

## **Submission by the State Revenue Commissioners eConveyancing Committee (the Committee) - NSW Independent Pricing and Regulatory Tribunal (IPART) - Pricing regulation of electronic conveyancing services in NSW - Draft Report - Electronic Conveyancing services in NSW - August 2019**

Following is the State Revenue Commissioners eConveyancing Committee's (the Committee) submission on the subject draft report (the Report).

### **Background/Context**

With the emergence of two new entrants in the electronic conveyancing market the Commissioners for State Revenue established the Committee in September 2018 with the following initial foci.

1. Consistency across jurisdictions (so far as is possible)
2. Revenue Office Messaging Standards (ROMS) - replacement
3. Operating Level Agreements
4. Consistent onboarding processes for new Electronic Lodgement Network Operators (ELNO's)
5. A consistent cost recovery model
6. Change controls.

The Report examines elements of the ELN market, including with respect to governance, the scope for competition, the regulation of the financial settlement component of transactions and the pricing regulatory framework.

The Committee has an interest in the findings in the Report, particularly the proposed pricing methodologies for services provided to ELNOs in NSW. Given its stated focus the Committee is concerned with the following issues.

- Consistency across jurisdictions
- Administrative costs in managing cost recovery
- Competitive neutrality
- ELNO subscriber support
- Government agencies roles in a commercial market.

The Council of Australian Governments initiative to create an Electronic Lodgement Network (ELN) saw the establishment of the first and until recently the only ELNO - Property Exchange Australia (PEXA). Initially, some of the State Governments were shareholders in PEXA. During the establishment phase of PEXA Governments and PEXA shared certain costs, including Governments absorbing significant technology development costs of Land Registries and State Revenue Offices (SROs).

There were few if any benefits for SROs in establishing the ELN, as each SRO had already established mechanisms for conveyancers to interact electronically with State Revenue Management Systems (RMS), with States already collecting revenue electronically through their RMS. The ELN required building the Duties Verification Process to interact with RMS with concomitant technology development and maintenance costs for SROs. SROs have largely absorbed these costs and the costs associated with system changes required by PEXA, land registries and legislative change. SRO's have also absorbed significant costs in managing ELNO subscriber support requests. Those costs are highest in States where electronic lodgement has been mandated (NSW, Vic, WA).

The emergence of new entrants in the ELN market will significantly increase costs for SROs, in providing access to the Duties Verification Process for multiple ELNO's, including interoperability issues.

### **SRO Submissions**

State Governments that previously held shares in PEXA have now divested them. PEXA's IPO and a potential multi ELNO market fundamentally shifts the nature of the relationship between SROs and ELNOs. That shift can be characterised as moving from a co-founder and co-owner (for some states) of a monopoly to a service provider, servicing multiple commercial entities in an open and competitive market.

A threshold question in the Report is whether a tax agency should be permitted to charge for performing its core function of collecting taxes. In the Report it was found that eConveyancing has resulted in Revenue NSW undertaking additional functions (duties verification services) and incurring additional costs outside its core tax collection function. While the Committee broadly agrees with the Report findings, the Committee has a different view on several of the conclusions reached, as set out in the table below.

IPART finding	SRO submissions
<p>Because ELNOs are not able to influence all the costs associated with Revenue NSW's duties verification service, we consider that these prices should recover only the cost items that ELNOs impact and could avoid or minimise.</p>	<p>In a commercial relationship SROs are a service provider to ELNOs. SROs have statutory obligations to Government. SROs are of the view ELNOs operating in a commercial regulated market do so knowing that responding to necessary changes in that environment is a normal cost of doing business. SRO's incur additional costs to ensure ELNOs can retain connectivity with the RMS. This is considered a service cost that should be passed on to ELNOs, rather than absorbed by governments and ultimately taxpayers.</p>
<p>Costs relating to ELNO subscriber support: \$15.20 per support inquiry to Revenue NSW (based on reported Revenue NSW costs)</p>	<p>ELNO subscriber support should be provided by the ELNO. The IPART finding would effectively shift responsibility and costs associated with supporting subscribers (who pay a fee to the ELNO) from the ELNO to the SRO. Also, SROs question whether the fee nominated by IPART is sufficient to encourage ELNO behaviour to actively reduce the number of support requests to the SRO. \$15.20 per support request is a very cost-effective way for an ELNO to provide subscriber support.</p>
<p>Testing for ELNO product releases that exceed base level frequency. (Base level is two major and two minor releases per year, per ELNO): \$125,000 per ELNO for each product release that exceeds base level</p>	<p>The nature, incidence and timing of ELNO change control/change releases have a significant impact on SROs. SROs are ordinarily not included in the decision-making process for the content of change releases. Consequently, SRO's have at times had little if any notice of planned changes and have had to suspend their own SRO system development/changes to accommodate ELN change releases. SROs also have had limited opportunity to plan and manage costs associated with these changes. SROs consider that, as with bespoke service changes, ELNOs should negotiate a price for product releases that exceed the scheduled base level.</p>
<p>Other jurisdictions could adopt a similar framework for recommending ELNO prices.</p>	<p>SROs prefer a pricing model that is easy to administer for both SROs and ELNOs and that reflects a commercial relationship. The Committee has developed a cost recovery model which will form a part of a nationally consistent Data Trading Agreement with ELNOs. Broadly, the cost recovery model includes a:</p> <ol style="list-style-type: none"> <li>1. base reimbursement amount reflecting the cost of "connection";</li> <li>2. per transaction reimbursement amount; and</li> <li>3. negotiated reimbursement of SRO costs to accommodate ELNO initiated change requests. This includes onboarding of new entrants to the ELN.</li> </ol> <p>The Committee notes that while SROs aim, so far as is possible, for consistency between State jurisdictions under the Federation model each State jurisdiction is responsible for making and administering its own laws, including setting charges and fees.</p>
<p>Cost of governance and change management of ELNO services should be absorbed by Revenue NSW.</p>	<p>Most SROs now require dedicated resources to administer and control the impact of ELNO systems and services. Change control, management, and committees established to govern changes are a further cost to SROs. Therefore, SRO should be</p>

	entitled to recover from ELNOs reasonable and equitable costs associated with governance and change control.
<p>Revenue NSW should <u>not</u> be able to recover from ELNO's, establishment costs including the:</p> <ul style="list-style-type: none"> <li>• ELNO verification system capital costs including system development, licences, hardware, servers, and automated testing establishment; and</li> <li>• ELNO on boarding cost (relating to joint integration testing).</li> </ul>	<p>ELNO technology development costs should be paid by the relevant ELNO. Most SROs' duty verification systems have established to operate with a single ELNO connection. Integration of multiple ELNO's will incur further development costs, which SROs should not have to absorb.</p> <p>The costs to establish and integrate PEXA systems with SROs' RMS were previously absorbed by SROs on the basis that some of the States were shareholders in NECDL (PEXA's previous entity name). Those States have now divested their share interests in PEXA and therefore PEXA should be treated as with any other ELNO in a competitive market.</p>
<p>ELNO's be able to pass through as an additional charge (presumably to the taxpayer/customer as the end consumer) the efficient costs of implementing interoperability.</p>	<p>SROs consider that costs associated with establishing interoperability between ELNO's is a commercial cost that should not be passed on to SROs and ultimately taxpayers. Taxpayers should not have to bear any additional commercial costs (over and above CPI increases to established fees and charges) for a property transfer through eConveyancing.</p>