



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: Prop:EEgl:1777153

18 September 2019

eConveyancing Review
Independent Pricing and Regulatory Tribunal
PO Box K35
HAYMARKET POST SHOP NSW 1240

By email: ipart@ipart.nsw.gov.au

Dear Sir/Madam,

Review of pricing framework for electronic conveyancing services in NSW
("Draft Report")

The Law Society of NSW appreciates the opportunity to comment on the Draft Report. The Law Society's Property Law Committee has contributed to this submission.

Our responses to the draft findings and draft recommendations made in the Draft Report are set out in the attached table.

Any questions in relation to this submission should be directed to Gabrielle Lea, Policy Lawyer on [REDACTED] or email: gabrielle.lea@lawsociety.com.au.

Yours faithfully,

[REDACTED]

Elizab  th Espinosa
President

IPART – Review of the Pricing Framework for Electronic Conveyancing Services in NSW

Submission by the Law Society of NSW – September 2019

| NO. | FINDING/RECOMMENDATIONS | COMMENTS |
|---|---|--|
| 1 EXECUTIVE SUMMARY | | |
| 1.4 List of draft findings and recommendations | | |
| Draft findings: | | |
| 1 | The eConveyancing market in NSW is currently highly concentrated and is likely to remain concentrated in at least the short term. | We agree with this finding. |
| 2 | Interoperability would improve competition in the eConveyancing market and would reduce barriers to entry | <ul style="list-style-type: none">• Depending on which model for interoperability is chosen, interoperability is likely to improve competition in the electronic conveyancing market.• Interoperability has the potential to reduce barriers to entry, depending on which model for interoperability is chosen. |
| 3 | While 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. | We agree with this finding. |
| 4 | The direct connection or an information hub models provide the greatest prospects for competition, differentiation and innovation between ELNOs. | Both models appear to offer the greatest opportunity for innovation as opportunities for competition occur at multiple points in the process. |

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| 5 | The incremental capital cost of a direct connection between the two current ELNOs is relatively low | <ul style="list-style-type: none"> We defer to the expertise of others in relation to the incremental capital cost of a direct connection between the two current ELNOs. In relation to overall costs, we note there are potentially significant capital costs for financial institutions in connecting to multiple ELNOs. |
| 6 | An access framework could be based on the cash equities market where existing ELNOs or service providers are compelled to facilitate access to services on a transparent and non-discriminatory basis, and the ACCC is given the power to arbitrate disputes where access negotiations between an incumbent and new entrant fail. | We agree with this finding. |
| 7 | The MORs address the appropriate treatment of pass through costs, such as ELNO insurance premiums, fees imposed by external agencies and changes in the law. | We agree with this finding. |
| 8 | Maintaining the current pricing framework for eConveyancing will ensure consumers pay no more for eConveyancing than they did for paper conveyancing. | We support the current pricing framework for eConveyancing. |
| 9 | Other jurisdictions could adopt a similar framework for recommending ELNO prices | This is a matter for other jurisdictions. |
| 10 | NSW LRS has made savings from eConveyancing and so can absorb the cost of modifying its technology platform to permit connection by multiple ELNOs. | We accept this finding. |

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| 11 | Including Revenue NSW in the governance framework would reduce total costs to the industry, and deliver greater efficiencies. | We agree with this finding. |
| Draft recommendations: | | |
| 1 | The eConveyancing market be monitored at least every 2 years, ideally by a national regulator such as the ACCC (or on a state-by-state basis by regulators including IPART), to assess the effectiveness of competition and inform governance and pricing policy decisions | <ul style="list-style-type: none"> We note that ARNECC has an existing monitoring function. We strongly prefer that a national regulator with appropriate expertise, resources and independence, review the eConveyancing market every two years as it is a national system. However, if there is not a suitable national regulator, independent state review would be appropriate. |
| 2 | NSW ORG work with ARNECC to model the competition framework for eConveyancing on the framework developed by the Council of Financial Regulators and the ACCC in their review of competition in cash equities clearing and settlement in Australia. | We support the development of a competition framework for eConveyancing. However, it is difficult to comment on whether the NSW ORG and ARNECC are the appropriate bodies to undertake this work pending the outcome of the review of the Intergovernmental Agreement for an Electronic Conveyancing National Law. The framework must be developed on a national basis, and with appropriate expertise. |
| 3 | Due to the continuing development of the eConveyancing market, the national eConveyancing regulator review the adequacy of the MORs to address the impacts of vertical integration. | We agree with this recommendation. |

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| 4 | A direct connection between the two current ELNOs be implemented as soon as possible to promote competition. Preferably, interoperability between the two current ELNOs would be implemented on a national basis by ARNECC through the MORs, but otherwise, should be implemented in NSW potentially through ELNO licence conditions. | <ul style="list-style-type: none"> • We do not support a NSW only based solution. Financial institutions and the ELNOs operate nationally and appear to express some reservations about making investment for a State based solution only. We also have concerns about NSW departing from a national approach, for the long term integrity, efficiency and stability of the national system. • A national approach to interoperability is vital and the MORs are the appropriate vehicle to implement this. In our view, the long-term model for interoperability must be agreed nationally before any individual option is implemented. However, given the imminent commencement of a second ELNO in NSW, this work needs to progress as a matter of urgency. |
| 5 | New entrant ELNOs to negotiate commercial agreements to access existing infrastructure, or build their own infrastructure and establish direct connections with other ELNOs. Any disputes over price and or non-price terms and conditions would be subject to arbitration provided by a party mutually agreed by the participants or by a regulator | We agree with this recommendation. |
| 6 | NSW ORG work with ARNECC to set a schedule of costs that can be used by ELNOs to calculate a cost-reflective transfer price for interoperable transactions to ensure that costs are shared fairly across ELNOs. | We agree there needs to be a fair transfer price, but we are uncertain if NSW ORG and ARNECC have the appropriate resources and expertise to undertake this task. |

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| 7 | Maximum prices for all ELNOs be set at PEXA's current (real) prices from 1 July 2020 and CPI indexed annually (as defined by the MORs) for two years, before being reviewed again, ideally by a national regulator such as the ACCC (or on a state-by-state basis by regulators including IPART) | We agree but would prefer that the two-yearly review be carried out by a national regulator. If prices are set nationally, it is appropriate that the review be conducted nationally by a body with suitable expertise and resources. |
| 8 | If an ELNO unbundles its prices for the financial settlement and lodgment components of a service, then the sum of the separate prices for financial settlement and lodgment components must not exceed the regulated maximum for the bundled price | We agree with this recommendation. |
| 9 | ELNOs be permitted to set prices for any new eConveyancing service to reflect costs (based on the building block methodology). ELNOs must notify prices for new eConveyancing services to the regulator at least two weeks before they are effective. Prices must also be published on the ELNO's website | <ul style="list-style-type: none"> • The concept of a "new eConveyancing service" requires further clarification. • Two weeks' notice is insufficient having regard to the cost disclosure obligations of practitioners. We suggest four weeks' notice is more appropriate. |
| 10 | Maximum prices for each category of residual dealing made available for eConveyancing be set as shown in Table 5.3. ELNOs and NSW LRS work together to determine the appropriate category for each residual dealing. | Agree, subject to the current supervisory role of the Registrar General in relation to fees charged by NSW LRS. |

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| 11 | ELNOs be able to pass through as an additional charge the efficient costs of implementing interoperability (but these costs should be reviewed in two years by the eConveyancing regulator, or sooner if an interoperability model is implemented). | <ul style="list-style-type: none"> • We support the current approach as outlined in the MORs. • Interoperability should be implemented in such a way as to minimise any additional costs to end consumers. |
| 12 | ELNOs not be required to offer nationally consistent pricing, but they may choose to do so on a commercial basis. | We agree with this recommendation. |
| 13 | Revenue NSW charge ELNOs the following maximum prices (indexed by CPI annually): <ul style="list-style-type: none"> ▪ \$15.20 (in real \$2018-19) per support inquiry received, to recover costs relating to ELNO subscriber support ▪ For any tests that exceed base level frequency (ie two major and two minor tests per year per ELNO to be provided at no charge), \$125,000 per test (in real \$2018-19), per ELNO ▪ Prices for bespoke service changes to be determined by contractual negotiations between ELNOs and Revenue NSW. | <ul style="list-style-type: none"> • We have some reservations about Revenue NSW recovering costs for ELNO subscriber support, particularly noting that Revenue NSW has benefitted from the automation that has occurred with electronic conveyancing and the mandatory use of the Electronic Duties Return process. The electronic verification of duty also assists Revenue NSW in maximising duty collected and improving the integrity of the revenue stream. • We agree that testing costs over an agreed base level could be passed on from Revenue NSW to the ELNOs. This would also incentivise the ELNOs to improve the co-ordination and scope of testing. • We agree that costs due to bespoke services should be determined by contractual agreement. |