

INDEPENDENT PRICING AND REGULATORY TRIBUNAL

REVIEW OF THE PRICING FRAMEWORK FOR ECONVEYANCING SERVICES
IN NSW

Tribunal Members

Dr Paul Paterson, Chair
Mr Ed Willett and Ms Deborah Cope

Members of the Secretariat

Ms Liz Livingstone, Ms Jennifer Vincent,
Ms Alexandra Rush and Ms Courtney Barry

At
The offices of IPART
Level 15, 2-24 Rawson Place, Sydney

On Tuesday, 3 September 2019, at 10.00am

1 OPENING REMARKS

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THE CHAIR: Good morning, everybody, and welcome to IPART. I am Paul Paterson, the chair of IPART, the Independent Pricing and Regulatory Tribunal of New South Wales.

I would like to begin by acknowledging that we are meeting on the Gadigal land of the Eora people and I would like to pay my respects to the traditional custodians of the land and elders both past and present.

I welcome you to this public hearing, which is part of the consultation process for our review of the pricing framework for electronic conveyancing services in New South Wales.

I am joined today by my fellow Tribunal members, Ed Willett on my right and Deborah Cope on my left. Assisting the Tribunal today are members of the IPART secretariat, Liz Livingstone, the CEO, Jennifer Vincent, Alexandra Rush and Courtney Barry. Our cost consultants from AECOM, Simon Ward and Mike Stoke, are here as well to answer any queries as they come up. We have a range of stakeholders around the table. Welcome everyone who is here, and people on the floor of the meeting as well.

Today's hearing provides you with an opportunity to comment on and discuss our draft recommendations for the pricing regulatory framework for eConveyancing. The hearing is being transcribed and the transcript will be placed on our website.

I would like to thank those who have participated in the review to date, particularly those who have provided written submissions on our issues paper which was released in March this year. Our issues paper, submissions to the issues paper and the recently released draft report are available on IPART's website. As well as the discussion today, we are seeking written submissions on our draft report. The closing date is 17 September and our final report will be submitted to the Premier and Minister for Customer Services by November of this year with a view to prices being applied from July 2020.

I will turn now to a brief overview of our review's

1 findings and our preliminary recommendations. The
2 NSW Government asked IPART to review the state of the
3 eConveyancing market and to recommend an appropriate
4 pricing regulatory framework for both the providers of
5 eConveyancing services, the electronic lodgment network
6 operators - ELNOs - and for services provided to the ELNOs
7 by Land Registry NSW and Revenue NSW.
8

9 Our approach was to first consider the current level
10 of competition in the eConveyancing market and the likely
11 developments of that market in the future. We found that
12 the market is at present concentrated and is likely to
13 remain so at least in the short-term.
14

15 There is no doubt in our mind that eConveyancing is a
16 digital success story, but to build on that success IPART
17 is of the preliminary view that more needs to be done to
18 support the development of competition in the market.
19

20 We consider that implementing what we call a direct
21 connection interoperability solution between the two
22 existing ELNOs, PEXA and Sympli, could be done at a
23 relatively low cost and would drive the benefits of the
24 competition for innovation and pricing. A direct
25 connection between the two current ELNOs should therefore
26 be built as soon as possible, in our view.
27

28 After that, new entrants should be allowed to choose
29 between accessing existing infrastructure to provide
30 services, or building their own with direct connections to
31 existing ELNOs to maximise cost efficiency and the scope
32 for innovation, so allowing for choice in the market and,
33 therefore, subsequent ELNOs entering the market.
34

35 We consider that pricing regulation is still required
36 while the market is concentrated. We have reviewed an
37 estimated efficient cost of eConveyancing and benchmarked
38 eConveyancing prices against paper settlement prices and we
39 concluded that PEXA's current prices are reasonable.
40

41 Therefore, our draft recommendation is that PEXA's
42 current prices should apply as maximum prices for any ELNO
43 in the market, indexed by CPI over two years, at which
44 point a review would be warranted.
45

46 We also looked at new charges proposed by Revenue NSW
47 and NSW Land Registry Services for building and maintaining

1 systems and supporting operations. We analysed a number of
2 factors, including whether there are offsetting benefits
3 for these organisations and whether or not the ELNOs can
4 avoid or reduce the costs.

5
6 I will now hand over to Alexandra Rush and
7 Courtney Barry from IPART's secretariat. Alex will give a
8 brief overview of our draft findings and recommendations
9 regarding the state of the market and interoperability as a
10 spur to the benefits of competition. Courtney will then
11 give an overview of our pricing regulatory framework
12 decisions for ELNOs. I will then invite discussions,
13 firstly from those at the table and then from the floor.
14

15 Over to you, Alex.

16
17 MS RUSH: Thank you, Paul.

18
19 As mentioned in the opening remarks, we firstly would
20 like to recognise that eConveyancing has been a good
21 innovation for Australia in general and for New South Wales
22 specifically. It has streamlined a number of aspects of
23 the conveyancing process, including reducing the amount of
24 time required to meet to attend settlements, and the checks
25 and balances built into ELNO systems reduce the potential
26 for errors and fraud.
27

28 As a first step in this review, we analysed the
29 current state of the market and found that the market is
30 highly concentrated with only one ELNO currently operating
31 in New South Wales. Some new competitors have begun to
32 emerge in the market and establish themselves, but it is
33 likely to remain concentrated, at least in the short-term.
34

35 Based on that assessment of competition in the market,
36 it has guided our thoughts on what the appropriate form of
37 regulation might be. We feel that measures should be put
38 in place to encourage robust competition and that will help
39 drive innovation and cost savings over time. To achieve
40 this, regulators could establish a framework for
41 competition that is similar to the framework in the cash
42 equities market. Broadly, this would involve firms meeting
43 regulatory requirements and regulators setting specific
44 licence conditions for each firm based on their individual
45 business plans. Incumbents would need to provide access to
46 services and infrastructure to new entrants on transparent,
47 fair and reasonable terms, and any disputes around those

1 commercial arrangements would be arbitrated by a regulator.

2
3 Who the appropriate regulator is, is part of the live
4 discussion that is happening as part of the ARNECC review of
5 the national eConveyancing framework, so we won't go into
6 that discussion today. However, these sorts of regulatory
7 measures that we are suggesting could be implemented by the
8 current State-based regulators, or they could be
9 implemented by a new national regulator, depending on the
10 outcomes of the ARNECC review.

11
12 We also believe that interoperability can help promote
13 competition by reducing the impact of network effects,
14 which means that smaller ELNOs are more able to compete
15 more effectively, and it would also allow subscribers to
16 choose to use their preferred ELNOs for all their
17 transactions.

18
19 To help with our analysis, we appointed a cost
20 consultant, AECOM, to analyse the efficient costs of
21 building and operating an ELNO platform. They did that for
22 both an incumbent or an established ELNO, as well as for a
23 new entrant ELNO. A number of different scenarios were
24 tested and they found that the costs were particularly
25 sensitive to the assumptions around market share and the
26 number of transactions performed by each ELNO.

27
28 A similar process was also used to build up the costs
29 of building and operating four different potential
30 interoperability solutions. Courtney will go through our
31 thoughts on ELNO prices in a moment, and AECOM is available
32 to answer questions on their modelling. First, I will go
33 through some of our findings on interoperability.

34
35 We found that the costs for the different
36 interoperability solutions varied depending on the number
37 of ELNOs in the market. For example, if we start with a
38 baseline assumption where we have two ELNOs in the market,
39 the different interoperability options actually have
40 similar costs, and they are relatively small. As the
41 number of ELNOs increases, it becomes cheaper for the
42 industry overall if new ELNOs use existing financial
43 settlement and lodgment infrastructure.

44
45 However, these costs have to be weighed up against the
46 degree of competition and innovation that can be supported
47 by the different interoperability options. We found that

1 this is greatest when ELNOs in the market build direct
2 bilateral connections with each other, because it means
3 that each ELNO would be responsible for their own retail
4 infrastructure, but also be responsible for their own
5 back-end infrastructure for lodgment and financial
6 settlement.

7
8 Taking those two factors into account, we felt that a
9 more flexible interoperability framework would allow the
10 industry to adapt over time and it would minimise costs
11 while maximising the potential for innovation in the
12 market.

13
14 To make use of the existing infrastructure that the
15 two existing ELNOs have already built in the market, we
16 thought that a direct connection should be built between
17 those two current ELNOs. However, we felt that new
18 entrants should be given the choice of whether to enter
19 into commercial terms to access that existing
20 infrastructure, or to have the opportunity to develop their
21 own new and unique infrastructure and connect to the
22 existing ELNOs.

23
24 The other important point to mention is this sort of
25 interoperability framework could be implemented at a State
26 level in New South Wales or at a national level. It is
27 also open enough that if a new national regulator wants to
28 be more prescriptive, our suggested framework would not
29 create inconsistencies in the rules and the framework or
30 create additional sunk costs.

31
32 Another important element is that we felt there should
33 be a transfer price so that ELNOs can share costs fairly
34 for interoperable transactions. This is not the same as
35 those commercial arrangements that would be negotiated
36 between ELNOs to access infrastructure and it does not
37 necessarily represent additional costs to subscribers.

38
39 When we were thinking about the transfer price, we
40 looked at the current costs involved in a transaction, and
41 this included the capex that is required, the capital
42 expenditure, to set up the lodgment and settlement
43 infrastructure; the pass-through fees, like the LSS fees
44 and the lodgment gap insurance; and we also allowed for
45 potential new interoperability insurance. Which ELNO pays
46 these costs varies from transaction to transaction.
47 Regulators will need to set a schedule of costs and a

1 formula that allows ELNOs to calculate the net transfer
2 price for each individual transaction.

3
4 In the draft report we have provided some examples,
5 but the specific costs will depend on the choice of
6 interoperability model and the insurance regime that is
7 chosen by the industry.

8
9 I will now pass to Courtney who will tell us all about
10 ELNOs' prices.

11
12 MS BARRY: Thank you, Alex.

13
14 We asked AECOM to model the costs for both a benchmark
15 efficient new entrant ELNO and a benchmark efficient
16 established ELNO over a five-year period. This involved
17 modelling both the capital costs and the operating costs,
18 that is, establishing an ELNO software platform and also the
19 ongoing operating costs.

20
21 Based on this analysis, we found that PEXA's current
22 prices are reasonable, andso we recommend that PEXA's current
23 prices are applied as maximum prices for any ELNO from
24 July 1, 2020 and indexed by CPI annually. We also recommend that
25 this pricing framework is reviewed every two years while
26 competition in the eConveyancing market develops.

27
28 We also proposed an additional measure for recommending
29 ELNO prices, and that was to benchmark eConveyancing prices
30 to prices that were paid for paper conveyancing. This
31 confirmed that the prices we have recommended for ELNOs
32 mean that consumers pay no more for eConveyancing than
33 they did for paper.

34
35 This chart here shows the application of AECOM's cost
36 modelling to the standard IPART building block model. As
37 you can see, there is substantial variation in the prices
38 that are required to recover all costs over the two-year
39 regulatory period. This is because a benchmark efficient
40 ELNO would have relatively high fixed costs based on their
41 capital and operating costs, so they require a high number
42 of transactions, or market share, to recover their costs.

43
44 It is important to note that this analysis is
45 dependent on ELNOs recovering all costs in a two-year
46 regulatory period, which we understand might not be the
47 case in practice, particularly for technology-based firms

1 which may recover their costs over a longer period.

2
3 In our issues paper we proposed benchmarking ELNO
4 prices to prices that were paid for paper settlement
5 services. To do this analysis we collected information from
6 paper settlement agents in June 2019, which was the period
7 immediately before the July 1 mandate for eConveyancing in
8 New South Wales. We consider that paper settlement
9 agents performed similar activities to what ELNOs now do
10 electronically, which is exchanging documents and funds.

11
12 Based on this analysis, we found that our pricing
13 framework means that consumers will pay no more for
14 eConveyancing than they did for paper.

15
16 That concludes our discussion on ELNO prices, costs
17 and interoperability. Now I will hand back to Paul to open
18 up the discussion to stakeholders.

19
20 THE CHAIR: Thank you, Courtney and Alex. I will now
21 invite responses initially from around the table and then
22 from the floor of the meeting, seeking comments that anyone
23 would like to make.

24
25 As I indicated, we have a transcriber here today. To
26 assist the transcriber, it would be very helpful if people
27 could introduce themselves and, where applicable, state
28 their organisation and speak loudly and clearly when they
29 present.

30
31 Around the table here today we have got
32 representatives of both users of the eConveyancing system
33 and providers of the eConveyancing system, and also some of
34 the other organisations involved - NSW Land Registry,
35 Revenue NSW and the Registrar General - so we have a range
36 of people to hear from around the table.

37
38 We will start with the user groups first, then the
39 providers, and then see whether the other agencies at
40 this stage have any comments they would like to make.

41
42 Perhaps the Law Society and the Institute of
43 Conveyancers first.

44
45 MS LEA: Thank you, chair. Gabrielle Lea from the
46 Law Society. Thank you, Alex and Courtney for that
47 outline. I work with our property law committee at the

1 Law Society. We did put a submission into the issues
2 paper. We are currently making our way through the draft
3 report.
4

5 The Law Society supports interoperability. We see
6 that as a necessary development, largely from our users'
7 perspective. We very much will continue to be involved in
8 these processes going forward.
9

10 THE CHAIR: Thank you very much, Gabrielle.
11

12 MS BLANNIN-FERGUSON: I am Ann Blannin-Ferguson from the
13 Australian Institute of Conveyancers. We also support
14 interoperability, and are looking forward to the competition in the
15 market. The pricing seems reasonable from our aspect as
16 well, and being able to cap it basically every two years.
17 As we know, the CPI is abysmal at the moment, so price
18 reviews every two years is a good idea.
19

20 THE CHAIR: Thank you.
21

22 Would Sympli like to make some comments, please.
23

24 MR WILLS: Thank you. David Wills, chief executive of
25 Sympli.
26

27 Firstly, we welcome the review and thank you for the
28 summary this morning. As the first proper economic
29 analysis of the eConveyancing industry, we think that this
30 is a very important report. We think that it is welcomed
31 by the industry and we think that it should hold
32 significant weight in relation to the national model.
33 Sympli supports the recommendations and we emphasise the
34 importance of the recommendations in relation to ELN
35 competition, in particular the recommendations around
36 interoperability are consistent with what we consider to be
37 anecdotal feedback through the market as users want to see
38 an efficient way to use multiple ELNs in the market.
39

40 The recommendations from the Tribunal are sensible,
41 practical and, in our view, should be implemented by the
42 industry's regulator, ARNECC. We commend the Tribunal in
43 relation to the thoroughness of the examination, in
44 relation to the clear and concise conclusions that you have
45 reached, and we think this is a very important report for
46 the industry.
47

1 THE CHAIR: Thanks very much, David.

2

3 PEXA?

4

5 MR SCHMITT: Thank you, Chair. Justin Schmitt from PEXA.

6

7 We are also supportive of the process in reviewing the
8 current market structure and the way that this would all
9 play out. Obviously from our point of view we also think
10 that national consistency is a cornerstone of all of this.
11 PEXA was created to provide a national solution for
12 eConveyancing, or settlement and lodgment, and we think that
13 there is a risk around having one jurisdiction go alone on
14 all of this, given that we have multiple reviews that are
15 currently underway in this space.

16

17 Interoperability as a whole, again, we will work with
18 the industry on all of that. There was a lot of work done
19 in the New South Wales interoperability review and there
20 are a lot of items that are still up for discussion as a
21 consequence of that review, and a lot of issues that need
22 to be solved. Potentially it is not as straightforward as
23 what we are perhaps working through here, and I think there
24 is a lot of water to go under the bridge in terms of
25 dealing with those specific issues. I think we will make
26 some comments in our submission in relation to that.

27

28 We were competing with paper when we set our prices
29 back in 2014 and have not changed other than a CPI
30 adjustment, so that is a sensible approach in relation to
31 that. We can continue with that arrangement until two
32 years down the track. I think we will make some further
33 submissions as we work our way through the detail of the
34 report as well.

35

36 THE CHAIR: Thank you, Justin.

37

38 MR WILLIS: Just a quick comment from our board member.

39

40 MR BEATON: If that is okay, I would like to make a quick
41 comment. My name is Blair Beaton. I am a director of
42 Sympli.

43

44 The first thing I want to do is compliment IPART on
45 the quality of the analysis and the report that has been
46 prepared. I think it is an excellent document, so thank
47 you very much. There has been a lot of good work done

1 there.

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As to the draft recommendations, if we can get them implemented, in particular the interoperability ones, I think they are incredibly important for the industry and I think they will benefit all of the industry. I think about interoperability as competition, so I think the industry is looking for competition, and if we can provide the industry with competition, then I think we are better off.

Lastly, Sympli is ready, willing and able to work with PEXA and all parties to make that happen. Thank you very much.

THE CHAIR: Thank you.

Does anyone else around the table want to make a comment at this stage?

MR DOLTON: Thank you. James Dolton from NSW Land Registry Services. I think the bulk of our comments we will save for the next topic, but I think we will just reiterate that, as stated in our written submission to IPART, NSW Land Registry Services supports the NSW Government's objective of competition in eConveyancing in New South Wales, and we welcome the IPART report.

THE CHAIR: Thank you, James.

Thanks, Jeremy.

MR COX: Thank you. I will make a quick comment. Certainly thank you for doing the analysis and for Alex's and Courtney's presentations.

Obviously the government commissioned this report to have independent expert advice, and we really welcome that at this point, at this juncture. It is an evolution of this reform, I suppose.

I should start by saying our view, and I think shared probably by most around the table, is industry reform, and as evidenced by IPART's independent review, too, is a very successful example of cooperation between states and territories through a COAG process. We have the world's first national electronic system for conveyancing which should be celebrated. In New South Wales, I think around

1 95 per cent of all possible dealings that can be lodged
2 electronically are now lodged electronically, and it has
3 been an all-hands-on exercise working very closely with the
4 Law Society and the AIC and others. So we are really very
5 grateful for that. We do see that we have a very big and
6 exciting future in front of us.

7
8 At this point, the opportunity for competition is
9 something that should be absolutely celebrated. From a
10 regulatory perspective, celebrated because it will involve
11 better outcomes for customers, and that is the
12 NSW Government's position here. Certainly we are committed
13 to the development of this competitive market, and just to
14 talk about the importance of competition goes beyond
15 pricing, I think, and it is very helpful to have that
16 analysis around pricing which we are talking about today.

17
18 Equally in your report, we noticed the importance put
19 on the innovation that is driven from competition. The
20 pressure that will be put on all operators to compete for
21 customers is what then drives innovation to make their
22 services of high quality to attract those customers. From
23 a regulatory perspective, that is very difficult to get
24 with regulatory levers, at least relative to having
25 competition in the market, and obviously the NSW Government
26 has been clear on its views and its desire for an
27 interoperability solution as one of the means to achieve
28 that competition. Maybe I will pause there for now.

29
30 THE CHAIR: Thank you, Jeremy.

31
32 I will open up for comments from the floor now and
33 would encourage people to stand up and give us their views
34 on what we have seen this morning and what comments have
35 been made around the table. We have lots of time this
36 morning to do this, so feel free to provide a contribution to
37 our discussion.

38
39 MR YOUNG: South Young, Mr CHAIR, retiree. From what I
40 hear around the table, it is very encouraging to see the
41 view of competition, especially electronic conveyancing.

42
43 My individual view is that in Australia since the
44 Hawke-Keating government in the 90s, the national
45 competition policy has a very strong framework in terms of
46 competitive neutrality. Similarly, I think the former
47 Chief Justice, Robert French, has made a lot of decisions

1 in the Federal Court with competition, particularly
2 recently with the Competition and Consumer Act 2010,
3 Commonwealth. It provides a lot of competition protection,
4 particularly for organisations and individuals as well.

5
6 So I thought the transparency part of this is very
7 encouraging. Perhaps some consistency and conformity to
8 those would be very good. Thank you, Mr CHAIR.

9
10 THE CHAIR: Thank you very much. Next? No-one at this
11 stage. We will have an opportunity after the second
12 presentation. If there are no further comments on what we
13 have covered with the start of the presentations so far, we
14 will move on to the second session.

15
16 I will now hand over to Jennifer Vincent from the
17 IPART Secretariat, who will give a brief overview of our
18 draft findings and recommendations regarding pricing for
19 services from Land Registry Services and Revenue NSW.

20
21 Over to you, thanks, Jennifer.

22
23 MS VINCENT: Thanks, Paul. I might actually just start by
24 asking if there is someone from Revenue NSW who can come up
25 to the table and represent Revenue NSW. We seem to be
26 missing Julie King, who was going to be here.
27 Matthew Nowell, thank you.

28
29 This second session deals with the sections of our
30 terms of reference where we were asked to investigate and
31 recommend prices or a pricing methodology for services
32 provided to ELNOs by NSW Land Registry Services and a
33 maximum price or pricing methodology for services provided
34 to ELNOs by Revenue NSW.

35
36 Turning first to NSW Land Registry Services, there
37 were a couple of areas of their prices that we considered
38 to be out of scope. There are two categories of fees that
39 LRS charges that are already set by regulation. Those are the
40 registration fees that NSW LRS charges to principals in a
41 property transaction and which are collected and passed on
42 by ELNOs. The second out of scope category of fees is the
43 existing lodgment support services, or LSS, fees that
44 NSW LRS charges to PEXA to recover the capital and
45 operating costs associated with eConveyancing for NSW LRS.

46
47 Although those two categories are out of scope in

1 terms of setting those prices, in our issues paper we noted
2 that we would take into account cost savings when
3 considering NSW LRS's proposed new transaction fee to
4 recover costs of a new multi-ELNO platform, and that we
5 would also consider whether there were any costs of the
6 multi-ELNO platform that were already being recovered by
7 LSS fees.

8
9 In our draft report we found that the cost of a
10 multi-ELNO platform was appropriately categorised as
11 expenditure on technology to provide an existing service
12 and, therefore, should be recoverable from existing LSS
13 fees. We also found that NSW LRS have been able to realise
14 savings from the rapid take-up of eConveyancing in recent
15 years, so we consider that they can absorb the costs of
16 their additional expenditure on a multi-ELNO platform
17 without introducing a new fee.

18
19 Turning now to Revenue NSW services to ELNOs, in our
20 issues paper we did ask the threshold question - whether
21 a taxing agency should be able to charge for its core tax
22 collecting activities. While we consider that the answer
23 to that question is “no”, we also found that eConveyancing
24 has resulted in Revenue NSW undertaking a duties
25 verification service as a different service in addition to
26 its core tax collection activities.

27
28 Some of these additional costs of providing the duties
29 verification service are imposed by ELNO activities, so we
30 consider that ELNOs should bear those costs and be
31 incentivised to minimise or eliminate them where possible.

32
33 Our draft recommendations cover three categories where
34 we consider that Revenue NSW should be able to recover
35 costs from ELNOs. Since we published the draft report, we
36 have had some discussions with Revenue NSW and their
37 feedback was the terminology we used in the draft report
38 for those categories could be clearer, so the language that
39 we have used on this slide reflects that change.

40
41 The first category is ELNO subscriber support, where
42 Revenue NSW is required to provide support regarding ELNO
43 issues to ELNO subscribers, and this does not include
44 situations where Revenue NSW is giving tax information to
45 subscribers. The second category is where Revenue NSW must
46 undertake activities such as testing to support development
47 work such as security patches undertaken by an ELNO where

1 Revenue NSW's system is not itself changed.

2
3 The third category is where Revenue NSW and an ELNO
4 agree on a development program such as a new service
5 offering that requires Revenue NSW to modify its system as
6 well as the ELNO modifying its system. We call these
7 bespoke services in the draft report.

8
9 For these three categories we recommended prices in
10 our draft report as follows: \$15.20 per support inquiry to
11 Revenue NSW; \$125,000 per ELNO for each episode of
12 Revenue NSW activity that exceeds a base level; and prices
13 for bespoke service changes to be negotiated between the
14 parties, with any disputes to be resolved by the regulator.

15
16 One area where we have already had some feedback is
17 regarding the appropriate definition of a base level of
18 support for another party's development work. Our initial
19 assessment was that two major and two minor releases would
20 be likely to be reciprocated by Revenue NSW's own
21 development work that would require testing or support from
22 an ELNO, and therefore should be able to be tested or
23 otherwise supported by Revenue NSW for free.

24
25 However, our recent discussions with Revenue NSW
26 suggested that this categorisation did not fit their own
27 analysis of their activity, so we, in particular, are
28 interested in feedback on this and any other of our draft
29 recommendations and findings for Revenue NSW and NSW LRS.

30
31 With that, I will hand back to the chair.

32
33 THE CHAIR: Thank you, Jennifer.

34
35 I will invite a response from NSW LRS representatives,
36 James and Eamon, first up, and then I will turn to
37 Revenue NSW.

38
39 MR DOLTON: Thank you, Dr Paterson.

40
41 We are obviously pleased to respond to the IPART
42 report. Firstly, just a little bit of background on
43 NSW Land Registry Services. That is the name of the entity
44 that acquired the 35-year concession to operate the
45 NSW land registry system, including the Torrens Title
46 register, for approximately \$2.6 billion in June 2017.

1 The draft IPART report acknowledges that there have
2 been savings made by NSW Land Registry Services through
3 eConveyancing. However, there are few, if any, incremental
4 savings from a multiple ELNO environment. So we ask IPART
5 to reconsider its finding that the cost of the
6 eConveyancing platform should be absorbed by NSW LRS.
7

8 We were requested to support the government's agenda
9 via our regulator, the Office of the Registrar General, to
10 invest in our technology stack to facilitate multiple ELNOs
11 to be able to provide services in New South Wales. We made
12 this investment on the understanding that the incremental
13 costs of this investment would be recouped under a pricing
14 framework to be determined, and obviously it was part of
15 this review.
16

17 We ask that IPART consider our position that it was
18 our understanding from consultation with government that
19 some cost recovery would be available to NSW LRS and
20 acknowledge that there are no additional savings that can
21 be recovered from NSW LRS through multiple ELNOs that were
22 not available to NSW LRS in a single ELNO environment.
23

24 Next we move to the AECOM estimate of efficient costs.
25 In reviewing the draft report, we appreciate that AECOM has
26 made an estimate of efficient incremental costs to NSW LRS
27 of upgrading our technology. Whilst we have not had the
28 opportunity to review in detail the calculations of AECOM,
29 we note that NSW LRS's actual costs in upgrading our
30 technology were in excess of this estimate. We would
31 welcome the opportunity to work with AECOM to reconcile
32 their estimate to our actual costs before the report is
33 finalised.
34

35 Finally, we just wanted to make the point and ask
36 IPART to reconsider its finding that LSS, or lodgment
37 support services fees, recovers the cost of our existing
38 eConveyancing technology. As the Registrar General stated
39 in their response to the Tribunal's issues paper, LRS
40 charges the LSS fee to ELNOs for feeding Torrens Title
41 data, such as mortgagee names and numbers, into the ELN.
42 There are three types of LSS, varying in terms of the level
43 of service provided by LRS to the ELNO. For example, the
44 top LSS includes initial supply of title data, verification
45 of documents and automated checks for changes in the
46 initial data supplied.
47

1 Given LSS fees are set out in the Real Property
2 Regulation 2014, the LSS fees are already subject to
3 regulation and cannot be increased by more than CPI each
4 year.

5
6 As such, the LSS fee covers the provision of data and
7 compensates NSW LRS in much the same way as our over the
8 counter and via information broker search fees, and that is
9 revenue that is being regulated by the ORG.

10
11 Following the logic of the draft report, there is no
12 mechanism through which NSW LRS could recover the costs for
13 our incremental technology investment to facilitate
14 multiple electronic lodgment networks. This is contrary to
15 the opportunity afforded to Revenue NSW, although both
16 organisations have invested in the building and testing of
17 systems and performing ongoing support and maintenance for
18 ELNOs.

19
20 So, again, we just reiterate that we ask IPART to
21 consider this position and note that if we had been advised
22 that the investment could not be recovered through
23 appropriate service pricing, we would obviously have needed
24 to have had that discussion with our shareholders about the
25 timing of the investment.

26
27 Thank you, Dr Paterson.

28
29 THE CHAIR: Thanks, James, for your views.

30
31 MR DOLTON: I also note that we will obviously follow up
32 with a written submission as well.

33
34 THE CHAIR: Eamon, anything to add?

35
36 MR MOONEY: No, thank you.

37
38 THE CHAIR: PEXA might wish to comment.

39
40 MS SCHMITT: In relation to these parts, we are working
41 through the numbers as well, so we are doing the same sort
42 of activity in the background that James outlined. I think
43 at this stage we probably do not have a great deal to add
44 at the moment until we have had that assessment completed
45 at our end.

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47 THE CHAIR: Thanks, Justin.

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Sympli?

MR WILLIS: Thank you, chair. I think this is a tricky issue. We obviously understand the different perspectives around the table. We would state for the record that both NSW LRS and Revenue NSW has been very supportive in making connections to Sympli as the second ELNO coming into the New South Wales market. We acknowledge that. We also recognise that for whatever reason it was, the systems were not designed for multiple ELNOs, so there has been that additional investment.

With regard to the details of the numbers, again, we will work through that as well and we will obviously be informed by the economic analysis that IPART and AECOM have undertaken.

THE CHAIR: Thank you. Anything from the two user groups?

MS LEA: Our response to the issues paper is that we did not support Revenue NSW charging for services to the ELNOs. We took a sort of broader perspective from our own user experience, and to us Revenue NSW has benefitted quite significantly from the move to eConveyancing, with duty being paid up front and with less labour costs. We also see that they benefit in terms of information and processes that have been brought on as part of the eConveyancing system and the sort of reconciliation and compliance management that that brings. So we do not support Revenue NSW recovering fees from ELNOs by way of services.

For LRS, again we can see that they have benefitted probably from some of the savings. Most have been realised probably, and we support that offsetting that has been discussed. Where that should eventually land I guess is the very important question. That is all I will say at this stage, but we will be putting in a written submission.

THE CHAIR: Thank you, Gabrielle. The Institute of Conveyancers? No. Matthew from Revenue NSW, would you like to make a comment?

MR NOWELL: Sure. In Julie's absence, I will try my best to represent Revenue NSW.

1 I guess first of all, because we missed out on the
2 first part, we definitely welcome this review and we have
3 appreciated the chance to contribute. We also welcome the
4 opportunity to have our costs considered and analysed to
5 support cost recovery from Revenue NSW's perspective, and
6 we do definitely support the NSW Government's position on
7 competition and interoperability.
8

9 In terms of this specific component, I know that we
10 are continuing to work with IPART in defining those cost
11 components, working off AECOM's report, and we look forward
12 to following that up with a written submission around our
13 costs and further refining that.
14

15 I guess for context, we are a key integration partner
16 for ELNOs, and in New South Wales duty is to be paid prior
17 to lodgment, so we have designed an eConveyancing process
18 to meet this requirement for us. That has definitely
19 driven some efficiencies for us in terms of the way that we
20 do collect the revenue directly versus via batch processes.
21

22 I guess for us transitioning to eConveyancing now
23 means we are a critical player in the settlement process,
24 whereas before we were part and parcel to it, but we were
25 not directly involved where we could actually stop
26 settlement from occurring. I think that is one of the
27 biggest transitions for us and what has caused us the
28 biggest disruptions internally for us. Now the subscribers
29 and the parties to the settlement actually need a green
30 light from us before they can actually proceed. That is
31 where we fall into this duties verification process.
32

33 For us, the way that we built it, it does definitely
34 ensure upfront compliance for us so we do get efficiencies
35 around data matching between our duties assessment and the
36 dealing that has been established in the eConveyancing
37 system. But also to that, it allows for revenue collection
38 and revenue protection. I think the flow-on effect for
39 that is it does help guarantee the integrity in terms of
40 the land title, ensuring that that data is correct upfront.
41

42 In terms of our core activities, where we have
43 mentioned the key components, now that we are such a
44 critical part of that financial settlement and lodgment
45 process, we have found a very big influx of calls from
46 subscribers to help actually make sure that green light
47 occurs. As much as we have designed a process with ELNOs

1 to make sure that there are regular touch points through
2 the process with us to make sure that we are safeguarding
3 settlement processes, we do find that there are a lot of
4 errors that can occur and we have found that
5 about 12 per cent of all dealings that are established
6 actually fail first-time verification with us. That drives
7 a lot of work internally for our business that we never had
8 before.

9
10 In terms of that, that can have flow-on effects. It
11 is not just about phone call support; there is actually
12 complex transactional support that we have to undertake to
13 make sure settlement can proceed. I guess now that the
14 mandate has occurred, we are continuing to see that number
15 increase. Obviously 12 per cent continued on at a high
16 rate results in quite a lot of work for our internal staff.

17
18 In terms of release activities to support ELNO
19 releases, we know that this is a technical environment and
20 there are a lot of releases that occur. We understand the
21 whole idea of getting up to a good level of maturity with
22 each product that comes on to the market, but we find that
23 because we are an integral part, we are involved in all of
24 the stages of release. That can include prioritisation and
25 release planning, documentation review, impact analysis
26 that we have to do, supporting testing, loading data,
27 making sure that test cases can run and attending various
28 forums for that. That normally occurs for most releases,
29 even though we are not directly impacted. That is a new
30 line of work that we must partake in to make sure that we
31 support the delivery of these systems.

32
33 On the back of that, the final one which is bespoke
34 system changes, we find that there are certain
35 circumstances that will result in changes in both
36 Revenue NSW and ELNOs to maintain compatibility, or even
37 introduce new enhancements. We find that they do come at a
38 cost, and we have requested that that can be considered for
39 cost recovery.

40
41 I am happy to answer any other questions as well as I
42 can. Thank you.

43
44 THE CHAIR: Thank you, Matthew.

45
46 Before I turn to the floor for any questions from the
47 audience, I will ask whether the secretariat has any

1 questions or follow-up points they want to make at this
2 stage?

3
4 MS VINCENT: No, thank you.

5
6 THE CHAIR: Anyone else from around the table? Jeremy,
7 do you have anything else to contribute?

8
9 MR COX: Maybe I will just make one comment. I suppose
10 the only observation would be predominantly to LRS, that
11 the role of the Office of the Registrar General, to some
12 extent, is to administer the concession and put boundaries
13 around the ways in which the services provided by LRS are
14 delivered and the pricing of those. That is kind of the
15 first principle.

16
17 A new ELNO, just recognising the context, emerged in, I
18 think, early 2018 - maybe there was a call before then,
19 late in 2017, but clearly that was a good development from
20 the government's perspective in terms of all the
21 competition stuff that we are talking about.

22
23 So we do recognise the fact that we turned to LRS who
24 had a legacy technology system that was more or less wired
25 to a single ELNO that needed to be updated to a multi-ELNO
26 platform which, once done, allows for more ELNOs coming on
27 board.

28
29 The response, I suppose, firstly, was we are grateful
30 for the investment that LRS did. They turned to it
31 quickly. It's not an easy task to transform the system,
32 and delaying a decision around certainty over costs would
33 have delayed the process of an incoming ELNO, I suppose.
34 That said, the concession recognises that the LRS does need
35 to provide services equally to multi-ELNOs, so there is a
36 recognition that there will be multiple ELNOs. I suppose
37 that is something to consider as well.

38
39 The final comment would be the way in which
40 LRS, Revenue NSW and the incoming ELNOs have cooperated to make
41 this happen has been really pleasing as well.

42
43 Ultimately, coming back to the start, one of the
44 reasons the government commissioned this review was to get
45 the expert advice and the independent advice and industry
46 input through a process that is well structured to
47 understand what that right pricing is. Thank you, Chair.

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THE CHAIR: Thanks, Jeremy. Anything else from around the table before we turn to the floor? Thank you.

To the audience, I would invite anyone to make a comment, to introduce yourself clearly and speak slowly and loudly. Nothing more to add to the discussion so far.

I have a question from Deborah Cope, from the Tribunal.

MS COPE: Justin, in your discussions in the first session you made the comment that national consistency is preferable, and we thoroughly support that. As we state in our report, we think that is the way that the market should go.

You also said that one State going it alone creates costs. I wanted to get a better understanding of where you see that to be problematic. Is it simply around having to be involved in multiple processes at the same time, or are there specific things in our recommendations that we have in the report at the moment that you think cut across what could be achieved nationally?

MR SCHMITT: I think it is more to do with whether or not the other jurisdictions actually support and run with the IPART recommendation or otherwise. So if it was that another jurisdiction or other jurisdictions say, "Look, we won't take up this arrangement", or are going to undertake other reviews, then we may end up with a fracturing of the national arrangements and national solutions. That is what we are highlighting is a risk at the moment, given that the framework talks about being a national player, a national solution, et cetera. That is the bit I guess we are highlighting as a concern for us, particularly if it is not the national solution, that New South Wales will commence around this on its own.

MS COPE: Because when we were designing it, we were trying to be quite cognisant of the fact that we did not want to do anything which would prevent something different happening nationally. I think what you are saying is something slightly different, and that is the risk that all the States have slightly different models, and you have to try to manage the complexity of operating within different regulatory systems.

1 MR SCHMITT: Yes, and also potentially retrofitting
2 everything in order to deal with those jurisdictional
3 complexities.

4
5 THE CHAIR: Any other comments or questions?

6
7 MR CAHILL: Tony Cahill, member of the Law Society's
8 property law committee.

9
10 Just following on from that last point that Justin
11 made, while there are numerous stakeholders represented
12 around the table, one group that will be very seriously
13 impacted by New South Wales going it alone is the financial
14 sector.

15
16 Historically both New South Wales and Victoria
17 attempted to introduce, in effect, partial solutions to
18 eConveyancing - New South Wales in the 1990s, Victoria in
19 the early part of this century - and each of them struck
20 resistance because from the point of view of national
21 bodies like financial institutions, they were not truly
22 national solutions.

23
24 I think any approach which involves one jurisdiction
25 going it alone will create significant obstacles for the
26 finance sector who are, particularly in the area of
27 financial settlements, a key player in the eConveyancing
28 stakes, if you like.

29
30 THE CHAIR: Thank you for that important contribution.
31 Anything else?

32
33 MS VINCENT: Thank you for that comment. We did invite
34 the Australian Banking Association, and they definitely
35 made a submission to the issues paper and intend to make
36 one to the draft report, but they were not able to be here
37 today. So, yes, it would have been nice to hear their
38 perspective. Thank you.

39
40 THE CHAIR: Any further questions or comments?

41
42 MR YOUNG: Mr Chairman, South Young, retiree. I would
43 just like to support and comment on the point that the
44 Revenue NSW has brought through, particularly in the
45 context of transparency. I think Revenue NSW, like the ATO
46 nationally, should have a regulatory oversight - if not
47 alone, pseudo, otherwise they should be a strong

1 stakeholder in the process. It is better to be preventive,
2 proactive, rather than reactive. Thank you, Mr Chairman.

3
4 THE CHAIR: If there are no more comments or questions,
5 we are at the end of our proceedings. I would like to
6 thank you very much for giving your time and your opinions
7 today. There have been some useful and revealing points
8 made.

9
10 As always in these public hearings, they are always
11 useful for us. IPART is very much an independent
12 organisation and we will provide an independent report and
13 view at the end of the process, but we very much want it to
14 be and strive for it to be an informed view that we
15 develop. Thank you for the various contributions today to
16 help us in that regard.

17
18 The transcript will be available on our website within
19 the next few days for anyone who is interested. We will
20 consider feedback we received today, of course, and any
21 feedback we receive on our draft report, so I would
22 encourage people to lodge a written submission by
23 17 September and then we will provide our final report to
24 the Premier and Minister for Customer Service by November.

25
26 If there is nothing else, thank you everybody for
27 attending today and we look forward to your submissions.

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29 AT 10.55AM, THE TRIBUNAL ADJOURNED ACCORDINGLY

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