



The Hon. Victor Dominello MP
Minister for Customer Service and Digital Government
Minister for Small Business
Minister for Fair Trading

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Our reference: BN-07499-2022

Ms Carmel Donnelly
Chair, Independent Pricing and Regulatory Tribunal
ipart@ipart.nsw.gov.au

Dear Ms Donnelly

I refer to IPART's ongoing investigation of interoperability pricing for electronic lodgment network operators (**ELNOs**), which I referred to IPART on 27 June 2022. I have decided to amend the terms of reference for that investigation under section 12A(4) of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW). Please find the amended terms of reference enclosed.

The amended terms of reference now require IPART to recommend service fees that ELNOs may charge to their subscribers.

Section 12A(4) requires me to provide reasons for amending IPART's terms of reference. My reasons are that it has become apparent during IPART's current investigation that:

- Consideration should be given to whether ELNO service fees should factor in the costs of establishing and maintaining interoperability.
- Since IPART last recommended ELNO service fees in 2019, some of the inputs to those prices may have become out-of-date, such that it may not be appropriate to simply continue the current fees in real terms.

Should you wish to discuss any aspect of this letter, you may contact Ms Danusia Cameron, Registrar General on [REDACTED] or at [REDACTED]

Yours sincerely

The Hon. Victor Dominello MP
Minister for Customer Service and Digital Government
Minister for Small Business
Minister for Fair Trading

Date: 23/12/22

Enclosed: amended terms of reference.

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TERMS OF REFERENCE

Interoperability pricing for Electronic Lodgment Network Operators and ELNO Service Fees for Electronic Lodgment Network Operators

I, Victor Dominello, Minister for Digital, Minister for Customer Service, under section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992* (the Act), request the Independent Pricing and Regulatory Tribunal (Tribunal) to investigate and report on a pricing regulatory framework for interoperable transactions between Electronic Lodgment Network Operators (ELNOs) in accordance with this Terms of Reference.

Context

Electronic conveyancing is a system which provides for the lodgment of electronic instruments with Land Registries using an Electronic Lodgment Network (ELN). Registrars approve entities to operate ELNs and they are known as ELNOs. The two current ELNOs also facilitate the associated financial settlement of conveyancing transactions.

Today, all parties to a conveyancing transaction must subscribe to the same ELN to complete the transaction. This is because ELNs are not yet interoperable: they cannot exchange information, or ‘talk’ to each other, to complete a transaction. With more than one ELNO now operating, interoperability aims to permit subscribers (conveyancers, lawyers and financial institutions) to use the ELN(s) they choose, while other parties may use a different ELN.

All states and territories support the principle of requiring interoperability between ELNs in the Electronic Conveyancing National Law (ECNL).

To support implementation of interoperability, with the approval of all States and Territories, the NSW Parliament enacted proposed changes to the national law on 6 June 2022 (to apply in all States and Territories).

The Model Operating Requirements (MORs) are being updated to include provisions on interoperability. In particular, the interoperability regime proposes the role of Responsible ELNO, which will interact with Land Registries and Revenue Offices, and perform the transaction Settlement and Lodgment. Other ELNOs hosting subscribers in the transaction are designated as Participating ELNOs. More information is available here: <https://www.arnecc.gov.au/wp-content/uploads/2021/08/interoperability-model-overview.pdf>

It is proposed that the MORs include provisions on Interoperability Service Fees, being fees charged by an ELNO to another ELNO or to a Subscriber in relation to:

- (a) establishing and maintaining Interoperability with the other ELNO; and
- (b) carrying out the functions of the Responsible ELNO.

The first task

The Tribunal should investigate and make recommendations on:

- 1) Whether fees should be charged by the Responsible ELNO to Participating ELNOs for participation in an interoperable transaction, and whether and how any such fees should be passed on to subscribers.
- 2) Whether:
 - a) a negotiate-arbitrate model should apply to setting any such ELNO fees, and if so, the pricing principles that should apply under such model; or
 - b) a regulated method or level of price should apply to setting any such ELNO fees, and if so, what that method or level should be for 2023-24 and a method for reviewing and adjusting the price in the future.
- 3) Any amendments to the MORs required to support the most appropriate way to apply the principles or formula, as applicable.

In investigating and making recommendations regarding the fees, the Tribunal should consider:

- a) Supporting and promoting competition through ELNO interoperability pricing.
- b) Promoting ongoing investment by ELNOs.
- c) Costs (including operating and relevant capital costs) and risks incurred by different participants in an interoperable transaction and who should bear these costs.
- d) The current and evolving structure of the interoperable transaction market, with additional ELNOs potentially entering the market over the next 1-5 years.
- e) Avoiding unnecessary regulatory or administrative burdens on ELNOs or other participants in an interoperable transaction.
- f) Any other matter the Tribunal considers relevant.

The second task

- 1) The Tribunal is further requested to investigate and make recommendations on ELNO service fees, including:
 - a) Whether such fees should continue to be regulated.
 - b) If continued regulation is recommended, whether a regulated method or level of price should apply to ELNO service fees, and if so:
 - i. what that method or level of price should be; and
 - ii. when that method or level of price should apply, following delivery of the Tribunal's final report on the second task.
 - c) Future adjustment and review processes for ELNO service fees.

In investigating and making these additional recommendations, the Tribunal should consider:

- a) Supporting and promoting competition in the ELNO market.
- b) Promoting ongoing investment by ELNOs.
- c) Efficient costs of providing eConveyancing services.
- d) Equitable access to eConveyancing services for customers across Australian jurisdictions.
- e) Reasonable prices for eConveyancing services for customers across Australian jurisdictions.
- f) The current and evolving structure of the eConveyancing market.
- g) Avoiding unnecessary regulatory or administrative burdens on ELNOs.
- h) Any other matter the Tribunal considers relevant.

Process and timeframe

The Tribunal is directed to commence work on the second task when the following occurs, whichever is the soonest:

- 1. Six months after Day 2 functionality is available to facilitate interoperable transactions
- 2. The Australian Registrars' National Electronic Conveyancing Council (ARNECC) notifies IPART that an ELNO has applied to ARNECC under the price adjustment mechanism in the MORs to change its Pricing Table because a change in law has given rise to a change in the ELNO's operating costs
- 3. 1 July 2025, or
- 4. ARNECC notifies IPART it is to commence work on the second task.

The Tribunal will provide progress briefings to ARNECC at key timetable milestones, as well as upon request by ARNECC.

The Tribunal will also consult with the public, including the key stakeholders listed below, in undertaking its review, including through releasing a draft report, and provide a final report to the Minister on the first task by 30 April 2023 and the second task by 12 months after the Tribunal commences work on it.

The Tribunal will consult with these key stakeholders:

- Economic regulators from other Australian jurisdictions
- Treasuries from other Australian jurisdictions
- ARNECC nominees/Registrars
- ELNOs
- ELNO subscriber representatives
- Australian Competition and Consumer Commission

The final reports will be made publicly available on the Tribunal's website.