

## **InfoTrack submission to Senate Committee Inquiry into Micro-competition opportunities in the Australian economy in relation to e-conveyancing**

**20 June 2025**

### **1. Introduction and executive summary**

- 1.1. Thank you for the opportunity to provide a further submission to the Senate Committee inquiry into Micro-competition opportunities in the Australian economy in relation to e-conveyancing (**Inquiry**). This submission seeks to provide factual background in support of the issues raised in InfoTrack's first submission to the Senate Committee (**InfoTrack Submission**) of 13 March 2025, as well as to address some matters raised by Property Exchange Australia Limited (**PEXA**) in its own submissions to the Inquiry that in InfoTrack's view, are not an accurate representation of the development of the e-conveyancing industry and its current operative dynamics.
- 1.2. InfoTrack remains concerned that, unless there is significant regulatory reform of e-conveyancing that permits and fosters competition rather than monopolisation by a single entity, Australia is in danger of repeating mistakes of the past by creating another concentrated industry with downstream impacts on consumers and adjacent service providers alike. Should PEXA be allowed to sustain its monopoly, it will have no incentive to innovate or find efficiencies, removing the opportunity for lower prices, better quality products and services, and choice for Australian consumers.
- 1.3. Accordingly, this submission addresses the following matters:
  - (a) Why interoperability is possible, beneficial, generates resilience and does not impinge on intellectual property rights contrary to the assertions of PEXA;
  - (b) Why the current monopoly generates risk of failure – and why interoperability mitigates this risk;
  - (c) Why appropriate and robust regulation in e-conveyancing is necessary and should be consistent with other forms of critical infrastructure;
  - (d) Why PEXA is not incentivised to invest in Australia and, absent regulation, has an increased ability and incentive to use its power to extract more and give less, to the detriment of other participants in the e-conveyancing value chain; and
  - (e) Why PEXA, as a home-grown, dominant Australian platform should be viewed in the same light as other dominant digital platforms – to the extent there are concerns about the use or abuse of market power by such platforms, those concerns extend equally to PEXA for the same reasons.

### **2. Interoperability and competition in e-conveyancing**

#### **A. PEXA's roots as an Australian Government initiative enabled it to establish and maintain an unfettered market position**

- 2.1. Contrary to PEXA's second submission to the Senate Committee (**Second PEXA Submission**),<sup>1</sup> the lack of interoperability continues to protect PEXA's first mover advantage and the network effects generated from that status and by its ecosystem of related services. It

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<sup>1</sup> See Second PEXA Submission, p2 and 4.

- is misleading for PEXA to assert that Symplici had the opportunity or ability to enter markets in which PEXA was not yet operating in respect of e-conveyancing services.
- 2.2. InfoTrack supports the wholesale/retail "practitioner first" model submitted by Symplici as an **interim step** towards interoperability as it will deliver limited competition in the legal practitioner market. However, interoperability must continue to be pursued with urgency because this model does not resolve:
- (a) the significant competition issues arising from the absence of interoperability – PEXA will continue to have access to 100% of the data being transacted through the Electronic Lodgment Network (**ELN**);
  - (b) the squeeze on competition in other adjacent markets including data and digital services;
  - (c) competition in non-practitioner ELN markets (i.e., banking);
  - (d) the platform resilience issues arising from the absence of interoperability – PEXA's monopoly infrastructure will continue to be a single point of failure under a practitioner first model – see further paragraph 3.
- 2.3. As the Senate Committee will be aware, e-conveyancing began as an Australian Government initiative, with state Governments and banks being joint shareholders in the NECDL<sup>2</sup>, which was subsequently renamed to Property Exchange Australia Limited (i.e., PEXA).<sup>3</sup> PEXA became wholly privately owned in January 2019, when state governments sold their interests in the company to Link Group, Morgan Stanley Infrastructure Inc, and the Commonwealth Bank of Australia (CBA).<sup>4</sup> Today, the largest shareholder of PEXA is CBA, and PEXA is a publicly listed company on the Australian Stock Exchange with a market capitalisation of approximately \$2.18 billion (AUD) as at 2 May 2025.
- 2.4. E-conveyancing was mandated in Australian States and Territories from around 2016 when there were no competitors to PEXA. This effectively meant that all parties concerned in the provision of e-conveyancing services (including financial institutions, lawyers, and conveyancers) were required to become subscribers to PEXA in order to comply with the mandate. The e-conveyancing mandate led to a surge in e-conveyancing transactions and the rapid uptake of the services of PEXA Exchange Relevantly, interoperability was not mandated at the same time, nor was it at the time PEXA commenced operations as PEXA operated the only ELN. As there were no competitors to PEXA it enjoyed a singular status as the only available e-conveyancer and due to that legacy, PEXA became the gatekeeper of all relevant data standards, artefacts and processes required for e-conveyancing and interoperability, as explained further in this section.
- 2.5. E-conveyancing is currently mandatory in New South Wales, Victoria, South Australia, and Western Australia. It is available for certain transactions in Queensland, the Australian Capital Territory and Tasmania, and plans are in place for it to be available in the Northern Territory. The below figure provides a snapshot of the availability of e-conveyancing across Australian states and territories as of November 2023.

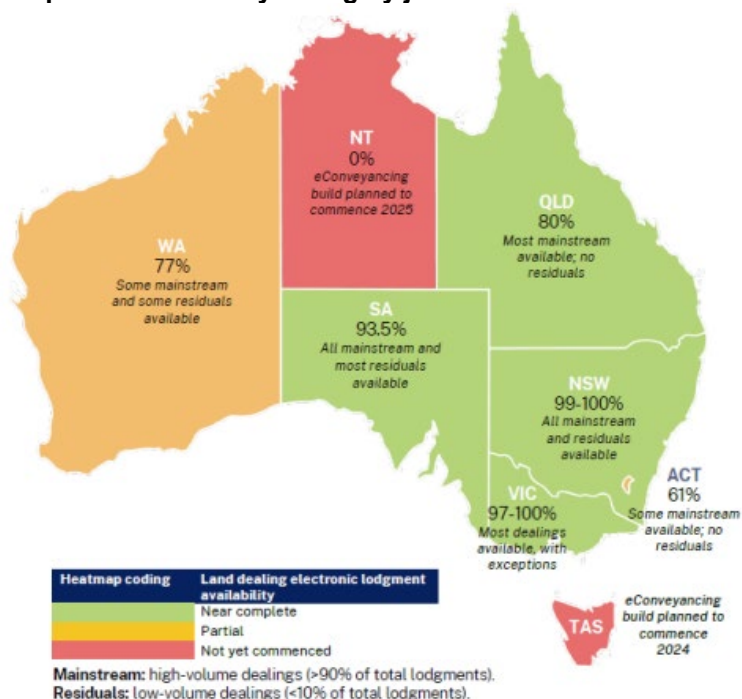
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<sup>2</sup> National E-Conveyancing Development Limited.

<sup>3</sup> In 2008, the Council of Australian Governments agreed to develop e-conveyancing as part of its *National Partnership to Deliver a Seamless Economy*, which led to two key developments: (i) the establishment of the National E-Conveyancing Development Limited (**NECDL**) in 2010, which was converted in 2011 to be a company in which the governments of New South Wales, Victoria, Queensland, Western Australia and the four major banks were shareholders; (ii) in 2011, all states and territories signed the Intergovernmental Agreement (**IGA**) for the ECNL.

<sup>4</sup> See <https://www.pexa-group.com/about/history/>.

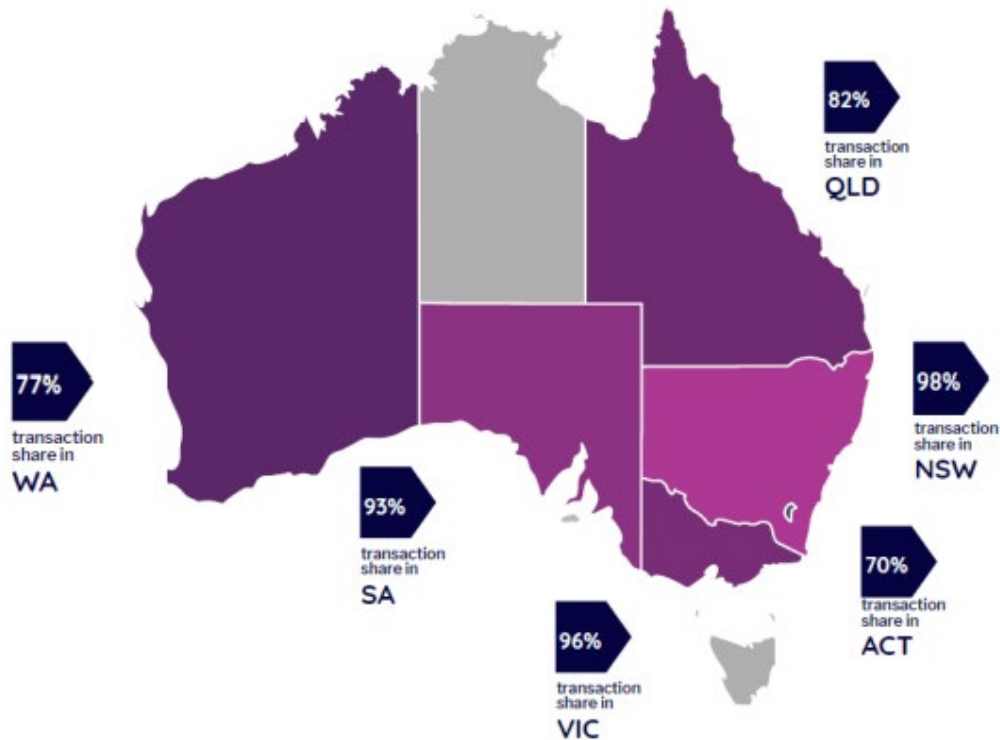
**Figure [1] – update of e-conveyancing by jurisdiction**



Source: Australian Registrars' national Electronic Conveyancing Council "Meeting papers". In Ministerial Forum: National eConveyancing Towards a sustainable, competitive national eConveyancing market, November 2023.

- 2.6. A snapshot of PEXA's e-conveyancing transaction coverage as of 25 January 2024, considered in the context of **Figure [1]** above reflects PEXA Exchange's monopoly in respect of e-conveyancing transactions in all states and territories in which e-conveyancing services are available.

**Figure [2] – PEXA's e-conveyancing transaction coverage in Australia as of January 2024**



Source: PEXA pre-Budget submission, 2023-24, 25 January 2024<sup>5</sup>

- 2.7. In the course of 2024 PEXA has launched services in Tasmania, expanded its ELN services to the Northern Territory and increased its market share in Western Australia and Queensland.<sup>6</sup>
- 2.8. Of the two operating Electronic Lodgment Network Operators<sup>7</sup> (**ELNO**), only PEXA has full-service functionality across its operating jurisdictions, meaning that it offers the full suite of document and transaction types. In contrast, Sympli Australia (**Sympli**)<sup>8</sup> does not have full-service functionality in any state or territory, and the extent of its offering varies across jurisdictions, as indicated in **Figure [3]** below. This is because the original e-conveyancing market structure conferred upon PEXA monopolist status which allowed it to benefit greatly by way of resulting economies of scale and network effects, permitting it to expand and grow in a manner that Sympli has not been able to match and is unlikely to, absent interoperability.

<sup>5</sup> See <https://www.pexa-group.com/staticly-media/2024/11/PEXA-pre-Budget-submission-2024-25-sm-1731630162.pdf> , p13.

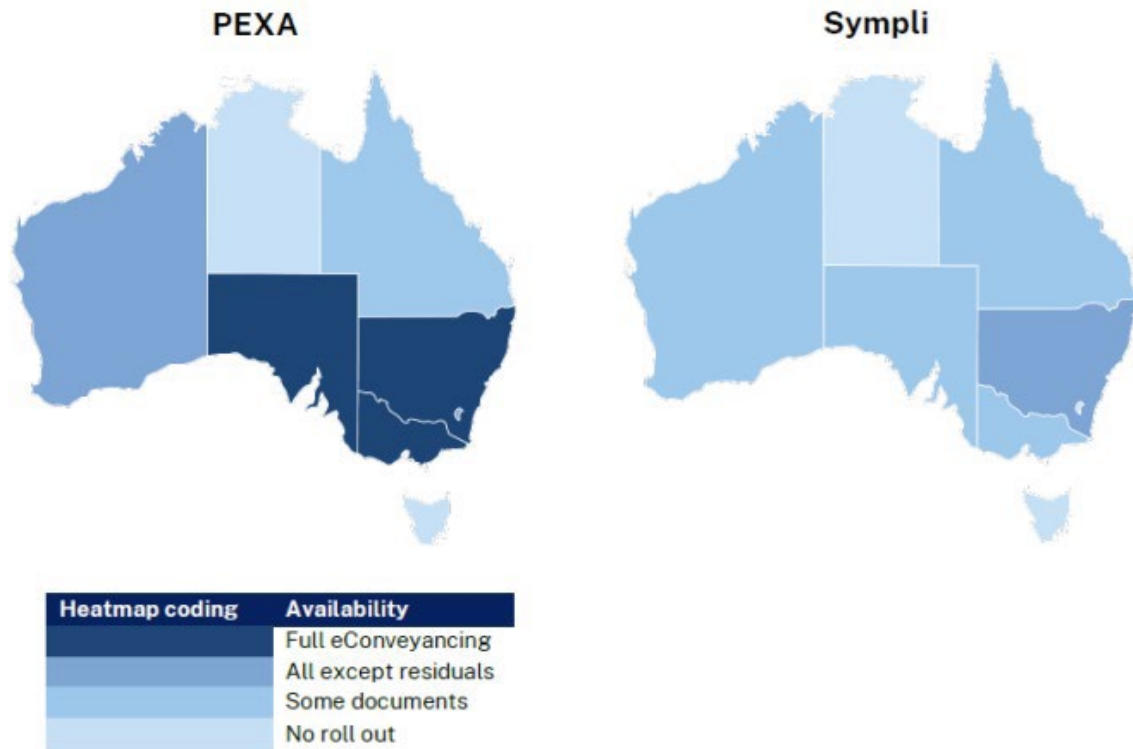
<sup>6</sup> See [https://www.pexa-group.com/staticly-media/2025/03/H1-FY25-Commentary\\_Investor-Presentation\\_vF-sm-1741060167.pdf](https://www.pexa-group.com/staticly-media/2025/03/H1-FY25-Commentary_Investor-Presentation_vF-sm-1741060167.pdf) , p6.

<sup>7</sup> PEXA and Sympli Australia, a joint venture between the Australian Securities Exchange and InfoTrack.

<sup>8</sup> Sympli is a joint venture between the Australian Securities Exchange and InfoTrack. InfoTrack holds a 49% interest in Sympli and has 2 directors on the board but does not have day-to-day management or control of the organisation.

**Figure [3] – ELNO rollout across jurisdictions**

Figure 3: ELNO rollout across jurisdictions



Source: ARNECC 2023d, 7.

Source: NSW Productivity and Equality Commission, *eConveyancing market study*, June 2024<sup>9</sup>

- 2.9. By virtue of its origin as a government-owned entity, numerous bank and land registry processes were historically created around PEXA's offering. PEXA was therefore the custodian of e-conveyancing data standards and artefacts, including the National Electronic Conveyancing Data Standard (**NECDS**), the Residual Document Spreadsheet (**RDS**),<sup>10</sup> and the National Electronic Conveyancing Interoperability Data Standard (**NECIDS**).<sup>11</sup>
- 2.10. Given this, PEXA's assertion that Sympli had "*ample opportunity to expand into jurisdictions where PEXA had not converted a large part of the market from paper-based to electronic conveyancing*"<sup>12</sup> is misleading, noting that until recently, Sympli did not have access to the relevant e-conveyancing data standards and artefacts required to permit it to expand. Relevant intellectual property has recently been transferred to a new state and territory-controlled and owned entity NECDS Ltd<sup>13</sup> permitting Sympli to gain access to the NSW artefacts. However this failure to permit access and noting that Sympli does not yet have

<sup>9</sup> See <https://www.productivity.nsw.gov.au/sites/default/files/2024-06/20240628-econveyancing-market-study.pdf>, p21.

<sup>10</sup> The RDS is an artefact that draws on the data specifications in the NECDS to create a framework for generating residual documents, which comprise approximately 90% of total document types. It is proposed that management of the RDS will pass to NECDS Ltd with the NECDS.

<sup>11</sup> The NECIDS governs the exchange of data between ELNOs to facilitate interoperable transactions and was being developed between ARNECC and ELNOs through ARNECC's Interoperability Design Committee. Given the pausing of the interoperability reforms in light of concerns raised predominantly by PEXA, it is unclear whether this workstream is continuing.

<sup>12</sup> Second PEXA Submission, [2.1.2].

<sup>13</sup> See: <https://necds.com.au/>.



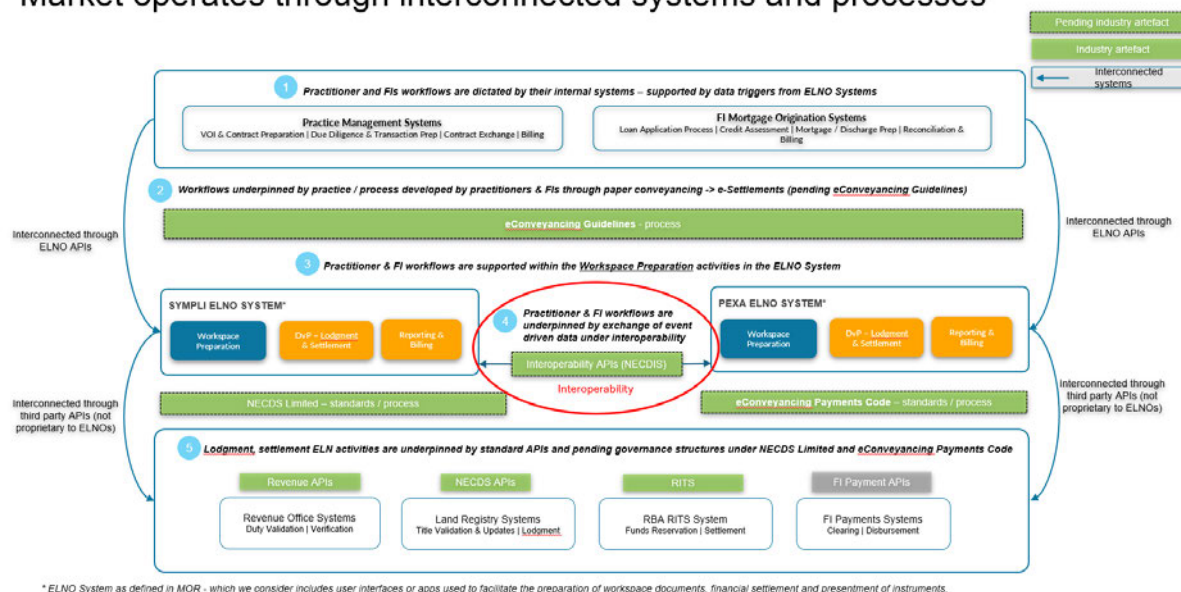
automatic access to the artefacts for other jurisdictions, has significantly delayed and hampered Sympli's ability to build out its ELN.

### **B. Interoperability is an existing feature in several key Australian sectors**

- 2.11. Interoperability refers to the "ability of a system, product, or service to communicate and function with other (technically different) systems, products or services. Interoperability issues in the digital economy will typically relate to information exchange and data".<sup>14</sup> Interoperability may be considered a sub-category of the broader concept of compatibility, namely the "ability of two or more systems or components to perform their required functions while sharing the same hardware or software environment... The boundaries that systems share and allow them to connect and exchange information are called "interfaces". Often interoperability will be based on the access to a (technical) standard..."<sup>15</sup>
- 2.12. PEXA asserts in its submissions to the Senate Committee that "interoperability between ELNO systems turned out to be a great deal more complicated than interoperability between traditional networks",<sup>16</sup> and that the extended delays to interoperability timelines were due to the complexity of the program of works required rather than any purposeful obstruction on its part through intellectual property or other claims.<sup>17</sup> However, as **Figure [4]** below shows, the program of works over which PEXA asserts intellectual property is underpinned by practices and processes developed by practitioners and financial institutions under the paper conveyancing workflow. That is, interoperability should not be complicated given the common understanding of the workflow.

**Figure [4] – Systems and processes**

Market operates through interconnected systems and processes



- 2.13. As the Senate Committee may be aware, on 16 November 2023, ARNECC released a statement indicating that the scope for interoperability releases had been settled (**ARNECC**

<sup>14</sup> See Dr W Kerber and Dr H Schweitzer, 'Interoperability in the Digital Economy', Journal of Intellectual Property, Information Technology and Electronic Commerce Law, 8 (2017), p. 40.

<sup>15</sup> See Dr W Kerber and Dr H Schweitzer, 'Interoperability in the Digital Economy', Journal of Intellectual Property, Information Technology and Electronic Commerce Law, 8 (2017), p. 3.

<sup>16</sup> PEXA submission to Senate Committee, March 2025 (**PEXA Submission**), p15.

<sup>17</sup> Second PEXA Submission, [3.3].

**Approved Scope**). PEXA contests certain items<sup>18</sup> within the ARNECC Approved Scope, on the basis that:

- (a) the items are outside of the defined scope of interoperability and not within the remit of ARNECC; and
- (b) any expansion of scope to include such items will infringe PEXA's intellectual property.

- 2.14. In addition to the items identified in the ARNECC Approved Scope, financial institutions have specific workflows for activities in the "workspace preparation" phase of a transaction, so as to prepare for settlement of e-conveyancing transactions (**FI Workflows**). If FI workflows are not supported, workspaces within the ELN will not be ready for settlement at the required date and time, leading to delays. However interoperability does not change the lodgement and settlement ("Delivery versus Payment" or **DvP**) phases of the e-conveyancing process.
- 2.15. Relevantly, as noted at [2.5] and [2.6] of the InfoTrack Submission, there is no federal regulator that oversees all aspects of e-conveyancing (including those related to settlements and payments). This regulatory gap lines up with the FI Workflows in respect of which PEXA exerts intellectual property claims, placing pressure on financial institutions / industry participants not to engage in discussions with Sympli or ARNECC to clarify the technical requirements involved in the FI Workflows.
- 2.16. InfoTrack does not agree with PEXA's position that working towards interoperability would erode PEXA's intellectual property<sup>19</sup>, given the focus of the proposed discussions is on identifying operating requirements necessary for interoperability to occur between ELNOs, rather than any technical know-how or expertise required to build the mechanisms that facilitate interoperability. In any event, the interoperability specifications that have been developed demonstrate that information can be shared to support interoperability in a way that does not erode ELNO intellectual property. Additionally, the scope of interoperability that PEXA is contesting on intellectual property grounds was proposed by Sympli, which has designed and built these features independently.
- 2.17. PEXA's assertion in the Second PEXA Submission that if the *"interoperability reform requires PEXA to exchange a significant amount of confidential data and know-how to enable another ELNO to facilitate the maintenance of that functionality...[that] would...be detrimental to innovation as it would enable competing ELNOs to replicate PEXA's technology rather than develop their own bespoke features"* also appears to be at odds with its argument in the PEXA Submission that standardisation is beneficial in the context of e-conveyancing, and that *"innovations are typically only of value to [Titles Offices, revenue offices, financial institutions, and conveyancers] if they are simultaneously adopted by all ELNOs"*.<sup>20</sup>
- 2.18. Moreover, the technology that enables interoperability (i.e., "application programming interfaces" or **APIs**) is not novel. An API is *"a set of rules, protocols and tools that allows different software applications to communicate with each other. It acts as an intermediary layer*

<sup>18</sup> These include Autobalance, Common indicators for transactions (which provide indicators of common requirements or agreements for settlements between participants in a workspace – e.g., loan documents received by an incoming mortgagee or discharge authority received by the discharging mortgagee), Attachment management, Trust account as source account (this refers to the use of trust accounts as source funds for the purpose of ELNO transaction settlement), Linked lodgments (supports other properties that are to be used as collateral – without this item, financial institutions would need to have a process outside the ELN platform to flag that the linked lodgment case must be lodged), Express Refinance, Reconciliation of transactions between Responsible ELNO and Participating ELNO (which supports requirements from financial institutions where a payment is not processed correctly due to erroneous account details or errors in the payments process – this supports financial institution processes to ensure that funds are directed to the correct recipient), International disbursements (which refers to collection of international financial institution details to process an international payment through SWIFT or IBAN), ATO GST withholding tax requirement (for which an API service is published and provided to ELNOs to integrate and streamline the forms and payments required for the transaction), and ELN source accounts (which relates to the ability for a purchaser or vendor's representative to use their ELN's source account in a workspace).

<sup>19</sup> For example, with reference to Autobalance, this is ELNO functionality that leverages data in the workspace to automate actions for subscribers – the intellectual property relating to Autobalance is not necessary for interoperability. Accordingly, the intellectual property in Autobalance should not be viewed as an excuse not to progress interoperability.

<sup>20</sup> PEXA Submission, p24.

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*that allows the transfer of data between different systems, services, and libraries. APIs enable organisations to open their application data and functionality to internal branches, business partners, third-party developers, and other key internal and external stakeholders."*<sup>21</sup>

- 2.19. In this sense, interoperable APIs that would facilitate the exchange of data between ELNOs are **not** fundamentally distinct from the way currently PEXA facilitates connections with and between subscribers/users of PEXA Exchange, including with practice management systems (**PMS**), land registry services, revenue offices, and financial institutions.
- 2.20. The benefits of interoperability have been demonstrated in other key Australian industry sectors. For example, the *Connecting Australian healthcare – National Healthcare Interoperability Plan 2023-2028* outlines a national vision to share consumer health information in a safe, secure manner and identifies actions across five priority areas relating to identity, standards, information sharing, innovation and measuring benefits. There are a number of efficiencies and benefits that will be generated through this interoperability plan, as shown in **Figure [5]** below.<sup>22</sup>

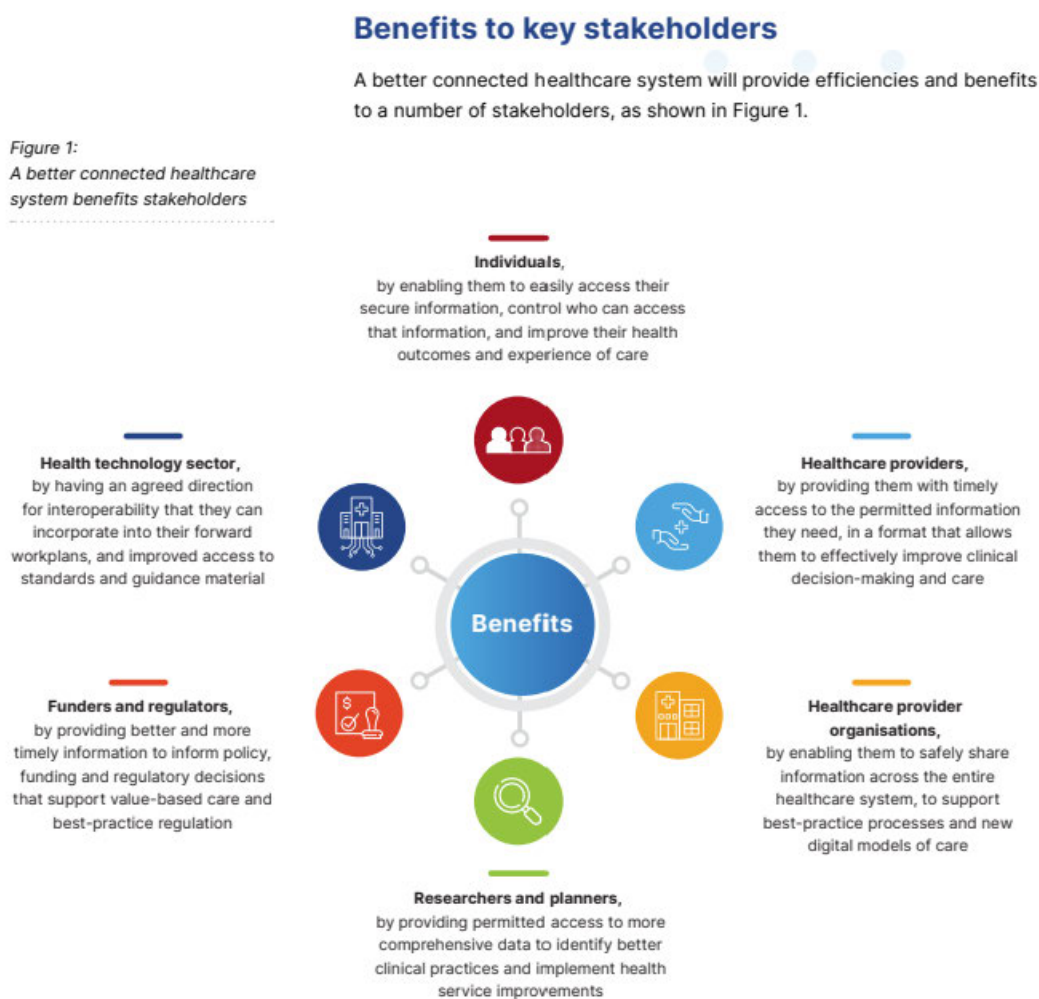
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<sup>21</sup> See <https://architecture.digital.gov.au/apis>.

<sup>22</sup> See <https://www.digitalhealth.gov.au/about-us/strategies-and-plans/national-healthcare-interoperability-plan> and <https://www.digitalhealth.gov.au/sites/default/files/documents/national-healthcare-interoperability-plan-2023-2028.pdf>.



**Figure [5] Benefits to key stakeholders in relation to healthcare system interoperability<sup>23</sup>**



- 2.21. Another example of progress towards interoperability is in respect of the education sector, with the establishment of the National Schools Interoperability Program (**NSIP**) as a joint initiative of State, Territory and Federal Ministers for Education in July 2010 to support the development of digital learning infrastructure nationally and improve access to information for stakeholders in the Australian education sector. NSIP promotes the adoption of common technical standards and supports projects that improve data mobility and interoperability of information systems used by schools and school authorities across Australia.<sup>24</sup>
- 2.22. PEXA's unsubstantiated claims that interoperability e-conveyancing transactions would introduce additional risk need to be weighed against the recognised benefits of interoperability in other sectors which involve critical infrastructure and highly sensitive data such as healthcare and education. Contrary to PEXA's claims, there is **no** evidence to suggest that:

- (a) *"multiple ELNOs would decrease resilience"*<sup>25</sup>

InfoTrack strongly disagrees with this unsubstantiated assertion by PEXA. Rather, in an interoperable environment, if one ELN fails or has an outage (which is an ongoing and

<sup>23</sup> See <https://www.digitalhealth.gov.au/sites/default/files/documents/national-healthcare-interoperability-plan-2023-2028.pdf> , p6.

<sup>24</sup> See <https://www.nsip.edu.au/about/> .

<sup>25</sup> PEXA Submission, [6.1.1].

prevalent issue plaguing the current monopolistic operator – see section 3) then a well-designed interoperable network will enable "in-flight" settlements to switch across seamlessly to the other operator. Data portability would be a feature of the e-conveyancing market, providing choice to subscribers / users. In this sense, industry participants would be able to switch between ELNs in the instance of one ELN failing and there would be no issues with documents / details being contained "in flight" and unable to be extracted and rapidly transferred to the alternative ELN;

- (b) *automation tools may be "degraded or become non-functional if they are not implemented by all ELNOs"*<sup>26</sup>

The relevance of or basis for this statement by PEXA is unclear given that, currently, there is no opportunity for other ELNOs to build these tools because PEXA has declined to engage on interoperability, FI Workflows and the contested items within the ARNECC Approved Scope. PEXA concedes that it has sought to assert its influence on regulators, other industry participants (such as financial institutions), and customers such that they similarly refrain from engaging constructively to progress interoperability works on the basis that doing so would infringe PEXA's unsubstantiated intellectual property rights;<sup>27</sup>

- (c) *interoperability increases the risk of settlement failures due to:*

- (i) *the higher level of technical complexity because there will no longer be a single body with the skills, responsibility or authority to expedite resolution of failed settlements;*<sup>28</sup>

This is a hypothetical construct that assumes and perpetuates the first mover advantage PEXA enjoys as the incumbent monopoly ELN. The e-conveyancing market should be contestable. Analogous to the policy recognition that it is no longer appropriate for PEXA to continue to be the custodian of e-conveyancing data standards and artefacts (which led to an in-principle agreement between ARNECC and PEXA to transfer responsibility and control of the NECDS to NECDS Ltd), it is also inappropriate that PEXA continues to be the gatekeeper of skills, responsibility and authority to facilitate and resolve issues with Australian property transaction settlements. Furthermore, this construct is entirely unsupported and is at odds with the numerous examples of existing interoperable critical infrastructure networks (see [4.9] below).

- (ii) *the dependence on ~60 APIs between ELNOs to facilitate interoperable transactions;*<sup>29</sup>

The number of APIs that might be required is not relevant and equating complexity with a number of APIs is misleading. The ELNO ecosystem is entirely dependent on APIs to connect to external systems to manage e-conveyancing transactions. Existing integrations to third parties (such as banks and PMS) already pose a risk to workplace readiness and settlement failure. Indeed, these integrations are not with other ELNOs and are less regulated than inter-ELNO connections. This means that APIs with another ELNO are safer and more predictable than what already exists.

<sup>26</sup> PEXA Submission, [6.1.2].

<sup>27</sup> Second PEXA Submission, p12.

<sup>28</sup> PEXA Submission, [6.1.2].

<sup>29</sup> PEXA Submission, [6.1.2].

### 3. PEXA's monopoly ELN infrastructure represents a single point of failure

- 3.1. As recognised by PEXA in its first submission to the Senate Committee in March 2025 (**PEXA Submission**), *"For most Australians, property is their largest asset, and property transactions are the largest monetary transactions in their lives. Individuals, and society more broadly, have zero tolerance for loss associated with these transactions."*<sup>30</sup> Despite this, real world experience suggests that outages that stem from failures of PEXA's ELN do indeed result in material losses for Australians, with no mandatory framework for accountability imposed on PEXA, other than general concepts of "service reliability" which are prone to subjective interpretation.<sup>31</sup>
- 3.2. In the 12 months from February 2024 to January 2025, PEXA customers experienced 95 platform incidents. PEXA only takes accountability of 10 of these incidents, with the rest of the responsibility for such outages attributed by PEXA to "partner platforms" including banks, SROs and Land Registries. Approximately 10 settlements a week are delayed due to platform incidents to the next business day, with an unknown number delayed for longer.<sup>32</sup> Although PEXA indicates that it *"systematically analyses all incidents to identify improvement opportunities for the future"*, it is difficult to understand the nature of the incidents and the measures undertaken by PEXA to prevent such outages from reoccurring; there is a paucity of information disclosed on PEXA's incidents page.<sup>33</sup>
- 3.3. By way of example, "Payment File Response" related platform incidents occurred on or around both 18 March 2025<sup>34</sup> and again on or around 14 April 2025,<sup>35</sup> as well as on multiple occasions in January 2025, December 2024, November 2024, October 2024, September 2024, August 2024 and earlier. These incidents are categorised by PEXA as affecting "Financial Settlement Services" and appear on some occasions to impact transactions involving specific banks such as the Commonwealth Bank of Australia (**CBA**)<sup>36</sup>, Macquarie Bank (**Macquarie**),<sup>37</sup> Australia and New Zealand Banking Group Limited (**ANZ**),<sup>38</sup> Bendigo Bank (**Bendigo**)<sup>39</sup>, Australian

<sup>30</sup> PEXA Submission, [6.1].

<sup>31</sup> For example, PEXA appears to distinguish between a service outage and a service disruption / incident. PEXA has asserted that there have been no service outages preventing all PEXA Exchange users from accessing the system, and it is on this basis that it represents the accuracy of its "100%" uptime figure. However, "uptime" is an artificial construct that is not based on the regulatory requirements of the ECNL nor the MOR. As indicated in ARNECC's Guidance Notes, PEXA's *"service reliability requirement is not less than 99.8% during Core Hours and not less than 99% during Non-Core Hours. When you have no unplanned service disruptions during a month, your service reliability performance is 100%"*. See <https://www.arnecc.gov.au/wp-content/uploads/2023/07/7.2.1-MORGN-Version-6.2-Clean-002.pdf>.

<sup>32</sup> PEXA Submission, [4.5].

<sup>33</sup> See <https://status.pexa.com.au/history>.

<sup>34</sup> See <https://status.pexa.com.au/incidents/8gp58xkvz301>.

<sup>35</sup> See <https://status.pexa.com.au/incidents/d87cwc0y8ijk>.

<sup>36</sup> See for example <https://status.pexa.com.au/incidents/rh0vvtx5z76m>.

<sup>37</sup> See for example <https://status.pexa.com.au/incidents/8msgd3bck530>, <https://status.pexa.com.au/incidents/w4scpy5t8q13> and <https://status.pexa.com.au/incidents/qxpl5j5pmlhn>.

<sup>38</sup> See for example <https://status.pexa.com.au/incidents/x6c56b0mxkcy> and <https://status.pexa.com.au/incidents/y2jc4431zd8k>.

<sup>39</sup> See for example <https://status.pexa.com.au/incidents/rcb9pddzf4zf>.

- Settlements Limited (**ASL**)<sup>40</sup>, Bank of Queensland (**BOQ**)<sup>41</sup>, Westpac<sup>42</sup>, National Australia Bank (**NAB**).<sup>43</sup> On other occasions they have had a generalised impact across all workspaces.<sup>44</sup>
- 3.4. In August 2024, there were numerous outages affecting transactions across several Australian states, relating to workspace creation, document preparation and lodgement services.<sup>45</sup> Transactions in Queensland workspaces were materially impacted.<sup>46</sup> This is of particular concern, given that settlement delays are considered to be responsibility of the purchaser in Queensland, and where a settlement is delayed, a prospective purchaser is liable to lose the deposit they have paid for the property (as well as the property itself) and be liable to the vendor for costs / expenses which have been incurred due to the delay. Additionally, the detrimental impacts of a delayed settlement on prospective purchasers have been reported to include Australians forced to stay overnight in their cars and incurring material additional expenses that would not have been the case had settlement occurred on time (which may have been the case had paper conveyancing processes been followed).<sup>47</sup>
  - 3.5. Another example of PEXA's platform incidents was a material outage in March 2025, relating to an issue impacting Australian Taxation Office (**ATO**) GST forms. This outage commenced on the morning of 17 March 2025 and was eventually resolved in the evening of 19 March 2025. During this outage, PEXA advised users that *"in the meantime, for urgent settlements, we recommend lodging ATO forms 1 and 2 directly via the ATO website and manually creating the GST Withholding payment line item as needed."* This appears at odds with PEXA's concerns that interoperability would derogate the effectiveness and automated nature of the existing ecosystem which takes place within PEXA's walls.
  - 3.6. As recently as 28 April 2025, it was reported that the PEXA ELN experienced a cyber incident, with login issues attributed to the actions of a third-party vendor, as well as duplicated transactions that resulted in conveyancers' trust accounts being overdrawn.<sup>48</sup> Since that time, there have been a further three outages all in relation to payment files impacting transactions and affecting workspaces nationwide in addition to a mobile signing validation issue.<sup>49</sup>
  - 3.7. From the repeated occurrence of the same issues resulting in outages / platform incidents, it is evident that the PEXA ELN is not as robust or resilient as PEXA asserts, and these arguments should not be raised as barriers to interoperability, particularly given PEXA's advocacy for the open use of Land Information and designation of the property sector under the Consumer Data Right (as discussed at section [5]). Indeed, competition between two or more interoperable ELNs will encourage PEXA (and any competitors) to invest in providing a more stable network – this will particularly be the case if the consequence of network failure is that revenue is at risk because settlements are transferred to another ELN in the event of an outage.
  - 3.8. As is evident from the examples set out at [3.3], many outages / platform incidents involve financial settlement processes which are expressly contemplated by CPS230.<sup>50</sup> These

<sup>40</sup> See for example <https://status.pexa.com.au/incidents/qwp0b5jn0s0> .

<sup>41</sup> See for example <https://status.pexa.com.au/incidents/g19z6nd2pb2l> and <https://status.pexa.com.au/incidents/r246tptmxgcw> .

<sup>42</sup> See for example <https://status.pexa.com.au/incidents/9gvv96xdmnl4> .

<sup>43</sup> See for example <https://status.pexa.com.au/incidents/w3y1wwl782p9> and <https://status.pexa.com.au/incidents/xt4pxvhz3vk2> .

<sup>44</sup> See for example <https://status.pexa.com.au/incidents/cg2kbfcpqlvj> .

<sup>45</sup> See <https://status.pexa.com.au/incidents/4khsphrmdvpw> .

<sup>46</sup> See <https://status.pexa.com.au/incidents/9q4yxd5rh58k>, <https://status.pexa.com.au/incidents/w3lqljhm138> , <https://status.pexa.com.au/incidents/zj4y6hh35ky2> and <https://status.pexa.com.au/incidents/zj4y6hh35ky2>

<sup>47</sup> Payday News, *The devastating human impact of PEXA settlement outages*, 20 March 2025.

<sup>48</sup> See <https://www.bankingday.com/pexa-strife-a-matter-of-trust> .

<sup>49</sup> See <https://isdown.app/status/pexa/incidents/390725-mobile-signing-issue>.

<sup>50</sup> See <https://www.apra.gov.au/sites/default/files/2023-07/Prudential%20Standard%20CPS%20230%20Operational%20Risk%20Management%20-%20clean.pdf> .

incidents do not appear to involve just one bank / authorised deposit-taking institutions (**ADIs**), but are widespread and occur frequently. In such circumstances, InfoTrack reiterates its concern that ADIs' reliance on PEXA Exchange represents a single point of failure that does not align with their obligations set out in CPS230, in the absence of interoperability and competition.

- 3.9. Moreover, there is no evidence to suggest that there is "*substantial inconvenience and cost of linking internal systems to more than one ELNO*", or that it would take days for a customer to become a subscriber to a different ELNO.<sup>51</sup> Where there are multiple ELNOs that Australians may choose from, it may not necessarily be the case that interoperability is required for every transaction, where for example all parties are using Sympli. In any event there are real benefits to progressing interoperability, which will drive ELNOs to invest in innovation, value, user experience, security and resilience of their platforms.

#### 4. PEXA Exchange should be held to appropriate service standards and regulated accordingly

##### A. Service standards and obligations

- 4.1. As noted in the InfoTrack Submission, the existing regulatory framework does not adequately equip ARNECC with enforcement powers in instances where the Model Operating Requirements (**MOR**) or Electronic Conveyancing National Law (**ECNL**) is breached. PEXA is not required to compensate users where it breaches the service availability or reliability requirements set out in the MOR.
- 4.2. Schedule 2 of the MOR sets out the performance targets for ELNOs and states that "service availability" means that the ELNO System must be available to its Subscribers (including those services dependent on functionality needing external communications and systems except when those external communications or systems are not available) for 24 hours per day, seven days per week and 52 weeks per year, exclusive of Scheduled Maintenance, to be assessed monthly. "Service reliability" is also set high: the ELNO System must be available for:
- (a) Not less than 99.8% during Core Hours (defined as between 6am – 10pm on each business day); and
  - (b) Not less than 99 during Non-Core Hours,
- assessed monthly.
- 4.3. While "availability" is not defined in the MOR, the definition of availability included in APRA's CPS 234 which sets out the Prudential Standards for Information Security is "*accessibility and usability when required*".
- 4.4. In any event PEXA does not meet these criteria. Its reported system incident history<sup>52</sup> indicates multiple "significant service disruptions" in the first 6 months of 2025 as well as a number of "partial service disruptions". Accordingly, the "100% uptime" metric cited by PEXA<sup>53</sup> appears to be a misrepresentation of the operation of PEXA Exchange; while PEXA may be "available", access to PEXA Exchange<sup>54</sup> without an ability to transact and settle is meaningless to Australians and such outages should not be downplayed as mere "minor service disruption[s]".

<sup>51</sup> Second PEXA Submission, [2.3]. This is an assertion which should not be accepted at face value. While there may be a process, initial sign up is a singular event. That there is a sign-up process should not be a barrier to on-going access which will provide the benefit of resilience and competitive choice once registration is complete. Interoperability sets up a competitive environment which means that switching, if necessary or desirable, is an option and is easier to undertake.

<sup>52</sup> Available here.

<sup>53</sup> See <https://www.pexa-group.com/content-hub/news/how-pexa-is-delivering/> and its system incident history, available in fn 52 above.

<sup>54</sup> Noting that on some occasions, incidents have also included login and multi-factor authentication service issues. See for example <https://status.pexa.com.au/incidents/wjhw5tkgl169>.



Currently, PEXA operates on a "best endeavours" basis and has no commercial incentive to invest in improving the stability, resilience and user experience of its ELN.

- 4.5. In contrast to PEXA's reporting, telecommunications and energy providers are subject to mandatory service requirements as well as obligations to notify users of planned interruptions, with requirements to compensate users where they have failed to meet such standards. For example, Ausgrid is required to maintain certain service levels under the Guaranteed Service Level Scheme, the National Energy Retail Rules (NSW), the Electricity Supply Act 1995 (NSW), and associated regulations. Where it fails to do so, customers can make a GSL Claim,<sup>55</sup> and regulators may issue infringement notice penalties.<sup>56</sup> Similarly, telecommunications providers in Australia are required to meet the Telecommunications (Customer Service Guarantee) Standard 2011, failing which they must compensate customers.<sup>57</sup>
- 4.6. Moreover, to keep its licence, Telstra must follow the Network Reliability Framework and report to the Australian Communications and Media Authority (**ACMA**) on the performance of its network.<sup>58</sup> ACMA reports on Telstra's performance against 3 levels of operation in its annual communications report – for example, level 3 examines individual service performance, and Telstra must act to prevent any service from experiencing: (i) more than 3 faults in any 60 day period, and (ii) more than 4 faults in any 365 day period, and report on any services that breach these thresholds.
- 4.7. InfoTrack believes that such reporting obligations enable transparency which builds community confidence and encourages providers to invest and strive to meet service standards that comply with those set out in the regulatory framework. Currently, compensation by PEXA Exchange to users impacted by outages appears to be ad hoc and at the full discretion of PEXA.<sup>59</sup> This is likely to result in PEXA having the ability and incentive to cherry pick the occasions on which it provides compensation which will likely be to the detriment of individuals and smaller user groups with no countervailing power and no alternative ELN to turn to.
- 4.8. At the very least, "availability" as defined in CPS 234 should be included in the MOR. PEXA's reporting would then provide a more accurate picture of its resilience (or lack thereof).

#### **B. Equivalence in regulating critical infrastructure**

- 4.9. We understand from the PEXA Submission that PEXA Exchange was listed as "critical infrastructure" under the *Security of Critical Infrastructure Act 2018* (the **SOCI Act**) in 2023.<sup>60</sup> As the Senate Committee would be aware, the SOCI Act applies to 11 sectors (**SOCI Sectors**), being communications, financial services and markets, data storage or processing, defence industry, higher education and research, energy, food and grocery, healthcare and medical, space technology, transport and water and sewerage.<sup>61</sup> The objective and policy of the SOCI Act is to improve resilience and minimise the impact of a single-point-of-failure in Australia's critical infrastructure. In many of these sectors, and indeed in order for many of these sectors to function and meet this objective, some aspects are outsourced to or operated by an external entity (in certain instances considered to be an "operator" under the SOCI Act). This is expressly contemplated in guidance given by the CISC and the Department of Home Affairs – for example:

<sup>55</sup> See <https://www.ausgrid.com.au/Your-Energy-Use/Guaranteed-Service-Levels> .

<sup>56</sup> See for example <https://www.aer.gov.au/news/articles/news-releases/nsw-electricity-distributors-pay-100-000-penalties-regarding-their-life-support-obligations> and <https://www.esc.vic.gov.au/media-centre/ausnet-services-pays-penalties-allegedly-failing-notify-customers-planned-interruption> .

<sup>57</sup> See for example <https://www.telstra.com.au/consumer-advice/customer-service/customer-service-guarantee> .

<sup>58</sup> See <https://www.acma.gov.au/reliability-telstras-network> .

<sup>59</sup> Payday News, *The devastating human impact of PEXA settlement outages*, 20 March 2025.

<sup>60</sup> PEXA Submission, [6.1]. As the Senate Committee may be aware, the Cyber and Infrastructure Security Centre (**CISC**) maintains a Register of Critical Infrastructure (**Register**), which is not available to the public.

<sup>61</sup> See <https://www.cisc.gov.au/legislation-regulation-and-compliance/soci-act-2018> .



- (a) where the responsible entity for an electricity transmission network contracts an entity to independently manage an electricity substation;
- (b) where the responsible entity for a critical water asset has contracted an entity to independently manage a water treatment plant.<sup>62</sup>

4.10. Tasks that operators can be responsible for (but not limited to) include:

- (a) managing, controlling and/or participating in an asset's control room or network operations centre (or however else described). This includes those entities that manage and/or control an asset's industrial control systems (such as SCADA systems);
- (b) independently managing or controlling key assets or network elements (whether remotely or not), with relevant examples being:
  - (i) a third-party provider operating medical imaging in a critical hospital;
  - (ii) contracting an outside firm to provide the maintenance for a critical broadcasting asset's communication cables.<sup>63</sup>

4.11. In the context of the above and noting that interoperability and cooperation with third party entities in the operation of critical infrastructure assets is an existing feature in many of the SOCI Sectors, it is difficult to understand why interoperability in e-conveyancing would be at odds with PEXA's obligations under the SOCI Act.

4.12. In fact, in order to meet the policy objectives of the SOCI Act, interoperability must be considered to be one measure by which operational risk is mitigated by providing both network redundancy and resilience.

### **C. Importance of robust regulation of e-conveyancing sector to Australian economy**

4.13. The scale and breadth of PEXA should not be underestimated. InfoTrack does not agree with PEXA's assertions that robust regulatory regimes akin to those that apply to other industries such as utilities or telecommunications, should not apply to e-conveyancing based on a comparison of revenues generated by the industry or individual operators. Approximately \$3 billion in payments flows through PEXA Exchange each day,<sup>64</sup> with 20,000 home settlements processed per week.<sup>65</sup> In addition, PEXA's revenues are not confined to its statutory revenue stream. As discussed further in section [5], PEXA has been strategically investing in adjacent and related businesses to increase its reach across the property transaction value chain, with its financial results demonstrating great success in doing so.<sup>66</sup>

4.14. Second, the PEXA Submission asserts that the e-conveyancing sector is a regulated and relatively small market in the Australian economy, and compares PEXA to the ASX and Google, suggesting that PEXA is subject to more regulation despite having lower revenues.<sup>67</sup> However, these are not valid nor relevant comparisons, including for the following key reasons.

- (a) First, the ASX is subject to rigorous listing rules and regulatory oversight by the Australian Securities and Investments Commission (**ASIC**) and the Reserve Bank of Australia (**RBA**), which have significantly more enforcement powers than ARNECC.
- (b) On 25 February 2025, ASIC announced that it had used "*new powers to promote competitive outcomes in clearing and settlement (CS) by requiring the ASX to provide its CS services on a transparent and fair basis, with a requirement to publish a comparison of fees against international providers.*" This follows the passing of the *Competition in*

<sup>62</sup> See <https://www.cisc.gov.au/resources-subsite/Documents/register-critical-infrastructure-assets.pdf>.

<sup>63</sup> See <https://www.cisc.gov.au/resources-subsite/Documents/register-critical-infrastructure-assets.pdf>.

<sup>64</sup> PEXA Submission, [6.2.7].

<sup>65</sup> PEXA Submission, p3.

<sup>66</sup> See <https://www.pexa-group.com/staticly-media/2025/02/2025-Half-Year-Results-ASX-Announcement-sm-1740691326.pdf>.

<sup>67</sup> PEXA Submission, p4.

*Clearing and Settlement (CiCS)* services reforms passed in September 2023 and enlivened by the Minister in May 2024. Relevantly, these new rules require the ASX to ensure its clearing and settlement services are offered in a transparent, non-discriminatory way and require the ASX to have taken all reasonable steps to:

- (i) ensure that the pricing of its services is transparent, fair and reasonable;
  - (ii) provide access to its covered services (including data) on commercial, transparent and non-discriminatory terms;<sup>68</sup> and
  - (iii) ensure that its core technology systems are designed and developed in a way that facilitates third-party access.<sup>69</sup>
- (c) The new rules impose enforceable obligations on the ASX in respect of requirements on technical interoperability, management of intragroup conflicts, and external assurances on pricing and barriers to competition. This reflects the robust nature of the updated regulatory regime under which the ASX is regulated, compared to the regulatory framework that currently governs e-conveyancing.
- (d) Second, in respect of Google, the ACCC has found that it has a dominant position in several sectors and markets, including the following:
- (i) **Ad-tech** – Google's dominance in the ad tech supply chain is underpinned by multiple factors including its access to consumer and other data, access to exclusive inventory and integration across its ad tech services. The ACCC's *Digital advertising services inquiry Final Report* released in September 2021 (**Adtech Report**) found that Google used its position to preference its own services and shield them from competition, and the ACCC noted that "Google has access to a large volume and range of first-party data gathered through its customer-facing services, such as Search, Maps and YouTube. The extent to which Google uses its first-party data to advantage its ad tech businesses is not clear and is a source of confusion among industry stakeholders." The impacts of network effects and unfettered use / access to data by dominant undertakings is considered in more detail at section [7] below;<sup>70</sup>
  - (ii) **General search services** – in December 2024, the ACCC found that Google's dominance in general search services in Australia has continued despite regulatory and technological changes to search services. Google has maintained its position as the dominant search engine in Australia with a market share of nearly 94% as recently as August 2024. Its nearest rival has just 4.7% of the Australian market. The ACCC emphasised the importance of closely monitoring

<sup>68</sup> This obligation and that at 4.9(b)(iii) appear to be similar to the "equal access" requirements that are placed on ELNOs but are more robust, see MOR 7.2.4.

<sup>69</sup> See <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2025-releases/25-019mr-asic-makes-new-clearing-and-settlement-rules-to-promote-competition/>. As noted by ASIC, the "CiCS reforms that passed the Parliament in September 2023 and the May 2024 Corporations and Competition (CS Services) Instrument 2024 provided ASIC with rule-making powers in respect of ASX's cash equity CS facilities. The CiCS reforms were the culmination of extensive review and industry consultation by the Council of Financial Regulators (CFR) and the ACCC on the implications of competition in CS of cash equities in Australia, and calls from regulators for more powers. In 2017, the CFR published regulatory expectations for conduct in operating cash equity clearing and settlement services in Australia (Regulatory Expectations), which we have implemented as enforceable obligations in our CS Services Rules...

ASIC and the RBA are co-regulators of licensed CS facilities.

The RBA and ASIC have supervisory responsibilities for the four CS facilities in the ASX Group: two central counterparties – ASX Clear Pty Ltd and ASX Clear (Futures) Pty Ltd – and two securities settlement facilities – ASX Settlement Pty Ltd and Austraclear Limited. The ASIC CS Service Rules 2025 will apply to these subsidiaries and other ASX Group entities."

<sup>70</sup> See <https://www.accc.gov.au/media-release/googles-dominance-in-ad-tech-supply-chain-harms-businesses-and-consumers>, where then ACCC Chair Rod Sims said "Google has used its vertically integrated position to operate its ad tech services in a way that has, over time, led to a less competitive ad tech industry. This conduct has helped Google to establish and entrench its dominant position in the ad tech supply chain."

overseas developments<sup>71</sup> while the Australian Government considers regulatory reform measures.<sup>72</sup>

- 4.15. Given the importance of the e-conveyancing sector to the Australian economy and Australians, PEXA as the dominant market participant should be subject to robust regulation considering that it has in fact benefited from light-handed regulatory scrutiny relative to other participants in key Australian sectors to date.
- 4.16. InfoTrack notes that measures (which could be exercised by the NSW Government in particular) available to regulate PEXA and force it to work with ARNECC and Sympli to accelerate interoperability between the ELNs have not to date been utilised. For example, in section 16 of the ECNL the Registrar General has the power to attach conditions to an ELNO's approval to operate an electronic lodgment network in NSW.<sup>73</sup> Conditions can include adjustment of the ELNO price cap by the application of a discount "Factor" which may be set at higher than zero.<sup>74</sup> Should this occur it may provide PEXA with an incentive to take relevant steps introduce interoperability and hence competition in E-conveyancing.

## 5. PEXA's push for greater data sharing to drive unregulated revenues

- 5.1. As outlined at [4.3]-[4.4] of the InfoTrack Submission, InfoTrack is concerned that a monopolistic, vertically integrated ELNO may share information, staff or systems between related entities in order to stifle or frustrate competition developing in the e-conveyancing market or across related markets. Such an ELNO may:
- (a) deny or hinder competitors from across relevant supply chains, access to certain data or services;
  - (b) only offer access at higher prices, provide a reduced service quality, or provide services to market participants under less favourable conditions compared to those offered to its own related party;
  - (c) leverage the access that it has to the market in its entirety which other participants cannot access (or can only access at a later point in time for a fee);
  - (d) gain advantages from its position across related markets through access to information about how their competitors operate (including greater visibility of their intellectual property, processes and customers).
- 5.2. In contrast to its asserted concerns regarding interoperability, PEXA appears to be pushing for greater integration with market participants and the sharing of data / APIs in respect of related services that drive unregulated revenues, where it aligns with PEXA's commercial incentives. InfoTrack is concerned that this contradictory approach is ultimately to the detriment of the e-conveyancing and related markets, and that a consistent approach to market openness should be adopted.

<sup>71</sup> For example, on 5 August 2024, a US District Court ruled in favour of the US Department of Justice that Google had illegally maintained its monopoly in search and search advertising through its exclusive distribution agreements (*United States et al v Google LLC*, No. 20-cv-3010 (APM) (D.D.C. Aug 5 2024), Dkt. No. 1033). On 17 April 2025, the US District Court for the Eastern District of Virginia found that Google violated antitrust law by maintaining a monopoly in the advertising technology market and unlawfully tying its products together. See: <https://www.justice.gov/opa/pr/departments-justice-prevails-landmark-antitrust-case-against-google>.

<sup>72</sup> See <https://www.accc.gov.au/media-release/google%E2%80%99s-dominance-in-general-search-yet-to-be-disrupted> and <https://treasury.gov.au/consultation/c2024-547447>.

<sup>73</sup> See <https://www.registrargeneral.nsw.gov.au/regulator/approval-conditions>

<sup>74</sup> See the Competition Conditions set out in PEXA's Special Conditions in particular at 3.1(c) and the Factor applied to date (zero), available here.

#### **A. PEXA's ability to leverage dominance to extract data from market participants**

- 5.3. PEXA already enjoys an unfair advantage over a number of competitors through its ability to extract data from other market participants in return for their use of PEXA's ELN (an example of which is set out below at [5.7ff]). Such data may be leveraged for its own Digital Solutions business.
- 5.4. The e-conveyancing market trades in highly attractive data and transferable services. By way of further background:
- (a) PEXA's standard form API Agreement contains a clause (**PEXA Data Use Clause**) requires users of PEXA's APIs to give PEXA the right to access and use their data for "*any purpose in connection with [PEXA's] business*";<sup>75</sup>
  - (b) the PEXA Data Use Clause appears to be designed to circumvent the spirit of the MOR separation regime and effectively enables PEXA to gather and use other market participants' data (without any financial reimbursement) to drive property data insights and analytics such as automated valuation models (**AVMs**) offered by its own "partner" companies and sold to real estate agents, financial institutions, and valuers;
  - (c) in contrast, market participants such as CoreLogic/Cotality, PropTrack and PriceFinder are required to invest significantly to purchase this data from land registries and other third-party data sources;
  - (d) of this data, "Land Titles Data" is only available in real time on an exclusive basis to the Land Titles Offices (**LTOs**) (upon settlement) and PEXA (prior to settlement). CoreLogic, Domain and REA do not get it for free, nor do they have any capacity to leverage their services to access it in the way that PEXA is able to;
  - (e) unlike other market participants who must wait for up to anywhere from 1 day to 14 days after property settlement to receive the data sets from various LTOs under broker licence agreements, PEXA is able to obtain this data prior to settlement from the point in time when the PEXA workspace is opened and, where permitted under the PEXA Data Use Clause, use this data for "*any purpose*".
- 5.5. PEXA recognises it has access to real time data on nearly every property transaction in the biggest markets in Australia, and claims that it is able to "*draw de-identified and aggregated data on the buying and selling of Australian houses, including sales volumes, house prices and mortgage and refinancing figures – all in real time.*"<sup>76</sup> PEXA asserts that "*the problem is that the data is locked up by state-based land registrars and we are often unable to use it without registrar approval, even on a carefully anonymised and aggregated basis to protect privacy.*" While PEXA may technically comply with the relevant privacy laws (in respect of which InfoTrack has no insight), most users of PEXA's network have no choice but to consent to any and all secondary purpose(s) of data use.<sup>77</sup>
- 5.6. For these reasons, InfoTrack reiterates its concerns as outlined at [4.15]-[4.20] of the InfoTrack Submission about the inadequacies of the current data use / protection, and privacy measures contained in the ECNL and MOR.

#### **B. PEXA's ability to enforce acceptance of "Value Added API" services**

- 5.7. InfoTrack's concerns are substantiated by PEXA's recent actions whereby it approached SettleIT (a PEXA subscriber and PEXA API User) and consumer groups of titles / plans and dealings about PEXA's "Value Added API" service. The Value Added API service provides a multitude of API services, including but not limited to:

<sup>75</sup> InfoTrack understands that the PEXA Data Use Clause is generally included in PEXA's API agreements as "industry standard".

<sup>76</sup> See <https://www.pexa.com.au/content-hub/how-we-can-truly-tackle-housing-affordability/>.

<sup>77</sup> APP 6 of the *Privacy Act* provides that "*an entity can only use or disclose an individual's personal information for the purpose it was collected for, unless the individual has consented to a secondary purpose or an exception applies.*"

- 
- (a) push notifications via webhooks;
  - (b) Document API;
  - (c) Settlement Shortfall API;
  - (d) Workspace Title Data API;
  - (e) Mortgage Document API;
  - (f) Line Items API;
  - (g) Workspace Checklist API.
- 5.8. The Value Added API service appears to use data that is the same as or substantially similar to Land Information as defined at MOR 2.1.2 as being "*information provided by the Land Registry or information used to complete electronic Registry Instruments or other electronic Documents to be Lodged at the Land Registry.*" For example, a sample API response is provided below in **Figure [6]** in respect of a title change on a workspace; the data provides lot details, mortgage details and dealing numbers which is substantially the same as information that a law firm or bank would seek to obtain by ordering a title search to ensure that their interests are secured.

**Figure [6] – Sample API response derived from PEXA Value Added API service**

```

<Description>Positive Title Activity Check result returned for Title: ██████████
Workspace: ██████████
</Description>
<Details>
  <LandTitle>
    <LandTitleReference>██████████</LandTitleReference>
    <PropertyDetails>
      <LandDescription>██████████</LandDescription>
      <PropertyAddress>██████████</PropertyAddress>
    </PropertyDetails>
    <TitleActivityCheck>
      <DocumentReference>
        <DocumentType>MORTGAGE</DocumentType>
        <LrDocumentId>██████████</LrDocumentId>
        <DocumentStatusDetails>
          <DocumentStatusTimestamp>██████████
          ██████████</DocumentStatusTimestamp>
          <DocumentStatus>REGISTERED CURRENT</DocumentStatus>
        </DocumentStatusDetails>
      </DocumentReference>
    </TitleActivityCheck>
  </LandTitle>
</Details>

```

```

<Description>The Land Registry have examined lodgment case documents in the above
workspace. Please refer to the Document List for the lodgment status of each
document.</Description>
<Details>
  <Lodgement>
    <LodgementCaseId>██████████</LodgementCaseId>
    <LodgementCaseStatus>Completed</LodgementCaseStatus>
    <Document>
      <DocumentId>██████████</DocumentId>
      <DocumentType>Lodgement Instructions</DocumentType>
      <DocumentStatus>Lodged</DocumentStatus>
      <DealingNumber>██████████</DealingNumber>
      <LandTitleReference>7/██████████</LandTitleReference>
      <Timestamp>██████████</Timestamp>
    </Document>
    <Document>
      <DocumentId>██████████</DocumentId>
      <DocumentType>Mortgage</DocumentType>
      <DocumentStatus>REGISTERED</DocumentStatus>
      <DealingNumber>██████████</DealingNumber>
      <LandTitleReference>7/██████████</LandTitleReference>
      <Timestamp>██████████</Timestamp>
    </Document>
  </Lodgement>
</Details>

```

- 5.9. PEXA's charge for using these services is initially \$1 per workspace. This operates such that two lawyers and two banks opting to use this Value Added API service, would result in PEXA receiving \$4 per workspace. The price for this service is charged regardless of whether the "Value Added APIs" are used or called upon in the workspace and is contracted to increase yearly as a function of CPI and/or at the unilateral discretion of PEXA. It is not subject to any regulation or oversight.
- 5.10. Moreover, over time, older "legacy" APIs will likely be deprecated, replaced by and/or recategorised as "Value Added APIs" such that subscribers/users have no choice but to sign up to PEXA's standard form contractual arrangements, and agree to pay the fee(s) as determined



by PEXA as well as the contracted price increases so as to ensure ongoing integration with PEXA.

- 5.11. As the Senate Committee may be aware, an ELNO must comply with the separation requirements set out in MOR 5.6, if it proposes to develop products in addition to the core lodgement functions it provides. In addition, MOR 19.3 requires that unless approved by the Registrar, an ELNO must not store or use Land Information for any purposes other than for the purpose of facilitating lodgement or otherwise create data or other products which are the same as or substantially similar to the Land Information.
- 5.12. It is unclear whether PEXA's Value Added API service complies with MORs 5.6 and 19.3, given that information asymmetry shields PEXA's access to/use of Land Information and information that it derives from its unique market position in respect of core ELN functions, as well as the relevant PEXA entities which may develop products incorporating such information (or some derivation of it). To the best of InfoTrack's knowledge, express approval from the Registrars was not sought by nor granted in accordance with the MOR in respect of the Value Added API service. Nor is it likely that the Registrars would grant such approval given their proprietary interests in the data being sold by PEXA.
- 5.13. In any event, as outlined at [4.20]-[4.22] of the InfoTrack Submission, InfoTrack reiterates its view that there should be careful consideration of the circumstances in which approval for PEXA to offer value-added services should be granted, noting the information asymmetry that already exists in the e-conveyancing and related/adjacent markets. The unfettered use of Land Information that is otherwise proprietary to land registries will likely result in an even greater ability and incentive for PEXA to misuse its market power and leverage its dominance in the core e-conveyancing market across related markets.

#### **C. PEXA's strategic push for data sharing and portability to grow unregulated revenues**

- 5.14. PEXA asserts that *"there's been commitment at a federal level to reform laws 'to improve the flow of information in the economy, encouraging the development of new products and applications', such as through the Consumer Data Right (CDR), first applied to Open Banking."*  
<sup>78</sup> Again, PEXA's strong interest in advocating for greater integration and flow of information in respect of the CDR runs counter to its defensive position in respect of interoperability. PEXA has submitted to Treasury that it supports *"an approach that maximises the opportunities of data sharing and portability"* and that:  
  
*"Key to unlocking many of these benefits is the more open transmission of information between various participants in the property ecosystem...Should the property sector be designated under CDR, PEXA may seek to compete in the market as an accredited data recipient to perform analysis and product comparisons on behalf of consumers. It is conceivable that in some circumstances PEXA could be viewed as the data holder."*<sup>79</sup>
- 5.15. PEXA advocates for the expansion of the CDR to Land Information and asserts that a range of consumer benefits would arise from such a designation, relating to enabling *"improved consumer choice, reduced transaction costs, and the development of innovative solutions to consumer problems"* and envisages that *"as the CDR evolves over time there will be opportunities to streamline services and interactions regarding property with Commonwealth agencies...[including] the Australian Tax Office (ATO) and State / Territory departments like Service NSW and Service Victoria. We further note that while Government-held databases such as Land Registries can be a source of data under CDR, extending CDR to the property sector would enable further competition – leading to better consumer outcomes at lower cost."*<sup>80</sup>
- 5.16. Given this, it is difficult to understand PEXA's inconsistent positions: on the one hand, that Land Information and data portability through designation of the property sector under the CDR

<sup>78</sup> See <https://www.pexa.com.au/content-hub/how-we-can-truly-tackle-housing-affordability/>.

<sup>79</sup> See <https://www.pexa-group.com/staticly-media/2024/11/PEXA-Submission-Consumer-Data-Right-sm-1731630670.pdf>.

<sup>80</sup> See <https://www.pexa-group.com/staticly-media/2024/11/PEXA-Submission-Consumer-Data-Right-sm-1731630670.pdf>, p4.

should be supported and viewed as enabling a raft of consumer benefits including innovation, choice and competition; and on the other hand, that interoperability yields little to no benefit to consumers, and that competition in e-conveyancing would stifle innovation because participants *"highly value standardisation."*<sup>81</sup>

- 5.17. PEXA's claim that *"if one participant uses an ELNO with an alternate processing approach, other participants may be involuntarily impacted if the alternate process does not result in consistent processing, documentation and information flow"* and that this would lead to *"confusion and inefficiencies for smaller organisations that do not have the scale to cope with similar transactions having different processing paths due to the platform choices made by other participants"* underestimates the sophistication of its users, overstates the complexity of an ELN workspace, and assumes without any valid basis that alternate processes would be the cause of inconsistencies.<sup>82</sup> In fact, the interoperability data standards should ensure that all processing paths are supported, thus mitigating this risk.
- 5.18. In addition, for the reasons set out at section [2] in respect of PEXA's intellectual property claims, the "innovations" that PEXA refers to in respect of back-end infrastructure are arguably a digitisation and translation of paper conveyancing processes. It follows that a ELN seeking to present a viable alternative to market participants and needing to interoperate with PEXA would strive to build out relevant functionalities that reflect paper conveyancing and that such functionalities offered by PEXA currently are a reflection of its first mover advantage rather than of its own innovation.
- 5.19. As such, InfoTrack does not believe that achieving standardisation in back-end infrastructure is mutually exclusive of innovation, as innovation in the context of e-conveyancing should be a broad concept that covers efforts to improve various aspects of an ELN, including but not limited to user experience, efficiency, stability, resilience, and value.
- 5.20. In fact, in contrast to the investment PEXA appears to be making into its Digital Solutions business in Australia<sup>83</sup> (as discussed further in section [6] below) and its expansion into the UK market,<sup>84</sup> in respect of which it has incentives to compete and grow its unregulated revenue streams, it has no incentive to similarly invest in its ELN service in Australia where it enjoys a monopolistic position.<sup>85</sup>

<sup>81</sup> PEXA Submission, [5.2].

<sup>82</sup> This is particularly the case given the success of the Day 1 Transactions. See <https://www.arnecc.gov.au/wp-content/uploads/2023/09/ARNECC-Statement-Sept-23.pdf>.

<sup>83</sup> By way of example, PEXA's non-ELN revenue represents 15% of its total business revenues, highlighting the growth of new revenue streams within the PEXA Group, which were non-existent at the time of the IPO in 2021. Please see [https://www.pexa-group.com/static-media/2024/08/FY24-PEXA-Results\\_Investor-commentary-website-sm-1724380204.pdf](https://www.pexa-group.com/static-media/2024/08/FY24-PEXA-Results_Investor-commentary-website-sm-1724380204.pdf) at page 1 and PEXA FY24 Investor Presentation at slide 4.

<sup>84</sup> For example, PEXA acquired Optima Legal in September 2022 as part of its UK expansion strategy. Please see <https://www.pexa-group.com/content-hub/news/pexa-continues-uk-expansion-with-optima-legal-acquisition/>. In addition, PEXA has recently launched the Future Property Transactions Group, the aim of which appears to be driving collaboration and integration between PEXA and various key industry participants including the Leeds Building Society, Legal & General, West Yorkshire Combined Authority, Mortgage Advice Bureau, Arch Law, and the Open Property Data Association. Please see <https://ifamagazine.com/pexa-launches-future-property-transactions-group-with-key-property-industrystakeholders/>.

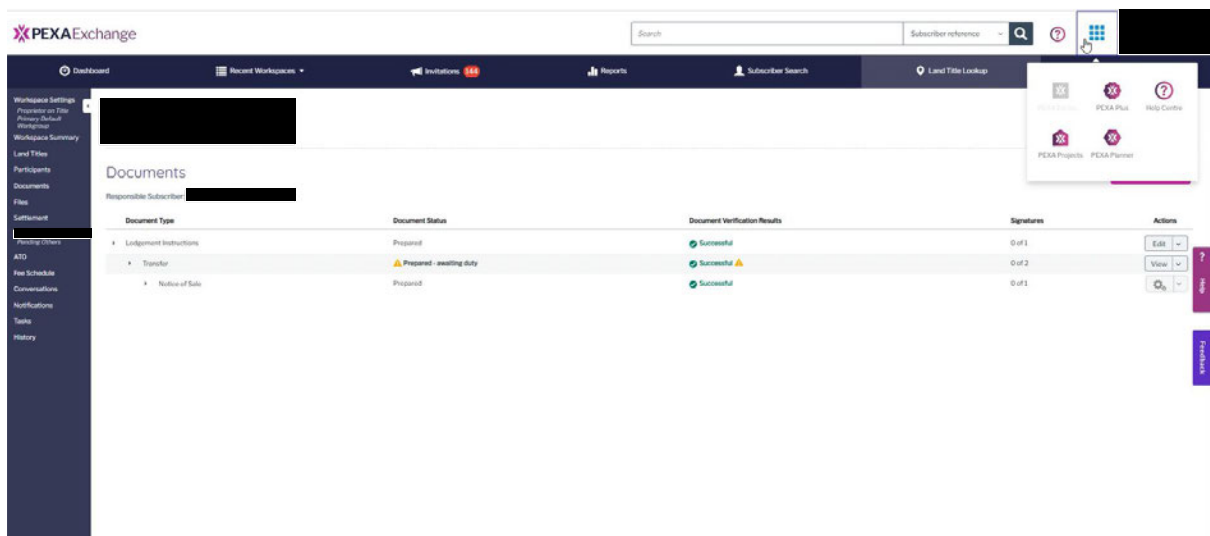
<sup>85</sup> This is articulated in PEXA's FY24 Results released 21 August 2024 available here at p.7 where PEXA clearly states its objectives: to "enhance/maintain leading position" for PEXA Australia Exchange; to "extend/adjacent solutions supporting existing and new customers" for its Digital Solutions; and to "expand/create Exchange-like economics offshore" for International. PEXA noted in its investor presentation commentary available here that approximately 85% of its international platform development is reusable across multiple jurisdictions (at p.2) indicating a strategic approach to scalable international expansion. Overall, PEXA's investments in overseas projects and businesses in FY24 represented a significant portion of its revenue, reflecting its commitment to international growth and diversification.

## 6. Expansion along transaction value chain

### A. PEXA's integration and representation of DUS and related entities

- 6.1. PEXA asserts that it does not offer any "downstream or upstream services" (**DUS**)<sup>86</sup> and consequently has not separated its business or developed a formal separation plan, on the basis that while it *"does have related entities that provide property information services...these entities do not use information derived from PEXA's ELN, and consequently are not Downstream or Upstream Services within the MOR"*.<sup>87</sup>
- 6.2. PEXA's interpretation of the definition of DUS under the MOR appears to be:
- inconsistent with its use of Land Information as discussed above in section [5]; and
  - at odds with how PEXA Exchange's workspace is presented to subscribers, as reflected in **Figure [7]** below, which is a screenshot of the PEXA ELN workspace, showing how PEXA presents and integrates additional services into its ELN (being in this example, PEXA Plus, PEXA Projects, and PEXA Planner).

**Figure [7] – Screenshot of a PEXA Exchange workspace, 5 June 2025**



<sup>86</sup> Defined under MOR 2.1.2 as being a "service supplied or offered to a Person (including a Related Entity), which directly or indirectly: (a) accesses or uses an ELN; or (b) integrates with an ELN; or (c) utilises information accessible through or generated by an ELN, but does not include services supplied or offered through a Back End Infrastructure Connection."

<sup>87</sup> PEXA Submission, [7.2].



Tower 2, Level 21 International Towers  
200 Barangaroo Avenue, Sydney NSW 2000  
[www.infotrack.com.au](http://www.infotrack.com.au)

**PEXAPlus**

**MY WORKSPACES**

877 Active

185 Not ready settling within 5 business days

622 In preparation

19 Prepared

51 Ready

**INVITATIONS**

143 Awaiting a response from you

104 Sent to others pending acceptance

**TODAY'S SETTLEMENTS**

Settling 10:00am

Representing: [Redacted]

Others: [Redacted]

Tasks: 7 of 13 tasks completed

Settling 10:00am

Representing: [Redacted]

Others: [Redacted]

Tasks: 6 of 12 tasks completed

Settling 10:00am

Representing: [Redacted]

Others: [Redacted]

Tasks: 7 of 7 tasks completed

**SETTLEMENTS CALENDAR**

June 2025

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7

**PEXAPlus**

**PEXA Key**

**Active clients**

Understand how your clients are using PEXA Key.

Sort by: Settlement Date

Q Search

Subscriber Reference	Client Name	Tracking	Trust/Source Account	Account Details	Settlement Date
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

Note: The address displayed here is what your client has entered in PEXA Key. It may vary from the address in the workspace. Rest assured, it will not impact settlement. Your client can change the address in the app if they wish.

Rows per page: 10 1-1 of 1

**PEXAProjects**

Search Project name

**Project Dashboard**

Manage Workspaces

Manage Participants

Manage Financial Accounts

Propose Settlement Date

Reports [NEW]

Archive this Project

Alerts

Data changes

Warnings

**INTERACTIVE PROJECT VIEW (click to filter)**

Invitation acceptance

Settlement date acceptance

Workspace status

Awaiting digital signatures

Workspaces (31/31)

Participants

Subscriber Reference	Lot(s) on Unreg. Plan	Child Titles	Workspace Id	Settlement Date	Incoming Proprietor Rep	Mortgagee on Title Rep	Incoming Mortgagee Rep	Send Invite	Lodgement	Settlement
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

- 6.3. This form of promotion of DUS is, in InfoTrack's view, a clear breach of MOR 5.6.3(a) which states that an ELNO must not give, or operate in a manner which gives, an **unfair commercial advantage** to a related DUS (emphasis added). Subscribers have no choice as to whether they are exposed to some of these ancillary e-conveyancing services, as they are integrated into PEXA Exchange.<sup>88</sup>
- 6.4. PEXA has also expanded into e-conveyancing adjacent markets, with full or majority ownership of the following entities:<sup>89</sup>
- (a) .id (informed decisions);<sup>90</sup>
  - (b) Land Insight;<sup>91</sup> and
  - (c) Value Australia.<sup>92</sup>
- 6.5. In addition, PEXA promotes the following (non-exhaustive list of entities) as "PEXA Partners": Archistar,<sup>93</sup> OPEX,<sup>94</sup> Landchecker,<sup>95</sup> Elula,<sup>96</sup> Smaver,<sup>97</sup> Send Payments,<sup>98</sup> and Business Advantage,<sup>99</sup> all of whom offer services adjacent to and/or upstream/downstream of the ELN market and are advertised by PEXA on its website.
- 6.6. By engaging in this conduct, PEXA effectively forecloses any other market participants from competing for the provision of adjacent e-conveyancing services. While other adjacent businesses can and do compete, the "self-preferencing" conduct engaged in by PEXA enables the conversion of PEXA Exchange customers to PEXA's Digital Solutions businesses, locking them into the PEXA ecosystem. In the longer term, the conversion of customers to PEXA's Digital Solutions businesses will result in fewer, if any, independent businesses providing services that compete with PEXA's.

**B. Commercial strategy to grow unregulated revenues and expand position along transaction value chain**

- 6.7. PEXA has a commercial strategy to grow non-regulated revenues in adjacent markets via its Digital Solutions business, in addition to enhancing and maintaining the leading position of its

<sup>88</sup> This appears to be analogous to Meta's tying of its online classified ads service Facebook Marketplace to its personal social network Facebook and imposing unfair trading conditions on other classified ads service providers. On 14 November 2024, the EC announced a EUR797.72 million fine on Meta for engaging in these abusive practices. Please see: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_5801](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5801).

<sup>89</sup> PEXA also fully owns Optima Legal, which is a conveyancing firm based in the UK focusing on remortgaging, as well as Smooove, which is a conveyancing tool available in the UK.

<sup>90</sup> .id (informed decisions) is fully owned by PEXA as part of its Digital Solutions business, and is a consulting company that provides local area demographics analysis and forecasts. Please see <https://home.id.com.au/about-us>.

<sup>91</sup> Land Insight is fully owned by PEXA as part of its Digital Solutions business, and provides environmental and climate data with analysis of the risks associated with any land or property in Australia. Please see <https://www.pexa-group.com/about/brands-partners/land-insight/>.

<sup>92</sup> Value Australia provides property valuations through its AVM. Please see <https://value-australia.com.au/>. PEXA has a 70% interest in Value Australia.

<sup>93</sup> Please see <https://www.pexa-group.com/about/brands-partners/archistar/> and <https://www.pexa-group.com/static-media/2024/08/PEXA-FY24-Annual-Report-Final-sm-1724193447.pdf> (PEXA FY24 Annual Report) at page 132.

<sup>94</sup> Please see <https://www.pexa-group.com/about/brands-partners/opex/> and PEXA FY24 Annual Report at pages 132-133.

<sup>95</sup> Please see <https://www.pexa.com.au/landchecker/> and PEXA FY24 Annual Report at page 132. Based on an ASIC search dated 3 July 2024, Scott Marc Butterworth is a director of Landchecker Holdings Pty Ltd. Mr Butterworth was appointed as the Chief Financial and Growth Officer of PEXA in May 2023. Please see <https://www.pexa-group.com/content-hub/news/scott-butterworth-appointed-as-new-chief-financial-and-growth-officer/>.

<sup>96</sup> Please see <https://www.pexa-group.com/about/brands-partners/elula/> and PEXA FY24 Annual Report at page 133.

<sup>97</sup> Please see <https://www.pexa-group.com/about/brands-partners/smaver/>.

<sup>98</sup> Please see <https://www.pexa.com.au/send-payments/> and PEXA FY24 Annual Report at page 10.

<sup>99</sup> Please see <https://www.pexa.com.au/business-advantage/>.

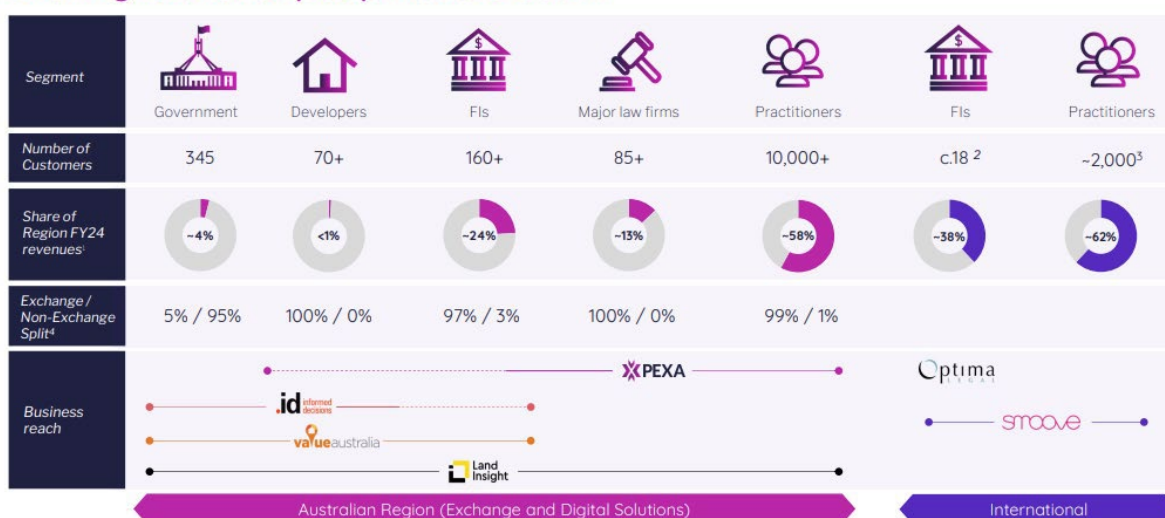


ELN, PEXA Exchange.<sup>100</sup> PEXA's non-ELN revenue represents ~15% of its total business revenues, highlighting the growth of new revenue streams within the PEXA Group, which were non-existent at the time of the IPO in 2021.<sup>101</sup> PEXA's Digital Solutions business (which was previously Digital Growth) brought Value Australia to market to "complement" the other businesses, and PEXA now has a "suite of bundled and unbundled solutions to support [its] customers".<sup>102</sup>

- 6.8. In Australia, approximately 160 financial institutions, more than 10,000 conveyancing and legal practitioners, more than 70 developers, and 345 local councils use PEXA services, both in respect of its ELN and for non-Exchange services that are bundled with the Exchange platform. This is reflected in Figure [8] below taken from PEXA's FY24 Investor Presentation, which shows the depth and reach of PEXA's Exchange and Digital Solutions businesses.

**Figure [8] – PEXA's business reach**

### Growing relationship depth and breadth



<sup>1</sup> Reflects reported Australian revenue for the year ended 30 June 2024 and Proforma UK revenue for the year ended 30 June 2024

<sup>2</sup> 2 customers are utilising the PEXA platform capability

<sup>3</sup> Smooove-Conveyancer and Legal Panel Management customers

<sup>4</sup> Based on revenue

- 6.9. In FY24, PEXA brought together the PEXA Exchange and the Digital Solutions business under a "single Australian leadership structure", as the Digital Solutions business remains "strategically important and is growing...providing the foundation to build non-regulated revenues as the economy improves when the rate outlook restores investor confidence."<sup>103</sup> This is similarly reflected in the appointment of Mr Scott Marc Butterworth, who is the Chief Financial and Growth Officer of PEXA as appointed in May 2023, as a director of Landchecker Holdings Pty Ltd.

- 6.10. PEXA's Digital Solutions business is growing rapidly – for example, in FY24 it achieved breakeven operating EBITDA, an 87% increase in new .id clients, and integrated Land Insight.<sup>104</sup> In relation to the performance of Digital Solutions in FY24, PEXA indicated:

*"We saw improved revenues across the period, underpinned by a growth in subscription revenue, alongside growing levels of project activity.  
To put these dynamics in a business context, ID benefitted from record revenues during the period, and Value Australia made its inaugural sales, including to major*

<sup>100</sup> Please see PEXA FY24 Investor Presentations at slide 7.

<sup>101</sup> Please see [https://www.pexa-group.com/static-media/2024/08/FY24-PEXA-Results\\_Investor-commentary-website-sm-1724380204.pdf](https://www.pexa-group.com/static-media/2024/08/FY24-PEXA-Results_Investor-commentary-website-sm-1724380204.pdf) (PEXA FY24 Investor Commentary) at page 1 and PEXA FY24 Investor Presentations at slide 4.

<sup>102</sup> Please see PEXA FY24 Investor Commentary at page 2 and PEXA FY24 Investor Presentations at slide 5.

<sup>103</sup> Please see PEXA FY24 Investor Commentary at page 3 and PEXA FY24 Investor Presentations at slide 8.

<sup>104</sup> Please see PEXA FY24 Investor Presentations at slide 8.



*banks. Land Insight also settled well into the portfolio, making its first ever Financial Institution sale, and we continued to support demand for transaction solutions such as workflow and FX products."*<sup>105</sup>

- 6.11. Given the synchronisation of leadership and bundled representations of PEXA Partners, it is inevitable that the incentives of PEXA Exchange and Digital Solutions will align in such a way to maximise profit and squeeze out actual or potential threats to its position. With the security of its dominant position in the e-conveyancing market, the growth of PEXA's Digital Solutions business is bolstered by an unfair advantage over its competitors, and this will likely continue in the absence of regulatory intervention.
- 6.12. Significantly, PEXA is also seeking to further entrench its position, lobbying for integration of its ELN with proposed AML and CTF regulatory processes (**Integrated AML/CTF Service**).<sup>106</sup> Aas recently as June 2025 PEXA has approached its customers seeking information from them in the form of a customer survey intended to assist PEXA Exchange to "*determine the best way to leverage the PEXA Exchange to support our customers*".<sup>107</sup> It is PEXA's very clear intention to find a way to provide these services. As acknowledged by PEXA,<sup>108</sup> legislative reforms are required in order to permit the lawful integration of the Integrated AML/CTF Service (a DUS). This is because such integration presently would breach the separation regime contained in MOR 5.6.
- 6.13. While some entities may benefit from the convenience of being able to rely on third-party AML/CTF services to discharge their responsibilities under the proposed reforms via the same platform they use to complete the e-conveyancing transaction, this would be outweighed by the significant detriment to competition if PEXA engages in foreclosure strategies. If PEXA were permitted to expand and integrate such services, PEXA would effectively be "book-ended" into a transaction and have the advantage of offering AML/CTF services at an early stage of the transaction process when the PEXA Exchange workspace is first set up, before any other competing provider has the opportunity to do so.
- 6.14. The current state of play illustrates the deficiencies in the existing separation regime and the need for reform. Even if the separation regime required by MOR 5.6 is not technically breached (noting the concerns set out in the InfoTrack Submission at [4.2] in respect of the vague and porous drafting of the MOR in respect of the definition of "DUS" and MOR 5.6), the spirit of the

<sup>105</sup> Please see PEXA FY24 Investor Commentary at page 7.

<sup>106</sup> In April 2023, the Government released a consultation paper proposing reforms to simplify and modernise the Australian AML/CTF regime. Please see [https://consultations.ag.gov.au/crime/aml-ctf/user\\_uploads/amlctf-consultation-paper.docx](https://consultations.ag.gov.au/crime/aml-ctf/user_uploads/amlctf-consultation-paper.docx) (**Consultation Paper**). In June 2023, PEXA responded to the Consultation Paper (**PEXA First AML/CTF Submission**), proposing that the proposed CDD processes could be integrated into its ELN platform, which "tranche-two entities" could then use to discharge their CDD obligations. Please see [https://consultations.ag.gov.au/crime/aml-ctf/consultation/download\\_public\\_attachment?sqld=question-2022-01-06-6908678210-publishablefilesquestion-1&uuld=518175675](https://consultations.ag.gov.au/crime/aml-ctf/consultation/download_public_attachment?sqld=question-2022-01-06-6908678210-publishablefilesquestion-1&uuld=518175675). In June 2024, PEXA made a further submission in the second round of consultation, seeking "*simple legislative amendments to enable reliance between parties to a transaction which is implemented through...the PEXA Exchange, which connects those parties and enable[s]...assessment of AML / CTF risks*". Please see [https://consultations.ag.gov.au/crime/reforming-aml-ctf-financing-regime/consultation/download\\_public\\_attachment?sqld=pasted-question-1712813916.3-28992-1712813916.47-74735&uuld=182916743](https://consultations.ag.gov.au/crime/reforming-aml-ctf-financing-regime/consultation/download_public_attachment?sqld=pasted-question-1712813916.3-28992-1712813916.47-74735&uuld=182916743).

<sup>107</sup> See PEXA "Around the grounds with PEXA" email to customers of June 2025 which stated: "**AML Reform: PEXA evaluating ways to help.** In November 2024, the Federal parliament passed legislation to expand Australia's AML/CTF scope to include property transactions. The Federal Government has included in the legislation provisions to allow Australia's critical national infrastructure to be leveraged to support the new laws. From 1 July 2026, lawyers and conveyancers who facilitate the sale and purchase of real property will be required to have an AML/CTF program that includes due diligence procedures for buyers and sellers during their transaction. PEXA recognises that the anti-money laundering and counter-terrorism financing regime is important in safeguarding the integrity of our financial system. With collaboration and guidance from industry bodies and regulatory bodies we intend to determine the best way to leverage the PEXA Exchange to support our customers. To help us better understand how we can support, we'd love you to complete our customer survey about your current processes and thoughts on these upcoming changes. It only takes 5 minutes."

<sup>108</sup> Please see <https://www.pexa-group.com/static/media/2024/08/Investor-Presentation-vF-sm-1724195453.pdf> (**PEXA FY24 Investor Presentation**) at page 32 which states PEXA's FY25 priorities include "regulated data" which it notes is subject to regulatory approval and PEXA First AML/CTF Submission at page 24.

regime is breached by PEXA's representation and active promotion of its related entities and partners on its website, in public statements and on its ELN.

## 7. PEXA's data driven digital ecosystem has a material impact on Australians and economy

- 7.1. As explained above at section [6], in the absence of competition and a robust regulatory framework, PEXA has effectively developed an "ecosystem" (being a network of connected technologies and applications) in which e-conveyancing is but one, central, element. This ecosystem does not align with the spirit of the separation regime contained in MOR 5.6, and is a clear example of how the existing regulatory regime and definition of "DUS" are insufficient in instilling confidence in industry that *"neither an ELNO, nor its related entity(ies) are providing an upstream or downstream service with a commercial advantage over existing or potential competitors due to it being an ELNO."*<sup>109</sup>
- 7.2. This ecosystem is analogous to those established by digital "gatekeepers" in other sectors such as general search services, and relevantly, raises comparable competition concerns including those in respect of network effects and self-preferencing in respect of PEXA's ecosystem.
- 7.3. Parallels may be drawn between PEXA's position and that of the "gatekeepers" designated overseas, including by the European Commission (EC) under the *Digital Markets Act (DMA)* in the European Union (EU), and by the Competition Markets Authority (CMA) under the *Digital Markets, Competition and Consumers Act 2024* in the United Kingdom (UK). The e-conveyancing market bears similarities to other digital platform markets. For example:
  - (a) ELNOs act as a platform between several stakeholders;
  - (b) there are material network effects;
  - (c) there is reliance on large amounts of user data that is difficult and costly to replicate or analyse;
  - (d) consumers experience barriers and costs when switching between ELNOs in terms of the time and effort they must expend; and
  - (e) the incumbent claims IP rights over the technology / method it uses, citing this as a reason to deny access for the purposes of creating interoperability.
- 7.4. In addition to considerations of the alternatives available to user groups in multi-sided markets and the barriers to disruptive entry,<sup>110</sup> data plays a significant role in assessing market power in digital platform markets. In particular, access to and use of rich and high-quality data (including real-time individual-level data) is central to the business models of many digital platforms, as it provides several key competitive advantages and benefits, including the ability to:
  - (a) train algorithms to improve products and services, assist in the development of new products and services, and ultimately increase the platform's attractiveness to users; and
  - (b) increase profitability by allowing a firm to improve its ability to forecast product demand and market trends.<sup>111</sup>

<sup>109</sup> Synergies Economic Consulting, *Issues Paper – Review of the Separation Regime in Operating Requirement 5.6*, September 2024, p14.

<sup>110</sup> Please see [https://one.oecd.org/document/DAF/COMP/WD\(2022\)21/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2022)21/en/pdf) (The Evolving Concept of Market Power in the Digital Economy) at page 4. As noted by the ACCC, a number of the characteristics of digital platform markets make them prone to "tipping" where one or a very small number of large platforms supply the vast majority of the market. Once this occurs, the most significant competitive rivalry is likely to come from disruptive entry. That is, entry on a scale sufficient to displace the incumbent. As a result, a significant focus of the assessment of market power in many digital platform markets concerns the barriers to, and the likelihood of, disruptive entry.

<sup>111</sup> Please see The Evolving Concept of Market Power in the Digital Economy at pages 8-9.

- 7.5. The ACCC has previously noted that data held by large digital platforms such as Google and Meta is particularly valuable not just because of the scale and scope of the user data collected, but also because of the high volume of reliable first-party data (i.e., data collected via their own services which is typically not available to potential rivals). In the final report of the *Adtech Inquiry*, the ACCC noted that:

*"Google's access to a large volume and range of first-party data, gathered through its customer facing services, such as Search, Maps and YouTube, as well as its third-party data appears to have provided Google with a competitive advantage in the supply of ad tech services, but in particular, in the supply of DSP services..."*

*Google submitted to the ACCC that it does not use its first-party data to provide targeted advertising through its ad tech services on third-party inventory (that is, on websites and apps Google doesn't own). However, there is a widely-held perception in the industry, among advertisers, rivals and publishers, that Google does use its first-party data in this way. In particular, industry participants consider that the information Google obtains via its core services, where it holds a dominant position such as Google Search, provides Google with an unparalleled advantage in ad tech and that its advantage is unlikely to diminish in the future. The widespread view that Google is using its first-party data to provide targeted advertising via its ad tech services is in part due to Google's own ambiguous messaging about how it uses such data, including in public material on its websites aimed at advertiser customers. Further, Google's terms of service and privacy policies do not prevent Google using first-party data in this way."<sup>112</sup>*

- 7.6. In Australia, PEXA's exclusive pre-settlement access to property, customer and transaction data is unparalleled. InfoTrack notes that while the Issues Paper for the *Digital Platform Services Inquiry March 2024 Interim Report* did not include PEXA amongst the 9 firms identified as examples of firms the ACCC considered provided the types of data products and services that are within the scope of the Inquiry, PEXA's data broking operations and capabilities should not be underestimated.<sup>113</sup>
- 7.7. There are numerous sources of individual-level data that are already accessible to PEXA by virtue of its position as the dominant ELN and associated bargaining power, as noted above at [5.4]. There is simply no way for PEXA's competitors to obtain the same quality or volume of real-time data. Even if PEXA (like Google) asserts that it is not currently relying on first-party data in the supply of DUS or related services, there is nothing stopping it from doing so in the future. PEXA would be able to do so without seeking additional consent from its subscribers / contracting counterparties, or otherwise notifying industry of a change of practice (as it appears to have commenced doing in respect of its Value Added API service).
- 7.8. Ecosystems can also entrench an incumbent's control over access to consumers / users and their data, thereby consolidating their market power. PEXA's extensive web of touchpoints across the breadth of the transaction chain and in adjacent markets incentivises it to ensure that the current state of play in the e-conveyancing market continues. Given the insurmountable data and scope advantages PEXA enjoys, it is likely that PEXA will be able to maintain or entrench its market power in e-conveyancing and ultimately other markets indefinitely.<sup>114</sup>

<sup>112</sup> Please see <https://www.accc.gov.au/system/files/Digital%20advertising%20services%20inquiry%20-%20final%20report.pdf> at page 6.

<sup>113</sup> The 9 firms identified (being not an exhaustive list of firms that provide data products and services) are: (i) credit reporting agencies, being Equifax, illion, and Experian; (ii) property data firms, being CoreLogic and PropTrack; and (iii) data analytics and other data firms that supply data products and services, being Oracle, Quantum, LiveRamp and Nielsen.

<sup>114</sup> Please see The Evolving Concept of Market Power in the Digital Economy at page 4 which indicates that "A key issue for assessing the market power of digital platforms is the likelihood of effective entry in the presence of these data advantages. In this regard, it is important to assess the variety of the sources of individual-level data available to digital platforms across the breadth of their activities in digital markets. The extent to which these data advantages are insurmountable is central to the degree and longevity of market power in digital platform markets."

- 7.9. Moreover, there are material same-side and cross-side network effects in the e-conveyancing and related markets, which do not operate to the benefit of the Australian economy and consumers: PEXA has substantial operations in related markets where its pricing is not regulated and has commercial incentives to leverage network effects such that all subscribers / users remain within the walls of its ecosystem.
- (a) **Same-side network effects** – similar to the way that the value of a social media platform to a user increases the more their family and friends also use the platform, PEXA Exchange's captive subscriber base enables it to attract more users in the absence of interoperability, making PEXA Exchange even more valuable.<sup>115</sup> Same-side network effects also arise from PEXA's data accumulation – for example, an additional user of PEXA Exchange increases the data PEXA has about consumers, transactions and properties, which allows it to improve the relevance of its AVMs, risk assessments and analytics offerings.
  - (b) **Cross-side network effects** – these effects materialise bi-directionally, as PEXA Partners (and other corporations who may enter into strategic partnerships with PEXA) are attracted to and seek to integrate with PEXA Exchange due to its incumbency and captive subscriber base (as subscribers to PEXA Exchange face switching costs and the lack of a viable alternative to PEXA Exchange in the absence of interoperability). This in turn creates strong feedback effects where the greater the number of adjacent services integrated into or sold alongside PEXA Exchange, the more subscribers are likely to use PEXA Exchange, which in turn means PEXA is more likely to attract strategic partnerships, and so on.
- 7.10. Digital platforms are prone to the accumulation of substantial market power, which, once attained, can readily become entrenched by conduct such as foreclosure and self-preferencing. The unconstrained market power of a digital platform in one market can undermine competition in other sectors. In 2022, the Organisation for Economic Co-operation and Development (OECD) identified vertical integration as a key feature of digital markets, noting that:
- "Digital platforms that act as "gatekeepers" between downstream firms and their customers may be the subject of competition concerns if they provide advantages to their own downstream operations. Further, firms may seek to leverage their market power from one market to another, for example with bundling and tying strategies that foreclose competition for a digital "ecosystem" of products."*<sup>116</sup>
- 7.11. As outlined in this submission, PEXA benefits from the development of a digital ecosystem that is contrary to the spirit of the MOR separation regime. While ecosystems can benefit consumers by increasing convenience or reducing friction when moving between different services within the system, there are material anti-competitive effects that arise when the ecosystem is not interoperable with other ecosystems or networks and there are default biases which mean that users tend to stick with the default option. In respect of e-conveyancing and the related services ecosystem, PEXA is the default option as a result of the mandating of e-conveyancing when PEXA Exchange was the only ELN. These default biases result in reduced incentives to switch to another ELNO such as Sympli (or LexTech before it withdrew from the market in March 2025)<sup>117</sup>, which inevitably limits competition in related services as well as between the ecosystems themselves.<sup>118</sup>

<sup>115</sup> Please see <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf> (DPSI Final Report) at page 79. As noted by the ACCC, digital platforms with a large number of users can easily attract more users, making the platform even more valuable.

<sup>116</sup> Please see [https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/02/oecd-handbook-on-competition-policy-in-the-digital-age\\_50b6e951/c8c1841b-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/02/oecd-handbook-on-competition-policy-in-the-digital-age_50b6e951/c8c1841b-en.pdf) at page 14.

<sup>117</sup> See AFR article [here](#).

<sup>118</sup> Please see <https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry.pdf> at page 31.



- 7.12. Stakeholder and regulatory concerns that the provision of e-conveyancing services could be bundled with several related products and services including the provision of legal / conveyancing advice, the supply of practice management software, or the provision of property data have already materialised and are areas of strategic focus for PEXA, as explained in this submission. The difficulties faced by other ELNOs and competitors in related markets are heightened in the absence of interoperability and data portability between ELNOs. The presence of strong network effects has already led the e-conveyancing and related markets to "tip" in favour of PEXA and PEXA Partners, such that competition, to the extent it exists (and it is marginal), is "for the market", rather than "in the market".<sup>119</sup>
- 7.13. While network effects as a source of market power may be mitigated if one or both types of users (on each side of the platform) multi-home, this is not the reality in respect of e-conveyancing currently in the absence of interoperability, where PEXA Exchange accounts for approximately 99% of all e-conveyancing transactions. Parallels may be drawn with the ACCC's finding that in Australia, as Google Search provides around 95% of general search services and is the default search engine on the largest Internet browsers, most users of general search almost always use Google and single-home. Given this, if an advertiser wishes to reach these consumers when they are searching for information on the Internet, they must advertise on Google Search, such that Google effectively has a monopoly over access to the attention of these customers while they are engaged in general online search.<sup>120</sup>
- 7.14. Similarly, PEXA enjoys gatekeeper status in respect of the e-conveyancing market. In the absence of interoperability, it is effectively the sole access point to all e-conveyancing users and transactions, such that subscribers and businesses have no choice but to participate on the platform. This characteristic of PEXA is similar to those of the largest digital platforms, where the use or abuse of market power by platforms exhibiting these characteristics can have serious implications for competition in other markets, as well as for consumers more broadly.
- 7.15. InfoTrack is of the view that a fully interoperable framework should enable users to subscribe to multiple ELNOs concurrently, without penalty and to freely switch between providers intra and extra-transaction. Multi-homing will provide the benefits of network redundancy enabling Subscribers to mitigate against network outages, the recent examples of which have caused significant disruption to property settlements across Australia, see section 3 above.

## 8. Conclusion

- 8.1. Should PEXA be allowed to sustain its monopoly, it will have no incentive to innovate or find efficiencies, removing the opportunity for lower prices, better quality products and services, and choice for Australian consumers.
- 8.2. As the Senate Committee may be aware, since the Hilmer reforms in the early 1990s, experiences from a range of industries indicate that the introduction (or even mere threat) of competition may encourage businesses to innovate, improve their product offerings and offer lower prices.<sup>121</sup>

<sup>119</sup> Please see The Evolving Concept of Market Power in the Digital Economy at page 6. As noted by the OECD, the "presence of same-side and / or positive bi-directional cross-side network effects can make digital platform markets prone to "tipping". In markets where such network effects are sufficiently strong, users will be drawn towards the platform with the highest number of users. This further enhances the attractiveness of the platform which has the potential to lead the market to "tip" in favour of this platform, leaving it as the only platform in the market, or the largest platform by a substantial margin. Once this occurs, the most effective form of competition may be competition "for the market" rather than competition "in the market".

<sup>120</sup> Please see DPSI Final Report at page 95.

<sup>121</sup> Please see <https://treasury.gov.au/publication/p2024-553588#:~:text=For%20instance%2C%20competition%20in%20the,to%2010%20per%20cent%20lower>. For example, in respect of the aviation industry, the Treasury recently found that "increasing competition lowers price growth, and that in some cases, the mere threat of competition can lower airfares...competition has strong positive implications for passenger welfare through reducing prices. For instance, competition in the domestic aviation sector is estimated to have saved



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- 8.3. To date, PEXA has escaped scrutiny as a home-grown, dominant Australian platform and the current regulatory framework has failed to curb PEXA's market power and commercial incentives to squeeze other market participants out of the industry, to the detriment of Australians and the economy. For these reasons and in consideration of the materials outlined in this submission, InfoTrack urges the Senate Committee to consider the proposals outlined in the InfoTrack Submission.

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*consumers between \$27.2 billion and \$35.2 billion over the last 14 years, and the presence of an additional airline on a route leads to airfares that are 5 to 10 per cent lower".*