



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref:PLC:JvdPgl091122

9 November 2022

Interoperability Pricing for Electronic Lodgment Network Operators
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop
Sydney NSW 1240

By [Online submission form](#)

Dear Sir/Madam,

Issues Paper 2 – IPART investigation of interoperability pricing for eConveyancing transactions

The Law Society of NSW appreciates the opportunity to comment on the Interoperability pricing for Electronic Lodgment Network Operators Issues Paper 2. The Law Society's Property Law Committee has contributed to this submission.

Our responses to the questions raised in the Paper are provided in the **attached** comments table.

If you have any further questions in relation to this submission, please contact Gabrielle Lea, Policy Lawyer by email: gabrielle.lea@lawsociety.com.au or on (02) 9926 0375.

Yours faithfully,

Joanne van der Plaats
President

Encl

IPART – Interoperability pricing for Electronic Lodgment Network Operators – Issues Paper 2 – October 2022
Law Society of NSW Comments

NO.	Question	Law Society comments
1.	Do you agree with prescribing prices rather than prescribing a pricing methodology for interoperable transaction fees? If not, what are the reasons for preferring a pricing methodology?	Yes, we agree with prescribing prices rather than prescribing a pricing methodology for interoperable transaction fees. We also note that prescribed prices will provide greater certainty and transparency for subscribers.
2.	Do you agree that a Responsible ELNO fee should apply to all interoperable transactions?	Yes, provided it reflects a share of the marginal costs of performing the role of the Responsible ELNO.
3.	Do you agree that a default Responsible ELNO surcharge should apply when an ELNO cannot fulfil its role as the designated Responsible ELNO?	Yes, given the limited nature of both the Responsible ELNO fee and the default Responsible ELNO surcharge, a default Responsible ELNO surcharge is potentially justifiable in our view. We note however that if the default Responsible ELNO surcharge is too high, this will be problematic for new entrants needing to make the investment necessary to be able to perform the role of the Responsible ELNO in future, which is part of the rationale for adopting such a surcharge.
6.	What are your views on recovering a share of the capital costs of developing financial settlement and lodgment infrastructure via a default Responsible ELNO charge?	Please see our answer to question 3.
7.	Do you agree with our approach to categorising the costs of interoperability that should be recovered otherwise than through interoperable transaction fees?	Yes, the categorisation is appropriate in our view, given the nature of the various costs.
8.	Do you agree with reviewing efficient operating and capital costs associated with interoperability for 4 years from 2023-24 to 2026-27? Or, do you think we should review efficient costs for a shorter or longer period than this?	Yes, and we suggest that, in addition, there should be a mechanism to trigger an early review if there is a material change to the relevant assumptions.
11.	What are your views on our proposed approach to forecasting transaction volumes?	Yes, the approach using data sourced from land registry offices and ELNOs is appropriate.

NO.	Question	Law Society comments
13.	Do you agree with recommending charges for 2 years? If not, what time period do you prefer and why?	Two years is appropriate at the initial stage of interoperable eConveyancing. In our view, it will be appropriate to review the approach to charges after two years as the market may have evolved significantly. Current expectations, assumptions and forecasts may need to be revised, as well as consideration of the more fundamental question of whether the market has matured to such a stage that competition may be able to replace price controls.
14.	Do you agree with indexing by CPI for the second year of the regulatory period? If not, what approach do you prefer and why?	Yes, this is common practice, and is also consistent with the current approach to ELNO fee increases.
15.	Have we identified the relevant matters that should be implemented through amendments to the Model Operating Requirements?	Broadly yes. Consideration could be given to including in the Model Operating Requirements an express prohibition against a Participating ELNO passing on to a subscriber any separate fee paid to the Responsible ELNO by the Participating ELNO for participation in an interoperable transaction.
16.	Do you think it is appropriate for the practical arrangements between ELNOs for payment of interoperable transaction fees to be negotiated through Interoperability Agreements?	Yes, and we suggest that the proposed amendment to Schedule 8 of the Model Operating Requirements should additionally refer to the arrangements to be made between the ELNOs in respect of the payment of Lodgment Support Service fees.