

Senate Standing Economics References Committee**Micro-Competition Opportunities in E-Conveyancing Inquiry**

We refer to the hearing of the Senate Economics References Committee into Micro-Competition Opportunities in E-Conveyancing (**Committee**) held on 9 September 2025 (**Hearing**).

Issue one: InfoTrack's correspondence with and submissions to regulatory agencies

During the Hearing, Senator Lisa Darmanin asked InfoTrack Pty Limited (**InfoTrack**) to provide the outcome of submissions that John Ahern, CEO of InfoTrack stated had been made to the Australian Competition and Consumer Commission (**ACCC**) and the Australian Registrars' National Electronic Conveyancing Council (**ARNECC**) regarding anti-competitive issues in relation to Property Exchange Australia Ltd (**PEXA**).

InfoTrack has reviewed its records and identified certain documents responsive to the request. These are listed below and are provided to the Committee under cover of this letter. InfoTrack notes that the most recent correspondence with the ACCC and ARNECC concerned the conduct undertaken by PEXA of most recent concern to InfoTrack (namely PEXA's plans to enter into the provision of anti-money laundering / counterterrorism financing (**AML/CTF**) services, PEXA's conduct with respect to the provision of Value-Added APIs, and PEXA's expansion into the supply of downstream and upstream services). These submissions to the ACCC and ARNECC were provided to the relevant agencies in the last 12 months.

In 2020, InfoTrack also engaged in correspondence with the ACCC with respect to PEXA's conduct in implementing a "PEXA Plus marketplace" (now defunct) and with ARNECC with respect to potential breach of ARNECC's Model Operating Requirements (**MORs**). Given that these matters have been largely overtaken by events, including those the subject of the correspondence and submissions enclosed under cover of this letter, InfoTrack has not provided the Committee with this material although a catalogue of correspondence is included in **Table 2** below.

The correspondence of most relevance to the Committee's present considerations is summarised in **Table 1** below. Where necessary, confidential information as between InfoTrack and PEXA has been redacted.

Table 1 – Submissions to the ACCC and ARNECC and outcomes of the same

Item	Event	Date	Summary
1.	Letter from InfoTrack to ACCC	4 July 2025	InfoTrack's concerns regarding PEXA's plans to expand into AML/CTF compliance services ahead of the finalisation of Tranche 2 reforms and associated competition issues.
2.	Letter from InfoTrack to ARNECC	20 February 2025	InfoTrack's concerns regarding compliance of PEXA's "Value-Added API" services with the MORs, requesting ARNECC's review and approval.
3.	Letter from ACCC to InfoTrack	5 February 2025	ACCC's response to InfoTrack's submission dated 10 October 2024 (Item 5 below), stating that ARNECC was best placed to consider InfoTrack's concerns.
4.	InfoTrack submission to ACCC	14 November 2024	InfoTrack provided further information in support of the issues raised in its letter to the ACCC dated 10 October 2024 (Item 5 below).
5.	Letter from InfoTrack to ACCC	10 October 2024	InfoTrack's concerns regarding PEXA's conduct in the context of the ACCC's consideration of digital platforms and its role in enforcing the <i>Competition and Consumer Act 2010 (Cth)</i> .

As an addendum to this correspondence and noting the Senator's desire to understand outcomes:

1. ARNECC has not responded to InfoTrack's correspondence of 20 February 2025 concerning compliance with the MORs.
2. The ACCC responded to InfoTrack's letter of 4 July 2025 requesting a virtual meeting with InfoTrack which was held on 19 August 2025. InfoTrack has not subsequently heard from the ACCC with respect to these issues.

Please also see below in Table 2 a chronology of further facts and matters which InfoTrack has experienced with PEXA which have generated competition concerns, including where InfoTrack has raised those issues with relevant regulators.

Table 2 – Historical communications with the ACCC and PEXA concerning PEXA's conduct

Date	Issue
October 2024	InfoTrack wrote a letter to Treasury in relation to Treasury's consultation regarding revitalising National Competition Policy.
October 2020	PEXA launched PEXA Plus Marketplace (now defunct) offering products upstream from settlement (e.g Titles, Contracts and Council certificates). InfoTrack engaged on a preliminary basis with the ACCC in relation to this issue.
March 2020	InfoTrack sent a letter to ACCC outlining PEXA's misuse of market power with respect to integration issues.
May 2019 – August 2020	PEXA attempted to prevent InfoTrack integrating with PEXA. PEXA asserted that it could no longer support information brokers like InfoTrack and had to be integrated directly into client law firm systems.
October 2018	PEXA terminated sponsorship agreements and tabled an integration agreement with InfoTrack which had untenable terms from InfoTrack's perspective.
2015	<p>PEXA created sponsorship agreements for information brokers like InfoTrack which included the following terms:</p> <ul style="list-style-type: none"> • Brokers must promote PEXA in exchange for transaction fees, • Brokers must integrate with PEXA, and • PEXA will only recognise the Broker fee if the client explicitly calls PEXA and asks them to flag the Broker as their supplier. Note: The Integration failed to work for a client unless this was done.

Given the long history of issues that InfoTrack has experienced in dealing with PEXA as a monopoly enterprise, InfoTrack wishes to draw the Committee's attention to three issues of continuing concern which underpins correspondence with the ACCC and ARNECC:

1. **Vertical integration:** PEXA is expanding into adjacent markets. Most recently it has indicated an intention to commence the provision of AML/CTF compliance services. That risks enabling PEXA to control multiple stages of the property transaction chain and foreclose competitors who could otherwise provide the relevant services in competition with PEXA but who will have limited ability to do so, given PEXA's monopoly on the provision of e-conveyancing services. This is of grave concern. See section 4 of InfoTrack's first submission to this Inquiry dated 13 March 2025 (**First Submission**).
2. **Use of exchange data in value-added services:** InfoTrack believes PEXA is commercialising exchange data through its "Value-Added API" service. The Value-Added API service appears to use data that is the same as or substantially similar to land information provided by the state-based land registries. To the best of InfoTrack's knowledge, express approval from the Registrars was not sought by PEXA, nor granted in accordance with the MORs in respect of the Value-Added API service. Nor is it likely that the Registrars would grant such approval given their proprietary interests in the data being sold by PEXA. This is directly related to the concerns that InfoTrack holds concerning ARNECC's inability to exercise regulatory enforcement powers. This requires Federal intervention as set out in section 5 of InfoTrack's First Submission and in Schedule 1 to that submission.
3. **Regulatory gap:** In its letter of 5 February 2025, the ACCC noted that ARNECC was established to facilitate the implementation and ongoing management of the regulatory framework for electronic conveyancing, and that ARNECC is best placed to propose solutions to address barriers to interoperability. However, ARNECC currently lacks the enforcement powers necessary to address anticompetitive conduct. InfoTrack submits that reform to strengthen enforcement capacity is essential to preserve competition and ensure interoperability in e-conveyancing, see section 3 of the First Submission and the recommendations at Schedule 1 to that submission.

We trust that these documents and observations assist the Committee in its inquiry. We would be pleased to discuss any aspect of these submissions and correspondence further.

Issue two – Response to Australian Institute of Conveyancers submission

During the Hearing, Senator Deborah O'Neill asked InfoTrack to respond to the points the Australian Institute of Conveyancers (AIC) raised in their submission to the Committee dated 4 September 2025 (**AIC Submission**).

We welcome the AIC Submission, notably its collective call for competition in the e-conveyancing market. Currently, conveyancers across Australia have no choice but to use PEXA– but it is clear conveyancers want choice. We have the following comments on that submission.

- ***Benefits of competition and risk of market concentration***

The AIC Submission explored the benefits of competition as well as the risk of market concentration. It is encouraging to see the AIC note that these are *"not abstract principles – they translate into smoother settlements, reduced disruption, and public confidence in the system"*.¹ As InfoTrack and other stakeholders have submitted there are tangible benefits to competition in e-conveyancing, including choice, improved service quality, innovation and resilience. The benefits of competition have been previously drawn out by the ACCC² and the NSW Productivity Commission.³

The risk of market concentration is also highlighted by the AIC. This risk has been highlighted by InfoTrack as well as other stakeholders including the lack of downward pressure on costs, and the lack of innovative progress and systemic vulnerability in the event of a major outage. The single point of failure is a real risk given there is no backup in the event of a national PEXA outage.

- ***ELNOs extending into conveyancing services***

InfoTrack concurs with the AIC that ELNOs are facilitators of data transmission and should not be permitted to extend into the provision of e-conveyancing services (which is not their mandate). Competition and effective enforcement is the best solution to ensuring that complete vertical integration does not occur in this market. If vertical integration is permitted, it is *"necessary to have robust and enforced functional separation requirements or ring fencing...[which] may include separation of resources, employees, systems,*

¹ AIC Submission at p.1.

² ACCC, *ACCC report on eConveyancing market reform*, December 2019:

<https://www.registrargeneral.nsw.gov.au/news/accc-report-on-econveyancing-market-reform>

³ NSW Productivity and Equality Commission, *eConveyancing market study*, June 2024:

<https://www.productivity.nsw.gov.au/market-study-on-econveyancing>

*contractor arrangements and support functions.*⁴ As we saw with PEXA's extension into the conveyancing industry through *PEXA SettleAssist Pty Ltd* in 2018, vertical integration and its accompanying risk of foreclosure of competitors to PEXA remains a risk to the industry.

- ***Responding to AIC Submission claims about Interoperability – Promise and Limits***

There are also some assertions which have been made by the AIC that InfoTrack would like to address:

Claim: Consumer costs – Competition does not automatically equate to lower costs

The AIC Submission asserts that competition does not automatically equate to lower costs. InfoTrack is of the view that this assertion is incorrect.

Competition leads to lower costs for consumers while monopolies have the ability and incentive to increase prices. Interoperability, which will open the door to consumer choice and competition between ELNOs, will logically lead to downward pressure on prices for consumers. The ACCC stated in 2019, that *"in the absence of competition and with an automatic pathway to increase prices in line with CPI, the impetus for further price reductions, product innovation or service level improvements is foregone."*⁵ The NSW Productivity Commission has also stated that *"the costs associated with establishing interoperability were outweighed by the benefits of lower prices, quality improvements, and innovation."*⁶ Lawyers and conveyancers will always advocate for their clients when it comes to costs and other benefits, such as lower fees, innovation and security.

At page 2 of its submission, AIC has stated in support of its claim that interoperability will increase costs that *"already two additional fees have been introduced for every transaction"*. We believe the two fees being referenced are the National Electronic Conveyancing Data Standard (**NECDS**) fees and the Responsible Electronic Lodgement Network Operator (**RELNO**) fees. In relation to NECDS fees, this is a levy that currently exists which neither ELNO is charging to subscribers. Without competition, PEXA would have no incentive to absorb this cost and would pass this fee on to consumers. In relation to RELNO fees, the MORs state that an

⁴ ACCC, *ACCC submission to the ARNECC Issues Paper: Review of the Separation Regime in Operating Requirements 5.6* 11 October 2024, p.2: <https://www.accc.gov.au/inquiries-and-consultations/accc-submissions-to-external-consultations#toc-electronic-conveyancing>

⁵ ACCC, *ACCC report on eConveyancing market reform*, December 2019, p.9: <https://www.registrargeneral.nsw.gov.au/news/accc-report-on-econveyancing-market-reform>

⁶ NSW Productivity and Equality Commission, *eConveyancing market study*, June 2024, p.28: <https://www.productivity.nsw.gov.au/market-study-on-econveyancing>

ELNO must ensure that the ELNO Service Fees are the same for an interoperable and non-interoperable transaction. Accordingly, the RELNO fee cannot be passed on to subscribers.⁷

Claim: Innovation and Security – more entry points into the system may increase vulnerabilities and compromise security

During the Hearing, PEXA stated that it does not hold significant levels of market sensitive data. This is incorrect. According to the MORs, ELNOs must indefinitely retain all workspace data and all electronic workspace documents.⁸ Given PEXA's role in e-conveyancing, and its nature as a monopoly provider of e-conveyancing services undertaking 99% of all e-conveyancing transactions presently, it inevitably has extensive data holdings.

InfoTrack acknowledges that there is a significant risk if PEXA's security is compromised. Australia's Cyber Security Centre clearly states that concentration and reliance on a single provider **increases** cyber risk. Therefore, using two networks such as PEXA and Sympli simultaneously —decentralising, diversifying and spreading the data holdings between entities—will deliver more controls and more reliability and make the trillion-dollar conveyancing market less vulnerable to cyber and fraud risks, see further below.

Claim: System resilience – introducing multiple ELNOs could create more points of failure

PEXA presents a single point of failure risk as there is no backup in the case of a national outage. There have been media reports of homebuyers being stranded due to a PEXA platform outage⁹. This continues to be a significant issue for the country given the risk of a CrowdStrike¹⁰ like event which would grind property settlements to a halt. Multiple ELNOs will increase transparency in case of an issue, given competitive pressure will push ELNOs to enhance security and ascertain the root cause of an issue more quickly that it may without competition.

⁷ ARNECC, Model Operating Requirements, February 2025, 5.4.7, p.32:

https://www.arnecc.gov.au/publications/model_operating_requirements/

⁸ ARNECC, Model Operating Requirements, 19.1, p.62:

https://www.arnecc.gov.au/publications/model_operating_requirements/

⁹ Daily Telegraph, 'Stranded': Homebuyers caught in property platform PEXA's outages', July 11:

<https://www.dailytelegraph.com.au/news/nsw/stranded-homebuyers-caught-in-property-platform-pexas-meltdown/news-story/985cdd2dda1bd8dfa33aa7af72333341>

¹⁰ CrowdStrike Incident (July 19, 2024): A faulty update to CrowdStrike's Falcon Sensor software caused widespread crashes of Windows systems globally, disrupting critical services and resulting in billions of dollars in damages.

This single point of failure risk was highlighted by ARNECC in their Senate submission: *“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.”*¹¹

InfoTrack would also like to highlight that according to PEXA’s service history page they sustained a "National Full-Service Outage" in August.¹² When asked about this event at the Senate Inquiry by the Chair, the PEXA CEO denied that a full system outage had occurred.

Claim: Interoperability and Complexity – Complexity underestimates and costs borne by consumers

Interoperability is the exchange of data between ELNOs and data exchange has been achieved in many other industries including telecommunications. Whilst there are complexities, InfoTrack does not believe there are any technical barriers given PEXA has developed similar APIs with other platforms.

What is lacking is an incentive for PEXA and the banks to deliver a solution. Interoperability is the technical solution to the issues of market concentration and single point of failure. Complexity has come from PEXA’s reluctance to genuinely participate in the reform: PEXA as a monopoly enterprise has no incentive to deliver competition to the market.

In relation to the costs being borne by consumers, the costs to build and implement interoperability will be borne by the ELNOs. The competition benefits of interoperability far outweigh the costs of implementation when it comes to productivity benefits, lower fees, choice for industry and resiliency for the Australian economy.

In relation to realistic timelines for interoperability, the timeframe to introduce competition is limited. A potential third ELNO, Lextech, exited the market in May 2025.¹³ Unless there is commitment to interoperability and urgency for robust implementation, Australia may lose the opportunity to change the dynamic from monopoly infrastructure to duopoly infrastructure wedded by interoperability.

¹¹ ARNECC Senate Submission, p.9.

¹² <https://status.pexa.com.au/history>

¹³ Australian Financial Review, Michael Bleby, *Rival to PEXA quits e-conveyancing market*, May 12 2025: <https://www.afr.com/property/residential/rival-to-pexa-quits-e-conveyancing-market-20250511-p5ly7s>

Claim: Monopoly and public interest – a regulated monopoly may be more appropriate

The AIC Submission asserts that a monopoly can be more appropriate but carefully caveats that statement – it can be appropriate *"if subject to strong oversight and pricing control"*.¹⁴ However PEXA is not subject to strong oversight, see further below.

The NSW Productivity Commissioner 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"*. InfoTrack notes that interoperability has been agreed by experts and legislated by Government as the best way to deliver competition to this market. InfoTrack is confident that the ARNECC reviews¹⁵ will again find that this is the case.

Broader Issues for Reform

InfoTrack shares similar concerns to the AIC on the following matters:

- ***Upstream and downstream risk:*** PEXA is expanding into ancillary services like payments and verification. Intervention is required to prevent PEXA being fundamentally "baked into" the property supply chain, see First Submission at section 4 and the risks that vertical integration combined with a weak regulator expose consumers (lawyers, conveyancers and the broader public) to. See also section 6 of InfoTrack's supplementary submission of 20 June 2025.
- ***Regulatory design – ARNECC (and the ACCC):*** InfoTrack agrees with the AIC that ARNECC is a fragmented, state-based and under-resourced entity that would benefit from Federal resources (ie., reform into a federal body under a national framework with adequate funding). InfoTrack has made specific recommendations about how ARNECC's powers should be enhanced at section 3 of the First Submission and at paragraph 1.2 of Schedule 1 to InfoTrack's First Submission. See also InfoTrack's recommendations concerning legislative change at paragraph 1.3 of that Schedule. ARNECC should also be encouraged to work with the ACCC in the exercise of its powers as a competition regulator, see paragraph 5.7 of the First Submission. The ACCC should be encouraged to exercise its powers to investigate PEXA's activities and to take action if it reasonably believes that PEXA is behaving in a manner that is anticompetitive, see section 5 of the First Submission.

¹⁴ AIC Submission, p.3.

¹⁵ ARNECC, *2025 Reviews Project Update*, 23 July 2025: <https://www.arnecc.gov.au/>

- ***Innovation and infrastructure renewal:*** We agree that, given the PEXA system is more than a decade old, competition will deliver innovation to the market. PEXA has no incentive to innovate where its customers are sticky due to the absence of choice.
- ***Demonstrating competition – It is not enough to state “we support competition”:*** InfoTrack strongly agrees with the AIC Submission that competition needs to be delivered by the States and the Federal Government. Reliance on ARNECC is insufficient and lip service is not enough – there needs to be urgent action to deliver competition. Further, any enhancement of PEXA's monopoly position, such as by empowering it to enter into the provision of AML/CTF services, will not deliver competition but will significantly harm it. On this point, InfoTrack agrees with the concerns of the AIC that conveyancers should be supported to meet their AML/CTF obligations without being forced into dependence on monopoly providers.¹⁶

Independence of the Conveyancing Profession

InfoTrack welcomes further legislative changes to explicitly prevent ELNOs, banks, and related entities from offering or controlling conveyancing services. We note that PEXA has previously sought to offer conveyancing services – this is another manifestation of a monopoly seeking to vertically integrate into other services.

InfoTrack's response to the AIC Recommendations:

Mandate interoperability as part of a suite of reforms

Interoperability has already been mandated by the *Electronic Conveyancing National Law*¹⁷ which requires ELNOs to interoperate. InfoTrack does not believe any further legislative change is required – what is required is that the State and Federal Governments work together to deliver interoperability, including by establishing a cohesive national enforcement regime where ARNECC is the statutory body with authority to take enforcement action in its discretion, see further below.

¹⁶ AIC Submission, p.4.

¹⁷ Electronic Conveyancing (Adoption of National Law) Amendment Act 2022 (NSW), s 18A:

“A person approved as an ELNO under section 15 must, in accordance with the operating requirements, establish and maintain interoperability between the ELN operated by the person and each ELN operated by another ELNO.”:

Strengthen regulatory oversight with a Federal body

InfoTrack believes that ARNECC is the appropriate regulator to deliver interoperability, but it requires Federal resources from bodies such as the ACCC, RBA, and Commonwealth Treasury to provide the necessary expertise to deliver competition urgently to the market. InfoTrack has provided specific comments about the necessity for regulatory oversight and enforcement at section 4 of its First Submission, see in particular paragraphs 4.26 – 4.28. Reform must ensure that any regulatory gaps in relation to competition may be filled by the ACCC in its role as competition regulator and enforcer, specifically in relation to maintaining competitive rivalry in circumstances where persistent vertical integration by a monopoly service provider threatens to eliminate it.

Align competition oversight with the ACCC and national consumer protection frameworks

InfoTrack strongly supports ACCC involvement in monitoring price, enforcing transparency and preventing anti-competitive conduct by the PEXA monopoly. ARNECC in its current form is not a regulator. Accordingly, in the short term, the risks to the competitive landscape require intervention from the ACCC to ensure that competitive is maintained by reform is delivered. Enforcement action by a sophisticated regulatory with a credible track record is necessary.

Address upstream/downstream risks and conflicts of interest – this means ensuring that AML/CTF reforms complement, not compromise, competition and professional independence

As stated above, InfoTrack is deeply concerned about the upstream and downstream risks for the industry arising if a PEXA monopoly remains. The AML/CTF reform, and the potential for those services to be provided by PEXA, is an example of PEXA seeking to leverage its monopoly to vertically integrate upstream with the effect that it will be in a position to foreclose competing businesses. InfoTrack supports the AIC's view that AML/CTF reforms should support competition and not diminish it. PEXA's actions will inevitably provide it with the ability to leverage itself into the whole of the e-conveyancing supply chain. This issue and the potential for its anticompetitive effect, falls squarely into the ACCC's jurisdiction. The ACCC can assist Senate to assess the risks of PEXA's proposal to provide AML/CTF services, and it should be directed to investigate this issue urgently if it is not already doing so.

Legislate to protect the independence of the conveyancing profession

As stated above, InfoTrack supports any measure to guarantee and protect the independence of the conveyancing profession.

Keep innovation, infrastructure renewal, and consumer protection at the centre of reform

InfoTrack supports the AIC in the need for infrastructure renewal, innovation and consumer protection. Interoperability presents an opportunity to modernise the e-conveyancing ecosystem and ensure that it remains competitive and innovative.

Conclusion

InfoTrack welcomes the contribution of the AIC and supports its call for reforms that protect both practitioners and consumers across Australia.

A system dominated by a single ELNO exposes practitioners and consumers to inflated costs, innovation bottlenecks, and systemic vulnerability. Interoperability is not simply one option among many — it has been agreed upon and legislated for, given it is the best way to deliver competition. Without it, the industry is effectively locked into a monopoly, with no competitive pressure or any incentive to drive down costs or improve service.



16 September 2025

ITEM 1

(please see overleaf)

Sydney	Tower 2, Level 21, 200 Barangaroo Avenue Sydney NSW 2000	T 02 8203 7600
Melbourne	Level 5, 271 Spring Street Melbourne 3000	T 03 8609 4700
Brisbane	Level 14, 80 Ann Street, Brisbane, QLD 4000	T 07 3040 4000
Perth	Level 12, 197 St Georges Terrace, Perth WA 6000	T 08 6333 2100

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4 July 2025

Ms Gina Cass-Gottlieb
Chair and Agency Head, Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

By email:

Dear Ms Cass-Gottlieb,

Re: AUSTRAC AML/CTF Tranche 2 reforms – ELNO Competition Issues

Further to InfoTrack's letter to the ACCC dated 10 October 2024 and further submission of 14 November 2024 (**Submissions**), I write to you regarding significant competition concerns arising out of the Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Tranche 2 reforms in relation to real property transactions.

As outlined in our previous Submissions, InfoTrack is concerned that PEXA misusing its market power in breach of section 46 of the *Competition and Consumer Act 2010* Cth (**CCA**) by leveraging its monopoly position in the Electronic Lodgement Network (**ELN**) market to establish dominance in the transaction value chain and related markets by integrating a number of downstream and upstream services into its ELN.

PEXA has now publicly signalled its ambitions to expand into AML/CTF compliance services ahead of the finalisation of Tranche 2 reforms, citing alignment with its platform capabilities and existing relationships with conveyancing professionals¹. We believe this proposed expansion, particularly if bundled into its ELN platform, will:

- (a) **Substantially lessen competition** in the AML/CTF service provider market by leveraging its monopoly position as an ELNO to foreclose competitors and channel users exclusively through its ecosystem;
- (b) **Misuse market power** by conditioning access to its ELN or through pricing advantages based on the uptake of its AML/CTF services, whether explicitly or by design; and
- (c) **Reduce consumer choice** by locking practitioners into vertically integrated service workflows where third-party alternatives are functionally or commercially disincentivised.

InfoTrack therefore has serious concerns that if PEXA provides upstream AML/CTF compliance services, this will lead to a further misuse of market power through vertical foreclosure, reduced contestability, and self-preferencing and enable PEXA to further entrench its dominance across the entire property transaction supply chain, thereby inhibiting the development of a competitive market for AML/CTF compliance services.

Specifically, InfoTrack is concerned that:

- (a) In circumstances where the Integrated AML/CTF Service is "endorsed" through legislation without countervailing constraints and PEXA is the sole provider of this service for conveyancing transactions, PEXA may pursue commercial strategies aimed at maximising its commercial profitability via the provision of the Integrated AML/CTF Service;

- (b) PEXA will have no incentive to work towards interoperability with other potential eConveyancers, as doing so would likely enhance competition in e-conveyancing and provide an alternative platform through which Tranche 2 entities could seek to discharge their AML/CTF obligations; and
- (c) despite the regulatory nature of the processes that are contemplated within the scope of the Integrated AML/CTF Service, PEXA may seek to assert intellectual property claims over such processes, to protect and entrench its position in the market for its DUS.

InfoTrack have also been made aware that AUSTRAC are working on a partnership with PEXA to source real estate data for AML/CTF Tranche 2 implementation. We have concerns that a partnership between AUSTRAC and PEXA will further entrench and expand PEXA's dominance in the transaction value chain and related markets, building on the foundations of its monopoly ELN.

We urge the ACCC to closely scrutinise this development. In particular, we request that the Commission:

- investigate whether PEXA's proposed actions may constitute a breach of Section 46 of the CCA in relation to misuse of market power;
- advocate, in consultation with AUSTRAC and relevant regulators, for mandated provider neutrality in the delivery of AML/CTF checks linked to the property transaction process.

InfoTrack would be grateful for the opportunity to discuss the concerns that it has highlighted at a high level in this letter with the ACCC and request a meeting with you to discuss this issue further.

Regards

Lee Bailie
Head of Property, InfoTrack

CC: Mr Brendan Thomas, CEO of AUSTRAC
Mr Matthew Kamarul, Chair of ARNECC

ⁱ See <https://www.pexa-group.com/content-hub/news/new-anti-money-laundering-reforms-industry-concerns/> and <https://www.afr.com/property/residential/no-id-new-anti-money-laundering-rules-won-t-stop-agents-making-deals-20250622-p5m9f6>



16 September 2025

ITEM 2

(please see overleaf)

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Perth	Level 12, 197 St Georges Terrace, Perth WA 6000	T 08 6333 2100

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Attention:
Melissa Harris
Chair ARNECC

cc:
Danusia Cameron
Registrar General NSW

CONFIDENTIAL

Subject: PEXA Value Added Service

Dear Melissa and Danusia,

PEXA have approached SettleIT (a PEXA subscriber and PEXA API User) and some mutual clients (large scale consumers of titles/plans and dealings) with their "Value Added API" service.

We understand that, if an ELNO proposes to develop products in addition to the core Lodgement functions they provide, the ELNO must first comply with rule 5.6 of the ARNECC Model Operating Requirements (**MOR**).

We also understand that, under rule 19.3 of the MOR, unless approved by the Registrar, an ELNO must not store or use Land Information for any purposes other than for the purpose of facilitating Lodgement or otherwise create data or other products which are the same as or substantially similar to the Land Information. In other words, when a value-added service uses Land Information, the Registrar's approval is required.

The Value-Added API Service provides a multitude of API services. These services include (but not limited to):

- Push notifications via webhooks
- Document API
- Settlement Shortfall API
- Workspace Title Data API
- Mortgage Document API
- Line Items API
- Workspace Checklist API

In our opinion, these value added services use data that is the same as or is substantially similar to the Land Information. Using these services attracts an additional charge initially of \$1 per workspace. Noting that if two lawyers, and two banks were integrated using these API's, PEXA would receive \$4 per workspace.

The price for this service is contracted to increase yearly as a function of CPI. The older PEXA API's under our previous agreement will be deprecated, SettleIT will need to sign this contract, pay this fee and contract for a yearly increase to integrate to PEXA.



The value of the service lies within the richness of the data in the API responses. A sample API response is provided below to notify us that the title on a workspace has changed. The data provides lot details, mortgage details and dealing numbers. This is sufficient detail for law firms, banks and Mortgage Processes to eliminate the need for a title search to ensure their interests are secured. Previously banks, lawyers, and Subscribers would need to obtain a Title Search to ensure their client's interests and security. Providing this value in an API eliminates user error and negates the need for a title record to be obtained.

Paying \$1.00 for this data is an attractive alternative to paying for a land title and associated dealings.

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

```
<Description>The Land Registry have examined lodgment case documents in the above  
workspace. Please refer to the Document List for the lodgment status of each  
document.</Description>  
<Details>  
  <Lodgement>  
    <LodgementCaseId>██████████</LodgementCaseId>  
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PEXA have asked us to sign this document by Friday 28th February 2025. Can you please confirm the following:

1. ARNECC has reviewed and approved this Value-Added API Service.
2. ARNECC has reviewed and approved the unregulated yearly price increase.
3. ARNECC has reviewed and approved the use and licensing arrangements for the Land Information within the Value-Added API Service.

Kind Regards,

A rectangular area that has been redacted with a light blue background, obscuring the signature of John Ahern.

John Ahern, CEO InfoTrack



16 September 2025

ITEM 3

(please see overleaf)

Sydney	Tower 2, Level 21, 200 Barangaroo Avenue Sydney NSW 2000	T 02 8203 7600
Melbourne	Level 5, 271 Spring Street Melbourne 3000	T 03 8609 4700
Brisbane	Level 14, 80 Ann Street, Brisbane, QLD 4000	T 07 3040 4000
Perth	Level 12, 197 St Georges Terrace, Perth WA 6000	T 08 6333 2100

www.infotrack.com.au

Our ref: ICMS-100131
Your ref: 21-41079695
Contact officer: Dylan Richards
Contact phone: 03 9290 6916



Land of the Turrbal and Jagera/Yuggera peoples
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Brisbane Qld 4000
GPO Box 3131
Canberra ACT 2601
Tel 07 3835 4666
www.accc.gov.au

5 February 2025

Mr Stephen Wood
Chairman
InfoTrack Pty Limited

By email:
cc:

Dear Mr Wood

Alleged anti-competitive conduct by Property Exchange Australia Limited

Thank you for your 10 October 2024 submission to the Australian Competition and Consumer Commission (**ACCC**) in which you raise concerns about Property Exchange Australia Limited (**PEXA**) engaging in anti-competitive conduct.

InfoTrack's concerns

You have raised concerns that PEXA is:

- not engaging in discussions intended to progress interoperability between electronic lodgement networks, and
- in a position to leverage its position as an electronic lodgement network operator to other adjacent markets.

Our assessment of your concerns under the Competition and Consumer Act 2010

As you may be aware, the ACCC has previously investigated PEXA's conduct regarding its participation in the interoperability reform process, with a view to determining whether PEXA's conduct gave rise to concerns under the *Competition and Consumer Act 2010*. The ACCC has reviewed your submission carefully and notes that the core issues raised regarding PEXA's conduct were previously considered during the ACCC's earlier investigation. We do not consider your submission presents materially new information that warrants the ACCC undertaking further inquiries at this time.

The ACCC acknowledges your submission in relation to PEXA potentially being able to leverage its position as an electronic lodgement network operator to provide services in adjacent markets. As your submission notes, the Australian Registrars' National Electronic Conveyancing Council (**ARNECC**) has developed Model Operating Requirements that seek to prevent an electronic lodgement network operator from behaving in a manner which gives an unfair commercial advantage to a related upstream or downstream service provider.

The ACCC supports the development of effective competition in the e-conveyancing market, and related markets, and will continue to monitor for anti-competitive conduct.

E-conveyancing regulatory framework

As ARNECC was established as the body designed to facilitate the implementation and ongoing management of the regulatory framework for electronic conveyancing of real property in Australia, the ACCC considers that ARNECC is best placed to consider your concerns, and propose solutions to address barriers to interoperability between electronic lodgement networks.

The ACCC considers that the successful completion of the regulatory reform process is the best avenue to achieve the development of a robust market where competition delivers value and innovation to users.

We thank InfoTrack for raising its concerns with the ACCC.

If you wish to discuss this letter please contact Dylan Richards

Yours sincerely

Melinda McDonald
Executive General Manager
Competition Division



16 September 2025

ITEM 4

(please see overleaf)

Sydney	Tower 2, Level 21, 200 Barangaroo Avenue Sydney NSW 2000	T 02 8203 7600
Melbourne	Level 5, 271 Spring Street Melbourne 3000	T 03 8609 4700
Brisbane	Level 14, 80 Ann Street, Brisbane, QLD 4000	T 07 3040 4000
Perth	Level 12, 197 St Georges Terrace, Perth WA 6000	T 08 6333 2100

www.infotrack.com.au

InfoTrack submission to the Australian Competition and Consumer Commission – concerns regarding PEXA conduct

1. Introduction and executive summary

1.1 This submission is intended to provide the Australian Competition and Consumer Commission (**ACCC**) with further information in respect of the issues raised in InfoTrack's letter to the ACCC dated 10 October 2024 (**Letter**). In summary, InfoTrack is concerned that PEXA is engaging in the following conduct, which raises issues under the *Competition and Consumer Act 2010* (Cth) (**CCA**) and more broadly noting that PEXA is a dominant homegrown digital platform:

- (a) leveraging its first mover advantage and network effects to prevent other Electronic Lodgment Network Operator's (**ELNOs**) from entering and competing. PEXA's current position is that it will not engage in discussions intended to progress interoperability, which is critical to opening the relevant markets to competition;
- (b) leveraging its monopoly position in the e-conveyancing market to establish dominance in other parts of the transaction value chain and taking advantage of gaps in the existing regulatory framework and its ability to extract valuable real-time, pre-settlement data from other market participants due to their use of PEXA Exchange;
- (c) breaching the spirit and intent of the separation and ring-fencing requirements set out in the existing regulatory framework by promoting businesses in which it has a financial interest, as part of an integrated offering with its ELN, PEXA Exchange; and
- (d) seeking to entrench and expand its position in the Australian regulatory landscape by pursuing a central hub position in the proposed tranche two anti-money laundering and counter-terrorism financing reporting processes, as part of a broader global commercial strategy to rapidly grow non-regulated revenues, building on the robust foundations of its monopoly ELN,

(together, the **Conduct of Concern**).

1.2 Since PEXA's establishment as a government-owned ELNO in 2013 (fully privatised in 2019) PEXA has maintained a near-monopolistic position in the provision of e-conveyancing services. The current ELNO market design and conditions have enabled PEXA's growth while making it difficult for other ELNOs to enter the market and effectively compete for the provision of e-conveyancing services against PEXA. InfoTrack's concerns in respect of the deficiencies of the existing regulatory regime,

the roadblocks to interoperability and PEXA's conduct in preventing other ELNOs from entering and competing are discussed in section 2.

- 1.3 In the absence of adequate regulation, PEXA is leveraging its monopoly position in the Electronic Lodgement Network (**ELN**) market to establish itself, and ultimately in InfoTrack's submission, dominance in the transaction value chain and related markets. Despite the separation regime included in *Model Operating Requirements (MOR)* that is intended to address the anticompetitive effects of a monopolistic ELN vertically integrating up and down the transaction chain, PEXA has integrated a number of downstream and upstream services into its ELN, without any sanctions or regulatory action taken against it. Section 3 provides an overview of PEXA's related entities and downstream / upstream services, as well as its commercial strategy to grow its unregulated revenues, including by pushing for greater access to data and to entrench its ELN with anti-money laundering (**AML**) / counter-terrorism financing (**CTF**) regulatory processes.
- 1.4 As recognised by the Australian Registrars National Electronic Conveyancing Council (**ARNECC**), the ACCC, the Inter-Governmental Agreement for an Electronic Conveyancing National Law (**IGA**) Review and Independent Pricing and Regulatory Tribunal of New South Wales (**IPART**) have all called for regulation to overcome the concentration of market power in PEXA Exchange. The current level of concentration is a poor outcome for the community and may contravene the 1995 Competition Principles Agreement and the 2016 Intergovernmental Agreement on Competition and Productivity-enhancing Reforms.¹ Section 4 considers reasons why the e-conveyancing market and related markets should be highly contestable, given that the market is not a natural monopoly and can (and should) support competition.
- 1.5 PEXA benefits from the competitive inefficiencies in the e-conveyancing market that arise from its monopoly. By virtue of its market power, it is able to exploit these inefficiencies, which are reflected: (i) firstly in PEXA's high degree of market concentration and profitability; (ii) secondly by the lack of transparency relating to prices charged by PEXA to different subscribers (such as banks given the Commonwealth Bank of Australia's (**CBA's**) vested interest in PEXA, where PEXA may choose to price below the published prices which effectively act as a ceiling), with no regulatory oversight or opportunity to consider whether there are any impacts on the market and on competition by reason of PEXA's pricing practices; and (iii) thirdly by the fact that price control arrangements have allowed PEXA to set prices at levels that do not reflect its underlying costs, such that end-user consumers have been excluded from sharing in the significant productivity benefits that e-conveyancing has produced.

¹ Please see <https://www.arnecc.gov.au/wp-content/uploads/2021/12/Interoperability-RIS-December-2021.pdf> (**Interoperability RIS**) at page 9.

- 1.6 InfoTrack is concerned that PEXA is misusing its market power in breach of section 46 of the CCA. As the ELNO that accounts for approximately 99% of all re-financing transactions, 88% of all property transfer transactions, and 88% of overall market share in Australia as at November 2023,² PEXA undoubtedly has a substantial degree of market power. Section 5 sets out reasons why InfoTrack believes PEXA's conduct amounts to a breach of the misuse of market power provisions, noting that its conduct can be broadly categorised into: (i) refusal to deal, in respect of its failure to engage on issues of interoperability such that competition for the provision of e-conveyancing services is blunted, and subscribers are unable to exercise choice or access better value services; and (ii) foreclosure and self-preferencing, in respect of its illicit integration of Downstream or Upstream Services (**DUS**) and adjacent services with its ELN, and in respect of its proposed integration with AML / CTF regulatory processes.
- 1.7 PEXA is a homegrown, dominant Australian digital platform that continues to be unchallenged and unconstrained, and which is actively resisting taking steps intended to level the playing field (i.e., implementing interoperability as between ELNOs). As a result, PEXA has few incentives to innovate, improve quality, pass through efficiencies and cost savings to customers, or work constructively with other market participants to build a more efficient, robust and contestable e-conveyancing industry. InfoTrack is concerned that in the absence of adequate regulation, PEXA will be able to continue to foreclose other potential competitors and self-preference the products and services of entities in which it is financially invested.
- 1.8 The issues with market power and network effects that arise in other digital platform markets similarly arise in e-conveyancing markets in Australia. For that reason, to the extent that the ACCC forms the view that domestic regulation needs to be introduced to regulate the activities of international digital platforms with respect to self-preferencing, tying and bundling practices, barriers to switching and promoting access to third-party applications, InfoTrack supports an extension of that regulation to PEXA so as to curb such conduct in the Australian e-conveyancing and adjacent markets. Consideration as to PEXA's gatekeeper status as well as potentially appropriate aspects of overseas regimes are detailed in section 6.
- 1.9 Given the rapid rate of PEXA's growth and that the current market conditions do not allow for the sustained entry of another ELNO to unlock the gates to greater competition along the transaction chain, InfoTrack is concerned that there is a closing window of opportunity for the ACCC and the Government to intervene. Should policy makers and regulators not undertake urgent steps to implement a pro competition market model and in the interim, investigate and intervene to stop anti-competitive conduct, then the status quo will continue indefinitely, to the benefit of PEXA and to the detriment of the Australian economy, consumers and businesses.

² Please see https://www.pexa-group.com/staticly-media/2023/12/Investor_Day_Nov_23-sm-1701686736.pdf at page 11.

- 1.10 InfoTrack believes that the ACCC is the appropriate regulator to consider and act on the issues outlined in this submission, given the ACCC's experience deterring and kerbing anti-competitive conduct arising from a position of market power and related breaches of the CCA, as well as its expertise in relation to digital platforms and data, given its ongoing work in this area.
- 1.11 As set out in detail in section 7 of this submission, InfoTrack therefore requests that the ACCC consider the issues raised in this submission and in particular, the practical measures that it may take to address them, given its powers under the CCA to regulate the misuse of market power, and its policy objectives of maintaining competitive markets in Australia so as to enhance the welfare of Australians. InfoTrack would be happy to meet with the ACCC to discuss this submission and the facts and matters contained in it.

2. **Issues with current regulatory framework and landscape**

- 2.1 InfoTrack recognises that regulation of the e-conveyancing market is complex given significant market asymmetries and regulatory uncertainty. However, the development of a competitive e-conveyancing market remains stifled by PEXA's Conduct of Concern and issues with the design and operation of the current regulatory framework (being the *Electronic Conveyancing National Law (ECNL)*, the MOR, and the *Model Participation Rules (MPR)*), which in the absence of change, only benefit the incumbent.
- 2.2 These issues are considered in turn below. For the purposes of this submission, InfoTrack has not sought to provide a comprehensive analysis or summary of its views in respect of the current regulatory framework governing e-conveyancing but has rather endeavoured to highlight the salient issues as relevant to PEXA's Conduct of Concern and within the remit of the ACCC's role in administering the CCA.
- 2.3 The impact of these issues on competition are significant, as they effectively preserve PEXA's monopoly and prevent the sustained entry and operation of any other ELNO in Australia, dampening competition in e-conveyancing and adjacent markets.

A. PEXA's roots as an Australian Government initiative has enabled it to establish an unfettered market position

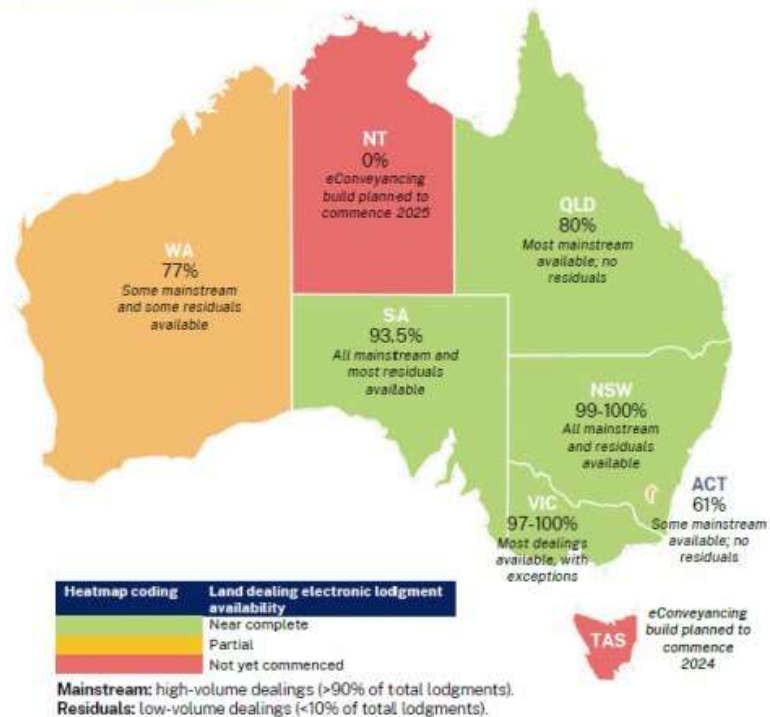
- 2.4 As the ACCC is aware, e-conveyancing began as an Australian Government initiative, with state Governments and banks being joint shareholders in the NECDL, which was subsequently renamed to Property Exchange Australia Limited (**PEXA**).³ PEXA

³ In 2008, the Council of Australian Governments agreed to develop e-conveyancing as part of its *National Partnership to Deliver a Seamless Economy*, which led to two key developments: (i) the establishment of the National E-Conveyancing Development Limited (**NECDL**) in 2010, which was converted in 2011 to be a company in which the governments of New

became wholly privately owned in January 2019, when state governments sold their interests in the company to Link Group, Morgan Stanley Infrastructure Inc, and the CBA.⁴ Today, the largest shareholder of PEXA is CBA,⁵ and PEXA is a publicly listed company on the Australian Stock Exchange with a market capitalisation of approximately \$2.49 billion (AUD) as at 18 September 2024.

- 2.5 From 2016, some states mandated e-conveyancing and phased out paper-based conveyancing, which led to a surge in e-conveyancing transactions being carried out and the rapid uptake of the only ELN available at the time, being PEXA. E-conveyancing is currently available in all states and territories, except Tasmania and the Northern Territory, however each of those states intends to commence e-conveyancing within the next two years.

Figure 2: Update of eConveyancing by jurisdiction



Source: ARNECC 2023d, 6.

- 2.6 Of the two operating ELNOs, only PEXA has full-service functionality across its operating jurisdictions, offering the full suite of document and transaction types. In New South Wales, Victoria and South Australia where e-conveyancing is mandatory, PEXA

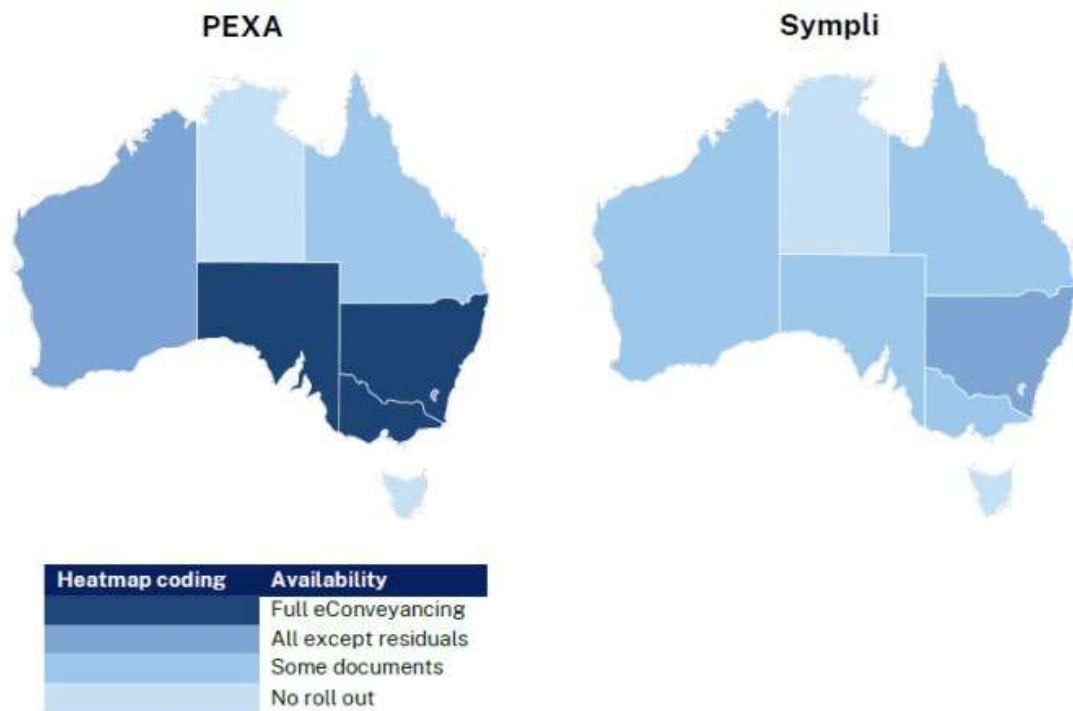
South Wales, Victoria, Queensland, Western Australia and the four major banks were shareholders; (ii) in 2011, all states and territories signed the Intergovernmental Agreement (IGA) for the ECNL.

⁴ Please see <https://www.pexa-group.com/about/history/>.

⁵ CBA's interest in PEXA is approximately 24%.

has over 95% of the transfer market based on transaction volumes.⁶ The original conveyancing market structure conferred upon PEXA monopolist status which allowed it to benefit greatly by way of the resulting economies of scale and network effects. In contrast, Sympli Australia (**Sympli**)⁷ does not have full-service functionality in any state or territory, and the extent of its offering varies across jurisdictions, as indicated in the figure below.

Figure 3: ELNO rollout across jurisdictions



Source: ARNECC 2023d, 7.

2.7 By virtue of its origin as a government-owned entity, numerous bank and land registry processes were historically created around PEXA's offering. PEXA is the custodian of e-conveyancing data standards and artefacts, including the *National Electronic*

⁶ Please see <https://www.productivity.nsw.gov.au/sites/default/files/2024-06/20240628-econveyancing-market-study.pdf> (E-conveyancing Market Study) at page 20.

⁷ Sympli is a joint venture between the Australian Securities Exchange and InfoTrack. InfoTrack holds a 49% interest in Sympli and has 2 directors on the board but does not have day-to-day management or control of the organisation.

Conveyancing Data Standard (NECDS), the *Residual Document Spreadsheet (RDS)*,⁸ and the National Electronic Conveyancing Interoperability Data Standard (**NECIDS**).⁹

- 2.8 Recognising it is no longer appropriate for this legacy arrangement to continue where state governments have indicated a desire to transition to a competitive market, InfoTrack understands that ARNECC and PEXA have reached an in-principle agreement to transfer responsibility and control of the NECDS to a state and territory-controlled and owned entity in late 2024 (NECDS Ltd), although the process has been the subject of delays as explained below.

B. PEXA does not support interoperability and reforms are paused indefinitely

- 2.9 Interoperability is a critical catalyst new entry and for real competition in the e-conveyancing market but is not a feature of the current e-conveyancing market.
- 2.10 In the absence of interoperability, PEXA has benefited from a government-sponsored program of work (involving Registrars, land registries, revenue offices, commercial banks, and other industry stakeholders), and has a first mover advantage that places it in a unique position of power over other existing or potential ELNOs, as well as over other industry participants that are reliant on its platform.
- 2.11 While ARNECC has considered adopting a phased model of interoperability with the first release of interoperability to the market scheduled for 31 July 2025 and full interoperability scheduled to be completed by 31 December 2025, such reforms have experienced a number of delays as set out in the table below.

⁸ The RDS is an artefact that draws on the data specifications in the NECDS to create a framework for generating residual documents, which comprise approximately 90% of total document types. It is proposed that management of the RDS will pass to NECDS Ltd with the NECDS.

⁹ The NECIDS governs the exchange of data between ELNOs to facilitate interoperable transactions, and was being developed between ARNECC and ELNOs through ARNECC's Interoperability Design Committee. Given the pausing of the interoperability reforms in light of concerns raised predominantly by PEXA, it is unclear whether this workstream is continuing.

Table 1 – Timeline of interoperability reform delays to date

Date	Activity
First half of 2021	Ministers supported a timeline to achieve the first interoperable transaction by the end of 2021, with broader implementation in 2022.
Late 2021	The timeline was extended, with the first interoperable transaction proposed for Q3 2022 and full interoperability functionality by mid-2023.
Mid 2022	The timeline was again revised, with the first transaction pushed back to March 2023 and agreement to revise the dates for broader implementation.

Date	Activity
February 2023	The timeline was again revised, with the first transaction pushed back to September 2023.
July 2023	ARNECC announced that the rollout of interoperability will commence in New South Wales, and Queensland from July 2025 and ELNOs will be required to complete the design, build and testing of the technical solution by 31 December 2025.

Source: Productivity NSW, *E-conveyancing Market Study*, pages 22 to 23.

2.12 This proposed schedule has not been met. Interoperability has not been introduced in any state in any workable form.

2.13 As noted in our Letter, PEXA is delaying the implementation of interoperability, citing the following concerns:

(a) in respect of security:

(i) PEXA asserts that *"Interoperability was not policy when PEXA was founded or when the PEXA Exchange was built. As a result, the design and architecture of the PEXA Exchange did not contemplate interoperability, and the current design of interoperability will cut across many aspects of the design of the PEXA Exchange. Given the now critical role of the PEXA Exchange, changes to the exchange and to e-conveyancing policy need to be designed and managed conscious of the importance of maintaining reliability, resilience and security of e-conveyancing as a whole. It is important to note that, while*

interoperability is now a topical conversation in the context of e-conveyancing policy, it's not a widely used model either here in Australia or internationally. In large part, this is because it's complex to implement, particularly when trying to embed into pre-existing systems, and it's complex to oversee".¹⁰ PEXA's concerns appear to have extended to a number of banks as indicated in ARNECC's recent statements regarding the halting of progress towards interoperability (**ARNECC IOP Statement**).¹¹

- (ii) Any risks to PEXA's business are likely to be outweighed by the detriment to competition in the absence of interoperability, with there being no certainty or evidence that a systematic approach to interoperability reforms as is contemplated by industry and ARNECC would threaten the resilience of the PEXA ELN. The successful completion of the live "Day 1 Transactions"¹² demonstrated that interoperability can be safely and effectively implemented. As integration through Application Programming Interfaces (**APIs**) is the common way of communication with key transaction entities including land registries and revenue offices, the technologies required to facilitate interoperability are not unfamiliar to sophisticated businesses such as ELNOs. InfoTrack does not agree with PEXA's assertion that system complexity is the reason interoperability is taking time to implement, given the roadblocks to constructive discussions PEXA has put forward to date, and that delays to interoperability preserve the status quo to PEXA's benefit.¹³
- (iii) We note that should security in fact be a material issue, the fact that the entire e-conveyancing system is underpinned by PEXA's "critical infrastructure" gives rise to a single point of failure, which is at odds with

¹⁰ Please see https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/Economicdynamism/Report/Chapter_10_-_Interoperability at paragraphs 10.30-10.31. We note that the reference to interoperability as "*not being a widely used mode*" in Australia or internationally is disingenuous as an excuse for failure to introduce interoperability: PEXA was the world's first digital property exchange platform. Accordingly, as interoperability was not mandated in Australia at the time of PEXA's creation, interoperability has not been a model at all for e-conveyancing. Outside of e-conveyancing, a number of other data exchange systems are "interoperable" such as payment or banking systems, which arguably require reliability, resilience and security to the same degree, or more so, than e-conveyancing.

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

¹² Please see <https://www.arnecc.gov.au/wp-content/uploads/2023/09/ARNECC-Statement-Sept-23.pdf> .

¹³ Please see https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/Economicdynamism/Report/Chapter_10_-_Interoperability#_ftn31 at paragraph 10.34. PEXA submitted to the Standing Committee on Economics that "*[t]he reality is that interoperability is far more complex to design, execute and build than was represented or assumed at the start. That's why it's taking time. That is also why even to get to this relatively early stage of two pilot transactions in September 2023 our next interoperability program has already had to consider over 120 change requests*".

regulatory requirements on "authorised deposit-taking institutions" (ADIs) to mitigate risks that may arise from the outsourcing of a "material business activity". The concentration of risk by virtue of there being no alternative to PEXA Exchange is to the detriment of the e-conveyancing ecosystem and its participants – conveyancers and consumers are impacted by a lack of choice of service and the failure of competition to drive least cost conveyancing, and financial institutions are similarly impacted by the lack of choice and risk of system redundancy.

(b) In respect of Intellectual Property (IP) protections, PEXA's current position is that it will not engage in discussions intended to progress interoperability, citing concerns that participation in such discussions may derogate its IP in respect of "bespoke" integration with banks to streamline processes and create workspace efficiencies;¹⁴

(i) PEXA's position hinders the progress towards interoperability, as banks are reluctant to provide key information due to concerns about infringing PEXA's IP. [REDACTED]

[REDACTED]

[REDACTED]¹⁵

(ii) As indicated to the ACCC previously, InfoTrack does not agree with PEXA's position that working towards interoperability would erode PEXA's IP, given the focus of discussions is on identifying operating requirements necessary for interoperability to occur between ELNOs,

¹⁴ Please see Annexure 1, being correspondence from PEXA to ARNECC dated 24 July 2023.

¹⁵ [REDACTED]

rather than any technical know-how or expertise required to build the mechanisms that facilitate interoperability;

- (iii) moreover, the Australian Banking Association (**ABA**) has indicated that financial institutions want ELNOs to provide the same or substantively similar functionality under both an interoperable transaction and a non-interoperable transaction.¹⁶ The ABA has "*significant concerns that the interoperability program will be impacted by the failure to resolve ongoing issues relating to the scope, functionality, innovation and payment and settlement flows of the program, including in relation to the enforcement powers of ARNECC to uphold requirements.*"¹⁷ The resolution of such scope issues raised by the ABA requires the identification of workflow requirements through discussions with PEXA (and to the extent required, input from financial institutions) so that the interoperability model can be designed to reflect the data exchange required to support these workflows. Critically, while ARNECC acknowledges the importance of the financial settlement component of a conveyancing transaction, it has reiterated its position (in the context of including "Associated Financial Transactions" in the definition of interoperability) that "*financial settlement is not part of the Registrars' remit, and has never been. Regulation of financial settlement is the remit of the Commonwealth Government, its Departments and agencies.*"¹⁸

2.14 PEXA has taken a similarly resistant stance in respect of the transitioning of the e-conveyancing data standards and artefacts to NECDS Ltd, citing that this involves the assignment of PEXA's IP. The process of operationalising NECDS Ltd has been delayed, due to the time taken to finalise the legal documents required to transfer the IP that PEXA asserts it owns, and establish the operating model / procedures of the company. InfoTrack agrees with the concerns highlighted by the NSW Productivity Commission in its E-Conveyancing Market Study that, as long as PEXA maintains control of the e-conveyancing data standards and artefacts, there will not be equal or fair access to the necessary inputs for competition, including for the following reasons:

- (a) other ELNOs have no ability to input into the management of the NECDS and are required to pay PEXA for access to the NECDS (raising rivals' costs);

¹⁶ Please see <https://www.ausbanking.org.au/wp-content/uploads/2024/02/20240209-ABA-submission-to-the-ECNL.pdf> (**ABA Submission to the ECNL**) at page 3.

¹⁷ Please see ABA Submission to the ECNL at page 3.

¹⁸ Please see <https://www.arnecc.gov.au/wp-content/uploads/2024/01/Model-Participation-Rules-Version-7-Consultation-Draft-7-Feedback-Table.pdf> at rows 5 and 6.

- (b) PEXA can deny ELNOs access to the RDS, meaning that other ELNOs cannot develop and offer residual documents to subscribers, preventing them from becoming a full-service ELNO (service denial); and
- (c) PEXA can maintain control over key matters of the NECDS including change management and schema upgrades for land registries and revenue offices¹⁹ (consolidation of power).

C. The current regulatory framework does not adequately address impediments to competitive e-conveyancing markets

- 2.15 Even if progress towards interoperability were to resume, which seems unlikely without intervention, there remain a number of impediments to effective competition that are not addressed by the current regulatory framework and do not appear likely to be able to be resolved by ARNECC. Resolution of such issues on an urgent basis is critical, as PEXA's dominance is squeezing out any actual or potential competition in the e-conveyancing and adjacent markets. Indeed, InfoTrack is of the view that PEXA's reluctance to engage on these matters is intended to buy sufficient time that it will no longer be tenable for the current potential competitors to PEXA to compete, given losses endured due to delay.
- 2.16 InfoTrack considers the below aspects of the ECNL / MOR as set out in **Table 2** below to be particularly problematic in blunting effective competition.

Table 2 – Overview of critical deficiencies in current regulatory framework vis-à-vis competition

ECNL / MOR issue	InfoTrack concern
MOR Schedule 8 (Interoperability Agreement)	While "Interoperability Agreement Matters" are set out in Schedule 8 of the MOR, this schedule is high level in nature, reflecting ARNECC's view that " <i>Interoperating ELNOs are in the best position to know the practical realities of the relationship between them</i> ", with the anticipation that " <i>Interoperability Agreements will contain largely operational matters, or matters that give effect to existing obligations in the MORs or other law.</i> " ²⁰

¹⁹ Please see E-Conveyancing Market Study at page 40.

²⁰ Please see <https://www.amecc.gov.au/wp-content/uploads/2021/11/Model-Operating-Requirements-Consultation-Draft-7-Feedback-Table.pdf> (MOR Consultation Draft 7 Feedback Table, November 2021) at row 8.

ECNL / MOR issue	InfoTrack concern
	<p>However, it is precisely the operational matters and practical realities in respect of which PEXA is the most intimately familiar that are inaccessible in circumstances where PEXA does not have a commercial incentive to support or facilitate interoperability. The current MOR appears to contemplate ARNECC having a very light-handed role in respect of ensuring interoperability, with a significant portion of the interoperability regime sitting behind a contractual "Interoperability Agreement" between ELNOs that is not subject to market transparency or regulatory scrutiny. InfoTrack shares the ACCC's concern that such areas of responsibility ought to be carried out by the regulator, rather than delegated to ELNOs.²¹</p>
Lack of enforcement powers	<p>The existing enforcement measures under the ECNL are too limited, particularly in jurisdictions where e-conveyancing is mandatory.</p> <p>Currently, the principal enforcement powers in the ECNL are broadly limited to suspension or termination of the ELNO.²² While the requirement to comply with a Registrar's reasonable directions provides flexibility, it only applies in respect of the MOR and the MPR as opposed to the whole e-conveyancing legal framework, with its effectiveness limited by the lack of supplementary enforcement powers. As noted by ARNECC, suspension or revocation of an ELNO's approval to operate is likely to be not viable given the limited number of ELNOs and the impact on business viability for subscribers.²³ Where e-conveyancing is mandated and there is only one fully</p>

²¹ Please see <https://www.accc.gov.au/system/files/ACCC%20submission%20to%20IPART%20Interoperability%20pricing%20for%20Electronic%20Lodgement%20Network%20Operators%20Issues%20Paper%202.pdf> (ACCC Submission to MOR Version 7, 11 August 2021) at page 4. The ACCC's submission to MOR Version 7, 11 August 2021 was provided as part of the ACCC's submission to IPART in response to IPART's Issues Paper 2, *Interoperability Pricing for Electronic Lodgment Network Operators* at page 4.

²² These are: (i) a Registrar may suspend or revoke the approval of an ELNO if there is a Suspension Event or Termination Event as set out in the MOR; (ii) a Registrar may, or may direct an ELNO to, restrict, suspend or terminate a Subscriber's use of or access to an ELN if there is a Suspension Event or Termination Event as set out in the MPR; (iii) an ELNO must comply with any reasonable direction given by the Registrar for the purpose of the MOR; and (iv) subscribers must also comply with reasonable directions of the Registrar under the MPR.

²³ Please see <https://www.amecc.gov.au/wp-content/uploads/2023/12/National-Enforcement-Framework.pdf> at page 2.

ECNL / MOR issue	InfoTrack concern
	<p>functioning ELNO it is practically impossible to suspend that ELNO's licence to operate.</p> <p>InfoTrack supports ARNECC's proposed civil and criminal penalty regime as contemplated in its <i>Electronic Conveyancing National Law National Enforcement Framework – Detailed Proposal Consultation Draft</i> (November 2023) but notes that the crystallisation of such sanctions will likely take some time.²⁴</p>
<p>MORs 5.3(g), 7.4.2, 19.3, Schedule 8 (Limited data use protection measures)</p>	<p>The current data protection measures are inadequate, particularly given the absence of any legislative protections in the ECNL and sanctions for breach.</p> <p>The data protection measures in MOR 7.4.2 (introduced in version 7 of the MOR) are intended to "<i>regulate but not restrict</i>" an ELNO's use of data that it receives from the other ELNO involved in the "Interoperable Electronic Workspace" for "<i>the purpose of performing any function in the Interoperable Electronic Workspace</i>" or in accordance with the MOR or as required by law.²⁵</p> <p>MOR 5.3(g) also requires ELNOs to comply with all applicable Privacy Laws and laws relating to document and information collection, storage and retention.</p> <p>ARNECC has indicated it does not consider it necessary that any further obligations be included in the ECNL.²⁶ Beyond the inclusion in Schedule 8 of the MOR of a requirement on ELNOs to acknowledge that "<i>it will comply with the Privacy Laws in relation to any Personal Information sent or received in relation to Interoperable Electronic Workspaces and cooperate in the investigation and resolution of any privacy complaints relating to any Interoperable Lodgment Cases</i>" and MOR 19.3 (which requires Registrar approval which approval may not be unreasonably withheld for the use of "Land Information") there</p>

²⁴ This consultation follows a previous consultation on enforcement measures at a national level in 2021, and the implementation of interim enforcement measures in New South Wales through the *Electronic Conveyancing Enforcement Act 2022* (NSW).

²⁵ Information supplied by the ELNO is not subject to any limitation.

²⁶ Please see MOR Consultation Draft 7 Feedback Table, November 2021 at row 136.

ECNL / MOR issue	InfoTrack concern
	<p>are no legislative or regulatory requirements or any oversight of use of data.</p> <p>Noting that Schedule 8 relates to matters to be included in the Interoperability Agreement, enforcement of privacy obligations and data use will likely be limited to bilateral action.²⁷</p> <p>In circumstances where PEXA is the incumbent and has the ability to dictate the commercial terms on which counterparties must transact with it, PEXA is able to extract consent from those counterparties in respect of their data, in return for using PEXA Exchange. The lack of transparency as to how PEXA uses such data likely shields PEXA from any privacy complaints, particularly when there is no alternative to PEXA Exchange in the absence of interoperability.</p> <p>InfoTrack's concerns about the lack of sanctions and PEXA's ability to aggregate and potentially misuse data to entrench its market position in DUS and adjacent markets are considered further in section 3 below.</p>
<p>MOR 5.6 (Separation regime)</p>	<p>There is no effective separation of PEXA from DUS.</p> <p>As the ACCC would be aware, the legal framework for electronic conveyancing does not restrict an ELNO from providing services additional to those provided by the ELN, as acknowledged in section 17(4) of the ECNL. However, MOR 5.6 was introduced in Version 5 in response to concerns about an ELNO's ability to offer services like conveyancing or legal services and was designed to prevent an unfair competitive advantage by requiring an ELNO to operate in a manner which separates its ELN services from any DUS. MOR 5.6 also requires the two relevant entities to act independently, at arm's</p>

²⁷ Please see <https://www.amecc.gov.au/wp-content/uploads/2024/01/Model-Operating-Requirements-Version-7-Consultation-Draft-7-2-Feedback-Table.pdf> at row 31. PEXA's response to this stakeholder concern is that it anticipates that Interoperability Agreements will contain largely operational matters or matters that give effect to existing obligations in the MORs or other law.

ECNL / MOR issue	InfoTrack concern
	<p>length. However, there is significant industry concern as to the lack of rigour in the current regulatory framework.²⁸</p> <p>As indicated to ARNECC in the context of feedback on version 7 of the MOR, there is also industry concern that the impact of price controls in one part of the market may be easily offset by decisions in a related market, with the concern being the unfettered movement of ELNOs into related markets in the absence of clear expectations and obligations around the services ELNOs may offer and how they interact with related entities at other parts of the supply chain surrounding and supporting e-conveyancing.²⁹</p> <p>In circumstances where the definition of DUS in the MOR is insufficiently clear and the separation requirements are not robust,³⁰ and where there are no civil or criminal sanctions for non-compliance with the MOR or the ECLN, it appears to be PEXA's commercial strategy to expand beyond its ELN to drive unregulated revenues. In fact, it has already done so in respect of a number of DUSs: as discussed further in section 3 below. Even if ring-fencing measures have been technically implemented, PEXA has integrated with some of those entities and publicly represents such DUSs as part of an integrated offering with its ELN, effectively avoiding the operation of MOR 5.6.</p>
MOR (Ineffective control and	10.3 and As discussed above at 2.7, 2.8, and 2.14, the regulatory function of controlling and maintaining data standards was

²⁸ Please see <https://www.amecc.gov.au/wp-content/uploads/2023/09/Model-Operating-Requirements-Version-7-Consultation-Draft-7.1-Feedback-Table.pdf> at rows 16-18. InfoTrack understands that in response, ARNECC has commissioned an external review of the separation regime at MOR 5.6, which commenced in May 2024. Please see <https://www.parliament.nsw.gov.au/tp/files/188837/Interoperability%20between%20Electronic%20Lodgment%20Network%20Operators%20-%20Progress%20Report%20to%20Parliament%20-%20June%202024.pdf> at paragraph 2.3.5.

²⁹ Please see MOR Consultation Draft 7 Feedback Table, November 2021 at row 56. ARNECC noted but did not adopt this feedback as it did not directly relate to interoperability.

³⁰ Please see MOR Consultation Draft 7 Feedback Table, November 2021 at row 4. InfoTrack's concerns have previously been raised in feedback to ARNECC in the context of consultation on Version 7 of the MOR. In response to feedback provided in relation to MOR Consultation Draft v6.1, ARNECC identified a lack of sufficient information to further refine the requirements for DUS. ARNECC proposed alternate wording with a view to future implementation noting that version 7 of the MOR was intended to implement interoperability. As it remains, this definition remains unchanged in the current version of the MOR.

ECNL / MOR issue	InfoTrack concern
enforcement of data standards)	<p>within PEXA's remit, with no separation or oversight over PEXA's conduct in this central role.</p> <p>While responsibility and control of the NECDS will be transferred to NECD Limited in late 2024, it is unclear whether NECD Limited will have adequate resources and expertise to carry out this regulatory function, given the reliance of regulators in the e-conveyancing industry on market participants, in circumstances where there is substantial information asymmetry.</p> <p>Moreover, given the pausing of the interoperability reforms in light of concerns predominantly raised by PEXA, it is unclear whether the workstream regarding the NECIDS (which governs the exchange of data between ELNOs to facilitate interoperable transactions) is continuing. There is uncertainty as to who will be responsible for enforcing compliance with these standards as required under MOR 10.3.2 (which relates to the requirement for each ELNO to comply with the NECIDS).</p> <p>While stakeholders have previously requested clarity that ARNECC would be responsible for enforcing a breach of the NECIDS relating to "Associated Financial Transactions", it was ARNECC's position that registrars have the discretion to take action in respect of an ELNO's breaches of the MOR under MOR 20.³¹ However, the note under MOR 10.3.2 explicitly states that "[e]ven though the Operating Requirements require use of the NECIDS, which include data standards relating to Associated Financial Transactions, the Registrar is not responsible for regulation of Associated Financial Transactions."³²</p>
Regulatory gap in financial settlements	ELNOs and banks are members of a self-regulatory e-Conveyancing Payments Industry Code, which was developed

³¹ Please see MOR Consultation Draft 7 Feedback Table, November 2021 at row 94.

³² Please see <https://www.amecc.gov.au/wp-content/uploads/2024/03/Operating-Requirements-Version-7-FINAL.pdf> at page 30.

ECNL / MOR issue	InfoTrack concern
	<p>by the Australian Payments Network (AusPayNet).³³ However, while the AusPayNet Board approved the Code on 31 August 2023, it is not yet operational and the timeline for implementation has not been communicated. The Code is voluntary, meaning that ELNOs are not required to comply. There is of course no requirement to do so in the MOR.</p> <p>Given existing regulatory gaps about financial settlement, the operationalisation and mandating of the Code without delay is critical.</p>

- 2.17 Given the above circumstances that favour the incumbent, InfoTrack is concerned that PEXA will continue to push for the preservation of the status quo via its support for "customer led reforms".³⁴ As noted above, the current regulatory framework does not grant ARNECC credible enforcement powers, with the only sanction currently available being the suspension of the ELN. Moreover, as the ACCC has noted, the current MOR has limited practicable enforceability. The absence of clear timeframes and specific triggers in the ECNL also undermine the certainty around the interoperability reform process.³⁵
- 2.18 Where PEXA has captured the market through its first mover advantage and network effects, "customer led reforms" are unlikely to materialise or resolve any of the relevant issues, including the concerns PEXA has raised in respect of interoperability. As such, InfoTrack believes that regulatory intervention by the ACCC is critical, in circumstances where the existing regulatory framework is insufficient and ARNECC lacks the requisite enforcement powers and experience to regulate conduct that undermines competition.

³³ AusPayNet led the development of the Code based on a recommendation of the Council of Financial Regulators in 2021. The Code addresses a range of matters including messaging standards, technical requirements, settlement models, and dispute resolution.

³⁴ Please see <https://www.pexa-group.com/static-media/2024/08/Investor-Presentation-vF-sm-1724195453.pdf> (PEXA FY24 Investor Presentations) at slide 9.

³⁵ Please see ACCC Submission to MOR Version 7, 11 August 2021 at page 4.

3. **PEXA seeks to expand further along e-conveyancing transaction value chain and into adjacent markets in breach of ring-fencing obligations**

A. Anti-competitive integration of DUS

3.1 As indicated in **ANNEXURE 2** which shows the breadth of PEXA's operations in related and adjacent markets, PEXA is well-positioned to and does take advantage of its incumbency to offer a range of other integrated services via related entities and partnerships (**PEXA Partners**).

3.2 Despite the regime included in MOR 5.6 that is intended to address the anticompetitive effects of a monopolistic ELN vertically integrating up and down the transaction chain, PEXA has integrated a number of DUS into its ELN (some of which incorporate functionalities facilitated by PEXA Partners), including the following as noted in our Letter:

- (a) PEXA Key;
- (b) PEXA Projects;
- (c) PEXA Planner; and
- (d) PEXA Tracker.

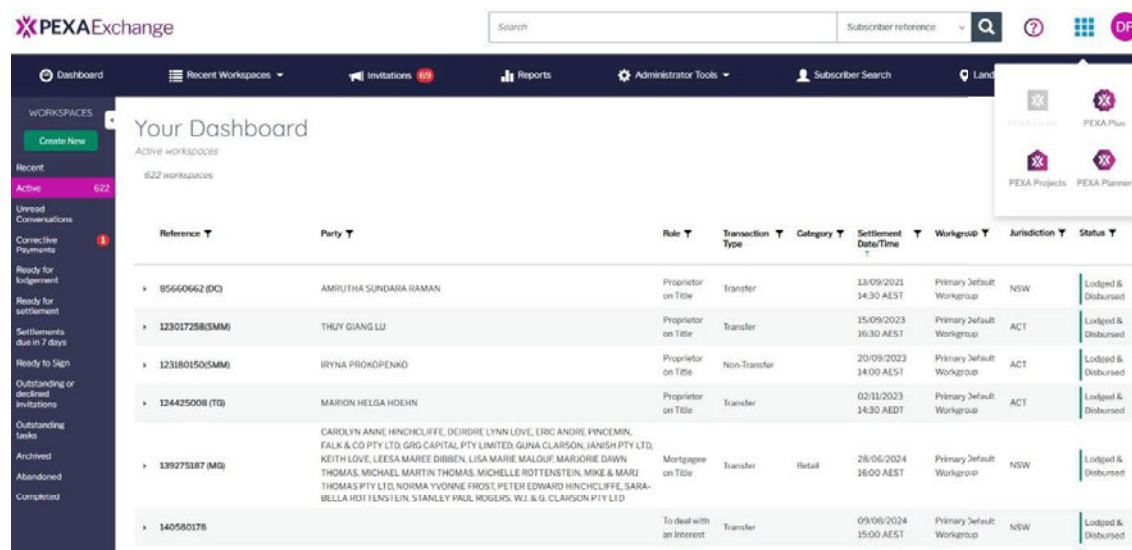
3.3 In the absence of any published separation plans as required under MOR 5.6.3(c), there is no transparency about how PEXA complies with the separation regime under MOR 5.6, including in respect of the following which are required to be included in the separation plan:

- (a) how PEXA manages the ELN independently from the related DUS;
- (b) PEXA's management of confidential or commercially sensitive information of a "Person Wishing to Integrate" or a "Person who has Integrated" with the ELN to ensure that information is not available to, or able to be used by or for the benefit of the related DUS;
- (c) the sharing of personnel, systems and services with the related DUS; and
- (d) the implementation of suitable governance frameworks.

3.4 PEXA's integration of these DUS on PEXA Exchange conveys the impression to subscribers that they are a bundled offering, such that even if there is technical ring-fencing from the ELN business, the effect is that other actual or potential competitors are foreclosed from offering competing e-conveyancing services. By way of example, InfoTrack has two competing products being Secure Exchange and PlanIt that offer alternative solutions to PEXA Key and PEXA Projects respectively, which are foreclosed by PEXA's circumvention of the existing regulations. The figure below is a

screenshot of the PEXA ELNO workspace, showing how PEXA integrates its DUS into its ELN.

Figure 1 – Screenshot of a PEXA Exchange workspace, 29 October 2024



- 3.5 This form of promotion of integrated DUS is, in InfoTrack's view, a clear breach of MOR 5.6.3(a) which states that and ELNO must not give, or operate in a manner which gives, an **unfair commercial advantage** to a related DUS (emphasis added).
- 3.6 The current state of play illustrates the deficiencies in the existing separation regime and the need for reform, with the main concerns highlighted in Synergies' recent *Separation Issues Paper* including:
- (a) lack of clarity around what constitutes a DUS;
 - (b) lack of clarity of what form of ring-fencing is required for ELNOs to be compliant;
 - (c) the stringency of the requirements, in respect of preventing PEXA's misuse of market power;
 - (d) comprehensiveness in relation to the entities bound by the separation regime, as PEXA's DUS are not prevented under the current regulatory framework from encouraging or incentivising their customers to use the PEXA ELN; and
 - (e) the adequacy of the compliance framework, particularly in respect of ARNECC's role and capacity to regulate and enforce compliance noting the

clear absence of any separation plan on PEXA's website as evidence of a breach of the separation regime.³⁶

B. Leveraging of monopoly ELN to establish dominance in adjacent markets

- 3.7 Contrary to the spirit of the separation regime in the MOR, PEXA appears to have a commercial strategy to grow non-regulated revenues in adjacent markets via its Digital Solutions business, in addition to enhancing and maintaining the leading position of its ELN, PEXA Exchange.³⁷ PEXA's non-ELN revenue represents 15% of its total business revenues, highlighting the growth of new revenue streams within the PEXA Group, which were non-existent at the time of the IPO in 2021.³⁸ PEXA's Digital Solutions business (which was previously Digital Growth) brought Value Australia to market to "complement" the other businesses, and PEXA now has a "*suite of bundled and unbundled solutions to support [its] customers*".³⁹
- 3.8 In Australia, approximately 160 financial institutions, more than 10,000 conveyancing and legal practitioners, more than 70 developers, and 345 local councils use PEXA services, both in respect of its ELN and for non-Exchange services that are bundled with the Exchange platform. This is reflected in **Figure 2** below taken from PEXA's FY24 Investor Presentation, which shows the depth and reach of PEXA's Exchange and Digital Solutions businesses.

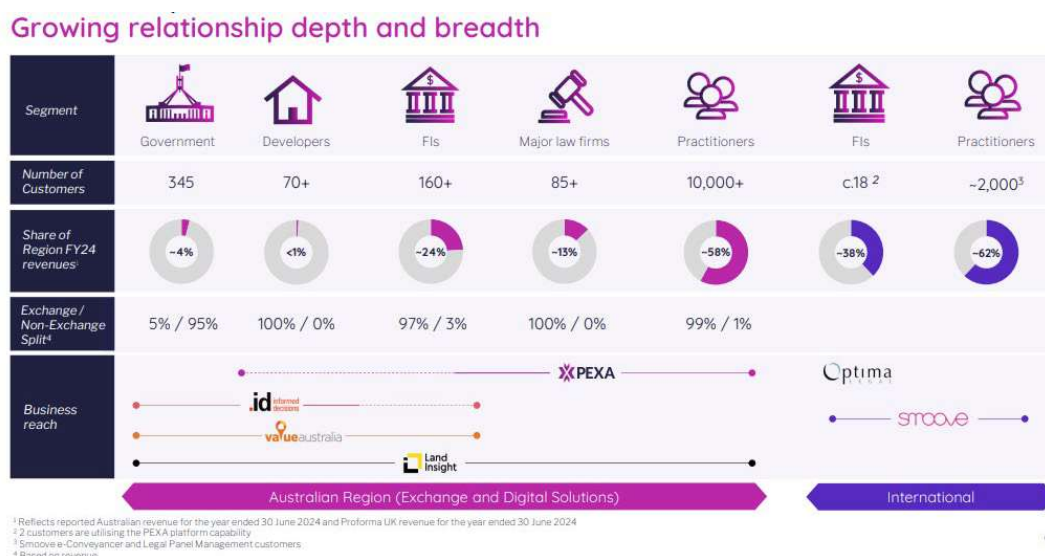
³⁶ Please see **Annexure 3**, Synergies, *Separation Issues Paper*, September 2024.

³⁷ Please see PEXA FY24 Investor Presentations at slide 7.

³⁸ Please see https://www.pexa-group.com/static-media/2024/08/FY24-PEXA-Results_Investor-commentary-website-sm-1724380204.pdf (**PEXA FY24 Investor Commentary**) at page 1 and PEXA FY24 Investor Presentations at slide 4.

³⁹ Please see PEXA FY24 Investor Commentary at page 2 and PEXA FY24 Investor Presentations at slide 5.

Figure 2 – PEXA's business reach



- 3.9 In addition to the business entities included in the above Figure, there are a number of additional PEXA Partners as outlined in **ANNEXURE 2** that similarly have a broad business reach, servicing these customers. Notably, while the Exchange / Non-Exchange split (based on revenues) currently appears to vary between the different customer types, as PEXA's Digital Solutions revenue grows with the strengthening of its ELN, InfoTrack expects there to be a more even split as PEXA will have commercial incentives to drive profits in unregulated areas. The current data merely reflects the current position – that PEXA's unregulated investments are still immature and have room for growth and expansion – supported by the ELNO framework. InfoTrack expects this to change significantly in the next 2 – 3 years.
- 3.10 In FY24, PEXA brought together the PEXA Exchange and the Digital Solutions business under a "single Australian leadership structure", as the Digital Solutions business remains "strategically important and is growing...providing the foundation to build non-regulated revenues as the economy improves when the rate outlook restores investor confidence."⁴⁰ This is similarly reflected in the appointment of Mr Scott Marc Butterworth, who is the Chief Financial and Growth Officer of PEXA as appointed in May 2023, as a director of Landchecker Holdings Pty Ltd.
- 3.11 PEXA's Digital Solutions business is growing rapidly – for example, in FY24 it achieved breakeven operating EBITDA, an 87% increase in new .id clients, and is in the process

⁴⁰ Please see PEXA FY24 Investor Commentary at page 3 and PEXA FY24 Investor Presentations at slide 8.

of integrating Land Insight.⁴¹ In relation to the performance of Digital Solutions in FY24, PEXA indicated:

"We saw improved revenues across the period, underpinned by a growth in subscription revenue, alongside growing levels of project activity.

To put these dynamics in a business context, ID benefitted from record revenues during the period, and Value Australia made its inaugural sales, including to major banks. Land Insight also settled well into the portfolio, making its first ever Financial Institution sale, and we continued to support demand for transaction solutions such as workflow and FX products."⁴²

- 3.12 Given the synchronisation of leadership and bundled representations of PEXA Partners, it is inevitable that the incentives of PEXA Exchange and Digital Solutions will align in such a way to maximise profit and squeeze out actual or potential threats to its position. With the security of its dominant position in the e-conveyancing market, the growth of PEXA's Digital Solutions business is bolstered by an unfair advantage over its competitors, and this will likely continue in the absence of regulatory intervention.
- 3.13 The existing regulatory framework has failed to prevent PEXA from circumventing the spirit and intent of the separation regime under the MOR. This is in part because regulatory decisions in one part of the market (such as price controls) can be offset by PEXA's decisions in related markets and relationships with its related entities / PEXA Partners, giving it a range of levers to frustrate competition and the entry of future competitors.

C. PEXA is pushing for even greater access to data which will further undermine the conditions for competition

- 3.14 As indicated in our Letter, InfoTrack is concerned that PEXA also has an unfair advantage over a number of competitors through its ability to extract data from other market participants in return for their use of PEXA Exchange, which it may then leverage for its own Digital Solutions business.⁴³ While PEXA may technically comply

⁴¹ Please see PEXA FY24 Investor Presentations at slide 8.

⁴² Please see PEXA FY24 Investor Commentary at page 7.

⁴³

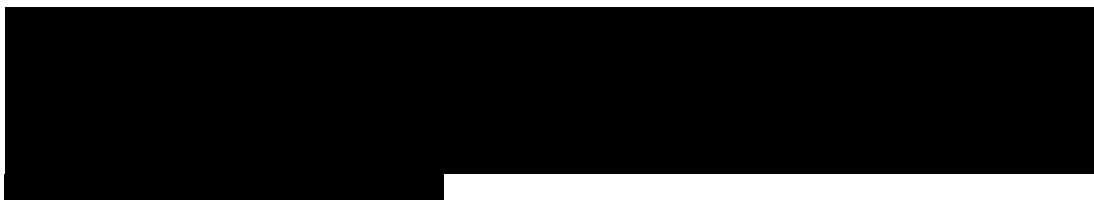


with the relevant privacy laws (in respect of which InfoTrack has no insight), users of PEXA's network have no choice but to consent to any and all secondary purpose(s) of data use.⁴⁴

- 3.15 Despite PEXA's resistance to interoperability between ELNOs, it has indicated a strong interest in integrating with InfoTrack, albeit not on an "equivalent basis" as required by MOR 5.5.⁴⁵ PEXA's defensive position in respect of interoperability is also at odds with its submission to Treasury in respect of the review of the Consumer Data Right (CDR), PEXA reiterated its support for "*an approach that maximises the opportunities of data sharing and portability.*"⁴⁶ PEXA submitted that:

*"Key to unlocking many of these benefits is the more open transmission of information between various participants in the property ecosystem...Should the property sector be designated under CDR, PEXA may seek to compete in the market as an accredited data recipient to perform analysis and product comparisons on behalf of consumers. It is conceivable that in some circumstances PEXA could be viewed as the data holder."*⁴⁷

- 3.16 PEXA's focus on data broking and aggregation is reflected in its commercial strategy. In FY24, PEXA's Digital Solutions business has already made significant inroads by providing these services to existing PEXA Exchange customers, allowing PEXA to "*form deeper relationships with them*". PEXA's Insights business (which appears to include .id, Land Insight, and Value Australia) collectively have data that covers over 11 million properties and their local catchments across Australia. PEXA is also providing these services into new segments, "*allowing PEXA to broaden its presence across the property sector.*"⁴⁸



⁴⁴ APP 6 of the *Privacy Act* provides that "*an entity can only use or disclose an individual's personal information for the purpose it was collected for, unless the individual has consented to a secondary purpose or an exception applies.*"



⁴⁵ Please see **Annexure 5**, being PEXA's submission in response to the statutory review of the CDR, 2022.

⁴⁶ Please see **Annexure 5** at page 5.

⁴⁷ Please see <https://www.pexa-group.com/staticly-media/2024/08/PEXA-FY24-Annual-Report-Final-sm-1724193447.pdf> at page 26.

- 3.17 In the absence of effective safeguards separating PEXA's ELN from its other businesses, any further extension of PEXA's role into data broking or aggregation, and any greater ability to have exclusive pre-settlement access to valuable and comprehensive transaction, property and consumer data will likely only reinforce the existing network effects to the detriment of competition.

D. PEXA's proposed integration of AML / CTF functionalities into its ELN will effectively entrench its monopoly position

Overview of proposed reforms to the Australian AML / CTF regime

- 3.18 On 11 September 2024, the Government introduced into Parliament the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (AML Bill)*. The AML Bill addresses three key objectives:

- (a) capturing higher risk "gatekeeper" professions;
- (b) simplifying the anti-money laundering and counter-terrorism financing regime to improve its effectiveness; and
- (c) modernising the regime to reflect changing business structures, technologies and illicit financing methodologies.⁴⁹

- 3.19 Under the latest proposed reforms, in order to comply with AML / CTF obligations, reporting entities (**Tranche 2 entities**) must document their money-laundering (**ML**) and terrorism financing (**TF**) risks and design their frameworks, processes, systems and controls (**AML program**) to ensure that these risks are managed and mitigated.⁵⁰ Relevantly, the AML / CTF regime will be extended to: (i) real estate professionals when brokering, selling or transferring real estate in the course of carrying on a business; and (ii) professional service providers that assist clients with particular types of transactions (including lawyers, conveyancers, accountants, consultants, insolvency and restructuring practitioners, financial planners, wealth advisors, business brokers, company secretarial service providers, and trust and company service providers).

⁴⁹ Please see <https://www.austrac.gov.au/amlctf-amendment-bill-introduced-parliament#:~:text=This%20Bill%20has%20three%20key,virtual%20assets%20and%20payments%20technology> .

⁵⁰ Please see <https://consultations.ag.gov.au/crime/aml-ctf/> , https://oia.pmc.gov.au/sites/default/files/posts/2020/02/ris_-_amlctf_amendment_bill_2019_-_final.pdf and <https://ministers.ag.gov.au/media-centre/introduction-anti-money-laundering-and-counter-terrorism-financing-amendment-bill-2024-11-09-2024> . An AML / CTF program is divided into two parts: (i) Part A to identify, mitigate and manage the money ML / TF risks that a reporting entity may reasonably face in providing designated services; and (ii) Part B on applicable customer identification procedures (**ACIP**). While there is no formal requirement for an AML / CTF program to have two parts, whatever AML / CTF policies exist should be designed to achieve two outcomes: (i) to achieve the Part A outcome as set out above; and (ii) to ensure the reporting entity complies with the AML / CTF Act, AML / CTF Rules and regulations.

- 3.20 Where the reporting entity provides designated services at or through a place of business in Australia, it must have regard to the following key factors when carrying out that assessment:
- (a) the nature of the services being provided and the kinds of customers of a business;
 - (b) how the services are delivered;
 - (c) the countries in which the reporting entity does business;
 - (d) any guidance issued by the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) (**Guidance**) and any other matters specified in the AML / CTF Rules; and
 - (e) the ML / TF risk assessment must be reviewed where there is a significant change to any of the factors, or at least every three years.
- 3.21 In addition, the reforms propose to shift certain customer due diligence (**CDD**) requirements from the Rules to the Act, in relation to the following:
- (a) ongoing CDD – including verifying customer identity and beneficial owners, assessing whether they are a politically exposed person (**PEP**) or sanctioned, reviewing and updating the "know your customer" (**KYC**) information;
 - (b) enhanced CDD – triggers set out in the AML / CTF Rules will be moved to the Act and will require a reporting entity to apply enhanced CDD including where the customer's ML / TF risk is high or a suspicious matter report (**SMR**) has been lodged about the customer;
 - (c) verification data – customer identification information must be verified using reliable and independent documents or data.⁵¹

Overview of competitive landscape in respect of AML / CTF services

- 3.22 There are a range of competitors that currently provide services that enable entities to comply with existing obligations. These services can broadly be considered in 6 categories, as set out in **Table 3** below, together with examples of vendors that currently offer these services.

⁵¹ Reporting entities will be required to use reliable and independent data that is appropriate to the ML / TF risk of the customer.

Table 3 – Overview of AML / CTF service providers

AML / CTF service	Examples of service providers
<p>Verification of identity (VOI)</p>	<ul style="list-style-type: none"> • InfoTrack ID provides a digital and secure VOI solution, which is performed remotely by the verifier and 'person being identified'.⁵² Where customers subscribe for Premium VOI services in addition to the InfoTrack ID services, for each VOI check submitted by a "Person Being Identified" and prior to uploading the final VOI Report to the InfoTrack ID platform, InfoTrack will provide additional services such as manual checks and resubmissions of documents. • Australia Post⁵³ offers an in-person VOI service for property transfers. Customers bring their identity documents, and a Land Title Identity Verification Form to a participating Post Office. An Australia Post employee verifies the customers documents, witnesses their signature, scans the documents and takes their photo. Once completed, the verified details are sent to the Property Practitioner. • ConnectID⁵⁴ offers a digital VOI service that enables businesses to securely verify their customers' identities online. By acting as an identity exchange, ConnectID allows customers to authenticate themselves using trusted institutions, such as their banks. • IDVerse, formerly known as OCR Labs,⁵⁵ offers a comprehensive digital VOI service utilising advanced AI technology.⁵⁶ • IDSecure by Dye & Durham offers a fully integrated VOI service. Its VirtualVOI feature enables conveyancers to verify the identities of property buyers and sellers

⁵² Please see <https://www.infotrack.com.au/infotrackid/> .

⁵³ Please see <https://auspost.com.au/id-and-document-services/identity-checks-for-property-transfers/identity-checks-for-buyers-and-sellers> .

⁵⁴ Please see <https://connectid.com.au/> .

⁵⁵ Please see <https://idverse.com/products/identity-verification/> .

⁵⁶ Please see <https://idkit.docs.idverse.com/docs/id-verification-flows> .

AML / CTF service	Examples of service providers
	<p>remotely. This is achieved using Facial Biometric technology, which scans and verifies identities against government sources through Document Verification Service (DVS) checks and Optical Character Recognition (OCR) technology. IDSecure also provides integration with Dye & Durham's online tools, including Matter Centre, Open Practice, and Unity® Search.⁵⁷</p> <ul style="list-style-type: none"> PharmacyID is an identity service provider that enhances the VOI process by integrating a face-to-face component through its nationwide network of pharmacies. Independent personnel verify original documents and confirm that the individual presenting them is the rightful owner. PharmacyID uses advanced biometrics and DVS in their online applications.⁵⁸
<p>PEPs & sanctions checks</p>	<ul style="list-style-type: none"> InfoTrack provides a Tailored International Search solution for conducting comprehensive PEP and sanctions checks. This global search platform allows businesses to perform due diligence on companies and individuals worldwide. The service features key indicators, including completion status of due diligence checks, alerts for potential negative records, and notifications of changes to company names.⁵⁹ IDMatrix by Equifax offers a comprehensive PEP and Sanctions Screening service designed to mitigate regulatory and reputational risks. This solution provides access to an extensive collection of PEP and sanctions lists from major sanctioning bodies, law enforcement agencies, and financial regulators worldwide.⁶⁰ FinCrime Risk Intelligence by Comply Advantage offers an AI-assisted PEP and sanctions screening service through a cloud-based platform that integrates with

⁵⁷ Please see <https://dyedurham.com.au/solution/idsecure/> .

⁵⁸ Please see <https://pharmacyid.com.au/> .

⁵⁹ Please see <https://www.infotrack.com.au/solutions/due-diligence/tailoredinternationalsearch/> .

⁶⁰ Please see <https://www.equifax.com.au/idmatrix/features/fraud-assessment/pep-and-sanction-screening> .

AML / CTF service	Examples of service providers
	<p>existing systems and provides real-time updates to global sanctions data.⁶¹</p> <ul style="list-style-type: none"> • Persona provides a customisable PEP and sanctions screening service, allowing organisations to tailor their KYC/AML processes with off-the-shelf templates or bespoke solutions. The platform automatically runs watchlist screenings and adverse media reports in one place, with customisable recurring screening cadences.⁶² • Data Cloud by Dun & Bradstreet is a PEP and sanctions screening solution that allows organisations to remotely screen customers and third parties against sanctions lists. The platform highlights corporate linkages, beneficial ownership, and network connections to identify potential indirect exposure.⁶³ • Dow Jones offers a remote sanctions compliance solution through its Risk & Compliance platform. This service enables organisations to screen customers and third parties against an array of independently audited data by an in-house global research team.⁶⁴ • Encompass Corporation offers an automated screening and monitoring solution that identifies relevant individuals and entities within corporate ownership structures against global PEP, sanctions, and adverse media providers.⁶⁵ • FrankieOne provides a comprehensive PEP and sanctions screening service through its unified API, integrating with numerous global vendors and data sources. This integration enables organisations to

⁶¹ Please see <https://complyadvantage.com/fincrime-risk-intelligence/> .

⁶² Please see <https://withpersona.com/use-case/compliance/kyc-aml> .

⁶³ Please see <https://www.dnb.co.uk/solutions/regulatory-compliance-financial-crime.html> .

⁶⁴ Please see <https://www.dowjones.com/professional/risk/resources/peps> ;
<https://www.dowjones.com/professional/risk/sanctions-compliance/> .

⁶⁵ Please see <https://www.encompasscorporation.com/encompass-platform/pep-sanctions-and-adverse-media-screening/> .

AML / CTF service	Examples of service providers
	<p>screen individuals and businesses against international PEP and sanctions lists.⁶⁶</p> <ul style="list-style-type: none"> • KYC6 by Acuris is a package AML solution that enables businesses to effectively KYC through its online platform by providing access to extensive international datasets, including PEP data, and sanctions lists.⁶⁷ • WL-X by NiceActimize provides AI-powered sanctions screening, offering real-time checks against global sanctions lists, PEPs, and adverse media. It integrates data from global sources, using AI to improve accuracy with customisable controls for tailored screening programs and full auditability.⁶⁸ • Labyrinth Screening by RIPJAR provides advanced AML name screening, enabling organisations to screen individuals and entities against sanctions, watchlists, and PEPs. The platform is data-agnostic, allowing integration with various lists, and offers continuous monitoring to alert users of real-time changes.⁶⁹
Risk Assessment	<ul style="list-style-type: none"> • Arctic Intelligence's Risk Assessment platform provides customisable automated risk assessments for larger, complex organisations. It integrates with existing systems, transforming traditional spreadsheet-based approaches into streamlined digital processes. By ingesting data through APIs or file uploads, the platform automates inherent risk assessments using customisable risk models and offers a comprehensive audit trail for regulatory reporting.⁷⁰ • FinCrime Risk by Fenergo is a cloud-based platform that centralises and automates risk assessments for financial institutions. This API-first, cloud-native risk

⁶⁶ Please see <https://frankieone.com/know-your-customer-and-aml> .

⁶⁷ Please see <https://info.acuriskintelligence.com/anti-money-laundering/> .

⁶⁸ Please see <https://www.niceactimize.com/anti-money-laundering/sanctions-screening/> .

⁶⁹ Please see <https://ripjar.com/aml-name-screening/> .

⁷⁰ Please see <https://arctic-intelligence.com/platforms/risk-assessment> .

AML / CTF service	Examples of service providers
	<p>engine integrates into existing systems, enabling business users to make on-demand, automated risk calls via APIs. The platform standardises compliance processes and offers customisable workflows.⁷¹</p> <ul style="list-style-type: none"> • BronID's ML/TF Risk Assessment platform is a cloud-based solution that automates ML/TF risk profiling using machine learning algorithms. It enables organisations to efficiently identify and classify risk levels while providing real-time monitoring of changes in risk profiles. Users can customise risk assessment criteria and workflows to meet compliance needs, along with detailed reporting capabilities for enhanced transparency and auditability.⁷²
Enhanced CDD	<ul style="list-style-type: none"> • Encompass Corporation's Enhanced CDD platform automates document and data collection from public and premium sources, accessing global corporate registries for electronic verification to confirm customer-supplied information. The platform identifies Ultimate Beneficial Owners (UBOs) and screens individuals and entities against preferred suppliers of PEP, sanctions, and adverse media. The platform integrates into existing systems, allows for customisable workflows, automated reporting and continuously monitors KYC profiles for material changes and generates a regulator-ready audit trail.⁷³ • NetReveal KYC by SymphonyAI offers real-time risk assessments, integrating KYC with name screening and AML detection to provide a comprehensive view of customer risk. The AI-based platform automates due diligence processes and supports continuous

⁷¹ Please see <https://resources.fenergo.com/newsroom/fenergo-launches-financial-crime-risk-saas-solution-to-centralise-automate-and-standardise-risk-assessment> .

⁷² Please see <https://www.bronid.com/features/ml-tf-risk-assessment/> .

⁷³ Please see <https://www.encompasscorporation.com/encompass-platform/enhanced-due-diligence/> .

AML / CTF service	Examples of service providers
	<p>monitoring through Perpetual KYC (pKYC), ensuring compliance with transparent workflows.⁷⁴</p> <ul style="list-style-type: none"> • CDD-X by NiceActimize is an end-to-end platform designed to assess and monitor customer risk throughout their lifecycle. It integrates data intelligence tools to build comprehensive customer profiles, utilising identity resolution and network analytics to identify relationships and potential risks. The solution employs AI-driven customer segmentation and comprehensive risk assessments to provide accurate risk scores, facilitating a targeted approach to customer due diligence.⁷⁵
<p>Threshold Transaction Report</p>	<p>Reporting to Austrac</p> <ul style="list-style-type: none"> • Jade ThirdEye's Regulatory Reporting platform automates and streamlines the detection and reporting of suspicious activities, cash transactions, and foreign transactions. The platform automatically creates and submits Suspicious Matter Reports (SMRs) to AUSTRAC or Suspicious Activity Reports (SARs) to the Financial Intelligence Unites (FIUs) in New Zealand. It also submits Threshold Transaction Reports (TTRs), International Funds Transfer Instructions (IFTIs), and Prescribed Transaction Reports (PTRs).⁷⁶ • Identitii's platform streamlines regulatory reporting by managing the data flow from source to submission. It allows secure information requests from customers and internal teams, tracks responses, and automates follow-ups. The platform supports data importation and transformation into any model. It also features a full workflow audit trail and provides visibility into operations across users, teams, and systems, while

⁷⁴ Please see <https://www.symphonyai.com/financial-services/netreveal-kyc-cdd/> .

⁷⁵ Please see <https://www.niceactimize.com/anti-money-laundering/customer-due-diligence/> .

⁷⁶ Please see <https://www.iadethirdeye.com/solutions/regulatory-reporting> .

AML / CTF service	Examples of service providers
	<p>offering enhanced privacy through field-level sensitive data permissions.⁷⁷</p>
<p>Ultimate beneficial ownership</p>	<ul style="list-style-type: none"> • InfoTrack resells a UBO report provided by CreditorWatch, which identifies UBOs by analysing company structure. • Encompass Corporation's UBO verification platform automates the identification and verification of beneficial ownership for enhanced due diligence. It provides access to global corporate registries and integrates data from public and premium sources to streamline document and data collection. The platform automatically discovers UBOs and screens individuals and entities against preferred suppliers of PEP, sanctions, and adverse media lists. Encompass also continuously monitors KYC profiles for material changes, ensuring compliance and maintaining a regulator-ready audit trail.⁷⁸ • Dun & Bradstreet's UBO solution leverages its Data Cloud to provide insights into ownership structures. The platform integrates with existing systems offering cloud-based data visualisation tools and automatically sources and updates beneficial ownership data for corporate clients.⁷⁹ • Moodys' UBO platform provides access to extensive global data on millions of companies. It automates beneficial ownership discovery across complex networks and borders using the Orbis database, which includes information on 528 million entities. The platform also integrates curated risk data for AML/CTF compliance and connects to 200+ registries via the Entity Verification API for real-time verification.⁸⁰

⁷⁷ Please see <https://www.identitii.com/use-case/regulatory-reporting> .

⁷⁸ Please see <https://www.encompasscorporation.com/encompass-platform/ubo-verification/> .

⁷⁹ Please see <https://www.dnb.co.uk/products/corporate-compliance/beneficial-ownership.html> .

⁸⁰ Please see <https://www.moodys.com/web/en/us/kyc/solutions/ultimate-beneficial-owners.html> .

AML / CTF service	Examples of service providers
	<ul style="list-style-type: none"> <li data-bbox="651 323 1370 541">• Experian's comprehensive UBO database constructs complete corporate trees by gathering data from Companies House. It utilises advanced algorithms to identify beneficial owners. The platform facilitates the discovery of hidden UBOs across corporate structures.⁸¹ <li data-bbox="651 579 1370 911">• UBO Verify by Kyckr is an AI-driven tool that integrates with global corporate registry data for fast, accurate, and AML-compliant beneficial ownership verification. Features include a dynamic ownership tree, calculated UBOs, registration details, identification of intermediate and non-beneficial owners, and red flag alerts. The platform simplifies complex corporate structures and is tailored for finance, fintech, legal, and insurance industries.⁸² <li data-bbox="651 949 1370 1136">• IQ Connect by Equifax is an online portal that simplifies identifying beneficial owners for non-individual customers. It generates reports using ASIC data, includes PEP and sanctions checks, and flags adverse findings from the Equifax commercial bureau.⁸³

3.23 In addition, there are a range of other international providers of AML / CTF services that could viably enter the Australian market in respect of tranche two services, given the right market conditions and incentives. These include Oracle and Illion, both of which are already active in respect of providing tranche one services.

PEXA proposes to expand and integrate AML / CTF services into PEXA Exchange

3.24 As indicated in PEXA's submissions to the Government,⁸⁴ it is PEXA's intention to further entrench in related markets by integrating AML/CTF services into PEXA

⁸¹ Please see <https://www.experian.co.uk/blogs/latest-thinking/guide/ultimate-beneficial-owner/> .

⁸² Please see <https://www.kyckr.com/products/ubo-verify#> .

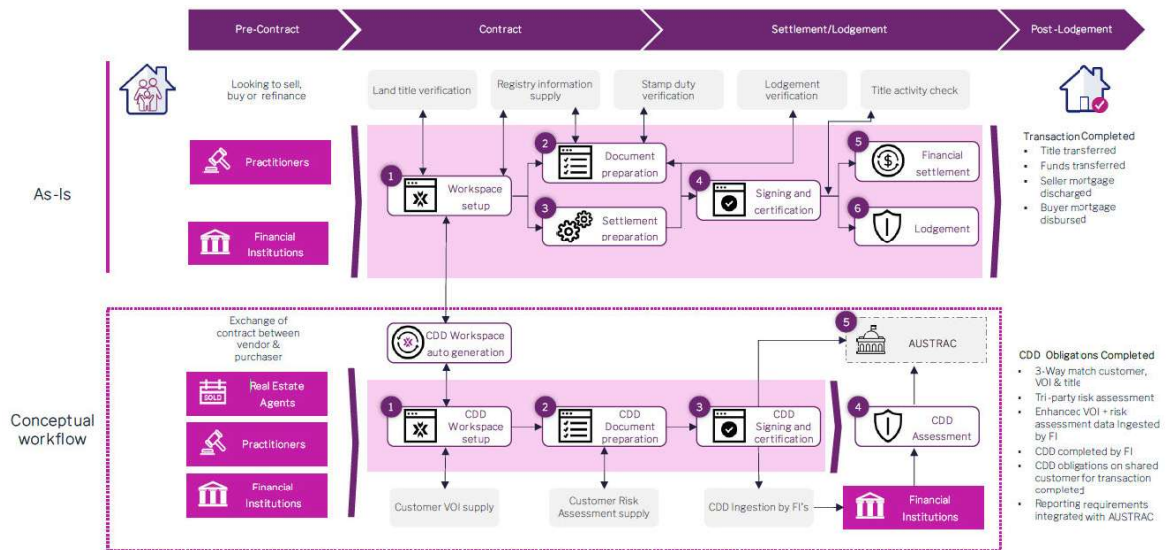
⁸³ Please see <https://www.equifax.com.au/business-enterprise/products/company-beneficial-ownership-identification> .

⁸⁴ In April 2023, the Government released a consultation paper proposing reforms to simplify and modernise the Australian AML/CTF regime. Please see https://consultations.ag.gov.au/crime/aml-ctf/user_uploads/amlctf-consultation-paper.docx (Consultation Paper). In June 2023, PEXA responded to the Consultation Paper, proposing that the proposed CDD processes could be integrated into its ELN platform, which "tranche-two entities" could then use to discharge their CDD

Exchange (**Integrated AML/CTF Service**). PEXA has submitted to the Government that:

*"Building upon the adoption of the PEXA Exchange, we propose a model that extends the platform to incorporate AML/CTF compliance measures for CDD sharing and reliance. The extended platform would allow real estate professionals, solicitors, conveyancers, and financial institutions to integrate AML/CTF compliance measures into their existing workflows and processes. This integrated solution streamlines compliance processes, enhances information sharing, and improves intelligence and reporting capabilities and could potentially be leveraged for further AML/CTF obligations...The proposed continuous CDD process operates a secure parallel channel that is connected to...the PEXA workspace."*⁸⁵

Figure 3 – PEXA's proposed Integrated AML/CTF Service



3.25 The proposed Integrated AML/CTF Service is effectively an aggregation of regulatory guidance,⁸⁶ information exchanges and processes as required by the AML/CTF regime. In that respect, the discharging of AML/CTF obligations via a platform is not

obligations. Please see https://consultations.ag.gov.au/crime/aml-ctf/consultation/download_public_attachment?sqld=question-2022-01-06-6908678210-publishablefilesubquestion-1&uuld=518175675 (First PEXA AML/CTF Submission). In June 2024, PEXA made a further submission in the second round of consultation, seeking "simple legislative amendments to enable reliance between parties to a transaction which is implemented through...the PEXA Exchange, which connects those parties and enable[s]...assessment of AML / CTF risks". Please see https://consultations.ag.gov.au/crime/reforming-aml-ctf-financing-regime/consultation/download_public_attachment?sqld=pasted-question-1712813916.3-28992-1712813916.47-74735&uuld=182916743 (Second PEXA AML/CTF Submission).

⁸⁵ Please see First PEXA AML/CTF Submission at pages 18 and 20.

⁸⁶ For example, the incorporation of the AUSTRAC Guidance.

dissimilar from an e-conveyancing workflow conducted via an ELN, which is also an aggregation of processes and data exchanges required in order to satisfy regulatory mandates.

3.26 As acknowledged by PEXA,⁸⁷ legislative reforms are required in order to permit the lawful integration of the Integrated AML/CTF Service (a DUS). This is because such integration presently would breach the separation regime contained in MOR 5.6. While some Tranche 2 entities may benefit from the convenience of being able to rely on third-party AML/CTF services to discharge their responsibilities under the proposed reforms via the same platform they use to complete the e-conveyancing transaction, this would be outweighed by the significant detriment to competition if PEXA engages in foreclosure strategies. Specifically, InfoTrack is concerned that:

- (a) PEXA will adopt a commercial strategy similar to what it has done in respect of integrating its ELN with a number of DUS and PEXA Partners with the distinction that the Integrated AML/CTF Service would be lawfully connected to PEXA Exchange via legislative reforms if passed. In circumstances where the Integrated AML/CTF Service is "endorsed" through legislation without countervailing constraints, PEXA will have incentives to maximise commercial profits of the Integrated AML/CTF Service;
- (b) PEXA will have even less incentive to work towards interoperability, as doing so would likely enhance competition in the e-conveyancing market and provide an alternative platform through which Tranche 2 entities could seek to discharge their AML / CTF obligations; and
- (c) despite the regulatory nature of the processes that are contemplated within the scope of the Integrated AML/CTF Service, PEXA may seek to assert intellectual property claims over such processes, to protect and entrench its position in the market for its DUS.

3.27 PEXA's proposal to integrate its platform with the relevant CDD process appears to be part of a commercial strategy to grow its position vertically in Australia, as it has already done so, and is positioning to do so, overseas. From FY20 to FY24, PEXA spent approximately \$127 million on its international platform, which has an expected 85% reusability for multiple international markets.⁸⁸

3.28 In the UK, PEXA has recently launched the Future Property Transactions Group, the aim of which appears to be driving collaboration and integration between PEXA and various key industry participants including the Leeds Building Society, Legal & General,

⁸⁷ Please see PEXA FY24 Investor Presentation at page 32 that states PEXA's FY25 priorities include "regulated data" which it notes is subject to regulatory approval and PEXA First AML/CTF Submission at page 24.

⁸⁸ Please see PEXA FY24 Investor Commentary at page 4.

West Yorkshire Combined Authority, Mortgage Advice Bureau, Arch Law, and the Open Property Data Association.⁸⁹ PEXA has already expanded into offering legal, remortgaging and conveyancing services via Optima Legal. As indicated by PEXA:

"The acquisition of Optima Legal and Smoove provides [PEXA] with distribution scale in terms of FI and Conveyancing customers, and mortgage processing flow. During the year we completed the integration of Optima Legal into the PEXA Tech and also now working towards the conversion of the customer base onto the PEXA platform."

- 3.29 The strategy of a reciprocal customer base conversion between the core PEXA ELN and related businesses in adjacent and DUS markets is highly concerning and problematic, as it creates an impenetrable barrier around the PEXA network that forecloses other competitors or potential competitors from the opportunity to contest for those customers. In turn, those customers are effectively locked into the PEXA network, with costs of switching likely to deter them from leaving PEXA.
- 3.30 Such network effects are likely to be amplified in consideration of the broad range of industry participants that are subject to the AML/CTF regime. If legislative reforms were passed to permit PEXA to offer the Integrated AML/CTF Service without countervailing regulatory constraints being imposed simultaneously, and in the absence of interoperability, PEXA will enjoy a monopolistic position over the full span of the e-conveyancing transaction chain. In turn, it will have an even greater ability to access transaction data (and use this data for other parts of its Digital Solutions business)⁹⁰ and entrench leading positions in numerous other adjacent markets as well.
- 3.31 Over time, any competition that may have otherwise been able to flourish will be blunted, with PEXA services / products being first, the services or products of choice, but finally, the only choice available. Should PEXA be allowed access to subscribers / reporting entities at an early stage of the transaction as a result of being permitted to integrate its proposed AML / CTF service into its ELN, competitors that could have offered competing CDD services, but for being cut off upstream by PEXA, would likely be squeezed out within 12-18 months resulting in PEXA enjoying an unchallenged monopoly in this market. InfoTrack believes that the e-conveyancing and related markets should be highly contestable and competitive to the benefit of consumers and the Australian economy, including for the reasons set out in the following section.

⁸⁹ Please see <https://ifamagazine.com/pexa-launches-future-property-transactions-group-with-key-property-industry-stakeholders/> .

⁹⁰ Please see <https://itwire.com/business-it-sp-511/business-it/pexa-group-launches-ai-platform.html> . For example, in September 2024, PEXA Group launched a "permission-aware" AI platform to enhance data use.

4. **E-conveyancing market and related markets should be highly contestable**

A. PEXA's monopoly runs counter to established competition principles

- 4.1 As recognised by ARNECC, the ACCC, the IGA Review and IPART have all called for regulation to overcome the concentration of market power in PEXA Exchange. The current level of concentration is a poor outcome for the community and may contravene the 1995 Competition Principles Agreement and the 2016 Intergovernmental Agreement on Competition and Productivity-enhancing Reforms.⁹¹
- 4.2 The mandating of e-conveyancing in most Australian states and territories has removed the constraints previously imposed by paper conveyancing, with PEXA accounting for approximately 90% of all property transactions and 99% of e-conveyancing transactions. In addition, the Australian Government's intention to phase out cheques by 2030 as part of its *Strategic Plan for Australia's Payments System* will likely lead to PEXA filling the remaining market space in jurisdictions where e-conveyancing is not yet mandatory.⁹² As a result, under current regulations, no other ELNO has or will have the ability to sustain a presence in the market.⁹³
- 4.3 Should PEXA be allowed to sustain its monopoly, it will have no incentive to innovate or find efficiencies, removing the opportunity for lower prices, better quality products and services, and more choice for consumers. As the ACCC would be aware, since the Hilmer reforms in the early 1990s, experiences from a range of industries indicate that the introduction (or even mere threat) of competition may encourage businesses to innovate, improve their product offerings and offer lower prices.⁹⁴
- 4.4 There is strong industry support for achieving effective competition in the e-conveyancing market, with the NSW Productivity and Equality Commission (**NSW PEC**) noting that some stakeholders have already seen the benefits of competition through time-saving innovations, lower prices, and better customer support.⁹⁵ InfoTrack supports the NSW PEC's view that greater competition for the provision of e-conveyancing services is worth pursuing, because:

⁹¹ Please see Interoperability RIS at page 9.

⁹² Please see <https://treasury.gov.au/sites/default/files/2023-06/p2023-404960.pdf> .

⁹³ As recognised by the ACCC in 2019 and noted by ARNECC in the Interoperability RIS at page 8.

⁹⁴ Please see <https://treasury.gov.au/publication/p2024-553588#:~:text=For%20instance%2C%20competition%20in%20the,to%2010%20per%20cent%20lower> . For example, in respect of the aviation industry, the Treasury recently found that "*increasing competition lowers price growth, and that in some cases, the mere threat of competition can lower airfares...competition has strong positive implications for passenger welfare through reducing prices. For instance, competition in the domestic aviation sector is estimated to have saved consumers between \$27.2 billion and \$35.2 billion over the last 14 years, and the presence of an additional airline on a route leads to airfares that are 5 to 10 per cent lower.*".

⁹⁵ Please see E-conveyancing Market Study at page 25.

- (a) there is no evidence to suggest that ELNOs are a natural monopoly, as considered in further detail below;
- (b) even in industries characterised by a small number of businesses, the rivalry between those businesses, and the threat of new businesses entering the market spurs innovation leading to lower prices and better quality;
- (c) even a small reduction in the price of e-conveyancing services will be material given the mandated nature of e-conveyancing coupled with high transaction volumes;⁹⁶ and
- (d) a lack of competition in the market for e-conveyancing could have adverse implications for competition in adjacent markets, including the banking and conveyancing sector.⁹⁷

B. The market is not a natural monopoly and can support competition

- 4.5 As the ACCC has previously noted, while the conveyancing market was initially based on a government-owned monopoly service provider model, the entry of Sympli and LexTech confirm that it is contestable at various levels and that competition is a real aspect of the market.⁹⁸ The entrance of these ELNOs demonstrates that while upfront capital investments are required to enter the e-conveyancing market, they are not an insurmountable barrier to entry (which would likely be the case in respect of a natural monopoly).
- 4.6 Additionally, recent research indicates that all Australian jurisdictions and the e-conveyancing market as a whole are economic to serve and can support two or more ELNOs.⁹⁹ Assuming the cost to develop an ELNO is:

⁹⁶ In FY23, PEXA supported 900,000 customers undertaking 3.7 million transactions with a property settlement value of more than \$814 billion.

⁹⁷ Please see E-conveyancing Market Study at page 25.

⁹⁸ Please see <https://www.accc.gov.au/system/files/Letter%20to%20ARNECC%20Chair%20and%20state%20and%20territory%20policy%20agencies%20-%20December%202019.pdf> (ACCC E-conveyancing Market Reform Report) at pages 5-6.. As noted by the ACCC in 2019, "the licensing of new entrants and the consideration of more than one ELNO in land registry and revenue offices regulation is evidence that necessary structural reforms are underway. As noted above new entrants have invested in the market and have entered into agreements with regulatory agencies and industry to facilitate their entry." The ACCC also noted that "technological advancements and the emergence of nascent competition in various states have confirmed that e-conveyancing services are a contestable activity".

⁹⁹ Please see E-conveyancing Market Study at page 32. Contrary to some industry participants' views about the extent to which the e-conveyancing market in Australia could support multiple ELNOs, particularly for smaller jurisdictions like the Northern Territory and Tasmania.

- (a) \$40 million,¹⁰⁰ an ELNO as efficient as PEXA would only need to capture approximately 5% market share¹⁰¹ to earn a 12% rate of return before tax,¹⁰²
- (b) \$182 million,¹⁰³ an ELNO as efficient as PEXA would only need to capture approximately 20% market share to earn a 12% rate of return before tax.

4.7 InfoTrack supports the ACCC's view that the market could sustain various classes of ELNOs, given appropriate regulatory conditions (including interoperability). This could potentially include certain firms with expertise in one part of conveyancing services entering only to provide those specific services, while relying on an existing ELNO to complete the remaining facets of a settlement transaction.¹⁰⁴

4.8 Noting the above, the characteristics of the e-conveyancing market do not align with those of a natural monopoly, and there is no benefit (except to the privately-owned PEXA) to retain and entrench the current monopoly. For example, as a condition for a natural monopoly to exist, the costs must be sub-additive – that is, the natural monopolist must be able to produce the total output at a lower cost than what two or more suppliers can at the same level of demand. However, on average, Sympli's transaction fees are cheaper than PEXA Exchange's fees.

C. PEXA benefits from the competitive inefficiencies in the e-conveyancing market that arise from its monopoly

4.9 While the e-conveyancing market can support competition, it is not currently effectively competitive. In the absence of a robust regulatory framework and oversight, PEXA is unjustly rewarded by the market inefficiencies that it is able to exploit by virtue of its market power.

4.10 First, as noted by the NSW PEC, measures of market concentration and profitability suggest that this is the case for the market for e-conveyancing in New South Wales and other Australian jurisdictions.¹⁰⁵ Based on market share data from PEXA's annual reports, the e-conveyancing market in Australia is highly concentrated, with a Herfindahl-Hirschman Index (**HHI**) estimate of 7,554 and 7,926 for FY2022 and FY 2023 respectively, being far greater than the ACCC's and Federal Trade Commission's (**FTC**) indicative thresholds of 2,000 and 1,800 respectively when considering mergers.

¹⁰⁰ Please see https://www.pexa-group.com/static/media/2024/01/PEXA_IPO_Prospectus-sm-1705448098.pdf (PEXA Replacement Prospectus) at page 133.

¹⁰¹ Share of total e-conveyancing transactions, excluding the jurisdictions of Tasmania and Northern Territory.

¹⁰² Over 10 years, using a discount rate of 7%.

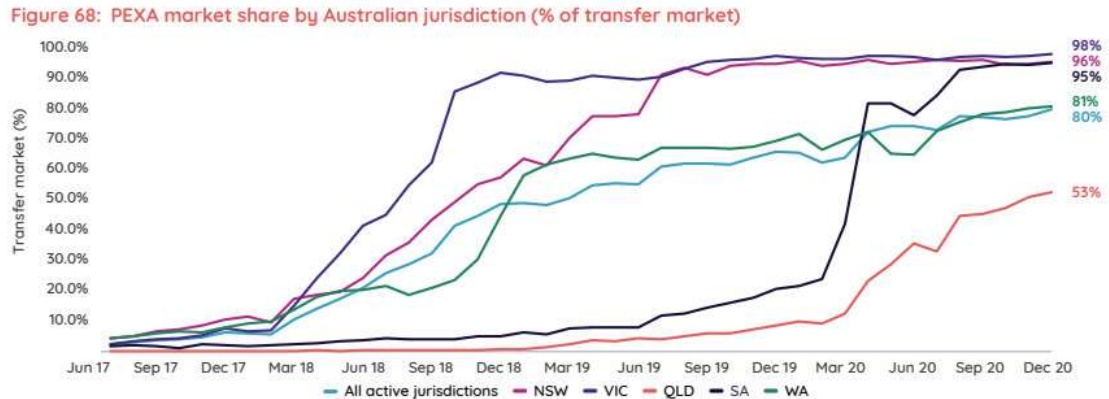
¹⁰³ As per PEXA's submission to IPART's draft report into interoperability pricing for ELNOs.

¹⁰⁴ Please see ACCC E-conveyancing Market Reform Report at page 4.

¹⁰⁵ Please see E-conveyancing Market Study at page 29.

PEXA's share of the market increased dramatically following PEXA's privatisation in FY2020, as reflected in **Figure 4** below.¹⁰⁶

Figure 4 – PEXA market share by Australian jurisdiction as of December 2020 (% of transfer market)



Source: *PEXA Replacement Prospectus*¹⁰⁷

- 4.11 Second, there is a lack of transparency relating to prices charged by PEXA to different subscribers. While the regulatory framework effectively establishes maximum fees by requiring PEXA to publish a Pricing Table and requiring PEXA to only increase fees in accordance with CPI, PEXA may choose to price below those published prices for certain categories of subscribers, such as banks.¹⁰⁸ ARNECC has no visibility over such arrangements / pricing practices and no opportunity or ability to consider whether there are any impacts on the market and on competition by reason of PEXA's pricing practices. This is particularly concerning given CBA's vested interest in PEXA, and PEXA's commercial incentives to secure banks' support on critical issues including interoperability.
- 4.12 Third, price control arrangements have allowed PEXA to set prices at levels that do not reflect its underlying costs. These arrangements also allow ELNOs to increase prices on an annual basis in line with CPI with no requirement to improve efficiency or pass on the benefits to consumers. The significant productivity benefits that are estimated to be \$89 million annually are likely to have been captured largely by PEXA in the form of above normal profits, and to a lesser extent, in the form of time savings

¹⁰⁶ Please see E-conveyancing Market Study at page 29.

¹⁰⁷ Please see PEXA Replacement Prospectus at page 130.

¹⁰⁸ Clause 3.6 of PEXA's Pricing Policy appears to provide it with scope to charge differential prices to different subscribers, given that "Pricing can be tiered in accordance with PEXA's cost to serve a specific Subscriber type".

from conveyancers not having to physically travel and attend settlements in person.¹⁰⁹ As noted by the NSW PEC, the fact that end-user consumers have not shared in the significant productivity benefits that e-conveyancing has produced is unfortunate in jurisdictions where e-conveyancing is mandated.

D. Effective competition would deliver material benefits

- 4.13 Competition delivered by the sustained operation of an alternative to PEXA Exchange will greatly benefit consumers contrary to PEXA's assertions that interoperability has questionable benefit to consumers and that the cost to consumers is as little as 0.01% of an average property transaction.¹¹⁰ According to the Centre for International Economics, the net benefit of interoperability relative to the base case is estimated at around \$83.6 million in net present value terms.¹¹¹ As noted by the NSW PEC:

*"The costs associated with establishing interoperability were outweighed by the benefits of lower prices, quality improvements, and innovation. By comparison, the net benefit of enhanced price regulation – like capping price increased by the Consumer Price Index (CPI) – relative to the base case is estimated at around \$19.7 million in net present value terms. Interoperability also had a net benefit of \$82.1 million in net present value terms compared to an alternate base case of multi-homing of subscribers."*¹¹²

- 4.14 In the current climate where many consumers are facing extreme cost of living pressures and housing affordability is a critical issue, the potential prospects of cost savings and increased consumer welfare should not be dismissed. Interoperability stands to benefit not only end-user consumers, but also other users of PEXA's ELN, including financial institutions and smaller businesses (such as conveyancing firms) that are part of the banking and conveyancing industries.
- 4.15 PEXA's position stands in stark contrast to its FY24 year on year increase in transaction volumes of approximately 1% translating to an increase in corresponding revenues of approximately 11% over the same period, with the increased volumes skewed to the more profitable transfer segment.¹¹³ As a privatised monopolist, PEXA has commercial incentives to protect its profitability, which is reflected in its acknowledgement that *"there is a risk that the new laws and regulations to implement*

¹⁰⁹ Please see E-conveyancing Market Study at page 31.

¹¹⁰ Please see PEXA FY24 Investor Commentary at page 3.

¹¹¹ Please see E-conveyancing Market Study at page 28. Over 10 years, using a discount rate of 7 per cent.

¹¹² Please see E-conveyancing Market Study at page 28.

¹¹³ Please see PEXA FY24 Investor Commentary at page 6.

interoperability may impose additional compliance burdens and costs on PEXA and may adversely affect PEXA's financial performance."¹¹⁴

5. PEXA's conduct is a misuse of market power in breach of the CCA

5.1 PEXA's Conduct of Concern is a misuse of market power in breach of section 46 of the CCA, which prohibits companies with a substantial degree of market power from engaging in conduct that has the purpose, effect or likely effect of substantially lessening competition. For the reasons set out in our letter and in this submission, PEXA undoubtedly has a substantial degree of market power, with the e-conveyancing market being highly concentrated.¹¹⁵

A. Refusal to deal

5.2 A refusal to deal with other market participants who have no choice but to rely on and deal with PEXA as the sole custodian of knowledge, standards and artefacts that it inherited through its origins as the Government-owned ELN amounts to a misuse of market power in respect of the e-conveyancing market, where PEXA has both an anti-competitive purpose for engaging in service denial, and where that conduct has the effect or likely effect of substantially lessening competition.¹¹⁶ The satisfaction of each of these statutory elements in respect of this plank of PEXA's Conduct of Concern are considered in turn:

(a) as outlined earlier in this submission, PEXA continues to seek to delay interoperability, citing concerns in respect of security and IP. Yet, at no point has PEXA specified the IP over which they claim ownership. PEXA has taken a similarly resistant stance in respect of the transitioning of the e-conveyancing data standards and artefacts to NECDS Ltd, delaying this process on the basis that it also involves the assignment of its IP. PEXA does not have a legitimate reason to resist interoperability, but it has every commercial incentive to do so and has publicly acknowledged that interoperability may have adverse impacts on its financial performance. These incentives drive PEXA's anti-competitive

¹¹⁴ Please see PEXA Replacement Prospectus at page 159.

¹¹⁵ PEXA's market power is evidenced by not only its significant market share, but also by the following key market conditions: (i) to date, PEXA has been highly insulated from dynamic and disruptive competition and new entry, both in respect of the ELN and related markets; (ii) PEXA has comprehensive, exclusive access to high-quality, real-time user / transaction data and is able to leverage its bargaining power to continue to demand the right to freely access such data from PEXA users and transaction counterparties. This valuable real-time data is then able to be used by PEXA as a competitive advantage over other property data brokers, to drive more accurate AVMs, valuations and other property risk products; and (iii) in the absence of the implementation of interoperability (which PEXA is resisting) there are material network effects that prevent users / subscribers from having any real choice of alternate ELNO and in turn, choice of alternate providers of services in adjacent markets.

¹¹⁶ Please see <https://www.accc.gov.au/media-release/action-against-tasports-for-alleged-misuse-of-market-power> . PEXA's conduct bears similarities with TasPorts' conduct in respect of failing to provide training to Engage Marine's employees (which only they could provide), preventing Engage Marine from providing pilotage services at Port Latta.

purpose of seeking to prevent interoperability and contestability from becoming tenets of the e-conveyancing market, enabling it to move away from a monopoly model that is built around PEXA Exchange towards a multi-ELNO model;

- (b) in relation to the effect or likely effect of PEXA's conduct on competition – given the quantifiable benefits of interoperability as discussed above at section 2, the nature and extent of competition in the e-conveyancing market is likely to be vastly different with and without interoperability. There is an inclusive definition of "competition" in section 4 of the CCA, and in *NT Power Generation Pty Ltd v Power and Water Authority (2004) 219 CLR 90 (NT Power v PAWA)*, the High Court stated that:

*"Competition by its very nature is deliberate and ruthless. Competitors jockey for sales, the more effective competitors injuring the less effective by taking sales away. Competition is also dynamic. It tends to create conditions of constant turbulence. It generates instability. These circumstances trigger the emulation and striving which produce competitive benefits."*¹¹⁷

- (c) PEXA's refusal to deal in respect of interoperability is substantial in the sense of being "*real or of substance*" and therefore meaningful and relevant to the competitive process.¹¹⁸ Presently, the competitive state of the e-conveyancing market is static and suppressed by PEXA's abuse of its dominant position akin to a gatekeeper to e-conveyancing; and
- (d) finally, in the ordinary meaning of the word "lessening",¹¹⁹ PEXA's conduct is that of suppressing competitors, and therefore has the likely effect of substantially lessening competition in the e-conveyancing market.

B. Foreclosure and self-preferencing

- 5.3 InfoTrack reiterates its concern that if PEXA were permitted to expand and integrate its ELN with the proposed Integrated AML / CTF service, the inevitable consequence is that other market participants will be foreclosed from offering competing services, as PEXA would effectively be "book-ended" into a transaction and have the advantage of offering the Integrated AML / CTF service at an early stage of the transaction process when the PEXA Exchange workspace is set up, before any other competing provider has the opportunity to do so.

¹¹⁷ Please see *NT Power v PAWA* at paragraph 138.

¹¹⁸ Please see *Pacific National Appeal (2020) FCR 49* at paragraph 104.

¹¹⁹ The word "lessening" is not exhaustively defined in the CCA. However, section 4G provides that for the purposes of the CCA, references to the lessening of competition shall be read as including references to preventing or hindering competition.

- 5.4 PEXA would have similar financial incentives to protect its vertical position in relation to this DUS and would again have a first mover advantage which would likely reinforce the existing network effects. In addition to PEXA having the commercial drivers and strategy to engage in conduct with an anti-competitive purpose of foreclosing downstream and upstream competitors by leveraging the market power of its ELN, the hypothetical counterfactual whereby PEXA is permitted to provide the Integrated AML / CTF service on PEXA Exchange will also have the effect or likely effect of substantially lessening competition as there would be no commercially feasible scenario where there are multiple ELNOs and market participants offering competing services at different levels of the transaction chain, in the e-conveyancing and related markets.
- 5.5 Similarly, PEXA's advertising and representation of PEXA Partners and DUS services as part of an integrated PEXA offering is a further misuse of market power in breach of section 46 of the CCA. By engaging in this conduct, PEXA has the purpose of foreclosing any other market participants from being able to compete for users of PEXA's ELN in respect of adjacent e-conveyancing services. Doing so has enabled PEXA's Digital Solutions business to grow rapidly and convert PEXA Exchange customers to its Digital Solutions businesses, locking them into the PEXA network. Given PEXA's recent decision to restructure and align leadership teams across its Exchange and Digital Solutions businesses, and the dual directorial / executive positions held by Mr Butterworth in respect of Landchecker and PEXA respectively ,¹²⁰ PEXA has even greater incentives and ability to closely align and integrate PEXA Partners into the Exchange offering.
- 5.6 In a hypothetical counterfactual scenario where PEXA did not have a monopoly in the e-conveyancing market, the nature and extent of competition in e-conveyancing and adjacent markets would likely be significantly more dynamic, with lower barriers to entry and a more level playing field for competitors at different parts of the transaction chain being able to contest for ELN customers.
- 5.7 Currently, actual or potential competitors to PEXA and PEXA Partners are also hamstrung by PEXA's strategy and standard practice of extracting pre-settlement, exclusive data from other industry participants at no or lower cost compared to the rest of industry by virtue of its PEXA Exchange position, unfairly enabling it to develop and offer more powerful data broking products and tools, risk assessments, insights and AVMs. This then becomes a cycle that reduces incentives to innovate in competition with PEXA, squeezes out competition and eventually makes it commercially unviable for others to enter or compete in a number of markets that are closely aligned with e-conveyancing, such as land and title valuations.

¹²⁰ Potentially there are other executives within the PEXA ecosystem who hold dual roles.

5.8 In these circumstances, the effect of PEXA's conduct is that competition in the e-conveyancing and adjacent markets are substantially lessened. Further, there is no opportunity or ability to front-foot PEXA's position in the transaction chain nor resist PEXA's demands for access to data in return for access to the only choice of ELN, in the absence of interoperability.

5.9 As discussed further in the following section, there are parallels that may be drawn between PEXA's data aggregation and self-preferencing conduct and those engaged in by some other digital platforms with significant market power.

6. **PEXA is a homegrown digital platform that has evaded regulatory constraint to date**

A. Issues with market power and network effects that arise in other digital platform markets similarly arise in e-conveyancing markets in Australia

6.1 The e-conveyancing market bears similarities to other digital platform markets. For example:

- (a) ELNOs act as a platform between several stakeholders;
- (b) there are material network effects;
- (c) there is reliance on large amounts of user data that is difficult and costly to replicate / analyse;
- (d) consumers experience barriers / costs when switching between ELNOs in terms of the time and effort they must expend; and
- (e) the incumbent claims IP rights over the technology / method it uses.

6.2 In addition to considerations of the alternatives available to user groups in multi-sided markets and the barriers to disruptive entry,¹²¹ data plays a significant role in assessing market power in digital platform markets. In particular, access to and use of rich and high-quality data (including real-time individual-level data) is central to the business models of many digital platforms, as it provides several key competitive advantages and benefits, including the ability to:

¹²¹ Please see [https://one.oecd.org/document/DAF/COMP/WD\(2022\)21/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2022)21/en/pdf) (**The Evolving Concept of Market Power in the Digital Economy**) at page 4. As noted by the ACCC, a number of the characteristics of digital platform markets make them prone to "tipping" where one or a very small number of large platforms supply the vast majority of the market. Once this occurs, the most significant competitive rivalry is likely to come from disruptive entry. That is, entry on a scale sufficient to displace the incumbent. As a result, a significant focus of the assessment of market power in many digital platform markets concerns the barriers to, and the likelihood of, disruptive entry.

- (a) train algorithms to improve products and services, assist in the development of new products and services, and ultimately increase the platform's attractiveness to users; and
- (b) increase profitability by allowing a firm to improve its ability to forecast product demand and market trends.¹²²

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

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

Google submitted to the ACCC that it does not use its first-party data to provide targeted advertising through its ad tech services on third-party inventory (that is, on websites and apps Google doesn't own). However, there is a widely-held perception in the industry, among advertisers, rivals and publishers, that Google does use its first-party data in this way. In particular, industry participants consider that the information Google obtains via its core services, where it holds a dominant position such as Google Search, provides Google with an unparalleled advantage in ad tech and that its advantage is unlikely to diminish in the future. The widespread view that Google is using its first-party data to provide targeted advertising via its ad tech services is in part due to Google's own ambiguous messaging about how it uses such data, including in public material on its websites aimed at advertiser customers. Further, Google's terms of service and privacy policies do not prevent Google using first-party data in this way."¹²³

6.4 In the case of PEXA, its exclusive pre-settlement access to property, customer and transaction data is unparalleled. InfoTrack notes that while the Issues Paper for the *Digital Platform Services Inquiry March 2024 Interim Report* did not include PEXA in the 9 firms identified as examples of firms the ACCC considered provided the types of

¹²² Please see The Evolving Concept of Market Power in the Digital Economy at pages 8-9.

¹²³ Please see <https://www.accc.gov.au/system/files/Digital%20advertising%20services%20inquiry%20-%20final%20report.pdf> at page 6.

data products and services that are within the scope of the Inquiry, PEXA's data broking operations and capabilities should not be underestimated.¹²⁴

- 6.5 There are numerous sources of individual-level data that are already accessible to PEXA by virtue of its dominant ELN and associated bargaining power. There is simply no way for PEXA's competitors to obtain the same quality or volume of real-time data. Even if PEXA (like Google) asserts that it is not currently relying on first-party data in the supply of DUS or related services, there is nothing stopping it from doing so in the future. PEXA would be able to do so without seeking additional consent from its subscribers / contracting counterparties, or otherwise notifying industry of a change of practice.
- 6.6 Ecosystems can also entrench an incumbent's control over access to consumers / users and their data, thereby consolidating their market power. PEXA's extensive web of touchpoints across the breadth of the transaction chain and in adjacent markets incentivises it to concentrate its efforts to protect and ensure that this state of play in the e-conveyancing market continues. Given the insurmountable data and scope advantages PEXA enjoys, it is likely that PEXA will be able to maintain or entrench its market power in a number of markets and industries indefinitely.¹²⁵
- 6.7 Moreover, there are material same-side and cross-side network effects in the e-conveyancing and related markets:
- (a) **same-side network effects** – similar to the way that the value of a social media platform to a user increases the more their family and friends also use the platform, PEXA Exchange's captive subscriber base enables it to attract more users in the absence of interoperability, making PEXA Exchange even more valuable.¹²⁶ Same-side network effects also arise from PEXA's data accumulation – for example, an additional user of PEXA Exchange increases the data PEXA has about consumers, transactions and properties, which allows it to improve the relevance of its AVMs, risk assessments and analytics offerings; and

¹²⁴ The 9 firms identified (being not an exhaustive list of firms that provide data products and services) are: (i) credit reporting agencies, being Equifax, illion, and Experian; (ii) property data firms, being CoreLogic and PropTrack; and (iii) data analytics and other data firms that supply data products and services, being Oracle, Quantum, LiveRamp and Nielsen.

¹²⁵ Please see The Evolving Concept of Market Power in the Digital Economy at page 4 which indicates that "A key issue for assessing the market power of digital platforms is the likelihood of effective entry in the presence of these data advantages. In this regard, it is important to assess the variety of the sources of individual-level data available to digital platforms across the breadth of their activities in digital markets. The extent to which these data advantages are insurmountable is central to the degree and longevity of market power in digital platform markets."

¹²⁶ Please see <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf> (DPSI Final Report) at page 79. As noted by the ACCC, digital platforms with a large number of users can easily attract more users, making the platform even more valuable.

- (b) **cross-side network effects** – these effects materialise in the relevant markets bi-directionally, as PEXA Partners (and other corporations who may enter into strategic partnerships with PEXA) are attracted and seek to integrate with PEXA Exchange due to its incumbency and captive subscriber base, where subscribers to PEXA Exchange face switching costs and the lack of a viable alternative to PEXA Exchange in the absence of interoperability. This in turn creates strong feedback effects where the greater the number of adjacent services are integrated into PEXA Exchange, the more subscribers are likely to use PEXA Exchange, in turn likely to attract more strategic partnerships for PEXA that are subsequently integrated into its ELN, and so on.

6.8 Many digital platform markets are prone to the accumulation of substantial market power, which, once attained, can readily become entrenched by conduct such as foreclosure and self-preferencing. The unconstrained market power of a digital platform in one market can undermine competition in other sectors. In 2022, the Organisation for Economic Co-operation and Development (**OECD**) identified vertical integration as a key feature of digital markets, noting that:

"Digital platforms that act as "gatekeepers" between downstream firms and their customers may be the subject of competition concerns if they provide advantages to their own downstream operations. Further, firms may seek to leverage their market power from one market to another, for example with bundling and tying strategies that foreclose competition for a digital "ecosystem" of products."¹²⁷

B. Vertical integration and self-preferencing behaviour

6.9 As outlined in this submission, PEXA benefits from the development of a digital ecosystem that is contrary to the spirit of the MOR separation regime, and the related advantages of scope and scale. While ecosystems can benefit consumers by increasing convenience or reducing friction when moving between different services within the system, there are material anti-competitive effects that arise when the ecosystem is not interoperable with other ecosystems and there are default biases which mean that users tend to stick with the default option. In respect of e-conveyancing and the related services ecosystem, PEXA is the default option, as a result of the mandating of e-conveyancing when PEXA Exchange was the only ELN. These default biases result in reduced incentives to switch to another ELNO such as Sympli or LexTech, which leads to limited competition in related services as well as limited competition between the ecosystems themselves.¹²⁸

¹²⁷ Please see https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/02/oecd-handbook-on-competition-policy-in-the-digital-age_50b6e951/c8c1841b-en.pdf at page 14.

¹²⁸ Please see <https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry.pdf> at page 31.

- 6.10 The OECD's and the NSW PEC's concerns that the provision of e-conveyancing services could be bundled with several related products and services including the provision of legal / conveyancing advice, the supply of practice management software, or the provision of property data have already materialised and are areas of strategic focus for PEXA, as explained in this submission. The difficulties faced by other ELNOs and competitors in related markets are heightened when considering the pre-installation and default arrangements, as well as the lack of interoperability and data portability between ELNOs. The presence of strong network effects has already led the e-conveyancing and related markets to "tip" in favour of PEXA and PEXA Partners, such that competition, to the extent it exists (and it is marginal), is "for the market", rather than "in the market".¹²⁹
- 6.11 While network effects as a source of market power may be mitigated if one or both types of users (on each side of the platform) multi-home, this is not the reality in respect of e-conveyancing where PEXA Exchange accounts for approximately 99% of all e-conveyancing transactions. Parallels may be drawn with the ACCC's finding that in Australia, as Google Search provides around 95% of general search services and is the default search engine on the largest Internet browsers, it appeared that most users of general search almost always used Google and effectively single-homed. Given this, if an advertiser wished to reach these consumers when they are searching for information on the Internet, they must advertise on Google Search, such that Google effectively had a monopoly over access to the attention of these customers, while they are engaged in general online search.¹³⁰
- 6.12 Similarly, PEXA enjoys gatekeeper status in respect of the e-conveyancing market. In the absence of interoperability, it is effectively the sole access point to all e-conveyancing users and transactions, such that subscribers and businesses have no choice but to participate on the platform. This characteristic of PEXA is similar to those of the largest digital platforms, where the use or abuse of market power by platforms exhibiting these characteristics can have serious implications for competition in other markets, as well as for consumers broadly.

C. Current regulation is not fit for purpose

- 6.13 PEXA is a home-grown dominant Australian platform. InfoTrack is concerned that in the absence of adequate regulation, PEXA will be able to continue to foreclose other

¹²⁹ Please see The Evolving Concept of Market Power in the Digital Economy at page 6. As noted by the OECD, the "*presence of same-side and / or positive bi-directional cross-side network effects can make digital platform markets prone to "tipping". In markets where such network effects are sufficiently strong, users will be drawn towards the platform with the highest number of users. This further enhances the attractiveness of the platform which has the potential to lead the market to "tip" in favour of this platform, leaving it as the only platform in the market, or the largest platform by a substantial margin. Once this occurs, the most effective form of competition may be competition "for the market" rather than competition "in the market".*".

¹³⁰ Please see DPSI Final Report at page 95.

potential competitors and self-preference the products and services of entities in which it is financially invested.

- 6.14 Given the failure of existing regulation to date to curb PEXA's Conduct of Concern, InfoTrack believes that further regulatory intervention is rapidly required. The similarities between the structural characteristics of the e-conveyancing markets and other digital platform markets and the incumbent player(s) within those markets lend themselves to a consistent approach to regulation: to the extent that the ACCC forms the view that domestic regulation needs to be introduced to regulate the activities of international digital platforms to address the use or misuse of market power by such entities, so should PEXA be regulated.
- 6.15 InfoTrack supports the ACCC's recommendations for new competition and consumer protection measures, and the Government's commitment to consult on the development of a new ex-ante digital competition regime.¹³¹
- 6.16 As noted by the ACCC, understanding similar international developments is essential to balance international regulatory cohesion, while ensuring domestic measures are fit for Australia's needs. Of the international regulatory developments considered in the ACCC's DPSI March 2025 Issues Paper, InfoTrack believes that the approaches implemented in Germany and the United Kingdom (**UK**) in particular are likely to result in material benefits for competition in the e-conveyancing industry, including for the following reasons:
- (a) the *German Digitalisation Act* enables the Bundeskartellamt (**BKartA**) to prohibit platforms of "paramount significance" from engaging in anticompetitive practices. InfoTrack believes that the factors by which "paramount significance" is determined¹³² is particularly relevant to the market conditions prevailing in the e-conveyancing industry that give rise to anticompetitive behaviour by the incumbent. If a regulator were to be given power to take preventative measures to prohibit the designated platform from taking actions which may threaten competition, such as self-preferencing or restricting access to data, there would be a material benefit to competition in the e-conveyancing and related markets;¹³³

¹³¹ Please see <https://www.accc.gov.au/system/files/dpsi-10-final-report-issues-paper.pdf?ref=0&download=y> (**DPSI March 2025 Issues Paper**) at pages 3-4.

¹³² As the ACCC would be aware, these include: (i) a company's dominant position in one or more markets; (ii) its financial strength or access to other resources; (iii) its vertical integration and activities in related markets; (iv) access to data relevant for competition; and (v) relevance of its activities for third-party access to supply and sales markets and its related influence on the business activities of third parties.

¹³³ The BKartA designated Google as being of 'paramount significance' in December 2021, and similarly designated Meta in May 2022, followed by Amazon in July 2022, and Apple in 2023.

- (b) passage of the *Digital Markets, Competition and Consumers Act (DMCC Act)* provides the UK Competition and Markets Authority (**CMA**) with the authority to regulate designated digital platforms that have "strategic market status" in respect of a digital activity. The CMA can designate a platform as having "strategic market status" in respect of a digital activity where it has substantial and entrenched market power and a position of strategic significance in respect of the activity. Once a platform has been designated, the CMA can impose "conduct requirements" specifying how the platform must conduct itself in relation to the relevant digital activity, and will also have powers to impose "pro-competition interventions" to rectify an adverse effect on competition. InfoTrack supports these aspects of the UK regime, but notes that while turnover thresholds are useful and appropriate in certain instances, they should be set having regard to the intended targets of the reforms which ought to include homegrown digital giants that may not necessarily have significant global turnover.

6.17 In addition, noting the definite and quantifiable market shares in respect of ELNOs in Australia, it may also be appropriate to consider alternate market share thresholds, to ensure that where turnover thresholds (if considered to be appropriate) are not satisfied, domestic monopolists do not continue to slip through regulatory gaps.

7. Conclusion and request for action

7.1 For the reasons outlined in this submission, the state of competition in the Australian e-conveyancing and related markets has deteriorated and will continue to deteriorate, in the absence of adequate regulatory intervention. InfoTrack is concerned that ARNECC faces challenges with its structure and resourcing that constrain its ability to deal with the relevant issues and market deficiencies.

7.2 In comparison to other regulators, ARNECC "*has no authority additional to that of its individual members*".¹³⁴ It does not have formal regulatory, compliance, or enforcement powers and is a council of Registrars established to facilitate the implementation and ongoing management of the policy and regulatory framework of e-conveyancing. Moreover, ARNECC makes decisions by consensus, with quarterly meetings that require a quorum of 75% of members, and determinations requiring the support of not less than 75% of the members present at a meeting and not abstaining from the determination.¹³⁵ In circumstances where Australian states and territories are at different stages of the rollout of e-conveyancing and considerations of

¹³⁴ Please see <https://www.arnecc.gov.au/wp-content/uploads/2021/12/ARNECC-Charter-endorsed-by-ARNECC-on-16-December-2021.pdf> (ARNECC Charter dated 16 December 2021).

¹³⁵ Please see ARNECC Charter dated 16 December 2021.

interoperability, this model of decision-making and implementation is fraught with delays and difficulty in adapting to market changes.

- 7.3 Critically, as a council of Registrars, ARNECC lacks the necessary experience and power to regulate the e-conveyancing and related markets. In particular, ARNECC does not have the expertise to oversee key areas such as technology, competition and financial settlement, and its ability to develop this expertise is constrained by limited funding and resources to engage external consultants.¹³⁶ It is, in InfoTrack's view, wholly inadequate for the purposes of regulating the sector.
- 7.4 In the same way Australia's merger framework would almost never permit the establishment of a monopoly, Australia's competition policy should adequately address those markets where monopolies (or those that are highly concentrated short of monopoly) exist.¹³⁷ On this basis, InfoTrack believes that the ACCC is the appropriate regulator to consider the issues outlined in this submission, given the ACCC's wealth of experience deterring and kerbing anti-competitive conduct arising from the position of market power, as well as its depth of expertise in relation to digital platforms and data, given its ongoing work in this area.
- 7.5 Given the rapid rate of PEXA's growth and that the current market conditions that do not allow for the sustained entry of another ELNO to unlock the gates to greater competition along the transaction chain, InfoTrack is concerned that there is a closing window of opportunity for the ACCC and the Government to intervene. Should policy makers and regulators not undertake urgent steps to implement a pro competition market model and in the interim, investigate and intervene to stop anti-competitive conduct, then the status quo will continue indefinitely, to the benefit of PEXA and to the detriment of the Australian economy, consumers and businesses.
- 7.6 InfoTrack would be happy to meet with the ACCC to discuss this submission and the facts and matters contained in it.

¹³⁶ Please see <https://www.finance.gov.au/government/managing-commonwealth-resources/structure-australian-government-public-sector/australian-government-organisations-register/australian-government-organisations-register-types-bodies>. ARNECC members are responsible for their own costs of participation in meetings. In contrast, bodies that undertake a national regulatory role are usually funded jointly by the Australian Government and the states / territories, with the Commonwealth usually contributing the largest portion.

¹³⁷ Please see <https://www.accc.gov.au/system/files/CompetitionReview-ACCCsubmission13February2024.pdf> at page 5.

ANNEXURE 1

(please see overleaf)

Australian Registrars' National Electronic Conveyancing Council

Not Relevant, Chair, Registrar General, New South Wales

Not Relevant, CEO, Titles Queensland

Not Relevant, Registrar-General, South Australia

Not Relevant, Registrar of Titles, Victoria

Not Relevant, Registrar-General, Australian Capital Territory

Not Relevant, Recorder of Titles, Tasmania

Not Relevant, Registrar of Titles, Western Australia

By email

24 July 2023

Dear Registrars,

Scope of Interoperability Reform

I refer to ARNECC's 29 June 2023 advice that it intends to undertake stakeholder consultation on the scope of the interoperability reform. The proposed consultation relates to Sympli's desire to expand the scope of interoperability to include certain PEXA features that Sympli wishes to replicate. I also refer to ARNECC's letter dated 21 July 2023.

As previously discussed, the proposal to consult industry on this matter raises a number of concerns. PEXA is concerned that the scope extension may seek to require PEXA to share its proprietary interest in IP with competitors without first resolving the legal or commercial basis for doing so. It may also create a mistaken expectation from customers that ARNECC and PEXA would support the disposal of PEXA IP to competitors in these circumstances. We have always understood ARNECC's position to be that interoperability scope change should not result in an abrogation of PEXA's IP rights. We again request that ARNECC delay the consultation process until we have resolved those matters.

Our position is explained in more detail in the following paragraphs.

The PEXA Features

PEXA has developed numerous additional services and features to enhance users' productivity. As the interoperability reform has progressed, customers have realised that these features are not included in the scope of interoperability and therefore will not be available in interoperable transactions. Sympli's proposed solution is to expand the scope of interoperability to include certain additional PEXA features (PEXA Features).

Expanding the scope of interoperability necessarily involves a misappropriation of PEXA IP

PEXA is deeply concerned that the objective of Sympli's proposal is to ensure that customers have access to all the PEXA Features in an interoperable transaction with Sympli, even if the PEXA Features are only available through bespoke PEXA IP.

The PEXA Features draw on data fields outside of the National Electronic Conveyancing Data Standard (which is the subject of a separate commercial arrangement). It is incorrect to make a blanket assumption that exchange of these additional data would not infringe PEXA IP rights. A deeper analysis is required in relation to exactly what is being sought and the extent to which this encompasses data fields and/or contextual information that reveals critical components of PEXA's confidential know-how in relation to the PEXA Features. Further, the method used to establish interoperability to date has involved the sharing of detailed process mapping and protocols that set out business processes and exception handling (PEXA's confidential know-how). That is why it is taking years to complete (compared to the early erroneous advice that interoperability would be simple). The same approach would presumably be followed with respect to the PEXA Features. If the objective of the proposed scope expansion is to enable customers to enjoy a consistent experience of the PEXA Features in an interoperable environment, this will inevitably require PEXA to share valuable IP with Sympli.

PEXA's IP is not a public asset

PEXA is now a publicly listed company, and its assets are held for the benefit of many thousands of shareholders. We must act at all times in the best interests of those shareholders. Although PEXA was started with a significant government shareholding, governments decided to sell PEXA's capabilities to the private sector and were rewarded handsomely. The consequence is that PEXA's assets are no longer available for government bodies to disburse. If ARNECC wishes to reacquire PEXA IP in order to provide it to competitors, this should be conducted as a commercial negotiation.

ARNECC itself has consistently acknowledged that ELNOs should not be forced to gift their intellectual property to competitors (in correspondence and in the terms of reference of the IDC and the PMG). ARNECC's advice to ELNOs of 29 June 2023, stated: *"Interoperability requires the exchange of data between ELNsARNECC does not envisage this would require either ELNO to disclose their intellectual property to the other."*

The proposed scope extension undermines a key policy objective of interoperability

We appreciate that, while the PEXA Features are not necessary for interoperability, they do impact the consistency of experience between interoperable and non-interoperable transactions. PEXA has long advised that there is a trade-off between incentives for ongoing innovation and a desire for uniformity of experience. Sympli's advocacy to increase the scope of interoperability to include the PEXA Features undermines the fundamental policy rationale for the reform - that the benefits of innovation would outweigh the loss of uniformity of experience. It also undermines the proposition that the proposed model of interoperability would not impact industry participants.

The early model of interoperability was built on the premise that there would be two (or more) competing full service ELNOs, and that interoperability would avoid the need for dual subscription. It has become clear that this envisaged Apple/Android model of competition bears no relation to reality, noting that Sympli (a) has had five years to build the required functionality but has not done so (b) recently terminated some 50 staff who had been employed to win business from practitioners, and (c) has not been seeking customers (its website does not enable potential customers to use its service).

Instead of competing as a full service and differentiated ELN, Sympli's strategy is clearly to rely on regulatory intervention to enforce access to PEXA infrastructure without any appropriate payment to PEXA. This strategy is apparent in Sympli's current attempts to access PEXA IP in other ways also – for example, Sympli's attempt to gain access to the Residual Document Configuration Spreadsheet (RDCS) without any meaningful payment to PEXA and Sympli's advocacy to be able to use PEXA as a default RELNO, enabling Sympli to avoid uncommercial components of an ELN build and instead access PEXA's capability without any meaningful compensation.

PEXA is prepared to consider alternative models to make its IP available to retailers on appropriate terms

ARNECC's engagement on scope expansion may be an attempt to avoid the complexity and costly duplication of infrastructure under the current model, which will ultimately be to the detriment of consumers and other stakeholders. As we have previously advised, PEXA is open to exploring models to provide Sympli and other potential retailers access to PEXA's capabilities on appropriate terms. We believe this would deliver the least cost, lowest risk and best service to customers across the country. It would also support genuine competition and innovation to drive continuous improvement of services.

We note your letter of 21 July advising that ARNECC is interested in considering how a wholesale/retail model for e-conveyancing could be further investigated. We appreciate ARNECC's invitation to engage further on these issues. PEXA will work through the queries raised by ARNECC and will provide a response to that letter as a matter of priority.

Next steps

PEXA reiterates the request that ARNECC cease engagement with industry on interoperability scope until the issues raised in this letter can be resolved. As stated above, we are concerned that this engagement will create (or has already has created) a false expectation from customers that ARNECC will somehow ensure that the customers' preference for consistent access to the PEXA Features will receive priority over respect for PEXA's IP rights. We also request that ARNECC clarify to any stakeholders consulted that ARNECC would not support the scope of interoperability being expanded in a manner that requires PEXA to share with competitors any process mapping, protocols or any other IP in relation to the PEXA Features. We would be grateful if you could also confirm this position and that the relevant communications have been made by reply letter.

We also reiterate our request that ARNECC support a review of the current industry model and will respond to ARNECC's 21 July letter as requested to aide ARNECC's further consideration of a wholesale/retail model. In that response we will address the issue of how this model could enable competing ELNOs to access PEXA's infrastructure and IP in a manner that promotes competition and innovation for the benefit of consumers and also provides an appropriate return to PEXA shareholders.

In the meantime, PEXA expressly reserves all rights in relation to this matter.

Sincerely,

Not Relevant

Not Relevant

Not Relevant

ANNEXURE 2

(please see overleaf)

Annexure 2 – Overview of PEXA related entities¹

PEXA company / partner	Description of key activities	PEXA's interest
PEXA Exchange	Online property settlement platform that facilitates the lodgement and settlement of property transactions	100% - PEXA Exchange
PEXA Projects	Online conveyancing platform designed to assist with managing multi-lot development property settlements	100% - PEXA Exchange ²
PEXA Planner	Settlement workflow management tool that provides overview of status and volume of workspaces settling over next 10 days, displaying live Workspace information from PEXA Exchange	100% - PEXA Exchange ³
PEXA Key	Consumer settlement application that offers protection for sellers and buyers against phishing and fraud	100% - PEXA Exchange ⁴
PEXA Tracker	Reporting tool that provides high level, read only property settlement status information designed for staff of Financial Institutions who outsource property settlements	100% - PEXA Exchange ⁵
PEXA MyView	Online reporting tool that leverages PEXA's unique access to data to provide a detailed summary of mortgage and refinance portfolio performance insights	100% - PEXA Digital Solutions ⁶
.id (informed decisions)	Consulting company acquired by PEXA in September 2022 that converts demographics, housing and economic trends into online tools to enable customers to determine where to make key investments such as in infrastructure, housing, retail and education facilities	100% - PEXA Digital Solutions ⁷
Land Insight	Acquired by PEXA in July 2023, Land Insight sells reports and data that enable government entities and private corporations to quantify and evaluate the risk of natural hazards, pollution, and ground hazards in relation to land and property	100% - PEXA Digital Solutions ⁸
Value Australia (formerly known as Slate Analytics)	In July 2022, PEXA acquired 70% of Value Australia. The investment allows PEXA to partner with the University of NSW and Frontier / SI in providing automated valuation and dynamic property scenario modelling to governments, financial institutions, and property developers	70% - PEXA Digital Solutions ⁹
Refinance Index	Interactive digital tool that harnesses PEXA's comprehensive data to show market performance, highlight where growth is occurring at a national and state level, and provide timely insights into property refinancing in Australia	Quantum of interest not disclosed - PEXA Digital Solutions ¹⁰
Archistar	Comprehensive AI-based platform that leverages 3D generative design and big data to provide property research solutions for developers and architects	0.95% - PEXA Digital Solutions ¹¹
OPEX	Comprehensive cloud-based property projects platform with end-to-end transaction workflow capabilities connecting law firms, developers, purchasers, real estate agents, and financiers with digital contracts in real time	40.4% - PEXA Digital Solutions ¹²
Landchecker	Landchecker consolidates property information, including title and document searches into a single source to support data-driven property decisions	38.4% - PEXA Digital Solutions ¹³

¹ The information in this annexure has been prepared on the basis of publicly available information, including from PEXA annual reports, investor presentations, and ASIC database searches. We note that there may be other PEXA partnerships, investments or interests that are not publicly disclosed that InfoTrack is not aware of. In addition, InfoTrack notes that PEXA previously made an investment in Honey Insurance in August 2022; based on PEXA's 2024 annual report, it appears that PEXA has sold this interest.

² Please see <https://www.pexa.com.au/products/pexa-projects/>.

³ Please see <https://www.pexa.com.au/products/pexa-planner/>.

⁴ Please see <https://www.pexa.com.au/products/pexa-key/>.

⁵ Please see <https://www.pexa.com.au/products/pexa-tracker/>.

⁶ Please see <https://www.pexainsights.com.au/>.

⁷ Please see <https://www.pexa-group.com/about/brands-partners/id-informed-decisions/> and <https://www.pexa-group.com/static/media/2024/08/PEXA-FY24-Annual-Report-Final-sm-1724193447.pdf> (PEXA FY24 Annual Report) at page 49.

⁸ Please see <https://www.pexa-group.com/about/brands-partners/land-insight/> and PEXA FY24 Annual Report at page 49.

⁹ Please see <https://value-australia.com.au/> and PEXA FY24 Annual Report at page 49.

¹⁰ Please see <https://www.pexa.com.au/refinance-solutions/>.

¹¹ Please see <https://www.pexa-group.com/about/brands-partners/archistar/> and PEXA FY24 Annual Report at page 132.

¹² Please see <https://www.pexa-group.com/about/brands-partners/opex/> and PEXA FY24 Annual Report at pages 132-133.

¹³ Please see <https://www.pexa.com.au/landchecker/> and PEXA FY24 Annual Report at page 132.

PEXA company / partner	Description of key activities	PEXA's interest
Elula	Customer relationship software designed to attract, grow, engage, and retain customers through a range of AI software products. Targeted towards home loan lenders seeking to predict customers who are most likely to refinance or sell their property within the next three months, and also predict customers who are likely to apply for a home loan in the next six months	26.4% - PEXA Digital Solutions ¹⁴
Optima Legal	Acquired by PEXA in September 2022, Optima Legal is a leading UK-based specialist property law firm focusing on conveyancing transactions and high-volume remortgaging processing	100% - PEXA International ¹⁵
PEXA UK	Online platform that provides remortgaging support for UK lenders, lawyers, and conveyancers in England and Wales, including automation of lodgements and movement of funds, and real time transaction status	100% - PEXA International ¹⁶
PEXAGo / PEXAPay	Lodgement system (PEXAGo) and settlement system (PEXAPay) integrated into the UK PEXA platform and is connected to His Majesty's Land Registry and the Bank of England, respectively	100% - PEXA International ¹⁷
Smooove	Acquired by PEXA in December 2023, Smooove is a comprehensive online platform that streamlines the process of moving home, capturing key property information upfront, identifying buyers, facilitating customer engagement, and providing real time updates	100% - PEXA International ¹⁸
HomeOwners Alliance Limited	UK-based property advice website providing services to homeowners and sellers in the UK	35% - PEXA International ¹⁹
Smaver	Intuitive application designed to help home buyers plan, organise, and move into their new home offering tips, guides, checklists, videos, and deals on goods and services from trusted providers	Quantum of interest not disclosed. Described as 'PEXA Partner' ²⁰
Send Payments	Australian based, non-bank, high volume international payment and foreign exchange platform integrated within PEXA's property settlement process that facilitates the transfer of money overseas	Quantum of interest not disclosed. Described as 'PEXA Partner' ²¹
Sorted Services	Australia's first comprehensive home services marketplace that helps customers manage their entire property portfolio in one place. Services include setting up utilities, paying rent and requesting maintenance	Quantum of interest not disclosed. Noted as 'strategic partnership' ²²
Business Advantage	Online platform that offers a range of business improvement and coaching services in the form of modules, videos and sessions designed for business owners, coaches, advisers, and professionals	Quantum of interest not disclosed. PEXA's partnership with Small Business Australia extends to providing access to Business Advantage ²³

¹⁴ Please see <https://www.pexa-group.com/about/brands-partners/elula/> and PEXA FY24 Annual Report at page 133.

¹⁵ Please see <https://www.pexa-group.com/content-hub/news/pexa-continues-uk-expansion-with-optima-legal-acquisition/> and PEXA FY24 Annual Report at pages 20 and 50.

¹⁶ Please see <https://www.pexa.co.uk/>.

¹⁷ Please see PEXA FY24 Annual Report at page 50.

¹⁸ Please see <https://hellosmoove.com/whoweare/> and PEXA FY24 Annual Report at page 50.

¹⁹ Please see <https://hoa.org.uk/> and PEXA FY24 Annual Report at page 50.

²⁰ Please see <https://www.pexa-group.com/about/brands-partners/smaver/>.

²¹ Please see <https://www.pexa.com.au/send-payments/> and PEXA FY24 Annual Report at page 10.

²² Please see <https://www.sortedservices.com/> and <https://www.pexa-group.com/content-hub/news/pexa-delivers-another-positive-performance-in-fy22/>.

²³ Please see <https://www.pexa.com.au/business-advantage/>.

ANNEXURE 3

(please see overleaf)



Review of the Separation Regime in Operating Requirement 5.6

Issues Paper

September 2024

Synergies Economic Consulting Pty Ltd
www.synergies.com.au

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The report is supplied in good faith and reflects the knowledge, expertise and experience of the consultants involved at the time of providing the report.

The matters dealt with in this report are limited to those requested by the client and those matters considered by Synergies to be relevant for the Purpose.

The information, data, opinions, evaluations, assessments and analysis referred to in, or relied upon in the preparation of, this report have been obtained from and are based on sources believed by us to be reliable and up to date, but no responsibility will be accepted for any error of fact or opinion.

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1 Purpose of this Issues Paper

Synergies Economic Consulting (Synergies) has been engaged by the Australian Registrars National Electronic Conveyancing Council (ARNECC) to review the separation (or ring-fencing) mechanism(s) that apply to Electronic Lodgment Network Operators (ELNOs). Under current arrangements ELNOs are required to separate any downstream or upstream services from their core operations as an ELNO. Downstream or upstream services may include (but are not limited to) conveyancing, legal services, information brokering, practice management products and land information products.

This Issues Paper provides an opportunity for interested stakeholders to participate in the review.

1.1 We would like to hear from you

We are seeking feedback from stakeholders to inform our review, including perspectives on the key issues we have identified in this Issues Paper and other information we should consider. The following box sets out questions to guide your feedback – feel free to respond to any or all, and feel free to raise other issues if you wish. These questions are interspersed throughout relevant sections of the document and are repeated here for convenience.

QUESTIONS

1. Do you agree with the list of potential competitive advantages identified in this Issues Paper that could be afforded to an ELNO due to its legislative functions to operate an ELN?
2. Is the list of potential competitive advantages comprehensive? Or are there other advantages that could be relevant?
3. Is the existing Separation Regime operating effectively and fulfilling its policy intent?
4. Is there vertical integration by existing ELNOs and does this impact competition in any market? How significant is any impact on competition?
5. Do the services we have identified in this Issues Paper represent the 'core' eConveyancing service offerings provided by ELNOs? Are there other services that should be considered as being core?
6. Are the definitions of upstream and downstream services in the Model Operating Requirements (MOR) sufficiently clear?
7. Is our list of upstream and downstream services identified in this Issues Paper comprehensive? Are there other services that could potentially be delivered by an ELNO and that should be considered as part of this review?
8. Should an upstream service require different consideration from a downstream service under the Separation Regime? If so, why?
9. Would more detailed definitions of core eConveyancing services, non-core eConveyancing services and upstream and downstream services improve the Separation Regime? If so, how should this be done?

10. What are the complexities encountered in developing suitable separation policies and provisions for ELNOs?
11. Should all non-core services of an ELNO be subject to separation?
12. Is there a need for improved guidance in the Separation Regime around what services should be subject to the separation requirements?
13. If so, how detailed should these service definitions be?
14. Are the obligations contained in the current Separation Regime difficult to interpret? If so, should the obligations for separation be spelled out in greater detail?
15. We have heard that the existing Separation Regime is not fit-for-purpose. In what ways could the separation requirements be strengthened?
16. How common is the practice of related party referrals in the market and does it pose a significant threat to competition?
17. Are the current compliance and enforcement provisions in the Separation Regime adequate or should they be strengthened? If so, in what way?
18. There are benefits and costs associated with various levels of ring-fencing prescription. Would the benefits of a more robust ring-fencing regime outweigh the costs? Would the benefits of functional separation (separation of staff and offices of related entities from ELNOs) outweigh the costs?
19. We have identified a range of issues relating to the current Separation Regime. Are there any issues that we have missed? Which issues are of most concern to stakeholders?

We intend to hold an online workshop for key stakeholders to discuss this Issues Paper via Teams in early October 2024 (date and time to be confirmed). Please advise us of your interest in participating in the online workshop so that we can make the necessary arrangements.

Following the workshop, Synergies would welcome written submissions from representative stakeholders and workshop participants by COB 11 October 2024. In making submissions, please indicate clearly any information you consider to be commercially sensitive or confidential.

Submissions can be emailed to:

submissions@synergies.com.au

For further information about the review, please contact ARNECC by email at chair@arnecc.gov.au

2 Introduction

eConveyancing has now been operating in Australia for a decade. Over this time considerable efficiencies have been realised through moving from a paper-based system of conveyancing to a modern system of eConveyancing and lodgment through an Electronic Lodgment Network (ELN). However, as the market evolves it is timely to review elements of the regulatory framework that were established to govern entities that operate an ELN, referred to as Electronic Lodgment Network Operators (ELNOs).

Synergies has been engaged by ARNECC to review the Separation Regime that forms part of the Model Operating Rules (MOR) used to regulate ELNOs.

The current Separation Regime was introduced in 2018. It requires ELNOs to separate (or 'ring fence') the supply of downstream or upstream services from their core operations as an ELNO¹. Under the Regime, ELNOs are not precluded from offering downstream and upstream services but must supply these services through either a separate company or a separate business unit that operates at 'arm's length' from the ELNO.

The intent of the Separation Regime is to instil confidence in the market that neither an ELNO, nor any related entities, are providing an upstream or downstream service provider with a commercial advantage over actual or potential competitors due to it being an ELNO.

2.1 Review objective and scope

The objective of this review is to assess whether the existing Separation Regime is effective and adequate to meet the policy intent of preventing the exercise of market power by ELNOs, with the ultimate aim of ensuring the long-term interests of consumers are best served.

The review will examine a range of alternative options and policy measures for meeting the policy objective, including the option of retaining the status quo.

The mere existence of inefficiency in the market for a specific service may not necessarily justify intervention. Regulation and remedial actions should be proportionate to the scale of the problem. This review will need to establish whether there is an economic case for reform of the Separation Regime, predicated on the basis that benefits of applying changes to its form are likely to outweigh the costs.

¹ Core operations are the delivery of electronic settlement and lodgment services through a back-end infrastructure connection to land registries, duty authorities, certification authorities, financial services settlement providers, a cloud service provider, government bodies.

Previous reviews have examined whether more should be done to encourage competition in eConveyancing through interoperability of ELNs and thus promoting entry of ELNOs. While this remains an important issue, it is outside the scope of this review, which focuses on a related, but distinctly different issue. That is, the scope for ELNOs to extend their use of any market power in the eConveyancing market through vertical integration into downstream or upstream market segments.

2.2 Terms of reference

The terms of reference for the review are shown below.

Box 1 Terms of reference

The consultant will:

1. Undertake an economic analysis of the role of ELNOs and relevant market(s) in Australia focussing on:

- i. competition in the marketplace including shares, pricing, barriers to entry, economies of scale and other relevant factors; and
- ii. the impact on the relevant market(s) of a separation regime.

A comparative analysis should identify and consider the economic impact on the relevant market(s) of different types of separation regimes or no separation regime.

2. Address the following questions:

- i. Is a separation regime the most appropriate approach to address potential market inequalities and the stated policy intent?
- ii. Are the controls and mechanisms in OR [Operating Requirements] 5.6 effective to achieve the policy intent? This should include a detailed analysis of the separation regime (including the definition of 'Downstream and Upstream Services') and the accountability measures in OR 5.6.3(c).
- iii. What enhancements should be considered to better meet the policy intent?

3. Consider what level of regulation, if any, is appropriate from a competition perspective when considering the provision of additional services by an ELNO in a market where the use of ELNOs had been mandated. In doing so, the consultant should advise on possible regulators.

4. Provide a pathway to achieving any recommended changes and/or outcomes.

2.3 Review stages

The review will take part in several stages, as summarised in Figure 1 below.

Figure 1 Review stages



Synergies has already completed an initial round of preliminary discussions with key stakeholders. We have met with:

- ARNECC;
- ELNOs and potential ELNOs (PEXA, Sympli and LEXTECH); and
- Australian Institute of Conveyancers.

We have also introduced ourselves and the purpose of our review to:

- Australian Banking Association; and
- Law Council of Australia.

These discussions have helped to inform this Issues Paper, which will serve as a basis for a forthcoming stakeholder workshop. The purpose of the workshop will be to ensure a shared understanding of key issues, the relative significance of matters raised, and identification of potential options for addressing the issues, including possible reforms to the Separation Regime. Written submissions to the paper will be invited from stakeholders following the workshop.

At the completion of this scoping stage, Synergies will prepare an Options Paper for ARNECC's consideration. The Options Paper will identify and consider the economic implications of alternative separation controls on ELNOs and relevant markets, and also compare different options in terms of what regulatory structures would need to be implemented.

At the conclusion of the options identification and evaluation stage, a draft report containing the review findings and recommendations will be prepared for ARNECC. The draft will be finalised after receipt of feedback from ARNECC.

2.4 Issues Paper

This Issues Paper is structured as follows:

- Section 3 provides context and background to the formation of ELNOs and the current regulatory framework within which ELNOs operate.
- Section 4 examines the current structure and operation of the eConveyancing market and related downstream and upstream services.
- Section 5 summaries a range of issues identified by Synergies, including a synopsis of those raised in previous reviews relating to the adequacy of the current Separation Regime.
- Section 6 presents a preliminary overview of the key elements of the Separation Regime that may need to be enhanced – while stopping short of identifying specific options, as this will form part of the next stage of the review.

We are particularly interested to understand whether the issues identified in this Issues Paper are comprehensive and correctly identified. Questions for consideration are interspersed throughout the paper to assist stakeholders to formulate their submissions. Synergies will also be working through these questions in the forthcoming workshop.

3 Background

This section provides context and background to the origins of eConveyancing in Australia, the core functions of ELNOs and the regulatory framework within which ELNOs operate – with a specific focus on the existing Separation Regime, its design and policy intent.

3.1 Facilitation of eConveyancing

In July 2008, the Council of Australian Governments (COAG) agreed that there should be a new single national electronic system for the settling of real property transactions in all Australian States and Territories. This single national electronic conveyancing facility would provide a convenient electronic way for legal practitioners, conveyancers, financial institutions and mortgage processors to prepare dealings and related instruments to register changes in land ownership and interests, settle financial transactions, comply with State or Territory Revenue Office requirements and lodge their dealings and instruments with the relevant State or Territory Land Registry.

The eConveyancing system that operates today has evolved from this Intergovernmental Agreement (IGA). A common regulatory and governance framework was introduced through the IGA, as set out in the Electronic Conveyancing National Law (ECNL). Operationally, eConveyancing is facilitated through ELNs, with registrars in each Australian jurisdiction having authority to operate an ELN or authorise an independent ELNO to operate an ELN. More than one approval can be granted by the registrar, allowing for more than one ELNO to operate.

Electronic lodgment through an ELN is now mandated in NSW, Queensland, South Australia, Victoria and Western Australia. The ACT has not mandated electronic lodgment. Tasmania has recently commenced eConveyancing and the Northern Territory is expected to commence eConveyancing in 2025.

3.1.1 Core functions and services delivered by ELNOs

The core function of an ELNO is investment in, and the use of, an ELN to lodge transactions (instruments) with land registries. A 'conveyancing transaction' is defined under the ECNL as a transaction that involves one or more parties with the purpose of:

- creating, transferring, disposing of, mortgaging, charging, leasing or dealing with – in any way – an estate or interest in land;
- getting something registered, noted or recorded in the titles register; or

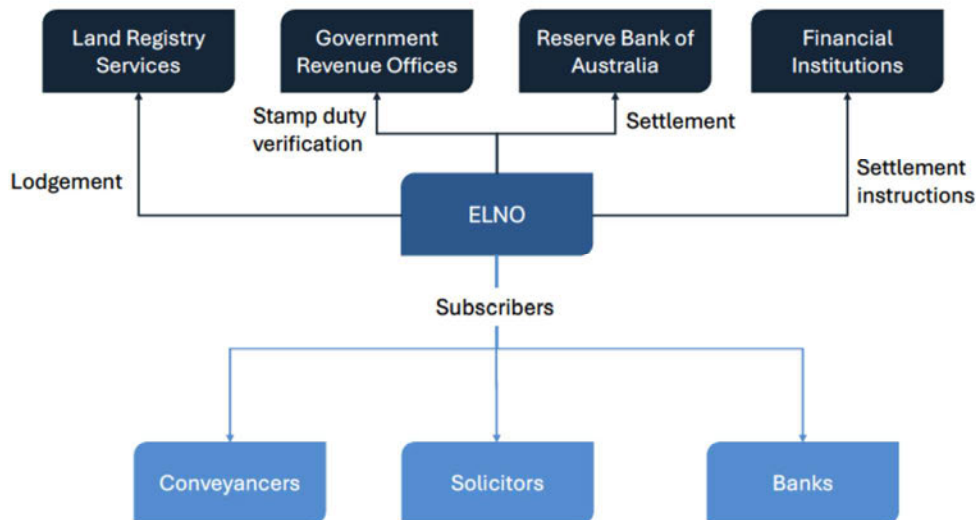
- getting the registration, note or record of something in the titles register changed, withdrawn or removed.

Conveyancing transactions can include transfers of land, mortgages, caveats, survivorships, applications by legal personal representatives, as well as plans of subdivision, survey-based applications and applications to record planning agreements.

To facilitate these transactions, ELNOs require a back-end ICT-based infrastructure connection. The back-end infrastructure connection means a connection between an ELN and land registries, duty authorities, certification authorities, financial services settlement providers, a cloud service provider, government bodies, and other ELNOs (for the purpose of interoperability).²

The regulated component of the eConveyancing market is as illustrated in Figure 2.

Figure 2 eConveyancing market structure



Source: Based on diagram in *Interoperability between Electronic Lodgement Network Operators: Progress to NSW Parliament May 2023*.

3.2 Model Operating Requirements

Under the ECNL, ARNECC develops Model Operating Requirements (MOR) and Model Participation Rules (MPR) that guide the regulatory rules and provisions set down by each jurisdiction for application in their own State and Territory.

Under this arrangement, ELNOs are required to comply with Operating Requirements made by the Registrar in each State and Territory, based on the MOR. Similarly,

² ARNECC (2024). Model Operating Requirements – Version 7, p. 6.

subscribers are required to comply with Participation Rules made by the Registrar in each State and Territory based on the MPR.

A registrar is not responsible for the regulation or operation of an ELNO's services that are in addition to the ELN-related eConveyancing services. For example, registrars are not responsible for the financial settlements associated with eConveyancing.

3.3 The Separation Regime

ARNECC introduced a Separation Regime into the MOR in 2018 (MOR 5.6). The Regime requires ELNOs (or related entities) to separate any downstream or upstream services from the core, regulated services delivered through its operation of the ELN.

Upstream or downstream services are defined in the MOR as meaning services supplied or offered to a person (including a related entity) which directly or indirectly:

- accesses or uses an ELN;
- integrates with an ELN; or
- utilises information accessible through or generated by an ELN;

but, does not include services supplied or offered through a back-end infrastructure connection.³

Specific examples of what may or may not constitute an upstream or downstream service are not provided in the MOR. It is clear, however, that these services are not regulated under the ECNL.

If a related entity supplies or proposes to supply a downstream or upstream service, the ELNOs must not be involved in the supply or development of the upstream or downstream service, other than to the extent of providing access to, or use of the ELN on the same terms as is offered to any other party.

Under MOR 5.6, ELNOs are required to prepare, publish and implement a separation plan, deal with a related upstream or downstream service provider on an arm's length basis (whether structurally or functionally) and not operate in a way that provides an upstream or downstream service provider with a commercial advantage. It is largely a decision for an ELNO how it separates its core eConveyancing services from its other services, and service providers.

³ ARNECC (2024). Model Operating Requirements – Version 7, p. 9.

To demonstrate compliance with MOR 5.6⁴, an ELNO is required to procure certification by an independent expert prior to starting operations, and every year after, if separation provisions apply. As part of receiving an independent certification, ELNOs are required to publish their separation plan (if applicable) and provide a copy to the registrar (within each jurisdiction).

The ECNL does not preclude an ELNO from offering additional services or choosing to establish a separate company in which to supply upstream and downstream services, and under the separation framework, it can do this but must comply with the separation requirements.⁵

3.3.1 Policy intent

At the time of introducing the Separation Regime, ARNECC stated that it was responding to stakeholder concerns that an ELNO could potentially operate with an unfair competitive advantage.⁶ In its guidance notes⁷, ARNECC notes the purpose of the separation requirement is to instil confidence in industry that neither an ELNO, nor its related entity(ies) are providing an upstream or downstream service with a commercial advantage over existing or potential competitors due to it being an ELNO.

While not explicitly referred to in ARNECC publications, Synergies notes that the potential competitive advantages afforded to an ELNO due to its legislative functions to operate an ELN could include:

- access to information collected in the course of operating an ELN, which is not available to other parties or that would cost considerably more to produce;
- leveraging use of ‘back-end’ network infrastructure assets (which are only available to an ELNO) to provide other products or services that would be more costly or impossible to provide in the absence of having access to this infrastructure;
- cross-subsidising an affiliate operating in another market; or
- developing other opportunities arising from affiliate businesses that may not be available to other participants.

Other potential impacts on competition, can come from:

⁴ ARNECC (2023) Model Operating Requirements Guidance Notes, Version 6.2, p. 85

⁵ ARNECC (2021) Model Operating Requirements (MOR) Consultation Draft 6.1 Feedback.

⁶ ARNECC (2018) Industry Forum, Version 5, Model Participation Rules, Model Operating Requirements. Melbourne, 19 September 2018.

⁷ ARNECC (2023) Model Operating Requirements Guidance Notes Version 6.2.

- An ELNO acting unfairly by excluding a competitor from integrating with its platform by imposing higher platform or access costs, excluding or delisting certain suppliers from the platform, or promoting/packaging the ELNO's complementary services as part of the core ELN service⁸;
- Bundling information and services to potentially provide new products and new services that would not be within the ability of non-ELNO entities;
- An ELNO having business information about an ELN subscriber and its clients and being in direct competition with them in a related market.

Under the ECNL's regulatory framework, a large segment of the Australian eConveyancing market is mandated to use an ELN to lodge dealings with land registries. Given that mandate, there is a heightened requirement that the Separation Regime is effective.

QUESTIONS

1. Do you agree with the identified list of potential competitive advantages of ELNOs referred to above?
2. Is the list of potential competitive advantages comprehensive? – Or are there other advantages that could be relevant?
3. Is the existing Separation Regime operating effectively and fulfilling its policy intent?

⁸ IPART, p. 21. Also noting Section 5.5 of the MOR sets out requirements for an ELNO to facilitate integration to any party on an equivalent basis.

4 A closer look at eConveyancing and related markets

Since its introduction around a decade ago, eConveyancing has revolutionised the way property-related dealings are lodged with land registries. ELNs have become instrumental for swift and efficient processing of transactions. The number of transactions processed every day through electronic lodgment has grown considerably as property markets have expanded and the majority of Australian jurisdictions now require instruments to be lodged through an ELN.

This section examines:

- the structure of the eConveyancing market, including a description of ELNOs currently operating in the market, market shares, and the existing level of competition;
- the economic scale and significance of the eConveyancing market;
- the type of downstream and upstream services currently being provided by the ELNOs and potential areas of future commercial interest for these operators, as signalled by the ELNOs (but for confirmation over the course of this review); and
- the nature of separation arrangements (structural or functional) that have been put in place by the ELNOs as part of their compliance with the existing Separation Regime and how this is impacting the relevant markets for downstream and upstream services.

4.1 Market structure

The eConveyancing market commenced in 2010 with one ELNO that was owned and operated by the NSW, Victorian and Queensland governments. The company was initially established as the National E-Conveyancing Development Limited (NECDL) and later rebranded to Property Exchange Australia Ltd (PEXA). In 2018, the Government shareholders decided to sell their equity in PEXA into the private market. At that time, the eConveyancing platform became fully commercially owned and operated.⁹

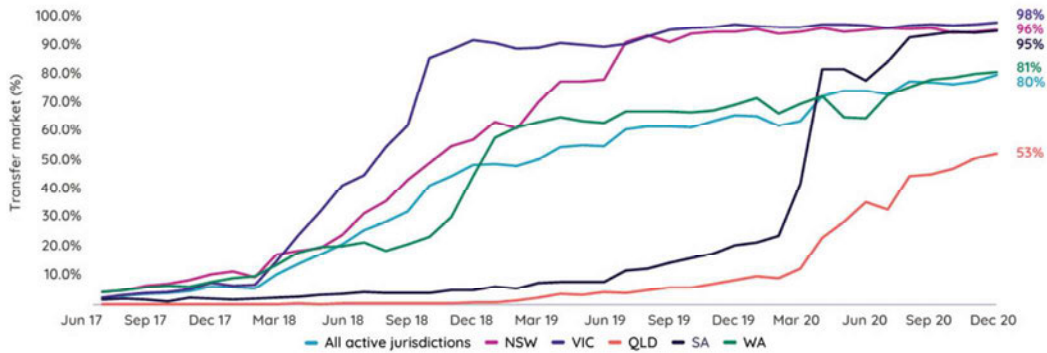
PEXA is the dominant ELNO, responsible for around 88% of the eConveyancing market, as measured in terms of digital property settlements and billable transactions (i.e.

⁹ Dench, p. 27

electronic transactions that an ELNO can charge a fee for), and a 99% market share of re-financing transactions.¹⁰

Figure 3 illustrates how PEXA has experienced market growth in each of the five jurisdictions that have mandated electronic lodgment, with step increases in market penetration across jurisdictions following each jurisdiction’s electronic lodgment mandating decision.

Figure 3 PEXA market growth, by Australian Jurisdiction (% of transfer market)



Source: PEXA IPO Prospectus 2021

4.2 Current competition landscape

The ECNL does not prevent multiple ELNOs being established to provide eConveyancing services but commercial interest by parties to become an approved ELNO has been limited. PEXA retains a significant incumbency advantage, including that arising from economies of scale in operating the first and largest ELN by infrastructure size and geographic coverage.

A key contributor to market concentration was the decision by State and Territory Governments to mandate the use of eConveyancing at a time when there was no competitor to PEXA.

At present, only one other participant has entered the eConveyancing market. In 2019, Sympli commenced operating but is currently not providing a full eConveyancing service offering (relative to the offerings provided by PEXA).

LXTECH is another potential ELNO that has signalled its intention to enter the market, but has not commenced operating. It has been assessed as meeting Schedule 3, Category

¹⁰ NSW Productivity and Equality Commission (2024). E-Conveyancing market study

1 requirements in 2023 and is able to commence negotiations for approval to be an ELNO and operate with each State and Territory.

Table 1 presents a comparative summary of PEXA and Sympli, and the potential new entrant - LEXTECH.

Table 1 Existing and future ELNOs

	PEXA (PROPERTY EXCHANGE AUSTRALIA)	SYMPLI	LEXTECH
Overview	The inaugural ELNO was formed by the State Governments of NSW, Queensland, Victoria and Western Australia, the big four banks and other investors. In 2019, PEXA was sold to private investors.	Entered the market in 2019. Operating on a significantly smaller scale to PEXA and does not offer the same scope of eConveyancing services.	Not yet an approved ELNO.
Function(s)	Approved operator of an ELN (PEXA Exchange)	Approved operator of an ELN (Sympli)	Not yet operational
Market share	PEXA reports it is responsible for 88% of all market transactions Australia-wide, with 99 percent of all digital transactions. ¹¹	Market share remains relatively small, with less than 1 percent in NSW and Victoria. ¹²	Not yet operational
Approval to operate in jurisdictions	ACT NSW QLD SA TAS VIC WA	NSW QLD SA VIC WA	Assessed as meeting Category One requirements of the MOR in December 2023. It can now commence negotiations for approval with each State and Territory Registrar.

Source: Synergies research, PEXA's website, Sympli's website, LEXTECH's website.

4.2.1 Vertical integration and implications for competition

Over time, PEXA has progressively been moving into upstream and downstream markets, as a means of providing additional revenue streams and to grow or maintain market share in the face of potential competitor ELNOs. Section 4.5 examines the array

¹¹ https://www.pexa-group.com/staticly-media/2023/12/PEXA_2023_Annual_Report-sm-1701686979.pdf: Parliamentary Inquiry into Promoting Economic Dynamism. (2024) - PEXA, Answer to Question on Notice, p. [1].

¹² Parliamentary Inquiry into Promoting Economic Dynamism. (2024) p. 25.

of services that PEXA has branched into and the extent to which it has vertically integrated its business, in addition to supplying core lodgment services.

While the terms of reference for this review focus on competition within markets for upstream and downstream services, and the potential for an ELNO to compete unfairly in the absence of an adequate separation regime, it is noted that effective separation may also assist with promoting horizontal competition – that is, the entry of new ELNOs.

QUESTION

4. Is there vertical integration by existing ELNOs and does this impact competition in any market? How significant is any impact on competition?

4.3 Economic scale and significance of the market

The economic scale and significance of a market is one of the relevant factors that should be taken into account when contemplating the degree of regulatory effort that should be applied to manage competition issues in a market.

In March 2024, the Federal Inquiry into Promoting Economic Dynamism, Competition and Business Formation (Inquiry Report) heard that Australia has a total addressable eConveyancing market of \$300 million.¹³ In 2022-23, PEXA reported total revenue of \$263 million.¹⁴

PEXA also reported more than 3.7 million exchange transactions and \$814.5 billion value of properties settled on the PEXA exchange.¹⁵ In its 2024 half year results, PEXA reported 1.97 million exchange transactions, with an 89 per cent market share of the property market.¹⁶

The proportion of all billable transactions for property settlement using the PEXA ELN has increased steadily as jurisdictions have progressively mandated eConveyancing, as can be seen in Figure 4.

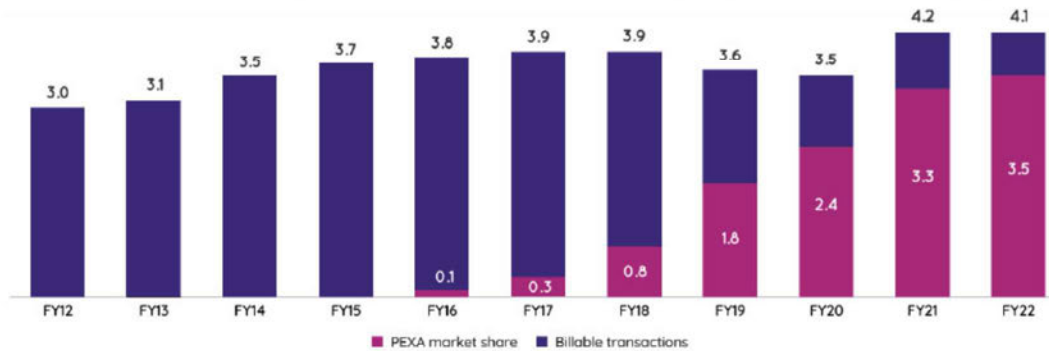
¹³ Parliamentary Inquiry into Promoting Economic Dynamism. (2024). p. 199.

¹⁴ PEXA Group 2023 Annual Report.

¹⁵ PEXA Group (2023). Strategy Update.

¹⁶ PEXA Group (2024). 1H24 Results.

Figure 4 Total potential digital property settlement billable transactions in Australia (millions)



Source: PEXA IPO Prospectus 2021

Note: FY12-FY16 market volumes are based on PEXA management estimates. FY17-FY20 market volumes are BIS Oxford estimates. The market volume forecast for FY21 is based on BIS Oxford estimated market volumes for July 2020 to March 2021 and PEXA management estimates for April, May and June 2021. FY22 market volumes is a BIS Oxford forecast. Forecast PEXA Exchange transactions for FY21 are based on actual transactions for July 2020 to April 2021 and PEXA management estimates for May and June 2021. Forecast PEXA Exchange transactions for FY22 are PEXA's forecast based on BIS Oxford's forecast of market volumes.

4.4 ELNO service provision

This section sets out our understanding of the types of services provided by ELNOs and those that could potentially be provided at a future date. We distinguish between core services and non-core services, the latter of which includes the provision of upstream/downstream services and 'other' services which fall outside of those defined in the MOR but are only able to be provided by an ELNO because of its control of an ELN.

4.4.1 Core services

While there is no formal definition of what constitutes 'core services' of an ELNO, the core service offerings are generally regarded to include instrument preparation, settlement and lodgment services for a variety of property transactions. Specifically, these transactions include land transfers, mortgages, and caveats.

QUESTION

- Do the services we have identified in this Issues Paper represent the 'core' eConveyancing service offerings provided by ELNOs? Are there other services that should be considered as being core?

4.4.2 Non-core services

Upstream and downstream services are defined within the MOR, however, there are no examples provided of what constitutes an upstream service, or a downstream service.

Based on stakeholder discussions to date, Synergies understands that potential upstream and downstream services that could be provided by an ELNO may include:

- Conveyancing services - for buyer/seller, conveyancer
- Real estate services
- Legal services
- Legal/conveyancing practice management software
- Financial services for buyer/seller, financial institutions
- Information broking
- Identification software
- Property development.

In addition to this list, there is a number of non-core services that can only be provided by ELNOs owing to their control of an ELN. These may include:

- Wholesale services – where an ELNO offers for sale the interface and/or information acquired from the ELN system to third parties.
- Settlement enablement/ platforms – services that do not interact with ELN systems, data or services. This could include services that use an ELNO's IT system, but do not involve real property in Australia. For example, settlement or security lodgment service for assets other than real property.
- Financial services – where a related party provides financial services linked to real property transactions.

QUESTIONS

6. Are the definitions of upstream and downstream services in the MOR sufficiently clear?
7. Is our list of identified upstream and downstream services comprehensive? Are there other services that could potentially be delivered by an ELNO and that should be considered as part of this review?
8. Should an upstream service require different consideration from a downstream service under the Separation Regime? If so, why?

9. Would more detailed definitions of core eConveyancing services, non-core eConveyancing services and upstream and downstream services improve the Separation Regime? If so, how should this be done?

4.5 Current ELNO service provision and separation arrangements

Table 2 summarises a number of non-core services currently supplied by PEXA and Sympli through various related entities and subsidiaries.

Table 2 ELNO legal structures for subsidiaries

	PEXA	SYMPLI	LEXTECH
Product service offerings / Subsidiaries	PEXA Exchange	InfoTrack Pty Ltd is a related entity that is 100% owned by ATI Global Ltd – it provides legal technology, software, and information services. ASX is a majority shareholder of Sympli.	Appears to be structured as two separate entities, a law firm servicing the banking industry and a cloud-based settlement platform.
	Land Insight – is a 100 percent owned subsidiary – it provides land management, property decisions and analysis of environmental risk solutions.	Infotrack Pty Ltd develops a SaaS based software application and online platforms for identity verification, property searches and certification, arranging deposits and exchange, settlement processing, project planning, electronic contract of sales retrieval, and electronic signing. The company develops an integrated platform that enables users to find, analyse, organize, and communicate information and provides searching tools for property, corporate, personal searching, and affiliated services.	
	OPEX Contracts Pty Ltd – minor subsidiary - develops and operates OPEX, a digital signing tool. Its cloud-based platform connects law firms, developers, purchasers, real estate agents, and financiers with digital contracts in real time.	CreditorWatch Pty Ltd – is 100% owned by Infotrack – it is a commercial credit reporting bureau, providing credit data collection services for businesses in Australi. Its credit management solution enables businesses to access the credit files of their customers; conduct due diligence; and identify, assess, and monitor their customer’s credit activities.	
	PEXA Insights – is a 100 per cent owned subsidiary – offers real-time property data and insights	SettleIT Pty Ltd is a related entity – it involves a platform used to assist with administration related to settlements and lodgments. It also operates as a law practice.	
	.id Consulting Pty Ltd – a 100% owned subsidiary of PEXA Insights and is a demographic-based consulting company.	Leap Legal Software Pty Ltd is a related entity that provides legal practice management software	

<p>Slate Analytics Pty Ltd – a majority owned subsidiary of PEXA Insights – it develops and offers a platform that calculates and provides values assessments of properties.</p>		
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Sources: PEXA website, Sympli website. Purcell Partners website. S&P Capital IQ Pro.

From the above summary it is evident that multiple products and services are being made commercially available by the ELNOs, however it is not always clear what separation arrangements have been put in place and whether these arrangements comply with the MOR 5.6 or satisfy the policy intent of the Separation Regime.

Synergies notes that PEXA has not published a separation plan. Sympli has published a separation plan in which it is stated that the parent company operates on a functionally and structurally separate basis to that of its related parties.

It is also evident that ELNOs provide a number of ‘non-core’ services that only an ELNO could deliver (owing to its access to back-end infrastructure) but that are not subject to the Separation Regime. For example, the technology underpinning an ELN IT system is something that is not otherwise available ‘off-the-shelf’ and is likely to be difficult for other entities to replicate. Arguably, these services are not subject to the separation provisions of the MOR because they are not considered to be an upstream or downstream service.

QUESTIONS:

10. What are the complexities encountered in developing suitable separation policies and provisions for ELNOs?
11. Should all non-core services of an ELNO be subject to separation?

5 Separation issues in the eConveyancing market

This section provides a stocktake of the competition issues that Synergies has identified as being relevant to this review of separation arrangements for ELNOs. In compiling the list of issues we have drawn on our discussions to date with stakeholders and also previous studies that have examined competition in the eConveyancing market and related services.

5.1 Findings from previous studies

Several studies have been undertaken of the eConveyancing market in recent years, including:

- a 2019 review by Dench, McClean and Carlson: *Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law*.
- a 2019 study by the Independent Pricing and Regulatory Tribunal (IPART): *Review of the Pricing Framework for Electronic Conveyancing services in NSW*; and
- a recent (June 2024) study by the NSW Productivity and Equality Commission: *E-Conveyancing Market Study*.

Despite separation not being a key focus of these studies, several relevant issues were raised, as summarised below.

- The Dench, McClean and Carlson review cited concerns by conveyancer practitioners with the existing Separation Regime and the need for further attention by a ‘qualified economic regulator’.
- In a submission to the review, the ACCC indicated that its preferred regulatory model for ELNOs was complete vertical separation, given the incentive for an ELNO to discriminate on both price and non-price terms. However, the ACCC suggested that if an ELNO is permitted to vertically integrate to offer downstream services, such as legal and conveyancing services, then it would be necessary to have in place robust functional separation requirements.¹⁷ The ACCC’s submission noted that:
 - Current separation obligations are weak and vague – and likely not fit for purpose.
 - It is not clear what ELNOs are required to do with respect to accounting and functional separation.

¹⁷ ACCC 2019

- There is a need to balance effectiveness and efficiency of ring-fencing.
- There is a risk that ELNOs will misuse their market power and unfairly compete with conveyancers.
- Due to the extensive information gathered by ELNOs from subscribers, ELNOs should not be able to participate in conveyancing and related markets.

In relation to the last dash point, the Dench, McLean and Carson review noted that ELNOs collect a considerable amount of data from some of their subscribers, including information about the numbers of transactions, geographic area of operations, indicative number of employees, ability to estimate income (and potentially profit), customer names and scale of customer operations. Given the availability of such information, ELNOs will be able to assess the value of a practitioners' business. According to Dench, McLean and Carlson, general competition law may not effectively prohibit an ELNO from using such information for acquisition or competition¹⁸.

- IPART's 2019 review of eConveyancing in NSW noted that vertical integration could potentially stifle competition and innovation in related markets and recommended that ARNECC review the separation obligations in the MOR.
- The NSW Productivity and Equality Commission expressed concerns around the potential for ELNOs bundling core services with related products and services such as legal and conveyancing advice, practice management software and property data – and the potential deleterious impacts this could have on competition and prices for those services.

5.2 The case for reform - synopsis of key issues

Based on the above reviews and Synergies' initial discussions with stakeholders, the need for some form of separation regime is uncontroversial. The question is what form it takes and how it should be regulated.

A number of issues have been raised that suggest the existing Separation Regime is deficient, with the main concerns being:

- Lack of clarity around what constitutes a downstream and upstream service.
- Lack of clarity of what form of ring-fencing is required for ELNOs to be compliant.

¹⁸ Dench (2019). Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law p. 129

- Stringency of the requirements – are they fit for purpose? Are they suitably proportionate to the size of harm and risk?
- Is the Separation Regime suitably comprehensive with respect to the rules about which entities the regime applies to?
- Adequacy of the compliance framework.

Each of these issues are explored in further detail below.

5.2.1 Lack of clear definition of what constitutes a downstream or upstream service

In Synergies' discussions with stakeholders to date, a common issue raised was the way in which ELNOs distinguish between what constitutes a core service and what classifies as a downstream/upstream service. It was said that the Separation Regime does not provide sufficient guidance on this matter.

For example, some data services offered by ELNOs are treated as core services (by the ELNO) as opposed to upstream or downstream services. Consequently, no effort is made to subject these data services to the separation requirements under MOR 5.6.

As previously noted, the MOR and the MOR Guidance Notes do not provide sufficient examples of upstream or downstream services, nor do they provide adequate guidance on which services could be regarded as 'core services' and which services would fall within the definition of an upstream and downstream service to which separation should apply. We have been advised by stakeholders that this lack of specification creates confusion for ELNOs developing a separation plan.

QUESTIONS:

12. Is there a need for improved guidance in the Separation Regime around what services should be subject to the separation requirements?
13. If so, how detailed should these definitions be?

5.2.2 Lack of clarity around the exact separation requirements under the current regime

A view has been expressed by some stakeholders that the specific separation mechanisms to meet the intent of MOR 5.6 are not adequately specified, leaving open a degree of ambiguity and interpretation. Questions were raised in regard to the nature

and adequacy of ring-fencing tools or controls that could be used to give effect to adequate separation of downstream and upstream services.

QUESTIONS:

14. Are the obligations contained in the current Separation Regime difficult to interpret? If so, should the obligations for separation be spelled out in greater detail?

5.2.3 Stringency and adequacy of the separation requirements

Some of the commentary contained in previous reviews of the eConveyancing market expresses concerns that the existing Separation Regime is not strong enough to safeguard against the risk of misuse of market power by ELNOs. For example, ACCC has advocated for complete vertical separation between ELNOs and related entities supplying downstream services such as legal and conveyancing services.

QUESTION:

15. We have heard that the existing Separation Regime is not fit-for-purpose. In what ways should the separation requirements be strengthened?

5.2.4 Comprehensiveness in relation to the entities bound by the separation regime

In our discussions with stakeholders to date, a concern was raised in regard to the possibility that a party related to an ELNO could encourage its customers toward use of this ELNO in preference to any other ELNO. It was noted this type of preferential treatment by a related party is not prevented under the current separation regime because only ELNOs are subject to the separation obligations.

QUESTION:

16. How common is the practice of related party referrals in the market and does it pose a significant threat to competition?

5.2.5 Adequacy of the compliance and enforcement framework

Several stakeholders have raised concerns around ARNECC's role and capacity to regulate compliance, noting the absence of a separation plan on PEXA's website, as evidence of a breach of the Separation Regime.

In our consultations to date, it was apparent that market participants were unaware of what powers ARNECC has to enforce the rules under MOR 5.6, nor what authority it has to require an ELNO to modify its separation plan should it not meet regulatory expectations or standards.

It was observed that ARNECC's expertise as a regulator does not extend to competition, financial or revenue matters – and that this is a significant weakness in ensuring ELNOs and their related entities do not exert undue competitive advantage in the market.

In its submission to the review of MOR version 7, the ACCC considered it was critical that a regulatory framework for eConveyancing established robust and credible enforcement measures (and appropriate penalties for breaches). Such measures would, according to the ACCC, promote compliance with a number of key obligations including timeframes for the introduction of interoperability, and with general obligations set out in the MORs.¹⁹

QUESTIONS:

17. Are the current compliance and enforcement provisions in the Separation Regime adequate or should they be strengthened? If so, in what way

¹⁹ ACCC 2021, Submission to Model Operating Requirements Version 7.1 Consultation Draft, December.

6 The potential shape of regulatory reforms

This section presents a preliminary overview of the key elements of the Separation Regime that may need to be enhanced, while stopping short of identifying specific options – which will form part of the next stage of the review.

The following matters are examined:

- The decision to intervene and the need to balance regulatory burden with benefits
- Principles of regulatory separation
- Key features of a separation regime
- Possible ring-fencing regimes
- The current approach to separation
- Alternative approaches.

The material in this section is intended to promote discussion and begin to inform consideration of what reforms may need to be contemplated.

6.1 Balancing regulatory burden with benefits of intervention

The benefits of ring-fencing eConveyancing services can arise from more effective competition that consumers will see through the price and quality of the upstream and downstream services they purchase. However, the regulatory obligations that stem from ring-fencing are not costless. Ring-fencing controls impose restrictions and burdens on businesses that are subjected to ring-fencing controls.

Further, intervention in the operation of markets should only take place where the benefits of the intervention outweigh the costs. In this context, the imposition of more rigorous ring-fencing requirements should be considered where there are benefits to be gained through lower prices or better services and the like. It should be stressed this assessment is not made easily.

It is understandable that ELNOs would focus on the regulatory burdens and associated costs of compliance that more robust and effective ring-fencing could introduce. However, ring-fencing can also be viewed as an enabling mechanism that creates more certainty around how a business can provide services in a market it might otherwise be excluded from. Ring-fencing, therefore, is inherently a compromise. A balance must be struck between the benefits and costs of ring-fencing. These benefits and costs depend on many factors. Effective ring-fencing means that competition takes place on a level

playing field in other affiliated markets such as property conveyancing, property data services and in financing services to name a few.

There is no single correct approach to ring-fencing. However, there are common features to ring-fencing that need to be considered in designing a ring-fencing approach appropriate to specific business activities.

6.2 A principles-based approach to separation

In evaluating the separation regime applicable to ELNOs, we have drawn on approaches that have been developed in other sectors, such as energy. Our review of the existing separation regime is guided by the following three principles:

- Effectiveness – Do the separation controls work? Are there economic harms that are not adequately controlled?
- Efficiency – Are the controls proportional to the economic harms (or do the benefits of controlling the harm match the costs, measured in the broadest sense)
- Enforceability – Does the ring-fencing framework have legal authority? Are the controls likely to be adhered to? Are the incentives to comply adequate?

We intend to apply these principles in examining the current approach to separation of eConveyancing and to any changes that may be suggested.

6.3 Key features of a separation regime

A separation regime should identify the services to be separated, the obligations on providers to keep services separated, explain how compliance will be monitored and set out the potential consequences for non-compliance. The key features of a ring-fencing framework are set out in Box 2.

Box 2: Key features of ring-fencing framework

Our approach to assessing ring-fencing arrangements is to break down and analyse the economic harms that ring-fencing is designed to prevent in the eConveyancing market. In this regard, we will consider:

- **Harms, controls and waivers** – in the absence of ring-fencing, what are the types of economic harm that might arise? In broad terms, the economic harms tend to fall into two categories: discriminatory access to information, and pricing cross-subsidies. Separation controls may target accounting separation to prevent cross subsidies, or functional separation controls to prevent transfer of commercially sensitive information. The choice of control and its severity will depend on the nature of any harms associated with the services and related services subject to separation. Choice of these controls should be based on an assessment of potential harm that

might be avoided versus the cost of implementing the controls²⁰. Ideally, separation controls will be targeted, proportionate and effective. There may be some rare circumstances where a separation obligation results in an unintended effect that is detrimental. In these circumstances a waiver from compliance with a specific obligation may be warranted. While waivers provide flexibility, they also introduce uncertainty and administrative cost and should only be considered as a last resort.

- **Risk and consequence** – an economic harm that is highly unlikely is of less concern than one that is likely. Similarly, if an economic harm eventuates, is it significant in terms of impact on affected stakeholders? How sensitive is the relevant services markets to ineffective ring-fencing? Controls need to be selected that are proportionate to good risk management.
- **Monitoring and reporting** – ring-fencing only works if compliance is monitored, and non-compliance detected and reported. Regulatory reporting arrangements need to be consistent with the authority for overseeing the ring-fencing requirements. In our view, for ring-fencing to be effective, sufficiently rigorous monitoring and reporting arrangements are needed. Publication of compliance breaches can also improve the transparency and confidence that ring-fencing is important and is being enforced.
- **Compliance and penalties** – there is little point in making a rule if there is no consequence for non-compliance. Hence, there needs to be incentives to comply with the ring-fencing arrangements just as much as there needs to be proportionate penalties for non-compliance. An effective reporting, compliance and enforcement framework will encourage compliance. An audit of ring-fencing compliance can provide a greater level of confidence that ring-fencing is being adhered to by regulated entities. An enforcement policy sets out how a regulator will respond to non-compliance, with responses typically increasing with the severity or harm of a compliance breach.

6.4 Current approach to separation

The current Separation Regime provides broadly described obligations on ELNOs and, as such, a non-prescriptive form of ring-fencing. In our view, we consider there is value in examining options that could provide greater clarity around existing and additional separation obligations. In the section below we discuss aspects of the Separation Regime for which alternative approaches could be considered. Subject to submissions we receive on this Issues Paper, we will examine alternative approaches to separation more closely in our Options Paper. We will also consider the capabilities and resources a regulator may require to oversee these aspects of the Separation Regime.

6.4.1 Service definitions

While upstream and downstream services are recognised in the MOR as distinct from a service provided by an ELN, the core eConveyancing services that an ELNO could or should offer are not defined. Effectively, this means an ELNO is free to provide any

²⁰ This includes both the cost of regulating and the cost to comply with the regulation.

service it considers to be a core service. We think this situation could be improved. A decision by either ARNECC or the relevant Land Title Registrar could classify services as core, or upstream or downstream, or as 'other services', which would be clearer than relying on broad open-to-interpretation definitions alone as is currently the case.

Approaches to the 'classification of ELNO services' could be drawn from other sectors including from regulated electricity networks. Subject to submissions from stakeholders, it may be useful for us to examine how ELNO services could be classified in our forthcoming Options Paper.

6.4.2 Separation controls

Section 5.6 of the MOR sets out the obligations an ELNO must meet in order to give effect to the separation of the ELNO from any related entities. The existing separation obligations offer little guidance in terms of how an ELNO should comply. For example, it states in the MOR that ELNOs are required to:

- deal with a related party on an arm's length basis;
- ensure the ELN business has control over and responsibility for provision and operation of the ELN; and
- not give or operate in a manner that gives an unfair commercial advantage to a related party.

We consider the existing provisions of MOR 5.6, such as those noted above, can be interpreted widely. ELNOs are also required to 'implement suitable governance frameworks', but no further expectation is set out as to what this means in practice. In our view, the separation obligations could be more specific. For example, the separation regime could specify legal structures to give effect to separation, or require controls be in place to ensure commercially sensitive information is protected. In addition, additional or enhanced forms of oversight or audit of separation controls could be introduced.

6.4.3 Regular reporting

We recognise the MOR imposes annual reporting requirements on ELNOs and that these are subject to independent certification. Nonetheless, we consider there may be value in considering more detailed reporting obligations under the Separation Regime. Ring-fencing regimes typically include requirements for regular reporting of compliance that may be subject to independent audit as well as irregular reporting of breaches or other compliance issues.

Routine reporting could be enhanced beyond existing obligations. For example, options might include:

- More transparent auditing.
- Publication of separation compliance reports.
- A more open approach to separation compliance and, in particular, non-compliance reporting.

Disclosure of compliance is a means of encouraging compliance at relatively low cost to market participants.

6.4.4 Compliance and enforcement

The MOR contains the basic elements of a compliance and enforcement framework. However, a more detailed framework that sets out operational and performance expectations may be appropriate.

A ring-fencing compliance and enforcement framework could set out how the regulator intends to ensure that compliance with separation requirements will be monitored and enforced. For example, see the Australian Energy Regulator's Guide to Electricity Distribution Ring-fencing Guideline - Compliance Reporting Best Practice Manual. Alternatively, see the ACCC website for information on its approach to compliance and enforcement.

In addition, where non-compliance is identified, a compliance framework could set out how the regulator will respond to non-compliance including the requirement for restorative actions by a non-complying ENLO and any penalties that might also apply.

6.5 Alternative ways to approach ring-fencing

We have not sought to make specific recommendations in this paper about the alternative approaches to separation – this is something we intend to provide at a later part of our review. However, we consider it would be useful to describe the broad alternative approaches to ring-fencing for stakeholders to consider. Ring-fencing approaches range from highly prescriptive to non-prescriptive. As the level of prescription rises, so does the certainty of outcome and the cost of compliance.

6.5.1 Non-prescriptive approaches

The least cost and simplest methods of ring-fencing are non-prescriptive. These types of ring-fencing set out principles or broad objectives that a business must observe. Of course, simplest and least-cost does not mean most effective or most appropriate.

For example, under a non-prescriptive approach a ring-fenced business may simply be instructed to:

- operate at arm's length from its related parties
- not discriminate in favour of a related party
- offer services on the same terms and conditions to both related and unrelated parties
- ensure related party business is separate from its regulated business activities.

Non-prescriptive separation tools are open to interpretation by the entity offering ring-fenced services. The advantage of these types of tools include:

- potential to minimise cost of compliance
- flexibility to operate, innovate and explore opportunities.

6.5.2 Prescriptive approaches

Prescriptive ring-fencing tools can directly target potential harms. Generally, ring-fencing controls are pre-emptive and designed to avoid specific harms, such as:

- cross-subsidies – assisting a related party to offer services in a contestable market by providing access to resources (staff and or equipment) for less than actual cost.
- privileged access to information – allowing a related party access to information obtained through its regulated activities that is otherwise not available to competitors of the related party.
- advantageous terms and conditions – providing related parties with preferential treatment.

Cross subsidies can be prevented or at least reduced through legal separation, accounting separation and through third party audit of cost allocation methods. Legal separation imposes obligations on a legal entity to maintain its financial accounts consistent with accounting standards. Separation of accounts means that a transaction between related parties is recorded and can be audited. Audits provide a form of

assurance that accounting procedures have been followed increasing the level of confidence that related parties are not benefitting from hidden cross-subsidies.

Access to information can be controlled through a number of mechanisms that reflect the means by which information can be transferred between related parties. IT systems can be configured to restrict access to certain staff. The potential for information to be transferred between staff of related parties can be restricted by avoiding co-location or sharing of staff that have knowledge of privileged business activities.

Publication of terms and conditions and the nature of services that are available from businesses offering ring-fenced services can assist in reducing the risk of preferential terms and conditions. In addition, requirements for staff to be appropriately trained to understand the obligations and reasoning underpinning the ring-fencing restrictions that their business must comply with.

Ring-fencing can be extended to other aspects of a business's activities. For example, restrictions relating to branding, cross promotion, and staff sharing, and obligations to define data and information disclosure procedures that are required to be applied consistently to all parties, related or otherwise. In the Options Paper to be prepared after we receive feedback on this Issues Paper, we will examine a range of approaches and tools that can be used to give effect to separation arrangements and to provide greater confidence in the separation regime itself.

QUESTIONS:

18. There are benefits and costs associated with various levels of ring-fencing prescription. Would the benefits of a more robust ring-fencing regime outweigh the costs? Would the benefits of functional separation (separation of staff and offices of related entities from ELNOs) outweigh the costs?
19. We have identified a range of issues relating to the current Separation Regime. Are there any issues that we have missed? Which issues are of most concern to stakeholders?

ANNEXURE 4

(please see overleaf)



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ANNEXURE 5

(please see overleaf)

Ms Elizabeth Kelly PSM
C/ - Secretariat
Statutory Review of the Consumer Data Right
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms Kelly

Introduction

Thank you for the opportunity to make a submission to your review of the Consumer Data Right (CDR), as announced by Senator Hume on 14 February 2022. We note that the Strategic Assessment Review of CDR published in January 2022 states at page 10:

'Consultation with industry and across state and Commonwealth government agencies highlighted the benefits of designating customer specific data held by government, either to complement private sector data or to support particular use cases ...'

In this context, the purpose of this submission is to suggest that the property sector – Australia's largest asset class accounting for 15% of Australia's GDP – be considered for designation by the Minister under Part IVD of the Competition and Consumer Act 2010 (the Act). As a significant participant in this sector, PEXA Group Limited (PEXA) would welcome further consultation on this proposal as the CDR undergoes further evolution in the national interest. PEXA supports an approach that maximises the opportunities of data sharing and portability, while managing risk in a targeted and proportionate manner. Therefore, we welcome the opportunity to contribute to this important review.

About PEXA

Arising from an initiative of the Council of Australian Governments (COAG), PEXA developed a world-first digital property exchange that enables its members to lodge documents with Land Registries and complete financial settlements electronically. Robust, secure, and fast, our platform is trusted by more than 9,400 legal and conveyancing firms and 160 financial institutions and underpinned by a culture of innovation, collaboration, and momentum.

Today, we process over 85% of Australian property sales and settlements, and over 95% of mortgage refinance transactions. In 2021, around \$688.7B of property settlements were processed by us, equivalent to around 1/3rd of Australia's GDP.

The platform and framework under which PEXA operates, was created in collaboration with enterprising individuals from the government, banking, legal and conveyancing communities to ensure PEXA meets the needs of various stakeholders, from lenders to homeowners. Through PEXA's collaborative engagement with stakeholders and our continuous improvement processes, approximately 87% of our platform enhancements are based on stakeholder feedback and collaboration.

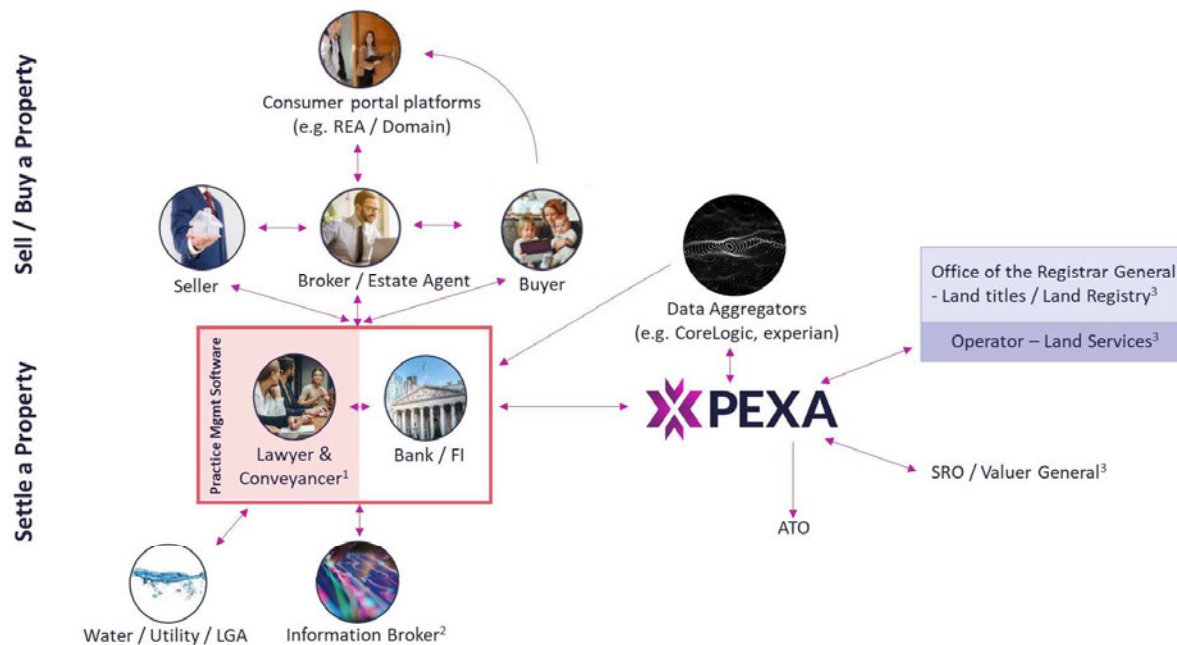


Figure 1. Property Value Chain

- ¹ Lawyer / Conveyancers use a range of Practice Management Software platforms
- ² Sourcing data from multiple providers including Land Titles Offices, LGA Certificates etc.
- ³ Each State / Territory replicates this function. PEXA works with 6 States / Territories

ADDITIONAL NOTES:

- buyers and sellers are represented by their lawyer / conveyancer of choice
- buyers typically seek funding from lenders (FI)
- sellers typically have existing loans secured by real property that must be paid to lender (FI) upon sale of property

While the establishment of digital property settlement, enabled by PEXA, was a significant COAG-led reform, it has been just one force that is re-shaping Australia’s property market. Of note, digitalisation has increased along the property value chain with COVID-19 further accelerating this trend. For example, a study undertaken by the University of Melbourne¹ found that while countries such as the United States and the United Kingdom reported significant declines in property settlements during COVID-19 lockdowns, Australia’s market remained fully operational. The report confirmed it was the availability of electronic conveyancing that helped keep the country’s \$9.8 trillion² residential property market online.

This digitalisation is creating a range of changes to the operation of the property market, as set out in Figure 2. The trends noted in Figure 2 will over time lead to a more connected and automated property market, which will provide efficiency benefits for consumers, government, and other stakeholders. As an example of this, PEXA is seeing its stakeholders seeking greater use of Application Programming Interfaces (APIs) to support cross-organisational process integrations to improve transaction velocity, consumer outcomes and choice.

¹ Research Findings: Digital Transformation in Australian Property Industry, Dr Niharika Garud and Professor Daniel Samson, Department of Management & Marketing, Faculty of Business and Economics, The University of Melbourne

² Corelogic Monthly Chart Pack, March 2022



Figure 2: Digitally enabled changes to the property value chain

Key to unlocking many of these benefits is the more open transmission of information between various participants in the property ecosystem. Increasing transparency in the property market will support improved decision-making in areas ranging from infrastructure planning to residential property selection and management. For example, PEXA’s geographic mobility data could assist governments to better understand the demand for land in near real-time, particularly where demand is falling or growing. These changes in demand have consequential impacts on the type and level of investment required by governments when it comes to building, managing and maintaining infrastructure, including the delivery of essential services to ensure community cohesion and resilience.

Additionally, with the introduction of smart meters collecting data and communicating with smart devices integrated into homes³, location-specific energy information will help consumers better manage the environmental footprint of their home and enable the ability to share or sell energy within their local community through micro-grids.

Another major change will be smart cities and suburbs based on 3D information or digital twins. Rapid advances are being made with a push towards 4D, which includes an understanding of spatial-temporal information. This change means consumers could access information relating to traffic congestion at different times of the day around property, or the impact of pedestrians or other services such as schools, shopping centres and commercial or industrial land uses. The additional information would help consumers to make informed choices based on their needs and preferences.

Data transparency would enable governments to test and monitor various housing affordability policies and projects in conjunction with PEXA and registries. Current policies address the demand side with very little

³ <https://mondo.com.au/community/mini-grids/ubi>

understanding of the drivers of housing affordability per segment. In conjunction with the registries, PEXA can provide this information at a national and State / Territory level. If permitted, PEXA could provide information at a postcode level while still protecting the privacy and security of consumers. While the data on its own will not solve the problem, it would provide valuable insight and input to help governments understand the likely impacts of their policy and in designing an informed and segmented approach to housing affordability.

Impediments to more open transmission of land information

Despite the potential consumer and economic benefits associated with more open property information, there are a range of impediments to it. These include:

1. consumer privacy – the ability for information to be misused or reidentified if appropriate governance processes are not established.
2. use of the information – ethical data driven innovation focused on the interest of the consumer and society at large should govern the use and handling of information.
3. regulatory constraints – agreement with Australian Registrars’ National Electronic Conveyancing Council (ARNECC) to modernise data usage that opens competition and enables revenue sharing with the States and Territories.
4. inconsistency in data approvals – acknowledging Australia’s federation, it is important to ensure guidelines are established at a federal level as data and technology are borderless. Differences between States and Territories impedes innovation and blocks Australian Technology businesses from being truly global leaders while also reducing foreign investment.

Expanding the CDR to land information

A range of consumer benefits would arise from such a designation. These primarily relate to enabling improved consumer choice, reduced transaction costs, and the development of innovative solutions to consumer problems. For example, property sellers could be empowered to move their service to their new property, buyers could elect to transfer existing services to themselves to maintain continuity of services. In the property sector, this could be achieved through a simple tick box selection during the property journey, enabling consumers to focus on living rather than the admin aspects of property transactions, giving consumers greater tools and insight to make decisions right for them.

In addition to informing consumers and other stakeholders, PEXA envisages that as the CDR evolves over time there will be opportunities to streamline services and interactions regarding property with Commonwealth agencies. We envisage interactions with the Australian Tax Office (ATO) and State / Territory departments like Service NSW and Service Victoria could be streamlined.

We further note that while Government-held databases such as Land Registries can be a source of data under CDR, extending CDR to the property sector would enable further competition – leading to better consumer outcomes at lower cost.

Suitability of the CDR

PEXA believes Part IVD of the Act needs improvement to support the wider expansion of the CDR with focus on cross-sectoral data sharing, straight through consent, inclusion of government (public) datasets enabled with a fit-for-purpose privacy framework. PEXA does however, welcomes the opportunity for the CDR to enable greater convenience for consumers in the property sector, enhancing the digital economy and reducing friction points for consumers.

By designating the property sector, the CDR would enable Australian families to access tailored home loans, home insurance, utilities and other property orientated services that meet their specific needs and circumstances while reducing friction or negative impact related to terminating and restarting services.

PEXA supports in principle the existing assessment, designation, rule-making and standard-setting requirements of the CDR framework which encompass the activities and consultation process undertaken by the Minister under subsection 56AC(2) before making an instrument and including the items under 56AD with a focus on:

- the interest of consumers;
- promoting competition;
- promoting data-driven innovation;
- the public interest; and
- the privacy and protection of consumer information.

Should the property sector be designated under CDR, PEXA may seek to compete in the market as an accredited data recipient to perform analysis and product comparisons on behalf of consumers. It is conceivable that in some circumstances PEXA could be viewed as the data holder. We believe that broader consultation with the property sector would be required to explore which datasets along the value chain should be covered by the CDR.

The statutory settings do enable the development of CDR-powered products and services to benefit consumers, however the benefits will only be fully realised as sectoral rollout of the CDR continues and consumers are educated on the benefit of the CDR across the various designated sectors. The government needs to consider the impacts and consequences as sectors are designated, as sectors do not function in isolation. It is important to understand and recognise some sectors have cross sector dependencies. Examples of where synergies exist between current or soon to be designated CDR sectors and the property sector include:

- information on the best utility providers for the area (e.g. Internet and telecommunications, electricity and gas)
- insurance coverage and premiums for the area based on offers from various providers and how those premiums are changing over time (increase or decrease)
- environmental factors that may impact the property including its valuation for lending and insurance purposes (e.g. modelling on climate change and natural disasters or contamination from previous land use)

Consumers would be able to gain additional information and transparency in the property sector on factors that may impact property valuation based on ancillary factors and land uses including safety. These may be:

- understanding peak traffic (e.g. people and vehicles) times in the property area that meet consumer needs (e.g. accessibility)
- access to information on noise levels (either from traffic or other community or council related activities such as sports, festivals, restaurants etc) prior to purchasing.
- consumer transparency on the cladding of buildings which may be highly flammable, impacting the safety of the building and the investment by the consumer in rectification work

In addition to informing consumers and other stakeholders, PEXA envisages that as the CDR evolves over time there are opportunities to streamline services and interactions regarding property with Commonwealth agencies such as the Australian Tax Office (ATO) and State / Territory departments including Service NSW and Service Victoria.

Matters to consider in extending the CDR to property

Society and governments are rapidly moving to digitised services and data sharing to reduce friction points for consumers, ensure open competition, stimulate innovation, and drive the digital economy.

PEXA believes the Australian property sector is a perfect candidate for the government to realise quick wins for the CDR should it become a designated sector. This is due to its size, increased digitisation in recent years, the exposure of Australian consumers to the sector and synergies between property-related data and other CDR sectors. Extending the CDR will require consultation with the property industry, consumer groups and other stakeholders to ensure a thoughtful and proportionate approach to data sharing, which meets the key objectives of the CDR while minimising and mitigating key risks.

We would welcome any questions you or your office may have about this submission. We would also welcome our involvement in working with stakeholder groups to give effect to a broader application of CDR in the property sector.

Yours sincerely

Scott Butterworth
Chief Data and Analytics Officer



16 September 2025

ITEM 5

(please see overleaf)

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www.infotrack.com.au

10 October 2024

CONFIDENTIAL

Our ref: 21-41079695

Attention: Melinda McDonald
Executive General Manager of Competition, ACCC

By Email: <mailto:Melinda.Mcdonald@accc.gov.au>

Dear Ms McDonald,

Concerns regarding PEXA's conduct in Australia

1. Introduction and purpose of letter

1.1 The purpose of this letter is to outline InfoTrack Pty Limited's (**InfoTrack**) concerns about conduct engaged in by Property Exchange Australia Ltd (**PEXA**). InfoTrack believes that PEXA's conduct raises issues that are relevant to the Australian Competition and Consumer Commission's (**ACCC**) current consideration of digital platforms and also its role in enforcing the provisions of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

2. Relevant background to PEXA's conduct in Australia

A. *PEXA has secured an unintended monopoly in the Electronic Lodgement Network Operator (ELNO) market*

2.1 Since PEXA's establishment as a government-owned ELNO in 2013 (fully privatised in 2018) PEXA has maintained a near-monopolistic position in the provision of e-conveyancing services. The current ELNO market design and conditions have enabled PEXA's growth while making it difficult for other ELNOs to enter the market and effectively compete for the provision of e-conveyancing services against PEXA, despite the *Electronic Conveyancing National Law (ECNL)* permitting multiple ELNOs.¹

B. *PEXA leverages its first mover advantage and network effects to prevent other ELNOs from entering and competing*

2.2 The mandating of e-conveyancing in Australian States and Territories at a time when there were no competitors to PEXA effectively meant that all parties concerned in the provision of e-

¹ The only other ELNOs are Sympli Australia Pty Ltd (**Sympli**) and Lextech Pty Ltd (which was assessed as meeting the Schedule 3, Category One requirements of the Model Operating Requirements on 14 December 2023 and can now commence negotiations for approval to provide and operate as an ELNO with each State and Territory Registrar).

- conveyancing services (financial institutions, lawyers, and conveyancers etc) were required to become subscribers to PEXA.
- 2.3 As the ACCC is aware, currently, all parties to an electronic conveyancing transaction must use the same electronic lodgement network (**ELN**) because parties on separate ELNs cannot exchange data to complete a transaction in the absence of interoperability between ELNOs. Under current market conditions, network effects and its incumbent position protect PEXA as subscribers to PEXA (transacting with similarly PEXA-subscribed counterparties) are unlikely to switch to non-incumbent ELNOs, in the absence of interoperability. This represents a significant barrier for new entrants, as PEXA accounts for approximately 99% of all digital property transactions across Australia² and has approximately 20,000 subscribers using its platform a week to settle property transactions.³
- 2.4 Relevantly, PEXA's current position is that it will not engage in discussions intended to progress interoperability, citing concerns regarding security and that participation in such discussions may derogate its intellectual property (**IP**).⁴ Yet, at no point has PEXA specified the IP over which they claim ownership.
- 2.5 In respect of security, PEXA has indicated that any alterations to the existing model need to *"take account of the central importance of the PEXA network, or else risk the reliability, resilience and security of e-conveyancing."*⁵ PEXA's concerns appear to have extended to a number of banks as indicated in the Australian Registrars' National Electronic Conveyancing Council's (**ARNECC's**) recent statements regarding the halting of progress towards interoperability (**ARNECC IOP Statement**).⁶ The ARNECC IOP Statement indicates that *"Financial services aspects of the Interoperability Program are beyond the remit of State and Territories to resolve"*, noting that State and Territory Ministers are seeking to raise these issues with federal government and relevant regulators for intervention. ARNECC only has the remit to regulate PEXA. Accordingly, ARNECC has limited ability to intervene on the actions of PEXA's related entities and the relevant competition law issues that arise.

² Please see https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/Economicdynamism/Report/Chapter_10_-_Interoperability (at [10.13]). PEXA operates across all States and Territories, except Tasmania, where it will enable electronic conveyancing in FY25, and the Northern Territory where planning has commenced with an indicative target date of FY26.

³ Please see <https://www.pexa.com.au/company/>.

⁴ Please see **Annexure 1**, being the letter from PEXA to ARNECC dated 24 July 2023.

⁵ Please see https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/Economicdynamism/Report/Chapter_10_-_Interoperability (at [10.30]-[10.31]). PEXA asserts that *"Interoperability was not policy when PEXA was founded or when the PEXA Exchange was built. As a result, the design and architecture of the PEXA Exchange did not contemplate interoperability, and the current design of interoperability will cut across many of the aspects of the design of the PEXA Exchange."*

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

- 2.6 InfoTrack understands that some banks may be hesitant to engage in the Interoperability Program due to perceived risks and uncertainties regarding governance under ARNECC.⁷ However, such concerns raised by the banking industry appear to be at odds with regulatory requirements on "authorised deposit-taking institutions" (**ADIs**) to mitigate risks that may arise from the outsourcing of a "material business activity", which arise in this case from a single point of failure as there is no real alternative to PEXA, in the absence of interoperability.⁸ Similarly, such concerns do not align with the successful completion of the "Day 1 Transactions" in September 2023, which involved the Commonwealth Bank of Australia and the National Australia Bank participating in two refinance transactions on the PEXA and Sympli ELNs.⁹ The stalling of the Interoperability Program until these perceived issues can be resolved will only benefit PEXA.
- 2.7 InfoTrack also does not agree with PEXA's assertions that working towards interoperability would erode PEXA's IP, given the focus of discussions is on identifying operating requirements necessary for interoperability to occur between ELNOs, rather than any technical know-how or expertise required to build the mechanisms that facilitate interoperability. PEXA is claiming IP rights over the digitisation of processes that were developed by the conveyancing industry to reflect best practices originating from the paper conveyancing workflow, and has asserted this position with banks requesting that they refrain from engaging in interoperability discussions.
- 2.8 In circumstances where a subscriber can currently only use a different ELNO if the counterparty also agrees to use that same ELNO, PEXA as the incumbent e-conveyancing services provider has a material advantage and also a commercial incentive to hinder the implementation of interoperability.
- C. *PEXA leverages monopoly position in ELN market to establish dominance in transaction value chain and related markets, in the absence of adequate regulation*
- 2.9 Under the Model Operating Requirements (**MOR**) developed by the ARNECC, ELNOs must not bundle ELNs with other upstream or downstream services.¹⁰ Clause 5.6 of the MOR requires an ELNO to operate separately from the supply of an upstream or downstream service, and where ELNOs wish to offer other services, they must functionally or structurally separate the

⁷ The ARNECC IOP Statement indicates that there is continuing work towards a national enforcement regime in relation to e-conveyancing, and that following stakeholder feedback, ARNECC is working to develop nationally-consistent enforcement legislation in relation to subscribers and ELNOs, with the aim to enshrine this in legislation in 2025.

⁸ Please see <https://www.apra.gov.au/sites/default/files/Prudential-Standard-CPS-231-Outsourcing-%28July-2017%29.pdf> (at [14]) and <https://www.apra.gov.au/sites/default/files/2023-07/Prudential%20Standard%20CPS%20230%20Operational%20Risk%20Management%20-%20clean.pdf> (at [31] and [60]).

⁹ Please see **Annexure 2**, being ARNECC's Statement "Day 1 Success" dated 12 September 2023. The Day 1 Transactions were two refinance transactions relating to properties in Queensland and involving Sympli and PEXA. These transactions were designed to test the capacity of both ELNOs to act as the "Responsible ELNO" and the "Participating ELNO" in an interoperable workspace, liaise with the outgoing and incoming mortgagee banks and successfully complete lodgement of the associated dealing at the Queensland Land Registry.

¹⁰ Downstream or upstream services are services which directly or indirectly: (1) access or use an ELN; (2) integrate with an ELN; or (3) utilise information accessible through or generated by an ELN.

ELN business from the business that offers other services. ARNECC has indicated that the current restrictions on ELNOs are intended to prevent anti-competitive behaviour by ELNOs in adjacent markets, but not in the ELN market itself.¹¹ However, even if such upstream or downstream businesses are technically "ring-fenced" from the PEXA ELN, PEXA openly represents all such businesses as being part of an integrated PEXA "offering" on its website (**PEXA Brands and Partners**).¹²

2.10 In the current limited regulatory environment in which there are no sanctions for non-compliance with the MOR or the ECNL,¹³ PEXA has developed and then integrated a number of e-conveyancing services into its ELN (some of which incorporate functionalities facilitated by "PEXA Partners"),¹⁴ including PEXA Exchange,¹⁵ PEXA Key, PEXA Projects, PEXA Planner, PEXA MyView, and PEXA Tracker.

2.11 PEXA has also expanded into e-conveyancing adjacent markets, with full or majority ownership of the following entities:¹⁶

- (a) .id (informed decisions);¹⁷
- (b) Land Insight;¹⁸ and
- (c) Value Australia.¹⁹

¹¹ ARNECC Interoperability Regulation Impact Statement, December 2021. Please see <https://www.arnecc.gov.au/wp-content/uploads/2021/12/Interoperability-RIS-December-2021.pdf> (at [9]).

¹² Please see <https://www.pexa-group.com/about/brand-partners/> .

¹³ As noted by the ACCC in its 2019 report on e-conveyancing market reform (**ACCC E-conveyancing Market Reform Report 2019**) the current MOR requires self-monitoring by ELNOs and does not contain a credible threat of enforcement by way of any specific response or sanction for non-compliance. Please see <https://www.accc.gov.au/system/files/Letter%20to%20ARNECC%20Chair%20and%20state%20and%20territory%20policy%20agencies%20-%20December%202019.pdf> (at [5]).

¹⁴ InfoTrack understands from public sources that "PEXA Partners" refers to entities in respect of which PEXA either has a financial interest in or is otherwise in a partnership with.

¹⁵ This platform facilitates transaction exchange and settlement, including foreign exchange transactions via "Send" (a PEXA Partner).

¹⁶ PEXA also fully owns Optima Legal, which is a conveyancing firm based in the United Kingdom (**UK**) focusing on remortgaging, as well as Smoove, which is a conveyancing tool available in the UK.

¹⁷ .id (informed decisions) is a consulting company that provides local area demographics analysis and forecasts. Please see <https://home.id.com.au/about-us> .

¹⁸ Land Insight provides environmental and climate data with analysis of the risks associated with any land or property in Australia. Please see <https://www.pexa-group.com/about/brands-partners/land-insight/> .

¹⁹ Value Australia provides property valuations through its Automated Valuation Model (**AVM**). Please see <https://value-australia.com.au/> .

- 2.12 In addition, PEXA promotes the following (non-exhaustive list of entities) as "PEXA Partners": Archistar,²⁰ OPEX,²¹ Landchecker,²² Elula,²³ Smaver, Send,²⁴ and Business Advantage,²⁵ all of whom offer services adjacent to and/or upstream/downstream of the ELN market. PEXA's promotion of its adjacent and related businesses is at odds with its obligations under MOR 5.5, which requires that integration should occur on an "equivalent basis". For example, PEXA has stalled integration with InfoTrack's PlanIT (which is an alternative to PEXA's OPEX) and has required payment of fees in return for the integration of InfoTrack's SettleIT solution.²⁶
- 2.13 In these markets which ought to be highly contestable and where competition ought to be of real benefit to consumers, PEXA is also enjoying an unfair advantage over a number of competitors (including the likes of CoreLogic, REA, Domain, and Sympli) through its ability to extract data from other market participants in return for use of the PEXA platform.

2.14



²⁰ PEXA's interest is up to 22%.

²¹ PEXA's interest is 33% as at 31 December 2023.

²² PEXA's interest is 38% as at 31 December 2023. Based on an ASIC search dated 3 July 2024 (Annexure 3), Scott Marc Butterworth is a director of Landchecker Holdings Pty Ltd. Mr Butterworth was appointed as the Chief Financial and Growth Officer of PEXA in May 2023. Please see <https://www.pexa-group.com/content-hub/news/scott-butterworth-appointed-as-new-chief-financial-and-growth-officer/> .

²³ PEXA's interest is 26.5% as at 31 December 2023.

²⁴ Please see https://www.pexa.com.au/staticly-media/2023/05/FSG_PEXA-SendFX-JUL22-sm-1683759631.pdf .

²⁵ Please see <https://www.pexa-group.com/about/brand-partners/> .

²⁶

²⁷

²⁸

²⁹



2.15 Through its operations in adjacent markets, PEXA creates and maintains a web of data input touchpoints across the transaction chain. As a result of the lack of choice in ELNOs and PEXA's unconstrained monopoly, PEXA is able to build and increasingly consolidate its dominance in related markets and other parts of the transaction value chain, eroding the conditions for effective competition and incentives for others to enter the relevant market(s).

D. *PEXA is seeking to entrench and expand position in transaction chain*

2.16 In addition to the examples of conduct highlighted above, it appears that it is also PEXA's intention to further entrench itself and build its position in related markets. This intention has materialised in the context of lobbying for integration of its ELN with proposed anti-money laundering (AML) and counter-terrorism financing (CTF) regulatory processes.

2.17 In April 2023, the Government released a consultation paper proposing reforms to simplify and modernise the Australian AML/CTF regime (**Consultation Paper**). In June 2023, PEXA responded to the Consultation Paper, proposing that the proposed customer due diligence (CDD) processes could be integrated into its ELN platform (**First PEXA AML/CTF Submission**), which "tranche-two entities" could then use to discharge their CDD obligations.³¹ In June 2024, PEXA made a further submission in the second round of consultation, seeking "simple legislative amendments to enable reliance between parties to a transaction which is implemented through...the PEXA Exchange, which connects those parties and enable[s]...assessment of AML / CTF risks."³²

2.18 If such legislative reforms are permitted without countervailing regulatory constraints being imposed on PEXA simultaneously, PEXA will preside over the full span of the e-conveyancing transaction chain, giving it an even greater ability to access transaction data and leverage existing touchpoints to entrench its position in the ELN and related markets.

2.19 By virtue of its status as the dominant incumbent, PEXA is fundamental to e-conveyancing both in the front facing retail environment and via its back end connections and associated established relationships with relevant stakeholders, including revenue offices and financial institutions.³³ The effect of this is that while there may be a range of other market participants



³¹ Tranche two entities include lawyers/conveyancers and real estate agents. In its submission, PEXA proposes a sector-specific model that "would enable reporting entities to share procedures in a real estate context, utilising the ... ELNO as part of the procedures in a compliant sector-specific AML / CTF program."

³² As the ACCC may be aware, in order for PEXA to lawfully integrate such CDD processes into its existing platform, there would need to be *inter alia* amendment of the MOR.

³³ This issue was raised by the ACCC in the E-conveyancing Market Reform Report 2019, (at [5]).

that could also offer the relevant CDD services, they would effectively be precluded from being able to compete effectively as they are "shut out" from the transaction process and relevant data collection by virtue of PEXA's integrated platform.³⁴ Should PEXA be allowed access to subscribers/reporting entities at an early stage of the transaction as a result of being permitted to integrate its proposed AML/CTF service into its ELN, competitors that could have offered competing CDD services, but for being cut off upstream by PEXA, would likely be squeezed out within an estimated 12-18 months resulting in PEXA enjoying an unchallenged monopoly in this market.

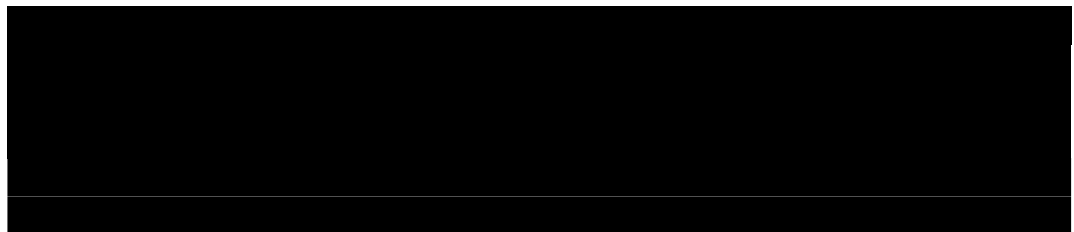
- 2.20 PEXA's proposal to integrate its platform with the relevant CDD process appears to be part of a commercial strategy to grow its position vertically in Australia, as it has already done so in overseas jurisdictions. For example, in the United Kingdom, PEXA has expanded into offering legal, remortgaging and conveyancing services as well, via Optima Legal.³⁵
- 2.21 Given PEXA's present conduct in resisting the implementation of interoperability between ELNOs, InfoTrack is concerned that if PEXA is permitted, under amended rules and legislation, to expand the breadth of its platform so as to also provide AML/CTF reporting to AUSTRAC, it would have further incentives and ability to leverage its market power to limit contestability at any level.

3. **PEXA is misusing its market power in breach of the *Competition and Consumer Act 2010* (Cth)**

3.1 InfoTrack is concerned that PEXA is misusing its market power in breach of section 46 of the CCA. As the ELNO that accounts for approximately 99% of all re-financing transactions, 88% of all property transfer transactions, and 88% of overall market share in Australia as at November 2023,³⁶ PEXA undoubtedly has a substantial degree of market power, evidenced by not only its significant market share, but also by the following key market conditions:

(a) to date, PEXA has been highly insulated from dynamic and disruptive competition and new entry, both in respect of the ELN and related markets;

(b)



³⁴ For example, there are a number of providers of "verification of identity" (VOI) services, including ConnectID, IDVerse by OCR Labs, and IDSecure by Dye & Durham. InfoTrack also offers its own VOI product, being InfoTrackID.

³⁵ Please see <https://360.optimalegal.co.uk/corporate> .

³⁶ Please see https://www.pexa-group.com/staticly-media/2023/12/Investor_Day_Nov_23-sm-1701686736.pdf (at [11]).

- [REDACTED]
- (c) there are material network effects that prevent users/subscribers from having any real choice of alternate ELNO and in turn, choice of alternate providers of services in adjacent markets.
- 3.2 Section 46 of the CCA prohibits companies with a substantial degree of market power from engaging in conduct that has the purpose, effect or likely effect of substantially lessening competition. PEXA's refusal to work towards interoperability with other ELNOs is a refusal that strengthens its monopoly position. Given PEXA's incumbency and relevant network effects, other actual or potential ELNOs have no ability to effectively compete for the provision of e-conveyancing services in the absence of interoperability, which can only be achieved with PEXA's participation in constructive discussions. PEXA's failure to engage on this issue means that competition for the provision of e-conveyancing services is blunted, and subscribers are unable to exercise choice and/or access better value services.
- 3.3 Second, as the ACCC has indicated in its Digital Platforms Inquiry 2017-2019 report (**DPI Report**), and in its Fifth Digital Platform Services Inquiry report (**DPSI Report**), self-preferencing conduct may constitute a misuse of market power. PEXA's advertising and representation of the PEXA Brands and Partners as being part of an integrated PEXA "offering" is aimed at foreclosing any other market participants from competing for users of PEXA's ELN in respect of adjacent e-conveyancing services despite the intended operation of the MOR. This is likely to have the effect of substantially lessening competition in the relevant adjacent markets.
- 3.4 Third, InfoTrack is concerned that if PEXA were permitted to expand and integrate its ELN platform with the proposed AML/CTF regulatory functionalities and processes, the inevitable consequence would be that other market participants would be foreclosed from offering competing services unless they could also offer AML/CTF reporting to AUSTRAC as efficiently as PEXA could do. PEXA would again have a first mover advantage which would likely reinforce the existing network effects, preventing conditions for competition from being sustained such that there would be no commercially feasible scenario where there are multiple ELNOs and market participants offering competing services at different levels of the transaction chain, in the ELN and related markets.
4. **Current regulation is not fit for purpose**
- 4.1 PEXA is a homegrown, dominant Australian digital platform that continues to be unchallenged and unconstrained, and which is actively resisting taking steps intended to level the playing field (i.e., implementing interoperability as between ELNOs). As a result, PEXA has few incentives to innovate, improve quality, pass through efficiencies and cost savings to customers, or work constructively with other market participants to build a more efficient, robust and contestable e-conveyancing industry. This is highlighted by the fact that in FY24, PEXA Exchange's

transaction volumes increased by 1% compared to FY23; however, its corresponding revenues increased by 11% over the same period.³⁷

- 4.2 InfoTrack is concerned that in the absence of adequate regulation, PEXA will be able to continue to foreclose other potential competitors and self-preference the products and services of entities in which it is financially invested.
- 4.3 The issues with PEXA as a homegrown domestic platform have parallels with the issues the ACCC has identified in respect digital platforms that are currently the focus of the DPI. For that reason, to the extent that the ACCC forms the view that domestic regulation needs to be introduced to regulate the activities of international digital platforms with respect to self-preferencing, tying and bundling practices, barriers to switching and promoting access to third-party applications, InfoTrack supports an extension of that regulation to PEXA so as to curb such conduct in the Australian e-conveyancing and adjacent markets.

5. **Next steps**

- 5.1 InfoTrack would be grateful for the opportunity to discuss the concerns that it has highlighted at a high level in this letter with the ACCC, and can provide further information if that would be of assistance. We look forward to hearing from you.

Your sincerely,

Stephen Wood
Chairman
InfoTrack Pty Limited

Enclosures

³⁷ PEXA's FY 24 Results dated 21 August 2024. Please see <https://www.pexa-group.com/static-media/2024/08/Investor-Presentation-vF-sm-1724195453.pdf> (at [17] and [19]).

Annexure 1

[please refer to the next page]

Australian Registrars' National Electronic Conveyancing Council

Not Relevant, Chair, Registrar General, New South Wales

Not Relevant, CEO, Titles Queensland

Not Relevant, Registrar-General, South Australia

Not Relevant, Registrar of Titles, Victoria

Not Relevant, Registrar-General, Australian Capital Territory

Not Relevant, Recorder of Titles, Tasmania

Not Relevant, Registrar of Titles, Western Australia

By email

24 July 2023

Dear Registrars,

Scope of Interoperability Reform

I refer to ARNECC's 29 June 2023 advice that it intends to undertake stakeholder consultation on the scope of the interoperability reform. The proposed consultation relates to Sympli's desire to expand the scope of interoperability to include certain PEXA features that Sympli wishes to replicate. I also refer to ARNECC's letter dated 21 July 2023.

As previously discussed, the proposal to consult industry on this matter raises a number of concerns. PEXA is concerned that the scope extension may seek to require PEXA to share its proprietary interest in IP with competitors without first resolving the legal or commercial basis for doing so. It may also create a mistaken expectation from customers that ARNECC and PEXA would support the disposal of PEXA IP to competitors in these circumstances. We have always understood ARNECC's position to be that interoperability scope change should not result in an abrogation of PEXA's IP rights. We again request that ARNECC delay the consultation process until we have resolved those matters.

Our position is explained in more detail in the following paragraphs.

The PEXA Features

PEXA has developed numerous additional services and features to enhance users' productivity. As the interoperability reform has progressed, customers have realised that these features are not included in the scope of interoperability and therefore will not be available in interoperable transactions. Sympli's proposed solution is to expand the scope of interoperability to include certain additional PEXA features (PEXA Features).

Expanding the scope of interoperability necessarily involves a misappropriation of PEXA IP

PEXA is deeply concerned that the objective of Sympli's proposal is to ensure that customers have access to all the PEXA Features in an interoperable transaction with Sympli, even if the PEXA Features are only available through bespoke PEXA IP.

The PEXA Features draw on data fields outside of the National Electronic Conveyancing Data Standard (which is the subject of a separate commercial arrangement). It is incorrect to make a blanket assumption that exchange of these additional data would not infringe PEXA IP rights. A deeper analysis is required in relation to exactly what is being sought and the extent to which this encompasses data fields and/or contextual information that reveals critical components of PEXA's confidential know-how in relation to the PEXA Features. Further, the method used to establish interoperability to date has involved the sharing of detailed process mapping and protocols that set out business processes and exception handling (PEXA's confidential know-how). That is why it is taking years to complete (compared to the early erroneous advice that interoperability would be simple). The same approach would presumably be followed with respect to the PEXA Features. If the objective of the proposed scope expansion is to enable customers to enjoy a consistent experience of the PEXA Features in an interoperable environment, this will inevitably require PEXA to share valuable IP with Sympli.

PEXA's IP is not a public asset

PEXA is now a publicly listed company, and its assets are held for the benefit of many thousands of shareholders. We must act at all times in the best interests of those shareholders. Although PEXA was started with a significant government shareholding, governments decided to sell PEXA's capabilities to the private sector and were rewarded handsomely. The consequence is that PEXA's assets are no longer available for government bodies to disburse. If ARNECC wishes to reacquire PEXA IP in order to provide it to competitors, this should be conducted as a commercial negotiation.

ARNECC itself has consistently acknowledged that ELNOs should not be forced to gift their intellectual property to competitors (in correspondence and in the terms of reference of the IDC and the PMG). ARNECC's advice to ELNOs of 29 June 2023, stated: *"Interoperability requires the exchange of data between ELNsARNECC does not envisage this would require either ELNO to disclose their intellectual property to the other."*

The proposed scope extension undermines a key policy objective of interoperability

We appreciate that, while the PEXA Features are not necessary for interoperability, they do impact the consistency of experience between interoperable and non-interoperable transactions. PEXA has long advised that there is a trade-off between incentives for ongoing innovation and a desire for uniformity of experience. Sympli's advocacy to increase the scope of interoperability to include the PEXA Features undermines the fundamental policy rationale for the reform - that the benefits of innovation would outweigh the loss of uniformity of experience. It also undermines the proposition that the proposed model of interoperability would not impact industry participants.

The early model of interoperability was built on the premise that there would be two (or more) competing full service ELNOs, and that interoperability would avoid the need for dual subscription. It has become clear that this envisaged Apple/Android model of competition bears no relation to reality, noting that Sympli (a) has had five years to build the required functionality but has not done so (b) recently terminated some 50 staff who had been employed to win business from practitioners, and (c) has not been seeking customers (its website does not enable potential customers to use its service).

Instead of competing as a full service and differentiated ELN, Sympli's strategy is clearly to rely on regulatory intervention to enforce access to PEXA infrastructure without any appropriate payment to PEXA. This strategy is apparent in Sympli's current attempts to access PEXA IP in other ways also – for example, Sympli's attempt to gain access to the Residual Document Configuration Spreadsheet (RDCS) without any meaningful payment to PEXA and Sympli's advocacy to be able to use PEXA as a default RELNO, enabling Sympli to avoid uncommercial components of an ELN build and instead access PEXA's capability without any meaningful compensation.

PEXA is prepared to consider alternative models to make its IP available to retailers on appropriate terms

ARNECC's engagement on scope expansion may be an attempt to avoid the complexity and costly duplication of infrastructure under the current model, which will ultimately be to the detriment of consumers and other stakeholders. As we have previously advised, PEXA is open to exploring models to provide Sympli and other potential retailers access to PEXA's capabilities on appropriate terms. We believe this would deliver the least cost, lowest risk and best service to customers across the country. It would also support genuine competition and innovation to drive continuous improvement of services.

We note your letter of 21 July advising that ARNECC is interested in considering how a wholesale/retail model for e-conveyancing could be further investigated. We appreciate ARNECC's invitation to engage further on these issues. PEXA will work through the queries raised by ARNECC and will provide a response to that letter as a matter of priority.

Next steps

PEXA reiterates the request that ARNECC cease engagement with industry on interoperability scope until the issues raised in this letter can be resolved. As stated above, we are concerned that this engagement will create (or has already has created) a false expectation from customers that ARNECC will somehow ensure that the customers' preference for consistent access to the PEXA Features will receive priority over respect for PEXA's IP rights. We also request that ARNECC clarify to any stakeholders consulted that ARNECC would not support the scope of interoperability being expanded in a manner that requires PEXA to share with competitors any process mapping, protocols or any other IP in relation to the PEXA Features. We would be grateful if you could also confirm this position and that the relevant communications have been made by reply letter.

We also reiterate our request that ARNECC support a review of the current industry model and will respond to ARNECC's 21 July letter as requested to aide ARNECC's further consideration of a wholesale/retail model. In that response we will address the issue of how this model could enable competing ELNOs to access PEXA's infrastructure and IP in a manner that promotes competition and innovation for the benefit of consumers and also provides an appropriate return to PEXA shareholders.

In the meantime, PEXA expressly reserves all rights in relation to this matter.

Sincerely,

Not Relevant

Not Relevant

Not Relevant

Annexure 2

[please refer to the next page]

ARNECC Statement – Day 1 Success

ARNECC is pleased to announce the successful delivery of a critical interoperability program milestone – the Day 1 Transactions.

The Day 1 Transactions were two refinance transactions relating to properties in Queensland and involving the two Electronic Lodgment Network Operators (**ELNOs**) currently operating in the electronic conveyancing market, Property Exchange Australia Limited (**PEXA**) and Sympli Australia Pty Ltd (**Sympli**).

The Day 1 Transactions were designed to test the capacity of both ELNOs to act as the Responsible ELNO and the Participating ELNO in an interoperable workspace, liaise with the outgoing and incoming mortgagee banks and successfully complete lodgment of the associated dealing at the Queensland Land Registry.

ARNECC is pleased to announce that the Day 1 Transactions were completed successfully on 12 September 2023 in accordance with the current program timeline. The Day 1 Transactions represent a critical milestone, demonstrating that the technical solution developed by ELNOs is capable of delivering on its objective – enabling Electronic Lodgment Networks to interoperate in order to complete an electronic conveyancing transaction.

This achievement is the product of significant contributions by industry. ARNECC thanks all stakeholders for their ongoing commitment to the reform and in particular, would like to thank the Commonwealth Bank of Australia and the National Australia Bank for participating in the Day 1 Transactions.

The next phase of the interoperability reform is the design, building, testing and implementation of comprehensive interoperable functionality for all Subscribers. ARNECC is currently consulting with key stakeholders on the progressive rollout of this functionality and will shortly consult on updated Model Operating Requirements which include timing milestones to give greater certainty to industry.

ARNECC reiterates the importance of maintaining the momentum behind the reform to ensure that a complete interoperability solution is developed efficiently and expeditiously.

Dated: 12 September 2023

Annexure 3

[please refer to the next page]

ASIC EXTRACT SNAPSHOT

CURRENT ORGANISATION DETAILS

Date Extracted	03/07/2024
ACN	657 144 575
ABN	58 657 144 575
Current Name	LANDCHECKER HOLDINGS PTY LTD
Registered In	Victoria
Registration Date	08/02/2022
Review Date	08/02/2025
Company Type	ACN (Australian Company Number)
Current Directors	4
Current Secretaries	2

Start Date	07/04/2022
Name	LANDCHECKER HOLDINGS PTY LTD
Name Start Date	07/04/2022
Status	Registered
Type	Australian Proprietary Company
Class	Limited By Shares
Sub Class	Proprietary Company
Disclosing Entity	No

Share Structure (Displaying Top 4 Only)

[Go to Full ASIC Results](#)

Class	Class Type	Shares Issued	Amount Paid
ORD	ORDINARY SHARES	28090734	\$28,090,734.00

(creditor)watch - Credit Score (544)

[Go to Full Credit Report](#)

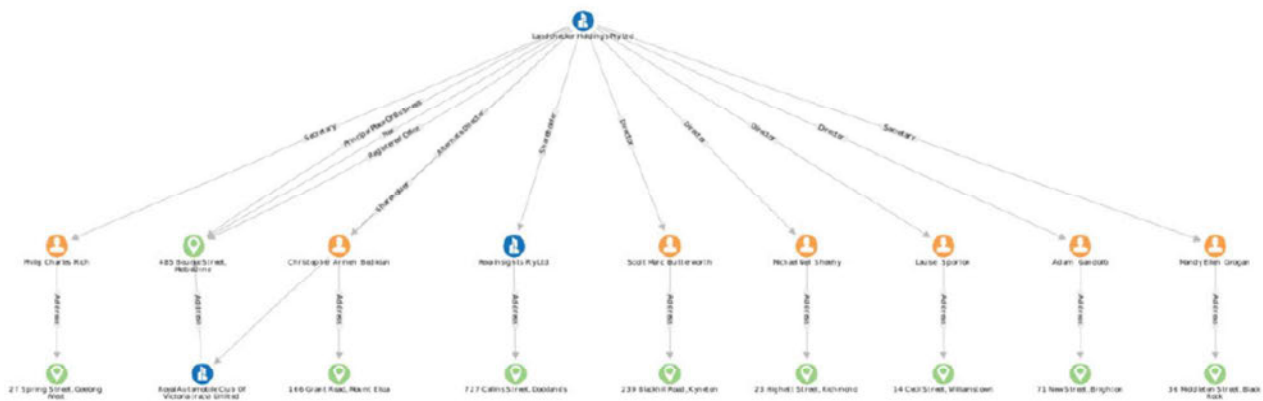


Risk Data Summary

Court Judgments	0	Payment Defaults	0	Insolvency Notices	0	Mercantile Enquiries	0	Credit Enquiries	20
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REVEAL - Company Visualisation

[Go to full workspace](#)



ASIC Data Extracted 03/07/2024 at 08:16

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

No changes to the company information have been detected since last extracted.

- 657 144 575 LANDCHECKER HOLDINGS PTY LTD -

ACN (Australian Company Number):	657 144 575	Document No.
ABN:	58 657 144 575	
Current Name:	LANDCHECKER HOLDINGS PTY LTD	
Registered in:	Victoria	
Registration Date:	08/02/2022	
Review Date:	08/02/2025	
Company Bounded By:		

- Current Organisation Details -

Name:	LANDCHECKER HOLDINGS PTY LTD
Name Start Date:	07/04/2022
Status:	Registered
Type:	Australian Proprietary Company
Class:	Limited By Shares
Sub Class:	Proprietary Company

- Company Addresses -

- <u>Registered Office</u>		5EFL72506
Address:	LEVEL 7 485 BOURKE STREET MELBOURNE VIC 3000	
Start Date:	08/02/2022	
- <u>Principal Place of Business</u>		5EFL72506
Address:	LEVEL 7 485 BOURKE STREET MELBOURNE VIC 3000	
Start Date:	08/02/2022	

- Company Officers -
Note:

A date or address shown as UNKNOWN has not been updated since ASIC took over the records in 1991. For details, order the appropriate historical state or territory documents, available in microfiche or paper format.

* Check documents listed under ASIC Documents Received for recent changes.

Director

Name: SCOTT MARC BUTTERWORTH 9EAA61324
Address:
Birth Details:
Appointment Date: 25/02/2022
Cease Date: //

Name: MICHAEL NEIL SHEEHY 7EBT16419
Address:
Birth Details:
Appointment Date: 08/02/2022
Cease Date: //

Name: LOUISE SPORTON 6EDGV4134
Address:
Birth Details:
Appointment Date: 01/07/2024
Cease Date: //

Name: ADAM GANDOLFO 6EDGV4134
Address:
Birth Details:
Appointment Date: 01/07/2024
Cease Date: //

Secretary

Name: MANDY ELLEN GROGAN 7EBQ68846
Address:
Birth Details:
Appointment Date: 16/03/2022
Cease Date: //

Name: PHILIP CHARLES RICH 7EBQ68846
Address:
Birth Details:
Appointment Date: 16/03/2022
Cease Date: //

Alternate Director

Name: CHRISTOPHER ARMEN BODIKIAN 6EJB42212
Address:
Birth Details:

Appointment Date: 18/08/2023
Cease Date: //

- Share Structure -

Current

Class:	ORDINARY SHARES	6EZO14325
Number of Shares Issued:	28090734	
Total Amount Paid / Taken to be Paid:	\$28,090,734.00	
Total Amount Due and Payable:	\$0.00	

Note:

For each class of shares issued by a company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

- Share/Interest Holding -

Current

- Holding -

Class:	ORD	Number Held:	10784479	6EZL84163
Beneficially Owned:	Yes	Fully Paid:	Yes	

- Members -

Name: PEXA INSIGHTS PTY LTD
ACN: 647 086 584
Address: 'TOWER FOUR COLLINS SQUARE' LEVEL 16 727 COLLINS STREET DOCKLANDS VIC 3008
Joint Holding: No
Abn: 93 647 086 584

- Holding -

Class:	ORD	Number Held:	17306255	6EZO14325
Beneficially Owned:	Yes	Fully Paid:	Yes	

- Members -

Name: ROYAL AUTOMOBILE CLUB OF VICTORIA (RACV) LIMITED
ACN: 004 060 833
Address: LEVEL 7 485 BOURKE STREET MELBOURNE VIC 3000
Joint Holding: No
Abn: 44 004 060 833

- External Administration Documents -

[There are no external administration documents held for this organisation.](#)

- Charges -

[There are no charges held for this organisation.](#)

Notes:

On 30 January 2012, the Personal Property Securities Register (PPS Register) commenced.

At that time ASIC transferred all details of current charges to the PPS Registrar.

ASIC can only provide details of satisfied charges prior to that date.

Details of current charges, or charge satisfied since 30 January 2012 can be found on the PPS Register, www.ppsr.gov.au.

InfoTrack may cap documents for on-file searches to 250.

- Document List -

Notes:

* Documents already listed under Registered Charges are not repeated here.

* Data from Documents with no Date Processed are not included in this Extract.

* Documents with '0' pages have not yet been imaged and are not available via DOCIMAGE. Imaging takes approximately 2 weeks from date of lodgement.

* The document list for a current/historical extract will be limited unless you requested ALL documents for this extract.

* In certain circumstances documents may be capped at 250.

Form Type	Date Received	Date Processed	No. Pages	Effective Date	Document No.
484	01/07/2024	01/07/2024	2	01/07/2024	6EDGV4134
484E					Change to Company Details Appointment or Cessation of A Company Officeholder
484	08/03/2024	08/03/2024	2	07/03/2024	6EZQ34329
484E					Change to Company Details Appointment or Cessation of A Company Officeholder
484	07/03/2024	07/03/2024	4	07/03/2024	6EZO14325
484					Change to Company Details
484O					Changes to Share Structure
484N					Changes to (Members) Share Holdings
484	06/03/2024	06/03/2024	2	05/03/2024	6EZL84163
484					Change to Company Details
484O					Changes to Share Structure
484G					Notification of Share Issue
484N					Changes to (Members) Share Holdings
484	22/02/2024	22/02/2024	3	22/02/2024	6EYL66682
484					Change to Company Details
484O					Changes to Share Structure
484G					Notification of Share Issue

484N	Changes to (Members) Share Holdings				
484	25/08/2023	25/08/2023	4	23/08/2023	6EJU93000
484	Change to Company Details				
484O	Changes to Share Structure				
484G	Notification of Share Issue				
484N	Changes to (Members) Share Holdings				
484	18/08/2023	18/08/2023	3	18/08/2023	6EJB42212
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
484	09/02/2023	09/02/2023	2	09/02/2023	3ETZ84574
484A2	Change to Company Details Change Member Name or Address				
484	08/12/2022	08/12/2022	4	08/12/2022	7EBZ37763
484	Change to Company Details				
484O	Changes to Share Structure				
484G	Notification of Share Issue				
484N	Changes to (Members) Share Holdings				
484	02/08/2022	02/08/2022	4	02/08/2022	7EBV00868
484	Change to Company Details				
484O	Changes to Share Structure				
484G	Notification of Share Issue				
484N	Changes to (Members) Share Holdings				
484	08/06/2022	08/06/2022	2	08/06/2022	7EBT16419
484A1	Change to Company Details Change Officeholder Name Or Address				
205	07/04/2022	07/04/2022	2	28/03/2022	7EBR35504
205A	Notification of Resolution Changing Company Name				
484	18/03/2022	18/03/2022	2	18/03/2022	7EBQ49465
484N	Change to Company Details Changes to (Members) Share Holdings				
484	17/03/2022	17/03/2022	3	17/03/2022	7EBQ68846
484E	Change to Company Details Appointment or Cessation of A Company Officeholder				
484	03/03/2022	03/03/2022	6	03/03/2022	9EAA61324
484	Change to Company Details				
484D	Change to Ultimate Holding Company				
484E	Appointment or Cessation of a Company Officeholder				
484O	Changes to Share Structure				
484G	Notification of Share Issue				
484N	Changes to (Members) Share Holdings				
201	08/02/2022	08/02/2022	3	08/02/2022	5EFL72506
201C	Application For Registration as a Proprietary Company				

- Company Contact Addresses -

- Contact Address for ASIC use only

Address: LEVEL 7 485 BOURKE STREET MELBOURNE VIC 3000

Start Date: 03/03/2022

*** End of Document ***









(creditor)watch

Credit Report


Name	LANDCHECKER HOLDINGS PTY LTD
ABN	58657144575
ACN	657144575
Document Type	Credit Report
Report Generated	22-07-2024 at 15:51
ASIC Extract	Not Included
ASIC Extract Status	Not Included

Credit Report	✓ Included
RiskScore	✓ Included
Payment Rating	✗ Not Included
CW Bankruptcy Check (PIRS)	✗ Not Included
ASIC Data (On File)	✗ Not Included
ASIC Current Extract	✗ Not Included
ASIC Current & Historical	✗ Not Included
PPSR ACN	✗ Not Included
PPSR ABN	✗ Not Included
PPSR Business Name	✗ Not Included
Append Docs Lodged	✓ Included
Append Business Names	✓ Included
Append Credit Enquiries	✓ Included

Summary

 C3 / 544 Borderline Risk	20 Credit Enquiries	 Registered
 No Registered Defaults	 No Court Actions	 No Mercantile Enquiries
 No ASIC Published Notices	 No Critical ASIC Documents	 Important Cross Directorships Not Available

Adverse

Risk Category	Risk Level	Risk Overview
		 No Adverse Information Found

ABR Data

Main Name	LANDCHECKER HOLDINGS PTY LTD
ABN	58 657 144 575
Registered Date	08-02-2022
Entity Status	Active
Entity Type	Australian Private Company
GST Status	Not currently registered for GST
Main Physical Address	VIC 3000 (from 08-02-2022)
ABN Last Updated	09-04-2022

ASIC Data

Name	LANDCHECKER HOLDINGS PTY LTD
Registered Office Address	L 7 485 BOURKE ST MELBOURNE 3000
ACN	657 144 575
Registered Date	08-02-2022
Next Review Date	08-02-2025
Status	Registered
Company Type	Australian Proprietary Company
Class	Limited By Shares
Subclass	Proprietary Company
Locality	MELBOURNE VIC 3000
Regulator	Australian Securities & Investments Commission

Industry

ANZSIC Classification	Financial and Insurance Services Finance Financial Asset Investing Financial Asset Investing
NACE Classification	Activities of holding companies Trusts, funds and similar financial entities Other financial service activities, except insurance and pension funding n.e.c.

RiskScore



RiskScore Information

- C3 credit rating
- 544 out of 850 points
- Risk level **Borderline**



C3
Rating

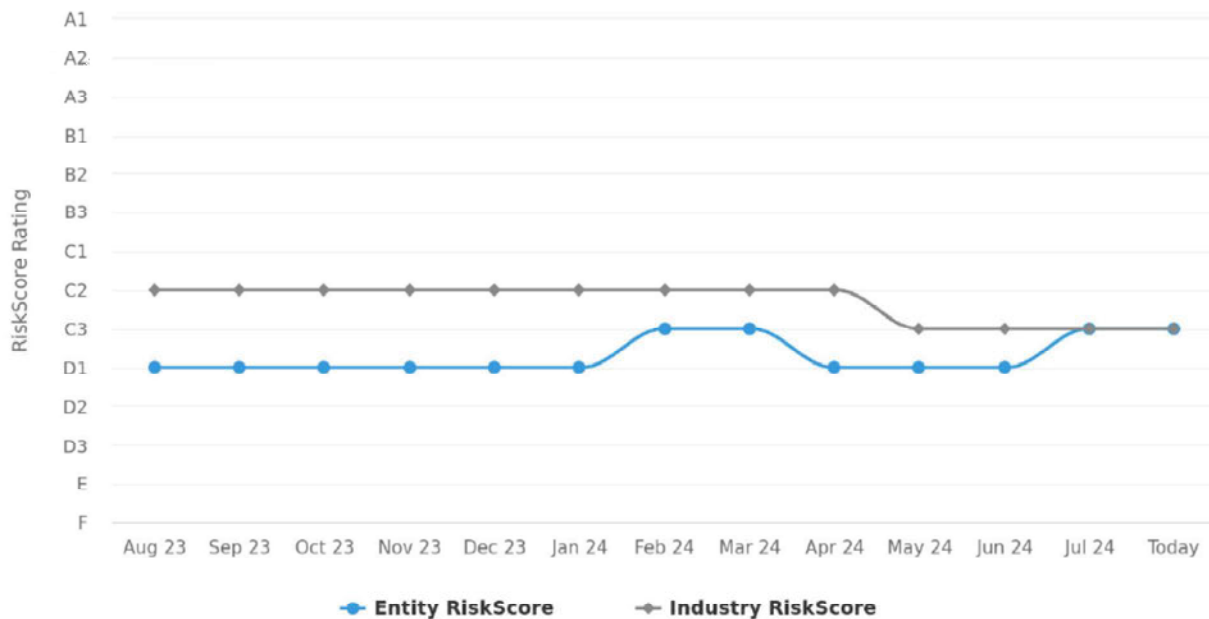
RiskScore advice for the C3 Range

Entity is vulnerable and the aptitude to meet credit commitments is dependent upon favourable business, financial, and economic conditions. Trade with caution, closely monitor and consider your payment terms.

Entity has a **9% to 12% chance of default** within the next 12 months.

RiskScore Historical Information

Within the last 12 Months



i The CreditorWatch RiskScore is the most advanced algorithm in the market and is designed to ensure you make the right decision. The RiskScore has been developed using the latest machine learning techniques in combination with CreditorWatch's extensive data. The CreditorWatch RiskScore should be used in partnership with your internal credit procedures and policies.

What is "probability of default"?

This is the likelihood that an entity will NOT be able to meet their financial commitments in the next 12 months eg: pay an invoice.

Score Recommendations

RiskScore Rating	Risk Level	Recommendation
A1, A2, A3	Very Low	Very strong credit quality based on behavioural and business demographics. Likelihood of default or insolvency is considered very low. Extend terms within consideration.
B1, B2	Low	Strong credit quality based on behavioural and business demographics. Likelihood of default or insolvency is considered very low. Extend terms within consideration.
B3, C1	Neutral	Lower than average default risk for an Australian business. Business demographics and behaviours indicative of low likelihood of default or insolvency in the short to medium term. Extend terms and monitor ongoing payment behaviour.
C2	Acceptable	Average default risk for an Australian business. Standard underwriting criteria and due diligence recommended prior to extending credit. Extend terms, closely monitor ongoing payment behaviour.
C3	Potential Risk	Behaviours and business demographics may indicate increased risk for some businesses in this group. Assessment of the entity's financial position and cashflow is recommended prior to extending material unsecured credit.
D1, D2, D3	High	Risk of default or insolvency is significantly higher than the average for Australian businesses. COD trading highly recommended.
E	Impaired	Entity is highly vulnerable to default or insolvency in the short term.
F	Defaulted	One or more creditors has initiated legal proceedings or other significant actions in response to unpaid debt obligations, or the entity is entering or has entered insolvency.

i Please note that the rating and recommendation should be used in partnership with your company's internal credit procedures and policies. The rating should not be used as the sole reason in making decision about the entity.

Credit Enquiries

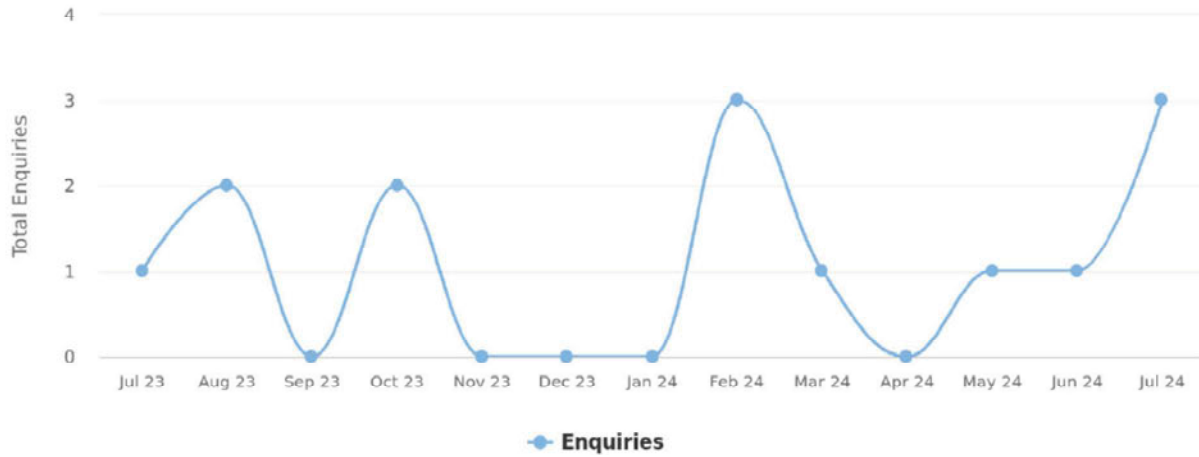


20
Last 5 Years



14
Last 12 Months

Credit Enquiries
Within the last 12 Months



Enquiries Ordered by Industry

Industry (ANZSIC Division)	No of Enquiries
Information Media and Telecommunications (J)	10
Rental, Hiring and Real Estate Services (L)	3
Professional, Scientific and Technical Services (M)	1
Total Enquiries (within the last 12 months)	14


Enquiries Ordered by Date

Industry (ANZSIC Division)	Date
Information Media and Telecommunications (J)	22-07-2024
Information Media and Telecommunications (J)	03-07-2024
Information Media and Telecommunications (J)	02-07-2024
Rental, Hiring and Real Estate Services (L)	20-06-2024
Information Media and Telecommunications (J)	27-05-2024
Information Media and Telecommunications (J)	22-03-2024
Information Media and Telecommunications (J)	14-02-2024
Professional, Scientific and Technical Services (M)	13-02-2024
Information Media and Telecommunications (J)	07-02-2024
Rental, Hiring and Real Estate Services (L)	30-10-2023
Rental, Hiring and Real Estate Services (L)	29-10-2023
Information Media and Telecommunications (J)	28-08-2023
Information Media and Telecommunications (J)	23-08-2023
Information Media and Telecommunications (J)	24-07-2023

i Credit enquiries provide an indication of the number of times an entity's credit file has been accessed. For credit enquiries performed in the last 12 months, the date of the enquiry and the industry of the business, sole trader or individual performing the credit enquiry is detailed in the graph and table.


Risk Data

Court Actions

Court Details	Plaintiff	Action	Nature of the Claim	Amount
 No Court Actions				


- i** CreditorWatch aggregate data from courts around Australia to provide a summary of court actions against an entity. When available, details of the action include location, case number, state, plaintiff, nature of the claim, action type and dollar amount.

Payment Defaults

Added	Invoice Due	Submitted By	Amount	Status
 No Payment Defaults Lodged				


- i** A default indicates that the debtor has failed to make a payment for goods or services. Payment Defaults are unique to CreditorWatch and can have one of three statuses: outstanding, partial payment or settled.


Tax Defaults

Date Added	Date Updated	Submitted By	Status	Amount
 No Tax Defaults Lodged				

- i** A tax default indicates that a business has overdue tax payments and has failed to respond to a notice of disclosure by The Australian Taxation Office (ATO). Tax defaults are only lodged on debts that are over 90 days overdue and are over a value of \$100,000.

Mercantile Enquiries

Enquiry Date	Mercantile Agent
 No Mercantile Enquiries Lodged	

 A Mercantile enquiry is an indication that a mercantile agency (or debt collection agency) has conducted an enquiry on this entity for the purpose of debt collection.

Status Changes

ASIC Entity Status Changes

Change Date	ASIC Status
08-02-2022	Registered (Current status)

i The most common ASIC entity statuses are: registered, deregistered, external administration and strike-off action in progress. This section identifies if there have any been changes to the status of the entity's ACN, and the date the changes have occurred.

Business Names

Registered Business Index

Business Name	Status	Registered Number	Address
There are no business name extracts registered to this company			

Registered Business Names

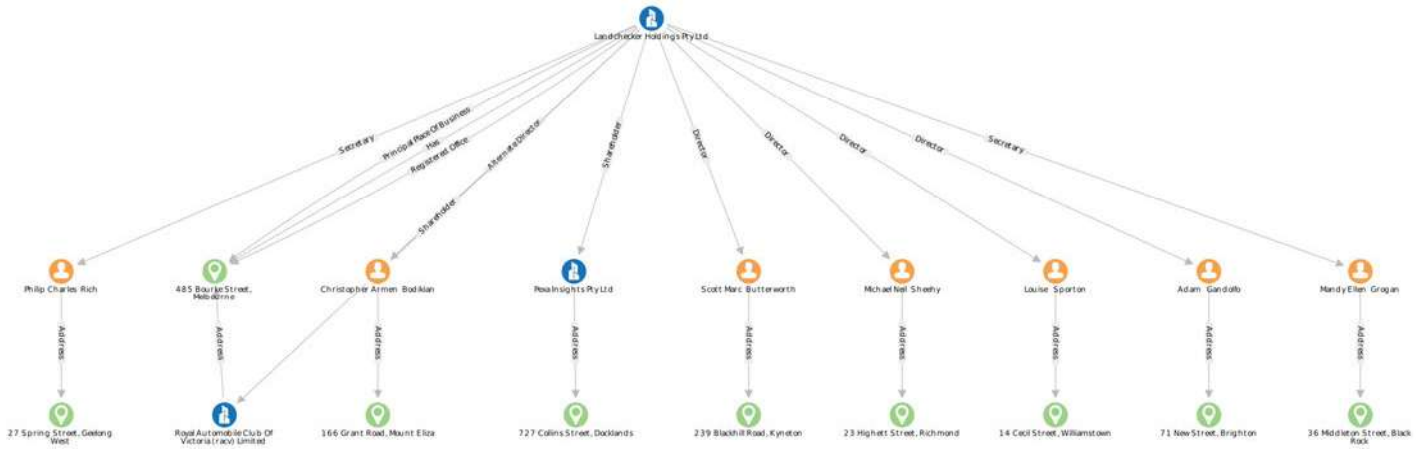
Name	Business Name Type	Source
LANDCHECKER HOLDINGS PTY LTD	Main Name	ABR
PROJECT FLIPPER HOLDINGS PTY LTD	Former Name	ASIC
PROJECT FLIPPER HOLDINGS PTY LTD	Main Name	ABR

i Business names are derived from two data sources, one of which is basic information provided by ABR. The other comes from the business names extract index which, when available, includes the owner of the business name and registered business address.

Appendix

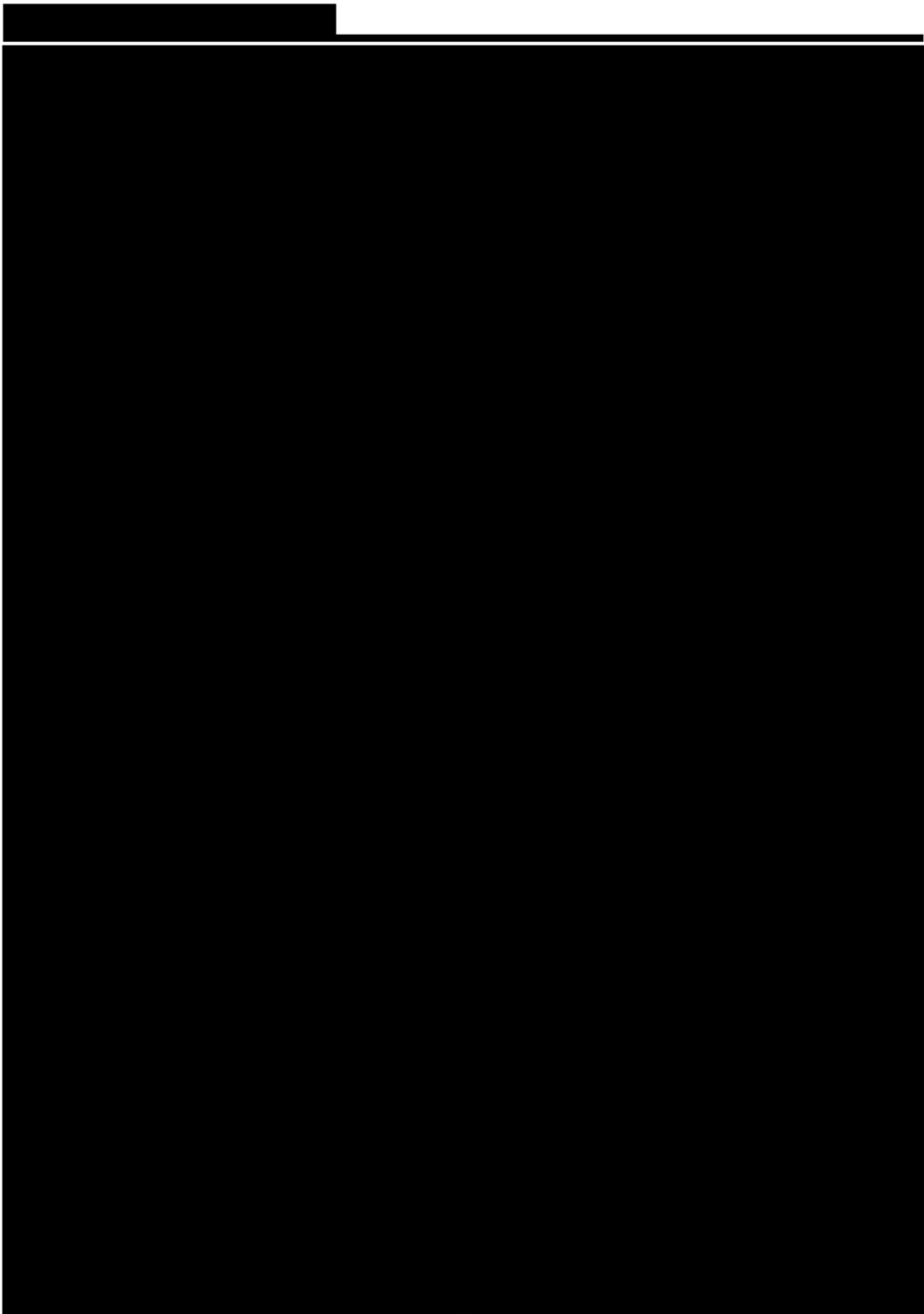
Disclaimer

CreditorWatch is committed to ensuring that the information provided is accurate and comprehensive however due to data being received from sources not controlled by CreditorWatch we cannot guarantee that it is complete, verified or free of errors. To the extent permitted by law, CreditorWatch will not be held responsible for any errors or omissions therein concerning the information sourced and published in its publications, websites, API or emails.



Annexure 4

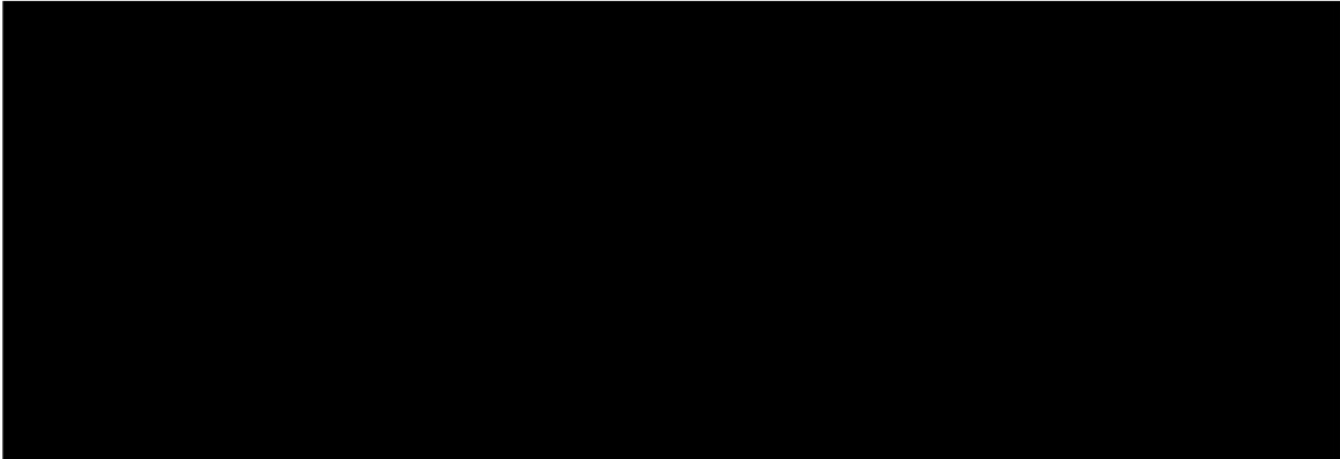
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Annexure 5

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