

PEXA Submission
to
Independent Pricing and Regulatory
Tribunal NSW

Review of Electronic Lodgment network
Operator service fees

Response to issues raised in Workshop
Discussion Paper

March 2026

Contents

Introduction and context	3
Context	3
Need for this submission	3
Voice of the customer	3
1. Regulation of fees for ELNOs without significant market power	5
Q.1 Application of price caps only to the ELNO with substantial market power	5
Q.2 How substantial market power should be defined	5
Q.3 Other criteria to apply about which ELNOs should be subject to price regulation	5
2. Method for setting price caps	6
Q.4 Structure of the fee schedule	6
Q.5 Price cap, revenue cap, and weighted average price cap alternatives	7
Q.6 Who should regulate compliance with revenue/fee caps?	8
3. Scope of regulated maximum fee	9
Q.7 How should ancillary eConveyancing services be treated? Should they be regulated?	9
Overall approach	9
Definitional issues	10
Distinguishing between different kinds of ‘ancillary services’	11
Not preventing competition	14
Q.8 Inclusion of costs outside the ELNO’s control	15
Principles	15
Changing circumstances	16
State-based pricing	16
NECDS fees	17
Revenue Office Charges	18
LSS Fees	19
Overall impact	20
Q.9 Is section 5.4.4 of the MOR arrangements adequate for responding to changes in costs	21
Q.10 Should the costs of implementing interoperability be included in the cost base for ELNO service fees?	21
Q.11 Nationally consistent pricing	23
Q.12 Inclusion of regulatory fees (NECDS, Registry Office and LSS fees)	23
Conclusion	24

Introduction and context

Context

IPART is conducting a Review of Electronic Lodgment Network Operator Service fees. IPART issued a call for submissions in August 2025, in broad terms, asking “what the [regulated] method or level of price should be [for ELNO service fees]”. PEXA provided an extensive submission.

Need for this submission

In March 2026, IPART issued a *Workshop Discussion Paper*, which raised a number of significant specific issues, many of which were not canvassed in the initial call for submissions, including:

- Whether there should be a simpler fee schedule that groups fees by transaction type, or a more complex fee schedule that is more cost reflective;
- Whether there should be a weighted average price cap or a revenue cap rather than a cap on transaction prices;
- Whether there are services and functions additional to the transactions for which ELNO Service Fees are charged, whether their price should be regulated, and if so how;
- How externally charged fees (such as LSS, NECDS fees and Registry Offices fees) should be treated;
- How the costs and potential costs of implementing interoperability should be treated; and
- Whether pricing should be nationally consistent or vary by jurisdiction.

PEXA’s initial submission in November 2025 – which ran to 130 pages – did not directly cover all of these issues, because they were not obviously raised by the initial broad terms of reference.

On 17th March 2026, IPART hosted an industry workshop on the *Workshop Discussion Paper* where PEXA was able to provide high level feedback.

This submission aims to provide further feedback on the issues raised by IPART’s *Workshop Discussion Paper*, on the basis that IPART considers them important to its inquiry and the time available to discuss them at the workshop was limited.

Voice of the customer

Like other regulators, IPART’s approach to economic regulation over recent years has emphasised the voice of the customer.¹ IPART has repeatedly stressed that pricing proposals should be informed by customer views, and that the key issue in judging whether elements of a pricing proposal (including proposed expenditure allowances, price structures and form of price control) are reasonable is whether they are in the long-term interests of customers.

This emphasis of IPART (and other economic regulators) on the voice of the customer reflects the objective of economic regulation to mimic (as closely as possible) the outcomes of competitive markets – where customers ultimately have the power to determine suppliers’ expenditure priorities and the trade-off between service levels and price levels (subject to legislative requirements). For instance, IPART’s Water Regulation Handbook states that:

¹ This is highlighted in IPART’s “3Cs” regulatory framework for water utilities, as outlined in its Water Regulation Handbook.

“Each business should seek to understand what services, products and prices their customers value and need”²

“a proposal that we consider to be of high quality demonstrates to us that its proposed costs are in customers’ interests”,³ and

“any potential trade-offs should be driven by customers.”⁴

However, many of the potential directions raised in IPART’s *Workshop Discussion Paper* do not obviously respond to the customer voice. PEXA provided substantial evidence about the extent of its customer engagement and the key concerns of its customers (conveyancers and financial institutions) in its initial submission.⁵ Their key concerns, as measured through a range of mechanisms, are:

- Certainty of on-day settlement;
- Available and highly responsive customer support;
- Ease of use of the platform;
- Services and products that integrate with their business process and assist in enhancing the efficiency of their operations; and
- Expansion of service coverage.

Many of these customers and participants have made submissions to IPART’s review. In general, these submissions have focused on issues similar to those outlined above.

By contrast, there is relatively little concern with refining the pricing schedule design or elimination of potential ‘cross-subsidies’. In PEXA’s experience, ELNO customers prefer pricing structures that remain stable, and price levels that don’t change often, because pricing changes often require Subscribers to update their own quotation and pricing mechanisms, and may have to alter and test their systems, with costs that far outweigh any marginal increase in efficiency. That is particularly so when any efficiency gains due to more cost-reflect pricing are likely to be small because end users (property buyers and sellers) are unlikely to change their behaviour when the service fees, let alone any relative changes in service fees, are a tiny fraction of their overall transaction value.

Obviously, PEXA must also serve the needs of other participants in its platform (such as registry offices, revenue offices, the RBA, the ATO, and other government entities). The key concerns of these bodies are generally that PEXA continues to facilitate electronic integration with their platforms so that their own internal labour costs are minimised, and security and reliability are enhanced.

PEXA’s customers and regulators have consistently indicated that they value and prioritise service quality, reliability and resilience. PEXA’s expenditure and proposed expenditure outlined in its initial submission focuses on delivering these outcomes at least cost – i.e., there is no scope to deliver these outcomes at lower cost than proposed by PEXA. Therefore, reductions to PEXA’s proposed revenue requirement would compromise the delivery of such outcomes, which would adversely impact customers and other eConveyancing participants.

Consistent with these indications, the key concern of Registrars appears to be that PEXA will under-spend on its platform. The draft *Model Operating Requirements Version 7.2*, issued by ARNECC in March 2026, proposes that PEXA must make a capital investment of 10% of gross revenue, implement the ARNECC Roadmap (outlining the jurisdictions’ priorities for new functionality), and add functionality as specified by

² IPART, *Water Regulation Handbook*, July 2023, p 17.

³ IPART, *Water Regulation Handbook*, July 2023, p 13.

⁴ IPART, *Water Regulation Handbook*, July 2023, p 10.

⁵ PEXA (2025) *PEXA submission to IPART’s review of ELNO Service Fees*, p.49-55

each Registrar.⁶ PEXA is more likely to make such investments, to the extent that they are in customers' interests, if there is an economic regulatory framework that provides it with sufficient certainty that it will be able to recover a reasonable return on efficient capital investments.

PEXA has been unable to identify *any* regulated entity in Australia that is required to expend capital by reference to its gross revenue. Normally the focus of regulation is *preventing* excessive expenditure. That is because normally a regulated entity has incentives to maximise its expenditure because regulatory price-setting will usually result in it earning a return on that expenditure close to or slightly above its actual cost of capital. The only obvious reason for a regulator to require additional expenditure is that it is concerned that the regulated entity will be motivated to under-spend. That would only be true if in fact, or in the perception of the regulated entity, the regulatory price-setting would not result in the entity obtaining a reasonable return on its actual and necessary expenditure.

1. Regulation of fees for ELNOs without significant market power

Q.1 Application of price caps only to the ELNO with substantial market power

PEXA does not object in principle to price regulation applying only to ELNOs with substantial market power where ELNOs are operating on equal terms.

Q.2 How substantial market power should be defined

Any definition of substantial market power should be simple, transparent and consistent with competition law principles and established practice. The objective should be to avoid unnecessary regulatory complexity. Definitions based on sustained market share are likely to be appropriate.

In this context PEXA notes that, as outlined in its initial submission, all price, customer service and operational performance indicators suggest that PEXA is operating as if it is in a highly competitive market. In particular, PEXA is highly engaged with and responsive to its customers, as demonstrated by its very high customer satisfaction scores. This reflects:

- PEXA's longstanding incentive to 'make e-conveyancing work' in Australia – to shift the Australian market (and jurisdictions within this market) from paper to e-conveyancing, and to show Australia as a successful 'test case' for other potential markets;
- competition and the threat of competition in the provision of ELNO services (noting that ELNO services are not typical natural monopoly services); and
- PEXA's need to be as efficient as possible to meet the needs of its customers, regulators and shareholders under a framework where its prices have remained unchanged in real terms for many years.

Q.3 Other criteria to apply about which ELNOs should be subject to price regulation

No other criteria are obviously required in advance.

However, regulation should remain proportionate and targeted. ELNO services are world first and part of a fast-evolving market – where significant innovation is continuing, technical regulation is evolving and the extent of competition that will emerge is still playing out.

⁶ MOR: Consultation Draft Version 7.2, https://www.arnecc.gov.au/resources/consultation/model_operating_requirements/, cl.4.11, 13.3.4, 4.9.3(a), and 13.3.8(b).

Furthermore, current arrangements have served customers well. As detailed in PEXA's initial submission, PEXA has consistently delivered a high-quality, reliable service experience with a customer satisfaction rating of 85-90% and a track record of customer centric evolution of product and services. PEXA has also performed very well operationally (99.95% on-day settlement) and against all regulatory performance requirements. Therefore, care needs to be taken to ensure that regulation is not too heavy handed and "does no harm" relative to current arrangements.

If price caps only apply to ELNOs with substantial market power, then there should be an opportunity for reconsideration if it appears that other entities are gaining an unfair advantage. For example, a land registry might set up an ELNO, and asymmetric price regulation may provide it with an unfair advantage. IPART should recommend a mechanism for reconsidering the breadth of application of price regulation if an ELNO that is price-regulated considers that it is facing unfair competition from ELNOs that are not price-regulated.

2. Method for setting price caps

Q.4 Structure of the fee schedule

There is no obvious need to change the current fee schedule.

The current per-transaction pricing structure is simple, predictable and well understood by subscribers and their end customers. It minimises billing complexity for conveyancers, financial institutions and software providers. It also aligns with the application of statutory lodgment fees, which are typically charged on a per document basis.

There is **no apparent customer demand** for change. No submission to IPART has suggested material change to the structure of the fee schedule.

Changes are unlikely to lead to **more efficient outcomes**. eConveyancing costs are a tiny fraction of overall transaction spending, and consequently changes in relative prices are unlikely to change behaviour.

Changes are unlikely to lead to **fairer outcomes**. The economic incidence of eConveyancing Service Fees ultimately falls on the buyers and sellers of property. Even where financial institutions absorb eConveyancing fees, those costs are incorporated into the price of loans ultimately paid by borrowers. Consequently, reallocating fees between sale/purchase transactions and financing transactions is unlikely to change in the long term the *total* costs of eConveyancing ultimately paid by buyers and sellers of property.

Changes would not lead to materially more **cost-reflective prices**. The vast majority of eConveyancing transactions use shared systems, infrastructure or other resources. Changing price structure to achieve more "cost-reflective prices" would imply a level of precision in cost attribution that is not feasible, as in reality costs would have to be allocated using cost drivers – which would result in inherently uncertain or arbitrary cost allocation (and additional administrative cost, for no benefit).

Changes would incur **additional dead-weight costs**, that would ultimately be passed through to buyers and sellers of property. Changes to price structure would require changes to the systems of ELNOs, conveyancers and financial institutions. Those dead-weight costs are ultimately borne by consumers.

In the absence of customer demand for change, with additional deadweight costs and minimal benefit, there is no persuasive reason to change the existing fee structure.

There is little **regulatory value** in more cost-reflective pricing. From an end-consumer perspective, changes in relative prices will not make much difference because individual consumers will wind up paying about the same total amount for ELNO services, irrespective of how prices are structured. The economic incidence of ELNO Service Fees is ultimately all borne by consumers, and most consumers have finance transactions associated with their property transactions, so however pricing is structured (particularly between conveyancers and financial institutions), most consumers will ultimately pay a similar amount.

A significant shift in price structure may not align with the approach of Registrars to the broad policy direction of eConveyancing. The most likely shift if prices were to be more cost-reflective would be a sharp increase in price for low volume transaction types and jurisdictions, to reflect that fixed costs of building functionality for them is shared between a smaller number of users. These are also typically the transactions for which there is the least competition – precisely because their economics are challenging. Functionality for such transactions has often been built not for commercial motivations, but to respond to regulatory requirements to provide universal service. A shift in pricing structure towards more cost-reflective pricing would run counter to the purpose of eConveyancing, which has aimed to create a universal, national scheme since its genesis in a 2008 Council of Australian Governments meeting.⁷

Q.5 Price cap, revenue cap, and weighted average price cap alternatives

Under the current model of price regulation through transaction price caps, an ELNO bears transaction volume risk. Transaction prices are set based on an ELNO's recoverable costs and forecast transaction volumes. If these are higher (lower) than forecast, then the ELNO recovers more (less) than its notional revenue requirement. Provided that the transaction volume forecasts are reasonable, these risks are symmetric.

Transaction volume volatility is allowed for in setting the ELNO's cost of capital: in its consideration of an ELNO WACC in 2023, IPART decided, consistently with PEXA's submissions, that appropriate proxy firms for an ELNO are real estate and data exchange firms, rather than retail mortgage banks, because like ELNOs, their revenues reflect volatility in transaction volumes.⁸

Provided that IPART's determination of an ELNO's WACC continues to use proxy firms that have similar levels of revenue volatility, PEXA would prefer to be subject to regulated transaction price caps rather than a regulated revenue cap or weighted average price cap. In this context, PEXA notes that its initial submission includes, as an attachment, an expert report on *The required rate of return for a benchmark efficient ELNO*.

PEXA notes that no Subscriber submission to IPART appears to have suggested that there should be a revenue cap or weighted average price cap rather than a price cap.

There is substantial value for Subscribers in a price cap for transactions rather than a revenue cap or weighted average price cap. Subscribers prefer price certainty because price changes require adjustments to their IT systems, add to the complexity of in-flight transactions, and add to the complexity of communications with the buyers and sellers that use their services.

A revenue cap or weighted average price cap do have the advantages that actual ELNO revenues would be closer to the notional revenue requirement, and ELNO revenues would be less volatile. The implication of IPART's worked example of a weighted average price cap is that with a revenue cap or weighted average price cap, an ELNO would set prices each year based on the previous year's volumes, and this could include a true-up that aimed to balance out any under or over-recovery in the previous year.

⁷ COAG (2008) *Communique*, <http://ncp.ncc.gov.au/docs/COAG%20communique%2029%20Nov%202008.pdf> p.10; COAG (2011), *Intergovernmental agreement for an electronic conveyancing national law*, cl.5. ELNOs are required to build a national system, and to have specific plans to encourage the use of the ELN nationally: MOR, cl.5.1(a), 5.2

⁸ IPART (2023), *Interoperability pricing for Electronic Lodgment Network Operators: Final Report*, p.76-78

However, with a revenue cap or weighted average price cap, customer prices would be more uncertain, more irregular, and would change more often as an ELNO adjusted its prices up and down in response to transaction volumes to achieve a close match between actual revenues and the revenue cap or weighted average price cap.

In addition, a weighted average price cap might lead to significant changes from year to year in ELNO service fees for particular transaction types. The whole point of such a regulatory structure is to allow ELNOs more freedom in setting their prices. However, in PEXA's experience, customers appear to prefer less volatile pricing.

A revenue cap or weighted average price cap would also require greater supervision by the regulator and greater administrative effort by an ELNO. It is not obvious that there is a suitably equipped regulator. A regulator would need to monitor volumes for each transaction type, as well as prices, to determine compliance. It would also require some sophistication to determine which revenues and prices were and were not included within the revenue cap or weighted average price cap. As discussed below in answer to Question 6, no existing regulator is suitably equipped to do so. By contrast, a price cap requires much less regulatory supervision as the regulator only needs to ensure that services are sold at prices not higher than the regulated price.

Furthermore, with a price cap, customers themselves can readily monitor an ELNO's compliance with pricing requirements – which highlights the price transparency, stability and certainty benefits of price caps.

Nevertheless, if a suitable regulatory environment can be identified, PEXA can see merit in further exploration of a weighted average price cap given the flexibility that it creates for ELNOs.

Q.6 Who should regulate compliance with revenue/fee caps?

It is difficult to identify a regulator that would be able to regulate a revenue cap or a weighted average price cap. No single body exists that could make such a decision.

As ARNECC pointed out in its submissions to a recent Senate inquiry, it is technically a group of Registrars, each of whom has independent authority to exercise powers conferred by the *Electronic Conveyancing National Law* and the MOR. It has very few powers as a collective entity.⁹ It does not have power to collectively determine whether a (presumably national) revenue cap has been breached.

Nor is it realistic to rely on each Registrar reaching the same regulatory decision. ARNECC's difficulties in reaching *unanimity* amongst Registrars in exercising their pricing powers under the MOR is illustrated by the decision of the NSW Registrar to defer pass through of the NECDS fee under MOR cl.5.4.4(c), even though it was approved for immediate pass through by all other State and Territory Registrars. As discussed later in this submission, the lack of unanimity has had significant repercussions, including a delay in pass through imposing significant costs on PEXA, a shift from national to State-based pricing, and the reprioritisation of scarce IT resources to building the required functionality.

ARNECC might delegate supervision of a revenue cap or weighted average price cap to IPART, but this would require IPART to dedicate ongoing resources to eConveyancing supervision.

⁹ As ARNECC submitted recently, 'ARNECC is not a legal entity.... Any decisions made by ARNECC must be implemented through the Registrar of each jurisdiction': ARNECC (2025), *Submission to Senate Economics References Committee, Inquiry into micro-competition opportunities in the Australian economy relating to e-conveyancing*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Micro-competition/Submissions, paras 10-11. The major exception is the power to develop and publish model operating requirements and participation rules: ECNL, s.24(1), and the proposed power to create an ARNECC Roadmap under MOR Consultation Draft 7.2, cl.2.1.2.

It is unclear what other regulator would be suitable. A Commonwealth entity might well lack power to exercise these functions given that eConveyancing is fundamentally a property conveyancing function not obviously covered by any head of power in the Commonwealth Constitution.

3. Scope of regulated maximum fee

Q.7 How should ancillary eConveyancing services be treated? Should they be regulated?

Overall approach

‘Ancillary services’ cover a wide variety of services and functionality, some of which require different approaches. The interaction of legislative definitions, the practicalities of an eConveyancing network, and the applicable economic and regulatory principles suggest that the costs of some services and functionality should be included in the ELNO Service Fee for transactions, some other services and functionality should be priced with specific ELNO Service Fees, some should be left to agreement between ELNO and Subscriber with regulatory intervention by exception, and some should be market priced, as summarised in Figure 1.

Figure 1: Summary of Ancillary services and proposed approach

Nature of service	Type	Dimension	Examples	Legal status	Pricing	Suggested IPART approach
Provided to subscribers	Intrinsically linked to ELN	Interface provided by ELNO	• PEXA UI (user interface)	ELNO System service	Part of ELNO transaction Service Fee	Costs included in ELNO Service Fee cost base
		Features with network effects	• Auto-balance • Auto-message • Attachments	ELNO System service	Part of ELNO transaction Service Fee	Costs included in ELNO Service Fee cost base
		Features with limited/no network effects	• Projects • Planner • Allocation • Tracker • PEXA Key • Bespoke reports	ELNO System service	Historically limited charges and will be specified ELNO Service Fees	Revenues and costs included in ELNO Service Fee cost base
		System to system integration	• Subscriber APIs	Integration ¹⁰	By ELNO/ Integration Services agreement	Revenues and costs excluded from Service Fee
	Not intrinsically linked to ELN		• PEXA Clear (AML)	Separated or require DUS approval	Market pricing	Revenues and costs excluded from Service Fee
Provided to participants other than subscribers			ELNO connections to: • Titles offices • Registry offices • FIs • RBA • ATO	Backend infrastructure connection (which may be via API)	Part of ELNO transaction Service Fee	Costs included in ELNO Service Fee cost base

¹⁰ Technically, such an integration is not a ‘service’, but it appears to be within the matters that IPART wishes to consider as ‘ancillary services’

Definitional issues

The MOR contains separation and integration requirements designed to prevent an ELNO using its ELN to gain unfair competitive advantage in upstream or downstream markets.¹¹ There are complexities in the drafting of the MOR. ARNECC commissioned Synergies Economic Consulting to review the separation requirements in 2024, but its report has not been released, and the latest proposed revision to the MOR does not include any material amendment to these provisions.

Some of the complexities in defining the scope of ELN activities arise because the definition of an 'ELN' is narrower than the definition of an 'ELNO System':

- an 'ELN' is defined as 'an electronic system that enables the [preparation and] lodging of registry instruments and other documents in electronic form';¹² and
- an 'ELNO System' is defined as the system for facilitating the preparation of Electronic Workspace Documents relevant to a Conveyancing Transaction, the financial settlement of a Conveyancing Transaction (if any) and the presentation for Lodgment of electronic Registry Instruments or other electronic Documents at a Land Registry, and includes the ELN'.¹³

Thus, unlike an ELN, an ELNO System includes functions that 'facilitate' the preparation of documents. It also includes 'financial settlement', and functions that facilitate the 'presentation' of documents for lodgment.

Although the MOR are not always consistent about the distinction between an ELN and an ELNO System, it appears that the pricing regime is intended to cover the broader 'ELNO System'. This is consistent with IPART's Terms of Reference, which refer to 'ELNO service fees'. 'ELNO Service Fees' are defined in the MOR as 'fees charged by the ELNO to a Subscriber for access to, and use of, the ELN'. Nevertheless, it has been accepted by all participants throughout the history of eConveyancing that the Service Fees are paid for the use of an 'ELNO System' – i.e. they include the service of facilitating financial settlement.

Other complexities arise from the very broad definition of 'Downstream or Upstream Service' ('DUS') as including a service that 'accesses or uses', 'integrates with', or 'utilises information accessible through', an ELN.¹⁴ An ELNO that provides a DUS must either have specific approval from all Registrars, or must separate it from its ELN, unless it merely provides access to the ELN as an Integration.¹⁵

It is possible to interpret the DUS provisions as requiring the separation of a wide range of functions. On its face, the definition of a DUS could include the operation of an ELN, and an ELNO System. In practice, however, it has been accepted that the services and functions of an ELNO System are not DUS, and the 'ELNO System' has been interpreted more broadly to include services and functions closely related to preparation for lodgment and settlement that would be practically impossible to provide separately from an ELN. These include services and functions such as:

- Providing access to digital and mobile signing solutions;
- Managing information about Subscribers and Subscriber authorities (such as changing authorised signatories or requesting new digital certificates);
- Identifying the amount, source and destination for funds associated with a transaction (including inter-Subscriber financial adjustments such as those facilitated by Autobalance, and facilitating communications direct from a purchaser or vendor through PEXA Key);

¹¹ MOR cl.5.5, 5.6

¹² ECNL s.13

¹³ MOR cl.2.1.2

¹⁴ MOR cl.2.1.2

¹⁵ MOR cl.5.6.1

- Interfaces that enable a Subscriber to facilitate multiple Workspaces (such as PEXA Planner and PEXA Projects);
- Enhancing interactions between different Subscribers to increase the efficiency and security of preparing for lodgment and settlement (such as Inter-Subscriber communications like Ready to Book (e.g. “mortgagee ready to settle”), and attachments (e.g. communicating a copy of a rates notice));
- Enhancing interactions between different Workspaces to increase the efficiency and security of preparing for lodgment and settlement (such as Linked Settlements and Linked Lodgments); and
- Providing information from a Workspace or its status to the Subscriber’s contractors or agents (such as the role of PEXA Tracker in providing information to the Subscriber’s client, their real estate agent or mortgage broker).

It is unclear how any of these services and functions could be efficiently provided separately from an ELN – so the failure to separate them does not result in unfair competition.

Because all of these services involve access to and use of the ELN, fees charged for them are ‘ELNO Service Fees’, and consequently they are regulated by the pricing regime MOR cl.5.4.

The MOR also distinguishes implicitly between ‘ELNO Service Fees’ (for ‘access to, and use of, the ELN’) and ‘Integration’ (defined as ‘system to system communication between the ELN and the system of a Person Wishing to Integrate’).¹⁶ The implicit distinction is that if a person has direct access to and use of the ELN, then ELNO Service Fees apply. If a person’s *system* has access to an ELN, then the Integration regime applies. Conceptually such system-to-system integrations are not a ‘service’: the value to the customer is in the ability to integrate its system with PEXA’s system. Any ‘service’ is provided by the functionality of PEXA’s internal platform.

Pricing for ELNO Service Fees is subject to controls imposed by the Registrar. By contrast the level of pricing for Integration is unregulated, except that an ELNO must allow any person to Integrate on an equivalent basis subject only to differences attributable to the type, level or class of integration.¹⁷

Given these definitions and ambiguities, a practical approach is required to defining the scope and pricing for ancillary eConveyancing services (noting that integrations are not technically a ‘service’ because they do not provide a service ‘in addition to’ the ELNO’s core function, but rather facilitate the performance of that core function through an alternative interface).

Distinguishing between different kinds of ‘ancillary services’

IPART has raised the pricing of ‘Ancillary services’. ‘Ancillary services’ are not defined in eConveyancing legislation. They might include a broad range of services and functions, for which different regulatory approaches would be appropriate.

Given legal requirements, the practicalities of eConveyancing, and regulatory principles around discouraging unfair competition, and maintaining incentives to provide services that promote efficient conveyancing, key considerations in developing sensible regulatory outcomes for separation and pricing for ‘ancillary services’ include:

- Is the service provided to a Subscriber, and **intrinsically linked to an ELN** – i.e. would it be practically impossible to provide it if it were separated from an ELN?

¹⁶ MOR cl.2.1.2, definitions of ‘ELNO Service Fees’ and ‘Integration’

¹⁷ MOR cl.5.5

- Does the service depend on **network effects** – i.e. does its value to one Subscriber depend on other users also using it?
- Does the function involve **system-to-system integration**, or is the function provided by the ELN's system and interface to personnel of the user?
- Is the service provided to **Participants in eConveyancing other than Subscribers or their agents and contractors** (e.g. titles offices, revenue offices, banks as financial settlement institutions, etc)?

Where a service is **intrinsically linked to an ELN and depends on network effects**, then it will normally be the service of an ELNO System. Usually it would not be appropriate to charge separately for such a service. Because its value to one participant depends on its use by other participants, the decision by one participant to opt out effectively imposes externalities on other participants (i.e. use of the service by an ELNO customer benefits *all* ELNO customers). Consequently, outcomes will be optimal if the service is not priced separately, but bundled with general ELNO Service Fees. The efficient costs of providing such a service should be included in the calculation of ELNO Service Fees. For example, PEXA's Autobalance function only works if it is used by all Subscribers to a transaction. If one Subscriber opted out, it would degrade the efficiency of the platform and reduce On Day Settlement rates which would be costly to both PEXA customers and end-consumers.

Such services often add substantial value to customers as the network creates value to all users.¹⁸ Their importance is illustrated by ARNECC adding these features to the scope of the interoperability program, because it became apparent that without them, interoperable transactions would create substantial difficulties for customers.¹⁹

Where a service is **intrinsically linked to an ELN but does not depend on network effects**, it typically provides particular benefits for particular classes of Subscriber. For example, PEXA Project aimed to make it easier for a developer to handle multiple workspaces for a single development, and PEXA Planner aimed to make it easier for a financial institution to handle multiple workspaces to which it was a party. Historically PEXA developed and provided these interfaces without a separate charge, as part of its obligation to 'encourage widespread industry use of the ELN'.²⁰ Consequently the efficient costs of providing these services should be included in the calculation of ELNO Service Fees.

Now that the use of eConveyancing is all but universal, eConveyancing is evolving towards charging for these services. PEXA charged a fee to the user when it introduced PEXA Allocator (a new service making it easier for financial institutions to manage the multiple workspaces in which they are involved) and PEXA Tracker (which enables real estate agents and brokers to gain critical information in real time about the status of a transaction). The value of these services does not depend on their use by other subscribers, and a subscriber can effectively participate in eConveyancing without them. The subscriber using the service derives most of the benefit.

Other subscribers, however, do benefit from these services to some extent. The increased efficiency of the operation of the subscriber that does use the service may lead to better On-Day-Settlement rates, benefiting buyers and sellers. Because of the history, and the fact that other subscribers benefit from these services, PEXA has historically priced these services at or below cost, and such services have yielded less than 1% of PEXA's Exchange Revenue.

¹⁸ See PEXA (2025), *PEXA revised submission to the NSW IPART review of ELNO service fees*, p.53-54

¹⁹ See PEXA (2025), *PEXA revised submission to the NSW IPART review of ELNO service fees*, p.34-35; Australian Banking Association (2025), *Submission to Senate Economics References Committee, Micro-competition opportunities in the Australian economy in relation to eConveyancing*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Micro-competition/Submissions, p.3-4, 6-7.

²⁰ MOR, cl.5.1

However, there is an argument that the benefits primarily reaped by one subscriber should not be cross-subsidised by other subscribers. Charging for the full cost of such services also provides market discipline to both users and ELNOs so that new functionality is only built if customers perceive that its value to them is greater than its cost. Consequently there may be value in moving towards more cost-reflective pricing for these services over time.

The process of legally separating PEXA's business has recently led to PEXA re-examining such arrangements and their classification. In the short term, PEXA intends to seek ARNECC approval for the current pricing for these services, and will then list them on the pricing schedule as ELNO Service Fees. Given their regulatory classification, the history, and the benefits to all subscribers, both the revenues and the costs of such services should be included in the overall calculation of ELNO Service Fees for this pricing determination. In the longer term, it may be appropriate to reconsider this treatment, and PEXA expects that it would bring a proposal accordingly to a future IPART pricing review for eConveyancing.

Where a function involves **system-to-system integration** then it will primarily benefit individual Subscribers. These functions are different to services where PEXA provides the user interface (as it does with PEXA Project, Planner, Allocator, and Tracker). Instead, APIs facilitate access between the electronic systems of the user and PEXA. These integrations do not involve the provision of services 'in addition to' the ELNO's core function, but rather facilitate the performance of that core function through an alternative interface. Such arrangements are 'Integrations', and governed by cl.5.5 rather than cl.5.4 of the MOR. Under the MOR, pricing is set by agreement between the user and PEXA, provided that PEXA offers equivalent terms for a particular type, level and class of integration.

System to system integrations typically require substantial capital outlay from both PEXA and Subscriber. Consequently the pricing is typically agreed before any party is committed. The purchasers of such services are typically substantial financial institutions, mortgage processors, and law firms. Functionality (and costs) can be bespoke to a customer's needs (although PEXA is obliged to then offer a similar service to any other customer that requests it). Consequently, there is significant competitive discipline and real value to flexibility, so that optimal results are more likely if the pricing for these services continues to be set by negotiation rather than regulation. In practice, PEXA's pricing for such functionality reflects cost recovery and investment in integration capability, with flexibility for bespoke solutions where required.

These commercial realities suggest that even if prices for these functions were legally 'ELNO Service Fees', as a matter of principle, we submit that IPART should recommend that they should not be regulated, and should exclude both revenues and costs from its determination of other ELNO Service Fees. This also aligns to IPART's questions as to whether some of these ancillary services are 'gold plating'. System to system integrations aren't required to operate an ENLO, and primarily benefit individual subscribers. Market discipline is maximised if these fees are not regulated, but instead are commercially priced.

This would be consistent with IPART's treatment of some services provided by monopoly water utilities. For example, IPART does not set prices for 'voluntary' recycled water services, and instead allows water authorities and customers to reach mutual agreement.²¹ There are strong parallels between voluntary recycled water services and system to system eConveyancing integrations:

- customers have a choice about whether to buy the 'standard' service or the unregulated non-standard functionality
- the functionality is often bespoke to the needs of the customer
- IPART can provide a 'backstop' price determination if the parties are unable to agree
- The costs and revenues of these agreements are 'ring-fenced' from the regulated service cost base.

²¹ IPART (2019) *Review of pricing arrangements for recycled water and related services, Final Report*, p 12.

Where a service is **not intrinsically linked to an ELN** – i.e. it could be provided separately, then it would be a DUS if it uses ELN information or functionality, and it would need either specific approval from Registrars, or to be separated from the ELN. By definition, it would not be providing the services of an ELNO System, and consequently any revenues would not be derived from ‘ELNO Service Fees’. The costs of providing such a service must be separated from the costs of the ELNO System, and both the costs and revenues should be excluded from the calculation of regulated ELNO Service Fees. For example, PEXA’s AML solution, PEXA Clear, is being developed as a separated service, and both the costs and revenues of this service should be excluded in determining regulated ELNO Service Fees.

Other services that do not use ELN information or functionality at all are not DUS. However, the same logic applies, and their revenues and costs should be excluded from the calculation of regulated ELNO Service Fees. Consequently, PEXA has excluded the revenues and costs of its information services business from its calculation of its cost base for determining proposed regulated ELNO Service Fees.

Apart from the legal outcomes, these outcomes are consistent with economic principles. Such services are supplied in competitive markets where customers have choice about supplier and/or whether to purchase the service. Consequently, there is no rationale for their prices or revenues to be regulated by an economic regulator such as IPART.

All costs of PEXA’s UK business are excluded from the costs PEXA has used to develop its proposed regulated ELNO Service Fees because the UK services are outside the scope of Australian ELNO services.

Where a service is provided to **Participants in eConveyancing other than a Subscriber** such as a land registry, revenue office, government agency, or a financial institution in its capacity as facilitating financial settlement, it will typically be a ‘Back End Infrastructure Connection’.²² By definition such services are not DUS,²³ and separate ELNO Service Fees are not charged for these activities or services (because the participant is not a Subscriber).²⁴ A large proportion of calls to PEXA’s APIs are for such connections. Obviously, these services are integral to an ELN (and the provision of ELNO services), and their costs should therefore be included in the calculation of ELNO Service Fees.

It should be noted that all integrations, including APIs, are subject to the same legal and contractual constraints that apply to the use of the ELN via the user interface. In particular, Land Information may only be used for the permitted purpose of preparing and lodging registry instruments. Integration does not enable access to additional data, nor any broader rights to use that data.

The process of re-examining ancillary services has led PEXA to conclude that it should amend its submission to exclude both cost and revenue associated with system-to-system integration. PEXA will include this amendment with a number of other financial updates in a submission to be lodged in April 2026.

Not preventing competition

The original purpose of the separation requirements was to prevent unfair competition in other markets (particularly cross-subsidisation from monopoly services to potentially contestable services). However, there is a real danger that the requirements may be interpreted so as to reduce legitimate competition in other markets. Downstream and upstream markets such as property search, mortgage processing and practice management software are each as large or larger than eConveyancing.²⁵ They are not subject to specific regulation such as that which applies to eConveyancing. The largest, if not the dominant, provider in each of these markets is ATI Group, or an entity it controls. In its submission to IPART, ATI Group has

²² MOR cl.2.1.2

²³ MOR, cl.2.1.2, definition of ‘Downstream or Upstream Service’

²⁴ MOR, cl.2.1.2, definition of ‘ELNO Service Fees’.

²⁵ For an estimate of the size of these markets, see PEXA (2025), *Revised Submission to IPART review of ELNO service fees*, p.19-20

‘raised concerns’ about the risks of cross subsidisation and bundling from an ELNO, although it has not identified any concrete evidence of unfair competition where PEXA is leveraging its ELN network into adjacent markets.²⁶ Indeed PEXA has publicly indicated that its new AML offering (PEXA Clear) would be separated from the Exchange to ensure that there was no opportunity for it to gain unfair advantage from its association with PEXA’s ELN. There is no example of PEXA competing unfairly in adjacent markets. It may well be that ATI Group’s real concern is an *increase* in competition, not *unfair* competition.

Q.8 Inclusion of costs outside the ELNO’s control

NECDs, Revenue Office, and LSS fees should all be passed through to Subscribers, instead of including forecasts of these costs in the ELNO cost base. In order to minimise costs to PEXA and Subscribers, they should be included in a single Service Fee applicable to each transaction (rather than charged separately). The make-up of the Service Fee should be publicly disclosed, transparently showing how the Service Fee is made up of the base Service Fee that applies nationally set on the basis of the regulated cost base, and the pass through of costs due to charges imposed by governments and their delegates.

As discussed in our response to Question 12, to minimise costs for both PEXA and Subscribers, these charges should be combined into a single Service Fee applied per transaction, instead of being billed separately. The composition of this Service Fee should be publicly disclosed, clearly and transparently outlining:

- the nationally applied base Service Fee, determined by the regulated cost base; and
- the pass-through costs arising from charges imposed by governments and their delegates.

Principles

As a matter of principle, IPART should lean towards explicit pass-through of such fees if:

- There is significant **uncertainty** about the forecast cost, because the level of the fee is a consequence of unilateral actions by regulators or their delegates, and/or the cost depends on transaction volume over the pricing period;
- The ELNO has **no ability to avoid the cost**, because it is necessary to operating an ELNO (which means that a pass through does not diminish incentives for the business to efficiently control costs);
- There is **no doubt about the efficient level of the cost** faced by the ELNO that are to be passed through (e.g., the level is determined by a government entity or regulator and cannot be offset by other factors);
- A pass-through will result in the ELNO **recovering revenues more closely related to its actual efficient costs** than if revenues are based on a cost base using forecast costs; and
- There is a **basis for attributing the cost** to readily identifiable transactions.

IPART should lean towards including such fees in the ELNO cost base if

- The cost can be **forecast with reasonable accuracy** over the pricing period;
- The ELNO can **control or influence the cost**, and therefore there are potential incentive and efficiency benefits of including cost forecasts in the initial cost base; or

²⁶ PEXA (2025), *Supplementary response to Senate Economics References Committee Inquiry into micro-competition opportunities relating to eConveyancing*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Micro-competition/Submissions, p.17-19

- **Costs have already been incurred** and the ELNO did not have a reasonable opportunity to seek pass through.

NECDs, Revenue Office and LSS fees should all be included in ELNO service fees as a cost pass-through. ELNOs cannot accurately forecast these costs given the uncertainty of regulatory decisions. ELNOs have no ability to manage these costs. They are all imposed on ELNOs by government entities or their delegates (such as outsourced registry offices). These entities are effectively monopoly suppliers to PEXA. There is no way for eConveyancing to function without them. ELNOs are effectively required to use the functions for which fees are charged. Because they are government entities, or entities acting with a government mandate, PEXA has no ability to control, manage or minimise these costs and no ability to manage future price increases.

NECDs, Revenue Office and LSS fees that PEXA has not had a reasonable opportunity to pass through should be added to its regulated cost base, and recovered through general ELNO Service Fees. For example, if government entities impose costs that come into effect before ELNOs have had a reasonable opportunity to seek regulatory approval to pass these on, to make necessary system changes, and to notify customers (who may themselves need time to alter *their* systems), then these costs should be added to the regulated cost base. Otherwise, regulators would be able to unilaterally impose costs on PEXA, but PEXA would have no reasonable opportunity to recover these costs.

Because IPART sets prices for a regulatory period of several years, without pass through there would be limited flexibility to reflect the real cost burden when governments or their delegates adjust their prices in the interim.

Changing circumstances

Historically, Revenue Office and LSS fees were included in ELNO Service Fees that applied nationally. This national approach was consistent with the original approach of eConveyancing, and was sustainable when these fees were low, and variations between jurisdictions were not material.

However, several State and Territory governments have materially increased these fees well above CPI, expanding the cross-subsidy between jurisdictions. There are significant pressures to increase these fees because State and Territory governments are under budgetary pressure, several governments are looking to sell their Registry Offices, and the owners of recently privatised Registry Offices are looking to maximise the return on their investment. There is a real risk of a ‘race to the top’ in which each jurisdiction increases these fees, knowing that its own residents will only pay a fraction of the cost. This risk is increased if forecasts of such fees are incorporated in the ELNO cost base and general ELNO Service Fees, and not separately identified and passed through at their actual level, reducing transparency.

Transparently identifying the actual costs of these fees through a cost pass through mechanism would ‘shine a light’ on the actual level of these fees (rather than a forecast at a point in time) and impose some discipline on NECDs, Revenue Offices and Registry Offices to ensure they can justify and explain their fees – which, in turn, would promote enhanced efficiency over time, for the benefit of ELNO customers.

State-based pricing

Because of the divergence in costs imposed by jurisdictions, and the failure of the NSW Registrar General (unlike all other Registrars) to allow pass through of the NECDs fee, PEXA has concluded that a shift to State-based pricing is inevitable. However, differences in prices between States and Territories should *only* be a consequence of charges imposed by government entities or their delegates (such as outsourced registry offices). This would provide maximum transparency to consumers and citizens about the impact of charges unilaterally imposed by government entities and their delegates.

For the reasons discussed in answer to Question 4, PEXA does not believe that State-based pricing should try to take into account the costs of building ELN functionality particularly for that jurisdiction.

State-based pricing should take into account the historical inability to pass through costs because the Registrar of one jurisdiction refused to approve a cost pass through. Otherwise, a jurisdiction would effectively be able to transfer costs to Subscribers in other jurisdictions. For example, because the NSW Registrar, unlike other Registrars, did not approve a pass through of NECDS costs, NSW residents will pay less than residents of other States for eConveyancing from 18th May 2026. The NECDS costs paid by PEXA but not recovered from NSW residents should be added to PEXA's regulated asset base because PEXA had no reasonable opportunity to recover them. However, those costs should be added specifically to future NSW fees, because otherwise they would be recovered from the residents of *all* States once IPART's pricing determination is implemented.

NECDS fees

NECDS fees are charged by NECDS Co in respect of ELNO use of the National eConveyancing Data Standards ('NECDS').

The NECDS were developed by PEXA. Significant effort was required to align the data standards of different jurisdictions so that the systems of national businesses (particularly financial institutions and large banks) could interact with eConveyancing as a national, rather than state-based platform. This alignment was a key aim of the national eConveyancing reform in 2008.²⁷ PEXA's intellectual property in the NECDS was expressly recognised in contracts when PEXA was privatised in 2019.²⁸ ELNOs are required to use the NECDS for their interactions with land registries.²⁹ The costs of maintaining the standards were much less than the costs of developing them.

As regulators pursued interoperability, the NSW Registrar requested that PEXA make available the NECDS to all ELNOs on an equivalent basis. PEXA did so, but there were perceived issues with PEXA, as one ELNO, continuing to manage the NECDS in an interoperable environment. As a gesture of goodwill in attempting to facilitate government policy of interoperability, PEXA agreed to transfer its interests in the NECDS to a government-controlled entity, NECDS Co. The consideration received by PEXA was substantially less than the historic cost of developing the NECDS.

Since July 2025, NECDS Co has charged \$1 (excl GST) per 'transaction' for use of the NECDS.³⁰ Although these fees are notionally for the maintenance of the NECDS, the total collected (around \$3m per year) is much more than 50 times PEXA's historical costs of maintaining these standards.

Pass through of NECDS charges was discussed extensively with Registrars before PEXA agreed to transfer its interests in NECDS to NECDS Co. Subsequent to the transfer, the MOR were changed to allow the pass through of 'additional fees, charges or Costs ... imposed on the ELNO in order to operate an ELN'.³¹ When NECDS Co imposed an NECDS Fee, the Registrars of all jurisdictions except NSW approved PEXA changing its pricing to reflect the additional NECDS charge.

²⁷ COAG (2011), *Intergovernmental agreement for an electronic conveyancing national law*, cl.5

²⁸ See PEXA (2021), *Replacement Prospectus, Initial Public Offering for shares*, https://www.pexa-group.com/static-media/2024/01/PEXA_IPO_Prospectus-sm-1705448098.pdf, p.87-88

²⁹ MOR, cl.10.3.1

³⁰ NECDS fees primarily cover ordinary transactions such as refinances and transfers. For most purposes, the definition of 'transaction' in calculating liability for an NECDS Fee corresponds to a 'transaction' for which PEXA charges an ELNO Service Fee. The precise scope of the transactions liable for a NECDS Fee is the subject of current negotiations between PEXA and NECDS Co.

³¹ MOR 7.1, cl.5.4.4(d). This provision was inserted by MOR Version 7.1, which commenced in February 2025. The new provision was possibly designed to deal with concerns that NECDS Co was not a 'government agency', and so would not have been covered by long-standing pass-through provisions in MOR cl.5.4.4(c).

Apart from the specific requirements in the MOR that a Registrar must not unreasonably withhold approval for pass through of additional fees imposed on an ELNO,³² the specific pass through of NECDS fees is consistent with cost pass through principles.

- There is significant **uncertainty** about the forecast cost because the NECDS charge can be changed annually at the discretion of NECDS Co
- ELNOs **cannot control** this cost, because ELNOs are required to use the NECDS, the level of the cost is externally determined by NECDS Co, and there is no scope for ELNOs to negotiate or reduce the NECDS Fee per transaction;
- NECDS Fees are directly related to transaction volume, which is beyond the control of ELNOs; therefore basing revenues on an estimate of NECDS costs increases the **quantum of forecasting risk**; and
- A pass through will result in the ELNO recovering revenues **more closely related to its actual efficient costs** compared to including forecasts of these costs in the regulated cost base;
- NECDS Fees can be **attributed to identifiable transactions** because they can be charged by ELNOs to Subscribers for each instrument, on the same basis that NECDS Co charges them to ELNOs.
- There is value in separately identifying and transparently passing through actual NECDS Fee costs to ELNO customers, to **hold NECDS Co to account for these costs** and hence promote efficiency in NECDS Co's services over time.

The only reason to include NECDS Fees in the initial cost base for ELNO Service Fees is to allow for the recovery of historic actual NECDS Fees that PEXA had no reasonable opportunity to recover. PEXA was unable to recover NECDS fees between July 2025 and May 2026 in all jurisdictions because they required a significant system change to introduce State-based pricing that was needed to accommodate the refusal of the NSW Registrar to approve a pass through. PEXA may continue to be unable to recover NECDS Fees in NSW until IPART's determination of this matter.

Although IPART's *Workshop Discussion Paper* suggests that changes to NECDS ownership may reduce ELNO costs,³³ it is just as likely that changes to NECDS ownership will *increase* ELNO operational costs. PEXA estimates that its costs to maintain the NECDS were less than \$30,000 per year. The additional costs of negotiation and communication with NECDS Co over fees and the content of the NECDS are likely to exceed this level.

Revenue Office Charges

Revenue Office ('RO') charges are imposed for the electronic lodgment of stamp duty transfers, and therefore do not apply to refinances. Historically the costs of RO charges have been included in PEXA's general cost base, and they have effectively been paid by Subscribers in all jurisdictions. Increasing divergence between States, and substantial increases in the total quantum suggest that it is appropriate to shift to specific State-based charges, with a corresponding reduction in PEXA's cost base and the base ELNO Service fee (before pass through of RO costs).

PEXA proposes that the RO charge be passed-through to the transaction participant responsible for payment of duty. This would ensure a direct link between fee incurred by PEXA and the fee incurred by the customer.

Like NECDS Fees, RO charges meet the principles for a cost pass through

³² MOR c.5.4.4I

³³ p.11

- There is **uncertainty** about the forecast cost because the level of the RO charge can be changed annually at the discretion of the relevant Revenue Office
- LNOs **cannot control** RO charges because ELNOs are required to lodge stamp duty with Revenue Offices, the RO charge is externally determined by the relevant Revenue Office, and there is no scope to negotiate or reduce the RO charges, and;
- RO charges are directly related to transaction volume, which is beyond the control of ELNOs, so that basing revenues on an estimate of RO charges increases the **quantum of forecasting risk**; and
- A pass through will result in the ELNO recovering **revenues more closely related to its actual efficient costs** compared to including forecasts of these costs in the regulated cost base;
- RO charges typically apply for each transfer processed by an ELNO;³⁴ and they can be **attributed to identifiable transactions** because they can be charged by ELNOs to Subscribers for each transfer instrument on the same basis that they are charged to ELNOs.
- There is value in separately identifying and transparently passing through actual RO costs to ELNO customers, to **hold ROs to account** for these costs and hence promote efficiency in RO's services over time.

LSS Fees

LSS fees are paid for the provision of land information to a workspace. An ELNO is required to use this information in each workspace. As with RO charges, LSS costs have historically been included in PEXA's general cost base, and they have effectively been paid equally by Subscribers in all jurisdictions. However, LSS charges vary significantly between jurisdictions (for example, a LSS1 fee is \$15.95 in the ACT and \$29.00 in NT), and this variation is increasing as jurisdictions have privatised, or are considering privatising, their registry office. The issue has been crystallised with the addition of the Northern Territory to eConveyancing. LSS fees in NT are the highest in Australia. When the NT LSS fee of \$29 is charged for the registration or withdrawal of a caveat, for which PEXA's ELNO Subscriber Fee is currently \$19.80, PEXA loses money on the transaction (even before allowing for the costs of building eConveyancing infrastructure, providing customer support, etc).

A significant complexity with LSS fees is that they are charged *per workspace*. However, an ELNO charges Subscribers per transaction (or more accurately, per 'dealing' or 'billing event'). When a Subscriber creates a workspace, and the ELNO obtains the relevant land information and pays the LSS fee, it is unclear how many billing events will occur with that workspace. For the registration of a caveat, an LSS fee is charged, and there is only one dealing. However, for a transfer, the number of dealings and Subscribers varies between two and four (depending on whether the seller is discharging a mortgage, and whether a mortgage is being registered for the buyer). All of the Subscribers for that transfer effectively use the same land information supplied pursuant to a single LSS fee.

For the pass through to match perfectly, an ELNO would need to vary the LSS fee passed through depending on the number of dealings associated with the workspace. Creating this functionality would require substantial investment, and would need to resolve complexities caused because the number of dealings for a workspace can be changed close to settlement if, for example, the purchaser chooses to self-finance the transaction rather than take out a mortgage. It would also increase the complexity of the pricing schedule, because pricing would depend on the number of parties to the transaction. Furthermore, Subscribers would not know in advance the cost of a transaction that they could quote to customers. It is doubtful that the increase in cost-reflectiveness would be worth the additional cost and complexity.

³⁴ Tasmania charged PEXA a flat fee for RO costs in 2024 when eConveyancing was implemented in Tasmania, but thereafter shifted to a fee per transaction.

PEXA suggests that the mismatch could be reasonably accommodated by passing through to each dealing an LSS fee reduced proportionately by the average number of billing events per workspace in that jurisdiction in the previous year. For example, VIC Land Registry has recently proposed to increase LSS by \$2.60 (a 15% year on year increase for LSS1 fees). Assuming the proposal is implemented, the recovery would be based on the volume in 2024-25 in Victoria, where there were 672k workspaces opened (attracting an LSS fee) and 1,125k dealings. Consequently, the LSS fee passed through to every transaction in Victoria should be \$1.55 ($= \$2.60 \times 672k / 1,124k$). This approach is currently being discussed between VIC Land Registry and PEXA for FY27.

Although LSS recovery would vary slightly depending on the mix of transactions from year to year, the effect would be small. For example, in Victoria the mix ratio has varied by less than $\pm 2\%$ from its average over the past four years.

LSS fees meet the principles for a cost pass through:

- There is **uncertainty** about the forecast cost because the level of the LSS fee can be changed by the relevant Registry Office (where privatised this usually requires the approval of the relevant Registrar);
- ELNOs **cannot control** LSS fees because ELNOs are required to use land information supplied by the Registry Office, the LSS fee is externally determined, and there is no scope to negotiate or reduce LSS fees;
- LSS fees are directly related to transaction volume, which is beyond the control of ELNOs, so that basing revenues on an estimate of LSS fees increases the **quantum of forecasting risk**;
- A pass through will result in the ELNO recovering **revenues more closely related to its actual efficient costs** compared to including forecasts of these costs in the regulated cost base;
- LSS fees typically apply for each transaction processed by an ELNO; and they can be **attributed to identifiable transactions** because they can be charged by ELNOs to Subscribers for each transaction on a basis closely related to the basis on which they are charged to ELNOs.
- There is value in separately identifying and transparently passing through actual LSS costs to ELNO customers, to **hold Registries to account** for these costs and hence promote efficiency in Registry services over time.

Overall impact

While these pass through fees are relatively small for Subscribers, particularly relative to their total purchase cost, they are collectively material for ELNOs. Total NECDS, SRO and LSS charges beyond CPI are forecast to be ~\$6-7 mill in FY27. Because these charges can vary substantially if a jurisdiction unilaterally decides to change them, they can have an outsize impact on an ELNO's costs, and a proportionately greater impact on an ELNO's returns, even though they are beyond the ELNO's control.

Consequently, one of the largest uncertainties for ELNO costs arises from regulatory uncertainty about future charges imposed on ELNOs. This uncertainty increases the risk that an ELNO would under or over recover its costs over a pricing period for reasons beyond the ELNO's control. In contrast, the pass-through of these actual charges would result in ELNO service fees reflecting more closely the ELNOs efficient costs. It would also increase transparency about the level of NECDS, SRO and LSS charges – which, in turn, holds those levying these charges to greater account.

Q.9 Is section 5.4.4 of the MOR arrangements adequate for responding to changes in costs

PEXA had believed that the provisions of 5.4.4 as amended by MOR 7.1 were largely adequate. The provisions appeared to mean that where costs are imposed on ELNOs they are able to apply at any time to pass through these costs.

However, the decision of the NSW Registrar not to approve PEXA's requests to pass through NECDS costs, and instead to refer this question to IPART has revealed that the regime may be inadequate. As a result of this decision, PEXA will be liable for NECDS charges for 2025-26, and 2026-27, but it will not have a reasonable opportunity to recover these charges in any jurisdiction until May 2026, and it is unknown when or if it will be able to recover them in NSW. If these costs are ultimately included in PEXA's cost base, and effectively recovered through future ELNO Service Fees, then in effect future Subscribers will pay for costs incurred in respect of past Subscribers.

PEXA has sought a declaration from the Supreme Court of NSW about whether the decision of the NSW Registrar was lawful. If the Court finds in effect that the Registrar should have made a different decision, then it may be that MOR 5.4.4 is fit for purpose. If not, then it has exposed a significant flaw in the pass-through regime. Such a flaw might be resolved by amending MOR cl.5.4.4 to provide that an ELNO may amend its Pricing Table provided that the conditions described in cl.5.4.4(a) to (d) are met, without requiring the approval of the Registrar.

It may also be appropriate to clarify that the "costs" that can be passed on through c.5.4.4 include an ELNO's reasonable operating costs to implement systems to pay and recover pass-through costs.

Q.10 Should the costs of implementing interoperability be included in the cost base for ELNO service fees?

The reasonable costs of implementing interoperability should be included in the cost base for ELNO service fees. PEXA has spent \$22.5 million to date preparing for interoperability.³⁵

These interoperability costs were incurred in response to legislative requirements in the Electronic Conveyancing National Law.³⁶ They are recoverable both under IPART's general principles for cost recovery, and under the specific provisions of MOR 5.4.4(b), which allows an ELNO to increase its prices if 'a change in any law gives rise to a change in the ELNO's operating Costs'. Consistent with this approach, IPART has previously found that interoperability costs should be recovered through an ELNO's service fees.³⁷ PEXA does not believe that the interoperable functionality will be re-usable for any other purpose.

ELNOs should be able to recover the costs they have already incurred on interoperability over the period of the next pricing determination. Contrary to the submission of the Australian Banking Association,³⁸ there is no reason to wait for a decision on whether interoperability will proceed, and if so in what form. The historical costs should be recovered, whether or not regulators proceed with interoperability.

Longstanding and universally applied principles of economic regulation are that:

- A regulated business should be able to recover its efficient costs via prices of delivering its services that meet the needs of its customers, *while complying with all regulatory and legislative requirements*.

³⁵ PEXA (2025), *Revised submission to IPART's review of ELNO service fees*, p.36

³⁶ *Electronic conveyancing national law*, s.18A, MOR, cl.5.7, 5.8

³⁷ IPART (2023), *Interoperability pricing for Electronic Lodgment Network Operators: Final Report*, https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Final-report-Interoperability-pricing-for-Electronic-Lodgment-Network-Operators-June-2023.PDF, p.65

³⁸ Australian Banking Association, *Submission to IPART's review of ELNO service fees*, p.3-4

- The prudence and efficiency of expenditure should only be assessed based on the circumstances and information prevailing at the time that expenditure was incurred, including the regulatory and legislative requirements in place. For example, in explaining the “efficiency test”, IPART has previously stated that *‘we assess whether the actual expenditure was efficient based on the information available to the utility and the circumstances prevailing at the time it incurred the expenditure.’*³⁹

If regulators decide not to proceed with interoperability, this may result in future Subscribers paying for a failed government policy. However, the alternative is that ELNOs effectively absorb the cost of the policy – even though PEXA has consistently submitted to regulators that the policy of interoperability was misguided.⁴⁰ The only alternative to either Subscribers or ELNOs paying for interoperability costs would be for regulators to make a one-off payment to ELNOs to compensate them for costs incurred in preparing for Interoperability, which seems unlikely.

Uncertainty about the future of interoperability does create questions about how to account for *future* costs to implement interoperability. PEXA estimates that it will spend an additional \$38 million to implement interoperability assuming the current scope for ‘functional equivalence’ is required.

These costs may never be incurred – in which case it would be inappropriate to include them in an ELNO’s regulatory cost base. While there is inevitably some uncertainty about future capital investments, IPART can have reasonable confidence in an ELNO’s future plans to add functionality and increase resilience and security because they are within the ELNO’s control. By contrast, expenditure to implement interoperability depends on future regulatory decisions that are beyond an ELNO’s control.

PEXA suggests that a recovery of \$7.5 million per year in respect of interoperability should be included in the cost base for each of the three years of the next regulatory period (assuming that IPART recommends a three-year regulatory period, consistently with PEXA’s submission).⁴¹

If interoperability does *not* proceed, this would result in PEXA recovering its costs of interoperability to date within the regulatory period. In this scenario, PEXA would effectively write-off over three years its costs to date for interoperability. Arguably, PEXA should be able to recover all of these costs immediately; but recovering them over a 3 year period would reduce sudden shifts in ELNO Service Fees.

If interoperability *does* proceed, then this level of cost recovery would *also* result in a reasonable recovery of and on PEXA’s *total* costs of interoperability over a reasonable period. There is no obvious metric for an appropriate period for PEXA to recover the costs of interoperability if it becomes functional. Interoperable functionality does not provide PEXA with an economic return. It is functionality built solely to comply with regulatory requirements such that PEXA can continue to operate its existing business. Consequently this functionality does not have an ‘economic life’ as it is conventionally defined. Given this ambiguity, PEXA suggests that an 8 year life is a reasonable allocation.

On this basis, if PEXA’s estimates of future interoperability costs are reasonable (which depends in part on future regulatory decisions about scope), then PEXA’s total costs of interoperability would be \$60.5m. A recovery of \$7.5 million per year would recover these total costs over 8 years.

Consequently, a recovery of \$7.5 million per year is a reasonable recovery for PEXA’s interoperability costs over the next three years, whether or not the reform ultimately proceeds.

³⁹ IPART, Guidelines for Water Agency Pricing Submissions, November 2020, p 18

⁴⁰ See for example PEXA (2019), *Response to IPART Draft Report: Review of the Pricing Framework for Electronic Conveyancing Services in NSW*, <https://www.ipart.nsw.gov.au/sites/default/files/documents/online-submission-property-exchange-australia-ltd-j-schmitt-3-oct-2019-172500000.pdf>, p.3-12

⁴¹ PEXA (2025), *Revised submission to IPART’s review of ELNO service fees*, p.117-118

Obviously if interoperability proceeds, and PEXA's efficient costs to implement it are higher or lower than forecast, then this should be taken into account in calculating its regulatory asset base in a subsequent regulatory period.

Q.11 Nationally consistent pricing

As indicated in answer to Question 8, there should be national prices for ELNO service fees, apart from the pass through of charges by governments and their delegates (such as outsourced registry offices) where PEXA has no ability to control or manage this cost. State-specific pass through of government charges would avoid residents of one State paying for revenues received by the government of another State, and would maximise transparency of government charges. Obviously if these government charges were aligned, then eConveyancing could revert to uniform national pricing.

As discussed in the answer to Question 4, the creation of a single *national* system was a core **purpose** of eConveyancing from its genesis in a 2008 Council of Australian Governments meeting.⁴² ELNOs are required to build a national system, and to have specific plans to encourage the use of the ELN nationally.⁴³ ELNOs are required to build functionality for a wide range of electronic instruments in each Australian jurisdiction.⁴⁴

The majority of ELNO **costs** are truly national. PEXA's underlying platform – including elements such as workspaces, settlement functionality, and signing functionality – is used in all States and Territories. While there are inevitably costs and features that respond to particular features of a jurisdiction's conveyancing system, these are a minority of PEXA's costs, and little of PEXA's infrastructure is specific to individual jurisdictions. Any attempt to allocate the costs of PEXA's platform between States and Territories would be inherently arbitrary, and any differences are likely to be the consequence of an arbitrary methodology rather than genuine differences in the cost to serve.

Nationally consistent **pricing** would be the preference of PEXA and its customers. PEXA and many of its customers (particularly financial institutions, outsourced mortgage processors, and large conveyancing firms), operate national systems, so there are productivity efficiencies for PEXA's customers from national pricing.

However, with direct costs increasingly diverging due to charges imposed by State and Territory agencies, uniform national pricing would increasingly result in residents of one State funding the government of another State. It would also fail to make government charges transparent.

Consequently, it would be appropriate to set a base national price -grounded in the regulated cost base (excluding the costs imposed by governments, particularly NECDS, RO and LSS fees), and then set the jurisdiction-specific price by adding to the base national price the pass through of costs due to charges imposed by governments and their delegates, as described in the answer to Question 8.

Q.12 Inclusion of regulatory fees (NECDS, Registry Office and LSS fees)

The total ELNO Service Fee charged in each jurisdiction should be **calculated** as the base national price plus the pass through of costs imposed by governments and their delegates as outlined in answer to Questions 8 and 11.

⁴² COAG (2008) *Communique*, <http://ncp.ncc.gov.au/docs/COAG%20communique%2029%20Nov%202008.pdf> p.10; COAG (2011), *Intergovernmental agreement for an electronic conveyancing national law*, cl.5

⁴³ MOR, cl.5.1(a), 5.2

⁴⁴ MOR, cl.5.2.1

The **components** of the ELNO Service Fee charged in each jurisdiction should be publicly disclosed on each ELNO's website, clearly setting out the base national price, and the costs passed through from governments and their delegates. Such public disclosure would provide transparency to citizens and users of eConveyancing about government charges. They would also provide transparency for ELNO charges.

The total ELNO Service Fee charged for each dealing should be a **single line item** in a workspace. If ELNOs are required to create separate line items for the base national price and pass through items, it would increase costs for both ELNOs and Subscribers as they adapt their systems for the new standards. Changes to pricing structure tend to be costly because they require particularly extensive testing to minimise the risk of mispricing. Mispricing tends to impose very high costs because it typically requires extensive re-work to identify, reconcile, and rectify large numbers of transactions. A single line item, with a total cost that can be easily checked against an ELNO's pricing schedule maximises simplicity and transparency for end consumers, reducing the possibility of Subscribers mis-charging buyers and sellers when they pass on eConveyancing costs as disbursements.

In other industries, such as energy, telecommunications and banking, overly complex pricing structures such as multi-part tariffs, time-of-use, and bundled charges, have led to customer confusion, retailers misapplying charges, and widespread billing errors. Complex, multi-component pricing inherently increases the risk of operational error and reduces transparency. In several cases, remediation programs have cost banks hundreds of millions due to the need to reconstruct and audit historical transactions. Even when the quantum of mispricing per transaction is small, the remediation costs are often extremely high because of the need for manual reconciliation across millions of transactions.

Regulators such as the Australian Energy Regulator have often needed to intervene as a result. They now increasingly push providers to set clear single-line consolidated fees that reduce the risk of provider systems implementing pricing incorrectly, and that increase the transparency of charges, so that it is easier for providers, customers and regulators to verify that pricing is appropriate.

Conclusion

eConveyancing in Australia is a first-in-the world industry. Regulation of this industry tends to throw up an unusual number of novel regulatory issues that do not have obvious precedents. The difficulties are compounded because many of the regulatory pricing frameworks that exist were designed for industries where the primary costs are large physical infrastructure, rather than software. With this novelty, there is a greater risk of regulatory decisions with unintended consequences.

IPART's *Workshop Discussion Paper* has raised a number of issues that are genuinely novel and complex. They may well require further exploration than has been possible in this submission. PEXA would be happy to discuss with IPART further detail about any of the issues raised in this submission.