



The Hon. Victor Dominello MP
Minister for Customer Service and Digital Government

OFFICIAL

*Our reference: BN-03575-2022
Your reference: 22/234-1-1*

Ms Carmel Donnelly
Chair
IPART
By email: ipart@ipart.nsw.gov.au

Dear Ms Donnelly

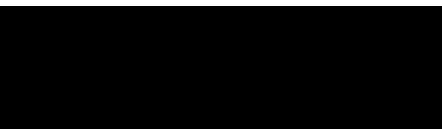
I am writing in response to your correspondence on the revised terms of reference for an IPART investigation of interoperability pricing for electronic lodgment network operators.

In April 2022, pursuant to section 12A of the Independent Pricing and Regulatory Tribunal Act 1992, I referred the matter to the Tribunal for investigation and report. I note that IPART gave notice of this referral and sought public comment on the draft terms of reference.

I have considered the revised terms of reference you provided and I am pleased to issue IPART with the final terms of reference (attached).

The Tribunal is requested to conduct an investigation, with the final report to be completed and provided to me by 30 April 2023.

Yours sincerely



The Hon. Victor Dominello MP
Minister for Customer Service and Digital Government

Date: 27/06/22

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TERMS OF REFERENCE

Interoperability pricing 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 Lodgement. 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 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.

Process and timeframe

The Tribunal will provide progress briefings to the Australian Registrars' National Electronic Conveyancing Council (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 by 30 April 2023.

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 report will be made publicly available on the Tribunal's website.