



Interoperability pricing for Electronic  
Lodgment Network Operators

## Draft Report

February 2023



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## Tribunal Members

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## Invitation for submissions

IPART invites comment on this document and encourages all interested parties to provide submissions addressing the matters discussed.

### Submissions are due by Friday, 24 March 2023

We prefer to receive them electronically via our [online submission form](#).

You can also send comments by mail to:

Interoperability pricing for Electronic Lodgment Network Operators  
Independent Pricing and Regulatory Tribunal  
PO Box K35  
Haymarket Post Shop, Sydney NSW 1240

If you require assistance to make a submission (for example, if you would like to make a verbal submission) please contact one of the staff members listed above.

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If you would like further information on making a submission, IPART's [submission policy](#) is available on our website.

## The Independent Pricing and Regulatory Tribunal

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## Acknowledgment of Country

IPART acknowledges the Traditional Custodians of the lands where we work and live. We pay respect to Elders both past and present.

We recognise the unique cultural and spiritual relationship and celebrate the contributions of First Nations peoples.

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# 1 Executive Summary

Electronic conveyancing (eConveyancing) is the digital completion of a conveyancing transaction.<sup>a</sup> Electronic Lodgment Networks (ELNs) are the platforms where eConveyancing transactions take place. ELN Operators (ELNOs) provide eConveyancing services to lawyers, conveyancers, and financial institutions (subscribers). There are currently 2 approved ELNOs – PEXA and Sympli.

The eConveyancing market will soon be interoperable, meaning that multiple ELNOs can represent different participants (subscribers) in a property transaction. This is different from the current market, where ELNOs' systems cannot exchange information and so every participant in a transaction must use the same ELNO. Interoperability will help to promote competition and choice for the lawyers, conveyancers and financial institutions that use eConveyancing. However, it will change the way each ELNO incurs costs in a transaction.

For this reason, IPART was asked by the NSW Minister for Customer Service and Digital Government, on the request of the Australian Registrars' National Electronic Conveyancing Committee (ARNECC), to investigate and make recommendations on whether eConveyancing interoperable transaction fees should be charged and, if so, how they should be set.

This Draft Report outlines our draft recommendations on interoperable transaction fees and explains our approach to calculating these fees.

## 1.1 IPART has been asked to recommend interoperable transaction fees

Currently ELNOs recover their costs of providing eConveyancing services through **ELNO service fees** charged to their subscribers. These fees range from around \$4 to around \$142 per subscriber, depending on the type of transaction service.<sup>b</sup> In an interoperable transaction each ELNO will continue to be responsible for their own subscribers and recover most of their costs through ELNO service fees. However, one ELNO – the Responsible ELNO (RELNO) – will complete lodgment and financial settlement on behalf of all other ELNOs in the transaction – the Participating ELNOs (PELNOs).

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<sup>a</sup> Under the eConveyancing National Law, "conveyancing transaction" means a transaction that involves one or more parties and the purpose of which is— (a) to create, transfer, dispose of, mortgage, charge, lease or deal with in any other way an estate or interest in land, or (b) to get something registered, noted or recorded in the titles register, or (c) to get the registration, note or record of something in the titles register changed, withdrawn or removed. See *Electronic Conveyancing (Adoption of National Law) Act 2012*, Appendix, s 3(1).

<sup>b</sup> Based on the lowest and highest prices published on PEXA and Sympli's pricing schedules. See PEXA, [Pricing schedule Effective from 1 July 2022](#), accessed 16 February 2023; Sympli, [Our pricing](#), accessed 16 February 2023.

ELNOs' operations are governed by the Model Operating Requirements (MORs). A new consultation draft of the MORs (version 7.1), is intended to apply from the introduction of interoperability. It defines interoperability service fees as fees that a RELNO can charge other ELNOs or subscribers in relation to establishing and maintaining interoperability, and/or carrying out the functions of a Responsible ELNO. These are the fees we have been asked to investigate and make recommendations on.

## 1.2 Approach to recommending interoperable transaction fees

We decided to separate this review into 2 stages, reflecting that we have been asked to firstly decide whether interoperable transaction fees should be charged, and secondly, if so, how they should be set.

In the first stage of the review, we decided:

- Fees should be charged by the RELNO to PELNOs for participation in an interoperable transaction.
- Subscribers should not pay more for an interoperable transaction than a single ELNO transaction.
- Interoperability is a function that all ELNOs will need to have, and so any additional costs of establishing and maintaining interoperability should be recovered through ELNO services fees, and not through a separate interoperable transaction fee.
- The form of regulation for interoperable transaction fees should be regulated prices, which provide certainty and transparency to the industry.

The second stage of the review covers:

- when a PELNO should pay the RELNO interoperable transaction fees
- how to set these fees and what costs should be included
- what level those fees should be
- how to implement these fees.

## 1.3 Overview of our draft recommendations on interoperable transaction fees

As interoperability is not yet in place, there is limited information available on the costs that ELNOs will incur in an interoperable transaction. Therefore, we have had to make a series of assumptions to make draft recommendations on the level of interoperable transaction fees.

To reflect the additional activities that a RELNO performs in an interoperable transaction, we recommend there should be 2 types of interoperable transaction fees: the RELNO fee and the default RELNO surcharge. We recommend these fees apply for a 2-year period, from 2023-24 and indexed by the Consumer Price Index (CPI) in 2024-25. All prices in this report are presented in \$2022-23.

The **RELNO fee** reflects the additional costs an ELNO incurs from fulfilling its role as the RELNO that are avoided by the PELNOs. Our draft recommended maximum RELNO fee is \$0.75 (ex-GST), paid by PELNOs (to the RELNO) for each subscriber they represent in every interoperable transaction. In a typical property purchase with 4 subscribers, the RELNO would receive \$2.25 in total from the 3 PELNOs.

Business rules will determine which ELNO performs the RELNO role in an interoperable transaction. However, there may be situations when an ELNO is not able to perform this role, because it lacks the capacity to do so, and the RELNO role will be redesignated to another ELNO. When this happens, we recommend that a **default RELNO surcharge** apply to the ELNO that could not perform the RELNO role. The default RELNO surcharge reflects the costs of developing a full suite of financial settlement and lodgment infrastructure and web hosting capacity. The draft recommended default RELNO surcharge is \$2.90 per transaction (ex-GST).

These fees represent a cost-sharing arrangement between ELNOs, not an additional charge to subscribers in an interoperable transaction. In our view, subscribers who participate in an interoperable transaction should not pay more than subscribers in a single ELNO transaction. This will help to promote competition and choice for subscribers in the long term.

The terms of reference require us to investigate and make recommendations on any amendments to the MORs that are required to support our proposed interoperability pricing arrangements. We have identified several amendments that will be required to implement our recommendations which are outlined in Chapter 3 of this report.

Our draft recommended maximum **RELNO fee** is \$0.75 (ex-GST), paid by PELNOs for each subscriber they represent in each interoperable transaction. Our draft recommended maximum **default RELNO surcharge** is \$2.90 per transaction (ex-GST).

#### 1.4 The draft recommended maximum RELNO fee is \$0.75 per subscriber for 2023-24

The draft recommended maximum RELNO fee that each PELNO would pay the RELNO is \$0.75 (ex-GST) for each subscriber they represent in an interoperable transaction. For example, in a typical property purchase transaction where the RELNO represents 1 subscriber and the PELNO(s) represents 3 subscribers, the RELNO would receive \$2.25 (ex-GST). The RELNO fee reflects costs incurred by the RELNO that are avoided by PELNOs.

Most of the lodgment and financial settlement actions that the RELNO performs will be automated through the interoperability APIs that all ELNOs will be required to develop.<sup>c</sup> However, there will be some tasks that the RELNO performs that require manual intervention, such as error resolution and support.

Each ELNO will be responsible for providing support to and communicating with its own subscribers. However, when issues arise, the PELNO will refer them to the RELNO, who will then be responsible for resolving the issue and communicating the solution to the relevant parties. PELNOs will then provide instructions to their own subscribers. In our view, the costs of the RELNO undertaking these issue resolution and support activities should be included in the RELNO fee.

There is limited information about the costs incurred by RELNO and PELNO roles, as interoperability is not yet in place. PEXA and Sympli's views on costs also varied widely. Therefore, we have estimated the costs of performing the RELNO role using cost information from our 2019 eConveyancing review,<sup>d</sup> and sought expert advice from a cost consultant (AECOM). We have also considered information provided by PEXA and Sympli, although this information mostly reflects the current non-interoperable environment.

PEXA raised other costs that it considers should be included in the RELNO fee, such as insurance costs and financial settlement costs. In our view, these costs should not be included in the RELNO fee at this time but could be revisited in the future when more information is available about actual costs incurred by the RELNO in an interoperable transaction.

## 1.5 The draft recommended maximum default RELNO surcharge is \$2.90 per transaction for 2023-24

When an ELNO is not able to perform the designated RELNO role (by the business rules), the role will be redesignated to another ELNO. In this situation, we recommend that an additional fee be charged which reflects the per transaction share of the costs of developing a full suite of financial settlement and lodgment infrastructure and web hosting capacity. The draft recommended maximum default RELNO surcharge is \$2.90 per transaction (ex-GST) for 2023-24, reflecting the efficient cost of an ELNO developing lodgment and financial settlement infrastructure. This surcharge would be paid to the RELNO by the ELNO that was not able to perform the designated RELNO role.

Currently, 2 ELNOs – PEXA and Sympli – are approved to operate in most jurisdictions. However, if a transaction involves more than 2 ELNOs and the RELNO role is re-designated to different ELNOs multiple times throughout the transaction, we recommend those ELNOs share the default RELNO surcharge. The RELNO that ultimately completes lodgment and financial settlement (the lodging RELNO) would recover the default RELNO surcharge only once per transaction.

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<sup>c</sup> The chosen interoperability model enables interoperability between ELNOs through APIs, which execute system actions across ELNO workspaces. See ARNECC, [Interoperability Model Overview](#), March 2021, p 2.

<sup>d</sup> In 2019 IPART completed a review of the eConveyancing market in NSW. See IPART, [Review of the Pricing Framework for Electronic Conveyancing Services in NSW, Final Report](#), November 2019.



To calculate the draft maximum price for the default RELNO surcharge we applied a cost build-up approach, and:

- modelled various scenarios for the capital cost of developing title lodgement and financial settlement infrastructure
- estimated that the efficient capital cost of developing a full suite of financial settlement and lodgment infrastructure would be \$4.7 million
- forecasted annual eConveyancing volumes, using data from the Australian Bureau of Statistics on the number of property transfers and refinancing transactions
- assumed an asset life of 5 years for the title lodgment and financial settlement infrastructure. This was used as the period for cost recovery of the investment
- applied a pre-tax WACC of 4.4% to calculate the capital cost as an annuity.

## 1.6 We will review ELNO service fees

Currently each ELNO's service fees can increase once per year by no more than the annual change in CPI.<sup>1</sup> Throughout our review of interoperable transaction fees, we observed that implementing interoperability may increase overall costs for ELNOs in the short term, because they will incur costs from developing the APIs required to implement interoperability. However, other inputs to the price calculation may have changed (such as transaction volumes, cost efficiencies and innovation). Therefore, the net impact of implementing interoperability on ELNO service fees is uncertain, and it may no longer be appropriate to continue the current ELNO service fees in real terms.

IPART's terms of reference have been amended by the Minister to require us to investigate and make recommendations about ELNO service fees, in addition to completing our review of interoperability pricing. A review of ELNO service fees will ensure ELNOs can recover their efficient costs within current operating conditions and will ensure that subscribers pay no more than they need to. It will also allow IPART to assess the effectiveness of competition in the eConveyancing market and the need for ongoing pricing regulation.

We will commence work on recommending ELNO service fees when one of the following occurs, whichever is the soonest:

1. six months after Day 2 functionality<sup>e</sup> is available to facilitate interoperable transactions
2. ARNECC notifies IPART that an ELNO has applied to ARNECC 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 recommending ELNO services fees.

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<sup>e</sup> The Day 2 milestone requires ELNOs to have the technical capability to perform all currently defined eConveyancing transactions, through the new interoperable system between ELNOs. Once the Day 2 milestone is achieved, the rollout of interoperability will occur progressively by jurisdiction. See ARNECC, [Ministerial Statement](#), 9 December 2022.

We have 12 months to complete the review and prepare a Final Report on ELNO service fees from the date of commencing work on it. The timing of IPART's review of interoperability pricing will not be affected by the amendments to the terms of reference. We will prepare a Final Report on interoperability pricing by April 2023.

## Structure of this report

This Draft Report is structured as follows:

### Chapter

02	Introduction
03	Approach to recommending interoperable transaction fees
04	RELNO fee
05	Default RELNO surcharge
06	ELNO service fees and market design

### Appendix

A	Terms of reference for the review
B	Weighted Average Cost of Capital
C	Glossary of terms used in this paper

## List of draft recommendations

### Draft recommendations

1.	ELNOs should not be required to pay PEXA a common user charge for participating in an interoperable eConveyancing market.	15
2.	The level of interoperable transaction fees should be prescribed for the initial regulatory period, rather than determined by ELNOs according to a prescribed methodology.	16

3.	There should be 2 regulated interoperable transaction fees:	18
a.	<b>RELNO fee</b> – paid by all Participating ELNOs to the Responsible ELNO in every interoperable transaction. The RELNO fee should:	18
	– reflect a share of the marginal costs an ELNO incurs from fulfilling its role as the RELNO that are avoided by the PELNOs	18
	– be based on the marginal costs of performing the RELNO role only, as each ELNO has invested in its own infrastructure (which can be recovered from ELNO Service Fees).	18
b.	<b>Default RELNO surcharge</b> – paid by an ELNO when it is designated as the Responsible ELNO by business rules, but it is unable to perform this role and the role is designated to another ELNO. This fee should reflect the per transaction share of costs of developing a full suite of financial settlement and lodgment infrastructure and web hosting capacity.	19
4.	Interoperable transaction fees should apply for a 2-year regulatory period, with charges set for the initial year and indexed by CPI for the second.	20
5.	Following the initial 2-year regulatory period (2023-24 and 2024-25), interoperable transaction fees should be reviewed.	20
6.	To enable a review of interoperable transaction fees following the initial 2-year regulatory period, ARNECC should consult with industry stakeholders to develop reporting requirements for ELNOs on information relating to interoperable transactions.	21
7.	ELNOs should negotiate the practical arrangements for payment of interoperable transaction fees through Interoperability Agreements, including the frequency and method of payment.	21
8.	Amendments to the Model Operating Requirements (MORs) will be required to implement our recommendations on interoperable transaction fees, including to specify:	23
a.	that an ELNO's costs of establishing and maintaining interoperability should be recovered from all subscribers through ELNO Service Fees	23
b.	that subscribers who participate in an interoperable transaction should not pay more than subscribers in a single ELNO transaction	23
c.	when interoperable transaction fees should be charged	23
d.	the level of interoperable transaction fees	23
e.	arrangements for adjusting or reviewing interoperable transaction fees	23
f.	that Interoperability Agreement Matters, as outlined in Schedule 8 of Consultation Draft Version 7.1 of the MORs, should include the practical arrangements for payment of interoperable transaction fees and apportionment of Lodgment Support Service fees between ELNOs	23
g.	that ELNOs be required to report information to ARNECC on interoperable transactions.	23
9.	The maximum RELNO fee is \$0.75 for 2023-24 (ex-GST), to be paid to the RELNO by each PELNO per-subscriber that they represent in an interoperable transaction.	25
10.	The RELNO fee should be payable to, and reflect the costs incurred by the designated RELNO that completes lodgment and financial settlement in a transaction.	27
11.	The maximum default RELNO surcharge is \$2.90 per transaction (ex-GST) for 2023-24.	36

## 2 Introduction

Conveyancing is the process through which title to real property is transferred from one person to another (e.g. when it is sold or inherited), and other interests in the property are dealt with (e.g. a lessor's or mortgagee's).

Electronic conveyancing (eConveyancing) 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 2 current ELNOs also facilitate the associated financial settlement of conveyancing transactions.

Today, all parties (conveyancers, lawyers, and financial institutions) to an eConveyancing transaction must subscribe to the same ELN to complete the transaction. This is because ELNs are not yet interoperable: their systems cannot exchange information, or 'talk' to each other, to complete a transaction. Interoperability would permit parties to use the ELN(s) they choose, while other parties may use a different ELN in the same transaction.

In June 2022, NSW Parliament enacted changes to the national law (which will ultimately apply in all States and Territories) to support implementation of interoperability.

The Australian Registrars' National Electronic Conveyancing Council (ARNECC) is updating the Model Operating Requirements (MORs) to include provisions on interoperability. In particular, the interoperability regime proposes the role of Responsible ELNO (RELNO). The RELNO will orchestrate the transaction, interact with Land Registries and Revenue Offices, and perform the transaction settlement and lodgment. Other ELNOs that are hosting subscribers in the transaction are designated as Participating ELNOs (PELNOs).

ARNECC has proposed that the MORs should include provisions on the fees ELNOs may charge other ELNOs and/or subscribers, in relation to participation in an interoperable transaction. The NSW Minister for Customer Service and Digital Government (Minister) has asked IPART to investigate and make recommendations on whether those fees should be able to be charged, and if so, how they should be set.

In Issues Paper 1 for this review, we set out the scope of the review and our proposed two-stage approach. We asked questions about the first stage of the review, which entailed deciding on a form of regulation for interoperable transaction fees. We sought submissions on the Issues Paper, held a public hearing, and held a workshop with economic regulators from other jurisdictions.

In Issues Paper 2, we outlined what we heard from stakeholders through consultation on Issues Paper 1. We provided our draft decisions on form of regulation, including that we should proceed to set a regulated price for interoperable transaction fees. We also outlined issues on which we sought submissions for the second stage of the review, including:

- when a PELNO should pay interoperable transaction fees
- the relevant cost categories that should be included in those fees
- whether we should recommend a regulated method or price level
- our proposed approach to setting a regulated price
- how to implement such fees.

This Draft Report presents our draft recommendations for interoperable transaction fees, including draft maximum fee levels for 2023-34 and 2024-25.

## 2.1 Scope of this review

ARNECC sought this investigation (via the NSW Minister for Customer Service) to support its ongoing reforms to the eConveyancing system to implement interoperability between ELNs from mid-2023.

A consultation draft of the MORs (version 7.1), intended to apply from the introduction of interoperability, defines interoperability service fees as fees that a RELNO can charge other ELNOs or subscribers in relation to establishing and maintaining interoperability, and carrying out the functions of a RELNO.<sup>2</sup> Consultation draft 7.1 of the MORs prohibits ELNOs from charging interoperability service fees.<sup>3</sup> However, ARNECC will consider IPART's recommendations in this review on whether and how fees for interoperable transactions should be set.

Our terms of reference outline the matters we should consider in making these recommendations, including:

- supporting and promoting competition through ELNO interoperability pricing
- promoting ongoing investment by ELNOs
- the costs and risks incurred by different parties during an interoperable transaction
- the current and evolving structure of the interoperable transaction market
- avoiding unnecessary or administrative burdens on ELNOs or other participants in an interoperable transaction.

Through stakeholder feedback and our own research and analysis, we also identified broader issues with pricing of ELNO services and design of the eConveyancing market. While these are important issues that involve categories of cost that an ELNO should be able to recover, we consider that these costs should not be recovered through interoperable transaction fees.

We referred these issues to ARNECC and ARNECC asked the Minister to amend our terms of reference to include a review of ELNO service fees. ARNECC decided not to revisit the market design issue at this time. In December 2022, the Minister issued revised terms of reference that provide for IPART to investigate and make recommendations on ELNO service fees. IPART's work on this second task will commence on the occurrence of one of the trigger events set out in the revised terms of reference.

The full terms of reference are at Appendix A.

## 2.2 Our approach to this review

Our approach to this review of interoperable transaction fees considers all matters required by our terms of reference. It comprises the following steps:

1. Determine whether fees should be charged by the RELNO to PELNOs for participation in an interoperable transaction, and whether and how any such fees should be passed on to subscribers.
2. Determine the form of regulation for any ELNO interoperable transaction fees, that is:
  - whether a negotiate-arbitrate model should apply to setting any such fees, or
  - whether a regulated method or price for 2023-24 should apply, with a method for reviewing and adjusting the price in the future.
3. Based on our recommended form of regulation, determine either:
  - the appropriate pricing principles for setting ELNO interoperable transaction fees under a negotiate-arbitrate model and any amendments to the MORs that are required to support these, or
  - the regulated method or price for 2023-24 for ELNO interoperable transactions, a method for reviewing and adjusting the price in the future and any required amendments to the MORs.

We released Issues Paper 1 to decide on the first 2 points of our terms of reference. Issues Paper 2 explored the details of a regulated method or price for interoperability transaction fees. Our Draft Report provides draft recommendations from our investigation of interoperable transaction fees.

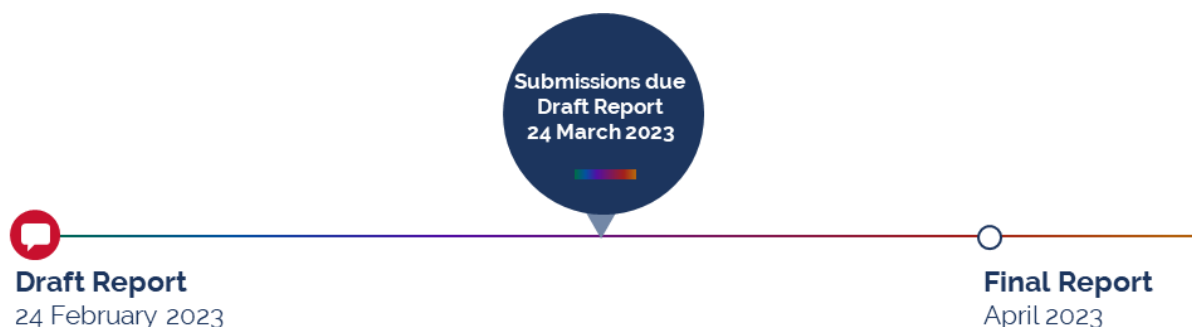
We will consult on this Draft Report through written submissions and submit a Final Report by 30 April 2023.

Table 2.1 shows the project timetable.

Table 2.1 Project timetable

Project milestone	Proposed timetable
<b>Issues Paper 1</b>	15 July 2022
<b>Public hearing</b> - form of regulation	26 July 2022
Workshop with economic regulators – form of regulation	11 August 2022
Submissions on Issues Paper 1 due	12 August 2022
<b>Issues Paper 2</b> – approach to regulation	14 October 2022
Submissions on Issues Paper 2 due	11 November 2022
<b>Draft Report – this report</b>	24 February 2023
Submissions on Draft Report due	24 March 2023
<b>Final Report</b>	April 2023

Figure 1 Remaining project timeline



## 2.3 How to give us feedback

### Have your say

Your input is critical to our review process.

[Submit feedback »](#)

You can get involved by making a submission.

Table 2.2 provides a brief overview of what stakeholders can influence in this stage of the review.

Table 2.2 What stakeholders can influence in this stage of the review

What stakeholders can influence in this stage of the review	Decisions that have already been made
<ul style="list-style-type: none"> <li>The final recommendations we make about regulated prices for interoperable transactions</li> </ul>	<ul style="list-style-type: none"> <li>Interoperability will be required in eConveyancing and the form of interoperability has been decided</li> <li>We will recommend a regulated method or prices rather than a negotiate-arbitrate model</li> <li>The process for the review and review timeframe – we must report by April 2023</li> </ul>

We welcome submissions on this Draft Report. Please see page ii for details of how to make a submission.

## 3 Approach to recommending interoperable transaction fees

As set out in the Introduction, our approach to the review comprises the following steps:

1. **Consider 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.** We consulted on this question in Issues Paper 1 and in Issues Paper 2 we set out our draft decision that fees should be charged for performing the RELNO role, but subscribers should pay no more for an interoperable transaction than a non-interoperable transaction.
2. **Consider whether a negotiate-arbitrate model should apply to setting ELNO fees, or a regulated method or level of price should apply.** We consulted on this question in Issues Paper 1, and in Issues Paper 2 we set out our draft decision that a regulated method or level of price should apply.
3. **Determine the regulated method or price for 2023-24 for interoperable transaction fees.** In Issues Paper 2 we consulted on our proposals for the structure of interoperable transaction fees, the costs that should be recovered through those fees, and the method we should use to calculate those fees.

This chapter provides a summary of the draft recommendations we made as a result of Issues Paper 1, and the approach to calculating interoperable transaction fees we have taken as a result of our consultation on Issues Paper 2. Chapters 4 and 5 set out our draft recommendations for the level of the two types of interoperable service fees, when we apply the method we developed following Issues Paper 2.

### 3.1 A Responsible ELNO should charge a fee for taking that role

If the responsibilities of ELNOs in interoperable transactions are asymmetrical **and** market shares are unequal, it would be appropriate to have an ELNO-to-ELNO fee for performing the duties of a Responsible ELNO, as a way of sharing costs between ELNOs.

We recognise that:

- RELNOs have additional costs in an interoperable transaction compared with PELNOs.
- One ELNO (PEXA) is more likely to be the RELNO while later entrants develop their capabilities and connections with financial institutions.
- An interoperable transaction fee would provide an incentive for any party to invest in a timely fashion to be a RELNO, which helps to promote competition.

For these reasons, we concluded, and stakeholders generally agreed, that a RELNO should be able to charge fees to PELNOs in an interoperable transaction. We also suggest that ARNECC review the need for interoperable transaction fees as the interoperable eConveyancing market matures.



### 3.2 ELNO costs of establishing and maintaining interoperability should be recovered from all subscribers

An ELNO's costs of establishing and maintaining interoperability includes development and maintenance of the infrastructure systems to enable inter-ELNO connections, and customer support.<sup>4</sup>

Interoperability is a function that all ELNOs will need to have. Given this, any costs of establishing and maintaining interoperability that are additional to the costs of becoming a standalone ELNO should be recovered through ELNO Service Fees, and not through a separate interoperable transaction fee. Recovering these costs directly from ELNOs' own subscribers means there are incentives for ELNOs to be as efficient as possible – these incentives may not be as strong if ELNOs were able to recover these costs from other ELNOs. Ultimately subscribers pay, so greater efficiency should result in lower costs for subscribers overall.

Stakeholders generally agree that an ELNO's costs of establishing and maintaining interoperability should be recovered from its subscribers.<sup>5</sup> However, the Australian Banking Association (ABA) submitted that IPART should consider more broadly the costs of establishing and maintaining interoperability for all market participants (such as banks who may incur costs to prepare for a multi-ELNO/interoperable market).<sup>6</sup>

Our terms of reference require us to consider whether fees should be charged by the RELNO to PELNOs for participation in an interoperable transaction. We have not been asked to consider how costs incurred by other market participants should be recovered. In the long term, an interoperable environment that facilitates competition between ELNOs, should enable market participants to connect to the ELNO(s) of their choice and put pressure on ELNOs to minimise costs incurred by market participants. In the short term, it is possible that market participants could resolve issues around cost sharing through commercial negotiations with ELNOs.

In our view, an ELNO's costs of establishing and maintaining interoperability should be recovered through ELNO Service Fees, and so we have not included these costs in our calculations for interoperable transaction fees.

In Chapter 6 we discuss our future review of ELNO Service Fees, and further discuss the costs of establishing and maintaining interoperability.

### 3.3 Subscribers should not pay more for an interoperable transaction than a single ELNO transaction

Subscribers who participate in an interoperable transaction should not pay more than subscribers in a single ELNO transaction. While this would mean that these prices are not directly cost-reflective, we consider that this slight distortion is in the longer-term interests of customers and supports competition developing.

This means that an interoperable transaction fee for performing the duties of a RELNO should not be passed through to a PELNO's subscribers as a separate charge. It should instead be considered as part of an ELNO's overall costs when an ELNO is setting its ELNO Service Fees.

### 3.4 Direct price control is preferred over negotiate-arbitrate

In Issues Paper 1 we outlined the benefits and disadvantages of different forms of regulation for interoperable transaction fees. Most stakeholders indicated a preference for direct price control over a negotiate-arbitrate approach.<sup>7</sup>

In Issues Paper 2 and in this Draft Report, we have continued to develop recommendations for direct price control for interoperable transaction fees.

### 3.5 Lodgment Support Service fees should not be recovered through interoperable transaction fees

The Lodgment Support Service (LSS) fee is incurred by the ELNO opening the digital workspace (which is not necessarily the RELNO). Stakeholders generally agree that it is appropriate for this fee to be apportioned equally between participants in a transaction.<sup>8</sup> Sympli, the Law Society of NSW and the Law Council of Australia suggest that this apportionment and recovery can be resolved in the negotiation framework for the interoperability agreement between ELNOs that is set out in Consultation Draft Version 7.1 of the MORs.<sup>9</sup>

Apportionment of the LSS fee is an issue that arises because of interoperability, but it is not related to the costs of performing the role of a Responsible ELNO. We therefore consider that it should not form part of interoperable transaction fees charged by a RELNO to a PELNO.

### 3.6 ELNOs should not pay PEXA a common user charge

PEXA has argued that it must be able to recover the cost to create the existing eConveyancing system on which interoperability is built.<sup>10</sup> It states that these costs include the one-off costs of building the processes and relationships that transformed the market from paper to electronic conveyancing. PEXA submitted that interoperability jeopardises its ability to recover those costs and earn a return on that investment, and that interoperability creates a situation analogous to an infrastructure access regime, in which PEXA is the access provider to other ELNOs.

It suggested that there could be a common user charge that all ELNOs (except PEXA) would pay to PEXA as the founding ELNO for each transaction, whether or not that ELNO was the Responsible ELNO.<sup>11</sup> PEXA proposed that this charge would be deducted from retail fees (ELNO Service Fees) and that it should not result in any increase in charges to subscribers.

Sympli disagreed with PEXA's proposed founding ELNO fee. It noted that PEXA has had a monopoly since its inception, benefiting greatly from being the first mover and from the mandating of eConveyancing in most jurisdictions prior to Sympli being in the market.<sup>12</sup> Sympli considers that if PEXA were also paid a premium for being the "founding ELNO", it would punish new entrant ELNOs and make competition unviable.<sup>13</sup>

We consider that other ELNOs should not pay PEXA a fee for "creating eConveyancing" for the following reasons:

- The role of an interoperable transaction fee is to recover only those costs which relate to an ELNO acting as a RELNO in an interoperable transaction.
- We do not consider that an interoperable transaction fee has the characteristics of an access fee. Participation in an interoperable transaction is not the same as providing access to monopoly infrastructure.
- We consider that a founding ELNO fee would constitute a barrier to entry and inhibit rather than encourage competition. Promoting competition in eConveyancing has been an explicit objective of Australian state and territory governments and ARNECC for many years.

In responding to Issues Paper 2, PEXA reiterated its position on a common user charge and requested that IPART reconsider our draft decision to "ensure there is a mechanism to allow PEXA an opportunity to earn an adequate return on its investments in establishing eConveyancing."<sup>14</sup>

We maintain our position that ELNOs should not be required to pay PEXA a common user charge.

### Draft recommendation

1. ELNOs should not be required to pay PEXA a common user charge for participating in an interoperable eConveyancing market.

## 3.7 We recommend interoperable transaction fees rather than a pricing methodology

In Issues Paper 2, we asked whether stakeholders agreed with prescribing prices, rather than a pricing methodology for interoperable transaction fees.

Sympli prefers a pricing methodology, rather than a regulated price because:

- a methodology removes the burden on regulators to set the price
- it allows for flexibility when costs change
- it rewards investment in infrastructure and provides incentives for ELNOs to drive down costs, which can be reflected in lower costs to subscribers<sup>15</sup>
- prescribing prices relies on assumptions and forecasts and there is a risk that these will be inaccurate.<sup>16</sup>

However, other stakeholders would prefer a regulated price, at least in the short term.

The Law Society of NSW notes that a regulated price provides transparency and certainty.<sup>17</sup>

PEXA argues that, in recommending regulated interoperable transaction fees, IPART should clearly outline its methodology, including the specific costs and risks each fee represents. It notes that this will "...ensure transparency and assist with future reviews and adjustments to the pricing model, where necessary".<sup>18</sup>

The Law Council of Australia considers that a regulated price would be preferable in the short term, for consistency and transparency, and that a pricing methodology may be preferable in the longer term.<sup>19</sup>

We consider that, with only 2 firms in the market, and the prescribed nature of the service that is being priced, the benefits of a pricing methodology for interoperable transaction fees are minimal. A pricing methodology may also require more regulatory involvement in monitoring compliance with the methodology.

Prescribing a price generally provides greater certainty for participants by setting specific and enforceable maximum prices, particularly where services are similar and generic, as is the case for performing the role of RELNO.

Our draft recommendation is that a regulated level of price should apply for interoperable transaction fees, rather than a pricing methodology.

### Draft recommendation

- 2. The level of interoperable transaction fees should be prescribed for the initial regulatory period, rather than determined by ELNOs according to a prescribed methodology.

## 3.8 There should be 2 types of interoperable transaction fees

In Issues Paper 2, we outlined our preliminary position that there should be 2 regulated interoperable transaction fees:

1. **RELNO fee** – paid by all PELNOs to the RELNO in every interoperable transaction. This fee would reflect a share of the marginal costs an ELNO incurs from fulfilling its role as the RELNO that are avoided by the PELNOs. It would be based on the marginal operating costs of performing the RELNO role only, as each ELNO has invested in its own infrastructure (which can be recovered from ELNO Service Fees).
2. **Default RELNO surcharge** - where an ELNO is not able to perform the designated RELNO role (set by the business rules) and the role is redesignated to another ELNO, we consider it would be reasonable for an additional fee to be charged which reflects the per transaction share of the costs of developing a full suite of financial settlement and lodgment infrastructure and web hosting capacity. The surcharge compensates the default RELNO for its capital investment in financial settlement and title lodgment infrastructure and ensures that ELNOs have an incentive to invest in a timely fashion in their own infrastructure to develop the capability to perform the RELNO role. The default RELNO surcharge also includes hosting costs (e.g. server, bandwidth costs). This ensures that ELNOs have a similar incentive to make sufficient investment in bandwidth to support financial settlement and title lodgment infrastructure.

We proposed that in both situations the PELNO(s) would pay these fees to the RELNO, reflecting a share of each PELNO's avoided costs in an interoperable transaction.

We consider that the structure of interoperable transaction fees we proposed in Issues Paper 2 remains appropriate. The sections below explain how we have considered stakeholder views on each fee.

### 3.8.1 RELNO fee

PEXA and the Law Society of NSW agree that an interoperable transaction fee (the RELNO fee) should apply for all interoperable transactions, reflecting the marginal costs an ELNO incurs from fulfilling its role as the RELNO that are avoided by the PELNO.<sup>20</sup>

Sympli considers that financial settlement costs are the only marginal costs that should be recovered through an interoperable transaction fee and that the fee should only apply where an ELNO is not able to perform the RELNO role and the role is redesignated (i.e. the default RELNO surcharge scenario).<sup>21</sup>

We maintain our position that the RELNO fee should apply in every interoperable transaction, reflecting the marginal costs of performing the RELNO role. Chapter 4 discusses our approach to recommending the RELNO fee and the categories of costs we consider should be recovered through it.

### 3.8.2 Default RELNO surcharge

Stakeholders had mixed views on the default RELNO surcharge and the categories of costs it should recover. The ACCC and Law Society of NSW note that all ELNOs are required to be capable of operating in an interoperable market and to invest accordingly.<sup>22</sup> The Law Society of NSW highlights that if the surcharge is too high, it may be problematic for new entrants who need to make the investment necessary to be able to perform the RELNO role in the future.<sup>23</sup>

PEXA agrees with our preliminary view that a default RELNO surcharge should apply when the initially designated RELNO is unable to perform the role, and that the surcharge should reflect the avoided cost of infrastructure or capability the defaulting RELNO lacks at the time of the transaction. However, it argues that an ELNO that has previously defaulted on RELNO responsibility should pay the default RELNO surcharge for each subsequent transaction with the feature that caused the default. PEXA argues that the surcharge should be paid whether or not the ELNO is initially designated as the RELNO, and until the ELNO has demonstrated capability in practice to execute a subsequent transaction with that feature.<sup>24</sup> In our view, an eConveyancing transaction is a discrete event where an ELNO can demonstrate its capacity to perform the designated RELNO role. Therefore, the default RELNO surcharge should only apply to the transaction in which the designated RELNO is unable to perform the role, and not subsequent transactions.

PEXA also considers that initially the surcharge should be set as 50% of the ELNO Service Fee of the RELNO for all subscriber roles in the transaction played by a defaulting RELNO. It argues that this is reasonable based on PEXA's actual costs for establishing relevant capabilities. It also sets an appropriate economic incentive for ELNOs to develop full functionality (and avoid freeriding), which is a core feature of the interoperability model.<sup>25</sup> We consider the default RELNO surcharge should reflect the per transaction share of the costs of developing a full suite of financial settlement and lodgment infrastructure and web hosting capacity. ELNO Service Fees are likely to reflect a wider range of costs than this, and so it is not appropriate to set the default RELNO surcharge based on a percentage of subscriber fees.


Sympli does not agree that a RELNO should be able to recover capital costs through interoperable transaction fees. It argues that it is not financially viable for new entrants to build their own infrastructure, as required by the MORs and to also pay for another ELNO's already built infrastructure. Legislation has passed in NSW to enforce compliance with the MORs, which further empowers the Registrar to ensure that ELNOs develop the required baseline infrastructure. Sympli also notes that ELNOs need to have connections to financial institutions to gain market share and this is a far greater incentive to develop capability than being able to avoid a default RELNO surcharge.<sup>26</sup>

However, if IPART does decide that a RELNO should be able to recover capital costs where another ELNO cannot perform the designated RELNO role, Sympli argues that this should be limited to the specific lack of infrastructure that caused the redesignation:

For example, if an interoperable refinance transaction in NSW required a RELNO switch because one party is a financial institution to which Sympli does not have a connection, the capital cost sharing should not include lodgment infrastructure for that transaction. This is because Sympli has the lodgment infrastructure in place to support this transaction and should not be required to pay for this infrastructure twice.

We maintain our position that the default RELNO surcharge should apply where an ELNO is not able to perform the designated RELNO role. This would reflect the costs of developing a full suite of financial settlement and lodgment infrastructure and web hosting capacity. We agree with stakeholder comments about setting the surcharge at a level that encourages ELNOs to invest in their own infrastructure. Chapter 5 discusses our approach to recommending the default RELNO surcharge in more detail.

## Draft recommendation

- 3.  There should be 2 regulated interoperable transaction fees:
  - a. **RELNO fee** – paid by all Participating ELNOs to the Responsible ELNO in every interoperable transaction. The RELNO fee should:
    - reflect a share of the marginal costs an ELNO incurs from fulfilling its role as the RELNO that are avoided by the PELNOs
    - be based on the marginal costs of performing the RELNO role only, as each ELNO has invested in its own infrastructure (which can be recovered from ELNO Service Fees).

- b. **Default RELNO surcharge** – paid by an ELNO when it is designated as the Responsible ELNO by business rules, but it is unable to perform this role and the role is designated to another ELNO. This fee should reflect the per transaction share of costs of developing a full suite of financial settlement and lodgment infrastructure and web hosting capacity.

### 3.9 Fees should be set for 2 years and indexed by CPI for year 2

In Issues Paper 2, we outlined our preliminary view that interoperable transaction fees should be set for a 2-year regulatory period, and they should be indexed by CPI in year 2. We explained that, in our view, setting interoperable transaction fees for 2 years is appropriate to manage the risks of change in costs or operating conditions.

PEXA, Sympli and the Law Society of NSW agree that a 2-year regulatory period is appropriate in the initial stage of interoperable eConveyancing given current market structure and the pace of development.<sup>27</sup>

PEXA noted that a longer regulatory period would increase the risk that IPART's recommendations would not be fit for purpose. It argued that the commencement date for IPART's recommendations should be the "Day 2" commencement date for interoperability, when interoperable transactions will commence commercially in NSW and Queensland.

We agree that the Day 2 commencement date is when the interoperable transaction fees will be first used by ELNOs. However, our terms of reference require us to recommend fees from 2023-24. Our recommendations will be based on cost information, assumptions and forecasts that are appropriate at a point in time, but should be reviewed and updated within 2 years to reflect market developments. Therefore, the 2-year regulatory period should apply from the relevant date in 2023-24 and not from the Day 2 commencement date.<sup>28</sup>

PEXA and the Law Society of NSW also agree that it is appropriate to index interoperable transaction fees by CPI in the second year of the 2-year period.<sup>29</sup>

Sympli agrees that indexing the RELNO Fee by CPI for the second year is appropriate, given these costs operate on a per-transaction basis and are likely to be impacted by inflation. However, it argues that it would be inappropriate to index any capital costs by CPI, because both ELNOs would already have incurred these costs.<sup>30</sup>

We agree with Sympli that indexation should not apply to capital cost inputs that the fees are intended to recover, rather it should apply to the interoperable transaction fees.

Our draft recommendation is that interoperable transaction fees should apply for a 2-year regulatory period, with fees set for the initial year and indexed by CPI for the second.

Following the initial 2-year regulatory period for interoperable transaction fees, ARNECC should review the need for ongoing fees and the level of any fees that are still required.

The level of competition between ELNOs is likely to influence the need for ongoing interoperable transaction fees. For example, if each ELNO is equally likely to be the RELNO, there may be no need for a RELNO fee as all ELNOs would incur roughly the same costs across a year's worth of transactions.

The need for an ongoing default RELNO surcharge will depend on whether ELNOs have the same capacity to perform the RELNO role. If at least one ELNO is still developing the capacity to perform the RELNO role, for example, through connections to financial institutions, a default RELNO surcharge would be required. However, once all ELNOs can perform the RELNO role for all transactions, the surcharge would not be needed and therefore should be removed.

### Draft recommendations

4. Interoperable transaction fees should apply for a 2-year regulatory period, with charges set for the initial year and indexed by CPI for the second.
5. Following the initial 2-year regulatory period (2023-24 and 2024-25), interoperable transaction fees should be reviewed.

## 3.10 ELNOs should report data on interoperable transactions to ARNECC

The MORs currently outline a number of reporting requirements and data and information obligations for ELNOs.<sup>31</sup> As discussed above, interoperability is not yet in place so there is no data available to indicate what costs RELNOs and PELNOs incur in an interoperable transaction. It is also unclear how many transactions will be interoperable and how frequently each ELNO will perform the RELNO role. To support future reviews of interoperable transaction fees, ARNECC should require ELNOs to collect and report on:

- the number of interoperable transactions an ELNO has participated in and whether they were the RELNO or the PELNO in that transaction
- any interoperable transaction fees paid or received
- the frequency of any ELNOs not being able to perform the designated RELNO role and reasons why
- the number of interoperable transactions that require support activities or issue resolution from the RELNO on behalf of all PELNOs in a transaction.

When developing these additional reporting requirements, ARNECC should consult with the industry to develop a standardised information template so that each ELNO takes a consistent approach to reporting. It should also consult on the appropriate frequency of reporting.



## Recommendations

- 6. To enable a review of interoperable transaction fees following the initial 2-year regulatory period, ARNECC should consult with industry stakeholders to develop reporting requirements for ELNOs on information relating to interoperable transactions.

### 3.11 Arrangements for payment of interoperable transaction fees should be negotiated by ELNOs through Interoperability Agreements

In Issues Paper 2, we noted that, on a practical level, ELNOs will need to establish arrangements for payment of interoperable transaction fees to each other, including for matters such as frequency and method of payment. We outlined our preliminary view that ELNOs should negotiate the payment arrangements for interoperable transaction fees between themselves as part of the Interoperability Agreement.

Consultation Draft Version 7.1 of the MORs provides that an Interoperability Agreement must include terms that deal with the Interoperability Agreement Matters, as set out in Schedule 8 of that instrument.<sup>32</sup> We consider it would be appropriate for the Interoperability Agreement Matters to include the practical arrangements for payment of interoperable transaction fees.

PEXA, Sympli and the Law Society of NSW agree that the practical arrangements for payment of interoperable transaction fees should be negotiated by ELNOs through Interoperability Agreements.<sup>33</sup>

#### Draft recommendation

- 7. ELNOs should negotiate the practical arrangements for payment of interoperable transaction fees through Interoperability Agreements, including the frequency and method of payment.

### 3.12 The MORs should be amended to implement our recommendations

The terms of reference require us to investigate and make recommendations on any amendments to the MORs that are required to support our proposed interoperability pricing arrangements.

In Issues Paper 2, we identified that amendments to the MORs would be needed to implement:

- some of our draft decisions:
  - An ELNO's costs of establishing and maintaining interoperability should be recovered from an ELNO's subscribers through ELNO Service Fees.
  - Subscribers who participate in an interoperable transaction should not pay more than subscribers in a single ELNO transaction,
- matters that we would make recommendations on in Stage 2 of the review:
  - when interoperable transaction fees should be charged
  - the methodology for determining interoperable transaction fees or the level of prices
  - arrangements for adjusting or reviewing interoperable transaction fees.

We identified that each of these matters would be implemented through amendments to the MORs. Compliance with and enforcement of these requirements would therefore be subject to the regime that is being established by ARNECC.

PEXA, Sympli and the Law Society of NSW agree that we have identified relevant matters that should be implemented through amendments to the MORs.<sup>34</sup>

PEXA notes that new definitions will be required to facilitate IPART's recommendations, including for the trigger events that determine when the default RELNO surcharge applies.<sup>35</sup>

The Law Society of NSW suggests that Schedule 8 of the MORs (about matters included in Interoperability Agreements between ELNOs) should also be amended to refer to the arrangements to be made between ELNOs for payment of Lodgment Support Service fees.<sup>36</sup> This is consistent with our suggested approach in Issues Paper 2 for arrangements for payment of interoperable transaction fees between ELNOs. We agree that arrangements for payment of Lodgment Support Service fees should be included in the list of matters for which amendments to the MORs will be required.

PEXA and the ACCC commented on the need for a compliance and enforcement regime to support the regulatory regime. The ACCC argues:

It is critical that a meaningful enforcement regime underpins the market. An enforcement regime that provides clear compliance incentives is critical to the development and continued operation of a competitive eConveyancing market.<sup>37</sup>

PEXA calls for specific provisions to address compliance with our recommended pricing approach for interoperable transaction fees. For example, it argues:

The MORs should include a process for independent verification of assertions and an enforcement regime for inaccurate claims of RELNO capability... IPART should recommend that the MORs are updated to ensure there is an avenue for ARNECC to receive complaints about, and appropriate powers to investigate and apply appropriate regulatory penalties for, inaccurate claims of RELNO capability. In terms of enforcement, compensation should be payable to the aggrieved RELNO that would receive lower ELNO Service Fees as a result of the inaccurate claim of capability by the ELNO.<sup>38</sup>

ARNECC is developing a compliance and enforcement regime to support the implementation of interoperability. We agree with the ACCC that this compliance and enforcement regime will be critical to the integrity of a competitive eConveyancing market. We consider that the compliance and enforcement regime should support the pricing components of interoperability that are the subject of this review. Our proposed default RELNO surcharge should incentivise ELNOs to invest in their infrastructure and reduce inaccurate claims of RELNO capability. ARNECC should consider an enforcement regime for the default RELNO surcharge, in its development of a compliance and enforcement regime for interoperability.

Our draft recommendation about matters that should be addressed through amendments to the MORs reflects the draft recommendations we have made to date.

### Draft recommendation

8. Amendments to the Model Operating Requirements (MORs) will be required to implement our recommendations on interoperable transaction fees, including to specify:
  - a. that an ELNO's costs of establishing and maintaining interoperability should be recovered from all subscribers through ELNO Service Fees
  - b. that subscribers who participate in an interoperable transaction should not pay more than subscribers in a single ELNO transaction
  - c. when interoperable transaction fees should be charged
  - d. the level of interoperable transaction fees
  - e. arrangements for adjusting or reviewing interoperable transaction fees
  - f. that Interoperability Agreement Matters, as outlined in Schedule 8 of Consultation Draft Version 7.1 of the MORs, should include the practical arrangements for payment of interoperable transaction fees and apportionment of Lodgment Support Service fees between ELNOs
  - g. that ELNOs be required to report information to ARNECC on interoperable transactions.

## 4 RELNO fee

As discussed in Chapter 3, we recommend that there should be 2 types of interoperable transaction fees: the RELNO fee and the default RELNO surcharge.

The RELNO fee would be paid by all PELNOs to the RELNO in every interoperable transaction. This fee would reflect a share of the marginal costs an ELNO incurs from fulfilling its role as the RELNO that are avoided by the PELNOs. It would be based on the marginal costs of performing the RELNO role only.

Because interoperability is not yet in place, there is limited information on what costs a RELNO is likely to incur in an interoperable transaction. Cost information we received from PEXA and Sympli reflected costs incurred in the current non-interoperable environment. We used these costs to estimate the costs of performing the RELNO role, and we engaged a cost consultant (AECOM) to provide expert advice on our assumptions and estimates of those costs.

In the absence of more comprehensive information about likely actual interoperable transaction costs, particularly around financial settlement costs, we are open to more information being provided in response to this Draft Report that would allow us to confirm or revise those estimates.

Our draft recommended maximum RELNO fee is \$0.75 for 2023-24, to be paid by PELNOs for each subscriber they represent in an interoperable transaction. As discussed in Chapter 3, this fee would apply for a 2-year regulatory period and be indexed by CPI for the second year of the regulatory period.

This chapter discusses our approach to recommending the RELNO fee and the costs that we consider should be recovered through it.

### 4.1 The draft maximum RELNO fee is \$0.75, to be paid by PELNOs for each subscriber they represent in a transaction

We calculated that the draft maximum RELNO fee is \$0.75 for 2023-24, to be paid by PELNOs for each subscriber they represent in an interoperable transaction. For example, in a typical refinance transaction, where the RELNO and the PELNO each represent 1 subscriber, the RELNO would receive \$0.75 from the PELNO. In a typical property purchase transaction where the RELNO represents 1 subscriber and the PELNO(s) represents 3 subscribers<sup>f</sup>, the RELNO would receive \$2.25.

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<sup>f</sup> Subscribers can include financial institutions, government agencies, and/or solicitors/conveyancers that represent the vendor or purchaser.

The RELNO fee reflects the marginal costs of performing the RELNO role, which we consider are driven by the RELNO performing issue resolution and support activities on behalf of PELNOs in a transaction. All ELNOs (regardless of whether they are the RELNO or a PELNO in a transaction) will be responsible for providing support to and communicating with their own subscribers. However, when issues arise, PELNOs will refer these issues to the RELNO and the RELNO will take on additional responsibilities for resolving issues and communicating solutions to the parties in a transaction. PELNOs will then provide instructions to their own subscribers.

Stakeholders raised other costs that they consider should be included in the RELNO fee (including insurance costs, hosting costs and financial settlement costs). However, in our view these costs should not be attributed to the RELNO role, or we have been unable to estimate a level of costs to be attributed to the RELNO role, and we have therefore excluded them from the RELNO fee.

Our cost estimates for the RELNO fee are based on cost information from our 2019 review of the eConveyancing market in NSW, updated cost information provided by the ELNOs, and expert advice from AECOM. The sections below explain our approach to recommending the RELNO fee.

## Draft recommendation



9. The maximum RELNO fee is \$0.75 for 2023-24 (ex-GST), to be paid to the RELNO by each PELNO per-subscriber that they represent in an interoperable transaction.

## 4.2 RELNO fee should reflect costs incurred by RELNO and avoided by PELNOs

As discussed in Issues Paper 1, a RELNO is likely to have more responsibilities and incur more costs than PELNOs in an interoperable transaction. PEXA submitted that the RELNO sets up the workspace, liaises with stakeholders, and orchestrates and executes lodgment and financial settlement.<sup>39</sup> It also manages post lodgment and settlement communications. Table 4.1 outlines our understanding of the actions RELNOs and PELNOs will perform in an interoperable transaction, noting that these are under discussion and subject to change. The interoperability APIs are used to provide two-way updates between ELNOs when subscriber and system actions are performed. We understand that most of the interactions between ELNOs will be automated by each ELNO using the interoperability data standard (NECIDS). However, there are some actions that will require manual intervention at least in the short-term.

Throughout a transaction ELNOs will be either the RELNO or a PELNO, according to a business rule hierarchy. However, it is expected that the RELNO and PELNO roles may change multiple times in a transaction, as documents and parties are added to the workspace.

The sections below explain how we consider these actions may create costs for ELNOs.

Table 4.1 Actions performed by ELNOs in an interoperable transaction

Actions performed by RELNO	Actions performed by PELNO
<ul style="list-style-type: none"> <li>• Manage exchange of transaction Objects such that all ELNOs receive changes.</li> <li>• Manage subscriber interactions for their subscribers.</li> <li>• Ensure the NECDS and SDV schema versions for a transaction are acceptable to the authorities in the jurisdiction and other participating ELNOs.</li> <li>• Perform all calls to Land Registries and Revenue Offices (authority calls), either as requested by a participant ELNO, and/or as required by its own business rules.</li> <li>• Distribute any responses from authorities in relation to authority calls.</li> <li>• Determine the appropriate NECDS Schema version for the lodgement case.</li> <li>• Prepare document XML for those documents it is responsible for using the relevant NECDS schema.</li> <li>• Prepare document renderings for their subscribers using the appropriate XSLT stylesheet.</li> <li>• Supporting digital signing of documents by their subscribers.</li> <li>• Ensure duty is accounted for and create the Duty line item in the Financial Settlement Schedule.</li> <li>• Perform any pre-locking integrity checks.</li> <li>• Lock the workspace.</li> <li>• Perform financial settlement.</li> <li>• Lodge documents with Land Registry.</li> <li>• Manage post-settlement communications with participant ELNOs, Banks and Land Registries.</li> <li>• Collect and remit Lodgement Fees to the Land Registry where the Responsible Subscriber is using their ELN.</li> <li>• Pay LSS fees for those LSS calls that it makes (apportionment of these fees will be as directed by the inter-ELNO agreement).</li> <li>• Pay any fees associated with financial settlement (apportionment to be resolved following the outcome of the IPART Review into Interoperability Fees).</li> <li>• Ensure they (continue to) have the capability to conduct the conveyancing transaction and request another ELNO (determined by role hierarchy) to take over as Responsible ELNO if they cease to have the capability.</li> <li>• Manage "lodgement case level" errors.</li> </ul>	<ul style="list-style-type: none"> <li>• Respond in a timely manner to all requests and/or notices sent by the Responsible ELNO.</li> <li>• Manage subscriber interactions for their subscribers.</li> <li>• Prepare document XML for those documents it is responsible for using the relevant NECDS schema.</li> <li>• Prepare document renderings for their subscribers using the appropriate XSLT stylesheet.</li> <li>• Supporting digital signing of documents by their subscribers.</li> <li>• Collect and remit Lodgement Fees to the Land Registry where the Responsible Subscriber is using their ELN.</li> <li>• Pay LSS fees for those LSS calls that it makes (apportionment of these fees will be as directed by the inter-ELNO agreement).</li> <li>• If they are now the ELNO for the responsible subscriber and have the capability to be the lodging ELNO and all other rules regarding changing the responsible ELNO have been met, initiate a request to become the responsible ELNO.</li> <li>• Allow owner/creator of a document to manage "document level" errors including considering whether to unsign.</li> </ul>

Note: These actions are under discussion and are subject to change.  
Source: Email received from Interoperability Operational Committee.

### 4.3 RELNO fee should reflect the costs incurred by the RELNO that completes lodgment and financial settlement

As discussed above, the RELNO and PELNO roles may change multiple times in a transaction, as documents and parties are added to the workspace. PEXA submitted that "for reasons of practicality and on the basis that the RELNO that executes lodgment and/or settlement will incur the vast majority of costs (and risks) that are specific to the RELNO role, the RELNO fee should be payable to the designated RELNO at the time of lodgment/settlement."<sup>40</sup>

We agree that the RELNO fee should be based on the costs incurred by the RELNO that completes lodgment and settlement on behalf of PELNOs in the transaction (the lodging RELNO). It is possible that ELNOs who are designated the RELNO role earlier in the transaction may incur some costs from the RELNO role. However, estimating costs for RELNOs earlier in the transaction is likely to be complex because:

- There are fewer tasks unique to the RELNO in earlier stages.
- The RELNO role may switch multiple times, meaning that multiple ELNOs may have been the RELNO at different stages of the transaction, and at least some of the incremental costs of being the RELNO net out.

As a result, we consider that the RELNO fee should be based on the typical activities and costs incurred by the lodging RELNO only. This means that any ELNO that was designated the RELNO earlier in the transaction would not be able to recover its costs through the RELNO fee. Future reviews of interoperable transaction fees could revisit whether the costs incurred by ELNOs that are designated the RELNO role earlier in the transaction are material, and whether there should be additional fees to recover these costs.

### Draft recommendation

- 10. The RELNO fee should be payable to, and reflect the costs incurred by the designated RELNO that completes lodgment and financial settlement in a transaction.

## 4.4 PEXA and Sympli's views varied widely on what costs a RELNO is likely to incur

In submissions to Issues Paper 2, only PEXA and Sympli provided detailed comments on the costs a RELNO is likely to incur. However, PEXA and Sympli's views on costs varied substantially.

PEXA raised several cost items that a RELNO may incur in performing the RELNO role, including:

- insurance costs
- financial settlement costs charged by financial institutions
- hosting costs (e.g. server and bandwidth load)<sup>41</sup>
- staff costs incurred from the RELNO resolving errors and issues on behalf of all ELNOs in a transaction.<sup>42</sup>

However, Sympli's view was that many of these costs (except for financial settlement costs) are likely to be incurred by PELNOs as well, and should therefore be recovered from an ELNOs own subscribers, rather than through a RELNO fee.<sup>43</sup> Sympli considers that there should not be a RELNO fee. In its view, financial settlement costs should only be paid when an ELNO is designated the RELNO role but is not able to perform it and the RELNO role redesignated to another ELNO (the default RELNO surcharge scenario).<sup>44</sup> The sections below discuss each cost item and IPART's draft decisions on whether these costs should be included in the RELNO fee.

#### 4.4.1 Insurance costs should not be included in the RELNO fee at this time

Under the MORs, all ELNOs are currently required to have specified minimum levels of insurance cover, irrespective of interoperability.<sup>45</sup> These include professional indemnity insurance, fidelity insurance, public and product liability insurance and asset insurance. Interoperability insurance is another product that has been raised by stakeholders throughout our review, but it is yet to be developed.

PEXA submitted that the RELNO fee should include the cost of insurance.<sup>46</sup> It argued that the cost of insurance premiums is likely to take into account the number of transactions in which an ELNO plays the RELNO role. PEXA submitted that, while all ELNOs are likely to incur a cost for insurance, an ELNO is likely to pay a higher premium per transaction if the proportion of transactions in which it acts as the RELNO is higher than the proportion for which it acts as the PELNO role (because the activities it will undertake will be higher risk).<sup>47</sup> Therefore, in its view, the additional insurance cost per transaction attributable to assuming the RELNO role should be recovered through the RELNO fee and not through ELNO service fees.<sup>48</sup> PEXA submitted that IPART should benchmark insurance costs based on PEXA's historic insurance premiums incurred for bearing responsibilities that will in future be carried out by the RELNO.<sup>49</sup>

Sympli submitted that insurance costs will be incurred by an ELNO with respect to their own subscriber, regardless of whether or not they are acting as a Responsible ELNO for a transaction. Therefore, it considers this cost should not be included in the calculation of any interoperability fees.<sup>50</sup>

In our view, insurance costs should not be included in the RELNO fee at this time and should instead be recovered through ELNO service fees, since all ELNOs are currently subject to the same insurance requirements. While it may be the case that insurance premiums could increase in the future as a result of an ELNO taking on the RELNO role more frequently, this is not certain. If there is evidence in the future that ELNO insurance premiums have been affected by the frequency of an ELNO performing the RELNO role, future reviews of interoperable transaction fees could reconsider this issue.

#### 4.4.2 Financial settlement costs are likely to vary depending on which ELNO performs the RELNO role

The RELNO may incur costs from performing financial settlement in a transaction on behalf of all ELNOs. However, financial settlement costs incurred by ELNOs are likely to vary, since PEXA and Sympli have adopted different approaches.

Completing financial settlement requires an ELNO to incur capital costs from building connections to the RBA and financial institutions.<sup>9</sup> These connections allow the ELNO to send instructions to the RBA to reserve funds and then distribute them to the relevant financial institutions in the transaction once the title changes have been lodged with the Land Registry.

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<sup>9</sup> In our 2019 review of the eConveyancing market in NSW, AECOM assumed that an ELNO would need to interface with the RBA, and that up to 12 financial institutions would also be fully integrated into the platform. See AECOM, [Estimating the costs of electronic conveyancing services in NSW](#), November 2019, p 8.



To complete financial settlement:

- The RELNO sends a "Reservation Request" to RBA's financial settlement system (RITS) with details of the property transaction (the batch instructions). The RBA reserves funds in the relevant financial institution's account to guarantee availability for settlement.
- Once funds are reserved, the title changes are lodged with the land registry.
- Once lodgment is successful, reserved funds are debited and credited across the financial institutions' accounts at the RBA. Financial institutions then credit or debit their client's accounts.

The current settlement model used in the eConveyancing market involves an ELNO being a 'batch administrator' in RITS to submit batch instructions. In addition to the initial capital cost of building connections to the RBA, batch administrators pay a fixed fee of \$13,000 per year (exclusive of GST) to the RBA.<sup>51</sup> Batch administrators do not pay any additional transaction fees to the RBA.

However, Sympli outsources its financial settlement role by connecting to RITS via a separate batch administrator, ASX Financial Settlements Pty Ltd.<sup>52</sup> Instead of incurring capital costs of connecting to the RBA and paying the annual batch administrator fee, it incurs financial settlement costs on a per-transaction basis, charged by its third-party provider.<sup>53</sup>

While PEXA does not incur any transaction fees from the RBA, it submitted that the RELNO will incur financial settlement costs charged by financial institutions for completing each settlement.<sup>54</sup> PEXA provided confidential information to IPART on the level of these costs and the situations in which it incurs them.

It is unclear if Sympli incurs similar fees from financial institutions. Since ASX Financial Settlements Pty Ltd completes financial settlement on its behalf, these costs may be included in its per-transaction fee.

#### 4.4.3 We have not included financial settlement costs in the draft maximum RELNO fee

The capital cost of building connections to the RBA and financial institutions and the annual batch administrator fee is a cost that ELNOs will incur regardless of interoperability or the RELNO role. Therefore, we do not consider it a cost that should be recovered through the RELNO fee.

AECOM concluded that the financial settlement costs PEXA incurs from financial institutions are likely to be a 'business as usual' cost that all ELNOs are likely to incur, regardless of the RELNO role. AECOM found that it is common for financial institutions to charge a fixed fee per user (as opposed to a per-transaction fee) for providing payment or settlement services and therefore do not consider it a marginal cost of performing the RELNO role. In our view, there may be merit in apportioning these fixed costs on a per-transaction basis for inclusion in the RELNO fee. However, we do not have substantive data on these costs without revealing PEXA's confidential information. Therefore, our draft decision is not to include these costs in the RELNO fee at this stage.

We welcome stakeholder views on whether these costs should be included in the RELNO fee and different approaches for estimating these costs.

#### 4.4.4 Hosting costs should not be included in the RELNO fee

In its submission to Issues Paper 1, PEXA raised hosting costs (e.g. server and bandwidth load) for consideration as part of an interoperable transaction fee.<sup>55</sup> In our 2019 review of the eConveyancing market in NSW, we estimated that a benchmark efficient ELNO would incur around \$10,000 per year in webhosting costs in (\$2018-19).<sup>56</sup> Since all ELNOs will be required to incur hosting costs regardless of interoperability, we do not consider this to be a marginal cost associated with the RELNO role. Based on AECOM's advice, we consider that hosting costs should instead be included in the calculation of the default RELNO surcharge, which is discussed further in Chapter 5.

#### 4.4.5 Issue resolution and support costs should be included in the RELNO fee

In an interoperable transaction, all ELNOs will be required to respond to queries and communicate with their own subscribers. However, when issues arise, the PELNO will refer them to the RELNO, who will then be responsible for resolving the issue and communicating the solution to the relevant parties. PELNOs will then provide instructions to their own subscribers. In our view, the costs of the RELNO undertaking these activities should be included in the RELNO fee.

PEXA's submission notes the following instances where an issue will likely be referred to the RELNO:

- where a transaction is queried or not processed by a subscriber, land registry, revenue office, or financial institution
- incident management, management of lodgment case errors and document errors
- post-settlement issues (such as mistaken payments).<sup>57</sup>

In these situations, the RELNO will be responsible for:

- determining the cause of the issue and working with the relevant PELNO to resolve it
- acting as the conduit between the PELNO and third parties (such as Land registries, State Revenue Offices, and financial institutions)<sup>58</sup>
- communicating the solution to the PELNO (which then passes those instructions onto its subscriber).<sup>59</sup>

In Sympli's view, all ELNOs will continue to conduct various support activities with their subscribers regardless of their role in the transaction, and these costs will be borne across both Responsible and Participating ELNOs in a transaction.<sup>60</sup>

We sought and received confirmation from the IOC that the RELNO will be responsible for resolving issues and communicating the solution to PELNOs, who will then provide instructions to their subscribers. Based on AECOM's advice, we concluded that performing these activities is likely to result in the RELNO incurring additional costs. Therefore, our draft decision is that the marginal cost of performing these activities should be included in the RELNO fee. Our approach to calculating these costs is discussed below.

## We recommend the RELNO fee be paid by all PELNOs on a per subscriber basis

We have considered whether to charge the RELNO fee per subscriber, per workspace or per dealing (described in Box 4.1).

PEXA submitted that "rather than a fixed fee payable per workspace, the RELNO fee should be charged for each subscriber supported by an ELNO other than the RELNO (...) as the costs incurred by the RELNO increase as more subscribers are added to a workspace. Each subscriber creates independent and additional potential for errors, risk and exceptions that the RELNO must process. For example, independent subscribers are just as likely to call for support even if another in the workspace has already received support. Additionally, the RELNO accepts a greater risk as they are answerable to more subscribers should anything go wrong and each may make its own claim".<sup>61</sup>

We agree with PEXA's comments that the RELNO fee should be paid by each PELNO according to the number of subscribers they represent in a transaction. Since the RELNO fee is comprised of issue resolution and support costs that will typically relate to subscriber queries and errors, we consider that charging the RELNO fee on a per-subscriber basis is likely to be closely aligned to the cost drivers in an interoperable transaction.

### Box 4.1 Options for how to recover the RELNO fee

#### Per workspace

A workspace is a shared virtual area where subscribers prepare settlement documents for a property exchange transaction to effect lodgment and or settlement. A new workspace is created for each new property exchange and multiple titles can be added to the 1 workspace. Usually there is 1 workspace per transaction, but a workspace may be abandoned if the property transaction does not go ahead. Setting the RELNO fee on a per workspace basis, would likely mean that a RELNO would collect the same amount of money in every transaction, no matter how complex (or simple) the transaction is.

#### Per dealing

A dealing is a legal instrument which records changes in the Torrens Title register. A typical workspace for property purchase would involve 3 dealings – a discharge of mortgage, a transfer and a mortgage. Setting the RELNO fee on a per dealing basis would allow the RELNO to collect more money for transactions with more dealings. However, not all dealings can be attributed to a single party (e.g. a transfer is prepared by both the vendor's representative and the purchaser's representative). This would require deciding an allocation method for dealings where multiple parties are involved in preparing the dealing.

## Box 4.1 Options for how to recover the RELNO fee

### Per subscriber

A subscriber is a person or business representing the parties to a transaction (e.g. financial institutions and lawyers/conveyancers). Setting the RELNO fee on a per subscriber basis allows the RELNO to collect more money for transactions with more subscribers.

Source: *Real Property Act 1900*, s 3(1)(a) (definition of 'dealing'); NSW Land Registry Services, [What is a subscriber?](#), accessed 17 February 2023; PEXA, [Create a Workspace | Help Centre](#), accessed 17 February 2023.

## Cost information from our 2019 review informed our estimate of issue resolution and support costs for the RELNO fee

Because interoperability is not yet in place, there is limited information on what costs a RELNO is likely to incur in an interoperable transaction. Current costs incurred by PEXA and Sympli reflect the current non-interoperable environment.

We consider that issue resolution and support activities have some similarities to costs that were raised by Revenue NSW in IPART's 2019 review of the eConveyancing market in NSW. Therefore, we have used this cost information to estimate the marginal costs that a RELNO is likely to incur from issue resolution and support activities in an interoperable transaction. AECOM concluded that Revenue NSW's support costs would be a reasonable benchmark for estimating these costs.

In our 2019 review, we found that as a result of the transition from paper conveyancing to eConveyancing, Revenue NSW was undertaking additional functions to enable ELNOs to verify that duties payment in an eConveyancing transaction (see Box 4.1). This differed from how duties verification worked in a paper conveyancing transaction. The new duties verification service resulted in Revenue NSW incurring a range of costs. One of which was that ELNO subscribers would frequently require support from Revenue NSW to resolve data matching errors and subscribers would contact Revenue NSW by phone or by email to resolve the error.<sup>62</sup>

Revenue NSW was incurring \$608,000 (in \$2018-19) in annual staffing costs to provide subscriber support and resolve errors, which our cost consultant at the time (AECOM) concluded were efficient. These costs consisted of employing 5 full time staff of various clerk grades, and one technical expert, who were responding to around 30,000 support inquiries per year. At the time, around 250,000 transactions per year were dutiable and the error rate was around 12%.<sup>63</sup> IPART recommended it was appropriate for Revenue NSW to charge ELNOs a fee for performing this duties verification service because it was outside Revenue NSW's core business of collecting taxes.<sup>64</sup>

We consider that these activities (providing subscriber support and helping to resolve errors) resemble those activities that are likely to drive costs for the RELNO role. For example, PEXA's submission noted that "under [its] current system, the majority of support queries received relate to the management of documents and errors relating to verification."<sup>65</sup> Therefore we have used Revenue NSW's cost information (inflated to \$2021-22) to estimate the marginal costs that are likely to be incurred for performing the RELNO role.

### Box 4.2 Revenue NSW's role in eConveyancing

Revenue NSW facilitates the payment of transfer duty that results from a conveyancing transaction. To support this process, Revenue NSW has implemented an Electronic Duties Return (EDR) and eDuties portal, both of which are integrated with eConveyancing.

When an eConveyancing workspace is set-up in an ELNO by a subscriber, a Land and Property Information (LPI) document is created. If that LPI is liable to duty, the State Revenue Office is required to verify the details it contains, and confirm the amount of duty payable, all of which is completed through the eConveyancing platform. This requires that the ELNO platform interacts with the Revenue NSW system. Incomplete or inaccurate data results in a failed verification check from Revenue NSW. The issue is identified on the eConveyancing platform and must be resolved before the transaction can proceed.

Source: AECOM, [Estimating costs of electronic conveyancing services in NSW](#), November 2023, p 46.

To convert Revenue NSW's costs to an equivalent cost for the RELNO fee, we:

- Used the Wage Price Index (WPI) to inflate \$608,000 in \$2018-19 to \$2021-22. The WPI reflects changes in labour costs over the relevant period. This results in an estimate of around \$646,000 in annual staff costs.
- Calculated a cost per transaction of \$2.59 – we divided \$646,000 by the total number of dutiable transactions in NSW at the time (250,000). This was the total number of dutiable transactions in NSW of which around 12% were incurring errors. Dutiable transactions typically represent transfers of property ownership (i.e. property purchases).
- Calculated a cost per subscriber of \$0.75 – we divided \$2.59 by the average number of subscribers in a dutiable transaction (3.7).<sup>h</sup>

Box 4.3 shows an illustrative example of the amount of money that a RELNO may receive for performing the RELNO role.

<sup>h</sup> This is based on a weighted average of number of subscribers involved in a property transfer, assuming 70% involve 4 subscribers, 29% involve 3 subscribers and 1% involve 2 subscribers. Based on information provided by Sympli.

### Box 4.3 Illustrative example of amount of money generated by RELNO fee

We estimate that the RELNO fee would generate around \$462,000 per year for an ELNO that performs the RELNO role in 60% of refinance and transfer transactions in NSW and QLD (the jurisdictions where phase 1 of interoperability will be rolled out).<sup>a</sup> This assumes that 70% of all property transfers and refinances in NSW and QLD are interoperable.

a. ARNECC has indicated that phase 1 of interoperability will be rolled out in NSW and QLD, with other jurisdictions to follow in later phases. See ARNECC, [Ministerial Statement](#), 9 December 2022.

Source: IPART analysis

#### 4.4.6 We recommend there be a single RELNO fee at this stage

It is likely that certain types of property transactions will cause some variation in costs incurred by the RELNO. For example, more complex transactions may lead to the RELNO incurring more issue resolution and support costs. Because the RELNO fee we are recommending applies to PELNOs on a per subscriber basis, it allows the RELNO to receive more money for transactions that involve more subscribers. We consider this is a reasonable proxy for transaction complexity. However, we are not recommending that the RELNO fee varies according to any other cost driver.

PEXA submitted that the RELNO fee should vary according to each jurisdiction, subscriber type (i.e. financial institutions and practitioners) and transaction type. PEXA argues the RELNO fee should be specific to:

- Each jurisdiction, as requirements specific to a jurisdiction can lead to higher support costs. For example, the introduction of new functionality for land registry instruments in a particular jurisdiction may result in jurisdictional-specific based cost implications for a RELNO. The RELNO fee for a jurisdiction should reflect the expected volume of issues that will be raised with the RELNO. These specific fees should be developed over time, ahead of the phased implementation of interoperability in each jurisdiction.
- The subscriber role, because purchasers and vendors (and their representative practitioners) tend to generate more queries and issues than financial institutions. Individual financial institutions typically process far more property transactions than other subscriber roles, and consequently tend to have more specialised and expert operators which means fewer queries and issues.
- The transaction type - for example, different RELNO fees should be set for transfers and refinances because transfers tend to generate more queries and issues than refinances.<sup>66</sup>
- Multi-title transactions, which PEXA argues are inherently more complex and therefore a higher RELNO fee should apply.<sup>67</sup>

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In our view, reflecting these cost variations in the RELNO fee is likely to be complex because:

- Interoperability is not yet in place, so there is limited information to indicate to what extent different transaction types will lead to higher costs for the RELNO. While ELNOs may have this information in the current, non-interoperable environment, it may not be reflective of cost drivers in an interoperable environment.
- Setting the RELNO fee according to transaction type requires us to forecast the volume of each transaction type and the proportion of these that will be interoperable. We would then need to apportion costs across these forecasts. We do not have accurate information to indicate what volume of transactions will be interoperable by transaction type, so the risk of forecasting error is high.

For these reasons, our draft recommendation is that there should be a single RELNO fee. When there is more accurate information about cost drivers for interoperable transactions and the volume of interoperable transactions by transaction type, this issue could be revisited in future reviews.

## 5 Default RELNO surcharge

In addition to the RELNO fee that is payable by PELNOs to the RELNO in every interoperable transaction as discussed in Chapter 4, we are recommending there be a default RELNO surcharge that applies in limited circumstances.

The default RELNO surcharge would be paid by an ELNO when it is designated as the Responsible ELNO by business rules but is unable to perform this role and the role is re-designated to another ELNO. This fee reflects the per transaction share of the costs of developing a full suite of financial settlement and lodgment infrastructure and web hosting capacity.

Our cost estimates are based on the direct development costs of lodgment and financial settlement infrastructure and webhosting costs. However, there may be other costs associated with negotiating the agreements necessary to establish connections to organisations such as financial institutions, land registries and revenue offices. We are open to more information about potential costs of negotiating agreements for establishing connections being provided in response to this Draft Report that would allow us to confirm or revise those estimates.

The draft maximum default RELNO surcharge is \$2.90 per transaction (ex-GST) for 2023-24.

This chapter explains our approach to developing that draft recommendation, including our response to stakeholder submissions to Issues Paper 2 regarding the default RELNO surcharge.

### 5.1 The draft maximum default RELNO surcharge is \$2.90 per transaction

We recommend that the maximum default RELNO surcharge be \$2.90 per transaction (ex-GST) for 2023-24. For 2024-25, we recommend indexing the maximum default RELNO surcharge for 2023-24 by CPI, in line with our draft recommendation 4 in Chapter 3.

Currently, 2 ELNOs – PEXA and Sympli – are approved to operate in most jurisdictions. However, if a transaction involved more than 2 ELNOs and the RELNO role had to be re-designated to different ELNOs (by the business rule hierarchy) multiple times throughout the transaction, we recommend those ELNOs who were designated as the RELNO but were not able to perform the role should share the default RELNO surcharge. The ultimate RELNO would recover the default RELNO surcharge only once per transaction.

#### Draft recommendation



11. The maximum default RELNO surcharge is \$2.90 per transaction (ex-GST) for 2023-24.



## 5.2 Stakeholder feedback on whether and when there should be a default RELNO surcharge

Issues Paper 2 proposed that in addition to the RELNO fee there should be a default RELNO surcharge. We considered where an ELNO is not able to perform the designated (by business rules) RELNO role and the role is redesignated to another ELNO, it would be reasonable for an additional fee to be charged which reflects the avoided cost of infrastructure or capability the defaulting RELNO lacks at the time of the transaction.

Stakeholders largely supported our view. PEXA agreed that a default RELNO surcharge should apply when the initially designated RELNO is unable to perform the role. It argued that an ELNO that has previously defaulted on RELNO responsibility should pay the default RELNO surcharge for each subsequent transaction with the feature that caused the default (whether or not the ELNO is initially designated as the RELNO) until it has demonstrated capability in practice to execute a subsequent transaction with that feature.<sup>68</sup>

PEXA submitted that it is not currently possible to identify all instances when the default RELNO surcharge should apply, since interoperability is still being developed. PEXA noted that some possible capability-based default trigger events might include:

- lacking technical integration with a specific revenue office
- lacking integration to a specific financial institution
- lacking the capability to process certain lodgement types (such as some registry instruments, or instruments requiring an attachment).<sup>69</sup>

In principle, PEXA agreed that the surcharge should reflect the avoided cost of infrastructure or capability the defaulting RELNO lacks at the time of the transaction. However, it considered that initially the surcharge should be set as 50% of the ELNO Service Fee of the RELNO for all subscriber roles in the transaction played by a defaulting RELNO. It argued that this is reasonable based on PEXA's actual costs for establishing relevant capabilities. It also sets an appropriate economic incentive for ELNOs to develop full functionality (and avoid freeriding), which is a core feature of the interoperability model.<sup>70</sup>

PEXA viewed the default RELNO surcharge as being akin to an access fee.<sup>71</sup>

Sympli also agreed that a default RELNO surcharge should apply when an ELNO cannot fulfil its role as designated RELNO. However, Sympli submitted that the default RELNO surcharge should only recover operating costs.<sup>72</sup>

The ACCC noted that all ELNOs are required to be capable of operating in an interoperable market and to invest accordingly.<sup>73</sup> The Law Society of NSW agreed that a default RELNO surcharge should apply when an ELNO cannot fulfil its designated RELNO role. In addition, the Law Society of NSW highlighted that if the surcharge is too high, it may be problematic for new entrants who need to make the investment necessary to be able to perform the RELNO role in the future.<sup>74</sup>

We do not think it is reasonable for a defaulting ELNO to pay a surcharge for each subsequent transaction with the feature that caused the default (regardless of whether the ELNO is initially designated as the RELNO) until it has demonstrated capability in practice to execute a subsequent transaction with that feature. We consider the surcharge should recover the efficient costs avoided by the defaulting ELNO for that transaction only.

In addition, we do not agree that the default RELNO surcharge should be set as 50% of the ELNO Service Fee. We consider the surcharge should reflect the efficient costs of developing lodgment and financial infrastructure that the initially designated RELNO lacked at the time of the transaction. If we set the surcharge too high, this would lead to over-recovery of costs for the RELNO, resulting in a windfall gain. If we set the surcharge too low, ELNOs are likely to prefer to pay the surcharge and avoid incurring costly investment in lodgment and financial settlement infrastructure.

We consider any avoided costs associated with lodgment and financial settlement that cause the initially designated RELNO to default should be included in setting the default RELNO surcharge. In our view, these costs are the avoided capital cost of developing lodgment and financial settlement infrastructure and the avoided webhosting costs. This is discussed further in the next section.

### 5.3 How we developed the draft recommended default RELNO surcharge

The default RELNO surcharge reflects the per transaction share of the costs of developing financial settlement and lodgment infrastructure and web hosting capacity. The surcharge compensates the default RELNO for its capital investment in financial settlement and title lodgment infrastructure and ensures that ELNOs have an incentive to invest in a timely fashion in their own infrastructure to develop the capability to perform the RELNO role.

The default RELNO surcharge also includes hosting costs (e.g. server, bandwidth costs). This ensures that ELNOs have a similar incentive to make sufficient investment in bandwidth to support financial settlement and title lodgment infrastructure.

Under the MORs it is mandatory for ELNOs to develop all the necessary infrastructure.<sup>75</sup> However, building lodgment and settlement infrastructure can take time and the surcharge we recommend is intended to encourage ELNOs to make a timely investment.

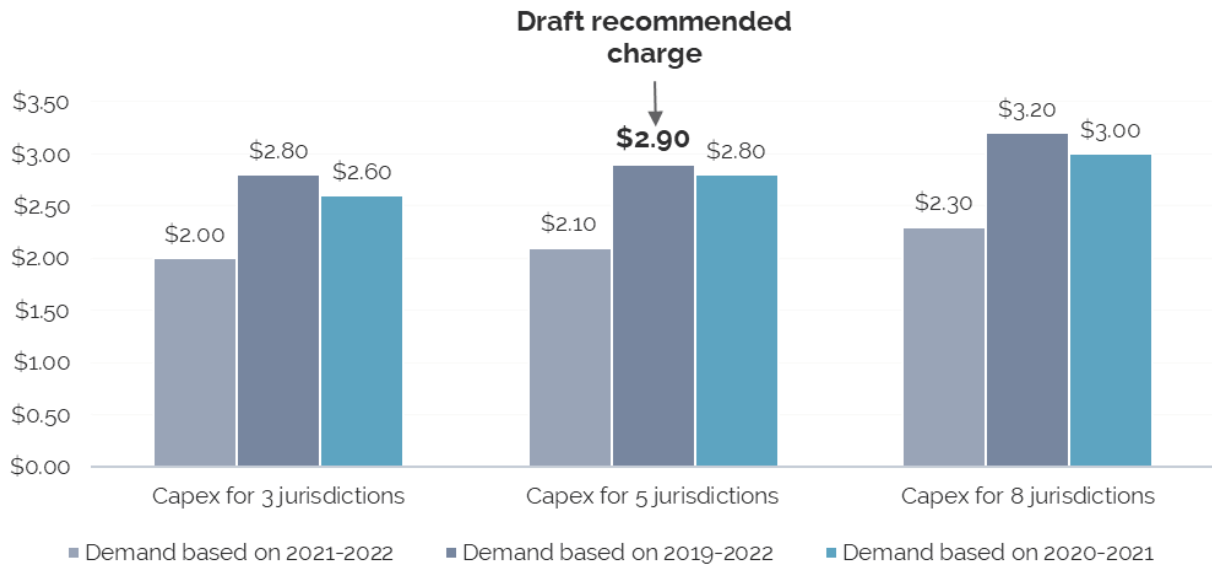
We applied a cost build up approach to calculate the maximum price for the default RELNO surcharge. Box 5.1 summarises the key steps in our cost build up approach.

### Box 5.1 Our approach for estimating the default RELNO surcharge

- We calculated the total efficient cost for the RELNO based on the capital cost of developing financial settlement and lodgment infrastructure and web hosting costs.
- We assumed an asset life of 5 years for the financial settlement and title lodgment infrastructure and used it as the period for cost recovery of this investment.
- We applied a pre-tax Weighted Average Cost of Capital (WACC) of 4.4% to convert the capital cost of developing lodgment and financial settlement infrastructure as an annuity.
- We forecast annual eConveyancing volume using the Australian Bureau of Statistics (ABS) data on the number of property transfer and refinancing transactions from 2019 to 2022.
- We divided the total revenue requirement (i.e. the total efficient cost) by the forecast conveyancing volumes to derive the maximum price for the surcharge.

Figure 5.1 shows our draft recommended maximum default RELNO surcharge compared to the other modelled options. The draft recommended charge is based on the estimated capital cost assuming an ELNO operating in 5 jurisdictions and forecast demand based on the ABS data on property transfer and refinancing transactions from 2019 to 2022.

Figure 5.1 Draft recommended charge and other modelled charges (\$2023, ex-GST)



Source: IPART analysis

In the sections below, we explain in detail our approaches to estimating the default RELNO surcharge, including:

- how we estimated the costs of developing financial settlement and lodgment infrastructure
- how we estimated the hosting costs and why we consider they should be included in the default RELNO surcharge
- how we forecast annual eConveyancing transaction volumes
- how we used costs, forecast volumes and the WACC to calculate the surcharge.

### 5.3.1 Capital costs of developing lodgment and financial settlement infrastructure

Our cost estimates for the maximum default RELNO surcharge are based on cost information from our 2019 review of the eConveyancing market in NSW and expert advice from AECOM.

For our 2019 review, we engaged AECOM to estimate the capital costs that a benchmark efficient new entrant ELNO would incur in NSW from 2018-19 to 2022-23. AECOM estimated that a benchmark efficient ELNO would incur capital costs of around \$4 million<sup>i</sup> to develop financial settlement and lodgment infrastructure, which included the following costs:

- the core ELNO service of financial settlement and lodgment. That is, the software development effort required (including activities such as project management, quality assurance and process design)
- IT hardware (e.g. PCs and local network equipment)
- building connections to around 12 financial institutions.<sup>76</sup>

For this review, we have engaged AECOM once again to seek advice on updated capital costs. Table 5.1 shows updated capital cost estimates for developing lodgment and financial settlement facility for the 3 scenarios modelled. We estimate that the costs of developing lodgment and financial settlement would range between \$3.7 million and \$4.3 million depending on the number of jurisdictions in which a benchmark ELNO operates. These capital costs include annual capital expenditure over the life of the assets, which is assumed to be 5 years.

Table 5.1 Capital costs for developing lodgment and financial settlement facility

Capital cost scenario	Initial investment	Annual capex for 5 years	Total cost including annual capex
Low capex	\$2.3 million	\$451,000 per year	\$4.5 million
Medium capex	\$2.4 million	\$478,000 per year	\$4.8 million
High capex	\$2.6 million	\$519,000 per year	\$5.2 million

Source: IPART analysis.

Currently, electronic lodgment via an ELN has been mandated for all or some land dealings in NSW, Victoria, South Australia, Queensland and Western Australia. Both PEXA and Sympli are approved to operate in these jurisdictions. While around 44% of land dealings are currently lodged via an ELN in ACT, there is no mandate and only PEXA has been approved to operate in ACT. In Tasmania and Northern Territory, there is no eConveyancing, and there are no approved ELNOs.<sup>77</sup>

Reflecting the current state of the eConveyancing market across Australia, we have modelled 3 scenarios in estimating the costs of developing lodgment and financial settlement infrastructure by varying the number of jurisdictions in which a benchmark ELNO operates.

- For the "Low capex" scenario, we assumed that an ELNO operates in 3 jurisdictions.
- For the "Medium capex" scenario, we assumed that an ELNO operates in 5 jurisdictions.
- For the "High capex" scenario, we assumed that an ELNO operates in all jurisdictions.

Note that in all scenarios, we have assumed that an ELNO has established connections to 12 financial institutions. This is consistent with our approach in the 2019 review.

<sup>i</sup> AECOM estimated that an ELNO would incur capital costs of around \$3.7 million (in \$2018-19) to provide lodgment and financial settlement infrastructure. After adjusting for inflation (using the RBA inflation calculator) this would be around \$4 million in \$2021-22. See, IPART, [Review of the pricing framework for electronic conveyancing services in NSW](#), November 2019, p 34.

Given that the market for interoperable transactions is at a very early stage of development and that the regulatory period is 2 years, we consider the scenario reflecting the current state of the eConveyancing market, where ELNOs are approved to operate in 5 jurisdictions, is a reasonable assumption. Therefore, we have selected the "Medium capex" scenario as our base case to estimate our recommended draft default RELNO surcharge.

In calculating the capital cost of developing lodgment and financial settlement infrastructure, based on AECOM's advice we assumed:

- a developer hourly rate of \$213 in \$2022 with 8 developer hours per day
- a base developer days of 15 days plus 20 additional days per jurisdiction in which a benchmark ELNO operates and 49 additional days per connection to financial institution.

AECOM advised that the developer hourly rates are generally between \$175 and \$225 (\$2019) and took the midpoint (i.e. \$200) to calculate the software development costs in the 2019 review. We adopted the same hourly rate after adjusting for inflation using the Wage Price Index.

PEXA submitted that to determine the default RELNO surcharge, the actual capital costs incurred to establish technical integrations between an ELNO and key industry stakeholders should be assessed to determine the efficient capital costs.<sup>78</sup>

Sympli did not agree that a RELNO should be able to recover capital costs through interoperable transaction fees. It argued that it is not financially viable for new entrants to build their own infrastructure (as required by the Model Operating Requirements) and to also pay for another ELNO's already built infrastructure. It also noted that ELNOs need to have connections to financial institutions to gain market share and this is a far greater incentive to develop capability than being able to avoid a default RELNO surcharge.<sup>79</sup>

However, Sympli argued that if IPART does decide that a RELNO should be able to recover capital costs where another ELNO cannot perform the designated RELNO role, this should be limited to the specific lack of infrastructure that caused the redesignation:

For example, if an interoperable refinance transaction in NSW required a RELNO switch because one party is a financial institution to which Sympli does not have a connection, the capital cost sharing should not include lodgment infrastructure for that transaction. This is because Sympli has the lodgment infrastructure in place to support this transaction and should not be required to pay for this infrastructure twice.<sup>80</sup>

Sympli suggested that this could be addressed by having 3 levels of a default RELNO surcharge, where the defaulting RELNO:

1. has neither lodgment nor financial settlement infrastructure
2. has lodgment infrastructure but no financial settlement infrastructure
3. has financial settlement infrastructure but no lodgment infrastructure.

As discussed in Section 5.3.1, to determine the efficient capital costs, we considered cost information from our 2019 review of the eConveyancing market in NSW and sought expert advice from AECOM. AECOM reviewed the latest development costs for lodgment and financial settlement facility based on the number of developer days required and the latest developer hourly rates for a benchmark ELNO. We consider our updated estimate appropriately reflects the efficient capital costs incurred by a benchmark ELNO in establishing technical integrations between an ELNO and key industry stakeholders, as suggested by PEXA.

We do not agree with Sympli's view that a RELNO should not be able to recover capital costs through interoperable transaction fees. Instead, we consider a default RELNO surcharge should be set to reflect the costs of developing a full suite of financial settlement and lodgment infrastructure and web hosting capacity. This would ensure that ELNOs have an incentive to invest in their infrastructure to develop the capability to perform the RELNO role.

We considered whether it would be appropriate to have different levels of fees depending on the capability gap that causes the designation of the RELNO role. In principle, we agree with Sympli that the recovery of capital costs where another ELNO cannot perform the designated RELNO role should be limited to the specific lack of infrastructure that caused the redesignation. This would require estimating the capital costs of developing lodgment and financial settlement separately and forecasting the number of transactions in each of the 3 scenarios.

Our recommended default RELNO surcharge is relatively low compared to ELNO's subscriber fees. Also, with only 2 ELNOs operating in the market currently, it is unlikely interoperable transactions would fall into all 3 different scenarios that Sympli listed, requiring different default RELNO surcharges for the 3 different scenarios. We consider at this stage the benefit of having a more accurate fee structure is likely to be outweighed by the regulatory and administrative costs associated with establishing 3 different levels of a default RELNO surcharge.

As discussed above, our capital costs are based on the direct development costs of lodgment and financial settlement infrastructure. However, there may be other costs associated with negotiating the agreements necessary to establish connections to organisations such as financial institutions, land registries and revenue offices. We have not included these costs as we do not have sufficient information on the level and materiality of these costs. If these costs are material, we are likely to have underestimated the cost of developing the capability to be a RELNO and hence the recommended default surcharge.

We invite stakeholder views on whether these costs should be included and if so how to estimate these costs for the Final Report.

### 5.3.2 Web hosting costs

In the 2019 review, AECOM considered a benchmark efficient ELNO would be cloud-based, most likely through a proprietary web hosting service. Hosting costs are driven by usage and how resilient and responsive the system needs to be as well as the types of data or files being sent through the system.<sup>81</sup>

As discussed in Chapter 4, PEXA raised hosting costs (e.g. server and bandwidth load) for consideration as part of an interoperable transaction fee.<sup>82</sup> Since all ELNOs will be required to incur hosting costs regardless of interoperability, we did not consider this to be a marginal cost associated with the RELNO role, and hence did not include it in the RELNO fee.

Instead, we consider this cost should be included in the default RELNO surcharge. Each ELNO able to act as a RELNO will have its own APIs for dealing with land registries, revenue offices, financial institutions, the RBA, land registries and subscribers. If an ELNO had not invested in the technology needed to deal with them, it would not be able to perform the RELNO role when it is designated as the one, and the role would need to be re-designated to another ELNO. Including this cost in the default RELNO surcharge would provide ELNOs with incentives to make sufficient investment in maintaining an appropriate level of web hosting capacity.

In our 2019 review of the eConveyancing market in NSW, we estimated that a benchmark efficient ELNO would incur around \$10,000 per year in webhosting costs in (\$2018-19). The estimate was based on typical rates from the market and AECOM advised that the costs remain relatively stable. Therefore, we adopted the cost estimate we used in the 2019 review after adjusting for inflation using the Wage Price Index.

We therefore included an annual hosting cost of \$10,630 in calculating the default RELNO surcharge.

### 5.3.3 Forecasting eConveyancing volumes

After establishing the revenue requirement for the RELNO based on the estimated capital cost of developing financial settlement and lodgment infrastructure, we divide the revenue requirement by the forecast annual eConveyancing volume.

We considered 2 options for forecasting demand for eConveyancing. The first option was to use the number of eConveyancing **dealings** based on data on the number of paper and electronic dealings collected from various land registries across all jurisdictions. The second was to use the number of property transfer and refinancing **transactions** based on transfer and refinancing activity data from the Australian Bureau of Statistics (ABS). The data period for both data sources was from 2019 to 2022.

The difference between dealings and transaction is that a transaction can often involve several dealings – for example, a typical property transfer can involve dealings such as transfer, discharge of mortgage, and mortgage. Hence, the volume based on the number of *dealings* can be substantially higher than that based on the number of *transactions*.

We consider a default RELNO surcharge per transaction to be a more appropriate charging structure than a default RELNO surcharge per dealing.

A default RELNO surcharge per dealing would allow an ELNO who was initially designated as a RELNO but could not perform the role to pay for only those dealings for which it could not fulfil its role.



For example, consider a transaction involving discharge of mortgage, withdrawal of caveat, transfer, and mortgage. If an ELNO who was initially designated as the RELNO lacked capability for withdrawal of caveat (but had capability to lodge the other dealings) and hence could not perform the RELNO role, the role would be designated to another ELNO. A default RELNO charge per dealing would allow the initial RELNO to pay a surcharge for only 1 of the 4 dealings (i.e. "withdrawal of caveat") rather than paying for the whole transaction.

However, estimating a default RELNO charge per dealing is likely to be complex. This is because to recover costs, the default RELNO charge must be estimated using an accurate estimate of the dealings volume for which an initially designated ELNO is likely to be unable to perform the RELNO role. Because interoperability has not yet begun, there is no data to support this type of analysis. Also, a charge per dealing is likely to be complex to implement considering transactions involve multiple dealings and the RELNO and PELNO roles may change multiple times in a transaction, as documents and parties are added to the workspace.

The ABS does not collect information on whether a transfer or refinancing transaction was done via paper or electronic conveyancing. Hence, we used the proportion of electronic dealings estimated using dealings data from land registries to derive the annual number of eConveyancing transfers and refinancing transactions.

We modelled 3 scenarios for the eConveyancing transaction volume, and in doing so, we considered that there was a surge in property and refinancing transactions during the peak of the COVID-19 pandemic period.

- 'Demand based on 2020-2021': calculate the number of eConveyancing transactions during the peak of the COVID-19 pandemic period (i.e. using 2 years of data from 2020 to 2021)
- 'Demand based on 2019-2022': calculate the number of eConveyancing transactions using the latest 4 years of data from 2019 to 2022
- 'Demand based on 2021-2022': calculate the number of eConveyancing transactions using the latest 2 years of data from 2021 to 2022 (i.e. excluding the peak of the COVID-19 pandemic period).<sup>j</sup>

We used the average number of eConveyancing transactions as the base year volume for each scenario. Our analysis shows that the number of transfer and refinancing activities increased by 15% to 21% per annum on average over the various sample periods above. Also, the average increases did not differ significantly between different scenarios. Given this, we assumed a 15% increase in transaction volume from 2022-23 to 2023-24 based on the low end of the average increase. We consider this is a reasonable assumption as while the property market for buying and selling may have declined in response to recent interest rate increases, the level of refinance activity is expected to remain high as mortgage customers shop around for competitive rates from lenders.<sup>83</sup>

Finally, we assumed that a benchmark ELNO has 50% of the market share, as discussed Section 5.1, to arrive at our forecast eConveyancing transaction volume.

<sup>j</sup> The World Health Organization (WHO) declared the outbreak a public health emergency of international concern on 30 January 2020, and a pandemic on 11 March 2020. For the purpose of modelling demand scenarios, the peak of the COVID-19 pandemic period is defined as the 2 years from 2020 to 2021.

Table 5.2 shows our forecast eConveyancing transaction volume based on property and refinancing transactions for a benchmark ELNO.

Table 5.2 Forecast number of property and refinancing transactions

Transaction volume scenario	2023-24	2024-25
Demand based on 2020-2021	376,100	432,000
Demand based on 2019-2022	352,500	404,900
Demand based on 2021-2022	478,500	549,600

Note: The transaction numbers are rounded to the nearest hundreds.

Source: IPART analysis.

In Issues Paper 2, we proposed to obtain data from land registry offices and information from ELNOs to forecast future eConveyancing transaction volumes.

**PEXA** commented that our approach needs to take the mid-long term property cycle into account and that we should not assume that average volumes over the past 5 years are representative of likely volumes over the next few years.<sup>84</sup>

**Sympli** agreed with our proposed approach of obtaining data from land registry offices and information from ELNOs to forecast future transaction volumes. It noted that changing property market conditions impact on the types and volumes of transactions that take places across ELNOs.<sup>85</sup>

The **Law Society of NSW** also agreed that it would be appropriate to use data sourced from land registries and ELNOs to forecast transaction volumes.<sup>86</sup>

In forecasting eConveyancing transaction volumes, we considered the mid-to-long term property cycle as suggested by PEXA. We modelled 3 different transaction volume scenarios where we looked at different subsets of the 4-year period between 2019 to 2022. We analysed the sensitivities of the maximum surcharge to the varying demand scenarios. Our draft recommended charge sits within a reasonable range of the various modelled surcharges (see Figure 5.1).

While Sympli and the Law Society of NSW agreed with using data from land registry offices, we sourced transaction data from the ABS. This is because land registry offices provide statistical information for dealing lodgments only.

We assumed that a benchmark ELNO had 50% market share. Currently, 2 ELNOs – PEXA and Sympli – are approved to operate in most jurisdictions. We considered a benchmark efficient ELNO with an equal market share of 50% to be a reasonable assumption that reflects a competitive market outcome (although not the only possible competitive market outcome).

### 5.3.4 Calculating the surcharge

In Issues Paper 2, we proposed that once we identified the total efficient costs required for the default RELNO surcharge, we would add a profit margin which adds the return on assets (i.e. shareholder investment) and tax allowance components of the total efficient costs.

We have treated the capital cost of developing lodgment and financial settlement infrastructure as an annuity and estimated the capital cost as the whole-of-life cost including annual capital expenditure. The annuity payment includes an allowance for depreciation, interest on borrowing, tax and profit on shareholder investment.

We used a pre-tax WACC<sup>k</sup> of 4.4% to calculate the annuity, calculated using our standard WACC methodology and used the same WACC to calculate the net present value of the revenue and costs to set the price. Appendix B sets out our approach to calculating the WACC, including our response to WACC-related issues raised by stakeholders in their submissions to our Issues Paper 2.

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<sup>k</sup> We used a pre-tax WACC as a tax allowance is included in the annuity.

## 6 ELNO Service Fees and market design

In Issues Paper 2 we noted that, through stakeholder feedback and our own analysis, we had identified broader issues with the pricing of ELNO services and the design of the eConveyancing market. While they are important issues that involve categories of cost that an ELNO should be able to recover, in our view these costs should not be recovered through interoperable transaction fees.

We referred these issues to ARNECC. As a result, the Minister, on ARNECC's request, has amended our terms of reference to include a review of ELNO Service Fees, to be undertaken in the future once certain conditions have been met. ARNECC also decided not to revisit the issue of market design at this time.

This chapter explains how and why our terms of reference have been amended.

### 6.1 IPART will review ELNO Service Fees

IPART's terms of reference have been amended to require us to investigate and recommend ELNO Service Fees, in addition to completing our review of interoperability pricing. A review and update of ELNO Service Fees will ensure these fees allow ELNOs to recover their efficient costs within current operating conditions and will ensure that subscribers pay no more than they need to.

We will commence work on investigating and making recommendations about ELNO Service Fees when one of the following occurs, whichever is the soonest:

1. six months after Day 2 functionality<sup>1</sup> is available to facilitate interoperable transactions
2. ARNECC notifies IPART that an ELNO has applied to ARNECC 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 recommending ELNO Service Fees.

We will have 12 months to complete the review and prepare a Final Report for ELNO Service Fees from the date of commencing work on it. The timing of IPART's review of interoperability pricing will not be affected by the amendments to the terms of reference. We will prepare a Final Report on interoperability pricing by April 2023.

The sections below explain why we have been asked to review ELNO Service Fees.

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<sup>1</sup> The Day 2 milestone requires ELNOs to have the technical capability to perform all currently defined eConveyancing transactions, through the new interoperable system between ELNOs. Once the Day 2 milestone is achieved, the rollout of interoperability will occur progressively by jurisdiction. See ARNECC, [Ministerial Statement](#), 9 December 2022.

### 6.1.1 Conditions have changed since ELNO Service Fees were last reviewed

In 2019, the NSW Government asked IPART to review the eConveyancing market in NSW, including recommending ELNO Service Fees.<sup>87</sup> For that review, we developed a pricing model to assess whether prices being charged by ELNOs were reasonable, based on efficient costs. We concluded that PEXA and Sympli's ELNO Services Fees were reasonable. Interoperability had been foreshadowed at the time, but a model had not been chosen. We also did not assess whether each transaction price was individually cost-reflective.

To take account of market development and any changes to costs, we recommended ELNO Service Fees be reviewed again within 2 years. Since 2019, there have been changes to the operating conditions and costs of ELNOs, including additional costs associated with establishing and maintaining interoperability.

In Issues Paper 1, we observed that implementing interoperability may increase overall costs for ELNOs in the short term, implying that ELNO Service Fees may need to increase.<sup>88</sup> However, the net impact of implementing interoperability on ELNO Service Fees is uncertain, as other inputs to the price calculation may have changed. For example:

- innovation and efficiency may have lowered the costs of eConveyancing
- transaction volumes have proven to be higher than forecast in 2019, suggesting lower costs per transaction than we allowed for
- the WACC has changed.

Even in more mature, stable industries, with minimal changes in operating conditions, a pricing period is usually no longer than 5 years. However, more frequent review is required in industries undergoing rapid change.

A review of ELNO Service Fees will also allow IPART to assess the effectiveness of competition in the eConveyancing market and the need for ongoing pricing regulation. The eConveyancing market is highly concentrated, with PEXA having almost 100% market share. As stakeholders have noted, competition from interoperability in eConveyancing services may lead to further innovation from ELNOs and efficiencies, that result in lower costs and improved services for subscribers.<sup>89</sup> The review of ELNO Service Fees will allow us to assess the impact of competition on ELNO pricing.

### 6.1.2 Continuing current ELNO Service Fees in real terms may no longer be appropriate

PEXA developed its initial pricing schedule at a time when paper conveyancing was still the dominant conveyancing mode, and therefore it set its prices by comparison to the market at that time. Sympli set its prices at a discount to PEXA's prices.<sup>90</sup>

Since February 2019, the MORs have allowed PEXA and Sympli to raise the prices outlined in their pricing schedules once a year on 1 July, up to the year-on-year CPI growth to the previous March quarter.<sup>91</sup> This price regulation is based on the price schedule each ELNO had at the time of coming into the eConveyancing market, and not on the efficient costs of a benchmark ELNO.

Further, ELNO Service Fees for different classes of subscriber cannot be rebalanced because individual fees are capped. In a typical 4-party transaction, involving a vendor, purchaser, and financial institutions for both parties, under PEXA's current pricing schedule:<sup>92</sup>

- subscribers for the vendor and purchaser would each pay \$123.97
- the incoming mortgagee would pay \$62.04
- the outgoing mortgagee would pay \$45.76.

These prices may not represent an ELNO's costs for each subscriber in an interoperable transaction. Interoperability has exposed (but not caused) the cross-subsidies in ELNO Service Fees between different classes of subscriber and/or transaction type that may mean these fees are not individually cost-reflective.

Stakeholders have acknowledged some of these issues. For example, Sympli submits that:

...the MOR Guidance Notes set out that ELNO pricing should be cost reflective, and that cross-subsidies should be minimised and would need to be justified as being in the public interest. ...this may mean ELNOs should take the opportunity of shifting market structures and interoperability to review their pricing and ensure it remains appropriate in the present market environment. Competition in eConveyancing presents an opportunity not only for innovation in service and functionality, but also on pricing. ELNOs should ensure that pricing is competitive and cost-reflective, in accordance with their obligations under the MOR.<sup>93</sup>

A review of ELNO Service Fees will allow IPART to assess whether current prices reflect their underlying costs, for both different transaction types and classes of subscribers.

### 6.1.3 Indicative modelling shows ELNO Service Fees are sensitive to changes to inputs

As discussed above, in 2019 we developed a pricing model to assess whether prices being charged by ELNOs in NSW were reasonable, based on efficient costs. We modelled benchmark efficient prices based on a range of market share assumptions for both a new entrant ELNO and an established ELNO.

We have updated this pricing model to show the impact of changes to inputs on ELNO Service Fees, including:

- a lower WACC (post-tax real) of 3.3% (previously 4.6% in 2019), reflecting the current WACC we have used for interoperable transaction fees<sup>m</sup>

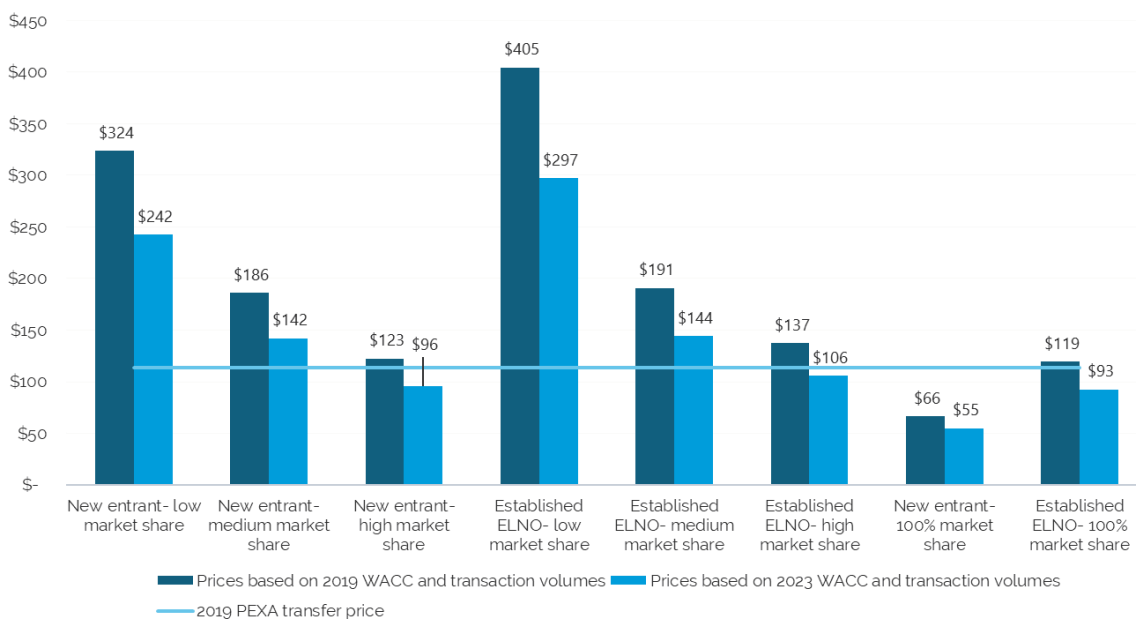
<sup>m</sup> In 2019, we calculated ELNO Service Fees using a post-tax real WACC. However, our draft maximum interoperable transaction fees calculation uses the pre-tax real WACC. For more information, please see section 5.3.4.

- a dealing volume estimate of 1 million per year (previously 736,000 in 2019). From 2019 to 2022, the total number of NSW dealings (including electronic and paper) has increased from around 820,000 to 980,000 total dealings.<sup>94</sup> While the property market for buying and selling may have declined in response to recent interest rate increases, the level of refinance activity is expected to remain high as mortgage customers shop around for competitive rates from lenders.<sup>95</sup>

Changing these inputs results in a decrease in the price of a transfer compared to the 2019 pricing model (see Figure 6.1). For instance, under the scenario of an 'established ELNO with high market share', the transfer price would decrease by \$32, from \$137 to \$105. We have presented prices in \$2018-19, consistent with how they were presented in our 2019 review and have held all other inputs constant, including costs.

Our review of ELNO Service Fees will consider whether other inputs have changed, and the impact this would have on fees. We will also consider relevant inputs from other jurisdictions, not just NSW.

Figure 6.1 Illustrative prices for a benchmark efficient ELNO (transfer with financial settlement) (\$2018-19) including GST



a. The market share assumptions for 8 different scenarios were calculated across a 3-year period: new entrant- low market share (2%, 5%, 10%), new entrant- medium market share (5%, 10%, 20%), new entrant- high market share (10%, 20%, 35%), established ELNO- low market share (20% each year), established ELNO- medium market share (50% each year), established ELNO- high market share (80% each year), new entrant- 100% market share (100% each year), established ELNO- 100% market share (100% each year).

Source: IPART, AECOM modelled efficient costs.

### 6.1.4 Costs of establishing and maintaining interoperability

We have made a draft recommendation that the costs of establishing and maintaining interoperability should be recovered from an ELNO's subscribers through ELNO Service Fees.

Current ELNO Service Fees were set before the costs of establishing and maintaining interoperability were incurred. These costs will include additional capital and operating expenditure for development and maintenance of the infrastructure and systems to enable an ELNO to connect to other ELNOs. Other operating expenses, such as customer support, could increase with the introduction of interoperability. However, the costs and number of staff required to maintain IT assets used for lodgment and settlement may not be affected by interoperability.

PEXA submits that the task of establishing and maintaining interoperability has been more complex and involved more significant financial investment than anticipated at the time of IPART's 2019 review. It notes that, at this stage, the anticipated interoperability build-costs involve primarily the technical build required for interoperability. However, there may be significant additional costs to accommodate changes to the existing governance, change and release management, contractual, regulatory, legal, risk and liability allocation and insurance framework. There will also be significant training and education costs for all industry participants.<sup>96</sup>

PEXA considers that:

- there is an inherent uncertainty about the costs of establishing and maintaining interoperability - there may be costs to establish and maintain interoperability that are currently unknown
- future reviews that consider pricing for eConveyancing services will likely need to consider the scope of costs involved with establishing and maintaining interoperability.<sup>97</sup>

It submits that:

...these additional costs imposed by government regulation should be reflected by an appropriate increase in overall subscriber fees in the short-term.<sup>98</sup>

Other stakeholders, including Sympli, the Law Council of Australia and Tasmania's Land Titles Office, agree that the costs of establishing and maintaining interoperability should be recovered from all subscribers.<sup>99</sup> Sympli submits that this should occur through ELNO Service Fees.

## 6.2 ARNECC will not revisit market design at this stage

The MORs require ELNOs to ensure that the ELN is available to each Land Registry capable of receiving electronic instruments and other documents, and to subscribers in all States and Territories.<sup>100</sup> The ELN must enable the lodgment of all registry instruments and other electronic documents (which are capable of lodgment). These requirements ensure eConveyancing is accessible to all Australians.<sup>101</sup> This is a type of universal service obligation (USO). However, there is currently no mechanism to enforce how and when ELNOs provide full coverage, and no requirement for ELNOs to provide comprehensive financial settlement functionality.

After more than 10 years, PEXA does not have full coverage of lodgment instruments in jurisdictions with eConveyancing. There are 2 jurisdictions (Northern Territory and Tasmania) with no eConveyancing yet.



PEXA and Sympli currently have nationally consistent pricing for eConveyancing transactions. These prices may provide cross-subsidies that ensure that subscribers in less populous jurisdictions do not pay higher prices than subscribers in more populous jurisdictions. Otherwise, subscribers in less populous jurisdictions could potentially be paying much higher prices, as fixed costs are recovered from fewer customers.

PEXA explains that "the rationale for this cross-subsidy is that all entities in conveyancing benefit if the number of [paper] transactions is minimised." PEXA adds that "the cross-subsidy may also reflect the preference of ARNECC, as an intergovernmental body made up of States and Territories, for fiscal equalisation principles that so far as possible deliver an equivalent level of government services to residents of different states".<sup>102</sup>

PEXA notes that it is likely that new ELNOs will not reach PEXA's level of coverage for many years, meaning they will have substantially different fixed costs. PEXA argues that IPART should consider these fixed costs in setting interoperable transaction fees. Failing to do so may result in new entrants being incentivised to cherry pick the highest volume transactions in the largest jurisdictions, while potentially offering prices that do not include the fixed costs of building back-end settlement and lodgment functionality for other transactions.<sup>103</sup>

Sympli disagrees with this position. It argues that there is nothing specific to PEXA that requires it to provide a universal level of service. The requirement to develop a level of infrastructure and capability to support eConveyancing transactions in each jurisdiction applies to all ELNOs. It notes that this contrasts with the concept of a USO in the telecommunications industry, where Telstra is specifically required, to the exclusion of other telecommunications operators, to provide a universal level of service nationally, with an acknowledgement that this is below cost.<sup>104</sup>

Sympli notes that there are several enforcement regimes being contemplated at State and ARNECC levels to ensure ELNOs comply with MORs.<sup>105</sup> It also notes that while there is no regulatory mandate to establish payment connections with all financial institutions, there are market incentives to do so:<sup>106</sup>

Payment connections with financial institutions are critical for ELNOs to ensure that they are able to participate in all transactions, both interoperable and single-ELN.. Without these payment connections, ELNOs are unable to offer a comparable and compelling ELN offering. This incentive drives ELNOs to complete payment connections.

Sympli advises that it has completed payment connections to the 4 major banks, with further connections to follow.<sup>107</sup>

We agree that the USO combined with national pricing may set up incentives for ELNOs to delay full roll-out in order to cherry-pick the most profitable jurisdictions and transactions. We consider that it would not be appropriate to recover costs associated with a USO through an interoperable transaction fee charged by a RELNO to a PELNO, as USO costs are driven by market design and not by the model of competition (interoperability) chosen. The USO is a market design issue that goes well beyond interoperability pricing and so it will not be resolved through our recommendations on interoperable transaction fees.

In Issues Paper 2 we noted that there may be more economically optimal ways to design a market that provides eConveyancing services to all Australians than a USO. In response, ARNECC has indicated it will not investigate the USO at this stage but may revisit this issue in the future. It intends to maintain the current Model Operating Requirement (MOR) that all ELNOs must roll out in all jurisdictions,<sup>108</sup> and is developing an enforcement regime.<sup>n</sup> The enforcement regime is part of a proposed second bill of amendments to the Electronic Conveyancing National Law (ECNL), which governs the MORs. It is proposed the amendments to the ECNL will be tabled before interoperability is rolled out. Appropriate enforcement mechanisms that ensure ELNOs comply with their requirement to provide all services in all jurisdictions will prevent ELNOs from 'cherry picking' the most profitable services.

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<sup>n</sup> Each jurisdiction is consulting their relevant Departments on the proposed enforcement regime. See ARNECC, [Ministerial Statement](#), 9 December 2022, p 1.

# Appendices



## A Terms of reference

## 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.

## B Weighted Average Cost of Capital (WACC)

### B.1 Draft decision

We estimated a WACC for an efficient benchmark ELNO. Table B.1 sets out our WACC estimate.

We adopted IPART's standard WACC methodology to calculate market-based parameters, and our draft decision on industry parameters are set out below:

- equity beta of 1
- gearing ratio of 60%.

IPART's measure of uncertainty (discussed below) is currently within 1 standard deviation of the long-term average of 0. As per IPART's decision rule, we recommend adopting the midpoint, **pre-tax real WACC of 4.4%** for a benchmark efficient ELNO.

Table B.1 Draft decision WACC calculation for a benchmark ELNO

	Step 1		Step 2 – Final WACC range		
	Current	Long	Lower	Midpoint	Upper
Nominal risk-free rate	2.80%	2.50%			
Inflation	3.60%	3.60%			
Implied Debt Margin	3.00%	2.30%			
Market Risk premium	7.8%	6.0%			
Debt funding	60%	60%			
Equity funding	40%	40%			
Gamma	0.25	0.25			
Corporate tax rate	30%	30%			
Effective tax rate for equity	30%	30%			
Effective tax rate for debt	30%	30%			
Equity beta	1.00	1.00			
Cost of equity (nominal post-tax)	10.6%	8.5%			
Cost of equity (real-post tax)	6.8%	4.7%			
Cost of debt (nominal pre-tax)	5.8%	4.8%			
Cost of debt (real pre-tax)	2.1%	1.2%			
Nominal Vanilla (post-tax nominal) WACC	7.7%	6.3%	6.3%	7.0%	7.7%
Post-tax real WACC	4.0%	2.6%	2.6%	3.3%	4.0%
Pre-tax nominal WACC	9.0%	7.3%	7.3%	8.1%	9.0%
<b>Pre-tax real WACC point estimate</b>	5.2%	3.5%	3.5%	<b>4.4%</b>	5.2%

Source: Bloomberg, Refinitiv, RBA and IPART calculations.

In Issues Paper 2, we proposed that we would be using a cost build up approach and add a profit margin to calculate the default RELNO surcharge. Including an appropriate margin in the default RELNO surcharge encourages competition in eConveyancing markets by encouraging economically efficient investment in infrastructure that enables interoperable transactions.



We have treated the capital cost of developing lodgment and financial settlement infrastructure as an annuity and estimated the capital cost as the whole-of-life cost including any maintenance costs. The annuity payment includes an allowance for depreciation, interest on borrowing, tax and profit on shareholder investment. This approach is a simple way to include a profit margin.

We have used a pre-tax WACC of 4.4% to calculate the annuity. Also, we used the same WACC to calculate the net present value of the revenue and costs to set the default RELNO surcharge.

## B.2 Stakeholders' views

In the Issues Paper 2, we proposed that we would estimate an equity beta and gearing ratio for a benchmark efficient ELNO based on a sample of retail mortgage banks.

**Sympli** did not agree that a margin should not be included. It argued that the role of an interoperable transaction fee should be to recover costs that a PELNO has avoided because they did not have sufficient infrastructure to act as a RELNO. Including a margin would result in an asymmetrical outcome, where incumbent ELNOs would make profits on top of core infrastructure they were required to build to exist in a single ELN environment.

Sympli argued that if a margin must be included, mortgage banks are imperfect proxies given the debt and equity funding of the current ELNOs in market. However, it did not have a better suggestion.<sup>o</sup>

**PEXA** agreed that estimating a WACC for ELNOs is an appropriate approach for estimating the required profit margin. However, it argues that mortgage banks are not an appropriate proxy for 3 reasons:

1. The variability and volatility of revenue is much greater for an ELNO relative to mortgage banks.
  - a. The major component of revenue for mortgage banks is interest payments linked proportionally to the size of the outstanding loan book. This is a relatively stable and known revenue stream.
  - b. Conversely, ELNO revenue is directly proportional to property transaction volumes, which are highly variable.
2. ELNOs are an emerging, speculative technology platform, with an inherently different risk profile to established mortgage banks. ELNOs are exposed to the technology risk of the relatively novel eConveyancing industry, and the additional technical risk of implementing interoperability.
3. Mortgage banks have a markedly different capital structure relative to ELNOs, with a significantly greater balance sheet and ability to take on debt.

PEXA argues that, as a result, the WACC for an ELNO is significantly higher than for a mortgage bank.

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<sup>o</sup> Sympli, [submission to IPART Issues Paper 2](#), November 2022, pp 6-7.

Instead, PEXA thought that digital property advertising platforms such as Domain Holdings Australia Ltd and REA Group Ltd should be used as proxy companies. It argues that these companies are more comparable to ELNOs as:

- Revenue is inherently linked to the number of properties advertised for sale, and therefore similarly exposed to volatility in property market transaction volumes.
- Gearing ratios are more similar (possibly because their revenue profiles are volatile and so both companies and financiers are less willing to tolerate the higher gearing ratios typical for mortgage banks).
- Technology risk as a digital platform is more similar to ELNO technology risk (although ELNOs tend to have even more complex technology platforms).

PEXA considered that online brokerage companies and software start-up companies would also be more comparable proxy companies over mortgage banks to ELNOs.

It noted that the appropriateness of the comparable WACC is also dependent on the time at which the investment is made.<sup>P</sup>

In Issues Paper 2 we suggested that a margin would be included in both RELNO fee and default RELNO surcharge. However, under our proposed methodology, a margin is included to compensate ELNOs for committing capital investment that allow them to act as a RELNO, and we decided not to include capital costs in the RELNO fee. Instead, we included a margin in the default RELNO surcharge only. Including an appropriate margin in the default RELNO surcharge encourages competition in eConveyancing markets by encouraging economically efficient investment in infrastructure that enables interoperable transactions.

We continue to be of the view that mortgage banks are an appropriate proxy. As we noted in the Issues Paper 2, conveyancing activity is the core business of an ELNO, and the number of transactions in the real estate market has a direct impact on the revenues of an ELNO. Transfer, mortgage and discharge of mortgage involving financial settlement tend to represent a substantial part of an ELNO's total transactions. Since ELNOs' revenues would likely be driven by the number of property transfer or refinancing transactions, we consider mortgage banks, whose returns would be highly correlated with the number of property transfer and refinancing transactions, would best match the systematic risk profile of a benchmark ELNO.

In addition, our equity beta approach aims at capturing the broadest possible selection of proxy companies from global stock markets. In doing so, we select a group of stocks in a comparable industry to the regulated business, and do not handpick individual stocks. Domain Holdings Australia is classified as Advertising & Marketing based on Thomson Reuters Business Classification and its comparable peers (i.e. in the same industry group) include many stocks that are not comparable to digital property advertising such as Seek Ltd, Carsales.Com, Seven West Media Ltd. Further, equity beta of stocks in digital property advertising platforms would only reflect systematic risk of a business affected by property sales transactions, not mortgage, discharge of mortgage and refinancing transactions that do not involve sales.

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<sup>P</sup> PEXA, [submission to IPART Issues Paper 2](#), November 2022, pp 29-31.

Given this, we have made a draft decision to use mortgage banks as proxy companies and estimate the equity beta and gearing ratio for a benchmark ELNO using IPART's standard methodology for estimating equity beta.

Table B.2 provides the results of our proxy firm analysis.

Table B.2 Summary of beta and gearing estimation results

Name	Exchange	Asset beta	Equity beta	Gearing
ABSA Group	Johannesburg	0.39	0.98	60%
Bank BPH	Warsaw	0.63	1.58	38%
Bank BTPN	Indonesia SE	0.38	0.94	41%
Bank Neo Commerce	Indonesia SE	0.60	1.51	7%
Berkshire Hills Bancorp	New York	0.51	1.27	51%
Capitec Bank	Johannesburg	0.80	2.01	5%
Cathay Gen.Bancorp	Nasdaq	0.56	1.40	52%
Cembra Money Bank N Ord	SIX Swiss	0.42	1.05	47%
Dewan Housing Finance Corporation	National India	0.04	0.09	98%
Discover Financial SVS	New York	0.84	2.09	48%
Firststrand	Johannesburg	0.65	1.62	41%
Home Cap.GP.'B'	Toronto	0.56	1.39	59%
Housing Development Finance Corporation	National India	0.47	1.18	55%
JB Financial	Korea	0.06	0.15	91%
Komplett Bank	Oslo	0.90	2.24	11%
LIC Housing Finance	National India	0.15	0.38	89%
Ocwen Financial	New York	0.09	0.22	92%
OSB Group	London	0.67	1.68	56%
Pathward Financial	Nasdaq	0.41	1.03	64%
Pennymac Financial Services	New York	0.27	0.68	78%
PNB Housing Finance	National India	0.18	0.45	87%
Sbanken	Oslo	0.20	0.49	79%
Takarek Mortgage BK	Budapest	0.08	0.20	90%
Walker & Dunlop	New York	0.55	1.38	60%
WSFS Financial	Nasdaq	0.38	0.94	65%
<b>Median</b>		0.42	<b>1.05</b>	<b>59%</b>
<b>Mean</b>		0.43	<b>1.08</b>	<b>59%</b>
<b>Minimum</b>		0.04	0.09	5%
<b>Maximum</b>		0.90	2.24	98%

Source: Bloomberg, Refinitiv and IPART analysis.

## B.3 WACC analysis

### B.3.1 We used IPART's standard WACC method to calculate discount rates

IPART's measure of uncertainty (discussed below) is currently within 1 standard deviation of the long-term average of zero. As per IPART's decision rule, we recommend adopting the midpoint pre-tax real WACC value.

### B.3.2 We have sampled market observations to the end of December 2022

We sampled market observations to the end of December 2022, which is the last available whole month. For earlier years in the trailing average calculation of the cost of debt, we sampled to the end of February in that year. This minimises the change in WACC estimates from Draft Report to Final Report.

### B.3.3 The Uncertainty Index remains within the acceptable range

We tested the uncertainty index for market observations to the end of December 2022. It was within the bounds of plus or minus 1 standard deviation of the long-term mean value of zero. Therefore, we recommend maintaining the default 50% – 50% weighting between current and historic market estimates of the cost of debt and the cost of equity.

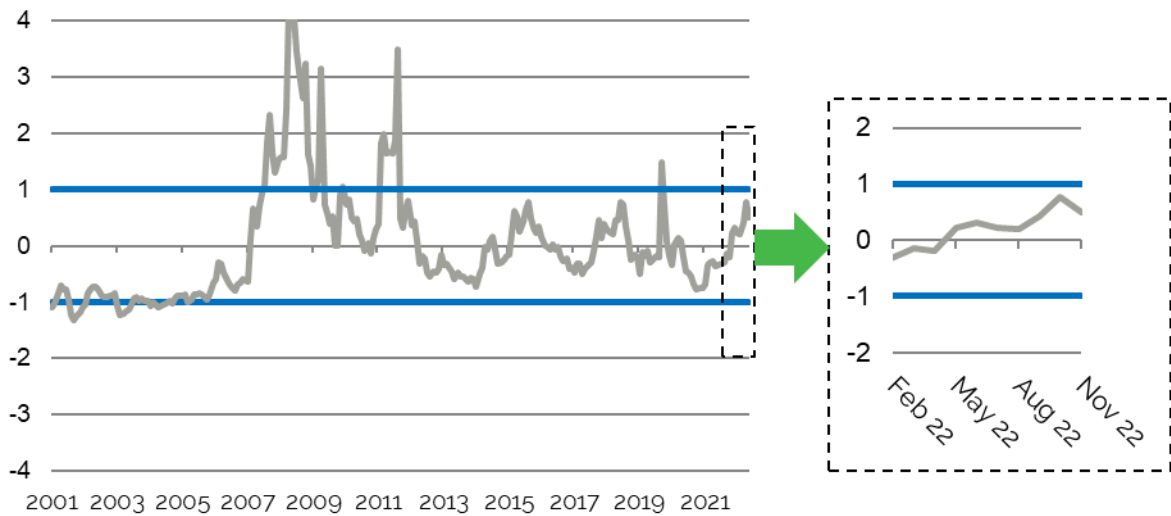
We note that our uncertainty index is updated using market data to November 2022, while all other market-based WACC parameters and our analysis of equity beta and gearing ratio are based on market data to December 2022.

The Australian Government Overnight Indexed Swap is one of the inputs to the uncertainty index, but the data for December 2022 is unavailable.<sup>9</sup> November 2022 is the last month for which all the required data for the uncertainty index are available

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<sup>9</sup> The original data source confirmed (via Refinitiv) that it is unable to obtain the December 2022 and January 2023 data points due to contractual obligations. It said it is considering alternative data but will take some time.

Figure B.1 IPART's uncertainty index



Source: Bloomberg, Refinitiv (formerly Thomson Reuters) and IPART calculations.

### B.3.4 Tax rate

We adopted our standard tax rate of 30% for a benchmark ELNO. We note that we previously used a lower tax rate for smaller benchmark firms (e.g. private ferries) where businesses have annual turnover of less than \$50 million.

### B.3.5 We have used a 2-year trailing average for the 'current' WACC parameters

The length of the trailing average is the same as the length of the regulatory period by convention. In the Issues Paper 2 of the eConveyancing review, IPART made a draft decision to set prices for a regulatory period of 2 years. We therefore calculated the 2-year trailing average for the current cost of debt.

### B.3.6 Estimation of inflation

We have adopted a 2-year geometric mean for our inflation estimate. This is consistent with IPART convention to average inflation forecasts over the same number of years as there are in the regulatory period

### B.3.7 Application of trailing average method

We calculated the cost of debt based on the assumption that a benchmark ELNO has completed the transition to the trailing average.

We introduced the concept of a transition to the trailing average for current debt, so that utilities that have previously been regulated by IPART under the pre-2018 WACC method would have the opportunity to restructure their debt portfolio to match the assumptions of the 2018 WACC method. The reason we offer a transition is to account for the possibility that an efficient firm might previously have adopted an inefficient debt structure because of our pre-2018 WACC method.

For firms that were never subject to IPART's pre-2018 WACC method, there should be no need to restructure their debt portfolio to match the 2018 WACC method assumptions. Instead, our WACC calculation assumes that the transition to trailing average is complete. This is the case for a benchmark ELNO.

### B.3.8 We adopted a gearing ratio of 60%

As shown in Table B.2, we found that the median and average gearing ratios are 59%. There is a wide spread of gearing ratios across the sample of 25 firms with the minimum and maximum gearing ratios being 5% and 98%, respectively. Despite some extreme outliers, the distribution of gearing ratios seems to be symmetric as the mean and median gearing ratios are very close. We consider our empirical evidence supports the benchmark gearing ratio of 60%. We note that the gearing ratio of 60% is the same as that used in our 2019 eConveyancing review.

### B.3.9 We adopted an equity beta of 1

As shown in Table B.2, we found that the median of the estimated betas is 1.05 and the average equity beta is 1.08. The equity beta minimum is 0.09 and maximum is 2.24.

Based on our empirical evidence on the estimated betas, we consider an equity beta of 1 is a reasonable estimate for a benchmark efficient ELNO. We note that the equity beta of 1 is the same as that used in our 2019 eConveyancing review.

### B.3.10 Comparison to other betas published by IPART

The proposed median asset beta of 0.42 is around the middle of the range of asset betas previously adopted by IPART. Table B.3 below shows the range of asset beta values we have previously adopted.

Table B.3 Range of asset beta values previously adopted by IPART

Industry	Asset beta adopted by IPART
Cruise terminal	0.60
Private ferries, Sydney ferries	0.45
Rural and regional buses	0.43
<b>EConveyancing</b>	<b>0.42</b>
Rail access (freight rail)	0.38
Deathcare	0.37
Sydney and NSW Trains (passenger rail)	0.36

Industry	Asset beta adopted by IPART
Light rail	0.35
Valuer General (2014, implied from equity beta and gearing)	0.34
Water industry	0.28
Valuer General (2019)	0.28

Note: Equity beta values will be higher than these asset betas because they also reflect financial risk. The conversion between the two depends on each firm's gearing and the prevailing corporate tax rate.

## C Glossary

Term	Meaning
<b>API</b>	Application Programming Interface - ELNOs interact with land registries, revenue offices, banks and the Reserve Bank of Australia through secure APIs. The backbone of interoperability is a set of purpose-built APIs, governed by a data standard which will determine how ELNOs exchange data to complete interoperable transactions.
<b>ARNECC</b>	Australian Registrars' National Electronic Conveyancing Council – formed in 2011 under the Intergovernmental Agreement for an Electronic Conveyancing National Law (ECNL) to coordinate a national approach among States and Territories to regulation of an electronic environment for completing conveyancing transactions.
<b>Default RELNO</b>	The ELNO that performs the role of Responsible ELNO following redesignation of this role during a transaction, arising from the determination of the originally designated RELNO that it does not have the RELNO capability for that transaction.
<b>ECNL</b>	Electronic Conveyancing National Law
<b>ELNO Service Fees</b>	Fees charged by the ELNO to a Subscriber for access to, and use of, the ELN. Also known as subscriber prices or transaction service fees.
<b>ELN</b>	Electronic Lodgment Network, an electronic system that enables the lodging of registry instruments and other documents in electronic form for the purposes of the land titles legislation.
<b>ELNO</b>	Electronic Lodgment Network Operator, the party approved to provide and operate an ELN. There are 2 ELNOs approved across most Australian jurisdictions - PEXA and Sympli.
<b>Interoperable Transaction Fees</b>	Fees charged by an ELNO to another ELNO for carrying out the functions of the Responsible ELNO.  Consultation Draft 7.1 of the MORs uses the term "interoperability service fees" to describe this and other categories of fees that can be charged for interoperability.
<b>MORs</b>	Model Operating Requirements – the requirements relating to the operation of an ELNO and the provision and operation, by an ELNO, of an ELN. These are the requirements on which the Operating Requirements in each jurisdiction are based.
<b>MPR</b>	Model Participation Rules – the rules, relating to the use of an ELN, with which subscribers (participants in the system such as lawyers) must comply. These are the rules on which the Participation Rules in each jurisdiction are based.  ARNECC publishes <a href="#">Guidance Notes on the Operating Requirements</a> and <a href="#">Guidance Notes on the Participation Rules</a> to explain what is expected in complying with the requirements and rules in each jurisdiction.
<b>NECDS</b>	National Electronic Conveyancing Data Standard – ELNOs are required to use the NECDS to send data to or receive data from Land Registries.
<b>NECIDS</b>	National Electronic Conveyancing Interoperability Data Standard
<b>PELNO</b>	Participating ELNO - means an ELNO involved in an Interoperable Electronic Workspace that is not the Responsible ELNO.
<b>RELNO</b>	Responsible ELNO - means the ELNO involved in an Interoperable Electronic Workspace that is responsible for Lodgment of the Interoperable Lodgment Case and completion of any Associated Financial Transaction.
<b>Subscriber</b>	A person or entity authorised to conduct electronic conveyancing transactions using the ELNO on behalf of a client, such as lawyers or conveyancers, or on their own behalf, such as financial institutions and government agencies.



- 1 ARNECC, Model Operating Requirements (version 6.1), May 2022, p 27.
- 2 ARNECC, Model Operating Requirements Consultation Draft 7.1, p 13.
- 3 ARNECC, Model Operating Requirements Consultation Draft 7.1, requirement 5.4.7, p 29.
- 4 IPART, Review of the pricing framework for electronic conveyancing services in NSW, Final Report, November 2019.
- 5 Law Council of Australia submission to IPART Issues Paper 1, p 3; Law Society of NSW submission to IPART Issues Paper 1, p 3; PEXA submission to IPART Issues Paper 1, pp 27-30, 55; Sympli submission to IPART Issues Paper 1, p 7; Tasmania Land Titles Office submission to IPART Issues Paper 1, p 1.
- 6 ABA submission to IPART Issues Paper 2, p 3.
- 7 Law Council of Australia submission to IPART Issues Paper 1, p 5; Law Society of NSW submission to IPART Issues Paper 1, p 4; PEXA submission to IPART Issues Paper 1, pp 40, 58; Tasmania Land Titles Office submission to IPART Issues Paper 1, p 1, Sympli submission to IPART Issues Paper 1, August 2022, p 8.
- 8 Law Society of NSW submission to IPART Issues Paper 1, p 3; Sympli submission to IPART Issues Paper 1, pp 7-8; Law Council of Australia submission to IPART Issues Paper 1, p 4.
- 9 Law Society of NSW submission to IPART Issues Paper 1, p 3 Sympli submission to IPART Issues Paper 1, pp 7-8; Law Council of Australia submission to IPART Issues Paper 1, p 3.
- 10 PEXA submission to IPART Issues Paper 1, August 2022, pp 21, 32-39.
- 11 PEXA submission to IPART Issues Paper 1, August 2022, p 36.
- 12 Sympli submission to IPART Issues Paper 1, August 2022, p 6.
- 13 Sympli submission to IPART Issues Paper 1, August 2022, p 7.
- 14 PEXA submission to IPART Issues Paper 2, November 2022, p 6.
- 15 Sympli submission to IPART Issues Paper 1, August 2022, pp 8-9.
- 16 Sympli submission to IPART Issues Paper 2, November 2022, p 2.
- 17 Law Society of NSW submission to IPART Issues Paper 2, November 2022, p 1.
- 18 PEXA submission to IPART Issues Paper 2, November 2022, p 15.
- 19 Law Council of Australia submission to IPART Issues Paper 1, August 2022, p 5.
- 20 PEXA submission to IPART Issues Paper 2, November 2022, p 15; Law Society of NSW submission to IPART Issues Paper 2, November 2022, p 2.
- 21 Sympli submission to IPART Issues Paper 2, November 2022, pp 2-3.
- 22 ACCC submission to IPART Issues Paper 2, November 2022, p 5 [Page 3 of letter to ARNECC, 11 August 2021]; Law Council of Australia submission to IPART Issues Paper 1, p 2.
- 23 Law Society of NSW submission to IPART Issues Paper 2, November 2022, p 2.
- 24 PEXA submission to IPART Issues Paper 2, November 2022, p 3.
- 25 PEXA submission to IPART Issues Paper 2, November 2022, pp 3-4.
- 26 Sympli submission to IPART Issues Paper 2, November 2022, pp 4-5.
- 27 PEXA submission to IPART Issues Paper 2, November 2022, p 33; Sympli submission to IPART Issues Paper 2, November 2022, p 5; Law Society of NSW submission to IPART Issues Paper 2, November 2022, p 3.
- 28 PEXA submission to IPART Issues Paper 2, November 2022, p 33.
- 29 PEXA submission to IPART Issues Paper 2, November 2022, p 33; Law Society of NSW submission to IPART Issues Paper 2, November 2022, p 3.
- 30 Sympli submission to IPART Issues Paper 2, November 2022, p 7.
- 31 ARNECC, Model Operating Requirements (version 6.1), May 2022, pp 48-49.
- 32 Model Operating Requirements Consultation Draft 7.1, requirement 5.7.4(b).
- 33 PEXA submission to IPART Issues Paper 2, November 2022, p 34; Sympli submission to IPART Issues Paper 2, November 2022, p 8; Law Society of NSW submission to IPART Issues Paper 2, p 3.
- 34 PEXA submission to IPART Issues Paper 2, November 2022, pp 33-34; Sympli submission to IPART Issues Paper 2, November 2022, p 8 Law Society of NSW submission to IPART Issues Paper 2, November 2022, p 3.
- 35 PEXA submission to IPART Issues Paper 2, November 2022, pp 33-34.
- 36 Law Society of NSW submission to IPART Issues Paper 2, November 2022, p 3.
- 37 ACCC submission to IPART Issues Paper 2, November 2022, p 2.
- 38 PEXA submission to IPART Issues Paper 2, November 2022, p 34.
- 39 PEXA submission to IPART Issues Paper 1, August 2022, p 21.
- 40 PEXA submission to IPART Issues Paper 2, November 2022, p 19.
- 41 PEXA submission to IPART Issues Paper 1, August 2022, p 22.
- 42 PEXA submission to IPART Issues Paper 2, November 2022, p 17.
- 43 Sympli submission to IPART Issues Paper 2, November 2022, p 3.
- 44 Sympli submission to IPART Issues Paper 2, November 2022, pp 2-3.
- 45 ARNECC, Model Operating Requirements (version 6.1), May 2022, pp 23-24.
- 46 PEXA submission to IPART Issues Paper 2, November 2022, p 17.
- 47 PEXA submission to IPART Issues Paper 2, November 2022, p 18.
- 48 PEXA submission to IPART Issues Paper 2, November 2022, p 18.
- 49 PEXA submission to IPART Issues Paper 2, November 2022, p 19.
- 50 Sympli submission to IPART Issues Paper 2, November 2022, p 3.
- 51 RBA, RITS Schedule of Fees, accessed 20 February, 2023.
- 52 Reserve Bank of Australia (RBA), Property settlements in RITS, accessed 13 February 2023.
- 53 Sympli submission to IPART Issues Paper 2, November 2022, p 3.
- 54 PEXA submission to IPART Issues Paper 2, November 2022, p 17.
- 55 PEXA submission to IPART Issues Paper 1, August 2022, p 22.
- 56 AECOM, Estimating costs of electronic conveyancing services in NSW, November 2023, p 14.

- 57 PEXA submission to IPART Issues Paper 2, November 2022, p 15.
- 58 PEXA submission to IPART Issues Paper 2, November 2022, p 17.
- 59 PEXA submission to IPART Issues Paper 2, November 2022, p 18.
- 60 Sympli submission to IPART Issues Paper 2, November 2022, p 3.
- 61 PEXA submission to IPART Issues Paper 2, November 2022, p 15.
- 62 IPART, *Review of the Pricing Framework for Electronic Conveyancing Services in NSW, Final Report*, November 2019, p 73.
- 63 IPART, *Review of the pricing framework for electronic conveyancing services in NSW, Final Report*, November 2019, p 79.
- 64 IPART, *Review of the pricing framework for electronic conveyancing services in NSW, Final Report*, November 2019, p 70.
- 65 PEXA submission to IPART Issues Paper 2, November 2022, p 19.
- 66 PEXA submission to IPART Issues Paper 2, November 2022, pp 15-16.
- 67 PEXA submission to IPART Issues Paper 2, November 2022, p 16.
- 68 PEXA, submission to IPART Issues Paper 2, November 2022, p 3.
- 69 PEXA, submission to IPART Issues Paper 2, November 2022, p 3.
- 70 PEXA, submission to IPART Issues Paper 2, November 2022, pp 3-4.
- 71 PEXA, submission to IPART Issues Paper 2, November 2022, pp 20-22.
- 72 Sympli, submission to IPART Issues Paper 2, November 2022, p 3.
- 73 ACCC, submission to IPART Issues Paper 2, November 2022, pp 2-3.
- 74 The Law Society of NSW, submission to IPART Issues Paper 2, November 2022, p 2.
- 75 [Model Operating Requirements, version 6.1, Operating Requirement 5.2\(a\); Model Operating Requirements, version 6.1, Operating Requirement 5.2\(b\) and \(c\)](#).
- 76 AECOM, *Estimating costs of electronic conveyancing services in NSW*, Public Report, November 2019, pp 8-11.
- 77 IPART, *Interoperability pricing for Electronic Lodgment Network Operators*, Issues Paper, July 2022, pp 9-10.
- 78 PEXA, submission to Issues Paper 2, November 2022, p 4
- 79 Sympli, submission to IPART Issues Paper 2, November 2022, pp 4-5.
- 80 Sympli, submission to IPART Issues Paper 2, November 2022, p 4.
- 81 AECOM, *Estimating costs of electronic conveyancing services in NSW*, November 2023, p 14.
- 82 PEXA, submission to Issues Paper 1, August 2022, p 22.
- 83 PEXA, *Mortgage Insights September 2022 Quarter*, accessed 25 January 2022.
- 84 PEXA, submission to Issues Paper 2, November 2022, pp 31-32.
- 85 Sympli, submission to Issues Paper 2, November 2022, p 7.
- 86 The Law Society of NSW, submission to Issues Paper 2, November 2022, p 2.
- 87 IPART, *Review of the Pricing Framework for Electronic Conveyancing Services in NSW, Final Report*, November 2019.
- 88 IPART, *Interoperability pricing for ELNOs Issues Paper 1*, July 2022, p 18.
- 89 Law Council of Australia, submission to IPART Issues Paper 1, p 3.
- 90 Australian Financial Review, *Major Banks Prepare to Connect to Sympli to compete with PEXA*, August 24, 2020.
- 91 [Model Operating Requirements version 6.1, Operating Requirement 5.4; ARNECC, Regulation Impact Statement: Options for promoting competition in the market for electronic lodgment network operators](#), December 2021, p 9.
- 92 PEXA Pricing and Fee Schedule, effective from 1 July 2022.
- 93 Sympli, submission to IPART Issues Paper 1, pp 2-3.
- 94 NSW Land Registry Services, *Dealing Statistics*, accessed 25 January 2022.
- 95 PEXA, *Mortgage Insights September 2022 Quarter*, accessed 25 January 2022.
- 96 PEXA, submission to IPART Issues Paper 1, p 27.
- 97 PEXA, submission to IPART Issues Paper 1, pp 26-27.
- 98 PEXA, submission to IPART Issues Paper 1, p 2.
- 99 Sympli, submission to IPART Issues Paper 1, p 7; Law Council of Australia, submission to IPART Issues Paper 1, p 3; Tasmania's Land Titles Office, submission to IPART Issues Paper 1, p 1.
- 100 [Model Operating Requirements, version 6.1, Operating Requirement 5.2\(a\)](#).
- 101 [Model Operating Requirements, version 6.1, Operating Requirement 5.2\(b\) and \(c\)](#).
- 102 PEXA, submission to IPART Issues Paper 1, p 28.
- 103 PEXA, submission to IPART Issues Paper 1, p 28.
- 104 Sympli, submission to IPART Issues Paper 1, p 6.
- 105 Sympli, submission to IPART Issues Paper 1, p 3.
- 106 Sympli, submission to IPART Issues Paper 1, p 4.
- 107 Sympli, submission to IPART Issues Paper 1, p 4.
- 108 ARNECC, *Model Operating Requirements Version 6.1, 16 May 2022, Operating Requirement 5.2*.

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