



Submission to Senate Economics References Committee

Inquiry into micro-competition opportunities in the Australian economy relating to e-conveyancing

From Australian Registrars' National Electronic Conveyancing Council (ARNECC)

Introduction

1. The Australian Registrars' National Electronic Conveyancing Council (ARNECC) thanks the Committee for this Inquiry and for providing ARNECC with the opportunity to make a submission.
2. ARNECC welcomes any inquiry into opportunities for competition in relation to electronic conveyancing.
3. ARNECC wishes to participate throughout the Inquiry and is willing to assist the Committee where required. ARNECC can provide additional information if requested. ARNECC trusts that this submission will assist the Committee to look at particular issues and opportunities that ARNECC considers to be of national significance.
4. In this submission, ARNECC sets out background on the electronic conveyancing industry and how it is regulated and then draws out areas for improvement which would assist the development of competition in the industry.

PART 1 – BACKGROUND

About ARNECC

5. The Australian Registrars' National Electronic Conveyancing Council (ARNECC) is the council established to facilitate the implementation and ongoing management of the regulatory framework for electronic conveyancing of real property in Australia. ARNECC was established in 2011.
6. ARNECC is constituted under an Intergovernmental Agreement (IGA) among the States and Territory Governments.¹ ARNECC membership comprises the Land Titles Registrars (or their nominee) from each Australian State and Territory.
7. Each Australian State and Territory has its own land titles registry that records the owner of the land in that State or Territory and applicable interests in land such as mortgages over

¹Intergovernmental Agreement for an Electronic Conveyancing National Law, available online at https://www.arnecc.gov.au/regulation/intergovernmental_agreement/

the land and registrable leases, in accordance with land titles legislation in that State or Territory.

8. The State and Territory officials who have responsibility for each jurisdiction's Land Registry function are:
- New South Wales – Registrar General
 - Victoria – Registrar of Titles
 - Queensland – Registrar of Titles
 - Western Australia – Registrar of Titles (and/or other officer of the Land Registry nominated by the Chief Executive of the Western Australian Land Information Authority trading as Landgate)
 - South Australia – Registrar General
 - Northern Territory – Registrar General
 - Australian Capital Territory – Registrar General
 - Tasmania – Recorder of Titles.

(Each of the above are referred to as a "Registrar" for the purposes of this submission.)

9. The Commonwealth Government does not operate or regulate a Land Registry and accordingly, does not have representation at ARNECC.
10. ARNECC is not a legal entity but a Council of members. Its deliberations are governed by a Charter² adopted and varied by the unanimous vote of its members. ARNECC meets frequently and relies on funding from State and Territory Governments to perform its functions.
11. While ARNECC is a Council of the Registrars (or nominees) of the eight State and Territories across Australia, any decisions made by ARNECC must be implemented through the Registrar of each jurisdiction.
12. Further details about ARNECC and resources relating to electronic conveyancing are available on ARNECC's website located at www.arnecc.gov.au.

Principal functions of ARNECC

13. The principal functions of ARNECC are to:

² ARNECC Charter, available online at <https://www.arnecc.gov.au/wp-content/uploads/2024/06/ARNECC-Charter-approved-13-June-2024.pdf>.

- Advise the State and Territory Governments on any proposed changes to the Electronic Conveyancing National Law (ECNL).
- Develop and publish Model Operating Requirements (MOR) and Model Participation Rules (MPR) as provided for in the ECNL.
- Provide authoritative advice to the States and Territories about matters relating to electronic conveyancing.
- Ensure that, as far as is practicable, business practices with respect to electronic conveyancing are consistent when implemented by the Registrars in each jurisdiction.

Electronic Conveyancing National Law (ECNL)

14. The Electronic Conveyancing National Law (ECNL) governs the provisioning and operation of electronic conveyancing in Australia. The ECNL is implemented by separate legislation in each State and Territory.
15. The ECNL was first implemented in NSW as an Appendix to its *Electronic Conveyancing (Adoption of National Law) Act 2012*. Thereafter, the ECNL was implemented in other States and Territories as either application or corresponding legislation. Application legislation is an Act that adopts the Appendix to the NSW legislation. Corresponding legislation is an Act that is essentially the same as the Appendix to the NSW legislation. All States and Territories have now applied the legislation or proclaimed corresponding legislation. A full list is available here:

https://www.arnecc.gov.au/regulation/electronic_conveyancing_national_law/
16. To be clear, there is not one national Electronic Conveyancing law, but eight laws (adopted in each State and Territory) that are, in effect, substantially identical. There is no Commonwealth electronic conveyancing law.
17. A principal concept in the ECNL is the Electronic Lodgment Network (ELN).
18. An ELN is an electronic system that enables the lodging of registry instruments and other documents in electronic form with the Land Registry of a jurisdiction for the purposes of the land titles legislation in each relevant State and Territory.³
19. An ELN may also enable the preparation of registry instruments and other documents in electronic form for lodging under the land titles legislation in each relevant State and Territory.⁴

³ E.g. Electronic Conveyancing National Law (Queensland) s 13(1).

⁴ Ibid s 13(2).

20. The ECNL, being the legislation enacted by each of the States and Territories, focusses on the preparation and lodgment of documents in electronic form with that State's or Territory's Land Registry.
21. Each Registrar may provide and operate an ELN.⁵ At present, only Victoria does this. Each Registrar or other delegated entity may also approve a person as an Electronic Lodgment Network Operator (ELNO) to provide and operate an ELN.⁶ At present, ARNECC members work together so that an ELNO is approved to operate on a jurisdiction-by-jurisdiction basis until its services are available nationally.
22. Presently, there are two operating ELNOs, Property Exchange Australia Limited (PEXA) and Sympli Australia Pty Ltd (Sympli). If a person wishes to use an ELN to prepare and lodge registry instruments in electronic form with the relevant Land Registry, that person will enter into a participation agreement with the ELNO to use that ELNO's ELN to do so (becoming a Subscriber).⁷
23. The ECNL was amended in June 2022⁸ to include provision for the Registrars to determine operating requirements in relation to specific matters relating to associated financial transactions, being:
- the technical and operational requirements for an ELN, including, without limitation, data standards and other requirements relating to interoperability, for example, data standards with respect to associated financial transactions,⁹ and
 - participation by an ELNO in a scheme for an industry code relating to associated financial transactions and compliance by an ELNO with that code.¹⁰
24. The ECNL was also amended at this time to provide that the mere fact that the operating requirements include provisions relating to the following matters does not make the Registrar responsible for the regulation or conduct of associated financial transactions:
- data standards relating to those transactions, and
 - participation by an ELNO in a scheme for an industry code relating to those transactions and compliance by an ELNO with that code.¹¹

⁵ Ibid. s 14.

⁶ Ibid. s 15.

⁷ Ibid. s 3 (Definitions), s 22(2), 26(1).

⁸ [*Electronic Conveyancing \(Adoption of National Law\) Amendment Act 2022 \(NSW\)*](#).

⁹ E.g. ECNL (Queensland) s 22(2)(c).

¹⁰ Ibid. s 22(2) (c6).

¹¹ Ibid. s 40(2).

Model Operating Requirements (MOR) and Model Participation Rules (MPR)

25. Operating Requirements apply to ELNOs.¹² Participation Rules apply to the Subscribers to ELNs.¹³
26. The Model Operating Requirements (MOR) are developed and published by ARNECC. The MOR are currently in version 7.1, published in February 2025 and available at:
https://www.arnecc.gov.au/publications/model_operating_requirements/
27. The MOR are model requirements developed by ARNECC; however they have no legal effect. Registrars determine Operating Requirements under section 22 of the ECNL, and in doing so, are to have regard to the MOR. Under section 24 of the ECNL, the Registrars are to have regard to the desirability of maintaining consistency with ARNECC's MOR. The Registrars for each State and Territory have determined Operating Requirements for their jurisdiction that are substantially the same as the MOR.
28. Under section 27 of the ECNL, a Registrar may grant a waiver from compliance with any of their jurisdiction's Operating Requirements where it is considered reasonable to do so in all the circumstances. Waivers may be granted for a particular ELNO or for all or a class of ELNOs if there is more than one ELNO.
29. Waivers are requested by applying to ARNECC if the waiver is relevant to the Operating Requirements in more than one State or Territory, or to the Registrar in the particular State or Territory when the waiver is relevant to Operating Requirements in that single jurisdiction only.
30. Accordingly, even though ARNECC seeks to maintain consistency across jurisdictions, and the ECNL and the Operating Requirements are substantially the same for each jurisdiction, there can be differences between jurisdictions with respect to waivers.
31. The ECNL also provides for the determination of Participation Rules by the Registrar in each State and Territory based upon Model Participation Rules (MPR) developed by ARNECC.¹⁴
32. The current version of the MPR developed by ARNECC, version 7, published in January 2024 are available at: <https://www.arnecc.gov.au/publications/model-participation-rules/>.

Fees and Payments

33. Each ELNO charges Subscribers fees to access and use that ELNO's ELN.¹⁵ Typically, Subscribers are conveyancers, lawyers and financial institutions.
34. As an example, for the purchase of a residential property, a simplistic summary of the fees paid is the following:

¹² Ibid. s 22.

¹³ Ibid. s 23.

¹⁴ Ibid.

¹⁵ Fees are charged in accordance with an ELNO's pricing policy, as per OR 5.4: ELNO Service Fees.

- a) The purchaser pays fees to the purchaser's conveyancer or lawyer. These fees cover the conveyancer's or lawyer's use of an ELN. The conveyancer or solicitor has a participation agreement with the ELNO providing the ELN on which the conveyancer or lawyer will transact. The conveyancer or lawyer pays fees to the ELNO to use the ELN (ELNO Service Fees).
- b) The ELNO arranges settlement and electronic lodgment of the transfer with the relevant Land Registry. The ELNO pays search and lodgment fees to the Land Registry (and passes on those fees to their Subscribers, who pass them onto the parties to the transaction as disbursements).

Note that the search and lodgment fees paid to the Land Registry are different to the ELNO Service Fees.

- 35. The fees charged by an ELNO to its Subscribers are set by the ELNO according to a publicly available, equitable and transparent pricing policy but are subject to price caps set by ARNECC. To date, these price caps have generally allowed an annual price increase capped at CPI. The NSW Independent Pricing and Regulatory Tribunal (IPART) has conducted reviews of pricing for ELNOs in 2019¹⁶ and 2023.¹⁷ The current CPI cap arrangements were introduced in 2019.

Financial Settlement

- 36. The MOR require that lodgment not take place unless financial settlement of a conveyancing transaction (when relevant) is irrevocable.
- 37. Both presently operating ELNOs (PEXA and Sympli) offer their Subscribers the ability to undertake the financial settlement of a conveyancing transaction through their systems. The electronic settlement of property transactions was mentioned in the IGA as an element of "National E-Conveyancing".¹⁸
- 38. A 2019 review of the IGA identified gaps in relation to the regulation of financial settlement.¹⁹ A working group comprising of Council of Financial Regulator agencies, with the ACCC and Registrars attending as observers, recommended addressing these gaps through a self-regulatory industry code.²⁰ The eConveyancing Payments Industry Code was developed by the Australian Payments Network (AusPayNet) and approved by the AusPayNet Board on 31 August 2023.²¹

¹⁶ See <https://www.ipart.nsw.gov.au/Home/Industries/Special-Reviews/Reviews/Electronic-Conveyancing/Pricing-regulation-of-electronic-conveyancing-services-in-NSW>

¹⁷ See <https://www.ipart.nsw.gov.au/Home/Industries/Special-Reviews/Reviews/Electronic-Conveyancing/Review-of-interoperability-pricing-for-Electronic-Lodgment-Network-Operators>

¹⁸ Intergovernmental Agreement (n 1) 2.3A, 9.4.54.

¹⁹ Dean McClean Carlson, *Final Report: Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law* (2019), available online at <https://www.arnecc.gov.au/wp-content/uploads/2021/08/iga-review-final-report.pdf>

²⁰ [Media Release Number: 2021-03 – Quarterly Statement by the Council of Financial Regulators – News – Council of Financial Regulators](#)

²¹ [The eConveyancing Payments Industry Code | Australian Payments Network.](#)

Change

39. Over the last ten years, the electronic conveyancing environment has changed. For example, PEXA started as a government-owned and run company; it is now a public corporation without government involvement or ownership.²² Originally, there was a single ELNO; there are now additional and proposed new ELNOs in the ecosystem.²³ Some jurisdictions have private operators of their titling functions, with private company objectives.
40. The operations of ELNOs are continually evolving. The functionality provided by ELNOs has experienced significant change in the last ten years.
41. As the ECNL focusses on the preparation and lodgment of documents in electronic form with the relevant State's or Territory's Land Registry, the ECNL does not encompass all aspects of electronic conveyancing or the activities that currently form part of it, such as, for example, the regulation of all aspects of financial settlement.
42. Many of the involved parties (e.g. the financial industry, revenue offices and the conveyancing/legal profession) have been involved in the work of ARNECC in various degrees and ways over the years to support the facilitation and implementation of electronic conveyancing. These parties have also separately been involved in their own work directly with the ELNOs to review and implement their requirements relating to associated financial transactions and other services. ARNECC has not been involved in these components.

PART 2 – COMPETITION

43. ARNECC understands that the Inquiry relates to competition opportunities in respect of electronic conveyancing in Australia. The Inquiry uses the term "micro-competition" which is open to different meanings. This submission discusses competition broadly, and opportunities with respect to competition between ELNOs in relation to their ELNs.

Historical Context

44. In the early days of electronic conveyancing in Australia, the Registrars focused on the development of an ELN and establishing the legal, legislative, contractual and risk frameworks as well as creating the systems across Australia in Land Registries that could accept electronic data as opposed to paper lodgments.²⁴ Once that was done, attention turned to developing use of the ELN so that it could be shown that there was a market for ELNOs. It was recognised at that stage that an ELNO market was possible and that there could be another ELNO that could bring competition.
45. Additionally, there were significant efforts over years directed towards industry stakeholders (for example, financial institutions, conveyancers, lawyers and settlement agents) regarding

²² <https://www.pexa-group.com/about/history/>.

²³ <https://www.sympli.com.au/>.

²⁴ ARNECC, *Introduction of the Electronic Conveyancing National Law Regulation Impact Statement for Decision (2012)*, available online at <https://oia.pmc.gov.au/sites/default/files/posts/2012/07/02-electronic-conveyancing-RIS-201207231.pdf>

the industry change from paper to electronic transactions.²⁵ At the time of establishing the first ELNO, there was no competitor seeking to build another ELNO.²⁶

The Benefits of Competition

46. ARNECC understands that competition is a driving force in a healthy economy, and that competition brings a wide range of benefits to both consumers and society as a whole. Key advantages of competition are generally understood by ARNECC to include:
47. Benefits for Consumers:
- *Lower Prices:* When businesses compete, they strive to offer the most attractive prices to customers. This often leads to lower prices for goods and services, making them more affordable and accessible.
 - *Greater Choice:* Competition encourages businesses to differentiate their products and services. This results in a wider variety of options for consumers, allowing them to find products that better match their needs and preferences.
 - *Improved Quality:* In a competitive market, businesses are constantly seeking ways to improve the quality of their offerings to attract and retain customers. This leads to better quality products and services, giving consumers greater value for their money.
 - *Innovation:* Competition fosters innovation as businesses strive to develop new and improved products, services, and technologies. This leads to a dynamic marketplace with constant advancements that benefit consumers.
 - *Increased Efficiency:* To remain competitive, businesses must operate efficiently and minimize costs. These efficiencies can translate into lower prices for consumers and a stronger overall economy.
48. Benefits for Society:
- *Economic Growth:* Competition promotes economic growth by encouraging businesses to be more productive, innovative, and responsive to consumer needs. This leads to increased investment, job creation, and overall prosperity.
 - *Resource Allocation:* Competition helps to allocate resources efficiently by ensuring that they are directed towards the most productive uses. This leads to a more efficient economy and greater overall well-being.
 - *Greater Productivity:* Competition encourages businesses to improve their productivity by adopting new technologies, streamlining processes, and investing in employee training. This leads to a more productive workforce and a stronger economy.

²⁵ <https://www.arnecc.gov.au/resources/presentations/>.

²⁶ Sympli were assessed as meeting ARNECC's Schedule 3, Category 1 requirements on 29 June 2018. Purcell Partners Pty Ltd was assessed as meeting the Schedule 3, Category 1 requirements on 21 May 2018. Lextech Pty Ltd (an entity associated with Purcell Partners) was assessed as meeting the Schedule 3, Category 1 requirements on 14 December 2023.

The Benefits of Competition in respect of electronic conveyancing

49. A stable, national electronic conveyancing market is critically important to the Australian economy. Critical to achieving this goal is ensuring the regulation of electronic conveyancing is effective, and that it facilitates competition.
50. In all States and Territories where it has been implemented, electronic conveyancing has become the main lodgment channel for conveyancing transactions. In its 2024 Annual Report, PEXA reported that 89% of property transactions nationwide were conducted through its system, with over 15,000 transactions (on average) taking place each day in Australia, worth around \$3.5 billion per day²⁷. Purchasing a property is the largest transaction most Australian residents undertake in their lifetime.
51. As discussed above, there can be multiple ELNs, each operated by an ELNO. ARNECC considers that an electronic conveyancing regulatory framework that allows for competition between ELNOs may have benefits for consumers and for society. These benefits are likely to include:
 - *Choice*: Competition leading to a variety of offerings. Thus, a Subscriber can choose the best ELN for them, based on the factors that are important for that consumer.
 - *Price competition*: Competition between ELNOs may lead to lower prices.
 - *More features and better useability*: Competition is not just about price. An ELNO may have a higher priced offering but with more features or superior quality. Alternatively, if pricing is similar, ELNOs may innovate to provide an ELN with the better features.
 - *Better customer service*: Competition between ELNOs may lead to better customer service.
 - *Resilience*: A sole ELNO market creates a single point of failure. A multiplicity of ELNOs creates redundancy because if one ELNO goes down, subscribers can switch. In addition, competitive pressure would be more likely to result in a more secure and resilient offering as subscribers would likely select the more secure and resilient system.
52. In relation to resilience for example, it is noted that PEXA publishes details about its outages and incidents at <https://status.pexa.com.au/history> which demonstrates that 100% uptime is not guaranteed for this critical system. There have been instances where Subscribers have been unable to complete transactions due to issues associated with an ELN, while in other cases Subscribers may be impacted by issues associated with financial institutions' systems.

For example:

 - The PEXA ELN experienced a highly publicised outage on 30 June 2021 which prevented subscribers from being able to log in to the PEXA ELN on the last day of the financial year for a period of 105 minutes.²⁸ Information published on the PEXA website and reporting by PEXA to Registrars shows that PEXA customers have experienced a range of unplanned outages in the last 12 months, some due to PEXA and others due to third parties such as

²⁷ PEXA Group Limited Annual Report 2024, 23.

²⁸ See https://www.pexa.com.au/staticly-media/2022/09/30_June_2021_statement-sm-1664414475.pdf

financial institutions. These could involve delays to settlement for people transacting in land, and therefore, can have significant impact.

- The Sympli ELN had an unplanned outage lasting 165 minutes on 13 September 2023.²⁹
- There are also outages and technical issues that arise due to the complexity of the electronic networks to which the ELNs are a part. For example, between November 2024 and January 2025, PEXA released outage alerts stating that several Payment File Response service issues were impacting transactions. Some of these related to particular financial institutions.

53. Electronic conveyancing mandates by some jurisdictions mean that the majority of land title transactions are now occurring through electronic conveyancing in some jurisdictions.³⁰ Reliance on electronic systems would make it practically impossible to revert to paper transactions, should a disaster event occur.

The Current Situation regarding Competition between ELNOs

54. There are two operating ELNOs in Australia, each with their own ELN. A third organisation, Lextech Pty Ltd, has been assessed as meeting the Schedule 3, Category One requirements of the Operating Requirements, enabling it to commence negotiations for approval to provide and operate an ELN as an ELNO with each State and Territory Registrar.
55. PEXA was the original ELNO and operated for many years without competition. PEXA has the dominant market share and now provides services in all jurisdictions other than the Northern Territory, where it is planning to launch later this year.
56. Sympli is a relatively new entrant. Sympli has low market share. Sympli has been approved to operate in five jurisdictions.
57. In its 2024 Annual Report, PEXA stated that it conducted about 89% of the total Australian conveyancing market, an increase from 88% in FY23.³¹ As an unlisted entity, Sympli does not publish an Annual Report, and its lodgment numbers are confidential. However, Sympli currently operates with a limited number of document types available; for example, Sympli only lodges transfers in New South Wales and not in other States or Territories.³² As transfers make up the majority of lodgments for both PEXA and paper conveyancing, Sympli's lodgment numbers are likely to be considerably lower than both PEXA and paper lodgments. (Paper lodgments are decreasing but still constitute up to 25% of transactions depending on jurisdiction, and at present constitute all transactions in the Northern Territory.)
58. As stated above, PEXA and Sympli each operate a separate ELN. Their ELNs are stand-alone, and do not currently interoperate. This means that all parties to a transaction must be subscribed to the same ELN for the transaction to proceed. For example, for a typical

²⁹ See <https://www.sympli.com.au/wp-content/uploads/Sympli-MOR-Cat-4-September-2023-Report-1.pdf>

³⁰ Currently Victoria (2018), Western Australia (2018), South Australia (2020) and New South Wales (2021) have mandated eConveyancing for all general transactions. Queensland has mandated eConveyancing for some transactions (2023). The ACT and Tasmania do not mandate eConveyancing.

³¹ [PEXA Annual Year Report 2024](#)

³² <https://www.sympli.com.au/services/>

sale of a residential home, there are potentially four parties to the transaction: the seller, the seller's lender, the buyer and the buyer's lender. Each party or their representative must subscribe to and use the same ELN to complete an electronic conveyancing transaction.

59. A dominant player has a competitive advantage due to network effects, which occur where market conditions favour dominant providers with a larger network of customers. A new consumer (for example, a new law firm or new financial institution) when selecting an ELNO, is more likely to select PEXA because most other parties to an electronic conveyance are likely to be using the PEXA ELN. A PEXA Subscriber is unlikely to move to Sympli (even if they preferred the Sympli service) because likely counterparties are with PEXA not Sympli, and Sympli does not provide all the documents they will wish to lodge.
60. Subscribers are unlikely to have accounts with both PEXA and Sympli, because doing so adds complexity and cost. For example, additional training would be required for staff to manage different processes on the two ELNs.³³ Moreover, most ELNs interface with other computer systems used by Subscribers, and it is costly and complex for a Subscriber to implement and maintain multiple interfaces.³⁴
61. Different reports have come to different conclusions on the position of there being a natural monopoly, but there is consensus that network effects exist.
62. In a 2019 report *Final Report - Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law*,³⁵ it is stated:

"5.13 An ELN has some natural monopoly like characteristics primarily attributable to two key factors. Firstly, there is the essential infrastructure like nature of the financial payment and settlement services which require extensive financial sector collaboration and investment to develop. It likely has sufficient capacity to process all transactions requiring associated financial settlement with little or no benefit to justify the costs of duplication.

5.14 Secondly, since an ELN has strong positive network effects, multiple ELNs fragment the network and reduce the value to subscribers who can only transact with a subset of other subscribers who are on the same network. Absent other factors, this tends to drive subscribers to the largest network."
63. However, a 2024 report from the NSW Productivity and Equality Commission³⁶ (PEC) found that competition is beneficial and can be supported by the eConveyancing market but there are barriers to entry. The PEC's market study found that the eConveyancing market is not a natural monopoly and that competition would be beneficial, both to the eConveyancing market and to other related sectors. This market study also noted the strong network effects of the eConveyancing market.³⁷

³³ Feedback received from stakeholders, Dean McClean Carlson Report (n17) 158-166.

³⁴ Ibid.

³⁶ <https://www.productivity.nsw.gov.au/sites/default/files/2024-06/20240628-econveyancing-market-study.pdf>

³⁷ Ibid. section 3.3.1.

64. Given these strong network effects, PEXA is operating as a near-monopoly incumbent in the national electronic conveyancing market.

Competition Between ELNs

65. As stated above, ARNECC supports competition amongst ELNOs in the Australian electronic conveyancing market.
66. Recognising the challenges faced by new entrant ELNOs in obtaining Subscribers and market share due to the issues identified above, ARNECC commenced the interoperability reform several years ago in an effort to facilitate effective competition amongst ELNOs and promote Subscriber choice.
67. The interoperability reform aims to establish a technical and regulatory framework for the interworking of ELNs. It is designed to facilitate the exchange of conveyancing transaction data between ELNs, to enable a Subscriber of one ELNO to complete a conveyancing transaction with a party (or parties) using a different ELN.³⁸
68. By enabling Subscribers to conduct an electronic conveyancing transaction using different ELNs, interoperability is anticipated to facilitate competition by removing network effects. Provided that each ELNO facilitates the same range of transactions, this should increase competition by enabling Subscribers to transact on their ELN of choice, regardless of the ELN used by other Subscribers in the transaction. This may also support greater competition and innovation in markets other than core electronic conveyancing services, such as with respect to value added services particularly data products that use land information.
69. A key principle of the interoperability reform is to minimise the impact on Subscribers by ensuring that an ELNO provides equivalent functionality and services across its interoperable and single-ELN transactions.³⁹

ARNECC's Interoperability Program

70. In June 2022 ARNECC introduced changes to the ECNL and the MOR to assist establishing interoperability between ELNs (see section 18A of the ECNL). The reviews and decisions which led to the legislative changes are outlined in the Regulation Impact Statement.⁴⁰ Section 18A of the ECNL requires an ELNO to establish and maintain interoperability between its ELN and the ELN of each other ELNO, in accordance with the Operating Requirements (ORs).
71. OR 5.7.7 requires an ELNO to:
- a) interoperate with all ELNOs on an Equivalent Basis; and
 - b) ensure that the standard of performance of its ELN in an Interoperable Electronic Workspace is equivalent to its performance in a standalone Electronic Workspace.

³⁸ E.g. ECNL (Queensland) s 18A.

³⁹ OR 5.7.7.

⁴⁰ <https://www.arnecc.gov.au/wp-content/uploads/2021/12/Interoperability-RIS-December-2021.pdf>

72. ARNECC has also published *Key Guiding Principles for Interoperability*. See <https://www.arnecc.gov.au/wp-content/uploads/2023/11/Key-Guiding-principles-as-approved-by-ARNECC-002.pdf>
73. ARNECC established the ARNECC Interoperability Program to assist ELNOs with the design of interoperability, including to develop the National Electronic Conveyancing Interoperability Data Standard (NECIDS) to enable interoperability.
74. ARNECC approved a scope for the technical solution for interoperability in October 2023. See <https://www.arnecc.gov.au/wp-content/uploads/2023/12/ARNECC-Statement-Scope-for-interoperability-releases-settled.pdf>
75. Financial institutions (as Subscribers) have indicated that the ARNECC approved scope will not be sufficient to achieve the equivalence between Interoperable and standalone Electronic Workspaces.⁴¹ ARNECC has relied on ELNOs and industry participants to provide information and, due to the issues raised, has been unable to design a scope for interoperability that is acceptable to all ELNOs and industry participants. In 2024 ARNECC developed IP Guidelines to assist industry address these issues.
76. The ARNECC approved scope includes functions across the full process for an electronic conveyancing transaction. This includes functions to facilitate preparation and lodgment of a document, and functions related to the financial aspects of a transaction e.g. preparation of instructions to disburse funds.
77. On 11 June 2024, relevant State and Territory Ministers and their representatives met to review the progress of the electronic conveyancing reforms, to support a sustainable, competitive market structure for electronic conveyancing. The State and Territory Ministers acknowledged that while considerable work had been undertaken by ARNECC and ELNOs and other stakeholders within the Interoperability Program, the Interoperability Program faced significant challenges in being able to proceed. The Ministers emphasised the importance of Commonwealth assistance and stated that they would raise these issues with the Commonwealth Government and regulators. The statement released from this Ministerial Forum provides:
- "State and Territory Ministers also noted recent issues that have been raised by the banking industry in relation to the Interoperability Program, and that some of these are beyond the remit of States and Territories to address effectively. While reiterating their support for competition in the marketplace, State and Territory Ministers acknowledged the progress of the Program faces significant challenges without these issues being resolved by the relevant parties. The Ministers will raise these issues with Commonwealth Government and regulators."⁴²
78. As a result, on 20 September 2024, ARNECC announced the pause of the design, build and test working groups for the Interoperability Program and stood down the Interoperability Project Team.

⁴¹ See Australian Banking Association submission of 9 February 2024 located at:

<https://www.ausbanking.org.au/wp-content/uploads/2024/02/20240209-ABA-submission-to-the-ECNL.pdf>

⁴² See <https://www.arnecc.gov.au/wp-content/uploads/2024/06/Ministers-Statement-Forum-11-June-2024.pdf>

79. Since then, New South Wales and Queensland conducted a joint project to investigate the issues that were raised, inclusive of intellectual property claims made and assessed possible next steps. The review involved extensive engagement with industry to understand concerns and help determine the way forward.
80. The outcome of this review included ARNECC undertaking:
- a) a functional review of interoperability to ascertain if interoperability can be achieved in light of the intellectual property claims referred to above; and
 - b) a cost/benefit analysis to review the cost of implementing interoperability against the likely benefits. ARNECC expects that the outcome of the above reviews will assist in determining the next steps for the reform.⁴³

Challenges with Implementing Interoperability

81. While ARNECC has supported interoperability as a way to enhance competition amongst ELNOs, ARNECC also recognises the significant challenges with implementing interoperability as a means of delivering competition within the industry.
82. This submission will now briefly discuss some of the challenges with implementing interoperability that are relevant to the Inquiry. These challenges highlight the limitations with the current regulatory framework for the electronic conveyancing ecosystem and how they impact competition.

Authority of ARNECC and its members

83. Generally speaking, ARNECC promotes consistency across the jurisdictions in the regulation of the lodgment of registry instruments and other documents in electronic form for the purposes of each State and Territory's land titles legislation. ARNECC has a remit for national consistency but must rely on each State and Territory to reach agreement on relevant aspects of the Registrars' regulatory framework and to exercise their powers consistently. ARNECC is not a regulator.⁴⁴
84. While ARNECC's members (i.e. each Registrar or their nominee) have clear regulatory authority and expertise in electronic conveyancing processes relating to the preparation and lodgment (and subsequent registration) components of a conveyancing transaction, ARNECC's members have specific and limited powers to regulate, and do not have the necessary experience in relation to, the financial aspects of conveyancing transactions and other associated services. One might ask whether another regulator also has such powers or is best placed or better experienced to regulate some or all of these functions.
85. The second reading speech for the Electronic Conveyancing (Adoption of National Law) Bill 2012 (NSW)⁴⁵ noted that "The network will also facilitate the financial settlement of electronic conveyancing transactions. However, this aspect of the operation of a network is not mentioned in the national law as it is subject to existing regulatory oversight by the

⁴³ See <https://www.arnecc.gov.au/wp-content/uploads/2025/02/Next-Steps-on-Interoperability-19-Feb-2025.pdf>

⁴⁴ From the ARNECC Charter: 'ARNECC has no authority additional to that of its individual members'.

⁴⁵ <http://bulletin/prod/parlment/hansart.nsf/V3Key/LC20121017014>

Reserve Bank or by the Australian Securities and Investments Commission.” There is clear delineation between elements of an electronic conveyancing transaction which relate to the preparation and lodgement of documents and elements which relate to financial settlement.

86. ARNECC refers to *Final Report - Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law* (discussed above), at section 1.23:

“Our understanding is that the RBA is the relevant regulator for the financial settlement process, ASIC for payment systems and consumer protection in the payment systems environment, and the Australian Competition and Consumer Commission (‘ACCC’) for market regulation. It remains unclear which regulator, if any, is responsible for oversight of Delivery versus Payment in the property settlement process.”

87. There is currently no single regulator with a clear remit to oversee an end-to-end electronic conveyancing transaction, and with clear authority to effectively regulate all participants in the electronic conveyancing ecosystem. Similarly, if regulation of the end-to-end electronic conveyancing transaction rests with several regulators, their roles and remit are not clearly defined, and there has been no overall analysis to ensure all activities within electronic conveyancing that need to be regulated are regulated, and if so, by whom.

The need for cooperation of all key participants in the electronic conveyancing market

88. As discussed above, Subscribers to ELNs are predominantly conveyancers, lawyers and financial institutions. These stakeholders have an interest in competition reform.
89. Most stakeholders consulted as part of the recent investigation into the interoperability program continue to support competition, including interoperability and its underlying principles, provided it does not result in significant changes to their existing processes, increase risks or increase costs. For example, financial institutions do not wish that changes to ELNs (that will arise when interoperability is introduced) will cause their “on time” transaction settlement rates to decrease. The major banks and the Australian Banking Association (ABA) are not satisfied that their current high rates for settling on time would be maintained under interoperability.
90. There is a need for either expanded regulatory oversight or broader industry support for the implementation of interoperability or other competition reforms.

PART 3 – ISSUE FOR THIS INQUIRY TO CONSIDER

91. ARNECC sets out below specific matters that it believes the Inquiry should consider.
- A. Identifying the appropriate Regulator(s) for electronic conveyancing processes
92. ARNECC recommends that the Inquiry consider who are the most appropriate regulators and decision makers in respect of the different aspects of the national electronic conveyancing ecosystem (including the implementation and regulation of mechanisms such as interoperability as discussed above).
93. In this regard, ARNECC refers to *Final Report - Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law* (discussed above), at section 7, which

discusses future organisational models for regulation, governance and management. This report also warns:

"Future organisation models for effective regulation, governance and in some cases management eg national consistency agenda, require more resources to ensure a robust system for the future. With the addition of more ELNOs and potential interoperability arrangements, resource requirements will increase further."

94. There is no regulator who has end-to-end oversight for electronic conveyancing throughout Australia. ARNECC's role in regulating ELNOs and the participation of Subscribers in electronic conveyancing transactions is designed to ensure the accuracy, quality and integrity of transactions reflecting dealings in interests in land and their subsequent registration. ARNECC is mindful that the electronic conveyancing environment includes other activities such as the management and disbursement of settlement funds and the payment of stamp duty to Revenue Offices on relevant transactions. ARNECC recognises that these activities need to occur safely and securely, and that ELNOs' systems and processes need to ensure that is the case. However, the regulation of these activities also intersects with the roles of other regulatory bodies, including financial and conveyancer/lawyer regulators. Accordingly, there is a need for greater involvement and coordination amongst regulators to provide comprehensive and more effective regulation of the end-to-end electronic conveyancing processes and to close any regulatory gaps that may currently exist.

B. Reviewing the Regulation of Key Participants to facilitate change

95. It is apparent that any program of change to introduce competition within the electronic conveyancing industry requires the cooperation of key participants such as financial institutions, conveyancers and lawyers. To successfully achieve that cooperation, the involvement of other regulatory bodies, including competition and financial regulators is required. ARNECC recommends that the Inquiry consider the key participants required to enable change and ensure there is clear and appropriate regulation of those parties so competition can be introduced in a timely manner.

C. Reviewing the Competition Oversight of ELNOs

96. ARNECC recommends that the Inquiry identify and consider any gaps in the regulatory framework to ensure there is appropriate oversight of the conduct of the near current monopoly incumbent (which has strengthened its market position over time) and in managing other existing and future ELNOs and their interactions.
97. As noted earlier, ARNECC is a council consisting of State and Territory regulators who have defined powers. ARNECC promotes national consistency but cannot regulate nationally. To be clear, ARNECC is not a regulator and has no direct powers to regulate or enforce. The Committee should consider an appropriate regulator that has power to regulate in respect of competition in trade and commerce or financial settlement across jurisdictions. There are aspects of electronic conveyancing that are within the remit of other regulatory bodies.
98. The State and Territory Registrars have powers limited to their State and Territory. As mentioned above, for the purposes of electronic conveyancing, these powers focus on providing an environment that maintains integrity, quality and accuracy in the preparation and lodgment of registry instruments and other documents in electronic form with the Land Registry pursuant to the applicable State or Territory land titles legislation.

99. To facilitate competition throughout the whole electronic conveyancing ecosystem, thought needs to be given to how regulation can be achieved through multiple regulators working together to ensure all relevant aspects of electronic conveyancing and the activities of participants within the industry are appropriately and effectively regulated.
100. Commonwealth support and involvement will be critical for both the future success of any program to introduce competition and as part of an uplifted national regulatory approach.

D. Other Alternatives

101. ARNECC considers it would be very helpful if the Inquiry considered alternative ways to introduce competition in the electronic conveyancing market. Additionally, the Inquiry could consider investigating stronger monopoly regulation to provide a robust framework to manage a market with a dominant incumbent.

PART 4 – CONCLUSION

102. ARNECC welcomes the Inquiry.
103. The implementation of electronic conveyancing has been a successful initiative that has several benefits. Over time, the functionality and complexity of ELNs and associated systems has expanded to encompass more than the preparation of documents and lodgment of documents with Land Registries.
104. Currently, there is a risk that participants in the electronic conveyancing industry may take advantage of a perceived lack of clarity over who regulates which activities within the electronic conveyancing ecosystem. The question arises whether existing regulation is sufficient to ensure all relevant activities are appropriately regulated. Given the importance of electronic conveyancing to the national economy, ARNECC believes this Inquiry presents an ideal opportunity to review the regulatory framework. This includes considering the important role federal competition, banking and corporate regulators should play.
105. Today, electronic conveyancing effectively has a monopoly provider, and competition issues will only get more complex to resolve as time goes on. For regulation to be effective, and for competition in any form to be successful, ARNECC considers that Australia needs the right regulators who have the remit required to come together with clarity on their roles to jointly regulate all aspects of the electronic conveyancing ecosystem. ARNECC has been meeting with the member agencies of the Council of Financial Regulators (CFR), but much more is needed.
106. ARNECC supports competition in respect of electronic conveyancing and believes this Inquiry is an important step towards introducing the changes needed to the regulatory framework to better facilitate competition. ARNECC is happy to assist the Inquiry further as needed.