

Cost-benefit Analysis – Terms of Reference

1. Objective and scope

To compare the costs and benefits of direct connect interoperability with a base case of the current status quo, and other interoperability or market models.

2. Background and legal framework

Electronic conveyancing (or eConveyancing) allows instruments and documents needed for property transactions to be electronically prepared, signed, settled, and lodged with the relevant land registry. It was initiated in 2008 as part of the Council of Australian Governments (COAG) 'National Partnership Agreement to Deliver a Seamless National Economy' and was referenced in the 2011 Intergovernmental Agreement, which established a high-level implementation pathway and the Australian Registrars' National Electronic Conveyancing Council (ARNECC). ARNECC is the body responsible for the development and maintenance of the national regulatory framework and is made up of each State and Territory's land titles Registrar or their nominee.

eConveyancing operates under a national law applied or enacted in each State and Territory. The Electronic Conveyancing National Law (ECNL) provides for Operating Requirements and Participation Rules, which are determined by the Registrar in each State or Territory and are binding on Electronic Lodgment Network Operators (ELNOs) and subscribers respectively.¹ Under the ECNL, ELNOs provide a national front-end system that enables professionals (conveyancers, lawyers and financial institutions) undertaking conveyancing on behalf of their clients/customers to become subscribers i.e. are authorised to use an Electronic Lodgment Network (ELN) (or ELNs), then settle and lodge property transactions electronically.

The initial ELNO for eConveyancing was National E-Conveyancing Development Limited (NECDL), established in 2010 by New South Wales, Queensland & Victoria. It was developed to provide a single national eConveyancing front end system connected to each land registry. In 2012, the four major banks subscribed for shares together with Western Australia. In 2014, NECDL changed its name to Property Exchange Australia Limited (PEXA). The legal framework allows for other private companies approved by the Registrar(s) to become ELNOs.

Following the implementation of mandated eConveyancing in Victoria, Western Australia and New South Wales and partial mandate in South Australia,² a second ELNO, Sympli Australia Pty Ltd (Sympli), entered the market in late 2018. In 2019, all State interests in PEXA were sold and PEXA became a wholly private entity.³

At present, the two operating ELNOs (PEXA and Sympli) operate in a stand-alone capacity. This means that where there are four parties in a transaction (for example, the seller's lawyer, the seller's bank, the buyer's lawyer, and the buyer's bank), all four parties need to be subscribers to the same ELN. This leads to a strong network effect which has

¹ ECNL ss. 18, 23.

² Footnote 2, p29.

³ Footnote 2, p39.

resulted in the original ELNO (PEXA) having an almost 100% market share, which in turn has a significantly adverse impact on competition in the ELNO eConveyancing market.

3. ARNECC Interoperability Program Overview and Model

3.1. Overview

For more than five years, work has been underway to develop a technical and regulatory regime for 'interoperability,' the interworking of two ELNs in a way that enables an ELN subscriber to complete a conveyancing transaction with a subscriber who is using a different ELN. The original purpose of the interoperability reform was to support a sustainable competitive market structure for electronic conveyancing.⁴

3.2. Key milestones

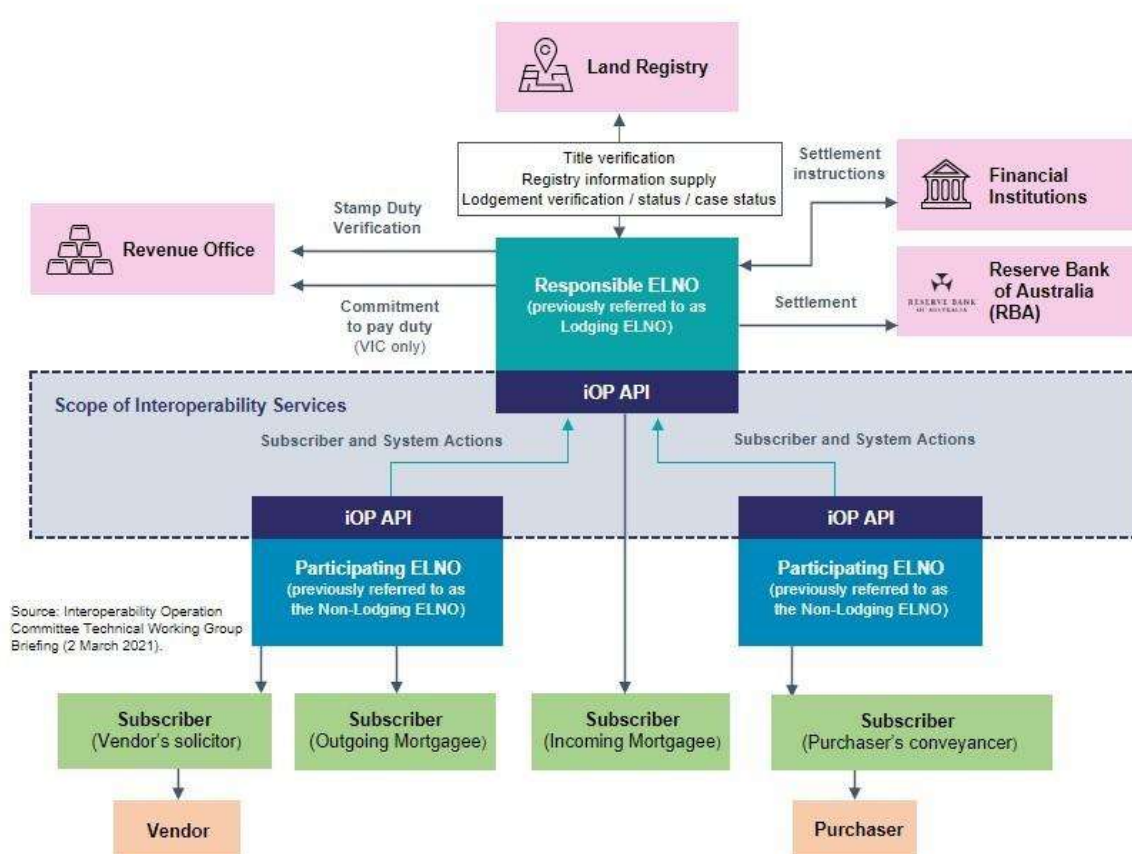
A summary of key milestones in the reform is provided in Attachment 1 - *Key milestones in the reform*.

3.3. Model

The technical model adopted to facilitate interoperability has been a 'direct connect' model (see Attachment 2, Model 2) with a potential future transition to an ESB model (Attachment 2, Model 4), where interoperable ELNOs exchange data using application programming interfaces (APIs) in accordance with a common data standard (the National Electronic Conveyancing Interoperability Data Standard or NECIDS) (see diagram below).

For each transaction, at any given time, one of the ELNOs is designated as the Responsible ELNO. This ELNO would orchestrate the transaction, interact with Land Registries and Revenue Offices, and perform the transaction Settlement and Lodgment. The ELNO designated as Responsible ELNO will differ from transaction to transaction. The Responsible ELNO for a transaction is determined by a set of system rules and cannot be selected by subscribers. Other ELNOs hosting subscribers in the transaction are designated as Participating ELNOs.

⁴ Ministerial Directions Statement - October 2021.



Various other interoperability models or general market models have been raised by stakeholders and or reviews. Attachment 2 – *ELNO market models* provide descriptions and diagrams of alternative models.

3.4. Previous cost-benefit analysis

In 2020, The Centre for International Economics (CIE) was commissioned by the NSW Office of the Registrar-General to undertake a cost-benefit analysis of options to address market power in the electronic lodgment services market.⁵ The CIE report, *Addressing market power in electronic lodgment services*, considered three market options:

- maintaining the status quo; this option was used as base case against which the costs and benefits of the other options were assessed,
- mandating interoperability to facilitate effective competition, and
- a more comprehensive approach to price regulation.

The report found that interoperability was the preferred option for addressing market power in the market for electronic lodgment services, and that interoperability was preferred over enhanced price regulation due to the benefits of a competitive market.⁶ The report formed the basis for ARNECC's Regulation Impact Statement - Options for promoting competition in the market for electronic lodgment network operators.

⁵ The Centre for International Economics, *Addressing market power in electronic lodgment services: Cost-benefit analysis* (Report, September 2020) 12.

⁶ Ibid. 53.

As the interoperability model had not been settled at the time the CIE report was prepared, the report made a number of assumptions including in relation to the development, ownership, and governance arrangements for a phased transition to an ESB.

4. The 2024 Interoperability Program Review

At or soon after a 11 June 2024 Ministerial Forum, a majority of the eight State and Territory Ministers decided that the interoperability program could not continue without the intervention of federal regulators, due to the banking industry raising significant issues with the program. As a result, ARNECC paused the program and stood down the design, build and test working groups.

Following the program pause in June 2024, Queensland and NSW undertook a review of the Interoperability Program. One of the key recommendations of the review was that an up-to-date cost-benefit analysis of the Interoperability Program should be undertaken.

A second key recommendation of the review was that an independent expert be engaged to undertake an in-depth review of both ELNOs' functionality to develop a list of functional requirements for interoperability to finalise the functional scope. The functional requirements review is being conducted concurrently with this cost-benefit analysis. Information obtained as part of the review will be used to establish the likely costs associated with the design and build for the direct connect model of interoperability. Completion of the cost-benefit analysis may need to be delayed until the completion of the functional requirements review.

5. Key objectives and issues to be determined by the cost-benefit analysis

To identify, measure and assess the costs and benefits of a direct connect interoperability model (with a potential future transition to an ESB model), and compare it against:

- Multiple standalone non-interoperable ELNOs (the current situation).
- Direct connect interoperability model limited to a 'practitioner choice' scope.
- A wholesale/retail or hub-ELNO model (including possible government owned hub).
- An enterprise service bus (ESB) between all connected entities e.g. ELNOs, Revenue Offices, Land Registries).
- Monopoly regulation, including but not limited to price regulation.

The models above are described at a high level in *Attachment 2 – ELNO market models*.

5.1. Specific inclusions in the scope of work

The cost-benefit analysis should take the following into account (to the extent possible):

- Outputs from the functional requirements review as appropriate.
- Specific costs of each model for all stakeholders, including ELNOs, financial institutions, subscribers, Land Registries, Revenue Offices, and consumers.
- For the direct connect model, this should also include costs of a phased transition to an ESB between ELNOs, such as the 'ESB Connected ELNOs' model below.
- Likely cost of regulation for each model.

- Specific benefits including:
 - Likely benefits (if any) from competition for services and innovation including potential time and cost savings for subscribers.
 - Possible benefits of having eConveyancing data flow through more than one provider allowing innovation in value added services and data products.
 - Market/eConveyancing ecosystem resilience by having more than one ELNO.
- Whether the models resolve some of the main pain points outlined in past reports, i.e. subscribers potentially having multiple digital signing certificates (noting that this is not an issue if an open digital signing certificate is used), multi homing, third party integration where competition is not just merely based on ELNOs, resilience and security.

The cost-benefit analysis should include a distributional analysis outlining how costs and benefits are likely to be distributed across different stakeholder groups.

As part of the process, it is expected that the consultant will consult with representatives from all stakeholders with a view to obtaining detailed information or estimates about the likely costs and benefits of that group.

6. Request for proposal

6.1. Project proposal

The consultant should include in the proposal:

- Methodology and approach,
- Expected delivery outcome,
- Team who will deliver the project,
- Cost estimate, and
- Identification of any potential issues.

6.2. Following appointment

The consultant will provide a cost-benefit analysis of the options set out under the heading 'Key objectives and issues to be determined'.

The consultant may be required to arrange preliminary meetings with ARNECC's nominated representatives prior to providing their draft and then final recommendations. The purpose of these meetings would be to discuss engagement with key stakeholders, ensure context and issues are considered and to provide insight into other matters that may need to be covered.

Attachment 1 – Key milestones in the reform

Adapted and updated from ARNECC's Regulation Impact Statement.⁷

Milestone	Detail
Nicholls Review July 2019	Dr Rob Nicholls <i>Interoperability Between ELNOs</i> (Final Report, July 2019) Report summarising the discussions and outcomes of two industry working groups on interoperability between electronic lodgment networks established by the NSW Government under an independent chair, Dr Rob Nicholls.
IPART Review November 2019	Independent Pricing and Regulatory Tribunal of New South Wales, <i>Review of the Pricing Framework for Electronic Conveyancing Services in NSW</i> (Final Report, November 2019) Reported that structural elements of the Australian electronic conveyancing market required further examination, in particular its governance, the scope for competition, the regulation of financial settlements and the pricing regulatory framework.
Dench McClean Carlson Review December 2019	Dench McClean Carlson, <i>Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law</i> (Final Report, December 2019) Commissioned by ARNECC in 2018, the independent DMC review recommended that national regulators determine the regulatory, governance and management requirements for competition in the ELNO market, as a matter of urgency. Advised governments that regulatory action to deliver competition is justified if it will achieve a net benefit.
ACCC Report December 2019	Australian Competition & Consumer Commission, <i>ACCC report on E-conveyancing market reform</i> (Report, December 2019) Advised governments that the current regulatory framework is no longer fit for purpose, neither constraining the incumbent nor promoting competition in the market. After meeting with a range of stakeholders, the ACCC advised governments on the need for certainty in rules that supported competition as a matter of urgency.
ARNECC action January 2020	ARNECC undertakes to compare the costs, risks and liabilities of various electronic conveyancing market structures.
CBA adopted June 2020	The Centre for International Economics, <i>Addressing market power in electronic lodgment services</i> (Cost-benefit analysis September 2020) ARNECC adopts CIE Cost Benefit Analysis, commissioned by NSW ORG, comparing interoperability with alternative structures.

⁷ ARNECC, *Options for promoting competition in the market for electronic lodgment network operators* (Regulation Impact Statement, 2021) available [online](#).

Ministerial roundtable 10 June 2020	Roundtable asks ARNECC for a proposal to implement a national interoperability regime, including the benefits and costs of potential regulations.
Ministerial roundtable 7 September 2020	<p>Roundtable supports interoperability being part of the Electronic Conveyancing National Law (ECNL), after considering:</p> <ul style="list-style-type: none"> • an independent CBA, supported by Treasuries, • an industry-endorsed secure technology approach, and • an approach to update laws and regulations, developed with Registrars. <p>New South Wales, Queensland, South Australia and Western Australia also agree to develop the technical and regulatory regime, including for legislation to be in place by mid-2021. Tasmania notes it was taking steps to implement electronic conveyancing locally. Victoria supported in principle requiring interoperability between ELNOs in the ECNL.</p>
Ministerial roundtable 7 December 2020	<p>ARNECC updates Ministers on key design requirements of a national interoperability regime, including:</p> <ul style="list-style-type: none"> • changes to the regulatory framework to mandate interoperability and specify key technical and operational requirements. • industry and government to collaborate to develop an interoperability data standard and business rules. <p>Ministers support ARNECC continuing to work towards implementing legislative changes to facilitate interoperability by mid-2021.</p>
Joint government and industry statement 12 March 2021	<p>Australian Government, State and Territory Ministers, ELNOs and stakeholder peak bodies publish a joint statement supporting:</p> <ul style="list-style-type: none"> • the interoperability reform process and collaboration between government and industry; and • the proposed timeframe to implement legislative changes by mid-2021 and going live with a first interoperable transaction by the end of 2021.
Council of Financial Regulators meeting June 2021	<p>The CFR (comprising APRA, ASIC, the RBA and Australian Treasury) publishes a quarterly statement expressing its support for self-regulation through an industry code to address gaps in financial settlement regulation.</p> <p>The CFR made this statement after considering recommendations of a working group comprising CFR members, ELNOs and Registrars.</p>
Joint Ministerial and ACCC statement	<p>Australian Government, State and Territory Ministers and the ACCC publish a joint statement:</p> <ul style="list-style-type: none"> • acknowledging the progress of the interoperability reform and the significant contributions of stakeholders to the development of the regime; and

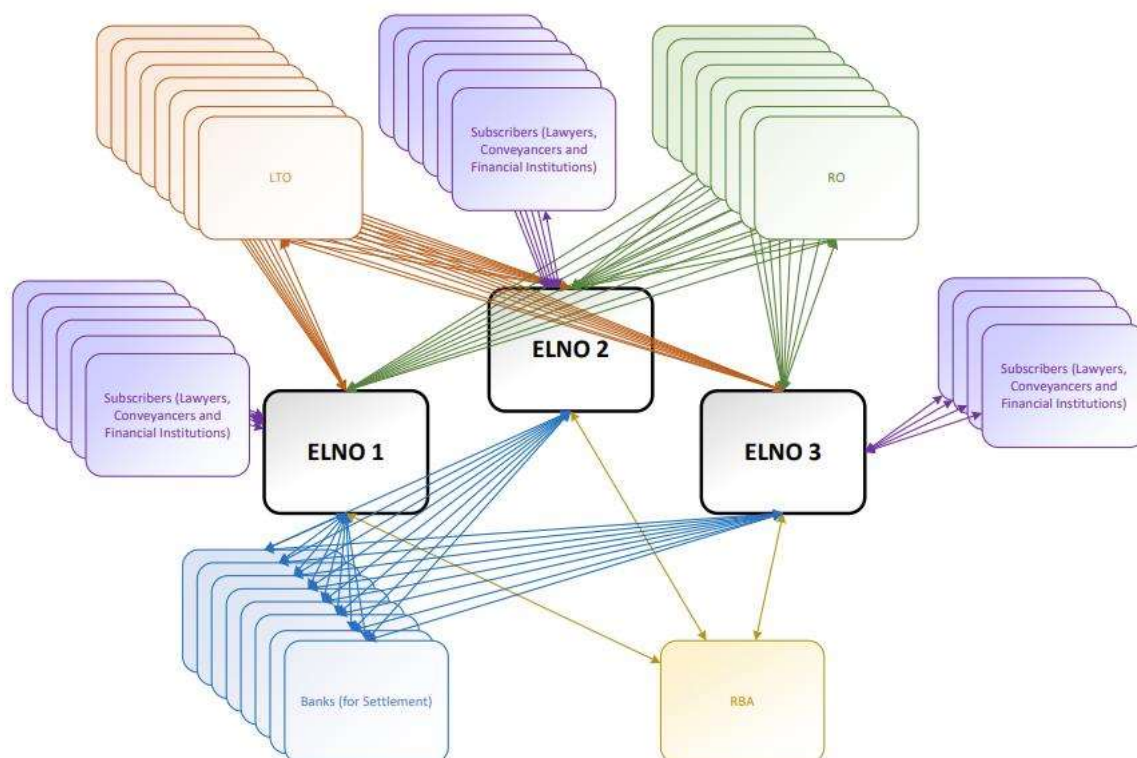
1 July 2021	<ul style="list-style-type: none"> noting the proposed timeframe to achieve a first interoperable transaction by the end of 2021 or first quarter 2022.
Ministerial Directions Statement 29 October 2021	<p>Australian Government, State and Territory Ministers publish a joint statement agreeing to the following key dates:</p> <ul style="list-style-type: none"> NSW to introduce changes to the national law into NSW Parliament in February 2022; the first interoperable transaction to occur in the third quarter 2022; and by mid-2023, all interoperable transactions to be functional, with roll-out commencing in jurisdictions in the second half of 2023.
Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022 6 June 2022	<p>Act assented to by the NSW Parliament, to make amendments to the ECNL, including to:</p> <ul style="list-style-type: none"> Require ELNos to interoperate; Clarify scope of powers for the Registrar to make operating requirements to support the interoperability requirement; Other consequential amendments.
eConveyancing Payments Industry Code 31 August 2023	AusPayNet Board approves the eConveyancing Payments Industry Code (eC1), following the establishment of a steering committee in 2021 and after consultation with key participants in the eConveyancing industry.
Successful Day 1 Transactions 12 September 2023	Successful completion of 'Day 1 Transactions' being two refinance transactions relating to properties in Queensland. Transactions involve the two ELNos currently operating in the electronic conveyancing market (PEXA and Sympli), the Commonwealth Bank of Australia and the National Australia Bank.
ARNECC publishes Model Operating Requirements Version 7 January 2024	<p>Version 7 of the Model Operating Requirements (MOR) is published in January 2024.</p> <p>Under Version 7 of the Operating Requirements, ELNos are required to implement interoperability over three releases:</p> <p>Release 1 – lodge an Interoperable Mortgage and Discharge of Mortgage by a limited group of Authorised deposit-taking Institutions (ADIs) acting on their own behalf as approved by the Registrar – on or before 31 July 2025; DRelease 2 – lodge an Interoperable Mortgage and Discharge of Mortgage by any Subscriber – on or before 31 December 2025; DRelease 3 – lodge all available electronic Registry Instruments and other electronic Documents required under Operating Requirement 5.2.1 as part of an Interoperable Lodgment Case by any Subscriber – on or before 31 December 2025.</p>
eConveyancing Market Study June 2024	<p>NSW Productivity and Equality Commission, <i>eConveyancing Market Study</i> (Report, June 2024)</p> <p>The NSW Productivity and Equality Commission conducts a market study which examines:</p>

	<ul style="list-style-type: none"> • the effectiveness of competition in the eConveyancing market: • the best ways of promoting long-term competition: • the resources, governance, and regulatory structures needed to ensure a sustainable and long-term competitive market.
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Attachment 2 – ELNO market models

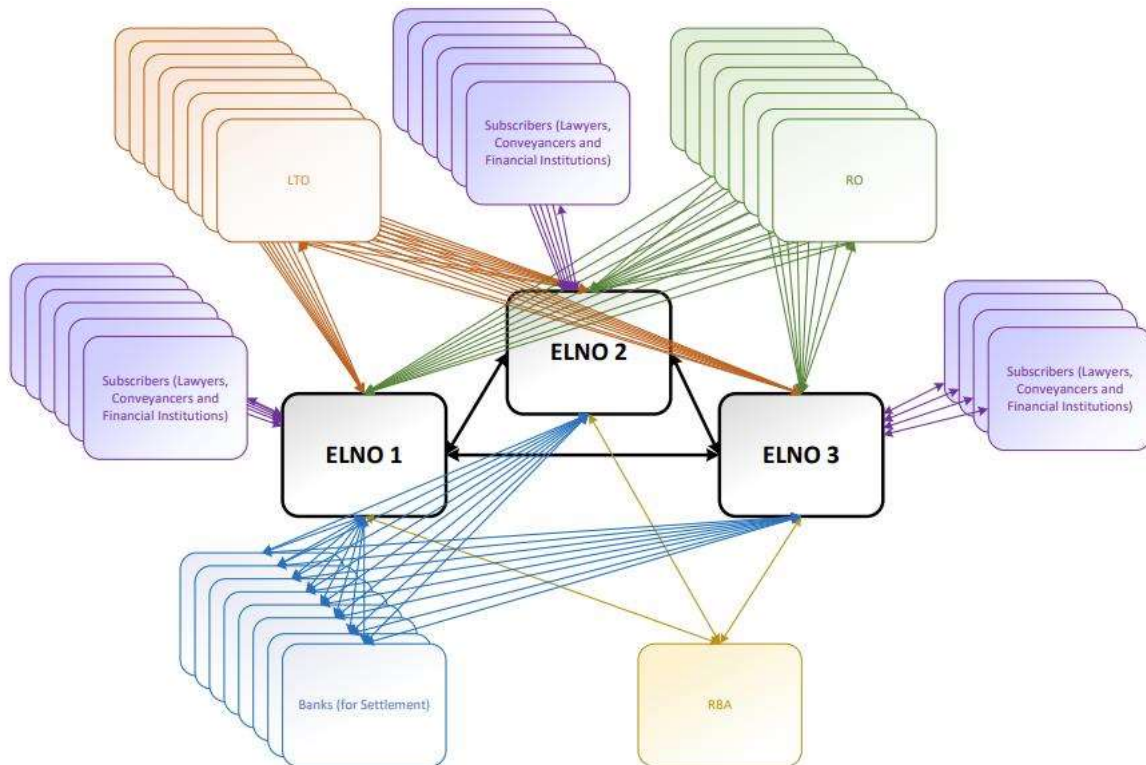
Model 1: Multiple standalone non-interoperable ELNOs

Multiple ELNOs operate independently, with no connections between the ELNs. Each ELNO builds connections with and communicates directly with subscribers, banks, Land Registries and Revenue Offices. This is the current market model. All parties to a transaction must use the same ELN.



Model 2: Direct Connect Interoperability

The ELNs involved in the transaction exchange all relevant information to enable the Responsible ELNO to complete the duty assessment, financial settlement and lodge the Registry instruments. Each ELNO connects directly with each other, with one designated as the Responsible ELNO.

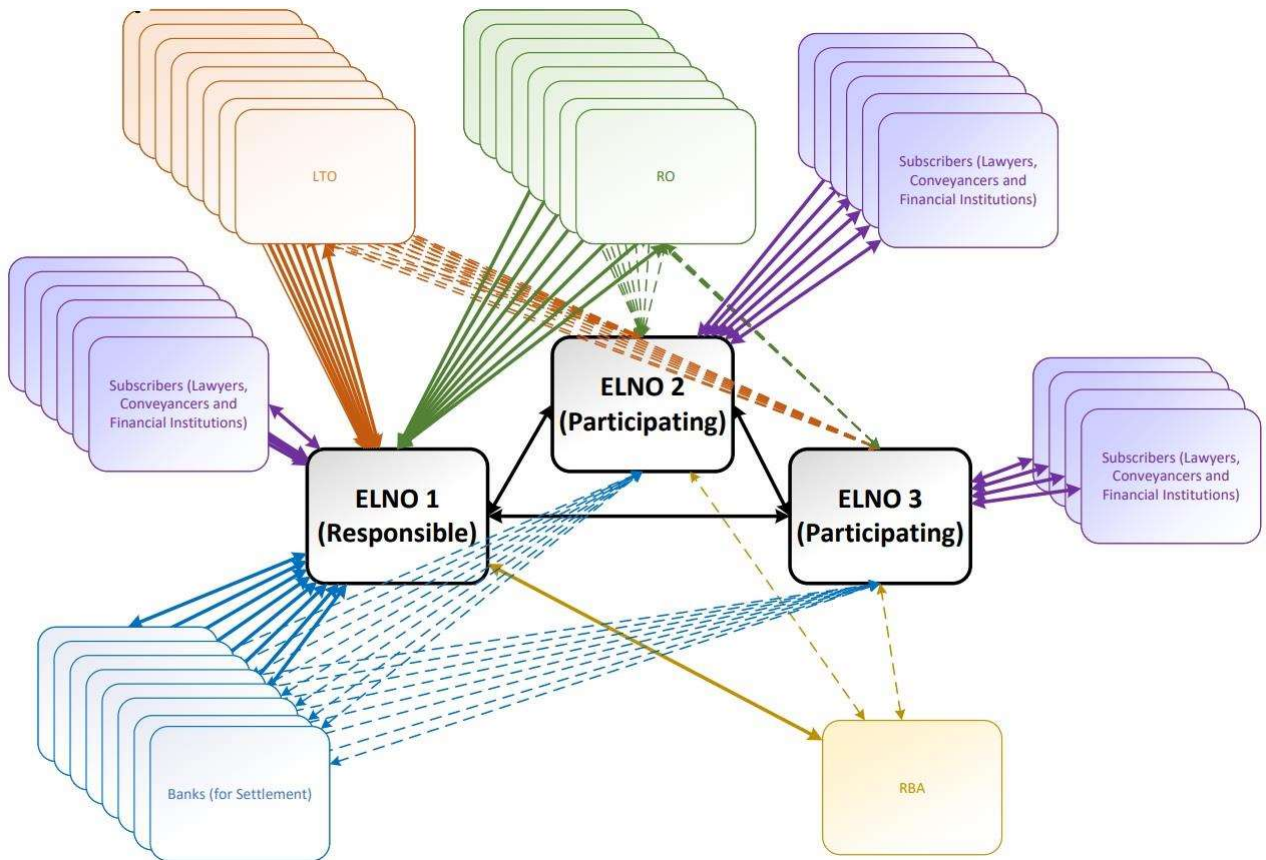


Model 3: Direct Connect Interoperability - Practitioner Choice Scope

This is a variation of direct connect interoperability. In this model a single ELNO performs the role of the Responsible ELNO for all interoperable transactions. The Responsible ELNO for all interoperable transactions would be determined according to subscriber functionality and/or connectivity.

Participating ELNOs provide the Responsible ELNO with all relevant information to enable the Responsible ELNO to complete the duty assessment, financial settlement and lodge the Registry instruments. Under this model financial institutions would use the Responsible ELNO and practitioners (lawyers and conveyancers) would use the Participating ELNO(s).

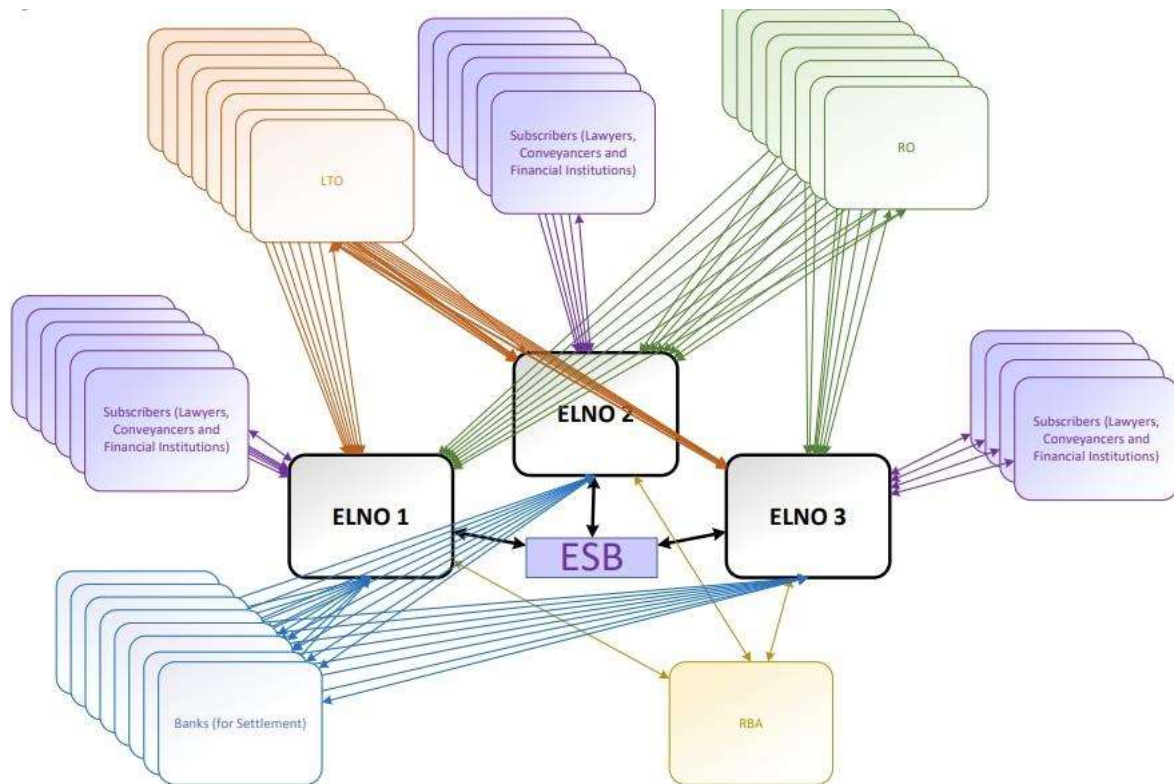
Participating ELNOs would still have connections to Land Registries, Revenue Offices and Financial Institutions (for financial settlement) and use these connections to conduct standalone transactions.



-----.	Indicates that a connection will not be used in an interoperable transaction.
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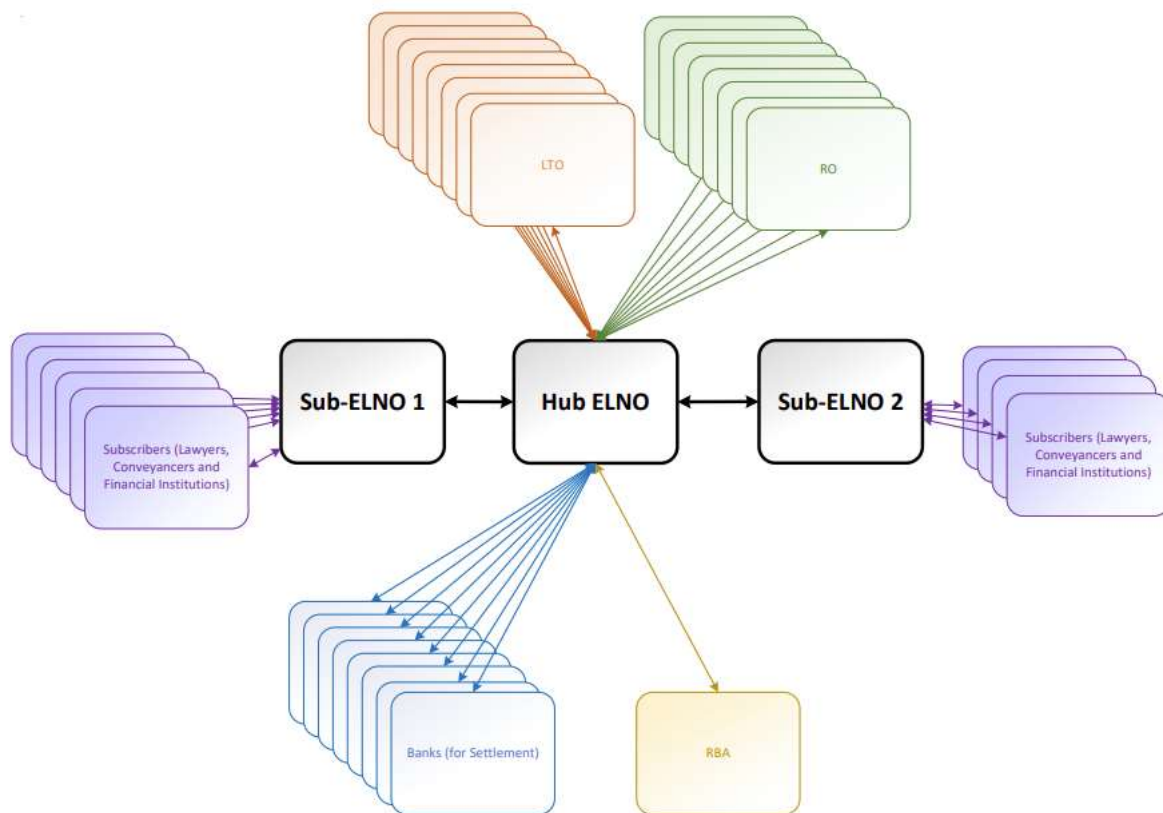
Model 4: ESB between ELNOs

Communication between ELNOs is conducted through the ESB. Each ELNO communicates directly with Revenue Offices and Land Registries.



Model 5: A wholesale/ retail or hub-ELNO model

The Hub-ELNO settles and lodges the transaction. Sub-ELNOs look after subscribers, digital signatures and associated regulatory functions and provide transaction and financial information to the Hub-ELNO.



Model 6: An enterprise service bus (ESB) connecting all parties

All communication between ELNOs and other parties including Land Registries and Revenue Offices is conducted through the ESB.

