IPART Independent Pricing and Regulatory Tribunal | NSW

Interoperability pricing for Electronic Lodgment Network Operators

Issues Paper

July 2022

Tribunal Members

The Tribunal members for this review are:

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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, 12 August 2022

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.

Late submissions may not be accepted at the discretion of the Tribunal. Our normal practice is to make submissions publicly available on our website as soon as possible after the closing date for submissions. If you wish to view copies of submissions but do not have access to the website, you can make alternative arrangements by telephoning one of the staff members listed above.

We may decide not to publish a submission, for example, if we consider it contains offensive or potentially defamatory information. We generally do not publish sensitive information. If your submission contains information that you do not wish to be publicly disclosed, please let us know when you make the submission. However, it could be disclosed under the *Government Information (Public Access) Act 2009* (NSW) or the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW), or where otherwise required by law.

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

IPART's independence is underpinned by an Act of Parliament. Further information on IPART can be obtained from IPART's website.

Acknowledgment of Country

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

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

Contents

1 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 to an eConveyancing 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.

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 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 orchestrate the transaction, 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.

It is proposed that the MORs include provisions on the fees ELNOs may charge other ELNOs and/or subscribers in relation to participation in an interoperable transaction.

IPART has been asked to investigate and make recommendations on whether those fees should be able to be charged, and if so, how they should be set.

This Issues Paper sets out the scope of the review, some context for the review, our proposed approach, and issues we have identified and on which we seek comment.

1.1 The scope of this review

The Australian Registrars' National Electronic Conveyancing Council (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 responsible ELNO can charge other ELNOs or subscribers in relation to establishing and maintaining interoperability, and carrying out the functions of a Responsible ELNO. Consultation draft 7.1 of the MORS prohibits ELNOs from charging interoperability service fees. However, ARNECC is reconsidering this approach and will take into account IPART's recommendations in this review on whether and how such fees 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
- the costs and risks incurred by different parties during an interoperable transaction
- the current and evolving structure of the interoperable transaction market.

The full terms of reference are at Appendix A.

1.2 Our proposed approach to this review

We consulted on the draft terms of reference we received in April 2022, as required by the IPART Act. We received 3 submissions. We suggested some amendments to the terms of reference to reflect those submissions, clarify terms and ensure that we consider all relevant matters during the review. We settled the final terms of reference with the Minister for Customer Service and Digital Government.

We have now developed a proposed approach to the review that takes account of all matters required by our terms of reference. It comprises the following steps:

1. Determine 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. Determine the form of regulation for any ELNO interoperable transaction fees, that is:
   - whether a negotiate-arbitrate model[a] 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 transaction, a method for reviewing and adjusting the price in the future and any required amendments to the MORs.

1.3 How we will conduct this review

Reflecting our 3-step approach, we will conduct the review in 2 stages. This issues paper presents the issues we have identified for the first 2 steps in the approach.

We will consult widely on this issues paper, seeking written submissions and holding a public hearing as well as a workshop with other economic regulators to help us think through the options for the form of regulation.

[a] Chapter 4 explains and discusses the different forms of regulation we are considering through this review.

By October 2022, we will publish a decision paper on the chosen form of regulation, together with a second issues paper that explores the detailed content of the form of regulation: that is, either a set of pricing principles to guide the negotiate-arbitrate process, or a regulated method or price. We will then consult on this second stage of the review and publish a draft report early in 2023 and submit a final report by 30 April 2023.

Table 1.1 shows the indicative project timetable.

Table 1.1 Indicative project timetable

Project milestone	Proposed timetable
Issues Paper 1 – this paper	15 July 2022
Public hearing - form of regulation	26 July 2022
Workshop with economic regulators – form of regulation	1 August 2022
Submissions on Issues Paper 1 due	12 August 2022
Decision Paper (form of regulation) and **Issues Paper 2** (approach to regulation)	October 2022
Workshops and/or meetings – approach to regulation	October/November 2022
Submissions on Issues Paper 2 due	November 2022
Draft Report	February 2023
Submissions due on Draft Report	March 2023
Final Report	April 2023

1.4 How you can be involved

The table below provides a brief overview of where stakeholders may have influence in this review.

Table 1.2 What stakeholders can influence in this review

What stakeholders can influence in this review	Decisions that have already been made
• Whether fees should be charged by Responsible ELNOs to Participating ELNOs in an interoperable transaction • The categories of cost that should be recovered through any such fees • Whether and how any such fees should be recovered from subscribers • The form of regulation for any interoperable transaction fees • The approach to the chosen form of regulation • Any changes to the Model Operating Requirements (MORs) that are necessary to reflect our recommendations	• Interoperability will be required in eConveyancing and the form of interoperability has been decided • A 2-stage process for the review: – Stage 1 – deciding whether fees should be charged, whether and how they should be recovered and the appropriate form of regulation – Stage 2 – deciding on the approach to the chosen form of regulation and any changes that are required to the MORs to reflect our recommendations • At least 1 public hearing, 2 issues papers and a draft report made public • A workshop with economic regulators from each jurisdiction • Review must cover all items listed in the terms of reference • Review timeframe – we must report by April 2023.

This issues paper forms part of Stage 1 of our process for this review. We will publish a second issues paper for Stage 2 of the process.

We have provided a list of questions for stakeholders to respond to throughout this issues paper. The consolidated list is set out below. These questions are aimed at starting the conversation and not designed to be an exhaustive list.

Have your say

Your input is critical to our review process.

You can get involved by making a submission, submitting feedback or attending a public hearing.

Submit feedback »

Attend the public hearing »

Questions on which we are seeking comment

1.5 The structure of this paper

This issues paper is structured as follows:

Chapter	
02	Context for the review the eConveyancing market and interoperability
03	Should fees apply for interoperable transactions?
04	If so, what should the form of regulation for those fees be?

Appendix	
A	Sets out the terms of reference for the review
B	Provides a glossary of terms used in this paper

2 The eConveyancing market and interoperable transactions

2.1 What is eConveyancing?

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). Typically, it includes the following phases:

- preparation of contracts
- exchange of contracts
- property searches and enquiries
- preparation and exchange of documents
- transfer duty calculation and payment
- financial settlement
- document lodgment
- document registration (when legal title is transferred).

eConveyancing is an electronic solution for some of the steps involved in this process – from preparation and exchange of documents to document lodgment. It allows solicitors, conveyancers and financial institutions to enter a secure, online workspace via an electronic lodgment network (ELN) where they can exchange data and collaborate to prepare documents, settle funds and lodge documents with land registries.

eConveyancing allows the parties involved to complete conveyancing transactions and disburse settlement funds electronically. It also allows other documents that are not necessarily part of a sale but relate to interests in land (e.g. caveats) to be lodged electronically.

2.2 Key participants in eConveyancing

The eConveyancing process involves the following participants:

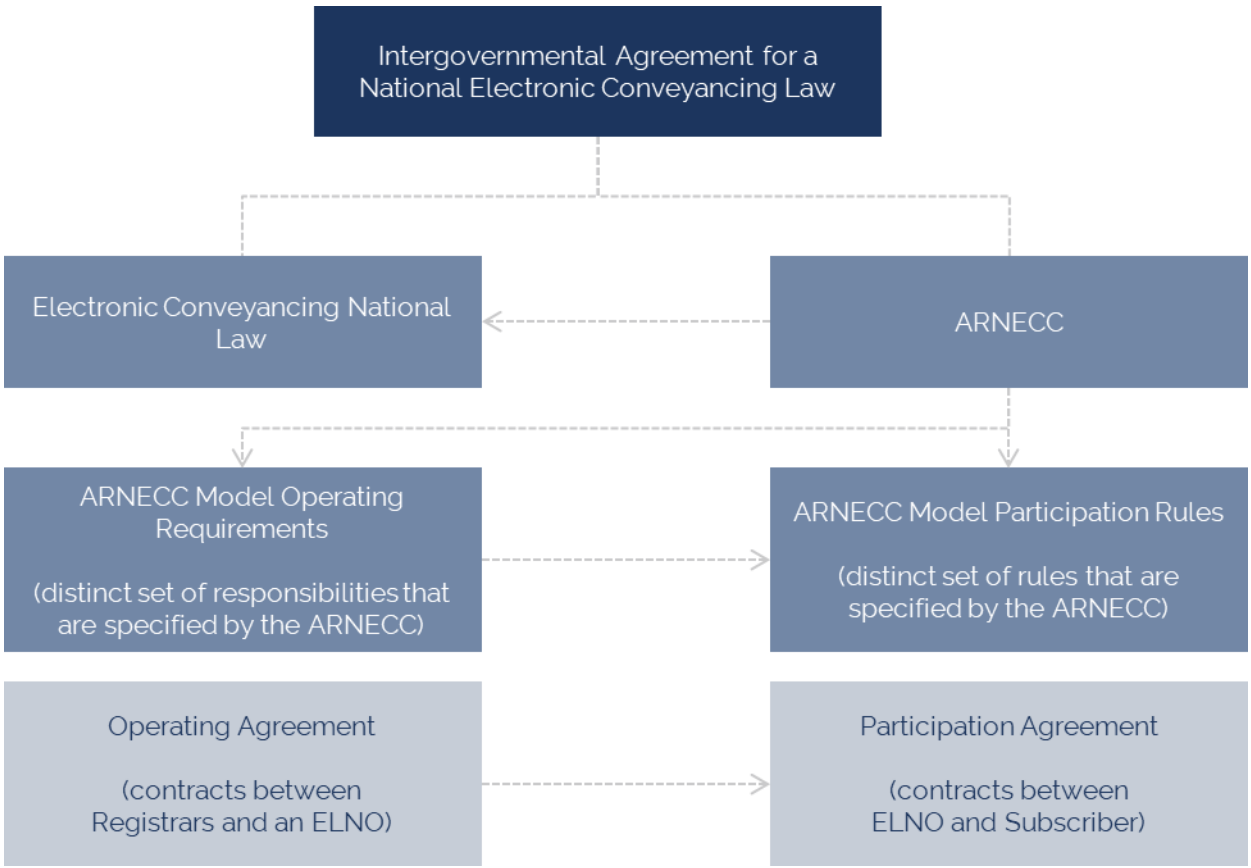
- **Electronic Lodgment Network Operators (ELNOs)** - businesses approved by the relevant state's Registrar General to build and operate ELNs, through which documents and funds can be exchanged.
- **Subscribers** - people or businesses authorised by their client to enter and exchange data to complete electronic documents and transactions via an ELN. They include:
  - Principal subscribers, who represent themselves – for example, financial institutions and government agencies
  - Representative subscribers, such as solicitors and conveyancers who represent other parties to the conveyance – typically, the vendor or purchaser.
- **The Reserve Bank of Australia (RBA)** - facilitates financial settlement by reserving funds until lodgment is confirmed and transferring funds between financial institutions.

- **State or territory revenue offices** - confirm if duties have been paid and if not, the dutiable amounts are populated in the workspace and paid via the ELN at settlement.[b]
- **State or territory registry offices** - documents are lodged with the registry office which then examines the documents and, if acceptable, registers them and updates the land titles register.

2.3 The national legal framework for eConveyancing

The State and Territory governments signed a 2011 Intergovernmental Agreement to develop, implement and manage a national regulatory framework for eConveyancing (see Figure 2.1).[1] This included establishing the Electronic Conveyancing National Law (ECNL) and the Australian Registrars' National Electronic Conveyancing Council (ARNECC).

Figure 2.1 National legal framework for eConveyancing



Source: ARNECC, *Key objectives.*

[b] The process and timing of payment of duties varies across jurisdictions, for example, the ACT operates a "barrier free conveyancing" model where conveyance duty is paid after settlement. This means that ELNOs do not need to connect to the ACT registry office.

The ECNL governs how eConveyancing is provided and operated across all the States and Territories.[2] It is implemented by separate legislation in each jurisdiction.

ARNECC is comprised, and acts on behalf, of Registrars[c] from each jurisdiction. It facilitates the implementation and management of the regulatory framework.[3] It is also responsible for advising on the ECNL and developing and maintaining Model Operating Requirements (MORs) and Model Participation Rules (MPRs), which are then determined by the Registrar in each jurisdiction.[4]

The jurisdictional Operating Requirements apply to ELNOs. Each jurisdiction may attach conditions to an ELNO's approval to operate. In many jurisdictions this is done through an Operating Agreement between the Registrar and an ELNO.

Participation Rules are the rules that subscribers must comply with to be registered and use an ELNO's network. These are reflected in a Participation Agreement between an ELNO and its subscribers.

2.4 The state of the eConveyancing market across Australia

The Australian eConveyancing market is well advanced. Electronic lodgment of land dealings via an ELN is available to varying degrees in all Australian jurisdictions except Tasmania and the Northern Territory. In some jurisdictions, electronic lodgment is mandated for all or certain transactions.

The eConveyancing market is also highly concentrated, with only 2 ELNOs approved to operate in most jurisdictions: Property Exchange Australia Ltd (PEXA) and Sympli Australia Pty Ltd (Sympli). PEXA has around 99% of the eConveyancing market.[5] Competition has been hampered by ELNOs' inability to interoperate with each other in transactions involving multiple parties.

Table 2.1 provides an overview of the current extent of eConveyancing, the scope of mandates for electronic lodgment and the approved ELNOs in each jurisdiction.

Table 2.1 State of eConveyancing market in Australian jurisdictions

Jurisdiction	Extent of eConveyancing and mandates for electronic lodgment	Approved ELNOs
NSW	100% of land dealings lodged via an ELN. Electronic lodgment via an ELN has been mandated for all transactions since 11 October 2021.	PEXA Sympli
Victoria	Around 97% of land dealings currently lodged via an ELN. All transactions available for electronic lodgment are mandated for lodgment via an ELN, where the transacting party is represented by an Authorised Deposit-Taking Institution or is represented by a lawyer or licensed conveyancer.	PEXA Sympli
South Australia	Around 92% of land dealings currently lodged via an ELN. All transactions available for electronic lodgment are mandated for lodgment via an ELN.	PEXA Sympli
Queensland	Around 70-75% of land dealings currently lodged via an ELN. No current mandates. The Queensland Department of Resources recently completed consultation on a proposal to mandate eConveyancing in Queensland by early 2023.	PEXA Sympli

[c] A Registrar is the official responsible for land registry functions in each State and Territory.

Jurisdiction	Extent of eConveyancing and mandates for electronic lodgment	Approved ELNOs
Western Australia	Around 76% of land dealings currently lodged via an ELN. Most transactions available for electronic lodgment are mandated for lodgment via an ELN. Some exemptions apply, such as for people who are self-represented.	PEXA Sympli
ACT	Around 44% of land dealings currently lodged via an ELN. No current mandates. Electronic lodgment is available for the 3 most frequent transactions (transfer, mortgage and discharge of mortgage).	PEXA
Tasmania	No eConveyancing	None
Northern Territory	No eConveyancing	None

Source: Correspondence with Registrars-General in each jurisdiction.

2.5 Reforms to implement interoperability between Electronic Lodgment Networks

There are several reforms required to implement interoperability between ELNs. These include:

- developing a technical approach to interoperability
- establishing an interoperability data standard
- updating the ECNL and MORs to support interoperability.[6]

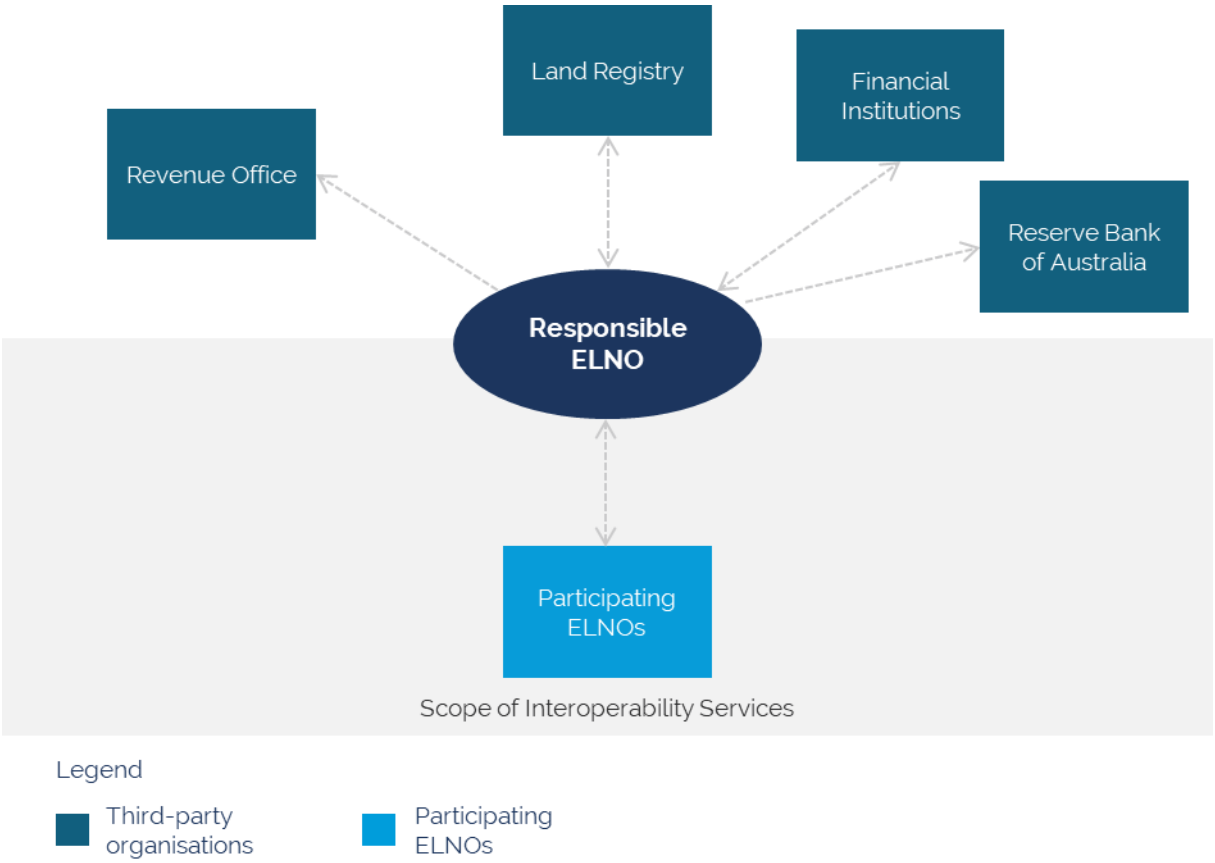
2.5.1 What is an interoperable eConveyancing transaction?

The 'interoperable' eConveyancing transaction model developed by ARNECC involves multiple ELNOs hosting subscribers that are participating in the same transaction. The ELNOs exchange and use information between themselves and with third parties through secure Application Programming Interfaces (APIs) to complete a transaction. This allows each subscriber to choose their preferred ELNO, rather than having to subscribe to the same ELNO to complete a transaction.

For each transaction, one ELNO is designated as the **Responsible ELNO** according to a set of system rules. This ELNO will orchestrate the transaction, interact with Land Registries and Revenue Offices, and perform the transaction Settlement and Lodgment. Other ELNOs hosting subscribers in a transaction are designated as **Participating ELNOs**.[7]

Figure 2.2 shows the parties and their interactions in ARNECC's interoperable eConveyancing transaction model.

Figure 2.2 Interoperable eConveyancing transaction model



Note: Arrows represent the flow of information during a transaction.

Source: IPART; Interoperability Operational Committee, *Interoperability Model Overview*, March 2021, p 2.

2.5.2 Status of reforms to implement interoperability

To support implementation of interoperability, with the approval of all States and Territories, the NSW Parliament enacted changes to the national law on 6 June 2022 (to be applied by all States and Territories as a law of their respective jurisdictions). Key changes included:

- a mandate for all ELNOs to interoperate with each other
- expansion of a Registrar's powers to make operating requirements that specify matters that must be included in interoperability agreements, so that important customer protections are included
- allowing Registrars to require ELNOs to participate in an industry code to provide regulation of the financial component of a transaction
- allowing Registrars to exchange information about compliance with ECNL requirements
- extension of the statutory reliance regime for digital signatures to cover interoperable dealings.[8]

A second bill is being developed, which will address outstanding details not covered by the first bill, including an enforcement regime for interoperability. This bill will be introduced before interoperability is rolled out in 2023.[9]

Various committees, working groups and panels, comprised of industry and jurisdictional representatives are assisting ARNECC to resolve outstanding issues and finalise a national interoperability regime.[10] The proposed implementation timetable involves:[11]

- a Day-1 transaction in March 2023
- an independent assessment of the current mid-2023 target for rolling out interoperability, for Ministers to review at their next forum (anticipated for September 2022)
- progressive implementation of interoperability by jurisdiction:
  - phase 1: Queensland and NSW
  - phases 2, 3 and 4: two jurisdictions in each phase.

3 ELNO costs and fees

IPART has been asked to consider whether fees should be charged by the Responsible ELNO to Participating ELNOs for participation in an interoperable transaction, and whether and how such fees should be passed on to subscribers.

This chapter discusses factors that are relevant to this consideration, including:

- costs currently incurred by ELNOs
- fees currently charged by ELNOs
- additional costs that will be incurred by ELNOs with interoperability
- how the costs of an interoperable transaction are incurred
- how the costs of interoperability might be recovered
- under what conditions it would be appropriate to charge an ELNO-to-ELNO fee
- our view that the conditions under which it would be appropriate to charge an ELNO-to-ELNO fee will exist in the interoperable transaction market as it is likely to stand when interoperability commences.

3.1 We previously estimated the costs incurred by ELNOs

We reviewed the pricing regulatory framework for eConveyancing in 2019. For that review we engaged a cost consultant, AECOM, to estimate the capital and operating costs that a benchmark efficient new entrant ELNO would incur in NSW from 2018-19 to 2022-23. At the time, interoperability had been foreshadowed but a model had not been chosen, so these costs include only the costs of a standalone ELNO. AECOM considered the following costs:

- Development of an eConveyancing platform that performs 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 10 financial institutions
- General staff costs, such as executive staff costs, human resources staff etc
- General operating expenditure, for example, the cost of renting office space
- Marketing and customer acquisition/retention costs
- Any pass-through costs, for example land registry fees and lodgment gap insurance.

For more information on standalone ELNO costs, please see AECOM's report and IPART's final report on the pricing framework for electronic conveyancing services in NSW.

3.2 Fees currently charged by ELNOs to subscribers recover costs

PEXA developed its initial pricing table (of "ELNO service fees") at a time when paper conveyancing was still the dominant conveyancing mode, and therefore it set its prices by comparison to the market. When eConveyancing was mandated in NSW, removing the competitive pressure formerly exerted by paper conveyancing, the NSW Government asked IPART to undertake our 2019 review of eConveyancing pricing.

We developed a pricing model to assess whether prices being charged by ELNOs were reasonable, based on efficient costs. We used AECOM's efficient cost estimates for a benchmark ELNO and tested a range of market share assumptions, and concluded that PEXA and Sympli's prices were reasonable, and sufficient to cover the costs identified in section 3.1 above.

ELNO service fees are regulated through the Operating Rules. The MORs allow an ELNO to increase its ELNO Service Fees once per year on 1 July by no more than the Consumer Price Index (CPI). An ELNO may also request the Registrar's approval for changes to its pricing table.

3.3 ELNOs will have additional costs of interoperability

As part of our previous review, we also asked AECOM to investigate any additional costs that would be incurred by ELNOs if interoperability were to be implemented. AECOM found that each ELNO would incur some costs to implement interoperability, but the incremental cost of establishing interoperability between the 2 current ELNOs would be relatively low (regardless of interoperability model chosen).

Now that the model of interoperability has been settled,[12] as part of this review we will consider in more detail the additional costs that ELNOs incur.

Some of the additional costs are associated with establishing and maintaining interoperability. Additional capital and operating expenditure will include 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 do not change with interoperability.

Interoperability insurance may also be required to cover risks that are unique to interoperable transactions. We understand that this insurance product is currently being developed.

3.4 Interoperable transactions change the way costs are incurred

In an interoperable transaction, ELNOs will incur different costs, depending on whether they are the Responsible ELNO or a Participating ELNO. These costs are not additional to the costs of the same transaction being performed by a single ELNO, but are allocated between 2 or more ELNOs involved in a transaction.

In an interoperable transaction, Participating ELNOs provide information from their subscribers (e.g. signed documents) to the Responsible ELNO to progress the transaction. The Responsible ELNO lodges documents and performs financial settlement to complete the transaction. As the Responsible ELNO has greater responsibilities, it will likely incur greater costs than the Participating ELNOs in the same transaction.

To start an interoperable transaction, an ELNO will open a digital workspace with the relevant Land Registry and pay a corresponding Lodgment Support Service (LSS) fee. Payment of the LSS fee is not associated with the Responsible ELNO role – this cost may be incurred by a Participating ELNO or Responsible ELNO, depending on the transaction. It is incurred in all eConveyancing transactions, whether they are interoperable or not.

In the workspace for interoperable transactions, all ELNOs will prepare documents before the workspace is "locked" and the lodgment and settlement process begins.

During lodgment and settlement, the Responsible ELNO performs the following tasks to complete an interoperable transaction:

- collect and remit lodgment fees to the Land Registry
- perform all calls to the Land Registry and Revenue Office (i.e. authority calls), either as requested by a Participating ELNO, and/or as required by its own business rules
- manage 'lodgement case level' errors
- pay fees associated with financial settlement
- manage post-settlement communications with Participating ELNOs, banks and the Land Registry.

For all eConveyancing transactions, lodgment gap insurance covers the risk that the registration of a title is prevented by a dealing on the title, between the final title activity check and before settlement and lodgment.[d] In an interoperable transaction, this risk, and therefore the cost of insurance, falls on the Responsible ELNO.

[d] In our 2019 review, AECOM estimated that lodgment gap insurance cost around $10 per transaction: AECOM, *Estimating costs of electronic conveyancing services in NSW - Public Report,* August 2019, p 13.

We seek comment on the following:

1. Have we identified all relevant categories of costs and risks associated with interoperable transactions?
2. Have we accurately identified the party incurring the costs and risks associated with interoperable transactions?
3. Do these costs and risks vary across jurisdictions? If so, what are the reasons for the variation?

3.5 There are different ways to recover the costs of interoperability

Interoperability service fees are not provided for in the current MORs – version 6.1, on which the jurisdictional Operating Requirements are based. Consultation draft 7.1 of the MORs defines interoperability service fees as charges for:

- establishing and maintaining interoperability, or
- taking the role of Responsible ELNO.

The definition encompasses ELNO-to-subscriber fees (in addition to an ELNO Service Fee)[e] as well as ELNO-to-ELNO fees.

Consultation draft 7.1 requires that ELNOs not charge interoperability service fees.[13] However, ARNECC is seeking advice on a pricing regulatory framework that allows ELNOs to recover the costs of interoperability in a way that supports competition and consumer choice, which may include non-zero interoperability service fees.

In our previous review we found that a cost-reflective transfer price should be set to ensure that costs are shared fairly across ELNOs in an interoperable transaction.

The ACCC also found that "through the establishment of a clear regulatory framework the costs of interoperability can be decided and allocated appropriately between ELNOs in order to drive efficiencies".[14]

[e] ELNO Service Fee is defined in the MORs as fees charged by an ELNO to a Subscriber for access to, and use of, an ELNO. PEXA and Sympli currently charge ELNO Service Fees to subscribers on a per transaction basis. See PEXA Pricing Schedule, July 2021 and Sympli Pricing Schedule FY 21-22.

Considering the issue afresh, our preliminary views are:

- Where all ELNOs are required to have the capacity to undertake the Responsible ELNO role, any additional costs of establishing and maintaining interoperability should be recovered through increasing ELNO Service Fees (as it is a function that all ELNOs will need to have).
- 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 the development of competition.
- If the responsibilities of ELNOs in interoperable transaction are symmetrical, each ELNO would have the same set of costs and there would be no need for an ELNO-to-ELNO fee. Given that only one party can be the Responsible ELNO, interoperable transactions will always be asymmetrical.
- If ELNOs have equal shares of the interoperable transaction market, the costs of performing the Responsible ELNO role net out over time, and the fee for performing the Responsible ELNO role should be set to zero.
- 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, It would not be appropriate to pass this fee through in a transaction specific interoperability service fee – as noted above, subscribers who participate in an interoperable transaction should not pay more than they would for the same transaction if a single ELNO is involved. However, these Responsible ELNO to Participating ELNO fees should be included in the cost base of the Participating ELNO and recovered from subscriber fees more generally.
- The Lodgment Support Service fee, paid to a land registry to open a digital workspace, should not form part of an ELNO-to-ELNO fee for performing the duties of a Responsible ELNO. In an interoperable transaction, this cost should be shared equally between all parties.

We seek comment on the following:

4. Should a Responsible ELNO be able to charge a fee to Participating ELNOs for performing the functions of a Responsible ELNO in an interoperable transaction?

5. We have proposed that the costs of interoperability should be recovered from all subscribers. This may result in prices for subscribers that are not directly cost-reflective, however, we consider this is worthwhile to achieve the long-term benefits of competition. Are there any alternative approaches that we should consider?

6. We have identified that the Lodgment Support Service fee, paid to a land registry to open a digital workspace, is not necessarily paid by the Responsible ELNO. This means it cannot be recovered through a fee for performing the functions of a Responsible ELNO. What are your views on the best mechanism for sharing this cost between all ELNOs in an interoperable transaction?

3.6 Market conditions suggest that a Responsible ELNO fee would be appropriate

As discussed in section 3.4, a Responsible ELNO has additional responsibilities and is therefore likely to incur greater costs than Participating ELNOs in an interoperable transaction.

We next turn to the structure of the interoperable transaction market. If each ELNO is equally likely to be the Responsible ELNO, over time the costs of each ELNO in performing the function of a Responsible ELNO in interoperable transactions would net to zero. Therefore, no interoperability service fee would be needed.

However, in the initial interoperable transaction market, one ELNO is more likely to perform the functions of the Responsible ELNO. PEXA is likely to be integrated with a larger number of financial institutions than the recent entrant ELNO, Sympli, or future new entrants. PEXA may need to perform the role of Responsible ELNO in cases where a financial institution is not connected to the ELNO that would perform lodgment and financial settlement under the system or business rules. So, PEXA is likely to perform the role of Responsible ELNO more often than its competitors, at least in the short-term.

With the current market structure, it is likely that these costs will not be balanced between ELNOs over time. This suggests that it would be reasonable for Responsible ELNOs to charge interoperability service fees to Participating ELNOs.

In the next chapter, we discuss what form of regulation would be best for such a fee.

3.7 Introducing a Responsible ELNO fee has implications for subscriber fees, but the precise impact is unclear

Allocating some costs to the Responsible ELNO fee will likely have implications for subscriber prices. We have previously noted that implementing interoperability would increase overall costs in the short term, implying that subscriber fees may need to increase. However, interoperability could lead to innovation and efficiencies that lower costs in the medium to longer term. ELNOs may also need to rebalance their prices for different types of transaction as prices may no longer be cost-reflective.

Our 2019 review of ELNOs' pricing regulatory framework recommended a fresh review after 2 years to take account of market development and any changes to costs.

4 What form of regulation should apply for ELNO interoperable transaction fees?

Setting ELNO interoperable transaction fees involves first deciding on a method (a form of regulation) to establish fees, and then adjusting fees over time. The form of regulation may have a significant impact on competition in the eConveyancing market. It could affect the ability of ELNOs to interoperate, the incentives for them to interoperate, and/or the choices and information available to consumers.

As discussed in Chapter 1, the terms of reference ask us to investigate and make recommendations on whether:

- a negotiate-arbitrate model should apply to setting any ELNO interoperable transaction fees and if so, the pricing principles that should apply under this model; or
- a regulated method or level of price should apply to setting any such ELNO interoperable transaction 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.

In this Chapter, we provide an overview of different forms of regulation and discuss the 2 forms we are required to consider. Our discussion includes how each form of regulation applies to different industries and benefits and limitations of each.

4.1 Many forms of regulation could apply to interoperable transaction fees

There are many ways interoperable transaction fees can be facilitated, which have varying degrees of regulatory control or intervention.

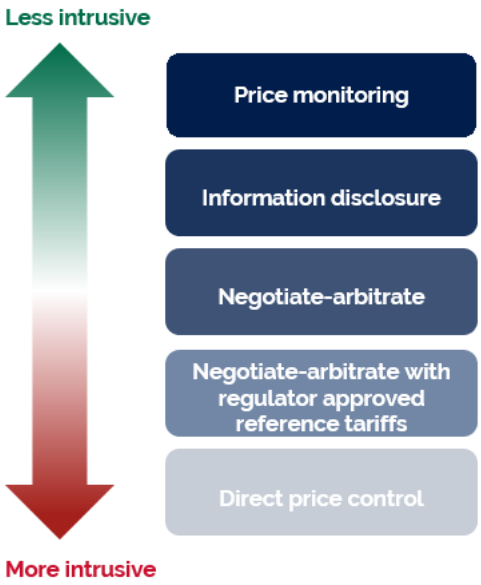
As Figure 4.1 shows, the least intrusive form of regulation is **price monitoring** where the regulator may report on the performance of service providers. Within this form of regulation, the regulator may publish prices, or a price range that it considers reasonable. The regulator may also report on whether the prices being charged are consistent with costs. This form of regulation is the least intrusive and imposes the lightest administrative burden.

At the other end of the spectrum, **direct price control** involves the regulator setting prices and/or the rate of price increase or decrease over time. Direct price control can take many forms, including:

- incentive regulation, which is price-based regulation such as CPI-X price caps and revenue caps
- command and control regulation, which includes cost plus, cost of service and rate of return regulation.

In between price monitoring and direct price control, there is information disclosure regulation,[f] negotiate-arbitrate regulation and negotiate-arbitrate regulation with regulator approved reference tariffs.

Figure 4.1 Different forms of regulation for interoperable transaction fees



In general, the choice of form of regulation depends on the extent of competition in the market and the degree of market power held by service providers. For interoperable transaction fees, the choice between these forms of regulation will depend on:

In the sections below. we focus our discussion on the 2 forms of regulation the terms of reference ask us to consider – negotiate-arbitrate regulation and direct price control.

[f] Under **information disclosure** regulation, the regulator will set disclosure requirements. The regulator and/or firms will publish data and assess performance. Stakeholders will use the disclosed information to influence the performance of the regulated firm. In New Zealand, the Auckland, Wellington and Christchurch international airports are regulated under information disclosure regulation. See Oxera, Out of the dark: the role of information disclosure regulation in New Zealand, September 2012.

4.2 Negotiate-arbitrate as a form of regulation

Negotiate-arbitrate regulation involves parties negotiating with each other to determine the price and non-price terms and conditions of service. If negotiations fail, an independent party can be called on to resolve the dispute.

The current MORs (Version 6.1) do not contain any interoperability negotiation/arbitration processes for ELNOs. However, MORs – Version 7 (Consultation Draft 7.1) provides for the following negotiation, mediation and arbitration processes for ELNO interoperability agreements:

Negotiation	an ELNO that receives a request from, or makes a request to, another ELNO to interoperate must promptly enter into good faith negotiations to prepare and execute an interoperability agreement.
Mediation	if an ELNO is unable to agree on the terms of an interoperability agreement with another ELNO and the ELNOs have not agreed to a binding dispute resolution process by which the dispute can be resolved.
Arbitration	if a dispute or difference arising under Operating Requirement 5.7.5 (mediation) is not settled within 20 Business Days of referral to mediation (unless such period is extended by agreement between the parties)

4.2.1 Negotiate-arbitrate regulation can take 3 different forms

There are 3 forms of negotiate-arbitrate regulation that could be applied to setting ELNO interoperable transaction fees. Each of them requires timely and cost-effective arbitration.

1. **Standard negotiate-arbitrate model** - ELNOs would negotiate with each other to determine the price and non-price terms and conditions of interoperability. This could also include information disclosure, a negotiation framework, pricing principles and frequency of price changes. If negotiations fail, a commercial arbitrator/mediator or regulator – who would likely be appointed by ARNECC - can be called on to resolve the dispute. The outcomes from arbitration would be binding on all parties. This form of the negotiate-arbitrate method is used in many other industries in Australia, including:
   - rail access regimes in various states[9]
   - port access regimes in Queensland, SA and Northern Territory (NT)
   - electricity network access regimes in the east coast, NT and WA (for negotiated services and non-reference services).[15]

[9] Queensland (for non-reference services), WA, SA and for the Tarcoola-Darwin rail network

2. **Negotiated settlements model** - ELNOs would jointly negotiate in order to determine the prices and non-price terms and conditions of interoperability, which may be facilitated by a regulator. Once an agreement (negotiated settlement) is reached, it is approved by the regulator.
3. **Negotiate-arbitrate with regulator approved reference tariffs model** - the regulator would approve reference tariffs for interoperable transactions on an *ex ante* basis, which are then used as the basis for negotiations by ELNOs. If negotiations fail, the regulator can be called on to resolve the dispute and give effect to the reference tariff. Compared to the standard negotiate-arbitrate model, this can be more costly to implement and tends to be used where there are several parties negotiating fees. This form of the negotiate-arbitrate method is used in the rail access regimes in Queensland for coal-related services.

4.2.2 Negotiate-arbitrate regulation requires establishing pricing principles

The negotiate-arbitrate form of regulation requires establishing pricing principles to guide price negotiation for an interoperable transaction.[h] These principles would aim to support greater competition and efficiency in the eConveyancing market, while ensuring that the Responsible ELNOs can generate enough revenue to cover their efficient costs of interoperable transactions.

Many access regimes currently include high-level pricing principles. High level principles would provide ELNOs with flexibility to respond to changes in the eConveyancing market or changes in best practice regulation.[16] For example, the pricing principles could specify that the fee should:

- reflect the cost of providing the service
- reflect the risks faced by the responsible ELNO in providing the interoperable transaction
- be the same for all participating ELNOs.

We could also consider specifying more detailed or prescriptive pricing principles, such as setting a minimum and maximum interoperable transaction fee or a single maximum price. While these could allow for more predictable interoperable transaction fees, if the principles are too restrictive, they could lead to inefficiencies and/or uncompetitive outcomes. Regular reviews of the pricing principles could help to avoid this situation but may also create more regulatory uncertainty.

[h] In addition to the pricing principles, negotiate-arbitrate regulation requires establishing the type of instruments used to give effect to the negotiate-arbitrate regulation, whether different forms of regulation are applied to different services, the role of the regulator, information disclosure obligations, the negotiation framework and dispute resolution mechanisms.

The NSW rail access regime currently includes more detailed pricing principles, including that prices must be between a 'floor' and a 'ceiling'.[i] The floor price is the direct costs of maintaining and operating the rail infrastructure for an access seeker. The ceiling limit is a revenue cap for an access seeker or group of access seeker set at the full economic cost of providing the services to these access seekers, including direct costs of maintaining and operating infrastructure, a proportion of overheads, rate of return and depreciation.[17] Compliance with the revenue cap is assessed on an ex-post basis.

Setting a regulator reference price would require identifying the costs of interoperable transactions and assessing what costs (and what proportion of costs) should be paid for by the Participating ELNO. As discussed in Chapter 3, our 2019 review of the pricing framework for eConveyancing services in NSW provides some guidance on the types of costs we would consider when setting a reference price. The eConveyancing industry has changed since then, and so setting reference prices would require reassessing the costs of interoperability and how much should be recovered from the Participating ELNO.

4.2.3 Negotiate-arbitrate regulation has both benefits and limitations

Negotiate-arbitrate regulation has both benefits and limitations, as summarised in Table 4.1. In determining whether it is the most appropriate form of regulation, certain market conditions should be met. Generally, negotiate-arbitrate regulation works well when there is effective competition in the market, and roughly equal market power between negotiating parties. If there is unequal market power, information disclosure requirements can help parties negotiate fair and reasonable conditions. If these information disclosure requirements are insufficient, smaller service providers may be deterred by costly negotiation/arbitration processes and could decide to exit or not enter the market, which would harm competition in the long term.

Negotiate-arbitrate regulation can work well in a market where there is similar market power between negotiating parties and/or effective information disclosure requirements

[i] The floor price in the NSW rail access regime ensures that the rail owner recovers at least the direct costs imposed by access seekers, and acts as the minimum price to be paid by access seekers. The ceiling limit (revenue cap) would ensure that if the rail owner has substantial market power, it cannot exercise its market power to charge access seekers more than the full economic costs.

Table 4.1 Benefits and limitations of negotiate-arbitrate regulation

Benefits	Limitations	Possible solutions
Promotes incentives for efficiency	There can be imbalances in bargaining power. If the Participating ELNO does not have access to enough information on the responsible ELNO's costs of an interoperable transaction, it may be difficult to assess whether proposed charges are reasonable.	Information disclosure requirements could reduce imbalances in bargaining power. Disclosure requirements can improve transparency and accountability around past and forecast costs of an interoperable transaction.
Reduces regulatory and compliance costs because it is a less intrusive form of regulation	Can lead to high transaction costs, which may increase with the number of parties in negotiation ELNOs may incur unavoidable ongoing costs, such as legal costs and the costs of providing information for negotiations,	Negotiate-arbitrate with regulator approved reference tariffs can provide some guidance for negotiations.
Provides ELNOs with the ability to have recourse through arbitration.	ELNOs would likely weigh up costs of stronger regulation against benefits of not reaching commercial agreement (e.g. temporary gains from using market power).	There needs to be a credible threat of stronger regulation. The threat of regulatory intervention is likely to encourage ELNOs to negotiate a reasonable outcome, as they would typically prefer to avoid more direct and costly forms of regulation.

Source: IPART analysis

Negotiate-arbitrate regulation may be preferred over direct price control if the costs of setting regulated prices outweigh the benefits of doing so, or if the threat of stronger regulatory intervention (i.e. arbitration) provides enough incentive for ELNOs to reach commercial negotiation. Box 4.1 describes how the threat of stronger regulatory intervention supported a negotiate-arbitrate model in the wheat port industry.

Box 4.1 ACCC decision on form of regulation for bulk wheat port

In 2009 and 2011 the ACCC approved a publish-negotiate-arbitrate model for determining access prices, where the prices are not set by the ACCC. The ACCC considered that *ex ante* price regulation was not necessary due to the specific circumstances of the transitioning wheat export industry. The ACCC also had regard to the relatively short duration of the initial access undertakings and the threat of more prescriptive regulatory requirements in any future access undertaking should the publish-negotiate-arbitrate framework not be effective.[18]

The threat of arbitration was seen as providing enough incentive for the port terminal operators to negotiate reasonable prices with access seekers. The ACCC also noted that an important consideration in accepting a publish-negotiate-arbitrate model was the clarity and transparency about the terms and conditions of access contained in the access undertakings.

Source: ACCC, Part IIIA access undertaking guidelines, August 2016, p 26

We seek comment on the following:

7. What are your views on negotiate-arbitrate as a form of regulation for fees for performing the functions of a Responsible ELNO in an interoperable transaction?

8. What characteristics of the eConveyancing market influence whether a negotiate-arbitrate form of regulation is appropriate?

4.3 Direct price control as a form of regulation

As an alternative to the negotiate-arbitrate model, the terms of reference require us to consider whether a regulated method or price level should apply to setting any interoperable transaction fees. If so, what that method or level should be for 2023-24 and what method should be used for reviewing and adjusting the price in the future.

The need for direct price control (whether it be a pricing method or level) would be largely determined by the extent to which competition creates incentives for ELNOs to continually improve their services and keep their prices in line with the efficient costs of supplying those services.

Direct price control applies in a range of industries including telecommunications (Mobile Terminating Access Service) and the energy distribution networks in various states (see details in Box 4.1).

Box 4.2 Industries where direct price control applies

- **Mobile Terminating Access Service (MTAS)** The MTAS is a wholesale service provided by a mobile network operator (MNO) to fixed line operators and other MNOs to connect or 'terminate' a call on its mobile network. It is a service which enables subscribers from a mobile or fixed line network to make calls to subscribers on a different mobile network. Because each MNO has exclusive access to subscribers on their network, without regulation, an MNO has the ability to set unreasonable terms of access, including setting unreasonably high prices. The ACCC has generally taken a cost-based approach to setting MTAS.[a] It also sets non-price terms and conditions to assist negotiating parties.
- **Energy (East Coast/NT direct control services)** Distribution Network Service Providers (DNSPs) often offer services to customers where only one distribution provider is licensed to operate or where ownership and control of its infrastructure prevents alternative suppliers. The AER classifies services provided by DNSPs either as a direct control service or a negotiated distribution service. Negotiated service classifications apply to services where the AER considers that all relevant parties have a reasonable degree of market power to effectively negotiate the provision of those services. Services that do not meet this condition are classified as direct control services, which the AER regulates, typically by setting a revenue cap.

a. In its 2019 review, the ACCC set an MTAS cost-based price consistent with the total service long run incremental cost plus organisational-level costs.

Source: ACCC, MTAS Final Report, October 2020, p 4; ACCC, MTAS discussion paper, August 2019, p 5; AER, Electricity Distribution Service Classification Guideline, September 2018, p 12.

4.3.1 Direct price control requires choosing whether to set a pricing method or a price level

If we decide that direct price control should apply to interoperable transaction fees, we would need to decide whether to determine a method that ELNOs must use to set their own interoperability transaction fees, or whether we should set a regulated price or revenue cap.

Determining a method for ELNOs to set their own interoperability fees may reduce regulatory burden and provide ELNOs with more flexibility to update their prices if their costs change. However, there may be other costs of ensuring that ELNOs comply with the pricing method.

Like setting a regulator reference tariff, setting a regulated price would require analysis of costs of interoperability. Our standard regulatory approach to estimating the costs of an asset-heavy business uses the 'building block' method to determine a 'notional revenue requirement'. This involves estimating the business's operating costs, and setting allowances for a return of capital, return on capital, tax and working capital. Alternative approaches we have used in less asset-dominated industries which could apply to interoperability transaction fees include a cost build-up approach (i.e. calculating an operating cost allowance and a profit margin) and benchmarking.

Once we have determined the costs of interoperability, we would then:

- forecast the number of interoperable transactions and decide on the appropriate allocation of costs between services. Uncertainty in forecasting the number of interoperable transactions could result in under or over-recovery of costs and so we may need to develop an adjustment method to manage this uncertainty.
- decide on the form of control – whether to set controls on revenue, average prices or individual maximum prices – and the structure of prices – for example, whether to have a 2-part tariff with separate fixed and variable charges. Our decision on the form of control would require us to understand cost drivers for interoperable transactions. When deciding on the structure of prices, we would consider cost drivers, impacts on incentives and how the form of regulation would affect innovation.
- consider an approach to updating prices in the future to reflect changes in costs. For example, prices could be adjusted annually by the CPI.
- decide on the frequency of reviews (e.g. annual reviews or multi-year reviews).

4.3.2 Direct price control may be preferred if there is unequal bargaining power

As discussed above, negotiate-arbitrate regulation may be less effective in markets where there is a lack of information to inform negotiations, negotiations are prohibitively expensive, or the threat of stronger regulation is insufficient. In these situations, direct price control may be preferred.

Factors we will consider when deciding if direct price control is needed include:

- barriers to market entry
- the existence and level of market power by a business
- the availability of substitute services
- information asymmetry.

As discussed in Chapter 2, PEXA currently has substantial market share, performing around 99% of transactions. Sympli does not have a substantial market presence due to its limited subscriber base. The start-up costs for ELNOs also tend to be high and the number of real-estate transactions is largely fixed. These factors imply potentially high barriers to entry and a restricted level of competition in the market.

Like any form of regulation, direct price control can impose indirect costs through influencing market behaviour as well as direct administrative costs. There is also a risk of regulatory error when setting prices – prices could be set too high or too low. We would weigh up these potential costs and risks against the likely benefits of direct price control.

We seek comment on the following:

9. What are your views on direct price control (regulated price or a pricing methodology) for fees for performing the functions of a Responsible ELNO in an interoperable transaction?

10. Which form of direct price control would be appropriate for fees for performing the functions of a Responsible ELNO in an interoperable transaction?

4.4 Market conditions may change over time

The eConveyancing market is evolving and so the form of regulation may need to change over time to reflect any changes in the level of competition between ELNOs, costs or other factors. For example, a regulated price for interoperable transaction fees might be required in the short term, but as market conditions change, a less intrusive form of regulation such as price monitoring might be warranted.

Appendices

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.

B Glossary

Term	Meaning
API	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.
ARNECC	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.
ECNL	Electronic Conveyancing National Law
ELNO	Electronic Lodgment Network Operator, the party operating the electronic platform. There are 2 ELNOs approved across most Australian jurisdictions - PEXA and Sympli.
LSS fee	Lodgment Support Service fee – a fee paid by an ELNO to a Land Registry to open a digital workspace for an eConveyancing transaction.
MOR	Model Operating Requirements – the rules governing the relationship between an ELNO and the land title registries. These are the requirements on which the Operating Requirements in each jurisdiction are based.
MPR	Model Participation Rules – the rules governing the relationship between the ELNO and subscribers (participants in the system such as lawyers). These are the rules on which the Participation Rules in each jurisdiction are based. ARNECC publishes Guidance Notes on the Operating Requirements and Guidance Notes on the Participation Rules to explain what is expected in complying with the requirements and rules in each jurisdiction.
Subscriber	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.

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1 ARNECC, *Intergovernmental Agreement*; Dench McClean Carlson, *Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law,* December 2019, p 18.
2 ARNECC, *Electronic Conveyancing National Law*.
3 ARNECC, *About us*.
4 ARNECC, *Key objectives*.
5 NSW Parliament Legislative Council Portfolio Committee No. 4, *Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022*, Report 51, April 2022, p 2.
6 ARNECC, *Regulation Impact Statement*, December 2021, pp 18-20.
7 Interoperability Operational Committee, *Interoperability Model Overview*, March 2021, p 2.
8 NSW Government, *Historic eConveyancing reforms approved by NSW Parliament*, May 2022.
9 Ministerial Forum: National Electronic Conveyancing, Statement, 2 June 2022, p 2.
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ISBN 978-1-76049-589-3