

11 November 2022

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

Dear Tribunal Chair,

RE: ISSUES PAPER No. 2 - Interoperability Pricing for Electronic Lodgment Network Operators

AIC National (AIC) appreciates the opportunity to provide its observations to IPART in relation to Issues Paper No 2. AIC supports interoperability and considers interoperability to be an essential feature of the future settlement/registration process and welcomes any benefits this may provide to conveyancing practitioners and their clients. In a multi-ELNO environment, it is essential that interoperability be seamless to the user, without introducing any additional costs or risks and foremost, provide the necessary security to our titling system.

AIC notes that second Issues Paper outlines the collated feedback to IPART from stakeholders during the consultation on Issues Paper 1 and IPART's draft decisions on form of regulation, including how IPART should proceed to set a regulated price for interoperable transaction fees.

It also outlines the issues on which IPART is seeking comment in 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; and
- how to implement such fees.

AIC does not possess the domain expertise to provide comments or advise in relation to the various issues above or the question posed within the Issues paper.

However, AIC would note that it has been actively involved over many years in the consultation for the development of interoperability between Electronic Lodgment Network Operators (ELNOs). We also, as representing subscribers, have been consistent in our feedback to the Australian Registrars' National Electronic Conveyancing Council (ARNECC) as to our position concerning the objectives of developing an interoperable electronic market.

A consistent issue that AIC has raised has been the issue of imposing additional cost, complexity, and risk into the conveyancing process with the introduction of interoperability.

We are concerned that the emphasis of the current review has been on the ELNOs and their ability to pass on the cost of developing interoperability functionality onto subscribers. This would appear to be supported by stakeholders through IPART's draft decision 1.1:

"The costs of establishing and maintaining interoperability should be recovered from all subscribers (and not charged by the RELNO to PELNOs)."

Developing interoperability will have a cost and any additional cost passed onto subscribers will be passed onto the client by way of disbursement. We trust that after interoperability becomes operational that the costs of undertaking an interoperable conveyancing transaction is not a magnitude more than what it would have been in the paper settlement process. That would be an unacceptable outcome.

We also observe an issue that AIC has raised previously is the impact of the introduction of interoperability on other conveyancing costs such as platform management software and property search fees. IPART has already opined on this issue:

Independent Pricing and Regulatory Tribunal (IPART) August 2019 Report noted that:

“Vertical integration may lead to efficiencies in the eConveyancing process, which will ultimately benefit consumers, vertical integration also has the capacity to stifle competition in upstream and downstream markets. If an ELNO chooses to supply the upstream or downstream service, it may have a distinct advantage over its upstream or downstream competitors. That is, without appropriate regulations to prevent it from doing so, the ELNO could:

- *Reduce prices to gain market share in the upstream or downstream market*
- *Recover the costs of providing the upstream or downstream service through the prices it charges for core ELNO services (unless the regulatory framework prevents it from doing so).”*

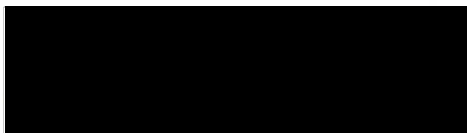
AIC also notes that with the absence of regulatory protections ARNECC will potentially be restricted in its ability to apply future controls as noted in **July 2018 by Cristina Cifuentes Commissioner ACCC**, in writing to the Secretary Environment and Planning Committee (VIC) noting that in relation to transparency of regulation as it applies to privatisation of the Land Registry,

“Attempting to impose a sound regulatory structure after the assets have been transferred to private ownership and operation is inevitably more complex and potentially impossible compared with a well thought out and implemented regime pre-transfer.”

As noted above by Commissioner Cifuentes it is imperative to get this right from the start, as once implemented, changing will be impossible compared to a well thought out and implemented pricing regime.

We look forward to the Tribunal’s final report into this important aspect of Interoperability.

Yours faithfully,



Michelle Kent
President
AIC National

