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Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By Email: economics@aph.gov.au

Dear Committee Secretary,

Micro-competition opportunities in the Australian economy in relation to eConveyancing

We welcome the opportunity to make this submission to the Senate Economics Reference Committee in relation to eConveyancing. Both I and my colleague Dr Rob Nicholls have previously, and are currently, advising on policy approaches to promote competition in Australia's eConveyancing market. We have provided advice to the Australian Registrar National Electronic Conveyancing Council (ARNECC), the NSW Productivity and Equality Commission, the NSW Registrar General, and more recently to Sympli.

In this brief submission, we address a small number of issues that are relevant to the promotion of competition in Australia's eConveyancing market. We discuss why there is a need for pro-competitive reform and that long term this is best achieved by the implementation of interoperability between competing Electronic Lodgment Network Operators (ELNOs). We suggest that moving forward ARNECC's Interoperability Program be elevated to be a national microeconomic reform initiative to promote increased competition, enhance efficiency and to deliver consumer benefits. Consistent with this recommendation, we see merit in the ACCC having a formal, ongoing market oversight and enforcement role in respect of eConveyancing.

There is not effective competition for eConveyancing services in Australia

The development of eConveyancing platforms and their take-up in Australia is a direct consequence of effective cooperation between Commonwealth, State and Territory Registrar Generals, the Australia's banking industry, the conveyancing industry and other private sector parties. Consequently, Australia is a world leader in eConveyancing. Despite this there is strong evidence that Australian consumers have not benefited from this innovation.

As demonstrated by the NSW Productivity and Equality Commission's eConveyancing Market Study, Australia's eConveyancing market is dominated by one provider with close to 90 per cent market share¹. There are significant barriers to entry, including the presence of network effects, which are preventing market entry of at least two credible competitor firms that have developed alternative Electronic Lodgement Network Operator (ELNO) platforms. Market prices for eConveyancing services increase by CPI each year and do not need to be justified by either quality improvements or changes in market conditions. The incumbent firm, PEXA, is highly profitable - its Australian eConveyancing business unit recently reported EBITDA margins of 56 per cent². Previously, the Australian Competition and Consumer Commission (ACCC) has raised concerns about this current market structure and the lack of competition³.

The absence of effective competition in Australia's eConveyancing market is not due to natural monopoly but policy and regulatory failure. Claims that ELNO platforms exhibit natural monopoly characteristics are inconsistent with the fact that both Sympli and LexTech have both developed competitive, alternative platforms that offer the same functionality as PEXA's as well as evidence suggesting that the cost profile of ELNOs does not meet the economic test of *subadditivity of costs*. We note that several reputable reports into the benefits of competition in eConveyancing question claims that ELNOs are natural monopolies⁴.

Interoperability will reduce barriers to entry and expansion and promote competition

The key barrier to entry in eConveyancing is the lack of interoperability between ELNOs. This issue has arisen due to several factors, including the failure of Commonwealth, State, and Territory Governments to establish a competitive process for the development of eConveyancing that mandated interoperability between competing ELNOs. Unfortunately, the development of eConveyancing in Australia led to the establishment of a government-owned monopoly, which was subsequently privatised without an adequate competition and access regulatory regime. Subsequent efforts by

¹ See PEXA, PEXA Group Limited Interim Report 2025, p.7 [2025-Half-Year-Results-Appendix-4D-and-Half-Year-Financial-Report-sm-1740691267.pdf](#)

² See PEXA, *ASX and Media Release: Friday, 28 February 2025* p.3 [2025-Half-Year-Results-ASX-Announcement-sm-1740691326.pdf](#)

³ See for example: ACCC *ACCC report on E-conveyancing market reform*, 2 December 2019 [ACCC Generic Letterhead 25 JUNE 2015](#)

⁴ See NSW Productivity and Equality Commission, eConveyancing Market Study p.25 [eConveyancing market study](#)

ARNECC to establish a direct connect model of interoperability to promote competition have, to date, been unsuccessful.

The absence of interoperability, combined with the incumbent's first-mover advantage, has exacerbated the impact of network effects. While network effects are a common feature of network industries, such as telecommunications and digital platforms they are not an insurmountable barrier to effective competition. For example, regulatory regimes applying to telecommunications networks both in Australia and elsewhere mitigate the harmful impact of network effects by mandating interconnection or any-to-any connectivity between network operators. More recently the Consumer Data Right (CDR) in Australia mandated that banks must share customer data with accredited third parties upon customer request in an effort to promote competition and reduce barriers to entry and expansion.

The experience of Australia's telecommunications, energy and aviation industries suggest that it is not too late for policy makers and regulatory agencies to rectify this situation by pursuing policy reforms to promote long-term sustainable competition. While these reforms could take many forms, experience from other industries (in particular, telecommunications) suggests that full facilities-based competition will reduce barriers to entry and expansion, promote competitive investment and drive ongoing innovation. As noted by the Centre of International Economics (the CIE) in its report titled *Addressing market power in electronic lodgment services: Cost-benefit analysis*, full facilities-based competition, enabled by the interoperability between ELNOs, would result in net benefits to consumers and to Australia as a whole⁵.

To reinforce this, there is nothing about the ELNO function that suggests that there should be a "winner takes all" or "winner takes most" outcome that is seen in the social media space. Instead, there is scope for effective competition in contrast to the "workable competition" associated with regulatory intervention in natural monopolies.

ARNECC should stay the course to deliver interoperability with greater involvement by relevant Commonwealth Government and Regulatory stakeholders

We note that the pursuit of interoperability by ARNECC has experienced significant delays. Importantly these delays are not as a consequence of technological challenges or risks but rather because some stakeholders have opposed the interoperability reform and its principles and governance arrangements. Related to this, is that ARNECC was not established, nor is it appropriately resourced, to oversee the development of interoperability and associated technical standards in order to drive improved competition outcomes.

⁵ The CIE noted that interoperability is expected to deliver benefits to consumers in the form of lower prices and product improvements. Their cost-benefit modelling suggested that interoperability had a benefit-cost ratio of 3.0, indicating that for every dollar spent to achieve interoperability, it would deliver \$3.00 of benefit to society. See [Report re Addressing market power in electronic lodgment services](#), p.53.

For example, ARNECC paused its Interoperability Program in June 2024 in response to concerns raised with ARNECC, and relevant State and Territory Ministers, by the banking industry⁶. These concerns relate primarily to the importance of standardised platform functionality and data standards to avoid banks having to establish duplicative and costly processes to accommodate interoperability of ELNOs. While this concern is not unreasonable, its significance is heightened by the fact that PEXA has not shared details of its platform functionality and data standards with the ARNECC interoperability working group and ARNECC has been reluctant to take the necessary steps to compel PEXA to share such information.

ARNECC has recently announced initiatives in which it will further investigate the best way forward to pursue interoperability by undertaking:

1. an in-depth review of the functional requirements for interoperability (Functional Review); and
2. commissioning an updated cost benefit analysis to test whether the direct connect interoperability model continues to be the most appropriate model (Updated CBA).

Based on ARNECC's announcement dated 19 February 2025, it appears that these reviews will largely replicate previous technical and economic analyses already conducted. Furthermore, if the Functional Review concludes that interoperability requires PEXA to share information, such as data standards and systems functionality with competitor ELNOs it is likely to result in a continuation of the current situation. This, along with ARNECC's reluctance to compel PEXA to share such information with other ELNOs, raises questions about whether the Functional Review will be effective in addressing the primary impediment to interoperability.

To avoid such an outcome following the completion of the Functional Review ARNECC should consider developing a detailed industry roadmap and milestones to achieve full interoperability within a reasonable timeframe. Importantly, this roadmap should be developed with the assistance and input of the ACCC along with other relevant Commonwealth Government stakeholders, including the Reserve Bank and Commonwealth Departments of Treasury. This roadmap should be published along with regular (quarterly) updates highlighting progress against key milestones and performance indicators. Additionally, the Commonwealth Department of Treasury should direct the ACCC to work with ARNECC to ensure that ELNOs, the banks, and other parties take appropriate steps consistent with the roadmap to ensure that interoperability is implemented in a timely manner to reduce barriers to entry and promote competition. Given that the current pause to the Interoperability Program is largely due to concerns raised by the banks, it is important to ensure that going forward they are discouraged from unreasonably delaying or frustrating the implementation of interoperability. Indeed while the implementation of interoperability may impose some costs on the banks in the short term these costs will be offset by the longer term ongoing benefits of competition including direct benefits to the banks in the form of lower eConveyancing prices and improved service standards.

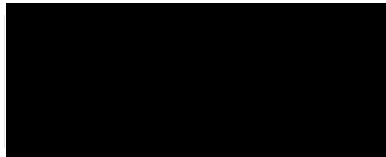
The Functional Review should also seek to reposition the Interoperability Program as a national microeconomic reform initiative to promote increased competition, enhance efficiency and to deliver consumer benefits. Accordingly, the ACCC should be given a formal ongoing market oversight and

⁶ See ARNECC at <https://www.arnecc.gov.au/wp-content/uploads/2024/06/Ministers-Statement-Forum-11-June-2024.pdf>.

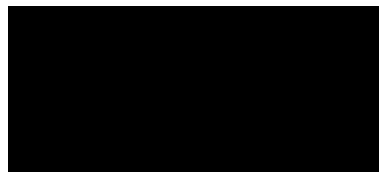
enforcement role in respect of eConveyancing to ensure that there are no further delays to the Interoperability Program and that any lack of cooperation by ELNOs, or other parties, does not entrench the current market structure. Such a role is consistent with the ACCC's core legislative purpose and the objectives of the *Competition and Consumer Act 2010* (Cth). That is, although property legislation is constitutionally a state matter, there is an important role for the ACCC in the promotion and protection of competition in the sector at a Commonwealth level.

We hope that the above is helpful to the Senate Committee in understanding some of the issues relevant to the promotion of competition in Australia's eConveyancing Market. We would each be pleased to appear before the Committee if that is of value.

Kind regards



James Endres
Managing Director



Dr Rob Nicholls

