

**Submission
No 12**

**INQUIRY INTO ELECTRONIC CONVEYANCING
(ADOPTION OF NATIONAL LAW) AMENDMENT BILL
2022**

Organisation: Australian Competition & Consumer Commission
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The Hon. Mark Banasiak, MLC
Chair
Portfolio Committee No. 4 - Customer Service and Natural Resources
Parliament House, Macquarie Street
SYDNEY NSW 2000

By email: portfoliocommittee4@parliament.nsw.gov.au

Dear Chair

Re: Inquiry into the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022

As set out in our public letter of 21 February 2022, the Australian Competition & Consumer Commission (ACCC) strongly supports interoperability in the electronic conveyancing market. Interoperability will facilitate competition, which will foster innovation and provide improved services while placing downward pressure on prices. As such the ACCC welcomed the introduction of *the Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022* (the Bill) into the NSW Parliament as a critical milestone in the electronic conveyancing market reform process.

The ACCC understands that the intention of introducing enabling provisions and a high-level framework for reform through the Bill, is to ensure that the Australian Registrars' National Electronic Conveyancing Council (ARNECC) can carry out the next stage of the reforms in a timely and considered manner. This approach is consistent with the expectations set out in the January 2022 *Ministerial statement on amending the Electronic Conveyancing National Law to deliver a secure national interoperability regime and effective competition*.

Crucially, the ACCC understands that the interoperability reform process is at a critical stage. Further delay to the reform timetable will likely see the incumbent operator PEXA become further entrenched in the market, and barriers to entry heightened as opportunities for new entrants to participate in the market diminish. PEXA has already benefited immensely, first as the incumbent and more recently due to jurisdictions mandating the use of electronic conveyancing before settling the arrangements for interoperability. As such, PEXA has a large degree of market power. Further delays to reform will forgo the benefits of reform and allow PEXA to entrench its dominant position without appropriate safeguards or constraint.

The ACCC has noted its concern with the considerable risks associated with privatising critical infrastructure, like PEXA, without appropriate arrangements in place. Such privatisations require careful consideration, with appropriate market safeguards determined up front. Where possible, a market-led model is preferable to a regulated monopoly, given

the costs, constraints, and risks for industry of relying on one operator. Ideally a robust set of pro-competitive market rules underpinned by an effective enforcement mechanism would have been established prior to privatisation. Nevertheless, the opportunity still exists for the market to benefit from competition by progressing the Bill and associated arrangements. The ACCC notes the current participation of Symplic in the market may deliver that competitive market outcome, while avoiding the far-reaching costs of a long-term monopoly operator on industry.

The passage of the Bill is essential to progress of reform for other states and territories (given the agreed national law approach to electronic conveyancing). Passage of the Bill would provide industry operating across Australia much needed certainty around the rollout of interoperability, in addition to leading to further opportunities for stakeholders to contribute to the reform process.

The ACCC acknowledges it is important that relevant issues raised by stakeholders during consultation are appropriately addressed and a fit-for-purpose national regulatory framework is delivered by ARNECC to support competition. The complexity of the reforms and the potential need for further regulatory amendments in response to stakeholder feedback was explicitly acknowledged in the January 2022 Ministerial Statement. The ACCC understands that ARNECC recognises the importance of working through these matters with stakeholders during the next stage of reforms.

As such, the ACCC understands the amendments contained in the Bill are intended to enable ARNECC to move to that important next stage of consideration and deliberation, while ensuring certainty and momentum for reform is not lost. The ACCC understands that important outstanding issues in this process will be brought back to the Parliament for your considered review. In addition, competition reform is only part of a broader reform process currently underway, with ARNECC also developing an enforcement regime for the market and industry working on the payments code.

Noting the critical stage of this reform process, we encourage the Committee to support the timely passage of the Bill. It is a key step in the process to establish a regulatory framework that will promote competition for the long term in the market, and to also deliver important and overdue reform to an under-regulated market. Absent the timely introduction of a robust regulatory framework, there is a clear risk that PEXA could be the sole party facilitating electronic conveyancing in Australia. This would present ongoing challenges for industry and government and ultimately for customers.

Should you wish to discuss anything raised in this letter, please contact Matthew Schroder, General Manager, Infrastructure Transport & Pricing

Yours sincerely

Anna Brakey
Commissioner
Australian Competition and Consumer Commission