

Ms Jennifer Vincent  
Director, Pricing  
Independent Pricing and Regulatory Tribunal  
PO Box K35  
Haymarket Post Shop NSW 1240  
**By email: Jennifer\_Vincent@ipart.nsw.gov.au**

Thursday 23<sup>rd</sup> May 2019

Dear Ms Vincent

***Revenue NSW's response to Review of the pricing framework for electronic conveyancing services in NSW***

We welcome IPART's review of the pricing framework for eConveyancing services in NSW.

Revenue NSW maintains a strong relationship with the NSW Office of the Registrar General (ORG) as the regulator of Electronic Lodgement Network Operators (ELNOs) in NSW and with the private operator of NSW's land titles registry, NSW Land Registry Services (NSW LRS). Together we have strived to support the NSW Government and Minister Dominello's commitment to competition in eConveyancing.

We look to the benefit of having an expert, independent review of pricing in this market. This will assist Revenue NSW to plan its support for the market and be better placed to respond quickly to the changing needs of a competitive marketplace.

For the public, this provides an opportunity for better clarity of the use of Government funds. A clear position on cost recovery for Revenue NSW will remove any public concern that government funds are being used to support private sector enterprises.

Revenue NSW has supported the change to digital conveyancing since its first program of work with PEXA in 2014. Revenue NSW is currently working with Sympli in preparation for their market entry and is in communication with Lextech regarding their plans.

Revenue NSW has also introduced a new system for digital lodgement of Commissioner assessments previously in paper. This new service will support the eConveyancing mandate on 1 July 2019 when all mainstream documents must be lodged electronically. It is a key piece in the overall change agenda to reach a point where no practitioners need to revert to paper for any step of the conveyancing process.

Our detailed responses to IPART's Issues Paper are at **Attachment A**.

Yours sincerely



Stephen Brady  
Chief Commissioner of State Revenue

## **Our approach to the Issues Paper**

In our detailed response to the Issues Paper set out below we have limited our comments to the areas directly and indirectly impacting Revenue NSW and our role in the review.

### **General comments on Section 2 Context.**

Revenue NSW provides some comments on Section 2 to clarify context as it relates to our role in eConveyancing. This section lays the foundation for the review and if misperceptions occur across stakeholders particularly where it relates to costs we incur, these may affect the feedback you receive. The nuances of our role may not be well understood and we continue to try to improve awareness in this area more broadly. This section contains much of the commentary that relates to the indirect impacts on Revenue NSW's cost which are outside of our control.

Separately Revenue NSW would welcome the opportunity to discuss a few of the diagrams in the document so that they could more accurately represent some of the interactions or process flows with the revenue offices.

Section 2.3.3 Revenue NSW provides an explanation of Electronic Duties Returns (EDR). The description of EDR is generally correct. Revenue NSW also performs Commissioner assessments. These are currently sent via paper to Revenue NSW. Those assessments are moving to eDuties, a new digital lodgement service. Both EDR and Revenue NSW assessment types provide a Duties Assessment Number (DAN) which can be used by an ELNO to facilitate the duties verification service for eConveyancing. It is not just EDR assessments that are used in eConveyancing. With specific reference to pricing, Revenue NSW does not intend to recover costs for eDuties. While eDuties is an enabler of eConveyancing any cost recovery Revenue NSW seeks from the ELNOs will only relate to ELNO services not general assessment systems or other payment channels that we provide.

Section 2.4.2. The Legal and Regulatory Framework. This section specifically describes eConveyancing Legislation. Either in this section, or in Appendix D, (Rules, requirements and conditions for ELNOs and other participants under the NSW legal and regulatory framework) it would be helpful to include touchpoints with other legislation that create dependencies in the eConveyancing process. A reference to the Duties Act 1997 Section 301 relating to payment of duty prior to transfer of title would help to clarify the critical legal requirement that must be fulfilled by the ELNO in order to authorise the land transfer. Likewise reference to the Land Tax Act 1956 would highlight an example of a driver for innovation as the ability to clear land tax debt with settlement funds is a feature customers are seeking.

Section 2.4.4. The land registries and ELNOs are required by the ECL to integrate their systems using a common data standard. This standard is called the National Electronic Conveyancing Data Standard (NECDS). This by default requires that the revenue offices use this same data standard as the basis for its messaging services given the many common data fields and the interchange of information between services. Nationally the revenue

offices have to maintain a separate set of revenue office standards with the ELNOs to ensure maintenance of the ELNO service. The IPART paper notes separate work to move the NECDS into a new regime so that all ELNOs have equal opportunity to influence change. The cost impost of the management of the data standards of the revenue office would be improved if they were also included in this regime. Their omission relates potentially to the original governance and change framework which was set up specifically for the land registry offices. They are raised here to identify areas where cost improvements may be achieved through a more inclusive governance arrangement.

Section 2.4.4. (cont:;) Revenue NSW currently bears additional support costs until changes to reduce common user errors can be scheduled by the working group. Currently change is prioritised through ARNECC with the key priority being the inclusion of the full suite of documents. This may be the correct priority however it does not ameliorate the cost impost in the meantime for Revenue NSW which cannot be recovered. It also exposes the difficulty the revenue offices face when not officially part of the governance or change framework.

Section 2.4.4. (cont:;) The MORs permit that a new ELNO can stage its entry into the market. This is desirable to encourage new entrants but at the same time creates greater cost for Revenue NSW as the on-boarding process can in fact take a number of years. Current timelines have PEXA completing the remainder of the registry documents in 2020. Efficient costs are not likely to occur even for the incumbent until this point is reached. The long term staging plans of the new ELNOs are unclear at this point in time. Staging should be considered as a cost factor when IPART considers whether there is a need for transitional pricing.

***Question 1:*** *Do you agree with IPART's proposed approach for this review? Are there any alternative approaches that would better meet the terms of reference, or any other issues we should consider?*

**RNSW Response:** Revenue NSW's agrees with the use of a cost build up for Revenue NSW and the consideration of an appropriate timeframe for adopting the pricing methodologies. The consideration of transition measures and the ability for stage related cost recovery in line with peak support impact periods, such as on-boarding is welcomed.

Revenue NSW has addressed the inclusion of other issues that stakeholders might consider and that IPART should take into account for its review in our commentary on Section 2.

***Question 3:*** *How important are barriers to entry in constraining competition in the eConveyancing market? Are there other barriers or factors that will influence competition in the market?*

**RNSW response:** Revenue NSW has supported the removal of any barriers for a new ELNO. The support for Sympli as an emerging ELNO seeking to enter the market required a new process and plan to be developed and the experience has heightened an awareness of the need for an efficient onboarding approach for any new ELNOs.

It requires the ability to be responsive and to have some elasticity in the ability to supply resources and be able to commit to a plan with relatively short lead time. With the many interconnecting stakeholders it is challenging to align timelines with best endeavours as these complex businesses have many competing priorities. Particularly in a government context it requires some certainty about the appropriate use of government funds for such a project. The outcome of this review will assist in that area. A transparent position on cost recovery will improve the government's ability to facilitate market entry and respond in an agile manner to the drivers of a competitive marketplace.

**Question 5:** *What factors influence the effectiveness of potential multi-homing or interoperability solutions in promoting competition?*

**RNSW response:** Revenue NSW as a regulator and administrator has a requirement that the Duties Act 1997 is followed and that title transfer cannot occur without the payment of duties. Therefore clear liability, data alignment and integrity, and payment warranty are key concerns that would need to be resolved if a dual workspace option is progressed.

**Question 6:** *What are the relative costs of implementing the different potential multi-homing or interoperability solutions between ELNOs?*

**RNSW response:** The goal of a multi-ELNO market is to improve competition, foster innovation and let market forces create natural pressure on pricing. The question of interoperability has arisen because of a customer preference for using a single interface with its benefits of streamlined training and business adoption as well as concern over additional cost and risk. These costs could potentially offset a gain in pricing efficiency.

The Interoperability Review is investigating a range of options which retain multiple front end choices that may or may not provide interoperability between them or may operate independently on a rules based approach. There has also been consideration of whether these various front end systems connect to one or multiple backend systems.

For the suppliers of the backend connectivity systems such as the banks, NSW LRS and Revenue NSW a multiple backend interoperability solution increases overall cost, complexity and risk in order to achieve that seamless front end experience. Whereas a single back end solution reduces maintenance, change and release overheads through reduction in complexities, schedule planning, fewer instances of integrated deployment and a lower number of stakeholder interactions.

It is critical therefore that the costs of back end suppliers are also factored into the total cost of the recommended interoperability model. If the total cost recovery is higher than the net benefit to a consumer from market competition then the consumer may pay more for the service than in a regulated natural monopoly environment. The IPART review will assist to surface the cost of back end system support which will inform the interoperability review.

In addition, there is a period of higher support effort required for any new ELNO onboarded until all of the required documents under the MORs are available in the new ELNO solution. If multiple ELNOs are at running at varying stages of completeness there is a multiplier effect of supporting independent platforms and impacts on scale.

When a level of stabilisation and maturity occurs with the ELNOs the rate of change and release will subside so that effort and cost is reduced. It is not until that point is reached that pricing could be reduced and the real benefits of competition could kick in.

### **Deciding on and applying pricing methodology for ELNO services**

**Question 18:** *Are there any other issues relevant for considering whether our recommended NSW pricing regulatory framework could be an appropriate model for a national regime?*

RNSW response: There are similarities nationally for revenue office cost models but there are differences related to their policy on mandating, volume, conveyancing practices and system design. Using a 'per transaction' model in a state with low volume may work for a national ELNO but not necessarily for the state titles or revenue office as they cannot offset cost across a broader total volume.

**Question 19:** *Who should bear the costs of implementing an interoperability solution and how should the costs be recovered?*

RNSW response: NSW Government's preliminary view is that each ELNO should bear its own costs of interoperability as a cost of doing business in a multi-operator competitive market. The additional impost for the government to operate the revenue office in a multi-ELNO environment should be recoverable from the ELNOs.

**Question 20:** *In an interoperable transaction, should one or multiple ELNO(s) complete lodgement with the land registry and financial settlement with the RBA, and which ELNO(s) should perform these activities?*

RNSW response: Revenue NSW asserts that it is essential from a legislative point of view that the principle of 'delivery v payment' is maintained in any interoperable solution i.e. the transfer of title occurs if (and only if) the corresponding payment of duty occurs. The duties verification step should remain linked to the land registry and financial settlement steps if some steps are split between two ELNOs.

### **Recommending prices for the services provided by Revenue NSW**

Error correction: Section 6.2.1 states that cost for land titles and revenue offices to accommodate ELNOs will range from a few hundred thousand dollars to seven million dollars. In the interest of ensuring concerns are not raised unnecessarily we point out that the actual figure quoted in the IGA report is "**several** million dollars". Revenue NSW's costs are on the lower end of that range.

**Question 26:** *Should Revenue NSW charge ELNOs for its electronic system? And if so should Revenue recover efficient costs by charging an initial set up fee, an annual maintenance fee or both?*

RNSW response:

Government cost recovery is supported by a solid body of review papers and policy available in the public domain.

The Productivity Commission stated,

“ Cost recovery can provide an important means of improving the efficiency with which Government services are produced and consumed. For regulatory agencies....the prices of regulated products should incorporate all of the costs of bringing them to market, including the administrative costs of regulation.....Partial cost recovery is generally inappropriate — either the costs of an activity or product are recovered in full or funded from general taxation revenue. Deviating from this rule would involve making subjective decisions about the degree of public and private benefits involved.”<sup>1</sup>

Charges for goods and services consumed can give important messages to users or their customers about the costs of the resources involved. The more that charges are uncoupled from the underlying cost structures, the less efficient those arrangements would be.

Revenue NSW is intending to charge ELNOs based on a form of cost recovery. This would incorporate some or all of the costs of building new systems or modifying existing systems, connecting a new ELNO, testing and ongoing maintenance of the ELNO service on-going.

Our experience has been that a new ELNO requires an intensive period of project support during their initial onboarding. This higher level of service, and therefore cost, is one off and for a specific time period. Revenue NSW needs to work with the new ELNO so that they understand the web service data standards and specifications to aid their system development and to familiarise them with business processes and rules. This period of support is critical to the success of their business plan and their entry to the market. Both businesses work to ensure the readiness activities before their go-live period has in place all necessary customer and IT support frameworks.

This one-off period is better supported by charging an initial set-up fee. The cost is different from the ongoing support and maintenance fee that would be part of the operating agreement with the ELNO. Given user support costs vary with volume part of that fee may be better suited to a transactional cost. It is likely therefore that a combined pricing model will most effectively cover the different types of cost being recovered.

Best practice principles for cost recovery should be applied, including avoiding cross-subsidies, ensuring transparency and accountability; and undertaking industry consultation

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<sup>1</sup> *Inquiry Report - Cost Recovery for Government Regulatory Agencies, Productivity Commission 2001*

from time to time. This will give current and potential ELNOs greater confidence in the reasonableness of specific cost recovery arrangements.

Revenue NSW supports that IPART will consider both transition and timing of any new pricing regulation and that the cost recovery structure may include a combination of fee types e.g. an initial set-up fee, annual maintenance fees or per transaction costs. This approach will achieve the most equitable cost recovery framework.

**Question 27:** *If Revenue NSW were to charge for services to ELNOs, on what bases should the fees be set?*

**RNSW response:** Revenue NSW supports IPART's recommendation of the use of a cost build up approach. Revenue NSW manages a distinct web service and maintains a separate system for the Multi- ELNO gateway

Separately the duties assessment system is part of Revenue NSW's main system of record which also manages the other tax administration functions. These assets and costs are isolated from the ELNO system. Revenue NSW is not seeking cost recovery for these assets, only for the ELNO web service and system which interrogates the main system.

In addition, Revenue NSW maintains a separate payment platform for all its revenue streams. Revenue NSW will continue to provide and maintain this service with cost borne by Revenue NSW. This service provides customers, who do not use an ELNO, a channel through which to pay digitally. This channel is typically required when the duties assessment liability date is in advance of the planned property settlement date.

Further, Revenue NSW maintains a web service with NSW LRS for paper transactions. This will continue until paper transactions are completely removed. As mentioned earlier in our response we have also created a new eDuties digital lodgement service for Revenue NSW assessments.

Depending on the interoperability decisions further costs may arise to provision these changes. These would also need to be included in the cost recovery model.

### **Timeframes and transition**

**Question 28:** *When could businesses implement prices recommended by this review? What factors affect that timing and any transitional measures required?*

**RNSW response:** The terms and expiry dates of any existing agreements impacted by the recommendations of the review would need to be considered when determining when any new pricing could be introduced.

**Question 29:** *What is the appropriate determination period for ELNO, NSW LRS and Revenue NSW prices? What factors should we take into account when deciding on a determination period?*

**RNSW response:** It may not be that the same review frequency is required for ELNOs, NSW LRS and Revenue NSW. There may be a case for an annual review for ELNOs at this stage of the market however Revenue NSW does not see that with an effective pricing methodology agreed any of its underlying cost drivers would change significantly within the next 2 years. We therefore would recommend a 2-year determination period for the revenue office.

**Question 30:** *Should the scope of future reviews be similar to the current review, or focus on particular aspects of pricing?*

**RNSW response:** It may be necessary to focus on any interoperability cost impacts flowing to Revenue NSW from decisions yet to occur and whether these have been adequately recovered. It may also be prudent to assess whether improvements resulting from the IGA review have created a desired shift to a more efficient cost model.