



ABN 92 140 677 792
Property Exchange Australia Ltd

Dr Peter Boxall AO
Chairman
Independent Pricing and Regulatory Tribunal New South Wales
PO Box K35
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BY EMAIL

5 December 2018

Dear Peter

Property Exchange Australia Limited – Price Regulation of Electronic Conveyancing Network Operators in NSW – Draft Terms of Reference

Thank you for the opportunity to comment on the draft Terms of Reference in respect of the potential Pricing regulation of Electronic Lodgement Network Operators in New South Wales, issued by IPART on 30 October 2018 (Draft **Terms of Reference**).

Most importantly, we suggest that IPART can and should focus its analysis on recommendations for an appropriate CPI-based method for making annual adjustments to relevant ELNO service fees in NSW.

Indeed, this approach is anticipated by the NSW Registrar General (**Registrar General**) and would be consistent with long-running regulatory reviews in this industry:

- The Australian Registrars National Electronic Conveyancing Council (**ARNECC**) will imminently finalise and publish its national Model Operating Requirements (**MOR**), which have been the subject of extensive industry-wide consultation for more than 12 months, and which will include a CPI price increase control applicable to all Electronic Lodgement Network Operators (**ELNOs**) until 2022; and
- The Registrar General, which has also separately engaged in an extensive industry consultation process, will shortly publish operating conditions to apply to all ELNOs in NSW, which will contain a CPI-X price increase control, applicable from July 2019 onwards. In this context, on 13 November 2018, the Registrar General wrote to PEXA, noting the following purpose and proposed use of the IPART analysis:

IPART's review will inform [the Registrar General on] the calculation of "X" [in the CPI-X calculation from July 2019].

In considering this suggestion, as well our other suggestions set out below, it is important to have regard to PEXA's position in the rapidly developing e-conveyancing industry.

1. E-conveyancing is a new, innovative, technology based industry in which significant entry is imminent

PEXA provides an electronic platform to enable participants in a conveyancing transaction (e.g. lawyers, conveyancers and banks) to facilitate the completion of that transaction. This includes the preparation and



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lodgement of the relevant land registry documents to facilitate the registration of property interests at the relevant land titles office and the execution of financial settlement.

PEXA was developed through a successful collaboration between certain States, banks and commercial investors, and to date has been regarded as a major success for PPP's and an outstanding example of governments working together with industry to create and sustain innovation.

This occurred after a long and unproductive history of disputes in which it became apparent that the Registrars in each State were unable to co-operate to develop a national e-conveyancing solution. After the intercession of COAG in 2008 and working with the Departments of Treasury and Premier and Cabinet in Victoria, NSW and Queensland, PEXA was formed to deliver this critical reform.

PEXA was established as a private sector entity that would work co-operatively with the public sector to solve public sector problems. Its shareholders took very significant financial risk in funding well over \$300 million to establish a system that delivers significant dividends to the broader economy. They did so in reliance on the basis of strategic alignment with the state governments and on the basis of a stable national regulatory regime that allowed for innovation and new entry (and did not involve unwarranted and excessive regulation).

As the first mover in the sector it is PEXA that has solved all of the technical and regulatory problems of interfacing with the LTOs, banks and subscribers. It is also PEXA that has taken on the arduous task of educating the market to establish a level of acceptance for e-conveyancing as a new service. This supports the entire industry and other ELNOs are now benefitting enormously from PEXA's pioneering work.

Notwithstanding its many successes in technological innovation, PEXA has not yet been profitable.

In large part this is because the e-conveyancing industry is nascent, technology driven, innovative and contestable. It has none of the characteristics of the types of physical natural monopoly infrastructure which are sometimes the subject of legitimate regulatory price review and regulation.

We have attached at **Attachment B** for your information recent reports regarding the imminent new entry in the e-conveyancing industry by Sympli, which will occur in the first part of 2019. As you may be aware, Sympli is owned and backed by the Australian Stock Exchange (probably the largest and most powerful Australian technology and information company) and InfoTrack (a leading incumbent in the conveyancing industry nationally). As you will see, Sympli's stated business plan is to provide similar functionality to PEXA whilst reducing prices and innovating on services.

2. It is already known that PEXA's fees and Sympli's fees have been, and will be, set in a highly innovative and competitive environment

PEXA presently competes with many established operators using the paper-based system and its role has been to attract customers to e-conveyancing. PEXA's current prices were subject to extensive national industry consultation and were set by it as a new entrant, starting with no market share, in an industry where it has been competing with physical lodgement. Its prices were determined in around 2013/2014, based on investment expectations at that time. Despite the significant additional investment that PEXA has made to its platform and industry transformation since then, PEXA has contractually committed to only increasing its pricing at CPI for operational expenses, with other adjustments for relevant pass through costs. PEXA took this approach voluntarily to demonstrate that it would not charge excessive prices. This was done to manage reputational and political sensitivities in a new industry.



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As shown above, the CPI-based price controls that PEXA has applied since its inception will shortly be enshrined in national (as well as NSW specific) regulation, along with a variety of other protections designed to ensure ELNOs operate in the interests of consumers.

In these circumstances it is self-evident that PEXA's fees were historically determined as an entirely new entrant in a highly competitive environment. Furthermore, it is known that Sympli will shortly enter the market and compete fiercely on the basis of price, service and innovation.

For these reasons PEXA suggests there is little utility in incurring significant costs to re-consider ELNO fees. Presumably any assessment would be targeted at determining the extent to which ELNO fees reflect a competitive environment – but it is already known with certainty that both PEXA's and Sympli's fees have been, and will continue to be, determined by market forces in the context of new entrants to a highly innovative and competitive environment.

It is also known that prices, the entire regulatory environment, and indeed the types of services offered by ELNOs, will materially change over the next few months and years. This further calls into question the merits of a detailed price analysis at this time.

3. ARNECC's consultation on the MOR should be finalised before additional regulation is considered

As IPART would be aware, the national regulation of pricing of ELNOs has been subject to consideration in the context of the ARNECC review of the MOR and Model Participation Rules (**MPR**). This review commenced in late 2017 and public consultation on the draft version 5.1 of the MOR concluded on 3 October 2018. ARNECC has recently consulted on, amongst many other things, a CPI based price control regime for all ELNOs.

A significant amount of time and resources have been dedicated to ARNECC's consultation on the MOR and MPR over a 12 month period, including development of the draft documents by ARNECC, submissions by interested parties, industry forums and ongoing consultation with stakeholders. ARNECC's review process is nearly finalised and PEXA believes an appropriate balance has been found, including the following provision relating to pricing regulation:

5.4.3 From 1 July 2019 to 1 July 2022, the ELNO may increase the ELNO Service Fees as listed in its Pricing Table, once every year on 1 July, provided that the percentage increase in the revised ELNO Service Fees does not exceed the percentage increase in the CPI for the immediately preceding March quarter when compared with the CPI for the March quarter of the previous year.¹

As IPART would also be aware, the Registrar General has also recently determined to replace PEXA's Operating Agreement with conditions issued under section 15 of the Electronic Conveyancing National Law (**ECNL**) (**Conditions**). Most recently, the Registrar General has indicated that he intends to publish a final version of the Conditions at the end of December 2018.

The Conditions include a CPI-X limitation upon future price increases, where X is to be determined by the Registrar General. The Registrar General has indicated that until June 2019, the value of 'X' will be 0.

¹ The provision is subject to pass throughs relating to a change in the amount of any insurance premium payable by the ELNO in respect of any insurance policy the ELNO is required to hold under the MOR and a change in any law that gives rise to a change in the ELNO's operating costs.



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While PEXA considers that ordinary market forces will ensure PEXA's prices remain competitive, it has worked with ARNECC and the Register General in respect of the review of the MOR and does not oppose the proposed CPI-based pricing regime (noting PEXA has already contractually committed to CPI based price increase controls in any event).

PEXA does however have concerns in relation to the prospect of inconsistent regulation between NSW and the other participants in ARNECC.

In this context, PEXA has previously submitted to the Registrar General that as a first and over-riding priority, all parties involved should work constructively with ARNECC to finalise the current draft MOR / MPR. PEXA would like to see these documents, which are the collective result of huge amounts of intellectual effort over the past 12 months, finalised and brought into effect as soon as possible.

For the reasons set out above, PEXA considers that the terms of reference ought to therefore be limited to determining whether a CPI or CPI-X based price control is the appropriate form of price regulation, and if relevant, the proposed value of "X" over a reasonable time period.

4. Specific drafting recommendations

We set out PEXA's recommended amendments to the Draft Terms of Reference in **Attachment A** to this letter.

In addition to the more significant issues explained above, we also suggest the following:

1. The review should recognise the fact that there has never been a "single market operator" in the conveyancing industry. PEXA has always competed against physical lodgement, and Sympli is also about to enter as an ELNO.
2. The review should not proceed on the prejudicial assumption that there could be "pricing abuses" by ELNOs. The industry is nascent and contestable, and PEXA has yet to make a profit. While there are political reasons for price controls in a sensitive new sector, there is no evidence of abuse.
3. To limit unnecessary regulatory cost and burden, we suggest that future reviews should occur every 5 years, rather than annually.
4. While IPART is constituted in NSW we urge that due consideration is given to the significant efficiency, and benefits to all Australian consumers, associated with a single national regulatory regime for the e-conveyancing industry.

5. Cost review of ELNO Fees as part of the conveyancing transaction

We note that PEXA's ELNO Transaction Fee makes up only a small proportion of the broader fee structure of a conveyancing transaction. In this context it may be more appropriate for the NSW State Government with the assistance of IPART to re-consider all of the transaction costs faced by a consumer involved in a conveyancing transaction. It seems unusual to focus on 0.5% of the costs involved in providing the lodgement and settlement services provided by PEXA – particularly when this is already an innovative and competitive element.



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We set out below our indicative estimates of the typical fees charged to a consumer for a property transaction in NSW, using an approximate median house price.

OSR stamp duty	63.4%
Real estate agents	31.7%
Legal service providers (lawyer/conveyancer)	3.2%
LTO search and lodgement fees	0.8%
PEXA fees (including lodgement and settlement)	0.5%
Non-registry search fees (additional property searches required)	0.4%
Total	100%

We suggest it would be helpful for IPART to focus not just on the ELNO fee but the fees broadly charged by all participants in the conveyancing transaction, many of whom are now operating in a predominantly digital environment rather than the manual, labour intensive paper based system. These include the privatised land registry operator (a sole market operator with long term CPI price increase mechanism) and the limited re-suppliers nominated by the Registrar General and NSW LRS of title searches, providing services with significant mark ups for consumers on digital data or a pdf.

6. Scope of Registrar General regulatory powers

Further to the above, you will note that the scope of regulatory power in this area for the Registrar General is limited to the part of the service that relates to lodgement of documents. PEXA's fee presently comprises a bundled service of many components that include (but not limited to) financial settlement and Lodgement Support Services (LSS charged by NSW LRS). The Registrar General has never had responsibility for regulating aspects of the financial system. As a consequence the IPART process should consider how it will limit itself to those components that are regulated by the Registrar General, but balance that with the broader interest in considering those parts of the conveyancing process that are provided by the Registrar General or NSW LRS (including but not limited to LSS, processing of digital data for lodgement fees, title search fees (both wholesale and retail)). This will ensure that NSW consumer interests are considered in total, as PEXA is a relatively low-cost participant in these transactions.



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7. Cost and burden of the review

We note that the Finance, Services and Innovation cluster will meet the agreed costs of the review. In keeping with the overarching objective of benefiting consumers, PEXA considers it important that taxpayers do not pay for an unnecessarily broad and duplicative regulatory review of ELNOs, in light of the comprehensive ARNECC MOR and Registrar General review processes being so close to finalisation.

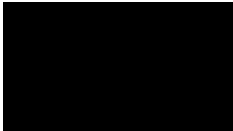
8. Conclusion

PEXA is concerned that for reasons of political sensitivity it could be treated as if it were a natural monopoly physical infrastructure business. This is far from the truth - in fact, it is a fledging IT start-up that is yet to turn a profit, operating in a nascent contestable industry that will deliver significant benefits to consumers nationally.

PEXA considers that a narrower review of ELNOs than that proposed by the Draft Terms of Reference is appropriate at this time, and there is no imperative to undermine the significant regulatory work that has been undertaken by ARNECC to date before it is even implemented.

To the extent a more detailed review is pursued, it should properly consider all relevant fees for services faced by consumers in NSW involved in conveyancing transactions.

Yours sincerely,



Marcus Price

Chief Executive Officer

Property Exchange Australia Ltd.

Encl.

ATTACHMENT A

IPART is requested to:

- (a) Undertake a market review and consultation process on the current state of the electronic conveyancing process;
- (b) Recommend an appropriate ~~pricing regulatory framework, such framework to include a maximum price for the provision of services and a~~ methodology for making annual adjustments to ELNO service fees.~~this maximum price~~;
- (c) Consider the appropriate timeframe in which any pricing framework should be adopted and any ~~transitional~~ measurements; and
- (d) Undertake ~~annual~~ market reviews every 5 years and thereafter advise whether the pricing framework needs to be adjusted in line with changing market conditions.

In determining an appropriate pricing framework, the Tribunal should have regard to the following matters:

- (a) ~~Protection~~ The interests of consumers in NSW and nationally;
- (a) ~~from potential pricing abuses due to the current status of electronic conveyancing as a single operator market;~~
- (b) The relevance of additional ELNOs ~~potentially~~ entering the national market in the near future over the next 1-5 years, and how this should be reflected in the pricing framework;
- (c) ~~The importance of undertaking the review in an open, fair and robust manner to ensure public confidence in the process and promote the NSW approach as a model for other jurisdictions;~~
- (~~e~~)(d) The significant efficiency associated with national consistency in regulation for the e-conveyancing industry;
- (~~d~~)(e) The extent to which PEXA has invested capital and developed intellectual property to support its ELN in its capacity as the initial and sole ELNO; and
- (~~e~~)(f) Any other matter the Tribunal considers relevant.

ATTACHMENT B

Readiness, offering & profitability

Sympli passes 'Category 2' to operate in Australia as the second Electronic Lodgment Network Operator (ELNO)

The national regulator, ARNECC, has assessed Sympli as meeting the Schedule 3, Category 2 requirements of the national Model Operating Requirements. Sympli is a collaboration between ASX Limited and InfoTrack Pty Limited.

The NSW government welcomes Sympli's entry to the market. A second ELNO will bring new benefits to eConveyancing customers that come from a competitive ELNO market.

Sympli is planning to commence this year with caveats in Victoria and priority notices in Queensland.

They are then expecting to be operational in the first quarter of 2019 in NSW. To facilitate this timeframe, NSW Land Registry Services is updating registry technology to allow for a more modern, efficient and secure interface between the registry and multiple ELNOs going forward.

As new providers establish themselves, we will be updating our training workshops with information on all ELNO's platforms to support practitioners transition to eConveyancing.

For more information on training and resources to support your transition to eConveyancing please go to our eConveyancing page.

Correspondence from the Office of the Registrar General of NSW, 26 November 2018

Two states, Queensland and Victoria, are already on board with the Sympli system and more are poised to follow.

Mr Wills said Sympli had done the bulk of the required work on having data standards set up for the system to be fully operational and he expected other states to adopt the system in coming months.

*"Every state is going to do the work and we'll have them on the system in the **first half of next year**," he said.*

This would see it adding further document services and allow the roll-out to spread rapidly.

*"That can happen quite quickly," Mr Wills said, noting it would only be a **matter of weeks** before the system had as many documents as PEXA.*

The Australian, 23 November, [Challenge for PEXA as rival approved battle looms](#)

*"It's taken PEXA 10 years and maybe they'll be profitable in the near future," he said. "We're **not going to take 10 years to be profitable.**"*

*"There is a difference in coming second," he said. "The disadvantage is that you are second. The advantage is that you **know** what you are doing and we are coming into a **more developed market**".*

AFR, 23 November, [PEXA rival Sympli gets approval to start operating online conveyancing platform](#)

Sympli plans to become an electronic lodgement network operator **ahead** of a formal launch in the **first half of 2019**.

*"With the **final ARNECC approval granted**, competition and choice in the e-settlement market is imminent. This is an outcome that will deliver **better value and service** for conveyancing practitioners and financial institutions," he said.*

The Australian, 23 November, [Sympli gains a key licence in battle to take on PEXA](#)

*"We are working to provide the **same services** by way of documents and registrations that PEXA provides," said Mr Wills, a former Lazard Australia banker. "We will be **side by side** with PEXA in terms of **service capability**. Then it comes down to serviceability and the way you treat your clients – all those things you would expect ELNOS [Electronic Lodgement Network Operators] to compete on."*

AFR, 25 October, [PEXA float pulled, rival Sympli ramps up](#)

Likewise, deputy CEO Peter Hiom told investors and media: *"[W]e are pleased to report that Sympli, our new e-conveyancing joint venture with InfoTrack, is progressing well."* The Sympli team, in addition to a number of ASX staff members, are currently focused on working with the banks and obtaining the regulatory approvals required to commence operations.

*"Customer feedback has been **positive** and the business is **well advanced in the development of its technology solution**."*

Mortgage Business, 21 August, [ASX invests in e-conveyancing venture](#)

ASX expects to invest approximately \$30million in the new venture over this and the next two financial years.

This will comprise approximately \$7 million in 2018, with further investments in 2019 and 2020. The ASX estimates that Sympli will **break-even in the 2021** financial year.

Mortgage Business, 4 June, [ASX, InfoTrack to take on PEXA](#)

Broker News, 4 June, [ASX aims to take on electronic settlement](#)

AFR, 31 May, [ASX, PEXA square up in \\$200m electronic property settlement market](#)

Pricing

*"It's the last main thing," Mr Wills told The Australian Financial Review on Friday. "We are now on track to start lodging [documents]. And we're offering it at a **cheaper price**."*

*"Sympli's prices will be set on a per successful lodgement basis, with **each document priced between 15 and 50 per cent lower** than the current market provider," it said on Friday.*

AFR, 23 November, [PEXA rival Sympli gets approval to start operating online conveyancing platform](#)

...pitching itself as a **lower cost alternative** that could halve prices on certain product lines.

The company's newly-released pricing guidance for its e-settlement service shows prices will be set on a per successful lodgement basis, with each document priced below the existing system.

The Australian, 23 November, [Sympli gains a key licence in battle to take on PEXA](#)

Not only will Sympli **spend less** building and operating the ELNO, Mr Wills said he can "**do things much cheaper than PEXA**".

AFR, 25 October, [PEXA float pulled, rival Sympli ramps up](#)

Ease of use/reliability

*"Initial feedback from roadshows involving thousands of industry practitioners has been overwhelmingly positive, particularly about Sympli's **capacity to fully integrate** with their practice management systems, our customisable workflow and task management, and its **simple user interface**,"* Mr Wills said.

*"This is an outcome that will deliver **better value and service** for conveyancing practitioners and financial institutions,"* Mr Wills said.

The Australian, 23 November, [Challenge for PEXA as rival approved battle looms](#)

The Australian, 23 November, [Sympli gains a key licence in battle to take on PEXA](#)

Mr Wills was clear he felt Sympli – which is backed by InfoTrack and the ASX – would spend less building its platform than PEXA did and the resulting competition would be positive for the consumer.

He (Wills) said the combination was a powerful one. *"Some of the things that PEXA had to take time to build, we didn't have to. For example, the connections into banks. We have those in place through the ASX. Being second to market you tend to **do these things much better.**"*

AFR, 25 October, [PEXA float pulled, rival Sympli ramps up](#)

Sympli chief executive David Wills believes the big advantage his service can offer is **far more streamlined integration with existing office technology** — much of which is offered by the company's backer, InfoTrack.

While e-conveyancing involves change, Wills says **much of the pain can be avoided** because of Sympli's integration with practice management systems.

The Australian, 21 September, [Sympli to give PEXA a run for money in electronic conveyancing](#)

Sympli's backers say it will pitch its service on **more reliable delivery**, rather than waiting for the market to expand when key states make digital settlements compulsory.

Sydney Morning Herald, 1 July, [Infotrack, ASX find property exchange Sympli irresistible](#)

Trading update:

*“Sympli will offer lawyers, conveyancers and financial institutions a **more streamlined and comprehensive technology solution** that will seamlessly integrate with clients’ existing practices and systems.*

*“The service will **improve efficiencies** and support Australia’s successful transition to full electronic conveyancing and settlement.”*

*“Sympli is an exciting opportunity. **Combining the experience and expertise of both shareholders** will enable Sympli to provide a compelling offering, which we believe will allow users to **easily realise the efficiencies of electronic property settlements.**”*

Mortgage Business, 4 June, [ASX, InfoTrack to take on PEXA](#)
Broker News, 4 June, [ASX aims to take on electronic settlement](#)

Sympli’s Chief Executive Officer, David Wills said: *“Sympli is well advanced in developing a **seamless and reliable technology solution** that will automatically integrate with users’ existing practices and systems.”*

*“As Australia’s leading technology provider of end-to-end electronic conveyancing, InfoTrack is keenly interested in the successful adoption of e-Settlements across Australia with **minimal disruption to market participants,**”* said InfoTrack Chairman, Stephen Wood.

Dynamic Business, 1 June, [Electronic Property Settlements made ‘Sympli’](#)

Mr Wills said the Sympli service would **integrate better with those existing services** and offer a more intuitive user experience.

The Australian, 1 June, [ASX, InfoTrack rival on way before PEXA has time to settle](#)

“We have actually built the system that can do this in the past,” ASX chief executive Dominic Stevens said. *“There are some upgrades to be done ... it’s all about **service and efficiency and making the workflow better.**”*

The Sympli group claim their rival system drew on feedback from market participants that already deal closely with property and technology group InfoTrack. They say it will **reduce duplication** that feedback suggested was a frustration with PEXA’s model.

Sympli’s statement said it offers lawyers, conveyancers and financial institutions a **“streamlined and comprehensive”** technology solution that can integrate with customers’ existing practices and systems.

AFR, 31 May, [ASX, PEXA square up in \\$200m electronic property settlement market](#)

In an email announcing the potential venture to their clients, InfoTrack CEO John Ahern and Chairman Stephen Wood advised that their company’s ELNO would *“support Australia’s move to electronic settlements by: giving market participants choice and the benefits that flow from competition; **improving reliability** of the marketplace by **eliminating single party risk**; and **delivering on the anticipated efficiencies** of electronic settlements and lodgements”.*

Dynamic Business, 15 February, [Infotrack partners with ASX to consider taking on PEXA for Australia’s e-Conveyancing crown](#)