

**REPORT ON PROCEEDINGS BEFORE**

**SELECT COMMITTEE ON COMPETITION REFORMS IN  
ELECTRONIC CONVEYANCING**

**UNCORRECTED**

**At Macquarie Room, Parliament House, Sydney on Wednesday 5 November 2025**

**The Committee met at 9:00.**

**PRESENT**

The Hon. Taylor Martin (Chair)  
The Hon. Mark Banasiak (Deputy Chair)  
Ms Abigail Boyd  
The Hon. Susan Carter  
The Hon. Greg Donnelly  
The Hon. Wes Fang  
The Hon. Eileen MacDonald  
The Hon. Jacqui Munro  
The Hon. Cameron Murphy

**PRESENT VIA VIDEOCONFERENCE**

The Hon. Bob Nanva





**The CHAIR:** Welcome to the first hearing of the Committee's inquiry into competition reforms in electronic conveyancing. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present. I acknowledge and pay my respect to any Aboriginal and Torres Strait Islander people joining us today. My name is Taylor Martin. I am the Chair of the Committee.

I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of this hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence here today. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

**Ms JUDY BLISS**, Director and Licensed Conveyancer, Bliss Conveyancing, sworn and examined

**Miss CHARLOTTE EGAN**, Principal Solicitor and Director, Booth Brown Legal, before the Committee via videoconference, sworn and examined

**Ms PETA STEWART**, Founder and Chief Executive Officer, Peta Stewart Property Conveyancers, before the Committee via videoconference, affirmed and examined

**The CHAIR:** As is customary in our inquiries, I will ask if anyone would like to make an opening statement.

**JUDY BLISS:** Good morning, and thank you for the opportunity to appear today. My name is Judy Bliss and I am the director of Bliss Conveyancing. I would like to make several disclosures at the outset. I am a current member of the PEXA Advisory Council in New South Wales, and I confirm that I hold no shares or financial interest in PEXA or any other electronic lodgement network operator. Since lodging my written submission, I have also been elected to the board of the Australian Institute of Conveyancers – NSW Division. However, I appear today in a personal capacity as Judy Bliss, a licensed conveyancer who stands at the coalface of property transactions every day.

Buying and selling of real estate is one of the most, if not the most, significant financial transactions an everyday Australian will undertake in their lifetime. It is stressful, emotional, high value and legally complex. When things go wrong, the consequences can be financially and emotionally devastating for all parties. My submissions come from a very practical viewpoint—not academic or theoretical, but real world, day-to-day experience inside the electronic workspace where settlements are created, coordinated, problems solved and completed.

Conveyancers and solicitors are the end users who deal with these platforms at every stage. We see the benefits, we see the failings and we see the impact, both good and bad, on consumers. Electronic conveyancing has absolutely transformed our industry, but it must continue to evolve with transparency, accountability and competition to protect the public interest. Interoperability, reliability and genuine end-user consultation are not industry wishes. They are consumer protection issues. I appreciate the Committee's willingness to hear from people who actually transact in the electronic workspace every day. I hope my experience can assist the inquiry to understand what is working, where the roadblocks are, and what risks everyday buyers and sellers are currently exposed to. Thank you. I welcome any questions.

**The CHAIR:** Charlotte, did you have an opening statement?

**CHARLOTTE EGAN:** Nothing of any particular substance. Judy has said a lot of what I would normally say as well. I think the only disclosure that I need to make is that, subsequent to my submission, I have been elected the regional president of the Orana Law Society. I now have a much greater exposure to a bigger demographic than I would have otherwise during my submission.

**The CHAIR:** Peta, do you have an opening statement or any declarations or disclosures?

**PETA STEWART:** Like Judy said, I thought, "Well, I do have shares in PEXA." I think I bought them a million years ago when they opened, and it might be about \$3,000. I guess that's a disclosure. They've done nothing, but I have nothing else. I do have someone that works for me that is on the PEXA advisory committee, but no other disclosures to make.

**The CHAIR:** Is that advisory committee different and separate to the advisory board that Judy mentioned or is it just different semantics and it's the same thing?

**PETA STEWART:** It's the same thing.

**The Hon. WES FANG:** Thank you very much for all appearing today. This is an interest that I've got and I think a number of other members have got in relation to ensuring that we've got competition in the space. Having a look at the submissions, there is obviously a level of support for what PEXA provides in the eConveyancing space. But is there a way that you could perhaps articulate what you think could be done better in that space that isn't currently being offered to consumers? I'll start with you, Ms Bliss.

**JUDY BLISS:** From my understanding, PEXA has never been hacked, for want of a better word. This is a \$7.26 billion industry. My main focus is consumer protection, and that's where my business as a conveyancer comes from—it's consumer protection. I'm not opposed to interoperability, but I just want to make sure that it's a secured system as much as it can be. Nobody can give a 100 per cent guarantee in anything in life except birth and death. PEXA is doing a lot of work around consulting with the people who transact every day in the system, hence the advisory board. There are conveyancers in each State and Territory on different boards.

**The Hon. WES FANG:** In relation to the question that I asked, I appreciate that there's a level of support for PEXA, and that's quite clear from the submissions. I'm asking, objectively, are you able to provide some instances where you think the industry could be better and where you found issues that you think might be improved if we had some competition? It's challenging each and every one of you to, instead of just support the status quo, think about what could be available to the industry if there was a greater sphere of—

**JUDY BLISS:** I think you've misunderstood what I said. I support interoperability, but it can't come at a cost. What PEXA does really well is we have a secured system at the moment that works. Just because it works, doesn't mean it's the be all and end all. For it to work better—and I am no IT expert in any way, shape or form. I run a business. I have to have security on our laptops and things like that. We have implemented that, after consultation with PEXA, to make what we do more secure when we're accessing that system. In respect of making it better, that is an open-ended question because there is so much other work that needs to be done with Land Registry Services, Revenue NSW and all the other players in the field. It's not just that PEXA has got to do something better.

**The Hon. WES FANG:** I'm not suggesting it is. I'm seeking objectively, where there is a lot of obvious support for the current PEXA platform, whether there has been an objective analysis by people that have made submissions and whether they've thought, "Actually, this could be improved or that could be improved." Do you believe that the PEXA system is perfect and doesn't need any changes at all?

**JUDY BLISS:** Nothing is perfect in this life.

**The Hon. WES FANG:** Which is why I asked the question.

**JUDY BLISS:** In my submission I did point out that if we have interruptions to the systems, regardless of what other player in the whole system has caused the interruptions, as the person dealing with the clients, we need to know what is happening—like why the system has gone down. Is it a platform system? Is it not talking to Revenue? Is it not talking to the ATO with the form ones? Is it not talking to the banks, or the banks have an issue uploading the funds? I have actually raised that with PEXA. They are looking at that because when I was writing this submission I did ask for the statistics. They don't keep statistics like that. They also do not keep statistics other than if a settlement fails one day, it goes to the next day. That's a statistic. But they don't keep statistics on if there's a delay in the settlement, hence my comment in my submission about smoke and mirrors. The smoke and mirrors is happening here because it's mainly one of the players within the workspace who hasn't signed off on time. Funds haven't been loaded up, funds haven't been confirmed, whatever—that is what is actually delaying settlements.

**The Hon. WES FANG:** I don't want to monopolise the time, Chair, but I thought the other witnesses might—

**The CHAIR:** We will come back.

**The Hon. CAMERON MURPHY:** As a follow-up to that, when I read all of your submissions, in essence what you're saying is that PEXA provides a great service and it's great to have this done electronically compared to the previous system, but you're concerned that interoperability might pose risks to the way that that operates and, if competition is brought in, it may pose a risk to that working well. Given that PEXA, in effect, is a natural monopoly, would it be better, for example, to regulate that monopoly rather than to focus on interoperability and competition? Do each of you have a quick view about that?

**JUDY BLISS:** Does anybody else want to have a say first?

**CHARLOTTE EGAN:** I can probably speak to that. I think both are very valid options, when you assess it critically. I think managing a monopoly is definitely possible. I have the same concerns that Judy does in the sense that if you add other players into the game, the regulation of that becomes more difficult because you're looking at different systems. How the monopoly is managed, I don't know, but I suspect that is probably a more viable and preferable option for practitioners. From a day-to-day use situation, I think it's a bit about the devil we know versus the devil we don't. PEXA is a wonderful system. It does work. The more layers, the more players, the more people you put into that system and the more different players in that system, the more complicated that management is going to become. That's my honest thinking there.

**JUDY BLISS:** Can I just answer that as well? Competition is great in business. We're all in business. Competition is great. It just makes you strive even harder to succeed and provide a better product than somebody else. My understanding of why interoperability was actually paused was because the banks had some issue with payments. Now, the minute you start mentioning money, the minute I say that maybe it's just not time for it just yet until all that is worked out. Because I'm the one who's going to be telling a client, "I'm sorry. Your money has disappeared", or, "You've been delayed"—whatever. They then come to me and ask questions. I then become a

counsellor and go, "Look, we're working through it. We're just trying to understand what's going on." Interoperability—what actually is it going to achieve? Somebody is going to be \$5 cheaper than somebody else on a fee? Realistically, if you're dealing in a multimillion dollar—let's face it, that's what property is nowadays. We're talking millions of dollars, not just hundreds of thousands. Is the consumer really going to be concerned about saving \$5 here or having a secured system?

**The Hon. CAMERON MURPHY:** Can you tell us what people normally pay in terms of a property transaction? There's the stamp duty. There are the fees for a loan and so on. You're talking about hundreds of thousands of dollars, aren't you?

**JUDY BLISS:** The most expensive thing after the purchase price is stamp duty, which goes straight to the New South Wales Government. The next thing that comes in after that is lenders mortgage insurance.

**The Hon. CAMERON MURPHY:** So you're talking about a saving that is a fraction of a per cent in terms of the transaction?

**JUDY BLISS:** Yes. If you have a system—this is purely from a business point of view. If your business model is to undercut somebody else, are you really going to have the resources to do the security? What are you going to miss out on because you don't have the revenue to do that? Is it not time that, as leaders, you just acknowledge that maybe it's not the right time for it until all these other issues are sorted out first?

**PETA STEWART:** May I add something here?

**The CHAIR:** Please.

**PETA STEWART:** I also agree somewhat with the ladies that whatever shortcomings can happen with PEXA at the moment is usually a result of all the other parties in there. It's with the banks. It's with the stamp duties office. It's all of those things. The energy and time I think is much better spent ironing all of that out, regulating that, getting everything else as safe as possible with that—and then considering looking at interoperability at a later date. Because, when people are complaining about PEXA and the shortcomings, it's usually a result of these other subscribers and government bodies that feed into it that they can't actually control. As soon as those government bodies need to be speaking with two or three different ELNOs, it's just not going to be smooth. What's going to happen is it's going to be the conveyancers and the buyers and the sellers that are going to be the ones that get the repercussions from it. When we're talking about PEXA fees, we're talking about \$150 per transaction. That's it.

**The Hon. SUSAN CARTER:** Ms Bliss, I have a question to you but am happy for other people to have their views. I noticed in your submission you've addressed in particular the role of the regulator and regulation—your comment that, among other powers, ARNECC is able to suspend or revoke an ELNO's approval. If that was done in New South Wales—if the ELNO's approval was revoked—what would the impact be on the market and on your operations?

**JUDY BLISS:** That would be the last port in the storm, so to speak, that that would happen. You would assume that they would first contact them to discuss what the issue was. If it was a repeated so-called breach and they weren't willing to rectify, then maybe that's the last, as I said, port in the storm. If it went down, well, then we go back to the old paper settlements. I'm the dinosaur. I've been doing this for 30 years. I remember the paper settlement days, walking to the bank. I acted for the banks.

**The Hon. SUSAN CARTER:** If, for example, the regulator was to use that power in a market where there's only one ELNO, it's the existing ELNO or it's paper transactions.

**JUDY BLISS:** Correct.

**The Hon. SUSAN CARTER:** Does that suggest that this actually is an ineffective power to give to a regulator in a market with only one ELNO?

**JUDY BLISS:** What's the point of it all? That's what I ask myself: What's the point of it all? If you're going to use the big stick and whack the stick, you've got to have the alternative to it. The alternative is we go back to the old days.

**The Hon. SUSAN CARTER:** As the market is currently constituted, the alternative—we have one ELNO on paper, and so the regulator acts against the ELNO, if there was cause for that, because there is no alternative. In terms of the regulator exercising powers—I understand from the ladies that PEXA seems to have a good advisory system and seek input from their customers. Does the regulator talk to people involved in conveyancing? How does the regulator get information to find out if there is a need to exercise any of their powers?

**JUDY BLISS:** I can't answer that. I do not know.

**The Hon. SUSAN CARTER:** Ms Stewart?

**PETA STEWART:** I'm not sure if this answers the question, but we do all get random audits where we have to submit ourselves as subscribers directly to ARNECC—I can't remember the exact name of the body. We do have random audits, and it's compulsory. They go through what we've done and what's happened. There is definitely safety measures around that. I know those audits are very strict. I have been caught out once where I had a date that was handwritten and didn't look like the right number. They take that very seriously. I do know that in the conveyancing industry the audits keep people on their toes a little bit so they don't become relaxed with the rules that need to be followed to participate in the ELNO.

**The Hon. SUSAN CARTER:** Do those audits pick up any issues with respect to the ELNO or only with respect to those people doing the conveyancing?

**PETA STEWART:** It's more who is doing the conveyancing. It usually goes around the verification of identity, the right to deal with the property, that the correct forms are being used to be able to participate and authorisations in the ELNO. It's more around that area.

**The Hon. JACQUI MUNRO:** Can I just quickly jump in? Did any of you receive communications from ARNECC in relation to their upcoming report?

**JUDY BLISS:** I didn't.

**CHARLOTTE EGAN:** No.

**The Hon. SUSAN CARTER:** Ms Egan, do you have any comments on that issue of how the regulator is able to identify problems that need regulation?

**CHARLOTTE EGAN:** I can only speak from my firm's perspective at this point in time. Like Peta mentioned earlier, the audit process is quite strict and quite regular. I do know there is a mechanism for us as consumers to be contacting ARNECC directly if there is a problem or an issue—or we think there is an issue—with the actual ELNO body itself. I do know there is a process we can follow for that.

**The Hon. SUSAN CARTER:** Last quick question for each of you before I hand over—have any of you ever contacted ARNECC raising issues that you think need addressing?

**JUDY BLISS:** No.

**The Hon. SUSAN CARTER:** No? Thank you.

**PETA STEWART:** No, but I also haven't had an issue that I thought needed addressing.

**CHARLOTTE EGAN:** I agree, Peta.

**PETA STEWART:** I haven't had cause to want to contact them.

**Ms ABIGAIL BOYD:** Good morning to all of you. Thank you so much for appearing and for your evidence today. I just wanted to acknowledge, as you say, that we're talking about really large transactions when we're talking about property transactions. Of course, interoperability operates very happily in the trillions of dollars of bonds and shares that get traded every day, every hour and every minute across the globe. If interoperability was to work in the same way that it works happily in other spheres, what would you be most concerned with? If it was completely well-regulated and everything was working, would you have any concerns with there being multiple players in the market?

**PETA STEWART:** No.

**JUDY BLISS:** No.

**CHARLOTTE EGAN:** No.

**PETA STEWART:** I know for myself and Judy—we spoke yesterday—it's definitely around data and money and safety. That is the number one concern.

**Ms ABIGAIL BOYD:** When we look at the costs and the fees—I understand that, compared to all of the other fees, we're talking about relatively small amounts, but it's still an extra amount for people who are buying a home. What's the trajectory of the fees been over the last five or so years? Have they gone up?

**JUDY BLISS:** Yes, just like every other fee for every other government department.

**Ms ABIGAIL BOYD:** Yes, but they're not a government department.

**JUDY BLISS:** No, that's right. But I'm just making the comparison.

**Ms ABIGAIL BOYD:** Yes. But if we take the basic principle that competition in a market tends to push down prices, that can only be a good thing for people buying houses, would you say?

**JUDY BLISS:** Do I mention the electricity industry, where we were told that prices would go down?

**Ms ABIGAIL BOYD:** But we're not talking about the electricity industry, with respect.

**JUDY BLISS:** I know, but I'm just making the comparison once again. We're told prices will go down. Do they truly go down?

**The CHAIR:** Given that we only have 20 more minutes, I don't think we'll get into the electricity market.

**JUDY BLISS:** It's just a comparison.

**Ms ABIGAIL BOYD:** Could I ask one last question? On the basis that it would push down costs and you wouldn't see a problem with it if it was actually working, in other areas such as the international bond market, we've got a working interoperability because we have parties on all sides wanting to interoperate with each other. Would you encourage PEXA to come to the table and do everything it can to make interoperability work?

**CHARLOTTE EGAN:** Yes, I would.

**PETA STEWART:** My understanding is that they haven't said they don't want interoperability and that they have been forthcoming. But, as a consumer, I've got no issues with interoperability if it is going to work, as we said. As a consumer, I wouldn't be choosing the cheapest one. I would be choosing the best product for my clients. That's why, when we're talking about the price, for a lot of us, it doesn't come into it yet. If we have a problem in PEXA and something goes wrong or someone loses their money, that's pretty much our reputation for our whole business gone. For us, it's the safety of what's happening. But if someone comes in and they're \$5 cheaper, that itself isn't enough for me to choose them. There's a lot more that would come into it.

**CHARLOTTE EGAN:** I'd agree with that statement, particularly in the scheme of what we are talking about. We're not talking about \$50 transactions, where \$5 is a lot of money. We're talking about hundreds of thousands, or sometimes hundreds of millions of dollars. In the scheme of things, \$50 here or \$5 here is not going to be the thing that makes me change systems.

**Ms ABIGAIL BOYD:** But a competitor with a better product as well as a cheaper price might?

**CHARLOTTE EGAN:** Correct.

**The Hon. AILEEN MacDONALD:** Thank you, everyone, for coming. From all your submissions, it looks like you're all quite happy with the status quo. Why are you not supportive of choice or competition?

**JUDY BLISS:** I think you misunderstand. That's not what we're saying.

**The Hon. AILEEN MacDONALD:** From your submissions, it does appear that way.

**JUDY BLISS:** But at the end of my submission, I say I'm not opposed to it. I just want it to work properly and be safe and secure.

**The Hon. AILEEN MacDONALD:** If it was safe and secure, or was designed in a secure manner, would you then be supporting it and offering your clients choice if they came to you and said, "I'm doing this. I want to use this service rather than that one"?

**JUDY BLISS:** I don't believe that the clients would be electing which ELNO we would be using.

**The Hon. AILEEN MacDONALD:** Is that because they don't have choice at the moment, or you don't give them that choice?

**JUDY BLISS:** We can't give them a choice. It's PEXA or nothing.

**The Hon. AILEEN MacDONALD:** Isn't that the whole aim?

**JUDY BLISS:** But then it gets back to another thing: Do we give them a choice of which provider we get our searches through? Everybody gets their searches through different providers. This is from a practical standpoint that has just come off the top of my head at this very moment. If a company or a business is using one ELNO, I don't understand why you would be offering another ELNO. It would be like, "I go to triSearch for my searching; do you go to Hazlett?" or something like that. I don't think it's really going to concern a consumer at this point. This is just straight off the top of my head, without asking anybody else. It wouldn't matter to them because they're just wanting their house to be either sold or bought and settled.

**PETA STEWART:** And clients are trusting us to advise them on what is the best for them.

**The Hon. AILEEN MacDONALD:** But you've only ever worked with one operator. How can you say which one is the best if you've only ever worked with one?

**JUDY BLISS:** Well, where's the other one that's transacting?

**PETA STEWART:** One thing I will say—

**The Hon. AILEEN MacDONALD:** You're not letting them have the opportunity to do so.

**PETA STEWART:** If I can say something for one second.

**The Hon. AILEEN MacDONALD:** Sorry.

**PETA STEWART:** Out of all the businesses that we deal with in conveyancing, from government departments to searching—everything that we deal with—PEXA would have the best customer service, and they don't have to. They have upped their game every single year to support our industry. This is compared to competitors. We have 10 different CRMs that we can use. We have 20 different title search bays. None of them has anywhere near the level of investment in our industry and our customer service as they do. That's why when people say they're doing all these things because they've got a monopoly—they don't have to do that. They don't have to do anywhere near what they do because of having a monopoly. I'm not against interoperability, but I think you need to be a little bit fair and say that what they've done is gone above and beyond what a business would normally do with a monopoly.

**The Hon. WES FANG:** This evidence is extraordinary. I find it extraordinary because in these sorts of inquiries, we tend to get a little bit more balance from some of the witnesses and submissions. What I'm hearing at the moment is effectively the PEXA cheer squad. The question I'm going to ask each of you is have you spoken with PEXA prior to giving evidence today? Have they provided you any incentives or encouragement to provide glowing references for them? Because the talking points that you are giving us at this inquiry are exactly the same talking points I got from PEXA when I met with them. It's extraordinary that that's the case. I'll go around in turn. Ms Bliss, have you spoken with PEXA and are they—

**JUDY BLISS:** I actually find that very offensive.

**The Hon. WES FANG:** I don't care if you find it offensive. I find your evidence extraordinary.

**The Hon. CAMERON MURPHY:** Point of order: As a matter of fairness, the member has to treat the witness with respect. Attacking the witness in that way is simply disrespectful and he ought to be called to order, Chair.

**The CHAIR:** That is correct. Mr Fang, I might move along from here if this is the path that you are going to take. If you have serious questions—

**The CHAIR:** It's a very serious question, Chair, and I think the witnesses should answer it.

**JUDY BLISS:** I'm willing to answer that.

**The CHAIR:** Please, Ms Bliss.

**JUDY BLISS:** As I said, I find it really offensive. You don't know me.

**The Hon. WES FANG:** No, I don't.

**JUDY BLISS:** You don't know my values; you don't know my business.

**The Hon. WES FANG:** No.

**JUDY BLISS:** To come out and say something like that, I find highly offensive, because my value is I'm there to protect my client. I am not going to spend three hours driving up the highway, leaving at three-thirty this morning to get here, to come in here and play games with this council. I am not going to do that. You can believe me or you can not believe me—

**The Hon. WES FANG:** Well, I don't at the moment.

**The Hon. GREG DONNELLY:** Point of order: Chair, that is completely inconsistent with the ruling you made. It would be my submission that we should move on from this member to another member for questioning.

**The CHAIR:** We certainly will.

**The Hon. GREG DONNELLY:** It is rude and disrespectful.

**The CHAIR:** Yes. I am going to hear the rest of what Ms Bliss has to say and see if either of the two witnesses dialled in wish to add anything. If that's not the case, I will then move on to Mr Banasiak. Ms Bliss, you have the call.

**JUDY BLISS:** I just want to point out that I'm here for another perspective. You'll hear evidence from other people. This is my opinion. As I said, I have written this for myself and I've come here to do this. I do not lie; I do not make up stories. I am 60 years old, and my filter for playing games is gone. Okay? I am just telling you what it's like at the coalface every day. You can believe me or you can not believe me.

**The Hon. WES FANG:** You still haven't answered the question as to whether you've spoken to PEXA.

**The CHAIR:** Wes!

**The Hon. GREG DONNELLY:** Point of order—

**JUDY BLISS:** I will still go home and sleep of a night-time.

**The Hon. WES FANG:** You haven't answered the question.

**JUDY BLISS:** No, I have not!

**The CHAIR:** I call the Hon. Wes Fang to order for the first time. I'm not going to put up with this all day.

**JUDY BLISS:** I will just point out that no, I have not received any incentives, nor would I accept any incentives. My integrity is worth more than a gift voucher to Myer, or whatever you think we may have been given—nothing. This is just our opinion. I'm not going to get into personal attacks either.

**The CHAIR:** No, I appreciate it. I apologise for what has just taken place. Before I pass the call to Mr Banasiak, I apologise on behalf of the rest of the Committee and thank all three of you for making the time to take time out of your business to give evidence today.

**PETA STEWART:** Sorry, can I add something. There's actually an element that the three of us are alienating ourselves right now because the competition against PEXA has a very big voice and are in the media. I expect that I will probably—I'm trying to think of a bit of word—cop a bit of shit today for putting my neck on the block because there are a lot of people out there that haven't gone deep into this and won't speak up and support PEXA. We've all taken a little bit of a hit for that, to be honest, to be here, but it just did not feel right for me for PEXA to keep getting slogged on when that's not the problem. I have not got any kickbacks whatsoever. I just wanted to point out that, honestly, we're probably all going to cop some shit from our industry, from turning up today.

**The CHAIR:** I appreciate that. Charlotte, did you have anything further to add? Otherwise we'll move along.

**CHARLOTTE EGAN:** I completely agree. I am more than happy to support interoperability, and I think I say in my submission that I'm not averse to that. However, the fact is, as far as I'm aware, there is no other service provider that has met the regulatory standards to even offer competition within the space. For us to sit here and say that PEXA is wonderful and that PEXA is great, that's not necessarily what we're here to do. We're here to support the product that has met the regulation standards and is able to provide the service. I haven't received a kickback; I haven't received an incentive. I'm here, as Peta says, because I'm an interested consumer in the space that uses the product all the time. That's why we're here.

**The CHAIR:** I appreciate that, and I thank you again. I'm sorry that this is where our first session of the morning has gone.

**The Hon. MARK BANASIAK:** Picking up on what you were saying just then, has the proposed market competitor, Sympli/InfoTrack—because they're the one and the same company—presented any working model or shown you what their product would look like in an attempt to allay any concerns or fears to any of you? Have you seen what their model would look like?

**PETA STEWART:** No.

**JUDY BLISS:** No.

**The Hon. MARK BANASIAK:** Picking up on Ms Boyd's question, in your extensive time in the industry, how many property transactions have failed to go through because the buyer of the property didn't want to pay the \$150 fee? How many of them have pulled out of a million-dollar property purchase because of a \$150 fee?

**JUDY BLISS:** None.

**PETA STEWART:** None, zero.

**The Hon. MARK BANASIAK:** This is probably my last one. The other argument that has been put for interoperability is innovation rather than costs. From my perspective, it's obviously a highly technical product in terms of software and technology that's being developed or has been developed. Where would the innovation come from, for you, in terms of front facing? What innovation would you like to see that isn't already in existence?

**PETA STEWART:** I'm going to jump in here. Obviously none of us are IT experts, but where I would like to see whatever system is used get better is more—to use a better word—the interoperability with all the government departments and banks that we're using in it, because that's what's holding us back. It's the communication with the banks and what they're doing in there with the revenue officers and with the land titles office. The shortcomings that we come up against is around the other users in the space. That's where it will get even better, if we can get some more resources into streamlining that process better.

**The Hon. MARK BANASIAK:** Is the Registrar General not the best person to regulate interoperability if it comes in? Because you're dealing with not just a property transaction but you're dealing with banks and with government agencies, should there be a different regulatory authority that deals with this system?

**JUDY BLISS:** I believe that they should be so they're impartial to everybody.

**PETA STEWART:** I agree.

**CHARLOTTE EGAN:** We all, at different levels, answer to various different regulation bodies, and I think for this system to work in a way that it's meant to, there needs to be somebody sitting over the top of everybody.

**The CHAIR:** I have a few questions of my own. It has been touched on in the last half an hour about singular transactions falling over because one party out of a range of parties involved couldn't follow through. That happens on an individual basis, but it has been reported that there were over 92 outages in 2024 alone of the PEXA system. Has any of the three of you dealt with these sorts of system-wide outages?

**PETA STEWART:** Absolutely. The system outages happen, but I can say that there has never been a settlement that did not go through on the same day it was set for. It may have just been delayed. I actually reached out to PEXA yesterday and said, "I want some direct data on the big May '25 stoppage," which is the one that everyone spoke about, because I wanted to make sure that what happened in my office was the same across the nation, because I do two States and it was signing again by 1.00 p.m. What I want to point out is 90 per cent of the banks won't sign a settlement before 2.00 p.m. on a day anyway, so it didn't actually delay any settlements. Yes, there are outages. It would be great if maybe there was a rolling screen of when there are outages and when we can expect things to get up, but it hasn't in the scheme of things caused any settlements to fall over, and I think that's important because, honestly, my internet would probably drop out just as much.

**The CHAIR:** Thank you, that's very useful. Charlotte?

**CHARLOTTE EGAN:** I think that's right. Anything in terms of an outage that causes a settlement delay or things like that, very often it's not actually attributable to PEXA necessarily; it's attributable to the Reserve Bank system or it's attributable to the National Australia Bank system. It's things like that, or it's a Registrar General land titles office outage. PEXA itself is just like any of those other players in the game, and often it's not PEXA as such that is causing the issue.

**The CHAIR:** Ms Bliss, did you have anything further to add on that?

**JUDY BLISS:** Just reiterating that the way the system works is if somebody doesn't sign off by the appointed time, the settlement rolls every 30 minutes until the last settlement time. Very rarely—and I cannot remember off the top of my head—where one was delayed because of the system, other conveyancing issues may have been involved in it that it went to the next day. It's more that getting the parties to play nicely with one another and doing what they're supposed to do by the time frames which they're accepting under the system would be fantastic.

**The CHAIR:** I think that's a very apt summary of this whole issue that we're inquiring into. You mentioned the 30-minute settlement times. Do you recall what time at the end of the day the last settlement usually takes place?

**JUDY BLISS:** During non-Daylight Saving Time, it's 5.00 p.m. After that I think they've pushed it back to 6.00 or 6.30 p.m.

**The CHAIR:** Do either of the three of you know of any other conveyancers who have used or do use the Sympli platform?

**JUDY BLISS:** My understanding is Sympli is not transacting, but that's just me because I haven't got any information about that.

**CHARLOTTE EGAN:** I agree.

**PETA STEWART:** Yes, no-one.

**The CHAIR:** With the two minutes we have left, are each of the three of you—forgive me if I'm wrong, maybe, Ms Egan, this doesn't apply to you. You have experience with the PEXA advisory board. Are you able to tell us some of the issues that come up that the board is able to wrangle with or solve?

**CHARLOTTE EGAN:** Just to clarify, that does impact me as well.

**The CHAIR:** Sorry, I didn't recall correctly.

**JUDY BLISS:** I went on the advisory board when I was asked if I wanted to nominate for it to try and get the banks on board to sign off on time because it's a hit to my business. Let's face it, conveyancing is fixed costs in the majority of cases. Our fees are fixed costs. We estimate what it's going to be to do that settlement. The client accepts the costs—off we go. It can go this way; it can go that way. We still get the same fee at the end. If settlement is booked in for two o'clock, my staff may still be sitting there at five o'clock trying to phone banks, putting conversations into PEXA, contacting other sides if it's other sides who haven't done it to get them to sign off on time. I've been told, when we've rung the other side, "So and so, who's got the only signing capacity in the office, is in a meeting." Okay, but you accepted the time and date for this. As I said, we're the ones who are telling the clients there's been a delay. Again, if you can communicate what that delay is, then you don't have this headbutting. We don't play the blame game. As conveyancers, we're the people who solve the problems.

**The CHAIR:** That's right.

**CHARLOTTE EGAN:** I can tell you that I joined the PEXA Advisory Council because I had a real wish that the RRR—rural, regional, remote—voice was heard in the implementation of any system that was being developed. I can tell the Committee today that this electronic conveyancing has saved our office hours and hours of time, and, to be frank, quite a lot of stress and pressure, because we're outside the metro area. For us, it was not as simple as send your office junior down to the bank settlement rooms to facilitate a paper settlement. That was days in advance. It was book an agent, it was make sure all your documents are ready in your office a week in advance because they've then got to be mailed to Sydney. For me, it was paramount that this came on board. It gives rural, regional and remote participants the same eligibility, the same opportunity, to be in the same market as it does to our metro, and that was really important to me—that that voice was heard on the advisory council and how they then continued to develop their product.

**The CHAIR:** Thank you. I might have to pull it up there, unless Ms Stewart had something pressing to add?

**PETA STEWART:** No, thank you.

**The CHAIR:** Thank you, all three of you, very much for making the time this morning, and Ms Bliss especially for driving up early this morning, as you outlined earlier. I don't think any questions were taken on notice. The secretariat will contact you if there is a need to follow up.

**(The witnesses withdrew.)**

**Mr JARED ZAK**, Founder and Principal Solicitor, Dott and Crossitt Conveyancers and Solicitors, sworn and examined

**Mr RICHARD BOOTLE**, Director, Lawlab, affirmed and examined

**Mr MARCUS BAIN**, Director, Bain and Young Conveyancing, before the Committee via videoconference, affirmed and examined

**The CHAIR:** Welcome, gentlemen. Would any of you like to begin with an opening statement?

**JARED ZAK:** I don't have an opening statement prepared per se, but I just wanted to give a little bit of further context to my company, Dott and Crossitt Conveyancers. We are the largest conveyancing firm in New South Wales. We have about 10 offices. We also practise in Queensland and in Victoria, but predominantly it's New South Wales. We have about 50 or 60 staff, and about 8,000 transactions per year. A lot of that is actually very much attributable to the success that was PEXA in completely revolutionising conveyancing. But as I probably might be asked later on, I think that those benefits are now diminishing. I just want to say that my experience is very different from the three ladies that presented today, on a lot of levels. Certainly on the price squeeze that we're seeing, I'm very much seeing that. Maybe I'll be asked about this later, but I've also experienced outages which have been multi-day outages, and have cost my clients money.

**The CHAIR:** Thank you. Mr Bootle, did you want to open with anything to do with your experience?

**RICHARD BOOTLE:** Yes. Thank you, Chair. Just a quick background: Lawlab is a national business. We are probably the only one that's truly national, and we're about to be international. We're heading to New Zealand and opening there. I echo what Jared says: I don't think anyone's complaining or saying that the electronic settlements aren't a step forward from the old paper settlements. That's not anyone's issue here. It's really about: Do we want to support a monopoly? Is a monopoly a good thing? I did Economics 101 and I'm sure most of you did as well. Monopolies are bad, across the board.

I don't want to bite the hand that feeds us—I understand my role in this; we are here to beg you for change—but I'm going to nibble it a bit. It is your hand, as the New South Wales Parliament. You created the monopoly. We had a very efficient and very competitive system. Every solicitor across the country could do settlements. Multiple points of disparate settlements could occur. We had large settlements agents. I am based in Nyngan, so I win the travel today. It's 600 kilometres west of Sydney, so a four o'clock start for a plane from Dubbo. Yes, the change and the mandating of PEXA that put out all that competition and created the monopoly was done by New South Wales Parliament. They led the charge on that.

I feel like you guys collectively—the Parliament, not anyone individually sitting here—have the role to correct this. It was sold to you on the basis that there was this systematic failure of the way that we used to do settlements, and that's not the case. There were points of failure on individuals who failed. Banks failed. A person failed. Someone didn't do their job as a conveyancer. That caused failure. But there was no systematic failure. There was no possibility for it, because it was disparate. What you've put in place is a monopoly and a single point of failure.

It's electronic, it's prone to attack, and it will mean, as it has on a couple of occasions in the past, that no settlements happen. For our business, across the country, that means that doesn't happen. That never occurred until you created the monopoly. That's what I'm here to say. I have talked constantly—and I used to be on the PEXA advisory board until they threw me out because they put up their own settlements business in competition with us and I told everyone about it. I didn't get an invitation back to that advisory role. So, I have been a critic for a long time, and I am published as that, and I will continue to be a critic of a monopoly, any monopoly, across the board.

**The CHAIR:** Thank you. Mr Bain, do you have anything you want to commence with?

**MARCUS BAIN:** Yes, I want to reiterate Mr Zak's and Richard's comments. I was a settlement agent before, on paper settlements, and now I'm doing them on the PEXA platform. I still remember two years ago on the end of financial year when PEXA had gone down, and it was one of the worst—so many clients lost so much money that day. I just want to say, with monopolies, competition drives innovation.

**The CHAIR:** Thank you. I might open for questions.

**The Hon. GREG DONNELLY:** Thank you, gentlemen, for appearing today. I think thematically through the three submissions—and thank you for the three submissions—similar points are picked up, which is probably not surprising given what we're looking at here specifically. Perhaps if I couch the questions, and there will

probably be two or three of them, you can jump in or not as the case may be. Perhaps using Mr Zak's submission as a bit of a narrative to the questions, you say in your recommendations that:

... the NSW Government use pricing powers to freeze ELNO service fees until such time as there is competition in the market

A couple of questions: One is the issue of what's happening with fees, or the experience with respect to fees, and the term "competition in the market". I'm not trying to be clever here because it's probably difficult to define, but what is your sense of what that might look like? Perhaps if we start with you, Mr Zak.

**JARED ZAK:** Thank you for the opportunity to answer that question. In my experience with fees, we've all read the newspapers and seen that house prices have gone through the roof in the last 10 years. Stamp duty has gone up, the cost of living has gone up and inflation has gone up. We saw that yesterday. One thing that I can tell you—and maybe Richard might echo this—one thing that has not gone up materially are the conveyancing fees, and that is the truth. Our average conveyancing fee has been around \$1,600 to \$1,800 for about five or six years. We've just missed out. We can talk all day about why that is, but a lot of it comes down to the way conveyancers are set up. We're very much a cottage industry, very fragmented. There are hundreds and hundreds of them. As I said, I'm the biggest one in New South Wales and I've got a market share of about 3 per cent. It's just a total cottage industry. We're price takers; we're not price makers.

Our fees have not gone up, but all our disbursements, including our PEXA fees, have gone up. They're going to continue to go up unless we get competition. Completely in contrast to what the ladies before me said, I have definitely missed out on work over a matter of \$50. I've missed out on work over a matter of \$25. The margins are just so thin in conveyancing. As one of the larger practices, and being quite public about that, I'm getting constantly contacted by struggling conveyancers, a lot of them in regional New South Wales, who are really feeling it. They just cannot make any money in this environment, and they're asking whether they can merge with us. We are really feeling it. Certainly, whilst we don't have competition, it makes sense to me that one of the levers we have—and I don't think it's the best lever—is to at least have a price freeze on ELNO fees.

**RICHARD BOOTLE:** I would just add that, again, it's Economics 101. When you look at the monopolists and you see a 55 per cent return, you go, "That's a monopolist return." We live on margins of less than 5 per cent. I'm sure there are industries across the whole, but monopolists don't. They're on a huge return. That indicates to me that there's a pricing issue, because that's why they're having such a huge return. That's all.

**JARED ZAK:** So \$150—consumers like to have it broken down really simply. It's very difficult to explain to them when they only buy a property once every five or six years and they're fresh and new to it, "That's my conveyancing fee, that's my ELNO fee and that's my disbursement." It's all going to appear as one additional cost over your stamp duty. They just see it as one transaction fee. We're encouraged by the agents and the people that refer us work to quote as one fee. The banks want us to quote as one fee so they can factor in the loan costs accordingly. The part that's left over for us as the ELNO—and there are other costs and expenses, which is obviously not the subject of this Committee, that keep going up. But as that ELNO fee creeps up every year, the part left over for us diminishes. That's why we're seeing conveyancers going out of business. Every month, we're seeing it.

**The Hon. GREG DONNELLY:** Mr Bain, did you have anything you would like to contribute?

**MARCUS BAIN:** No, that's all. That's perfect.

**The Hon. GREG DONNELLY:** I go to the second point, Mr Zak, in your recommendations for you all to comment on. It reads:

- 2) Direct the NSW Government to implement interoperability urgently as has been legislated and use enforcement powers were appropriate to compel the monopoly to participate in the reform and meet deadlines,

Trying to flesh this out a little bit more, is it your submission that the New South Wales Government, with its current legislative framework, can do this or is it something that needs to be looked at to see that, in fact, it does have the powers to do this?

**JARED ZAK:** My understanding is that they can do it.

**RICHARD BOOTLE:** Yes, I think you've passed the legislation to do it but it's just not being done. Again, it's quite hard to dig into this. We are functioning. We're on the coalface here. I have a reasonably close relationship with Purcell. One of their major employees used to work for us. What I got from that was that, even though the legislation is there and they're being told to do it, it's not being enforced and it requires government to actually—

**The Hon. GREG DONNELLY:** Sorry, can I just press you a bit? When you say it's not being enforced, what specifically do you understand is not being enforced?

**RICHARD BOOTLE:** Directing PEXA to work to create interoperability. I understand that PEXA just aren't handing across codes that Sympli, in this case, need to do that and Purcell's needed. There's some information sharing required to create interoperability. We saw it with Telstra and Optus. The Government directed Telstra to make available stuff, which led to what we have now. I can make an Optus call to a Telstra phone. That's what we want. I'm not a technologist. We just want to be able to be in a system that we choose on behalf of our clients.

I acknowledge some of the points that the conveyancers earlier made. But we can choose, on behalf of the clients, the best experience for them. I want to be able to have that choice. The only way we can get interoperability, because PEXA—they are a monopolist. Even if I wasn't covered by parliamentary privilege, you would say the monopolist is not going to willingly do this. They will do everything they can to not give the codes across to make interoperability. It's not a technical issue. The technical issues are all solved. It's just the "hand the codes across the table", and you guys are the only ones that can do it.

**JARED ZAK:** Maybe this question will come later, but I think the ladies that spoke before us didn't have any experience using the Sympli platform. That's probably their choice because—

**The Hon. GREG DONNELLY:** Sorry, which platform?

**JARED ZAK:** The Sympli platform.

**The Hon. GREG DONNELLY:** That is for the purposes of Hansard. Thank you.

**JARED ZAK:** The Sympli platform does work. We've done many transactions in it. The only impediment to using Sympli wholesale really is the banks. That's because the banks are not being told, "Cooperate here because we're all working together to try and get interoperability and competition into the market." Until the Government steps in and really cracks the whip with the banks, we're just going to be stuck in this limbo. I do feel like it's a rapidly closing window. I feel like we've only got almost this period now, and then we're all going to give up on it. PEXA will race along. There's going to be some massive single point of failure event, like a CrowdStrike type event, and we'll all look back to this day where we sat here and decided, "Let's do nothing about it. It's all too hard." Maybe I'm being unfair, but that seemed to be the main argument from my colleagues previously. "Oh, it's all too hard. Yes, competition would be nice, but what if it all goes wrong?" Well, that's not the way to look at these things. There's too much at stake.

**The Hon. GREG DONNELLY:** Mr Bain, do you have anything you would like to contribute?

**MARCUS BAIN:** I just want to echo Jared's comments. It's definitely the banks that have held up these transactions. I've done a huge number of transactions in the Sympli workspace and that technology is definitely okay. It's just the banks that are holding up the interoperability connections.

**The CHAIR:** Mr Bootle, I'm glad you made the Telstra and Optus comparison. I've been wearing that metaphor out for the past six months.

**The Hon. JACQUI MUNRO:** Thanks for appearing today. I think you heard the evidence from our previous witnesses about their experience of not having outages that really impacted their business. You're obviously giving evidence that your business is very impacted. Could you explain to the Committee why that difference occurs? How does that difference in experience play out if there's only one platform?

**JARED ZAK:** Maybe I misunderstood your question, but I think on a volume basis—those ladies, I know them fairly well. They've got really successful businesses, but they're very boutique. They're very niche. Myself and Richard, we do—well, Richard does thousands and thousands of transactions a year, and so do I. We just see a bit more. The intraday outages happen every day. That's not even an issue. We're not here to discuss that. It's the multi-day ones, when you've got the removalists waiting outside at 5.00 p.m. and the family homeless overnight—they're the big ones. There have been probably half a dozen of those that I can remember.

One, in fact, was not the end of financial year one that Marcus was talking about. I remember last year in August, we had a big outage in Queensland. I had people literally stranded in the driveway. They had to stay in accommodation. On that occasion we wrote to PEXA and they actually compensated my client, to be fair to them, but that was also an admission of fault on their behalf. You can't say that was the banks. You can't say the conveyancer didn't sign off on time. They said, "Yes, that was an outage with us." That, to me, was a really big red flag.

**The CHAIR:** When was that?

**JARED ZAK:** I believe it was August last year in Queensland. But that, to me, is like, "Wow, this is just in Queensland. If there's a nationwide event of this nature—there's nothing to suggest that that can't happen—we are in a lot of trouble."

**The Hon. JACQUI MUNRO:** Mr Bootle, do you have anything to add?

**RICHARD BOOTLE:** It's, again, a bit about scale and geography as well. I recall the Queensland one as well—absolute nightmare. That was PEXA, notwithstanding it was localised to Queensland, so there was something that occurred in the interaction between Queensland and PEXA there. The general point is that we already know, because we sit here looking at Optus over the last couple of months—we know that that's going to happen to PEXA at some stage. It just has to. It's not saying that PEXA is going to do wrong. It's just that that's the reality of the electronic systems that we live in. Let's have a backup for that. If for no other reason, let's do that. But, as I said, there are so many other reasons for doing it. But as that single point failure, let's do that.

**The Hon. JACQUI MUNRO:** Did you also have the same experience or same comment, Mr Bain, about it being that volume or scale?

**MARCUS BAIN:** Yes. As Jared said, unfortunately the story of the removalist sitting in driveways is all too common in this industry. The amount of times that I have had, on the PEXA platform, even just little skips of 20 minutes, 30 minutes and then the settlement has to roll over—removalist costs, for example, can be hundreds and hundreds of dollars. People are already paying so much money for property in New South Wales in particular. Just to have a backup, just if these multi-day outages happen—it just seems like a no-brainer to me personally.

**The Hon. AILEEN MacDONALD:** Mr Zak, you recommended a price freeze until competition is delivered. How do you think that should be implemented and monitored?

**JARED ZAK:** I don't see any problem through ARNECC enforcing that. That's just one of the things but probably the easiest thing that we can implement. Money talks and PEXA do like their money, although I noticed most of it does go and get spent in overseas jurisdictions, which is a bit of a shame. But, yes, that to me would seem a really, really easy lever to pull. ARNECC can do that.

**The Hon. AILEEN MacDONALD:** What specific powers should the Registrar General use to address this monopoly behaviour that we're currently seeing and those price increases?

**JARED ZAK:** I don't know the answer to—I may not know the answer to this question, but if it was possible to levy a fine, that would be another option as well. I don't know whether the existing regulations permit that but, along with the price freeze, I think money is going to ultimately motivate this monopolist to sort of start giving up the code and cooperating.

**The Hon. AILEEN MacDONALD:** Mr Bootle, you said that Parliament created the monopoly. What changes are needed to reverse that?

**RICHARD BOOTLE:** As I understand it, you actually have the legislation now that mandates interoperability so I think you've got it there already. Those changes have been made and they were, again, notwithstanding you guys led the monopoly in the first place—you have been good as a Parliament, as both sides of Parliament to actually lead the charge to interoperability in terms of theoretical mandating, theoretical interoperability. So we've got that. What we want you to do now is help us take—

**The Hon. AILEEN MacDONALD:** Pull that lever.

**RICHARD BOOTLE:** Yes, pull the levers so that it's no longer theoretical. PEXA just can't, as the monopolist, hold the code and say, "It's ours." I've seen lots and lots of stuff that they've put across the board. It seems to be every time there was a new meeting on interoperability, there was a new reason that they couldn't do it. I think that's shared across the industry. Everyone believes that that is what's occurring. We just need you to, as Jared says—maybe there are some fines, maybe there are some other directions that Parliament can do. We aren't parliamentarians and I'm not a parliamentary lawyer, so I can't tell you exactly. But I guarantee the brains trust that sits behind this Committee can do that.

Please, please, please—that's what I'm saying. We're coming here cap in hand. Because I don't know anything about Sympli's finances or anything like that. But we're never going to get another capitalist that's going to put their ring into—if Sympli doesn't get up, there's going to never be another chance to have any kind of competition in this industry. I don't know how long they can fund it. I know how long—we fund loss-making businesses over time and an expansion of conveyancing nationally and internationally costs that sometimes, but you can't do that forever. I don't know how much longer there is. But I think time is really critical. I'm urging you guys to take action as soon as possible.

**The Hon. AILEEN MacDONALD:** As I understand that, that's meant to happen December, next month. I don't know that we're on target. Do you think your business is at risk—or any business—from this monopoly if interoperability isn't implemented in a timely time frame?

**RICHARD BOOTLE:** Thanks. I think that's a really great question, and I think it's sometimes lost on some of the other players in this industry. I have a very broad view, and we are a large business. I've looked at the kind of things that PEXA has said in its prospectus in the first place. The ambitions that PEXA has, they are industry swallowing. I can't describe them in any other way. It has always driven me—if you look up my various interviews over the years, it's constantly driven me—that our business, Jared's business and all of our businesses are at risk. We are a cottage industry. We employ across—the conveyancing industry across the nation is lots and lots of mums and dads doing their thing. All of that is gone.

If we leave a monopolist in charge of the registries and all the most incredibly important data and transfers of the largest single industry in the country—property is the wealth of Australia—then it's stuck with a monopolist that can then chew up the rest of the industry. For me, it's really personal. It's all the money we've invested—\$15 million or something—in our business over the years in tech and lots of things. We gave clients electronic notices, and we bring agents and brokers together. All that software we built long before PEXA, and all of that is at risk. Again, I'm begging you to do this. We're at so much risk.

**JARED ZAK:** If I could just build on that as well, if you go back to five or six years ago, I was so proud to come from New South Wales. I used to practise property law in London. I'd go back there every now and then, and I would just laugh at how they were doing transactions over there. I would say, "You guys are so far behind. We have this great thing in New South Wales called PEXA. We do all our settlements electronically. It's amazing." Now they've caught up. We're missing this opportunity because this monopoly is now stifling innovation. Are they going to be investing in things like AI without a competitor breathing down their neck? I'd suggest not. All that innovation and that success that we had, we're at risk of losing that. This is a challenge. I'm sure you've got heaps of things on. It would be very easy to think, "It's 50 bucks a transaction. Who really cares when stamp duty is so big?" If you take that attitude, then we are going to fall behind. I think it's a big opportunity here. Like Richard, I'd also really implore you to seize that opportunity.

**The Hon. AILEEN MacDONALD:** I just have one final question to everyone. You mentioned banks before. How are banks blocking competition in this sector?

**JARED ZAK:** They have to invest to get some of their integration set up with Sympli. Until someone actually compels them to do that, they're not going to do that. There is some tech work to do, and they're just not prepared to do it. Why? Because they're reading the tea-leaves and thinking, "No-one is really supporting interoperability. Why are we going to allocate our resources here unless we have to?" It's not like you can just turn on a switch in the banks, and Bendigo Bank and CBA and Westpac are all online. There is a little bit of work to be done. There is a little bit of codesharing to be had, which PEXA aren't helping with. Until the banks are compelled to do it—you know how they work—they're not going to do it.

**The CHAIR:** The more we see in here, the more I think we need to see the ACCC involved.

**JARED ZAK:** Good luck with that.

**The CHAIR:** I know.

**RICHARD BOOTLE:** We've definitely tried.

**The CHAIR:** I know.

**RICHARD BOOTLE:** We're here, and we've begged on that front already in Federal Parliament. Can I also just point out that the Commonwealth Bank owns nearly a quarter of PEXA. It has a vested interest in that. I was part of a wheat board a while ago when AWB was challenged. It was a monopsony, which was good for farmers. But every time we had that debate, there were people that were large shareholders in GrainCorp and competitors. They would get up and say, "I'm just a farmer, and I think that competition is good." They weren't. They were shareholders in a competitor. Again, I implore you: If you're listening to people's arguments from time to time, maybe it's a great thing to ask them to disclose their interests on that as well, without impugning anyone.

**The CHAIR:** Thank you, Mr Bootle. I've heard you say multiple times that you're begging us, and you've just said that you implore us. We are very cognisant that Lextech effectively left the market, and Sympli are trying very hard to get moving. If we lose Sympli, we'll basically have an entrenched monopoly.

**The Hon. SUSAN CARTER:** Thank you all for being here. Mr Bootle, could I just follow up on something? I believe that you indicated something about PEXA extending their business into settlements. Are you suggesting that that's an example of how they're using monopoly power to grow into other areas of the conveyancing industry?

**RICHARD BOOTLE:** They're in settlements now. They call themselves electronic conveyancing, but we do the conveyancing. It starts a lot earlier and it finishes afterwards. We're the ones with the client on the

phone in the driveway. They do electronic settlements, but if they're left in that monopoly position, then they can go upstream. It's very clear in the PEXA prospectus that what they've always wanted to do is go upstream, by which I mean offering search. At the moment, the money laundering legislation is giving PEXA the opportunity to grab data higher up in the transaction. We're really concerned that they're propping up a solution there that will give them access to our client data that they have asked us to share. They have gone to real estate agents directly. All the things that a monopolist can do, they have set out in the prospectus. It's not make believe. We're watching what they're doing in the UK where they're not regulated like they are here. You have to assume that they want to do all the same things back in Australia, and it really scares me.

**The Hon. SUSAN CARTER:** That's the basis for your statement that they're a business swallower, and that they're empowered to do that because of their monopoly position?

**RICHARD BOOTLE:** All that monopoly rent can be used to take us out. They can operate. It's the Amazon model, isn't it? They can operate conveyancing against Jared, Marcus and me for no cost, for an unforeseen time, can't they? We can't compete. We're just individuals.

**The Hon. SUSAN CARTER:** Perhaps in a quick answer from all three gentlemen, is it your primary concern that, in an effort to create competition, what has happened is that a regulatory, very high barrier to entry into a market has been replaced by a technological barrier to entry into a market?

**JARED ZAK:** It's not even that, I don't think.

**RICHARD BOOTLE:** I don't think it's a technological barrier. That's the thing. I listened to the former CEO one day talk about how PEXA was like the railways. I asked him to answer a question. The railways in England, when they took over from carts, didn't require government legislation mandating them. There was very slow uptake and very little uptake in PEXA, and there was competitive pricing in Queensland because they weren't mandated. This isn't a technological issue in any way, shape or form. We know the technological solution. This is government mandated. They put a mandate that said that we all have to use PEXA. What I'm saying is you're the ones that created the problem. It's legislative, and it needs to be fixed by you guys.

**JARED ZAK:** That's really well put. I'd agree with that.

**The CHAIR:** I will go to Mr Fang, but I'll remind him that I was not—

**The Hon. WES FANG:** To be fair—

**The CHAIR:** I haven't even finished, Mr Fang, but I did note in my opening address this morning that the Legislative Council has adopted rules regarding procedural fairness for participants.

**The Hon. WES FANG:** I would suggest that my questions were fair, and I'm going to be extremely fair.

**The Hon. GREG DONNELLY:** Point of order—

**The Hon. WES FANG:** I haven't even started.

**The Hon. GREG DONNELLY:** You're cavilling with what was a gentle reminder by the Chair.

**The CHAIR:** I uphold the point of order. You did cavil with my earlier ruling and, in the first session, you immediately went to the motivation of the witnesses being here to give evidence. I ask you not to do that again.

**The Hon. WES FANG:** I'm about to ask the same questions of these witnesses.

**The CHAIR:** In that case, Mr Banasiak, you have the call.

**The Hon. WES FANG:** Chair, this is an appropriate line of questioning.

**The CHAIR:** No, it's not.

**The Hon. WES FANG:** There's a witness on the screen with a Sympli T-shirt on. I'm about to ask if they've got any shares or ownings in Sympli and that they declare that.

**The Hon. GREG DONNELLY:** I'll call for—

**The CHAIR:** We're moving on. I understand, and I can imagine what it's going to be. We're going to move on. If there's time at the end, Mr Fang, you can do so.

**The Hon. MARK BANASIAK:** Picking up on the comments around the banks, given that you are under parliamentary privilege, do you want to name the banks now that are actively blocking access?

**JARED ZAK:** All of them. All at the get-go.

**RICHARD BOOTLE:** Every bank. There are probably some smaller ones that we don't know about.

**The Hon. MARK BANASIAK:** Who are the ones that have?

**RICHARD BOOTLE:** The Commonwealth Bank, which is the largest shareholder in PEXA. They have a vested interest to not—

**The Hon. MARK BANASIAK:** It might be easier to ask which of the banks that do have access to your system—you've done transactions, so obviously some banks are working with Sympli. Which ones are those?

**JARED ZAK:** There's a limited universe of transactions you can do. You've got transfers where there's a bank. You can easily do a transfer on Sympli. We do them all the time, and it's actually a really good product where you transfer title without a bank on either side. There's no encumbered mortgage on the sale, and the buyer doesn't have a mortgage. That's easily done. When you introduce the banks, it becomes very difficult, and most of them have said, "We're not set up to do that right now." Let's name them: CBA, Westpac, NAB, ANZ. These are the main banks that we deal with, and all of them will put up obstacles and say, "We're not set up to do this on Sympli; you'll have to use PEXA."

There's not a single bank that I can think of that has said, "Yes, happy to do this. Let's settle on Sympli." I can't talk about the refi market, because we don't do that. I understand it's a little bit easier in the refi market. We're talking about transfers here.

**The Hon. MARK BANASIAK:** Mr Bootle, you've stressed the point around monopolies. Do you share an equal concern around ATI Global's potential to have a vertically integrated monopoly in that software system based around searches and stuff like that? If interoperability occurs, will they also have the ability to do that?

**RICHARD BOOTLE:** I dislike monopoly across the board. Anywhere we can resist monopolies—the difference, I guess, with a large global player is that it's not due to an Act of Parliament that they're created a monopoly. But, yes, I want competition, and anything you can do to enhance competition in all parts of our industry and all parts of the transaction is good for me.

**The Hon. MARK BANASIAK:** I equally dislike duopolies as well. With that in mind—

**RICHARD BOOTLE:** The lesser of two evils.

**The Hon. MARK BANASIAK:** The Coles and Woolies of conveyancing. What extra powers or oversight would you like to see from the ACCC in this space, so that if we get Sympli on board and we get interoperability working, we don't end up with the Coles and Woolies of eConveyancing, and you guys and the consumers aren't in any better position? What would you like to see?

**JARED ZAK:** I'm not an anti-trust expert, but it would be whatever tools and powers the regulator has to sort out the Coles and Woolies scenario. Price collusion and all those kinds of things would have to be looked at very closely. But there's no doubt at all that PEXA are not a malevolent beast. I'm sure if the roles were reversed, we'd be sitting here saying how bad InfoTrack are. It is really just the nature of monopoly that we're complaining about here. ATI has their fingers in many pies. Would there be a risk that they would also move up the conveyancing chain? Absolutely. But the risk would be less with two players in the market, I think.

**The CHAIR:** We'll cross the Coles and Woolies bridge if we ever come to it, but I think we are in a Telstra and Optus situation.

**The Hon. MARK BANASIAK:** I just wanted to introduce a new analogy.

**The CHAIR:** We will go to Mr Fang, who's going to ask each of you if you have any disclosures or relationships you'd like to talk about. Mr Bain, you might cop it more than the others because of your outfit choice today.

**JARED ZAK:** I've got my Sympli underpants on.

**MARCUS BAIN:** I'm ready, willing and able.

**RICHARD BOOTLE:** It's a fine question. I have no problem.

**The Hon. WES FANG:** To be fair, Mr Bootle, you actually indicated that this is a question we should be asking.

**RICHARD BOOTLE:** I agree.

**JARED ZAK:** Yes.

**The Hon. WES FANG:** It's pretty clear from the evidence that we've received, and from submissions we've received as well, that there are quite a lot of agendas in this and there's obviously a lot of money at stake here. There are agendas on both sides. Mr Bain, you are wearing a Sympli T-shirt, and that obviously hasn't gone unnoticed by some of the members of the Committee. To be fair, I asked the motivation of the other witnesses. I called them the PEXA cheer squad. I'm going to call you guys the Sympli cheer squad. Mr Bootle, you indicated that you might have a little bit of an axe to grind with PEXA. Is your evidence here driven by any motivation or, those things aside, did you want to come here to indicate that in your experience there are problems? Do you have any financial interest in Sympli?

**RICHARD BOOTLE:** Thank you for the question. I will not be offended by your question. I think it's an appropriate question.

**The Hon. WES FANG:** I think it genuinely is an appropriate question.

**RICHARD BOOTLE:** The bottom line is—and I've alluded to it—that I've been in the press continuously. Have I spoken to Philip at Sympli at times? Yes. I've continuously pushed them to have the backbone to keep this fight going. I have no financial interest in Sympli, or PEXA or the ASX. That's not my agenda. My agenda is kind of the opposite. I want to push them to front up and keep fighting this, because I think they are our only hope. Again, I pushed Purcell. I did have personal relationships with them. I drove to Dubbo and then got on an aircraft today because this is so important. Again, I implore you, please do something about this.

**The Hon. WES FANG:** Mr Zak?

**JARED ZAK:** No, I have no financial interest in ATI or PEXA. My interest is that I'm fully committed to the conveyancing market. I've invested millions of dollars over the last 10 years, and I just don't want to see the whole market completely damaged by a monopoly.

**MARCUS BAIN:** I have no financial interest in Sympli. It's just a nice shirt I thought I'd wear today.

**The Hon. GREG DONNELLY:** It's a very nice shirt.

**MARCUS BAIN:** Thank you. It fits me well. If this Sympli situation falls over and PEXA is the one monopoly—and we did say that they are an e-conveyancing platform—what's going to stop them from starting on the settlements and then undercutting a small business like myself? Whereas Jared and Richard have large businesses, I'm a small little business in New South Wales. I charge, say, \$1,600. It would take PEXA to just come above me and charge \$1,000 to each, and I'd lose all my clients. I wouldn't have a business.

**RICHARD BOOTLE:** I'd lose too, Marcus. I'd just lose more money. It's not about size in this.

**The Hon. WES FANG:** Like I said, I'm just simply trying to be fair and making sure that if I put questions to one set of witnesses, I'm prepared to put them to the others as well. As I said, I think there are a number of agendas here, and I just want to make sure that everything's on the table so that the Committee can look at the evidence clearly and understand what's happening.

**JARED ZAK:** At a practitioner level, I think PEXA are actually bigger than that. I was on the PEXA advisory committee before, and they were actually very good like that. I don't think they would do anything like that. The practitioners we saw there earlier, I think their heart is in the right place. I think they have a lot of good personal relationships with PEXA. They used to be great to deal with, PEXA. In the first couple of years, they had a massive team of BDMs, and they were ex-conveyancers.

**The Hon. WES FANG:** Sorry, BDMs?

**JARED ZAK:** Business development managers. They were the guys getting online. They'd come round, and they'd get you online. They'd stand over, and they'd celebrate your successes. Now, once they established the monopoly, they cut all those people. Those people have gone. There are still some relationships there, I guess, that those girls have, but most people don't know anyone at PEXA these days. It's just all ex-bankers, quite literally. What was the point of all that? I can't remember. Anyway, the biggest issue, I think, is the CBA-PEXA one. I think that's where the conflict is. I don't think there are any underhand deals.

**The Hon. WES FANG:** The reason you left the PEXA advisory board?

**JARED ZAK:** No, it wasn't as interesting as Richard's. I think I just got too busy.

**The Hon. CAMERON MURPHY:** Most of the issues you raise seem to be around the conduct of the banks, in terms of their willingness to participate in interoperability, to provide space for other platforms to come in. Is this really a problem where we need Commonwealth regulators to sort it out? Do we need ASIC, APRA or the Council of Financial Regulators to do their job and deal with those problems in the background before we deal

with the issue that's our responsibility as a State, which is the final element of settlement? Do you have a view about that?

**RICHARD BOOTLE:** I've certainly been to the Federal Senate parliamentary inquiry and pushed for those things and pushed for powers on that. Your logic is flawless; that is something that needs to happen. But please don't leave it to them. They have a terrible history of change. We talked about various duopolies already. The head of the ACCC said that she doesn't have the powers that she needs to do stuff, so please don't leave it to them. What you can do, as this Committee, is urge action by New South Wales Parliament, the passing of legislation, and start enforcing that and pushing the fines and things. Make PEXA come to the table and deliver interoperability. Please don't put that to someone else. That's your role.

**JARED ZAK:** I'd say the same. Let's take leadership here. As I said, we were so proud on the international stage to have PEXA out there. I think it was founded in Victoria, but very much the first fully mandated State and the largest property market is New South Wales. It was really a gem that we had. We should take ownership of that market again, that ELNO space, and do everything within this Parliament's power to try to get interoperability back on foot.

**The CHAIR:** I'm very glad that we did get into a few analogies and metaphors in this session. Mr Bootle probably mentioned a very apt one, which was Amazon. In my view, should Sympli pack it up and pack it in, after Lextech had moved away from the market, effectively, we would have one ELNO in what I'm told is a \$300 million per annum market. I'm told that the profit margin at the moment is over 80 per cent. If that sounds right, what are your thoughts about those numbers? We talked a lot in the previous session and we touched earlier on whether it's \$5, \$6, \$10 per transaction possibly, but it's a \$300 million market.

**JARED ZAK:** I'll just answer that by saying that my margins are around 5 per cent to 10 per cent.

**The CHAIR:** Exactly. Thank you for being so honest.

**RICHARD BOOTLE:** And we compete constantly and stuff, and that's the reality. If you have a monopoly that has this massive revenue and very low costs, which is I think conceded by PEXA itself, and its annual reports will show that—I don't know exactly that margin but you're the Chair and this is your Committee so I'm going to say yes. Then all that money is going to go somewhere. Where is it going to go? It's going to go where you can increase your power and where you have market power. Uber proved to the world that if you throw enough capital at something, you can take out the taxi drivers. I feel like I'm a taxi licence holder in all of this, for another analogy, but without a licence. I'm not paying for a licence. The fact was that Uber could throw money at something and make it—

**The CHAIR:** But you're a solicitor, right?

**RICHARD BOOTLE:** Yes, not a licence that I pay.

**The CHAIR:** You would be licensed and regulated.

**RICHARD BOOTLE:** Yes. That's the thing, isn't it, that you have a company, a monopoly, that will be able to compete with us on price and take us out. They have form. As I said, they set up their own conveyancing business in the past, and I complained about it. But we could all be taken out, and you're saying, "Is that good for the industry?" Notwithstanding my own self-interest in saying I think our business is great—we employ 70 people across the country; we started in New Zealand—I'd like to think we're a bit of a success story and what you can do if you have a competitive framework where we can compete with Jared and still have a beer afterwards, and that's not going to happen with a PEXA monopoly. You are the only ones that can change that.

**The Hon. JACQUI MUNRO:** In your view, who do you think should bear the cost of the transition or ensuring that there's an interoperable system?

**RICHARD BOOTLE:** PEXA has made a big thing lately that it wrote off \$12 million. I think that was one of the things that I read somewhere. They wouldn't have had to have spent \$12 million if they'd just handed across the codes. I don't think there's any cost in handing across that code. I think you'll see that the new entrant will always be the bearer of those costs. It's just then about transparency and mandating transparency to those codes so that we can have interoperability. It's going to be on the incumbent, and it is on the incumbent. Sympli has made that investment and Lextech certainly had made a lot of investment. But if you have someone who's ultimately sitting there not handing across the table the things they need to do, then all that investment is wasted. It was really cutesy to say, "I'm writing that off now because we wasted all that money." What was that consulting money for? Where was it spent?

**JARED ZAK:** And the banks need to pay their fair share as well.

**RICHARD BOOTLE:** And they'll do it in their own integration systems. As Jared said before, they're hesitant to do it because why have two systems. The bank, again, is this big, clotting—we've tried to integrate various things with them over the years. It has changed. Oh my God, it has changed. They don't want change because you've got the system and it's just working and they want to keep it going. Any kind of investment, they don't want to see because, again, that comes off the bottom line. They're almost monopolists, so any kind of expense comes off the bottom line and it comes off some CEO's bonus.

**The CHAIR:** We might have to leave it there. I don't believe any questions were taken on notice, but if there is anything, the secretariat will follow up. Thank you again for making time.

**(The witnesses withdrew.)**

**Mrs JENNIE TONNER**, President, Australian Institute of Conveyancers NSW Division Ltd, affirmed and examined

**Mr DALE TURNER**, Policy Adviser, Australian Institute of Conveyancers NSW Division Ltd, sworn and examined

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

**Mr JOHN FARRELL**, Executive Policy Lawyer, Law Council of Australia, before the Committee via videoconference, affirmed and examined

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

**The CHAIR:** Good morning all. Welcome and thank you for taking the time today to give evidence. Mr Argy, this is not the first time I've seen your face today. You actually turned up on an advertisement on my phone this morning for VentureCrowd, which is very interesting timing given you're here before us. As is customary, we'll open with opening statements, if you'd like to give one.

**PHILIP ARGY:** Thank you, Mr Chairman. I do have some pre-prepared remarks, but also, having heard some of the things this morning, I think I can help a lot in answering some of the unanswered queries members have. They seem to be grappling with some underlying unstated things, so I'll address that, with your indulgence, when I've said some preliminary things. And to pre-empt a question which may come, my superannuation fund once had shares in a company called Link. I think there were about 100 shares. That company was acquired by PEXA in a share swap, so my super fund is holding about 100 shares in PEXA, just so that's on the record, in case anybody asks.

The Law Council is the peak national representative body of the Australian legal profession. We've been involved in the development of eConveyancing virtually since its inception—so, more than 20 years—and I've chaired the committee almost for that period. In case our submission wasn't clear, we are very, very strongly in favour of competition between ELNOs, and interoperability in particular. Interoperability is absolutely crucial to driving competition because of what it enables compared to what there is now, and that is allow subscribers—that is, the legal practitioners and conveyancers—to choose the electronic lodgement network operator of their choice, and they're not required to subscribe to multiple ELNOs either.

We think that will encourage competition that can achieve more efficient outcomes for subscribers and their clients, maintain pressure on prices, offer additional resilience—and I'll come back to that, because that's really very important—and stimulate innovation. Technical innovation means improved products for subscribers and their clients. In terms of the regulatory structure, we have, almost since inception, been concerned that ARNECC is not actually the regulator. It's very narrow: It's simply registrars-general. The intergovernmental agreement that established ARNECC gave it a broader remit that they've actually never fully exercised. I'll come back to that, as well.

ARNECC has now got three reviews running, and I think there's a fourth about to start into technical aspects, regulatory aspects and some other aspects. We certainly think that those reviews should be allowed to complete—at least the three mains ones. The new one, if that's going to take another year, we can't wait for that for something to happen. The real point I want to make, I think, is to contextualise a lot of what's been said, and what underlies a lot of the submissions. There's a cohort of legal practitioners whose businesses almost eat, sleep and breathe conveyancing. For those people, since eConveyancing was mandated, they've had to use PEXA. For three or four years they've become comfortable with PEXA. They invested in training their staff on PEXA. They eat, sleep and breathe PEXA to do their day-to-day work.

For those people, the introduction of another ELNO is seen as unwarranted and even disruptive, and they don't want to have to bother with it. They're relaxed and comfortable using PEXA. That isn't PEXA's fault—that's the fact that eConveyancing was mandated. I won't describe motives, but it was connected with the privatisation of the Land Titles Office and the move to digital certificates. That just happened and we can't do much about it, but what it's meant is that the longer interoperability has been delayed, there's a growth in that cohort who've become relaxed and comfortable using PEXA and don't feel any problem. However, that cohort is not the majority of the legal profession. There's another cohort out there who don't eat, sleep and breathe conveyancing, who might do one or two conveyances a year at the individual practitioner level. They still have to do eConveyancing, but they're looking for something more user friendly with a better user interface, so there's a lot of innovation that can be brought to bear at that level that they're missing out on.

That's one level at which interoperability will help give the people who are ad hoc, infrequent conveyancers the option of an interface that's much easier for the ad hoc user—who hasn't been fully trained—to use. The second level is the technical level, and I've heard reference to the banks being baddies and PEXA being baddies. Let's look at what underlies that. To make eConveyancing work, the electronic lodgement network operator needs: a connection to the Land Titles Office; a connection to the parties' banks, in particular the lawyers' trust accounts; and a connection to the Office of State Revenue for the stamp duty. So there's a number of virtual connections that have to be put in place. For interoperability to work, Sympli needs to have the same connections. To avoid the single point of failure problem, Sympli needs an independent set of connections. Now, for Sympli to connect to the banks, it needs to have and adopt the same communication protocol that's been in place between PEXA and the banks, because the banks are not going to reinvent the wheel.

They say to PEXA, "We'll connect to you, but you've got to adopt this protocol." This protocol has been the subject of asserted intellectual property. The banks' reluctance to do anything with Sympli has been, in my respectful opinion—I've been looking at this, hopefully objectively, for some 20 years and the banks are very risk averse. If someone says to the banks, "Don't you dare copy our protocol or we'll sue you for breach of copyright," the banks are saying, "We're not going to take that on. Someone's got to solve that for us." What is required? What is required is for the banks to be absolved of any liability if they happen to use someone's intellectual property. Put to one side whether that's real or imagined intellectual property. I'm sceptical about it, but what would I know? I'm only an IP lawyer.

Who can do that? There are provisions in the Copyright Act for State and Federal governments to use intellectual property for the services of the Crown. There's a respectable argument that this protocol is not for the services of the Crown, but it's certainly in the public interest. I think a key issue would be—and, plainly, it's a Federal Government issue—to make clear that, where there are standards that are critical to enable competition and interoperability, there needs to be a carve-out from copyright, for example, in the public interest. I'll just park that idea but to say that the banks are being obstructive, I think some banks could try harder. Some banks have the wherewithal to stand up to asserted IP rights, and they choose not to. I don't want to be critical of the banks for being risk averse. I just want to put that on the record.

But, fundamentally, the removal of the truck in the driveway problem is an exact analogue. I'm sorry to pick up on your Optus and Telstra analogy but, in a much more tragic context, the problem we saw with the Optus 000 was that, when the call couldn't get through from Optus, it didn't fall over to an alternative carrier. What interoperability, fully implemented, will provide is that if, for whatever reason—whether it's a PEXA problem or a link to a bank or land titles office—that settlement can't be completed, the transaction will fall over to the other ELNO or ELNOs who have an independent connection for the standby. We think that is a really important benefit of interoperability. It adds literally resilience and redundancy to the system, the lack of which is currently the cause of this removalist in the driveway issue.

I hope that's helpful. It's a little bit outside some of our prepared material, but I've heard people grappling with what is the problem with interoperability? Why can't we just do it? It is mandated. ARNECC is reluctant to do anything because the banks say, "What are you going to force us to do? You can't force us to breach someone's copyright." No-one is owning the problem. I think that's a real problem. It needs a holistic approach to sit down and say—and I would be hopeful, frankly, that your Committee's report would say something along these lines—what is needed is to tackle it with State and Federal cooperation to say, "Here are the impediments." I'm not saying PEXA are little angels. They are a commercial organisation. It's in their interest for their monopoly to continue because every month more and more people get comfortable having PEXA and don't really want anything else. I'll stop there because we're conscious of time.

**The CHAIR:** That was very helpful. I'm sure we'll get stuck into some of those points that you raised. Mr Harvey?

**RICHARD HARVEY:** I won't read my statement, but I'll move quickly to a couple of points within it. We refer, obviously, to our submission from the Law Society of 20 September. We address two issues in it, and that was the current pricing and our view that, until an alternative ELNO is able to be up and running, it would be sensible to have price increases once a year at CPI. We thought that was a reasonable position. Obviously we're all concerned—not concerned, I shouldn't say, but obviously we're also interested in seeing that ARNECC's reviews come through and that ARNECC is a suitable organisation to be able to regulate the whole of the electronic settlement process. I think the bottom line from us is that, as the Law Society, we're not going to get involved in policy issues and discussions between PEXA and Sympli. Is competition good or bad? Personally, I think competition is good. But then again, not everything is competitive in the world. But I think the key thing I'd like to get to the council is that as long as—interoperability is the key. We just want to be able to basically have a system that's simple, that's reliable and that works.

**The CHAIR:** Mr Turner?

**DALE TURNER:** Mrs Tonner has a statement for the AIC, but I take the opportunity to disclose to the Committee that a couple of members of my family own a very small number of PEXA shares, and I also sit on the PEXA advisory board, for which I receive no fee and no reward.

**The CHAIR:** Thank you very much. It is much appreciated. Mrs Tonner?

**JENNIE TONNER:** I disclose nothing—I have nothing. AICNSW has been involved in and continues—as with the Law Society of New South Wales—to be involved in various committees that have assisted in the development and maintenance of the New South Wales eConveyancing system. AICNSW welcomes and thanks the Committee for the opportunity to contribute to this inquiry into competition reforms in electronic conveyancing. Since 1989, AICNSW—formerly known as the Association of Property Conveyancers—has represented the New South Wales conveyancing profession. The New South Wales eConveyancing system mandates that all real property and some personal property transactions or dealings require recording or registration on the New South Wales land register. Consequently, eConveyancing is an essential part of the work performed by New South Wales licensed conveyancers.

Unlike other jurisdictions, where settlement and conveyancing agents are expressly prohibited from engaging in legal practice and giving legal advice, conveyancers in New South Wales engage in legal practice as defined in the legal profession uniform law New South Wales Act, and give legal advice in a core area of high-value legal work. Unfortunately the anomaly of the two regulatory structures of conveyancers and solicitors for the same legal work in New South Wales has created—as warned by the Legal Services Commissioner of New South Wales and others—unequal and uncompetitive outcomes for consumers and practitioners in the New South Wales conveyancing and eConveyancing system. The New South Wales conveyancing and eConveyancing system, as the Law Society has expressed, is not a level playing field. Consequently, the Conveyancers Licensing Act requires reform.

That said, AICNSW agrees and welcomes equal and fair competition across all aspects of conveyancing and the eConveyancing system in New South Wales. However, the New South Wales land register, under the Torrens system of land registration, not only records a wide variety of interests over New South Wales lands; it does so on the paramount principle of indefeasibility. Indefeasibility is backed by the New South Wales Government, and confidence in that paramount principle of indefeasibility cannot and must not be compromised. Any compromise will quickly result in a public loss of confidence in the New South Wales register of land and the administration of property and conveyancing laws in New South Wales.

AICNSW is conscious that the eConveyancing system and any move to an interoperability model is—like the Torrens land registration system—a world first. Consequently, any competition must be delivered with the paramount assurance of indefeasibility above that of any economic gain. In addition, and with regard to electronic node operator systems, the scope of work must be consistent across the entire eConveyancing system. Complexities of a bilateral interoperable system have, as is now apparent, been misunderstood and underestimated. Indeed, one could ask, in the pursuit of competition, why not have two competitive land registers or two private companies competing for the administration of the New South Wales land register?

Whatever the answer to those questions may be, many of the issues—ranging from jurisdictional copyright of software, economic advantage against risk to the principle of indefeasibility, and regulatory responsibilities of financial transactions—appear after some six years to still be unclear or unresolved. In that respect, AICNSW welcomes this inquiry into the New South Wales eConveyancing system in the hope that these problems will be resolved.

**The CHAIR:** Thank you. Mr Farrell, did you have anything further to add?

**JOHN FARRELL:** No. Philip has spoken for the Law Council.

**The CHAIR:** Given your background and positions, we might kick off with questions from our own resident barrister, Mr Murphy.

**The Hon. CAMERON MURPHY:** Just listening to those opening statements, is it fair to say that, in summary, everybody wants competition because competition is really helpful—it's unhelpful having a monopoly there. The previous Government privatised PEXA and that's the situation that we're in. But this is something that the State can't resolve on its own because of these other issues over the IP, which only the Commonwealth can regulate, and the way that the banks behave, which is something only the Commonwealth can regulate. Really, the State has an ability to do something at the pointy end of the process, which is the settlement, but without solving those other issues or working with the Commonwealth, we can't really fix this problem, can we?

**PHILIP ARGY:** There is a solution. The ELNOs operate under a licence from each State's registrar. There's no impediment to the registrar saying to any ELNO, "We're not renewing your licence if you don't share, in the public interest, the protocols over which you claim IP. You want to renew your licence next year? Hand them over." That's being a bit bold. But where I'm coming from, as the Law Council, is we're there to look after the interests of all the legal practitioners and explore all possible avenues. To the extent to which New South Wales has the power practically to make something happen, that could happen—whether for policy reasons it would want to do something like that, whether ARNECC has the, bluntly, intestinal fortitude to do something like that. It's a bit like lots of regulation. You can take away a TV station's licence or a radio station's licence. No-one has actually done that even though—

**The Hon. CAMERON MURPHY:** It would be a pretty drastic step, wouldn't it?

**PHILIP ARGY:** Exactly. What are you going to do? You take away PEXA's licence—

**The Hon. CAMERON MURPHY:** What if nobody is licensed?

**PHILIP ARGY:** Precisely.

**The Hon. CAMERON MURPHY:** That's the risk of that approach.

**PHILIP ARGY:** Exactly. But all I'm saying is it needs a creative approach. If you could get an IP exemption—is there something else that the banks are saying is an impediment? There is an investment, obviously. They're now going to deal with two people instead of one. From their point of view, it's a hassle. Why should they? I don't think the banks have ever claimed to be altruistic.

**The Hon. CAMERON MURPHY:** They're not short of a quid either.

**PHILIP ARGY:** For example, there's no reason Land Titles—well, it is privatised now but, say, State Revenue ought to be very clear and, if necessary, directed to put in place an independent connection with Sympli, so that at least if, for example, there's an outage on the connection between PEXA and State Revenue and there was an alternative pathway, that would prevent that transaction not completing on the day. That's a little increment of removal of the problem. You'd need to do that for the banks, for the Land Titles Office. That's at that level. Then you've got to remember the other element of interoperability is the sharing of information between the ELNOs themselves. Essentially, it's based on an XML schema. I don't want to get too technical, but think of it as a form that gets filled in with various fields. You'll have the property identifier, the name of the parties, the purchase price—all the information needed to complete the transaction. It will go on to include, for example, on the vendor side, who has to pay out the council rates and the water rates and where will the disbursements go. That's all put into what's called the workspace.

With one ELNO, it's easy. They control everything and it doesn't have to go anywhere. With interoperability, if you've got one ELNO and the other party's solicitor has a different ELNO, they have to effectively mirror that information to each other so that, if something were to happen, either could complete the transaction. They've got to have the information from the party they don't represent in their database to be able to go forward and complete the transaction. That is also needed to happen. I think there are some impediments around competitors exchanging protocols to deal with that, but it's not insurmountable.

**The Hon. CAMERON MURPHY:** Equally, it would require some of the things you've spoken about—for example, the Commonwealth dealing with the IP issues or forcing the banks to regulate some of those other transactions that might be there—before you get to the final point of the settlement, wouldn't it?

**PHILIP ARGY:** I don't want to suggest it's trivial. There are significant policy issues in, for example, saying you're going to carve out copyright for something like this. But if you say, "It's in the national interest and we think it's important," well, it is a policy issue but it's technically a solution. Whether anyone wants to implement it is not for me to say. I can simply point out where I see the blocks and how they could, theoretically at least, be removed.

**The Hon. SUSAN CARTER:** Thank you all for being here. This is a general question. I'm happy for anybody who feels able to answer it. We're exploring interoperability. We heard evidence this morning from people involved in the conveyancing industry that interoperability may not be the answer that we think it is when a platform falls over. If a transaction is halfway through on one platform and that platform falls over, it's not a practical suggestion to say, "Move it to another platform." Do you have any comments about that evidence that we heard?

**JENNIE TONNER:** My understanding of the way it should work is that there is a hub. There are not two separate—there is a hub of one workspace for a matter if a conveyancer is acting for a purchaser. They can do that through Sympli, which is connected to the hub workspace. They can invite their bank through Sympli to that

workspace. Other people might access it and invite people through their PEXA workspace. Ultimately, there is a one-hub model. It would work through that way. That is, to me, the most efficient way forward without having two separate platforms to do settlements. I don't see the need for that. I think that just causes more issues, like you raised, rather than having something where they can work together. From my standpoint, I want to keep working in one model. I've got the competition and the choice to use one or the other. At the end of the day, I want one workspace. That workspace is going to settle my matter for my client.

**The Hon. SUSAN CARTER:** Given the developments in the area to date, is that one-workspace model currently achievable, or would it require significant change to the ELNOs that are currently available?

**JENNIE TONNER:** I might have to refer to you, Dale, but I think that it is a matter of whether PEXA would allow Sympli to work in their—essentially, the foundation would be the PEXA platform. Maybe Sympli would have to use the same kind of technology to be able to work in that hub. I don't think that PEXA want to do that, but I don't care. At the end of the day, there should be competition so long as at all times my industry and my client is protected. I don't want to hear "it's too hard" by a bank. I don't want to hear that. It was much harder for us to learn and be on eConveyancing. We did it, and we were forced to do it. It was mandated. It was only a matter of time that this was going to happen. In the next 10 years, we might find another two or three people that want to come in and compete in this space as well.

**The Hon. SUSAN CARTER:** If I'm understanding what you're saying, the PEXA model could be that workspace but it would require—perhaps picking up some of Mr Argy's comments—some copyright licensing or some other compensation to PEXA for their development of their technology, but allowing access to other people to use that workspace. Is that what you're suggesting?

**JENNIE TONNER:** Yes. The way I look at it is like Telstra lines. As the competitors came in, they used the Telstra lines, but you had the choice of using Telstra, Vodafone or Optus.

**The Hon. SUSAN CARTER:** Mr Turner, do you have something to add to that?

**DALE TURNER:** I understand that, as part of the review through ARNECC, they are going to re-examine the different models—the bilateral model and the hub model. But there are some practical consequences, just imagining it. If one system goes down, the other system automatically takes over. From a coalface, practical point of view, I can't see that happening. There also might be some problems where, if the system goes down and the process of settlement has begun, and if that workspace is locked down and then somebody lodges a caveat from another interoperable system, that caveat is most likely going to prevent the registration of that transfer.

**JENNIE TONNER:** Indefeasibility is at risk.

**DALE TURNER:** That is absolutely devastating. I don't know how that can be dealt with technologically, but I just see that as one small but very practical consideration.

**JENNIE TONNER:** The beauty about eConveyancing is that we don't have time frames to settle like we used to on paper. If something went down, we could still be settling at eight o'clock at night. It could still get done. I think that has happened once in the time we've been on PEXA. If there are delays, 90 per cent of the time the delay is the bank and it gets fixed. We may be delayed three, four or five hours, but it will get settled. We can continue to settle after five o'clock. It's terrible for the client, because they're outside waiting to move in, but we can still get it settled. Previously, with paper, if it hadn't settled by four, that was it. It was moved to the next day.

**The CHAIR:** While we're on that, how often do you find that that's the case where you do have clients left waiting?

**JENNIE TONNER:** Every day. When we went onto eConveyancing—I've been around a long time, so you've got to understand: I was very scared about eConveyancing. I was used to a certificate of title and bank cheques and seeing a title. I wouldn't hand over cheques without seeing a physical title. It took this old bird a long time to get her head around it. The great thing is that I get paid instantly and I don't have to wait for cheques to clear, so that has been great for cashflow. But with paper, you set a time for settlement—two o'clock. Everyone turned up at settlement at two o'clock and it happened. If it didn't settle for any reason—someone had to run down the street, pick up or change a bank cheque and come back—it would settle at three.

The attitude of the banks on eConveyancing is it will settle at some point that day. We've now had CBA, for the last six months or so, getting invited to the workspace, whether they're discharging or incoming, and automatically moving the settlement to 3.00 p.m. I'm at a loss as to why CBA cannot provide funds before 3.00 p.m., other than that it's an internal thing for them. For their customer, that means that they are outside waiting to move in with their removalist—paying hourly fees, childcare fees, loss of work or whatever it is—until the bank will settle. A lot of banks will say, "We won't have funding till after two." That applied for ING, for example, when we had paper settlements. I am at a loss as to how banks in 2025 still can't get funding to be able to settle a

matter at 12 o'clock. We're not saying nine o'clock; we're saying 12 o'clock. They're automatically moving them to the afternoon. I think that's lazy. They have this attitude that, now that it's electronic, they can do it at any point of the day without considering the client.

**DALE TURNER:** May I make a suggestion as to what might go some way to resolving that problem? We do have model operating rules. The model operating rules in New South Wales are administered by the New South Wales Registrar General's office. However, those model operating rules are merely rules. They're not professional standards, and there's no enforcement provision against subscribers that don't comply with the model operating rules. And until there are some kind of enforcement provisions ensuring that there's a penalty if those subscribers—whether they be banks, conveyancers or lawyers—don't comply with those model operating rules, that problem is going to continue. But the banks are the worst offenders by a long, long way.

**The CHAIR:** Thank you. I'm very glad for that contribution. Mr Fang.

**The Hon. WES FANG:** You might be able to assist me here. I've had a look at the legislation, and the Electronic Conveyancing (Adoption of National Law) Act 18A states the ELNO is required to establish and maintain interoperability. Part 1 specifies some of the rules around that. Part 2 states:

The Registrar may waive compliance with the interoperability requirement if the Registrar is satisfied that granting the waiver is reasonably necessary in all the circumstances.

In those circumstances where we've got an ELNO that's not operating under the Act that says there must be interoperability, the registrar is effectively signing off on that interoperability because they realise that, as my colleague indicated, if we were to shut down the only e-conveyancing organisation, we'd all be going back to paper, titles and cheques. That would be the result. Is it the case that, if we're going to enforce this to happen, we may actually have to have the registrar say to PEXA, "We're going to shut you down in New South Wales. We're going to force this interoperability to occur, and if that doesn't happen, we're going to go back to paper, cheques and titles," and they'll miss out on that 80 per cent profit margin on—what did you say, Chair—\$300 million until such time as everyone gets on the same page? Is that something that we might have to do as a State to get this sorted out?

**RICHARD HARVEY:** Both ELNOs are currently operating under that waiver.

**The Hon. WES FANG:** Yes. This has to go across the board.

**RICHARD HARVEY:** At the stroke of a pen, the waiver could be not granted in the future. But, as you said, the consequences are, because e-conveyancing is mandatory, there's no alternative.

**The Hon. WES FANG:** But as we heard today, the Commonwealth Bank owns one-quarter of PEXA. If they're going to miss out on that one-quarter of 80 per cent of \$300 million—if that's their profit margin—that's a fair hit to their bottom line. They'll want to get this interoperability question sorted quickly, won't they?

**RICHARD HARVEY:** They might think that they can win any competition between the political intestinal fortitude and commercial intestinal fortitude to have that contingency happen.

**DALE TURNER:** Mr Fang, I was just going to say that the economic consequences of doing that are hundreds of millions of dollars literally going through that system every day as opposed to \$300-odd million. It makes the \$300 million really insignificant. It's a huge figure, but that's the kind of context that we're talking about here.

**The Hon. WES FANG:** I appreciate that, but it may be that we have to go through the pain to get everyone on the same page for a little while. Do you think it might have to come to that?

**DALE TURNER:** I certainly would hope not.

**The Hon. WES FANG:** You'd hope not. But is that a reasonable outcome if we can't get everyone on the same page? The Government has committed to this occurring by next month. Are we at the point now where people buying houses in January better plan to be going down to the bank to get bank cheques?

**DALE TURNER:** They're not going to settle until March if you do that.

**RICHARD HARVEY:** It's not practical, with respect. It's technically an option, as I said earlier, but you'd have to put it—

**The Hon. WES FANG:** It's the nuclear option, should we call it?

**RICHARD HARVEY:** It's certainly the nuclear option, but who gets hurt?

**The Hon. CAMERON MURPHY:** That's why it's appealing.

**RICHARD HARVEY:** It's mums and dads buying their houses.

**The Hon. WES FANG:** Why? To me, it's more likely going to be the people operating the transactions until such time as everybody gets on the same page. The mums and dads will still get their houses, won't they?

**JENNIE TONNER:** This is what frustrates me as a conveyancer, because we're talking about the profits that conveyancers would—we live off the smell of an oily rag. We don't have anything like that in our businesses. We are forced to charge fees a lot less than what we—for the work we do. We are actively trying to change that. But when I say, "I don't care if it's too hard, it's got to happen." We've got to sit at a table and start finding the solution to make this work because, quite frankly, I don't want to hear about them losing some of their 80 per cent profit when for years I had no profit, through COVID and post-COVID. No. At the end of the day, they are providing something, and it is a business, but it's not about them making money. This system is about conveyancing indefeasibility and the purchase and sale of real estate.

**DALE TURNER:** If you did that, most of the young lawyers and conveyancers wouldn't know how to operate in the paper system.

**JENNIE TONNER:** True.

**The CHAIR:** Good point. Meanwhile, I'm advised PEXA are making about \$1.8 million in profit every day or thereabouts.

**The Hon. MARK BANASIAK:** Mr Argy, you spoke about in your opening statement about ARNECC not necessarily being the best regulator. Is it your view that we should throw the baby out with the bathwater and set up a new regulator, or should we try to whip ARNECC into shape? You said that they've been given this huge remit, but they're not really acting to their full potential. Do we give it to someone else or do we whip them into shape? If we do give it to someone else, who would that be? Please don't say the ACCC.

**PHILIP ARGY:** The two options are to graft onto ARNECC the additional wherewithal to cover the things that they don't have expertise in, such as a lot of the technical issues or intellectual property issues, so that they have the internal expertise to be able to regulate in a fully informed way. The other option would be all the States and Territories agree to give power to the Commonwealth Parliament to have some specific—for example, a Federal eConveyancing national law, which has constitutional power to deal with all these issues. These aren't trivial solutions, but they're technical and theoretical options.

Can I just quickly, with your indulgence, Mr Chairman, pick up my colleague's reference to hub. The word "hub" is used in two quite different senses. When we had some technical working groups looking at how connections would occur between ELNOs and land titles office, State revenue and all of that, there was the potential for two, three, four or more ELNOs. In that context, it was regarded as impractical for each ELNO to have its own connection with each of those places. It was decided that, for the time being, PEXA is the only one so they can effectively have a private connection.

If one more comes on, it's probably okay if they have their own as well, because there are only two. But if you go beyond that, a better solution is to now have an independently operated communications hub—maybe government-operated—to which all ELNOs would connect, and then that operator would put in place preferably two, maybe even three, connections to everybody and be able to use whichever one was working at the time. That's the original conception of a hub. Hub in the sense of a common workspace is not currently in place, and we would absolutely not support that.

**The CHAIR:** Thank you all for your time today and for the evidence. I don't believe any questions were taken on notice, but if there is anything to follow up, the secretariat will be in touch.

**(The witnesses withdrew.)**

**(Short adjournment)**

**Mr CRAIG EVANS**, Head of Economic Policy, Australian Banking Association, affirmed and examined

**The CHAIR:** Welcome, Mr Evans. Thank you for making time today to give evidence. Would you like to make an opening statement?

**CRAIG EVANS:** I would, Chair, thank you. Thank you, Chair and members of the Committee, for the opportunity to appear today on behalf of the Australian Banking Association and on behalf of our members. The ABA represents 20 ADIs from across Australia, including the four major banks, regional banks and international banks with an Australian banking licence. The ABA welcomes this inquiry and appreciates the chance to contribute to the Committee's consideration of competition reforms in eConveyancing.

The banking industry is strongly supportive of eConveyancing. Digital settlements have been a major innovation, reducing delays and delivering real benefits across the property ecosystem. At its simplest, eConveyancing replaces paper files and couriers with a secure digital process that brings together the two major steps in a property transaction: the transfer of funds between a buyer and seller, and the updating of property ownership and mortgages on State land title registers. What used to take days can now be completed in minutes, and this innovation has reduced fraud, improved compliance and increased the chances that Australians will settle on time and move into their homes when expected.

Our members have worked closely with State and Territory governments to expand digital transactions and increase national consistency. However, because land and property law is State based, inconsistencies across jurisdictions continue to impair efficiency. While there is a clear opportunity for the Commonwealth to play a stronger role in driving harmonisation, we would also welcome consideration of how the New South Wales Government can play a role in working towards a nationally consistent eConveyancing regulatory framework. A nationally consistent framework would reduce complexity, improve efficiency and ensure reforms deliver lasting benefits to all Australians, including the people of New South Wales. At its heart, reform in eConveyancing should be judged by its ability to support timely settlements, minimise risk and provide certainty for home buyers.

Since 2019, the ABA has actively participated in government processes to introduce competition through interoperability. Our members have invested significant time and resources in workshops, industry panels and State inquiries, and provided ongoing feedback to ARNECC on the functional requirements that must be met for the program to succeed. But our support has always been conditional. We would only support interoperability if the issues we have consistently raised from the beginning are addressed: namely, that any new framework must be functionally equivalent to the current process, must not introduce new risks to on-time settlement and must not degrade the customer experience. Despite six years of engagement and investment, these core concerns remain unresolved, particularly around functionality, integration and settlement reliability. These are not theoretical risks.

The success of eConveyancing has been built on deep integration and automation, which has underpinned the strong performance that we've seen. We therefore welcome ARNECC's decision to pause the program and initiate a review alongside a second cost-benefit analysis. These processes provide a vital opportunity to determine whether interoperability can deliver on its promise and to resolve the issues that we have consistently highlighted. We look forward to seeing the results of these important reviews to help guide the path forward. I'm very happy to take any questions you may have.

**The CHAIR:** Thank you very much. Mr Banasiak?

**The Hon. MARK BANASIAK:** Thanks, Chair. I chaired the initial inquiry into the original bill that kicked all this off. Obviously, the ABA appeared and its members participated as well. You were all very hot to trot. There didn't seem to be any conditions placed on that excitement about the process. What has changed since that inquiry to form your view that there are concerns around functional equivalence?

**CRAIG EVANS:** We've always had the concern that we do not want to see a step back in the success of eConveyancing and a decline in the amount of settlements and the safe and efficient process in doing that, and we've always had a concern that the scope of what eConveyancing was looking at was limited initially just to the actual title transfer and not to the financial or the fund settlement aspects of it. Until you had the kind of united process that considered both the settlement of the title as well as settlement of funds, you could not necessarily achieve the outcomes that we want. The goal of interoperability, we have always supported. But we've always made sure that we want to see that provided we don't see any degradation in the consumer experience.

**The Hon. MARK BANASIAK:** Have you seen or experienced Sympli's model working firsthand? If you have, where are the deficiencies, in the ABA's view, in that system?

**CRAIG EVANS:** The ABA does not enter into any transactions. We don't have relationships with PEXA or Sympli; our member banks have those relationships.

**The Hon. MARK BANASIAK:** Have your member banks seen Sympli's process or application or program in action? What are their specific concerns around functional equivalence?

**CRAIG EVANS:** The concerns are around the process of interoperability. It's the concerns about whether or not—since eConveyancing has come in, banks have worked closely with the incumbent ELNO, PEXA, to deliver a lot of processes, systems and triggers that have allowed them to put in place systems to meet electronic conveyancing and settlement of documents when they occur. That has seen to an increase in the amount of settlements that are occurring, without any issues and on time. Those improvements have come through eConveyancing. The concern that our members have is that unless those systems that we have built up through working with PEXA are not replicated when using Sympli, then we will not have the equivalent experience. There may be a greater risk of failure.

**The Hon. MARK BANASIAK:** I just want to press you further in terms of specificity. You've given us the surface level. What is it in Sympli's experience and system that isn't equivalent to PEXA in terms of delivering that? What is missing, specifically? What is missing in their product?

**CRAIG EVANS:** These questions will be covered by the functional requirements review that ARNECC is looking into. But essentially, there are other triggers and systems that are put in place by banks that they get the warning through—

**The Hon. MARK BANASIAK:** But your banks, your associated members, have put out this concern that there isn't functional equivalence, so they must know what they've told the mob that are doing this review. They must have provided inputs to that review. I'm asking, what are their specific concerns about Sympli's product?

**CRAIG EVANS:** I'm not an expert in what the actual specifics are. Those are matters for the individual banks who have been working closely with Sympli and with the reviewers. They have been all put in—those issues have been raised throughout that review, and that will be the process to outline what those concerns are.

**The Hon. MARK BANASIAK:** Are you able to go away and take it on notice and get that information from your members about what some specific concerns are?

**CRAIG EVANS:** To the extent that we will be able to answer those questions, I'm very happy to.

**Ms ABIGAIL BOYD:** I think there's a little bit of confusion over what interoperability is and what the problem is with bringing on multiple entrants, so could we just drill down into the process? My understanding is that CBA, who is now quite a large shareholder in PEXA, was involved in developing when eConveyancing first came in, making sure that link with the banks was tight and secure and did everything it needed to do. My understanding, and I'm asking you to correct me if I'm wrong, is that what a new entrant now has the option of doing is either reinventing the wheel—going through that day one process again with banks that perhaps have no incentive to do that with them—or to simply take what's been done with PEXA and replicate that across. My understanding is PEXA's not willing to give that across. Is that the heart of the issue, here?

**CRAIG EVANS:** Essentially, on the second part of your question, yes. Essentially the issue is those systems have been built up in terms of working with the incumbent, or with PEXA, and that has made the system for banks a very successful one in terms of reaching their targets and making sure that settlement occurs in a safe, efficient way. In terms of how that can be delivered via Sympli, or via an alternative ELNO—yes, essentially we want to ensure that there is functional equivalence, that those same processes are in place, because that has led to an increased customer experience, it's led to banks being able to do things in a way that has ensured that all of these settlements are occurring on time, and we want to maintain that same level of standards. As to how that can be delivered, that's the functional requirements review that ARNECC has undertaken—is looking into.

**Ms ABIGAIL BOYD:** It makes perfect financial sense if you're a bank at day one, before eConveyancing is live and you're interested in making sure that transactions work, there's plenty of incentive to engage with PEXA to develop that system in the first place. But when it comes to what incentive the banks then have to help a new entrant in, there's no real financial kind of motivation. So what needs to happen if PEXA doesn't just give across that technology? What needs to happen for the banks to want to participate?

**CRAIG EVANS:** In some ways, irrespective of any financial considerations, what we are primarily concerned about is that there's not a decline in settlement rates, there's not a degradation of the consumer experience. So what we want to see certainty of is—through that functional requirements review, the technical experts that are being engaged—confidence that if interoperability were to be implemented that it would be safe, efficient and effective. That there would not be a decline in the consumer experience. That is ultimately what we want to see, and that's why we're very much looking forward to the results of that review.

**Ms ABIGAIL BOYD:** From the bank's perspective, if PEXA just handed over the code to new entrants, you would be indifferent as to—

**CRAIG EVANS:** If it led to the same experiences as shown, and the same consumer outcomes, that is fine. We support competition. It's just that we want to make sure that it works.

**Ms ABIGAIL BOYD:** If PEXA doesn't hand it over and they're not made to—I'm asking you to maybe go against the interests of your members, but is the answer then for Parliament to legislate for banks to just have to prepare, or have to do this with each entrant?

**CRAIG EVANS:** In some ways I want to take a bit of a step back on that question in a sense. What is the ultimate aim of interoperability and, ultimately, competition? It's an improved consumer experience. What we have said is if that path cannot be delivered through interoperability, there are alternative ways that you could look at improving the consumer experience. That might involve enhanced regulation, it might involve PEXA, it could involve other things. What we want to say is, take a step back. What do we want to achieve which is a better consumer outcome through the process, and is interoperability the best way of delivering it? It may be, if it can be delivered in a safe and effective way, but if it that can't be delivered in a safe, efficient and effective way, then we think the risk of settlement failures and other concerns would actually not outweigh any benefits caused by interoperability.

**Ms ABIGAIL BOYD:** But if it is the best—put it aside as to whether or not that's your opinion. If interoperability is what we want to get towards and if you put yourself in our position as legislators, are our levers really to either make PEXA share their code or make the banks come to the table and do this process with every single new entrant?

**CRAIG EVANS:** To come back to the first aspect of your question, it's not personal opinion. We want to see what the functional requirements review says as to whether or not it's the best way to achieve that. My understanding is that the New South Wales Government currently has powers to be able to compel ELNOs to act in a way consistent with interoperability. They have chosen not to use that, or have not used it so far. It is a matter for government as to what they want to do. What we would want to encourage is that any decisions are taken in the full context of not leading to an increase in settlement failures, not leading to worse consumer outcomes, and being very aware of what the costs of any of those actions would be.

**Ms ABIGAIL BOYD:** It seems easily solvable, then, by us just using our lever to make PEXA do the thing.

**CRAIG EVANS:** I'm not an IP lawyer. I'm sure you could ask PEXA or others later on today—

**The Hon. WES FANG:** We will.

**CRAIG EVANS:** —and they might give different views as to whether or not there are costs involved with that action. That's not a matter for me to be involved in.

**The CHAIR:** You have mentioned functionality a few times, particularly in your opening statement, Mr Evans. Are you able to expand, for the benefit of members, on what kind of functionality PEXA has through the banks' eyes, through your members' eyes, that isn't being met by anyone else?

**CRAIG EVANS:** One of the key factors, as I said before, that has enabled banks to complete many eConveyancing transactions and settlements without delay is the degree to which bank platforms have been tightly integrated with the user interface, features and triggers that PEXA have developed over the years. The banks' close system integration with these additional functionalities has greatly supported managing and preparing a large number of transactions in a timely matter. I believe that PEXA, at least in their submission to the Senate inquiry into these issues, did outline some of the functionalities that have been listed there, such as auto balance, and there are some of the features that have been put in place there. I think that probably would give a better coverage of some of those functionalities in specifics than I would be able to. But, essentially, our position is that IOP must result in an equal or higher standard of service for customers and, again, that whatever has been developed by PEXA and bank systems has been designed to deliver to that high standard is a functional equivalent, as will be provided by any alternative ELNO.

**The CHAIR:** This hasn't been brought up as yet, but have you explored in your role the possibility of blockchain being implemented in the future in this process?

**CRAIG EVANS:** I don't believe so, not the ABA. I can't speak on behalf of all members, but not the ABA.

**The CHAIR:** That's understood. What would be the view of the ABA should there be a multi-day outage with the current PEXA platform? We heard from witnesses—conveyancers—this morning, and we have heard through submissions, that basically a lot of conveyancers are very happy that they don't have to deal with paper and cheques anymore. They're happy with PEXA. It seems to me like they're concerned with any real change.

There's always reluctance to change. But do we not have a risk at the moment where there's really one large player that almost all conveyancers are signed up to? What should happen if that domino were to fall?

**CRAIG EVANS:** There are a few issues in that. Essentially, banks deal with single points of failure across a whole range of things, not just in property settlements but an entire range of things. We have processes and contingencies in place to be able to respond to outages in certain cases. My understanding is that there have been very few outages of any substantial time so far through the PEXA process. And, again, sometimes the outages that occur are not necessarily the PEXA system but they are from related or other parties to the system. My understanding is that PEXA is covered by the Security of Critical Infrastructure Act and has some responsibilities in terms of ensuring that they meet the standards and are able to get up and running or limit downtime under that Act. I think we have confidence and faith that, if you're covered by the SOCI Act, there is an ability to respond.

**The CHAIR:** One last question from me before I hand over to the Opposition for questions. Has the ABA received any legal letters from PEXA in regards to its IP?

**CRAIG EVANS:** No, we have not.

**The CHAIR:** Are you aware of member banks that have?

**CRAIG EVANS:** I am aware of that. I believe some of those might have been—or one of those might have been—included in some of the submissions that have been put forward to this inquiry and also to the Senate inquiry.

**The Hon. WES FANG:** Mr Evans, in your opening statement you indicated that the support for interoperability was contingent on the fact that the member banks of yours would not like to see a change in the functionality and the customer service experience. Is that correct?

**CRAIG EVANS:** It's contingent on functional equivalency being maintained in a safe way, yes.

**The Hon. WES FANG:** Ms Abigail Boyd asked you about the levers that we can potentially pull. She indicated that there may be a circumstance where the Parliament has to enforce the competition aspects with the banks. If that's the case, and we indicate that we require your member banks to interface with players other than PEXA—regardless of how that interface works—and the Parliament legislates that way, your members will comply with the legislation, correct?

**CRAIG EVANS:** Our members will always work within legislative requirements. I assume you're referring to the IP issues? I'm just not sure.

**The Hon. WES FANG:** No. What I'm saying is that in circumstances where PEXA may claim that they have IP ownership over the interface that's currently in place between the banks and their system, and in circumstances where that has refused access to other players, the Parliament may require that the banks interface with another player in the eConveyancing space regardless of how their interface works. If it's legislated, your members will comply. That is correct, isn't it?

**CRAIG EVANS:** We will always comply with legislative requirements. Although, if I might, Mr Wang—Fang—I just point out—

**The Hon. WES FANG:** Did you just say "Wang"?

**CRAIG EVANS:** Sorry, I saw "Wes".

**The Hon. WES FANG:** That's twice in a week!

**CRAIG EVANS:** I was going to say "Mr Wes Fang". My apologies.

**The CHAIR:** It's only Wednesday.

**The Hon. WES FANG:** I know. It happened on Monday too.

**CRAIG EVANS:** I'm sorry. I do wonder why you would look to legislate additional requirements on any other player when the existing law already has the power to compel that from existing ELNOs.

**The Hon. WES FANG:** The reason I'm asking the question is because at the moment it just seems like there are a lot of children in a big cot and we can't get them to play nicely together. In circumstances where the kids aren't playing nicely, perhaps the Parliament needs to come in and start wielding a big spoon and make everyone play nicely. At the moment, given that we've got all these little factional issues that are occurring and we can't get people to play nicely, that may be what we have to do.

**The Hon. GREG DONNELLY:** That's the Coalition, Wes.

**The Hon. WES FANG:** No, thank you, Mr Donnelly. Your factions are just as bad.

**The CHAIR:** Ignore the interjection.

**The Hon. WES FANG:** Mr Evans, what I'm seeking to understand—and I put the nuclear question to a number of other witnesses today—is how far do we have to go before we're going to see competition in this space, given that it's legislated at the moment? As far back as 2018, the New South Wales Government—through either Labor or the Coalition in government—has indicated that it wants competition in this space. How long is it going to take? Is it going to take this Parliament to get everyone to play nicely? Are we going to have to wield the big stick and make sure that it hurts, or are you going to start to all play nicely together and encourage your members to do likewise?

**CRAIG EVANS:** I would note that one of the reviews that ARNECC is currently undertaking is into the governance of the regulatory framework. We would obviously want to see what the results of that review are in terms of whether there are improvements that could be made to the regulatory framework. Again, the other thing I would do, as I said earlier, is to take a step back. You want to make sure that any changes that are considered are not adding additional costs into the system and are actually driving benefits for consumers. I did catch a bit of the previous section in terms of the nuclear option, as you outlined. That would have significant decline in the experience for consumers, and we would not think that would be the best option in terms of driving it.

**The Hon. WES FANG:** Think of it like interest rates: short-term pain, long-term gain, right?

**CRAIG EVANS:** Again, I suppose that's why I would say, as I've said before, there are alternate measures to improving consumer outcomes other than interoperability.

**The Hon. WES FANG:** Seven years and we haven't been able to get everyone to play nicely together yet.

**CRAIG EVANS:** I suppose one of the reasons it's taken seven years is that resolving these issues are not simple matters. That's why the functional requirements review that is being—

**The Hon. WES FANG:** No, but all of a sudden, I suspect, if we pulled the nuclear option, they'd be resolved pretty quickly.

**CRAIG EVANS:** I'm not sure that they would necessarily be resolved in a way that would lead to—

**The Hon. WES FANG:** Then I hope your members have lots of bank cheques.

**CRAIG EVANS:** —safe, effective and efficient property settlements.

**The Hon. SUSAN CARTER:** Mr Evans, I'm curious about page 6 of your submission, where you refer to the transfer of technical and data standards from PEXA to NECDS Limited. Does that mean that NECDS Limited—or, effectively, the regulator—actually now has what's been referred to as the codes and could provide them to other operators in the field?

**CRAIG EVANS:** I have to admit, I'm not a technical expert in this. But the reason we raised it in our submission is around the kind of transparency around pricing matters.

**The Hon. SUSAN CARTER:** I understand that, but what I'm really interested in is what is the effect of this transfer, and does this mean that PEXA have already provided the technical keys to their system to the regulator, in which case presumably the regulator could also provide those to other players to ensure interoperability?

**CRAIG EVANS:** I might need to take that on notice to make sure that I provide you with an accurate answer to that. You might also follow up with PEXA and others later.

**The Hon. SUSAN CARTER:** If you could take it on notice, I'd be very grateful.

**The Hon. CAMERON MURPHY:** Mr Evans, it seems to me that really PEXA should not have been privatised by the previous Government without putting in place a competition framework ahead of that that really dealt with interoperability and these other measures. But that horse has now bolted. We're dealing with a monopoly in its position of power. Do we need national reforms to fix this problem? It seems as though the State can only go so far but, as other witnesses today have suggested, it also requires oversight of the financial settlement aspects of eConveyancing. It may require the Commonwealth to do things in relation to intellectual property. Is it something that we could perhaps drive but we also require a national framework—the Commonwealth and other States involved in sorting out how this works?

**CRAIG EVANS:** I would suggest that is one of the things that is most likely being considered by the governance review that ARNECC is undertaking. Ultimately, this process has been going on for quite a number of years. Resources have been put into achieving interoperability. I do wonder, taking a step back, if we were to

try and go on a different path, how long will it take to go down that path as well. If we were to take a step back and say, "What other sort of ways could we try and design a regulatory framework to try and achieve interoperability?", that is unlikely to be achieved in the near term. That's part of the reason why—

**The Hon. CAMERON MURPHY:** So what are the alternatives? Should we just nationalise PEXA and regulate it?

**CRAIG EVANS:** I would probably assume that, in terms of the intellectual property rights around that, the just compensation—that would impose its own costs. That sort of thing would need to be investigated. But in terms of enhanced regulation, that is something that we've borne out. There are powers that State governments have, including New South Wales, that can be used to do enhanced regulation. That might be a better way of achieving better consumer outcomes in the absence of the functional requirements review finding that interoperability can be established.

**The Hon. JACQUI MUNRO:** I think the Premier has already committed to competition in this space, so that would be interesting. You've helpfully provided a timeline. Particularly in the last year, there have been some changes to how that timeline has been rolling out. You note that the ARNECC functional requirements review and the cost-benefit analysis were due to conclude in late October. We're past that now. Are you aware of where that review is up to?

**CRAIG EVANS:** ARNECC did put out a statement on this a couple of weeks ago. My understanding is that they will be receiving the reports in November, I think; it was made clear there. They did not at that time make a commitment to release those reports, but I believe they did suggest that they will be doing some additional consultation with stakeholders at that time. We are obviously very interested in finding out what the results of those reviews are because they will provide the next steps on what might be necessary to achieve interoperability or might provide a greater picture of how easy/difficult it might be to do that. We obviously want to see what that has got to say, and also the cost-benefit analysis as well.

**The Hon. JACQUI MUNRO:** Has ARNECC reached out to you since that statement with any future timeline around further stakeholder engagement?

**CRAIG EVANS:** No, not to the best of my knowledge.

**The Hon. JACQUI MUNRO:** Do you expect that they will reach out to you as a key stakeholder?

**CRAIG EVANS:** I would hope, if they are conducting additional stakeholder consultation, that we or our members will be provided with an update on where that is, but we have not received any guidance as of yet.

**The Hon. JACQUI MUNRO:** Have your members expressed any concerns about the funding that ARNECC has, where it comes from or the level of funding, whether it's adequate or not?

**CRAIG EVANS:** This was a matter that was discussed, I think, at the Senate inquiry recently. I don't think we have a position on that; this is a matter for governments. But obviously a fully resourced and effective ARNECC would be a good outcome.

**The Hon. JACQUI MUNRO:** So your members haven't expressed a particular view about whether they think ARNECC is adequately resourced for their engagement?

**CRAIG EVANS:** I do not believe so, but I can check to see whether or not there have been any public statements on that.

**The Hon. AILEEN MacDONALD:** In your submission, you say settlements may fail under interoperability. I was just wondering, what evidence do you have that some settlements would fail? Where has that evidence come from?

**CRAIG EVANS:** My understanding is that our members—well, this has come from feedback from our members. Their view is that there will be increased risks of failure because of that, and that there is an increased chance that, if the systems are not put in place as they currently are, under a new system different flags will not necessarily be met, different systems will not be set, and therefore some of the steps that we need to take to ensure that things are occurring on time would not be taken if they're not designed in the same way.

**The Hon. AILEEN MacDONALD:** Was this evidence verbally conveyed to you or has it been supplied to you in writing from your members? Where did they get their evidence?

**CRAIG EVANS:** That was conveyed to us through the ABA. But in terms of how they formed those opinions, in some ways, that is a question for the individual banks, not for the ABA.

**The CHAIR:** Thank you, Mr Evans, for your time today and for your answers. I do believe at least one question was taken on notice. The secretariat will contact you in relation to those questions. Thank you again.

**(The witness withdrew.)**

**Mr ANDY WHITE**, Chief Executive Officer, Australian Payments Network, affirmed and examined

**The CHAIR:** I welcome our next witness. Thank you for making time today. Do you have an opening statement you'd like to make?

**ANDY WHITE:** I do. I will keep it brief and then open up for questions. As you hopefully know, we are the industry association and self-regulatory body for the Australian payments industry. We currently have more than 160 members, including financial institutions; non-banks; payment service providers; payment system operators like Swift, the NPP, Mastercard, Visa and so on; major retailers like Coles and Woolworths; and financial technology companies, both big—for example, PayPal and Google—and small, so what would commonly be called paytechs or fintechs.

The aspect of our role most relevant to this inquiry is that we manage and develop standards and guidelines governing payments in Australia. As an example of that, we set rules on card payments that bring together card schemes and financial institutions to ensure that those payments in Australia are secure, interoperable and accessible, and that we combat card fraud. Linked to that, following a request from the Council of Financial Regulators, we developed with the support of the conveyancing industry—so that's both the ELNOs and financial institutions—the eConveyancing Payments Industry Code in 2023. That code establishes a framework for self-regulation of the payment or financial settlement aspects of eConveyancing transactions between ELNOs and financial institutions. As an important aside, our remit doesn't extend to non-payment aspects of eConveyancing or the broader market structure and competition issues that are the focus of this inquiry.

That said, though, the New South Wales government's Productivity and Equality Commission's June 2024 *eConveyancing market study* noted the code and that it provides regulations and operating procedures to ensure that all parties involved in eConveyancing financial transactions have a common set of rules and mutually understood obligations. I won't go into the detail of that code now, but I'm more than happy to go where your questions take me if you'd like me to do so. For now, though, I'll note a couple of things about the code. The first is that it will apply to single ELNO eConveyancing transactions, so transactions through ELNOs today, and later to multiple ELNO transactions when interoperability is implemented.

I'd also note that in late February 2025 ARNECC announced that ELNOs would be required to obtain and maintain membership of the industry code. We used that as a trigger to open the industry code for membership to both ELNOs and financial institutions following consultation with ARNECC and other significant stakeholders, including regulators such as the RBA and the ACCC. We're now at the stage where ELNOs and banks are joining the code as members, and we expect to have the first meeting of the management committee that will oversee the code before the end of this year. I'll stop there.

**The Hon. CAMERON MURPHY:** Mr White, we heard evidence earlier from the Australian Institute of Conveyancers' New South Wales branch, and they were saying that one of the biggest problems causing delays in settlement was the banks not following the code. The example that was given was that the Commonwealth Bank just won't provide funding for a settlement before 3.00 p.m. What's done to enforce the code and those financial settlements, that part of the whole settlement process?

**ANDY WHITE:** As I said in my opening remarks, the code is nascent in the sense that it isn't enforced yet, but we expect to have the first meeting of the management committee before the end of this year. The way that that enforcement works will then be classic self-regulation between the members of that code, so that will include the ELNOs and the financial institutions. I'm not aware of that issue personally, but if that issue is occurring and is relevant to the operation of the code, then it would get raised with that management committee and dealt with there.

**The Hon. CAMERON MURPHY:** But at the moment it's just voluntary compliance. There's no enforcement mechanism at all.

**ANDY WHITE:** It's not even that yet because the code isn't stood up until that management committee meets for the first time.

**The Hon. AILEEN MacDONALD:** How does the eConveyancing payments industry code ensure systems resilience during payment outages or errors?

**ANDY WHITE:** There's a link between that and the wider work that we do around payments resilience. We operate what we call "incident calls" and "crisis calls" for industry whenever we see a payment system out. That relates to the actual payment systems that transactions are settled through, whether that's cards or accounts or account payments like our BEC system or the NPP system. We would pull together those crisis calls. It's important to emphasise that that doesn't cover wider resilience questions. So, for example, if there's an outage at

an ELNO, that isn't covered by those crisis calls; we're very focused in on the payment system. That said, another piece of work that we are currently leading relates to what we call the Industry Resilience Initiative. That feeds into another piece of work being led by the Council of Financial Regulators. At the moment, that is focused on scenarios like bank outages and could potentially go to the kind of question that you're exploring in terms of wider system outages, but we're not there yet.

**The Hon. AILEEN MacDONALD:** What about the code's readiness to support interoperability? Is it ready now, if someone says, "Yes, we're ready to go"?

**ANDY WHITE:** It is. The way that we thought about that in the development of the code was twofold. The code goes into elements such as messaging standards—the messages that transfer the payment itself; it goes into mistaken payments; it goes into the security of the payment messages et cetera. The way we thought about all of those concepts was that we grandfathered in connections that were currently being used by the industry today—so, that is, both the connections that financial institutions would have to PEXA and vice versa, and the connections that have been specified by Sympli as well. Those were grandfathered, and then those specifications were also used as a basis for a minimum standard for other potential connections.

The Committee would be aware of a third mooted ELNO, for example. Were a third ELNO to come into the market, then an option for them is to use the minimum standard specified in the code, at which point interoperability would be supported with the wider ecosystem—this is an important caveat—for financial settlement for the payment aspect. I can't talk to wider eConveyancing. So, absolutely, it would support interoperability. Another option for that potential third ELNO would be that they have specifications that they use themselves, at which point we would need to update the code to support those specifications.

**The Hon. AILEEN MacDONALD:** Are you testing the code at the moment? How are you ensuring that it does work?

**ANDY WHITE:** The way that the code has been developed has been through a pretty exhaustive set of collaboration with the financial institutions and the ELNOs—so not system testing, if I can call it that. But what we've done is, through the development, made sure that those specifications work for all of the players. We know that those specifications, as I say, are either grandfathered existing connections or set a minimum standard that can be used more universally.

**The Hon. AILEEN MacDONALD:** Would that standard enhance overall market fairness?

**ANDY WHITE:** We see it as supporting the competition aims, within the limited remit that we're only here, as I said, talking about the payment or financial settlement aspects. But it certainly enables competition. That's true to our wider role in the payments industry. We don't step into the competitive domain, but what we do is standardise the collaborative domain so that then any industry player can compete on that basis. That's really the benefit of setting those minimum standards. They can be exceeded if people can add competitive benefit to them, but the minimum standard ensures that competition is supported.

**The Hon. AILEEN MacDONALD:** As far as you're aware, would the standards be interacting with the enforcement powers of the Registrar General or ARNECC?

**ANDY WHITE:** The reason that the Council of Financial Regulators asked us to set up the industry code was that—and I think the previous witness talked to the ARNECC governance review, so this may change the view in this space—ARNECC traditionally had the view that it didn't cover financial settlement, so there was, if you like, a regulatory gap. That's why we've created the code. But the beauty of what I described in my opening statement, of ARNECC insisting that ELNOs are members of the industry code, is ultimately there's a sort of step up there. If an ELNO isn't meeting its requirements under the code, then potentially we could raise that with ARNECC in due course. And it's important as well to mention that from a payments perspective more broadly, we obviously work very closely with bodies like the Reserve Bank, so there's a potential step up in that regard as well.

**The Hon. AILEEN MacDONALD:** I just have one more question. I'm thinking about small conveyancers or regional players. What do you think the direct benefits would be in the standardisation?

**ANDY WHITE:** This almost goes back to your first question, which was a very good question, in the way that we thought about the code. In an ideal world, you would have everybody using the standard so that then it becomes completely interoperable and everybody's on the same basis. I think we recognise the need pragmatically to grandfather the existing connections, rather than try and move everybody to the standard in one hit. But that's the opportunity, that those players—who I would note will predominantly be connecting indirectly anyway—can benefit from that standard.

**The Hon. AILEEN MacDONALD:** I do have one more question, sorry. Do you think that the code's compliance framework should be recognised in legislation, or should we leave that alone?

**ANDY WHITE:** I think we have everything that we need for the code to work today. The step that I outlined of ARNECC making membership of the code mandatory for all ELNOs was critical because it ensured that those owners—and as I said earlier, they are now joining AusPayNet as members—would be beholden to the code and that there is enforceability via ARNECC if they don't meet the standards within the code. It also provided a trigger for financial institutions to join, because otherwise they can't perform their role within the wider network because they're a connecting institution; it's the only way for them to process those payments. So that works from an ecosystem perspective. I don't think we really need anything beyond that from the legislative perspective. I think it could be a negative step to add it to legislation in the sense that you then hardwire something that at the moment is agile and can move as it needs to.

**The Hon. AILEEN MacDONALD:** That's what I thought.

**The Hon. WES FANG:** Thank you for appearing, Mr White. In relation to your members, we've heard evidence today that where there are outages and perhaps multi-day outages, there's obviously an inability to transact. I imagine that a lot of your members would be digital-only in the way that they interact. Those multi-day outages would impact your members as well, wouldn't they?

**ANDY WHITE:** They would, from a financial transaction perspective, yes.

**The Hon. WES FANG:** Have they provided you any feedback in relation to the impacts to them when there are multi-day outages in the PEXA platform?

**ANDY WHITE:** They haven't. I'm only aware of those outages from what I've read in the press.

**The Hon. WES FANG:** What would be the effects?

**ANDY WHITE:** It would be an impact on their customers, ultimately. Obviously, without the financial settlement aspect, those conveyancing transactions can't go through. As I said earlier, I think if that is an issue, I would expect that to be raised in the management committee when it meets.

**The Hon. WES FANG:** In previous times where we didn't have eConveyancing—we heard from some of the people that were, I guess, in the paper realm of conveyancing transactions. They indicated that there were obviously bank cheques that were being run around and the like. Where you've got members that have a digital-only presence, that would be almost impossible for them to operate. That would be correct, wouldn't it?

**ANDY WHITE:** That's correct. I should point out as well that one of the programs of work that we're running at the moment is the orderly wind-down of the cheque system. There is a Commonwealth Government published timeline on that for the end of issuance of cheques in 2028 and acceptance of cheques by 2029. The digital landscape that you describe is going to be the way forward, not just for eConveyancing but relevant to eConveyancing.

**The Hon. WES FANG:** In circumstances where we would require everyone to play nicely, as I've mentioned previously, and that perhaps doesn't happen and we end up with a circumstance where we have to go back to paper cheques and paper titles and people meeting in one room to transact properties, that would cut out a lot of your members' ability to actually engage in that space, would it not?

**ANDY WHITE:** If we fast forward to the end of cheques in 2029, effectively there wouldn't be an option to go non-digital.

**The Hon. WES FANG:** If we're going to pull the trigger, you're saying we need to do it now while we've got cheques still available and we can force at least some people to do it the manual way?

**ANDY WHITE:** No, I'm not saying that.

**The Hon. WES FANG:** I said that.

**ANDY WHITE:** What I'm saying is that you would need to consider—if the view is that interoperability isn't going to work, then we would need to come up with another digital mechanism.

**The Hon. WES FANG:** I know you said that we need to consider. I suspect that we're not the only ones that might need to consider that and that there might be a number of other players who might need to consider the nuclear option, depending on how serious this Committee and the Parliament decides that we need to take the matter.

**ANDY WHITE:** Correct. This is not an issue that AusPayNet gets involved in, but I'll give you my personal view, for what it's worth. I think that there has been a view that interoperability is the way to go to get

competition in the eConveyancing market, and that competition is the policy objective. In the world you describe, that policy objective is threatened and, therefore, you would need to rethink from that basis what is the new objective and what is the correct market structure.

**The Hon. MARK BANASIAK:** When we've been discussing this issue we've heard a lot about concerns around resilience and potential outages and system failures if we allow another operator into the market. That has largely been quite vague and no-one can really pinpoint what is the deficiency in the potential competitor interface that is causing that concern. Can you provide any clarity with regards to what are specific concerns around Sympli's interface in terms of being deficient compared to PEXA, based on your working on the code?

**ANDY WHITE:** No, unfortunately not. The reason that the industry code thinks about different specifications that need to be grandfathered is that some of those do differ between PEXA and Sympli. But that's the limit of my knowledge.

**The CHAIR:** Thank you, Mr White, for your time today. It is much appreciated. I don't think any questions have been taken on notice but, if so, the secretariat will follow up with you.

**(The witness withdrew.)**

**Mr JOHN AHERN**, Chief Executive Officer, InfoTrack Pty Ltd, sworn and examined

**The CHAIR:** Welcome, Mr Ahern, and thank you for making the time to give evidence today. Do you have an opening statement you would like to give?

**JOHN AHERN:** I do. Thank you, honourable members, for the opportunity to talk with you today. I have served as CEO of InfoTrack for over 10 years. InfoTrack has served the legal and conveyancing community in Australia for over 25 years. I represent today the shareholders of Sympli. I'm happy to take questions on our submission. I would also like to table a number of documents, which I have already provided to the secretariat. Some additional context for today: As we've stated and heard many times today, in property settlements in New South Wales, due to government mandates, lawyers, conveyancers and banks have no choice but to use PEXA. With bipartisan support, competition through interoperability was legislated in New South Wales in 2022. Uniquely in Australia, New South Wales has enforcement powers and we have pricing powers. We have a very simple ask. We need the New South Wales Government to make good on its commitment to deliver competition with an enforceable date for interoperability.

As we have heard various times today, for background, when government mandates came in 2017, the New South Wales Government created the PEXA monopoly. At that time, they mandated that banks, lawyers and conveyancers all needed to onboard, train and use the PEXA platform. I note that at that time the banks weren't talking about functional equivalency. The banks were shareholders. In 2019 the ACCC market study determined that interoperability was the best way to deliver competition to the market. As we love this industry, we saw the opportunity to deliver competition. Since then, our shareholders have invested \$180 million to build a fully functional ELNO. Yet today, if a lawyer or conveyancer decides they wish to use Sympli to settle, they cannot do so because the other lawyer is already using PEXA and the banks will not accept invitations on Sympli. Now we have the legislation, so why hasn't competition been delivered?

PEXA have a long history of using IP claims as a delay tactic. A recent example is that in 2023 PEXA wrote a letter to the New South Wales Government and ARNECC—their own regulator—threatening legal action if they continued the interoperability workshops. They also wrote to the banks claiming IP. That led to the banks withdrawing from the reform. Interestingly—and I think this is very important—at that time PEXA proposed to government an alternative model called the "ladder of investment". This model is best described as a "PEXA wholesale" model. At that time, the practitioner-first approach was conceived. That approach is a simple yet powerful initial step towards full interoperability. This would initially offer lawyers the choice of ELNO, then proceed to the banks later, entirely avoiding regulation issues with the banks and delivering competition in a low-risk phased approach of interoperability. This is something that the New South Wales Government can execute on with the legislation and enforcement powers they have today.

PEXA's latest submission is disturbingly clear. They do not support any form of competition by interoperability. They disregard the ACCC, the New South Wales Government, the Productivity Commission and IPART. They do not support the New South Wales legislation. PEXA's supplementary submission has attempted to taint this practitioner-first model by calling it an "ATI-first" model. It is not. For the record, we have no intention of vertical integration. InfoTrack has a single intention, and that is to offer lawyers and conveyancers the choice of ELNO for their client. For clarity, the ATI Group operates a range of separate businesses that serve the legal and conveyancing industry. None of those businesses rely on exclusive access or government mandates. Every single business operates in highly competitive markets. In my business, InfoTrack, clients can and do switch providers at any time. Our success depends entirely on our performance, our innovation, our service—but not control.

PEXA operates under a government-mandated monopoly, where there is no practical alternative. Interoperability is about breaking open this closed system so that everyone—including small technology providers, practitioners and consumers—can benefit from competition. While PEXA have stated many times they've had no outages, the truth is that there have been over 90 incidents that have occurred over the last year. In May 2025 an outage meant that clients couldn't sign off transactions. They couldn't settle. If InfoTrack had an outage of this magnitude, we would lose clients. But, without interoperability, when PEXA is down, clients have no alternative. They stop work and New South Wales property transactions stop. Competition will solve a lot of these problems. Competition will deliver resilience for New South Wales.

Let me clear up some of the earlier conjecture from today about our intention as shareholders. We want some certainty on an enforced date to enable competition to grow this important New South Wales based company. But if we don't get that, we will withdraw. The New South Wales Government will then be left with a monopoly to regulate. PEXA will continue to expand its network to uncover new revenue streams. PEXA will have outages. That will be the New South Wales Government's legacy to manage. In September 2023 the Minns

Government confirmed their full commitment to this critical reform. It's time for the largest property State in Australia to enforce its own legislation and deliver on that commitment. Thank you.

**The CHAIR:** I might start with a question of my own—or a hypothetical, rather. You're the CEO of an IT company. If one of your managers came to you with a letter that they'd received saying that they'd like to work with your company to build their software to interact with yours—the company is unrelated but seeks to be a competitor for a business that you currently enjoy a good working relationship with, and, should you assist this new entrant, you would receive no benefit and no revenue—what would your response to that letter be?

**JOHN AHERN:** If they sought to integrate into InfoTrack for no benefit? That's a great example of what we do with PEXA today. Although it's not in PEXA's submission, InfoTrack provides an integration to PEXA today to the practice management systems that we integrate with—both the practice management systems within our group and outside our group. The contract that we have with PEXA ensures that we integrate with them on an equivalent basis, so we can't unfairly preference PEXA or Sympli but we provide that integration today. We do what's in the best interests of our clients because, on a transaction-by-transaction basis, our clients can leave us. We can have a client use us on one transaction one minute and decide to leave us the next. There are no costs for our platform for logging in. There's only a per transaction charge. We have to be very considered with the products that we offer them. If we don't offer them products that they need to complete their day-to-day tasks, they'll use a competitor.

**The CHAIR:** If I maybe add a bit more detail to my hypothetical. Say I was a line manager at any of the bank or non-bank lenders and I manage either the mortgage division or the IT department and I get a letter, a lovely letter from Sympli or hypothetically Lextech—but we can't deal with Lextech anymore because they've exited the market. They've now given up. But, if I were one of those managers at a bank or a non-bank lender, and I went up the line to my boss with this letter—surely, if I'm an executive at a bank and I get a letter like this, I'd ask a few questions. One, what's wrong with the current process through the bank's eyes? Two, how much investment, whether it's dollar-wise or time taken by staff within the bank to implement it? Three, could I really make a business case to actually put that work into place to integrate Sympli when the bank doesn't really see a need themselves? Does that align with the current situation? Or are there any differences to the situation I've put?

**JOHN AHERN:** No, that does align. Let's talk about the situation the banks are in. When the mandates came in 2017, that was it—mandated. The banks had to choose. Many of the banks at that time didn't have integration to PEXA. They just stood PEXA up on their monitor and started to transact. It was a difficult transition, but they managed it. There were mandates; there was no choice. The situation we're in today is they're using PEXA. As the ABA spoke to briefly, they've integrated to PEXA since, and they continue to evolve that. What interests me about that is, though, if you listen to the statement from the ABA and then earlier from the industry, there is a disparity that I wish to point out, and that is that the banks very clearly say they're looking for functional equivalency, and one of the reasons that they state is because today there are no delays. Yet, if you listen to the industry earlier today, they talk about delays occurring every day. It's clear the banks and PEXA are aligned in that respect and that the system that they have today works for them, and they understand there's a cost of change.

What's not clear to me is why they're not putting their full support behind interoperability. If the banks are saying that they wish to continue to use PEXA because they're comfortable and they're integrated, then interoperability will enable them to continue to use PEXA, but other members in the network completing the transaction have the choice of Sympli. My view is the bank should put their full support behind either supporting multiple ELNOs, using Sympli and PEXA at the bank, or put their full support behind interoperability. Further, the argument that they state interoperability somehow is going to dilute equivalency or uncover IP issues, let me just address that. Missing from a few statements is a fact that PEXA today have APIs and integrate to many parties—not just banks but law firms and unregulated entities. They have APIs that create workspaces, accept invitations, push and pull financial data. Those APIs exist today.

There are various subscribers on the network who are interacting with the PEXA workspace via those APIs. I know because we're one of them. PEXA is mandated; when we perform transactions in our business, we're integrated to PEXA. Within the bank, when they start to talk about "We're worried about functional equivalence," I'm very curious about that because there are various subscribers out there today pushing and pulling data into those workspaces via those APIs. I really think it's very comfortable for the banks to sit where they are today, integrated to PEXA. That's why they should put their full weight and support behind interoperability and, specifically, the first practical step, which is a "practitioner first" approach, which enables one of the participants in the workspace—a lawyer or conveyancer—to use Sympli, whereas the other participants stay where they're comfortable.

**The Hon. WES FANG:** Thank you, Mr Ahern, for attending today. I note when you answered the two questions from the Chair, you were very cautious and careful in relation to your answers. I think, if we were

honest, in both circumstances the line manager or the owner of the company would say, "I'm very much unlikely to help you become a competitor to me." But what I think was the detail that was left out of that part of the question that's important in this scenario is that there is an Act of Parliament from 2022 that indicates that there must be that interoperability introduced into the eConveyancing space, and that there are penalties that apply if that doesn't occur. The only reason penalties haven't been applied thus far is because the registrar, in effect, is providing a waiver to PEXA to continue to operate as an ELNO but without providing that interoperability. Is that perhaps the case?

If you had a piece of legislation that said when somebody comes to you as a company and wants to integrate with your systems and you are legislated to do so, would you do that? That's probably the best analogy. Would you do that in those circumstances?

**JOHN AHERN:** In short, yes. Let me explain. There are various benefits to eConveyancing; we don't argue that. We also don't argue the PEXA platform is not a great platform; it is. My understanding is there is no waiver at present. There is legislation but there is no waiver. What happened is that there was a date for interoperability that was set to December 2025, and the legislation says that both ELNOs will work to establish and maintain interoperability. Since then, we've seen PEXA's submission that says it sees no way forward with interoperability, but that aside we're working towards that date. Then the letter went to the banks, and at the same time—and we've submitted it—a letter was sent to the regulator which was a legal letter, saying, "We have IP issues here and we're going to protect the interests of our shareholders."

Since then, we have seen the regulator very hesitant to move or to want to move more carefully. That's the history of what has happened. I heard your analogy earlier of the nuclear option. My understanding of the enforcement powers are they're not just nuclear. There are other avenues, financial penalties that could be put in place here. We've also mentioned pricing powers. I can't speak for PEXA's shareholders, but I know my shareholders. If I was to say to them, "We're going to start seeing penalties on a per transaction basis if we do not invest here," my shareholders would compel me very quickly to act.

**The Hon. WES FANG:** It's interesting you say that because I raised the issue of 18A from the Electronic Conveyancing (Adoption of National Law) Act 2012 that I referenced with witnesses earlier. In 2022, the State Parliament passed another piece of legislation, and it says in division 3, 16 (6):

In this section—

**maximum amount** means—

(a) for a contravention of the Electronic Conveyancing National Law (NSW), section 18A—

the one that I referenced—

(i) \$10,000,000, and

(ii) for a continuing contravention—a further \$250,000 for each day the contravention continues

You indicated that there are no certificates. The Law Society and some of the other legal bodies that were providing evidence to us earlier indicated that both ELNOs, Sympli and PEXA, are operating on dispensations from the registrar under the legislation. That may not be the case, as you've indicated.

**JOHN AHERN:** That's a great question for the registrar.

**The Hon. WES FANG:** We can get to the bottom of that later. The Government has committed that from December 2025 there will be a requirement for interoperability of the ELNOs. If we get to December 2025, less than four weeks away now, and we haven't got interoperability, is it your expectation that PEXA should face the \$10 million fine under the contravention of 18A and \$250,000 per day where they have refused to provide interoperability?

**JOHN AHERN:** I'd certainly like to see that, but my understanding is that the registrar can issue a waiver on the date. We've seen in other States a similar thing occur. What I see is what you're calling out, which is we have legislation and we have enforcement powers but we're not using them. We'd be happy with a reasonable date, and we've put forward this practitioner-first approach to avoid the obvious arguments that we have before us, which are IP issues and bank issues. We can't regulate banks; that's a Federal Government problem. The practitioner-first approach, we believe, avoids that. Sympli is a fully functional ELNO. It has its own auto-balance functions, it has its own connections to banks and it has its own connections to land registries and State revenue offices. It's a fully functioning ELNO. We believe, by offering choice to the lawyers and conveyancers on ELNOs, we'll solve for about 60 to 70 per cent of these integration issues, debunk a lot of the myths around what's IP and functional equivalence, and it will be a very positive step forward.

**The Hon. WES FANG:** The Minns Government has indicated that it supports the intent of the previous Parliament to introduce and enforce interoperability, and has nominated a date, being December 2025. You would think that if the Minns Government is serious about its commitment, it would seek to apply the legislated enforcement penalties if we get to that date and interoperability isn't in place.

**JOHN AHERN:** My personal view is the Minns Government is very good at making tough decisions.

**The Hon. WES FANG:** Well, you have to say that. I know. That's all right.

**JOHN AHERN:** They've made some tough decisions in and around housing. I believe they'll act with integrity and they'll deliver on the commitment to deliver competition.

**The Hon. WES FANG:** We'll see.

**JOHN AHERN:** There are various—I don't think we're here to argue the benefits of competition; I'm happy to. But I believe that they'll act with integrity and deliver on a promise.

**The Hon. MARK BANASIAK:** I've put this question to a few witnesses already, but you're probably a little bit closer to it. There have been a lot of excuses put up as to why Sympli can't provide functional equivalence. Can you give us any specifics around the problems or deficiencies that the banks are saying exist within your API, your interface? Are they giving you specific examples as to what isn't functionally equivalent to PEXA, or do you see it as a bit of a convenient excuse for the banks not to actually invest the money they need to?

**JOHN AHERN:** Philip, the CEO of Sympli, is closer to this. I can't think of specific examples. But I will say, in the banks' defence, that on day one when the mandates came in there was no integration to PEXA. It was "Get on this platform, everyone, and use it." Today, the banks have started to integrate more tightly to PEXA, so when they're looking at Sympli as another system, they're looking at another integration point. And so, when they were interacting in the interoperability reforms, they started to have conversations about "Hey, Sympli, we need you to have this capability." That's when PEXA sent a letter to the banks saying, "We believe we have IP issues here if you continue in the reforms," and then they withdrew. So the answer is, because the banks withdrew, I don't think we ever got to the bottom of specifically what those shortcomings are.

**The Hon. MARK BANASIAK:** Can I just go to that point? Is that what made the banks go cold? When we had the inquiry into the bill, they were unnaturally excited for this reform, I would say. Are you saying that the legal letter from PEXA saying "We've got IP concerns" was the trigger point for the banks essentially doing an about-face on their position?

**JOHN AHERN:** The email PEXA sent to the banks, I've submitted. I think it's one of the things, yes, and I think that's a good question for the registrar as well, because it was at that point they withdrew from the reforms.

**The Hon. MARK BANASIAK:** Has InfoTrack ever considered testing the IP case through legal means?

**JOHN AHERN:** It's a very good question. We've never received an IP claim. Neither Sympli nor InfoTrack have received a specific IP claim, and I find it hard to believe—I'm not saying there's not IP within the PEXA platform either. There's certainly IP within the Sympli platform. They're both excellent platforms. I would argue the Sympli one is better, but I'm biased in that respect. But what I will say is that today PEXA have integration out there to third-party systems where somehow we can push and pull data in and out of a workspace and drive a workspace without violating any IP which is inside PEXA. The basis of interoperability is that exchange of information between two platforms, so why is it that the integration that delivers competition is the only one that's got IP issues here?

**The CHAIR:** Before we go to Opposition questions—I appreciate we'll have Mr Joyce this afternoon, who's closer to the coalface on these matters, but are you aware of any particular banks that are more problematic for Sympli to deal with than other banks?

**JOHN AHERN:** I understand that there's complexity in all of these different transaction types. We're talking about refinance and single transfers and multi-transfers with multiple parties. But there are very simple transactions that you can perform on an ELNO that involves just one bank—so a single person transaction. As I understand it, ANZ and NAB have done some transactions.

**The CHAIR:** When you say "single person transaction", are you talking about refinancing?

**JOHN AHERN:** Yes, a bank effectively lodging a document or refinancing a mortgage to themselves. Those types of transactions—we've done test transactions, or a multitude of transactions, with ANZ and NAB, and I believe Commonwealth Bank have done a handful of transactions. Philip can give you the exact number. There's also been a small handful of refinance transactions between the banks. No four-party transfers, and nothing from Westpac.

**The Hon. AILEEN MacDONALD:** During budget estimates in September, I asked the Minister if he would convene a Minister's forum, and he indicated at the time that he was going to wait for the ARNECC review. From your point of view, when do you think he should convene a Minister's forum to ensure that, say, the 2025 deadline is met?

**JOHN AHERN:** I mentioned that I've been at InfoTrack for 10 years, and we started Sympli eight years ago. I think we've had six years of reviews, so these latest set of reviews are very important to us, but so are all of the other reviews that I believe the New South Wales Government detailed in their submission. We need action on this. As the ACCC point out, and as everybody has pointed out in their submissions, the longer we delay, the worse the problem. Philip Argy mentioned this, too—the longer we delay this, the worse the problem. The more entrenched the monopoly is, the worse the integration becomes, and functional equivalency arguments become more complicated. My view is that it should happen this year, and very, very quickly. We have a date. I met with Minister Dib and expressed that view. Minister Dib, I believe, made it very clear to me that he's looking for very solid outcomes from these reviews and he will act with integrity, and quickly, on the recommendations of those reviews.

**The Hon. AILEEN MacDONALD:** If it goes beyond 2025, what are the risks if these decisions aren't made and if we don't hear about this review? Like, if we don't get the report?

**JOHN AHERN:** The first risk I can tell you is that I sit with directors and shareholders very regularly—more regularly than every month, now—reviewing if we will continue to invest in Sympli with no firm understanding of if we can ever deliver competition. Reading PEXA's submission, they say they see no way to support the interoperability reform, despite the work that's been undertaken over the last eight years. It's becoming harder and harder to argue with shareholders that there's ever a path forward.

We know from speaking to ex-employees from PEXA and people in the industry that it has been a long-term strategy to bleed us dry. If we get commitment and if we get enforcement on a date and we feel comfortable with that, you have our full commitment, not just at the current levels of investment but way beyond. We're very passionate about Sympli, this New South Wales company. When it started, I took my best 12 developers and put them in there, and they are still there. We're very passionate about this business. We'll invest heavily.

**The Hon. AILEEN MacDONALD:** As a follow-up, under what circumstances should the Registrar General issue a direction or penalty under the enforcement Act?

**JOHN AHERN:** I think the legal letter that was sent to the regulator and New South Wales Government has then been very careful in enacting enforcement powers. There's a very real threat there of legal activity. I can't speak to the registrar's view there, but I think that would be a great question for her.

**The Hon. AILEEN MacDONALD:** Should the ACCC investigate whether PEXA's letters to the banks constituted anti-competitive behaviour?

**JOHN AHERN:** We, as part of the Federal Senate inquiry, raised various issues with the ACCC beyond what we have discussed today. We have got various vertical integration concerns about PEXA's activity in respect to their recent working with industry and, as was mentioned today, real estate agents around the anti-money laundering capability, which, if you think about it, would effectively bookend conveyancing transactions. We have raised all of those issues with the ACCC. We are yet to hear back from them on our last query around AML. We're waiting to hear from the ACCC on the Senate report. But the ACCC did actually make one admission which I thought was important, which is that PEXA have no incentive to deliver interoperability despite legislation. That's concerning.

**The Hon. WES FANG:** I have one last question. We spoke about the penalties that are available to be applied by the registrar should we see a failure of interoperability. But there's a flip side to that, which is that Sympli, as an ELNO as well, if they're not ready with interoperability, may face the same penalties. What work has Sympli done to ensure that they are ready to have interoperability abilities with the other ELNOs in the system? It's a two-way street.

**JOHN AHERN:** It is a two-way street. We're fully committed—big investment. But if you remember, this letter came out to the banks, and the banks withdrew from the interoperability reforms. That effectively stalled the interoperability reforms at that point. PEXA, I'm sure, will use that as an excuse to delay the dates, because there has been no action now for 18 months. That aside, Sympli has continued design work. Philip can speak to that more specifically around dates. My understanding from Philip is that we will be ready to go at the end of this year.

**The Hon. WES FANG:** So you will be able to provide the IP, the source code, the open platform or whatever it is that you need to do to another ELNO—in this case, PEXA. You will provide to them all of the interoperability requirements that your system will require from their side to interface with you. They just haven't provided, I think, the alternate interoperability with them. Is that how it has basically been packaged up and what we're looking at at the moment?

**JOHN AHERN:** Yes, I know we've been talking a lot about codes and XML, and there is a specification for integration around interoperability. We've continued to design that towards the end of this year. PEXA obviously have stopped, withdrawn. That'd be a very good question for both PEXA and Sympli: Are they going to be ready?

**The Hon. WES FANG:** I will be definitely asking both of those questions.

**The CHAIR:** Mr Donnelly?

**The Hon. GREG DONNELLY:** I think, in light of the time, I'll put my question on notice.

**The Hon. WES FANG:** Sorry, Greg.

**The CHAIR:** We'll have Mr Joyce from Sympli later on, so it might be pertinent. Thank you, Mr Ahern, for your time today. I can't recall if any questions in this session were taken on notice but, if they were, the secretariat will be in touch.

**JOHN AHERN:** Chair, I would just like to request, with some issues raised earlier today, if we would be able to make a supplementary submission after today.

**The CHAIR:** I'll do everything I can do to make sure that's accepted. I don't think there'll be a problem with that.

**JOHN AHERN:** Thank you very much.

**The CHAIR:** Thank you.

**(The witness withdrew.)**

**(Luncheon adjournment)**

**Mr RUSSELL COHEN**, Chief Executive Officer and Managing Director, PEXA, affirmed and examined

**Ms ELIZABETH WARRELL**, Acting Chief Financial Officer, PEXA, affirmed and examined

**Ms CLARE GILL**, Chief Regulatory and Corporate Affairs Officer, PEXA, affirmed and examined

**Ms EGLANTINE ETIEMBLE**, Group Chief Technology Officer, PEXA, affirmed and examined

**Mr DAMIEN MANUEL**, General Manager - Regulatory Affairs, PEXA, affirmed and examined

**The CHAIR:** Welcome and good afternoon to all of you. Thank you for making the time today to give evidence. As is customary in these hearings, I invite any or all of you to make an opening statement. Mr Cohen, you look like you're prepared.

**RUSSELL COHEN:** Yes. Thank you for the opportunity. I'll be making a short opening statement on behalf of PEXA. To the Committee, thank you for the opportunity to appear before you today and to make a brief opening comment. My name is Russell Cohen. I am the group CEO and managing director of the PEXA Group. Joining me today are my colleagues, Liz Warrell, our interim chief financial officer; Eglantine Etienneble, our group chief technology officer; Clare Gill, chief of regulatory and corporate affairs; and Damien Manuel, our general manager of regulatory affairs.

We are very proud of the outcomes that the PEXA platform delivers to the people of Australia. PEXA's exchange has processed more than \$5 trillion of property settlements, connecting legal and conveyancing firms, financial institutions and government agencies to allow Australians to settle their property transactions securely and reliably. The PEXA exchange is safe and reliable, with no major security breaches, despite more than 6.5 million intrusion attempts this year, and with a service reliability above 99.9 per cent. It is low cost, with regulated prices moving only in line with CPI. Today, the PEXA fee represents just \$141 of the average \$40,000 of transaction costs involved in selling a home. The PEXA exchange is innovative, with a continuous rollout of new technology and product features.

PEXA has supported and cooperated with the interoperability reform as it was originally conceived, namely, two functioning networks interoperating with one another without the need to disclose confidential intellectual property. We have held and participated in over 260 different meetings and workshops, and invested more than \$22.5 million of our own money in this program. Yet, seven years later, there is still no other comparable national network to connect to and the program has been a failure. Our concern is not with facing competition, but with the current expectation that PEXA should shoulder the responsibility of engineering a viable business model for potential competitors.

Importantly, competition is not an end in and of itself. Rather, it can be an efficient mechanism to deliver outcomes that benefit consumers across price, service standards, security, as well as innovation. The architects of the original eConveyancing regime placed consumer outcomes at the centre of the regulatory framework, and as such, PEXA's prices are subject to regulation and independent oversight by IPART here in New South Wales and have not increased in real terms since 2014. The Model Operating Requirements, which are PEXA's rules of operation, set out the minimum performance and service standards that we deliver to our customers, including that PEXA operate in each State and Territory in Australia, which we are proud to have achieved with our recent launch in the Northern Territory, and we have consistently achieved customer satisfaction ratings around 90 per cent.

Our security and reliability are protected through our adherence to the Security of Critical Infrastructure Act at a Commonwealth level and in the Model Operating Requirements as set out by ARNECC. Conversely, far from encouraging innovation, our competitors have proposed competition models that simply piggyback on PEXA's innovations at a discounted price, which is unfortunately a disincentive for further investment. Customer outcomes must remain at the centre of any reforms that are designed to achieve more competition. In conclusion, Australia's eConveyancing system today is safe, reliable, low cost and world leading in its sophistication. Any changes to this framework must strengthen—not weaken—this integrity, the security and the trust that all Australians have in our property system. Thank you.

**Ms ABIGAIL BOYD:** Thank you for attending and thank you for your opening statement. Just listening to that, though, it doesn't seem to take into account that this Parliament gifted PEXA a monopoly position, and everything that I've heard in your opening statement seems very resistant to giving any of that benefit back to the market or to competition. I can understand that from a financial perspective. It's obviously what you were set up to do. But it's true, isn't it, that you were gifted a monopoly? In terms of PEXA's hard work and innovation, a lot of that is down to the goodwill of this Parliament. Why is PEXA now standing in the way of this Parliament's intention for there to be competition?

**RUSSELL COHEN:** Thank you for your question, Ms Boyd. PEXA had a first-to-market advantage, absolutely, through the setup of the national eConveyancing regime, which was a COAG initiative back in 2007 or 2008. There were initial investors. The financial institutions—namely the banks—were early investors in PEXA, as well as four State governments. New South Wales, Victoria, Queensland and Western Australia were all equity holders in PEXA, as well as some private investors. Progressively through the life of PEXA, those investors sold their share. New South Wales was one of the State governments that chose to sell their share, and had a handsome return for the State. So the characterisation that PEXA was "gifted" is an incorrect term.

**Ms ABIGAIL BOYD:** To clarify, I said "gifted a monopoly position".

**RUSSELL COHEN:** It was never a monopoly position, because PEXA has always anticipated competition in our sector and the competition reforms really got going after Sympli entered the market in 2018. It was really in only PEXA's third or fourth year of operation processing electronic conveyancing transactions—and not even at a national level—that another entrant, in this case Sympli, entered the market. So there was plenty of time and plenty of opportunity for another player to take a foothold in the market. It's really important to understand that in 2018 when Sympli entered the market, PEXA was not operating in the Northern Territory, ACT and Tasmania. These were markets which were free for any other competitor to enter. PEXA had less than 30 per cent coverage in Queensland and only about 50 per cent or 60 per cent coverage in Victoria and New South Wales, so there was plenty of market for others to come in and offer customers their version of an eConveyancing solution that conformed with the regulations. So it wasn't gifted a monopoly. PEXA's then invested heavily in—

**Ms ABIGAIL BOYD:** We can perhaps disagree on the way that it's framed. But let's cut to the chase then. Why is PEXA issuing threatening letters to others involved in the interoperability process, which has had a chilling effect on the reforms?

**RUSSELL COHEN:** We don't characterise our letters as threatening. We participated in over 260 workshops. We spent \$22.5 million—at a minimum—of our own money. We've built pilot systems. We've participated in pilot transactions, all to adhere to our obligations around the reform. The letters that you may be referring to were specifically to remind different parties in the interoperability reform that there was intellectual property that PEXA retains—

**Ms ABIGAIL BOYD:** What is that intellectual property exactly?

**RUSSELL COHEN:** It's intellectual property in the way the platform and technology works. For details, I might ask Ms Warrell to flesh it out a little bit more.

**Ms ABIGAIL BOYD:** Yes, I would like to know exactly which IP is being claimed.

**ELIZABETH WARRELL:** We've got two forms of intellectual property. We've got copyright, which is the software source code that underpins the whole platform. And then we've got trade secrets, and that's our processes, our rules and know-how that really regulate how the system works together. These were expressly what was recognised when the States and the others privatised PEXA back in 2018. And when we look at our balance sheet, that's about \$1.5 billion on our balance sheet.

**Ms ABIGAIL BOYD:** Okay, but in what way is that IP being threatened, exactly?

**ELIZABETH WARRELL:** For interoperability, especially for functional equivalence, we would have to share that IP. We would have to share our source code. We would have to share our rules, processes and know-how to actually achieve functional equivalence.

**Ms ABIGAIL BOYD:** Is that the case even if they have what was called by the last witness the—

**DAMIEN MANUEL:** NECDS standards.

**The Hon. WES FANG:** API?

**Ms ABIGAIL BOYD:** Was it API driven or—no, sorry, I got distracted. They were talking about there being—

**The Hon. JACQUI MUNRO:** The industry code.

**Ms ABIGAIL BOYD:** No, the ability, instead of it being full interoperability, for this kind of modified version where simply—

**The CHAIR:** Practitioner first.

**Ms ABIGAIL BOYD:** Thank you—a practitioner-first model. Is that the same for that?

**CLARE GILL:** We're calling it ATI first, because we believe it's leading to an entrenched vertical integration of ATI. Putting that aside, that is actually not interoperability. What they're requiring is access to our settlement and lodgement functionality. They're proposing that they would set up a workspace kind of function and then integrate that with the settlement and lodgement, which we do today through the PMS providers—practice management software providers.

**Ms ABIGAIL BOYD:** In answer to my question, would that come with the same IP issues?

**CLARE GILL:** No, because it's actually accessing our network and they're not acting as an ELNO. They will not be an ELNO, which is required for interoperability. Interoperability is a concept where you've got two functioning networks being able to interoperate together so that you can work together on the same transaction. We would do all of the transaction. There is a small part of the workflow which is the workspace and the interface, per se. That's what they're saying that they would like opened up, where they can go in—

**Ms ABIGAIL BOYD:** But you won't even do that first bit.

**CLARE GILL:** We do do that with practice management software. The proposal for that is to use the pricing of interoperability, which was earmarked by IPART at around \$6, to use the concept of interoperability to get access to preferential pricing.

**Ms ABIGAIL BOYD:** But it won't have the same problems with the IP. It will introduce some competition, but that's still not something that PEXA is—

**CLARE GILL:** It doesn't introduce competition for electronic lodgement networks. It will potentially offer alternative choices for how you integrate and the software interface, which we already do with practice management software. We are prepared to provide access to our network through the practice management software integration, which we do already do today.

**Ms ABIGAIL BOYD:** Presumably you were listening to the evidence that we got in the last session. What was it that they were asking for that you're not willing to provide them?

**CLARE GILL:** They're asking for integration, that we settle and lodge for them, and they'll do the user interface. They're asking for it with preferential pricing over other practices.

**Ms ABIGAIL BOYD:** But that doesn't have the IP issue.

**CLARE GILL:** That does not; it's an access network regime.

**RUSSELL COHEN:** There's different interoperability.

**Ms ABIGAIL BOYD:** So why won't you do that?

**CLARE GILL:** The last witness, the gentleman from InfoTrack—we already have API connections to InfoTrack, as we do with other legal software products across the country. Those APIs are on our website. They're public—the pricing, the terms—and others are free to connect to them, so that exists today. It's not with Sympli, because there it's a different business model. That's an ELNO. That has a whole different set of obligations and regulatory framework and pricing. I think the last witness was conflating two things.

**Ms ABIGAIL BOYD:** Ideally, we want interoperability that's got ELNO, though. We all agree with that. But in the last session, we heard about a compromise or an entry level where at least this product could then be used by others and they could enter the market in some way. But we were told that PEXA wouldn't allow that either. I'm just wondering why that hasn't been allowed either.

**The CHAIR:** Just to be clear, are we still talking about practitioner first?

**Ms ABIGAIL BOYD:** Yes.

**RUSSELL COHEN:** We've received no technical requirements or specifications on practitioner first. It's a bit of a public marketing term that is used and has obviously been used today. It would be important for us to understand what it is, but I will say this: The request that we've seen was to access interoperability pricing as determined by IPART, which has a significantly reduced fee today. But all the responsibility for performing the transaction, keeping it secure, settling with the banks, lodging with the land registries—all that risk and all that responsibility would sit with PEXA. But the fee that would be provided in this practitioner-first branding, or ATI first, would be dramatically reduced today.

**Ms ABIGAIL BOYD:** So we should just go back to full interoperability then. Again, there is a problem with achieving interoperability, which has been narrowed down for us as being that PEXA won't do what it needs to do in order for that to happen. What is your response to that?

**RUSSELL COHEN:** Interoperability as a technology concept is totally fine. We've participated with it, which was two fully functioning networks with similar geographic scope and product offering agreeing on what data they would share and communicate. That's not the way that interoperability has evolved, specifically in the reform in Australia. The way it has evolved in the reform in Australia is one larger network—in this case, PEXA—fusing to a smaller network—in this case, Sympli. They have specific names. One is called the responsible ELNO and one is called the participating ELNO. Where one can't perform the functions—because in the case of Sympli, they can't perform the majority of the functions—that responsibility and accountability is borne by PEXA. It does nothing to enhance resilience because it's one down, both down, because they're fused together.

**Ms ABIGAIL BOYD:** I'm asking a very specific question. The Parliament has decided that it wants there to be interoperability. We are being told that the only reason there's not is because PEXA will not do what it needs to do. All I've heard so far as to why you wouldn't do what's required of you is because of some claim of IP. Is that the only obstacle here?

**CLARE GILL:** Firstly, ARNECC stopped the program. It wasn't PEXA that stopped the program.

**Ms ABIGAIL BOYD:** After you wrote to them.

**CLARE GILL:** I'll go through that. We were raising IP issues. What it has evolved from is two fully functioning networks communicating, which, in principle, is a great concept. What we now understand is that the banks wanted functional equivalence, meaning that everything that PEXA does, Sympli does, so that it interoperates. That is the IP. How we function—our workflows, our source code et cetera—is the value of our business that our shareholders bore. It is our responsibility to protect that IP for our shareholders. We are unable, because of our fiduciary duties, to just hand over IP.

**Ms ABIGAIL BOYD:** What would it take for you to hand over the IP? Is there a price? What is it that you would be looking for? Presumably, if we were to regulate that you had to give it across, you'd have to give it across. Is there a price or something that would incentivise that to happen?

**RUSSELL COHEN:** I think that any arrangement in the sharing of intellectual property could be resolved in a commercial manner. That's fair. It's really important to understand that there are other considerations here, in addition to the commercial considerations. One is simply around security and resilience of these transactions. Number two is the banks' expectations that transactions are functionally equivalent across ELNOs. They need to offer customers who are remortgaging or taking out a loan a similar experience when they're settling their property. Until those things can be answered, as well as access to the solicitors' trust accounts from both ELNOs, we have major concerns with the interoperability project scope.

**The Hon. WES FANG:** Before I start some questioning, I just wanted some clarity on an answer that you gave to my colleague Ms Abigail Boyd. What was the date that PEXA was privatised? I believe you said 2018. I just wanted to confirm: Was it 2018 or 2019?

**ELIZABETH WARRELL:** I believe it was first privatised in 2018.

**The Hon. WES FANG:** I think the plan to privatise was 2018. I think it wasn't privatised until 2019. Are you sure that it was 2018? I believe 1 January 2019 was the privatisation date.

**CLARE GILL:** My understanding is it was 2018, but we can confirm the exact date with you. I have just been reading documents on the privatisation and that trade sale.

**The Hon. WES FANG:** The Senate report indicates that it was January 2019 that the privatisation occurred, which is relevant to the question that I was about to ask, which is why I flagged that you said 2018. The government of the day and the Minister at the time, Victor Dominello, in 2018 indicated that he would require interoperability from PEXA. It's my understanding that the privatisation occurred in 2019. Prior to privatisation, the former Government was already flagging with the organisation that it was going to be required to have interoperability. This was no surprise, when the government of the day, whether it be previously or now, had indicated and the parliaments have voted for interoperability to become the standard. It is now six years since that occurred and we are still seeing the chain being dragged. If I am right and the numbers I have are correct, and there were flagged interoperability requirements of PEXA before it was prioritised, why haven't you done exactly what the legislation says you are required to do?

**CLARE GILL:** Thank you for the question. I have looked through all the documents, and if it was indicated, it wasn't indicated in the sales document when New South Wales, Queensland et cetera actually owned it at that time. Regardless of that, PEXA has always said they will cooperate with the program. The concern is it's been paused because what was envisaged for two interoperating networks is unable to be achieved through what is now a construct called "functional equivalence", which is not a term that I've been aware of in competition interoperability before. So, the scope has crept to something that may not be achievable now. However, there

are a number of reviews that we have participated in that are currently underway that we are working through and working with.

**The Hon. WES FANG:** And the functional equivalence issue is one of PEXA's? No, it's not, is it?

**CLARE GILL:** No, my understanding is—and Damien might want to add—that the banks had requested it and ARNECC has codified it.

**The Hon. WES FANG:** In those circumstances where the banks are requiring the functional equivalence, effectively, how can another player, regardless of who it is, achieve that without being provided the same level of integration with the banks that PEXA got because of its first-to-market status? How can we get equity?

**DAMIEN MANUEL:** I'll explain the functional equivalence stuff at a very simplistic level. So, eConveyancing started, and imagine you've got 50 different things and that's your base eConveyancing. Since that time, we have built new functions and features that customers have requested above and beyond eConveyancing, and it's those aspects of innovation that we're being asked to hand over. Really, if you're going to have interoperability, you're then destroying the notion of innovation between ELNOs because you need everybody to be exactly the same for interoperability to actually function correctly. A feature we might offer may not be a feature on Sympli. As a result, that transaction won't progress.

**The CHAIR:** We will need to move along—we're almost halfway through this session—but now that you've mentioned functionality, "functionality" is the term that keeps coming up again and again, whether it's the submissions or in the earlier witnesses today. I've got page 22 of PEXA's submission in front of me, and it explains "Platform functionality for better experience and greater efficiency", and it names a whole bunch of functions on the platform, such as:

- **AutoBalance**, which automatically adjusts payment amounts within tolerances set by subscribers ...
- **Linked Settlements**, so that one transaction doesn't settle unless another specified transaction also settles ...
- **Ready to book ...**
- **Mobile Signing ...**
- **PEXA projects**, which enables developers to manage bulk transactions (for example multiple transfers from a single development) ...
- **Complex settlement support—**

the list goes on to a few more. Is this the functionality that we're talking about, and is this the functionality that the banks are saying they want to see from other providers before they'll work with them?

**RUSSELL COHEN:** Yes, these are examples. That's why they're in the submission. We tried to articulate some examples of the innovations that we've built with our customers over the last few years.

**The CHAIR:** With all due respect, this is great, but it's kind of the Rolls-Royce of functionality. If I'm buying a house or if I'm refinancing, why do I need the functionality that the property developer requires to settle multiple properties or link settlements for people with multiple transactions? I mean, Sympli are trying to enter the market, Lextech has exited because it's too hard, and we've got the banks, who basically, until someone else can build a Rolls-Royce, are not going to deal with them. Is that a fair statement to make of the current state of play?

**RUSSELL COHEN:** Thank you for the question. I think it's important to think about who's using the PEXA technology. In this case, the primary users of PEXA technology are lawyers and conveyancers on one side and the banks and financial institutions on the other. So it's the transaction features that we build for that audience such that they can smoothly and securely complete their transactions. It's not so much the buyer and seller at home who may need these certain features; it's their assigned lender or their assigned lawyer or conveyancer. That's how we think about developing these technology features. But, you're right, these are sophisticated features that have been built over time for efficiency and security and workflow management and high-volume productivity. To do a simple transaction, I believe that's available today on Sympli. They put that on their website, the transaction types they do in the jurisdiction. Nothing is stopping them from performing that, and they do that today for a small part of the market.

**The CHAIR:** Don't get me wrong, this is all great. I'm really pleased to hear that PEXA are taking this overseas, particularly the UK. I think it could be a really great Australian story.

**The Hon. SUSAN CARTER:** Thank you for being here. Ms Gill, I have a question to follow up. The practice management software that you referred to in relation to practitioner first, who owns that?

**CLARE GILL:** There are a number of providers in the market—the ATR group, Dye and Durham. My colleagues can jump in.

**The Hon. SUSAN CARTER:** This is a third-party interface that people can use to interact with your system?

**CLARE GILL:** Yes, they're a software provider for legal services.

**DAMIEN MANUEL:** If you're a conveyancer, you might use this software to record your details and then you would click a button to push some of those details into the PEXA exchange. Then, at a certain point, under the regulations, you have to come out of that practice management software into the PEXA exchange and digitally sign your documents.

**The Hon. SUSAN CARTER:** How is that different from just interacting with PEXA directly?

**CLARE GILL:** We have our own user interface. Users can choose to use PEXA's user interface or they can choose to use the integrations from practice management software. It limits having to enter into one system and turning around and entering into another system. It's a service that practice management software—

**The Hon. SUSAN CARTER:** But that doesn't really speak to interoperability at all.

**RUSSELL COHEN:** No, it doesn't.

**CLARE GILL:** No, that's the argument that we're making.

**RUSSELL COHEN:** It's different interoperability. It's effectively an efficiency tool that we offer law firms and conveyancers so they don't have to double key information.

**The Hon. SUSAN CARTER:** I don't think it's interoperability, with respect, in the sense that it was thought about by the regulator. It's interoperability with your existing practice management system rather than two systems being able to talk to each other, isn't it?

**DAMIEN MANUEL:** It's more an integration than interaction.

**RUSSELL COHEN:** Yes.

**The Hon. SUSAN CARTER:** I'm curious about the data and technical standards that you have provided for a fee to the National Electronic Conveyancing Data Standard. What proprietary intellectual property was contained in that material that you made available?

**DAMIEN MANUEL:** If you think about it, in the early days when PEXA was meeting with all the titles officers and all the revenue officers, it had to come up with a standard in terms of that communication, so protocol. Effectively, that protocol is now owned NECDS Ltd. That's the protocol that all nodes need to abide by for transacting or pushing information.

**The Hon. SUSAN CARTER:** What was the fee that you charged for that?

**DAMIEN MANUEL:** The fee that we're currently being charged by any NECDS or the fee for them to buy?

**The Hon. SUSAN CARTER:** The fee for them to buy that information.

**DAMIEN MANUEL:** It was roughly \$100,000 a month over a period of 1½ years, from memory. It was about 1.6 or 1.9.

**The Hon. SUSAN CARTER:** It's a licence fee per month or it was a total fee paid?

**DAMIEN MANUEL:** A transfer of IP fee.

**The Hon. SUSAN CARTER:** Can you on notice provide the exact figure and the exact payment details?

**DAMIEN MANUEL:** Sure.

**The Hon. SUSAN CARTER:** Was that a licence for copyright material or a sale of confidential information? What was it?

**DAMIEN MANUEL:** It was a transfer of the intellectual property of that data standard.

**The Hon. SUSAN CARTER:** Sorry, but what type of intellectual property were you claiming in that? Copyright or trade secrets?

**RUSSELL COHEN:** We'll have to take that on notice and get back to you. It predates me in my time at PEXA. We'll provide the Committee with that information.

**The Hon. SUSAN CARTER:** What was the process by which you arrived at a valuation of that information?

**CLARE GILL:** I just inquired about this. My understanding is that we actually did get it valued by an independent business, which valued it at well over \$20 million. We provided it at a far greater discount to ensure that there was a national data standard. It wasn't provided at the value that it was provided by an independent third party.

**The Hon. SUSAN CARTER:** Can you provide that valuation on notice as well, please?

**CLARE GILL:** Yes.

**DAMIEN MANUEL:** To participate, we now have to pay a monthly licence fee. There's the expectation of a transaction fee as well.

**The Hon. SUSAN CARTER:** When you say there's the expectation of a transaction fee, you're not currently paying that?

**DAMIEN MANUEL:** At the moment we're working through that with NECDS Ltd.

**The Hon. SUSAN CARTER:** Why would you be paying a transaction fee? Why hasn't that already been all sorted at the time of the negotiation of the transfer of the information?

**DAMIEN MANUEL:** There's a number of things that we're working through with the contract with NECDS Ltd because it's an independent entity.

**The Hon. SUSAN CARTER:** So the contract has been finalised or it hasn't been finalised?

**DAMIEN MANUEL:** There was a version of the contract that we did sign, and then there was a second version of the contract, which we haven't yet signed.

**The Hon. SUSAN CARTER:** Sorry, you're confusing me. A version of the contract that you signed, and then a second version of the same contract. So you voided the first contract?

**DAMIEN MANUEL:** We didn't void it. The contract was changed—not by us, but by NECDS Ltd.

**The Hon. SUSAN CARTER:** With respect, it would have to be changed by both parties, otherwise there's no change.

**DAMIEN MANUEL:** Correct, which is why we haven't signed that one yet.

**The Hon. SUSAN CARTER:** So you have signed? It has been changed?

**DAMIEN MANUEL:** We signed the original. We haven't signed—

**The Hon. SUSAN CARTER:** Yes, so that's the contract.

**DAMIEN MANUEL:** Yes.

**The Hon. SUSAN CARTER:** And there are negotiations to amend the contract?

**DAMIEN MANUEL:** Correct.

**The Hon. MARK BANASIAK:** Mr Manuel, you spoke about—to use your analogy, you have the baseline, and then all these items that the Chair mentioned on page 22 of your submission are your Rolls-Royce. That's the IP issue that you're concerned about.

**DAMIEN MANUEL:** Correct.

**The Hon. MARK BANASIAK:** Is there anything—and, Mr Cohen, you spoke about big ELNO and little ELNO, and little ELNO simply fusing onto big ELNO and you picking up the slack of the functions it can't do. What's stopping this interoperability going forward in that model? You don't give them the IP for the whiz-bang Rolls-Royce stuff. They come into the market and operate as little ELNO until they can build up their own capacity in terms of those Rolls-Royce features themselves, and then you allow natural market forces to occur. Then building up their own capacity allows them to level out and become a bigger ELNO in the future. Is that something that you'd be opposed to in moving this reform forward?

**CLARE GILL:** If we go back to first principles, when we actually looked at it as just a lodgement network—and in response to Mr Martin's questions in relation to "If you strip out all the things, why can't we just interoperate?", that horse has already bolted. They're already fused and integrated into the system, which is the argument that the banks are making—that the egg can't be unscrambled now. The PEXA system now is fully integrated. What the banks are saying is Sympli has to operate like that, not just accretively build to that, for them

to integrate. That is what I understand is functional equivalence—that they both have to, from day one, act exactly the same.

**The Hon. MARK BANASIAK:** But do we have to do everything the banks want us to do as part of this reform?

**The CHAIR:** Can we expand on that? Which banks are saying this?

**CLARE GILL:** My understanding is it was the four major banks. You'd have to ask ARNECC that. I don't understand the whole thing. It's ARNECC who paused it. It's ARNECC who asked for functional equivalence. That is the problem that we've got at the moment. If we go back to first principles, I suppose the issue that we're talking about here is how we were privatised. We weren't privatised as an open access network. We were privatised as we are—building innovation et cetera. We now have a responsibility to protect the product and the assets that our shareholders bought in that privatisation process.

**The Hon. MARK BANASIAK:** But that model I proposed to you in terms of slowly progressing or transitioning to that stage where you've got two big ELNOs does protect your fiduciary duty, because in the meantime of Sympli trying to gain some market share, you can be doing what you do in providing a competitive service and innovation et cetera to maintain that fiduciary duty and protect your shareholders' price. Bugger the banks.

**RUSSELL COHEN:** If I may, obviously this is before my time at PEXA, but I believe that's what was originally contemplated before the functional equivalence expectation was set. Some of the tests and the pilot transactions that were attempted were unsuccessful specifically because they relied on a series of features that had been built into the transaction flow deeply over many years. That's when the banks raised the expectation of "Hey, this needs to be functionally equivalent for customers who are lending or remortgaging, regardless of which ELNO the lawyer or conveyancer uses." We're back in this situation whereby a lot of this stuff is deeply built into the workflow of the way property transactions are settled in Australia right now. It's very hard to undo.

**Ms ABIGAIL BOYD:** Can I clarify that?

**The Hon. WES FANG:** I think we all have the same question.

**The Hon. JACQUI MUNRO:** Did PEXA have any involvement in ARNECC codifying this functional equivalence? Did PEXA request that from ARNECC?

**RUSSELL COHEN:** My understanding is no.

**The Hon. JACQUI MUNRO:** So ARNECC just decided that they would respond to the banks and codify functional equivalence because of a bank request?

**DAMIEN MANUEL:** Effectively interoperability has morphed over time. It wasn't initially like that. But because the banks are not willing to move off a platform that doesn't have the same function and features, because that gives them productivity benefits as well and customer benefits—

**The Hon. JACQUI MUNRO:** I'm just trying to understand how ARNECC came to that view.

**Ms ABIGAIL BOYD:** I just want to understand. You've put out there an idea of functional equivalence quite different to what I think functional equivalence is in other interoperability contexts. I want to know where you got that from—that you think it's to do with the features that have been developed by PEXA that apparently Sympli don't have, because I don't think Sympli think that that's what it is. Where did you get that from in order to come here and tell us that that's the functional equivalence that we're dealing with?

**DAMIEN MANUEL:** That's our understanding from discussions with the banks, that they want to have functions and features that are the same between ELNOs.

**Ms ABIGAIL BOYD:** So your understanding from discussions with—

**DAMIEN MANUEL:** With banks.

**Ms ABIGAIL BOYD:** All of the banks? Do you have it in writing?

**DAMIEN MANUEL:** We have people that work with the banks in terms of managing issues and challenges. From those discussions, it was very clear that they're looking for a same-same service.

**RUSSELL COHEN:** There's a letter from ARNECC to PEXA which speaks specifically about functional equivalence.

**Ms ABIGAIL BOYD:** If we could see that, that would be very helpful.

**The CHAIR:** That would be very helpful because I think we're actually getting to the crux of the issue here. I don't believe that, when we passed this legislation, we envisioned functionality equivalence would include, as I said, the Rolls-Royce list of features.

**CLARE GILL:** No.

**The CHAIR:** Good on you for developing that. It's a great product. But now we've got the banks—I think Ms Gill said it was the big four banks who have said that's what they want.

**CLARE GILL:** Can I confirm that? I just want to make sure before I—

**The CHAIR:** Please.

**RUSSELL COHEN:** I think it's also important to remember—back when Mr Fang mentioned around interoperability being a concept raised by the Minister in 2018—it was around interoperability of lodgement. It didn't take into account the full transactional—the two parts: settlement and lodgement. Over time, the way in which the national reform was built was that both settlement and lodgement had to be completed in real time for delivery versus payment, so there didn't have to need to be undertakings. There was a whole innovation such that we could transact and lodge at the same time. Then, once you get into settlement, you get into the domains of the banks and the RBA and the transmission of funds securely from buyer to seller. That is where the interoperability reform morphed from the very original conception. I think this history is really important because now we're dealing with both the financial institutions, the RBA from a settlement perspective, the State revenue offices, as well as the land title offices.

**The CHAIR:** Let's just put them together. The banks said to ARNECC, "We'd like functionality equivalence." Who is PEXA's biggest shareholder?

**RUSSELL COHEN:** PEXA's largest shareholder today is the Commonwealth Bank.

**The CHAIR:** Who's the chair of the PEXA board?

**RUSSELL COHEN:** A gentleman by the name of Mark Joiner.

**The CHAIR:** Where did he come from?

**RUSSELL COHEN:** He's had a few roles, but prior to that he was at the NAB, National Australia Bank.

**The CHAIR:** There you go.

**The Hon. WES FANG:** Can I just ask one clarifying question in relation to all of this, which I've been patiently waiting to get an answer to?

**The CHAIR:** Go for it, Mr Fang.

**The Hon. WES FANG:** You've said that effectively the system has morphed over time from what was a more simple model, say, when you were originally privatised to now, and the expansion of the offering to the market has meant that interoperability is now much harder. In reality, that's your fault because you've effectively made a system so complex and so integrated with the banking system that you've locked out other players. That's the way I'm interpreting what has occurred here. Why shouldn't we just force you to open up your systems now, given that you've elected to make the behemoth that you've got—as good as it is—and allow the competition that we've flagged to be required prior to privatisation?

**RUSSELL COHEN:** We don't see it like that.

**The Hon. WES FANG:** I know you don't, but I'm asking: Why shouldn't I?

**RUSSELL COHEN:** I'll explain. The way in which the original reform was conceived, it was a national system for consistency and a single standard for lodging and settling property in Australia. That's really what PEXA built. We did jurisdiction by jurisdiction, digitisation by digitisation. That is hundreds of millions of dollars spent, many years of serving the whole of Australia: big cities, small towns, large law firms, country conveyancers—all on equal terms and equal pricing. We think that's a very significant national asset. We don't agree with the characterisation, respectfully. For us, we think it's something that makes Australia very unique in the world of property settlements. We think it's a national asset. We're very proud to export Australian know-how and security globally.

**The Hon. WES FANG:** Are you suggesting we should nationalise it, then?

**RUSSELL COHEN:** No, I'm not at all.

**The Hon. WES FANG:** No? Okay.

**RUSSELL COHEN:** But some of the ways in which people are proposing PEXA give up their IP or give up their know-how would look a bit like renationalisation.

**The Hon. WES FANG:** If we're going to shut down competition, sometimes we've got to wield the big stick. I don't understand.

**The CHAIR:** We're going to hear from the Government now.

**The Hon. CAMERON MURPHY:** I've really just got one question. If I could come back to this issue of intellectual property, trade secrets and copyright—that's intellectual property that you already provide to other people, don't you? You allow banks to access that intellectual property in terms of what they do. You've talked about practice management software and various types of that. Do you charge a licensing fee to those people that access your intellectual property?

**RUSSELL COHEN:** They don't access our intellectual property. They access the technology features that the intellectual property is based on. We have uniform pricing to access PEXA's services. It's published on our website. It's the same pricing for everyone in the country.

**The Hon. CAMERON MURPHY:** How is that different to allowing a competitor to access that?

**RUSSELL COHEN:** Sorry?

**The Hon. CAMERON MURPHY:** You're providing your IP to banks, practice management software companies and a vast array of other people without charging them a licence or a fee. In effect, you're not providing it to competitors if they come along and want to utilise the same intellectual property. Why are they being treated differently?

**RUSSELL COHEN:** The systems access you speak of—that currently today has a commercial price on it—is available to anyone that would like to connect via API. InfoTrack connects, as do Dye and Durham, all the banks and a range of other law firms and legal software products. That's available to anyone who would like to connect. To answer your question, that is available today. Those APIs are public and are on our website.

**The Hon. CAMERON MURPHY:** But it's the additional functionality—

**DAMIEN MANUEL:** It's important to not confuse access to service versus access to IP. You might access and use Microsoft products, but you won't have the IP of those products and how they function behind the scenes.

**The Hon. CAMERON MURPHY:** Wouldn't you have to have given access to that IP to practice management software, for example?

**CLARE GILL:** I think I can answer the question you're asking. What we are being asked is to give it to Sympli to build the same functionality to compete against us. No-one is asking Google to give their algorithm to Microsoft so that they can compete effectively against Google, who has 95 per cent of the search engine. What we're saying with practice management software is they have integration so that we can perform a function for them. That's the difference.

**DAMIEN MANUEL:** And the integration—

**The Hon. CAMERON MURPHY:** What you're saying, in effect, is you're giving it to partners that you work with for free, but you're not willing to give it to a competitor. Is that fair to say?

**CLARE GILL:** No, we're giving functionality. They can actually integrate to a point where we will perform a function for them.

**The Hon. CAMERON MURPHY:** How do they redesign their software program so that it integrates with yours and has that functionality without access to your IP?

**CLARE GILL:** They all have very different software functions and offer very different propositions to their competitors. They basically do that. They integrate with an API that hands over, and we provide the settlement and lodgement.

**DAMIEN MANUEL:** I can give you an example. In practice management software, you might key in your customer details—who they are and their name. Rather than jumping into the PEXA platform and re-keying that in on the web interface, through your practice management software you can push that to PEXA and that comes across to the PEXA system. But it doesn't do all the other functions and features within the PEXA system. At some point, you need to jump out of your practice management software and into the PEXA system, under the regulations, to then actually sign those documents. You're not allowed to do that from within the practice management software.

**The Hon. CAMERON MURPHY:** You're saying that's the only part that is IP-related that you're trying to protect. Is that right?

**DAMIEN MANUEL:** There are components within practice management software that just push data across. The IP is within the surface construct that we deliver on our site. Auto-balance is an example.

**The Hon. CAMERON MURPHY:** Do you license your IP to anyone at the moment, or not?

**DAMIEN MANUEL:** No.

**RUSSELL COHEN:** No, we do not.

**The Hon. CAMERON MURPHY:** No-one? Okay.

**The CHAIR:** I do have a few questions before we go back to the Opposition, maybe for Ms Warrell. My numbers say PEXA had around \$115 million of free cash flow last year. Does that sound about right?

**ELIZABETH WARRELL:** Yes.

**The CHAIR:** Eighty-three million of that was in dividends to shareholders. Does that sound about right?

**ELIZABETH WARRELL:** No. PEXA has never declared a dividend.

**The Hon. WES FANG:** It could be right; they're just not going to tell you.

**The CHAIR:** I don't know about that. I mean, the shareholders—are you saying dividends have never been paid or—

**The Hon. WES FANG:** Declared. That's what they said.

**ELIZABETH WARRELL:** Declared or paid. The PEXA Group has never declared or paid a dividend.

**The Hon. WES FANG:** To shareholders?

**ELIZABETH WARRELL:** Yes.

**The CHAIR:** Are you aware of any of the shareholders that have nominated how much they've earned through PEXA?

**ELIZABETH WARRELL:** No. The PEXA Group actually made a loss last year, so it has not.

**The CHAIR:** What about the year before?

**ELIZABETH WARRELL:** The year before we made a loss as well.

**The CHAIR:** Interesting.

**The Hon. WES FANG:** How does it make a loss? Where is it losing money?

**ELIZABETH WARRELL:** We made a loss because of some of the investments we're making in the UK, which is the principal driver, as well as some impairments that we had to take across the group.

**The Hon. AILEEN MacDONALD:** I was just wondering, do you ever intend to do interoperability with Sympli?

**RUSSELL COHEN:** Sorry, what's the question? Do we ever intend to do interoperability?

**The Hon. AILEEN MacDONALD:** With Sympli.

**RUSSELL COHEN:** Currently the interoperability program is paused. We are waiting on direction from ARNECC, our regulator, as to the direction of that program. We're hoping we can get clarity on the scope of the program. We're hoping we can get clarity on actually how the program will work and what benefits it will deliver to the customers and if the cost-benefit of the project makes sense. To date, that has not made sense, and, very clearly, to many parties it has not made sense. That's really what we're waiting on.

**The Hon. AILEEN MacDONALD:** You say in your submission that you don't believe interoperability actually—or that you don't support it. Is that a fair statement?

**RUSSELL COHEN:** No. Interoperability, as it was last scoped by ARNECC, we think is a failed reform, and that we cannot support and we do not support. There is a model for interoperability which we would welcome, which is two fully functioning networks of similar technical features and similar geographic coverage agreeing on what information to exchange. Until we have that, any other reform, we think, is fundamentally flawed.

**The Hon. AILEEN MacDONALD:** Does that mean you do or you don't support legislation? Are you saying that you don't support the legislation?

**RUSSELL COHEN:** No. The legislation—we understand what it sought to achieve. It's the implementation of legislation and the shifting scope over many years which has caused us great concern. That's why we're waiting on ARNECC's clarity—hopefully over the coming months—on where to take the reform.

**The Hon. AILEEN MacDONALD:** When ARNECC has the review, will you fully participate in its implementation once the recommendations come through?

**RUSSELL COHEN:** We've participated in all the reviews and all the work and all the information requested of us. Once we read it, we'll obviously understand what is expected of PEXA, but, suffice to say, we'll always comply with any legislation that commands us to.

**The Hon. SUSAN CARTER:** Was the intention of you writing to ARNECC and pointing out your claims in relation to intellectual property, and one of the reasons for writing that letter, in fact, to pause the ARNECC push towards interoperability, which you now in a circular way appear to be claiming is the reason that you're not going forward on interoperability because that has been paused?

**RUSSELL COHEN:** Do you want to take that? The letter predates me. As far as I understand that letter—it was before my time; I've only been in the role six months—

**The Hon. SUSAN CARTER:** Perhaps somebody who understands it could answer.

**CLARE GILL:** Damien was here at the time.

**RUSSELL COHEN:** Damien, do you want to take it?

**DAMIEN MANUEL:** Yes, I'll take that question. Before we issued the letter to ARNECC, there were a lot of additional problems with the interoperability scope and program of work. We had raised and flagged that there were issues around the risk, in terms of the program.

**The Hon. SUSAN CARTER:** With respect, I think we're going over old ground. The question was very specific. You have told us that the reason interoperability isn't proceeding has nothing to do with you; it has been paused by ARNECC. What role did you play—and, in particular, that letter—in causing ARNECC to pause the push towards interoperability?

**DAMIEN MANUEL:** I think that letter just highlighted one of many flaws with the program, and then it was a ministerial decision to pause the program.

**The Hon. SUSAN CARTER:** But the letter essentially threatened legal ramifications if the process continued, didn't it?

**CLARE GILL:** Can I just clarify. In relation to intent of the letter, my understanding is the intent of the letter—

**The Hon. SUSAN CARTER:** Ms Gill, you were there when the letter was written?

**CLARE GILL:** No, I wasn't, but I have spoken to people.

**Ms ABIGAIL BOYD:** Can you provide the letter?

**The Hon. SUSAN CARTER:** Perhaps those people could provide us with information, then.

**CLARE GILL:** We can give you that question on notice. We will talk to the person there. But if I can just correct—you want to know what the intent was of sending the letter. Is that correct?

**The Hon. SUSAN CARTER:** One of the many questions I have about that letter. Last question: However you've obtained it, I think we would all agree that you hold great market power and there are significant barriers to entry, as you've just outlined very clearly for us during this discussion. What do you say to the proposition that as a company with market power, you are using that market power to stop the entrance of other competitors into that market?

**RUSSELL COHEN:** We would refute that. The market share that PEXA has today—

**The Hon. SUSAN CARTER:** Sorry, you would refute that how?

**RUSSELL COHEN:** I'd refute the implication that it's being somehow misused.

**The Hon. SUSAN CARTER:** No, sorry, you would refute that how? How are you not misusing your market power to prevent entry of other people into competition in this market?

**RUSSELL COHEN:** I think it's evidenced by the following. One, we participated fully in the interoperability program over many years. Dozens of our people spent time in over 260 workshops—

**The Hon. SUSAN CARTER:** Sorry, this is the program that, partly following your letter to ARNECC, has been paused, so you were instrumental in having this program paused.

**RUSSELL COHEN:** I'm just trying to answer your question when you say how we're refuting—

**The Hon. SUSAN CARTER:** No, but I'm challenging that that's actually evidence that you have not misused your market power.

**RUSSELL COHEN:** We participated in all the workshops requested of us. We participated, obviously, in the data standard. To your earlier question, we spent over \$22½ million of our own money. We worked with a whole bunch of parties in the States, the Federal level, Sympli and the banks to try and bring the reform and honour our obligations under the legislation. We think we did what we could to meet our obligations.

**CLARE GILL:** Can I also add that the ACCC gave evidence at the Senate inquiry that they had looked into PEXA, and they have seen no contravention of the Act in relation to misuse of market power. We have had someone look at us as well, but we would refute the claim that we misuse our market power.

**Ms ABIGAIL BOYD:** I think it's really clear. If I was in your position and I had a duty to my shareholders, I would do everything I possibly could to stop someone coming in and taking my business, and I don't think that's a controversial statement. I guess the question for us as legislators is: What is it that we need to do to financially incentivise you to do something different? That's why The Greens passed the amendment to the Act back in 2022 to up those fines by 10 times what they originally proposed. How much of that fine do we need to, I guess, penalise you with to make up for what you think you're going to lose in opening up to competition?

**RUSSELL COHEN:** I can't answer hypothetical questions on fines. I don't quite understand how to value that.

**Ms ABIGAIL BOYD:** Then how much do you think you're going to lose from letting Sympli in? And then I will know how much we need to threaten you in penalties so that you'll actually come to the table.

**RUSSELL COHEN:** We've never calculated that. We don't look at our business that way.

**The Hon. WES FANG:** Just in relation to that, in an answer to a question from one of my other colleagues you indicated that you don't support the interoperability program, obviously, and you listed a number of reasons why. Regardless of whether you support the interoperability or not, you are legislated to have to be interoperable, and the only way that you can avoid that is if the registrar effectively provides you clearance or a warrant to say that you're not going to have the penalties applied.

In circumstances where the registrar removes any permission for you to be interoperable, and the Government has indicated that that's going to be from next month, you are liable for a \$10 million fine on the first day and then \$250,000 for every day that you refuse to be interoperable. So regardless of whether you accept interoperability or not, you have to, under the legislation that's already passed, be interoperable. Do you accept that you have a requirement under the legislation to have that ready by the date the Government has nominated, which is December 2025?

**CLARE GILL:** If there is a framework for us to be able to interoperate which doesn't actually stop us with our other legal requirements, which means not to hand over our shareholders' IP at no cost, and if there is a framework that will work, we are willing to engage in that. At the moment, what we're saying is that as it is currently proposed we can't see how it can work without us giving up IP that belongs to our shareholders, and we have a legal obligation not to give that up.

**The Hon. WES FANG:** In those circumstances, I think the only lever that this Parliament and the Government have is to remove your 18A permission to be an ELNO, and then we'll all go back to paper and that's the end of that. Is that what it's going to take to get you to start playing nicely with others?

**CLARE GILL:** That is really a matter for this Committee—

**The Hon. WES FANG:** Yes, it is. We may well do that if you don't start playing nicely.

**CLARE GILL:** —and for the Government.

**DAMIEN MANUEL:** I think we're waiting for ARNECC to complete their review.

**The Hon. WES FANG:** We may not wait for ARNECC.

**The CHAIR:** Order!

**The Hon. MARK BANASIAK:** We're over time.

**The CHAIR:** The witness is answering your question.

**DAMIEN MANUEL:** We're waiting for ARNECC to complete the review because, effectively, the whole function around competition—is it to drive lower price, is it around innovation, is it around resilience or is it just an ideology? PEXA is currently price regulated, so, from a price perspective, that's the consumer protection there. We've demonstrated that we do innovation, which is causing some of these challenges around interoperability.

**The Hon. WES FANG:** Yes, that's your fault.

**DAMIEN MANUEL:** From a resilience perspective, we're classed as critical infrastructure. We have dual data centre homing, both in Sydney and in Melbourne, for 100 per cent uptime reliability. And so, really, it comes down to is it an ideological choice to give consumers the ability to have choice, which may mean higher prices for them in the long term?

**The CHAIR:** I'd just like to return to the financials quickly, before we run out of time. Is it fair to say that the eConveyancing market in Australia is around \$300 million a year?

**ELIZABETH WARRELL:** Yes, that's right.

**The CHAIR:** Is it fair to say PEXA have around 90 per cent of that market?

**ELIZABETH WARRELL:** Yes.

**The CHAIR:** So, for PEXA to make a loss, there must be some pretty big investments that it's making every single year to cancel out the pure profit it's getting from such a market share.

**ELIZABETH WARRELL:** Absolutely.

**The CHAIR:** Would you like to expand a bit more on—

**RUSSELL COHEN:** The \$300 million is revenue, not profit, just to make that clear to our owners.

**The CHAIR:** Yes, of course, Mr Cohen. Would you like to expand a bit more on your overseas investments and give us a bit of an idea of what we can be proud that New South Wales and Australia have built, that we'll see overseas?

**ELIZABETH WARRELL:** Yes. Last year we invested about \$58 million in our international operations. A big part of that is what we're calling our international exchange, and actually, a lot of that technology we'll be looking to use not just internationally but also bringing back into our Australian exchange.

**The CHAIR:** All right. Does anyone else want to ask a question?

**The Hon. JACQUI MUNRO:** Super quickly, because I know we are out of time. Did anybody from PEXA speak to any of the witnesses who have appeared in today's hearing, prior to today?

**CLARE GILL:** I did not speak directly, but I understand that our practitioner team did speak generally to the membership base in a number of forums, informing them about this inquiry, and encouraged people to make submissions if they do want to. And I did have one request for some data, which I provided them with a media statement that we provided to anyone who wanted it.

**Ms ABIGAIL BOYD:** There are five lobbyist firms registered as acting for PEXA. Why do you feel that you need five of them? What sort of service exactly do they provide when it comes to the New South Wales Government?

**CLARE GILL:** It may be a legacy, the five. At the moment we have Morris Iemma's group that we have engaged and have for a number of years. The other one was TGA, which we've engaged for assistance on the Senate inquiry. That's a short-term project that will finish up with the Senate inquiry. I believe they're the two active ones that we're using at the moment. Correct me if there's another one that I'm not aware of.

**Ms ABIGAIL BOYD:** There are five still listed, but that clarifies—

**CLARE GILL:** They are the two, because it's quite an active time at the moment.

**The CHAIR:** Thank you very much. I have made a mistake reading the run sheet today. Thank you very much for making time today. I believe there might have been a question or two taken on notice.

**CLARE GILL:** Yes. I can actually confirm one now. The cost of the NECDS was \$1,940,000.

**The CHAIR:** Thank you. Any questions taken on notice, the secretariat will follow up and work through that with you.

**(The witnesses withdrew.)**

**Mr PHILIP JOYCE**, Chief Executive Officer, Sympli Australia Pty Ltd, sworn and examined

**The CHAIR:** Welcome, Mr Joyce. Thank you very much for making time to give evidence today.

**PHILIP JOYCE:** Thank you to the Committee for the opportunity to talk with you today. This is an important inquiry to ensure delivery of a New South Wales legislated obligation for competition in property settlements. This needs to happen because there are two major issues today. Issue number one—the PEXA monopoly means that New South Wales and Australia have a massive single-point-of-failure risk in property settlements: \$1 trillion settled on behalf of every home buyer and seller in the country. Issue number two—the PEXA monopoly denies genuine choice to small businesses in New South Wales and blocks millions of dollars of benefits for consumers in New South Wales every year.

That's why in 2019 the ACCC concluded that network interoperability in this market was the most effective way to introduce competition, as has every independent, objective study of this market. Those are listed on page 15 of the New South Wales Government's own submission. That's why, following the comprehensive New South Wales parliamentary inquiry of February 2022, chaired by the Deputy Chair, legislation was introduced in New South Wales in May of 2022 to compel PEXA and Sympli to interoperate. In our view, this inquiry is about ensuring that the New South Wales Government uses its extensive powers to hold PEXA and Sympli to account on their legislated obligation to deliver interoperability.

What is the impact of the PEXA massive single point of failure? If there was a multi-day outage impacting the PEXA monopoly today, every single property settlement in New South Wales and Australia would stop. That would mean very real financial and emotional costs to everyday Australians. Without government action, the question is not if a CrowdStrike-type multi-day issue will occur, it is when it will happen. At Sympli, we are proud to have built a full national ELNO with its own infrastructure and connections using modern, secure, world-class technology. We are a fully functional, comparable network in New South Wales. Once interoperability is live, if PEXA were to go down, Sympli could step in and vice versa. But why is having an additional secure and viable network important? The Australian Government's Cyber Security Centre clearly states that concentration of market reliance on a single provider increases cyber risks. Using a two-network, diversified and decentralised model, we will deliver more controls and more reliability and make this trillion-dollar market less vulnerable to cyber and fraud threats.

What does competition look like in New South Wales? Competition means customer choice. It means lower prices. It means better service, greater innovation and, importantly, more reliability. This reform is long overdue because the incumbent monopoly has every incentive to delay. As the ACCC has noted on numerous occasions and in its recent Senate testimony, delay is a commercial tactic. It is worth over \$1 million a day to PEXA in uncontested revenue. Unless New South Wales use its extensive powers to better manage the monopoly, these tactics will continue. That's why we welcomed the recent New South Wales Government sponsored in-depth reviews. These will be yet another comprehensive fact base on which Minister Dib can act with certainty, as he has said he will do before this Christmas. We are confident that these reviews will conclude that interoperability is highly feasible and can be delivered without sharing any perceived IP and that the practitioner-first release is the right solution to deliver choice to legal practitioners and consistency for banks.

What needs to happen next is for the New South Wales Government to communicate and implement the recommendations from these reviews as soon as possible. New South Wales has the necessary powers to implement interoperability, and this should include clear binding directions to both PEXA and Sympli to deliver in 2026. Consumers and small businesses in New South Wales deserve the benefits of competition and resilience, and this could be delivered next year. In conclusion, I urge the Committee to use this inquiry and its report to: one, acknowledge that the PEXA monopoly represents a massive single point of failure risk for New South Wales; two, ensure that the New South Wales Government hold PEXA and Sympli to account to their legislated obligation to deliver interoperability and, in doing so, resolve both resiliency and competition issues; and, thirdly, ensure that the New South Wales Government communicates and implements the recommendations from its reviews this year.

**The Hon. CAMERON MURPHY:** You were here earlier, Mr Joyce, while PEXA were here giving evidence. What they've said, in effect, is that they've built all this additional functionality that comprises their intellectual property and trade secrets, in terms of the source code or copyright over that functionality that they've provided. What I want to know is what have you built? Have you replicated that functionality in terms of banks, in terms of practitioner software and other areas? Or are you just looking to have PEXA hand over to you that intellectual property, so you can copy it without paying for it effectively?

**PHILIP JOYCE:** Let me answer that question in a couple of ways. I note the PEXA CEO's comments that interoperability will work when there are two comparable fully functioning networks. I'm pleased to say that

in New South Wales we are just that: we're a fully functioning, comparable network. The features that PEXA outlined in their submission are not unique; we have built them on the Sympli platform. Why are we here? We're here because this reform is blocked by the incumbent, who has no incentive to voluntarily deliver this reform. The good news for this Committee is that the just completed ARNECC reviews will confirm that this can be delivered without the sharing of any intellectual property.

If I may, let me just go back to basics, because I think it all hinges on this, doesn't it? What is interoperability at its heart? It is the creation of a data standard such that two networks can share information safely and securely to enable choice for their customers. This is used safely and securely in loads of other markets—I think Ms Boyd noted that earlier—shares, bonds, payments, telecoms, mobile, energy. We are talking about nothing different here. The good news is that 75 per cent of the data required to form that data standard already exists in what both networks use today. We've heard from PEXA, and you'll hear from me: We are connected to land registries, revenue officers, the major banks and the RBA. We need to create a data standard that allows the information to be safely and securely shared. We use already those technologies and data standards today.

So why hasn't it been delivered? It hasn't been delivered because the incumbent has no incentive to do it. Mr Fang probed that quite successfully earlier. What we need to happen is the following. The reviews that ARNECC are just concluding will be the fact base that this Committee should ask for, which will detail that this can be delivered without the sharing of any perceived IP. We have the same view as the New South Wales Government, as ARNECC and as the legal experts. The sharing of this data does not contravene any IP. We're not asking for any of that. We're not asking for the tight integration to the banks, but what we are asking for is that the data standard is created such that choice and competition can flourish. That is blocked because the incumbent is not, to use your phrase, coming to the table.

**The Hon. CAMERON MURPHY:** What they've said, though, is that that could result in a lowering of the standard that is there in the market at the moment. In effect, what they've put to us is that you're asking for it to move to the lowest common denominator in order for you to compete, rather than what banks and the market are using right now. Is that right? Or have you built additional functionality that makes you equivalent to the offering that PEXA has now?

**PHILIP JOYCE:** I've got a very clear view here. We have to be different and offer value to customers, don't we? Because 100 per cent of the market is mandated to use the incumbent today. If we were to offer an inferior product, why on earth would we ever believe a customer would choose us? We have to demonstrate value in innovation, service, price and so on. In every other industry that has networks talking to each other, they rely on a data standard. That is what interoperability is. As it comes to the banks, PEXA have done a good job integrating with the banks. By the way, we're connected to the four major banks, and we service three of those every single day, successfully and securely. Interoperability is not about the sharing of any perceived IP. It's about sharing information such that one conveyancer, if they were using our platform, inputs the data that allows PEXA to provide that equivalent service to their banks.

You heard the PEXA team earlier remark that they believe there has been substantial scope creep. I want to correct that misrepresentation. Interoperability principles have always conceived of a competitive market. A competitive market is around a level playing field. This is not about replicating the features, but it is about setting a standard such that there is genuine choice. That is why we put on the table the practitioner-first solution. What is that? That goes to the heart of what the banks have stated, which they have said very clearly. You heard it from Mr Taylor earlier and again from the ABA. They want the on-network transactions they currently do with PEXA not to deteriorate in a world where someone is using another network. That is actually enshrined in the regulations of networks today. It's called the equivalency threshold, much like the way telecoms providers have to offer that. You would not buy a phone other than Telstra if your calls weren't connected immediately and your text messages were shorn, would you? The banks under a practitioner-first model can stay with PEXA, and we offer choice to the legal market based upon a common data standard.

**The Hon. CAMERON MURPHY:** Using your analogy, what they're saying, effectively, is that you're saying, "We're here with a Nokia," and PEXA is saying, "We've spent all this money building an iPhone." You're now wanting everyone to move back to a standard, which is a pre-smartphone standard, so that you can compete. Is that right or not?

**PHILIP JOYCE:** I don't think that analogy is appropriate, but I do think some of the elements play here. If a network can offer value to the end customer above the standard, that's great. That's exactly how innovation should flourish.

**The Hon. CAMERON MURPHY:** You're saying that you've done that? You've got a value-add?

**PHILIP JOYCE:** Yes. Let's use a pertinent example in payments. Payments is a great analogous industry. I'm going to use an example of the New South Wales Government's own banking arrangements. I worked for Westpac for a number of years, and I actually worked for NSW Treasury. Westpac is the dominant banker to the Government, despite every single bank being on their panel. Why? Is it because they have developed different payment standards? Is it because they have blocked other banks from those payment channels? No. The payment standards exist, but what Westpac has done is successfully integrate on those to offer value to customers.

That's exactly what we're talking about here. We're talking about creating a common standard that allows genuine choice such that customers can make their own choice. I listened with interest today to the different conveyancer views. I think that's brilliant. We should give them genuine choice. They don't have that today. They have to use PEXA. If there's a PEXA outage, they can't go anywhere. I think the Committee has the Telegraph article, where a couple were stranded because of a PEXA settlement failure. Their quote I think is quite pertinent. They said that PEXA don't have to care about outages because they don't lose a single customer. We talked about telecoms. When Optus had their recent issues, they've lost hundreds of thousands of customers.

**Ms ABIGAIL BOYD:** Mr Joyce, you're a much more patient person than I would be. How many people do you have working at Sympli?

**PHILIP JOYCE:** Thank you. We're a New South Wales-based company with 40 people. To your question, Ms Boyd, we used to have nearly 200 a couple of years ago, when we felt there was certainty on the reform being delivered. That hasn't eventuated. You heard from one of my shareholders, Mr Ahern, earlier. We would love to grow the company to beyond where we were before.

**Ms ABIGAIL BOYD:** You started developing your platform when?

**PHILIP JOYCE:** The company was formed in 2018. We built a national ELNO, and in New South Wales we are a comparable network.

**Ms ABIGAIL BOYD:** The idea that after seven years of working with what was 200 people until quite recently and you've only built a Nokia—you're very patient. No shade on my colleague, but the impression you get from hearing from PEXA before you was that they've got this Rolls-Royce model—yadda yadda. It makes me wonder why they would be so scared of the competition if your product was so inferior and you needed to leech off them. Do you believe your product is better than PEXA's product?

**PHILIP JOYCE:** Absolutely. The customers that use us today are very complimentary about the value it adds. I need to state that if we weren't hearing from customers today that there was value we could add, we would have exited many moons ago.

**Ms ABIGAIL BOYD:** To clarify for the Committee, you could have somebody on both sides of the transaction at the moment who were both using Sympli and that transaction would work?

**PHILIP JOYCE:** Can I use the telephone analogy, because I think it would be helpful? Today, to support a home purchase and sale, two banks and two conveyancers all need to be on the same network because there is no interoperability. They all have to use the Telstra phone, don't they? That's PEXA. If we are Vodafone entering this market and they're mandated to use PEXA, they then have to buy a separate phone and make sure the other parties are using Vodafone. That would be madness. That would be complex and costly. It's actually worse than that, because banks don't accept calls from Vodafone. Interoperability is all about a data standard that gives real choice. When you buy your phone, whether you choose to buy Telstra or Vodafone, it connects. To your question, yes, people have to be wholly on our network for the network to succeed.

**Ms ABIGAIL BOYD:** But this idea that somehow your product doesn't work or that it can't connect to the banks or any of those things is not true, because you currently have trades going on, settlement is occurring and you are working with the banks. You have a fully functional product; it just can't talk to anyone who's on the PEXA system.

**PHILIP JOYCE:** Correct. Until we create the common data standard, which we're calling interoperability, then really all the complexity and cost goes to the customer. We want to remove that, don't we? We want to give the customer genuine choice. It would be remiss of me to not emphasise again that because we have those separate connections and because we have separate infrastructure, not only is this reform about the legacy and benefits of competition, but it's also about resilience. If that PEXA monopoly went down today in New South Wales, tens of thousands of home sales wouldn't go through. Mr Fang remarked about paper. There is no office to submit paper today. I love the idea of a nuclear option, but I would ask this Committee to consider that the New South Wales Government have the appropriate powers that they could use to compel the networks to produce that data standard. By the end of next year, this could be delivered and customers would have true choice and we'd have true resiliency, which we don't have today.

**Ms ABIGAIL BOYD:** But you'd be ready if it was. You're already set up.

**PHILIP JOYCE:** Yes, that's right. We have a fully functional comparable network in New South Wales. I go back to the PEXA CEO's comments earlier that he'd be willing. I look forward to him backing up those comments. But we need to create the data standard. It would be useful for the Committee to hear that we haven't downed tools on this. We are completing the design work for the data standard, and we will have completed all of that design work by the end of the year. By our estimates, approximately 50 per cent to 60 per cent of the build work between the networks has already occurred. We're not starting from scratch. But let's be under no illusion: The incumbent has no commercial incentive to do this. You talk about the fines and they are substantive. Ten days of delay already outweighs the largest fine that could occur. It will need really assertive government action, on the basis of the reviews, to make this happen.

**The CHAIR:** I would argue that not only do they not have the incentive to do it; they have an incentive not to do it and to delay it, so that all this cashflow coming from 90 per cent of the eConveyancing market can be put to overseas investments. We've heard "functionality, functionality, functionality" all day and through the submissions. What functionality does PEXA have that the banks all seem to love so much that they went to ARNECC and said, "We want all of this functionality for any other player"?

**PHILIP JOYCE:** Let me reframe that, because I think the banks and the ABA have said this clearly. Mortgage processing and supporting customers buying houses is really important; I think everyone would acknowledge that. What the banks have said really clearly is they don't want a deterioration on the offer of their service on an on-network transaction on PEXA today versus someone where it's interoperable. PEXA are on record as saying to the banks that they will deteriorate their service. That is, again, that commercial incentive at play. We have seen no evidence to say why they couldn't deliver the same level of service to the banks when the data, instead of being input into the PEXA browser by a lawyer, is input into the Sympli browser and shared by a data standard—no evidence whatsoever. When the functional review is complete and the report is produced, we are confident that it will say, yet again, that this is technically feasible without the sharing of any perceived IP and that functional equivalence for the banks can be delivered. If there are further hearings, I would honestly say to the Committee: Call on the banks to come here with the reviews in hand and ask them to commit.

**The CHAIR:** I think we will.

**The Hon. WES FANG:** When my colleague the Hon. Cameron Murphy made his analogy about Nokia phones versus iPhones and the like, I think a number of us looked at each other with a bit of quizzical amusement. I note the analogy that he made, but I'm going to make another analogy that's similar, and tell me if I'm closer to the mark than my colleague was. We'll call PEXA the iPhone, for example. It's widely in use; it's understood. We'll call the telecommunications networks the banks. When they're sending a standard text message, an iPhone will send a data stream to the network. The network will then pass that data stream to another iPhone. If you send a text message on an iPhone, you can then receive it on another iPhone.

What is in effect with Sympli versus PEXA is that it's perhaps an Android phone. It's another type of phone, just as technologically advanced and just as good. But what the networks and the iPhone aren't giving you is what characters or what binary digits will make the A, the B and the C. If an iPhone sends you a text message through a network, you can't actually read the text message because it's scrambled. You need a common dataset that will receive a text message, like a standard message service—SMS. You need that standard dataset that column A is the address, column B is the price and column C is something else. That common dataset is shared amongst everybody. There's no IP in that, is there?

**PHILIP JOYCE:** That is a fantastic example, and we would 100 per cent agree. Well done. It's about the creation of a data standard that supports the choice for customers. Importantly, also, it supports resiliency because that data standard and the separate infrastructure mean that one provider, ourselves, could step in if PEXA had an issue. Again, if they had an issue today—catastrophic. But you're right. But it's a little bit worse than that, because the current position you heard from the PEXA team earlier is that they don't want to create the data standard. If they did, they want it to be lesser than their own network. That's not fair. That's not how this legislation was conceived. I think they're trying to reframe history here. This was all about creating a level playing field for the benefit of consumers and small businesses in New South Wales. Your characterisation is very clear.

**The Hon. WES FANG:** The obvious lead-on from that would be a circumstance where Apple, with their iPhone—or the network/banks—don't want to provide open source but Android is. Is it not the case that come December 2025—you've said you've continued working on these matters—you can release the data standard and you can set what is effectively the data standard? If the State Government and Federal Government adopt the dataset that you provided or proposed—because we don't have one from PEXA because they've stopped work on it—you've now effectively created the base code of what's going to be the data standard that, moving forward,

any other market operator can come in and adopt. Is it the case that we need to make PEXA adopt your standard in order for them to comply?

**PHILIP JOYCE:** That's a really interesting proposal. That's, in effect, what we are currently doing. We're completing the first set of the data standards to release those. We've said to ARNECC that we will release those into the community by the end of the year. Then it's PEXA's role to review those and make sure that's appropriate so that it's got a safe and secure system. Now we come back to the heart of the problem: their commercial incentive to do that. That's why we need the New South Wales Government to use their powers to do that. Then we can build this, test this and let consumers and small businesses benefit from this.

Why the powers that the New South Wales Government currently have are really important is because that needs to have deadlines with enforcement such that it is complied with. The good news recently is that the New South Wales Government issued directives to the ELNOs to contribute to the current reviews in good faith. I can categorically say that Sympli will support the recommendations of those reviews. That should be the expectation of the other network and of the banks that also contributed. That's step one, exactly to your point: a clear directive to the networks to build and agree to the data standard and implement it by the end of next year.

**The Hon. WES FANG:** In answer to a question from my colleague Ms Abigail Boyd, you indicated that the ARNECC review provided a number of determinations. Have you seen a draft of that report? Are you confident to say that there will be findings effectively saying that there is no IP sharing and we just need to get on with this and get it done quickly?

**PHILIP JOYCE:** No, I haven't seen the final reports. But we're confident, based on our experience in the industry and our knowledge of how customers work, that the recommendations will say, as I stated in my opening remarks, that this is highly feasible, it can be delivered without the sharing of perceived IP and it can be delivered next year. But given the testimony that you've heard today, it will need New South Wales Government action. We're asking the New South Wales Government to communicate the recommendations from their reviews and then use their powers. As you mentioned, this is a legislated obligation. This is not up for debate.

**The Hon. WES FANG:** It staggers me that this is already in place, and it has been in place for a number of years. I don't care what they say, this is PEXA using their market size and monopoly to shut out everybody else, whether it be through sending a letter or effectively failing to engage, but there are clear, legislated penalties, and in circumstances where they're not going to play nice, I think we need to start looking at that. You're right, they're not going to actually provide the hammer that we need, because 10 days—you're right, that's the revenue that they receive and the fine that they receive. But the point is that it's already a part of their requirement. The flipside of that is—and I've said this previously—that whilst they might receive that penalty as an ELNO as well, if you're not ready and you haven't engaged in good faith, you could face the same penalty. What do you have to hang your hat on to make sure that you aren't going to be liable for the same penalty if we were to go down the path of seeking to enforce it on PEXA?

**PHILIP JOYCE:** Let me be one hundred per cent clear—we would strongly welcome clear directions from the Government to deliver this legislated obligation with enforceable penalties for non-delivery. We will be ready. We have not downed tools. Why? Because we know there's benefit for consumers and small businesses, and as a legacy for the industry, this resiliency answer is really important, so we would welcome that action.

**The CHAIR:** Do any other members wish to follow-up on their questions? That being the case, thank you Mr Joyce.

**PHILIP JOYCE:** If I may, there are a number of substantive issues raised today, so we'd like to address those in a supplementary submission. If it's okay, I think it might aid the Committee if I make a couple closing comments, very briefly?

**The CHAIR:** Definitely. Thank you.

**PHILIP JOYCE:** New South Wales has legislated that PEXA and Sympli must interoperate. Numerous independent, objective studies have validated this as the most effective form of competition in this trillion-dollar market. The New South Wales Government has extensive powers to ensure that PEXA and Sympli deliver to that legislated obligation. There is strong support from Queensland as the other State to first rollout interoperability. Whilst Federal support would be welcome, it is not necessary, given the agreed rollout to Queensland and New South Wales and nor is approval from other States.

Interoperability will deliver customer choice, lower prices, better service, greater innovation and more reliability, but the alternative universe if this doesn't happen is that New South Wales will be left with an entrenched monopoly and a massive single point of failure for all home buyers and sellers. We are talking about data standards that leverage completely business-as-usual technology and schemas. Now is the time for the

New South Wales Government to act on the recommendations of their reviews this year. That would mean that at any future hearings, this Committee can hold to account networks, ELNOs, banks and the New South Wales Government to a clear delivery plan, so that the benefits to consumers and small businesses in New South Wales can happen next year. Thank you.

**The CHAIR:** Thank you very much. I don't recall if any questions were taken on notice, but if they were, the Secretariat will follow up with you. Thanks again for making time.

**PHILIP JOYCE:** Thank you.

**(The witness withdrew.)**

**The Committee adjourned at 15.35.**