
ISSUES PAPER

Review of the InterGovernmental Agreement for an Electronic Conveyancing National Law

PREPARED BY

DENCH McCLEAN CARLSON

13 February 2019

Submissions requested by 29 March

TABLE OF CONTENTS

1.0	EXECUTIVE SUMMARY	5
	Purpose of this paper	5
	Preliminary Findings.....	6
	Comments Invited	9
2.0	BACKGROUND AND GOVERNANCE FRAMEWORK	10
	ECNL	10
	Model Operating Requirements.....	11
	Model Participation Rules.....	13
	Compliance	14
3.0	STAKEHOLDER FEEDBACK	15
	Legal practitioners	15
	Conveyancers	18
	Financial services providers	21
	Software houses.....	23
	Revenue offices.....	25
	ELNOs and Applicant ELNO	26
	Registrars.....	28
	Verification of Identity (“VOI”) providers	30
	ACCC.....	30
4.0	STAKEHOLDER SURVEY RESULTS	32
	Respondents backgrounds and jurisdictions.....	32
	Survey Format.....	34
	Implementation.....	34
	Governance and Regulation	46
5.0	ANALYSIS OF ISSUES	52
	Uptake.....	52
	Regulatory control and compliance	53
	Regulatory powers	55
	Industry change management	56
	Conflict of interest and mandating eConveyancing	56
	System change control	56
	Cybersecurity	57
	Financial settlement	58
	Business disruption	59
	Competition	60
	Interoperability.....	62
6.0	PRELIMINARY OPTIONS	67
	Regulatory and governance arrangements.....	67
	Governance Bodies.....	68
	Funding a regulator	69
	Industry wide competition	70
	A competitive ELNO market	70
7.0	NEXT STEPS	74
	Anticipated Timetable	74

APPENDIX I	CONSULTATIVE RECORD AS AT 7 FEBRUARY 2019	75
APPENDIX II	DESCRIPTION OF PRELIMINARY OPERATING MODEL OPTIONS	80
APPENDIX III	COMPARISON OF PRELIMINARY OPERATING MODEL OPTIONS	87

GLOSSARY

ACCC	Australian Competition and Consumer Commission
ARNECC	Australian Registrars' National Electronic Conveyancing Council
ARWG	Australian Registrars' Working Group
BEC	Business Email Compromise
DvP	Delivery versus Payment
ECNL	Electronic Conveyancing National Law
ELN	Electronic Lodgement Network
ELNO	Electronic Lodgement Network Operator
IGA	Inter-Governmental Agreement for an Electronic Conveyancing National Law
LPLC	Legal Practitioners' Liability Committee
LR	Land Registry
MOR	Model Operating Requirements
MPR	Model Participation Rules
NECDS	National Electronic Conveyancing Data Standard
PA	Participation Agreement
PEXA	Property Exchange Australia Ltd (formerly National E-Conveyancing Development Limited)
RBA	Reserve Bank of Australia
VOI	Verification of Identity

1.0 EXECUTIVE SUMMARY

Purpose of this paper

- 1.1 In accordance with the Intergovernmental Agreement for an Electronic Conveyancing National Law (“IGA”) signed in 2011 and 2012, the parties to the agreement are required to review the IGA’s operations and terms after it has operated for seven years. The independent review is to include the operations and terms of the Electronic Conveyancing National Law (“ECNL”).
- 1.2 Dench McClean Carlson (“DMC”) was appointed by the Australian Registrars’ National Electronic Conveyancing Council (“ARNECC”) to conduct the Review and to recommend the most appropriate arrangements for the future.
- 1.3 The Review’s purpose is to assess the IGA’s operation since it started and assess whether the IGA has met its objectives of establishing a framework to facilitate the implementation and ongoing management of a regulatory framework for national eConveyancing. It will advise whether existing governance and regulatory arrangements are fit-for-purpose for the future and provide appropriate accountability to participating Governments.
- 1.4 The initial phase in the Review is to consult with identified stakeholders and prepare this Issues Paper to consolidate the feedback and identify preliminary options for the future.
- 1.5 Stakeholders identified by ARNECC from industry and Government were consulted in meetings, telephone interviews and by survey to identify the issues of most importance. Peak bodies were requested to send the survey to their members.
- 1.6 DMC consulted with the following stakeholders:
 - Key participants involved in Australia’s conveyancing sector including the legal sector, conveyancing sector and financial institutions
 - Individual registrars from each State and Territory and where there is an operator/regulator split of registry functions, both parties
 - Operating and potential Electronic Lodgment Network Operators (“ELNOs”)
 - Central agencies of State and Territory governments
 - The offices of state revenue operating in each jurisdiction
 - Downstream and complementary service providers to eConveyancing
 - The ACCC
- 1.7 A consultative record is provided at Appendix I.

Preliminary Findings

- 1.8 The original intent of electronic conveyancing was to improve efficiency and reduce costs in the industry and in government. This has been made possible with the building of a successful eConveyancing platform.
- 1.9 The full benefits will not be achieved until all participants are using the platform; but it is likely this will only be achieved by mandating its use for all land transactions that are able to be electronically lodged and, where applicable, settled. In some jurisdictions this will be close to 100%.
- 1.10 Stakeholders that have fully adopted have obtained significant time and in most cases cost benefits - limited in some cases by the need to prepare documents for both paper and electronic conveyancing.
- 1.11 Our consultations and observations include good reports and few concerns with the system currently delivered by PEXA.
- 1.12 We have also noted good responsiveness to improving the system's security when a fraud occurred via intrusion into a subscriber business email. Requests for Multi-Factor Authentication were immediately implemented after the breach occurred. We note that the transactions in eConveyancing are all high value and that cybersecurity in this environment will need continual monitoring by all participants.
- 1.13 Some concerns have been expressed with the lack of responsiveness by PEXA when stakeholders want change. Views were mixed about the level of training and support offered by PEXA when subscribers were learning the system.
- 1.14 Detail on stakeholder responses and their key issues are provided in sections 3 and 4. Issues are analysed in section 5 and preliminary options identified in section 6.
- 1.15 Most conveyancing practitioners support competition and have welcomed the recent preliminary entry of a second ELNO, Sympli, into the market. Most conveyancers and legal practitioners do not want to learn two systems but there is significant uncertainty about what an interoperability model would look like.
- 1.16 To date ELNOs have not identified a detailed model for interoperability but there will be additional risks and vulnerabilities with multiple parties involved in transactions. It is possible that information will be moving between two different eConveyancing systems and two different financial settlement systems. The party (or parties) liable for the risk needs to be clearly identified before any transactions occur in an interoperable system.
- 1.17 Governments should not endorse a system that could leave sellers or buyers without recourse (except through court action) against two competing ELNOs while they are without either clear title to a property or without funds from a sale. If two ELNOs work on a transaction then liability could be shared initially between them with the buyer or seller recompensed; the ELNOs can then assess liability between them, or perhaps other parties.

- 1.18 All ELNOs should use best endeavours to recover missing funds whether a title fraud or a settlement fraud (or even a mistake) as they will have significant relationships with the mortgage providers and the titles registries, whereas conveyancing practitioners and property buyers and sellers are less likely to receive assistance from financial institutions.
- 1.19 Stakeholders have suggested that if there is no interoperability then the purchaser's representative should choose which ELNO to use. Some have suggested it would be written into the contract of sale
- 1.20 It is not clear that two ELNOs will create a contestable market in the longer term. The costs of developing a system that is safe, secure and ensures land title integrity are not insignificant, so it is possible that only a duopoly will be created.
- 1.21 It is likely that price control will be needed for the foreseeable future given that some jurisdictions have mandated the use of electronic conveyancing for some or all transactions and others may follow.
- 1.22 Whilst the MOR require ELNOs to provide a minimum set of services to all jurisdictions, there is no maximum timeframe specified and the planned timeframe to deliver the services is forecast by the ELNO in its business plan. There are currently no enforcement options, short of ELNO suspension, if an ELNO fails to deliver services to all jurisdictions.
- 1.23 There is no guarantee that both or any additional ELNOs would operate in all jurisdictions and it may be that ELNOs choose to operate only in the large jurisdictions that generate a profit for the costs involved in set up. Depending on how the market develops, there may not be even two operators in each jurisdiction. When we compare this market with the telecommunications market, we note that the Australian Government pays one operator to meet Universal Service Obligations for services that cannot be delivered on a commercial basis.
- 1.24 The change management process for system updates will be significantly more complex with the need to coordinate releases from two ELNO systems and at least ten government entities – five land title registry functions and five revenue functions. This complexity will only increase in the future as other jurisdictions join.
- 1.25 All stakeholders believe that ARNECC has done a very good job of regulating the land titles component of the eConveyancing system, but most believe it has insufficient skills and resources currently at its disposal to manage the other matters requiring regulation and governance.
- 1.26 A number of these matters have existing federal and state and territory regulations and regulators, but the eConveyancing governance framework to date has not specifically covered compliance with all of these regulators' requirements or expectations.
- 1.27 ELNOs and subscribers should be in good standing with all appropriate regulators and be in compliance with ARNECC/government contracts and licences. ARNECC should have a range of options available to it to

ensure compliance. This could include the ability to fine or apply other penalties and sanctions where appropriate.

1.28 Regulatory and governance areas include:

- Land titles – ensuring security of title
- Financial settlement – certification that the settlement system is fit for purpose ie fit for property transactions that are of high value and require a Delivery versus Payment protocol where no party can hold the asset and the funds at the same time
- Cybersecurity for government data and personal data
- Privacy for personal data
- Confidentiality for appropriate government and business data
- Professional certifications and ELN practice requirements – conveyancers and lawyers
- Certifications and ELN practice requirements – financial services providers
- Market regulation including constraints on pricing in monopoly or duopoly circumstances, vertical integration and unfair competition, imposition of pricing barriers to competition
- Risk and liability management – financial settlement as well as title integrity
- Monitoring and reporting – audits of ELNOs and practitioners
- Guidance and enforcement – guidance and direction to ELNOs on new and emerging issues, actions to ensure compliance
- Policy development
- Dispute and complaints management
- Liaison with other regulators in each jurisdiction including national regulators
- A mechanism such as a stakeholder council or an advisory group to provide advice to ARNECC on relevant matters
- Business process matters – development of a proactive agenda to address matters of efficiency raised by stakeholders in a systematic fashion
- Technology frameworks and standards including data standards
- Change management processes – managing system updates and changes to ensure systems continue to reflect the legislative needs of the jurisdictions in both land titling and revenue collection matters,

and the stakeholders are given sufficient time and training to accommodate any changes

- 1.29 Stakeholders want these regulator and governance areas addressed.
- 1.30 Regulatory and governance issues are discussed in section 5 and preliminary options are discussed in section 6.

Comments Invited

- 1.31 Comment on the Issues Paper would be welcomed until 29 March 2019 to:

Anne Larkins	0419 373 096 Mobile alarkins@dmcca.com.au
Cameron Geddes	0417 653 118 Mobile cgeddes@dmcca.com.au
Office	Dench McClean Carlson P/L Level 5,99 Queen Street Melbourne 3000 (03) 8617 8160 Telephone

2.0 BACKGROUND AND GOVERNANCE FRAMEWORK

- 2.1 The total value of property recorded in Australian land registries is estimated to be \$6 trillion. Each year an estimated \$600 billion of property changes hands in 750,000 transfers. This is substantially higher than the total market capitalisation of the ASX, which is less than \$2 trillion.
- 2.2 For over 150 years, State and Territory land registries have played a critical role in the effective functioning of Australia's property market by successfully sustaining high levels of public confidence in the land titles administration system. Traditionally, each State and Territory has operated a paper-based registry.
- 2.3 In July 2008, the Council of Australian Governments ("COAG") agreed there should be a new single national electronic system for settling real property transactions in all Australian States and Territories. The system would allow legal practitioners, conveyancers and financial institutions to electronically prepare and lodge land property dealings with title registries; transmit settlement funds and pay associated duties and tax; and remove the need to physically attend property settlements.
- 2.4 In 2011 and 2012, all six States and the Northern Territory signed the IGA for developing, implementing and managing the regulatory framework for National eConveyancing, including the legislation to support National eConveyancing, the ECNL. To date five states have commenced eConveyancing; two of these have now mandated its use for all transactions, two have mandated for some transactions and another has not proposed any mandating.
- 2.5 Tasmania and the Northern Territory have yet to commence eConveyancing and the Australian Capital Territory is not yet a signatory to the IGA.
- 2.6 The IGA also provided for the formation, composition and operation of ARNECC to facilitate implementation and ongoing management of the regulatory framework including the ECNL.
- 2.7 The schematic overleaf identifies the documents that together make up the governance framework for eConveyancing.

ECNL

- 2.8 The ECNL is adopted into each participating jurisdiction as an Act for electronic conveyancing applicable to each jurisdiction's land titles legislation.
- 2.9 The ECNL provides for:
 - The electronic lodgment and processing of documents and enables digital signing of electronic registry instruments
 - A client authorisation document that allows subscribers to act on a client's behalf on matters such as digitally signing registry instruments or other documents, presenting registry instruments or other documents for lodgment electronically and authorising or completing any associated financial transaction

- Reliance on digital signatures
- Approval of ELNOs when they meet the qualifications for approval under the operating requirements and attach conditions which can be varied or revoked
- Operating requirements for ELNOs and participation rules for subscribers
- Appeals against decisions of the registrar in some circumstances
- Compliance examinations of ELNOs and subscribers and action arising from such examinations



Model Operating Requirements

- 2.10 The Model Operating Requirements (“MOR”) version 5 are a uniform set of requirements determined by ARNECC that are promulgated by the registrars as Operating Requirements for ELNOs to comply within their jurisdiction which take effect 25 February 2019.

- 2.11 They are accompanied by Model Operating Requirements Guidance Notes containing advice published by ARNECC on behalf of all registrars to assist ELNOs in complying with the MOR.
- 2.12 Version 4 of the MOR was in operation during the consultation process and we note that stakeholders may not have had the opportunity to provide us with feedback on the changes in version 5. We would welcome any additional comment on version 5.
- 2.13 The MOR include:
- ELNO eligibility criteria – legal status, character, financial resources, technical resources, organisational resources and insurance
 - Operation of the Electronic Lodgment Network (“ELN”) – encourage widespread industry use, national system and minimum document capability, general obligations, ELNO service fees, integration and separation requirements
 - Initial testing requirement before commencing operation
 - Obligations regarding system security and integrity - information security management system, access to ELN, security of ELN data, protection of land information, digital certificate regime, verifying digital signing, verifying no alteration, notification of jeopardised conveyancing transactions, obligations in relation to notification of compromised security item, data breach notification, cloud service
 - Security and integrity of titles register
 - Risk management
 - Minimum system requirements functionality - data standard, apply registrar’s business rules, services to enable assessment of integrity, ability to un-sign digitally signed documents, document templates, presentation following completion of financial settlement, presentation following duty payment or commitment, land registry fees handling
 - Minimum performance levels
 - Business continuity and disaster recovery management
 - Change management framework
 - Subscribers - subscriber registration, unreasonable barriers or refusal to accept subscriber, maintain subscriber and user register, evidence of subscriber insurance and verification of identity, participation agreement and participation rules, training, review of subscribers and suspension or termination, ELNO must restrict, suspend or terminate subscriber if directed by registrar, consequences of restriction, suspension or termination, the ELNO must not be a subscriber

- Compliance monitoring and reporting - monitor compliance, demonstrate compliance, inability to give a no change certification, when to demonstrate compliance, demonstrate compliance at any time, provision of further information, notice of non-compliance and remedy, remediation of non-compliance, remediation of serious non-compliance, ELNO may provide certified copies of original documents
 - Independent certification
 - Compliance examination
 - Reports
 - Data and information obligations – retention, generation and retention of transaction audit records, use, provide information to subscribers, intellectual property rights
 - Registrar's powers - suspension or revocation of ELNO's approval
 - Business and services transition- transition plan, minimum requirements of a transition plan, implementation of transition plan
- 2.14 The schedules to the MOR cover insurance, performance levels, reporting requirements, additional operating requirements, compliance examination procedure, amendment to operating requirements procedure and subscriber identity verification standard.
- 2.15 Each registrar in participating jurisdictions has a contract with the ELNOs that incorporates the MOR and adds conditions relevant to each jurisdiction.

Model Participation Rules

- 2.16 The Model Participation Rules ("MPR") are a uniform set of rules determined by ARNECC that are promulgated by the registrars as Participation Rules for the subscribers to an ELN to comply with in their jurisdiction.
- 2.17 They are accompanied by MPR Guidance Notes containing advice published by ARNECC on behalf of all registrars to assist subscribers in complying with the MPR.
- 2.18 The MPR include:
- Compliance with participation rules
 - Eligibility criteria – ABN, status, character, insurance
 - The roles of subscribers - subscriber as principal, responsible subscribers, subscriber as trustee and partnerships, subscriber as Attorney

- General obligations - ensure user compliance, keep subscriber system details complete and up-to-date, client authorisation, right to deal, verification of identity, supporting evidence, compliance with laws and participation rules, compliance with directions, assistance, protection of information, information, no assignment, mortgages, conduct of conveyancing transactions
 - Obligations regarding system security and integrity - protection measures, users, user access, signers, digital certificates notification of jeopardised conveyancing transactions, revoking authority, compromised security items, certifications
 - Amendment of participation rules
 - Restriction, suspension and termination - comply with directions relating to restriction of access or use, suspension at direction of registrar, termination at direction of registrar, rights and obligations on suspension, termination or resignation, further steps by subscriber
 - Compliance
- 2.19 The schedules to the MPR cover additional participation rules, amendment to participation rules procedure, certification rules, client authorisation forms, compliance examination procedure, insurance rules, suspension events, termination events and suspension and termination procedure, verification of identity standard, identity agent certification.

Compliance

- 2.20 The registrars that are members of ARNECC and utilise eConveyancing undertake a range of compliance monitoring and enforcement activities. These activities include:
- Compliance examinations of ELNOs and subscribers to an ELNO as provided for in the ECNL
 - Compliance assessments of ELNO applicants on application and prior to their being approved to operate
 - Annual reviews of ELNOs while they are approved to operate including:
 - Certifications by ELNOs and by independent experts (approved by registrars) engaged by ELNOs
 - Compliance monitoring generally of ELNOs and of subscribers.
 - The purpose of these activities is to maintain the integrity of title registers and community trust in the process of conveyancing in each State and Territory.

3.0 STAKEHOLDER FEEDBACK

- 3.1 DMC consulted with stakeholders primarily through face to face interviews and where that was not possible via teleconference. The consultative record listing stakeholders interviewed is provided at Appendix I.
- 3.2 Feedback was also received via a stakeholder survey. The full results of the survey are in section 4.
- 3.3 In the tables below, we have summarised the feedback from stakeholders and identified their issues.
- 3.4 As noted previously the consultation with stakeholders occurred before the release of MOR version 5. Therefore, some of the stakeholders' concerns listed below may not now accurately reflect stakeholders' view of the MOR.

Legal practitioners

Implementation	
Change management	<p>The industry change management process is more complete in jurisdictions that have mandated some or all transactions</p> <p>In other jurisdictions there is more concern about complexity of the task of moving to the electronic environment</p> <p>Stakeholders report some settlements are harder to do in the eConveyancing system (eg transfer between spouses)</p> <p>Higher volume organisations report the workload has increased for the senior practitioners who sign transactions because of the screen monitoring time required to deal with un-signed and re-signed transactions</p> <p>Stakeholders noted the high-profile fraud of \$1M that occurred in June and many recognise that they will need to upgrade security systems and practices</p> <p>Concern about the set-up of conveyancing factories</p>
Successes	<p>Some stakeholders report the eConveyancing system has resulted in quicker turnaround and settlements</p> <p>Stakeholders report fewer lost titles</p> <p>Easier financial settlement with no bank cheques (less cost)</p> <p>Ease of lodgement was considered a success</p> <p>Stakeholders report some progress on the National Mortgage Form</p> <p>No identified issues with PEXA downtime</p> <p>Good training support from ELNO</p>
Lessons learned	<p>Stakeholders report that the variations across jurisdictions create uncertainty and result in loss of productive time</p> <p>Stakeholders comment that there needs to be consistency between rules and enforcement compared to the paper system – mortgagees had to provide information one day prior in paper system and in the eConveyancing system they are only providing the same information at the last minute</p>

	<p>Losses through mis-keying bank details have been reported by many stakeholders</p> <p>There are trust account matters including the use of the PEXA source fund that need to be resolved – stakeholders noted that trust laws are jurisdiction-based not uniform</p> <p>Lack of resources and skills in the financial services providers was seen as an issue</p> <p>ELNOs should provide a residential guarantee</p>
Pricing	<p>Stakeholders report that pricing was set early in the development of eConveyancing with oversight from NSW</p> <p>It was developed to compete against paper, and it was set to recover some of the costs of set up</p> <p>Some stakeholders report that their direct costs have increased, and they then must justify the additional PEXA fee as well</p>
Cost versus benefits	<p>Some stakeholders report that whilst there are some time efficiencies, there has been additional workload requirements shifted to practitioners, particularly with the requirement for dual processes, resulting in higher overall direct transaction costs</p> <p>Most stakeholders report new time inefficiencies continually watching for settlement and re-signing when the other party un-signs – this contrasts with the paper environment when a packet was signed the day before settlement and the authoriser did not need to see it again</p> <p>Stakeholders report that financial services providers changing settlement figures close to settlement cause these inefficiencies</p> <p>Stakeholders believe PEXA has not sold the benefits of the system to legal practitioners</p>
System complexity	<p>Some stakeholders have made comments of concern about the security risks that have been experienced and will continue to increase in the future</p> <p>Some stakeholders noted that form handing is better in the electronic system especially mortgage forms</p>
Interoperability	<p>Stakeholders want transparency on costs</p> <p>The proposed interoperability model needs to be understood before agreeing to it</p> <p>A number of stakeholders have commented that they don't want multiple systems, citing training requirements for larger organisations</p> <p>Some stakeholders suggested a common front end would be desirable but believed risks would be difficult to assign in full interoperability</p>
Competition	<p>Some stakeholders believe it is a mistake to have competition that is not real</p> <p>Most stakeholders are in favour of competition, provided there are no additional costs and no additional risks or liabilities</p> <p>Competition needs to be fair to the existing ELNO and any new entrants</p> <p>Stakeholders are concerned that the IGA requirement to allow non-discriminatory access to participants engaged in the</p>

	property conveyancing market may not be transparently addressed
Regulatory framework	
Success	<p>The national system is up and running successfully in five jurisdictions</p> <p>Nearly all transactions have gone through securely with less fraud perpetrated than in the paper system (however there have been significant losses reported by stakeholders through mis-keying bank account details)</p> <p>Good training materials and support have been available to support take up</p>
Limitations	<p>ARNECC is insufficiently resourced to resolve all matters in a timely manner</p> <p>ARNECC does not have all the necessary skills needed to manage the market and wider industry environment created</p> <p>ARNECC needs to be able to direct ELNOs and to apply fines and penalties if necessary</p> <p>The ECNL has failed to regulate the financial settlement function and a number of stakeholders have commented that there needs to be a financial regulator</p> <p>Initially the consultation process was good, but the MOR consultation process is not progressing well</p> <p>Action is needed on poorly performing subscribers – negligence should lead to warnings and education and suspension if necessary</p> <p>The competitive environment needs regulation and control – if not ARNECC then who?</p> <p>ACCC should be responsible for regulation of the market particularly while there are monopoly or duopoly characteristics</p> <p>Most stakeholders believe ARNECC is independent</p>

Conveyancers

Implementation	
Change management	<p>The change process is not complete, and the industry is finding the changes required from both eConveyancing and the Australian Taxation Office (“ATO”) difficult to accommodate in a compressed timeframe. The ATO has been imposing significant and complex tax collection duties on conveyancers.</p> <p>Many conveyancers work in small firms without significant numbers of support staff and do not have sufficient spare capacity to deal with multiple concurrent major system changes.</p>
Successes	<p>eConveyancing has been successful in relation to the following</p> <ul style="list-style-type: none"> • Electronic settlement process is quicker and the elimination of the need to book a time with the banks and physically attend settlements is a major efficiency • Vendor receives funds faster and the ability to transfer funds to other parties i.e. Council rates rather than generating cheques • Immediate lodgement of caveats and other documents • Training and support from other conveyancers and industry bodies • Fewer errors at settlement in relation to documentation <p>Some stakeholders report increased convenience of being able to settle “anytime, anywhere”.</p> <p>Mandating has meant conveyancers came on board more quickly.</p>
Lessons learned	<p>Consistency achieved in business practices across jurisdictions not important for conveyancers</p> <p>Ensuring proper training on systems is provided when moving to eConveyancing is important for the jurisdictions not yet using eConveyancing</p> <p>Each jurisdiction is at a different point of implementation. In the jurisdictions where mandating of eConveyancing has occurred it has allowed the conveyancers to focus on the one settlement process</p> <p>In those jurisdictions which have not mandated, stakeholders still need to manage both the paper based and electronic settlement business process</p> <p>Implementing the different transaction types over time has allowed time to learn the system and each transaction type</p> <p>Many conveyancers expressed frustration that the banks rely on settlement rollover rather than being ready to settle at the agreed time and date</p> <p>They also believe the banks now leave the advisement of the payout to the last minute</p> <p>This requires last minute changes by the conveyancer and re-signing</p> <p>Reserve Bank of Australia (“RBA”) operating hours are inequitable for WA settlements</p> <p>Conveyancers want quick resolution of matters involving missing money – they don’t believe property buyers and sellers can be subject to a long wait</p>
Pricing	<p>Many believe prices are too high and are concerned about monopoly pricing – in discussions some stakeholders</p>

	<p>confirmed that they did not understand that pricing is capped in the agreement with ARNECC</p> <p>Some believe government is getting a benefit and should reduce statutory fees</p>
Cost versus benefits	<p>Conveyancers in jurisdictions with low take up believe that they have achieved little benefit mainly because they still prepare documents for both paper and electronic settlement</p> <p>Conveyancers where eConveyancing has not yet started believe they will not make gains in the short term but will in the longer term</p> <p>Conveyancers that do all their settlements electronically have identified time savings as a consequence</p> <p>As discussed above the banks late changes mean that conveyancers must do additional work reducing the benefit of eConveyancing</p> <p>Conveyancers note that most delayed settlements occur on the same day</p> <p>Conveyancers find it inefficient and time consuming to be “tied to the screen” to be sure a settlement goes through on time without needing to be re-opened</p> <p>In one jurisdiction that doesn’t use settlement agents and where only one cheque is drawn, conveyancers believe the benefits will not match costs, but they believe the banks might achieve benefits</p>
System complexity	<p>Most conveyancers that use the system regularly find it relatively easy to use and some are very positive about the system attributes and ease of use</p> <p>One jurisdiction commented that conveyancers are good at adapting to change</p>
Interoperability	<p>Conveyancers that want interoperability want it to be seamless, and they want to know how this will work ie what the model will look like</p> <p>They do not want a system where they must register for, learn and use different interfaces to multiple ELNs due to the impact on their productivity</p> <p>They see challenges around multi-platform integration and have concerns about fault and liability if things go wrong</p> <p>They want the risk issues addressed before a model is chose</p>
Competition	<p>Generally, in favour of competition especially if it leads to cost reduction and improved service, however conveyancers express concern that ELNOs will compete against them</p> <p>Conveyancers believe that ELNOs should be prohibited from offering conveyancing services</p> <p>Most (although not all) are not supportive of competition without interoperability</p> <p>However, some are prepared to learn two different systems but state that rules would be needed to establish who will choose the ELNO</p> <p>Most seem to favour the purchaser’s representative choosing the ELNO</p>
Regulatory framework	
Successes	<p>The national system is up and running successfully in five jurisdictions</p>

	<p>Nearly all transactions have gone through securely with much less fraud perpetrated than in the paper system to date</p> <p>Training materials and staff have been available to support take up</p>
Limitations	<p>ARNECC is insufficiently resourced to resolve all matters in a timely manner</p> <p>ARNECC does not have all the necessary skills needed to manage the market and wider industry environment created</p> <p>More technical skills and resources are needed</p> <p>ARNECC needs the power to regulate if ELNOs do the wrong thing</p>

Financial services providers

Implementation	
Change management	<p>Stakeholders have commented that the change management aspect of the move to eConveyancing was a much greater than anticipated</p> <p>It was very costly and time consuming with system development, maintenance and retaining of staff requiring substantial resource commitment</p> <p>Ongoing system changes are a significant change management task in their own right</p> <p>Most stakeholders have not yet recovered the costs of the change to eConveyancing</p>
Successes	<p>The system allows for jurisdictional differences to be managed automatically through form changes and this is seen as an efficiency benefit</p> <p>There has been a substantial reduction in the use of bank cheques which has been beneficial</p> <p>There has been a reduction in the resources required for settlement</p>
Lessons learned	<p>Running two systems in parallel (paper and electronic) means all the anticipated efficiencies haven't been realised as the stakeholders need to prepare for both scenarios; they often don't know in advance which system will be used</p> <p>Electronic signing has been a limited benefit, however the differing legislation across the jurisdictions has meant additional legislative change would be required to achieve the full benefit</p> <p>Stakeholders get criticised for being slow to provide final figures or for changing them on the day of settlement - complications when customers have multiple linked accounts mean that settlement amounts can change unexpectedly</p>
Pricing	Pricing did not appear to be an issue with stakeholders
Cost versus benefits	<p>Stakeholders report they have not yet recouped the initial costs due to the ongoing parallel processes (paper and electronic) and the higher than anticipated costs of the original introduction of eConveyancing</p> <p>The costs to implement and manage the required infrastructure and change management processes are significant</p> <p>Whilst they may not be as high for future ELNOs due to the lessons learnt, they will still be substantial</p> <p>Some stakeholders must be able to demonstrate a return on investment through a robust business case development</p>
System complexity	<p>The stakeholders' infrastructure requirements to link into additional ELNOs are not insignificant and will need to be considered</p> <p>The stakeholders quoted initial costs of connecting to an ELN of between \$10M and \$30M</p> <p>Stakeholders believe the technical requirements to achieve financial settlement with multiple ELNOs are able to be achieved, but the legal and liability model is not clear</p> <p>It is likely to be highly complex and needs to be developed in detail</p>

Interoperability	<p>Stakeholders will not support interoperability without a clear and detailed model that addresses risk and liability</p> <p>Stakeholders do not want to maintain more than one system, and they comment that training staff for more than one system would be costly and inefficient</p> <p>One indicated that it does not intend to connect to new ELNs and expects interoperability of ELNs will obviate the need for separate connections</p> <p>Stakeholders commented that the standards would need to be consistent across ELNOs in order to manage updates etc</p> <p>A clear understanding of responsibility/liability and risk is essential for interoperability</p>
Competition	<p>The stakeholders reported that in principle they support more competition in the eConveyancing marketplace if there isn't the requirement for them to interact with more than one system</p> <p>The stakeholders have commented that they will consider additional ELNOs on their individual merit and the associated business case(s) before committing to invest to build connections</p> <p>Stakeholders are not supportive of an environment where there are different systems in different jurisdictions</p>
Regulatory framework	
Success	<p>The stakeholders reported that ARNECC have done a good job to get a system up and running despite the challenges they face</p> <p>Stakeholders recognise that ARNECC is a collaborative group and believe they have achieved a good outcome considering the limits of that model</p>
Limitations	<p>Ongoing inconsistencies in implementation and requirements across jurisdictions impact the stakeholders, particularly the national operators</p> <p>Stakeholders need national standards particularly for security, timing and sequencing requirements and believe that this information should be managed by central organisation/regulator</p> <p>A clear roadmap by jurisdictions to enable stakeholders to plan for changes would be of benefit</p> <p>ARNECC needs access to greater capability and skills to manage its responsibilities outside title regulation</p> <p>ARNECC needs to develop a regulatory framework that encompasses all the necessary regulatory powers</p>

Software houses

Implementation	
Change management	<p>Most stakeholders reported a good or satisfactory level of support from PEXA</p> <p>Little interaction with Sympli has occurred to date</p> <p>Some stakeholders found PEXA very collaborative and some found the relationship difficult to manage</p> <p>One stakeholder reported the removal of about 400 roles (including settlement agents) with the operation of PEXA settlements – this represents an efficiency gain for the industry</p> <p>It was noted that PEXA offered paid sponsorships that assisted in defraying the costs of the change</p>
Successes	<p>eConveyancing is up and running and reasonable levels of integration between practice software and PEXA have been achieved</p> <p>This has led to a reduction in the requirement for re-keying information, reduced risk of errors and reduced document handling</p> <p>Some stakeholders report that their software has the ability to create a workspace in PEXA which is a benefit for their clients</p> <p>One stakeholder appears to have achieved a high level of integration with its product, but it only operates in one of the jurisdictions</p> <p>This integration is highly regarded by its customers - it would like still more capability for both input and output into its system</p>
Lessons learned	<p>A timetable of system releases and implications would have allowed smoother integration with stakeholders' own platforms and packages</p> <p>Integration has been a focus with PEXA however it is mostly one-way integration at this stage (information can get pushed into PEXA but not pulled out into stakeholder platforms) - two-way communication would be of benefit</p> <p>Some stakeholders reported limitations with PEXA platform which limits full integration</p> <p>Stakeholder report only preliminary discussions with the Sympli team to date</p> <p>Sympli has not yet specified requirements for the development of APIs, so stakeholders have been unable to determine strategies with respect to integration</p>
Pricing	<p>Some stakeholders have expressed concerns that PEXA will drive prices down in the sector, potentially driving downstream service providers from the industry – leaving PEXA controlling prices in the long term</p>
Cost versus benefits	<p>Integration has incurred costs, but most stakeholders see this as development costs rather than additional outlay</p> <p>One stakeholder reported recouping termination expenses through the sponsorship agreement with PEXA – this assisted the downsizing associated with moving to eConveyancing</p>

	Another stakeholder found that the costs of integrating were offset by the PEXA sponsorship payments
System complexity	<p>Different stakeholders had different experiences</p> <p>Initial integration with PEXA was via a spreadsheet then a move to APIs for sponsored stakeholders</p> <p>Full integration is not able to be achieved at present - workstations still need an additional monitor displaying the PEXA browser to monitor settlement/lodgement progress, while the main monitor allows users to continue to work</p> <p>Stakeholders believe security issues will become more complex as the system(s) become more complex, noting that the highest risk will be at the weakest point in the system and this needs to be considered and managed</p>
Interoperability	<p>There is a belief that a comprehensive definition of interoperability is yet to be detailed and therefore the pathway to interoperability is not able to be planned</p> <p>One stakeholder expressed concern about the impact interoperability would have on the complexity of the financial settlement process</p> <p>Another stakeholder commented that the financial settlement space needs stronger regulation</p>
Competition	<p>Stakeholders believe that true competition is many years away even with the recent approval of Sympli and are unsure what the environment will look like due to PEXA's significant first mover advantage</p> <p>There is concern PEXA will move into the information reseller market with a substantial competitive advantage</p> <p>Stakeholders believe that PEXA plans to move strongly into the downstream markets of products and services necessary to complete a property transaction, including verification of identity tools, title search products and eContracts</p>
Regulatory framework	
Success	ARNECC has been able to oversee the start of eConveyancing and the system is now successfully operating in five of the seven jurisdictions that have signed the IGA
Limitations	<p>ARNECC is believed to be powerless and lacking the required skills to regulate this complex environment (noting that all interviewees accept that title regulation is well handled and is not included in this statement)</p> <p>Multiple respondents commented that the regulatory framework should have been sorted earlier, as now the rules are unclear and the required controls are not in place</p> <p>Lack of clear regulation has made it very difficult for software houses to plan strategically</p> <p>Stakeholders believe that there should be some form of national regulation.</p> <p>An issue to consider is that software developers move quickly in response to customer needs, and government moves slowly - governance and regulation arrangements need to consider this industry requirement to support innovation</p>

Revenue offices

Implementation	
Change management	<p>Some stakeholders would like the revenue office voice to be heard more</p> <p>Stakeholders believe that NSW is the most advanced at developing revenue office Messaging Standards (“ROMS”) jurisdictions are at different stages of the implementation process</p> <p>One stakeholder reports being satisfied with PEXA change control processes</p> <p>One stakeholder reports mandating has had little impact on the revenue office</p>
Successes	<p>One stakeholder reports the revenue office has not directly benefited, but whole of government has benefitted</p> <p>One stakeholder commented that the revenue office receives payment more quickly in the eConveyancing system</p>
Lessons learned	<p>One stakeholder notes the change request process is driven by the ELNO</p> <p>One stakeholder believes revenue office requests are not being dealt with in timely manner by the ELNO</p> <p>Stakeholders believe change control needs to be centralised with ARNECC to drive and prioritise</p> <p>Some stakeholders believe they and ARNECC are out of step</p> <p>Revenue offices now have a subcommittee to jointly discuss issues across jurisdictions</p> <p>Stakeholders believe that ownership of revenue office data/API standards needs to be resolved and this has been a key topic at recent Tax Commissioners meeting</p>
Pricing	No comments from these stakeholders
Cost versus benefits	<p>Costs to connect to first ELN have been significant</p> <p>Costs can be recovered from PEXA through the trading agreement, one jurisdiction has done this, but other revenue offices haven't to date</p> <p>Costs to connect to new ELNs will be charged to the ELNOs</p>
System complexity	<p>For some stakeholders the system integration with PEXA is light touch – verification of tax amount only</p> <p>Some stakeholders want standards for revenue office integration with all ELNs</p> <p>Each new ELNO adds costs to revenue offices to implement and maintain (testing each release with each ELNO, worse if API is not standard)</p> <p>Suggestion to improve - better coordination of changes with other jurisdictions and/or through central body eg ARNECC</p>
Interoperability	<p>Stakeholders believe interoperability will increase cost and complexity</p> <p>Some stakeholders believe this is a limited issue for revenue offices</p> <p>One stakeholder is moving to a hub model to accommodate multiple ELNOs</p>

Competition	Stakeholders believe multiple ELNOs will result in more complexity for the revenue offices and will result in more charges to ELNOs for additional work by the revenue offices
Regulatory framework	
Success	Stakeholders believe the MOR and MPR are working
Limitations	<p>Some stakeholders believe ARNECC needs a stronger framework to govern ELNOs</p> <p>Some stakeholders believe penalties are needed to fill the gap between no enforcement action and suspension or termination of an ELNO</p> <p>Stakeholders believe the risk/liability model must be resolved</p>

ELNOs and Applicant ELNO

- 3.5 There are two operating ELNOs – PEXA which has built the existing system with input from the land titles registrars and the revenue offices from participating jurisdictions, and Sympli which has recently been approved and has quite recently completed its first transactions, lodging a Priority Notice in Queensland and a caveat in Victoria in December 2018.
- 3.6 Lextech has received approval for Category 1. This means that it has fulfilled the Category 1 requirements under the MOR which include production of documents to establish the bona fides of the organisation.
- 3.7 Before Lextech can commence operation of the ELN it has to complete the requirements of Category 2 which include system requirements to meet registrar requirements.
- 3.8 Comments from this group had similarities to other stakeholders:
- Change management - one noted that significant resources were committed to engaging practitioners and getting them started in the system - including telephone and in field support staff
 - Successes - the existing eConveyancing platform has effective collaboration, security and settlement functionality enabling electronic document lodgement and financial settlement
 - Lessons learned:
 - Open standards would reduce barriers to new ELNOs
 - ARNECC is not a national regulator but a committee of jurisdictional regulators – objectives such as national consistency may be difficult to achieve
 - One identified that business practices have not been standardised as was originally intended
 - Central body needs to own and maintain data standards

- Pricing - original fees set in competition with paper - increases are limited to CPI - new entrant proposes pricing 15% to 50% cheaper than current pricing
- Costs versus benefits:
 - Deloitte's 2018 Impact of e-Conveyancing highlights that the benefits of e-Lodgements are realisable when dual process is no longer an issue
 - As more transactions are conducted, greater benefits are delivered
 - One entity believes that the costs and benefits of eConveyancing are not shared equally across the industry participants
- Interoperability:
 - May increase complexity and risk
 - Costs and benefits of different ELN configurations (one, two or many, end to end or interoperable) should be evaluated to achieve the best overall consumer outcomes
 - Interoperability models need to be defined sufficiently in order for appropriate technical, legal and risk considerations to be evaluated
 - One thought workspace interoperability enables benefits of competition for regulators, homeowners, practitioners and connected authorities
 - Another had a preference for independent ELNOs operating on separate platforms
 - The third believes it is necessary to consider both the ultimate benefit to the consumer and cost and that the technical concept needs to be detailed so that legal, technical and risk considerations can be evaluated
- Competition - ELN competition will improve services, reduce cost and reduce the level for regulation required
- Regulatory framework success:
 - There was a general view that ARNECC had done a good job to date on land titling matters
- Regulatory limitations:
 - There are gaps in regulation that ARNECC has not addressed
 - Regulation of eConveyancing needs to extend beyond e-lodgement

- one commented that eSettlement is not governed under the regulatory framework under the IGA
- The general view is that ARNECC does not have sufficient resources
- One commented that the title “ECNL” creates confusion in the market as it is concerned with eLodgment not eConveyancing.
- One identified the need for a regulator that will regulate all aspect of eConveyancing
- One had the belief that there is inadequate risk management because ELNOs can choose their own auditors, however we note S 16.1 (a) of the MOR state “before an Independent Certification is given by an Independent Expert, the ELNO obtains written approval of the Registrar to the proposed Independent Expert”

Registrars

- 3.9 Whilst there was some consistency in feedback from the registrars, there was some variability depending on their current level of take up in eConveyancing.
- 3.10 The current level of involvement in eConveyancing varies as follows:
- Jurisdictions that have mandated or have set a date to mandate eConveyancing (NSW, SA, Vic and WA),
 - Jurisdictions that are actively engaged in eConveyancing but have not mandated (QLD)
 - Jurisdictions that are not actively engaged in eConveyancing (NT and Tas).
 - One jurisdiction which is not yet a party to the IGA (ACT)
- 3.11 A summary of feedback is as follows:
- Change management:
 - Some identified the provision of training to practitioners as successful in addressing skills gap and the different level of resources available in jurisdictions impacted on the individual jurisdictions ability to support industry change
 - Some jurisdictions saw the existing committees that support ARNECC as important change management groups and believed they should be retained
 - Industry reluctance to change has been identified and needs to be managed

- Successes:
 - The collaborative relationship between jurisdictions has been successful to date particularly in achieving a working eConveyancing system
 - One jurisdiction identified improvement in titles efficiency and no frauds to date in the electronic environment
- Lessons learned:
 - Registrars don't cover all the requirements of regulation in the eConveyancing environment - they don't have the experience and don't have the resources
 - Some jurisdictions believe it is tactically better to let the larger jurisdictions pave the way
 - Ensuring a national approach to data standards is key
 - Differences across jurisdictions continue to limit the amount of consistency which can be achieved
- Pricing:
 - Jurisdictions generally support the existing capped price model, some believe price control is necessary and should be in accordance with national law through ACCC and ELNOs must present a transparent pricing policy
 - Conveyancing fees in Queensland are lower than other jurisdictions so there are concerns about PEXA fees – practitioners and end users are price sensitive
- Costs versus benefits – the size of the jurisdiction and its current electronic lodgement position drives the opportunity for the benefits to be realised
- Interoperability - No jurisdictions have agreed an interoperability model or approach although one is a strong supporter of interoperability
- Competition:
 - Three of these jurisdictions have privatised their land registries and a fourth is in the process of a partial privatisation/commercialisation - these jurisdictions are operating in an increasingly commercial environment
 - Most jurisdictions are supportive of a competitive ELNO marketplace
 - Two jurisdictions questioned what additional benefits a second ELNO would offer compared with the cost of connection between the ELNO and the government agencies

- Regulatory framework success – the development work is nearly complete, and eConveyancing is up and running, ARNECC has worked hard to establish the framework
- Regulatory limitations:
 - Individual jurisdictions are free to pursue the most suitable options even if not supported by all
 - The regulatory framework for titling is good but regulatory requirements are broader - regulation beyond land titling is a function for which ARNECC does not have the appropriate skill set
 - ARNECC is under resourced and overburdened – updating and monitoring MOR and MPR are requiring large resources
 - Recurrent revenue through the registry is no longer an option for three jurisdictions therefore regulatory funding must be achieved through alternate means

Verification of Identity (“VOI”) providers

3.12 One VOI provider was interviewed and one other responded to the survey:

- Face to face verification will become more critical for trusted identity verification into the future due to the emergence of technology that allows video to be forged - ie an individual being identified using a video chat could present as someone else and be undetectable to the verifier
- Suggest adoption of national standards for identity verification, eg the Trusted Digital Identity Framework (“TDIF”)
- Observation that a portion of participants don’t understand what reasonable VOI steps are

ACCC

3.13 We have had a number of discussions with ACCC regarding future regulatory and governance frameworks and will continue to do so as options are further developed.

3.14 These discussions have covered:

- Pricing
- Vertical integration
- Competition and interoperability

- Powers to direct and to apply penalties
- Limitations of ACCC powers
- Market regulation resources to assist ARNECC or any new governance body

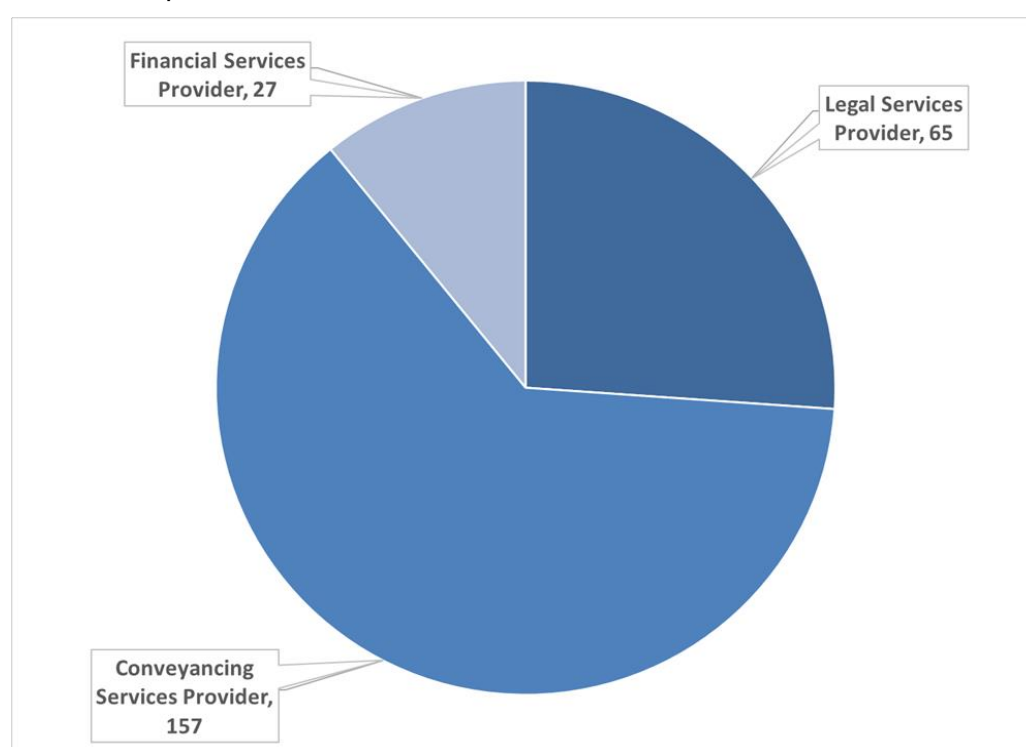
3.15 ACCC's comments to date are further discussed in section 5.0

4.0 STAKEHOLDER SURVEY RESULTS

- 4.1 An online survey was developed based on the stakeholder interview issues list and the early findings from the initial series of interviews including the key issues which began to surface.
- 4.2 The survey link was distributed to all stakeholders who were interviewed with the request that it be further distributed to interested parties. The link was also distributed to the complete ARNECC stakeholder email list. Peak Bodies were asked to distribute the link to their members.
- 4.3 The link was circulated on 9 November 2018. At 11 December 2018, 281 respondents had completed the survey and the results from this survey are analysed in the following graphs and charts. The survey will remain open until February and we will consider any additional information or submissions in the final Report.

Respondents backgrounds and jurisdictions

- 4.4 The following graph represents the background of 88.6% of the respondents.



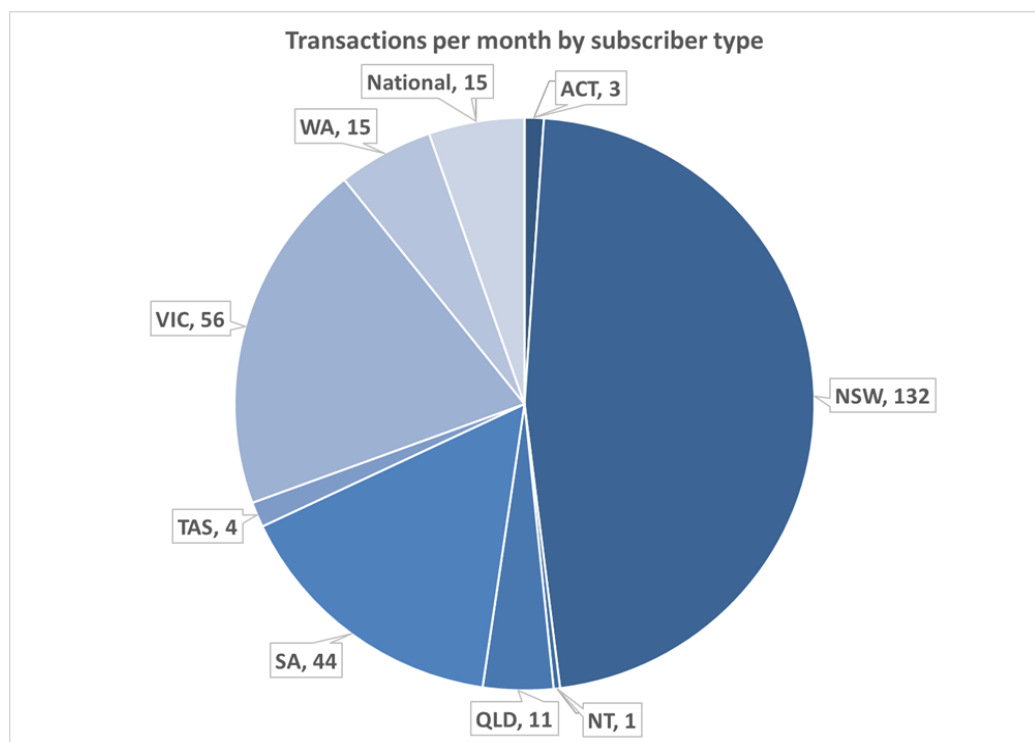
- 4.5 The remaining responses came from the following:

Type	Responses
ELNO – In progress	1
Government Policy entity eg Treasury	5
Land Titles Regulator	6
Peak Body	4
Private Registry Operator	2
Other (please specify)	14

4.6 Those who responded as “other” nominated themselves as follows:

- Software provider
- Local Government entity
- NSW regulator
- Private individual
- Australian Registrars’ Working Group (“ARWG”) member
- VOI provider
- Real Estate Agent
- Revenue Office
- Information Broker
- Property developer
- Information and Settlement Services Provider

4.7 The responses by jurisdiction are presented in the following chart.

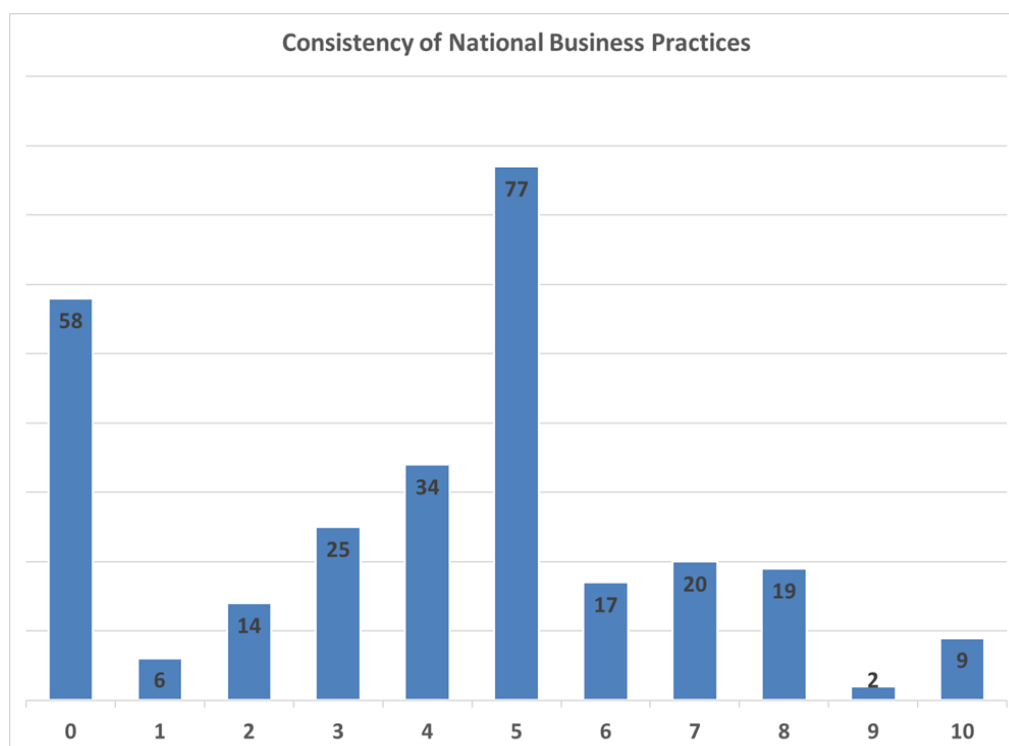


Survey Format

- 4.8 The survey was divided into two sections, the first relating to implementation of electronic conveyancing and the second relating to governance and regulation.

Implementation

- 4.9 The respondents were asked whether they believe the national business practices have become more consistent across jurisdictions since the commencement of electronic conveyancing in Australia on a 0-10 scale where 0 represents no change, 5 represents some change and 10 represents significant change.



- 4.10 Thirty respondents rated the consistency of business practices as high (scoring 8, 9 or 10) and indicative verbatim comments are provided below:

- *New policies eg. VOI, Right to Deal, Client Authorisation have been aligned for the electronic environment. Existing requirements eg CT/paper lodgment requirements remain misaligned.*
- *No matter where the lenders operations are based they have to know the PEXA system.*
- *The entire conveyancing process is unrecognisable from 5 years ago (other than the Contract of Sale). The disruption has been significant.*
- *VIC, NSW & SA have become all electronic by using PEXA*
- *WA has had to make some significant changes to settlement preparation with PEXA vs paper. Changes to VOI, mortgage*

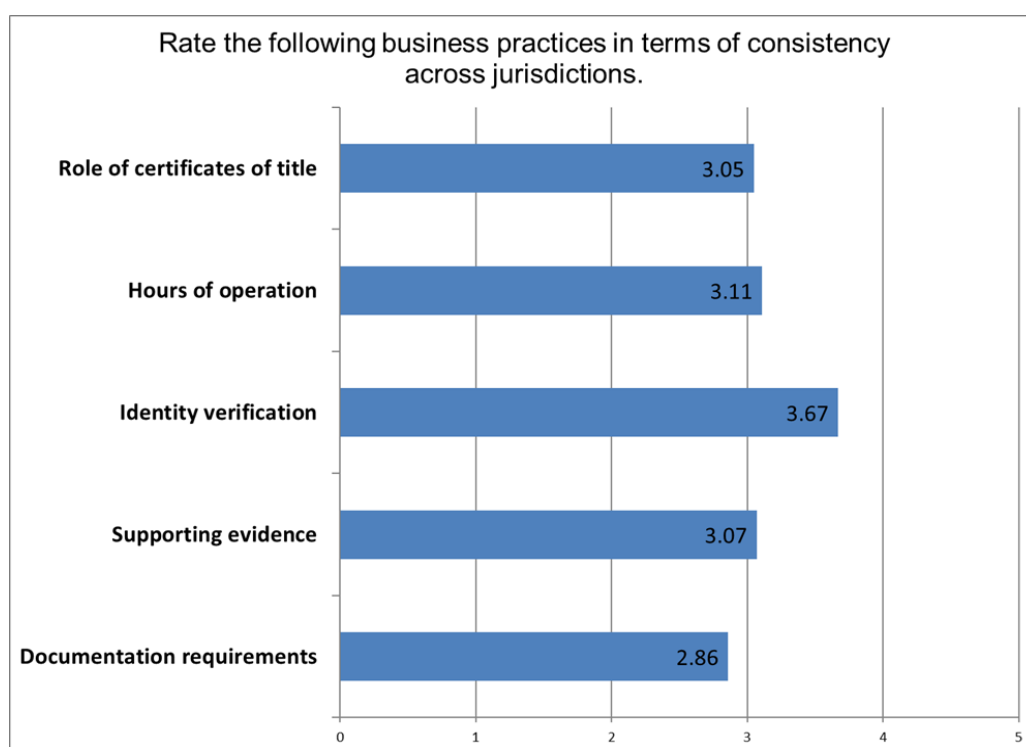
discharge payment and also financial statement preparation and notification to banks.

- *Where there is an electronic settlement and a client has a simultaneous / linked settlement in another State, the funds transfer is a lot easier than waiting for cheques to clear.*

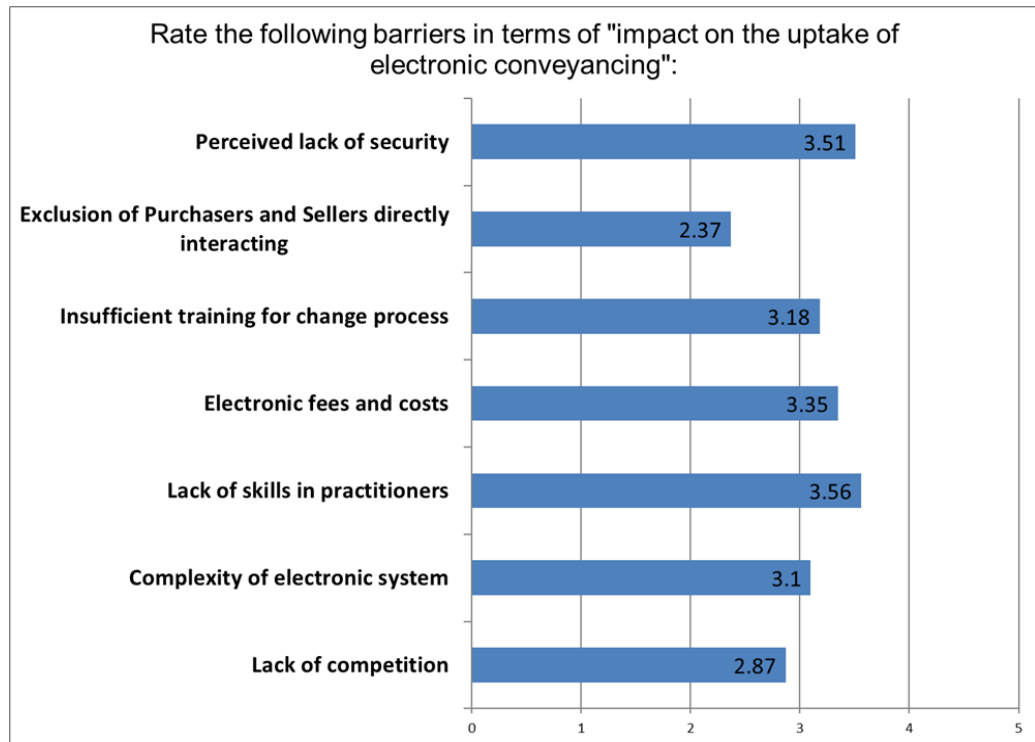
4.11 The issues noted by respondents on consistency of business practice included the following:

- Restrictions of state-based legislation on individual jurisdiction requirements
- Inconsistencies in the rollout timeframes across jurisdictions
- Different stakeholder requirements as some only operate in one jurisdiction whilst others operate across jurisdictions
- Some stakeholders' reluctance to change
- The complexity of communicating across such a large stakeholder group, many stakeholders reported that they are unaware of what is occurring outside their jurisdiction

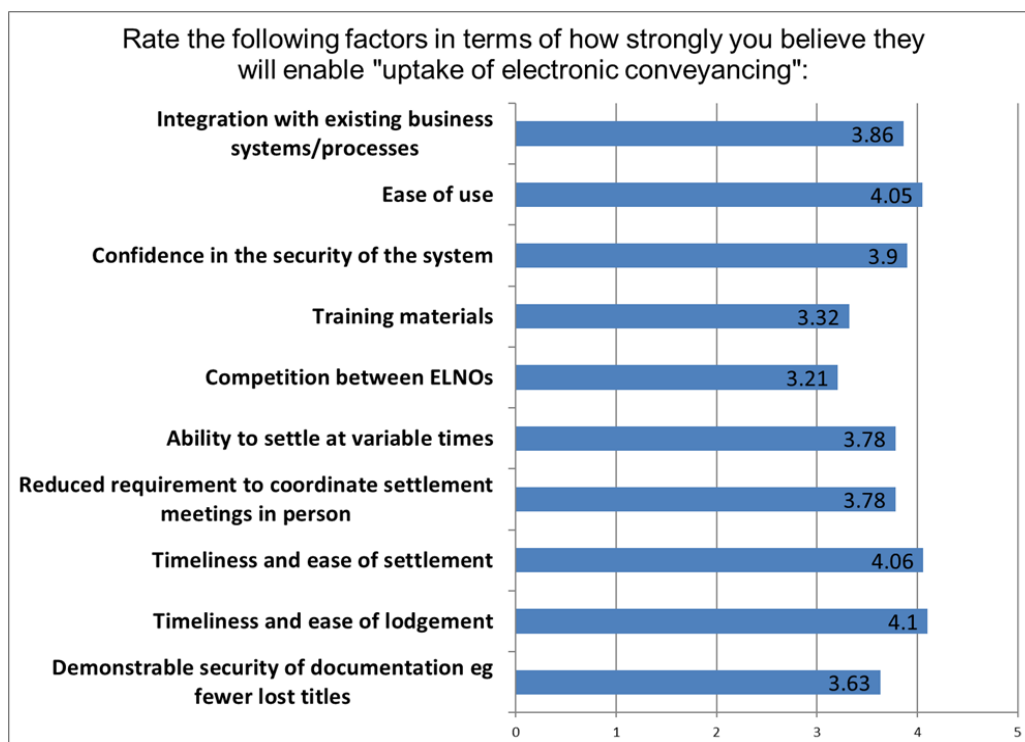
4.12 When specific business practices were scored for consistency the respondents rated most practices as moderate consistency (a score of 3) except for identity verification which was approaching high consistency (a score of 4).



- 4.13 Some of the potential barriers to take-up of electronic conveyancing were identified for comment and five of the seven scored between moderate and high in terms of impact on uptake.



- 4.14 Some of the potential enablers of uptake were identified for comment and all scored above moderate with some between high and very high.

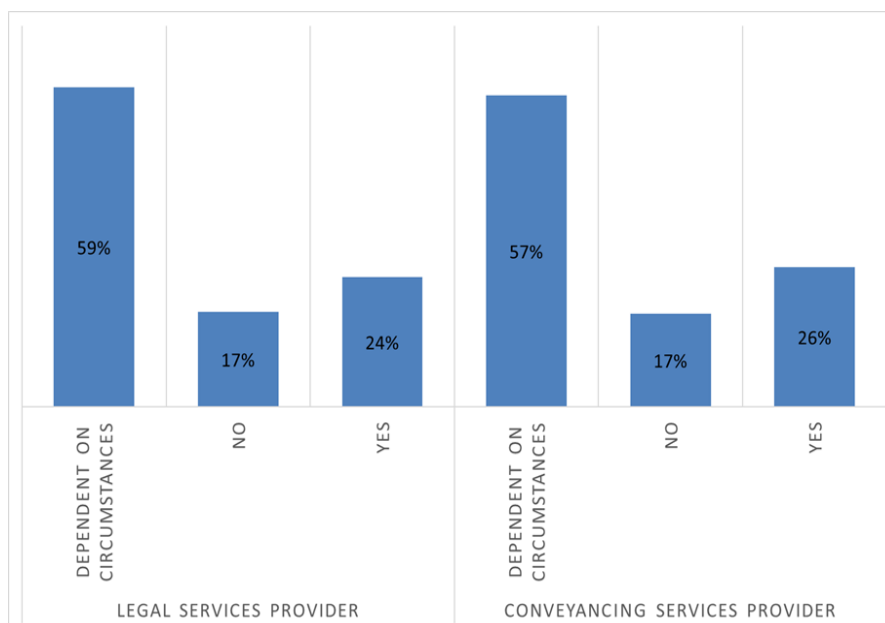


- 4.15 Most practitioners who responded to this survey are current PEXA subscribers. The following table represents the legal service providers and the conveyancing service providers and their response to the question:

“Are you currently a PEXA subscriber?”

Jurisdiction	No	Yes
ACT	0	2
NSW	8	103
NT	1	0
QLD	0	4
SA	8	26
TAS	3	1
VIC	3	44
WA	1	10
National	1	5
Total	25	221

- 4.16 When asked if they are prepared to work across multiple ELNOs, only approximately 25% of practitioner subscribers who responded to the survey replied in the affirmative. The majority are still unclear and have reserved their response until they have a better understanding of how multiple ELNOs will operate. However, 17% are not prepared to work across multiple ELNOs at this stage.



- 4.17 Respondents were asked to comment on the advantages or disadvantages to having multiple ELNOs.

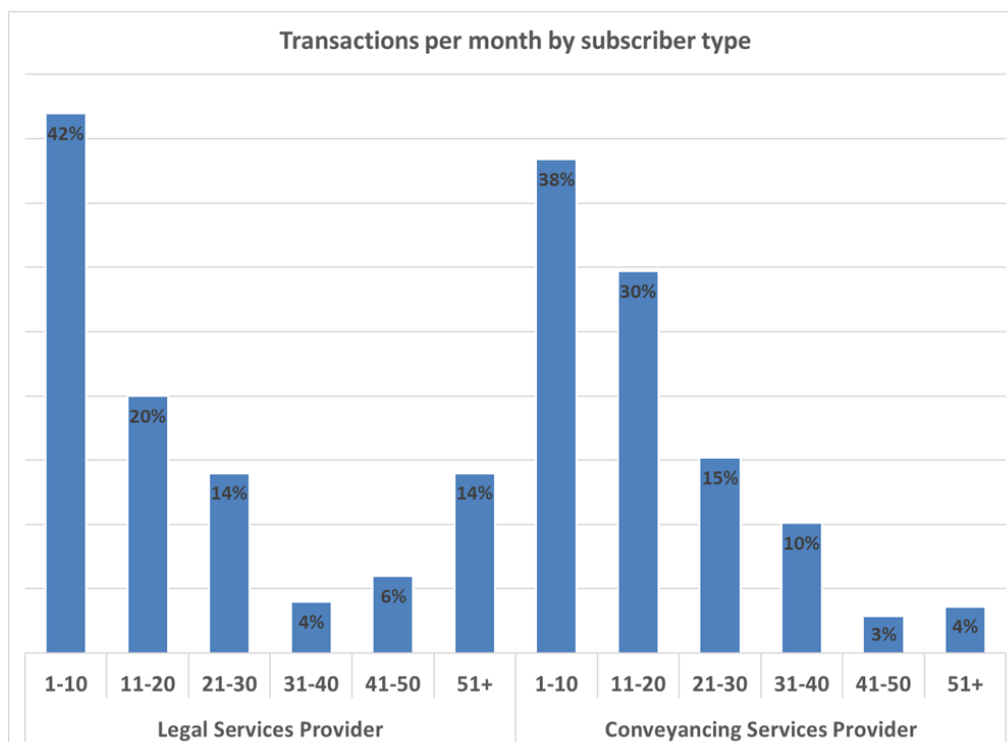
- 4.18 Identified advantages included:

- Competition and its impact on price and quality
- Increased fairness as removal of monopoly

- 4.19 Identified disadvantages included:

- Issues about which ELNO to use and how it is decided
- Increased complexity with more than one system
- Requirement to be able to operate in more than one system
- Currently still learning first system
- Need for effective regulatory oversight
- Many comments that interoperability is essential if there are multiple ELNOs
- Risk of confusion

- 4.20 The following table demonstrates the number of respondents who are current PEXA subscribers and who have completed transactions on PEXA. For those who selected yes for both, the number of transactions completed on average per month is shown and the trend between legal services providers and conveyancing service providers is similar.



- 4.21 The survey respondents were asked to identify what has worked well and what hasn't worked well to date in the implementation of electronic conveyancing across Australia. There were a substantial number of comments which were analysed to identify themes.
- 4.22 Themes identified in the working well category included:
- A working system
 - Communication
 - Ease of lodgement/settlement
 - Training and support provided
 - Less time requirements
 - Less errors
 - Mandating
 - Time saving
- 4.23 Below we have provided a range of indicative verbatim comments from the stakeholder feedback to illustrate the themes identified.

- *The fact it has actually worked is a positive, despite the frustrations at times. When it works well it is enjoyable by staff*
- *PEXA as a platform works well. Its (sic) the broader implications we are deeply concerned about.*
- *apart from it being stressful at first and the banks not ready to sign off on pexa we find it very good*
- *The removal of physically attending settlements. The speed of registration and funds transfer to vendors.*
- *When the mandate came in, it meant we all moved to one system rather than part paper, part electronic, which did help streamline my in office processes as i only had to focus on the one Settlement System*
- *Mandatory dates. This has forced people to move over into the digital workspace which has far less errors and has increased visibility of all parties.*
- *Education from AIC, Land Victoria Bulletins and State Revenue Office updates. PEXA have worked well with all three also.*
- *If all goes well, vendor receives cleared sale funds, purchaser (sic) settled and registered same day. No longer need to get documents/bank cheques to different destinations, figures can change & be rectified on morning of settlement much easier than in the past*
- *There has been plenty of training and support available. Setting a date and sticking to it has made it easier to plan for and work towards, and staggering the transition to ELNO with different transaction types rather than just all at once has allowed us time to learn each type separately.*
- *Ease of system to use for all parties involved.*
- *Less time (generally) spent on hold to banks and having to send endless documents that get lost in their system.*
- *Less chance of errors at settlement, banks no longer lose titles, cleared funds on same day, settlement packets no longer need to go to a city settlement agent*
- *Ability to get same day settlements on without requiring cheques to be prepared and agents physically attending settlement, change to payment directions close to settlement without impacting on settlement, not having to prepare paper settlement packets - reducing time and cost.*
- *Save a lot of time and no need to worry about paper Transfer with unacceptable signatures or incorrect names on paper cheques.*

- *well it definitely helps having all the pexa direct specialists out training us and making everything easier to use*
- *Immediate registration and dispersal of proceeds*
- *rebooking of settlement when settlement does not occur on time*
- *Law Society of NSW seminar training*
- *clear explanation of mandatory deadlines, circulars from Office of Register General, Law Society and PEXA updating on the changes happening.*
- *ELNO funded training & sundowners*
- *PEXA have been very supportive and adaptive*
- *Less issues with requirements not being met at settlement itself*

4.24 Themes identified in the **not** working well category included:

- Issues reported by conveyancing and legal service providers with the financial services providers such as:
 - Final figure confirmation late in the process
 - Changing dates
 - Communication
- When only one side is using electronic conveyancing
- Inconsistent timetable of rollout
- Slow take-up by some professions
- Security
- Costs
- A few issues with system speed
- A few issues with PEXA interactions

4.25 We have provided a range of indicative verbatim comments from the stakeholder feedback to illustrate the themes identified.

- *I see our highly experienced conveyancing clerks too often frustrated with connection, comms, lost settlement slots, etc*
- *Banks, at times, being cause of delay. Practitioner's understanding of what is mandated to be electronic versus paper.*
- *Volume/development conveyancing, increase in data entry, increase in time taken to complete development and volume work, increase*

likelihood of human errors, integration with the SRO in Vic in particular and complex duty

- *Some of the banks have not trained their staff well enough. There are still lots of issues with the banks requirements for paper documents and the inability to understand the conveyancing process*
- *No repercussions for parties not meeting a settlement on the accepted date and time. Settlement date and time should be able to be accepted where a party has outstanding (sic) tasks*
- *When PEXA has issues, it causes a world of issues for practitioners, causes purchasers to be sitting in trucks and overall causes a lot of stress that did not exist in the paper world. The Banks not having proper process in place prior to the implementation means that settlements continuously roll over causing additional works and purchasers to incur additional removalist fees for sitting in the trucks longer than they should have. The banks need to be held accountable to such delays but they are not*
- *The lack of responses or production of payout figures from the banks and or their representatives*
- *Banks not cooperating and not completing their requirements within sufficient time. Always relying on a roll-over rather than settling at the due time.*
- *Lack of mandatory Education. Why? I am transacting on PEXA daily, and have no comfort if the other practitioner is educated or winging it with the PEXA prompt notes to settle the property for my client.*
- *Parties not accepting settlement and completing documents in a timely manor (sic) which in turn precludes us from completing our documents eg: verification of stamp duty on a purchase. Also the lack of care for clients with settlements being delayed due to parties not completing and signing documents in time.*
- *Well where can i start - constant roll-overs with no accountability by any subscriber who fails to sign off or complete a workspace in time for the original settlement date. Lack of responsibility by banks; lack of competition; insufficient regulations; lack of consistency between EC and legislation*
- *There being no regulations guidelines or time frames implemented to avoid all being done on the day settlement is due*
- *Financial Institutions staffing and training around PEXA. The banks seem to have split their team up into paper or electronic which meant that they didnt (sic) have enough staff across both platforms causing delays and issues. That is more a financial institutions issue rather than an electronic conveyancing issue though.*
- *Vendor representatives leaving input of data to last minute resulting in additional work to chase up issues to get matter to settlement*

- *Banks are refusing/failing to do everything that is necessary in a matter until seconds before settlement is due, causing matters to constantly be pushed out. This is not necessary and not good enough*
- *Having to be tied to your computer to ensure settlement goes through. It is not even possible to leave your computer when the matter is in ready/ready as I have had several occasions when this has been tripped and required signing again. This makes our lives very inflexible as opposed to the paper settlements.*
- *BANKS - no certainty of what time settlement will take place which leaves clients paying removal truck fees. we are constantly having to ring the banks on the day of settlement to get them to commit*
- *Practitioners refusing to deal in the electronic workspace due to their perceptions. Practitioners using PEXA as a communication tool instead of a settlement tool.*
- *Banks failing to enter financial information until the last minutes*
Complexity of PEXA – not intuitive nor as straightforward as it could be
- *Many practitioners are still reluctant to take up this way of conveyancing. A lot of practitioners are nervous about incorrect account details being inserted into the workspace and no means of cross checking within the system*
- *Slow and late action taken by lending institutions when providing payout figures, entering source funds, signing off on documents etc*
- *Difficulties in dealing with banks. Limitations for any dealings which are complicated. IT issues impacting on signing. Requirement for practitioners to certify correctness of transactions such as Transmission Applications which represents a shifting of risk from the Land Registry to the user and is undermining the principles of indefeasible title*
- *dealing with the banks on Pexa. Bank staff are not trained properly, can't answer questions, don't respond in a timely manor (sic) and leave all matters relating to settlement too close to the settlement time resulting in numerous settlements not completing on time.*
- *does not cover all transactions, keeping up to date with mandatory deadlines, no longer having a pexa support specialist.*
- *lack of communication from bank, no penalty for bank delays, no ability for the vendors deposit funds to be loaded into the work space by vendors agent or legal representative*
- *The banks setting the rules and guidelines to suit themselves without consideration for other parties in the workspace. Also the attitude that if settlement does not happen at the scheduled time then it can simply "roll over". This means more time spent unnecessarily.*

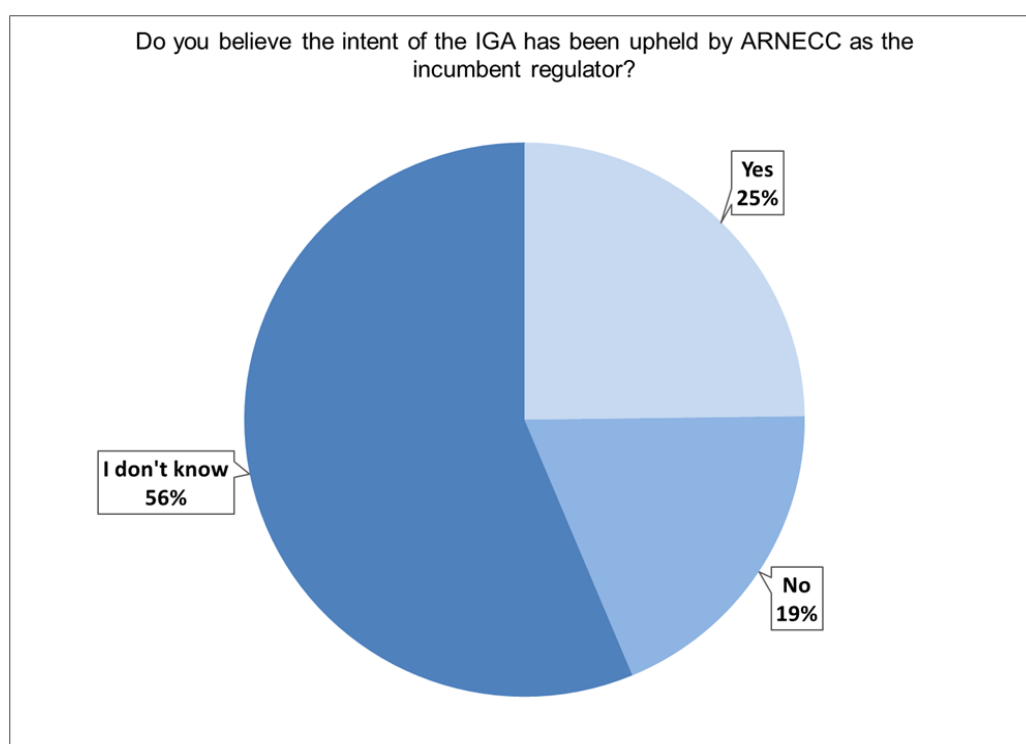
- *difficulties when the situation is not your usual transaction, practitioners unsure what to do, our PEXA direct specialist never calls us back*
- *Banks and lending institutions complying with tasks in a timely manner, often forcing settlements to roll over*
- *Tendency on the part of some parties, particularly mortgagees, to leave everything until the last moment. The system is intended to be able to have workspaces signed off well in advance of settlement time. Practitioners lose considerable valuable time having the check and recheck workspaces for mortgagee input before things can be signed off.*
- *Time for disbursing is taking too long, settlement completes quickly but disbursing can take several hours, this causes vendor practitioners to withhold keys when settlement has occurred but their client funds haven't disbursed; Lenders are finalising to late, up to 5 minutes before settlement time leaving practitioners having to monitor the workspace all day, this ties practitioners' time; Lenders knowing they can change times on the day of settlement instead of trying to meet the agreed time, this has caused some clients to pay removalist waiting fees while their Bank pushes settlement to a later time slot; Lenders do not use the conversation tool, ignore conversations or not answer at all; Lenders not completing shortfall funds yes or no until the last minute or not at all; security and media reporting of incidents has frightened some clients.*
- *Not all transactions are standard. Hard to navigate simultaneous and multiple settlements Misleading information about timing of lodgements - this seems in some instances to be a manual process with LRS NSW. Some settlements register same day and some don't. Lack of training around the types of documents and how you can create and lodge in PEXA - ie Caveats and Withdrawals of Caveats Lack of training around Priority Notices and how to create, lodge etc What is the process once a matters (sic) starts the settling process and then stalls. What should we be advising a client as to how long to wait for a settlement to occur. We have no control as to how long or short the settlement timing is. It does not appear to be standard timeframe. What is affecting this??*
- *Inability to ensure practitioners register and use electronic conveyancing - lack of training of some practitioners/time consuming in getting parties to attend to outstanding matters*
- *Difficult to get an urgent answers when an issue arises on settlement day from PEXA but mainly from the banks. The banks need to train their staff more regarding potential issues that can arise and how best to rectify the problem.*
- *Cord Consents not being updated Banks not updating funds available etc until 15 minutes before settlement having to be accessible in front of the computer waiting on everybody to do their parts in a paper settlement this is all done the day before and you can work your day around the fact everything has been done. You*

cannot leave the signing to anybody in the office you must be available at all times in front of a computer with the dongle

- *Financial Institutions complying with guidelines set and completing tasks in a timely manner, this needs to be addressed as a matter of URGENCY. This will slow down the uptake and of practitioners*
- *Lack of staff that the Banks have on their PEXA teams, there is not enough staff to respond to conversations in a timely manner in accordance with the PEXA guidelines especially on the day of settlement. Due to the lack of Bank response, trying to contact PEXA has become more difficult on the phone because you are on hold for a considerable amount of time and is often urgent for the reason you are contacting them.*
- *Banks non-responsive on PEXA (no perceived time saving benefit), additional workload on day of settlement (monitoring PEXA workspace), lack of flexibility certain transactions (stand alone transfer, simultaneous/linked settlements)*

Governance and Regulation

- 4.26 Respondents were asked to rate their understanding of the current governance and its associated documents on a 0-10 scale where 0 is none, 5 is fair and 10 is very good.
- 4.27 The result of an average of 5.1 demonstrates a fair understanding of the current governance arrangements.
- 4.28 The responses to the following question, however, demonstrate that more than 50% of respondents are unaware whether the intent of the IGA has been upheld by ARNECC in its role as the regulator (see chart below).

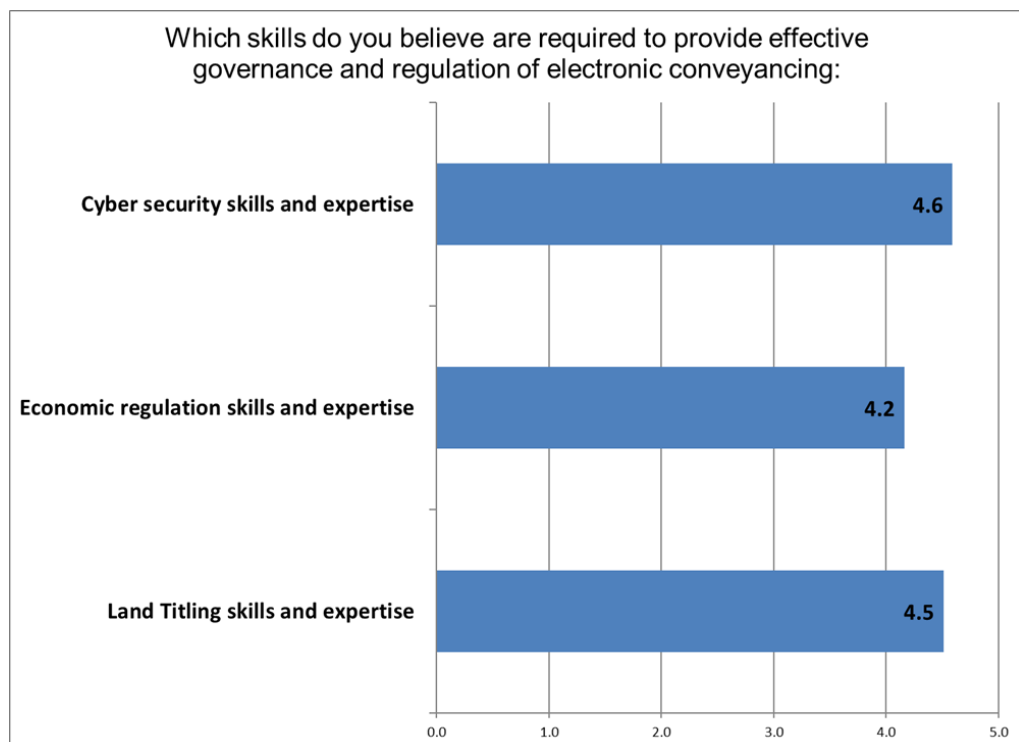


- 4.29 A subsequent survey question asked whether ARNECC has sufficient power to regulate the environment.
- 4.30 Responses to this question vary by respondent type, demonstrating a variation in perception across the industry.
- 4.31 Few of the financial services providers believe ARNECC has sufficient powers to regulate the environment. Other respondents are mostly unsure or do not believe ARNECC has sufficient power.

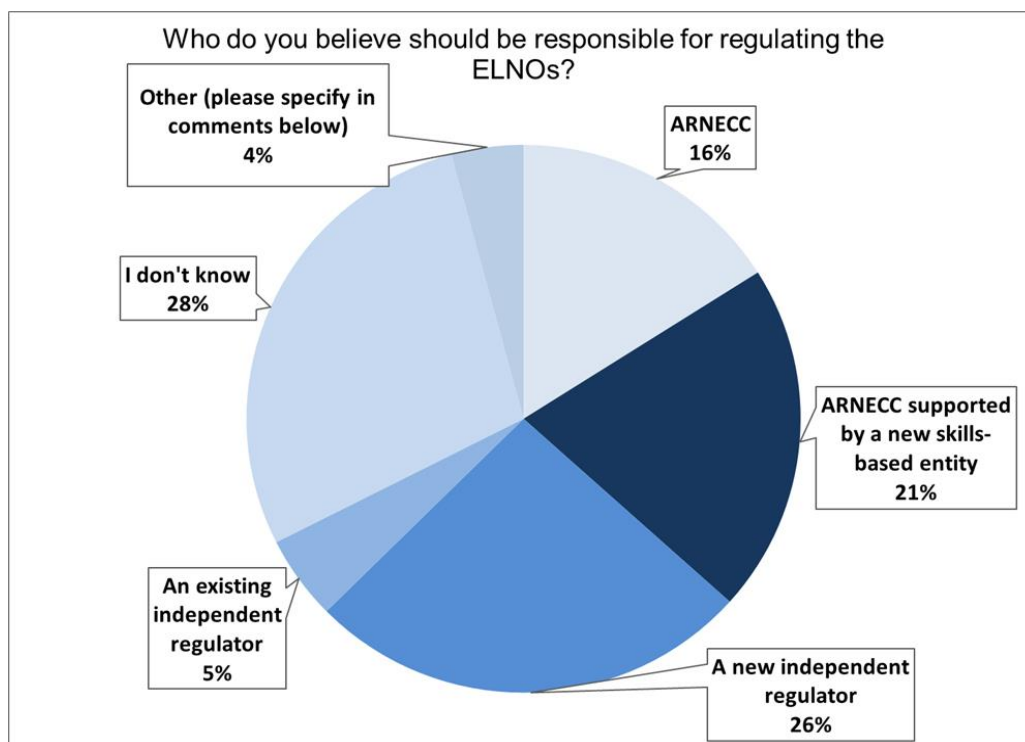
- 4.32 The next question asked respondents how well ARNECC is resourced, Respondents also demonstrate a level of uncertainty within the industry, particularly at the practitioner level.

Do you believe ARNECC is sufficiently resourced to regulate the electronic conveyancing environment?	
Response	Count
Don't know	149
No	75
Yes	30

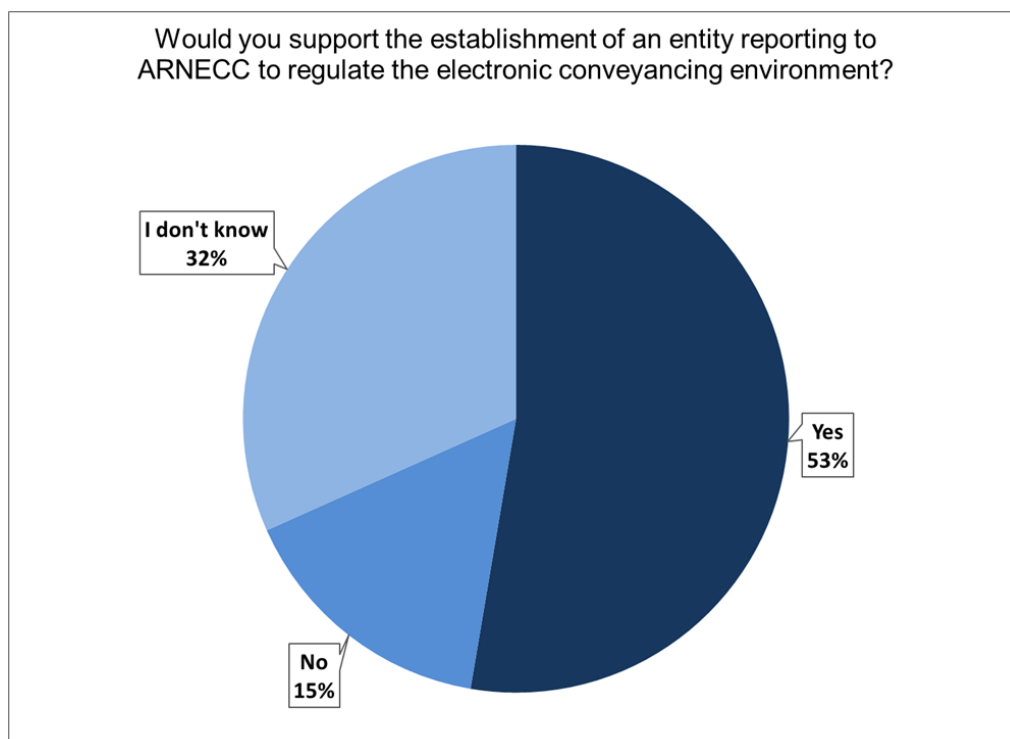
- 4.33 Respondents were asked to rate skills for effective governance and regulation of eConveyancing on a five-point Likert scale where 1 is not important and 5 is very important. The responses show that all three skills are considered important to very important.



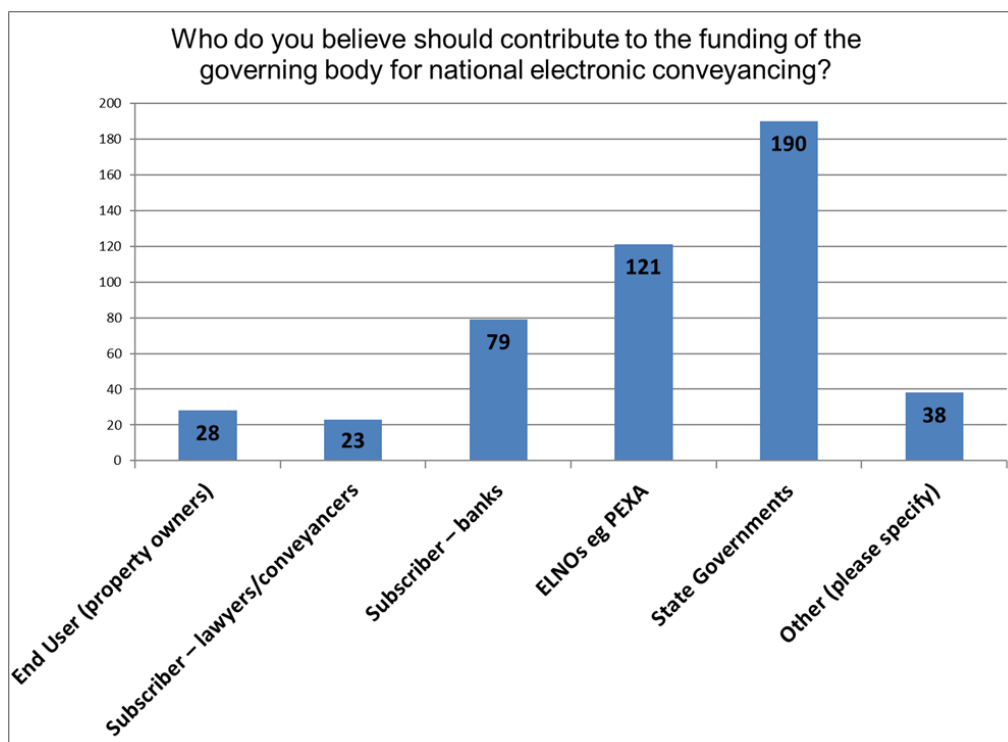
- 4.34 When asked who should be responsible for regulating ELNOs, respondents' opinions are divided.



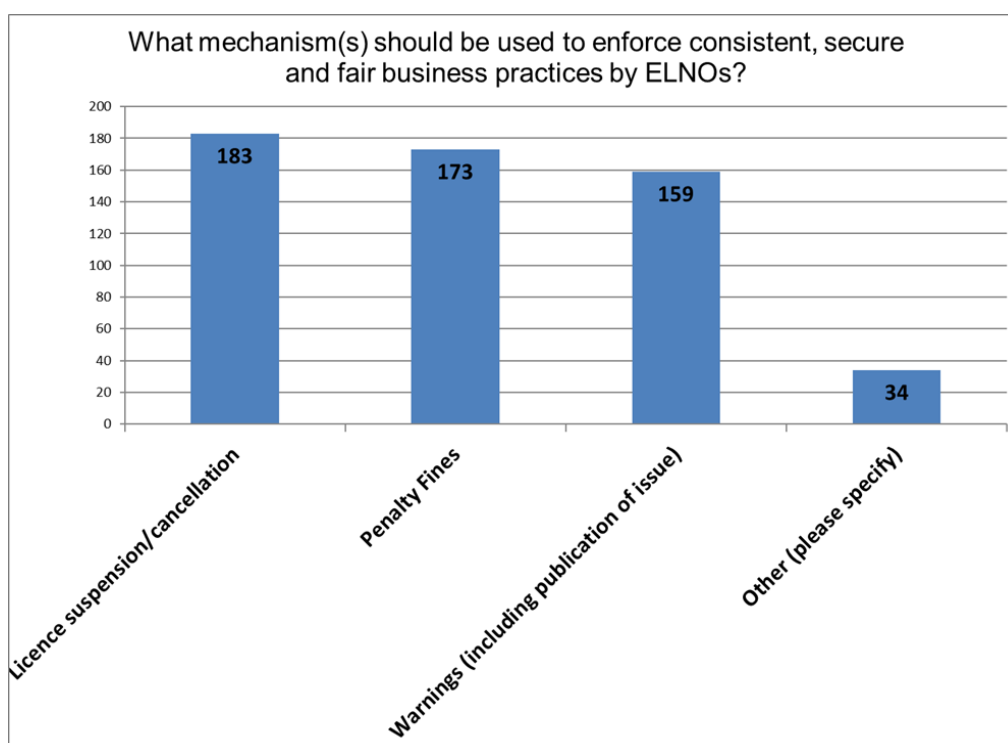
- 4.35 However, as can be seen in the chart below, more than 50% of respondents support the establishment of an entity reporting to ARNECC to regulate the eConveyancing environment, with the balance either unsure (32%) or against the idea (15%).



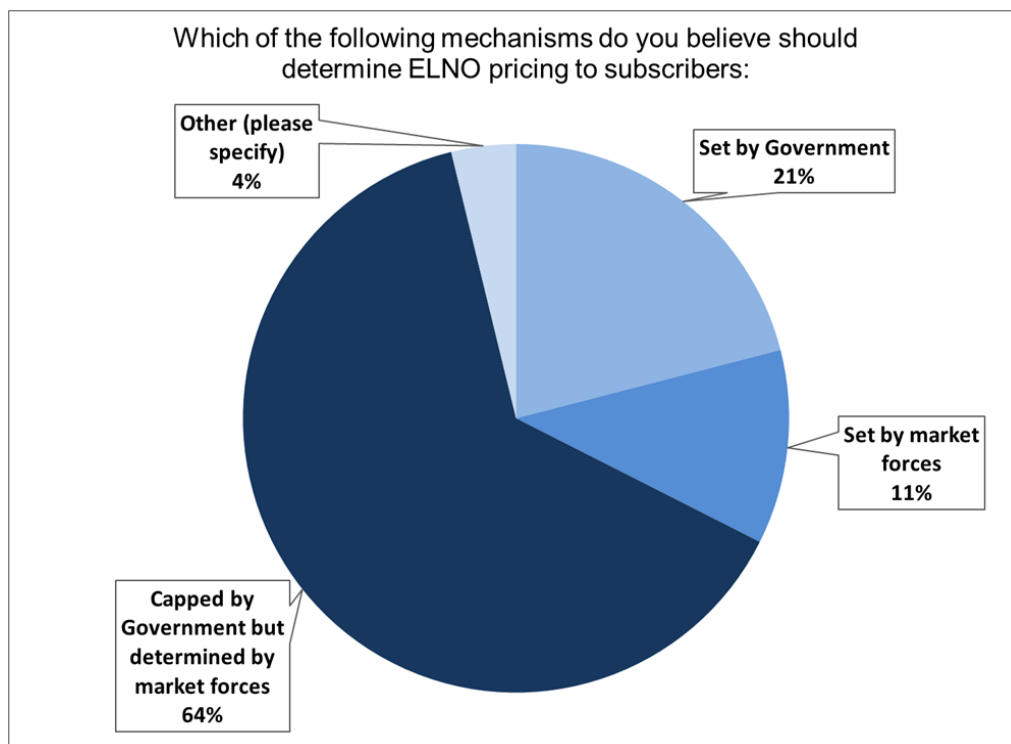
- 4.36 Respondents were asked who should contribute to the funding of the governing/regulatory body. There is an emphasis on funding by states and territories as the source. Other suggestions included a combination of the suggested sources or added in the federal government as an option. A number of comments noted that the end users will end up paying irrespective of where the funding is applied.



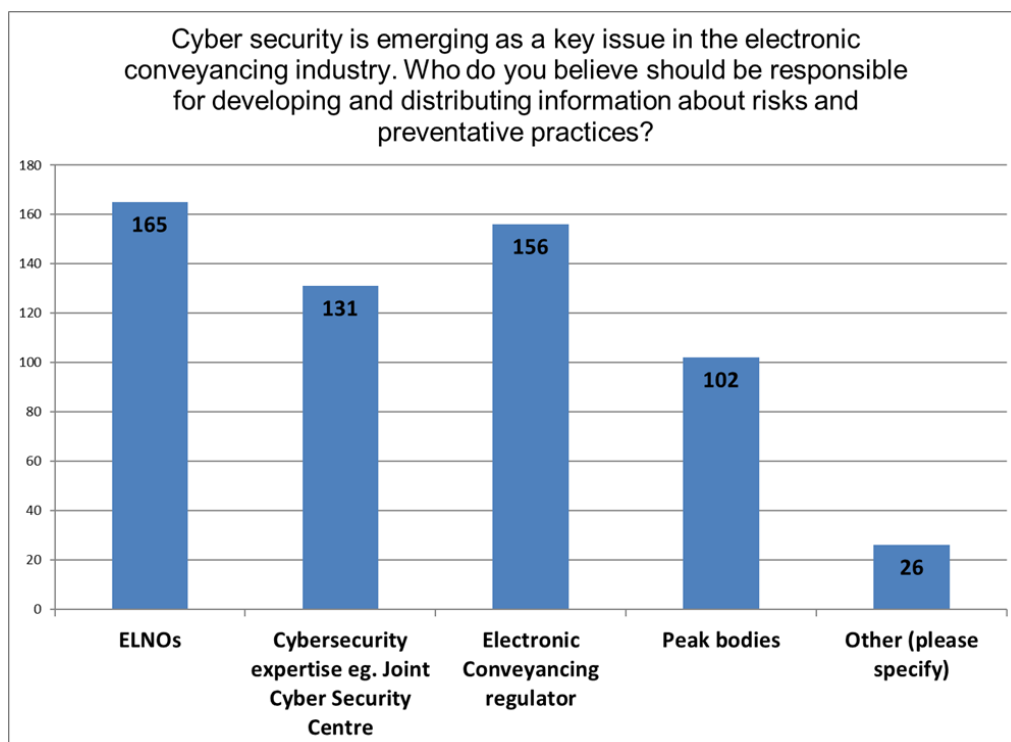
- 4.37 There was support for all proposed enforcement mechanisms for ELNOs with some suggesting a mix of all proposed.



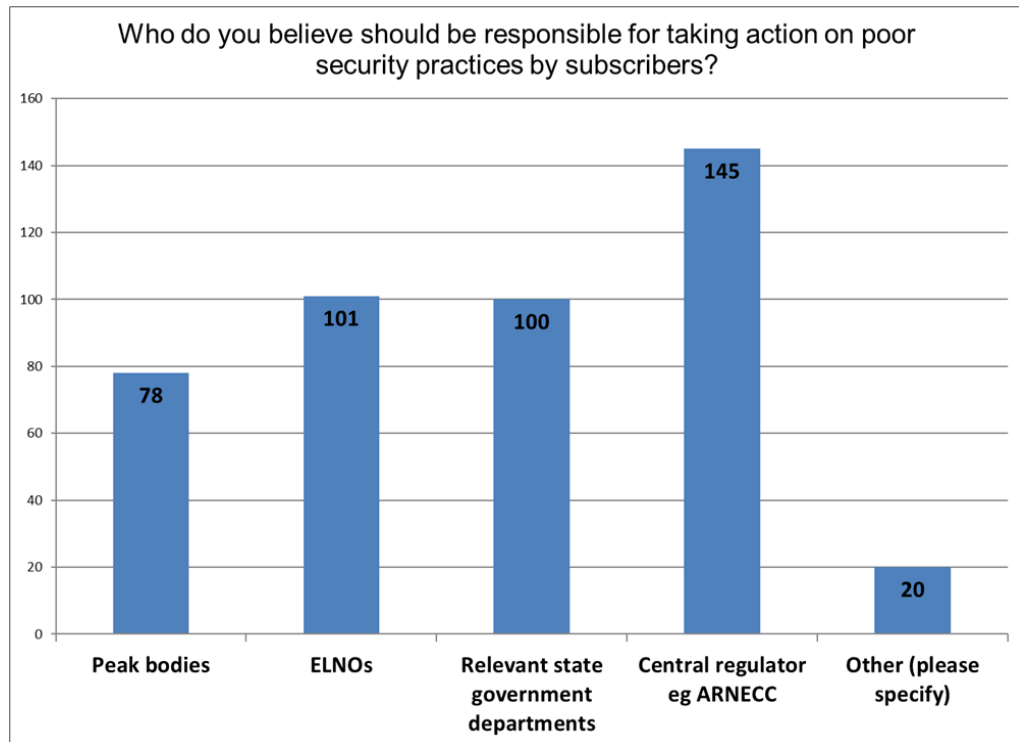
- 4.38 Government capping of ELNO pricing is strongly supported with the price then determined by market forces. Those who selected other tended to suggest the price be bound by CPI increases.



- 4.39 Cybersecurity has been raised as an increasing area of risk requiring attention. The following responses demonstrate that there is support for a number of different information sources.



- 4.40 In terms of managing poor security practices, the following responses demonstrate that stakeholders believe that more than one of the industry bodies has responsibility for taking action on subscribers with poor security practices.



5.0 ANALYSIS OF ISSUES

Uptake

- 5.1 The uptake and use of eConveyancing to date varies markedly across the five jurisdictions that have commenced eConveyancing, and also varies by instrument type:
 - Refinances and standalone discharges/mortgages have high uptake (typically greater than 90%) across all jurisdictions
 - Through to December 2018, transfers show a steady ramp up in Victoria (92%), NSW (62%) and WA (49%), which have mandated, or have announced dates for mandating transfers
 - Transfers are flat at 5% or less in SA and Queensland which have not committed to mandating transfers
- 5.2 As evidenced by the very high uptake for refinances and standalone discharges/mortgages, all major and many smaller financial institutions are using the eConveyancing platform extensively.
- 5.3 The very low uptake of transfers in non-mandated jurisdictions points to low voluntary sign up and use by practitioners. This suggests that the perceived benefits are insufficient to overcome most practitioners' resistance to commit to eConveyancing voluntarily. It is reasonable to draw the conclusion that mandating is the cause of the ramp up in transfers
- 5.4 The DMC survey conducted as part of this review highlighted the following:
 - Benefits - quicker settlement booking process, no physical settlement to attend, faster receipt of funds, need for cheques eliminated eg for council rates, immediate lodgement of documents, fewer errors at settlement
 - Disbenefits - need to continuously monitor for changes by banks just prior to settlement and re-sign, loss of social value eg social interaction in settlement rooms in the paper environment, value destroyed by need to maintain paper and electronic processes
 - Barriers - lack of practitioner skills/training, security concerns
 - Enablers - ease of use, confidence in system security
- 5.5 A previous study by Deloitte Access Economics showed that in 2016/17 the net benefit of eConveyancing for practitioners was marginal, particularly where paper processes were maintained in parallel.
- 5.6 This impact on net benefit caused by parallel processes is no longer relevant for Victoria which mandated eConveyancing from 1 October 2018 and is becoming less relevant in Western Australia where transfers for contracts signed after 1 December 2018 are mandated.

- 5.7 In jurisdictions where uptake has not reached a critical mass a very high proportion of eConveyancing transfer interactions fail ie they fall back to a paper process. Even assuming all financial institutions use the system, if only 30% of practitioners use the platform the probability is that only 9% of transfers can proceed electronically and therefore 91% cannot. This high interaction failure rate is a major disincentive to practitioners to invest the time to learn and commit to eConveyancing.
- 5.8 This chicken and egg problem, where the vendor practitioner won't join up without the purchaser practitioner and vice versa, is a characteristic of the platform model and must be solved for the platform to succeed.
- 5.9 Approaches to solving this problem typically involve a combination of minimising barriers to entry and incentivising users to use the platform. In this eConveyancing context, governments also have the option to mandate use to solve this problem (as has been highly effective in Victoria).

Regulatory control and compliance

- 5.10 The Australian community has long established expectations of land title security under the Torrens system which provides a secure and reliable land title system that is critical to Australia's property development and its prosperity.
- 5.11 The Torrens title system is a method of recording and registering land ownership and interests. It is named after South Australian Sir Robert Richard Torrens who is largely credited with designing and implementing it.
- 5.12 Established in South Australia in 1858, the efficient land titling system was adopted throughout Australia and New Zealand, and subsequently spread across the world.
- 5.13 The Torrens title system works on three principles:
- The land titles register accurately and completely reflects the current ownership and interests about a person's land
 - Because the land titles register contains all the legal interests that affect a person's land, it means that ownership and other interests do not have to be proved by long complicated documents, such as title deeds
 - Government guarantee provides for compensation to a person who suffers loss of land or a registered interest due to reliance on the register
- 5.14 The main benefit of the Torrens system is to enhance certainty of title to land (so called indefeasibility of title) and to simplify dealings involving land.
- 5.15 Australian property owners rely on government land title registrars to maintain accurate and complete registers of land titles so that they have surety of title.

- 5.16 The eConveyancing system is now a key piece of infrastructure that informs the titles registers in the five jurisdictions currently operating the system. In two jurisdictions all land transactions are mandated and for two others certain transactions are mandated. One jurisdiction has not mandated any transactions.
- 5.17 The current PEXA eConveyancing system not only lodges instruments relating to estates and interest in land with the registrar, it also completes financial settlements. Property buyers and sellers will expect that government endorsement by way of a licence or contract means that the system is fit-for-purpose, and risks and liabilities will have been taken into consideration. They will expect this to be true for financial settlement as well as for lodgement of title documents.
- 5.18 Titles registrars are experts at title regulation but not at financial regulation or market regulation.
- 5.19 When agreeing a contract or licence, governments are entitled to require assurance that national, state and territory laws and regulations will be adhered to and that unfair competition, abuse of market power, predatory pricing or risky financial transactions processes will be avoided. To achieve this ARNECC is able to access the skills and expertise of other appropriate regulators to ensure this key piece of infrastructure meets legitimate community expectations.
- 5.20 Other regulators could include ACCC to monitor and assess competition and pricing and the RBA to monitor and assess financial settlement standards.
- 5.21 ACCC advises that an ELNO can be subject to general competition law in the same way as those laws apply to the economy in general. However, the ACCC does not have a power to direct ELNOs or other companies under general competition law. Instead it has to seek remedies in the Federal Court.
- 5.22 Reliance on competition law is not an acceptable alternative to regulation where there are inherent monopoly characteristics. It is preferable to have specific provisions that address concerns that may arise in the ELNO context.
- 5.23 ACCC advises that seeking remedies under the general competition law for ELNO issues, rather than having a properly established tailored regulatory framework, has a number of limitations. These include:
- The limited range of orders that may not offer an appropriate solution to a market failure
 - The length of time of investigation of complex competition matters
 - Uncertainty about the timing of court decisions
 - The costs of litigation

- 5.24 It may be possible for ARNECC or individual registries to seek leave to intervene in such a proceeding if it took place, but it would depend on whether they had standing.
- 5.25 We consider it is unlikely that robust competition will occur immediately with two ELNOs and it is likely that price caps and price reviews will be required for some time if not indefinitely.
- 5.26 Many stakeholders believe that the governing body eg ARNECC needs power to direct an ELNO and power to levy fines or apply penalties in certain circumstances. This is particularly important where jurisdictions have mandated eConveyancing and the community has no alternative but to use the services of an ELNO.
- 5.27 The government licence/contract provided to ELNOs gives them a strong position in the market place.
- 5.28 We note that there are fledgling market developments in vertical integration, and it is important that ELNOs with a valuable government licence/contract do not unfairly compete against conveyancing practitioners, third-party providers or other industry participants.
- 5.29 There is industry concern that ELNOs could enter the conveyancing industry reducing competition in the industry in the longer term. While no business can be shielded from disruption due to technological advances, economic regulation should ensure that the community does not suffer economic or other significant disadvantage as a result.

Regulatory powers

- 5.30 ARNECC has powers within the governance framework documents to set standards and regulate the behaviours of ELNOs and subscribers to some extent but changes to the governance framework would be necessary to fully regulate the industry in an efficient manner.
- 5.31 It has the ability to regulate standards for the quality of title lodgement and set the requirements for the operation of ELNOs and subscribers. It has the ability to regulate price and has a price cap in place for PEXA.
- 5.32 ARNECC has a good compliance regime for the maintenance of the integrity of the titles registers but it is not sufficient to direct compliance with other areas of government regulation.
- 5.33 Stakeholders look to ARNECC to make the arrangements for proper regulation of all aspects of eConveyancing.
- 5.34 The list of matters to be considered in the future governance framework for eConveyancing is in section 6.0 Preliminary Options.
- 5.35 In the eConveyancing governance framework, powers are needed to direct ELNOs and to apply fines or other penalties for transgressions. The existing ability to suspend or terminate is not practical especially in jurisdictions that have mandated use, though it should be maintained for serious matters.

- 5.36 The power to revoke approval or not renew a contract is something of a sledge hammer tactic and could lead to significant and perhaps unnecessary disruption. If only one or two jurisdictions wanted to revoke or not renew approval, the ongoing operation of eConveyancing could be very complex to arrange.

Industry change management

- 5.37 Significant numbers of conveyancers and legal practitioners believe they have been required to deal with too many changes in a short period of time. Recently they have had to incorporate not only changes from eConveyancing but also from the Australian Tax Office.
- 5.38 Small firms in particular have limited resources to deal with significant change while managing day-to-day business.
- 5.39 This is a transition issue, but it has significant impact on the industry and is still impacting in jurisdictions where use of eConveyancing has not been mandated for all transactions.
- 5.40 Although significant support has been available especially when mandates are scheduled to commence or ramp up, the governance body needs to ensure that appropriate information, training and assistance is available to industry.

Conflict of interest and mandating eConveyancing

- 5.41 Stakeholders raised with us the matter of jurisdictions holding shares in PEXA having a conflict of interest in mandating its use. We agreed that this represented a conflict. We raised the issue with shareholder representatives in affected jurisdictions, and separately with registrars to understand whether there was any influence exerted on registrars by shareholder representatives.
- 5.42 We concluded that the decisions on mandating were taken without any influence from shareholders and were undertaken for reasons to do with efficient movement towards full uptake of eConveyancing. We know from our previous work in the early days of electronic conveyancing in Victoria, that the concept of mandating was always recognised as necessary once the system was established to remove the inefficiency of operating two systems – paper and electronic.
- 5.43 We concluded that the conflict of interest did not lead to a bias in the decision-making regarding mandating.
- 5.44 During the course of this review the jurisdictions were divested of their holdings in PEXA and so the conflict ceases to exist.

System change control

- 5.45 Some government stakeholders have expressed frustration at not getting all the changes they want in a timely fashion. Others have indicated that they will not necessarily be able to accommodate changes when ELNOs would like to schedule them and that government regulation may require system changes at times that are not convenient to ELNOs.

- 5.46 There will be additional complexity in coordinating change with two or more ELNOs, the existing five registrars and five revenue offices, and others that join in the future.
- 5.47 ARNECC will need to have resources to manage this function from the government side.

Cybersecurity

- 5.48 Data from the Legal Practitioners' Liability Committee ("LPLC") indicates that at least one lawyer or client each week is falling victim to Business Email Compromise ("BEC") scams.
- 5.49 The LPLC notes recent examples typical of BEC where using the compromised email account the scammers were able to impersonate either the client or the legal practitioner and sent new payment instructions to divert funds into the scammer's deposit account, before transferring those funds to untraceable or offshore destinations.
- 5.50 In a high-profile example a hacker compromised a practitioner's email account, used that email account to reset the practitioner's ELN access password and gained access to the ELN user account. The hacker was then able to modify the destination bank account details. The practitioner subsequently accessed the ELN and signed off the transaction without effectively checking the destination account details. At settlement the funds were transferred to the account designated by the hacker.
- 5.51 In this case the ELNO was able to work with the financial institutions involved to recover the majority of the funds. Although the practitioner failed to effectively verify the destination account details when signing the transaction, the ELNO made up the shortfall and the client received all funds.
- 5.52 The ELNO made a number of system improvements and learnings were shared with practitioners about how they could improve their own security practices.
- 5.53 PEXA held a Cyber Awareness Symposium for the property industry on Friday 12 October 2018. Industry stakeholders including the legal practitioners, conveyancers, banks, insurers, land titles registrars and cybersecurity experts were invited. The purpose of the symposium was to discuss the current issues and to inform industry members of some of the complexities of the current cybersecurity risks with the increased level of eConveyancing.
- 5.54 Key security measures discussed included:
- Standard username and password alone are not adequate to secure access
 - Two-factor authentication using mobile phone SMS alerts is not secure as phone porting is a simple process and is used extensively
 - Email communication (including business grade email) for payment details is not secure and should never be used

- Multi-factor authentication is now a minimum requirement for access by representatives' subscribers
 - Education for subscribers is one of the most effective methods of preventing this type of crime
 - Use of central education and information resources and reporting to these resources will help to identify existing and emerging scams
- 5.55 When the original IGA was developed, cybersecurity threats were considered but the nature of the threats has changed in the seven years since the original IGA was developed. The IGA has three elements which address security, the MOR, the MPR and the Information Security Management System ("ISMS").
- 5.56 It is acknowledged that BEC had not even been considered when the initial regulatory framework was developed and therefore regulation going forward should consider current cybersecurity issues and be flexible enough to cater for the inevitable advancement of cybercrime and the resultant threats.

Financial settlement

- 5.57 Most stakeholders were concerned about mistakes in financial settlements. These related to keying incorrect data such as bank account details or monetary amounts as well as potential fraud (covered in cybersecurity). Stakeholders gave many examples of errors in specifying bank accounts for disbursement. These included \$40K where the practitioner mis-keyed the bank account number and \$240K where the client provided an incorrect bank account number.
- 5.58 The change from cheque to electronic transfer of settlement funds removes the human matching of cheque name to the destination bank account and replaces it with direct keying of bank account numbers by practitioners. This abstraction from name to number and removal of name matching increases the risk of error and opportunity for fraud.
- 5.59 The introduction of one or more ELNOs as information intermediaries in a transaction further complicates the determination of liability in the event of error or fraud. In this environment a property owner impacted by fraud is poorly placed to determine which party among practitioners, ELNOs and banks is at fault.
- 5.60 Given many ordinary Australian homeowners have most of their wealth in their homes, they would likely face severe financial hardship in the event of error or fraud unless there are mechanisms in place to ensure near immediate resolution. Action through courts would take too long and be costly. We think it is incumbent upon government to ensure effective resolution mechanisms are in place.
- 5.61 Following the earlier hacking incidents, PEXA introduced a very limited Vendor Guarantee which provides some assistance to resolve incidents, but this alone is inadequate.

- 5.62 Stakeholders recounted multiple instances of amounts between a few hundred and thousands of dollars misdirected because of mistakes. Most said these mistakes were not reported due to embarrassment and were corrected at the subscriber's cost.
- 5.63 Banks have indicated that they are not willing to match account names to account numbers entered to enable checking. We understand that this is difficult to do with any accuracy, but we believe it warrants further investigation.
- 5.64 The RBA has indicated that any financial settlement platform for eConveyancing should offer Delivery vs Payment ("DvP") protocol with no person holding funds and title at the same time. Currently PEXA operates financial settlement to this standard, but Sympli has not yet advised its financial settlement protocol. DvP is a securities settlement mechanism that links a securities transfer and a funds transfer in such a way as to ensure that delivery occurs if and only if the corresponding payment occurs.
- 5.65 Most stakeholders reported financial services providers delaying settlement. There is reportedly too much reliance on payout figures provided on the morning of settlement, and too many cases of settlements being unsigned because of a change in figures by financial services providers. Providers comment that this is often driven by linked account balance variations.
- 5.66 It has been suggested that this could be improved by banks using the workspace to facilitate an agreed range for the payout figure.
- 5.67 We recommend that data analysis be conducted to determine the causes of delays to settlement and that performance metrics be developed to facilitate improvement.

Business disruption

- 5.68 The development of an eConveyancing platform has enabled business disruption. This is a common outcome of new technologies with efficiencies that remove the need for intermediaries.
- 5.69 This has certainly occurred with the removal of the need for settlement staff. One intermediary stakeholder reported that the introduction of mandatory eConveyancing had seen the removal of about 400 roles – mostly settlement clerks in addition to team leaders, settlement coordinators and managers.
- 5.70 It is likely that business disruption will continue and further new technologies such as block chain technology may impact on the business of eConveyancing itself.
- 5.71 Any future governance framework must be able to accommodate significant technology disruption and to avoid property transactions being locked into legacy technologies.

Competition

- 5.72 Most stakeholders support competition with reservations regarding costs, complexity, security, unfair competition, and fault and liability issues.
- 5.73 We note that other large and critical components of land titles infrastructure (outsourced registries) are monopolies with established price controls and rigorous standards.
- 5.74 We believe rigorous standards are essential when government is endorsing or mandating a system that deals with homes and other real property. Australians expect that their land titles are secure and that governments stand behind the accuracy and security of their land title registries.
- 5.75 In the paper environment, governments bore no responsibility for the financial settlement of property as it occurred in the banking environment under a separate regulatory system. However, stakeholders have noted that the governance framework has failed to regulate the financial settlement function, and a number of stakeholders have commented that there needs to be a financial regulator.
- 5.76 We believe that industry participants and property buyers and sellers now expect that as the government has endorsed a system (or more crucially mandated use) it will be fit for purpose and meet all appropriate government regulatory standards, including federal, state and territory regulatory standards. The future government framework should include requirements for ELNOs to demonstrate that they meet these standards.
- 5.77 These rigorous standards can be interpreted as barriers to entry, but we do not believe it is acceptable to lower these standards to advantage private sector operators potentially leaving liabilities to be borne by ordinary Australian homeowners.
- 5.78 Currently the largest PEXA fee is for a Transfer by a Third Party and this cost is \$112.64. Therefore, the cost advantage to consumers from competition must be less than \$112.
- 5.79 While it is important that consumers are not subject to inflated prices that lack of competition can bring, lower prices should not come at the expense of lesser quality.
- 5.80 Most property settlements will be upwards of \$500K, and consumers may only buy and sell property a handful of times during their life. The opportunity to save \$50 will not recompense consumers if the financial settlement process (or the land title registration process) leads to additional risk. The risk and liability issues should be clearly considered when any ELNO is approved as well as if and when any interoperability models are considered.
- 5.81 We note that when PEXA commenced development of the system, it had a majority government ownership, so the initial establishment standards were developed to meet government requirements. These expectations are no longer explicitly stated and should become part of the

authorisation process for ELNOs to be granted a government contract or licence for eConveyancing.

- 5.82 We note also that all participating jurisdictions both registry bodies and revenue bodies incurred significant costs to connect to the first ELN. For some jurisdictions the costs to connect to the second ELN will again be substantial – both the development costs and the ongoing maintenance costs. The estimates from titles and revenue offices to connect to a new ELN range from a few hundred thousand dollars to several million dollars - most have indicated they intend to recover these costs from the ELNO requesting the connection
- 5.83 We believe it would be sensible for these costs to be formally quantified so that potential ELNOs have a clear understanding of the likely investment needed to build a complying system. Public sector monies that are expended to support a business sector investment should be recouped from the business.
- 5.84 Whilst the MOR require ELNOs to provide a minimum set of services to all jurisdictions, there is no maximum timeframe specified and the planned timeframe to deliver the services is forecast by the ELNO in its business plan. There are currently no enforcement options, short of ELNO suspension, if an ELNO fails to deliver services to all jurisdictions.
- 5.85 There is no guarantee that both or any additional ELNOs would operate in all jurisdictions and it may be that ELNOs choose to operate only in the large jurisdictions that generate a profit for the costs involved in set up. Depending on how the market develops, there may not be even two operators in each jurisdiction. When we compare this market with the telecommunications market, we note that the Australian Government pays one operator to meet Universal Service Obligations for services that cannot be delivered on a commercial basis.
- 5.86 If an ELNO is unable to operate profitably in a jurisdiction it will need to cross subsidise delivery of services by setting prices higher across all jurisdictions. Is it effective competition to require all ELNOs to provide services in all jurisdictions? What should be the penalty if an ELNO fails to deliver according to its approved plan?
- 5.87 Any market regulation and governance framework will need to consider the implications if new ELNOs focus on profitable jurisdictions or clients and accommodating smaller jurisdictions becomes unprofitable. It is also possible that new entrants may focus on lodgement of only some documents and not offer a full eConveyancing service.
- 5.88 The governance framework should ensure that no restriction of access by ELNOs is allowed. Software suppliers should have equality of access and should not receive unfavourable pricing for access to a competitor ELNO. Conversely software suppliers should not be able to treat competitor ELNOs unfavourably. The MOR version 5 (paragraph 5.5 Integration) addresses this matter. Does this address stakeholder concerns? Depending on ACCC comment this would not necessarily restrict discounts for volume business as is usual in commercial arrangements.

- 5.89 If ELNOs are able to enter into commercial arrangements to encourage subscribers to use their systems this would be likely to have an adverse impact on subscriber monitoring. It is unlikely ELNOs would want to suspend or otherwise sanction subscribers with whom they have a commercial relationship. What party would then exercise control over the quality and performance of the subscribers in relation to eConveyancing?
- 5.90 We note that in the MOR version 5 (paragraph 14.10 ELNO must not be a Subscriber) if the subscriber is a related entity of the ELNO, then an independent expert must be used to assess the subscriber's application and undertake the subscriber reviews. This lessens the potential conflict of roles but does not entirely eliminate the conflict of interest. The MOR is otherwise silent on commercial arrangements between ELNOs and subscribers.
- 5.91 Should an ELNO be prohibited from offering related services eg conveyancing or mortgage lending services, practitioner software? MOR version 5 (paragraph 5.6) introduces a concept of Separation which requires legal or business unit separation of the ELN provider from the related services provider.
- 5.92 During our consultation process MOR version 4 was in operation and we note that stakeholders may not have been able to comment on changes in MOR version 5. Noting that we have not tested these changes with stakeholders, do these changes address industry concerns?
- 5.93 These matters need to be addressed before market positions solidify. Advice from an expert economic regulator is required to ensure the future governance framework addresses the emerging and future market environment.

Interoperability

- 5.94 The shift from well-defined, single ELN system to a multiple ELN environment in which key design decisions have not been made has created additional uncertainty for eConveyancing participants.
- 5.95 The most fundamental design decision is the extent to which ELNs will be closed or interoperable (i.e. data and actions from one ELN can interact with another).
- 5.96 Closed ELN characteristics:
- Each ELNO operates its own ELN independently of the other
 - Rules determine which ELN all participants must use to conduct a given transaction
 - Depending on these rules, this could require all participants join and use all ELNs, or some ELNs may be unviable
- 5.97 Interoperable ELN characteristics:
- ELNs share transaction data

- Rules determine which ELN executes the financial settlement and lodgement
 - Each participant is free to choose which ELN it uses
 - Removes barrier to competition created by closed network effects
 - Introduces greater risk by providing more points of vulnerability
- 5.98 In the absence of a clearly defined interoperability model for consideration, it is challenging for stakeholders to indicate a preference for a closed or an interoperable system.
- 5.99 Any operating environment involving multiple ELNs should be designed to maximise the benefits and minimise the adverse consequences and risk.
- 5.100 Below are two lists of elements to consider. These have been provided courtesy of analyses from two very knowledgeable stakeholders.
- 5.101 Questions from the first stakeholder are as follows:
- **Platform approach** to interoperability. *If platforms are open i.e. data and actions from one platform can interact with another, will this be for a portion (e.g., payment only) or all of the transaction (payment and property settlement)? Since property and payment are just the opposite side of the value, they need to be joined and simultaneous, thus both Lodgement and Payment need to be interoperable or, at a minimum, following the same standards. By way of analogy, interoperability of one without the other is like saying you want to only buy the front of a painting, not the canvass behind it.*
 - **Standards.** *What standards do all participants need to adhere to regardless of platform? For instance:*
 - **Sequence of actions.** *Will the sequence of actions for each use case be specified and where can there be deviations? eg financial irrevocability of source funds must be in place before title check.*
 - **Speed of actions** *to ensure sequencing works. If actions are sequential, what are the standards for time to perform each action (e.g., source fund confirmation within 15 minutes)?*
 - **Message formats.** *Are there specific formats (e.g., ISO20022) for messages to ensure compatibility, particularly across tech releases by various parties?*
 - **Payments across platforms.** *Payments need a standard to ensure compatibility and, most importantly, either one set of pipes or interoperability across platforms. Without this, payment pipes will need to be built to each ELN and any non-standard message formats or timing would impact the whole system. How will payments across platforms work efficiently? Will one platform take the lead over the other or can some*

payments go from one platform while other payments go from another?

- **Cross platform human communication.** Some conversations are facilitated on platform, others are over the phone. How will cross-platform communication be facilitated – through ELNs or through parties?
- **Release cycles.** All participants have technology release cycles to upgrade functionality and security. How will ELNs synchronise releases and/or ensure backward compatibility?
- **Use cases.** Particular use cases such as sequential or simultaneous settlements are more complicated. Are there use cases which will form the basis of collaboration on specific standards?
- **National Governance.** While for a citizen of a state, they will only care about the standards for a state where they have a transaction, other market participants transact nationally. How will standards be governed for national consistency? Will ARNECC, or another regulatory body, have the necessary powers to influence national level governance on standards and framework?
- **Establishment and changes.** Standards will need to be updated. What is the framework and process for that update? Will it be through MOR consultation or another mechanism? Where do tech specialists get involved? Where do legal specialists get involved?
- **Innovations.** The problem with standards is that it can result in mirrored systems with minimal differentiation. How will the marketplace be governed, and standards set which enable future step changes in innovations instead of incremental innovations?
 - Currently, we assume that participants are human actors, acting on behalf of their customer, not machines enacting a customer's action. **Can we put together a framework which spur innovation for participants**, particularly when it comes to **automation and integration**?
 - What other innovations do you see in the home lending space which can help lower unit cost and/or result in better customer outcomes?
 - Where can distributed ledger technology and smart contracts play a role and how is that catered for in standards and governance frameworks?
 - Intermediation ensures simultaneous payment and lodgement. Will direct – citizen to citizen - transactions be facilitated or is everything intermediated?
 - Will timeframes for disbursement change so citizens can get their funds sooner?
 - Are there ways to reduce intra-day and next-day rolls of settlements?

- **Security and platform integrity.**
 - **Security.** *How will we ensure that multiple platforms are secure? For instance, a DDOS attack on one impacting the viability of a transaction across platforms?*
 - **Downtime.** *If one platform is down, what occurs – batch, re-process each settlement, etc.?*
 - **Controls.** *Clarity on the control environment on each ELN is critical. However, if one party is on one ELN while other parties are on another, then a financial service provider would need a sense of the control environment on the other ELN. How would this work?*
- **Regulations.** *Thus far, the market has evolved through regulations and mandates.*
 - *How will regulations work with multiple ELNs? For instance, based on discussions we assume that participation in electronic marketplaces will be mandated, but participation on a particular ELN or on all ELNs will NOT be mandated?*
 - *Who will the regulator be? How will there be AU-wide regulation instead of state-based regulations?*
 - *How will the regulator confirm compliance to standards and/or enforce breaches?*
- **Fraud / disputes.**
 - *How will liability be determined in an interoperable / multiple ELN world?*
 - *If there is a fraud on one platform, how would it be resolved between parties on separate platforms?*
 - *Will there be a market approach / standardisation of how to address fraud / disputes while helping citizens in a timely fashion?*

5.102 Questions from the second stakeholder are as follows:

- *What are the trust and verification and liability arrangements between ELNOS and any central information exchange service provider e.g. is the information/Document received accurate and current (including settlement details), what are the service levels for advising of revocation or revision of received information or Documents, assurance of Subscriber and User verification, indemnities from transmitting ELNO especially where receiving ELNO has no contract with transmitting ELNO's Subscriber?*
- *How do the ELNs know which lodgement case counterparts to exchange?*
- *What are the privacy considerations?*
- *What level of information is being shared?*

- *How is information identified as appropriate to be shared?*
- *How often is the information shared or exchanged?*
- *The impact on Digital Signatures applied in one ELN, when data is then changed in the other ELN?*
- *If a lodgement case is compiled in separate systems, who is responsible for warranting its final content?*
- *Risk of mistake, error, failure to understand or process instructions, risk that lodgement proceeds when it should not, indefeasible title?*
- *If settlement is required in one ELNO, how is settlement tightly coordinated with lodgement if multiple ELNOs are lodging parts of the lodgement case?*
- *Issue of where liability rests?*

5.103 In summary, the design of an operating framework (closed or interoperable) must consider the wide range of matters identified above, but ultimately any solution must not compromise security of title nor increase financial settlement risk.

6.0 PRELIMINARY OPTIONS

Regulatory and governance arrangements

- 6.1 There are a range of governance and regulatory matters to be managed in eConveyancing especially for a mandated process. Stakeholders expect that a system endorsed by government such as the ELN is fit for purpose and will not expose the community to greater risk and liability than was present in the paper system it replaced.
- 6.2 To date, ARNECC has focused in the main on regulating the land titling components of eConveyancing. However, it is clear that all stakeholders expect that governments will provide regulatory and governance oversight on all of the matters impacted by the change to eConveyancing.
- 6.3 ARNECC recognises that it does not have all the skills necessary to regulate the wider business environment in which the ELNO operates, and also notes that other states, territories and national regulators have jurisdiction over components of that environment.
- 6.4 Stakeholders look to ARNECC to develop the regulatory and governance framework for the whole environment and if it is not able to do so it needs to make arrangements for other regulators to have the levers to address the other components. The mechanism by which the ELNOs are given the permission and right to operate in the eConveyancing space is the contract/licence agreed with each jurisdictional registrar. The preliminary approval to allow agreements to be reached is the Category 1 and Category 2 requirements in the MOR.
- 6.5 Having regard to the feedback from stakeholders and our analysis we suggest the regulatory and governance framework should consider the options to address the following:
 - Land titles – ensuring security of title
 - Financial settlement – certification that the settlement system is fit for purpose ie fit for property transactions that are of high value and require a Delivery versus Payment protocol where no party can hold the asset and the funds at the same time
 - Cybersecurity for government data and personal data
 - Privacy for personal data
 - Confidentiality for appropriate government and business data
 - Professional certifications and ELN practice requirements – conveyancers and lawyers
 - Certifications and ELN practice requirements – financial services providers
 - Market regulation including constraints on pricing in monopoly or duopoly circumstances, vertical integration and unfair competition, imposition of pricing barriers to competition

- Risk and liability management – financial settlement as well as title integrity
 - Monitoring and reporting – audits of ELNOs and practitioners
 - Guidance and enforcement – guidance and direction to ELNOs on new and emerging issues, actions to ensure compliance
 - Policy development
 - Dispute and complaints management
 - Liaison with other regulators in each jurisdiction including national regulators
 - A mechanism such as a stakeholder council or an advisory group to provide advice to ARNECC on relevant matters
 - Business process matters – development of a proactive agenda to address matters of efficiency raised by stakeholders in a systematic fashion
 - Technology frameworks and standards including data standards
 - Change management processes – managing system updates and changes to ensure systems continue to reflect the legislative needs of the jurisdictions in both land titling and revenue collection matters, and the stakeholders are given sufficient time and training to accommodate any changes
- 6.6 Options will be developed to best address these governance areas to guide the development of the regulatory framework for the future.

Governance Bodies

- 6.7 In addition to option 1 (existing governance arrangements) our consultation and analysis have led us to consider the possibility of two additional significant preliminary options for governance bodies to manage the developing complexities of eConveyancing and its potential impacts, recognising the increased expectations of stakeholders.

Option 1 – Existing governance arrangements

- 6.8 In the detailed options analysis stage involving each jurisdiction, we would consider the existing arrangements with ARNECC performing the function of the governing body as the base case – **option 1**.
- 6.9 In addition to option 1, two other preliminary options for the governance body have been identified

Preliminary option 2 - New body to advise ARNECC

- 6.10 In discussion with stakeholders we have proposed the creation of a new body to assist ARNECC with the regulatory and governance matters identified above.

- 6.11 Most stakeholders interviewed considered this a possible solution with only a small percentage saying they would not support such an option.
- 6.12 A few stakeholders nominated ACCC as the most appropriate regulator for the market, but they acknowledged it was not equipped to regulate land titling matters.
- 6.13 A new body would be resourced with the skills needed to provide expert advice to ARNECC on all the matters outside the direct land titling matters and would provide resources to resolve efficiency and business process matters in a timelier manner than can be achieved by staff employed in other full-time positions in registrars' offices.
- 6.14 Such a body would have the ability to develop a forward agenda to work on issues identified by stakeholders as of most importance to them, and to communicate regularly with peak bodies on the interests of members.

Preliminary option 3 - National regulator option

- 6.15 A potential option for governance is to create a new national regulator for eConveyancing and to regulate the impacts on related markets.
- 6.16 There does not appear to be any existing regulator that is a good fit for all aspects of eConveyancing. It is also difficult to see how a national regulator would be able to direct statutory office holders such as registrars (and perhaps revenue offices) in relation to their statutory decision making.
- 6.17 However, it is possible that there could be other options for a national regulator, and we would welcome stakeholder feedback on this issue.

Funding a regulator

- 6.18 Whatever regulatory model is eventually chosen, it will need to be funded. We have canvassed funding options with stakeholders both in interviews and via the survey. We believe there are four main options as follows:
- User pays – property buyers and sellers benefit from the development of eConveyancing and a small charge per transaction to support regulation and governance of the system would not be unreasonable
 - Subscribers – conveyancing practitioners and financial services providers earn money from the system and most will receive efficiency benefits from the system; regulation and governance of subscribers imposes costs on the regulator, so it would not be unreasonable to levy a small charge per transaction on subscribers
 - ELNOs – the system operators require substantial regulation and governance and they earn money from the system so again it would not be unreasonable to levy a small charge per transaction on ELNOs
 - State and territory governments – governments have benefited from the system with increased efficiencies in their transaction processing environments however since three jurisdictions have privatised their

registries the mechanisms for collecting a transaction-based fee may be difficult

- 6.19 In addition to per transaction funding, costs should be recovered from participating ELNOs for the maintenance of the national data standards – titles and revenue.
- 6.20 It is acknowledged that many stakeholders both government and industry have not yet recovered their costs of developing or connecting to the eConveyancing system, but almost all industry stakeholders agree that additional resources are needed for full regulation and governance now and in the future.
- 6.21 It is not surprising to note that most industry stakeholders believe governments should pay for the additional resources. Most government stakeholders (treasury officials, registrars and revenue officials) believe that industry should pay for its own governance and regulation, and point to the difficulty of getting additional new funds in government budgets from general taxation revenues.
- 6.22 We believe there is reason to have the funding targeted to the industry and end users in some way. Not all Australians are buyers and sellers of property so an argument for using general taxation revenues is not strong.
- 6.23 Do stakeholders have any additional funding models to propose?

Industry wide competition

- 6.24 Stakeholders have expressed concerns that consumers may be disadvantaged in the long term if vertical integration occurs and ELNOs business units or related entities move to delivering conveyancing services or related services.
- 6.25 Conveyancing practitioners are concerned the new players may develop conveyancing factories and that ultimately if small players are pushed from the market, prices will rise, and property owners will be disadvantaged.
- 6.26 Third party providers are concerned that the ELNOs will compete unfairly against them by making favourable commercial arrangements with some parties and not others.
- 6.27 The rules in the MOR for ELNOs operating in the wider market need to be reviewed by a qualified economic regulator in the near future to ensure that they are clear and there is no abuse of market power. Enforcement powers and procedures will need to be developed.

A competitive ELNO market

- 6.28 eConveyancing reached a critical juncture in its development with the approval of a second ELNO in November 2018 and commencement of operation in two jurisdictions in December 2018.

- 6.29 Prior to November 2018 there was a single ELN and eConveyancing governance was largely based on a single ELN operating model. While the ECNL gave registrars the power to approve more than one ELNO, it is recognised that the existing governance arrangements are inadequate for a multi-ELN environment. For example, there are no rules governing which ELN shall be used to effect a property transfer where parties choose to use different ELNs.
- 6.30 The introduction of a second ELN gives rise to an evaluation of potential options for operating models and selection of the most suitable model for the next period of eConveyancing operation.
- 6.31 Informed selection of a suitable model requires definition of objectives and an understanding of their relative importance, as well as an assessment of the risks associated with each option. In section 5 a number of questions were posed by stakeholders for consideration in designing an interoperable model.
- 6.32 In the remainder of this section we define some preliminary objectives and outline four preliminary options along with key observations. This is not a complete analysis but is intended to frame the key trade-offs decision makers face in selecting an operating model to move forward with.
- 6.33 Suitable preliminary objectives may include:
- Minimise risk to titles security
 - Minimise risk to financial settlement
 - Maximise service quality and industry productivity
 - Minimise cost (to consumers and taxpayers)
- 6.34 Although there are many permutations of possible operating models, we have identified four substantively different operating models:
1. Single ELN (base case)
 2. Multiple Independent ELNs
 3. Multiple Interoperable ELNs (direct connection / intermediated)
 4. Multiple Interoperable ELNs using infrastructure ELN
- 6.35 We acknowledge that there are other options stakeholders have identified, however our view is that the options above cover all the fundamentally different operating models identified. For example, cross ELN subscriber and digital signature recognition has been proposed to reduce subscriber switching costs in a multiple ELN environment. Given this feature could be included in any of the multiple ELN models where it adds value, we have not identified it separately.

Option 1 – Single ELN (base case)

- 6.36 We have used an operating model involving a single ELN as the base case. This is the model which has operated since the commencement of

the national eConveyancing system until November 2018 when ARNECC approved a second ELNO to operate. Stakeholders are familiar with this model and it provides a benchmark from which improvements or shortcomings in alternate models can be framed.

Option 2 – Multiple Independent ELNs

- 6.37 The basic competition option is for two (or more) ELNOs to compete using their own systems. Subscribers would need to learn two (or more) systems, and rules would need to be determined to establish which party chooses the ELN for any given transaction. Most conveyancers and legal practitioners believe that if this is the model, the purchaser's representative should choose the ELN and that this should be included in the contract of sale.
- 6.38 Financial services providers in the main did not want to use two systems. However, there was some consideration that they may use two different systems if it made sense for a particular part of their business operations eg a compelling case to use one operator for a particular transaction. There are costs involved in connecting to more than one ELN and these costs are not trivial. Estimates of initial connection costs to the first ELN for each provider range between \$10M and \$30M. Providers have indicated they would expect to have these costs met by the ELNOs as there do not appear to be any significant costs savings from the second (or third) connection. The main efficiency benefits can be achieved with the first connection.

Options 3 and 4 – Multiple Interoperable ELNs

- 6.39 A more complex competition framework is for an interoperability model to be developed. Interoperability supports ELNO competition by removing the barrier created by network effects. While stakeholders support the principle of interoperability in general, they do not want it to add costs or increase risk and liability. Practitioners are already conscious of the additional risks they need to manage with the responsibility for accurate and correct input into the financial management system. This risk was not present in the paper system where cheques were generated by the financial services providers.
- 6.40 Some stakeholders have proposed an interoperability model in which ELNs share workspace data for a transaction via an intermediary (option 3b). A variation to this model involves data sharing directly between ELNs (option 3a).
- 6.41 Another approach (option 4) to interoperability is to have an infrastructure ELN provide services for connecting to registries, revenue offices, the RBA and potentially financial institutions to other additional ELNs. The intention is to avoid the costs associated with building and maintaining replicated connections to existing entities. The infrastructure ELNO would provide additional ELNOs access to services for an agreed charge eg in a manner provided for in Part IIIA of the Competition and Consumer Act 2010.
- 6.42 Details of these options are provided at Appendix II.

Matters for consideration

- 6.43 We have considered two potential interoperability models above. There are advantages and disadvantages to both, and these will be developed in more detail in the months ahead. We do not believe that any decision to adopt an interoperability model should be made until the risks, liabilities and costs are properly identified and agreed between the ELNOs and the governments.
- 6.44 We see difficulties with the model that includes a new private sector monopoly player that all ELNOs must connect to. This monopoly would need special regulation in relation to pricing and relationships to the market more generally. Furthermore, there would not be a benefit unless there are a significant number of ELNOs.
- 6.45 We also note that two ELNOs does not make a market and believe that price capping will be necessary until an efficient market develops.
- 6.46 It is possible that ELNOs will choose to market in some jurisdictions and not others depending on establishment costs. It is also possible that they will choose to offer eConveyancing for a limited number of documents, so there may not be competition in all sectors and geographic areas. The MOR require all ELNOs to offer all services in all jurisdictions, however there is no mechanism at present to ensure this occurs.
- 6.47 Interoperability options may deliver the benefits of improved service (driven by competitive forces) and the security of an alternate ELN in the event of a catastrophic ELN failure. It is also asserted that practitioners will have a choice of ELNs and will not need to learn more than one.
- 6.48 Given that the benefits from implementing an interoperable system are not certain and the costs significant, if an interoperable solution is preferred then an in-depth analysis to better understand the total cost and likely outcomes is warranted. Questions could include:
- Is it cost effective to require all ELNOs to provide all transactions in all jurisdictions?
 - Alternately, what are the implications for the success of effective competition if additional ELNOs only invest in the most profitable transactions and jurisdictions?

7.0 NEXT STEPS

Anticipated Timetable

- 7.1 DMC would welcome comment on the issues raised and on the preliminary options identified.
- 7.2 Feedback is welcome until the end of March 2019, but earlier feedback would be appreciated as we will be working on development of the options through February and March 2019.
- 7.3 In April, options workshops will be facilitated with each jurisdiction to enable them to evaluate the impact on national eConveyancing of the proposed governance and regulation options, and the degree of fit to each jurisdiction's own governance and regulation framework.
- 7.4 It is anticipated that recommendations will be finalised in May 2019.

APPENDIX I CONSULTATIVE RECORD AS AT 7 FEBRUARY 2019

Stakeholder	Jurisdiction	Date
ARNECC	National	20/9/18
PEXA Open Day	National	20/9/18
Ian Ireson, Registrar Jane Allan, Deputy Registrar	Vic	27/9/18
Jean Villani, WA - Registrar Shirlene Allen, ARNECC Support Officer	WA	27/9/18
Marcus Price, CEO, PEXA Justin Schmitt, CTO Laurie Grantfield	Vic	9/10/18
Purcell Partners – Lextech Simon Purcell, Director -Principal Shauna Dunne, Head of Operations Devesh Chauhan, Business Transformation Manager Neil Fairbairn, Information Technology Chris Ailwood, Consultant	Vic	11/10/18
Australian Institute of Conveyancers (VIC Division) Jill Ludwell Chief Executive Officer General Manager, Ann Kinnear	Vic	11/10/18
PEXA Cybersecurity Symposium	Vic	12/10/18
Office of the Registrar General Jeremy Cox, Registrar General Danusia Cameron, Director, Contracts and Regulation Robert Goncalves, Director, eConveyancing Angeline Antony, Senior Lawyer, eConveyancing Christina Garas, A/Snr Lawyer	NSW	22/10/18
Karen Smith, General Counsel and Deputy Secretary - Governance Group, DPC Paul Miller, Consultant	NSW	23/10/18
NSW Land Registry Service Adam Bennett, Chief Executive Officer Nicole Graham, General Counsel Eamon Mooney, General Manager, Dealings	NSW	23/10/18
Philip Gardner, Deputy Secretary Commercial – Treasury Charlotte Alexandra, Director of LPI Transition Process	NSW	24/10/18
Australian Institute of Conveyancers (NSW Division) Chris Tyler, Chief Executive Officer Carolyn Booth, Conveyancer	NSW	24/10/18

David Wills, CEO, Sympli Kim Barnard, COO	NSW	24/10/18
Jim Laouris, Registrar-General and Public Trustee for the Northern Territory	NT	25/10/18
Australian Institute of Conveyancers (NT Division) Trevor Scherpig, President	NT	25/10/18
ARNECC	Canberra	30/10/18
Katherine Galang, Senior Treasury Analyst Blake Seerey-Lester, Treasury Linda Keeshan, Premiers	QLD	31/10/18
Liz Dann, Executive Director, Registrar of Titles, Registrar of Water Allocations Stephen Grice Marie Vidas Vanessa Watson	QLD	31/10/18
Westpac Bank Craig Hetherington Ashley D'Cruz	NSW	1/1/18 2/11/18
Matt Dunn, General Manager, Policy, Public Affairs and Governance QLD Law Society Matt Raven, Partner, Gadens and Chair of QLD Property Law Committee	QLD	1/11/18
Justin Schmitt, PEXA CTO Marty Karpowicz, Product Owner Another (to be confirmed)	Vic	8/11/18
Australian Institute of Conveyancers (SA Division) Rebecca Hayes, CEO	SA	12/11/18
Graeme Jackson, Registrar-General Jenny Cottnam, Deputy Registrar-General (Registrar-General from January 2019) Angie Nguyen, eConveyancing Specialist Ray Moore, Manager ICT and Innovation	SA	12/11/18
Theo Kadis, Chair of the Property Committee, Law Society of SA	SA	12/11/18
Greg Raymond, Director Budget & Performance, Department of Treasury & Finance	SA	13/11/18
Julie Holmes, A/Commissioner of State Taxation Tom Colmer, Manager, Projects and Business Support	SA	13/11/18
Hayley Gossert, A/Manager Intelligence, Compliance & Strategy (for Paul Bertram, Deputy Commissioner Consumer and Business Services)	SA	13/11/18
Land Services SA Brenton Pike, Chief Executive Officer Steve Wilden, Business Transformation Manager	SA	13/11/18

Jean Villani, Registrar Diem Scantlebury, Assistant Registrar/ Digital Lodgement Consultant Brad McBride, ARWG Richard Gell, Manager Business Capability Susan Dukes, Commissioner	WA	14/11/18
Australian Institute of Conveyancers (WA Division) Dion Dosualdo, CEO Fran Andrews, President	WA	14/11/18
Gary Thomas, Property Law Committee, Law Society of Western Australia	WA	15/11/18
Phil Payne, A/Director Property Industries, Department of Mines, Industry Regulation and Safety	WA	15/11/18
Chris McMahon, Director Group 2, Office of State Revenue	WA	15/11/18
Ian Gilbert, Previously ABA	Vic	19/11/18
Kevin O'Callaghan, Chief Executive Officer Victorian Land Registry Services	Vic	20/11/18
Ian Ireson, Registrar Jane Allan, Deputy Registrar	Vic	22/11/18
Peter Unkles, Industry Pursuits Lead, Australia Post	Vic	22/11/18
Martin Hoffman, Secretary, Department of Finance, Services and Innovation Jeremy Cox, Registrar General Teleconference	NSW	23/11/18
CBA Dan O'Neill, Acting Executive General Manager Group Operations Enterprise Services Steve Braithwaite Suzanne Turnbull	National	23/11/18
Chris McKenna, Environment Policy, Department of the Premier and Cabinet	QLD	26/11/18
Sympli roadshow	Vic	26/11/18
Bank – NAB Yumo Wang, Senior Associate, Regulatory Strategy & Affairs, NAB Alicia Crossett, Lead, Customer Settlements Kim Guilfoyle, Senior Legal Counsel – Consumer Greg Airns, Lead, NAB Servicing Gary Forrest, Head of BCO Servicing	National	29/11/18
Paul Broderick, Commissioner of State Revenue	Vic	29/11/18
ACCC Michael Eady, Director Infrastructure Regulation Division David Barrett, Analyst	National	30/11/18

Adele Teh, Analyst		
<p>ABA</p> <p>Jerome Davidson, Policy Director, Australian Banking Association</p> <p>Conference call with representatives from the following banks</p> <ul style="list-style-type: none"> • Westpac • Bank Australia • Suncorp • Commonwealth Bank of Australia • Macquarie • Bank of Queensland • St George • National Australia Bank • My State • Bendigo and Adelaide • ANZ 	National	3/12/18
<p>Minister's office</p> <p>Government and Industry eConveyancing interoperability forum</p>	NSW	4/12/18
Jeremy Cox, Registrar	NSW	4/12/18
<p>ACT Land Titles Office</p> <p>Tim Pearce, Project Manager, Land Titles Office</p> <p>Fred Arugay, Senior Manager, Customer Coordination and Licensing and Registrations</p>	ACT	4/12/18
<p>NSW Law Society</p> <p>Michael Tidball, CEO</p> <p>Richard Harvey, Chair Property Law Committee,</p> <p>Tony Cahill, Member Property Law Committee,</p> <p>Greg Channel, Member Property Law Committee</p> <p>Gabrielle Lea, Policy Lawyer</p>	NSW	5/12/18
<p>Revenue NSW</p> <p>Julie King, Director Duties</p> <p>Mark Smith, Client Engagement Manager, Property Revenue Group Operations</p>	NSW	5/12/18
<p>Land Titles Office</p> <p>Craig Pursell, Deputy Recorder of Titles</p> <p>Stuart James, Senior Business Analyst</p> <p>Anit Yan, Information Technology</p> <p>Stuart Fletcher, General Manager</p>	Tas	7/12/18
<p>Simon McKee, Deputy Commissioner, Office of the Commissioner, Office of State Revenue, Queensland Treasury</p>	QLD	7/12/18
Joe Italiano, CEO, C Solutions Setts Plus	WA	11/12/18
Paul Psaltis, General Manager, Smokeball	National	11/12/18

David Wills, CEO Sympli	National	12/12/18
Law Council of Australia Philip Argy, Expert Member Michael James, ACT Law Society Matthew Raven, Queensland Law Society David Clarke, Law Society of Western Australia Mark Swan, Law Society of New South Wales Gabrielle Lea, Policy Lawyer	National	13/12/18
Amanda Baker Program Director, Electronic Settlements SAI Global Property	National	14/11/18
Kathy Constan, Co-Founder, Director, LodgeX	National	14/11/18
Peter Maloney, CEO, GlobalX	National	18/11/18
Sympli David Wills, CEO Matthew Brown, Consultant	Vic	5/2/19
Australian Institute of Conveyancers (Tas Division) Debbie Hutton, Secretary Erin Sims, President Teleconference	Tas	7/2/19

APPENDIX II DESCRIPTION OF PRELIMINARY OPERATING MODEL OPTIONS

A2.1 This appendix provides a description of the four preliminary operating models identified in section 6.0. They are:

1. Single ELN (base case)
2. Multiple Independent ELNs
3. Multiple Interoperable ELNs (direct connection / intermediated)
4. Multiple Interoperable ELNs using infrastructure ELN

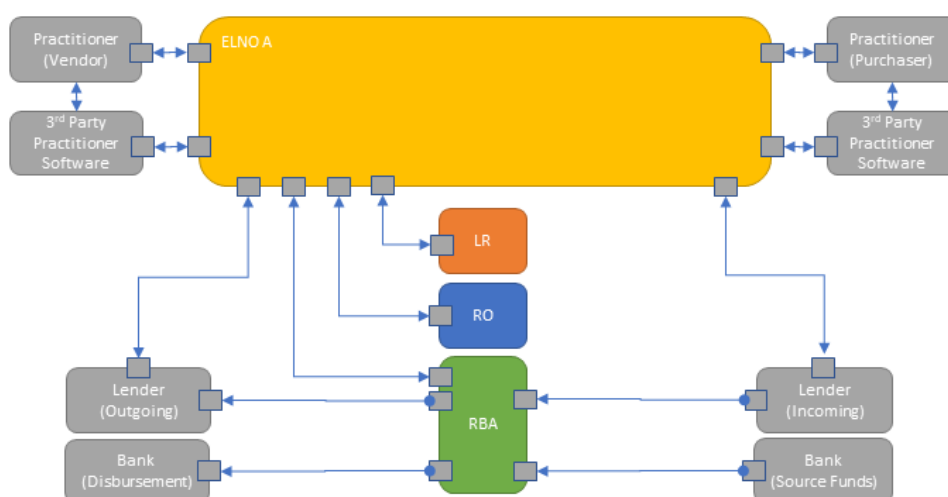
A2.2 In this section, in the comparison tables, the meanings below apply:

- observation - denotes an observation which is not significantly better or worse than the base case
- + observation - denotes observation better than the base case
- - observation - denotes observation worse than the base case
- LR denotes a Land Registry
- RO denotes a Revenue Office

A2.3 Cost estimates are rough order of magnitude only and are provided for illustrative purposes. Estimates should be sought from relevant parties where decisions are dependent on a particular estimate.

Preliminary option 1 - single ELN (base case)

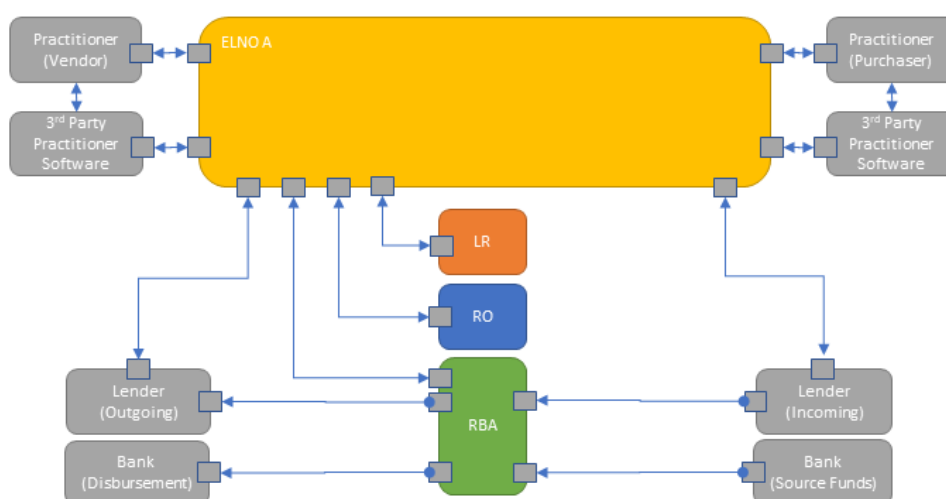
- A2.4 Single privately owned ELN operating under arrangements in place as 1 October 2018. The ELNO was operating in five jurisdictions at various stages of mandating use of eConveyancing.
- A2.5 This single system largely reflects the preferences of most stakeholders when the IGA was created. i.e. stakeholders wanted a single system to connect to and use. One notable deviation from the original expectation of stakeholders is that the ELNO is a private, rather than public, corporation.



Objective	Key observations
Minimise risk to titles security	Single ELNO involved in a transaction
Minimise risk to financial settlement	Single ELNO involved in a transaction Single settlement system (RBA) provides robust DvP
Maximise service quality and industry productivity	Practitioners only need to learn one ELN system Competitive practitioner software market motivates innovation Limited external forces on single ELNO to motivate innovation No alternative in the event of single ELN failure
Minimise cost (to consumers and taxpayers)	Regulatory controls are critical for title integrity, financial settlement, rapid consumer resolution of fraud or errors, compliance of single ELNO, subscriber pricing System change control management each connected party (subscriber, registry, revenue office, RBA) is only required to connect to one ELN

Preliminary option 2 - multiple independent ELNs

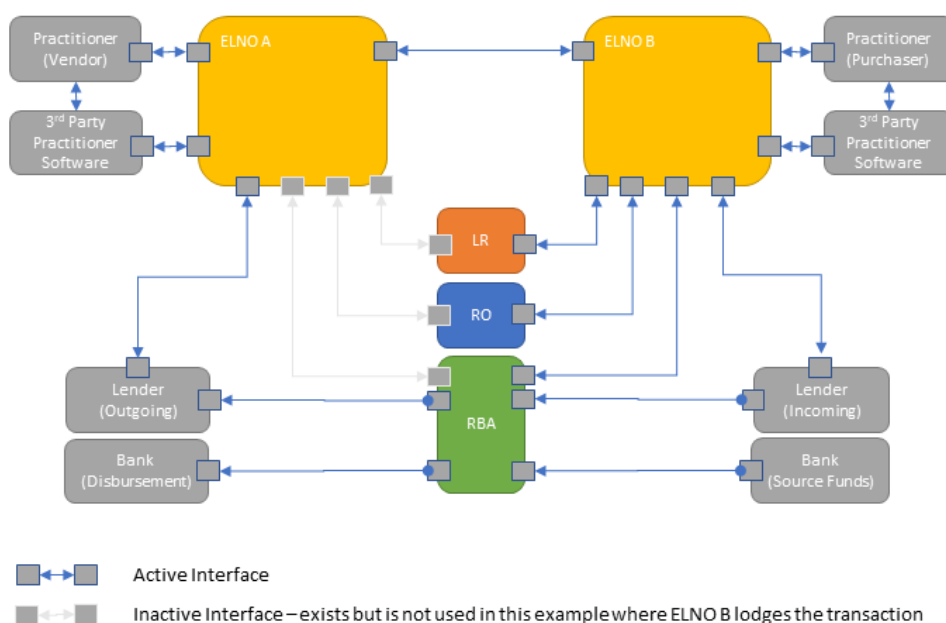
- A2.6 This option has multiple privately owned ELNs. Only one ELN is involved in any given transaction.
- A2.7 Key assumptions – a protocol is established to determine which ELNO performs the transactions, all ELNOs provide robust DvP financial settlement, all ELNOs can perform all transactions in all jurisdictions, cross-ELN recognition of subscriber registration and digital signatures is implemented and the number of successful ELNOs is insufficient to ensure effective price competition.



Objective	Key observations
Minimise risk to titles security	Single ELNO involved in a transaction
Minimise risk to financial settlement	Single ELNO involved in a transaction Single settlement system (RBA) provides robust DvP
Maximise service quality and industry productivity	<p>- Practitioners must learn and maintain proficiency in multiple ELN systems</p> <p>Competitive practitioner software market motivates innovation</p> <p>+ Competitive ELNO market motivates innovation</p> <p>+ Alternative available in the event of single ELN failure</p>
Minimise cost (to consumers and taxpayers)	<p>Regulatory controls are critical for title integrity, financial settlement, rapid consumer resolution of fraud or errors, compliance of single ELNO, subscriber pricing</p> <p>- System change control management effort is higher as interfaces between ELNs and connected parties are multiplied by the number of ELNOs</p> <p>- Duplicate onboarding costs for additional ELNOs to interface with LRs, ROs, Lenders, RBA and other ELNOs (\$20M-\$200M)</p>

Preliminary option 3a: Multiple interoperable ELNs (direct connection)

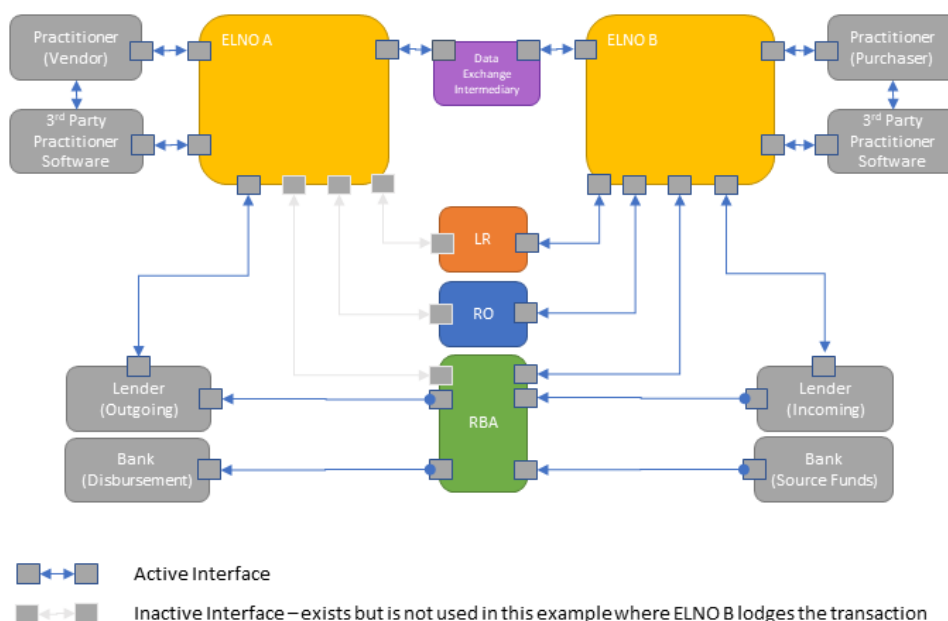
- A2.8 This option has multiple privately owned ELNOs operating under new regulatory arrangements. One ELNO lodges the transaction, however more than one ELNO may be involved in a transaction and ELNOs exchange data necessary to facilitate the transaction.
- A2.9 Key assumptions – a protocol is established to determine which ELNO lodges the transactions, all ELNOs provide robust DvP financial settlement, all ELNOs can perform all transactions in all jurisdictions and the number of operational ELNOs is insufficient to ensure effective price competition.



Objective	Key observations
Minimise risk to titles security	- Multiple ELNOs involved in a transaction increases risk and complicates liability allocation
Minimise risk to financial settlement	- Multiple ELNOs involved in a transaction increases risk and complicates liability allocation Single settlement system (RBA) provides robust DvP
Maximise service quality and industry productivity	Practitioners only need to learn one ELN system Competitive practitioner software market motivates innovation + Competitive ELNO market motivates innovation + Alternative available in the event of single ELN failure
Minimise cost (to consumers and taxpayers)	Regulatory controls are critical for title integrity, financial settlement, rapid consumer resolution of fraud or errors, compliance of single ELNO, subscriber pricing - System change control management effort is higher as interfaces between ELNs and connected parties are multiplied by the number of ELNOs - Duplicate onboarding costs for additional ELNOs to interface with LRs, ROs, Lenders, RBA and other ELNOs (\$20M-\$200M)

Preliminary option 3b: Multiple interoperable ELNs (intermediated)

A2.10 A variation on option 3a which has been proposed by a stakeholder involves the addition of a privately-operated data exchange intermediary between ELNs.

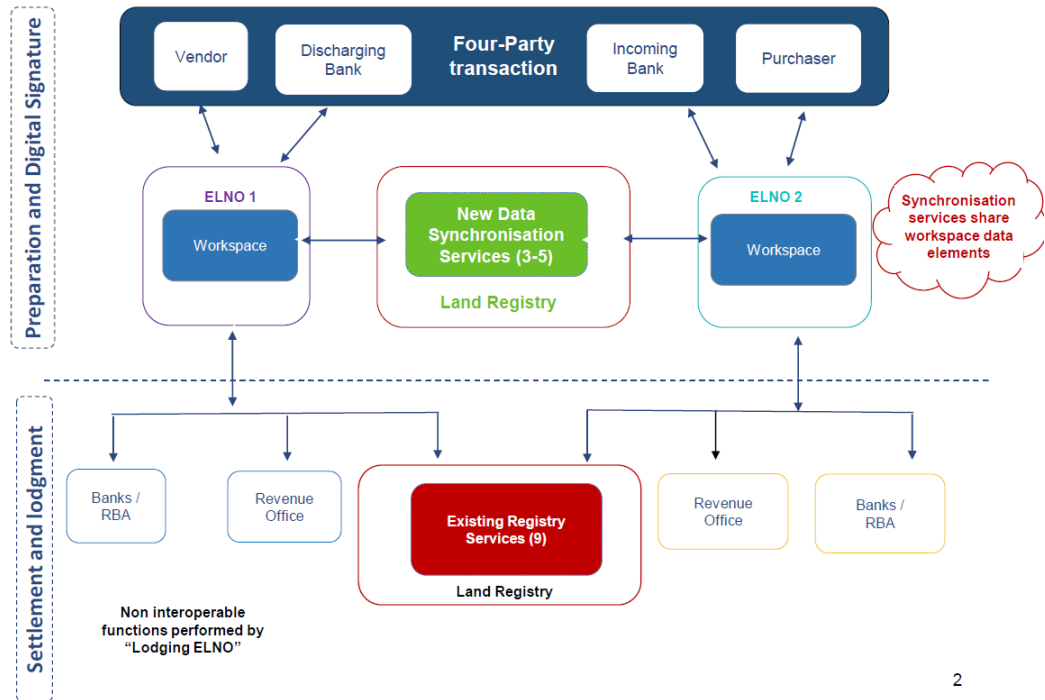


A2.11 Adding the data exchange intermediary between ELNs has the following implications:

- Involves the intermediary in retransmission of critical data which increases risk of data corruption, complicates liability allocation and reduces reliability of data exchange
- Introduces additional costs to the eConveyancing system
- Requires regulation of monopoly intermediary
- Simplifies connections between ELNs when there are many, but provides little or no benefit where the number of ELNs is small

A2.12 On 4 December 2018, a *Government and industry eConveyancing interoperability meeting* was held by the NSW Office of the Registrar General during which the following interoperability model (similar to preliminary option 3b) was presented. We understand that as at 13 February 2019, NSW has not committed to any specific interoperability model.

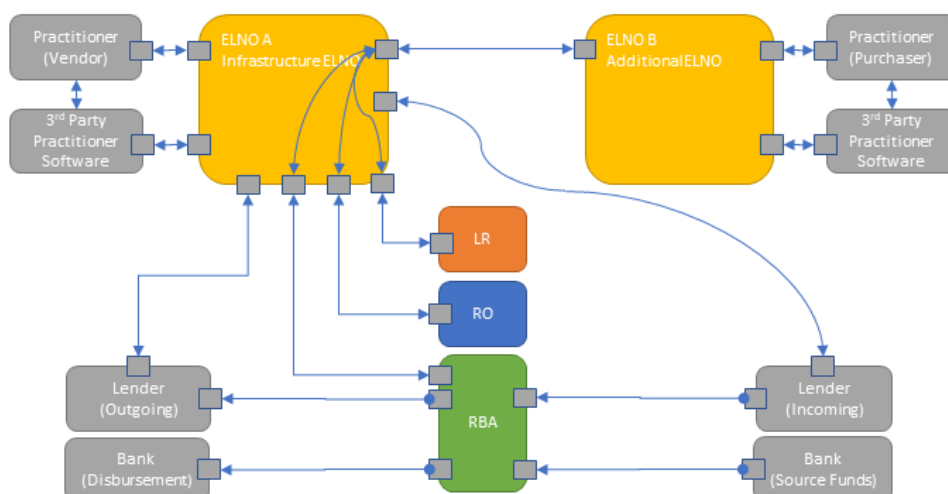
A workplace solution with the registry as the hub for synchronisation



2

Preliminary Option 4: Multiple interoperable ELNs using infrastructure ELN

- A2.13 An infrastructure ELN provides services for connecting to registries, revenue offices, the RBA and potentially financial institutions to other additional ELNs. The intention is to avoid the costs associated with building and maintaining replicated connections to existing entities.
- A2.14 Key assumptions – the infrastructure ELNO provides access to services for an agreed charge eg in a manner provided for in Part IIIA of the Competition and Consumer Act 2010, a protocol is established to determine which ELNO lodges the transactions, all ELNOs can perform all transactions in all jurisdictions and the number of operational ELNOs is insufficient to ensure effective price competition.



Objective	Preliminary high-level assessment
Minimise risk to titles security	- Multiple ELNOs involved in a transaction increases risk and complicates liability allocation
Minimise risk to financial settlement	- Multiple ELNOs involved in a transaction increases risk and complicates liability allocation Single settlement system (RBA) provides robust DvP
Maximise service quality and industry productivity	Practitioners only need to learn one ELN system Competitive practitioner software market motivates innovation + Competitive ELNO market motivates innovation No alternative in the event of infrastructure ELN failure
Minimise cost (to consumers and taxpayers)	Regulatory controls are critical for title integrity, financial settlement, rapid consumer resolution of fraud or errors, compliance of single ELNO, subscriber pricing, infrastructure access pricing System change control management - each connected party (subscriber, registry, revenue office, RBA) is only required to connect to one ELN - Additional cost for infrastructure ELNO to provide interface access to additional ELNOs (\$5-\$20M)

APPENDIX III COMPARISON OF PRELIMINARY OPERATING MODEL OPTIONS

Single ELN		Multiple ELNs	
Description: • key assumptions	Single ELN (base case): • As has operated to date	Independent ELNs: • Entire settlement takes place on one ELN, as determined by a protocol (e.g. Purchaser's representative) • No sharing of workspace data between ELNs • Cross-ELN recognition of subscribers and digital signatures is implemented	Interoperable ELNs (direct connection): • Replication of all necessary workspace data between involved ELNs • Common RBA settlement system • One infrastructure ELNO builds and maintains interfaces with LRs, ROs, RBA and Lenders are "infrastructure" assets
Minimise risk to titles security	Single ELNO involved in a transaction	Single ELNO involved in a transaction	- Multiple ELNOs involved in a transaction increases risk and complicates liability allocation
Minimise risk to financial settlement	Single ELNO involved in a transaction Single settlement system (RBA) provides robust DvP	Single ELNO involved in a transaction Single settlement system (RBA) provides robust DvP	- Multiple ELNOs involved in a transaction increases risk and complicates liability allocation Single settlement system (RBA) provides robust DvP
Maximise service quality and industry productivity	Practitioners only need to learn one ELN system Competitive practitioner software market motivates innovation Limited external forces on single ELNO to motivate innovation No alternative in the event of single ELN failure	- Practitioners must learn and maintain proficiency in multiple ELN systems Competitive practitioner software market motivates innovation + Competitive ELNO market motivates innovation + Alternative available in the event of single ELN failure	Practitioners only need to learn one ELN system Competitive practitioner software market motivates innovation + Competitive ELNO market motivates innovation No alternative in the event of infrastructure ELN failure
Minimise cost (to consumers and taxpayers)	Regulatory controls are critical for: title integrity, financial settlement; rapid consumer resolution of fraud or errors; compliance of single ELNO; subscriber pricing; System change control management: each connected party (subscriber, registry, revenue office, RBA) is only required to connect to one ELN.	Regulatory controls are critical for: title integrity, financial settlement; rapid consumer resolution of fraud or errors; compliance of single ELNO; subscriber pricing; - System change control management effort is higher as interfaces between ELNs and connected parties are multiplied by the number of ELNOs - Duplicate onboarding costs for additional ELNOs to interface with LRs, ROs, Lenders, RBA and other ELNOs (\$20M-\$200M)	Regulatory controls are critical for: title integrity, financial settlement; rapid consumer resolution of fraud or errors; compliance of single ELNO; subscriber pricing; infrastructure access pricing. System change control management: each connected party (subscriber, registry, revenue office, RBA) is only required to connect to one ELN. - Additional cost for infrastructure ELNO to provide interface access to additional ELNOs (\$5-\$20M)