



Gladys Berejiklian MP
Premier of New South Wales

Ref: A2810861

Dr Peter Boxall AO
Chairman
Independent Pricing and Regulatory Tribunal
PO Box K35
HAYMARKET POST SHOP NSW 1240



Dear Dr Boxall,

I am writing in response to your correspondence on the revised terms of reference for an IPART investigation into pricing regulation of electronic conveyancing services in New South Wales.

In November 2018, pursuant to section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992*, I referred the matter to the Tribunal for investigation. I note that IPART gave notice of this referral and sought public comment on the draft terms of reference.

I have considered the revised terms of reference you provided and I am pleased to issue IPART with the final terms of reference (attached).

The Tribunal is requested to conduct a review, with the final report to be completed within ten months of receiving the terms of reference.

Yours faithfully,

Gladys Berejiklian MP
Premier

CC: The Hon Victor Dominello, Minister for Finance, Services and Property

Review of Electronic Conveyancing Services in NSW - Final Terms of Reference

I, Gladys Berejiklian, Premier of New South Wales, under section 12A of the Independent Pricing and Regulatory Tribunal Act 1992 (the Act), request the Independent Pricing and Regulatory Tribunal (Tribunal) to investigate and report on an appropriate pricing regulation framework for the provision of electronic conveyancing services in New South Wales in accordance with this Terms of Reference.

Context

Electronic conveyancing is a system of settlement of real property transactions via an Electronic Lodgement Network (ELN). An entity that operates and administers an ELN is known as an Electronic Lodgement Network Operator (ELNO).

Currently the national regulations require the sole ELNO, Property Exchange Australia (PEXA), to determine its fees according to a publicly available, equitable and transparent pricing policy. However, the extent to which this policy properly reflects market conditions has never been tested. State and national regulators have not assessed PEXA's approach to introducing its original fees.

Additionally, the current fee regime may be reasonable while paper conveyancing as an alternative to electronic conveyancing provides competitive pressure on PEXA's prices, but such competitive pressure disappears when paper conveyancing is no longer an alternative. In NSW, paper conveyancing for some property and finance dealings has already been removed, and by 1 July 2019, all mainstream property dealings are mandated to be electronic. The NSW government intends to review and identify appropriate regulatory settings for the fees charged for the provision of eConveyancing services to ensure they are fair and transparent for all parties.

The NSW government recognises that electronic conveyancing is a national reform and strongly supports a nationally consistent regulatory regime. Although the IPART review and report will only consider pricing in NSW, the NSW government intends to share IPART's findings with other jurisdictions to support its overall aim of a nationally consistent pricing framework.

The task

IPART is requested to:

- a) Undertake a review and consultation process on the state of the electronic conveyancing market;
- b) Recommend an appropriate pricing regulatory framework, which includes:
 - A maximum price or pricing methodology for the provision of services by an ELNO, which may include any pass-through mechanisms, and a methodology for making annual adjustments to price;
 - A maximum price or pricing methodology for services provided to ELNOs by NSW Land Registry Services; and

- A maximum price or pricing methodology for services provided to ELNOs by Revenue NSW.
- c) Consider the appropriate timeframe in which any pricing framework should be adopted and any transition measures; and
- d) Consider the appropriate scope and frequency for future reviews of the pricing framework.

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

- i) Protection of consumers from potential pricing abuses due to the current status of electronic conveyancing as a highly concentrated market;
- ii) The potential for additional ELNOs to enter the market over the next 1-5 years, the costs and effectiveness of interoperability, and how this should be reflected in the pricing framework;
- iii) The cost of providing the services concerned, including the implication of differences in costs between jurisdictions for nationally consistent pricing;
- iv) The extent to which PEXA invested capital and developed intellectual property to support its ELN in its capacity as the initial ELNO;
- v) The possibility of applying the NSW approach to any of the elements of the pricing regulatory framework as a model for other jurisdictions.
- vi) Any other matter the Tribunal considers relevant.

Process and timeframe

The Tribunal consulted with the public on these terms of reference.

The Tribunal is to undertake the review in an open, fair and robust manner to ensure public confidence in the process, including releasing a draft report for public consultation and conducting at least one public hearing during the course of the review.

The Tribunal is required to provide a final report to the Premier within ten months of receiving the terms of reference. The final report will be made publicly available.

The Finance, Services and Innovation cluster will meet the agreed costs of the review.