

TERMS OF REFERENCE

Interoperability pricing 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, proposed changes to the national law were introduced on 15 February 2022 into the NSW Parliament (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 interact with Land Registries and Revenue Offices, and perform the transaction Settlement and Lodgement. 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 the fees ELNOs may charge other ELNOs in relation to participation in an interoperable transaction.

The task

The Tribunal should investigate and make recommendations on:

1. Whether fees should be charged by the Responsible ELNOs to Participating ELNOs for participation in an interoperable transaction.
2. Whether the Tribunal should identify appropriate pricing principles to apply to setting any such ELNO fees, and if so, such pricing principles; or whether the Tribunal recommends a method or level of price 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) Commercial flexibility requirements for ELNOs
- b) Costs incurred by different participants in an interoperable transaction and who should bear these costs
- c) The symmetry of the interoperable transaction market
- d) Avoiding unnecessary regulatory or administrative burdens on ELNOs or other participants in an interoperable transaction
- e) Additional ELNOs potentially entering the market over the next 1-5 years
- f) Any other matter the Tribunal considers relevant.

Process and timeframe

The Tribunal is required to consult with the public, including key stakeholders listed below on these terms of reference.

The Tribunal will provide progress briefings to the Australian Registrars' National Electronic Conveyancing Council (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 within twelve months of receiving the terms of reference.

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 report will be made publicly available on the Tribunal's website.