenience. It is a matter of cost, increased competition and incentives to drive innovation and to improve products. It would be incomplete to suggest that this bill is simply about convenience, because it is much more multifaceted than that.

The CHAIR: You might not be the right people to talk about the innovation—it has been touted by a few submissions—but are you aware of what specific innovations will come from this at all? When you talk about innovation, is that just a blanket statement and you are not too sure where that innovation will come from?

TASS LIVERIS: I am not going to speculate about that. I do not know whether Mr Argy or Mr Harvey wish to say anything more about it.

PHILIP ARGY: Mr Chairman, if I could perhaps just add this in response to your two questions. Obviously you need to speak to Sympli, and I gather it is appearing before the Committee later on.

The CHAIR: Yes.

PHILIP ARGY: My understanding is that at the moment interoperability is not in place, so Sympli cannot offer the full range of services. What it is doing at the moment is doing proof of concept for some selected transactions which are the most common transactions. My understanding is it will be 100 per cent offering the same range of transactions as PEXA offers when interoperability is implemented early next year. So that is part

one. Part two is the kind of innovation we are talking about, and this is really important, things like usability. For example, the Committee is using Webex. You know that people have the option of Zoom and Microsoft Teams. They each offer slightly different features and slightly different benefits, but that competition is really healthy.

As we have seen over the past few years, there have been massive strides in the innovation that has been brought to bear in how these systems work. The advantage of competition is going to be that, particularly for lawyers who do not do day in, day out conveyancing. Infrequent users really need much more user-friendly interfaces, and competition offers the strong likelihood that those users will be much better catered for than with the current system, which is really geared to people who eat, sleep and breathe conveyancing every day.

RICHARD HARVEY: I will chime in on this issue. Without interoperability, if there are two competitors or more then the transaction can only be completed on one of those ELNOs. Think in the conveyancing transaction, I am acting for the vendors, you are acting for the purchaser. I am on Sympli, you are on PEXA. Who determines which of those networks is going to be used, because without interoperability you can only use one of them? So you are going to end up with this ridiculous contractual impasse between two different practices saying, "No, I am on Sympli; you must use Sympli," and the purchaser is saying, "No, I'm on PEXA; we have to use PEXA." Without interoperability you are going to have that very basic problem. It just would not work without interoperability.

The CHAIR: Thank you, Mr Harvey. That is a really good analogy.

Ms ABIGAIL BOYD: When we are looking at this reform, we are looking at this initial bill, which is giving the green light for it all to go ahead. Then, as you have detailed, we are looking at a series of further discussions and amendments and considerations that would lead us to the final thing down the track. But if we do not do this bit, then we do not get to do the whole process. That is my understanding of what is happening here. But from a consumer perspective, or from the perspective of anybody who has perhaps lost a bit of trust in government to do what it says it is going to do, there is some concern that perhaps those further amendments will not go the way that people want them to go. Is there anything from a legal perspective that you think we could do to amend the bill in a way that would give that assurance—for example, some sort of review provision that states that if you do not get to certain milestones within a certain time, perhaps it can be changed again? Do you have any ideas around how we can give that assurance to people?

TASS LIVERIS: I strongly caution against an approach that seeks to amend the bill at this point. Primarily and fundamentally, what this will do is amend the primary legislation to introduce interoperability. As I say, that is not just an important step but it is a necessary step. As I said in my opening, it would also be a very strong indicator to the market that we are making progress here and that investments in the sector are not futile. The additional complication, and I suggest the basis for the Committee to proceed with particular caution in terms of further amendments, is that as this bill is not a sole initiative of the New South Wales Parliament, as it comes out of the years-long deliberations of ARNECC and all the State and Territory governments, amendments would not only need to be agreed at a multi-governmental level but the process becomes considerably unwieldy.

Where the joint Ministers have indicated that the reform is complex but that interoperability is a critical step in the process, which it, of course, is—I labour the point that it is not only critical, it is necessary. We received the joint ministerial statement that talks about the possibility of multiple regulatory amendments and referring to this as a first set of amendments as an indication that we can look down the track at the certain types of issues that we and other stakeholders have foreshadowed. But it is important not to lose sight of what this bill is designed to do and the imperative that it pass in its current form.

Ms ABIGAIL BOYD: Perhaps I could clarify and then I will invite the other witnesses to give their contributions. My suggestion was not that we amend the core bill. The suggestion was that we add on something to give people assurance. And perhaps the answer is that there is nothing that can give people assurance, that the next steps will be taken in good faith. A review provision is not unusual. An amendment in the Legislative Council would not unduly delay the bill. I understand what you are saying about amending core aspects of the bill and how that needs to be considered at a multi-jurisdictional level. But in terms of building in a safeguard for the democratic process in order to make people feel more comfortable, is there anything that you can conceive of that might do that in terms of an addition to the bill?

TASS LIVERIS: I do not have any additional remarks to make to that question.

Ms ABIGAIL BOYD: Perhaps Mr Harvey?

RICHARD HARVEY: I think what I would say on that is that we think the bill should go through as is because in terms of the democratic process and goodwill and "will people do the right thing", the processes that certainly the Law Society of New South Wales, the Law Council of Australia, the Registrar General, Land Registry Services, the ABA—everyone has been working on this very assiduously. There is a real desire for it to

work. Whilst we have some concerns on certain areas, which I mentioned in my opening remarks, we know those are the matters which the ministerial State indicate are things that are going to be discussed. A lot of the things that many of the submissions have raised will be dealt with in the model operating requirements. That is a thing which the registrars Australia wide will regulate and control. In terms of that, we have found that the whole process has been very cooperative and that all the major stakeholders worked together. We have an appreciation that the things that need to be done will be discussed so that in the next layer of legislation of the Act itself those things will be attended to.

PHILIP ARGY: I will add my two pence worth, Ms Boyd, because I think it is ironical that our comfort level that these things will happen comes from the unanimity across all political parties and all States and Territories. We have a really rare unanimous statement from all of the stakeholders that this is going to happen. I really get a lot of comfort from that. That is pretty unusual to get everybody, cross-party and cross-jurisdictional, unanimously agreeing that these further consultations and amendments are going to happen. I would respectfully say that we actually get our comfort level from the nature of the process.

The Hon. SCOTT BARRETT: I have only one question, so if there is time at the end of that to go back to what Ms Boyd was talking about, I am happy with that. Mr Liveris in particular, but I guess to anyone can answer, you mentioned in your opening statement about the urgency of this. Can you touch on that a little bit more and why the time frame is so important?

TASS LIVERIS: The time frame is so important because this has been, as we have discussed, a very long time coming. It has come out of the considered deliberations that have been years long between ARNECC, key stakeholders and all State and Territory governments. The process towards interoperability being achieved in 2023 will be that this is a critical step in the process. It is a critical step in what is a considered but complex reform. It is so that we can achieve that basic feature of interoperability in the system that has been hamstrung without it. That is what makes this bill so important and it is what makes it, as I have said, not only good, but necessary.

The Hon. SCOTT BARRETT: If we delay this bill and we miss that 2023 time frame, what are some of the practical ramifications of that?

TASS LIVERIS: The major ramification of it is that interoperability will not be achieved, or it will not be achieved within the existing expected time frame. That would not be a good outcome because, as we have spoken about, all the benefits and features that interoperability will have on the market, on consumers, on legal practices, on investment and on all those types of things—as I said earlier to the Chair, this is not simply about convenience; this is critical. We will lose that opportunity if the passage towards interoperability is not facilitated and this opportunity is not taken.

Ms ABIGAIL BOYD: Along the same lines as my prior questions, I just want to test that a little bit more. An example of the type of provision that we could add at the end of the bill would be something along the lines of "Within 12 months the Registrar General will report to the Parliament or a particular committee to give an update in relation to the process," or something of that nature. That is not actually messing with the terms of the bill but is giving that parliamentary oversight and assurance that the future reforms will actually occur as they are planned to. Do you see any objection to that? Do you have a problem with that idea?

TASS LIVERIS: I reaffirm my initial answer that in its current form this bill should pass. I appreciate the sentiment that you are expressing, but I am not in a position to just start to discuss additions or amendments to the bill in this hearing. What it is incredibly important to re-emphasise is the imperative of interoperability being achieved and the remarks made by my colleagues, Mr Argy and Mr Harvey, that supplemented the depth of the considered process and collaborative effort that has got us to this point. My overarching concern—despite what you say, about it being a perhaps less controversial or insubstantial amendment—is that amendments of any sort run the serious risk of delay. That is a broad statement, not a specific statement but a general statement. We strongly caution against delay for the reasons that we have set out. It is very important that we continue on the path towards achieving interoperability in 2023.

Ms ABIGAIL BOYD: Understood. For your benefit, Mr Liveris, as you must know, we commonly amend legislation in the Legislative Council in order to compromise amongst competing interests, just to get the job done. Sometimes it can result in less delay rather than more delay. If there was no delay caused—let us just be hypothetical and say that the amendment will cause no delay—do you have a concern with that sort of provision being added to the end of the bill?

TASS LIVERIS: One of my fundamental concerns is delay. If we are speculating or if we are talking in purely hypothetical terms, and someone said to me, "I want to add something there. It will not interfere with the time frame," that resolves an aspect of my concern, without analysing the detail of exactly what that addition

is. As I said, I understand and appreciate the sentiment, but I must emphasise that in its current form this bill ought pass. That is our primary focus.

The Hon. PETER PRIMROSE: May I ask a question, just following on from that? This bill was due to be passed 12 months ago. The delay has already occurred. The suggestion from Ms Boyd—and I made a similar suggestion earlier as well—was to enable a provision simply for some oversight. That may assist the delay not occurring. Would you support then a proposal that simply said that there was some degree of oversight? That very much may have the ability to not allow, when you are developing the next round of regulatory oversight legislation, for it to be delayed again for a further 12 months.

TASS LIVERIS: I think the point you raise reflects why the imperative is growing. This reform has already suffered some delay, where it has already taken—

The Hon. PETER PRIMROSE: But not because of parliamentary matters.

TASS LIVERIS: No, I am not suggesting that that is the cause of it. But what I am suggesting is that this bill has been a long time coming and it is very important that that then be the focus and that we look at achieving this outcome as a critical step in the process to achieving full interoperability, which will still take until next year to be in place. I suggest that that is the critical focus of the Committee's work, rather than the types of—perhaps if I could describe them as—intended safeguards that you are talking about this morning. That is quite a separate thing to whether this bill, which the Law Council has analysed, is a good bill that should pass—and it is.

The Hon. PETER PRIMROSE: [Disorder]. That is fine.

PHILIP ARGY: I am quite happy to supplement that earlier question by Mr Primrose and Ms Boyd by noting that the Electronic Conveyancing National Law is a very, very unusual animal. Whilst the New South Wales Parliament has been chosen as the, if you like, mechanical vehicle through which its provisions are enacted, other States and Territories automatically adopt those changes, and so the intergovernmental agreement, which has resulted in this national law, requires that every word, if not every comma, in a bill be discussed and approved by each of the jurisdictions. So the difficulty with what is proposed is that the New South Wales Government, and Parliament in a strict sense, whilst it obviously technically has autonomy, it should—as a matter of comity, I would respectfully suggest—not interfere with the words, because to change one word of the bill would require it to go back to each of the eight States and Territories and have that change approved. That would take a long time, and that is our great fear. That would just—

The Hon. PETER PRIMROSE: So, Mr Argy, even though it has been delayed by 12 months already, your suggestion is that the New South Wales Parliament may get in the way?

PHILIP ARGY: I would not put it that disrespectfully. I will simply note that the mechanics of achieving the agreement that has resulted in the language in this bill has taken longer than expected, and so what that really does is illustrate the risk of seeking to go back through that process to change any word of the bill.

Ms ABIGAIL BOYD: I completely understand what you are saying in terms of the language of the provisions that are already there, and they are the operative provisions that are putting in place the scheme that we are talking about. But if we also wanted to add, in order for the Legislative Council to be comfortable with passing the bill, an entirely separate provision, which is very common for us to do, with either a review or a reporting mechanism or something like that, I do not see how that provision would then need to be considered as part of the model bill for your purposes. Are you saying that if we did that then somehow that amendment in itself would need to go back through this process, even though it does not interrupt the amendments and the operative provisions that have been proposed in the bill?

PHILIP ARGY: My understanding is that if what you seek to do is to change the words of the bill itself, that would be the case. If you are talking about a different resolution, a procedural resolution of some other kind, I cannot really comment. The imperative, from our point of view, to overcome the fear of not having interoperability ready for the beginning of next year, is that anything at all happens that would delay the passage of this bill—that is the bottom line, at the risk of labouring the point.

The CHAIR: Thank you. That takes us right on time. I thank you all for your evidence you have given today. We will now bid you farewell and bring in our next set of witnesses.

(The witnesses withdrew.)

Mr DALE TURNER, National Councillor, Australian Institute of Conveyancers, sworn and examined

Ms MICHELLE HENDRY, Vice President, Australian Institute of Conveyancers, affirmed and examined

Ms FIONA LANDIS, Executive Director, Policy, Australian Banking Association, affirmed and examined

Mr BRENDON HARPER, Policy Director, Australian Banking Association, affirmed and examined

The CHAIR: Would either of you like to make a short opening statement, starting with the Australian Institute of Conveyancers? If you can keep it to a minute or two minutes, that would be great.

MICHELLE HENDRY: Yes, no problem. Thank you, Chair. The AIC thank you for the opportunity to provide a submission on and attend today's inquiry into the amendment bill. It was a necessity for the conveyancing and legal industries and those associated to be digitally transformed, and evidently have done so successfully. However, with such digital transformation evolved a regulatory framework lacking clarity for competition and interoperability. EConveyancing, or an ELN, is now a fundamental tool to deliver conveyancing services to consumers, which for many are selling or purchasing one of their most important financial investments of their life. Nationally, conveyancers lodge a significant number of real property transfers, with that number only continuing to grow. The AIC supports competition and considers interoperability essential to enable true competition in the ELN marketplace. However, the implementation of interoperability is complex and is a first-time project which demands a new regulatory framework to ensure the protection of consumer assets which often represent a lifetime of work and savings, is rigorous and safeguards public confidence in eConveyancing and the integrity of the land registries.

The current bill, in our view, does not address the significant issues raised during the extensive consultation to date. Our key concerns are financial settlement, resolution of claims and disputes, an enforcement regime, compliance, cost and, importantly to both conveyancers and consumers, the ability for vertical integration—an ELNO competing with conveyancers and lawyers, their subscribers, by providing end-to-end services. As warned by the ACCC, vertical integration would be anti-competitive and contrary to the public's interest. Lastly, we acknowledge the ministerial statement on 28 January 2022, indicating the intent to consider the issues raised during consultation separately at a later date. Perhaps during this discourse and examination by the Committee of the bill, some of these issues may be resolved or better explained than they have been to date. However, there are issues such as those above which have been expressed by not only the AIC but also others as key areas of concern. In that respect, we question: Is the bill not putting the cart before the horse? Thank you, Chair.

The CHAIR: Thank you. Is there any opening statement from the Australian Banking Association?

FIONA LANDIS: Yes, thank you. Good morning. The ABA represents Australia's major banks, regional and international banks. The ABA develops policy and advocacy on behalf of our members, advocating for a strong, competitive and innovative banking industry that delivers fair outcomes for customers. In this context, eConveyancing is an important aspect of the broader banking ecosystem in that it helps facilitate everyday Australians—mums and dads, young people, single parents—to realise the great Australian dream of home ownership. Buying a home is an important milestone in people's lives. It is likely their biggest purchase and one of the most significant decisions they will make.

A well-functioning and efficient eConveyancing market is in the best interests of all participants. Competition can be a driver of innovation, increased service and lower costs. It is reasonable to expect that competition in eConveyancing will drive enhanced outcomes for participants. To realise competition, we need interoperability. It is unrealistic to think meaningful competition will develop otherwise. The passage of this bill is a vital step in progressing towards interoperability. Interoperability essentially means the ability of different systems to connect and communicate. It enables them to speak the same language. The ABA is supportive of the passage of this bill and the two-step approach being proposed.

A point I would like to emphasise to the Committee is the need to ensure progress is also made on the payments aspects of eConveyancing. It is vital that title and funds transfer at the same time. While this is not strictly related to the ECNL, I urge the Committee to consider the time required for banks to develop, test and integrate systems changes to support interoperability. The ABA supports the passage of this bill. Thank you.

The Hon. PETER PRIMROSE: I have asked this question and I will keep asking it of all witnesses to begin with, and then I will pass on to Mr Veitch. I will begin by asking it of the Australian Institute of Conveyancers. Do you believe an independent regulator appointed by the registrar to assess the readiness of participants and the interoperable system as a whole would help address industry and consumer concerns about cybersecurity and risk? Mr Turner, do you have any views on that?

DALE TURNER: Yes, I do agree that there should be an independent assessment of the system for the cybersecurity and other risks. That will give confidence to both consumers and to subscribers that the system is fully operable. The consequences of a failure are very serious and they can be expensive and extensive. It is important that that confidence is in-built within the system.

The Hon. PETER PRIMROSE: Ms Hendry, do you have any further comments?

MICHELLE HENDRY: I support Dale's comments and supplement that with a recent example at 30 June where there was a system failure. We had only one ELNO and we were lucky enough to resolve those issues quickly with that ELNO, who involved the relevant State departments. For that to occur while two ELNOs are interoperating could only create significant concerns with respect to resolving any claims or disputes as to whose fault that was at that time of the outage.

The Hon. PETER PRIMROSE: Does the ABA have a comment on that question?

FIONA LANDIS: I think what the Committee really needs to consider is not further complicating an already complex space. It is just not clear to us what role that additional regulator would have. We think there has been sufficient consultation on this issue and this bill for a long time. Good consultation occurs with public policy development that departments run well before it gets to the floor of the Parliament for parliamentarians to consider. We have been talking about these issues for a long time. We feel that we have been adequately consulted. We do not think adding further complication and oversight would add a lot of value at this point.

The Hon. MICK VEITCH: My first question is probably to the conveyancers. Do you have any concerns about the implications of interoperability on the safety and security of customers, their information and their finances? Dale Turner?

DALE TURNER: Yes. I have to admit we do not have the knowledge, or I certainly do not have the knowledge, of the IT requirements that are involved there. But we do have some concerns as to cybersecurity and those other aspects, but I think that is more of an IT issue that needs to be considered. Our concerns are more to do with dealing with transaction failures, setting up quasi boards to deal with these problems when the immediate resolution is not available. We are more concerned with the face-to-face, day-to-day transaction implications of the bill rather than those aspects of IT and security.

MICHELLE HENDRY: I agree with Dale's comments. It is a concern, though, with respect to cybersecurity. Like Dale said, from the day-to-day dealing directly with the consumers, most of our members or conveyancers are SMEs so the security of the platform or the system that we are using has to be paramount as most of our members would not have the ability to have those high-level security systems for cybersecurity in place, other than the basic preventative measures.

DALE TURNER: May I just add that there is a view that with the more openings into the system, the more difficult and complex that security issue becomes. But, again, that is a question that really is a technical question with cybersecurity.

MICHELLE HENDRY: I agree, Dale.

The Hon. MICK VEITCH: The bill talks about an industry code. Have the conveyancers been consulted around the proposed industry code?

DALE TURNER: At this point, no.

MICHELLE HENDRY: No. The industry code is unknown.

The Hon. MICK VEITCH: Okay. Has the ABA had any input at all [inaudible] around the industry code?

BRENDON HARPER: I know there is an industry code on payments that is being developed but that has not progressed too far. But that is in progress. To your question on the safety and security of customers' information and data, it is an important question and a question we should all consider. If I may, I will answer the question more broadly and then come back specifically to interoperability.

One of the things that holds the financial systems together is trust. By trust, I mean customers trusting banks to look after their data and their money. For banks this is an extremely important issue. It is something that they spend a lot of time and money considering. A bank simply would not engage with a provider that they did not feel had the systems in place, be they cybersecurity or cyber-resilience systems, and did not have the systems in place that would ensure the protection and security of customers' data and money. They simply would not engage with that customer. Any ELNO that is looking to join the system would know that. They would know that

banks have an extremely high bar and they would know that banks simply would not engage with that provider if they did not have the adequate systems in place.

We look at interoperability—in a way, through an economic lens, you could think of it as market discipline. Either those ELNOs that are currently involved or those that are wanting to get involved know that there is that inherent market discipline. From the payments side, some of the details—as we said, the payments code is still being developed. I am confident, given the people involved and the technical expertise that has been involved by all the parties, that the code will develop a safe and secure mechanism. From the safety and security, as I say, it is an extremely important measure and issue, but it is not an issue that we have concerns about in this space.

The Hon. MICK VEITCH: Do the conveyancers have any concerns about ELNOs offering services such as information searches, brokering services, specific conveyancing software solutions and lodgement services as a part of this exercise? We can start with Mr Turner and then maybe go to Ms Hendry.

DALE TURNER: Thank you for the question. Yes, we do have some concerns. PEXA offers some searching services and other ancillary kinds of services, and we are not so concerned with that aspect of it. The real concern that we have is that they integrate into providing an end-to-end conveyancing service. In other words, they are providing those ancillary services but, in addition to that, all the information that they have—that is subscriber information and information of the subscribers' clients—is used to integrate into a full conveyancing service. In other words, they begin practising conveyancing. That is our concern.

The Hon. MICK VEITCH: Ms Hendry?

MICHELLE HENDRY: Yes, I agree with Dale's comments. It is a serious concern of ours that they will end up providing end-to-end services with the information that they have at hand.

The Hon. MICK VEITCH: So what do you see as the benefits of this reform? What will be gained through this process? Maybe I will start off with the bankers and then come to the conveyancers to root that out.

BRENDON HARPER: It depends on your view of competition. Competition is often the driver of innovation and the mother of creation, depending on how poetic you want to be. Our view is we support competition, and we support competition in eConveyancing. There are a number of ways you can look at what the benefits of this might be. You can look at it from the customers' perspective—that is sort of mums and dads and the Australian people—but you can also consider it from, say, the subscribers' point of view.

If you think of it from a customer's perspective—so that is the people looking to go into the houses—competition should drive down costs, so that will be the benefit for them. The subscribers are the people actually connecting into the ELNOs. The mums and dads do not really see what happens inside the ELNOs, in a sense. For the subscribers, we would hope that increased competition would drive innovation and would increase customer service. If the system is built correctly, that is what we would imagine would come of it. We do need to be cognisant that we do not create a system which duplicates or creates additional burden for the participants. At this stage, we are confident that that can be achieved. That is an issue which will be developed outside the ECNL; that is more the payments side. Really, it is benefits for the customers, and in theory there should be benefits for the subscribers as well.

The Hon. MICK VEITCH: Mr Turner?

DALE TURNER: Yes, I agree that we all should support the bill in the sense that it does create innovation and it does create competition. I question the cost-benefit. I do think that when one looks at the cost of maintaining this new regulatory system—the insurance costs and all the other things that go with it that are part of the system at the moment—whatever that costs will have to be imported into the system, and it will have to be paid for, ultimately, by consumers who are the end users. But in saying that, I see that the bill is necessary and it is important. But we believe that we should look at some of these aspects prior to it being passed rather than, as Michelle said in her opening statement, putting the cart before the horse.

Ms ABIGAIL BOYD: Good morning to all of you. I will go to you first, Mr Turner. I just wanted to understand from you as a practising conveyancer, when you have been dealing with PEXA or Sympli or whoever you are joined up with, what sort of arrangement is put into place between PEXA and you as a user? Is there a subscription fee? What does that look like?

DALE TURNER: No, there is not a subscription fee, but you have to enter into what is called a participation agreement. That participation agreement sets out, if you like, the terms and conditions of being a member and of the use of that particular ELNO. Basically, you are interfacing with software that allows you to conduct a whole series of practical things within the system itself, such as it interfaces with State Revenue, such as it allows you to do the electronic duties return in assessing the returns. It allows you to interface with the

New South Wales land registry. It allows you to interface with the financial institutions, whether it is an incoming mortgagee or a discharging mortgagee. And, of course, it allows you to interface with the other party's conveyancer or solicitor. It allows you to prepare the electronic documents and to put the financial statements within the system. Finally, it allows you to sign off—use your electronic signature—within the system itself.

Ms ABIGAIL BOYD: From a conveyancer's perspective, then, you only want one service. You will sign up to just one. There might be competition between which one, but there would be no circumstances in which you would be signing up to more than one.

DALE TURNER: That is correct, and the analogy if you had to sign up with more than one is a different gauge railway system. In effect, you have to sign up with different ELNOs with different participation agreements and with different sets of requirements within their participation agreements, which requires different training, different software and so on and so forth. It becomes very complicated, so it must be seamless. That is one of the concerns that we do have in terms of the definition of interoperability within the bill itself: The capacity of the registrars to waive what we feel is an approval to become an ELNO, meaning that an ELNO does not meet that level of qualification or requirement, is an area of concern for us.

Ms ABIGAIL BOYD: Thank you. That is very useful to explain why the interoperability is required, because otherwise you would be obliged to sign up to multiple systems in order to be able to do every transaction. My understanding of that waiver is that the provision is about a temporary waiver until the system is ready, rather than somebody getting a permanent waiver. Is your interpretation different?

DALE TURNER: I think it is pretty clear. It provides for the Registrar General to waive the requirements or the qualifications of becoming an ELNO, and it provides that it can be done waiving all the requirements and can be done on a permanent basis. That is an area of some concern for us, yes.

Ms ABIGAIL BOYD: Thank you. I will put a supplementary question in to the Registrar General about that, just to clarify.

The CHAIR: A quick question to you, Mr Turner: When I was questioning the Minister in estimates last week about this bill, he mentioned that lawyers do the bulk of conveyancing and conveyancers only do a little bit. Is that statement correct?

DALE TURNER: No, I do not know where the Minister got his information. In New South Wales there are over 1,600 licensed conveyancers. There are over 500 conveyancing firms that operate in the cities and regionally. In South Australia, I understand—and Michelle might clarify this for me—conveyancers do about 70 per cent of all property transfers, so I do not know where the Minister got his information from.

MICHELLE HENDRY: Yes, in SA, WA and Tas they do circa 90 per cent of real property transfers.

The CHAIR: I go to a point that Mr Veitch was raising about these ELNOs moving into conveyancing territory in the other services that they provide. You mentioned what PEXA is doing, but does it concern you that one of the co-owners of Sympli has a significant market share in some of those other areas like property title reselling and legal practice management software? Does it concern you that we may be perhaps taking a monopoly and then legislating an entrenched duopoly—essentially creating a Woolworths and Coles of the conveyancing world and relegating your membership to the corner shop of conveyancing? Does that concern you?

DALE TURNER: Yes, it does, but as long as there is a clear distinction made. There is a conflation of what an ELNO actually provides and what a conveyancer or a lawyer actually does. That distinction needs to be made very clear. So those kinds of ancillary services, such as providing searches and things like that, I do not believe that that is problematic. Where it becomes problematic is where an ELNO would also be able to provide a conveyancing service; in other words, they would be able to practise conveyancing. That is where the division actually is, I think, Chair.

The CHAIR: Thank you. If I was to sum up your position, Ms Landis, it is that your members are not really satisfied with the ministerial statement that basically says "all your concerns, we will deal with that at the next stage". Would that be a fair summary of what you are saying? You guys are not satisfied with that ministerial promise that we will address all those things down the track?

FIONA LANDIS: I think we are satisfied with that statement. As I said earlier, we have been consulted on these issues for a long time. There has been a lot of discussion among our members and with the New South Wales Government on this issue. What I am saying is that we think a two-phase approach to the ECNL is pragmatic and a really important way of progressing. We have some minor concerns that we have raised with ARNECC. But, given there is this bill and there will be a future bill, we think that the process gives us adequate opportunity to be consulted and to put forward our views.

The CHAIR: Ms Hendry, what is your view on that? Are you happy with the ministerial statement that says we will get to your problems at the end, or at the next stage?

MICHELLE HENDRY: With caution. There is a recent example, which Dale would be better to talk to, in New South Wales about a statement made by that Minister which has resulted in additional costs and issues to the conveyancing industry. Dale, do you want to talk to that example, given that it occurred in New South Wales?

DALE TURNER: Certainly. It was with the abolition of the certificates of title bill in which the Minister—let me go back a step. There was a committee that a lot of stakeholders were involved in as a part of this process. That was conducted by the Office of the Registrar General. At that committee, many of the stakeholders kept on asking, for a long period of time, if we could have an example of what was called the information notice, which was supposedly in the Minister's second reading speech in the introduction of the bill to provide the same information that paper certificates of title had previously provided.

The only problem was, when the information notice was finally drafted, the information notice did not contain one of the most important pieces of information, which was the new owners' names on the information notice. I would have thought that that was an essential part of providing the same kind of information. Consequently, what has now happened is that post settlement searches are done and a post settlement search means that an additional fee has to be paid. It is small, but it is an additional part of the process in conveyancing that everybody now goes through to ensure that the transfer reflects the correct information on the register.

The CHAIR: Thank you. I might go back to you, Ms Landis and Mr Harper. You say that you have been adequately consulted. Is that you as the Banking Association or are you saying that the banks have been adequately consulted? From my understanding, banks essentially have been allowed no time from the Government to actually make the necessary operational changes from their end in terms of making sure that their payments and transfers in this interoperable model will go through smoothly. Are you saying the Banking Association is satisfied, or your banks, that are your members, have been allowed adequate time to make the necessary changes to their computer systems to make this work?

BRENDON HARPER: I will answer that in two parts, if you do not mind, Chair. There is the ECNL, which is where we are to now. We—the ABA and our members, so the banks—feel that we have that been adequately consulted in the development of the ECNL, to the point of: Have banks been given sufficient time to implement the changes? We do not actually know what those changes fully are yet, so there is a process in place; so there is a payments code that is being developed—you could probably describe that as in its infancy; so the way that we would envisage that eventuating or coming to reality is that there would be a consistent way that ELNOS—one, two, three, four, however many we have—would interact with financial institutions. So depending on the detail of what comes of that industry code, that will drive what changes banks need to put in place, the cost of those changes, and the time that will be required to put in those changes.

Banks are large complex places. The most important thing for banks is knowing what they need to do when. Safety and security is the number one priority for banks—keeping customers' data and money safe. They do not like and they do not make changes that they are not completely sure will work. That is why we have systems in place. As I said, we have got working groups in place and I am confident that the right people—us and banks and other people in the ecosystem—are on those working groups. So where we stand now is that we have been adequately consulted on the ECNL. We are happy with and support its passage. As far as the detail of the payments, that is yet to come, but I am confident that there are the right people and the right processes in place and that that will progress as it should.

The Hon. SCOTT BARRETT: I will jump in there. It is great that the ABA in particular has expressed confidence in the security of the system and the technical infrastructure. Mr Turner, this is possibly a question for you: What other organisations have been consulted around that security and, hopefully, have expressed similar confidence?

DALE TURNER: I am not sure what other organisations have been consulted, specifically going to that security issue. That is the only information I can give you there.

The Hon. SCOTT BARRETT: Thank you.

The CHAIR: Are there any further questions from the Opposition?

The Hon. PETER PRIMROSE: Only one, if I may, and that is to the ABA. We had the situation outlined by Mr Turner earlier in relation to names being left off a document. Do you believe that the same level of consultation took place in the development of that form as has taken place in relation to this proposal?

BRENDON HARPER: I am not across the detail of that specific example that was given, so I cannot comment on that directly. I have not had issues raised by the banks, by our members, around the way that the system currently operates, or any issues or concerns around how it operates, so I cannot comment on that specific example. But no issues have been raised with us around the way that the system has been working of late.

The Hon. PETER PRIMROSE: Thank you.

The CHAIR: Mr Veitch, do you have any other questions? It does not sound like it. I will just put one final question to the Institute of Conveyancers. Mr Turner or Ms Hendry, are you satisfied, or are your members satisfied, that this regulatory model will be workable, or do you have concerns that you, as conveyancers, will bear the brunt from the mum and dad customers? Essentially, they will not see the ELNOs, as I think the Banking Association rightly pointed out, in the system. They will see the conveyancers. If this system breaks down, are you concerned that you will bear the brunt and the angst from the end consumer when essentially it may not be your fault?

MICHELLE HENDRY: Thank you, Chair. Yes. In short, we are. We are the ones on the ground, day to day, and have to face the consumers. If funds are misdirected or they are misplaced, we are the ones copping the brunt and having to deal with the consumer and their concerns and their stress. So we are concerned that this does not address or provide us with enough comfort or a framework that, in the circumstances that these happen, there is a clear pathway to resolve it.

The CHAIR: I will pick up on a question from my colleague Ms Boyd in the previous session. She raised the idea of having a review clause put in at the end of the bill that does not necessarily impact the passage of the bill or what is happening at a Federal level but may give you guys some comfort to say, if those ministerial promises do not come through in terms of those issues being addressed, at least at a State level New South Wales Parliament can look at it and say, "What is going on? We need a review. Why is it taking so long?" This is probably a question to both of you. Would you be opposed to having a review clause put into this part of the bill that says that we will look at it in one year or two years to see whether all those promises have been made and whether it is achieving what we hope it will achieve? Would you be opposed to that?

DALE TURNER: I think that would be entirely appropriate and I respectfully suggest that the following bill also be subject to the kind of scrutiny that we are going through with the Committee.

The CHAIR: Thank you. Any comments from the Banking Association on that?

FIONA LANDIS: I think a lot of pieces of law do have reviews built in for the future but what we really do not want to see is further delay to something that has already taken a long time where we think there has been sufficient consultation. We really encourage the Committee to recommend passage of this bill. If there is an appropriate clause to build in to suggest that the success of it could be reviewed in the future, that might be appropriate, but we do not support anything that will result in further delay.

The CHAIR: Thank you. If there are no further questions, and witnesses do not have any further comments, we might finish a little bit early and return at 11.30 a.m. for our next set of witnesses. If there is nothing further from witnesses, I thank you for your time.

BRENDON HARPER: Chair, if we do have a second, there is one point I would like to emphasise. There are a lot of issues around eConveyancing. It is a very complex space and once you peel back the onion there are definitely layers there. I would really encourage the Committee to consider what is the ECNL looking to address and what is it looking to achieve. Of all those issues, some of them, as I said, are yet to be developed and are still in train and still being worked through. There is a lot of detail yet to come. Is there a need to hold up the ECNL to deal with these issues that in our view are being dealt with in other places? We have confidence that the right people and the right places are in place to deal with those issues, so I would emphasise that the ECNL has a specific purpose. We should not lose track of that. There are other things that we do need to develop and that we do need to address, but there are systems in place and processes in place to do that. I would encourage the Committee not to hold up the ECNL because of those issues. Those issues should be dealt with but the ECNL should not be delayed because of them.

The CHAIR: Thank you. That concludes our time with you, so thank you very much for your evidence.

(The witnesses withdrew.)

(Short adjournment)

Mr PHILIP JOYCE, Chief Executive Officer, Sympli, sworn and examined

Ms JOANNE TSENG, Chief Legal and Governance Officer, Sympli, affirmed and examined

The CHAIR: Would either of you like to make a short opening statement, and if possible keep it to one or two minutes?

PHILIP JOYCE: Yes, Chair. I will. Thank you for the opportunity to provide testimony. It has been a long, multi-year journey and this ECNL bill is a vital next step in giving customers real choice in the eConveyancing network. Sympli strongly supports the timely passage of this bill without amendment or delay. Interoperability is essential to eConveyancing competition; without it there is no competitive market. Every day that interoperability is delayed, it hurts the prospect of innovation, security and lower costs for legal practitioners and working families trying to buy a family home. Every day of delay entrenches PEXA's monopoly position and puts a level playing field for new entrances such as ourselves further and further out of reach. We agree with the ACCC that interoperability is the best way to level that playing field and bring about sustainable competition for the benefit of customers. We also agree with the ACCC's submission encouraging the Committee to support the timely introduction of this bill. As you are aware they also noted that further delay to the reform timetable would likely see the incumbent operator PEXA become further entrenched in the market and barriers to the entry heightened.

The scale of the benefit to customers is really clear. In New South Wales alone, if you were to apply our Sympli price guide as it stands today to house sales in this State, it would save homebuyers and sellers over $20 million a year. Industry expected interoperability to be ready in December 2021. Action is already well overdue. Passing this bill is critical to keep momentum. The only player that benefits from delay here is the monopoly, PEXA. We have already seen them delay the process and I am certain you will see them advocate for further delays shortly. But let us not misunderstand their intentions. They wish to protect the monopoly profits for their shareholders. Every concern raised can be resolved through collaborative design work to create a safer, more secure and more resilient system for Australia. However, without this legislation the registrars cannot regulate for interoperability and, therefore, the monopoly is refusing to constructively engage.

Without this ECNL bill being in place, we have a hugely unsatisfactory situation of the monopoly incumbent dictating to their regulator their terms of reengagement in this reform. Therefore, it is customers who are left at the will of the monopoly and they miss out on innovation, lower pricing, resiliency and redundancy enabled by competition. As you heard from many of the stakeholders, this bill is based on extensive broad industry consultation dating back to 2018. It has been signed off by tripartisan Ministers in every State. We believe it is important for the process to be respected in its full current form without amendment. This is a key next step of implementing interoperability but it is not the last step. There will be continued ongoing consultation to ensure that it is done safely and securely with the customer experience at the forefront.

I know a number of you will have questions about security of the system, so I want to be really clear. Interoperability significantly improves the security of the eConveyancing system by removing the single-point-of-failure network that we have today. As we saw very clearly last year when the PEXA system crashed on 30 June, having only one network in the sector makes the whole system vulnerable if that one network fails. Interoperability improves infrastructure resiliency by providing a golden opportunity for redundancies to be built into eConveyancing. It is based on mature, proven API protocols with best practice security, and it is the same secure and safe way in which ELNOs connect to land registries, revenue offices and banks to date. This Committee and the New South Wales Parliament should be confident that effective risk and security interoperability can be developed by the combined experience and effort of the entire industry. For this to happen the bill must be passed so we can crack on with designing and delivering a better system for Australia's customers.

In summary, the ECNL bill is fit for purpose. It will achieve what it sets out to achieve and pave the way for further legislation and regulations to continue regulating the sector. Time is of the essence to introduce competition into this market for the betterment of businesses and customers. This bill is critical to that. I strongly encourage this Committee to recommend in your report that the ECNL bill be passed without any further amendments or delay. To do anything else would be to further entrench a monopoly and a single point of failure. Thank you.

The Hon. PETER PRIMROSE: You must be disappointed that this bill is already delayed by at least 12 months. That is the case, isn't it?

PHILIP JOYCE: I am really supportive of the bill in its current form. I, like many stakeholders, want to get on with designing this to bring competition.

The Hon. PETER PRIMROSE: Sorry, I thought you were going to answer the question. How many property transactions in New South Wales has Sympli processed to date?

PHILIP JOYCE: In terms of transfers, not very many. We have less than 1 per cent of the market today, doing a very defined subset of transactions. Our intent is to deliver a competitive offering so we can support a significant part of that market.

The Hon. PETER PRIMROSE: In your submission you indicated that competition would save people about $100. Could you please elucidate on that?

PHILIP JOYCE: Sure. As a matter of the regulation, our pricing and PEXA's pricing are a public record on our websites. If you compare the average cost applied to a transfer, we save on average a minimum of $100 per transaction. That is clearly seen by the document type and the transaction type. If you apply that to the 200,000 housing transactions in New South Wales, that is a saving of $20 million per year. If you add to that the IPART efficiency gains for the industry of $8.4 million a year, we are talking about a $30 million benefit for the industry through competition.

The Hon. PETER PRIMROSE: You would expect that these savings would go to homebuyers?

PHILIP JOYCE: Yes. The industry protocol is that most fees from conveyancers pass straight through to homebuyers. So this is money straight into mum and dad's pockets.

The Hon. PETER PRIMROSE: So it would not go to lawyers and conveyancers as increased profit?

PHILIP JOYCE: Given it is a competitive market for conveyancing services, I would be pretty confident that there would be a huge market pressure to pass those fees on.

The Hon. PETER PRIMROSE: Does the lack of a regulatory regime in the bill concern you?

PHILIP JOYCE: I think, as a number of stakeholders have said on this panel, that the bill is fit for purpose. It does exactly what it needs to achieve, and the next stages of the reform will address the remaining concerns. The big thing that I am worried about, and in answer to your question, is delaying any further on designing a system that is safe and secure and competitive for businesses and customers; that is what we need to get on with.

The Hon. PETER PRIMROSE: I need your technical advice on this point. The Minister has said:

> More ELNOs in the market means that if one is not available, we have more options for keeping property transactions moving in this great southern land.

As ELNOs would be intertwined, if one is not available could this prevent transactions from being processed through the available ELNO also?

PHILIP JOYCE: Let us put a bit of context to this. At the moment there is only one platform. If that goes down, all transfers are held up, and on June 30 last year that happened. What we have the golden opportunity to do now is to design processes to rely on the two sets of infrastructure that we have available for businesses and consumers. To be blunt, we have not got into the technical detail of the design to make that happen because the incumbent has not come to the table since the end of last year to help design for that. I am of the firm belief that we can design a more resilient, more secure and better environment for Australia.

The Hon. PETER PRIMROSE: Is it the case or you do not know at the moment? Is the Minister correct or not?

PHILIP JOYCE: We have two sets of infrastructure here. We are connected to all the land registries and the major banks, as are PEXA. In a mobile phone analogy, you have two sets of poles and wires. That gives us the opportunity to create redundancy and resiliency to ensure that home owners, buyers and practitioners are not affected should one of the systems go down. But we need to crack on with the design to bring this to life.

The Hon. PETER PRIMROSE: Does Sympli offer software services, such as information searches and brokering services Australia-wide, and jurisdiction-specific conveyancing software solutions and lodgement services?

PHILIP JOYCE: No. We are an ELNO. The only intent we have is to be an ELNO in this market, so we do not offer anything that you would deem vertical integration, nor do we have any intent to do so.

The Hon. PETER PRIMROSE: I will ask Ms Tseng to also comment on this one. Can you provide an update into the status of the industry code that this bill requests industry to develop?

JOANNE TSENG: You are referencing the payments industry code?

The Hon. PETER PRIMROSE: Yes.

JOANNE TSENG: That is in its infancy. Certainly that issue is a separate issue to interoperability in the context that they are processes that can be run in parallel to each other. Sympli is committed to the development of that code and certainly will be participating in that when it commences.

The Hon. PETER PRIMROSE: What is its status at the moment? Has the development of the code commenced?

JOANNE TSENG: It is in its infancy. The understanding at this stage is that it will be commencing in the next month, in terms of the development.

PHILIP JOYCE: The only thing I would add to that is that we had a session earlier this week with all industry participants on Tuesday. I think the deadline that was given was to complete this code by the end of this year, well in time to support interoperable transactions.

The Hon. PETER PRIMROSE: I have asked this question of everyone: Do you believe that an independent regulator, appointed by the registrar to assess the readiness of participants and the interoperable system as a whole, would help address industry and consumer concerns about cybersecurity and risk?

PHILIP JOYCE: Firstly, let me say that we take cybersecurity and risk incredibly seriously. And, as I am sure you are aware, the existing MOR has substantial security obligations for ELNOs to demonstrate. As the earlier witness from the ABA mentioned, we undertake significant cyber and security assessments from the major banks. In other words, they would not engage or put connections with ELNOs that they did not trust. The more pressing concern, I think, is not an independent assessor; it is getting on with the design of the system and the associated processes to address the concerns that other participants have raised today. The experts in this system are the participants you have heard from today: the ELNOs, the AIC and so forth. I fear that other independent experts would add further complexity, when actually the New South Wales ORG submission outlined a number of the sufficient tests and readiness hurdles that would have to be in place before we went live. So in that context I fail to see the merit of identifying an independent regulator or assessor.

The Hon. PETER PRIMROSE: So industry just wants governments and parliaments to get out of your way?

PHILIP JOYCE: What has been the hallmark of this particular reform has been, as you have heard from a number of parties here today, the collaborative nature and the universal support for competition. I think that we continue in that vein. To reiterate my point in my opening statement, I think in that context the bill in its current form is fit for purpose and should be passed without amendment.

The Hon. PETER PRIMROSE: There have been, however, industry and consumer concerns about cybersecurity and risk. I will ask again: If the appointment of an independent regulator was something that would assuage those, would you see that being a problem?

PHILIP JOYCE: I think the merit of someone independent further reviewing the sufficient tests that are already in process through the MOR and through the implementation process is something that can be assessed in the next stage of the reform but should not get in the way or justify any delay of this bill.

The CHAIR: Mr Joyce, I will pick up on some of the answers that you gave Mr Primrose. You said that you are currently only doing about 1 per cent of the transactions, but you also said that you are signed up to banks and registries. If you are all ready to go in doing these transactions, why don't you have a greater market share and why do you need the interoperability bill being passed to achieve that greater market share? If you are ready to go and you have signed up to registries and banks, what is holding you back?

PHILIP JOYCE: I am sure that the Committee might be sick of hearing this analogy, but I will repeat it because I think it is worthwhile to bring this to life: We currently have a monopoly market, much like Telstra. Every participant to a transaction has to be on that network, which is PEXA today. Therefore, for us to be able to support transactions, conveyancers and banks have to do what we refer to as "multi-home"—they have to subscribe to multiple ELNOs. The same as if you wanted to call someone on an Optus phone, you would have to have one phone for your Optus friends and one phone for your Telstra friends.

Interoperability allows the ELNOs to communicate such that choice is in the hands of the end customers to choose their ELNO of choice. Absent that, we will not have a competitive market. Absent that, we are further entrenching the monopoly. Today what PEXA has enjoyed for a number of years is the monopoly power and the whole-network affect. So interoperability, let us make no mistake, is a really important enabler of competition in this market.

The CHAIR: Just picking up on another question that Mr Primrose asked you about the other services, like title searches et cetera, you said you have no interest in getting into that space. Is it not the case that one of the co-owners of Sympli is in that space in property title reselling and legal practice management? Are you saying that they are going to be two separate businesses and they will not intertwine once this interoperability comes online? I will put some context: There is concern from conveyancers that both yourself and PEXA will start diversifying into some of their work and we will go from a monopoly to an entrenched duopoly and you two will become the Coles and Woolworths of conveyancing and essentially push them all out. Can we get a response to those concerns?

PHILIP JOYCE: Sure. I am going to address that in two parts. The first part was about our shareholders. Yes, we are owned by the ATI group, the ASX and staff. The ATI group do offer information broking services. In the law there is a clear separation between the companies. That is enshrined in the regulation. As context, because I think that is really important, as you mentioned, it would be a strategic disaster for us to compete with the customers we want to serve, remembering that PEXA have 100 per cent of the market to date. If you think about it strategically, why on earth would we compete with their services directly? Secondly, I think a bigger concern probably in the vertical integration is an impending review of Dye & Durham's takeover of Link, which the ACCC are reviewing. They actually have a bigger presence than our shareholder companies, but the ACCC—I am sure the Committee can get further detail on that.

As to the second part of your question, which was "Does this entrench a duopoly?", I strongly argue no. Again, I reiterate that we currently have a monopoly market. What this bill does is compel ELNOs to interoperate, and it is fit for that purpose. What that legislative certainty does is signal to other potential entrants that this is a market that they can enter. Absent this bill and absent interoperability, the barriers for entry are far too high. If we want competition, if we want innovation and if we want resiliency, passing this bill without delay is the critical step to do that.

The CHAIR: Just picking up on part of the first answer, is it not the case that this family of companies or this ownership structure also has a legal and conveyancing firm called SettleIt? Are you saying that will be separate and that will not be part of the services you offer on this interoperability model?

PHILIP JOYCE: Yes, that is entirely separate. My understanding of the SettleIt model is that they perform outsourced administrative tasks on behalf of lawyers and conveyancers who do not wish to do that. So it is a completely separate entity.

The CHAIR: A lot of concern has been raised about whether the system is going to be ready and the ELNOs are going to be ready and all that technical detail. I note that Sympli has been saying since 2018 that they will be ready to be competitive or on this model by the end of the year, and that never seems to change. How confident can you be and can you fill us with confidence that you are ready for deployment in line with the Government's timetable? Will you be ready to go once they hit stage two?

PHILIP JOYCE: Yes, we are dedicating a significant amount of our resources to be ready to support this. We have been a firm advocate of the time frame. Again, just to reiterate, if we do not introduce competition here then we are left with a monopoly and we are left with a single point of failure. It is of course in our interests to be ready, but it is also in the interests of customers and businesses that we are ready and the interoperability is ready to support giving them choice.

The CHAIR: Are you aware of concerns from a potential third ELNO, LEXTECH, who said that the proposed model will actually increase barriers to entry and entrench that duopoly? If you are aware of those concerns, what is your response to the barriers to a third or fourth or more ELNOs entering the market?

PHILIP JOYCE: Firstly, I cannot comment on LEXTECH's perspective but I can certainly give you mine. This bill, in compelling ELNOs to interoperate, provides that legislative certainty for potential entrants above and beyond LEXTECH or others that they can enter this market and they can do so without the significant barriers of entry that exist today. All the technical design and all the legislative design is in no way geared to support a duopoly; it is far from it. It actually contemplates further ELNOs. Today there is zero confidence, I suppose, in the ability for those barriers to be broken down. That is why this bill is really important. Absent that, we are left with the monopoly provider. Again, that stymies competition, resiliency, security and so forth.

The CHAIR: You might not want to divulge competitive secrets, but innovation has been touted as one of the reasons for this bill. But no-one can really point to anything concrete in terms of what this innovation will look like, other than maybe a bit of surface work on how the interfaces look. Is there anything that you can point to in terms of innovation that new players into the market will bring, obviously without divulging corporate secrets?

PHILIP JOYCE: Let us put some context first. When one player has 100 per cent of the market, we have got to do something pretty innovative, haven't we, to attract customers to us? The way I think about that is in three ways. Number one, we have got newer technology. We have the ability to create a user experience and deliver what customers want, which largely is efficiency and time back to run their business. There are a number of ways of doing that through the platform and through the workflow. We also believe we can do that through service. Again, as you heard from the AIC and others, a fundamental part of this is giving certainty and service to mums and dads and helping conveyancers do that. So there is service proposition.

Lastly, there is delivering value. Again, it is a matter of public record that we are significantly cheaper than the current incumbent. So a mixture of innovation on the platform, the service proposition and value makes that an innovative offering, and that is without even contemplating what additional ELNOs allow us to do and design as innovative for the market as a whole, particularly as it pertains to increased redundancy and resiliency. I do not think I am divulging anything there other than there are many vehicles for us to deliver better solutions at a cheaper cost and more securely to the customers in this market.

The Hon. TAYLOR MARTIN: I have a question to ask. Firstly, we have heard from some witnesses and through submissions as well about how complex technology can be. Would you be able to expand on that a bit more? We have heard that it can make it fragile, so to speak.

PHILIP JOYCE: Actually, if you boil it down to its fundamentals, interoperability really is two ELNOs communicating with each other through APIs. APIs are mature technology, so the complexity is more in the design of the processes. The underlying technology is safe, secure and used today by ELNOs to link up and communicate, as we have said, to land registries, to banks and to revenue offices. I think where we need to crack on with the design work and why this bill is so important to pass is to get in the process work—and we mentioned this by the AIC and others—such that were there to be a failure, we have the processes to unwind those and the liability and so forth to give confidence to the market. So, actually, I think on the technology front it is proven and secure and we just need to continue the implementation process. The challenge we have today is that without passing this bill we have the incumbent monopoly not engaging in that work and not allowing us to design that safer and securer system.

The Hon. SCOTT BARRETT: I have one quick question that I think will be a quick answer as well. This technology obviously breaks down geography a lot, but are there any advantages or disadvantages to accessing this system based on where you live?

PHILIP JOYCE: I do not think so. From a technology point of view, we are Australian based—as per them all—and so I think the focus here is on providing resiliency and redundancy. Geography wise, I do not think so.

The CHAIR: If there are no other questions from the Government, before I close, just a quick follow-up. A lot has been said about how this is a collaborative process between all State Ministers et cetera. You are obviously involved in the ARNECC process, are you, the ARNECC committee?

PHILIP JOYCE: We are part of the implementation meetings. We are part of the working group meetings. We encourage PEXA to join those—they are up next, you can ask them the same question. But, yes, we are very much a part of that.

The CHAIR: What level of involvement do all of the State Ministers have in that? Are all State Ministers as actively involved in it?

PHILIP JOYCE: I think the ministerial roundtables would be the public record for that. What I can refer to is I think we have got, as I mentioned, a kind of tripartisan support for competition, and why this bill is so important is it enables us to crack on with the design to create a system that delivers better outcomes for customers. Absent that, any further delay does one thing; it benefits the monopoly.

The CHAIR: Thank you. If there are no further questions, that pretty much will take us to the end. Thank you very much for joining us and providing evidence. It is much appreciated. Thank you for your time. We will bid you farewell.

(The witnesses withdrew.)

Mr SIMON SMITH, Chief Operating Officer, Property Exchange Australia, affirmed and examined

Ms AMY GERRATY, Chief Regulatory Officer, Property Exchange Australia, affirmed and examined

The CHAIR: Would either of you like to make a short opening statement? If possible, keep it to one to two minutes.

SIMON SMITH: Thanks, Chair, yes, I would. Thanks for the opportunity. PEXA is a great success story, as you know, borne by governments working together, funded by the private sector and successful because it has won the support of 10,000 banks, lawyers and conveyancers after a decade of shoe leather, listening and hard work. As Minister Dominello has said, "eConveyancing is currently safe and secure, delivering big savings in money and time for all", and competition has been in place already for four years.

I have listened to the evidence this morning and read the submissions and I am guessing that probably what you are thinking, some of you, is that everyone supports interoperability and here is PEXA holding out because it wants to protect its patch. So, first, for the avoidance of doubt, PEXA categorically supports more and diverse competition, and our DNA is not that of a sleepy monopoly. We have proven ourselves a dynamic startup that has transformed an important industry for the better, and no-one challenges this. And we are not stopping. Earlier this year the Prime Minister in the UK referenced the excitement in the UK about the opportunities that PEXA, bringing Australian expertise, will bring to the UK.

However, as a representative of the team who knows far more about delivering eConveyancing than any other on the planet, I am telling you that interoperability in its current form and on its current timetable is not safe and it will not deliver the grand-sounding benefits you are hearing about. There is a huge gap between the appealing assertions of innovation, resilience and choice, and the very superficial comparisons with telephone networks versus the reality of what is actually being prepared. Even the Minister has made it clear that he is not across these technical details, and I do not expect him to be. But it is a fact that many of the officials in charge also do not understand the majority of eConveyancing, particularly relating to financial settlement, because this is outside their area of expertise. We have put our facts about this in our submission, we have put them out to industry and to the Government, and these facts have not been challenged. So I draw your attention to them.

We have also set out our views on the many deficiencies in the bill in our submission. But what is remarkable is that not one of the submissions you have received from today's witnesses say this bill is sufficient to provide a workable interoperability framework—not one. All the agencies and representative bodies say more work is required—ARNECC, ACCC, the Law Council, the Law Society, ABA and more—and they all highlight a broad range of gaps: consumer protection, time line, enforcement, definitions, financial settlement, dispute resolution, insurance and costs, and so it goes on. Even the ministerial announcement, as has been said, confirms that another bill is needed to do the job. So the proposition that has been put to you effectively says, "Don't worry about the defects in the bill because we can fix them in a second round." The argument is, essentially, that our competitor might lose interest in entering the market unless they are encouraged by a symbolic Act of Parliament.

But instead I would like to direct your attention to the consumers, that is, the 15,000 to 20,000 home owners and the businesses who rely on ELNO every day. The submissions from the AIC and from Dench McClean Carlson—which was the law firm commissioned by ARNECC to review the eConveyancing intergovernmental agreement—painted a graphic picture of what is at stake: families on the street with their chattels due to a delayed settlement or, in much worse cases, losing their life savings with no-one to recover them. So I will not repeat those terrible risks here. But the critical point is ARNECC is giving assurances that it can prepare and present a further bill with all the details needed to address the acknowledged deficiencies in time to keep the system and its users safe. And yet the plan on the ARNECC website announced by the Ministers is to begin interoperable transactions in 121 working days. That is right—121 days.

Now, does anyone believe they can put safeguards in place in 121 days—that the officials can respond to the feedback they already received in November, draft a further bill, obtain approvals, bring it back here, pass it and commence the provisions in 121 days? Of course, they cannot. The example of the fact that it actually took 18 months to prepare this bill—a year longer than promised almost—adds to that. This is not a criticism of the officials; it is merely confirming the realities of their multi-jurisdictional operating environment. So what I am saying is the passage of this bill unamended provides authority for the commencement of interoperability years before the safeguards that everyone agrees are essential could be put in place, if they are ever put in place. That is why part of our submission recommends two critical safeguards that do not seek to slow the process—they are very straightforward—that must be added to this bill if it is to proceed.

First, protection for home owners. The bill should be amended to include an independent expert assessment of readiness across the ecosystem—require the expert to certify that there is no increased risk prior to

pressing any go buttons. Secondly, include standard rule-making processes to protect the industry. As you know, this bill is extraordinarily high level. It leaves almost all of the substantive decisions to unelected officials. Normally the New South Wales Subordinate Legislation Act would require consultation with affected parties about proposed new rules. Not here, because the bill relies on a loophole, which is to rebadge what anyone else would call regulations as "operating requirements", and so no consultation is required at all. As a former long-serving public servant, I have not seen a recipe for such poor regulatory processes. It will undermine confidence and create a lawyer's picnic. If the Government argues that they can be trusted not to press the go button prior to the safeguards, then ask: Why do they seek the authority to do so? Why would they oppose such simple safeguards? Do they want to proceed without knowing it is safe? Do they want to make new rules without consultation?

This is an industry where customers have zero tolerance for failure. It has serious consequences for everyone who is involved. Every family deserves to be able to trust the conveyancing system. None should be allowed to become a plaything for reform. They deserve proper protection. Finally, I would invite the Committee to ask why there is no interoperability in the share market. The Commonwealth Treasury, the Reserve Bank, ASIC and APRA spent more than five years looking into this in great detail. They concluded that interoperability is too technically complex and risky for share traders, and they noted that competition would arise without it—as it has. Chi-X has more than 15 per cent market share now and its presence has led to reductions in price and service improvements from the ASX—which, incidentally, is a half owner of Sympli.

If interoperability is too complex and not safe for the share market, why so for home owners [inaudible]? As Minister Dominello has said, Australia already has a reliable and secure service, world leading, and it is inexpensive. It is less than one quarter of 1 per cent of the transaction costs of buying or selling a home. What we have here, I think, is a solution looking for a problem. We are genuinely scratching our heads trying to understand what would justify imposing such great risks on something as critical as home buying and selling, especially without safeguards. I would say that when the troubles start, home owners will ask, "Who let this happen?" I commend our submission to you and would be pleased to answer any questions.

The CHAIR: Thank you. I will go straight to questions from the Opposition, and Mr Primrose.

The Hon. PETER PRIMROSE: I have only two and then I will hand to Mr Veitch. We have heard evidence this morning that despite the reliance—and I will use the term "regulation" as opposed to "operating requirements"—the industry code is only entering consultation next month. How long do you think that may take, and does that lead to there being increased risk about this proposal?

SIMON SMITH: Thanks for the question. I think the code that you are referring to is the code to guide financial settlement and payments. I guess this highlights a feature of—we think it would probably take a year to work out that code. But the critical point about the code is that it is not a regulator. Financial settlement is outside of the domain of the registrars. It is an area they do not regulate now and that they do not really understand. I have experts on how to do it. Even the existence of the code does not solve the problem that there is no-one standing there to make good if a family loses their life savings because a transaction went wrong. At the moment PEXA indemnifies participants and will look after them, but all of that is based on an informal agreement that is in place between ourselves and the banks.

The Hon. PETER PRIMROSE: My only other question—and I have asked this of all the witnesses: Do you believe an independent regulator appointed by the registrar to assess the readiness of participants and the interoperable system as a whole would help address industry and consumer concerns about cybersecurity and risk?

SIMON SMITH: Yes, I do. As I mentioned in my submission, we think—I am not sure they have to be a regulator but I think they need to be an honest broker. An expert in complex technical platforms who can review readiness and planning and report publicly and say, "All good, safe to go," or "It is safe to go in some way" would just take a lot of steam out of this. The outage we had on 30 June was drawn to your attention previously. That really was a very tough day for us. We worked really hard to make good. We paid compensation to people for being late. It was the worst day for PEXA. There just could be so many days like that, day after day after day, if this proper assurance process is not put in place.

It is an unbelievably complex ecosystem. You have got connectivity with every registry in the country, every revenue office and the ATO. This will all be times two because there would be two ELNOs in interoperability plus the connectivity between the ELNOs—multiple more points of failure. We just cannot afford to unleash a system that would be letting people down over a consistent period of time. It would just be way too disruptive for the economy and for the community.

The Hon. MICK VEITCH: Essentially what you are saying then is it would be worthwhile for the Parliament to be involved with some sort of assurance or statement by the RG before hitting the go button on this—all those steps have been put in place, the rigours have been conducted and are being managed, along with any analysis of the reliability of the [inaudible]—and that should be provided to the Parliament as a statement before we go live with this system?

SIMON SMITH: Yes, whether it is to the Parliament or to the public or whatever, the key point is having that independent assurance. If I were to contrast this, for example, with what would happen—the reason it needs the independence is because it is not just whether PEXA is ready. It is whether PEXA is ready; whether Sympli is ready; whether any other ELNO is ready; or the banks are all ready, having trained staff and so forth; whether the practitioners know what they have to do; and whether the technical stuff is all ready. It is an immensely complicated thing.

I guess all of you, if I said "big IT project", I know what just popped into your mind. When those things start, there are always problems. At the moment there is not any—I think ARNECC was never set up to orchestrate a large competition and technical reform. It does not have people in there. It has very lean resources, and those resources are not experts in any of this. At the moment it is all just fingers crossed, whereas what there should be is a robust planning process, checking of dependencies, confirmation of preparation level in each participation—all of that kind of stuff, double- and triple-checking so that on the big day things will go well. None of that architecture is present at the moment.

The Hon. MICK VEITCH: In your opening statement you said it was 126 days that PEXA was supposed to be in place and ready to go, or at least—

SIMON SMITH: Yes.

The Hon. MICK VEITCH: —the next phase. As I understand it, we are already 12 months late. This is already delayed. In PEXA's view, what is a safe implementation time line for this?

SIMON SMITH: I guess what we are saying is—sorry, I just want to emphasise that the delay in the legislation has got nothing to do with PEXA; it is to do with the complexity of the process. The time line should be when we are ready. PEXA has thrown itself enthusiastically all last year into basically showing how to design the system, educating our competitor and the government people on how it all needs to work. We did pause towards just before Christmas late last year because we have done the prep that is necessary for the day one transaction, we have raised some important issues with the Government and we have been working with ARNECC to resolve those issues.

But the point is that there was a time line that was developed from the bottom up by an industry working group—ourselves, Sympli and the officials—that went up to the ministerial council and it had 30 weeks just lopped off it because it was too slow. There was not any evidence put before Ministers to say, "These are the steps, one after another. This is how many there are. This is how long it is all going to take." There was none of that. It was just saying, "No, no, too slow. Do it faster." We are just very nervous that the go button gets pressed because an announcement is required. The go button should be tied to readiness.

The Hon. MICK VEITCH: Does PEXA intend to offer other software services, like information searches or brokering services and the like, as a part of the new operating environment?

SIMON SMITH: There are some very strong regulatory protections that control what an ELNO is able to do. If a company like PEXA or Sympli wanted to set up what is called an upstream or a downstream service, it has to create a formal separation between the core exchange and that other business service. PEXA does not own any conveyancing firms and it is not owned by any company or controlled by anyone else that does own a conveyancing firm, so we are not a competitor in the conveyancing space. But I think you heard the previous witness explain that, in fact, their owner is in the conveyancing space.

The Hon. MICK VEITCH: Yes. I think my time is now up, Chair. I am just looking at the WhatsApp notification.

The CHAIR: You have got about 50 seconds.

The Hon. MICK VEITCH: One very quick question then. You mentioned the standard rule-making instruments and your concerns about those. Could we fix that in this bill process?

SIMON SMITH: Yes. I think probably if you just made a provision that said that operating requirements should be dealt with as if they were regulations in each jurisdiction you would get exactly the same—you would achieve the outcome. You do not have to construct an elaborate scheme or anything.

Ms ABIGAIL BOYD: Good afternoon to the two witnesses. In your opening statement you mentioned how it was too difficult for the ASX and Chi-X to have any kind of interoperability et cetera. I am not going to delve into what their technology issues were. But of course, since 2003 we have had international central securities depositories, being Euroclear and Clearstream, having interoperability and trading securities in huge volumes. That has been going for almost 20 years. Clearly interoperability, once it is set up, can work really well. What is your view on—I guess the vibe I get from you is that you think it is all maybe a little bit too difficult. Are you saying that interoperability cannot occur or that we need to work out the details before we green light it?

SIMON SMITH: Two responses to that. The main reason that I draw the comparison is to just highlight that it is not us making it up that it is a high-risk, complex and technical thing to do. Those very experienced economic regulators looked at it for five years and decided that, in that case, it should not proceed. We are not saying interoperability cannot be done. We are just saying it is very complex and technical and needs to be done with great care, not rushed.

I suppose what we worry about in this bill is that it locks in only one particular form of competition extension. For example, if I was a business, I wanted to enter the ELNO market and I wanted to say, "I don't want to have to replicate all of the infrastructure that PEXA has already built. I want to just be able to come in as a retailer to access PEXA's infrastructure and offer services to niche markets," or just stages of the process or whatever, that would be a genuinely innovative outcome. But in the legislation, the way "interoperability" is defined and the way ARNECC is proposing it says, "No, you can't have any of that."

The only kind of ELNOs we can have, have to be exactly the same as PEXA. They have to build all of the infrastructure themselves, they cannot share and they have to offer all transactions in all jurisdictions, eventually. What we are saying is there has been a strong voice for one particular thing to be done to intensify competition for one market entrant, but to our knowledge neither the ACCC nor ARNECC—nor anyone—has ever sat down and said, "Okay, what is the actual problem here? What is the impact of that problem and what options could be considered?" We just think they have jumped to one way of doing it.

Ms ABIGAIL BOYD: But if other entrants were required to take off of the PEXA model then you would obviously be getting something from that, would you not? You would not be giving that for free, so that technology would then be something you would license to the other people.

SIMON SMITH: I guess the analogy is a bit like electricity retailing. At the moment we do not require every retailer to have their own set of poles and wires down every street. We have a regulatory framework that says, "Well, we only want one in the street", and we say, "Here is a wholesale business that provides that infrastructure and here are retail businesses that gain regulated access to it." I am not saying that is definitely the answer; I am just saying that has been ruled out now.

Ms ABIGAIL BOYD: But if that was the case and other organisations were required to license from you then, as well as improving your profits, it could also mean that—actually, let us look at it the other way. If we do not require that—if we have the interoperability model as it is currently proposed—then if those other organisations cannot reinvent the wheel and they cannot come in and have their own product, would you not benefit through maintaining your monopoly because there would be higher barriers to entrance?

SIMON SMITH: Sympli has told you they have already duplicated the infrastructure, so I am not saying that it is only PEXA who would be the one who could offer the wholesale service. What I am saying is that there is no credible suggestion that anyone is going to build a third lot. There is the prospect of other forms of innovation based on a retail model, but they have been ruled out by the legislation. The bill is locking in just two, exactly the same. I just think it has not been thought through. I am not saying that is a reason to delay the bill; I am just saying as a background—lots of talk about competition, but no analysis about what is required.

Ms ABIGAIL BOYD: I absolutely agree with you that this is incredibly technical and is a big IT project. I have been personally involved with the European securities clearing houses and the tech involved there, and I do understand just how complex that is. But that is clearly why we are putting in place the interoperability working groups and committees—so that work can be done. But we have heard that PEXA ceased participating in most of those meetings from last year. Why was that? How do you expect the work to now be done without your input?

SIMON SMITH: We have not withdrawn from the bulk of the processes; there is a stream that we have paused our input on. We are still working in the payments code space, we are still working on the pricing issues, we are still working on the legislative issues and we are working on other matters that I will elaborate shortly.

Ms ABIGAIL BOYD: But not the interoperability committees, correct?

SIMON SMITH: The particular committee is the operations committee, which is where the technical experts come together to devise the data standards. That committee—we put in a thousand hours of intensive

effort all through last year. On the basis of what we have learned, we could see that there was a big gap between what people were expecting would be offered by interoperability and what was actually going to be offered—for example, resilience. The idea is that if we have got two networks, if one is down then that is all fine; we can just use the other one. But in fact, as was explained by the AIC witness, people are in a legal agreement to sign up with one ELNO whereby they have established their identity and made undertakings about all the things that they have to do.

They cannot just switch to another ELNO unless they are also a subscriber to that other ELNO. People think, "Oh, great. One is not working; I will just pick up the other one." But it is not actually true. We have actually made it more complicated because transactions will require—someone is using Sympli; someone is using PEXA. If one of those ELNOs goes down then that is the end of that transaction. It would have to be restarted completely in the other ELNO, and only if everyone is a subscriber to both of the two ELNOs. People just blithely say, "Oh, yes, resilience will be great." If you get into the detail, it is not actually true.

We could see this and various other very significant problems emerging, so I wrote to ARNECC and said, "Look, we've got all the data standards we need ready for the first stage of the rollout. That has been completed. But there are four issues that must be resolved; otherwise, we are heading for a train wreck." The first was the time line because, as I have described, it has been artificially truncated and it is tied to an arbitrary date, not to readiness. The second was pricing. ARNECC had put out one paper about pricing that said ELNOs will set their prices for each other as they have for customers, and then they put out another paper that said, "Actually, they must perform their central function for free." In other words, they have to do all the work but not get paid for it at all.

The third point was about these concerns we have in the legislation that we have outlined in our submission. Fourthly, we are very concerned about the ability of ARNECC to stand up the capacities to be the market steward that is now required. By way of background, PEXA over the years has stood in the place of the steward—custodian of the data standards on behalf of everybody, managing the relationships with all the different States and Territories on their ever-changing requirements, looking after how it all fits together. In a competitive market, we cannot do that. The Government needs to do it, but they do not have any people to do it.

Ms ABIGAIL BOYD: Could I interrupt you, because I am out of time and the Chair will tell me off in a second. Can I just pick you up on that interoperability point? You said, for example, that if you had a PEXA and a Sympli transaction that were interoperable and then, say, PEXA went down then the Sympli transaction would not be able to occur. Clearly, that would also occur if it was all within PEXA and PEXA went down, so what is the additional risk?

SIMON SMITH: Yes, but you have only got one system that is involved. If you have got two, that is more points of failure. It is very logical.

Ms ABIGAIL BOYD: Sure, but they are all going to be regulated the same way.

SIMON SMITH: Every transaction depends on a chain of everything going right between about 10 different computer systems; only, in an interoperable transaction, there is going to be 20. That is all. The transactions are moving up until the moment of settlement. People are making changes to the detail, and there comes a point when it is locked.

Ms ABIGAIL BOYD: But if every system is regulated to the same standard—sorry, Chair. Back to you.

The CHAIR: I will pass to the Government, and if there is any time at the end then I will do some mop-up questions. Mr Martin or Mr Barrett, do you have any questions?

The Hon. TAYLOR MARTIN: I am okay. If Abigail wanted to continue that line then that is all right with me, unless Scott was ready to jump.

The Hon. SCOTT BARRETT: No, nothing from me, Chair.

The CHAIR: Ms Boyd, did you want to continue that, or are you happy for me to do some mop-ups?

Ms ABIGAIL BOYD: No, you go ahead. If there is time at the end, I will come back in.

The CHAIR: Mr Smith, the Minister has repeatedly mentioned that PEXA represents vested interests rather than the public interest, which sort of makes an inference that your opposition to this bill is purely based on your desire to maintain your monopoly. I will provide you an opportunity to reply to that.

SIMON SMITH: Thanks for the opportunity. We are very proud of what PEXA does. We used to be a government-controlled body. The Government decided to vest the function in the private sector when they sold

their shares, so now we are a private company. We do not hide from that; we are very proud to have thousands of Australians—individuals, lawyers, superannuation funds et cetera—as owners of our business. We are really excited because we think this year, after 10 solid years of investment, will be our first year of profit. That is good; that is really exciting; we are proud of that.

However, like every business, we only survive on the goodwill of our customers. If we do not deliver for the 10,000 lawyers and conveyancers and the banks then our business has no long-term future. We work incredibly hard to achieve and retain their goodwill. We have a net promoter score, which we test very regularly, of 76, which is the envy of almost any other business. We have an independently assessed brand and reputation score of 8½ out of 10. There is an incredibly high level of satisfaction in the services that we offer. We have a field force of people who are on the phone helping all of our customers regularly, and we are known for that. We consider that to be our secret sauce.

So our interests are exactly aligned with our customers' interests, and within our company it is customers first every time. You could make the point that we represent vested interests but that would be true, just by legal definition. We have shareholders and we need to deliver for them after 10 years of investment. But as an operating business, it is all about our customers.

The CHAIR: Thank you. I want to pick up on a point that you made about the system being ready. It is not just the IT infrastructure or the IT ecosystem, is it? With any big change in an industry or in an organisation it is actually managing the individual, the employee, and it is managing that change. It is managing them through that change. Would you want to see this readiness report or readiness assessment also looking to that side of the readiness—not just the IT ecosystem, the tech, but also whether the banks are ready in terms of their workers—the registers are ready in terms of their workers and their systems? Would you want to see that as part of the readiness assessment?

SIMON SMITH: Absolutely. For example, an understanding of the Government time line is that zero weeks have been allowed for change management in industry and it is just not practical. As the ABA representative said, banks are very large organisations. They take nine months to a year to make a process change. I think what the banks were told early on was nothing would change for them, but that thousand hours of work we put in last year shows that that is just simply not true. For example, we offered tools that large organisations used to keep track of all of the matters that they are dealing with at any one time so they are able to see what is coming up, what needs to be done today and tomorrow and next week, and to allocate work out to their staff. That system only works because the data that tracks where each transaction is at is already captured by us and used to generate that report.

Interoperability does not include data fields that are necessary to support that tool, so that tool is going to have to be switched off during the interoperability, if a transaction becomes interoperable. So the banks will need to develop different processes that kick in. Once a transaction is interoperable from their side they will need to say, "Uh-oh, this is not the normal type. This is a different type of transaction." We will have to have a team of people who trained specifically to be able to operate with the different requirements because of the nature of the transaction. Absolutely you are right; the readiness is not just about the tech. The readiness is about the people as well.

The Hon. TAYLOR MARTIN: I just want to put to Mr Smith that it has been said and it has been circulated—and I have not raised it in an earlier question to an earlier witness—about PEXA's lack of involvement in the process, and in some of the consultation and in some of the design of the system. I would like to give you the opportunity to respond to those sorts of comments.

SIMON SMITH: Yes. I did partly address this earlier, explaining that we have not thrown our toys out of the cot. We are still very actively engaged in multiple streams of the interoperability development process. The part that we have withdrawn from temporarily is running the data specifications required for stage two of the rollout. We have started to get stage one ready, which enables preparation to be made for stage one, but relative to stage two we said, "If the time line stays what it is, we probably need to build a different thing because we will have to have a scaled-down version of interoperability as the first stage one." We have asked ARNECC to give us an answer to say, "Is it the time line that is going to give, or is it the specification that is going to give?" because we will have to build something different, and we do not want to design something and then have to redesign it when the inevitable happens and the time line is delayed because not everyone can get ready.

SIMON SMITH: We are not trying to spoil the process. We are trying to avoid a train wreck by premature implementation.

The Hon. TAYLOR MARTIN: Can I ask if you have any estimate of your current market value and an estimate of what that may look like, given different levels of competition that will come on line?

SIMON SMITH: Our market value is as displayed by the ASX. I am sure that the investors in our company are each forming their own view about the pace and likelihood of changes in market share and are probably better placed to speculate on value than I am. Everyone knows that interoperability is coming. It was very clear in our prospectus. People will form their own view.

The CHAIR: That takes us right to time. I thank our witnesses for appearing today. It has been very insightful overall. Thank you for your attendance. I remind the Committee we will have a quick deliberative after we bid farewell to our witnesses. Once again, thank you very much for your time.

(The witnesses withdrew.)

The Committee adjourned at 12:15.