



1 October 2019

Dr Paul Paterson  
Review Chair  
Independent Pricing and Regulatory Tribunal  
Level 15, 2-24 Rawson Place  
SYDNEY NSW 2000

*By online submission*

Dear Dr Paterson,

## **Submission addressing Draft Report, Review of the Pricing Framework for Electronic Conveyancing Services in NSW**

NSW Land Registry Services (NSW LRS) appreciate the opportunity to comment on the Draft Report of the Special Review of Pricing Regulation of Electronic Conveyancing Services in NSW.

This written submission follows our participation in the Public Hearing on 3 September 2019 where the matters addressed in this submission were raised directly with IPART.

We set out below our submission that:

- The existing Lodgment Support Services (LSS) fees have been mischaracterised in the Draft Report and are not linked in any way to the cost of developing the new multi-ELNO technology platform.
- We invested in the new multi-ELNO platform to the timetable and specification supported by the Registrar General on the understanding that incremental cost recovery over the remaining duration of the concession would occur at a rate to be determined by IPART.
- Some costs have been saved however new costs have also arisen as a result of eConveyancing – these initial savings were available to NSW LRS absent the entry of additional ELNOs.
- Should IPART support a cost recovery model we request further interaction with AECOM in regards the efficient incremental cost estimate.

### **Purpose of existing LSS fees**

The Registrar General described the nature of LSS fees in their submissions to the Tribunal:

*“LRS charges the LSS fee to ELNOs for feeding Torrens Title data (such as mortgagee names and numbers) into the ELN. There are three types of LSS, varying in terms of the level of service provided by LRS to the ELNO e.g. the top LSS includes initial supply of title data, verification of documents and automated checks for changes in the initial data*

*supplied. Given LSS fees are set out in the Real Property Regulation 2014, the LSS fees are already subject to regulation and cannot be increased by more than CPI each year.”<sup>1</sup>*

NSW LRS submit that the existing LSS fees charged to ELNOs are mischaracterised in the Draft Report.

The Draft Report describes LSS fees charged to ELNOs as being:

*“..to recover the capital and operating costs of the technology platform as well as other operating costs associated with electronic conveyancing.”<sup>2</sup>*

The LSS fee was introduced by the Government prior to separation (the concession transaction) to offset the declining use of final title searches at Land and Property Information (LPI) as eConveyancing use increased and the corresponding level of paper settlements decreased. There has been a clear decline in title search usage since the introduction of the Registry Information Supply service.

### **New multi-ELNO platform development relied on some cost recovery**

NSW LRS understood the intention of the IPART review was to determine the amount that should be charged, not to determine whether a charge was appropriate. This is reflected in the IPART terms of reference asking IPART to determine a *“maximum price or pricing methodology for services provided to ELNOs by NSW Land Registry Services”*.

The issue of cost recovery had already been settled through our ongoing engagement with the Office of the Registrar General regarding the development of the new multi-ELNO technology platform.

We appreciate that the provision of technology to allow ELNOs to access the Torrens Title register is an existing service. However, the platform that we have developed goes beyond the ‘base model’ that could have delivered this outcome; that is, a ‘duplicate’ of the existing direct connection system. Instead, we have invested in a new platform that moves NSW further towards interoperability in alignment with the Government’s priorities.

As stated by IPART in the Draft Report and in our submission in response to the Issues Paper, NSW LRS does not seek ongoing fees to cover the cost of maintaining and supporting the platform in the future – just the incremental cost recovery upon which we relied in determining when and how to develop the platform.

We accelerated and increased our investment in the multi-ELNO platform on the understanding that the incremental cost of this investment would be recouped under an agreed pricing framework.

If the recommendations in the draft IPART report are upheld, there is no mechanism through which NSW LRS could recover costs for its investment despite the support of the Office of the

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<sup>1</sup> Office of the Registrar General's response to *Review of the pricing framework for electronic conveyancing services in NSW*, 8 May 2019, Attachment A, Response to Question 22.

<sup>2</sup> IPART Draft Report, August 2019, p 52.

Registrar General for our investment. This is contrary to the opportunity afforded to Revenue NSW, even though both NSW LRS and Revenue NSW have invested in the building and testing of systems and performing ongoing support and maintenance for ELNOs.

### Cost estimate of eConveyancing system

AECOM has estimated the efficient incremental cost to NSW LRS of upgrading our technology, which is included in the Draft Report.

The AECOM Draft Report provides insufficient information to determine the basis of the cost assessment made regarding our investment in the multi-ELNO platform. We would welcome further information from AECOM so as to reconcile their estimate to our actual costs before the report is finalised.

### Summary

In summary, we believe there is no correlation between the LSS fee and recovery of eConveyancing costs. NSW LRS delivered the platform in close consultation with the Registrar General and we were assured from that consultation that these infrastructure costs would be recoverable following the platform's completion. We are disappointed to now be asked to absorb these costs. We invested in the new multi-ELNO platform to the timetable and specification supported by the Registrar General on the understanding that incremental cost recovery would occur at a rate to be determined by IPART.

For further information regarding our ongoing operating costs associated with eConveyancing, please refer to the Appendix.

We welcome further engagement with IPART, the Registrar General, and other eConveyancing stakeholders to ensure we all share responsibility for supporting and enabling the use of eConveyancing in NSW.

Yours sincerely,



**Chief Executive Officer  
NSW Land Registry Services**

## Appendix - Further detail on NSW LRS eConveyancing operations

### NSW LRS operational effort in eConveyancing transactions

This section provides information on the services and operational support that NSW LRS provides to ELNOs and their subscribers to facilitate eConveyancing transactions each day, ensuring the accurate and timely transmission of data between ELNO subscribers and the Torrens Title register.

As part of our data service to ELNOs, NSW LRS makes title data automatically available to ELNO subscribers who are parties to a property transaction such as a transfer of land. This allows parties to be notified if an interest that could prevent the completion of the transfer is lodged on title, such as a caveat. This automated service replaces manual searches and eliminates risks that existed in the manual transfer settlement process, and allows ELNOs to automate the processes required to complete dealings.

These data services for ELNOs have significantly reduced the time and effort for ELNO subscribers to complete an electronic dealing compared to an equivalent manual dealing.

### Ongoing investment in support of ELNO automation to benefit subscribers

NSW LRS has substantially invested in upgrading the Registry Information Supply service since its first release in late 2013. Registry Information Supply is used by ELNOs to obtain title information supplied in discrete data fields and reflects much of the information provided by a title search. This provision of discrete data enables an ELNO to automate population of workspaces and dealings related to the case as well as perform validation on the contents of the dealings.

We are currently working on a further upgrade to the Registry Information Supply service to add new features including sub-level notification to the title data transmitted to ELNOs, further enabling efficiency and automation capabilities for ELNO platforms when released in early 2020.

The LSS 1 service bundle charged to ELNO subscribers – \$14.79 per transaction including GST in FY2019/2020 – includes the automated Title Activity Check service in addition to the supply of title data. The Title Activity Check provides certainty of a title's currency during the settlement period by providing an alert mechanism for any change on the title to ELNO subscribers registered as parties to a transaction. In addition to the efficiency benefits to all involved parties in the transaction, this service has significantly reduced the need for practitioners to order manual title searches or perform a final title search prior to settlement, as was industry practice in the paper settlement process.

### Saving and transfer of operational costs resulting from eConveyancing

NSW LRS provides ongoing service support to ELNOs to ensure the accurate and timely transmission of data between ELNO subscribers and the Torrens Title register.

As of August 2019, around 83% of *Real Property Act* dealings are lodged electronically through an ELNO, with the remaining 17% of dealings lodged manually in hard copy. The Draft Report

refers to “6% remaining on paper”; however this refers to ‘mainstream’ dealings only and does not include specialised and residual dealings.

While the registration of a completed eConveyancing transaction (for example, a transfer of land) is generally considered automatic, there are frequent instances where this ‘auto-registration’ does not occur. For example, there may be a caveat or other notice placed on the title that prevents automatic registration.

In those cases, the eConveyancing transaction is instead subject to a manual review by a NSW LRS dealing examiner to consider why the transaction was not auto-registered and if appropriate to then manually approve the transaction for recording on the register.

As at August 2019, approximately 20% of eConveyancing transactions required manual assessment by a NSW LRS dealings examiner outside of the auto-registration process.

ELNOs and their subscribers are not charged an additional fee for this support from NSW LRS; these activities are covered by the LSS fee, in addition to the ongoing investments in data service enhancements outlined above, which together ensure improved eConveyancing services and efficiency benefits for the citizens and businesses of NSW.

NSW LRS acknowledges that the mandated use of eConveyancing has led to some cost savings. Through good management, we have also improved efficiency independent of the eConveyancing mandate.

Many of the cost savings for land registries that are associated with eConveyancing cannot be fully realised until auto-registration is standard practice with most applicable transactions. As the use of eConveyancing has increased in the past three years, we have substantially invested to change our internal processes and to automate dealing examination and registration where appropriate.

While some costs have been saved as a result of the increased use of eConveyancing, others have been transferred internally to the manual examination of complex manual dealings and the examination of electronic dealings that could not be auto-registered.

In many instances, the move to eConveyancing has changed the nature of the work we carry out, rather than eliminating work tasks. Those dealings that continue to be lodged manually have become increasingly complex as they are generally those transactions subject to exemption from the eConveyancing mandate due to their complexity, which makes them unsuitable for processing through an ELNO.

Some registry dealings will never be capable of auto-registration and will always require manual examination and registration, such as a dealing connected to a plan and specialised dealings like Transfer Granting Easement. Of the 17% of dealings that remain paper lodgments, approximately 10% are these specialised dealings. While we are working with ELNOs to allow for electronic lodgment of these dealings during mid-2020, they will continue to be ineligible for auto-registration and will require manual examination by specialised dealings staff.

Furthermore, increased use of eConveyancing has increased the NSW LRS resources required to perform system maintenance and to audit ELNO subscribers to ensure their compliance with the lodgment requirements. The number of subscriber compliance audits will continue to increase as new ELNOs are enabled and Subscribers sign up to use different ELNOs. NSW LRS will be required to support the continuing increases with no additional cost saving and no increase to revenue.