



Property Exchange Australia Ltd ABN 92 140 677 792

PEXA supplementary response

to

Senate Economics References Committee
Inquiry into micro-competition
opportunities relating to eConveyancing

April 2025

Executive summary

This Supplementary Response should be read in conjunction with PEXA's Submission to the Committee in March 2025. It responds to a number of submissions to the Committee that have introduced substantial inaccuracies and unfounded allegations. We thank the Committee for the opportunity to respond to deliberate misinformation campaigns from competitors. PEXA takes its obligations under competition law very seriously and does not engage in anti-competitive behaviour. PEXA requests that the Committee does not put any weight on claims made by PEXA's competitors that are not founded on clearly articulated evidence.

ELNO competition is possible despite network effects. Claims that there is no competition in eConveyancing, or that competition is impossible without interoperability, are misguided. 15-20% of transactions are single party transactions that could be serviced without interoperability. Sympli, PEXA's major competitor ELNO, which is jointly owned by ASX and ATI Global, was functional before PEXA was operating, or had substantial market share, in some jurisdictions. History shows Sympli did not take the opportunities to enter these jurisdictions where PEXA was not operating. There may be a lack of *effective* competition in eConveyancing because competitor offerings are inferior, and competitor business models are hoping to rely on unfair government intervention that enables them to free-ride on PEXA's efforts rather than investing in providing a better customer offer. Sympli may be hoping for regulatory intervention through interoperability so that Sympli can collect full fees from Subscribers and deliver services using the functionality of PEXA's platform without paying the full costs of developing the network of subscribers or full-service ELNO functionality.

Multiple competitor ELNOs will not provide industry redundancy or reduce points of failure. In practice any attempt to switch even a single transaction from one ELNO to another will take days. Meantime, the design of interoperability inherently *increases* the risk of outages and non-availability.

Problems with interoperability are not a consequence of PEXA obstruction. Rather, the scope of interoperability has widened substantially through the course of the program and has never been properly settled. The concerns of financial institutions with interoperability are based on an informed view, not a 'concerted disinformation campaign by PEXA'. PEXA's concerns that the current design of interoperability may impair its IP rights are well-founded and an appropriate defence of its legitimate rights, not 'anti-competitive tactics'.

The claims of competitors should be understood in the context of their market position in the broader eConveyancing industry. The broader eConveyancing industry also includes Practice Management Software, property-related search, bank mortgage IT systems and outsourced mortgage processing systems and services (for both conveyancers and banks). Collectively, these parts of the industry facilitate digital processing of property transactions. These parts of the industry have substantially larger revenues than ELNOs. ATI Global (which owns Infotrack and jointly owns Sympli) has a majority market share in many of these markets, with high switching costs and little regulation. The current regulatory environment explicitly limits vertical integration by PEXA into the parts of eConveyancing where ATI companies have a majority market share, but may permit close links between ATI companies in related parts of the eConveyancing industry, and Sympli's ELNO. A holistic approach to micro-competition in eConveyancing would consider the effectiveness of competition regulation across all parts of the eConveyancing industry.

Competitor submissions have alleged PEXA misbehaviour without evidence, or any basis in fact, which is a misuse of Senate process. These include allegations of unconstrained pricing, insufficient investment, inappropriate IP claims, obstruction of interoperability, leveraging market power to offer upstream or downstream services, providing unequal access to different market participants, and misuse of market power. These submissions have not provided any specifics to support any of these allegations, and PEXA is not aware that it has engaged in any activity that would justify these allegations.

1 Introduction

PEXA thanks the Senate Economics References Committee for the opportunity to respond to Sympli's submission to the Committee, which has introduced substantial inaccuracies and unfounded allegations. PEXA has also incorporated responses to inaccuracies in some other submissions, particularly that of Infotrack, in order to minimise the number of separate submissions.

This Supplementary Response should be read in conjunction with PEXA's Submission to the Committee in March 2025.

As the referencing to PEXA March 2025 Submission will demonstrate, PEXA has previously placed most of the contents of this Response on the public record. It is therefore disappointing that PEXA's competitors continue to make unfounded allegations that PEXA has previously refuted.

2 Competition in eConveyancing

Submissions to the Committee have asserted that there is limited competition in eConveyancing because of the lack of interoperability. In fact there is a lack of *effective* competition because competitors have failed to build a service that matches the quality of PEXA's offering, and consequently have struggled to attract customers. PEXA's services help users to reduce their internal costs by much more than the price of PEXA's services. If alternative offerings do not offer such significant internal cost savings, then customers will not be attracted to them even if they are priced lower than PEXA's services.

It appears that PEXA's competitors have also chosen not to enter markets that PEXA did not yet serve, and a plausible explanation is that they hoped that government intervention through interoperability reforms would enable them to free-ride on PEXA's substantial costs of building a network of eConveyancing participants and setting up ELNO functionality in these jurisdictions.

2.1 ELNO competition is possible despite network effects

The Sympli submission asserts that there is no competition in eConveyancing, and competition is not possible without interoperability.¹ It may be strictly true, as Sympli claims, that customers have 'no option with regard to pricing or service',² but this is because Sympli has chosen not to enter markets that were open to it. And while there may be little effective choice of provider, PEXA's exchange services are price-regulated so that they do not increase in real terms, and the terms of service are closely prescribed by the Model Operating Requirements.³

2.1.1 Single party transactions and other opportunities that do not require interoperability

15-20% of eConveyancing transactions are not multiparty transactions and only involve one party. Single party transactions include lodgment or discharge of a mortgage with a property that the customer already owns, and lodgment and removal of caveats. A competitor could offer eConveyancing services for these single-party transactions without interoperability.

A substantially larger opportunity would be to provide refinance capability to the five largest financial institutions. This capability would be able to service most eConveyancing refinance transactions without interoperability.

¹ E.g. Sympli submission, paras 6-11.

² Sympli submission, para 10

³ See below, section 5.1

Nevertheless, the vast majority of single party and refinancing transactions are conducted on the PEXA platform. PEXA maintains that this is because its platform provides superior functionality and integration, and because it provides a superior service offering.

For eConveyancing customers, the key tradeoff is between price of an eConveyancing service and the cost savings enabled by that service. Overall the cost savings enabled by eConveyancing in 2019-20 were almost double the price of eConveyancing.⁴ PEXA has introduced further innovations since then responding to customer needs to further reduce their costs, as described in section 4.6 of PEXA's Submission to the Committee.

There is substantial scope for eConveyancing customers to reduce their internal costs even more as eConveyancing develops. PEXA's fees as an ELNO from *all* parties to a transaction (assuming the highest cost case in which the seller discharges a mortgage and the buyer takes out a mortgage) are \$380.⁵ Typical conveyancer revenues (from buyer and seller) are at least \$4,000 per transaction and the better estimate is that they average more than this.⁶ In addition, financial institutions incur substantial internal costs in processing mortgages. As a result, the reductions in total conveyancing costs that can be enabled by ELNO platforms are inherently much larger than ELNO platform prices.

In PEXA's experience, many customers have ignored competitor offerings for their single-party transactions not because they were 'locked in', but because the functionality of PEXA's platform, and its integration with their operations, offered larger internal cost savings than the services of alternative providers.

2.1.2 New jurisdictions

A new competitor could have provided eConveyancing services in jurisdictions where PEXA had not expanded its services or where it had not converted a large part of the market from paper-based to electronic conveyancing.

ASX/ATI Group's Sympli commenced building its platform in 2018. It had ample opportunity to expand into jurisdictions where PEXA had not converted a large part of the market from paper-based to electronic conveyancing. By 2020 PEXA had less than 30% penetration in Queensland, and less than 50% penetration in South Australia. PEXA only commenced operations in the ACT in 2021, and in Tasmania in 2024, and has not yet commenced operations in the NT. Despite the absence of network effects, Sympli did not attempt to enter these markets. By definition, the absence of interoperability was not a barrier. Although these are smaller jurisdictions, a number of regulatory decisions and recommendations have been made on the basis that it would be economic to serve such small jurisdictions even with relatively low market share.⁷ A plausible explanation for Sympli's failure to enter these markets is that Sympli preferred PEXA to incur the up-front costs of negotiating with titles offices, revenue offices and other regulators to adapt eConveyancing to any particular features of the jurisdictions, and the up-front costs of encouraging conveyancers to convert to the new system and training unfamiliar users.

⁴ In 2019-20, eConveyancing was estimated to reduce conveyancing costs (and increase productivity) by \$290m per year, almost double PEXA's total revenues of \$155m: Avsar S and Horton D, *The Net Economic Value of eConveyancing in FY20*.

⁵ \$132 each for buyer and seller, and \$66 for each financier.

⁶ Quotations from Conveyance.pro for handling a property sale of \$1.2m with a \$600,000 mortgage in Victoria identified 25 conveyancers with a median indicative price of \$950 (which excludes disbursements). In PEXA's experience, most conveyancers charge considerably more. Jarden estimates that typical solicitor fees (for both parties combined) for a house transaction in Sydney, Melbourne and Brisbane are between \$7,500 and \$10,000 (probably including disbursements): Jarden (2023) 'Breaking down housing turnover'.

⁷ NSW Productivity and Equality Commission (2023) eConveyancing Market Study, p.32-33 concluded, consistent with the views of 'several market participants', that it would be economic for an ELNO to serve smaller jurisdictions. Similarly, AECOM, the cost

2.1.3 Regulatory free-riding

A plausible explanation for the failure of competitors to build a substantial eConveyancing business around single-party transactions and in jurisdictions not served by PEXA is that their strategy was to free-ride on PEXA's costs to build a network, relying on regulators to compel PEXA to make its network available through interoperability at a price to other ELNOs much lower than it cost to establish a network of participants, create the business systems, and build the IT platform. This strategy was furthered by IPART's decision, adopted by ARNECC in the Model Operating Requirements, that inter-ELNO fees would be a small fraction of Subscriber fees. Under these rules a competitor ELNO could collect Subscriber fees of up to \$343.42, while only paying PEXA \$8.76 for the benefit of using its network and functionality.⁸

2.2 eConveyancing network established not by mandates but by PEXA's efforts

Some submissions to the Committee might be read as suggesting that the value of PEXA's network was a consequence of government mandates⁹ rather than PEXA's costly efforts to persuade subscribers to convert from paper based to online conveyancing. In fact, government mandates were only issued once PEXA had already expended significant resources to establish widespread usage of its platform amongst conveyancing practitioners and banks. If eConveyancing had not already been broadly adopted, governments would probably have lacked the social licence to mandate its use.

PEXA invested heavily to induce participants in conveyancing to change their business systems from traditional 'pen and paper' to eConveyancing. This transformation, a world first, required PEXA to:

- Understand the sector (business processes and challenges);
- Persuade sector participants to decide to adopt eConveyancing;
- Work with sector participants to re-design their business processes in ways that would integrate with PEXA's platform;
- Work with sector participants to implement substantial changes to their organisation and business processes, including substantial reskilling and training; and
- Provide maintenance and ongoing support.

The overall transformation from traditional conveyancing to eConveyancing depended on PEXA attracting a critical mass of network participants and system subscribers (conveyancers, property lawyers, banks, State Revenue Offices and Land Title Offices) to adopt and use the platform. Critical mass was vital because the platform and service were only viable to participants if it was also used by other participants.

consultant commissioned by NSW IPART, found that the incremental costs of serving additional jurisdictions was relatively small: IPART (2023) *Interoperability pricing for Electronic Lodgment Network Operators, Final Report*, p.97-99. While this view may not be consistent with PEXA's submissions to these bodies, it is the basis of the current regulatory framework, which Sympli has advocated.

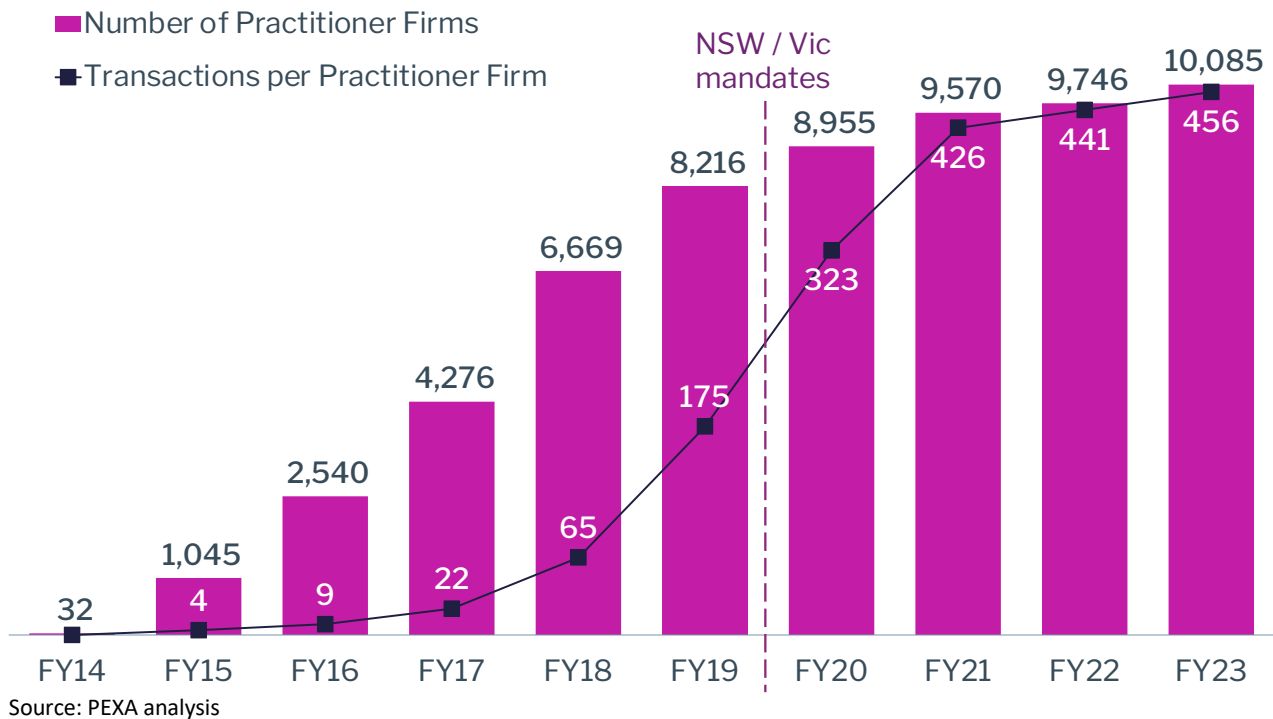
⁸ Assumes that the competitor eConveyancer acted for the buyer, the seller and the buyer's lender, and did not have functionality to complete the transaction, and so incurred three 'Responsible ELNO Fees' of \$0.78 and a default RELNO fee' of \$6.42: see MOR cl.5.9.1.

⁹ See for example Sympli submission, paras 7, 9; NSW Productivity and Equality Commission (2024), *eConveyancing market study*, p.41

To encourage adoption of eConveyancing, PEXA employed large teams across the country to meet with stakeholders, educate them on the benefits of a digital platform, build their confidence in using the platform and convert them to a new way of working with the appropriate support. As with almost all transformations, many in the sector resisted change due to uncertainty and lack of familiarity with new processes. Most of PEXA's Australian costs prior to 2021 that were not related to IT or platform operations were essentially related to transforming the sector to eConveyancing. However, PEXA's historic accounting practices do not enable an accurate estimate of this cost without additional forensic effort. As shown in Exhibit 1, PEXA succeeded in bringing a critical mass of conveyancing firms onto eConveyancing by around 2018-2019. As also shown in Exhibit 1, Government mandates were only adopted in NSW and Victoria in July-August 2019, once most practitioners had already adopted the platform. Government mandates were only adopted much later in other jurisdictions.

The primary purpose of government mandates was to assist in converting the lagging rump of transactions to eConveyancing. Government mandates were in part a *consequence* rather than a *cause* of a critical mass of users. This is because once clear majorities of users wanted to proceed digitally with their transactions, they wanted their peers to do so as well. The primary impact of these mandates was not so much to establish PEXA's eConveyancing network or increase its revenue. Rather, these mandates enabled financial institutions, land registries and revenue offices to eliminate the substantial fixed costs of maintaining physical systems for a relatively small number of paper-based transactions.

Exhibit 1: Practitioner Firm growth and up-take



2.3 Single point of failure and redundancy

A common misconception of regulators, promoted by competitors with a vested interest, is that competition will provide redundancy and eliminate a single point of failure. For example, Titles Queensland asserts that 'greater resilience' would be provided by 'a multiplicity of ELNOs'.¹⁰ ARNECC asserts that 'A multiplicity of ELNOs creates redundancy because if one ELNO goes down, subscribers can switch'.¹¹ Sympli claims that there is 'a single point of failure which presents a major risk to the Australian economy'.¹² Similarly, Infotrack claims that 'there is a single point of failure that arises from PEXA's monopoly'.¹³

None of these submissions engages with the practicalities of eConveyancing. If one ELNO is not functioning, then transactions will not simply proceed on the other ELNO. If one ELNO is not functioning, a transaction cannot proceed unless *all* the parties to the conveyance using that ELNO move their part of the transaction to another ELNO. A very large number of customers are likely to subscribe to only one ELNO. There is substantial inconvenience and cost to linking internal systems to more than one ELNO, and training staff to use multiple systems. This arrangement is known as 'multi-homing' and is an adverse outcome that Interoperability was promoted to overcome, by allowing practitioners and banks to subscribe to just one ELNO of their choosing. In the event of a severe failure, it would probably take days for a customer to become a subscriber to a different ELNO, as this process involves significant security checks (because a subscriber has authority to issue instructions for property transactions, and could, for example, fraudulently issue instructions on behalf of both a buyer and seller). Even if all parties to a failed transaction were already subscribers to a different ELNO, all of their instructions for the transaction would need to be re-entered into this ELNO's system, and checked by each other subscriber, a process that is unlikely to be completed within 24 hours. Consequently multiple ELNOs will not mitigate the risk of a 'single point of failure'.

In fact, interoperability will substantially *increase* the risk of failure. With an interoperable transaction, if *either* ELNO is down, then the transaction cannot proceed. In effect two interoperable ELNOs double the risk of failure. In addition, interoperability substantially adds to technical complexity and increases cyber risks as described in section 6.1.3 of PEXA's primary submission to the Committee by:

- Increasing the cyber-attack surface, particularly the additional gateways for inter-ELNO transactions
- Reducing incentives to adequately invest in protection because the weakest ELNO effectively sets the standard of vulnerability for all other ELNOs
- Increasing risks of inter-ELNO message spoofing
- Proceeding with transactions processed by a subscriber whose authority has been revoked

PEXA notes the claim by Sympli regarding 'the exchange has 100% system uptime'.¹⁴ As is obvious from Sympli's own submission, PEXA is transparent, both at the time and in retrospect, about incidents that lead to any impairment in functionality. As described in section 4.5 of PEXA's submission to the Committee, most incidents are the result of the platforms of other participants (such as financial institutions, titles offices and revenue offices) not functioning, which consequently delay transactions. As that submission also explains, in most of these incidents the transaction proceeds on the intended day, so that the impact on buyers and sellers is minimal.

¹⁰ Queensland Titles submission, p.2

¹¹ ARNECC submission, para.51.

¹² Sympli submission para.8

¹³ InfoTrack submission, para.2.9

¹⁴ Sympli submission, para.28

3 Interoperability

The challenges with introducing interoperability between ELNOs are described in section 6 of PEXA's Submission to the Committee. This section of PEXA's response deals with specific issues raised by other submissions to the Committee.

PEXA has long held concerns about interoperability. It has nevertheless cooperated with regulator efforts to implement the reform. The issues with the interoperability program are a consequence of the kind of issues that PEXA has flagged consistently. It is not, as Sympli's submission claims, because PEXA has 'undermined the competition reform'.¹⁵ Amongst other issues, there were problems with changing scope, reduced functionality, poor governance protocols and potential infringements of PEXA's intellectual property.

3.1 Interoperability scope

One of the primary challenges to the interoperability program is that the scope has shifted over time, and has never been settled. When the scope of a large project is not defined clearly, it is common for timeframes and costs to blow out, as they have with interoperability.

The original scope for interoperability as envisaged in 2019, and then legislated in 2022, was to enable:¹⁶

- 'a subscriber using an ELN (the **first subscriber**) to complete a conveyancing transaction that involves a subscriber using another ELN without the first subscriber having to be a subscriber to the other ELN', and
- the preparation of a registry instrument or other document in electronic form using data from a different ELN'

Interoperability was effectively defined as the functionality *necessary* to enable an interoperable transaction. Discussions at the time centred around functions such as invitations, workspaces, titles, documents, attachments, financial line items, and messaging.

By 2023, ARNECC indicated that the scope for interoperability would include additional functionality designed to minimise transaction failures and automate functionality, particularly in bank systems. It included a number of additional functions that PEXA had created on its platform such as:

- **Status indicators:** E.g. Ready for surplus, authority for shortfall
- **Orchestration:** E.g. events triggers, alerts
- **Collaboration:** E.g. Document sharing, Loan docs received
- **Enhanced features:** E.g. Autobalance, Linked settlements, Ready to book, PEXA Planner

ARNECC's Submission notes that it 'approved a scope for the technical solution for interoperability in October 2023',¹⁷ in a statement headed 'Scope for interoperability releases settled'.¹⁸

However, PEXA had already argued that it was inappropriate to include many of these additional functions in interoperability, which were referred to by all parties as 'contested items'.

¹⁵ Sympli submission, para.17.

¹⁶ Enshrined in the definition of 'interoperability' in *Electronic Conveyancing National Law*, s.2.3, as amended in 2022.

¹⁷ ARNECC submission, para.74.

¹⁸ ARNECC statement (2023), 'Scope for interoperability releases settled', www.arnecc.gov.au/wp-content/uploads/2023/12/ARNECC-Statement-Scope-for-interoperability-releases-settled.pdf

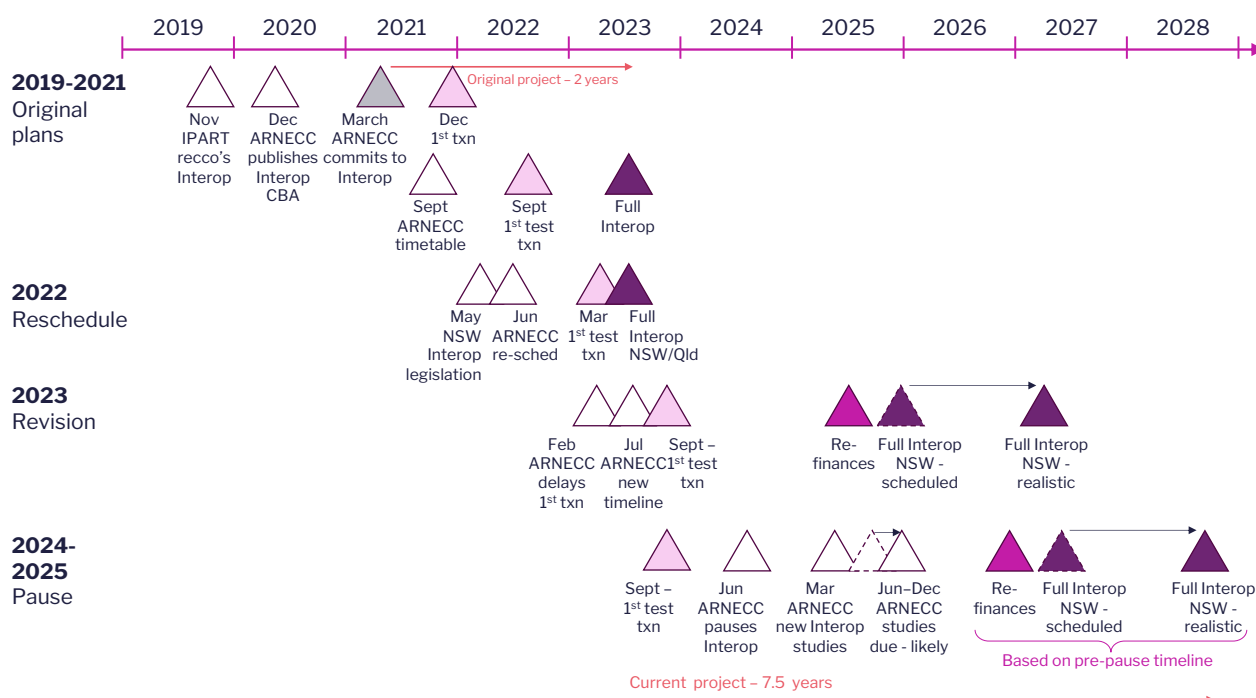
Nevertheless, an amendment to the Model Operating Requirements in January 2024 required that an ELNO must 'ensure that the standard of performance of its ELN in an Interoperable Electronic Workspace is equivalent to the performance of its ELN in an Electronic Workspace that is not an Interoperable Electronic Workspace.'

This expanded scope of interoperability now required 'functional equivalence' as it was termed by financial institutions.¹⁹ Interoperability was no longer about enabling a transaction to proceed with multiple ELNs; instead it required that whatever functionality was available on one ELN would work the same way if another ELN was also involved.

This scope creep created a large number of issues. As indicated in ARNECC's submission to the Committee, ARNECC 'has been unable to design a scope for interoperability that is acceptable to all ELNOs and industry participants.'²⁰

One consequence is the substantial blow out in timelines from 2 years to 7.5 years (on the current project – which may well slip further), illustrated in Exhibit 2.

Exhibit 2: Interoperability timelines



3.2 The attitude of financial institutions

Financial institutions have expressed increasing doubts about interoperability. The Australian Banking Association Senate submission states that it has 'significant concerns about the ability for the current IOP Program to deliver these Core Requirements. In our view, the current state of the IOP program may create a poorer experience and increase the financial risks to ELNO subscribers and consumers'.²¹

¹⁹ See for example Australian Banking Association submission, p.3

²⁰ ARNECC submission, para.75.

²¹ Australian Banking Association, p.6

Sympli's submission claims that the banks' position follows 'a concerted disinformation campaign by PEXA to the major banks indicating that their services would degrade under interoperability'. PEXA denies that it has engaged in any such campaign. Sympli's submission provides no detail of this alleged campaign, nor does it specify any misstatement by PEXA.

3.3 Intellectual property issues

PEXA has long maintained that it has significant intellectual property in its platform, and that to make many functions interoperable, PEXA may need to disclose confidential information, or other ELNOs may need to use PEXA's proprietary intellectual property.²²

Sympli contends that PEXA does not have any such intellectual property. Its submission asserts that PEXA is claiming intellectual property ownership of industry workflows and processes that predate eConveyancing'.²³ It goes on to claim that 'PEXA's practices and processes are not novel and merely reflect existing conveyancing processes',²⁴ and that 'it can be reasonably inferred that PEXA's intellectual property right claims are not bona fide but are instead anti-competitive tactics'.²⁵

In fact, in the agreements that sold PEXA to private ownership, State and Territory governments specifically warranted that the sale included all intellectual property necessary to continue to operate the PEXA platform. PEXA has since further developed that intellectual property by its own investment.

PEXA's system comprises valuable intellectual property. Clearly, PEXA and other ELNOs own copyright in the software underpinning their e-conveyancing platforms under the *Copyright Act 1968* (Cth). In addition, PEXA and other ELNOs own valuable intellectual property rights in their confidential information in the form of 'know-how' and trade secrets in respect of 'back-end' information, complex process-flows and decision logic developed in respect of their respective platforms.

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, this would:

- allow a competing ELNO to simply replicate PEXA's technology; and
- be detrimental to innovation as it would enable competing ELNO's to replicate PEXA's technology rather than develop their own bespoke features.

For example, PEXA's system includes a transaction orchestration engine that incorporates inputs from subscribers, and ensures the generation of internally consistent outputs, resolving any discrepancies between inputs from subscribers. The complex business rules to do so were developed for each transaction type. They were not formalised as part of paper-based conveyancing processes, and many of them have no paper-based analogy.

²² PEXA submission, section 6.2.3.

²³ Sympli submission, para.18.

²⁴ Sympli submission, para.19.

²⁵ Sympli submission, para.19.

In addition, PEXA has added to its system over the past few years a substantial number of innovations to facilitate subscriber workflow, improve security and provide tailored operational information,²⁶ such as the Autobalance function described in more detail in PEXA's submission to the Committee.²⁷ Again, none of these functions had an obvious analogy in a paper-based system, and their implementation incorporates a broad range of confidential business rules and IT approaches. Many of these features are novel, confidential to PEXA and are the result of considerable investment that is protected by intellectual property rights. The expansion of the scope of interoperability to deliver 'functional equivalence' was designed precisely to capture many of these innovative features.

At a more holistic level, it is implausible that PEXA has no substantial IP claims in a large and complex IT system that has cost many hundreds of millions of dollars to develop, and which supports an eConveyancing system that lacks analogies around the world – except in jurisdictions such as the UK, where PEXA is trying to introduce it.

PEXA has consistently offered to ARNECC opportunities to investigate its IP claims in more detail. ARNECC had commenced a process to do so, with which PEXA was fully cooperating, shortly before the interoperability program was paused in June 2024. As this suggests, and contrary to Sympli's submission, PEXA's claims were not 'broad and unsubstantiated'.²⁸

PEXA's intellectual property rights are substantial and bona fide. PEXA is a technology company whose world-leading e-conveyancing solution is the product of years of investment. PEXA's copyright and confidential information in its platform are valuable assets that PEXA, acting reasonably, is duty bound to protect for the benefit of its shareholders and other stakeholders.

Given these substantial claims, it is only reasonable that PEXA sought to protect its intellectual property by informing regulators, other participants, and customers, some of whom have access to some aspects of PEXA's intellectual property, that they should not share that intellectual property with competitors. Contrary to Sympli's submission,²⁹ it is not 'anti competitive conduct' to make such requests, nor is it anti-competitive to refuse to share such intellectual property with competitors.

3.4 Cost benefit

As indicated in section 6.4 of PEXA's submission, the original cost-benefit analysis of interoperability only found limited benefits. Sympli's submission incorrectly asserts on the basis of this study that 'the net productivity benefit of [interoperable] competition will be \$83.6m over 10 year[s] in New South Wales alone'.³⁰ In fact the relevant study estimated an \$83.6m benefit for interoperable competition in the entirety of Australia.³¹

In any case, as indicated in section 6.4 of PEXA's Submission to the Committee, with the passage of time many of the key assumptions that underlay that cost-benefit analysis have been contradicted by real world experience. PEXA has put these arguments in a series of forums in the past, and Sympli's submission has not attempted to engage with them.

²⁶ See the list of PEXA's customer innovations in section 4.6 of PEXA's submission to the Committee

²⁷ Described in more detail in section 5.2 of PEXA's submission to the Committee

²⁸ Sympli submission, para.20(b).

²⁹ Sympli submission, para.20 (c-e).

³⁰ Sympli submission, para.25.

³¹ Centre for International Economics (2020), *Addressing market power in electronic lodgment services: Cost-benefit analysis*, <https://www.thecie.com.au/publications-archive/the-impact-of-covid-19-on-australias-economic-landscape-p5ksj> [sic].

4 Wider eConveyancing industry structure and conduct

4.1 eConveyancing industry structure

The eConveyancing platform that PEXA operates is only one part of an online conveyancing industry value chain. As part of transferring land, a series of digital platforms and systems interact. There are no clear dividing lines that pre-determine which functions should be part of which system.

If eConveyancing is defined as digital systems that facilitate conveyancing, then in addition to the systems of ELNOs such as PEXA, it also includes:

- The electronic systems operated by lawyers and conveyancers (many of which are 'Practice Management Systems (PMS)' supplied by third parties);
- The electronic systems operated by financial institutions (many of which are supplied by third parties);
- The electronic systems operated by mortgage processors engaged by financial institutions;
- Electronic systems that conduct searches in relation to property transactions, including both land title searches, and searches of other land-related information such as planning, land tax, and council rates; and
- Other electronic services related to settlement and lodgment such as VOI, market data, e-signing, client onboarding and contract finalisation.

Property search services include title queries which use information ultimately sourced from a Titles Registry (disclosing the current owner, mortgagee, title dimensions, and any encumbrances) and other property searches (such as rates notices and payment status, land tax liabilities, and planning overlays). PEXA estimates that the Total Addressable Market for Property search in Australia is over \$400m per year³², larger than the eConveyancing market. PEXA does not currently provide property search services.

4.2 ATI Group market position and conduct

In the broader Australian digital conveyancing value chain, Australian Technology Innovators Pty Limited (ATI) – Sympli's 50 per cent owner - is the market-leading provider of both Practice Management Software for lawyers and conveyancers, and of Information Search Services. ATI directly or indirectly controls a wide range of entities in PMS and property search markets, as shown in Exhibit 3. PEXA estimates that ATI's share of the PMS market is ~60% nationally and ~80% in NSW/QLD, and has a high share of the Property Search segment of the Information Search Services market.³³ Infotrack (part of ATI Group) is the largest provider of property search services in Australia.

³² See PEXA submission, p.10

³³ ATI Global owns and operates market leading InfoTrack, as well as alternative Information Search Service providers - TriSearch and Creditor Watch. Through these entities, ATI Global is able to provide a full suite of Information Search Services (i.e. company, property and personal information searches). Practitioner firms generally favour full-service Information Search Service providers, such as those provided by ATI Global. However, unlike ATI Global, alternative service providers are not fully integrated across the entire conveyancing workflow technology stack.

Exhibit 3: ATI Global's owned or affiliated entities in the eConveyancing industry



ATI has substantial market power across this value chain:

- ATI has more than 50% market share in many segments;
- There are often significant switching costs for a conveyancer to move to different practice management software; and
- PEXA understands that ATI only allows its practice management platform subsidiaries to digitally integrate with property search providers also controlled by ATI.

The convenience of a search service integrated with their practice management system may significantly influence practitioners' choice of property search provider – particularly as the costs of property searches are often passed on to end-consumers as disbursements.

The Property search market is highly concentrated, but (unlike eConveyancing) its prices are unregulated. The margins in property search businesses appear to be very high. For example, ATI's property-related search businesses have a margin of 50% relative to the price charged for the search by the underlying data provider (such as the land registry or planning authority).³⁴ Unlike an ELNO, these online search businesses do not substantially value-add – instead they essentially pass the search request from the conveyancer to the data provider, and then pass the response back to the conveyancer.

The current Separation rules prevent PEXA from providing property search services that interact with its ELNO unless the property search business is separated from PEXA's ELN. Ironically the separation rules substantially *reduce* potential competition in the broader eConveyancing industry, by limiting PEXA's entry as a plausible competitor into the search market in which ATI is the largest supplier.

³⁴ ATI Global Ltd (2024), *Consolidated General Purpose SDS Financial statements for the year ended 30 June 2024*, p.27 indicates that revenue on search reports is \$751m, compared to cost of legal search reports of \$379m.

4.3 ATI Group regulatory interventions

The regulatory interventions of ATI Group, evidenced by the submissions to the Senate Committee of Infotrack and Sympli, which it owns and part-owns, may have the effect of encouraging regulatory intervention to prevent vertical integration by PEXA into the parts of eConveyancing in which ATI is the largest entity, while enabling self-preferencing by companies owned by ATI into Sympli. The list of regulatory interventions by ATI companies revealed in these submissions includes:

- Submissions by Sympli to ACCC that PEXA has made baseless claims about PEXA's intellectual property in order to prevent competition in eConveyancing;³⁵
- Claims by Sympli to APRA that banks face risks if interoperability does not proceed, and that there are risks from a single point of failure in eConveyancing;³⁶
- Claims by Sympli to ASIC that it should intervene around the use of statutory trust accounts and AFSL exemptions held by PEXA;³⁷ and
- Claims by Sympli to RBA that it should intervene to guide the interoperability program scope, and that there are 'risks of a impacted workflows [*sic*] in eConveyancing not being addressed'³⁸

PEXA notes that, according to the Sympli submission, none of the Commonwealth regulators contacted are actively taking these claims further. It is a reasonable inference that this is because they are without substance. The evidence that Sympli's claims are without substance is detailed in section 5 below. Sympli's behaviour in making baseless claims against its competitor to a variety of regulatory bodies is in effect a form of regulatory harassment.

Consistently with these previous regulatory interventions, Sympli and Infotrack have made a number of allegations about PEXA's conduct in their submissions to this Senate Committee. As further discussed below, they have not provided any actual evidence to back up vague allegations, and none in fact exists.

Such behaviour is an abuse of government processes. It has a significant impact in damaging PEXA's business and reputation. It also has an ongoing impact on PEXA staff who work tirelessly for their customers.

³⁵ Sympli Submission, paras 32-34

³⁶ Sympli submission, paras 36-37.

³⁷ Sympli submission, paras 38-40.

³⁸ Sympli submission, paras 41-43.

5 Market power in eConveyancing

Competitor submissions make a number of claims about PEXA's conduct, alleging or implying that PEXA is acting as an unconstrained monopolist, contrary to the public interest. There is no basis to these claims.

5.1 Pricing

The Infotrack and Sympli submissions make a number of incorrect statements on pricing that should be corrected.

- Sympli claims that without interoperability 'PEXA would ... enjoy the freedom to charge the prices they wish'.³⁹

In fact, eConveyancing prices have been capped since 2014 by a government agreement and then by the MOR so that they cannot increase in real terms.⁴⁰

- Sympli claims that 'competition can lead to fee savings ... of approximately **\$66** per transaction'.⁴¹

In fact, based on the pricing schedules for PEXA and Sympli applicable for 24-25,⁴² the fee savings for a typical property transfer (with a bank for both buyer and seller) if PEXA's prices reduced to match Sympli's prices would be **\$29.33**, relative to a total eConveyancing cost of \$394.23 – assuming that Sympli's pricing is in fact sustainable.

The only circumstances in which eConveyancing prices can increase by more than CPI are when insurance, law changes, government and other regulatory charges, and costs imposed in order to operate an ELN increase faster than CPI.⁴³ Until recently, PEXA has not applied for any such increase greater than CPI. In the past 12 months the National eConveyancing Data Standards Company has indicated that it would be charging approximately \$3m per year for ELNOs to use its data standards; and State Revenue Offices have substantially increased their charges to ELNOs. It is likely that these increases will be passed through to eConveyancing customers.

5.2 Investment

Competitors have implied that without competition PEXA will not continue to invest in its Australian network. Infotrack claims that PEXA 'has no incentive to similarly invest in its Electronic Lodgement Network (ELN) service in Australia where it enjoys a monopolistic position'.⁴⁴

In fact PEXA has invested over \$100m, approximately 10-12% of top-line revenues, in its Australian ELN over the past 3 years to improve functionality, resilience and security. As described in sections 4.3 to 4.6 of its Submission to the Committee, PEXA has invested to increase the cybersecurity of its platform, to increase resilience despite the growing complexity of eConveyancing, to add a range of substantial new functions, and to increase coverage to additional jurisdictions.

³⁹ Sympli submission, para.24.

⁴⁰ Prior to 2018, price increases were limited to CPI because PEXA's predecessor was owned by government, and through confidential operating agreements between registrars and PEXA: Dench McClean Carlson (2019), *Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law*, <https://dmcca.com.au/iga-review/>, p.87. Since MOR Version 5, published December 2018, price increases have been limited to CPI by MOR cl.5.4.3

⁴¹ Sympli submission, para.25.

⁴² See <https://www.pexa.com.au/pricing/> and <https://www.sympli.com.au/pricing/>

⁴³ MOR, cl.5.4.4

⁴⁴ Infotrack submission, para.2.8.

5.3 PEXA's (non) Vertical integration

As discussed in section 7 of PEXA's Submission to the Committee, the Model Operating Requirements have a number of requirements that aim to restrict vertical integration whereby an ELNO might gain an unfair competitive advantage.

5.3.1 Downstream and Upstream Services (DUS)

Infotrack's submission to the Committee claims that the policy aims of this regime have not been achieved, 'enabling the incumbent to leverage its market power in the e-conveyancing market to favour related parties in DUS markets, to the detriment of actual and potential competitors in those markets'.⁴⁵ It goes on to claim that PEXA 'appear[s] to offer a number of DUS [Downstream or Upstream] products'.⁴⁶

In the relevant section of its submission, Infotrack does not specify any particular service provided by PEXA, let alone details of whether it is a DUS under the Model Operating Requirements, or an explanation of how PEXA derives an unfair advantage. The only specificity provided anywhere in the Infotrack submission is that 'Review of PEXA Exchange workspaces indicates that there are indeed value-added services being offered that use Land Information'.⁴⁷ Again Infotrack fails to provide any detail of what Land Information is provided, and what value-added services PEXA provides using this Land Information.

PEXA denies that it provides a service that is a DUS within the definitions of the Model Operating Requirements that it is required to separate, or that it or any related party gains any competitive advantage from doing so.

Infotrack's vague allegations may be referring to PEXA's insight businesses, which provide land information services, primarily to local councils. However, these businesses currently only source data from third party providers, and do not source data from PEXA's ELN. Consequently they do not gain any unfair advantage from their association with PEXA's exchange business.

Services that do not integrate to the ELN or use ELN data (such as property valuation services using data not sourced from the ELN) are not required to be separate from an ELNO. Because they do not integrate to the ELN they are not within the definition of a 'Downstream or Upstream Service',⁴⁸ and consequently they do not need to be separated from the ELNO.⁴⁹ The current Separation Regime is operating effectively in respect of these businesses. There is no public policy reason to impose the additional costs of separating such businesses. Because they do not derive information from the ELN, they do not derive any competitive advantage from co-ownership, and consequently do not raise material competition issues.

Alternatively, it is possible that Infotrack's allegations are referring to services provided by OPEX, which provides a digital signing tool.⁵⁰ PEXA agrees that this is a Downstream or Upstream Service as defined by the MOR, but notes that PEXA owns less than 50% of OPEX, does not control OPEX, and consequently is not required to issue a Separation Plan for this business.⁵¹ PEXA's ELN connects with OPEX on an equivalent basis to other providers of practice management software, as required by the Integration provisions of cl.5.5 of the MOR. Consequently, no competition issues arise, and no public policy outcome would be served by requiring PEXA to issue a Separation Plan for this business because it is already separated.

⁴⁵ Infotrack submission, para.4.2

⁴⁶ Infotrack submission, para.4.5

⁴⁷ Infotrack submission, para.4.21

⁴⁸ *Model operating rules*, cl.2.1.2, definition of 'Downstream and Upstream Service'

⁴⁹ *Model operating rules*, cl.5.6 only requires separation of Downstream and Upstream Services.

⁵⁰ OPEX is principally a bulk contracting management solution, which provides a digital signing tool as part of its offering to its customers.

⁵¹ In any case, OPEX does not provide any digital signing solution, or other services, to PEXA's ELN or the PEXA Exchange. OPEX's digital signing tool cannot be used by PEXA Subscribers to sign documents in the PEXA Exchange.

5.3.2 Preferential treatment

Infotrack also alleges that PEXA is 'providing unequal access (if any) to different market participants'.⁵² Again, Infotrack does not specify any particular service provided by PEXA, let alone details of to whom it is provided, or whether it is a service that under the Model Operating Requirements is defined as 'Integration' that must be provided on an equivalent basis to other entities.⁵³ PEXA denies such allegations. Without any specifics, the Infotrack submission provides no explanation of how this 'unequal access' provides some market participants with an unfair advantage. In the absence of any such specifics it is difficult for PEXA to respond to these vague allegations.

PEXA has engaged with Infotrack via a non-subscriber API Agreement for the purposes of providing property search capabilities for integration with Infotrack and the Practice Management Services of its related entities, such as LEAP, SettleIT and Smokeball. This non-subscriber API Agreement, in accordance with the MOR, has also been rolled out on an equivalent basis (with standard terms and conditions) to other PMS providers such as Dye & Durham, Clio, OPEX and Actionstep.

For legal practitioners and conveyancers, (both providers of direct conveyancing services and firms that provide panel services to Banks and Financial Institutions), PEXA has developed a subscriber API Agreement on an equivalent basis (with standard terms and conditions) for this class of provider. These providers range from large panel firms to large developers with in-house conveyancing teams and large and small law firms.

In future, PEXA may develop as required other forms of API agreement utilising the concept of equivalent basis (with standard terms and conditions) for other classes of provider.

In all of these cases, there has been no adverse impact on competition, as all participants within a provider class are granted equal access on an equal basis.

There is no reason to amend the ECNL 'to include express obligations on ELNOs to provide non-discriminatory access to all users' as Infotrack suggests.⁵⁴ Such obligations are already included in the Model Operating Requirements,⁵⁵ and are operating effectively, notwithstanding Infotrack's vague and unsubstantiated claims to the contrary.

5.3.3 Lack of vertical integration in eConveyancing that constrains competition

Quite apart from the specific requirements in the MOR to separate any upstream and downstream service, *actual* vertical integration that *actually* constrains competition, with significant consumer detriment, by an ELNO is unlikely.

⁵² Infotrack submission, para.4.11.

⁵³ *Model operating rules*, cl.5.5.3

⁵⁴ Infotrack submission, para.4.12.

⁵⁵ *Model operating rules*, cl.5.5.

Despite PEXA having a leading ELNO, no-one has identified any *actual* example of vertical integration by PEXA that has ever lessened competition. The fact that PEXA has not pursued any of the hypothetical possibilities raised by the Dench McClean and Carlson review, the ACCC, the NSW Productivity Commission, or IPART, is powerful evidence that such hypothetical outcomes are in fact low probability. For example, while the NSW Productivity and Equality Commission noted that PEXA *could* price discriminate between banking subscribers, which *could* create competitive advantage for a mortgage lender, *in fact* PEXA has never price discriminated in the way suggested. Similarly, while the NSW Productivity and Equality Commission noted that PEXA *could* provide price information of some Subscribers to other Subscribers, which *could* create competitive advantage for a mortgage lender, it is not clear that PEXA even has the relevant information, and in fact PEXA has never provided information in the way suggested. PEXA notes that such conduct might well be proscribed by general competition and consumer law regimes

5.4 Other competition issues

Sympli's submission suggests that by making available to its customers closed digital certificates, PEXA has created a barrier to switching to a new ELNO, and suggests that regulators should mandate open digital certificates.⁵⁶ This claim passes over the existing regulatory treatment of digital certificates, and substantial additional costs that this would impose on all users of eConveyancing.

Digital certificates verify the identity of the person using the certificate and enable the creation of digital signatures that guarantee the authenticity of a document. They are issued by trusted organisations called Certificate Authorities. Typically the Certificate Authority provides a warranty that a person using their certificate has the identity claimed by the certificate. In practice, each user (i.e. each individual solicitor or conveyancer) must have their own digital certificate. Under ARNECC's regulations, ELNO Subscribers must only use digital certificates that are 'gatekeeper' accredited. An ELNO must accept on its platform any valid gatekeeper-accredited digital certificate.

Closed digital certificates are valid only for a specific purpose; open digital certificates can be used for a variety of purposes. Because open digital certificates can be used for more purposes, the Certificate Authority takes on substantially more risk, which is typically reflected in a higher price to issue the certificate.

When PEXA commenced operations, the market for gatekeeper-accredited digital certificates was limited. The primary digital certificate available was an open certificate that cost around \$800 per user (the fee would be lower for firms that employ a large number of practitioners). Consequently PEXA worked with an established gatekeeper accredited Certificate Authority to develop a closed digital certificate that would only be valid for a closed community of interest – those entities that rely on digital signatures under eConveyancing (such as land titles offices). PEXA incurred substantial costs in developing this alternative certificate. Using a PEXA digital certificate on any other system (including the Sympli system) would be contrary to the relevant Certificate Policies established by the Certificate Authority. Because of the restrictions on its use, this closed digital certificate entails less risk, and so can be issued for a much lower price (around \$150 per certificate).

ELNOs are not responsible for creating digital certificate solutions, and could exit the market altogether – although if PEXA did so, it would increase customer costs. Mandating open certificates, as Sympli suggests, would substantially increase customer costs.

⁵⁶ Sympli submission, paras 48-49

ARNECC has already considered the issue of closed digital certificates as part of its consultation in developing the regulatory regime for interoperability. ARNECC has consistently taken the view that further regulatory intervention in the provision of digital certificates by ELNOs is not warranted, noting that the ELNO's general obligation to accept 'open' digital certificates effectively enables a Subscriber to use a single gatekeeper-accredited digital certificate across multiple ELNs if the Subscriber wishes to do so.

5.5 'Misuse of market power'

Sympli asserts that the ACCC should be directed to investigate PEXA 'for misuse of market power'.⁵⁷ Sympli provides no evidence in its submission of any misuse of market power. Indeed, this paragraph is the *only* reference in Sympli's submission to 'market power'. Urging regulators to act against PEXA on the basis of non-existent evidence or flimsy complaints would not be an appropriate utilisation of regulatory resources.

Indeed, misuse of market power is unlikely in eConveyancing because of general competition laws and the substantial specific safeguards incorporated in the Model Operating Rules, including requirements that limit price increases (discussed above in section 5.1), vertical integration (discussed above in section 5.3.1), and preferential treatment (discussed above in section 5.3.2).

6 Regulatory environment

PEXA notes that many submissions, including those of Sympli, Infotrack, and ARNECC have suggested that there should be changes to the regulatory arrangements for eConveyancing. These raise difficult issues of regulatory capacity, and the inevitable overlap between State and Territory jurisdiction over land and land conveyancing, and Commonwealth jurisdiction over payments. Inherently eConveyancing involves both.

As indicated in section 8 of its Submission to the Committee, PEXA would be happy to support the redesign of regulatory arrangements as determined by State, Territory and Commonwealth governments.

⁵⁷ Sympli submission, para.53