



Interoperability pricing for Electronic
Lodgment Network Operators

Final Report

June 2023

Tribunal Members

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The Independent Pricing and Regulatory Tribunal

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Acknowledgment of Country

IPART acknowledges the Traditional Custodians of the lands where we work and live. We pay respect to Elders both past and present.

We recognise the unique cultural and spiritual relationship and celebrate the contributions of First Nations peoples.

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1 Executive Summary

Electronic conveyancing (eConveyancing) is the digital completion of a conveyancing transaction.^a eConveyancing is used to make changes to the land titles register in each state (e.g. when a property is sold). It is also used to record or make changes to interests in a property such as mortgages, leases or caveats. The most common property transactions are property transfers (usually when a property is sold) and refinances (when a property owner changes mortgage provider).

Electronic Lodgment Networks (ELNs) are the digital platforms where eConveyancing transactions take place. ELN Operators (ELNOs) provide eConveyancing services to lawyers, conveyancers, and financial institutions (subscribers), who act on behalf of their customers (the people who are transacting with property). There are currently 2 approved ELNOs – PEXA and Sympli.

In most states eConveyancing is mandatory for the most common eConveyancing transactions, so most people who make changes to ownership or interests in a property must use the services of an ELNO.^b Currently PEXA has almost 100% market share of the eConveyancing market.

The eConveyancing market will soon be interoperable, meaning that multiple ELNOs can represent different participants (subscribers) in a property transaction. This is different from the current market, where ELNOs' systems cannot exchange information and so every participant in a transaction must use the same ELNO. Interoperability will help to promote competition and choice for the lawyers, conveyancers and financial institutions that use eConveyancing. Without interoperability, the first ELNO – PEXA – will sustain a significant advantage over its competitors. PEXA remains the first choice for most subscribers, because so many more people are already using it.

IPART completed a review of the eConveyancing market in NSW in 2019, where we recommended that interoperability be implemented as soon as possible.¹ The ACCC has highlighted the importance of interoperability for enabling competition, as has the NSW Productivity Commission.² A cost benefit analysis showed that interoperability is the best option to create a competitive ELNO market and address concentration of power.³

The Australian Registrars' National Electronic Conveyancing Committee (ARNECC) decided to implement the direct connections model of interoperability, enabling interoperability between ELNOs through Application Programming Interfaces (APIs).⁴ The eConveyancing industry is working towards developing the technical and governance arrangements for interoperability, with the rollout of interoperability to be staged.

^a Under the eConveyancing National Law, "conveyancing transaction" means a transaction that involves one or more parties and the purpose of which is— (a) to create, transfer, dispose of, mortgage, charge, lease or deal with in any other way an estate or interest in land, or (b) to get something registered, noted or recorded in the titles register, or (c) to get the registration, note or record of something in the titles register changed, withdrawn or removed. See *Electronic Conveyancing (Adoption of National Law) Act 2012*, Appendix, s 3(1).

^b eConveyancing is mandatory for most conveyancing transactions in NSW, Victoria, Queensland, Western Australia and South Australia. eConveyancing has recently become available in ACT. NT and Tasmania do not have eConveyancing yet, instead using paper conveyancing.

In February 2023 ARNECC announced some changes to the interoperability rollout stages:

- The Day 1 transaction (a limited scope refinance) is expected to occur in September 2023 (this was previously planned for March 2023)
- Day 2 (the delivery of interoperability functionality to the market) will occur in 3 releases:
 - Release 1 will involve limited refinance capability with a small number of financial institution subscribers
 - Release 2 will deliver complete refinance functionality to all subscribers
 - Release 3 will deliver full interoperability functionality to all subscribers.⁵

Interoperability will change the way each ELNO incurs costs in a transaction. For this reason, IPART was asked by the NSW Minister for Customer Service and Digital Government, on the request of ARNECC, to investigate and make recommendations on whether eConveyancing interoperable transaction fees should be charged and, if so, how they should be set.

This Final Report outlines our recommendations on interoperable transaction fees and explains our approach to calculating these fees.

1.1 IPART has been asked to recommend interoperable transaction fees

Currently ELNOs recover their costs of providing eConveyancing services through **ELNO service fees** charged to their subscribers. Subscribers typically recover these fees from their customers – the people who are making changes to ownership of their property or changing other information recorded on the titles register. These fees range from around \$4 to around \$142 per subscriber, depending on the type of transaction service.^c In an interoperable transaction each ELNO will continue to be responsible for their own subscribers and recover most of their costs through ELNO service fees. However, one ELNO – the Responsible ELNO (RELNO) – will complete lodgment and financial settlement on behalf of all other ELNOs in the transaction – the Participating ELNOs (PELNOs). The RELNO will differ from transaction to transaction.

ELNOs' operations are governed by the Model Operating Requirements (MORs). A new consultation draft of the MORs (version 7.1) is intended to apply from the introduction of interoperability. It defines interoperability service fees as fees that a RELNO can charge other ELNOs or subscribers in relation to establishing and maintaining interoperability, and/or carrying out the functions of a Responsible ELNO. These are the fees we have been asked to investigate and make recommendations on.

^c Based on the lowest and highest prices published on PEXA and Sympli's pricing schedules. See PEXA, [Pricing schedule Effective from 1 July 2022](#), accessed 16 February 2023; Sympli, [Our pricing](#), accessed 16 February 2023.

1.2 Approach to recommending interoperable transaction fees

We decided to separate this review into 2 stages, reflecting that we have been asked to firstly decide whether interoperable transaction fees should be charged, and secondly, if so, how they should be set.

In the first stage of the review, we decided:

- Fees should be charged by the RELNO to PELNOs for participation in an interoperable transaction.
- Subscribers should not pay more for an interoperable transaction than a single ELNO transaction.
- Interoperability is a function that all ELNOs will need to have, and so any additional costs of establishing and maintaining interoperability should be recovered through ELNO services fees, and not through a separate interoperable transaction fee.
- The form of regulation for interoperable transaction fees should be regulated prices, which provide certainty and transparency to the industry.

The second stage of the review covers:

- when a PELNO should pay the RELNO interoperable transaction fees
- how to set these fees and what costs should be included
- what level those fees should be
- how to implement these fees.

1.3 Overview of our recommendations on interoperable transaction fees

As interoperability is not yet in place, there is limited information available on the costs that ELNOs will incur in an interoperable transaction. Therefore, we have had to make a series of assumptions to make recommendations on the level of interoperable transaction fees.

To reflect the additional activities that a RELNO performs in an interoperable transaction, we recommend there should be 2 types of interoperable transaction fees: the RELNO fee and the default RELNO surcharge. We recommend these fees apply until 18 months after full interoperability has commenced.^d These fees should be indexed by the Consumer Price Index (CPI) every year from 2024-25 until new fees apply.

The **RELNO fee** reflects the additional costs an ELNO incurs from fulfilling its role as the RELNO that are avoided by the PELNOs. Our recommended maximum RELNO fee is \$0.75 (ex-GST), paid by PELNOs (to the RELNO) for each subscriber they represent in every interoperable transaction. In a typical property purchase with 4 subscribers, the RELNO would receive \$2.25 in total from the PELNOs.

^d Full interoperability to unlimited subscribers will commence with the Day 2 (Release 3) transaction.

Business rules will determine which ELNO performs the RELNO role in an interoperable transaction. However, there may be situations when an ELNO is not able to perform this role, because it lacks the capacity to do so, and the RELNO role will be redesignated to another ELNO. When this happens, we recommend that a **default RELNO surcharge** apply to the ELNO that could not perform the RELNO role. The default RELNO surcharge reflects the costs of developing a full suite of financial settlement and lodgment infrastructure and web hosting capacity. The recommended maximum default RELNO surcharge is \$6.20 per transaction (ex-GST).

These fees represent a cost-sharing arrangement between ELNOs, not an additional charge to subscribers (or their customers) in an interoperable transaction. In our view, subscribers who participate in an interoperable transaction should not pay more than subscribers in a single ELNO transaction. This will help to promote the benefits of competition and choice for subscribers (and their customers) in the long term.

The terms of reference require us to investigate and make recommendations on any amendments to the MORs that are required to support our proposed interoperability pricing arrangements. We have identified several amendments that will be required to implement our recommendations which are outlined in Chapter 3 of this report.

Our recommended maximum **RELNO fee** is \$0.75 (ex-GST), paid by PELNOs for each subscriber they represent in each interoperable transaction. Our recommended maximum **default RELNO surcharge** is \$6.20 (ex-GST) per transaction

1.4 The recommended maximum RELNO fee is \$0.75 per subscriber for 2023-24

The recommended maximum RELNO fee that each PELNO would pay the RELNO is \$0.75 (ex-GST) for each subscriber they represent in every interoperable transaction. For example, in a typical property purchase transaction where the RELNO represents 1 subscriber and the PELNOs represent 3 subscribers, the RELNO would receive \$2.25 (ex-GST). The RELNO fee reflects costs incurred by the RELNO that are avoided by PELNOs.

Most of the lodgment and financial settlement actions that the RELNO performs will be automated through the interoperability APIs that all ELNOs will be required to develop.^e However, there will be some tasks that the RELNO performs that require manual intervention, such as error resolution and support.

^e The chosen interoperability model enables interoperability between ELNOs through APIs, which execute system actions across ELNO workspaces. See ARNECC, [Interoperability Model Overview](#), March 2021, p 2.

Each ELNO will be responsible for providing support to and communicating with its own subscribers. However, when issues arise (typically towards the end of a transaction), the PELNO will refer them to the RELNO, who will then be responsible for resolving the issue and communicating the solution to the relevant parties. PELNOs will then provide instructions to their own subscribers. In our view, the costs of the RELNO undertaking these issue resolution and support activities should be included in the RELNO fee.

There is limited information about the costs incurred by ELNOs performing the RELNO and PELNO roles, as interoperability is not yet in place. PEXA's and Sympli's views on costs differed substantially. Therefore, we have estimated the costs of performing the RELNO role using cost information from our 2019 eConveyancing review,^f and sought expert advice from a cost consultant (AECOM). We have also considered information provided by PEXA and Sympli, although this information mostly reflects the current non-interoperable environment. In response to the Draft Report, PEXA submitted that the RELNO fee should be materially higher.⁶ We have compared the RELNO fee of \$0.75 to PEXA's current actual support costs incurred on a per transaction, per subscriber basis and have not found evidence to suggest that the RELNO fee is too low.

Earlier in the review, PEXA raised other costs that it considered should be included in the RELNO fee, such as insurance costs and financial settlement costs. In our view, these costs should not be included in the RELNO fee at this time, but could be revisited in the future when more information is available about actual costs incurred by the RELNO in an interoperable transaction. PEXA agrees that these costs should not be included at this stage.⁷ Sympli also agreed that the RELNO fee should only include support costs.⁸

1.5 The recommended maximum default RELNO surcharge is \$6.20 per transaction for 2023-24

When an ELNO is not able to perform the designated RELNO role (by the business rules), the role will be redesignated to another ELNO. In this situation, we recommend that an additional fee be charged which reflects the per transaction share of the costs of developing a full suite of financial settlement and lodgment infrastructure. The recommended maximum default RELNO surcharge is \$6.20 per transaction (ex-GST) for 2023-24, reflecting the efficient cost of an ELNO developing lodgment and financial settlement infrastructure. This surcharge would be paid to the RELNO by the ELNO that was not able to perform the designated RELNO role. The surcharge would be payable for that transaction only.

Currently, 2 ELNOs – PEXA and Sympli – are approved to operate in most jurisdictions. However, if a transaction involves more than 2 ELNOs and the RELNO role is redesignated to different ELNOs multiple times throughout the transaction, we recommend those ELNOs share the default RELNO surcharge. The RELNO that ultimately completes lodgment and financial settlement (the lodging RELNO) would recover the default RELNO surcharge only once per transaction.

^f In 2019 IPART completed a review of the eConveyancing market in NSW. See IPART, [Review of the Pricing Framework for Electronic Conveyancing Services in NSW, Final Report](#), November 2019.

To calculate the maximum price for the default RELNO surcharge we applied a cost build-up approach, and:

- estimated that the efficient capital cost of developing a full suite of financial settlement and lodgment infrastructure would be around \$7.7 million and that the annual capital and operating costs to maintain that infrastructure would be around \$1.5 million
- forecasted annual eConveyancing volumes, using transaction data from PEXA's annual report
- assumed an asset life of 5 years for the title lodgment and financial settlement infrastructure - this was used as the period for cost recovery of the investment
- applied a pre-tax WACC of 8% to calculate the capital cost as an annuity.

ELNOs are required under the MORs to operate in all jurisdictions and be capable of lodging all document types.⁹ The Registrar in each state also has the power to require an ELNO to implement any other functionality reasonably required.¹⁰

However, because ELNOs can stage this capability in accordance with their business plans, the timeframes for ELNOs to meet these requirements are not clear. For this reason, an ELNO may have incentives to delay establishing certain capability if it is costly, and not in its commercial interests. We developed the default RELNO surcharge to encourage ELNOs to develop all the necessary capability to perform the RELNO role in a timely manner. We do not intend for the surcharge to replace the existing requirements under the MORs or serve as a penalty for ELNOs not complying with the MORs.

The default RELNO surcharge is one of many ways to encourage ELNOs to offer comprehensive capability.

1.6 We will review ELNO service fees

Currently each ELNO's service fees can increase once per year by no more than the annual change in CPI.¹¹ Throughout our review of interoperable transaction fees, we observed that implementing interoperability may increase overall costs for ELNOs in the short term, because they will incur costs from developing the APIs required to implement interoperability. However, other inputs to the price calculation may have changed (such as transaction volumes, cost efficiencies and innovation). Therefore, the net impact of implementing interoperability on ELNO service fees is uncertain, and it may no longer be appropriate to continue the current ELNO service fees in real terms.

IPART's terms of reference have been amended by the Minister to require us to investigate and make recommendations about ELNO service fees, in addition to completing our review of interoperability pricing. A review of ELNO service fees will ensure ELNOs can recover their efficient costs within current operating conditions and will ensure that subscribers (and their customers) pay no more than they need to. It will also allow IPART to assess the effectiveness of competition in the eConveyancing market and the need for ongoing pricing regulation.

We will commence work on recommending ELNO service fees when one the following occurs, whichever is the soonest:

1. six months after Day 2 functionality⁹ is available to facilitate interoperable transactions
2. ARNECC notifies IPART that an ELNO has applied to ARNECC to change its Pricing Table because a change in law has given rise to a change in the ELNO's operating costs
3. 1 July 2025, or
4. ARNECC notifies IPART it is to commence work on recommending ELNO services fees.

We have 12 months to complete the review and prepare a Final Report on ELNO service fees from the date of commencing work on it.

Structure of this report

This Final Report is structured as follows:

Chapter

02	Introduction
03	Approach to recommending interoperable transaction fees
04	RELNO fee
05	Default RELNO surcharge
06	ELNO service fees and market design

⁹ The Day 2 milestone has now been separated into 3 releases. Day 2 (Release 3) will deliver full interoperability functionality to all subscribers.

Appendix

A	Terms of reference for the review
B	Weighted Average Cost of Capital
C	Comparison of RELNO fee to PEXA's actual support costs
D	Summary of AECOM's advice
E	Glossary of terms used in this paper

List of recommendations

Final recommendations

1.	ELNOs should not be required to pay PEXA a common user charge for participating in an interoperable eConveyancing market.	18
2.	The level of interoperable transaction fees should be prescribed for the initial regulatory period, rather than determined by ELNOs according to a prescribed methodology.	19
3.	There should be 2 regulated interoperable transaction fees:	21
a.	RELNO fee – paid by all Participating ELNOs to the Responsible ELNO in every interoperable transaction. The RELNO fee should:	21
	– reflect a share of the marginal costs an ELNO incurs from fulfilling its role as the RELNO that are avoided by the PELNOs	21
	– be based on the marginal costs of performing the RELNO role only, as each ELNO has invested in its own infrastructure (which can be recovered from ELNO service fees).	21
b.	Default RELNO surcharge – paid by an ELNO when it is designated as the Responsible ELNO by business rules, but does not perform this role and the role is designated to another ELNO. This fee should reflect the per transaction share of costs of developing a full suite of financial settlement and lodgment infrastructure.	21
4.	Interoperable transaction fees should apply until 18 months after the Day 2 (Release 3) interoperable transaction milestone, unless ARNECC decides that new fees should apply sooner. Fees should be set for the initial year (2023-24) and indexed by CPI from 2024-25 until new fees (determined by the next review) are implemented.	23
5.	To enable a review of interoperable transaction fees following the initial regulatory period, ARNECC should develop reporting requirements for ELNOs on information relating to interoperable transactions. ARNECC should consult with industry stakeholders to develop these reporting requirements and complete the consultation process within 3 months from the completion of this Final Report.	24

6.	A review of interoperable transaction fees should start 6 months after the Day 2 (Release 3) interoperable transaction milestone, or when ARNECC requests a review of interoperable transaction fees, whichever is sooner.	25
7.	ELNOs should negotiate the practical arrangements for payment of interoperable transaction fees through Interoperability Agreements, including the frequency and method of payment. ARNECC should set a reasonable timeframe for ELNOs to settle these negotiations.	26
8.	Amendments to the Model Operating Requirements (MORs) will be required to implement our recommendations on interoperable transaction fees, including to specify:	28
a.	that an ELNO's costs of establishing and maintaining interoperability should be recovered from all subscribers through ELNO service fees	28
b.	that subscribers who participate in an interoperable transaction should not pay more than subscribers in a single ELNO transaction	28
c.	when interoperable transaction fees should be charged. Specifically, that:	28
–	the RELNO fee is payable to the RELNO by the PELNOs for each subscriber the PELNOs represent in every interoperable transaction.	28
–	the default RELNO surcharge is payable to the redesignated RELNO by the designated RELNO, when	28
i.	the designated RELNO invokes the planned API method to redesignate the RELNO role because it has determined that it is no longer capable to perform the RELNO role	28
ii.	a PELNO is hosting the responsible subscriber but chooses not to become the RELNO.	28
d.	the level of interoperable transaction fees	28
e.	arrangements for adjusting or reviewing interoperable transaction fees	28
f.	that Interoperability Agreement Matters, as outlined in Schedule 8 of Consultation Draft Version 7.1 of the MORs, should include the practical arrangements for payment of interoperable transaction fees and apportionment of Lodgment Support Service fees between ELNOs	28
g.	that ELNOs be required to report information to ARNECC on interoperable transactions.	28
9.	The maximum RELNO fee is \$0.75 (ex-GST) for 2023-24, to be paid to the RELNO by each PELNO per-subscriber that they represent in every interoperable transaction.	32
10.	The RELNO fee should be payable to, and reflect the costs incurred by the designated RELNO that completes lodgment and financial settlement in a transaction.	34
11.	The maximum default RELNO surcharge is \$6.20 per transaction (ex-GST) for 2023-24.	45

2 Introduction

Conveyancing is the process through which title to real property is transferred from one person to another (e.g. when it is sold or inherited), and other interests in the property are dealt with (e.g. a lessor's or mortgagee's).

Electronic conveyancing (eConveyancing) is a system which provides for the lodgment of electronic instruments with land registries using an Electronic Lodgment Network (ELN). Registrars approve entities to operate ELNs and they are known as ELNOs. The 2 current ELNOs also facilitate the associated financial settlement of conveyancing transactions.

Today, all parties (conveyancers, lawyers, and financial institutions) to an eConveyancing transaction must subscribe to the same ELN to complete the transaction. This is because ELNs are not yet interoperable: their systems cannot exchange information, or 'talk' to each other, to complete a transaction. Interoperability would allow parties to use the ELN(s) they choose, while other parties may use a different ELN in the same transaction.

In June 2022, NSW Parliament enacted changes to the national law (which will ultimately apply in all States and Territories) to support implementation of interoperability.

The Australian Registrars' National Electronic Conveyancing Council (ARNECC) is updating the Model Operating Requirements (MORs) to include provisions on interoperability. In particular, the interoperability regime proposes the role of Responsible ELNO (RELNO). The RELNO will orchestrate the transaction, interact with Land Registries and Revenue Offices, and perform the transaction settlement and lodgment. Other ELNOs that are hosting subscribers in the transaction are designated as Participating ELNOs (PELNOs).

ARNECC has proposed that the MORs should include provisions on the fees ELNOs may charge other ELNOs and/or subscribers, in relation to participation in an interoperable transaction. The then NSW Minister for Customer Service and Digital Government (Minister) asked IPART to investigate and make recommendations on whether those fees should be able to be charged, and if so, how they should be set.

In Issues Paper 1 for this review, we set out the scope of the review and our proposed two-stage approach. We asked questions about the first stage of the review, which involved deciding on a form of regulation for interoperable transaction fees. We sought submissions on the Issues Paper, held a public hearing, and held a workshop with economic regulators from other jurisdictions.

In Issues Paper 2, we outlined what we heard from stakeholders through consultation on Issues Paper 1. We provided our draft decisions on form of regulation, including that we should proceed to set a regulated price for interoperable transaction fees. We also outlined issues on which we sought submissions for the second stage of the review, including:

- when a PELNO should pay interoperable transaction fees
- the relevant cost categories that should be included in those fees
- whether we should recommend a regulated method or price level
- our proposed approach to setting a regulated price
- how to implement such fees.

We published a Draft Report in February 2023 outlining draft recommendations on the level of interoperable transaction fees and when they should apply, the length of the regulatory period and when fees should be reviewed again. We also made draft recommendations on amendments to the MORs that would be required to implement these fees. We sought feedback on the Draft Report through written submissions and held a workshop.

This Final Report presents our recommendations for interoperable transaction fees, including maximum fee levels to apply from 2023-24.

2.1 Scope of this review

ARNECC sought this investigation (via the then Minister) to support its ongoing reforms to the eConveyancing system to implement interoperability between ELNs from mid-2023.

A consultation draft of the MORs (version 7.1), intended to apply from the introduction of interoperability, defines interoperability service fees as fees that a RELNO can charge other ELNOs or subscribers in relation to establishing and maintaining interoperability, and carrying out the functions of a RELNO.¹² Consultation Draft Version 7.1 of the MORs prohibits ELNOs from charging interoperability service fees.¹³ However, ARNECC will consider IPART's recommendations in this review on whether and how fees for interoperable transactions should be set.

Our terms of reference outline the matters we should consider in making these recommendations, including:

- supporting and promoting competition through ELNO interoperability pricing
- promoting ongoing investment by ELNOs
- the costs and risks incurred by different parties during an interoperable transaction
- the current and evolving structure of the interoperable transaction market
- avoiding unnecessary or administrative burdens on ELNOs or other participants in an interoperable transaction.

Through stakeholder feedback and our own research and analysis, we also identified broader issues with pricing of ELNO services and design of the eConveyancing market. While these are important issues that involve categories of cost that an ELNO should be able to recover, we consider that these costs should not be recovered through interoperable transaction fees.

We referred these issues to ARNECC and ARNECC asked the then Minister to amend our terms of reference to include a review of ELNO service fees. ARNECC decided not to revisit the market design issue at this time. In December 2022, the then Minister issued revised terms of reference that provide for IPART to investigate and make recommendations on ELNO service fees. IPART's work on this second task will commence on when one of the trigger events set out in the revised terms of reference occurs.

The full terms of reference are at Appendix A.

2.1.1 The decision to implement interoperability has been made and the model of interoperability has been chosen

We have completed this review on the basis that the decision to implement interoperability has been made and the model of interoperability has been chosen. Several regulators (including ARNECC, the ACCC and IPART) have noted the importance of interoperability to promote competition and better outcomes for people who use eConveyancing services.

PEXA submitted to the Draft Report that:

"[IPART's] terms of reference focus on the design and quantum of inter-ELNO fees. However, IPART's work in fleshing out the design of interoperability, the obvious issues in setting fees in a way that delivers public benefits and is fair to all industry participants, and its preliminary work in understanding future Subscriber service fees, all contribute to a growing body of evidence that contradicts the rationale for adopting interoperability. This emerging evidence strongly points to a net public detriment associated with interoperability. Indeed, escalating costs are now leading IPART to forecast that interoperability will result in higher subscriber and consumer prices than a well-regulated wholesale provider. Accordingly, it would be appropriate for IPART to point out to governments the implications of its findings regarding the current choice of market structure and the public interest. Ensuring price regulation and market design are fit for purpose is critical to avoiding adverse economic and consumer outcomes."¹⁴

Our 2019 review of the eConveyancing market in NSW found that interoperability would improve competition in the eConveyancing market and would reduce barriers to entry. We also recommended that a direct connection model of interoperability between the two current ELNOs be implemented as soon as possible to promote competition.¹⁵

Several organisations have highlighted the importance of interoperability and stressed the need for urgent action. For example, the NSW Productivity Commission noted that:

"because [ELNO] systems do not interoperate, the first ELN operator—that is, PEXA—benefits from an enduring 'network effect'. PEXA remains the first choice for most people entering the market, not necessarily because it is better but because so many more people are already using it. As multiple reviews have acknowledged, this has cut down competition. The national competition regulator, the ACCC, has warned that new entrants will not be able to sustain a presence in the market. It has assessed the market as being at risk of becoming an entrenched monopoly—difficult to regulate, and with less innovation, higher costs, poorer services. (...) This problem needs fixing quickly: the longer the problem lasts, the greater the risk of entrenching a near-monopoly."¹⁶

ARNECC sought a cost benefit analysis, which determined that interoperability should be implemented. ARNECC considered 3 alternative forms of market that regulatory reform may promote: a single-ELNO monopoly with price regulation, multiple ELNOs without interoperability ("multi-homing"), and multiple ELNOs with full interoperability. The cost benefit analysis showed that interoperability is the best option to create a competitive ELNO market and address concentration of power in the ELNO market.¹⁷

We do not agree there is evidence indicating interoperability will result in net public detriment.

2.2 Our approach to this review

Our approach to this review of interoperable transaction fees considers all matters required by our terms of reference. It comprises the following steps:

1. Determine whether fees should be charged by the RELNO to PELNOs for participation in an interoperable transaction, and whether and how any such fees should be passed on to subscribers.
2. Determine the form of regulation for any ELNO interoperable transaction fees, that is:
 - whether a negotiate-arbitrate model should apply to setting any such fees, or
 - whether a regulated method or price for 2023-24 should apply, with a method for reviewing and adjusting the price in the future.
3. Based on our recommended form of regulation, determine either:
 - the appropriate pricing principles for setting ELNO interoperable transaction fees under a negotiate-arbitrate model and any amendments to the MORs that are required to support these, or
 - the regulated method or price for 2023-24 for ELNO interoperable transactions, a method for reviewing and adjusting the price in the future and any required amendments to the MORs.

We released Issues Paper 1 to decide on the first 2 points of our terms of reference. Issues Paper 2 explored the details of a regulated method or price for interoperable transaction fees. Our Draft Report presented draft recommendations from our investigation of interoperable transaction fees, which we consulted on through written submissions and holding a workshop.

This Final Report outlines our final recommendations for this review and explains how we have considered stakeholder feedback throughout this review.

Table 2.1 shows the project timetable.

Table 2.1 Project timetable

Project milestone	Project timetable
Issues Paper 1	15 July 2022
Public hearing - form of regulation	26 July 2022
Workshop with economic regulators – form of regulation	11 August 2022
Submissions on Issues Paper 1 due	12 August 2022
Issues Paper 2 – approach to regulation	14 October 2022
Submissions on Issues Paper 2 due	11 November 2022
Draft Report	24 February 2023
Stakeholder workshop	21 March 2023
Submissions on Draft Report due	24 March 2023
Final Report – this report	9 June 2023

3 Approach to recommending interoperable transaction fees

As set out in the Introduction, our approach to the review included the following steps:

1. **Consider whether fees should be charged by the Responsible ELNO to Participating ELNOs for participation in an interoperable transaction, and whether and how any such fees should be passed on to subscribers.** We consulted on this question in Issues Paper 1. In Issues Paper 2 we set out our draft decision that fees should be charged for performing the RELNO role, but subscribers should pay no more for an interoperable transaction than a non-interoperable transaction.
2. **Consider whether a negotiate-arbitrate model should apply to setting ELNO fees, or a regulated method or level of price should apply.** We consulted on this question in Issues Paper 1, and in Issues Paper 2 we set out our draft decision that a regulated method or level of price should apply.
3. **Determine the regulated method or price for 2023-24 for interoperable transaction fees.** In Issues Paper 2, we consulted on our proposals for the structure of interoperable transaction fees, the costs that should be recovered through those fees, and the method we should use to calculate those fees.

This chapter provides a summary of the recommendations we made following Issues Paper 1, and the approach to calculating interoperable transaction fees we have taken following our consultation on Issues Paper 2. Chapters 4 and 5 set out our recommendations for the level of the 2 types of interoperable service fees, when we apply the method we developed following Issues Paper 2.

3.1 How will interoperability impact costs for ELNOs?

We have identified 2 ways that interoperability in the eConveyancing market will impact ELNO costs:

1. An ELNO will incur costs from **establishing and maintaining interoperability**. These costs include the development and maintenance of the infrastructure and systems to enable inter-ELNO connections, and operating costs associated with adjusting to the new interoperable eConveyancing environment (e.g. providing additional training to subscribers on any process changes resulting from interoperability).¹⁸
2. **Transaction-specific costs for ELNOs**, which are costs that are directly related to the roles that each ELNO performs in an interoperable transaction.

The sections below discuss how we recommend each of these categories of costs should be recovered.

3.2 ELNO costs of establishing and maintaining interoperability should be recovered from all subscribers

Interoperability is a function that all ELNOs will need to have. Given this, any **costs of establishing and maintaining interoperability** that are additional to the costs of becoming a standalone ELNO should be recovered through ELNO service fees, and not through a separate interoperable transaction fee. Recovering these costs directly from ELNOs' own subscribers means there are incentives for ELNOs to be as efficient as possible. These incentives may not be as strong if ELNOs were able to recover these costs from other ELNOs. Ultimately subscribers (and their customers) pay, so greater efficiency should result in lower costs for subscribers (and their customers) overall.

In our view, an ELNO's costs of establishing and maintaining interoperability should be recovered through ELNO service fees, and so we have not included these costs in our calculations for interoperable transaction fees.

Stakeholders generally agree that an ELNO's costs of establishing and maintaining interoperability should be recovered from its subscribers.¹⁹

However, the Australian Banking Association (ABA) submitted that IPART should consider more broadly the costs of establishing and maintaining interoperability for all market participants (such as banks who may incur costs to prepare for a multi-ELNO/interoperable market).²⁰

Our terms of reference require us to consider whether fees should be charged by the RELNO to PELNOs for participation in an interoperable transaction. We have not been asked to consider how costs incurred by other market participants should be recovered. In the long term, an interoperable environment that facilitates competition between ELNOs, should enable market participants to connect to the ELNO(s) of their choice and put pressure on ELNOs to minimise costs incurred by market participants. In the short term, it is possible that market participants could resolve issues around cost sharing through commercial negotiations with ELNOs.

In response to the Draft Report, the Australian Institute of Conveyancers (AIC) submitted that "throughout the IPART Report the connotation is that subscribers are the ELNO's customer/client. While this may be the case, the practitioner is really the system user, acting on behalf of their client and consequently any additional cost of Interoperability will be passed directly onto the client by way of disbursement".²¹

In response to the AIC's feedback, we have clarified in the Final Report that subscribers may recover ELNO service fees from their customers. We understand that financial institutions do not necessarily pass ELNO service fees directly onto their customers as a disbursement, they may instead treat it as a cost of doing business. Ultimately, the way that subscribers recover ELNO service fees is a business decision.

In Chapter 6 we discuss our future review of ELNO service fees, and discuss the costs of establishing and maintaining interoperability in more detail.

3.3 A Responsible ELNO should charge a fee for taking that role

In an interoperable transaction, there are likely to be **transaction-specific costs** that each ELNO incurs, depending on the responsibilities that are associated with their role in the transaction (i.e. whether they are the RELNO or a PELNO in that transaction). Because the RELNO has more responsibilities in an interoperable transaction, it is likely to incur more costs than the PELNO in that transaction. If the responsibilities of ELNOs in interoperable transactions are asymmetrical **and** likelihood of being a RELNO is unequal, it would be appropriate to have an ELNO-to-ELNO fee for performing the duties of a Responsible ELNO, as a way of sharing costs between ELNOs. If the likelihood of being a RELNO is equal, fees are likely to net out, so there would be no need for ELNO-to-ELNO fees.

We recognise that:

- RELNOs have additional costs in an interoperable transaction compared with PELNOs.
- One ELNO (PEXA) is more likely to be the RELNO while later entrants develop their capabilities and connections with financial institutions.
- An interoperable transaction fee would provide an incentive for any ELNO to make timely investments to be a RELNO, which helps to promote competition.

For these reasons, we concluded, and stakeholders generally agreed, that a RELNO should be able to charge fees to PELNOs in an interoperable transaction. We also suggest that ARNECC review the need for interoperable transaction fees as the interoperable eConveyancing market matures.

3.4 Subscribers should not pay more for an interoperable transaction than a single ELNO transaction

In our view, subscribers who participate in an interoperable transaction should not pay more than subscribers in a single ELNO transaction. While this would mean that these prices are not directly cost-reflective, we consider that this slight distortion is in the longer-term interests of customers and supports competition developing.

This means that an interoperable transaction fee for performing the duties of a RELNO should not be passed through to a PELNO's subscribers as a separate charge. It should instead be considered as part of an ELNO's overall costs when an ELNO is setting its ELNO service fees. Stakeholders (including the Law Council of Australia, the AIC and the Law Society of NSW) supported this principle.²²

3.5 Direct price control is preferred over negotiate-arbitrate

In Issues Paper 1 we outlined the benefits and disadvantages of different forms of regulation for interoperable transaction fees. Most stakeholders indicated a preference for direct price control over a negotiate-arbitrate approach.²³

In subsequent stages of the review, we have continued to develop recommendations for direct price control for interoperable transaction fees.

3.6 Lodgment Support Service fees should not be recovered through interoperable transaction fees

The Lodgment Support Service (LSS) fee is incurred by the ELNO opening the digital workspace (which is not necessarily the RELNO). Stakeholders generally agree that it is appropriate for this fee to be apportioned between participants in a transaction.²⁴ Sympli, the Law Society of NSW and the Law Council of Australia suggest that this apportionment and recovery can be resolved in the negotiation framework for the interoperability agreement between ELNOs that is set out in Consultation Draft Version 7.1 of the MORs.²⁵

Apportionment of the LSS fee is an issue that arises because of interoperability, but it is not related to the costs of performing the RELNO role. We therefore consider that it should not form part of interoperable transaction fees charged by a RELNO to a PELNO.

In response to Issues Paper 2, the Law Society of NSW suggested that Schedule 8 of the MORs (about matters included in Interoperability Agreements between ELNOs) should also be amended to refer to the arrangements to be made between ELNOs for payment of Lodgment Support Service fees.²⁶ This is consistent with our suggested approach in Issues Paper 2 for arrangements for payment of interoperable transaction fees between ELNOs. We agree that arrangements for payment of LSS fees should be included in the list of matters for which amendments to the MORs will be required.

3.7 Lodgment gap insurance should not be recovered through interoperable transaction fees

In Issues Paper 1, we considered whether lodgment gap insurance should be recovered through interoperable transaction fees. Lodgment gap insurance covers the risk that the registration of a title is prevented by a dealing on the title, between the final title activity check and before settlement and lodgment. Lodgment gap insurance protects only the purchaser in an eConveyancing transaction. Both ELNOs will likely treat it as part of their broader cost base and recover it from all subscribers. Therefore, we do not consider it a RELNO-related marginal cost that should be recovered through interoperable transaction fees.

3.8 ELNOs should not pay PEXA a common user charge

PEXA has argued that it must be able to recover the cost to create the existing eConveyancing system on which interoperability is built.²⁷ It states that these costs include the one-off costs of building the processes and relationships that transformed the market from paper to electronic conveyancing. PEXA submitted that interoperability jeopardises its ability to recover those costs and earn a return on that investment, and that interoperability creates a situation analogous to an infrastructure access regime, in which PEXA is the access provider to other ELNOs.

It suggested that there could be a common user charge that all ELNOs (except PEXA) would pay to PEXA as the founding ELNO for each transaction, whether or not that ELNO was the Responsible ELNO.²⁸ PEXA proposed that this charge would be deducted from retail fees (ELNO service fees) and that it should not result in any increase in charges to subscribers.

Sympli disagreed with PEXA's proposed founding ELNO fee. It noted that PEXA has had a monopoly since its inception, benefiting greatly from being the first mover and from the mandating of eConveyancing in most jurisdictions prior to Sympli being in the market.²⁹ Sympli considers that if PEXA were also paid a premium for being the "founding ELNO", it would punish new entrant ELNOs and make competition unviable.³⁰

We consider that other ELNOs should not pay PEXA a fee for "creating eConveyancing" for the following reasons:

- The role of an interoperable transaction fee is to recover only those costs which relate to an ELNO acting as a RELNO in an interoperable transaction.
- We do not consider that an interoperable transaction fee has the characteristics of an access fee. Participation in an interoperable transaction is not the same as providing access to monopoly infrastructure.
- We consider that a founding ELNO fee would constitute a barrier to entry and inhibit rather than encourage competition. Promoting competition in eConveyancing has been an explicit objective of Australian state and territory governments and ARNECC for many years.
- Businesses operating in a competitive market are not guaranteed a return on their investment.
- No other stakeholders have expressed support for the common user charge. We also consulted with economic regulators from other jurisdictions on this issue, who did not see the need for a common user charge.

In responding to Issues Paper 2 and the Draft Report, PEXA reiterated its position on a common user charge and requested that IPART reconsider our draft decision to "ensure there is a mechanism to allow PEXA an opportunity to earn an adequate return on its investments in establishing eConveyancing."³¹ PEXA submits that its "creation of a system of e-conveyancing is a necessary part of establishing Interoperability, and the functions of the Responsible ELNO could not be carried out without this system."³²

We do not agree that other ELNOs would not be able to carry out the functions of Responsible ELNO without PEXA's system. As discussed in section 1.5, other ELNOs are subject to the same requirements under the MORs as PEXA to develop comprehensive capability. In addition, other ELNOs will complete non-interoperable transactions using their own infrastructure.

We maintain our position that ELNOs should not be required to pay PEXA a common user charge.

Recommendation



1. ELNOs should not be required to pay PEXA a common user charge for participating in an interoperable eConveyancing market.

3.9 We recommend interoperable transaction fees rather than a pricing methodology

Our recommendation is that a regulated level of price should apply for interoperable transaction fees, rather than a pricing methodology. In Issues Paper 2, we asked whether stakeholders agreed with prescribing prices, rather than a pricing methodology for interoperable transaction fees. Most stakeholder indicated that they would prefer a regulated price, at least in the short term. For example:

- The Law Society of NSW notes that a regulated price provides transparency and certainty.³³
- PEXA argues that, in recommending regulated interoperable transaction fees, IPART should clearly outline its methodology, including the specific costs and risks each fee represents. It notes that this will “...ensure transparency and assist with future reviews and adjustments to the pricing model, where necessary”.³⁴
- The Law Council of Australia considers that a regulated price would be preferable in the short term, for consistency and transparency, and that a pricing methodology may be preferable in the longer term.³⁵

However, Symply prefers a pricing methodology, rather than a regulated price because:

- a methodology removes the burden on regulators to set the price
- it allows for flexibility when costs change
- it rewards investment in infrastructure and provides incentives for ELNOs to drive down costs, which can be reflected in lower costs to subscribers³⁶
- prescribing prices relies on assumptions and forecasts and there is a risk that these will be inaccurate.³⁷

We consider that, with only 2 firms in the market, and the prescribed nature of the service that is being priced, the benefits of a pricing methodology for interoperable transaction fees are minimal. A pricing methodology may also require more regulatory involvement in monitoring compliance with the methodology.

Prescribing a price generally provides greater certainty for participants by setting specific and enforceable maximum prices, particularly where services are similar and generic, as is the case for performing the RELNO role.

Recommendation



2. The level of interoperable transaction fees should be prescribed for the initial regulatory period, rather than determined by ELNOs according to a prescribed methodology.

3.10 There should be 2 types of interoperable transaction fees

In Issues Paper 2, we outlined our preliminary position that there should be 2 regulated interoperable transaction fees:

1. **RELNO fee** – paid by all PELNOs to the RELNO in every interoperable transaction. This fee would reflect a share of the marginal costs an ELNO incurs from fulfilling its role as the RELNO that are avoided by the PELNOs. It would be based on the marginal operating costs of performing the RELNO role only, as each ELNO has invested in its own infrastructure (which can be recovered from ELNO service fees).
2. **Default RELNO surcharge** - where an ELNO is not able to perform the designated RELNO role (set by the business rules) and the role is redesignated to another ELNO, we consider it would be reasonable for an additional fee to be charged which reflects the per transaction share of the costs of developing a full suite of financial settlement and lodgment infrastructure. The surcharge incentivises ELNOs to make timely investments in their own infrastructure to develop the capability to perform the RELNO role. The surcharge would only be payable for the specific transaction in which the RELNO role was redesignated.

We proposed that in both situations, the PELNOs would pay these fees to the RELNO, reflecting a share of each PELNO's avoided costs in an interoperable transaction.

We consider that the structure of interoperable transaction fees we proposed in Issues Paper 2 and the Draft Report remains appropriate. The sections below explain how we have considered stakeholder views on each fee.

RELNO fee

PEXA and the Law Society of NSW agree that an interoperable transaction fee (the RELNO fee) should apply for all interoperable transactions, reflecting the marginal costs an ELNO incurs from fulfilling its role as the RELNO that are avoided by the PELNO.³⁸

Sympli considers that financial settlement costs are the only marginal costs that should be recovered through an interoperable transaction fee, and that the fee should only apply where an ELNO is not able to perform the RELNO role and the role is redesignated (i.e. the default RELNO surcharge scenario).³⁹

We maintain our position that the RELNO fee should apply in every interoperable transaction, reflecting the marginal costs of performing the RELNO role. Chapter 4 discusses our approach to recommending the RELNO fee and the categories of costs we consider should be recovered through it.

Default RELNO surcharge

Stakeholders had mixed views on the default RELNO surcharge and the categories of costs it should recover. The ACCC and the Law Council of Australia note that all ELNOs are required to be capable of operating in an interoperable market and to invest accordingly.⁴⁰ The Law Society of NSW highlights that if the surcharge is too high, it may be problematic for new entrants who need to make the investment necessary to be able to perform the RELNO role in the future.⁴¹

PEXA agrees with our view that a default RELNO surcharge should apply when the initially designated RELNO is unable to perform the role, and that the surcharge should reflect the avoided cost of infrastructure or capability the defaulting RELNO lacks at the time of the transaction.⁴²

Sympli does not agree that a RELNO should be able to recover capital costs through interoperable transaction fees. It argues that it is not financially viable for new entrants to build their own infrastructure, as required by the MORs and to also pay for another ELNO's already built infrastructure. However, if IPART does decide that a RELNO should be able to recover capital costs where another ELNO cannot perform the designated RELNO role, Sympli argues that this should be limited to the specific lack of infrastructure that caused the redesignation:

"For example, if an interoperable refinance transaction in NSW required a RELNO switch because one party is a financial institution to which Sympli does not have a connection, the capital cost sharing should not include lodgment infrastructure for that transaction. This is because Sympli has the lodgment infrastructure in place to support this transaction and should not be required to pay for this infrastructure twice."⁴³

We maintain our position that the default RELNO surcharge should apply where an ELNO is not able to perform the designated RELNO role. This would reflect the costs of developing a full suite of financial settlement and lodgment infrastructure. We agree with stakeholder comments about setting the surcharge at a level that encourages ELNOs to invest in their own infrastructure. Chapter 5 discusses our approach to recommending the default RELNO surcharge in more detail.

Recommendation



3. There should be 2 regulated interoperable transaction fees:
 - a. **RELNO fee** – paid by all Participating ELNOs to the Responsible ELNO in every interoperable transaction. The RELNO fee should:
 - reflect a share of the marginal costs an ELNO incurs from fulfilling its role as the RELNO that are avoided by the PELNOs
 - be based on the marginal costs of performing the RELNO role only, as each ELNO has invested in its own infrastructure (which can be recovered from ELNO service fees).
 - b. **Default RELNO surcharge** – paid by an ELNO when it is designated as the Responsible ELNO by business rules, but does not perform this role and the role is designated to another ELNO. This fee should reflect the per transaction share of costs of developing a full suite of financial settlement and lodgment infrastructure.

3.11 The recommended fees should apply until 18 months after full interoperability has been implemented

In Issues Paper 2 and the Draft Report, we outlined our view that interoperable transaction fees should be set for a 2-year regulatory period and should be indexed by CPI in year 2. We explained that, in our view, setting interoperable transaction fees for 2 years is appropriate to manage the risks of change in costs or operating conditions. Since that time, the timetable for the interoperability rollout has changed, and so setting fees for a fixed 2-year period is no longer appropriate, as the timing for the implementation of full interoperability is yet to be decided.

Our final recommendation is that fees will be set from 1 July 2023, as required by our terms of reference. However, instead of a 2-year regulatory period, we recommend that the regulatory period ends 18 months after the Day 2 (Release 3) interoperability milestone, unless ARNECC decides that new fees should apply sooner. We recommend that fees should be indexed by CPI from 2024-25 until new fees determined by the next review are implemented.

Most stakeholders (PEXA, Sympli and the Law Society of NSW) supported a relatively short regulatory period in the initial stage of interoperable eConveyancing, given current market structure and the pace of development.⁴⁴ PEXA noted that a longer regulatory period would increase the risk that IPART's recommendations would not be fit for purpose.⁴⁵

In response to the Draft Report, PEXA considered that a 2-year regulatory period starting on 1 July 2023 is appropriate.⁴⁶ Sympli considered the 2-year regulatory period should start once Day 2 interoperability is launched in at least one jurisdiction.⁴⁷

Law Society of NSW and Law Council of Australia noted that the timetable for the rollout of interoperability has been delayed, and that this delay should be considered when deciding the length of the regulatory period and timing of future reviews.⁴⁸ The Day 1 transaction date has been extended from March to September 2023 (see Table 3.1).⁴⁹ The Law Society of NSW noted that operational interoperability (i.e. Day 2 (Release 3)) may commence in 2024-25.⁵⁰

We are required by our terms of reference to recommend fees to apply from 2023-24 and so we are not able to recommend fee levels to apply from the date when interoperability commences. However, we consider that the end of the regulatory period should align with interoperability milestones and that 18 months is a reasonable timeframe for our recommended fees to apply.

PEXA and the Law Society of NSW agreed that it is appropriate to index interoperable transaction fees by CPI following the initial year of the regulatory period.⁵¹ Sympli agreed that indexing the RELNO Fee by CPI is appropriate, given these costs operate on a per-transaction basis and are likely to be impacted by inflation. However, it argues that it would be inappropriate to index any capital costs by CPI, because both ELNOs would already have incurred these costs.⁵² We agree with Sympli that indexation should not apply to capital cost inputs that the fees are intended to recover, rather it should apply to the interoperable transaction fees.

Table 3.1 Updated timetable for interoperability rollout

Milestone	Description of milestone	Date
Day 1 transaction	A limited scope refinance for property in Queensland, between PEXA & Sympli.	September 2023
Complete Day 1 build and bug fixing / Start building Day 2	-	-
Day 2 (Release 1)	Limited refinance capability with a small number of financial institution subscribers.	TBC
Day 2 (Release 2)	Complete refinance functionality to unlimited subscribers.	TBC
Day 2 (Release 3)	Full interoperability functionality to unlimited subscribers.	TBC

Source: ARNECC, [Ministerial statement](#), 28 February 2023, p 1.

Recommendation



4. Interoperable transaction fees should apply until 18 months after the Day 2 (Release 3) interoperable transaction milestone, unless ARNECC decides that new fees should apply sooner. Fees should be set for the initial year (2023-24) and indexed by CPI from 2024-25 until new fees (determined by the next review) are implemented.

3.12 ELNOs should report data on interoperable transactions to ARNECC

The MORs currently outline several reporting requirements and data and information obligations for ELNOs.⁵³ As discussed above, interoperability is not yet in place so there is no data available to indicate what costs RELNOs and PELNOs incur in an interoperable transaction. It is also unclear how many transactions will be interoperable and how frequently each ELNO will perform the RELNO role. To support future reviews of interoperable transaction fees, ARNECC should require ELNOs to collect and report on:

- the number of interoperable transactions an ELNO has participated in and whether they were the RELNO or the PELNO in that transaction
- any interoperable transaction fees paid or received
- the frequency of any ELNOs not being able to perform the designated RELNO role and reasons why
- the number of interoperable transactions that require support activities or issue resolution from the RELNO on behalf of all PELNOs in a transaction.

This information could also assist ARNECC in ensuring that ELNOs are complying with their requirements under the MORs. As discussed in section 1.5, ELNOs are required to operate in all jurisdictions and be capable of lodging all document types.

When developing these additional reporting requirements, ARNECC should consult with the industry to develop a standardised information template so that each ELNO takes a consistent approach to reporting. It should also consult on the appropriate frequency of reporting.

At our Draft Report workshop, a stakeholder asked whether IPART considered recommending that ARNECC impose timelines on the consultation for reporting requirements.⁵⁴ We consider there is merit in recommending a timeframe for the consultation period, to minimise the risk that a lengthy consultation period delays the rollout of interoperability.

We recommend that ARNECC consult with industry stakeholders to develop interoperability reporting requirements and complete the consultation process within 3 months from the completion of our Final Report. Our Final Report must be completed by June 2023, and the Day 1 transaction will occur in September 2023. This timeframe should ensure that the reporting requirements are settled in a timely manner. To assist ARNECC with the consultation process, we have developed a draft information template for ARNECC and sought preliminary feedback on it from PEXA and Sympli. We provided this template to ARNECC at the completion of our review.

Recommendation



5. To enable a review of interoperable transaction fees following the initial regulatory period, ARNECC should develop reporting requirements for ELNOs on information relating to interoperable transactions. ARNECC should consult with industry stakeholders to develop these reporting requirements and complete the consultation process within 3 months from the completion of this Final Report.

3.13 The next review of interoperable transaction fees should start 6 months after full interoperability is implemented

Following the initial regulatory period for interoperable transaction fees, ARNECC should review the need for ongoing fees and the level of any fees that are still required. We recommend the next review of interoperable transaction fees should start 6 months after the Day 2 (Release 3) milestone. This would allow 6 months of ELNOs reporting information on interoperable transactions from the implementation of full interoperability, and 12 months to complete a new review of interoperable transaction fees. We also recommend that ARNECC could request an earlier review of interoperable transaction fees and implement new fees sooner.

The level of competition between ELNOs is likely to influence the ongoing need for interoperable transaction fees. For example, if each ELNO is equally likely to be the RELNO, there may be no need for a RELNO fee, as all ELNOs would incur roughly the same costs across a year's worth of transactions.

Our review has considered the cost items that ELNOs should be able to recover through interoperable transaction fees and the appropriate level of those costs. This is discussed in detail in Chapters 4 and 5. The next review should consider whether these cost items remain appropriate and whether the level of fees should be updated to reflect changes in costs.

Recommendation



6. A review of interoperable transaction fees should start 6 months after the Day 2 (Release 3) interoperable transaction milestone, or when ARNECC requests a review of interoperable transaction fees, whichever is sooner.

3.14 Payment of interoperable transaction fees should be negotiated by ELNOs through Interoperability Agreements

In Issues Paper 2 and the Draft Report, we noted that, on a practical level, ELNOs will need to establish arrangements for payment of interoperable transaction fees to each other, including the frequency and method of payment. We outlined our view that ELNOs should negotiate the payment arrangements for interoperable transaction fees between themselves as part of the Interoperability Agreement.

Consultation Draft Version 7.1 of the MORs provides that where an ELNO receives a request from, or makes a request to another ELNO to interoperate, it must promptly negotiate with the other ELNO to prepare and execute an Interoperability Agreement.⁵⁵ Once an Interoperability Agreement is executed, the ELNO must publish a copy of it on its website.⁵⁶

The Interoperability Agreement must include terms that deal with the Interoperability Agreement Matters, as set out in Schedule 8 of Consultation Draft Version 7.1 of the MORs.⁵⁷ We consider it would be appropriate for the Interoperability Agreement Matters to include the practical arrangements for payment of interoperable transaction fees.

In response to Issues Paper 2, PEXA, Sympli and the Law Society of NSW agreed that the practical arrangements for payment of interoperable transaction fees should be negotiated by ELNOs through Interoperability Agreements.⁵⁸

The ACCC noted that "given the propensity for disputes between ELNOs, all users should have access to as much of the agreement as possible, subject to any specific confidentiality concern. ARNECC should have access to the whole of the agreement. Relatedly, ARNECC should consider the duration of any agreement to provide scope for review and to facilitate the prospect of new entrants." The ACCC also notes that "for competition to develop in this market it will be critical that a fair agreement can be reached between the current and future ELNOs. The negotiating framework must therefore be robust to alleviate the risk that new entrants will have no other choice than enter an agreement that favours the incumbent."⁵⁹

In response to our Draft Report, PEXA noted that ELNOs are sophisticated and well placed to discuss and agree on the arrangements.⁶⁰ PEXA submitted that any requirement in the MORs for arranging payment of interoperable transaction fees through Interoperability Agreements should be principle-based, leaving the detailed mechanisms to be negotiated between the ELNOs. We agree that requirements in the MORs should be principles-based, but also note that there is currently a substantial difference in market power (and potentially negotiating power) between the 2 current ELNOs, as PEXA has almost 100% market share.

At the Draft Report workshop, a stakeholder asked whether IPART has considered recommending that ARNECC impose a timeline on negotiation of the practical arrangements for payment of interoperable transaction fees between ELNOs.⁶¹

The stakeholder also suggested including a dispute resolution mechanism in the MORs, to resolve disagreements between ELNOs on the practical arrangements for payment of interoperable transaction fees.⁶² The stakeholder noted that the Consultation Draft Version 7.1 of the MORs outlines a process for resolving disagreements on the terms of an Interoperability Agreement.^h

We have revised our final recommendation to include that ARNECC should set a reasonable timeframe for ELNOs to negotiate the practical arrangements for payment of interoperable transaction fees. We support the Consultation Draft Version 7.1 of the MORs (5.7.5 and 5.7.6) that outlines a dispute resolution mechanism for the Interoperability Agreement. We consider the dispute resolution mechanism and timeframes in the draft MORs would apply to the negotiation of payment arrangements for interoperable transaction fees.

Recommendation



7. ELNOs should negotiate the practical arrangements for payment of interoperable transaction fees through Interoperability Agreements, including the frequency and method of payment. ARNECC should set a reasonable timeframe for ELNOs to settle these negotiations.

3.15 The MORs should be amended to implement our recommendations

The terms of reference require us to investigate and make recommendations on any amendments to the MORs that are required to support our proposed interoperability pricing arrangements. We have proposed several amendments to the MORs which would be required to implement interoperable transaction fees.

In Issues Paper 2, we identified that amendments to the MORs would be needed to implement:

- some of our draft decisions:
 - An ELNO's costs of establishing and maintaining interoperability should be recovered from an ELNO's subscribers through ELNO service fees.
 - That subscribers who participate in an interoperable transaction should not pay more than a single ELNO transaction.

^h If ELNOs cannot agree on the terms of an Interoperability Agreement, and they cannot agree to a binding dispute resolution process, the ELNOs can provide notice to one another of the dispute and request mediation. If ELNOs cannot agree on terms of an Interoperability Agreement within 20 business days of referral to mediation, it goes to arbitration.

- matters that we would make recommendations on in Stage 2 of the review:
 - when interoperable transaction fees should be charged
 - the methodology for determining interoperable transaction fees or the level of prices
 - arrangements for adjusting or reviewing interoperable transaction fees.

We identified that each of these matters would be implemented through amendments to the MORs. In response to Issues Paper 2, PEXA, Sympli and the Law Society of NSW agreed that we have identified relevant matters that should be implemented through amendments to the MORs.⁶³

PEXA noted that new definitions will be required to facilitate IPART's recommendations, including for the trigger events that determine when the default RELNO surcharge applies.⁶⁴ PEXA submitted to the Draft Report that IPART should state the exact circumstances in which interoperable transaction fees are payable.⁶⁵

We sought advice from the Interoperability Operational Committee (IOC) on whether the exact triggers for RELNO role redesignation have been agreed and documented.ⁱ The IOC confirmed that there is no definitive document that describes triggers where a designated RELNO is unable to perform its role. However, the IOC confirmed that some possible triggers that could result in a redesignation of the RELNO role include lacking:

- technical integration with a specific revenue office
- integration to a specific financial institution
- capability to process certain lodgment types (such as some registry instruments, or instruments requiring an attachment).

The IOC also indicated that a PELNO who is hosting the responsible subscriber could choose not to become the RELNO. We recommend that the default RELNO surcharge also be paid in this situation by the ELNO that chooses not perform the designated RELNO role.

We have revised our recommended amendments to the MORs to specify that:

- the RELNO fee is payable to the RELNO by the PELNOs for each subscriber the PELNOs represent in **every** interoperable transaction.
- the default RELNO surcharge is payable to the redesignated RELNO by the designated RELNO, when:
 - the designated RELNO invokes the planned API method to redesignate the RELNO role because it has determined that it is no longer capable to perform the RELNO role
 - a PELNO is hosting the responsible subscriber but chooses not to become the RELNO.

ⁱ The Interoperability Operational Committee (IOC) has been tasked with the co-creation of a common set of artefacts including data standards, APIs, technical architecture and associated documentation to facilitate the technical Interoperability of ELNOs in accordance with the agreed Industry principles, requirements and standards.

Recommendation



8. Amendments to the Model Operating Requirements (MORs) will be required to implement our recommendations on interoperable transaction fees, including to specify:
 - a. that an ELNO's costs of establishing and maintaining interoperability should be recovered from all subscribers through ELNO service fees
 - b. that subscribers who participate in an interoperable transaction should not pay more than subscribers in a single ELNO transaction
 - c. when interoperable transaction fees should be charged. Specifically, that:
 - the RELNO fee is payable to the RELNO by the PELNOs for each subscriber the PELNOs represent in every interoperable transaction.
 - the default RELNO surcharge is payable to the redesignated RELNO by the designated RELNO, when
 - i. the designated RELNO invokes the planned API method to redesignate the RELNO role because it has determined that it is no longer capable to perform the RELNO role
 - ii. a PELNO is hosting the responsible subscriber but chooses not to become the RELNO.
 - d. the level of interoperable transaction fees
 - e. arrangements for adjusting or reviewing interoperable transaction fees
 - f. that Interoperability Agreement Matters, as outlined in Schedule 8 of Consultation Draft Version 7.1 of the MORs, should include the practical arrangements for payment of interoperable transaction fees and apportionment of Lodgment Support Service fees between ELNOs
 - g. that ELNOs be required to report information to ARNECC on interoperable transactions.

PEXA suggested other amendments to the MORs that relate to compliance and enforcement

PEXA submits that "IPART should recommend that the MORs are updated to ensure there is an avenue for ARNECC to receive complaints about, and appropriate powers to investigate and apply appropriate regulatory penalties for inaccurate claims of RELNO capability. In terms of enforcement, compensation should be payable to the aggrieved RELNO that would receive lower ELNO Service Fees as a result of the inaccurate claim of capability by the ELNO."⁶⁶

In our view, the default RELNO surcharge is the only form of compensation that should be payable to the redesignated RELNO by the ELNO that did not perform its designed RELNO role.

We have considered whether it is likely that an ELNO can make inaccurate claims of RELNO capability. In our view, this situation is likely to be prevented by market forces because:

- Not every transaction will be interoperable. In a non-interoperable transaction, a new entrant ELNO will not be able to 'free-ride' on PEXA's capability.
- If the new entrant ELNO has not invested in comprehensive functionality, it will not be able to provide certain services to its subscribers if it is the only ELNO involved in the transaction. Its subscribers will instead have to complete that transaction via another ELNO and the new entrant ELNO will not receive the ELNO service fees for that transaction.
- This situation is likely to limit the new entrant's ability to attract and retain subscribers, compromising its market share. This is a powerful market force to incentivise ELNOs to develop comprehensive capability.

As discussed in section 3.12, ARNECC could use the information reported by ELNOs on interoperable transactions to monitor compliance with existing requirements under the MORs to develop comprehensive capability.

ARNECC is developing legislative changes to provide Registrars with broader enforcement powers, to promote ELNOs' and subscribers' compliance with their legislative obligations – including ELNOs' obligation to establish interoperability (see Box 3.1). In response to Issues Paper 2, the ACCC submitted that an enforcement regime that provides clear compliance incentives is critical to the development and continued operation of a competitive eConveyancing market.⁶⁷

We agree that it is important for the compliance and enforcement regime to support the pricing components of interoperability that are the subject of this review. Compliance with and enforcement of interoperable transaction fees would be subject to the regime that is being established by ARNECC.

ARNECC's enforcement regime would also apply to ELNOs that are not complying with requirements under the MORs to develop comprehensive capability.

Box 3.1 ARNECC is developing a compliance and enforcement regime

ARNECC has resolved to amend the Electronic Conveyancing National Law to introduce the following enforcement powers:

- enforceable undertakings
- extending the current powers of a Registrar to give binding directions
- financial penalties and infringement notices for certain breaches
- enhancing the current investigative and cooperative powers.

Until the national enforcement regime commences, NSW has put in place its own enforcement legislation, the *Electronic Conveyancing Enforcement Act 2022* (NSW). This legislation applies only to ELNOs to the extent that they operate in NSW.

Source: ARNECC, [Changes to enforcement powers in the Electronic Conveyancing National Law](#), May 2021, p 2; *Electronic Conveyancing Enforcement Act 2022* (NSW)

4 RELNO fee

As discussed in Chapter 3, we recommend that there should be 2 types of interoperable transaction fees: the RELNO fee and the default RELNO surcharge.

The RELNO fee would be paid by all PELNOs to the RELNO in every interoperable transaction. This fee would reflect a share of the marginal costs an ELNO incurs from fulfilling its role as the RELNO that are avoided by the PELNOs. It would be based on the marginal costs of performing the RELNO role only.

Because interoperability is not yet in place, there is limited information on what costs a RELNO is likely to incur in an interoperable transaction. Cost information we received from PEXA and Sympli reflected costs incurred in the current non-interoperable environment. We used these costs to estimate the costs of performing the RELNO role, and we engaged a cost consultant (AECOM) to provide expert advice on our assumptions and estimates of those costs.

The recommended maximum RELNO fee is \$0.75 for 2023-24, to be paid by PELNOs for each subscriber they represent in an interoperable transaction. As discussed in Chapter 3, this fee would apply until 18 months after the Day 2 (Release 3) transaction milestone and be indexed by CPI every year from 2024-25 until new fees (determined by the next review) are implemented.

This chapter discusses our approach to recommending the RELNO fee and the costs that we consider should be recovered through it.

4.1 The maximum RELNO fee is \$0.75, to be paid by PELNOs for each subscriber they represent in a transaction

We calculated that the maximum RELNO fee is \$0.75 for 2023-24, to be paid by PELNOs for each subscriber they represent in an interoperable transaction. For example, in a typical refinance transaction, where the RELNO and the PELNO each represent 1 subscriber, the RELNO would receive \$0.75 from the PELNO. In a typical property purchase transaction where the RELNO represents 1 subscriber and the PELNOs represent 3 subscribers,^j the RELNO would receive \$2.25.

The RELNO fee reflects the marginal costs of performing the RELNO role, which we consider are driven by the RELNO performing issue resolution and support activities on behalf of PELNOs in a transaction. All ELNOs (regardless of whether they are the RELNO or a PELNO in a transaction) will be responsible for providing support to and communicating with their own subscribers. However, when issues arise, PELNOs will refer these issues to the RELNO and the RELNO will take on additional responsibilities for resolving issues and communicating solutions to the parties in a transaction. PELNOs will then provide instructions to their own subscribers.

^j Subscribers can include financial institutions, government agencies, and/or solicitors/conveyancers that represent the vendor or purchaser.

Earlier in the review, PEXA raised other costs that it considers should be included in the RELNO fee (including insurance costs, hosting costs and financial settlement costs).⁶⁸ However, in our view there is not enough information at this stage to attribute a share of these costs to the RELNO role, and we have therefore excluded them from the RELNO fee. In response to the Draft Report, PEXA agrees that insurance costs, hosting costs and financial settlement costs should not be included in the RELNO fee at this stage.⁶⁹ Sympli strongly maintains that a RELNO fee should not be payable for each transaction. However, if IPART considers that a RELNO fee for every transaction should be applied, Sympli considers it is appropriate that the only component that should be considered in the RELNO fee is the support cost component.⁷⁰

Our cost estimates for the RELNO fee are based on cost information from our 2019 review of the eConveyancing market in NSW, specifically support and issue resolution costs incurred by Revenue NSW from providing support to ELNO subscribers. We also considered updated cost information provided by the ELNOs, and expert advice from AECOM. The sections below explain our approach to recommending the RELNO fee.

4.1.1 Stakeholders broadly agreed that the categories of costs included in the RELNO fee are reasonable at this stage

Stakeholders have generally supported our approach to calculating the RELNO fee, noting that better information on costs incurred by RELNOs is unlikely to become available until interoperability has been rolled out.

In its submission to the Draft Report, PEXA agrees that Revenue NSW costs used by IPART are a reasonable starting point for estimating RELNO issue resolution and support costs. However, PEXA submits that IPART should note fundamental differences between issue resolution costs for Revenue NSW and a RELNO. PEXA also maintains that issue resolution costs for a RELNO, particularly in an interoperable system, are inherently higher than the costs for Revenue NSW, as Revenue NSW deals with one party, but the RELNO will deal with more parties and the probability of issues arising is higher for the RELNO. PEXA submits that the RELNO fee should therefore be materially higher.⁷¹

Sympli does not consider there is sufficient information to determine that there will be a material cost avoided by the RELNO but incurred by the RELNO relating to error handling and transactional support: "Without a fully defined set of interoperable data standards, it is unclear the extent to which error handling will be handled through automated responses, and therefore to determine the resource intensity required to perform the RELNO role as compared to the RELNO role. However, if IPART assumes that this material cost will exist, the use of Revenue NSW costs as a proxy to estimate support costs is appropriate."⁷²

The Law Council submitted that it is "not necessarily persuaded that the proposed 75 cent fee reflects a Responsible ELNO's likely marginal costs of issue-handling. The Law Council is though supportive of setting that initial rate with a future review to determine whether the fee is over-recovering or under-recovering a Responsible ELNO's unique marginal costs of performing that role."⁷³

Recommendation



9. The maximum RELNO fee is \$0.75 (ex-GST) for 2023-24, to be paid to the RELNO by each PELNO per-subscriber that they represent in every interoperable transaction.

4.2 RELNO fee should reflect costs incurred by RELNO and avoided by PELNOs

As discussed in Issues Paper 1, a RELNO is likely to have more responsibilities and incur more costs than PELNOs in an interoperable transaction. PEXA submitted that the RELNO sets up the workspace, liaises with stakeholders, and orchestrates and executes lodgment and financial settlement.⁷⁴ It also manages post lodgment and settlement communications. Table 4.1 outlines our understanding of the actions RELNOs and PELNOs will perform in an interoperable transaction, noting that these are under discussion and subject to change. The interoperability APIs are used to provide two-way updates between ELNOs when subscriber and system actions are performed. We understand that most of the interactions between ELNOs will be automated by each ELNO using the interoperability data standard (NECIDS). However, there are some actions that will require manual intervention at least in the short-term.

Throughout a transaction ELNOs will be either the RELNO or a PELNO, according to a business rule hierarchy. However, it is expected that the RELNO and PELNO roles may change multiple times in a transaction, as documents and parties are added to the workspace.

The sections below explain how we consider these actions may create costs for ELNOs.

Table 4.1 Actions performed by ELNOs in an interoperable transaction

Actions performed by RELNO	Actions performed by PELNO
<ul style="list-style-type: none"> • Manage exchange of transaction Objects such that all ELNOs receive changes. • Manage subscriber interactions for their subscribers. • Ensure the NECDS and SDV schema versions for a transaction are acceptable to the authorities in the jurisdiction and other participating ELNOs. • Perform all calls to Land Registries and Revenue Offices (authority calls), either as requested by a participant ELNO, and/or as required by its own business rules. • Distribute any responses from authorities in relation to authority calls. • Determine the appropriate NECDS Schema version for the lodgment case. • Prepare document XML for those documents it is responsible for using the relevant NECDS schema. • Prepare document renderings for their subscribers using the appropriate XSLT stylesheet. • Supporting digital signing of documents by their subscribers. • Ensure duty is accounted for and create the Duty line item in the Financial Settlement Schedule. • Perform any pre-locking integrity checks. • Lock the workspace. • Perform financial settlement. • Lodge documents with Land Registry. 	<ul style="list-style-type: none"> • Respond in a timely manner to all requests and/or notices sent by the Responsible ELNO. • Manage subscriber interactions for their subscribers. • Prepare document XML for those documents it is responsible for using the relevant NECDS schema. • Prepare document renderings for their subscribers using the appropriate XSLT stylesheet. • Supporting digital signing of documents by their subscribers. • Collect and remit Lodgment Fees to the Land Registry where the Responsible Subscriber is using their ELN. • Pay LSS fees for those LSS calls that it makes (apportionment of these fees will be as directed by the inter-ELNO agreement).

Actions performed by RELNO	Actions performed by PELNO
<ul style="list-style-type: none"> • Manage post-settlement communications with participant ELNOs, Banks and Land Registries. • Collect and remit Lodgement Fees to the Land Registry where the Responsible Subscriber is using their ELN. • Pay LSS fees for those LSS calls that it makes (apportionment of these fees will be as directed by the inter-ELNO agreement). • Pay any fees associated with financial settlement (apportionment to be resolved following the outcome of the IPART Review into Interoperability Fees). • Ensure they (continue to) have the capability to conduct the conveyancing transaction and request another ELNO (determined by role hierarchy) to take over as Responsible ELNO if they cease to have the capability. • Manage "lodgement case level" errors. 	<ul style="list-style-type: none"> • If they are now the ELNO for the responsible subscriber and have the capability to be the lodging ELNO and all other rules regarding changing the responsible ELNO have been met, initiate a request to become the responsible ELNO. • Allow owner/creator of a document to manage "document level" errors including considering whether to resign.

Note: These actions are under discussion and are subject to change.
Source: Email received from Interoperability Operational Committee.

4.3 RELNO fee should reflect the costs incurred by the RELNO that completes lodgment and financial settlement

As discussed above, the RELNO and PELNO roles may change multiple times in a transaction, as documents and parties are added to the workspace. PEXA submitted that "for reasons of practicality and on the basis that the RELNO that executes lodgment and/or settlement will incur the vast majority of costs (and risks) that are specific to the RELNO role, the RELNO fee should be payable to the designated RELNO at the time of lodgment/settlement."⁷⁵

We agree that the RELNO fee should be based on the costs incurred by the RELNO that completes lodgment and settlement on behalf of PELNOs in the transaction (the lodging RELNO). It is possible that ELNOs who are designated the RELNO role earlier in the transaction may incur some costs from the RELNO role. However, estimating costs for RELNOs earlier in the transaction is likely to be complex because:

- There are fewer tasks unique to the RELNO in earlier stages.
- The RELNO role may switch multiple times, meaning that multiple ELNOs may have been the RELNO at different stages of the transaction, and at least some of the incremental costs of being the RELNO net out.

As a result, we consider that the RELNO fee should be based on the typical activities and costs incurred by the lodging RELNO only. This means that any ELNO that was designated the RELNO earlier in the transaction would not be able to recover its costs through the RELNO fee. Future reviews of interoperable transaction fees could revisit whether the costs incurred by ELNOs that are designated the RELNO role earlier in the transaction are material, and whether there should be additional fees to recover these costs.

Recommendation



10. The RELNO fee should be payable to, and reflect the costs incurred by the designated RELNO that completes lodgment and financial settlement in a transaction.

4.4 PEXA and Sympli's views varied widely on what costs a RELNO is likely to incur

In submissions to Issues Paper 2 and the Draft Report, only PEXA and Sympli provided detailed comments on the costs a RELNO is likely to incur. However, PEXA and Sympli's views on costs varied substantially.

Earlier in the review, PEXA raised several cost items that a RELNO may incur in performing the RELNO role, including:

- insurance costs
- financial settlement costs charged by financial institutions
- hosting costs (e.g. server and bandwidth load)⁷⁶
- staff costs incurred from the RELNO resolving errors and issues on behalf of all ELNOs in a transaction.⁷⁷

However, Sympli's view was that many of these costs (except for financial settlement costs) are likely to be incurred by PELNOs as well, and should therefore be recovered from an ELNOs own subscribers, rather than through a RELNO fee.⁷⁸ Sympli considers that there should not be a RELNO fee. In its view, financial settlement costs should only be paid when an ELNO is designated the RELNO role but is not able to perform it and the RELNO role redesignated to another ELNO (the default RELNO surcharge scenario).⁷⁹ The sections below discuss each cost item and our decisions on whether these costs should be included in the RELNO fee.

4.4.1 Insurance costs should not be included in the RELNO fee at this time

Under the MORs, all ELNOs are currently required to have specified minimum levels of insurance cover, irrespective of interoperability.⁸⁰ These include professional indemnity insurance, fidelity insurance, public and product liability insurance and asset insurance. Interoperability insurance is another product that has been raised by stakeholders throughout our review, but it is yet to be developed.

PEXA submitted to Issues Paper 2 that the RELNO fee should include the cost of insurance.⁸¹ It argued that the cost of insurance premiums is likely to take into account the number of transactions in which an ELNO plays the RELNO role. PEXA submitted that, while all ELNOs are likely to incur a cost for insurance, an ELNO is likely to pay a higher premium per transaction if the proportion of transactions in which it acts as the RELNO is higher than the proportion for which it acts as the PELNO role (because the activities it will undertake will be higher risk).⁸² Therefore, in its view, the additional insurance cost per transaction attributable to assuming the RELNO role should be recovered through the RELNO fee and not through ELNO service fees.⁸³ PEXA submitted that IPART should benchmark insurance costs based on PEXA's historic insurance premiums incurred for bearing responsibilities that will in future be carried out by the RELNO.⁸⁴

Sympli submitted that insurance costs will be incurred by an ELNO with respect to their own subscriber, regardless of whether or not they are acting as a Responsible ELNO for a transaction. Therefore, it considers this cost should not be included in the calculation of any interoperability fees.⁸⁵

In our view, insurance costs should not be included in the RELNO fee at this time and should instead be recovered through ELNO service fees, since all ELNOs are currently subject to the same insurance requirements. While it may be the case that insurance premiums could increase in the future as a result of an ELNO taking on the RELNO role more frequently, this is not certain. If there is evidence in the future that ELNO insurance premiums have been affected by the frequency of an ELNO performing the RELNO role, future reviews of interoperable transaction fees could reconsider this issue.

PEXA submitted to the Draft Report that it accepts that insurance costs should not yet be included in the RELNO fee. It notes that "insurer assessment of the probability of loss is not sufficiently fine-grained to distinguish between the level of risk incurred by a RELNO relative to a PELNO, particularly for a new market design when there is no claims experience of loss. Until this claims history emerges, and there is evidence of insurers setting premiums with regard to the proportion of transactions in which a participant plays the RELNO role, PEXA accepts that insurance costs should be recovered through Subscriber Fees rather than the RELNO Fee".⁸⁶

4.4.2 Financial settlement costs are likely to vary depending on which ELNO performs the RELNO role

The RELNO may incur costs from performing financial settlement in a transaction on behalf of all ELNOs. However, financial settlement costs incurred by ELNOs are likely to vary, since PEXA and Sympli have adopted different approaches.

Completing financial settlement requires an ELNO to incur capital costs from building connections to the RBA and financial institutions.^k These connections allow the ELNO to send instructions to the RBA to reserve funds and then distribute them to the relevant financial institutions in the transaction once the title changes have been lodged with the Land Registry.

^k In our 2019 review of the eConveyancing market in NSW, AECOM assumed that an ELNO would need to interface with the RBA, and that up to 12 financial institutions would also be fully integrated into the platform. See AECOM, [Estimating the costs of electronic conveyancing services in NSW](#), November 2019, p 8.

To complete financial settlement:

- The RELNO sends a "Reservation Request" to RBA's financial settlement system (RITS) with details of the property transaction (the batch instructions). The RBA reserves funds in the relevant financial institution's account to guarantee availability for settlement.
- Once funds are reserved, the title changes are lodged with the land registry.
- Once lodgment is successful, reserved funds are debited and credited across the financial institutions' accounts at the RBA. Financial institutions then credit or debit their client's accounts.

The current settlement model used in the eConveyancing market involves an ELNO being a 'batch administrator' in RITS to submit batch instructions. In addition to the initial capital cost of building connections to the RBA, batch administrators pay a fixed fee of \$13,000 per year (exclusive of GST) to the RBA.⁸⁷ Batch administrators do not pay any additional transaction fees to the RBA.

However, Sympli outsources its financial settlement role by connecting to RITS via a separate batch administrator, ASX Financial Settlements Pty Ltd.⁸⁸ Instead of incurring capital costs of connecting to the RBA and paying the annual batch administrator fee, it incurs financial settlement costs on a per-transaction basis, charged by its third-party provider.⁸⁹

While PEXA does not incur any transaction fees from the RBA, it submitted that the RELNO will incur financial settlement costs charged by financial institutions for completing each settlement.⁹⁰ PEXA provided confidential information to IPART on the level of these costs and the situations in which it incurs them.

It is unclear if Sympli incurs similar fees from financial institutions. Since ASX Financial Settlements Pty Ltd completes financial settlement on its behalf, these costs may be included in its per-transaction fee.

4.4.3 We have not included financial settlement costs in the RELNO fee

The capital cost of building connections to the RBA and financial institutions and the annual batch administrator fee is a cost that ELNOs will incur regardless of interoperability or the RELNO role. Therefore, we do not consider it a cost that should be recovered through the RELNO fee.

AECOM concluded that the financial settlement costs PEXA incurs from financial institutions are likely to be a 'business as usual' cost that all ELNOs are likely to incur, regardless of the RELNO role. AECOM found that it is common for financial institutions to charge a fixed fee per user (as opposed to a per-transaction fee) for providing payment or settlement services and therefore do not consider it a marginal cost of performing the RELNO role. In our view, there may be merit in apportioning these fixed costs on a per-transaction basis for inclusion in the RELNO fee. However, we do not have substantive data on these costs without revealing PEXA's confidential information. Therefore, we decided not to include these costs in the RELNO fee at this stage.

PEXA submitted to the Draft Report that "at present there is insufficient data to show that the RELNO would incur materially greater bank fees than a PELNO. Until such evidence emerges, PEXA accepts that financial settlement costs should be recovered through subscriber fees rather than interoperability fees".⁹¹

4.4.4 Hosting costs should not be included in the RELNO fee

In its submission to Issues Paper 1, PEXA raised hosting costs (e.g. server and bandwidth load) for consideration as part of an interoperable transaction fee.⁹² In our 2019 review of the eConveyancing market in NSW, we estimated that a benchmark efficient ELNO would incur around \$10,000 per year in webhosting costs in (\$2018-19).⁹³ In the Draft Report, we explained that since all ELNOs will be required to incur hosting costs regardless of interoperability, we do not consider this to be a marginal cost associated with the RELNO role. Chapter 5 discusses webhosting costs in more detail.

4.4.5 Issue resolution and support costs should be included in the RELNO fee

In an interoperable transaction, all ELNOs will be required to respond to queries and communicate with their own subscribers. However, when issues arise (typically in later stages of the transaction), the PELNO will refer them to the RELNO, who will then be responsible for resolving the issue and communicating the solution to the relevant parties. PELNOs will then provide instructions to their own subscribers. In our view, the costs of the RELNO undertaking these activities should be included in the RELNO fee.

PEXA's submission notes the following instances where an issue will likely be referred to the RELNO:

- where a transaction is queried or not processed by a subscriber, land registry, revenue office, or financial institution
- incident management, management of lodgment case errors and document errors
- post-settlement issues (such as mistaken payments).⁹⁴

In these situations, the RELNO will be responsible for:

- determining the cause of the issue and working with the relevant PELNO to resolve it
- acting as the conduit between the PELNO and third parties (such as land registries, state revenue offices, and financial institutions)⁹⁵
- communicating the solution to the PELNO (which then passes those instructions onto its subscriber).⁹⁶

In Sympli's view, all ELNOs will continue to conduct various support activities with their subscribers regardless of their role in the transaction, and these costs will be borne across both Responsible and Participating ELNOs in a transaction.⁹⁷

We sought and received confirmation from the IOC that the RELNO will be responsible for resolving issues and communicating the solution to PELNOs, who will then provide instructions to their subscribers. Based on AECOM's advice, we concluded that performing these activities is likely to result in the RELNO incurring additional costs. Therefore, our decision is that the marginal cost of performing these activities should be included in the RELNO fee. Our approach to calculating these costs is discussed below.

We recommend the RELNO fee be paid by all PELNOs on a per subscriber basis

We considered whether the RELNO fee should be charged per subscriber, per workspace or per dealing (described in Box 4.1) and have concluded that a per-subscriber fee is the most appropriate charging structure.

PEXA submitted to Issues Paper 2 that “rather than a fixed fee payable per workspace, the RELNO fee should be charged for each subscriber supported by an ELNO other than the RELNO (...) as the costs incurred by the RELNO increase as more subscribers are added to a workspace. Each subscriber creates independent and additional potential for errors, risk and exceptions that the RELNO must process. For example, independent subscribers are just as likely to call for support even if another in the workspace has already received support. Additionally, the RELNO accepts a greater risk as they are answerable to more subscribers should anything go wrong and each may make its own claim”.⁹⁸

We agree with PEXA's comments that the RELNO fee should be paid by each PELNO according to the number of subscribers they represent in a transaction. Since the RELNO fee is comprised of issue resolution and support costs that will typically relate to subscriber queries and errors, we consider that charging the RELNO fee on a per-subscriber basis is likely to be closely aligned to the cost drivers in an interoperable transaction.

Box 4.1 Options for how to recover the RELNO fee

Per workspace (per transaction)

A workspace is a shared virtual area where subscribers prepare settlement documents for a property exchange transaction to effect lodgment and or settlement. A new workspace is created for each new property exchange and multiple titles can be added to the 1 workspace. Usually there is 1 workspace per transaction, but a workspace may be abandoned if the property transaction does not go ahead. Setting the RELNO fee on a per workspace basis, would likely mean that a RELNO would collect the same amount of money in every transaction, no matter how complex (or simple) the transaction is.

Per dealing

A dealing is a legal instrument which records changes in the Torrens Title register. A typical workspace for property purchase would involve 3 dealings – a discharge of mortgage, a transfer and a mortgage. Setting the RELNO fee on a per dealing basis would allow the RELNO to collect more money for transactions with more dealings. However, not all dealings can be attributed to a single party (e.g. a transfer is prepared by both the vendor's representative and the purchaser's representative). This would require deciding an allocation method for dealings where multiple parties are involved in preparing the dealing.

Box 4.1 Options for how to recover the RELNO fee

Per subscriber

A subscriber is a person or business representing the parties to a transaction (e.g. financial institutions and lawyers/conveyancers). Setting the RELNO fee on a per subscriber basis allows the RELNO to collect more money for transactions with more subscribers.

Source: *Real Property Act 1900*, s 3(1)(a) (definition of 'dealing'); NSW Land Registry Services, [What is a subscriber?](#), accessed 17 February 2023; PEXA, [Create a Workspace | Help Centre](#), accessed 17 February 2023.

Most interoperable transactions will be either transfer or refinance transactions

ELNOs provide services for a wide range of transactions. Support costs incurred by ELNOs are likely to vary by transaction type, as more complex transactions are likely to lead to more support queries and errors.

PEXA's 2022 annual report notes that PEXA groups its transactions into 3 categories:

- **Transfer lodgments:** dealings connected to the transfer of a property title or sales transfer, and any associated discharges and mortgages in conjunction with the property transfer and other ownership transfers such as inheritance and family law matters.
- **Refinancing lodgments:** dealings connected to the refinance of a debt facility secured by a mortgage, but which are not connected to a sales transfer and involve a discharge of an existing mortgage replaced by a new mortgage.
- **Other lodgments:** other dealings lodged, either alone or together, but which are not connected to a transfer lodgement or a refinance lodgment such as a standalone discharge of mortgage lodged after a loan has been wholly repaid, a standalone mortgage lodged after a new loan is advanced, caveat-related dealings, death-related dealings, and lease-related dealings.⁹⁹

We consider that at least in the early stages of interoperability, most interoperable transactions will be either transfer or refinance transactions because these are the most common transactions that involve multiple subscribers. Therefore, we have estimated support costs on the basis that most interoperable transactions during the regulatory period will either be a refinance or a transfer transaction.

Cost information from our 2019 review informed our estimate of issue resolution and support costs for the RELNO fee

Because interoperability is not yet in place, there is limited information on what costs a RELNO is likely to incur in an interoperable transaction. Current costs incurred by PEXA and Sympli reflect the current non-interoperable environment.

We consider that issue resolution and support activities have some similarities to costs that were raised by Revenue NSW in IPART's 2019 review of the eConveyancing market in NSW. Therefore, we have used this cost information to estimate the marginal costs that a RELNO is likely to incur from issue resolution and support activities in an interoperable transaction. AECOM concluded that Revenue NSW's support costs would be a reasonable benchmark for estimating these costs.

In our 2019 review, we found that as a result of the transition from paper conveyancing to eConveyancing, Revenue NSW was undertaking additional functions to enable ELNOs to verify the duties payment in an eConveyancing transaction (see Box 4.2). This differed from how duties verification worked in a paper conveyancing transaction. The new duties verification service resulted in Revenue NSW incurring a range of costs. One of which was that ELNO subscribers would frequently require support from Revenue NSW to resolve data matching errors and subscribers would contact Revenue NSW by phone or by email to resolve the error.¹⁰⁰

Revenue NSW was incurring \$608,000 (in \$2018-19) in annual staffing costs to provide subscriber support and resolve errors, which our cost consultant at the time (AECOM) concluded were efficient. These costs consisted of employing 5 full time staff of various clerk grades, and one technical expert, who were responding to around 30,000 support inquiries per year. At the time, around 250,000 transactions per year were dutiable and the error rate was around 12%.¹⁰¹ IPART recommended it was appropriate for Revenue NSW to charge ELNOs a fee for performing this duties verification service because it was outside Revenue NSW's core business of collecting taxes.¹⁰²

We consider that these activities (providing subscriber support and helping to resolve errors) resemble those activities that are likely to drive costs for the RELNO role. For example, PEXA's submission noted that "under [its] current system, the majority of support queries received relate to the management of documents and errors relating to verification."¹⁰³ Therefore we have used Revenue NSW's cost information (inflated to \$2021-22) to estimate the marginal costs that are likely to be incurred for performing the RELNO role.

Box 4.2 Revenue NSW's role in eConveyancing

Revenue NSW facilitates the payment of transfer duty that results from a conveyancing transaction. To support this process, Revenue NSW has implemented an Electronic Duties Return (EDR) and eDuties portal, both of which are integrated with eConveyancing.

When an eConveyancing workspace is set-up in an ELN by a subscriber, a Land and Property Information (LPI) document is created. If that LPI is liable to duty, the State Revenue Office is required to verify the details it contains, and confirm the amount of duty payable, all of which is completed through the eConveyancing platform. This requires that the ELNO platform interacts with the Revenue NSW system. Incomplete or inaccurate data results in a failed verification check from Revenue NSW. The issue is identified on the eConveyancing platform and must be resolved before the transaction can proceed.

Source: AECOM, [Estimating costs of electronic conveyancing services in NSW](#), November 2023, p 46.

To convert Revenue NSW's costs to an equivalent cost for the RELNO fee, we:

- Used the Wage Price Index (WPI) to inflate \$608,000 in \$2018-19 to \$2021-22. The WPI reflects changes in labour costs over the relevant period. This results in an estimate of around \$646,000 in annual staff costs.
- Calculated a cost per transaction of \$2.59 – we divided \$646,000 by the total number of dutiable transactions in NSW at the time (250,000). This was the total number of dutiable transactions in NSW of which around 12% were incurring errors. Dutiable transactions typically represent transfers of property ownership (i.e. property purchases).
- Calculated a cost per subscriber of \$0.70 – we divided \$2.59 by the average number of subscribers in a dutiable transaction (3.7).¹
- Inflated the cost per subscriber of \$0.70 to \$2022-23 to calculate a per-subscriber fee of \$0.75.

While the RELNO fee appears to be low on a per transaction, per subscriber basis, ELNO transaction volumes are relatively high. Box 4.3 shows an illustrative example of the amount of money that a RELNO may receive for performing the RELNO role.

Box 4.3 Illustrative example of amount of money generated by RELNO fee

We estimate that the RELNO fee would generate around \$462,000 per year for an ELNO that performs the RELNO role in 65% of refinance and transfer transactions in NSW and QLD (the jurisdictions where phase 1 of interoperability will be rolled out).^a This assumes that 70% of all property transfers and refinances in NSW and QLD are interoperable.

a. ARNECC has indicated that phase 1 of interoperability will be rolled out in NSW and QLD, with other jurisdictions to follow in later phases. See ARNECC, [Ministerial Statement](#), 9 December 2022.

Source: IPART analysis

Why did we use Revenue NSW's costs instead of actual support costs incurred by ELNOs?

We have compared the recommended RELNO fee of \$0.75 to PEXA's actual support costs incurred in 2021-22 on a per transaction, per subscriber basis and consider that the RELNO fee of \$0.75 is reasonable.

¹ This is based on a weighted average of number of subscribers involved in a property transfer, assuming 70% involve 4 subscribers, 29% involve 3 subscribers and 1% involve 2 subscribers. Based on information provided by Sympli.

In its submission to the Draft Report, PEXA indicated it incurred \$5.5 million in support costs in 2021-22. It then calculated a per transaction support cost of around \$6.¹⁰⁴ We do not agree with some of the assumptions used in PEXA's calculation and have done our own calculation to 'sense-check' our estimate of \$0.75 for the RELNO fee against PEXA's actual support costs. Our calculation indicates that PEXA's actual support costs amount to around \$1.45 on a per transaction, per subscriber basis. The RELNO fee of \$0.75 represents around 52% of PEXA's actual support costs. This implies that the RELNO fee allows for the RELNO to be compensated for completing an additional 52% of the transaction support effort. Since RELNOs will also be responsible for providing support to their own subscribers, we consider that assuming a RELNO will incur an extra 50% of the support effort is a relatively high estimate.

Appendix C summarises our calculation and compares it to PEXA's calculation, explaining why we query certain assumptions it used.

Why not increase the estimated support costs to reflect that RELNOs will deal with more parties and more complex issues than Revenue NSW?

We agree that for some transactions, the issues that the RELNO deals with may be more complex and involve more parties than Revenue NSW. However, we estimate that at least 35% of the transactions that a RELNO deals with will be refinances, to which the RELNO fee also applies. Refinance transactions will be simpler and typically only involve 2 parties (one incoming and one outgoing financial institution).

For example, Sympli submits that there may be some support issues that arise that would not be captured by the Revenue NSW proxy (for example, where issues arise with land registry connections). However, Sympli also notes that it is likely that refinance transactions will form a large part of interoperability transactions (particularly in the initial review period). "Refinances are typically far less complex transactions that are unlikely to encounter substantial issues, which would reduce the support cost in many transactions. As such, Sympli is comfortable with IPART's estimation of support costs."¹⁰⁵

PEXA's submission to Issues Paper 2 also notes that individual financial institutions typically process far more property transactions than other subscriber roles, and consequently tend to have more specialised and expert operators which means fewer queries and issues.¹⁰⁶ Refinance transactions typically only involve financial institution subscribers, indicating that these transactions will lead to fewer issues and support queries.

The recommended RELNO fee applies to all transactions and ELNOs representing all subscribers (both conveyancers/solicitors and financial institutions). We do not consider it is reasonable to set the RELNO fee with reference to only the most complex transactions, without considering how the simpler transactions might offset these costs. We therefore maintain that the RELNO fee of \$0.75 paid on a per subscriber basis, is reasonable.

4.4.6 We recommend there be a single RELNO fee at this stage

As discussed above, it is likely that certain types of property transactions will cause some variation in costs incurred by the RELNO because more complex transactions may lead to the RELNO incurring more issue resolution and support costs. Because the RELNO fee we are recommending applies to PELNOs on a per subscriber basis, it allows the RELNO to receive more money for transactions that involve more subscribers. We consider this is a reasonable proxy for transaction complexity. However, we do not recommend that the RELNO fee varies according to any other cost driver at this stage.

PEXA submitted to Issues Paper 2 that the RELNO fee should vary according to each jurisdiction, subscriber type (i.e. financial institutions and practitioners) and transaction type. PEXA argues the RELNO fee should be specific to:

- Each jurisdiction, as requirements specific to a jurisdiction can lead to higher support costs.
- The subscriber role, because purchasers and vendors (and their representative practitioners) tend to generate more queries and issues than financial institutions.
- The transaction type - for example, different RELNO fees should be set for transfers and refinances because transfers tend to generate more queries and issues than refinances.¹⁰⁷
- Multi-title transactions, which PEXA argues are inherently more complex and therefore a higher RELNO fee should apply.¹⁰⁸

In our view, reflecting these cost variations in the RELNO fee is likely to be complex because:

- Interoperability is not yet in place, so there is limited information to indicate to what extent different transaction types will lead to higher costs for the RELNO. While ELNOs may have this information in the current non-interoperable environment, it may not be reflective of cost drivers in an interoperable environment.
- Setting the RELNO fee according to transaction type requires us to forecast the volume of each transaction type and the proportion of these that will be interoperable. We would then need to apportion costs across these forecasts. We do not have accurate information to indicate what volume of transactions will be interoperable by transaction type, so the risk of forecasting error is high.

For these reasons, in the Draft Report we recommended that there should be a single RELNO fee. We suggested this issue could be revisited in future reviews, when there is more accurate information about cost drivers for interoperable transactions and the volume of interoperable transactions by transaction type.

PEXA submitted to the Draft Report that "this is a reasonable basis for the early stages of interoperability, provided (as suggested in IPART's report) that the RELNO fee is calculated per subscriber. However, PEXA submits that IPART should explicitly note that whether there should be different RELNO fees for particular transaction types should be reconsidered once there is more evidence from the experience of an interoperable system in practice."¹⁰⁹

We maintain our position that there should be a single RELNO fee at this stage, but agree that future reviews should consider setting different RELNO fees for different transaction types.

4.5 The RELNO fee is not directly comparable to the illustrative transfer price from our 2019 review

At the Draft Report workshop, a stakeholder questioned the difference between the illustrative transfer price IPART presented in our 2019 review (\$12.96) and the draft recommended RELNO fee of \$0.75. At the workshop, we explained that the 2019 transfer price included other cost categories such as the Lodgment Support Services (LSS) Fee and lodgment gap insurance (see Box 4.4), which we have recommended should not be recovered through interoperable transaction fees. We have instead recommended that the LSS fee and lodgment gap insurance should be recovered through the Interoperability Agreements between ELNOs and ELNO service fees, respectively. Therefore, the 2019 transfer price and RELNO fee are not directly comparable.

The 2019 transfer price also included a capital costs component of \$1.12. We are not recommending that the RELNO fee should include a capital costs component, but that this should instead be recovered in certain situations through the default RELNO surcharge. Sympli's submission notes that the capital component included in the draft default RELNO surcharge (\$2.90) is materially higher than what was included in an illustrative transfer price in 2019 (\$1.12).¹¹⁰ Our recommended maximum default RELNO surcharge has increased to \$6.20 between the Draft and Final Report.

Box 4.4 Illustrative transfer price from our 2019 review

The 2019 review proposed the following illustrative cost schedule to calculate a transfer price between ELNOs in an interoperable transaction. The net transfer price would vary depending on the scenario (depending on the number of parties each ELNO represents).

- Capex for lodgment and financial settlement - \$1.12
- LSS fee - \$14.79
- Lodgment gap insurance - \$10
- Interoperability insurance (costs not known).

For example, if each ELNO represented 2 participants in the transaction and, assuming the lodging ELNO (now referred to as Responsible ELNO) incurred the capital costs and paid all pass-through fees, the other ELNO (PELNO) would need to pay a transfer price of \$12.96 to the lodging ELNO (and share the costs of interoperability insurance).

Source: IPART, [Review of the Pricing Framework for Electronic Conveyancing Services in NSW](#), Final Report, November 2019, p 43.

5 Default RELNO surcharge

As discussed in Chapter 3, in addition to the RELNO fee that is payable by PELNOs to the RELNO in every interoperable transaction, we recommend there be a default RELNO surcharge that applies in limited circumstances.

The default RELNO surcharge would be paid by an ELNO when it is designated as the RELNO by the business rules but is unable, or chooses not to perform this role and the role is redesignated to another ELNO. This fee reflects the per transaction share of the costs of developing a full suite of financial settlement and lodgment infrastructure.

The maximum default RELNO surcharge is \$6.20 per transaction (ex-GST) for 2023-24.

This chapter explains our approach to developing that recommendation, including our response to stakeholder submissions to Issues Paper 2 and the Draft Report.

5.1 The maximum default RELNO surcharge is \$6.20 per transaction

We recommend that the maximum default RELNO surcharge be \$6.20 per transaction (ex-GST) for 2023-24. From 2024-25 we recommend indexing the maximum default RELNO surcharge annually by CPI, in line with our recommendation 4 in Chapter 3. Between the Draft and Final Report, we made several changes to our approach to calculating the default RELNO surcharge. These changes resulted in the default RELNO surcharge increasing from the draft recommended level of \$2.90 per transaction to \$6.20 per transaction.

Currently, 2 ELNOs – PEXA and Sympli – are approved to operate in most jurisdictions. However, if a transaction involves more than 2 ELNOs and the RELNO role is redesignated to different ELNOs multiple times throughout the transaction, we recommend those ELNOs who were designated as the RELNO but were not able to perform the role should share the default RELNO surcharge. The ultimate RELNO would recover the default RELNO surcharge only once per transaction.

Recommendation



11. The maximum default RELNO surcharge is \$6.20 per transaction (ex-GST) for 2023-24.

5.2 What is the purpose of the default RELNO surcharge?

As discussed in Chapter 3, ELNOs are required under the MORs to operate in all jurisdictions and be capable of lodging all document types.¹¹¹ The Registrar in each state also has the power to require an ELNO to implement any other functionality reasonably required.¹¹²

However, because ELNOs can stage this capability in accordance with their business plans, the timeframes for ELNOs to meet these requirements are not clear. For this reason, an ELNO may have incentives to delay establishing certain capability if it is costly, and not in its commercial interests. We developed the default RELNO surcharge to encourage ELNOs to develop all the necessary capability to perform the RELNO role in a timely manner. We do not intend for the surcharge to replace the existing requirements under the MORs or serve as a penalty for ELNOs not complying with the MORs.

It is expected that ELNOs may not be able to perform the designated RELNO role when they lack:

- technical integration with a specific revenue office
- integration to a specific financial institution
- the capability to process certain lodgment types (such as some registry instruments, or instruments requiring an attachment).¹¹³

However (as noted in Chapter 3), at this stage there is no definitive list of circumstances that would lead to a redesignation of RELNO role.

The intent of the surcharge is not to compensate PEXA or Sympli (or other new entrant ELNOs) for their actual investments. It instead represents our estimate of the per-transaction share of the costs of developing the necessary infrastructure. The surcharge may be low on a per transaction basis, but if paid on an ongoing basis over the long term, it should signal to ELNOs that it is in their commercial interests to make the necessary investments in capability.

5.3 The default RELNO surcharge should only apply when the designated RELNO does not perform its role in a transaction

We recommend that the default RELNO surcharge applies when an ELNO that is designated the RELNO role in an interoperable transaction cannot, or chooses not to perform the RELNO role, resulting in a redesignation of the RELNO role.

The IOC has indicated that in an interoperable transaction:

The RELNO must monitor its capability to carry out its role as the workspace and lodgment case develops and, where it determines that it can no longer carry out the role it must use a specific API to request that another ELNO take over the role. If an ELNO determines that they can no longer carry out the role of Responsible ELNO, they would send out a request to the ELNO "next in line" according to the hierarchy of roles of the subscribers, asking that ELNO to take on the role of Responsible ELNO. Upon acknowledgement of the acceptance, the old Responsible ELNO will no longer have this role, and the new Responsible ELNO will assume these duties.

The IOC also indicated that it is possible that an ELNO that is hosting the responsible subscriber can elect not to request to become the RELNO.¹¹⁴

We recommend the default RELNO surcharge be paid in both these situations by the initially designated RELNO to the redesignated RELNO. The IOC indicated that both circumstances should be relatively easy to track and charge a fee for.

5.3.1 PEXA submitted that the default RELNO surcharge should apply in a broader range of situations

PEXA had different views on when the default RELNO surcharge should apply.

In response to Issues Paper 2, PEXA submitted that an ELNO that has previously defaulted on RELNO responsibility should pay the default RELNO surcharge for each subsequent transaction with the feature that caused the default (whether or not the ELNO is initially designated as the RELNO) until it has demonstrated capability in practice to execute a subsequent transaction with that feature.¹¹⁵

In the Draft Report we explained that we do not think it is reasonable for a defaulting ELNO to pay a surcharge for each subsequent transaction with the feature that caused the default until it has demonstrated capability to execute a subsequent transaction with that feature. In our view, an eConveyancing transaction is a discrete event where an ELNO can demonstrate its capacity to perform the designated RELNO role. We consider the surcharge should recover the efficient costs avoided by the defaulting ELNO for that transaction only.

In response to the Draft Report, PEXA submitted that it accepts that the administrative costs of applying its suggested regime may not be workable.¹¹⁶

However, PEXA submitted to the Draft Report that "the default RELNO surcharge should also be payable whenever a participating ELNO lacks any of the transaction-type capability required to complete a transaction in an automated way. This would help to ensure that an ELNO cannot free-ride on creating transaction type capability, which is one of the most expensive components of an ELN."¹¹⁷

We do not consider that the default RELNO surcharge should apply "whenever a participating ELNO lacks any of the transaction-type capability required to complete a transaction in an automated way". ELNOs may decide to complete transactions in different ways and may adopt varying levels of automation. We consider that competition in the ELNO market should allow ELNOs to adopt different approaches, so long as they meet minimum requirements set by ARNECC and the agreed protocols for the RELNO and PELNO roles in an interoperable transaction. ARNECC should continue to monitor these requirements and protocols to ensure they remain fit for purpose. We maintain that the default RELNO surcharge should only apply when an ELNO fails (or chooses not) to fulfil its role as the designated RELNO and the role is redesignated to another ELNO.

5.4 How we developed the recommended default RELNO surcharge

In our view, any avoided costs associated with lodgment and financial settlement that cause the initially designated RELNO to default should be included in setting the default RELNO surcharge. Therefore, we consider that the default RELNO surcharge should reflect the per transaction share of the avoided costs of developing financial settlement and lodgment infrastructure.

We applied a cost build up approach to calculate the maximum price for the default RELNO surcharge. Box 5.1 summarises the key steps in our cost build up approach.

Box 5.1 Our approach for estimating the default RELNO surcharge

- We calculated the total efficient cost for the RELNO based on the cost of developing financial settlement and lodgment infrastructure, assuming the ELNO operates in 5 jurisdictions.
- We assumed an asset life of 5 years for the financial settlement and title lodgment infrastructure and used this as the period for cost recovery of this investment.
- We applied a pre-tax Weighted Average Cost of Capital (WACC) of 8.0% to convert the capital cost of developing lodgment and financial settlement infrastructure as an annuity.
- We forecast annual eConveyancing volumes using transaction data from PEXA's 2021-22 annual report. We then adjusted this data to account for longer-term property market conditions.
- We divided the total revenue requirement (i.e. the total efficient cost) by the forecast conveyancing volumes to derive the maximum price for the surcharge.

In the sections below, we explain our approach to estimating the default RELNO surcharge, including how we:

- estimated the costs of developing financial settlement and lodgment infrastructure
- forecast annual eConveyancing transaction volumes
- used costs, forecast volumes and the WACC to calculate the surcharge.

5.4.1 We estimate the capital costs of developing lodgment and financial settlement infrastructure to be around \$7.7 million

Our cost estimates for the maximum default RELNO surcharge are based on cost information from our 2019 review of the eConveyancing market in NSW and updated expert advice from AECOM (see Appendix D). We estimate the initial cost of developing lodgment and financial settlement infrastructure to be around \$7.7 million. This is an increase from the Draft Report, where we estimated these costs to be around \$4.8 million.

We have also included an allowance for annual capital costs and maintenance of around \$1.5 million, split 50/50 between operating and capital costs.

For our 2019 review, we engaged AECOM to estimate the capital costs that a benchmark efficient new entrant ELNO would incur in NSW from 2018-19 to 2022-23. AECOM estimated that a benchmark efficient ELNO would incur capital costs of around \$4 million to develop financial settlement and lodgment infrastructure,^m which included the following costs:

- the core ELNO service of financial settlement and lodgment. That is, the software development effort required (including activities such as project management, quality assurance and process design)
- IT hardware (e.g. PCs and local network equipment)
- building connections to around 12 financial institutions.¹¹⁸

For this review, we engaged AECOM again to provide updated advice on capital costs, including costs over the life of the asset, which we assumed to be 5 years. We assumed that the ELNO:

- operates in 5 jurisdictions as this reflects the current state of the eConveyancing market (discussed further in Box 5.2)
- has established connections to 12 financial institutions.

Box 5.2 Current state of the market for eConveyancing

Currently, electronic lodgment via an ELN has been mandated for all or some land dealings in NSW, Victoria, South Australia, Queensland and Western Australia. Both PEXA and Sympli are approved to operate in these jurisdictions. While around 44% of land dealings are currently lodged via an ELN in ACT, there is no mandate and only PEXA has been approved to operate in ACT. In Tasmania and Northern Territory, there is no eConveyancing, and there are no approved ELNOs.

Source: IPART, [Interoperability pricing for Electronic Lodgment Network Operators](#), Issues Paper, July 2022, pp 9-10.

PEXA and Sympli had very different views on the approach we took to calculating the costs of developing lodgment and financial settlement infrastructure for the Draft Report.

^m AECOM estimated that an ELNO would incur capital costs of around \$3.7 million (in \$2018-19) to provide lodgment and financial settlement infrastructure. After adjusting for inflation (using the RBA inflation calculator) this would be around \$4 million in \$2021-22. See, IPART, [Review of the pricing framework for electronic conveyancing services in NSW](#), November 2019, p 34.

Sympli submitted that AECOM has appropriately calculated the capital expenditure of a benchmark efficient ELNO, considering the limitation that "There would be opportunities for each ELNO to add value by adding functionality that differentiates it in the market, but as these functions are not required to deliver the core ELNO service we have not included an allowance for the development of additional features or functionality beyond that required for the core service." Whilst both PEXA and Sympli have additional features and functionality that has contributed to a significantly higher capital expenditure, Sympli considers that the figure that IPART has used in its calculation is appropriate.¹¹⁹

PEXA submitted that AECOM's estimate that "the core capability of an ELNO can be built for \$4.8 million appears extraordinarily low". PEXA considers that to estimate the costs of establishing a new ELNO, IPART should put far greater weight on current real world experience. PEXA submits that it has incurred around \$182 million to develop its current level of capability.¹²⁰

Other stakeholders did not provide detailed comments on our approach to calculating development costs.

The sections below explain how we have considered stakeholder feedback when estimating development costs for the Final Report.

We have updated our assumptions for development costs used in the Draft Report

In response to PEXA's feedback, we have updated some of our assumptions for calculating the cost of developing lodgment and financial settlement infrastructure. For the Draft Report, we assumed:

- a developer hourly rate of \$213 in \$2022 with 8 developer hours per dayⁿ
- a base developer days assumption of 15 days plus 20 additional days per jurisdiction in which a benchmark ELNO operates and 49 additional days per connection to financial institution.

PEXA submitted that it accepts that AECOM's assumed average developer cost of \$200 per hour is reasonable. However, PEXA does not accept AECOM's estimates that core capability could be project managed, built, and tested by a small team in 15 days plus 20 days per jurisdiction, and 49 days per connection to financial institution.¹²¹

PEXA considers that there are 3 components of an ELNO system:

- the consumer facing interface that receives information input by customers
- the digital infrastructure / integrations that connect the PEXA exchange with third parties in the ecosystem
- the 'transaction orchestration engine' which does the bulk of the work to process the transaction.

ⁿ AECOM advised that the developer hourly rates are generally between \$175 and \$225 (\$2019) and took the midpoint (i.e. \$200) to calculate the software development costs in the 2019 review. We adopted the same hourly rate after adjusting for inflation using the Wage Price Index.

PEXA considers that IPART did not include the costs of developing an orchestration engine in its development costs estimate for the Draft Report.¹²² We agree that the development costs in the Draft Report did not include the development of an orchestration engine. The orchestration engine was not raised in earlier stages of the review by either ELNO.

We sought advice from AECOM on whether the development costs estimate used in the Draft Report should be increased to allow for additional effort to develop a transaction orchestration engine. AECOM agreed that it is reasonable to include an orchestration engine in the design of an ELNO system, given the scale of ELNO operations in the current eConveyancing market (as described in Box 5.2).¹²³ We have therefore increased our estimate of the team effort to build an ELNO platform to reflect the additional effort required to build an orchestration engine. AECOM revised the assumed team structure to include a Solution Architect (or equivalent) who would be responsible for the design of the orchestration engine.

We also sought advice from AECOM on whether the development costs estimate used for the Draft Report should be increased to reflect that ELNOs must develop a broad range of document types in each jurisdiction. AECOM advised that its 2019 estimate allowed for the development of 9 different document types and that it would be reasonable to increase this to 14 document types. AECOM's estimates allow for around 30% more development effort to include these additional document types.^o

Why did we choose to set the surcharge based on the costs of developing the full suite of lodgment and settlement infrastructure?

In the Draft Report we considered whether it would be appropriate to have different levels of fees depending on the specific 'capability gaps' that would cause the redesignation of the RELNO role. In principle, we agreed the recovery of capital costs where another ELNO cannot perform the designated RELNO role should be limited to the specific lack of infrastructure that caused the redesignation, but noted there are challenges to adopting this approach.

Sympli submitted that "if an interoperable refinance transaction in NSW required a RELNO switch because one party is a financial institution to which Sympli does not have a connection, the capital cost sharing should not include lodgment infrastructure for that transaction. This is because Sympli has the lodgment infrastructure in place to support this transaction and should not be required to pay for this infrastructure twice."¹²⁴

Sympli suggested that this could be addressed by having 3 levels of a default RELNO surcharge, where the defaulting RELNO:

1. has neither lodgment nor financial settlement infrastructure
2. has lodgment infrastructure but no financial settlement infrastructure
3. has financial settlement infrastructure but no lodgment infrastructure.

^o AECOM calculated that developing an additional 5 out of 14 document types would be a 36% increase in effort. However, AECOM estimated that approximately 20% of the logic/code could be re-used from the existing document types, and 80% would be new. Therefore, the effort should be reduced to factor in the re-usability of other transaction components and the additional effort would be 29%. See, AECOM, eConveyancing update, 2023, pp 5-6.

In principle, we agree with Sympli that the recovery of capital costs where another ELNO cannot perform the designated RELNO role should be limited to the specific lack of infrastructure that caused the redesignation. However, this would require estimating the capital costs of developing lodgment and financial settlement separately and forecasting the number of transactions in each of the 3 scenarios.

We have information to estimate a cost for developing some of the 'capability gaps' (identified in section 5.2) that are likely to cause a redesignation of the RELNO role. For example, AECOM's advice on development costs indicates it would cost around:

- \$540,000 to integrate with a financial institution
- \$220,000 to integrate with the land registry and revenue office in a new jurisdiction.

However, it is difficult to decide an appropriate volume forecast to convert these costs to a per-transaction fee. For example, the cost per transaction of integrating with a revenue office and land registry will differ by jurisdiction, as volumes vary substantially by jurisdiction. Similarly, the cost per transaction of integrating with a financial institution will depend on how many transactions that financial institution is involved in. There may also be situations where an ELNO has multiple capability gaps that lead to a redesignation of the RELNO role.

For these reasons, we maintain our view that the benefit of having a more accurate fee structure at this stage is likely to be outweighed by the regulatory and administrative costs associated with establishing different levels of a default RELNO surcharge. Therefore, we have maintained the approach taken in the Draft Report that the default RELNO surcharge be based on the full cost of developing lodgment and financial settlement infrastructure apportioned on a per-transaction basis across all transactions.

Our efficient development costs estimates are lower than PEXA's actual development costs, but consistent with other sources

IPART is not the only organisation to have estimated the cost of developing an ELNO platform. Deloitte previously estimated that it would cost between around \$2.4 million and \$14.5 million to build an ELNO platform, depending on the extent of the ELNO's service offerings (including additional features such as 'Robotic Process Automation').^p Our estimate for the Final Report of \$7.7 million is roughly in the middle of this range.

PEXA considers that IPART's cost estimate to build an ELNO platform used in the Draft Report is too low and should be replaced with an estimate of around \$200 million, based on the experience of PEXA and Sympli. PEXA submits that it has "incurred \$182 million to build and deliver the eConveyancing service that exists today and that it appears Sympli has spent over \$95 million".¹²⁵

^p Deloitte estimated in 2018 that the cost would vary from \$2.2 million to \$13.3 million. We have updated this to reflect inflation since 2018 using the [RBA inflation calculator](#). See, Deloitte, [The future of the Australian conveyancing industry 2025 and 2030](#), June 2018, pp 62 – 63

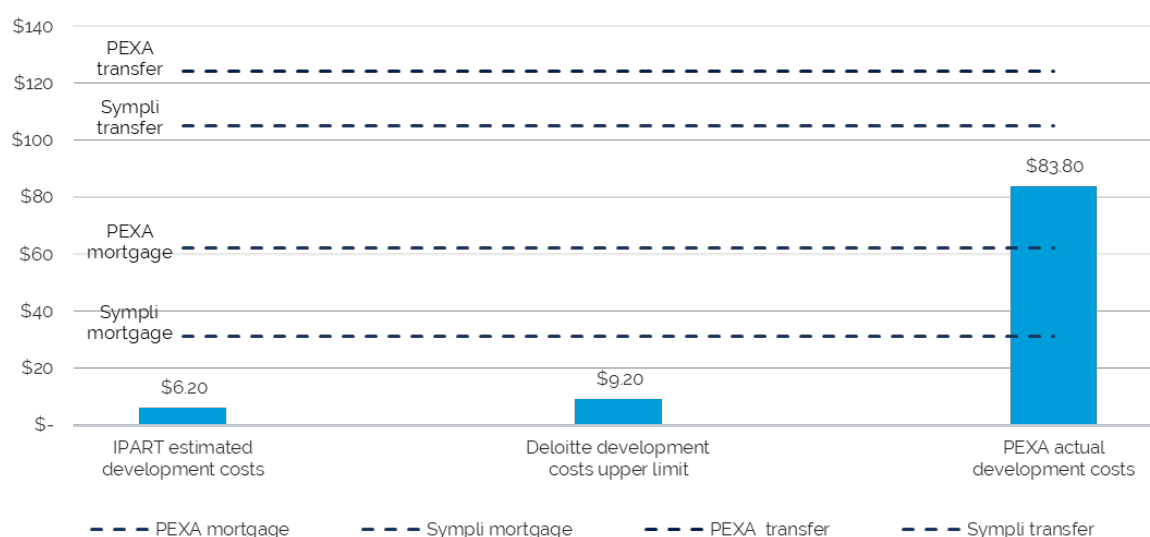
We do not think that setting the surcharge based on PEXA or Sympli's actual capital expenditure on their platforms is reasonable because it is not clear that PEXA or Sympli's costs are efficient. PEXA, as the first ELNO, is likely to have encountered a costlier development path, as the requirements and protocols for eConveyancing were not necessarily known at the time of PEXA entering the market. Also, both ELNOs may have invested in additional functionality that has led to higher costs. In our view, the default RELNO surcharge should be based efficient costs, rather than actual costs.

Figure 5.1 compares the recommended maximum default RELNO surcharge of \$6.20 (based on our estimate for initial development costs of \$7.7 million) to current ELNO service fees charged by PEXA and Sympli for mortgage and a transfer (with financial settlement). We have also modelled other scenarios for the surcharge based on:

- the upper limit of Deloitte's estimated range for development costs (\$14.5 million) which would lead to a surcharge of \$9.20
- PEXA's suggested approach using PEXA's actual ELNO development costs, which would lead to a surcharge of \$83.80.

We do not consider that a surcharge based on PEXA's suggested actual costs is reasonable. Figure 5.1 shows that in this scenario, the default RELNO surcharge would exceed both PEXA and Sympli's ELNO service fees for a mortgage, and would be close to Sympli's ELNO service fee for a transfer.

Figure 5.1 Scenario modelling for default RELNO surcharge



Note: In an interoperable transaction, the Responsible subscriber would typically be the incoming mortgagee for a refinance, who pays the ELNO service fee for the mortgage document. For a transfer transaction, the Responsible subscriber would typically be the incoming mortgagee or the purchaser's solicitor/conveyancer, who pays the ELNO service fee for the mortgage document and the transfer document, respectively.

Prices are based on PEXA and Sympli's ELNO service fees for mortgages and transfers with financial settlement as at May 2023. See PEXA, [Pricing schedule Effective from 1 July 2022](#); Sympli, [Our pricing](#).

Source: IPART analysis.

5.4.2 We have not included webhosting costs in the default RELNO surcharge

In the 2019 review, AECOM considered a benchmark efficient ELNO would be cloud-based, most likely through a proprietary web hosting service. Hosting costs are driven by usage and how resilient and responsive the system needs to be as well as the types of data or files being sent through the system.¹²⁶ As discussed in Chapter 4, PEXA raised hosting costs (e.g. server and bandwidth load) for consideration as part of an interoperable transaction fee.¹²⁷

For the Draft Report, we included an annual hosting cost of \$10,630 in the default RELNO surcharge, based on AECOM's advice.⁹ We considered that including this cost in the default RELNO surcharge would provide ELNOs with incentives to make sufficient investment in maintaining an appropriate level of web hosting capacity.

In response to the Draft Report, PEXA agreed that web hosting costs should be included in the default RELNO surcharge, but that its annual hosting costs were \$6 million in 2021-22, and are expected to be \$7.5 million in 2022-23.¹²⁸

Sympli submitted that it disagrees with the inclusion of web hosting in the calculation of default RELNO surcharge. Sympli submits that it is not currently contemplated that having sufficient bandwidth or web hosting capability would cause a RELNO switch; instead, insufficient capacity may cause an ELNO to breach its service level obligations under the MOR.¹²⁹

We agree with Sympli's view that under the MORs, an ELNO must ensure that the ELNO system meets certain performance levels (shown in Box 5.3) and that the ELNO must monitor performance against these levels and maintain records of that monitoring.¹³⁰

While it is possible that performing the RELNO role may have some impact on webhosting costs, it is not clear what the materiality of this cost is at this stage. It is also not clear that a PELNO would be incentivised to 'under-invest' in webhosting capacity. Therefore, we have decided to exclude webhosting costs from the calculation of the default RELNO surcharge. However, we recommend that webhosting costs be considered for inclusion in interoperable transaction fees at the next review. Future reviews should consider whether there is evidence that the frequency of performing the RELNO role impacts webhosting costs.

⁹ In our 2019 review of the eConveyancing market in NSW, we estimated that a benchmark efficient ELNO would incur around \$10,000 per year in webhosting costs in (\$2018-19). The estimate was based on typical rates from the market and AECOM advised that the costs remain relatively stable. Therefore, we adopted the cost estimate we used in the 2019 review after adjusting for inflation.

Box 5.3 ELNO system performance requirements

Under the MORs, an ELNO must ensure that

- the system is available at all times (exclusive of scheduled maintenance)
- the system is available at least 99% of the time, and 99.8% of the time from 6am to 10pm on business days
- the time taken by the ELNO system to respond to a user-initiated request is less than 3 seconds on average
- the ELNO service is not disrupted for the same root cause more than twice in a six-month period.

Source: [Model Operating Requirements, version 6.2](#), Operating Requirement 11.1 and Schedule 2.

5.4.3 We used PEXA's transaction volumes to forecast eConveyancing volumes

After establishing the revenue requirement for the RELNO based on the estimated capital cost of developing financial settlement and lodgment infrastructure, we divide the revenue requirement by the forecast annual eConveyancing volumes. We have used data published in PEXA's annual report to estimate annual eConveyancing volumes and adjusted it to account for longer-term property market conditions. This is different from the approach taken in the Draft Report where we used data from the Australian Bureau of Statistics (ABS) to forecast eConveyancing volumes.

We considered 3 options for forecasting demand for eConveyancing:

- using the number of eConveyancing **dealings** based on data on the number of paper and electronic dealings collected from various land registries across all jurisdictions.
- using the number of property transfer and refinancing **transactions** based on transfer and refinancing activity data from the ABS.
- using the number of eConveyancing **transactions** published in PEXA's annual report for 2021-22 and adjusting them to account for longer-term property market conditions.

The difference between dealings and transaction is that a transaction can often involve several dealings (as discussed in chapter 4). Therefore, the volume based on the number of *dealings* can be substantially higher than that based on the number of *transactions*. We consider a default RELNO surcharge per transaction to be a more appropriate charging structure than a default RELNO surcharge per dealing (this discussed further in Box 5.4). PEXA submitted to the Draft Report that it agrees the default RELNO surcharge should be payable per transaction, not per dealing.¹³¹

Box 5.4 We considered whether to the default RELNO surcharge should be charged on a per-dealing basis

A default RELNO surcharge per dealing would allow an ELNO that was initially designated as the RELNO but could not perform the role to pay for only those dealings for which it could not fulfil its role. However, as noted in chapter 4, not all dealings can be attributed to a single party (e.g. a transfer is prepared by both the vendor's representative and the purchaser's representative).

This would require deciding an allocation method for dealings where multiple parties are involved in preparing the dealing. Therefore, estimating a default RELNO charge per dealing is likely to be complex.

There are material differences between PEXA's transactions and ABS transaction data and we have adopted PEXA's as being the more accurate for our purposes

For the Draft Report we estimated the number of transactions using ABS data for refinances and transfers between 2019-2022. We used the average number of transactions as the base year and then applied a 15% increase in transaction volumes from 2022-23 to 2023-24.^r PEXA submitted that the growth rate used for the Draft Report was too high and suggested using a more conservative growth rate, reflecting property market conditions over a longer period.

We compared ABS data for transfers and refinances to transfer volumes published in PEXA's annual report and found material differences between the two sources (as shown in Table 5.1). We consider that PEXA's transaction volumes are likely to be a more accurate indication of eConveyancing volumes and have decided to adopt PEXA's transaction volumes instead.

Table 5.1 Comparison of ABS and PEXA data on transaction volumes in 2021-22

Transaction type	PEXA eConveyancing transactions	ABS data (assuming 85% eConveyancing)
Refinances	472,000	530,000
Transfers	787,000	505,000
Total	1,259,000	1,035,000

Note: The ABS does not publish data for the number of eConveyancing transactions. Therefore we have assumed that 85% of all transactions are completed via eConveyancing. Numbers are rounded.

Source: IPART analysis, PEXA Group Limited, Annual Report 2022, p 12, Australian Bureau of Statistics.

^r Our analysis shows that the number of transfer and refinancing activities increased by 15% to 21% per annum on average over the sample period above. Also, the average increases did not differ significantly between different scenarios. Given this, we assumed based on the low end of the average increase.

We have adjusted PEXA's 2021-22 transaction data to produce a forecast that reflects longer-term trends

PEXA submitted to the Draft Report that IPART should calculate a 7-year average of transfer volumes to simulate an end-to-end property cycle. We agree that a longer-term approach is reasonable, but are not able to use PEXA's transaction volumes over a longer period, as these volumes are likely to be impacted by transition from paper conveyancing to eConveyancing. The uptake of eConveyancing has increased substantially over the last 7 years. Therefore, we have applied an adjustment factor to PEXA's 2021-22 transaction volumes using ABS data. The adjustment factor calculates the difference between ABS transaction volumes in 2021-22 and the 7-year average. Based on this approach, we adjusted PEXA's actual transaction volumes in 2021-22 downwards by 20% and 36% for transfers and refinances respectively.⁵

As discussed in chapter 4, PEXA's transactions include a third category known as 'other lodgments'. We did not include an estimate for other lodgments in our Draft Report. Our volume forecast used in the Draft Report only considered the number of *interoperable* transactions (which we consider are likely to be refinance and transfers). However, we consider that it is more reasonable to calculate the surcharge based on *all* eConveyancing transactions (including those transactions that will not be interoperable). This is because, in practice, an ELNO will recover its costs of developing lodgment and financial settlement infrastructure from all transactions.

To estimate the number of 'other lodgments' we have subtracted PEXA's transfer and refinance transactions from PEXA's total transactions in 2021-22. This results in an estimate for 'other lodgments' of around 190,000.

PEXA's submission to the Draft Report suggests it would be reasonable to apply a growth rate to transaction volumes of 1.7% for population growth and an additional 4% to reflect the continued uptake of eConveyancing.¹³² To minimise complexity, we have not applied a growth rate to our forecast transaction volumes.

We then assumed that a benchmark ELNO has 50% market share. Currently, 2 ELNOs – PEXA and Sympli – are approved to operate in most jurisdictions. We considered a benchmark efficient ELNO with an equal market share of 50% to be a reasonable assumption that reflects a competitive market outcome (although not the only possible competitive market outcome).

Table 5.2 shows our forecast eConveyancing transaction volumes and compares them to forecasts used in the Draft Report. Box 5.5 explains the steps in our approach to forecasting transaction volumes.

⁵ We calculated the 7-year average for household external refinancing activities, based on ABS data. Data on investor refinancing activities and household *internal* refinancing activities is not available prior to July 2019, so we were unable to include this data in the calculation of the 7-year average.

Table 5.2 Forecast number of property and refinancing transactions

Transaction type	Draft Report (average over proposed 2-year regulatory period) ^a	Final Report
Transfers	391,000	654,000
Refinances	366,000	346,000
Other lodgments	0	193,000
Total eConveyancing transactions	757,000	1,194,000
Total volumes assuming ELNO has 50% market share	379,000	597,000

^aIn the Draft Report, we proposed a 2-year regulatory period.

Note: Numbers are rounded

Source: IPART analysis.

Box 5.5 Approach to forecasting transaction volumes

To forecast eConveyancing volumes we:

1. Used PEXA's transaction volumes for transfers (787,000) and refinances (472,000) for 2021-22 (published in its annual report)
2. Calculated the difference between 2021-22 transfer and refinance transactions and the 7-year average using ABS data. ABS data showed that transfers and refinances were 20% and 36% above the 7-year average, respectively.
3. Adjusted PEXA's transaction volumes for transfers and refinances downwards by 20% and 36%, respectively.
4. Estimated the number of 'other lodgment' transactions by subtracting transfer and refinance transactions from PEXA's total transactions for 2021-22.^a
5. Added the number of 'other lodgment' transactions to the adjusted number of transfer and refinances transactions in Step 3.
6. Assumed a benchmark ELNO has 50% market share.

a. PEXA's total transactions for 2021-22 were around 4 million. Based on our analysis, this measure for transactions appears to refer to the number of times ELNO service fees were charged to subscribers. We subtracted transfer and refinance transactions from total transactions to calculate the number of 'other lodgments'. To calculate the number of times fees were charged for transfer-related transactions we multiplied 787,000 by the typical number of subscribers in a transfer transaction (3.7). To calculate the number of times fees were charged for refinance transactions, we multiplied 472,000 by the typical number of subscribers in a refinance transaction (2).

5.4.4 Calculating the surcharge

In Issues Paper 2, we proposed that once we identified the total efficient costs required for the default RELNO surcharge, we would add a profit margin which adds the return on assets (i.e. shareholder investment) and tax allowance components of the total efficient costs.

We have treated the capital cost of developing lodgment and financial settlement infrastructure as an annuity and estimated the capital cost as the whole-of-life cost including annual capital expenditure. The annuity payment includes an allowance for depreciation, interest on borrowing, tax and profit on shareholder investment.

We used a pre-tax WACC^t of 8.0% to calculate the annuity, calculated using our standard WACC methodology and used the same WACC to calculate the net present value of the revenue and costs to set the price. Appendix B sets out our approach to calculating the WACC, including our response to WACC-related issues raised by stakeholders. The WACC has increased substantially from the Draft Report, mostly due to a change to the gearing ratio which has decreased from 60% to 15%.

5.4.5 PEXA suggested other ways that the surcharge could be set

In its submission to Issues Paper 2, PEXA submitted that initially the surcharge should be set as 50% of the ELNO Service Fee of the RELNO for all subscriber roles in the transaction played by a defaulting RELNO. It argued that this is reasonable based on PEXA's actual costs for establishing relevant capabilities.¹³³

We explained in the Draft Report that we do not agree that the default RELNO surcharge should be set as 50% of the ELNO Service Fee. We consider the default RELNO surcharge should reflect the per transaction share of the costs of developing a full suite of financial settlement and lodgment infrastructure.

ELNO service fees are likely to reflect a wider range of costs than this, and so it is not appropriate to set the default RELNO surcharge based on a percentage of ELNO service fees. For example, PEXA's annual report indicates that its operating costs were around \$93 million in 2021-22, with around \$47 million in general and administration costs and around \$20 million in sales and marketing costs. As discussed in section 5.5.1, PEXA submits that it has spent \$182 million on developing its platform, which amounts to around \$14.6 million per year on average since PEXA's inception. We consider that setting the surcharge at 50% of ELNO service fees is likely to lead to ELNOs recovering more than the cost of developing lodgment and settlement infrastructure.

PEXA submitted to the Draft Report that the draft default RELNO surcharge suggested by IPART of \$2.90 would only be 1% of the total Subscriber fees collected for a typical transfer. If the RELNO is only acting for one of the parties, it would receive on average just 26% of the total revenue even though it provides most of the functionality for the transaction. PEXA considers that total Subscriber fees would be \$284.24 for a typical transfer where PEXA acts for one financial institution and Sympli acts for the three other parties.¹³⁴

^t We used a pre-tax WACC as a tax allowance is included in the annuity.

ELNO service fees vary substantially depending on the type of transaction service and the party that the ELNO is representing in the transaction. PEXA and Sympli's ELNO service fees also vary widely for the same transaction services.

In a typical transfer transaction, the average ELNO service fee per subscriber is around \$78.^u Our recommended maximum default RELNO surcharge of \$6.20 represents around 8% of the average ELNO service fee for a transfer.

In a typical refinance transaction, the average ELNO service fee per subscriber is around \$41.^v The maximum default RELNO surcharge represents around 15% of the average ELNO service fee for a refinance.

^u Based on the average of PEXA and Sympli's ELNO service fees for a transfer, mortgage and discharge of mortgage, assuming the transfer ELNO service fee is paid by both the vendor and the purchaser.

^v Based on the average of PEXA and Sympli's ELNO service fees for a mortgage and discharge of mortgage.

6 ELNO service fees and market design

In Issues Paper 2 we noted that, through stakeholder feedback and our own analysis, we had identified broader issues with the pricing of ELNO services and the design of the eConveyancing market. While they are important issues that involve categories of cost that an ELNO should be able to recover, in our view, these costs should not be recovered through interoperable transaction fees.

We referred these issues to ARNECC. As a result, the then Minister, on ARNECC's request, has amended our terms of reference to include a review of ELNO service fees, to be done in the future once certain conditions have been met. ARNECC also decided not to revisit the issue of market design at this time.

This chapter explains how and why our terms of reference have been amended.

6.1 IPART will review ELNO service fees

IPART's terms of reference have been amended to require us to investigate and recommend ELNO service fees, in addition to completing our review of interoperability pricing. A review and update of ELNO service fees will ensure these fees allow ELNOs to recover their efficient costs within current operating conditions and will ensure that subscribers pay no more than they need to.

We will start investigating and making recommendations about ELNO service fees when one of the following occurs, whichever is the soonest:

1. six months after Day 2 functionality^w is available to facilitate interoperable transactions
2. ARNECC notifies IPART that an ELNO has applied to ARNECC to change its Pricing Table because a change in law has given rise to a change in the ELNO's operating costs
3. 1 July 2025, or
4. ARNECC notifies IPART it is to commence work on recommending ELNO service fees.

We will have 12 months to complete the review and prepare a Final Report for ELNO service fees from the date of commencing work on it.

The sections below explain why we have been asked to review ELNO service fees.

^w The Day 2 milestone has now been separated into 3 releases.

6.1.1 Conditions have changed since ELNO service fees were last reviewed

In 2019, the NSW Government asked IPART to review the eConveyancing market in NSW, including recommending ELNO service fees.¹³⁵ For that review, we developed a pricing model to assess whether prices being charged by ELNOs were reasonable, based on efficient costs. We concluded that PEXA and Sympli's ELNO services fees were reasonable. Interoperability had been foreshadowed at the time, but a model for interoperability had not been chosen. We also did not assess whether each transaction price was individually cost-reflective.

To take account of market developments and any changes to costs, we recommended ELNO service fees be reviewed again within 2 years. Since 2019, there have been changes to the operating conditions and costs of ELNOs, including additional costs associated with establishing and maintaining interoperability.

In Issues Paper 1, we observed that implementing interoperability may increase overall costs for ELNOs in the short term, implying that ELNO service fees may need to increase.¹³⁶ However, the net impact of implementing interoperability on ELNO service fees is uncertain, as other inputs to the price calculation may have changed. For example:

- innovation and efficiency may have lowered the costs of eConveyancing
- transaction volumes have proven to be higher than forecast in 2019, suggesting lower costs per transaction than we allowed for
- the WACC has changed.

Even in more mature, stable industries, with minimal changes in operating conditions, a pricing period is usually no longer than 5 years. However, more frequent review is required in industries undergoing rapid change.

A review of ELNO service fees will also allow IPART to assess the effectiveness of competition in the eConveyancing market and the need for ongoing pricing regulation. The eConveyancing market is highly concentrated, with PEXA having almost 100% market share.¹³⁷ As stakeholders have noted, competition from interoperability in eConveyancing services may lead to further innovation from ELNOs and efficiencies, that result in lower costs and improved services for subscribers.¹³⁸ The review of ELNO service fees will allow us to assess the impact of competition on ELNO pricing.

6.1.2 Continuing current ELNO service fees in real terms may no longer be appropriate

PEXA developed its initial pricing schedule at a time when paper conveyancing was still the dominant conveyancing mode, and therefore it set its prices by comparison to the market at that time. Sympli set its prices at a discount to PEXA's prices.¹³⁹

Since February 2019, the MORs have allowed PEXA and Sympli to raise the prices outlined in their pricing schedules once a year on 1 July, up to the year-on-year CPI growth to the previous March quarter.¹⁴⁰ This price regulation is based on the price schedule each ELNO had at the time of coming into the eConveyancing market, and not on the efficient costs of a benchmark ELNO.

Further, ELNO service fees for different classes of subscriber cannot be rebalanced because individual fees are capped. In a typical 4-party transaction, involving a vendor, purchaser, and financial institutions for both parties, under PEXA's current pricing schedule:

- subscribers for the vendor and purchaser would each pay \$123.97
- the incoming mortgagee would pay \$62.04
- the outgoing mortgagee would pay \$45.76.¹⁴¹

These prices may not represent an ELNO's costs for each subscriber in an interoperable transaction. Interoperability has exposed (but not caused) the cross-subsidies in ELNO service fees between different classes of subscriber and/or transaction type that may mean these fees are not individually cost-reflective.

Stakeholders have acknowledged some of these issues. For example, Sympli submits that:

...the MOR Guidance Notes set out that ELNO pricing should be cost reflective, and that cross-subsidies should be minimised and would need to be justified as being in the public interest. ...this may mean ELNOs should take the opportunity of shifting market structures and interoperability to review their pricing and ensure it remains appropriate in the present market environment. Competition in eConveyancing presents an opportunity not only for innovation in service and functionality, but also on pricing. ELNOs should ensure that pricing is competitive and cost-reflective, in accordance with their obligations under the MOR.¹⁴²

A review of ELNO service fees will allow IPART to assess whether current prices reflect their underlying costs, for both different transaction types and classes of subscribers.

6.1.3 Indicative modelling shows ELNO service fees are sensitive to changes to inputs

As discussed above, in 2019 we developed a pricing model to assess whether prices being charged by ELNOs in NSW were reasonable, based on efficient costs. We modelled benchmark efficient prices based on a range of market share assumptions for both a new entrant ELNO and an established ELNO.

We have updated this pricing model to show the impact of changes to inputs on ELNO service fees, including:

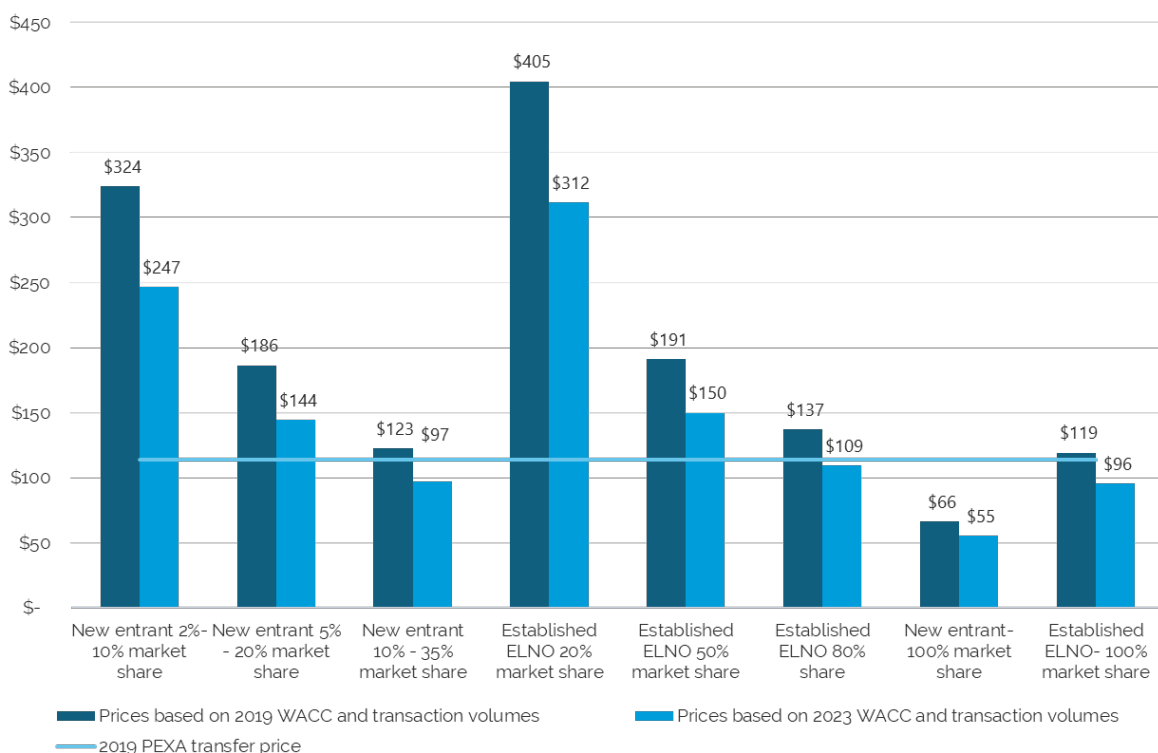
- a WACC (post-tax real) of 5.7% (previously 4.6% in 2019), reflecting the current WACC we have used for interoperable transaction fees^x
- a dealing volume estimate of 1 million per year (previously 736,000 in 2019). From 2019 to 2022, the total number of NSW dealings (including electronic and paper) has increased from around 820,000 to 980,000.¹⁴³

^x In 2019, we calculated ELNO Service Fees using a post-tax real WACC. However, our maximum interoperable transaction fees calculation uses the pre-tax real WACC.

Changing these inputs results in a decrease in the price of a transfer compared to the 2019 pricing model (see Figure 6.1). For instance, under the scenario of an 'established ELNO with high market share', the transfer price would decrease from \$137 to \$109. We have presented prices in \$2018-19, consistent with how they were presented in our 2019 review and have held all other inputs constant, including costs.

Our review of ELNO service fees will consider whether other inputs have changed, and the impact this would have on fees. We will also consider relevant inputs from other jurisdictions, not just NSW.

Figure 6.1 Illustrative prices for a benchmark efficient ELNO (transfer with financial settlement) (\$2018-19) including GST



a. The market share assumptions for 8 different scenarios were calculated across a 3-year period: new entrant- low market share (2%, 5%, 10%), new entrant- medium market share (5%, 10%, 20%), new entrant- high market share (10%, 20%, 35%), established ELNO- low market share (20% each year), established ELNO- medium market share (50% each year), established ELNO- high market share (80% each year), new entrant- 100% market share (100% each year), established ELNO- 100% market share (100% each year).

Source: IPART, AECOM modelled efficient costs.

PEXA submitted to the Draft Report that "on IPART's preliminary analysis, the interoperable market can only produce outcomes worse for consumers than a well-regulated wholesale provider market structure." PEXA considers that building 2 sets of eConveyancing infrastructure is more costly than a well-regulated single system and that consumer prices would need to be higher to accommodate these higher fixed costs.¹⁴⁴

We do not agree that competition and interoperability will result in worse outcomes for consumers. In our 2019 review, we outlined our view that competition, including the threat of competition, drives innovation, technology improvements and lower costs.¹⁴⁵

Sympli's submission to the Draft Report notes that "competition in the eConveyancing market will place downward pressure on prices. Not only is this evident given the price to consumers offered by Sympli in comparison to PEXA, but this has also occurred in other industries. For example, when Chi-X entered the stock exchange market, ASX reduced their transaction fees significantly. In addition, Telstra's average prices fell dramatically between June 1995 and June 1999 as a result of the introduction of competition to the market, despite the introduction of interoperability in the industry."¹⁴⁶

6.1.4 Costs of establishing and maintaining interoperability

We have recommended that the costs of establishing and maintaining interoperability should be recovered from an ELNO's subscribers through ELNO service fees.

Current ELNO service fees were set before the costs of establishing and maintaining interoperability were incurred. These costs will include additional capital and operating expenditure for development and maintenance of the infrastructure and systems to enable an ELNO to connect to other ELNOs. Other operating expenses, such as customer support, could increase with the introduction of interoperability. However, the costs and number of staff required to maintain IT assets used for lodgment and settlement may not be affected by interoperability.

PEXA submits that the task of establishing and maintaining interoperability has been more complex and involved more significant financial investment than anticipated at the time of IPART's 2019 review. It notes that, at this stage, the anticipated interoperability build-costs involve primarily the technical build required for interoperability. However, there may be significant additional costs to accommodate changes to the existing governance, change and release management, contractual, regulatory, legal, risk and liability allocation and insurance framework. There will also be significant training and education costs for all industry participants.¹⁴⁷

PEXA considers that:

- there is an inherent uncertainty about the costs of establishing and maintaining interoperability - there may be costs to establish and maintain interoperability that are currently unknown
- future reviews that consider pricing for eConveyancing services will likely need to consider the scope of costs involved with establishing and maintaining interoperability.¹⁴⁸

It submits that:

...these additional costs imposed by government regulation should be reflected by an appropriate increase in overall subscriber fees in the short-term.¹⁴⁹

Other stakeholders, including Sympli, the Law Council of Australia and Tasmania's Land Titles Office, agree that the costs of establishing and maintaining interoperability should be recovered from all subscribers.¹⁵⁰ Sympli submits that this should occur through ELNO service fees.

6.2 ARNECC will not revisit market design at this stage

The MORs require ELNOs to ensure that the ELN is available to each land registry capable of receiving electronic instruments and other documents, and to subscribers in all States and Territories.¹⁵¹ The ELN must enable the lodgment of all registry instruments and other electronic documents (which are capable of lodgment).¹⁵² These requirements ensure eConveyancing is accessible to all Australians. This is a type of universal service obligation (USO). However, there is currently no mechanism to enforce how and when ELNOs provide full coverage, and ELNOs are not required to establish connections to every financial institution.

After more than 10 years, PEXA does not have full coverage of lodgment instruments in jurisdictions with eConveyancing. There are 2 jurisdictions (Northern Territory and Tasmania) with no eConveyancing yet.

PEXA and Sympli currently have nationally consistent pricing for eConveyancing transactions. These prices may provide cross-subsidies that ensure that subscribers in less populous jurisdictions do not pay higher prices than subscribers in more populous jurisdictions. Otherwise, subscribers in less populous jurisdictions could potentially be paying much higher prices, as fixed costs are recovered from fewer customers.

PEXA explains that "the rationale for this cross-subsidy is that all entities in conveyancing benefit if the number of [paper] transactions is minimised." PEXA adds that "the cross-subsidy may also reflect the preference of ARNECC, as an intergovernmental body made up of States and Territories, for fiscal equalisation principles that so far as possible deliver an equivalent level of government services to residents of different states".¹⁵³

PEXA notes that it is likely that new ELNOs will not reach PEXA's level of coverage for many years, meaning they will have substantially different fixed costs. PEXA argues that IPART should consider these fixed costs in setting interoperable transaction fees. Failing to do so may result in new entrants being incentivised to cherry pick the highest volume transactions in the largest jurisdictions, while potentially offering prices that do not include the fixed costs of building back-end settlement and lodgment functionality for other transactions.¹⁵⁴

Sympli disagrees with this position. It argues that there is nothing specific to PEXA that requires it to provide a universal level of service. The requirement to develop a level of infrastructure and capability to support eConveyancing transactions in each jurisdiction applies to all ELNOs. It notes that this contrasts with the concept of a USO in the telecommunications industry, where Telstra is specifically required, to the exclusion of other telecommunications operators, to provide a universal level of service nationally, with an acknowledgement that this is below cost.¹⁵⁵

Sympli notes that there are several enforcement regimes being contemplated at State and ARNECC levels to ensure ELNOs comply with MORs.¹⁵⁶ It also notes that while there is no regulatory mandate to establish payment connections with all financial institutions, there are market incentives to do so.¹⁵⁷

"Payment connections with financial institutions are critical for ELNOs to ensure that they are able to participate in all transactions, both interoperable and single-ELN... Without these payment connections, ELNOs are unable to offer a comparable and compelling ELN offering. This incentive drives ELNOs to complete payment connections."

Sympli submits that it has completed payment connections to the 4 major banks, with further connections to follow.¹⁵⁸

We agree that the USO combined with national pricing may set up incentives for ELNOs to delay full roll-out in order to cherry-pick the most profitable jurisdictions and transactions. We consider that it would not be appropriate to recover costs associated with a USO through an interoperable transaction fee charged by a RELNO to a PELNO, as USO costs are driven by market design and not by the model of competition (interoperability) chosen. The USO is a market design issue that goes well beyond interoperability pricing and so it will not be resolved through our recommendations on interoperable transaction fees.

In Issues Paper 2 we noted that there may be more economically optimal ways to design a market that provides eConveyancing services to all Australians than a USO. In response, ARNECC has indicated it will not investigate the USO at this stage but may revisit this issue in the future. It intends to maintain the current Model Operating Requirement (MOR) that all ELNOs must roll out in all jurisdictions,¹⁵⁹ and is developing an enforcement regime.^y The enforcement regime is part of a proposed second bill of amendments to the Electronic Conveyancing National Law (ECNL), which governs the MORs. It is proposed the amendments to the ECNL will be tabled before interoperability is rolled out. Appropriate enforcement mechanisms that ensure ELNOs comply with their requirement to provide all services in all jurisdictions will prevent ELNOs from 'cherry picking' the most profitable services. We consider there are other mechanisms that will support this, which are discussed in more detail below.

6.2.1 There are a range of mechanisms to incentivise ELNOs to develop comprehensive capability

In addition to the default RELNO surcharge, there are other regulatory mechanisms and market forces that will incentivise ELNOs to offer comprehensive capability.

Throughout our review, PEXA has raised concerns that new entrant ELNOs are likely to choose to pay the default RELNO surcharge instead of making the necessary investments to provide comprehensive capability. PEXA considers other ELNOs could 'cherry-pick' the most profitable services while 'free-riding' on PEXA's capability to execute many of the less profitable transactions (and collect the ELNO service fees for these transactions).¹⁶⁰

On the other hand, Sympli considers there are stronger incentives that would encourage an ELNO to build its own capabilities. Sympli notes the definition of an ELNO System under the MORs includes both lodgment and financial settlement and that ELNOs are required to ensure that financial settlement is irrevocable before completing lodgment. Sympli also considers "current market forces are unlikely to enable a new entrant to build a sustainable ELN that utilises interoperability infrastructure to avoid building its own capabilities".¹⁶¹

^y Each jurisdiction is consulting their relevant Departments on the proposed enforcement regime. See ARNECC, [Ministerial Statement](#), 9 December 2022, p 1.

In our view, the default RELNO surcharge is not the only way of ensuring that ELNOs make the necessary investments to offer comprehensive capability. The default RELNO surcharge should operate alongside the broader regulatory framework and other market forces. For example:

- As noted above, the MORs require ELNOs to offer all document types in all jurisdictions in accordance with their business plans, and the Registrar can require ELNOs to implement other functionality. If ARNECC considers that an ELNO has not made the necessary investments, it can require the ELNO to do so.
- Not every transaction will be interoperable. In a non-interoperable transaction, a new entrant ELNO will not be able to 'free-ride' on PEXA's capability. If a new entrant ELNO does not invest in comprehensive functionality, this will likely limit its ability to attract and retain subscribers, compromising its market share. This is a powerful market force to incentivise ELNOs to develop comprehensive capability.

At the Draft Report workshop, a stakeholder expressed a view that ELNOs are only required to provide lodgment and there is nothing in the regulatory framework that requires ELNOs to connect to revenue offices, financial institutions, and other organisations like the Australian Tax Office.¹⁶²

However, Sympli's submission to the Draft Report notes that:

- the MORs define an ELNO system as preparing electronic conveyancing documents, facilitating financial settlement, and lodging electronic registry instruments or documents at a land registry.
- the MORs (Operating Requirement 10.8) require irrevocable financial settlement before an electronic registry instrument or other document can be lodged. Therefore, ELNOs cannot offer single-ELN transfer capability without infrastructure for financial settlement, either internally or outsourced.
- the AusPayNet Industry Payments Code is under development and will likely require ELNOs to have certain functionality to participate in the eConveyancing market.^z ELNOs must comply with AusPayNet Industry Payments Code under the Electronic Conveyancing National Law (ECNL) and the MORs. Sympli considers this will supplement the incentives and requirements set out in the MORs.

Sympli submits that there are also market forces that incentivise an ELNO to offer financial settlement capability. "A majority of PEXA's revenue comes from transfer transactions, which is not possible without financial settlement capability given the MORs. This incentive is far greater than the default RELNO surcharge."¹⁶³

^z AusPayNet is the industry association and self-regulatory body for payments. AusPayNet is facilitating the joint development of a technology neutral industry code on e-Conveyancing payments. The industry code will standardise financial settlement for e-Conveyancing, enabling financial institutions and intermediaries who are payment integrated with one ELNO to integrate with any subsequent ELNO. Auspaynet, [Annual Review 2022](#), p 17.

There are also conditions of approval in NSW that require an ELNO to integrate with the Revenue Office.^{aa} Unlike NSW, other jurisdictions' conditions of approval are in the form of an 'operating agreement', which is not publicly available. However, Operating Requirement 10.9 requires an ELNO to ensure duty has been paid to the state revenue office, before a document can be registered with the land registry. Therefore, ELNOs must establish a connection with state revenue offices to comply with Operating Requirement 10.9.

6.2.2 There may also be barriers to new entrant ELNOs developing comprehensive capability

As discussed in section 2.1.1, because ELNO systems currently cannot interoperate, PEXA benefits from a 'network effect', which limits competition because, without interoperability, new entrants will not be able to sustain a presence in the market. This is likely to limit a new entrant ELNO's incentives to develop comprehensive capability. In addition, we have heard from Sympli that there may be other barriers to ELNOs to developing comprehensive capability.

All ELNOs must use the National Electronic Conveyancing Data Standard (NECDS) to interact and lodge documents with the land registry. These data standards are currently owned by PEXA. ELNOs will eventually pay a licensing fee to access data standards from NECDS Limited (a recently established entity).^{bb} However, until that time, Sympli has needed to enter into an agreement with PEXA to access the NECDS.^{cc}

Sympli has told IPART that PEXA has not allowed it access to the data standards for certain document types (the residual document specifications). Sympli told us it has been informed by both PEXA and ARNECC that the residual document specifications will be owned and managed by NECDS Limited once the ownership of the data standards has been transferred from PEXA to NECDS Limited. Sympli says it has requested multiple times that PEXA licence the residual document specifications to Sympli on an interim basis (as they have with the NECDS more broadly), but PEXA has refused, and stated that Sympli will need to wait for the transfer to NECDS Limited to be complete.¹⁶⁴

In our view, until interoperability is in place and the ownership of all the data standards has been transferred to NECDS Limited, there are likely to be barriers to ELNOs developing comprehensive capability.

^{aa} The NSW conditions of approval require an ELNO to within 20 Business Days after the date of the Approval, enter into an agreement with Revenue NSW governing the connectivity of the Electronic Lodgment Network (the ELN) with Revenue NSW's systems. See, NSW Office of the Registrar General, [ELNO Conditions of Approval](#), July 2020, p 1.

^{bb} PEXA's 2021 Replacement Prospectus indicates that "Following Sympli receiving its approval to operate as an ELNO, the New South Wales Registrar requested that the NECDS be made available for all ELNOs to interface with the Land Titles Offices on an equivalent basis. PEXA has supported this move, in exchange for compensation for the intellectual property rights in the NECDS and the establishment of a regulatory regime for the proper future management of the NECDS. PEXA and ARNECC are currently developing this regulatory regime, which is yet to be implemented." See, PEXA, [Replacement Prospectus](#), p 53.

^{cc} This agreement includes a cost-sharing arrangement with PEXA and other ELNOs to fund the maintenance and curation of the NECDS. See, ARNECC, [Applying to become an ELNO fact sheet](#), August 2019, p 4.

Appendices



A Terms of reference

TERMS OF REFERENCE

Interoperability pricing for Electronic Lodgment Network Operators and ELNO Service Fees for Electronic Lodgment Network Operators

I, Victor Dominello, Minister for Digital, Minister for Customer Service, 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 a pricing regulatory framework for interoperable transactions between Electronic Lodgment Network Operators (ELNOs) in accordance with this Terms of Reference.

Context

Electronic conveyancing is a system which provides for the lodgment of electronic instruments with Land Registries using an Electronic Lodgment Network (ELN). Registrars approve entities to operate ELNs and they are known as ELNOs. The two current ELNOs also facilitate the associated financial settlement of conveyancing transactions.

Today, all parties to a conveyancing transaction must subscribe to the same ELN to complete the transaction. This is because ELNs are not yet interoperable: they cannot exchange information, or ‘talk’ to each other, to complete a transaction. With more than one ELNO now operating, interoperability aims to permit subscribers (conveyancers, lawyers and financial institutions) to use the ELN(s) they choose, while other parties may use a different ELN.

All states and territories support the principle of requiring interoperability between ELNs in the Electronic Conveyancing National Law (ECNL).

To support implementation of interoperability, with the approval of all States and Territories, the NSW Parliament enacted proposed changes to the national law on 6 June 2022 (to apply in all States and Territories).

The Model Operating Requirements (MORs) are being updated to include provisions on interoperability. In particular, the interoperability regime proposes the role of Responsible ELNO, which will interact with Land Registries and Revenue Offices, and perform the transaction Settlement and Lodgment. Other ELNOs hosting subscribers in the transaction are designated as Participating ELNOs. More information is available here: <https://www.arnecc.gov.au/wp-content/uploads/2021/08/interoperability-model-overview.pdf>

It is proposed that the MORs include provisions on Interoperability Service Fees, being fees charged by an ELNO to another ELNO or to a Subscriber in relation to:

- (a) establishing and maintaining Interoperability with the other ELNO; and
- (b) carrying out the functions of the Responsible ELNO.

The first task

The Tribunal should investigate and make recommendations on:

- 1) Whether fees should be charged by the Responsible ELNO to Participating ELNOs for participation in an interoperable transaction, and whether and how any such fees should be passed on to subscribers.
- 2) Whether:
 - a) a negotiate-arbitrate model should apply to setting any such ELNO fees, and if so, the pricing principles that should apply under such model; or
 - b) a regulated method or level of price should apply to setting any such ELNO fees, and if so, what that method or level should be for 2023-24 and a method for reviewing and adjusting the price in the future.
- 3) Any amendments to the MORs required to support the most appropriate way to apply the principles or formula, as applicable.

In investigating and making recommendations regarding the fees, the Tribunal should consider:

- a) Supporting and promoting competition through ELNO interoperability pricing.
- b) Promoting ongoing investment by ELNOs.
- c) Costs (including operating and relevant capital costs) and risks incurred by different participants in an interoperable transaction and who should bear these costs.
- d) The current and evolving structure of the interoperable transaction market, with additional ELNOs potentially entering the market over the next 1-5 years.
- e) Avoiding unnecessary regulatory or administrative burdens on ELNOs or other participants in an interoperable transaction.
- f) Any other matter the Tribunal considers relevant.

The second task

- 1) The Tribunal is further requested to investigate and make recommendations on ELNO service fees, including:
 - a) Whether such fees should continue to be regulated.
 - b) If continued regulation is recommended, whether a regulated method or level of price should apply to ELNO service fees, and if so:
 - i. what that method or level of price should be; and
 - ii. when that method or level of price should apply, following delivery of the Tribunal's final report on the second task.
 - c) Future adjustment and review processes for ELNO service fees.

In investigating and making these additional recommendations, the Tribunal should consider:

- a) Supporting and promoting competition in the ELNO market.
- b) Promoting ongoing investment by ELNOs.
- c) Efficient costs of providing eConveyancing services.
- d) Equitable access to eConveyancing services for customers across Australian jurisdictions.
- e) Reasonable prices for eConveyancing services for customers across Australian jurisdictions.
- f) The current and evolving structure of the eConveyancing market.
- g) Avoiding unnecessary regulatory or administrative burdens on ELNOs.
- h) Any other matter the Tribunal considers relevant.

Process and timeframe

The Tribunal is directed to commence work on the second task when the following occurs, whichever is the soonest:

1. Six months after Day 2 functionality is available to facilitate interoperable transactions
2. The Australian Registrars' National Electronic Conveyancing Council (ARNECC) notifies IPART that an ELNO has applied to ARNECC under the price adjustment mechanism in the MORs to change its Pricing Table because a change in law has given rise to a change in the ELNO's operating costs
3. 1 July 2025, or
4. ARNECC notifies IPART it is to commence work on the second task.

The Tribunal will provide progress briefings to ARNECC at key timetable milestones, as well as upon request by ARNECC.

The Tribunal will also consult with the public, including the key stakeholders listed below, in undertaking its review, including through releasing a draft report, and provide a final report to the Minister on the first task by 30 April 2023 and the second task by 12 months after the Tribunal commences work on it.

The Tribunal will consult with these key stakeholders:

- Economic regulators from other Australian jurisdictions
- Treasuries from other Australian jurisdictions
- ARNECC nominees/Registrars
- ELNOs
- ELNO subscriber representatives
- Australian Competition and Consumer Commission

The final reports will be made publicly available on the Tribunal's website.

B Weighted Average Cost of Capital (WACC)

B.1 Final decision

We estimated a WACC for an efficient benchmark ELNO. Table B.1 sets out our WACC estimate. We adopted IPART's standard WACC methodology to calculate market-based parameters, and our decision on industry parameters are set out below:

- equity beta of 1
- gearing ratio of 15%.

IPART's measure of uncertainty (discussed below) is currently within 1 standard deviation of the long-term average of 0. As per IPART's decision rule, we recommend adopting the midpoint, **pre-tax real WACC of 8.0%** for a benchmark efficient ELNO.

Our Draft Report estimated a pre-tax real WACC of 4.4% based on an equity beta of 1 and gearing ratio of 60%. These inputs were derived from a sample of retail mortgage banks. For the Final Report, we have decided that real estate and data exchange companies are a more appropriate proxy than retail mortgage banks. Adopting this sample has resulted in no change to the equity beta, but a substantially lower gearing ratio of 15% resulting in a higher WACC of 8.0%.

Table B.1 Final decision WACC calculation for a benchmark ELNO

	Step 1		Step 2 – Final WACC range		
	Current	Long	Lower	Midpoint	Upper
Nominal risk free rate	2.5%	2.5%			
Inflation	2.80%	2.80%			
Implied Debt Margin	2.40%	2.40%			
Market Risk premium	7.7%	6.0%			
Debt funding	15%	15%			
Equity funding	85%	85%			
Gamma	0.25	0.25			
Corporate tax rate	30%	30%			
Effective tax rate for equity	30%	30%			
Effective tax rate for debt	30%	30%			
Equity beta	1.00	1.00			
Cost of equity (nominal post-tax)	10.2%	8.5%			
Cost of equity (real-post tax)	7.2%	5.5%			
Cost of debt (nominal pre-tax)	4.9%	4.9%			
Cost of debt (real pre-tax)	2.0%	2.0%			
Nominal Vanilla (post-tax nominal) WACC	9.4%	8.0%	8.0%	8.7%	9.4%
Post-tax real WACC	6.4%	5.0%	5.0%	5.7%	6.4%
Pre-tax nominal WACC	11.9%	10.1%	10.1%	11.0%	11.9%
Pre-tax real WACC point estimate	8.9%	7.1%	7.1%	8.0%	8.9%

Source: Bloomberg, Refinitiv, RBA and IPART calculations.

In Issues Paper 2, we proposed that to use a cost build up approach and add a profit margin to calculate the default RELNO surcharge. Including an appropriate margin in the default RELNO surcharge encourages competition in the eConveyancing market by encouraging economically efficient investment in infrastructure that enables interoperable transactions. Under our proposed methodology, a margin is included to compensate ELNOs for committing capital investment that allows them to act as a RELNO. As we decided not to include capital costs in the RELNO fee, the margin applies to the default RELNO surcharge only and not the RELNO fee.

We have treated the capital cost of developing lodgment and financial settlement infrastructure as an annuity and estimated the capital cost as the whole-of-life cost including any maintenance costs. The annuity payment includes an allowance for depreciation, interest on borrowing, tax and profit on shareholder investment. This approach is a simple way to include a profit margin.

We have used a pre-tax WACC of 8.0% to calculate the annuity. We used the same WACC to calculate the net present value of the revenue and costs to set the default RELNO surcharge.

B.2 Stakeholder views

In Issues Paper 2 and the Draft Report, we proposed that we would estimate an equity beta and gearing ratio for a benchmark efficient ELNO based on a sample of retail mortgage banks.

Sympli did not agree that a margin should be included. It argued that the role of an interoperable transaction fee should be to recover costs that a PELNO has avoided because they did not have sufficient infrastructure to act as a RELNO. Including a margin would result in an asymmetrical outcome, where incumbent ELNOs would make profits on top of core infrastructure they were required to build to exist in a single ELN environment. Sympli argued that if a margin must be included, mortgage banks are imperfect proxies given the debt and equity funding of the current ELNOs in market. However, it did not have a better suggestion.¹⁶⁵

PEXA agreed that estimating a WACC for ELNOs is an appropriate approach for estimating the required profit margin. However, it argued that mortgage banks are not an appropriate proxy for 3 reasons:

1. The variability and volatility of revenue is much greater for an ELNO relative to mortgage banks.
2. ELNOs are an emerging, speculative technology platform, with an inherently different risk profile to established mortgage banks. ELNOs are exposed to the technology risk of the relatively novel eConveyancing industry, and the additional technical risk of implementing interoperability.
3. Mortgage banks have a markedly different capital structure relative to ELNOs, with a significantly greater balance sheet and ability to take on debt.

PEXA submitted to the Draft Report that it does not accept mortgage banks as a proxy for ELNOs because mortgage banks have lower business risk. PEXA explained that the key drivers of risk in its business are:

- Highly volatile revenues, which are primarily driven by property transaction volumes.

- Relatively high fixed costs, which are typical of businesses whose services are primarily provided by a sophisticated IT platform.
- Highly variable levels of profitability, because of the interaction between highly volatile revenues and high fixed costs.
- A product that primarily depends on the functionality provided by a sophisticated IT platform, creating substantial business execution risks.
- Few assets that are readily securitised by lenders.

PEXA suggested that IT businesses that enable customers to trade are a much better proxy for its business. It considered that 'data and transaction processing' businesses would be a better comparator than mortgage banks.¹⁶⁶

In response to submissions to the Draft Report, we reviewed the set of proxy firms and have decided to use real estate and data exchange firms as proxy companies instead of retail mortgage banks.

We consider that an ELNO is in the business of exchanging data between buyers and sellers of real estate, entities providing finance e.g. banks, lawyers, and government entities. In our view, an ELNO has aspects of a technology firm and professional services firm, and is exposed to fluctuations in demand for real estate and refinancing. Therefore, we have identified firms that have 3 characteristics: technology, professional services, and real estate.

We narrowed the list to 34 firms by retaining those in the business of data exchange/processing or real estate services, and excluding firms that would be considered as purely technology companies.

We estimated the equity beta and gearing ratio for a benchmark ELNO using [IPART's standard methodology for estimating equity beta](#). Table B.2 provides the results of our proxy firm analysis.

Table B.2 Summary of beta and gearing estimation results

Name	Exchange	Gearing	Asset beta	Re-levered equity beta with 15% gearing
ATENTO	US	56%	0.54	0.64
CAPITA	UK	22%	0.85	1.01
GENPACT	US	12%	0.83	0.97
LINK ADMINISTRATION	AU	26%	0.99	0.98
MAXIMUS	US	3%	0.78	0.92
STARTEK	US	15%	0.89	1.05
LONDON STOCK EXCHANGE	UK	13%	0.99	1.16
ASX	AU	1%	0.89	1.05
INTERCONTINENTAL EXCHANGE	US	12%	0.97	1.14
NZX	NZ	5%	0.87	1.03
TMX GROUP	CA	13%	0.70	0.82
COMPUTERSHARE	AU	16%	0.81	0.95
ADVFN	UK	1%	0.77	0.91

Name	Exchange	Gearing	Asset beta	Re-levered equity beta with 15% gearing
FACTSET RESEARCH SYSTEMS	US	2%	1.00	1.18
MOODY'S	US	10%	1.00	1.18
MSCI	US	19%	0.96	1.13
S&P GLOBAL	US	7%	0.90	1.06
BROADRIDGE FINANCIAL SOLNS	US	13%	0.74	0.87
DONNELLEY FINANCIAL SOLNS	US	30%	1.01	1.19
INFORMATION SVCS	CA	9%	0.55	0.65
ACUMENTIS GROUP	AU	6%	0.90	1.06
ANYWHERE REAL ESTATE	US	58%	0.74	0.87
BELVOIR GROUP	UK	11%	0.79	0.93
BRIDGEMARQ REAL ESTATE	CA	30%	0.50	0.59
CBRE GROUP CLASS A	US	26%	1.35	1.58
COLLIERS INTERNATIONAL	CA	28%	0.54	0.64
FIRSTSVCS	CA	12%	0.73	0.86
JONES LANG LASALLE	US	17%	1.02	1.19
LSL PROPERTY SVCS	UK	14%	0.76	0.89
MARCUS & MILLICHAP	US	1%	1.15	1.35
MCGRATH	AU	12%	0.89	1.04
PURPLEBRICKS GROUP	UK	2%	1.54	1.81
RE/MAX HOLDINGS CLASS A	US	33%	0.83	0.98
SAVILLS	UK	9%	0.95	1.12
Median		12.6%	0.86	1.02
Mean		16.0%	0.87	1.02
Minimum		0.5%	0.50	0.59
Maximum		57.7%	1.54	1.81

Source: Bloomberg, Refinitiv and IPART analysis.

PEXA's submission to the Draft Report argued that our risk-free rate estimate does not reflect an eConveyancing firm's current interest rate environment.¹⁶⁷

IPART has a standard approach for estimating the risk-free rate across industries. We estimate the risk-free rate in 2 ways i.e. a "current" estimate, which is a 3-year trailing average (based on the regulatory period) of the yield on 10-year government bonds, and a "long-term" estimate, which is a 10-year trailing average of the yield on 10-year government bonds.

PEXA submitted that IPART's use of a long-term trailing average may be appropriate for large utilities that IPART typically regulates, but it is inappropriate for an IT business that is more exposed to current interest rates.¹⁶⁸

We found that comparable benchmark firms borrow over extended periods. PEXA, Link Group, Computershare, and London Stock Exchange, which are a small sub-set of the comparable firms, borrow at debt maturities around 4-10 years.

Therefore, we have concluded that our standard approach to calculating the risk-free rate is appropriate.

PEXA's submission to our Draft Report argued that "Gamma should be zero, not 0.25. Because eConveyancing is a nascent industry, players inherently have very large and recent capital costs relative to revenue. As a result, (like PEXA) they are unlikely to pay tax, and therefore their shareholders do not benefit from imputation credits."¹⁶⁹

We adopt a gamma of 0.25 across all regulated industries, as there is no dataset, or research conclusion, that we can rely on to make an industry-specific estimate. We have decided not to depart from IPART's standard WACC methodology for our review of interoperable transaction fees and have maintained a gamma of 0.25.

B.3 WACC analysis

B.3.1 We used IPART's standard WACC method to calculate discount rates

IPART's measure of uncertainty (discussed below) is currently within 1 standard deviation of the long-term average of zero. As per IPART's decision rule, we recommend adopting the midpoint pre-tax real WACC value.

B.3.2 We have sampled market observations to the end of March 2023

We sampled market observations to the end of March 2023, which is the last available whole month. For earlier years in the trailing average calculation of the cost of debt, we sampled to the end of February in that year. This minimises the change in WACC estimates from Draft Report to Final Report.

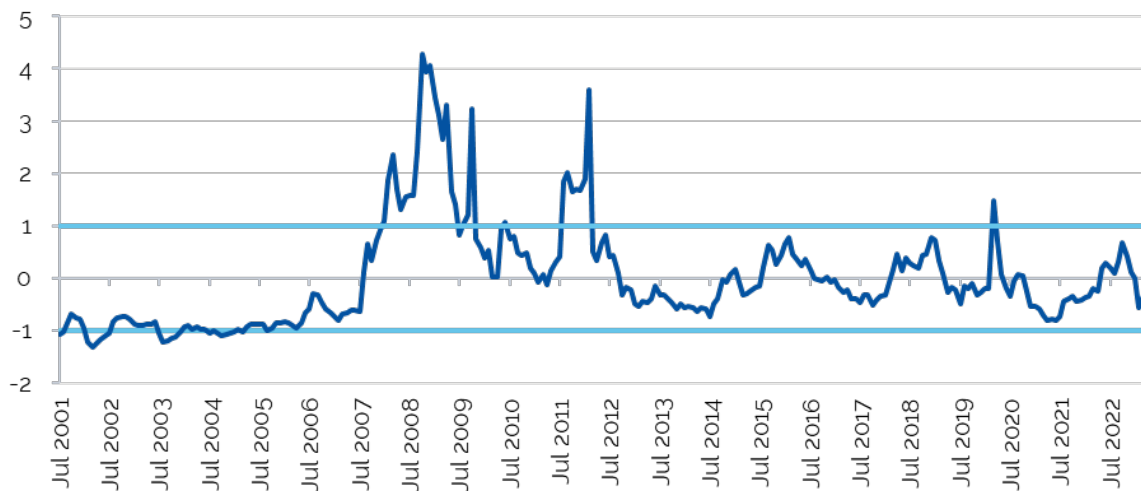
B.3.3 The Uncertainty Index remains within the acceptable range

We tested the uncertainty index for market observations to the end of March 2023. It was within the bounds of plus or minus 1 standard deviation of the long-term mean value of zero. Therefore, we recommend maintaining the default 50% – 50% weighting between current and historic market estimates of the cost of debt and the cost of equity.

The Australian Overnight Indexed Swap (OIS) rates is one of the inputs to the uncertainty index, but the data after November 2022 is unavailable. We found a temporary substitute for the OIS input (with near equivalent values) that we will use until the original source is updated or until the next IPART WACC review where we will invite stakeholder feedback on its suitability.

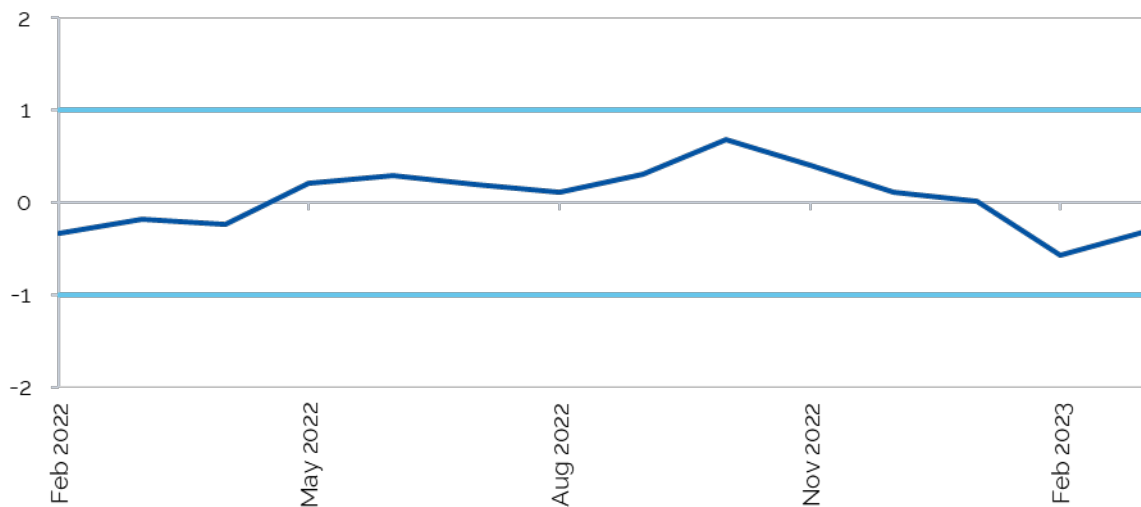
We have considered both the November 2022 index and new data for applying the test to this final WACC.

Figure B.1 IPART's uncertainty index (up to November 2022)



Source: Bloomberg, Refinitiv and IPART calculations.

Figure B.2 IPART's uncertainty index (up to March 2023)



Source: Bloomberg, Refinitiv and IPART calculations.

Tax rate

We adopted our standard tax rate of 30% for a benchmark ELNO.

B.3.4 We have used a 3-year trailing average for the 'current' WACC parameters

The length of the trailing average is the same as the length of the regulatory period by convention. In the Draft Report, we recommended a 2-year regulatory period. However, since then, the timetable for interoperability rollout has changed. We have therefore recommended a regulatory period that aligns with the interoperability milestones, rather than a fixed period. Specifically, we recommend the regulatory period applies from 2023-24 until 18 months after full interoperability has been implemented (the Day 2 (Release 3) transaction).

Calculating the WACC requires us to estimate a fixed regulatory period. To calculate the WACC, we adopted a regulatory period of 3 years, which we consider is a reasonable estimate for the likely length of the regulatory period, given the uncertainty around the timing for implementing full interoperability. The Day 1 transaction is scheduled for September 2023 and the dates for the Day 2 milestones are yet to be decided. Therefore, a 3-year regulatory period (i.e. until 1 July 2026) suggests that full interoperability may be implemented in early 2025. This aligns with the Law Society of NSW's submission that full interoperability may not commence until 2024-25.¹⁷⁰

We therefore calculated the 3-year trailing average for the current cost of debt and the risk-free rate.

B.3.5 Estimation of inflation

We have adopted a 3-year geometric mean for our inflation estimate. This is consistent with IPART convention to average inflation forecasts over the same number of years as there are in the regulatory period

B.3.6 Application of trailing average method

We calculated the cost of debt based on the assumption that a benchmark ELNO has completed the transition to the trailing average.

We introduced the concept of a transition to the trailing average for current debt, so that utilities that have previously been regulated by IPART under the pre-2018 WACC method would have the opportunity to restructure their debt portfolio to match the assumptions of the 2018 WACC method. The reason we offer a transition is to account for the possibility that an efficient firm might previously have adopted an inefficient debt structure because of our pre-2018 WACC method.

For firms that were never subject to IPART's pre-2018 WACC method, there should be no need to restructure their debt portfolio to match the 2018 WACC method assumptions. Instead, our WACC calculation assumes that the transition to trailing average is complete. This is the case for a benchmark ELNO.

B.3.7 We adopted a gearing ratio of 15%

PEXA's submission to the Draft Report suggested that the gearing ratio should be 20%, not 60%. It argued that a 60% gearing ratio does not accurately reflect PEXA's borrowing capacity or the underlying risk profile of a technology platform business and seems to be based on a non-comparable set of companies.¹⁷¹

Based on our analysis of comparable firms, we consider the benchmark gearing ratio should be 15%. We found that the median and average gearing ratios are 12.6% and 16.0% (see Table B.2). There is a relative spread of gearing ratios across the sample of 34 firms with the minimum and maximum gearing ratios being 0.5% and 57.7%, respectively. The distribution of gearing ratios seems to be symmetric as the mean and median gearing ratios are close.

We have rounded the median and average gearing ratios of 12.6% and 16.0% to the nearest 5% and have therefore adopted a gearing ratio of 15%. This is substantially lower than the gearing ratio of 60% we used in our 2019 eConveyancing review.

B.3.8 We adopted an equity beta of 1

PEXA's submission to our Draft Report suggested that the equity beta of 1 is too low, because it is exposed to the uncertainty introduced by interoperability, and other regulatory interventions increase uncertainty for investors.¹⁷² Sympli considers that an equity beta of 1 is reasonable.¹⁷³

Our comparable firms analysis suggests a benchmark equity beta of 1 is appropriate. As shown in Table B.2, we found that both the median and the average of the estimated betas is 1.02. The equity beta minimum is 0.59 and maximum is 1.81. We have rounded the median and mean re-levered equity beta at 15% gearing of 1.02 to the nearest .05 and adopted an equity beta of 1. We consider an equity beta of 1 is a reasonable estimate for a benchmark efficient ELNO. This is the same as the equity beta that was used in our 2019 eConveyancing review.

C Comparison of RELNO fee to PEXA's actual support costs

Table C.1 Comparing the RELNO fee to PEXA's actual support costs

PEXA calculation	Issues identified by IPART	IPART alternative calculation
PEXA spent around \$5.5 million on call centre support costs in 2021-22. This cost has been inflated to \$7.3 million by applying PEXA's 17% actual and forecast volume growth (see section 5.5 of PEXA's submission) and 13% inflation cumulative from 2021-22 to 2023-24	We do not agree with inflating these costs by a growth rate. We would instead divide the support costs by PEXA's actual number of transactions in 2021-22.	Divide \$5.5 million by PEXA's actual transactions in 2021-22. Based on PEXA's annual report, PEXA's transactions exceeded 4 million in 2021-22. ^a This gives a cost per subscriber of \$1.36. For this exercise, we think dividing support costs by 4 million is likely to indicate a per transaction and per subscriber cost, which is more comparable with how we recommend the RELNO fee should be applied.
The support costs have been divided by 486,000 transactions (based on PEXA's volume forecasts), which implies an average cost of \$14.90 per transaction for subscriber support costs in 2023-24. PEXA's submission notes that 486,000 is based on calculating the 7-year average of ABS total transfer volumes (2015-2022), amounting to an average of 486,000 transactions per year.	PEXA's actual support costs in 2021-22 (the numerator) would cover a broader range of transactions than just transfers. PEXA's support costs would cover transactions including refinances, caveats, and other dealing types. PEXA's transfer forecast (the denominator) would only represent a portion of the transactions that the support costs should be apportioned across. PEXA's actual transfer volumes for 2021-22 were 787,000, which is much higher than 486,000.	We would then inflate \$1.36 by CPI (around 6%) to convert this to 2022-23 dollars which gives \$1.44 as the support cost incurred on a per transaction, per subscriber basis.
PEXA estimates that the RELNO would be responsible for 40% of all queries in its capacity as RELNO, which gives \$5.98 per transaction (rounded to \$6).	To compare support costs with the RELNO fee, they should be presented on a per transaction and per subscriber basis.	The above calculation indicates that the draft recommended RELNO fee of \$0.75 represents around 52% of our estimate of PEXA's actual support costs incurred on a per transaction, per subscriber basis (\$1.44).

^a Based on our analysis 4 million transactions appears to refer to the number of times a fee was charged to a subscriber for a transaction.

Source: IPART analysis, PEXA, [submission to IPART Draft Report](#), March 2023, p 36.

D Summary of AECOM's advice

eConveyancing Update

2023 Update

01-Jun-2023
Estimating Costs of eConveyancing Services in NSW



eConveyancing Update

2023 Update

Client: IPART

ABN: 49 202 260 878

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1.0 Introduction

In 2019, IPART was asked to review the pricing regulatory framework for eConveyancing services in NSW, and engaged AECOM, working in association with Brown and Brown Conveyancers, to review, estimate and report on the costs that an efficient Electronic Lodgment Network Operator (ELNO), an efficient land registry and Revenue NSW would incur in providing specified services at the quantity and level demanded by the industry.

AECOM determined the capital and operating costs for a benchmark efficient new entrant and an established ELNO based on various market share scenarios, using an operational and financial model developed for the purpose. AECOM's findings were documented in a report submitted to IPART in October 2019.

In 2023, IPART approached AECOM to extend its initial support provided in 2019 by acting in an analyst / peer review capacity in support of the IPART review of interoperability pricing for ELNOs. In this engagement, AECOM has provided responses to questions asked by IPART and peer reviewed selected sections of IPART's draft report.

This document summarises the advice provided by AECOM in relation to questions asked or topics suggested by IPART. Each section of this report deals with one question or topic as raised by IPART and summarises AECOM's response in each case.

2.0 Responsible ELNO Financial Settlement Fees

Query: What is a reasonable transaction fee for a financial institution to charge a Responsible ELNO for participating in financial settlement?
Is this fee avoidable?

PEXA submitted to IPART that Responsible ELNOs (RELNOs) will incur financial settlement costs charged by financial institutions for completing each settlement, and IPART asked our opinion on the possible nature and scale of these settlement costs.

We note that the SaaS (software as a service) model is increasingly the basis for charging for software, and generally involves charges *per user or subscriber* (generally not expressed as a cost *per transaction*). There may be volume- or functionality-based steps in this cost (referred to in the industry as 'tiered pricing') but these tend to be commercial decisions that are not driven by increases in cost or capacity.

We have not attempted to discuss their charging model with the banks, but we have reviewed their approach as documented in bank brochures readily available from their websites. For example, Westpac indicates that the bank uses 'participation' fees (or 'plan' fees), and offers charges based on either the total number or the total value of transactions¹. We consider that this arrangement aligns with current SaaS charging models.

We were asked our opinion on the prospect of charging a per transaction fee for recovery of settlement costs. In our opinion, using a fixed fee to derive a per transaction fee is problematic because it will result in over- or under-recovery if the number of transactions changes, so we recommend that this approach not be taken.

In our opinion, financial settlement should be seen as another business-as-usual aspect of eConveyancing and is likely to be immaterial in the context of the entire transaction, so we do not think it is worth being separated out as an individual cost element. All ELNOs are likely to have to interact with multiple banks, so all will have to become users of settlement functionality, and all are likely to have to pay an annual user fee.

The industry should have incentives to reduce costs. Treating financial settlement as a business-as-usual annual operational cost is likely to be more effective in driving efficiency (whereas treating it as a per transaction fee has the opposite effect).

We therefore recommend that this cost not be treated as a per transaction cost. If it cannot be ignored altogether, then business-as-usual costs could be increased to include an annual user charge from the ELNO's bank (which is subject to a negotiated contract between the parties), and the cost should be recovered via the standard ELNO fee.

We note under the SaaS model user charges tend to remain fixed (per user) as user numbers increase, but they may plateau above a certain number of users. The plateau would depend on the circumstances of each SaaS provider and would apply to all ELNOs. We consider that the cost change would likely be immaterial, so we suggest that this issue be ignored.

¹ Westpac: *Guide to merchant fees and charges*, dated 8 December 2022

3.0 The Basis for Lodgement and Financial Settlement Cost Estimates

IPART issued a Draft Report on Interoperability Pricing in February 2023. Three key points were raised in submissions received, and IPART requested our response to these.

Query:

- PEXA considers a key component of its platform is the 'orchestration engine'. Did AECOM's capex estimate include the cost of developing 'orchestration engine' functionality?
- PEXA considers that a lot more developer days were required to develop lodgment and financial settlement infrastructure than estimated by AECOM. Should this estimate be revisited?
- PEXA noted that its annual webhosting costs are well in excess of the 2019 AECOM estimate. Should this cost be revisited?

3.1 What is the 'Orchestration Engine'? Is one needed, and if so, what is the impact on development costs?

The 2019 AECOM report did not refer to an 'orchestration engine', but it did include an 'Admin GUI' (Graphic User Interface) and 'active data transfer processes' in the software architecture described. It can therefore be inferred that the WebAPIs would have had triggers built into their logic to execute transactions, and that the Admin GUI would have been used to monitor the system. The figure from Section 4.1.1 of the 2019 report has been marked up to illustrate this (Figure 1).

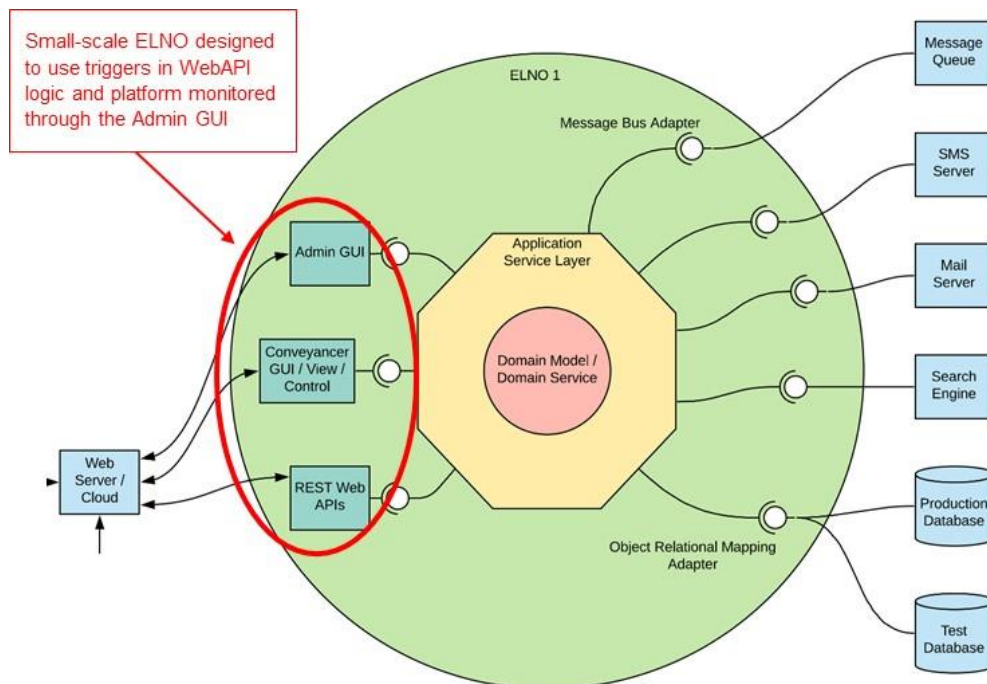


Figure 1 Software architecture of the ELNO platform (from AECOM's 2019 Report)

The assumption made at that time was that an efficient new entrant would have used Azure services to run the platform (such as Azure Portal, Monitor, API Management, Data Factory) or a similar alternative, an approach that was fairly typical in the industry. The cost of these services was included in the estimate of \$2 million per annum referred to in the 2019 AECOM report as 'Non-Labour System Maintenance'.

Development costs for the Admin GUI and active data transfer processes were included in AECOM's cost model.

The 2019 ELNO was designed to serve 3 markets and 10 financial institutions, and to process 9 transaction types included in 5 categories (Mortgage, Discharge of Mortgage, Transfer, Caveat, Withdrawal of Caveat). The architecture and design outlined in AECOM's 2019 report as a path for an efficient new entrant would have satisfied those requirements.

An 'orchestration engine' would therefore not have been required for an efficient new entrant if development had been done using Azure services (or equivalent).

In 2023, however, IPART has assumed the ELNO must scale to serve 5 jurisdictions and 12 financial institutions, and to process all transaction types. The scale and complexity of operations in 2023 is now at a point where it would be reasonable to include orchestration engine functionality in the platform design.

The orchestration engine is primarily a backend item, but it would trigger based on the inputs from the frontend, acting as the interface between front- and back-ends to control what happens and when. Since it is predominantly backend functionality used by the ELNO to control the platform's operations, its development cost has been added to the backend infrastructure cost calculation.

3.2 The cost impact of an 'orchestration' engine'

The 2019 AECOM report used a team structure and cost base as indicated in Figure 2, and assumed that a 'typical' resourcing structure would be used. Figure 2 presents the costs in \$2019.

	AU\$ ex GST	Per Day ex GST	Lean	Typical	Aggressive
Project Manager*	225	\$ 1,800.00	1	1	1
Analyst	265	\$ 2,120.00	1	1	2
Architect	285	\$ 2,280.00	1	1	1
UX	225	\$ 1,800.00	0	1	2
App dev / UI	205	\$ 1,640.00	1	2	3
QA*	150	\$ 1,200.00	1	2	3
			\$ 9,040	\$ 13,680	\$ 20,440
The above teams would be required at the rate of 1 team day per 2 development days. So that is the equivalent cost per day of:			\$ 4,520	\$ 6,840	\$ 10,220
At a developer daily cost of			\$ 1,600		
The effective multiplier is:			2.83	4.28	6.39

Figure 2 Software development team (from 2019 AECOM Report) (\$2019)

The 2019 AECOM report estimated development costs for an efficient new entrant ELNO to be **\$5.55 million (in \$2019)**, using 811 development days at \$1,600 per day and the weighted cost multiplier of 4.28 to determine the cost of the team. This included both the backend infrastructure and the frontend user interface,

Development of an orchestration engine would be done largely via an additional resource, likely to be similar in cost to a Solution Architect (design of the orchestration engine would be relatively complex and would require a relatively senior developer). Addition of this resource would change the cost base as indicated in Figure 3. Costs are shown in \$2019.

	AU\$ ex GST	Per Day ex GST	Lean	Typical	Aggressive
Project Manager*	225	\$ 1,800.00	1	1	1
Analyst	265	\$ 2,120.00	1	1	2
Architect	285	\$ 2,280.00	1	1	1
UX	225	\$ 1,800.00	0	1	2
App dev / UI	205	\$ 1,640.00	1	2	3
QA*	150	\$ 1,200.00	1	2	3
Orchestration Engine	285	\$ 2,280.00	1	1	1
			\$ 11,320	\$ 15,960	\$ 22,720

The above teams would be required at the rate of 1 team day per 2 development days. So that is the equivalent cost per day of:	\$ 5,660	\$ 7,980	\$ 11,360
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At a developer daily cost of	\$ 1,600
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The effective multiplier is:	3.54	4.99	7.10
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Figure 3 Revised software development team including an Orchestration Engine (\$2019)

The additional resource increases the total team cost and the weighted average team cost, which changes the cost multiplier to 4.99.

3.3 The cost impact of scaling up the ELNO

Scaling up involves additional jurisdictions, financial institutions, and transaction types.

- Additional jurisdictions

New entrant ELNOs are required to provide platform functionality to support services provided in 5 jurisdictions and involving 12 financial institutions. It is likely that a new entrant would in practice stage its development to start with a smaller number of jurisdictions and / or institutions, and scale up from there, and would presumably choose a starting position that suits their business model.

There will be additional development cost to add additional jurisdictions and financial institutions. We think it is reasonable to allow 30 days team effort for each of the first couple of jurisdictions but note that the relative effort required per jurisdiction would reduce from there because logic and code would be re-used. We think that it would be reasonable to assume an **average of 20 days of team effort per additional jurisdiction** (including both land registry and the revenue office interactivity for each jurisdiction).

- Additional financial institutions

There will be additional development cost to integrate financial institutions with the ELNO platform. We think it is reasonable to allow 49 days team effort for each financial institution.

- Additional base developer days

The 2019 AECOM report estimated that 15 team development days would be needed to develop the core platform and added further development days and costs for subsequent institutions. We have no reason to alter the provision of 15 team development days for the core platform.

- Additional transaction types

The 2019 AECOM report estimated development costs for 9 (out of a possible 14) transaction types (Table 13 on page 15 of the 2019 AECOM report).

A library of relevant forms (and transaction types) used in NSW can be found on the NSW Land Registry website (at <https://www.nswlrs.com.au/Forms/Library?t=LandTitleDealing#>).

Our review of a sample of the forms required indicates that while components would be re-usable (across transactions), each transaction does carry its own complexity (including more or fewer underlying forms). We consider it likely that approximately 20% of the logic/code used for the original transactions could be re-used for the 5 additional transaction types.

An additional 5 transactions added to the 9 already developed represents a 36% increase in costs (5 of the total of 14 transactions required).

We make the following assumptions in deriving an estimate of the effort involved to add more transaction types:

- The ELNO would only be adding more/new functionality (transaction types) to its platform (the platform itself would not need to be re-built)
- The integrations between 3rd parties (revenue office, land registry, financial institutions) can be re-used, but would need to be updated to include the additional transaction types
- 3rd parties would be more familiar with the ELNO, which should improve ways of working and therefore speedup the delivering additional transaction types
- The ELNO can re-use existing transaction type components (including business logic and code) to develop the additional transaction types.

If 80% of the code required is new, then the cost increase reduces to 29% (80% new code and 36% increase in transaction types). **A cost multiplier of 1.29 should therefore be used to provide for the increase in transaction types.**

- Ongoing support and development costs of the platform

The software industry has a rule of thumb that ongoing software costs are equivalent to the original development cost, spread over the expected 5 years of service life of the software.

Some of that cost would be for improving the platform (and therefore be treated as CAPEX), and the remainder would be for maintenance (including bug fixes and optimisation) which would be treated as an operational cost. These costs will fluctuate over the life of the software but are likely to be more capital intensive in the first few years. Over the life of the software, it is reasonable to assume that ongoing support and development costs would be split 50/50 between capital and operational.

Ongoing annual capital costs would therefore be 50% of the total development capital divided by 5.

- Revised development costs accounting for additional jurisdictions, financial institutions and the remaining transaction types

In summary, we recommend the following formula as a means of showing the cost increases involved in scaling up:

Developer days:	= 15 + 20 * J + 49 * F
(where J = the number of jurisdictions, and F = the number of financial institutions)	
Developer cost:	= Developer days * 8 hours * \$200 per hour
Team multiplier (including the Orchestration Engine):	= 4.99x
Expand the platform for all transaction types (T):	= 1.29x
Scaled Development Cost:	= Developer cost x T x Team multiplier

Ongoing annual capital costs would be added at 50% of the Scaled Development Cost / 5.

The development cost table using the scaled development cost formula (excluding ongoing annual capital costs) is shown as Figure 4. Costs are shown in \$2019.

Number financial institutions (F)	Number jurisdictions (J)							
	1	2	3	4	5	6	7	8
1	\$0.87	\$1.07	\$1.28	\$1.48	\$1.69	\$1.90	\$2.10	\$2.31
2	\$1.37	\$1.58	\$1.78	\$1.99	\$2.19	\$2.40	\$2.61	\$2.81
3	\$1.87	\$2.08	\$2.29	\$2.49	\$2.70	\$2.90	\$3.11	\$3.32
4	\$2.38	\$2.59	\$2.79	\$3.00	\$3.20	\$3.41	\$3.62	\$3.82
5	\$2.88	\$3.09	\$3.30	\$3.50	\$3.71	\$3.91	\$4.12	\$4.33
6	\$3.39	\$3.59	\$3.80	\$4.01	\$4.21	\$4.42	\$4.62	\$4.83
7	\$3.89	\$4.10	\$4.31	\$4.51	\$4.72	\$4.92	\$5.13	\$5.34
8	\$4.40	\$4.60	\$4.81	\$5.02	\$5.22	\$5.43	\$5.63	\$5.84
9	\$4.90	\$5.11	\$5.31	\$5.52	\$5.73	\$5.93	\$6.14	\$6.34
10	\$5.41	\$5.61	\$5.82	\$6.03	\$6.23	\$6.44	\$6.64	\$6.85
11	\$5.91	\$6.12	\$6.32	\$6.53	\$6.74	\$6.94	\$7.15	\$7.35
12	\$6.42	\$6.62	\$6.83	\$7.03	\$7.24	\$7.45	\$7.65	\$7.86

Figure 4 Impact of scaling on development costs (\$2019)

3.4 Webhosting costs

The 2019 AECOM report included a provision for webhosting costs of \$10,000 per annum (in \$2019), but also included a provision of \$2 million per annum as 'Non-Labour System Maintenance' to cover the cost of an efficient new entrant using Azure services to run the platform.

We consider that this provision is still appropriate for an efficient new entrant ELNO.

E Glossary

Term	Meaning
API	Application Programming Interface - ELNOs interact with land registries, revenue offices, banks and the Reserve Bank of Australia through secure APIs. The backbone of interoperability is a set of purpose-built APIs, governed by a data standard which will determine how ELNOs exchange data to complete interoperable transactions.
ARNECC	Australian Registrars' National Electronic Conveyancing Council – formed in 2011 under the Intergovernmental Agreement for an Electronic Conveyancing National Law (ECNL) to coordinate a national approach among States and Territories to regulation of an electronic environment for completing conveyancing transactions.
Default RELNO	The ELNO that performs the role of Responsible ELNO following redesignation of this role during a transaction, arising from the determination of the originally designated RELNO that it does not have the RELNO capability (or has elected not to be the RELNO) for that transaction.
ECNL	Electronic Conveyancing National Law
ELNO service fees	Fees charged by the ELNO to a Subscriber for access to, and use of, the ELN. Also known as subscriber prices or transaction service fees.
ELN	Electronic Lodgment Network, an electronic system that enables the lodging of registry instruments and other documents in electronic form for the purposes of the land titles legislation.
ELNO	Electronic Lodgement Network Operator, the party approved to provide and operate an ELN. There are 2 ELNOs approved across most Australian jurisdictions - PEXA and Sympli.
Interoperable Transaction Fees	Fees charged by an ELNO to another ELNO for carrying out the functions of the Responsible ELNO. Consultation Draft 7.1 of the MORs uses the term "interoperability service fees" to describe this and other categories of fees that can be charged for interoperability.
MORs	Model Operating Requirements – the requirements relating to the operation of an ELNO and the provision and operation, by an ELNO, of an ELN. These are the requirements on which the Operating Requirements in each jurisdiction are based.
MPR	Model Participation Rules – the rules, relating to the use of an ELN, with which subscribers (participants in the system such as lawyers) must comply. These are the rules on which the Participation Rules in each jurisdiction are based. ARNECC publishes Guidance Notes on the Operating Requirements and Guidance Notes on the Participation Rules to explain what is expected in complying with the requirements and rules in each jurisdiction.
NECDS	National Electronic Conveyancing Data Standard – ELNOs are required to use the NECDS to send data to or receive data from Land Registries.
NECIDS	National Electronic Conveyancing Interoperability Data Standard
PELNO	Participating ELNO - means an ELNO involved in an Interoperable Electronic Workspace that is not the Responsible ELNO.
RELNO	Responsible ELNO - means the ELNO involved in an Interoperable Electronic Workspace that is responsible for Lodgment of the Interoperable Lodgment Case and completion of any Associated Financial Transaction.
Subscriber	A person or entity authorised to conduct electronic conveyancing transactions using the ELNO on behalf of a client, such as lawyers or conveyancers, or on their own behalf, such as financial institutions and government agencies.

- ¹ IPART, [Review of the Pricing Framework for Electronic Conveyancing Services in NSW, Final Report](#), November 2019, p 10.
- ² ACCC, [ACCC letter to ARNECC regarding ECNL bill](#), February, 2022, NSW Productivity Commission, [White Paper 2021](#), pp 170-172.
- ³ ARNECC, [Regulation Impact Statement](#), p 10.
- ⁴ Interoperability Operational Committee, [Interoperability Model Overview](#), March 2021, p 2.
- ⁵ ARNECC, Ministerial Forum: [National Electronic Conveyancing Towards a sustainable, competitive national electronic conveyancing market](#), p 1.
- ⁶ PEXA, [submission to IPART Draft Report](#), March 2023, p 6.
- ⁷ PEXA, [submission to IPART Draft Report](#), March 2023, pp 35-36.
- ⁸ Sympli [submission to IPART Draft Report](#), March 2023, p 2.
- ⁹ [Model Operating Requirements](#), version 6.2, Operating Requirement 5.2(a) – (c).
- ¹⁰ [Model Operating Requirements](#), version 6.2, Operating Requirement 5.2(d).
- ¹¹ [Model Operating Requirements](#), version 6.2, Operating Requirement 5.4.3.
- ¹² ARNECC, [Model Operating Requirements Consultation Draft 7.1](#), Operating requirement 2.1.2.
- ¹³ ARNECC, [Model Operating Requirements Consultation Draft 7.1](#), Operating Requirement 5.4.7.
- ¹⁴ PEXA, [submission to IPART Draft Report](#), March 2023, p 6.
- ¹⁵ IPART, [Review of the Pricing Framework for Electronic Conveyancing Services in NSW, Final Report](#), November 2019, p 10.
- ¹⁶ NSW Productivity Commission, [White Paper 2021](#), p 170.
- ¹⁷ ARNECC, [Regulation Impact Statement](#), p 10.
- ¹⁸ IPART, [Review of the Pricing Framework for Electronic Conveyancing Services in NSW, Final Report](#), November 2019.
- ¹⁹ Law Council of Australia [submission to IPART Issues Paper 1](#), p 3; Law Society of NSW [submission to IPART Issues Paper 1](#), p 3; PEXA [submission to IPART Issues Paper 1](#), pp 27-30, 55; Sympli [submission to IPART Issues Paper 1](#), p 7; Tasmania Land Titles Office [submission to IPART Issues Paper 1](#), p 1.
- ²⁰ ABA [submission to IPART Issues Paper 2](#), p 3.
- ²¹ AIC, [submission to IPART Draft Report](#), p 2.
- ²² Law Council of Australia, [submission to IPART Draft Report](#), March 2023, p 2; AIC, [submission to IPART Draft Report](#), p 1; Law Society of NSW, [submission to IPART Draft Report](#), March 2023, p 1.
- ²³ Law Council of Australia [submission to IPART Issues Paper 1](#), p 4; Law Society of NSW [submission to IPART Issues Paper 1](#), p 4; PEXA [submission to IPART Issues Paper 1](#), p 40; Tasmania Land Titles Office [submission to IPART Issues Paper 1](#), p 1, Sympli [submission to IPART Issues Paper 1](#), August 2022, p 8.
- ²⁴ Law Society of NSW [submission to IPART Issues Paper 1](#), p 3; Sympli [submission to IPART Issues Paper 1](#), pp 7-8; Law Council of Australia [submission to IPART Issues Paper 1](#), p 4.
- ²⁵ Law Society of NSW [submission to IPART Issues Paper 1](#), p 3 Sympli [submission to IPART Issues Paper 1](#), pp 7-8; Law Council of Australia [submission to IPART Issues Paper 1](#), p 3.
- ²⁶ Law Society of NSW [submission to IPART Issues Paper 2](#), November 2022, p 3.
- ²⁷ PEXA [submission to IPART Issues Paper 1](#), August 2022, pp 21, 32-39.
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