

IPART Review of ELNO Service Fees

Review of IPART Draft Report dated July 2026

RBB Economics, 14 August 2026

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1 Introduction and executive summary

1. RBB Economics (**RBB**) has been engaged by Property Exchange Australia (**PEXA**) to prepare an independent economic report responding to the Independent Pricing and Regulatory Tribunal's (**IPART**) draft report on the regulation of Electronic Lodgement Network Operator (**ELNO**) services fees, dated July 2026 (the **Draft Report**).
2. Specifically, we have been asked to consider the following questions:
 - 2.1 What do you consider to be the most appropriate methodology for assessing PEXA's ELNO service fees?
 - 2.2 Is a recovered-capital methodology an appropriate basis for determining PEXA's prices, and does IPART's methodology provide a reliable basis for reducing PEXA's revenues by 20%?
 - 2.3 If a significant reduction in PEXA's prices is nevertheless adopted, how should it be implemented?

1.1 Summary of relevant background information

3. PEXA is an ELNO, meaning that it operates a network, or platform, on which conveyancing transactions are completed electronically (referred to as eConveyancing).^{1 2} PEXA was the first ELNO in Australia. It was initially established as a government-owned company in 2010 (by the NSW, Victorian and Queensland governments), before being converted to a company limited by shares in 2011 (at which point the WA government, financial institutions and other private investors made investments).³ It commenced operations in NSW in 2013 and by 2019 PEXA had largely replaced paper-based conveyancing in NSW (accounting for approximately 85% of all property dealings by June 2019).⁴ In 2019 IPART described this as a "*success story of digitisation*" that saved time, reduced the potential for errors and fraud, and continued to protect the integrity of land registries and financial transactions.⁵
4. In January 2019, PEXA was privatised through a \$1.62 billion acquisition by a consortium comprising Link Group, Morgan Stanley Infrastructure Inc, and the Commonwealth Bank of Australia.⁶ This consortium later sold down its interest in PEXA through an IPO in 2021, which raised \$1.174 billion (implying an enterprise value of \$3.3 billion).⁷
5. IPART first reviewed ELNO service fees in 2019. At that time, PEXA effectively supplied the entire eConveyancing market, although Sympli (a rival ELNO) had recently completed its first transaction and work was underway on interoperability reforms intended to facilitate competition between ELNOs.⁸
6. Following its 2019 review, IPART recommended that maximum ELNO service fees initially be set at PEXA's existing prices and indexed by CPI for two years. That approach primarily reflected an expectation that competition, supported by interoperability, might develop over that future period; and a finding that PEXA's prices were reasonable.⁹
7. In the Draft Report, IPART now forms a different view. In short, the Draft Report proposes that PEXA's revenue should be significantly reduced (by approximately 20%), with specific reductions proposed for the

¹ Draft Report, p. 2.

² Conveyancing is "the process through which title to real property is transferred from one person to another (eg, when it is sold or inherited), and other interests in the property are dealt with (eg, a lessor's or mortgagee's)". See IPART, Review of the pricing framework for electronic conveyancing services in NSW Final Report, November 2019 (**IPART's 2019 Report**), p. 2.

³ Draft Report, p. 14.

⁴ IPART's 2019 Report, p. 9.

⁵ IPART's 2019 Report, Executive Summary, p. 1.

⁶ Draft Report, p. 14.

⁷ PEXA's submission to IPART, November 2025, p. 15.

⁸ IPART's 2019 Report, Executive Summary, pp. 1–2.

⁹ IPART's 2019 Report, Executive Summary, pp. 1–3; NSW Office of the Registrar General, Directions Paper on a Proposed eConveyancing Interoperability Regime, p. 6.

fees of PEXA's four highest priced services in order to achieve that revenue reduction.¹⁰ No price regulation is proposed for other ELNOs.

1.2 Summary of our findings

8. For the purposes of this report, we proceed on the basis that PEXA possesses substantial market power and that some form of continuing regulatory oversight is appropriate. Given PEXA's market position, the network effects associated with eConveyancing and the absence of a realistic prospect of effective competition in the immediate future, there is a legitimate case for continuing oversight of its fees and performance.¹¹
9. The issue is whether those circumstances justify moving from the existing regulatory framework to the prescriptive application of a building block model (**BBM**) that produces a reduction of approximately 20% in PEXA's revenues and is used to directly determine its prices.
10. In our view, they do not. IPART's BBM does not provide a sufficiently reliable basis for the proposed revenue reduction. Nor does the other evidence presently available establish that PEXA's current prices are clearly unreasonable or identify a materially lower price that would more closely reflect the outcome under workable competition.
11. We therefore consider that regulatory oversight of PEXA should remain towards the more light-handed end of the spectrum and that intervention should be calibrated accordingly. IPART should retain the existing regulatory framework and continue to monitor price and non-price outcomes, while preserving its capacity to recommend stronger intervention if clear evidence of exploitation emerges.

1.2.1 The difficulty with IPART's approach

12. While BBMs are commonly used to regulate and set prices for physical utilities in Australia, we do not consider that such an approach can be soundly transplanted directly to set or otherwise regulate PEXA's prices. PEXA differs in important respects from the physical network utilities for which conventional building block regulation is most familiar. In particular, it operates a software-intensive digital platform that reliably connects different stakeholder groups, rather than an extensive network of owned physical infrastructure. Much of its economic value therefore resides in intangible assets, including its software, developed network, customer and stakeholder relationships, licences, operating capability and reputation for secure and reliable settlement. The economic value of these intangible assets is difficult to reliably quantify.
13. IPART accepts that this creates a difficulty for a conventional BBM approach, which was developed principally for capital-intensive physical networks, where establishment expenditure is generally capitalised and the relevant assets, costs and useful lives can be observed and quantified with reasonable confidence.
14. IPART nevertheless proposes to determine PEXA's maximum prices through a BBM. It constructs an initial regulatory asset base of \$367.6 million from PEXA's historical expenditure, including a \$136.3 million uplift for previously unrecovered operating expenditure incurred before 2019 that IPART considers contributed to establishing the platform. On the basis of that asset base and its other assumptions, IPART concludes that PEXA's current fees would imply revenue approximately 20% above its notional revenue requirement and proposes corresponding reductions in its four highest transaction fees.
15. In our view, IPART's historical-cost approach is unlikely to capture the economic value of PEXA's intangible assets soundly. Historical expenditure measures the money spent to develop a platform. It

¹⁰ Draft Report, pp. 2–3.

¹¹ Ibid., pp. 16–19 and 24–26.

does not reflect the value created where development succeeds in producing software, relationships, operating systems, reputation and a network whose value to customers may be materially greater than the sum of the expenditure recorded as having been spent.

16. While IPART presents a 'recovered capital method' to validate its historical-cost approach to estimating PEXA's asset base, this method also uses accounting costs to determine the financial losses incurred by PEXA over time and will therefore suffer from downward bias if past accounting costs represent a poor valuation of PEXA's intangible asset.¹² IPART's 'recovered capital method' therefore does not validate the asset base used in IPART's BBM.
17. In the absence of an arms-length market-based transaction, such internally generated intangible assets are difficult to value. However, in the case of PEXA, there was a market transaction: PEXA was acquired in 2019 for approximately \$1.62 billion (which PEXA estimates is equivalent to \$1.76 billion in 2027 terms). That transaction provides a rare observable market valuation of the business and the combined assets that generated its expected future earnings.
18. We accept that the transaction price does not necessarily provide an appropriate measure of the regulatory asset base without some adjustment. It may include purchaser-specific synergies, a control premium and some capitalised expectation that PEXA would earn supracompetitive returns in the future. We accept that investors should not, in general, be permitted to recover monopoly rents through a regulated return merely because they paid for those expected rents when acquiring the business.
19. However, it does not follow that the very large difference between PEXA's historical expenditure and its market value consists entirely – or even predominantly – of monopoly rents. Brand, software, customer relationships, operating capability and network development can possess substantial economic value, and provide substantial value for consumers, under competitive conditions. The value of network effects similarly cannot be equated automatically with the value of market power: a developed network may both contribute to PEXA's strong market position and provide real value to its users.
20. IPART gives no material weight to the 2019 transaction in constructing PEXA's asset base. In doing so, it argues that the regulatory asset base is not an enterprise valuation and excludes goodwill, brand value, network effects and other values associated with PEXA's market position. That approach avoids including potential capitalised monopoly rents, but risks excluding substantial competitive intangible value at the same time.
21. That distinction has practical consequences. Investors acquired interests in PEXA at market prices under the regulatory arrangements then in place, while governments were among the shareholders that realised value on privatisation. Investors properly bear the risk that any amount paid for expected monopoly rents will not be recoverable through regulated prices. However, unless IPART can reliably distinguish those rents from the competitive value of PEXA's intangible assets, excluding most of the value above historical cost risks retrospectively reallocating, from investors to users, intangible value for which investors paid.
22. The resulting \$367.6 million figure is therefore likely to materially understate the economic value of the important assets required to provide PEXA's regulated services. More broadly, such an outcome would have serious implications for regulatory predictability and for confidence in future investment in businesses whose value depends substantially on intangible assets.
23. If IPART continues to rely on a BBM, the 2019 transaction should be used as an important valuation anchor. The appropriate exercise would be to begin with that observable market value and seek to deduct the value of non-regulated businesses and assets, purchaser-specific synergies and the present value of

¹² We note that the differences between IPART's and PEXA's initial asset base calculations under the recovered capital methodologies are due to differing assumptions of the correct rate of return required to compensate investors during the early years of PEXA when the firm made a loss and was a riskier investment prospect.

any earnings reasonably attributable to the expected exercise of market power. The result would not necessarily identify a single correct asset value. It would, however, provide a range against which IPART's historical-cost estimate could be tested, alongside evidence from the purchase-price allocation, discounted cash flows and other valuation methodologies.

24. The context of the transaction is relevant to that exercise. At the time of the acquisition, PEXA's prices had not increased in real terms since 2014, regulatory oversight already existed, IPART's review was underway, and interoperability and competition from Sympli were anticipated. These circumstances do not establish that the transaction price was unaffected by expectations of market power. However, they do cast doubt on any assumption that most of the difference between the transaction price and historical cost represented capitalised monopoly rents.
25. The very wide range between IPART's historical-cost estimate and the available market and cash-flow valuations demonstrates the uncertainty inherent in applying a BBM to PEXA. That uncertainty is compounded by disagreement about the economic lives of PEXA's intangible assets and the appropriate depreciation profile. IPART must also select economic lives and depreciation profiles for intangible assets whose value may persist, increase or be lost through discrete technological change. Those assumptions materially affect the resulting revenue requirement, and there is no clear basis for concluding that IPART's selected asset lives and straight-line depreciation profile reflect the economic consumption of PEXA's intangible assets.
26. While a BBM can produce a precise numerical answer, the substantial uncertainty in the inputs that drive it may mean that the answer is not reliable.
27. The problem is also illustrated by the changes in IPART's approach over time. In 2019, IPART assessed PEXA's prices holistically, including by comparing them with paper-settlement prices and with prices generated by a model of a benchmark efficient ELNO. In 2026, it proposes to establish a PEXA-specific asset base using historical expenditure and to use the resulting BBM directly to set prices. Although that model can be rolled forward mechanically, it will produce a materially different outcome once IPART's historical operating-expenditure uplift has been substantially depreciated. IPART will then be applying a BBM to a largely opex business – a cost structure to which a BBM is not naturally suited, given that the model is principally designed to remunerate a measurable base of long-lived capital assets – even though PEXA continues to rely on the platform, know-how and other intangible value created by that historical expenditure. In other words, once the historical uplift has expired, the asset-based components of the BBM will cease to recognise much of the value of the assets supporting the provision of service (notwithstanding that the value of these are understated to begin with in IPART's model, as noted above). This leaves the result principally dependent on forecasts of operating expenditure and transaction volumes.
28. This creates a risk of materially different regulatory outcomes between review periods that do not reflect corresponding change in the underlying economics of the business. Such a systematic shift increases the risk of error and reduces regulatory predictability. This is likely to adversely affect confidence in the regulatory system and on investment and value creation, both for PEXA and other businesses regulated by IPART.
29. This concern also has a distributional dimension. Investors acquired interests in PEXA through arm's-length transactions undertaken against the regulatory arrangements then in place. A subsequent methodology that excludes much of the intangible value acquired would retrospectively transfer value from investors to users unless the value removed can reliably be attributed to expected monopoly rents. That issue is sharpened by the public sector's role in establishing PEXA and by the fact that governments were among the shareholders that realised value when it was first privatised in 2019.

1.2.2 A more appropriate way forward

30. These difficulties raise serious doubts regarding the appropriateness and reliability of IPART's proposed approach. The form and intensity of regulation should reflect both the likelihood of consumer harm under alternative approaches, accounting for PEXA's past and expected future conduct, and the reliability with which IPART can improve on existing outcomes through different regulatory arrangements.
31. Alternative regulatory approaches sit on a spectrum. Towards the more light-handed end, a regulator may retain an existing price constraint, monitor price and non-price outcomes and reserve stronger intervention for circumstances in which evidence of harm emerges. Towards the more prescriptive end, the regulator prescribes exactly the prices or revenue allowance that the regulated business will recover. Consistent with Australian regulatory practice, prescriptive price regulation is generally reserved for circumstances in which lighter-handed measures are unlikely to be effective and the expected benefits of intervention justify its costs and risks.
32. The further regulation moves towards prescriptive price-setting, the more precisely the regulator must identify an appropriate regulatory price. That increases the risk of regulatory error where the relevant price cannot be estimated reliably. A price set too high will not prevent the exercise of market power but will incur the higher administrative costs of more intrusive regulation; a price set too low may weaken incentives for investment, innovation and service quality.
33. Different analytical tools can inform the choice of regulatory approach, including a BBM, profitability measures, comparator evidence and excessive-pricing principles, but none of these presently identifies a single alternative price within a sufficiently confined range to support direct price-setting with confidence. However, those tools may still be used collectively under a more light-handed approach to monitor outcomes and identify whether closer investigation or stronger intervention is warranted.
34. The available evidence does not establish that PEXA's current prices are clearly unreasonable.
 - 34.1 Those prices originated when PEXA was a new platform seeking to attract transactions from established paper conveyancing and had not achieved the position it occupies today. PEXA therefore had strong incentives to price attractively to encourage adoption and achieve critical mass.
 - 34.2 PEXA's prices have not subsequently increased in real terms. In 2019, when PEXA had already achieved substantial adoption and was effectively the sole provider of eConveyancing services, IPART assessed materially the same real prices against a model of a benchmark efficient ELNO and paper-settlement prices. It concluded that the prices were reasonable and recommended retaining them subject to CPI indexation.
 - 34.3 IPART's 2019 conclusion does not, on its own, establish that the prices remain reasonable today. The competition then anticipated has not developed, paper conveyancing is no longer a meaningful alternative, and PEXA's transaction volumes and profitability have increased substantially. Those developments justify renewed scrutiny and continuing oversight, but they do not, in and of themselves, establish that existing prices have become unreasonable or that a 20% revenue reduction is appropriate.
 - 34.4 IPART's starting point in its 2026 review is that *"the significant increase in transaction volumes that PEXA has seen might have been expected to have led to lower prices, especially as the cost of providing ELNO services are largely fixed and not primarily driven by transaction volumes or the complexity of the transaction"*.¹³ While increased scale is relevant, even in a workably competitive

¹³ Draft Report, p. 5.

market, scale-driven per unit cost savings are not necessarily passed directly to consumers through price cuts. For instance, these cost savings can represent the reward for outperforming rivals. Moreover, where customers do benefit from such cost savings this could take the form of improved quality and reliability, service-enhancing investment or some combination of those outcomes (which is relevant given the importance of quality to PEXA's customers). Any assessment must therefore consider PEXA's investment and the development of its services since 2019, rather than treating the absence of real price reductions in the context of volume increases as a basis to suggest that current prices are now unreasonable.

34.5 PEXA has also remained subject to regulatory oversight and the prospect of stronger intervention. That also does not establish that its prices are reasonable, but it is relevant to whether PEXA would have expected to retain, and sought to exploit, its market position without regulatory constraint. The absence of material real price increases must be considered in that context.

35. Taken together, the evidence supports retaining an approach to regulating PEXA that is towards the more light-handed end of the regulatory spectrum. PEXA's market position justifies continuing oversight, but the absence of a reliable replacement price and the lack of clear evidence that current prices are unreasonable mean that moving to direct cost-based price-setting, which would represent a shift to the heavy-handed end of the regulatory spectrum, is not justified.
36. This is not, however, a recommendation that PEXA be left unregulated. IPART should retain the existing regulatory framework and monitor regulated prices, financial outcomes, investment, service quality and reliability, and developments affecting competition. The available analytical tools should be considered collectively and over an appropriate period; no single measure should determine whether stronger intervention is warranted.
37. If IPART nevertheless retains a BBM, it should avoid placing determinative weight on a single cost-based methodology that requires it to reconstruct PEXA's RAB while giving no material weight to the principal observed evidence of PEXA's market value contained in the 2019 transaction. It should use that transaction and other market-value evidence to test a reasonable range for PEXA's intangible asset value, after making appropriate deductions for non-regulated value and expected monopoly rents.
38. In our opinion, IPART's proposed BBM does not provide a reliable basis for reducing PEXA's revenues by 20%. On the evidence presently available, IPART should not move PEXA from the more light-handed regulatory framework that currently applies to the prescriptive end of the spectrum represented by direct BBM price-setting. Maintaining the existing framework with ongoing monitoring would constrain PEXA's pricing, enable IPART to identify emerging harm and preserve a credible capacity to move towards stronger intervention if the evidence later justifies it. That approach is more proportionate and less susceptible to regulatory error than IPART's proposal.

1.3 Answers to the questions that we have been asked

39. Against that background, our answers to the questions we have been asked are as follows.
40. **First, what is the most appropriate methodology or regulatory approach for assessing PEXA's ELNO service fees?** We do not consider that any single methodology can reliably identify an appropriate regulatory price. IPART should retain the existing regulatory framework, towards the more light-handed end of the regulatory spectrum, while using the available tools collectively to monitor its prices and financial and non-financial performance. Those tools include cost and profitability measures, comparator and excessive-pricing analysis, historical prices, evidence concerning customer value, and PEXA's investment and service performance. On the evidence presently available, they do not establish that PEXA's current prices are unreasonable or provide a reliable basis for replacing them with a particular alternative price.

We explain the limitations of the available tools in Section 6.3, apply them to PEXA in Section 6.3.1 and assess the reasonableness of PEXA's current prices in Section 6.4.

41. **Second, is a recovered-capital methodology an appropriate basis for determining PEXA's prices, and does IPART's methodology provide a reliable basis for reducing PEXA's revenues by 20%?**

Our view is no. A recovered-capital methodology remains dependent on historical expenditure and contested assumptions about the return required during PEXA's development period. It therefore does not overcome the difficulty of valuing the software, network, know-how, relationships and other intangible assets created through that expenditure. The very different results produced by the recovered-capital calculations under different assumptions demonstrate that selecting point assumptions for historical WACC, productivity and transaction volumes would create an appearance of precision without providing a sufficiently reliable pricing result. More generally, IPART's 20% result depends materially on uncertain estimates of PEXA's initial asset base, asset lives and depreciation profile and is not robust to plausible alternatives. We discuss the valuation of PEXA's intangible assets and the recovered-capital methodologies in Section 3, asset lives and depreciation in Section 4, and the implications for IPART's model and regulatory predictability in Sections 3.4 and 5.

42. **Third, if a significant reduction in PEXA's prices is nevertheless adopted, how should it be implemented?**

We do not consider that a reliable basis for the proposed reduction has been established and therefore do not recommend implementing it. If IPART reaches a different conclusion, it should first recalculate the amount and path of any adjustment using an economically appropriate depreciation profile. Only then would a separate choice between immediate and phased implementation arise. Any additional phasing should be adopted only to the extent necessary to manage demonstrated risks to efficient investment, service quality or the secure and reliable operation of the platform, and should not duplicate deferral already reflected in the depreciation profile. We discuss alternative depreciation profiles in Section 4.2 and the conditional implementation options in Section 6.5.1.

1.4 Structure of this report

43. The remainder of this report is structured as follows:

43.1 Section 2 provides relevant background and context to our assessment, including details on the development of eConveyancing in Australia, IPART's 2019 review of PEXA's pricing, and the proposal set out in the Draft Report.

43.2 Section 3 discusses the impact of intangible assets when regulating PEXA. We set out the economics of intangible assets and the inherent challenges associated with reliably estimating their value, before discussing the importance of intangible assets to PEXA's business, the genuine and significant uncertainty regarding their legitimate economic value, and the implications of this for IPART's BBM and proposals in the Draft Report.

43.3 Section 4 considers economic lives and depreciation profiles for intangible assets, and the implications for IPART's proposed BBM approach.

43.4 Section 5 discusses the impact of these issues on regulatory predictability, with reference to the outcomes were IPART's proposed approach to be mechanically rolled forward.

43.5 Section 6 considers the available regulatory approaches and analytical tools, assesses what they indicate about the reasonableness of PEXA's current prices, and explains why retaining the existing light-handed framework with ongoing monitoring is preferable to direct price-setting using IPART's BBM.

2 Relevant background and context

2.1 The development of eConveyancing

44. 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 property interests are managed (e.g., a lessor's or mortgagee's interests).¹⁴ Until the early 2010s, conveyancing was primarily a manual, paper-based process.¹⁵
45. Electronic conveyancing provides a digital alternative to the traditional paper-based process. It is conducted through an electronic lodgement network (ELN), which allows solicitors, conveyancers and financial institutions to exchange data, prepare documents, settle funds and lodge documents with land registries.¹⁶ A business approved to operate such a network is known as an electronic lodgement network operator (ELNO).¹⁷
46. Figure 1 below summarises the participants in the eConveyancing process and how the ELNO platform facilitates the interactions between these different participants.
 - 46.1 Subscribers to the ELNO platform are those authorised to enter and exchange data and complete electronic documents and transactions via an ELN.¹⁸ They include principal subscribers who represent themselves (e.g., financial institutions and government agencies) and representative subscribers (such as solicitors or conveyancers) who represent other parties to the conveyance – typically the vendor or purchaser.¹⁹
 - 46.2 The Reserve Bank of Australia facilitates financial settlement by transferring funds between financial institutions once lodgement is confirmed.²⁰
 - 46.3 State revenue offices confirm whether duties (e.g., stamp duty) have been paid; if not, the dutiable amounts are populated in the ELN workspace and paid at settlement.²¹
 - 46.4 Finally, the documents on the ELN are lodged with the state registry office, which updates the land titles register (e.g., replacing the vendor's name on a title with the purchaser's).²²

¹⁴ IPART's 2019 Report, p. 2.

¹⁵ PEXA's submission to IPART, November 2025, p. 14.

¹⁶ IPART's 2019 Report, p. 2.

¹⁷ Ibid., p. 3.

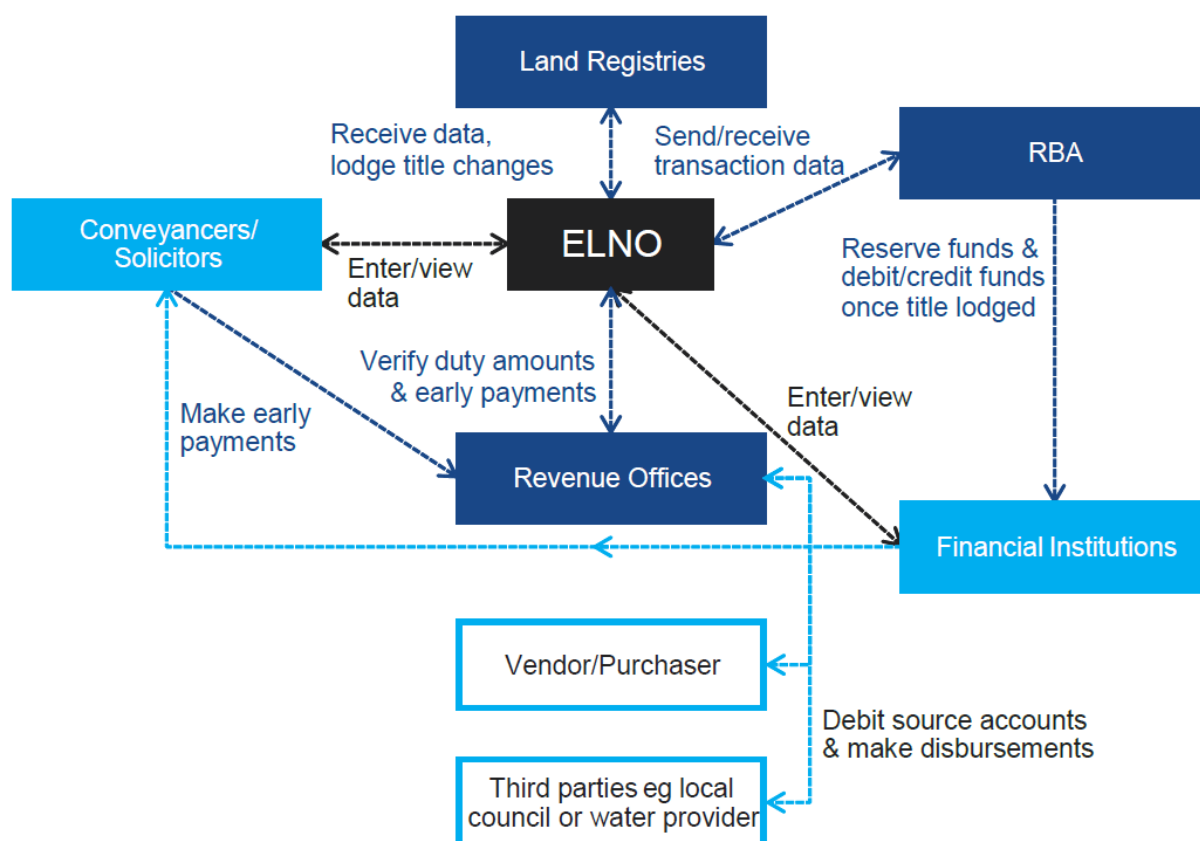
¹⁸ IPART's 2019 Report, p. 3.

¹⁹ Ibid., p. 3.

²⁰ Ibid., p. 3.

²¹ Ibid., p. 3.

²² Ibid., p. 3.

Figure 1: Participants in the eConveyancing process and interactions

KEY:

■ = Subscribers

■ = Send and receive data

□ = Not involved in the workspace

Source: IPART's 2019 Report, Figure 2.1.

47. ELNOs charge service fees to subscribers using their networks, including lawyers, conveyancers and financial institutions. Depending on the arrangements between a subscriber and its client, we understand that these fees may ultimately be passed through to the vendor or purchaser represented by the subscriber. These ELNO service fees are the subject of IPART's review.

2.2 PEXA's role in eConveyancing

48. PEXA was established to develop and operate Australia's first national electronic lodgement network.
49. PEXA completed its first transaction in 2013.²³ By 2024–25, it accounted for approximately 99% of all eConveyancing transactions and 90% of total conveyancing transactions across both paper and electronic channels.²⁴
50. That outcome was not assured. Several earlier state-led attempts to establish eConveyancing platforms had failed, including in NSW and Victoria, because they could not achieve the critical mass of users needed to make a shared platform worthwhile.²⁵ An electronic transaction requires the participation of

²³ PEXA, PEXA Economic Impact Report, 2025, p. 2.

²⁴ Draft Report, p. 25.

²⁵ PEXA's submission to Senate Economics References Committee, Inquiry into Micro-competition opportunities in the Australian economy in relation to eConveyancing, March 2025, p. 13.

multiple parties, including the representatives of the purchaser and vendor and, in many cases, their respective financial institutions. The value of the platform to each participant therefore depends substantially on the participation of others.

51. PEXA benefited from government seed funding and the development of a nationally consistent legal framework. Substantial further investment and user adoption were nevertheless required before the platform became viable.²⁶ PEXA encouraged adoption by initially setting prices at relatively low levels. According to PEXA's evidence, its prices have not increased in real terms since 2014, when its market penetration remained very low and paper conveyancing continued to provide the principal alternative.²⁷
52. PEXA had achieved substantial adoption before governments in Victoria, NSW, South Australia and Western Australia mandated eConveyancing for many transaction types.²⁸ Transactions on PEXA's platform continued to grow following these mandates and by 2019 eConveyancing had largely displaced paper conveyancing.²⁹
53. The benefits of eConveyancing have been substantial. IPART has described its development and implementation as a "*success story of digitisation*" that saved time, reduced the potential for errors and fraud, and continued to protect the integrity of land registries and financial transactions.³⁰ The requisition rate for paper-based lodgements was historically around 15–20%. PEXA reports that fewer than 1% of transactions lodged through its platform are now requisitioned.³¹
54. An evaluation prepared by ACIL Allen for PEXA estimates that the platform added approximately \$3.02 billion to Australian GDP between 2015 and 2025 relative to paper conveyancing. The estimated benefits include time and cost savings to financial institutions, legal practitioners and conveyancers, land registries and state revenue offices.³²
55. These matters do not determine the appropriate level of PEXA's fees. However, they do provide relevant context. PEXA developed a genuinely new platform, incurred investment and adoption risks in doing so, and delivered significant measurable benefits. Any regulatory assessment should therefore consider not only current prices and costs, but also the implications of regulation for investment, innovation, service quality and the continued development of the platform.

2.3 IPART's 2019 review

56. IPART first reviewed ELNO service fees in 2019. At that time, PEXA effectively supplied the entire eConveyancing market, although Sympli had recently completed its first transaction and work was underway on interoperability reforms intended to facilitate competition between ELNOs.³³
57. IPART assessed PEXA's existing prices in two principal ways. First, it used a utility-style building block analysis to model the costs and prices of an efficient ELNO under a range of market share scenarios. IPART found that PEXA's prices were reasonable compared to modelled prices for a benchmark efficient ELNO across these scenarios.³⁴
58. Second, IPART cross-checked PEXA's fees against the prices previously charged by settlement agents for paper settlements and related services. IPART concluded that PEXA's existing prices were reasonable

²⁶ Draft Report, p. 14; PEXA's submission to IPART's 2026 Methodology Paper, May 2026, p. 23; PEXA, Information Memorandum, July 2018, p. 59.

²⁷ PEXA's submission to IPART, November 2025, pp. 6 and 15; PwC, Market Analysis Consultation Brief, p. 36.

²⁸ PEXA's submission to IPART, November 2025, p. 15; PEXA's submission to IPART's 2026 Methodology Paper, May 2026, p. 22.

²⁹ IPART's 2019 Report, p. 9.

³⁰ IPART's 2019 Report, Executive Summary, p. 1.

³¹ PEXA's submission to IPART, November 2025, p. 17.

³² PEXA, PEXA Economic Impact Report, 2025, p. 10.

³³ IPART's 2019 Report, Executive Summary, pp. 1–2.

³⁴ Ibid., Executive Summary, p. 3 and pp. 46–54; AECOM, Estimating Costs of Electronic Conveyancing Services in NSW, November 2019.

compared with the modelled scenarios and that solicitors and conveyancers were no worse off, and could be better off, than under the relevant paper-based alternatives.³⁵

59. IPART therefore recommended that maximum ELNO service fees initially be set at PEXA's existing prices and indexed by CPI for two years. That approach reflected an expectation that competition, supported by interoperability, might develop over that future period.³⁶

2.4 Developments since the 2019 review

60. Our understanding is that the anticipated competition has not developed.
61. In 2024, ARNECC paused interoperability reforms following significant concerns raised by the banking industry.³⁷ Subsequent work concluded that implementing interoperability would be complex, costly and time-consuming, with substantial uncertainty as to whether it would produce meaningful long-term competition benefits.³⁸ In March 2026, ARNECC announced that it would not proceed with mandated interoperability at that time.³⁹
62. Sympli has not emerged as a significant competitive constraint. It has never accounted for more than a small fraction of eConveyancing transactions. In 2026, ASX sold its 49% interest in Sympli for a nominal amount.⁴⁰ PEXA continues to account for approximately 99% of eConveyancing transactions.⁴¹
63. At the same time, PEXA's transaction volumes, revenues and EBITDA have grown substantially. Its service fees have not increased in real terms, but the expansion of eConveyancing and the introduction of government mandates have increased the number of transactions conducted through its platform.⁴²
64. That growth is central to IPART's present concern. IPART does not contend that PEXA has materially increased its fees in real terms since the 2019 review. Rather, it considers that, because a substantial proportion of the costs of providing ELNO services is fixed, the increase in transaction volumes should have reduced the efficient cost per transaction. In IPART's view, prices in a competitive market might therefore have fallen as volumes increased.⁴³

2.5 What IPART proposes in 2026

65. The Draft Report concludes that PEXA possesses substantial market power and that its ELNO service fees should continue to be regulated. It recommends exempting Sympli and any future entrant from price regulation, giving those firms greater flexibility to rebalance their prices and reducing the regulatory burden associated with entry and expansion.⁴⁴
66. For PEXA, IPART proposes to determine maximum fees through a building block model.⁴⁵ In broad terms, a building block model estimates the revenue required to allow a regulated firm to recover its forecast efficient operating expenditure, depreciation and tax liabilities, together with an appropriate return on its regulated asset base. Forecast transaction volumes are then used to translate that revenue requirement into prices.
67. IPART's proposed use of the model differs materially from its approach in 2019. The 2019 review modelled the costs and prices of a benchmark efficient ELNO and used the resulting estimates as part of

³⁵ Ibid., Executive Summary, p. 3 and pp. 60–62.

³⁶ Ibid., Executive Summary, p. 2; NSW Office of the Registrar General, Directions Paper on a Proposed eConveyancing Interoperability Regime, pp. 5–6.

³⁷ Draft Report, p. 18.

³⁸ Ibid., p. 18.

³⁹ Ibid., p. 19.

⁴⁰ Ibid., p. 14.

⁴¹ Ibid., p. 15.

⁴² Ibid., pp. 14–15.

⁴³ Ibid., p. 5.

⁴⁴ Ibid., pp. 25–27.

⁴⁵ Ibid., pp. 33–35 and pp. 40–42.

a broader assessment of whether PEXA's existing prices were reasonable.⁴⁶ The 2026 draft instead proposes to construct an initial regulatory asset base for PEXA and use the resulting building block calculation to determine its maximum prices directly.⁴⁷

68. IPART proposes an initial asset base of \$367.6 million as at 1 July 2027, comprising:
- 68.1 \$231.2 million of PEXA's historical capital expenditure, rolled forward from 2010–11; and
 - 68.2 a \$136.3 million uplift for operating expenditure incurred up to and including 2018–19 that IPART considers contributed to developing and establishing the platform.⁴⁸
69. IPART included the uplift because it recognised that PEXA is a digital platform with a high proportion of intangible assets and that a conventional building block model, designed principally for capital-intensive physical networks, might otherwise understate the expenditure associated with establishing the business. The uplift is amortised using a 15-year asset life.⁴⁹
70. Using this asset base and its assumptions concerning expenditure, depreciation, the cost of capital and future transaction volumes, IPART estimates that PEXA's annual notional revenue requirement will be approximately \$272–274 million during the regulatory period.⁵⁰ It concludes that PEXA's current fees would generate revenue around 20% above that requirement.⁵¹
71. IPART proposes to recover the reduction by lowering the fees for the four transfer-transaction categories by between 14.6% and 36.6% from 2027–28. Other regulated fees would initially remain at their existing real levels, with regulated fees subsequently indexed by CPI.⁵²

Table 1: IPART's proposed draft regulated ELNO service fees for PEXA 2027-28 – 2031-32

Transaction	Current Fee (incl. GST)	Proposed Regulated Fee in 2027-2028 (incl. GST)	Percentage Reduction from 2026-27	Increase from 2027-28 – 2031-32
Transfer of interest (single title, no financial settlement)	\$97.24	\$81.71	-16.0%	CPI annually (0% real growth)
All other transfer transactions (single title, with financial settlement)	\$146.30	\$92.71	-36.6%	CPI annually (0% real growth)
Transfer of interest (multiple titles, no financial settlement)	\$118.25	\$100.96	-14.6%	CPI annually (0% real growth)
All other transfer transactions (multiple titles, with financial settlement)	\$167.42	\$111.96	-33.1%	CPI annually (0% real growth)
All other eConveyancing Services	Fees are capped at current prices and allowed to increase by CPI			

Source: Draft Report, Draft recommendations 7 & 8 and Table 4.2

⁴⁶ IPART's 2019 Report, Executive Summary, p. 3 and pp. 46–54.

⁴⁷ Draft Report, p. 5.

⁴⁸ Ibid., pp. 66–67.

⁴⁹ Ibid., pp. 67, 69 and 70–72.

⁵⁰ Ibid., pp. 41.

⁵¹ Ibid., pp. 44.

⁵² Ibid., Draft recommendations 7 & 8 and Table 4.2.

2.6 The issue addressed in this report

72. For the purposes of this report, we proceed on the basis that PEXA possesses substantial market power and that some form of continuing regulatory oversight is appropriate. Given PEXA's market position, the network effects associated with eConveyancing and the absence of a realistic prospect of effective competition in the immediate future, there is a legitimate case for continuing oversight of its fees and performance.
73. The issue is instead whether those circumstances justify direct price-setting through a prescriptive building block model and whether IPART's model can identify a sufficiently reliable price to support the reductions proposed.
74. That distinction matters. PEXA shares some characteristics commonly associated with regulated monopolies. It faces little effective competition, benefits from strong network effects and operates in a market in which electronic conveyancing is mandatory for many transactions. In the absence of regulation or the credible threat of regulation, it could possess both the ability and the incentive to charge prices above competitive levels.
75. But PEXA also differs materially from the physical network utilities for which conventional building block regulation is most familiar. It operates a digital platform rather than an extensive network of owned physical infrastructure. Its value depends heavily on intangible assets, including its technology, developed network, relationships, operating capability and reputation for secure and reliable settlement. Those assets are difficult to value by reference to historical expenditure and may have economic lives that differ materially from their accounting lives.
76. These characteristics neither establish that PEXA's existing prices are necessarily appropriate, nor do they eliminate the case for regulation. They do, however, create a risk that a conventional building block model will produce a precise answer without providing a reliable estimate of the price that would prevail under effective competition.

3 The impact of intangible assets when regulating PEXA

77. BBMs have been used as a regulatory tool across a wide range of industries in Australia. These industries are typically capital-intensive natural monopolies with long-lived physical assets, including water utilities, gas and electricity networks, maritime ports, and railways.⁵³ BBMs have many advantages in these cases as they provide a mechanism to tightly link prices to the efficient level of costs required to provide these services in settings where natural monopoly characteristics could lead to supracompetitive prices if price setting were left to the market. BBMs can also provide regulatory certainty by provisioning for capital recovery over time and smoothing price paths to accommodate this recovery, despite large and lumpy infrastructure projects.
78. However, the output of a BBM will only be as reliable as its inputs. A key feature of PEXA that distinguishes it from other industries that are typically subject to price regulation using BBMs is the presence of significant intangible assets that cannot safely be ignored. While efficient costs, asset bases, and the useful lives of assets, can be estimated with a reasonable degree of certainty in the industries described above, the same does not apply to the intangible assets of PEXA.
79. In this Section we discuss the impact of intangible assets when regulating PEXA. We begin by setting out the economics of intangible assets and the inherent challenges associated with reliably estimating their value. We then discuss the importance of intangible assets to PEXA's business (meaning they cannot safely be ignored), and the genuine and significant uncertainty regarding their legitimate economic value.
80. Finally, we discuss the implications of this for IPART's BBM and proposals in the Draft Report. In summary and in light of the significant and genuine uncertainty regarding the value of PEXA's intangible asset base, we do not consider that IPART's proposed approach and BBM (which relies on a single cost-based estimate that is likely to understate the value of PEXA's intangible assets) provides a reliable basis for lowering PEXA's notional revenue requirement (**NRR**) by 20%, or imposing reductions on specific service fees.⁵⁴
81. If IPART continues to rely on a BBM, the 2019 transaction should be used as an important valuation anchor. The appropriate exercise would be to begin with that observable market value and seek to deduct the value of non-regulated businesses and assets, purchaser-specific synergies and the present value of any earnings reasonably attributable to the expected exercise of market power. The result would not necessarily identify a single correct asset value. It would, however, provide a range against which IPART's historical-cost estimate could be tested, alongside evidence from the purchase-price allocation, discounted cash flows and other valuation methodologies.

3.1 The economics of intangible assets

82. The assets of a business can be either tangible or intangible. Tangible assets are those with a physical form. Examples include land and buildings, plant and machinery, fixtures, fittings and tools, vehicles, and office and computer equipment.⁵⁵ By contrast, intangible assets are those without a physical form. Examples include knowledge, skills in the workforce, consumer goodwill, superior management, strong branding or reputation (e.g., a reputation for security or reliability), and customer relationships built over time.⁵⁶

⁵³ For a summary of the industries that are subject to regulation in Australia using BBMs, see Annexure B.

⁵⁴ For a further, non-technical explanation of the NRR, see Annexure A.

⁵⁵ Brealey and Myers (2011), *Principles of Corporate Finance*, Chapter 1.

⁵⁶ *Ibid.*

83. Importantly, intangible assets can be present (and substantial) even in firms operating in markets subject to vigorous competition. Put differently, intangible assets are not necessarily derived from substantial market power.
84. It is widely recognised that accounting for intangible assets is important when assessing the value of a firm's assets. For example, Corrado et al. (2022) explain that "*understanding modern firms and indeed modern economies requires broadening the concept of capital beyond tangible assets to include intangibles*".⁵⁷ Similarly, Eberly (2022) notes that "[i]ntangible capital has become a large and increasingly important part of firms' capital stock and assets, especially over the last three decades" and that "*investments in intangibles create lasting value... which is the defining hallmark of investment*".⁵⁸ Any assessment of the economic value of a firm's assets which does not consider the role of intangibles will be unreliable.

3.1.1 The difficulty measuring intangible assets

85. While intangibles are clearly important in assessing the total value of a firm's assets, the value of intangible assets is difficult to measure.
86. Intangible assets are not typically included on a firm's balance sheet.⁵⁹ Economists have long recognised that the book value of assets typically understates corporate intangible assets.⁶⁰
87. For example, expenditure on advertising, research and development, and training can provide benefits beyond the period in which the costs associated with them are incurred.⁶¹ These expenditures create intangible assets that provide ongoing benefits to the firm in exactly the same way that investments in tangible assets do. However, accounting conventions generally require that these expenditures be treated as an expense in the period in which it is incurred, rather than capitalised and treated as an investment. This creates a divergence between the economic value of a firm's assets and the accounting value of a firm's assets.⁶²
88. However, the challenges associated with measuring the economic value of intangible assets goes well beyond capitalising a firm's operating expenses.
89. Intangible assets are often highly complementary. Instead of acting as substitutes, different categories of intangibles can interlock and multiply each other's productivity. For example, a firm's in house knowledge (human capital) can facilitate superior research and faster innovation.⁶³ In these cases, the economic value of a firm's total intangible assets can be greater than the sum of its parts.
90. Additionally, intangible assets are typically developed in-house and co-produced alongside a firm's primary products or services.⁶⁴ As such, it can be difficult to identify, in a non-arbitrary way, the proportion of costs (e.g., employee wages, managerial time, administrative overheads) that were used to develop a particular intangible asset. By contrast, firms rarely produce their own tangible assets; these are typically purchased through clear arm's length market transaction making their value more readily identifiable.⁶⁵
91. The value of a firm's intangible assets can be more objectively measured where those assets are acquired or sold through an arms-length market transaction. In these cases, goodwill will typically be recorded as the difference between the acquisition cost of the assets and their "fair value".⁶⁶ The difference between

⁵⁷ Corrado et al. (2022), Intangible Capital and Modern Economies, p. 4.

⁵⁸ Eberly (2022), The Value of Intangible Capital, p. 16.

⁵⁹ OECD, Policy Roundtable – Excessive Prices, 2011, pp. 394-395; Eberly (2022) The Value of Intangible Capital, p. 16.

⁶⁰ Eisefeldt and Papanikolaou (2014), The Value and Ownership of Intangible Capital, p. 1.

⁶¹ OECD, Policy Roundtable – Excessive Prices, 2011, pp. 394-395;

⁶² Church and Ware (2000), Industrial Organisation, pp. 433-434

⁶³ Haskel and Westlake (2018), Capitalism without Capital.

⁶⁴ Corrado et al. (2022), Intangible Capital and Modern Economies, p. 17-18.

⁶⁵ Corrado et al. (2022), Intangible Capital and Modern Economies, p. 17-18

⁶⁶ OECD, Policy Roundtable – Excessive Prices, 2011, p. 395.

the price paid for business and the value of the firm's tangible assets provides the value of the firm's intangible assets.

92. Generally, a market-based transaction would be a preferred approach to measuring the value of intangible assets. Alternative approaches – such as capitalising various operating expenses – are likely to understate the value of intangibles because they do not capture synergies between the intangibles. Moreover, any attempt to assess which portion of the operating costs should or should not be capitalised will be inherently arbitrary. Conversely, a market transaction abstracts away from these issues by capturing the comprehensive value of all of the firm's assets, used in combination, and bypassing the complex task of valuing them individually. However, there may be limitations with this approach.
93. In the context of economic regulation, it is only the firm's efficient costs of the assets required to supply the relevant services that should be included as part of a firm's regulatory asset base. If the purchase price of the business incorporates profits associated with the expected exercise of substantial market power, the sale price will overestimate the efficient costs of providing the relevant service and therefore overestimate the value of the relevant intangible assets.
94. Put simply, incorporating substantial market power rents into the value of the asset base simply allows the regulated firm to set its price at a level which allows the firm to exercise substantial market power.

3.1.2 The implications for asset and cost-based measures of return

95. In the context of physical utility regulation, intangible assets are unlikely to comprise a significant proportion of the initial asset base and will therefore have a relatively small impact on the regulated prices. For example, IPART notes that, in the context of water and wastewater service regulation, *“the initial asset base has typically been set using well-developed approaches applying to physical infrastructure...designed to reflect the prudent and efficient costs of assets required to deliver services”*.⁶⁷
96. Where this is not the case and intangibles are likely to be significant, any form of regulation will need to account for the value of the firm's intangibles to ensure efficient firms receive a reasonable return on their investments while protecting consumers from the exercise of substantial market power. For example, digital platforms typically possess significant intangible assets as their primary value often arises from non-physical assets, such as proprietary algorithms or software architecture, rather than physical infrastructure.⁶⁸
97. This challenge is particularly pertinent in asset- or cost-based regulation, where a firm's asset value is a key input to the regulator's cost model. When a regulated firm possesses significant intangible assets, the regulator must resolve the measurement reliability issues outlined in Section 3.1.1 above to achieve meaningful results.

3.2 The importance of PEXA's intangible assets

98. A key input into (or building block in) a BBM is the asset base. This feeds directly into the depreciation and return on capital that, in turn, determine the NRR.⁶⁹ All else being equal, if the asset base is significantly understated, then the NRR will also be significantly understated. Conversely, if the asset base is significantly overstated, then the NRR will also be significantly overstated.
99. IPART acknowledges that the nature of PEXA's asset base is different from other, physical-asset intensive industries in which a BBM is typically used, and that it is important to have regard to these intangible assets in the asset base. For instance, IPART notes the following:

⁶⁷ IPART, Methodology Paper – Initial Asset Base for an Electronic Lodgment Network Operator, March 2026 (IPART's 2026 Methodology Paper), p. 2.

⁶⁸ Eberly (2022), The Value of Intangible Capital, pp. 16-17;

⁶⁹ For a further, non-technical overview of the mechanics of a BBM and the key inputs, please see Annexure A.

- 99.1 *“[f]or an ELNO, the nature of the assets is different ...[as] ELNO’s rely predominantly on intangible assets including software platforms, system architecture, data and associated intellectual property, rather than long-lived physical infrastructure”;*⁷⁰
- 99.2 PEXA is a *“digital platform with a high proportion of intangible assets”* and that this view was generally supported by stakeholders;⁷¹
- 99.3 *“Given the nature of software and IT services, when using the building block model to estimate efficient prices for a benchmark ELNO, we considered the initial asset base (as discussed in Box 5.1) and the appropriate method for valuing an ELNO’s intangible assets”;*⁷²
- 99.4 *“We agree that one of the key issues in establishing the initial asset base is the approach used to value intangible assets, and whether and how research and development costs should be capitalised for ELNOs”.*⁷³
100. That intangible assets represent the majority of PEXA’s asset base can be seen when regard is had to the categories of assets included in its financial accounts. Table 2 presents the breakdown of PEXA’s asset base according to its financial accounts for the financial year ended June 2025 (along with the accounting book value of each asset, and the accounting valuation method). As can be seen below, financial accounts report that PEXA holds non-current physical assets valued at close to \$10.7 million. This constitutes only around 0.7% of PEXA’s entire non-current asset base, with the majority of the remaining balance relating to intangible assets.⁷⁴

⁷⁰ IPART’s 2026 Methodology Paper, p. 2

⁷¹ Draft Report, pp. 69–70.

⁷² IPART’s 2019 Report, p. 52.

⁷³ IPART’s 2019 Report, pp. 52–53.

⁷⁴ PEXA’s total non-current asset base at 30 June 2025 was valued at \$1.55 billion. Intangible assets represent \$1.52 billion of this value (98%) physical assets represent \$0.01 billion (0.7%). The remainder relates to financial and tax assets such as prepayments, investment in associates, deferred tax assets, and other financial assets.

See PEXA Group Limited financial accounts for financial year 2025, Consolidated Statement of Financial Position.

Table 2: Breakdown of PEXA Group Limited's asset base, according to financial accounts (June 2025)

Asset	Initial value recognition	Book value on 30 June 2025 (million \$2025)
Goodwill	Residual between acquisition price and net book value	753.61
Commercialised software	Fair value if acquired Historical cost if developed internally	266.61
In-house software	Internal development cost	215.63
Customer relationships	Fair value at acquisition	237.71
Brand	Fair value at acquisition	30.13
Licenses	Fair value at acquisition	14.96
Total non-current intangible assets		1,518.66
Furniture and fittings	Historical cost	1.51
Office and computer equipment	Historical cost	1.55
Right-of-use assets ⁷⁵	Cost	7.61
Total non-current physical assets		10.67
Total non-current assets		1,550.39

Source: PEXA Group Limited financial accounts for financial year 2025.

Notes: We understand that the book values in PEXA's financial accounts will have been prepared in accordance with the Australian Accounting Standards Board (AASB) and in particular AASB 138. Under AASB 138, we understand that PEXA would recognise the value of acquired assets under a business combination at the fair value of the asset at the date of acquisition, with this fair value judged based on the expected future economic benefits these assets can generate.

101. In light of Table 2, we understand that PEXA's specific intangible assets would include the following (although for the reasons set out in Sections 3.1 and 3.3, the book values may not accurately reflect the economic value of these assets):

101.1 **Software assets:** The underlying software and APIs that allow for a fully integrated exchange platform, and the value created by digitising the key lodgment, transfer, and settlement processes.

101.2 **Licenses:** Licenses granted by state registrars allowing PEXA to operate as an ELNO platform across Australia in compliance with the Model Operating Requirements ("MOR") set by ARNECC.

101.3 **The PEXA customer base:** PEXA can only complete transactions when all parties are subscribed to the PEXA's platform. PEXA's reach and coverage of 90% of Australian property transactions, means that subscribers (i.e., lawyers/conveyancers and financial institutions) can be confident that counterparties to a transaction (or their representatives) will also be PEXA's subscribers. The value of PEXA to a subscriber therefore grows with the number of other subscribers. These are known as network effects and are an important aspect of the value that PEXA (and many digital platforms)

⁷⁵ Relates to PEXA's right to use assets which it leases from third parties.

provide to their users.⁷⁶ Particular care needs to be taken when valuing such an asset to ensure that it does not include any capitalised market power. We discuss this further in Section 3.3 below.

101.4 **The PEXA brand:** PEXA's investment in security measures and resiliency minimises uncertainty for customers when completing large financial transactions. This trust in PEXA and subscribers' confidence in the reliability of the platform is also a valuable intangible asset for PEXA.⁷⁷ The importance of the stability and security of the PEXA's platform is also mentioned prominently in the 2019 sale information memorandum.⁷⁸

101.5 **Specific customer relationships:** Distinct from the network effects described above, customer relationships track the expected future value to PEXA of specific customer relationships (e.g., with important banking and conveyancing clients). For example, acquired customer relationships would be measured in terms of future expected cash flow received by PEXA from this customer, but no consideration would be taken into the possible increase in transaction volumes and revenues generated from other subscribers who benefit from this subscriber's inclusion in the PEXA's network.⁷⁹

102. We discuss the uncertainty associated with their economic value in the Section that follows.

3.3 Genuine uncertainty regarding the economic value of PEXA's intangible assets

103. We understand that IPART would agree with us that PEXA's intangible assets are potentially substantial and therefore must be considered when determining the value of PEXA's initial asset base for purposes of the BBM. Indeed, in the BBM underpinning the proposals in its Draft Report, IPART applies a specific uplift that "*reflects the nature of PEXA Exchange as a digital platform with a high proportion of intangible assets in an attempt to reflect the value of PEXA's intangible assets*".⁸⁰

104. However, it is IPART's approach to attempting to reflect PEXA's intangible assets in the asset base that we disagree with.

105. As noted in Section 2.5 above, IPART's proposed initial asset base of \$367.6 million as at 1 July 2027 comprises a \$136.3 million uplift for operating expenditure incurred up to and including 2018–19 that IPART considers contributed to developing and establishing the platform.⁸¹ In order to arrive at this uplift, IPART capitalises all operating costs incurred during the development and scaling phase of the PEXA platform (2010 – 2019).⁸² However, IPART explicitly excludes goodwill, brand value and network effects from the estimation of PEXA's asset base under the justification that these are "*associated with PEXA's current market position*".⁸³

106. In short, IPART attempts to reflect PEXA's intangible assets with reference to unrecovered historical accounting costs. For the reasons set out in Section 3.1, this is unlikely to reliably capture the value of PEXA's intangible assets.

⁷⁶ See PEXA, Information Memorandum, 2019, pp. 9–10. The importance of PEXA's network is underlined in the information memorandum created for PEXA's eventual sale in 2019. In this document, a qualitative overview of the value of PEXA's network is the first topic discussed in the executive summary, following a brief initial introduction to PEXA and the ELNO market.

⁷⁷ As stated in its financial accounts, PEXA's brand stands for "*integrity, reliability, and effectiveness*". To continue meeting customer and legal requirements in this regard, PEXA invested \$34 million in safety, reliability and resilience initiatives related to the PEXA Australian exchange in financial year 2025. The legal aspect of this stems from ARNECC's model operating requirements (MORs) which mandate minimum service levels, such as 99.9% service availability during core hours, average user-prompt response times below three seconds, and avoiding disruption from the same root cause more than twice in a six-month period. See PEXA Group Limited financial accounts for financial year 2025, p. 11 and p.19.

⁷⁸ See ARNECC, Model Operating Requirements Version 7.2, Schedule 2 – Performance Levels.

⁷⁹ PEXA, Information Memorandum, 2019, p. 9.

⁸⁰ Note this only relates to customer relationships as valued during the sale of PEXA in 2019, with adjustments applied for amortization and impairment. AASB 138 explicitly prohibits internally generated customer relationships from being recorded as intangible assets. See AASB 138, para.64.

⁸¹ Draft Report, p. 69.

⁸² Ibid., pp. 66–67.

⁸³ IPART set this as this period prior to 2019 when PEXA first became profitable. See Draft Report, pp. 69–70.

⁸⁴ Draft Report, p. 68.

107. This raises the question of what alternative approaches, if any, may be more appropriate.
108. While it is inherently challenging to reliably value intangible assets, as explained in Section 3.1, observing an arms-length market-based transaction can provide important insight into the value of the asset. In the case of PEXA, such a transaction exists in the 2019 sales price. In our view, this represents a relevant and important data point when seeking to estimate the value of PEXA's asset base. That sales price of \$1.62 billion reflects the market value of PEXA's business in 2019, as well as the cost of acquiring the assets of the business.
109. There is of course a risk that the sales price included capitalised market power (or reflected expectations that PEXA would be able to earn supracompetitive returns in the years following the sale in 2019). In our view, this is a valid concern given the position of PEXA in 2019 and we are not suggesting that the full 2019 sales price should necessarily be reflected in the asset base used in the BBM (after adjustments to bring it forward to 2027 terms).
110. That concern should operate in both directions. Investors acquired interests in PEXA through arm's-length transactions undertaken against the regulatory arrangements and information then available. While they properly bear the risk that any amount paid for expected monopoly rents will not be recoverable through regulated prices, it does not follow that the competitive intangible value acquired through those transactions should also be excluded. Unless those components can be distinguished with reasonable confidence, excluding most of the value above historical cost risks retrospectively reallocating from investors to users legitimate intangible value for which investors paid, after public and other vendors have realised the corresponding sale proceeds.
111. However, there is a very large difference between the asset base that IPART proposes to use (of \$367.6 million in 2027) and the 2019 sales price of \$1.62 billion (which PEXA estimates would imply an asset base in 2027 of \$1.76 billion).⁸⁴ That is a difference of almost \$1.4 billion in 2027 terms, and approximately \$1.2 billion in 2019 terms.⁸⁵ In our view, it is unlikely that this very large difference is fully explained by capitalised market power (as is implicit in IPART's proposed approach), or other idiosyncratic factors. This is the case for the following reasons:
- 111.1 PEXA had been subject to some form of regulatory oversight since the first MORs in 2013 and was subject to the IPART's pricing review in 2019;^{86 87}
- 111.2 in 2019 PEXA's prices had not increased in real terms since 2014 when PEXA first launched its platform and set prices to win volumes from paper-based conveyancing;
- 111.3 in 2019 Sympli had recently entered, interoperability was being considered, and there was an expectation that increased competition may emerge; and
- 111.4 in 2019 IPART considered that PEXA's prices were reasonable and did not elect to reduce them (a decision that was informed by the preceding factors).
112. In addition, the potential for continued and evolving regulatory oversight is also recognised in the Information Memorandum created during the privatisation process. PEXA notes the draft MOR at the time included "*provisions that relate to pricing and competitive behaviour*". Specifically, PEXA highlighted clauses regarding:

⁸⁴ We do not express a view on the appropriateness of the assumptions underpinning PEXA's estimate of the 2027 asset base using the 2019 sales price (i.e., the \$1.76 billion). Our point does not hinge on the precise value that is estimated, but is a broader point about the very large implied difference between IPART's approach and the 2019 sales price.

⁸⁵ IPART's approach to estimating the asset base for PEXA would imply an asset base of \$414 million in 2019, meaning a difference of roughly \$1.2 billion from the purchase price of \$1.62 billion.

⁸⁶ ARNECC, Model Operating Requirements Version 1, April 2013, Section 5.3.

⁸⁷ ARNECC, Model Operating Requirements Version 5, December 2018 Section 5.4.

- 112.1 price control provisions for lodgement services – including reference to future price increases being limited by a CPI price cap;
- 112.2 non-discrimination provisions for ELNO transactions with subscribers and other service providers;
- 112.3 ELNO integration requirements for service providers; and
- 112.4 the structural separation of an ELN business from other business of the ELNO.⁸⁸
113. Purchasers would therefore have been aware of the regulatory environment facing PEXA and would have been expected to have formed views on PEXA's pricing potential based on the information shared during the due diligence process.
114. For completeness, we understand that in 2019 PEXA's plans to expand in the UK were not well developed and PEXA's activities did not extend beyond the services that are now subject to IPART's proposed price regulation.⁸⁹ The 2019 sales price is therefore unlikely to overstate the value of PEXA's asset base due to the inclusion of PEXA's UK business or other non-regulated services.
115. In addition to estimating PEXA's initial asset base using the 2019 sales prices, we are also aware of the following approaches and sensitivities that have been put forward to estimate PEXA's initial asset base:
- 115.1 **Discounted cash flow (DCF) methodology based on 2019 prices.** PEXA takes the prices confirmed in IPART's previous review (which covered the 2019-2022 period) and estimates a value for PEXA's asset base based on the expected future cash flows over the remaining 25-year life of the asset base (given these prices). This asset base is then rolled forward to the start of the 2027 regulatory period by deducting depreciation/amortisation and factoring in net capex since 2022.⁹⁰ While this does not have the shortcoming of relying on historical accounting costs, like the approach of using the 2019 sales price, there is a risk that these prices may reflect market power, and lead to the asset base being overstated.
- 115.2 **Recovered Capital methodologies (RCM).** Both IPART and PEXA put forward RCMs, with IPART using its RCM as a sense-check on its estimated asset base.⁹¹ Both approaches use accounting costs to determine the financial losses incurred by PEXA over time and judge whether these still need to be returned to investors during the regulatory period in the form of an uplift to regulated prices. These methodologies will again suffer from downward bias if past accounting costs represent a poor valuation of PEXA's intangible asset investments.⁹² IPART's use of an RCM to validate the original historical cost methodology therefore does not necessarily provide confirmation that IPART's original cost-based methodology is a sound valuation of PEXA's assets.
116. Table 3 below summarises the wide range of estimates that are obtained for PEXA's asset base (as of 1 July 2027) depending on the approach adopted. As can be seen, the estimates range from \$367.6 million (based on IPART's rolled-forward historical cost approach) to over \$2.5 billion based on the upper bound of PEXA's RCM approach.

⁸⁸ PEXA, Information Memorandum, 2019, p. 62 and p. 69.

⁸⁹ The PEXA's Information Memorandum in 2019 does reference the potential to expand to international markets. However, this is classified as a "Horizon 3 opportunity". These opportunities are defined as "longer term, less certain priorities but offer significant value potential to PEXA". To date, PEXA has only entered into one international market, the UK, where PEXA released its first remortgage product in 2022. However, it took until 2025 to gain the requisite approval from the Financial Conduct Authority to allow PEXA to roll out products for sale and purchase transactions.

See PEXA, Information Memorandum, 2019, p. 58.

See PEXA, 2022: A year of volatility and progress in the UK, Dec 2022.

See PEXA, PEXA hits critical UK milestone with FCA approval ahead of Sale and Purchase product launch, 30 April 2025.

⁹⁰ PEXA's submission to IPART's 2026 Methodology Paper, May 2026, Section 4.

⁹¹ Ibid., Section 5.1; Draft Report, Section 7.5.

⁹² We note that the differences between IPART's and PEXA's initial asset base calculations under the recovered capital methodologies due to differing assumptions of the correct rate of return required to compensate investors during the early years of PEXA when the firm made a loss and was a riskier investment prospect.

Table 3: PEXA's initial asset base under different methodologies

Methodology	Initial RAB as of 1 July 2027 (million \$2026-27)
IPART historical rolled-forward cost	367.6
IPART RCM	0 – 383.7 ⁹³
PEXA DCF (based on 2019 prices)	1,442 ⁹⁴
PEXA 2019 sale price (rolled forward)	1,757 ⁹⁵
PEXA RCM	1,438 – 2,548 ⁹⁶

Source: Draft Report, PEXA's submissions

Note: We do not include PEXA's net book value metric in this table as the latest estimate for this relates to June 2025. For reference, PEXA submitted a net book value of \$1.13 billion which it believes to be an underestimate.

117. For the reasons set out above, we consider that IPART's approach based on historical accounting costs is likely to understate the economic value of PEXA's asset base. At the same time, we consider that there are risks that PEXA's alternative approaches would overstate the asset base (as they may reflect actual, or expected supracompetitive returns). In our view, the true and appropriate value is likely to lie somewhere in the middle.
118. The inherent challenge, or uncertainty, is in determining the proportion of the 2019 sale price (or 2019 prices), that are appropriately attributed to market power (or a purchaser premium or potential buyer-specific synergies) and should be stripped out of the asset base. In the absence of a suitable comparator in an effectively competitive market (which we are not aware of), this cannot be reliably done. In turn, there is very real and significant uncertainty regarding the value of PEXA's asset base, a key input into IPART's BBM.

3.4 The implications for IPART's BBM

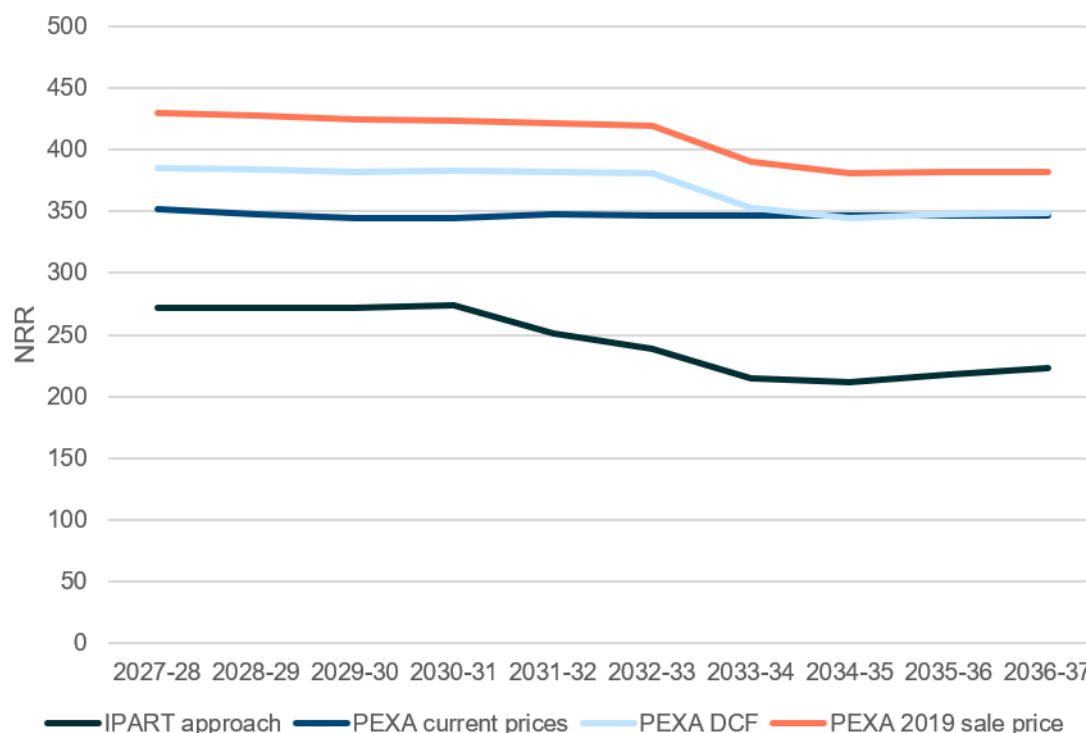
119. The uncertainty, and resulting very wide range of potential values for PEXA's asset base (i.e., between IPART's estimate of \$367.6 million and the \$1.76 billion implied by the 2019 sales price), have significant implications for the reliability of the NRR estimate by IPART's BBM. As summarised in Section 2.5, IPART's proposed approach leads to a required 20% reduction in PEXA's NRR. However, that finding is not robust to a wider range of potential asset values.
120. Figure 2 below shows the path of the calculated PEXA's NRR over time under the following approaches to valuing PEXA's initial asset base: (i) IPART's historical cost methodology (the black line), (ii) PEXA's DCF methodology (the light blue line), and (iii) PEXA's 2019 sales price rolled forward to financial year 2027 (the coral line). The NRR of PEXA's current price level (the dark blue line) is also included for comparison). As can be seen, while IPART's approach gives rise to a significantly lower NRR (compared to current prices) over the period between 2027 and 2031, both PEXA's methodologies give rise to significantly higher prices. Indeed, the NRR based on current PEXA's prices lies at approximately the midpoint between the NRR based on IPART's approach and the NRR based on PEXA's application of the 2019 sale price.

⁹³ A range of values is presented in the Draft Report as this is positioned as a cross-check on the main historical cost roll-forward approach. The range stems from the application of a number of different WACC rates to test the sensitivity of the historical rolled-forward cost estimate of the initial asset base.

⁹⁴ Rolled forward to 1 July 2027 and presented in 2026-27 prices to align with equivalent methodologies presented by IPART. This roll-forward uses the same assumptions as used in PEXA's submission to IPART's 2026 Methodology Paper.

⁹⁵ See footnote 94.

⁹⁶ See footnote 94.

Figure 2: Estimated NRR with different initial asset base assumptions (million \$2026-27)

Source: RBB analysis of IPART's BBM and PEXA's submissions to IPART.

Notes: PEXA's IAB estimates using the DCF method and the 2019 sale price are both rolled forward from 2025-26 to 2026-27 as per Table 3 above. For both of these estimates, we use PEXA's proposed average remaining lifespan of 20 years for the initial asset base as of the start of the regulatory period to set the remaining asset lives of cost uplift and the remaining asset base differential with IPART's initial asset base estimate. The NRR of current prices is calculated by multiplying PEXA's price list by IPART's projected transaction volumes for each PEXA product from 2027-2032. For the post-2032 period, we take the average annual volume for each transaction type for 2027-2032 as an illustrative example.

121. The implication is that IPART's proposed significant reductions to PEXA's revenue and prices are not robust to alternative estimates of PEXA's asset base. Given the genuine and significant uncertainty, it is in our view inappropriate to rely on IPART's single proposed approach to estimating the value of PEXA's asset base. Moreover, the estimate that IPART uses is a lower bound, cost-based estimate, rather than a midpoint within the wide range presented above.
122. While we note that IPART puts forward the RCM as a sense check on the asset base estimate, as explained above, we consider the RCM to be subject to the same limitations as the historical cost approach adopted to arrive at the \$367.6 million estimate. Such an approach could only be justified if the entire difference between IPART's estimate and the historical 2019 purchase price could be explained by market power (or expected supracompetitive returns). For the reasons outlined above, this is unlikely to be the case.
123. In summary and in light of the uncertainty regarding the value of PEXA's intangible asset base, we do not consider IPART's proposed approach and BBM provides a reliable basis for lowering PEXA's NRR by 20%, or imposing reductions on specific service fees.
124. If IPART continues to rely on a BBM, the 2019 transaction should be used as an important valuation anchor. The appropriate exercise would be to begin with that observable market value and seek to deduct the value of non-regulated businesses and assets, purchaser-specific synergies and the present value of any earnings reasonably attributable to the expected exercise of market power. The result would not necessarily identify a single correct asset value. It would, however, provide a range against which IPART's historical-cost estimate could be tested, alongside evidence from the purchase-price allocation, discounted cash flows and other valuation methodologies.

125. As discussed above, the context of the transaction is relevant to that exercise. At the time of the acquisition, PEXA's prices had not increased in real terms since 2014, regulatory oversight already existed, IPART's review was underway, and interoperability and competition from Sympli were anticipated. These circumstances do not establish that the transaction price was unaffected by expectations of market power. However, they do cast doubt on any assumption that most of the difference between the transaction price and historical cost represented capitalised monopoly rents.

4 The need for an economic approach to estimating asset lives

126. While we consider the uncertainty regarding the value of PEXA's asset base to be the primary issue with IPART's BBM, we note that there is additional uncertainty regarding the useful lives of PEXA's intangible assets, and the rate or profile of the depreciation.
127. IPART must also select economic lives and depreciation profiles for intangible assets whose value may persist, increase or be lost through discrete technological change. Those assumptions materially affect the resulting revenue requirement, and there is no clear basis for concluding that IPART's selected asset lives and straight-line depreciation profile reflect the economic consumption of PEXA's intangible assets.
128. In this Section we discuss this uncertainty in more detail. In Section 4.1, we discuss the uncertainty regarding the useful lives of PEXA's intangible assets from an economic perspective, and explain why a BBM is structurally unable to account for what may be more appropriate useful lives from an economic perspective (e.g., indefinite useful lives, or the risk of significant discrete reductions in the economic value of assets).
129. In Section 4.2, we discuss the uncertainty regarding the appropriate depreciation profile for PEXA's intangible assets, illustrate the sensitivity of IPART's NRR to alternative depreciation profiles and explain why, in our view, there is not a sound basis for favouring IPART's depreciation profile over one that is tilted (or backloaded).

4.1 Uncertainty regarding the useful lives

130. The useful lives of intangible assets are inherently different from physical infrastructure assets. Regulators may be able to identify with a reasonable degree of certainty that a water pipe, for example, may be able to operate for 80 years before needing to be replaced. In PEXA's case, it is less obvious that the value created by PEXA's network, or brand would necessarily cease to provide value at the end of a certain time horizon. Indeed, if PEXA's network were to grow, the value may increase over time. Conversely, if new or disruptive technology were to be developed, the value of PEXA's technology, platform and customer base (or network) may decrease significantly in a relatively short period of time.
131. This uncertainty is reflected in PEXA's own accounting treatment of its intangible assets, with goodwill, PEXA's brand, and PEXA's ELNO approval licenses each being treated as having indefinite useful lives. For these assets, PEXA recognises impairments to the asset value over time when the recoverable amount related to these assets falls below the value recorded on PEXA's books (the carrying amount).⁹⁷ For the reasons noted above, this may align well with how the asset is able to generate economic value over time. Rather than a predictable decrease in earning potential in each year, some assets may maintain economic value until displaced by new technologies. As such, in an ideal world, a BBM would be able to model the economic usage over time in a similar manner.
132. However, BBMs are structurally unable to account for indefinite life assets that lose value over time through discrete impairments.
- 132.1 The regulator could forecast potential changes in market structure and build a buffer into the NRR for impairment, making an allowance on the return of capital over and above realised depreciation of tangible assets over the period. This would have the disadvantage of increasing prices during the current regulatory period for an eventuality that may not materialise and resulting in the firm

⁹⁷ PEXA, "Appendix 4E – Preliminary final report given to ASX under listing rule 4.3A for the 12 month period ended 30 June 2025", Notes on the Financial Statements, Subsection b.

recovering capital prematurely. Alternatively, the regulator could attempt to value the asset at the end of the regulatory period and force the firm to return the buffer amount to consumers if no impairment has occurred, but this would likely be a complex and costly process.

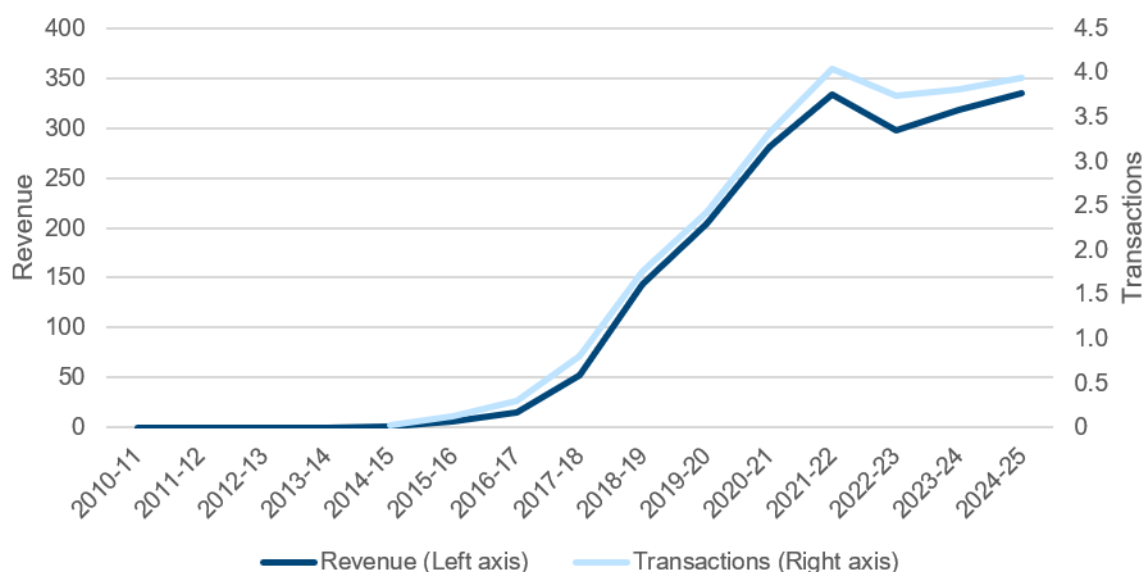
132.2 Since an impairment would occur when the value of the asset drops, the NRR would increase to allow the recovery of this capital at the moment the asset becomes less valuable. Therefore, if the regulator set the NRR assuming no impairment over the regulatory period but significant impairment did occur, this could lead to asset stranding where the firm would be granted the recovery of this impairment in the NRR but would be less able to sustain prices at the required level to recover the impairment fully.

133. A regulator may therefore prefer to proxy the economic lifespans of assets by making assumptions over useful lives in order to maintain the functionality of the BBM. This is reflected in IPART's Draft Report which assumes a 15-year useful life for the cost uplift that is intended to reflect PEXA's intangible investments. However, this may lead to a departure from economically meaningful useful lives of the assets, increasing the chances of the risk that the BBM may set inefficient prices.

4.2 Uncertainty regarding depreciation profiles

134. In addition to questions over useful lives, the rate at which the depreciation, or amortisation, of intangible assets is recognised over time may also differ from standard practices used in the regulation of natural monopolies with physical assets. In IPART's BBM methodology (and in applications of BBMs in other industries such as water utilities, electricity networks, and gas networks), capital assets are typically depreciated in a straight-line, resulting in an equal return of capital in each year of their useful life.⁹⁸ This makes sense when the economic value generated is likely to be similar in each year of the asset's life.
135. However, digital platforms such as PEXA, are different in that it may take time to realise the value of assets as the platform scales and matures. This is evidenced by the trajectory of PEXA's growth during its early life, as PEXA was first able to cover its annual operating expenses in the 2018 financial year (eight years after being founded, and five years after it commenced operations). The evolution of PEXA's revenue and transactions in Figure 3 illustrates this trajectory.

⁹⁸ Petersen, Bull and Dermody (2016), Access regulation in Australia, p. 80.

Figure 3: PEXA's revenues and transaction volumes FY2011-FY2025 (million \$2026-27, million transactions)

Source: RBB analysis of PEXA's data.

136. IPART's use of straight-line depreciation from the year of the cost outlay means that some assets are assumed to be returned to investors before PEXA could generate value from these assets in the form of operating income. For example, IPART recognises that PEXA invested \$19.2 million in capex and capitalised opex in the 2011 financial year. However, \$11.1 million of this is removed from PEXA's asset base prior to financial year 2018 when PEXA was first able to cover its opex spending (due to depreciation). During those eight years, PEXA did not earn a return on this investment or even cover the depreciation of these assets through operating income.
137. During the early years of the PEXA's platform, it is unlikely that the installed assets were generating their potential economic value and therefore it is unlikely that future earning potential should be depreciated in a straight-line as per various BBM-based utility regulation decisions (which involve established firms). Therefore, a positively tilted depreciation schedule, where the rate of depreciation is not constant over time and depreciation expenses are backloaded to later years of the asset's life, may better reflect economic value generation over time.⁹⁹
138. A positively tilted depreciation schedule was used by the Port of Melbourne during a period in which the port argued that it would not have been able to receive the required revenues to compensate for depreciation under the levels of the then price cap.¹⁰⁰ This approach was confirmed as lawful under the Port of Melbourne's pricing order by an investigation by the Essential Services Commission.¹⁰¹ Similar considerations were discussed in the ACCC's inquiry into Telstra's open-loop service fees.¹⁰²
139. To test the sensitivity of IPART's BBM, we consider the impact of a number of alternative depreciation profiles on IPART's estimated NRR (under reasonable assumptions regarding the path of revenues and transaction volumes). In running these sensitivities, we only alter the depreciation profile (or schedule) of PEXA's assets so that most of the depreciation occurs once the platform is operational and PEXA earns

⁹⁹ See Optus, Economic Rationale for the Tilted Annuity (Submission to Telstra's ULLS Undertaking, Appendix A, 2008), [1.2] for discussion of tilted annuities in the case of more established physical assets. In the case of PEXA, a back-loaded profile is more likely to be suitable to reflect that digital platforms require a development phase to build their network and establish a customer base. This is likely to outweigh the incentive for a front-loaded (or negatively tilted) profile from falling input costs over time.

¹⁰⁰ Essential Services Commission, "Inquiry into the Port of Melbourne compliance with the pricing order", 31 December 2021, pp. 97–100.

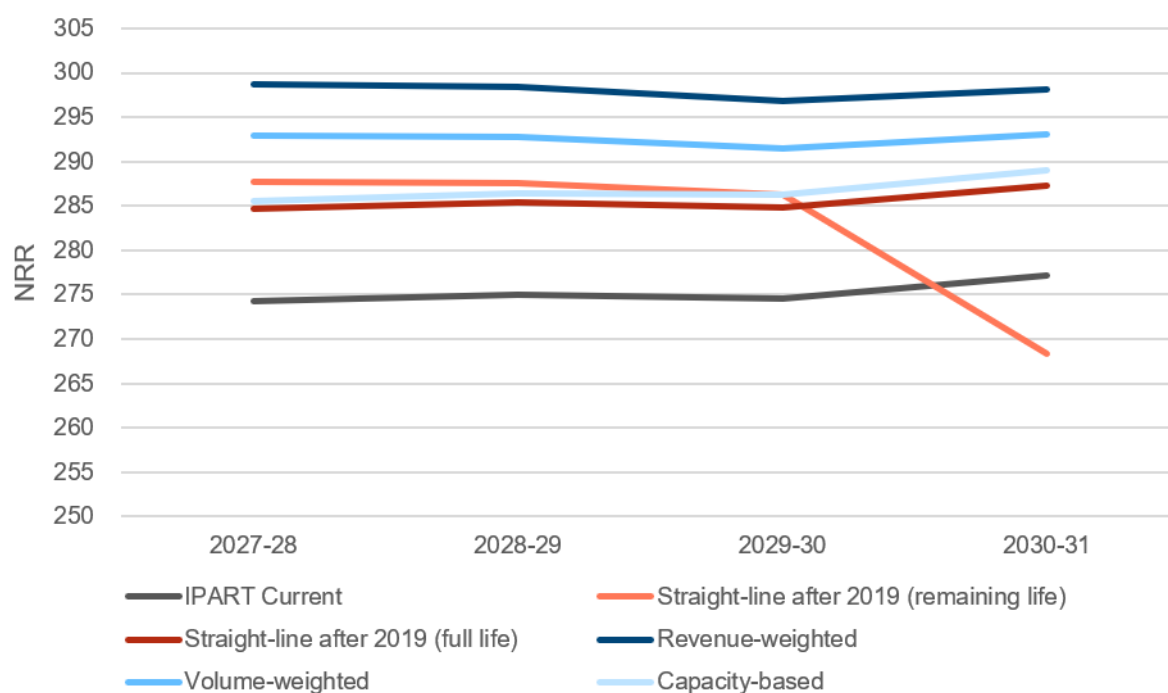
¹⁰¹ Ibid, pp. 97–100.

¹⁰² ACCC, "Assessment of Telstra's Unconditioned Local Loop Service Band 2 monthly charge undertaking", April 2009, pp. 268–273.

non-zero revenues.¹⁰³ We do not alter IPART's historical cost approach to evaluating the initial asset base (notwithstanding the concerns raised above regarding this approach).

140. These sensitivities are presented in Figure 4 below. As can be seen, all of the alternative depreciation profiles (which involve either backloading the depreciation to occur later in the assets useful life or delaying the commencement of the depreciation of the asset and extending the asset's useful life), result in a higher NRR than under IPART's proposed approach. This ranges from an NRR that is approximately 4% higher (under the "Straight-line after 2019 (full life)" approach) to one that is 8-9% higher (under the "Revenue weighted approach"). In the case of the "Straight-line after 2019 (remaining life)" approach, NRR falls below the IPART's estimates in FY2031 – the same decrease IPART forecasts one year later – because the shorter implied remaining life of the cost uplift accelerates its depreciation.

Figure 4: Estimated NRR with different depreciation schedule assumptions (million \$2026-27)



Source: RBB analysis of IPART's BBM

Notes:

- *Straight-line after 2019 (remaining life):* NRR based on back-loading straight-line depreciation to 2019 onwards – the year PEXA became profitable – while leaving the useful lives of each year's capex unchanged. An asset from 2011 with a 15-year useful life would therefore still fully depreciate by 2026.
- *Straight-line after 2019 (full life):* NRR based on the same back-loading approach but resetting the useful life of each year's capex to begin in 2019. An asset from 2011 would start its 15-year useful life in 2019 and fully depreciate only by 2034.
- *Revenue-weighted:* NRR based on back-loading depreciation to 2015 onwards – the year PEXA began earning revenue – with the useful life of each year's capex reset to begin in 2015. Depreciation in a given year reflects that year's share of the asset's lifetime revenue.
- *Volume-weighted:* NRR based on the same back-loading approach as above, with depreciation in a given year reflecting that year's share of the asset's lifetime volume.
- *Capacity-based:* NRR based on tying each asset's life to its lifetime capacity rather than to a fixed number of years, with depreciation in a given year reflecting that year's share of the asset's lifetime capacity.

141. A depreciation profile tilted (or backloaded) towards the period in which PEXA's assets are actually generating revenue may better reflect PEXA's circumstances than the current schedule. As shown above, if this were to be adopted, it would increase PEXA's NRR.
142. In our view, there is not a sound basis for favouring IPART's depreciation profile over one that is tilted (or backloaded). While there may be uncertainty regarding the most appropriate approach to that tilting or backloading, this is not a reason to adopt IPART's proposed approach which leads to a lower NRR.

¹⁰³ Specifically, we focus on the depreciation profile of the "Enhancing the Exchange" and "Cost uplift estimate" asset classes in the initial RAB calculation, as these two categories accounted for the bulk of initial capex and consequently form a substantial part of the initial RAB. Importantly, neither of these capex categories is linked to any physical assets (unlike, for instance, "Computer Equipment" or "Furniture & Fittings"), and both clearly contributed to PEXA's current intangible assets.

5 The impact on regulatory predictability

143. The issue with IPART's application of a BBM to a firm like PEXA, that has largely intangible assets and relatively low capex spend as compared to opex, can also be seen when regard is had to the outcomes if the approach were to be mechanically rolled forward at the next review in 2031. If this were to be done, it would produce a materially different outcome once the historical operating-expenditure uplift has been substantially depreciated. IPART will then be applying a BBM to a largely opex business – a cost structure to which a BBM is not naturally suited, given that the model is principally designed to remunerate a measurable base of long-lived capital assets – even though PEXA continues to rely on the platform, know-how and other intangible value created by that historical expenditure.
144. This creates a risk of materially different regulatory outcomes between review periods that do not reflect corresponding change in the underlying economics of the business. Such instability increases the risk of error and reduces regulatory predictability, with likely adverse effects on confidence in the regulatory system and on investment and value creation, both for PEXA and other businesses regulated by IPART.
145. This Section illustrates this issue. To do so, we first provide a brief history of IPART's regulation of PEXA's pricing, before setting out the consequences of mechanically rolling the approach in the Draft Report forward at the next planned review in 2031.

5.1 IPART's methodology for estimating the asset base in 2019 was based on MEA values

146. As summarised in Section 2.3, IPART was first asked to assess the reasonableness of PEXA's prices in 2019. In this review, IPART compared PEXA's prices against (i) the prices charged by paper settlement agents to execute physical conveyancing transactions, and (ii) efficient prices as set by a BBM with cost inputs estimated by AECOM.¹⁰⁴ This approach ultimately supported PEXA's then price levels and allowed these to rise with CPI inflation.
147. The 2019 building block approach took an outside view of the ELNO market, with AECOM estimating the efficient operating and capital costs for both an established ELNO operator and a new entrant. To calculate a theoretical initial asset base, AECOM used a Modern Equivalent Asset (MEA) methodology to estimate the efficient investments that would be required by a new entrant to replicate the main functionalities of an ELNO platform. As part of this, AECOM valued the required investments in software and intangible assets of a new entrant at around \$5.55 million, resulting in a total asset base of \$6.14 million.¹⁰⁵
148. However, AECOM acknowledged that this would understate the investments required by a first mover to establish the market and conceded that some cost items would have to be adjusted to reflect historical costs for the creation of operating licenses and data transfer standards.¹⁰⁶ Aside from this historical cost adjustment, AECOM did not use historical cost estimates and did not create a PEXA-specific initial asset base.

5.2 IPART's proposed methodology for estimating the asset base in 2026 is based on historical costs

149. The Draft Report abandons the approach of calculating efficient costs and developing an MEA base for a hypothetical ELNO platform, as well as any check against prices for paper-based conveyancing.

¹⁰⁴ IPART's 2019 Report, pp. 60-62 and pp.46-54.

¹⁰⁵ AECOM, "Estimating costs of electronic conveyancing services in NSW", November 2019, p. 11; IPART's 2019 Report, p. 53.

¹⁰⁶ Ibid., p. 17.

150. Instead, IPART proposes to set PEXA's prices using a single BBM. In constructing the BBM, IPART develops projections of PEXA's costs and attempts to value PEXA's asset base on the basis of historical costs, with depreciation applied in a straight-line from the year of acquisition. This departure from a bottom-up methodology of estimating efficient costs and an MEA base, anchors the analysis to the actual, identifiable costs incurred to create the PEXA's platform.¹⁰⁷ It ultimately results in the asset base increasing from approximately \$6.16 million under the 2019 approach, to \$367.6 million under the approach applied in the Draft Report.
151. IPART's justification for this change to the methodology relates to the structural changes in the ELNO market since 2019, which impact the extent of current and future competition. IPART states that *"The regulation of ELNO service fees was last considered by IPART in 2019. Since that time there have been a range of developments in the market including substantial growth in the number of transactions, reduced competition from paper conveyancing, an announcement that planned interoperability reforms that would have removed some of the structural barriers to competition will not proceed, and the ASX's announcement that it has sold its 49% share in Symplic to ATI for a nominal amount."*¹⁰⁸
152. IPART further justifies the use of PEXA's historical costs rather than the MEA approach taken in 2019 on the basis that *"as a first mover in the eConveyancing market, PEXA's costs are higher than that of an efficient ELNO constructed using today's technology. However, we consider that it would not be appropriate to base cost estimates on a differently structured system. Consequently, we have relied on PEXA's own costs in our calculations."*¹⁰⁹
153. In short, it appears that changes in market dynamics since 2019 (which somewhat cemented PEXA's market position) provided the catalyst for a more heavy-handed use of a BBM to directly set prices (as opposed to using it as one comparator), and that IPART decided tailoring this analysis to PEXA's own costs would be a more appropriate approach given this use of the model.

5.3 The impact of mechanically rolling forward the proposed approach in the Draft Report

154. As noted in the preceding Sections, IPART's approach has changed between 2019 and 2026, with IPART favouring a more prescriptive use of a BBM in 2026 alongside other changes such as shifting to a historical cost approach to estimating initial asset bases and forecasting future costs.
155. Based on this proposed new approach, IPART finds that PEXA's NRR should be between \$271.5 million and \$274.4 million in each year from 2027 to 2031 (reduction in PEXA's revenues of approximately 20%).¹¹⁰ IPART considers that this revenue reduction should be achieved by reducing the prices for PEXA's most common transaction types (transfer of interest, transfer of interest with financial settlement, and transfer of titles; both for single and multiple titles) with the prices of other products remaining unchanged to maintain certainty for subscribers.¹¹¹ When combined with forecasts of PEXA's volumes by specific transaction types, this results in reductions in the prices of each of these identified transactions of between 14.6% and 36.6%.¹¹²
156. Figure 5 below presents the future NRR under IPART's methodology (the dark blue bars) against PEXA's annual cash outlays (the coral bar), if the approach in the Draft Report were to be mechanically rolled

¹⁰⁷ IPART notes the historical cost approach has "several advantages in the ELNO context:

- it is grounded in actual, auditable expenditure
- it is transparent and replicable, and
- it aligns with established cost-of-service regulatory principles, under which users pay no more than the efficient cost of providing the service."

See IPART's 2026 Methodology Paper, pp. 4-5.

¹⁰⁸ Draft Report, p. 2.

¹⁰⁹ Ibid., p. 2.

¹¹⁰ Ibid., p. 44.

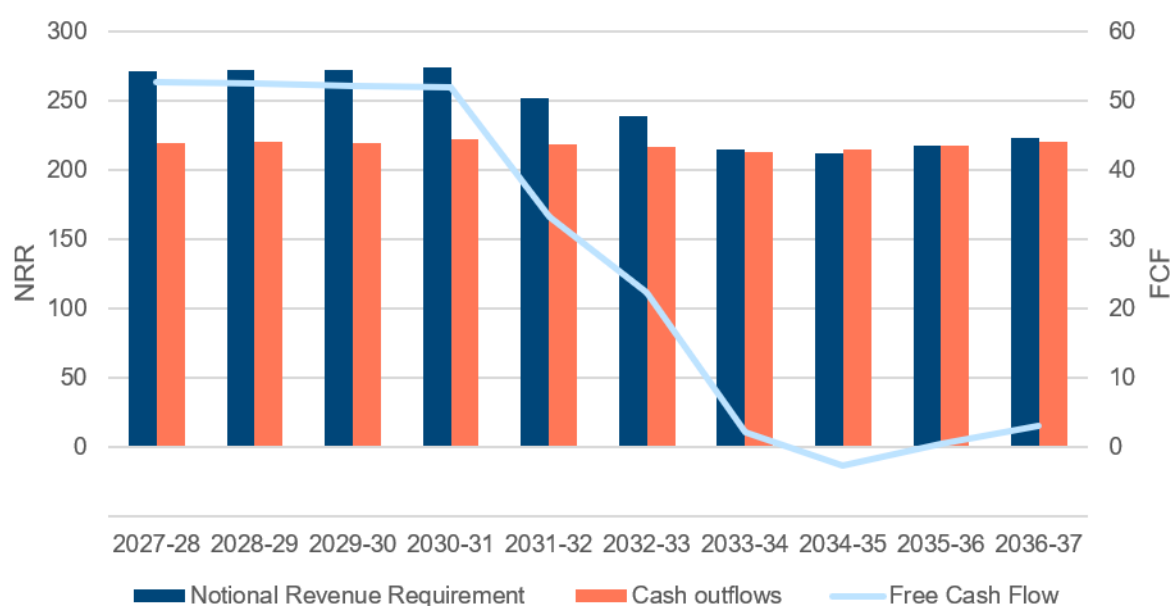
¹¹¹ Ibid., p. 45

¹¹² Ibid., p. 6.

forward. The difference is the free cash flow permitted by the model and is shown by the light blue line in the figure.

157. This shows that, following 2031, the NRR falls in each subsequent year until it reaches \$212 million by 2034-2035. However, PEXA's cash outflows stay relatively stable over time, resulting in the NRR falling below annual expenses in 2034-35 and consequently, PEXA recognising negative free cash flows (FCF).¹¹³ As can be seen above, this is not just an issue in 2034-35. From 2033 onwards, PEXA's free cash flow under IPART's currently proposed approach would be less than \$3 million per year. This is less than 6% of the FCF allowed in the initial years of the regulatory period (approximately \$52 million per year), even taking into account the required 20% revenue reduction.

Figure 5: Evolution of NRR, cash outflows and FCF (million \$2026-27)



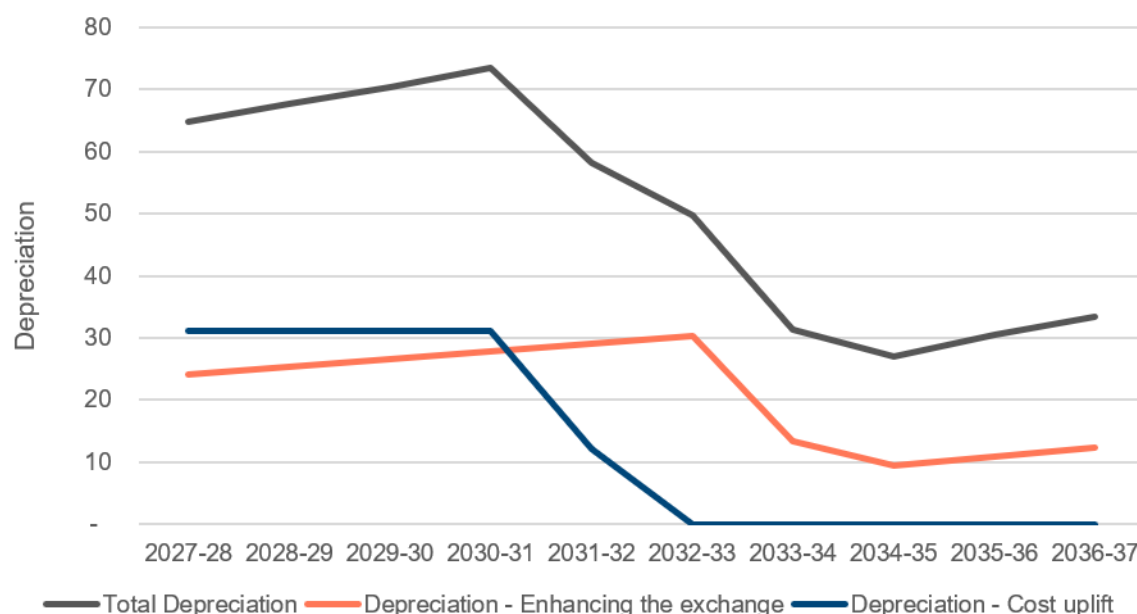
Source: RBB analysis of IPART's BBM

158. Low or even negative FCF can be an expected result from utilities regulation when capex is substantial and lumpy. This can occur if capex spend is necessarily high in some years when certain large capital project costs are incurred by the firm. However, the BBM smooths these costs across asset lifespans in the calculation of the NRR which should lead to offsetting positive free cash flows in future years when immediate capex spending is lower. However, this is clearly not the scenario with PEXA where capex is around 22% of opex and forecast to grow by only 2.9% in real terms in each year under the pricing regime.
159. The mechanics of this drop in the NRR stem from the initial asset base and depreciation assumptions employed by IPART. The short asset lives and the cost uplift serve to shift additional provisions for the return of capital into the 2027-2031 timeframe.
160. This is illustrated in Figure 6 below which plots the allowed return of capital over time for the two largest capex items in the initial asset base: the cost uplift and 'enhancing the exchange'. As can be seen, the substantial drop in the return of capital aligns with these assets being fully depreciated and removed from the initial asset base. As of 2027, the cost uplift has a weighted remaining asset life of 4.4 years and therefore exits the NRR calculation by the end of 2032, resulting in a \$31.0 million reduction in annual

¹¹³ FCF is defined as the revenue left each year after deducting annual operating expenses, tax allowance, working capital allowance, and capex spending. Free cash flow is an important financial metric that investors and market analysts use to judge the financial health of a business and guide investment decisions. This is an evolution of Warren Buffet's concept of "owner earnings" as discussed in Berkshire Hathaway's 1986 letter to shareholders. Negative cash flows show a company that is struggling to cover its immediate costs. Unless this is the result of investments in future growth that will generate positive cash flow in future periods, this represents a threat to the business' commercial viability (see Berkshire Hathaway, [Shareholder Letter](#), 1986).

capital return between 2030-31 and 2032-33. Similarly, assets associated with enhancing the exchange have 6.2 years of average remaining asset life in the initial asset base and therefore cause further declines in the overall return of capital allowed in the model in 2033-34 and 2034-35. This feeds directly into the NRR and is not offset by any increased revenue allowance from other building blocks. In the two years in which the NRR drops by more than \$20 million (the 2031 and 2033 financial years), the fall in return of capital is responsible for 66% and 78% of this decrease, respectively.

Figure 6: Return of capital over time in the IPART's BBM (million \$2026-27)



Source: RBB analysis of IPART's BBM

161. In summary, if the proposed approach in the Draft Report was to be mechanically rolled forward in the 2031 review, it would produce a materially different outcome once the historical operating-expenditure uplift has been substantially depreciated. IPART will then be applying a BBM to a largely opex business – a cost structure to which a BBM is not naturally suited, given that the model is principally designed to remunerate a measurable base of long-lived capital assets – even though PEXA continues to rely on the platform, know-how and other intangible value created by that historical expenditure.
162. This creates a risk of materially different regulatory outcomes between review periods that do not reflect corresponding change in the underlying economics of the business. Such instability increases the risk of error and reduces regulatory predictability, with likely adverse effects on confidence in the regulatory system and on investment and value creation, both for PEXA and other businesses regulated by IPART.

6 A more appropriate way forward

6.1 Overview

163. This Section discusses a more appropriate forward-looking regulatory framework for PEXA in light of the discussion above.
- 163.1 Section 6.2 discusses the spectrum of regulatory options available and the conditions under which 'heavy-handed' or 'light-handed' regulation would be suitable,
- 163.2 Section 6.3 explains that none of the regulatory tools available are capable of reliably calculating an appropriate regulatory price for eConveyancing services,
- 163.3 Section 6.4 assesses the evidence for IPART's finding that PEXA's prices reflect the exercise of substantial market power,
- 163.4 Section 6.5 concludes that absent clear evidence showing PEXA's prices reflect the exercise of substantial market power, the existing regulatory regime should remain in place.

6.2 A high bar for price regulation

164. In well-functioning markets, the price mechanism effectively coordinates the choices of individual consumers and producers acting solely on the basis of their own private costs and benefits and, importantly, achieves efficient outcomes in doing so. Price signals arising from these choices incentivise firms to allocate their resources to the goods consumers value the most (allocative efficiency) and to minimise costs (productive efficiency), thereby maximising the total value generated for society.
165. Economists typically promote market competition, therefore, as it generally leads to efficient markets and good outcomes for consumers. However, in cases where a seller possesses substantial market power because it faces insufficient competitive constraints, it may exercise that power by raising prices above the level which would prevail in a workably competitive market. This results in an inefficient underconsumption/undersupply of the good or service.¹¹⁴ The exercise of substantial market power is therefore an example of market failure.
166. Regulation is generally viewed as a possible solution to market failure.¹¹⁵ In deciding whether intervention is justified, the outcomes that might arise under workable competition provide a relevant counterfactual. They assist in assessing whether market power is producing materially higher prices or poorer non-price outcomes than a reasonably competitive process might be expected to produce.
167. That counterfactual does not, however, identify an observable price that a regulator can reproduce. The price that would prevail under workable competition is inherently uncertain and may vary over time. Workable competition may also deliver benefits through quality, reliability, innovation and investment, rather than price alone. It is therefore more useful as a benchmark for assessing whether intervention may be justified than as a precise target for the outcome of a regulatory regime.
168. Importantly, not all imperfectly competitive markets are regulated as regulation itself is costly and imperfect. Regulators rarely possess complete information about current and future demand, costs, investment requirements or the value customers place on non-price outcomes. A regulator must nevertheless select an administrable price or revenue allowance if it intervenes directly. The relevant question is therefore whether the proposed intervention is reasonably likely to improve on the existing

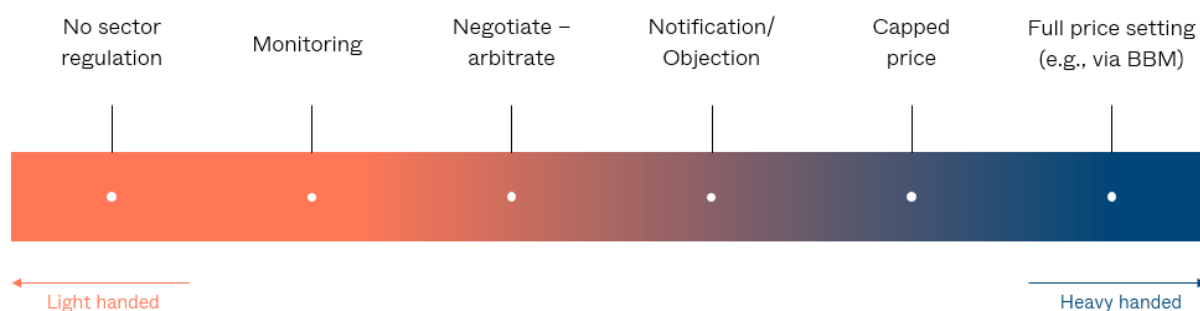
¹¹⁴ Bishop and Walker (2010), *The economics of EC competition law*. London: Sweet & Maxwell, p.52.

¹¹⁵ Productivity Commission (2001), *Review of the Prices Surveillance Act 1983*, p. XXI.

arrangements, having regard to the harm associated with market power, the uncertainty surrounding the regulated outcome and the potential effects on investment, innovation and service quality.

169. Australian regulatory practice broadly reflects these considerations. It generally favours competition and market mechanisms, with prescriptive price regulation reserved for circumstances in which lighter-handed measures are unlikely to be effective and the expected benefits of intervention justify its costs and risks. That approach is not a presumption against regulation as such. It reflects an appropriate measure of institutional humility about the informational limits facing regulators and the potential for regulatory error.
170. Across Australia's regulated industries, regulatory regimes occupy different positions on a spectrum. At the more light-handed end, regulators may monitor prices and non-price outcomes, require notification or justification of proposed price changes, or constrain increases from an existing price level. Examples of such markets in Australia include airports, airlines, and supermarkets.¹¹⁶ At the more prescriptive end, regulators determine the price or revenue allowance directly by estimating the efficient costs and return required to provide the regulated service.¹¹⁷ Examples of such markets in Australia include electricity transmission and distribution, gas pipelines, and water utilities.¹¹⁸ An illustration of the regulatory spectrum is shown in Figure 7 below.

Figure 7: A spectrum of regulatory options to correct a substantial market power market failure



Source: RBB Illustration

171. All else being equal, the closer a regulatory regime sits towards the heavy-handed end of the spectrum, the greater the precision required from the regulator. Under a monitoring regime, or one that constrains prices from an existing level, the regulator need not identify the uniquely correct competitive price at the outset. It may monitor price and non-price outcomes, using the existing price as a regulatory reference point and the prospect of stronger intervention to discipline the exercise of market power.¹¹⁹ By contrast,

¹¹⁶ See Table 6, Annexure B.

¹¹⁷ For example, the Productivity Commission (2001) refers to a "a range of instruments used by Governments to examine, monitor, influence or control pricing by businesses ...[which] vary in their degree of intrusiveness on the operation of the business" (p. 2). They contrast "price control", where the regulator "determines allowable prices", with "inquiries into pricing", where the inquiry body investigates "market situations to determine the nature, significance and causes of alleged pricing problems". Price monitoring and price notification regimes sit between these two ends of the spectrum (Productivity Commission 2001, *Review of the Prices Surveillance Act 1983*, Report no. 14, AusInfo, Canberra, pp. 2–3).

Similarly, Petersen, Bull and Dermody (2016) discuss "three broad regulatory intervention models" (i) the negotiate/arbitrate model, whereby access seekers negotiate the terms of access with the access provider with the regulator empowered to arbitrate any dispute and determine the terms of access, (ii) the propose/respond model whereby the access provider puts a proposal to the regulator and the regulator accepts or rejects the proposal, and (iii) the consider/determine model whereby the regulator determines the access prices on its own initiative. The authors note that these three models "represent three points along a spectrum of possible intervention models". In relation to the negotiate/arbitrate model, they note that it is a "relatively low-cost and light-touch model" (Geoff Petersen, Morelle Bull and Catherine Dermody, *Access Regulation in Australia* (Lawbook Co. 2016), pp. 110–111, [6.160]–[6.170]). Finally, in IPART's Electronic Network Operator service fees review public hearing in July 2026, IPART member Sharon Henrick noted that there is a spectrum of possible regulatory models with light-handed regulation including "monitoring and reporting on prices" and at the other end, regulation involving "setting price caps or individual prices directly".

¹¹⁸ See Table 6, Annexure B.

¹¹⁹ See, for example, Productivity Commission. (2019). *Economic Regulation of Airports* (Inquiry Report No. 92). Canberra, which notes on page 4 that "light-handed economic regulation is intended to achieve outcomes that would be consistent with those found in markets with effective competition, but will only do so if there is both...transparency as to how an airport operator is performing over time, to enable an assessment of whether it is likely to be exercising its market power...[and] a credible threat of additional regulation if an airport operator is found to be exercising its market power to the detriment of the community". See also, M. Arblaster, "The Design of Light-Handed Regulation of Airports: Lessons from Experience in Australia and New Zealand", *Journal of Air Transport Management*, Vol. 38, 2014, p. 30.

direct price-setting requires the regulator to estimate and impose a particular price or revenue allowance, commonly by reference to efficient costs and a required return on investment.

172. That greater requirement for precision creates a greater risk of regulatory error. The appropriate regulatory price (i.e., one that prevents the exercise of substantial market power but allows for an efficient return on the firm's investment) is not directly observable and, in many markets, cannot be estimated within a sufficiently confined range to provide a precise regulatory target. Direct price-setting nevertheless requires the regulator to select and impose a particular price or revenue allowance. If that allowance is set too high, the intervention may leave some consumer harm uncorrected while still imposing the costs of regulation; if it is set too low, it may impair efficient investment, innovation or service quality. Additionally, heavy-handed regulation typically imposes greater administrative and compliance costs on the regulator than light-handed regulation.¹²⁰
173. Heavy-handed regulation is therefore generally treated as a last resort. It is most appropriate where effective competition is unlikely to emerge, structural reforms and lighter-handed measures are unlikely to address the identified harm, and the key inputs required by the proposed methodology can be estimated with sufficient reliability to support a price or revenue allowance that is reasonably likely to improve on existing outcomes.
174. Put differently, the degree of intervention should therefore reflect both the evidence of harm and the reliability with which the regulator can improve on existing outcomes. The existence of substantial market power may justify continuing oversight, but does not by itself establish that current prices should be replaced by prices determined through a prescriptive cost-based model. This distinction is consistent with the general Australian competition regime, which does not prohibit the possession or use of substantial market power, or the charging of high prices, as such, but instead proscribes conduct by a firm with substantial market power that has the purpose, effect or likely effect of substantially lessening competition. IPART's statutory task is different, but the analogy reinforces the point that market structure alone does not establish either the need for prescriptive price-setting or the price that should be imposed. A material departure from the existing price framework requires a sound basis for concluding both that existing outcomes are unreasonable and that the proposed intervention is likely to produce better outcomes for consumers.

6.3 The available tools do not identify a single reliable regulated price

175. It is inherently challenging to determine whether a price is 'too high' relative to a competitive standard. This requires an assessment of the price that would have prevailed under workable or effective competition, which is not directly observable.
176. The competitive counterfactual may nevertheless provide a useful threshold for intervention. If the available evidence shows robustly that current prices fall materially outside the range that might reasonably arise under workable competition, that may support a conclusion that stronger intervention is warranted. This is broadly the role performed by excessive-pricing principles under UK and European competition law. They provide an ex post means of determining whether a dominant firm's prices are sufficiently excessive and unfair to constitute an abuse. The inquiry does not require the authority to identify the uniquely correct competitive price, provided the finding of excessiveness remains robust across a reasonable range of assumptions.
177. Regulators and competition authorities have nonetheless developed a range of tools to inform that assessment. These include BBMs, comparisons between returns and the cost of capital, cost-plus

¹²⁰ See, for example, Productivity Commission (2001), *Review of the Prices Surveillance Act 1983*, Report no. 14, AusInfo, Canberra, which notes on page 2 that "[c]ompared with inquiries and monitoring, price control usually involves substantially larger information demands, higher administrative costs, and the determination of prices, revenues or rates of return at levels acceptable to the regulator".

measures, comparator or yardstick analysis and tests for excessive pricing. A distinction must, however, be drawn between those analytical tools and the regulatory approach within which they are applied.

178. Under a more light-handed approach, prices and non-price outcomes may be monitored and the available tools used collectively as indicators of whether current outcomes are unreasonable and closer investigation or stronger intervention is warranted. Such an assessment can accommodate a range of reasonable estimates and ask whether the conclusion remains robust across that range.
179. A different and more demanding question arises when IPART seeks to set prices directly. A conclusion that an existing price is materially too high does not itself identify the price or revenue allowance that should replace it. Direct price-setting requires IPART to select and impose a particular administrable outcome using incomplete information and imperfect analytical tools. It is not sufficient to conclude that an appropriate price lies somewhere within a very wide range.
180. The consequences of error may be significant. If the selected price is materially understated, the resulting price control may adversely affect investment, innovation and service quality. If it is materially overstated, the intervention may leave some consumer harm uncorrected while still imposing the administrative and compliance costs of regulation. A tool may therefore provide useful evidence that stronger intervention is warranted without providing a sufficiently reliable basis for determining the resulting regulated price.
181. For the reasons we set out in Sections 3 to 5 above, cost-based approaches do not identify a sufficiently reliable point estimate of PEXA's prices. A BBM requires IPART to select a value and useful lives for PEXA's intangible assets, notwithstanding the genuine uncertainty surrounding those matters. Different reasonable assumptions produce materially different asset values, notional revenue requirements and implied prices.
182. Backward-looking profitability measures, such as comparisons of PEXA's return on capital employed with its weighted average cost of capital, may be used to assess whether PEXA has earned excess profits. However, they encounter related difficulties. Calculating the return requires a meaningful measure of the capital employed in providing the regulated services. If PEXA's intangible assets are materially understated, its measured return will be correspondingly overstated. The comparison must also make appropriate allowance for business risk, successful innovation and the period over which returns are assessed. These measures may provide useful indicators, particularly when tested across a range of assumptions, but they do not avoid the underlying measurement problem.
183. In principle, the difficulty of reliably valuing PEXA's asset base could be avoided if suitable comparators existed. Instead of seeking to determine PEXA's competitive return by reference to an uncertain asset base, IPART could compare PEXA's prices or returns with those observed in a sufficiently similar market subject to effective competitive constraints and peg PEXA's prices or returns to these. Comparator evidence may be used in several different analytical settings, including yardstick regulation and assessments of whether prices are excessive. Its reliability in each case depends (amongst other things) on the degree of comparability.
184. At a high-level, such a comparator could take the form of observed prices:
 - 184.1 in the same market at a time when no firm possessed substantial market power;
 - 184.2 for the same product (or service) in a sufficiently similar geographic market; or
 - 184.3 for a sufficiently similar product or service.¹²¹

¹²¹ See, for example, EC, Practical Guide. Quantifying Harm in Actions for Damages Based on Breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union, 2013, para 33. While this is focused on the identification of a counterfactual price in damages estimations, the principle of identifying a competitive price level is directly applicable.

185. Ideally, the comparator (whether the same product/service at a different point in time, the same product/service in a similar geographic market, or a similar product/service) would: (i) face the same cost, demand and regulatory conditions over time; (ii) reflect the same business model, particularly with respect to their value proposition and approach to monetisation; and (iii) objectively be subject to effective competition. In that (idealised) setting, the observed comparator price could provide evidence of the price likely to prevail for PEXA under workable competition.
186. In practice, such ‘perfect’ comparators rarely exist, and so careful judgment must be exercised in respect of: (i) the similarity of the business model; (ii) the similarity of demand conditions; (iii) the similarity of cost conditions; and (iv) the degree of competition in the comparator market.¹²²
187. A comparator need not be identical in every respect before it provides useful information. Perfect comparators rarely exist. Differences in business model, demand, cost, regulation and service quality can sometimes be identified and adjusted for. However, the greater those differences are, the less reliably the comparator can identify a particular price for the regulated service.
188. In the case of PEXA, sufficiently similar comparator platforms do not appear to exist, however. We understand that PEXA and its platform is a first of its kind internationally and no sufficiently similar platforms currently exist either in Australia or other countries.¹²³ While some comparator platforms may exist, these are unlikely to be sufficiently similar. For example, we understand that Sympli in Australia has been unsuccessful in gaining market share in Australia since its initial entry in 2019, which raises questions regarding its comparability to PEXA in terms of non-price dimensions (i.e., whether it is of the same quality).
189. However, one potential comparator is PEXA’s historical prices in Australia. In principle, if there was a point in time at which PEXA did not possess substantial market power, the prices charged at that point in time could serve as a benchmark.
190. In practice, the application of this benchmark would not be without challenges, given the need to adjust those prices to reflect, amongst other things, changes in input costs and changes in non-price dimensions of competition (e.g., if quality increases, then, all else being equal, we might also expect prices to increase). Indeed, we understand that (aside from the BBM) the primary basis for IPART’s view that PEXA’s revenues should be reduced is the expectation that the significant increase in PEXA’s transaction volumes since 2019 will have reduced the efficient cost per transaction, such that prices in an effectively competitive market might have fallen in real terms over the same period.¹²⁴
191. An excessive-pricing assessment provides another potential analytical tool. Under the approach identified by the European Court in its *United Brands* judgment, for example, a price may be abusive where it is excessive in relation to the economic value of the service.¹²⁵ ¹²⁶ This may be assessed by considering whether the difference between the costs incurred and the price charged is excessive and, if so, whether the price is unfair in itself or by comparison with competing products. The Court also recognised that other methods may be used and acknowledged the difficulties that can arise in determining the relevant costs.

¹²² For a further discussion of comparators (including the importance of similarity in terms of cost conditions, demand conditions and the degree of competition) see, for example, EC, Practical Guide. Quantifying Harm in Actions for Damages Based on Breaches of Article 101 Or 102 of the Treaty on the Functioning of the European Union, 2013, para 37; Davis and Garces (2010) Quantitative Techniques for Competition and Antitrust Analysis, p. 360.

¹²³ For example, PEXA describes its platform as a “world-first digital settlement platform has revolutionised the way we exchange property in Australia” (see <https://www.pexa.com.au/company/>).

¹²⁴ Draft Report, p. 5.

¹²⁵ European Court, Judgment of the Court of 14 February 1978. - *United Brands Company and United Brands Continentaal BV v Commission of the European Communities*, 1978.

¹²⁶ For a further discussion of the application of the excessive pricing test see, for example, RBB Economics Brief 56, Pfizer/Flynn vs the CMA: Misdiagnosis of excessive pricing, July 2018 (Available online: https://www.rbbecon.com/download/serve?file=https%3A%2F%2Fwww.datocms-assets.com%2F79198%2F1667224489-rbb_brief-56.pdf)

192. A cost-based application of that test would encounter many of the same difficulties as IPART's BBM. If PEXA's intangible assets are omitted or materially understated, a comparison of its prices with recorded costs, or of its accounting returns with the cost of capital, may overstate the apparent extent of any excess.
193. An excessive-pricing assessment may also consider historical and other comparator evidence and non-cost factors, including the quality, innovation and benefits associated with the service. Those factors may reveal value not captured by recorded costs but are also subject to limitations. Observed willingness to pay or market value may itself reflect PEXA's market power and cannot simply be treated as evidence that the resulting price is fair.
194. From an economic perspective the "value" of a product is typically defined as the maximum amount an individual is willing to sacrifice to procure that product (or, equivalently, as their willingness to pay). However, this definition does not translate easily into a sensible administrable test. In particular, customers that are observed to pay the prevailing price for a product will always, by definition, value it at least at the price paid. Using this definition of value would therefore define excessive prices out of existence as the observed (and allegedly excessive) price would always be lower than the value ascribed to it by consumers of the product.
195. An excessive-pricing assessment nevertheless performs a different function from forward-looking price-setting. It is principally an *ex post* threshold inquiry: it asks whether observed prices are clearly excessive and unfair, rather than identifying the uniquely correct competitive price. Uncertainty may therefore be accommodated by testing a range of reasonable assumptions and asking whether the conclusion remains robust across different measures of cost and asset value, relevant comparator evidence and legitimate non-cost explanations for the price. If a finding depends upon adopting one contested valuation of PEXA's intangible assets, or treating all observed market value as legitimate, would not necessarily be wrong, but would require greater caution and stronger corroborating evidence. Conversely, if prices appear clearly excessive across the reasonable range of assumptions and are supported by several independent indicators, the underlying uncertainty need not preclude such a finding.
196. By contrast, a BBM used to set prices prospectively must select a particular asset value, revenue requirement and price from within that uncertain range. An excessive-pricing assessment may therefore assist in determining whether stronger intervention is warranted, but it does not, without more, identify the prices that IPART should impose.
197. The circumstances in which excessive pricing has been established provide useful context. The recent hydrocortisone case related to Auden/Actavis acquiring a long off-patent, branded Hydrocortisone drug, selling (so far as the 10mg IR Tablets are concerned) at 70p per pack, re-launched it as a generic medicine at £4.54 per pack then steadily increased the price to a peak of £72.14 (an increase of 1600% above the relaunch price).¹²⁷
198. PEXA's circumstances are materially different: its regulated prices have not increased in real terms since they were introduced, and IPART assessed materially the same real prices as reasonable in 2019. Subsequent increases in transaction volumes and profitability are relevant, but do not themselves establish that current prices are clearly excessive or identify the amount by which they should be reduced.
199. A BBM, profitability analysis, comparator evidence and an excessive-pricing assessment may each contribute to a broader evaluation of PEXA's prices. None, however, identifies a single alternative price within a sufficiently confined range to support direct price-setting with confidence. But it does not follow that all regulatory approaches are equally appropriate. Where the available tools do not identify a reliable replacement price, they may be better used collectively to monitor price and non-price outcomes and

¹²⁷ UK Court of Appeal, [2026] EWCA Civ 974, paragraph 52 (Available online: https://assets.publishing.service.gov.uk/media/6a6883a13c7198e7d0a4c187/Court_of_Appeal_judgment.pdf).

identify evidence of exploitation than to impose a precise price derived from any one of them. The relevant question is therefore whether a holistic assessment of the available evidence provides a sufficiently strong basis for concluding that PEXA's current prices are unreasonable and for moving to a more prescriptive form of regulation. We consider that question in the following Section.

6.3.1 Applying the available tools to PEXA

200. Table 4 summarises our assessment. In short, we do not consider that any of the available tools identifies a single alternative price within a sufficiently confined range to support direct price-setting with confidence.
201. However, that does not mean that the tools provide no useful information. When considered collectively, they may still assist in answering the logically prior question of whether PEXA's current prices are unreasonable and whether there is a sufficiently strong basis for moving to a more prescriptive regulatory approach. That question should be answered by considering the tools collectively, together with PEXA's pricing history, the circumstances in which its prices were established, subsequent changes in scale, investment and service quality, and the effect of continuing regulatory oversight. We assess this in Section 6.4 below.

Table 4: Application of alternative analytical tools to PEXA

Tool	Application to PEXA	Limitation and regulatory implication
IPART's cost-based BBM	Produces a revenue requirement approximately 20% below PEXA's current revenue.	The result depends materially on uncertain assumptions concerning intangible assets, historical expenditure, asset lives and depreciation. It does not provide a reliable point estimate of reasonable revenue.
Recovered capital methodologies	Produces an initial asset base of between \$0 and \$383.7 million, while PEXA's produces a range of approximately \$1.4bn to \$2.5bn.	The range reflects, among other things, different assumptions about historical returns and the treatment of expenditure. It demonstrates the sensitivity of the result rather than independently validating IPART's estimate.
Profitability measures	Wide range depending on assumptions about asset values and WACC.	Raises similar issues to those when assessing IPART's BBM.
Excessive-pricing principles	PEXA's prices have not increased in real terms since 2014 and the available evidence does not disclose an extreme and unexplained disparity between price and cost.	The evidence does not presently support a robust finding of excessive pricing or identify a particular price reduction.
External comparators	No sufficiently similar ELNO operating under effective competitive constraints has been identified.	External comparator evidence cannot reliably determine a regulated price for PEXA.
Historical prices and IPART's 2019 review	Materially the same real prices were assessed by IPART as reasonable in 2019, having regard to a benchmark efficient ELNO and paper-settlement prices.	This is a relevant starting point, but it is not conclusive given subsequent market developments and increased scale.
Willingness to pay and economic value	PEXA provides substantial value by enabling secure, reliable and efficient electronic conveyancing. We understand that, between 2015 and 2025, PEXA's eConveyancing platform generated an estimated \$3.02 billion in productivity savings compared to traditional paper conveyancing. ¹²⁸	Willingness to pay may reflect limited alternatives and the importance of the underlying property transaction, as well as value created by PEXA.
Holistic monitoring	Allows the indicators above to be considered collectively and over time without requiring a false point estimate	Provides a basis for identifying possible harm and determining whether closer investigation or stronger intervention is warranted

Source: Draft Report, PEXA's submissions

6.4 Assessing whether PEXA's current prices are reasonable

202. The analysis above does not require IPART to identify precisely the price that would emerge under workable competition. That counterfactual is relevant to assessing whether current outcomes warrant intervention, but it does not itself identify the price or regulatory approach that should replace them. In choosing its approach, IPART must consider both the strength of the evidence that existing prices are unreasonable and whether the available tools can produce a sufficiently reliable alternative that is likely to improve outcomes for consumers. It can use:

¹²⁸ PEXA, PEXA Economic Impact Report, 2025, p. 10.

202.1 **heavy-handed regulation** to directly set PEXA's prices based on an unreliable metric - bearing in mind the risks of getting the regulated price 'wrong' discussed in Section 6.2, or

202.2 **light-handed regulation** and maintain the current regulatory framework (allowing annual price adjustments by CPI) while continuing to monitor consumer outcomes.

203. IPART's proposal is not simply that PEXA's per-unit fees should decline as transaction volumes increase. Such a reduction could, in principle, reflect scale efficiencies while continuing to allow recovery of efficient costs and an appropriate return on and of the assets used to provide the regulated services. IPART instead proposes to replace the existing framework with a prescriptive allowed-revenue regime based on an initial regulatory asset base that, in our view, materially understates PEXA's intangible assets.
204. That is a more fundamental intervention. It requires a sound basis for concluding both that existing prices are unreasonable and that the proposed asset base and revenue allowance can be estimated reliably. Without both foundations, there is a substantial risk of denying recovery of legitimate investment without any corresponding assurance that the resulting outcome will materially improve consumer welfare.
205. Economics offers no universally accepted definition of what a 'reasonable' price is. However, given that regulation, in many circumstances, is designed to address the exercise of substantial market power, the outcomes that might prevail under workable competition can provide a conceptual benchmark for assessing whether observed prices warrant intervention. Its role informs the threshold question of whether intervention is required, but does not identify a uniquely correct price for the regulator to impose.
206. Importantly, workable competition differs from the theoretical ideal of perfect competition (where price equals marginal cost). Because the strict assumptions of perfect competition rarely apply in practice, it is an inappropriate real-world benchmark against which to measure consumer outcomes.¹²⁹ Workable competition instead reflects a practical process that is commercially achievable and delivers reasonably efficient outcomes. As Professor Maureen Brunt noted:

*"The phrase 'workable competition' is not susceptible to a precise, universally accepted definition but usually carries two connotations: first, that the concept of competition must be of a process that is practically achievable in commercial reality; and secondly, that it must be a reliable mechanism for achieving good economic performance— in short, efficiency and progressiveness constrained by market forces..."*¹³⁰

207. The evidence suggests that PEXA's current prices are 'reasonable', or at least not demonstrably 'unreasonable'.

207.1 PEXA's current eConveyancing prices originated under materially stronger competitive constraints, have remained constant in real terms since 2014 and were deemed by IPART to be 'reasonable' in 2019.

207.2 While PEXA's volumes have increased significantly since 2019, this would not necessarily be expected to lead to reductions in real prices between 2019 and 2026.

207.3 PEXA has continually invested in quality improvements to its eConveyancing platform since 2019 such that its quality-adjusted prices are likely to have decreased.

¹²⁹ See, for example, Demsetz (1969), Information and Efficiency: Another Viewpoint, which cautions against the "nirvana approach" to public policy, which "presents the relevant choice as between an ideal norm and an existing 'imperfect' institutional arrangement".

¹³⁰ Brunt (1990), Market Definition Issues in Australian and New Zealand Trade Practices Litigation, p. 100.

207.4 Although IPART did not find that PEXA's prices were unreasonable, PEXA has been subject to the *threat* of regulation since at least 2019.

6.4.1 PEXA's prices originated under materially stronger competitive constraints

208. The starting point for assessing whether PEXA's current prices reflect the exploitation of market power is to consider the circumstances in which those prices were first established.
209. Those prices were established when PEXA was a new platform seeking to attract users and transactions from established paper-based conveyancing. PEXA had not yet achieved critical mass and faced the risk that its platform would fail to secure sufficient adoption.
210. In those circumstances, PEXA had strong incentives to price its services attractively. Excessive prices would have discouraged adoption by solicitors, conveyancers and financial institutions and slowed the migration of transactions from paper conveyancing. While it may not be possible to retrospectively determine whether PEXA possessed substantial market power at that time, it clearly did not then benefit to the same extent from eConveyancing mandates or from the limited alternatives that characterise the market today.
211. We understand that PEXA's prices have not increased in real terms since 2014. Current prices therefore substantially reflect the original price level, adjusted for inflation, rather than real price increases imposed after PEXA achieved its present market position. This distinguishes PEXA from excessive-pricing cases involving substantial price increases following the removal of competitive or regulatory constraints.
212. That distinction does not, however, resolve whether current per-unit prices remain reasonable. PEXA's transaction volumes have increased substantially and, even if its efficient aggregate revenue requirement were otherwise unchanged, spreading that requirement across a larger number of transactions could support lower per-unit fees. The absence of real price increases is therefore relevant to the assessment of PEXA's conduct, but it must be considered alongside changes in volumes, efficient costs, investment and service quality. It does not by itself establish either that current per-unit prices are reasonable or the extent to which they should be reduced.
213. IPART's 2019 review provides further relevant evidence. By then, PEXA had achieved substantial adoption and was effectively the sole provider of eConveyancing services. IPART nevertheless assessed substantially the same real prices against a model of a benchmark efficient ELNO and paper-settlement prices, concluded that they were reasonable and recommended retaining them subject to CPI indexation. That conclusion does not, on its own, establish that prices remain reasonable today, particularly given IPART's expectation at that time that competition would develop, but it provides an important regulatory data point.
214. Since 2019, PEXA's transaction volumes and profitability have increased, while paper conveyancing and prospective ELNO competition have become weaker constraints. But while those developments justify renewed scrutiny and continuing oversight, they do not establish that prices originating under materially stronger constraints and maintained in real terms have become unreasonable. IPART's case instead depends principally on the proposition that increased scale should have caused prices to fall. We consider that proposition in the following Section.

6.4.2 Increased scale since 2019 would not necessarily be expected to have lead to real price reductions between 2019 and 2026

215. Despite finding PEXA's 2019 prices to be 'reasonable', IPART claims:

“In a competitive market, the significant increase in transaction volumes that PEXA has seen might have been expected to have led to lower prices, especially as the cost of providing ELNO services are largely fixed and not primarily driven by transaction volumes or the complexity of the transaction.”¹³¹

216. IPART’s argument rests on the premise that because eConveyancing involves relatively high fixed-costs and low marginal costs, PEXA’s growth since 2019 has reduced its average per-unit costs. Under IPART’s logic, a workably competitive market would compel PEXA to pass these savings to consumers as price reductions; because real prices remained flat, IPART contends they are no longer ‘reasonable’.
217. This is a relevant consideration, but it does not in and of itself establish the extent to which prices would have fallen. The outcome would depend on the nature of competition, the investments required to maintain, develop and protect the platform and the extent to which firms competed through quality, reliability and functionality as well as price. The absence of lower real fees therefore warrants scrutiny but does not itself establish that current prices are unreasonable or identify the appropriate reduction.
- 217.1 **Higher returns could be a reward for competitive success:** Higher margins can represent the reward for outperforming rivals. If PEXA operated in a workably competitive market and expanded its scale by offering better products or operating more efficiently than its rivals, the resulting profits may reflect a fair return on competitive endeavour and better serving consumers rather than market power.
- 217.2 **Reinvestment in non-price aspects of the platform.** PEXA may reinvest scale savings into platform quality rather than price reductions. PEXA’s customer sentiment data show that non-price features – such as security, ease of use, speed, platform availability and support - are far more important to users than price. Price ranks 6th out of 9 factors, with only 15% of customers ranking it in their top three.¹³² Additionally, we understand that conveyancers typically pass on the costs of eConveyancing to end consumers and that these costs represent just 0.3% of the total transaction costs of buying and selling a property.¹³³ These factors suggest that non-price attributes may drive customer choice more strongly than prices. In such circumstances, firms in a workably competitive market that generate additional profits from increased scale may have strong incentives to reinvest these savings in quality improvements rather than price cuts.
218. In short, scale-driven cost savings do not necessarily lead to price reductions, even in a workably competitive market.

6.4.3 There is evidence that PEXA has continued to invest since 2019 and the quality of its platform has improved

219. Although PEXA’s current prices have remained constant in real terms since 2019, evidence of PEXA’s substantial investments in the functionality and reliability of its platform and complementary products indicates that its quality adjusted price likely decreased over this period. For example:
- 219.1 PEXA’s level of investment has increased in real terms since 2019. Capex investment almost doubled from approximately \$22 million per year between 2018 and 2020 (in FY2027 terms), to \$39 million per year between 2023 and 2025.¹³⁴ In addition, PEXA’s mean annual opex spending between 2018 and 2020 was approximately \$120 million (in 2027 dollars) and this rose to

¹³¹ Draft Report, p. 5.

¹³² PEXA’s submission to IPART, November 2025, p.18 and Table 7.

¹³³ Ibid., p. 4.

¹³⁴ We provide data up to financial year 2024-25 as this is the last year of observed cost data submitted by PEXA to IPART. Data from financial year 2025-26 onwards is projected.

approximately \$149 million over the period 2023 to 2025.¹³⁵ As a significant part of PEXA's cost base relates to primarily fixed cost drivers that do not increase with the number of transactions on the PEXA platform, these cost increases are consistent with additional investments into the platform.¹³⁶

219.2 Following IPART's 2019 review, PEXA expanded its geographic coverage to the ACT, Tasmania and the Northern Territory and continues to expand coverage across transaction types and geography into lower volume jurisdictions and document types.¹³⁷

219.3 PEXA has introduced several features based on customer feedback, including embedded FX capability and Mobile Signing, and continues to work with industry participants to improve transaction scheduling, PEXA's API and On-Day Settlement rate.¹³⁸

219.4 Initiatives across reliability and resilience, cyber security, customer experience, and regulatory compliance are reflected in both past and forecast capex schedules, demonstrating PEXA's ongoing efforts to expand platform functionality and improve the non-price factors described above.¹³⁹

220. A proper assessment of how PEXA's prices have evolved since 2019 should have regard to these additional investments and improvements in quality, which IPART does not appear to have explicitly considered in its Draft Report.

6.4.4 PEXA has been subject to ongoing regulatory oversight

221. Since its privatisation in 2019, PEXA has operated under the continuous threat of regulatory intervention.¹⁴⁰

222. Although PEXA's prices have never been directly set by a regulator, they have effectively been capped at 2019 levels plus CPI with the looming threat of further regulation from IPART's periodic reviews.

223. The principle that a credible threat of regulation deters the exercise of substantial market power is well recognised, including in Australia's excessive pricing prohibition for supermarkets. As the Australian Treasury's impact analysis noted, the reform *"is primarily intended to serve as a credible deterrent to excessive pricing by large supermarkets, rather than a prohibition that has to be frequently enforced"*.¹⁴¹

6.5 Maintaining the existing light-handed framework with ongoing monitoring

224. The findings in the preceding Sections support continuing regulatory oversight of PEXA, but do not establish a sufficiently reliable basis for departing from the existing regulatory framework. The available evidence does not demonstrate that PEXA's current prices are materially outside the range of outcomes that might reasonably be expected under workable competition and therefore warrant more prescriptive intervention. Nor has IPART demonstrated that the materially lower revenue allowance produced by its BBM is sufficiently reliable and likely to improve outcomes for consumers. Accordingly, neither the threshold case for stronger intervention nor the basis for IPART's proposed remedy has been established.

¹³⁵ We base these figures on the opex and capex spending presented in the "Free – RCM" sheet of IPART's BBM model workbook. We understand these include some adjustments for PEXA's opex spending compared to the data submitted by PEXA to account for some revenues earned by PEXA's and IPART's estimation of LSS fees. The figures are converted to 2027 dollars using IPART's cost inflator to account for inflation. We take a three-year average to take account of some variation between years in the data. We also note there are some years of high capex spending between 2013 and 2015 when PEXA was building out the PEXA exchange and investment exceeded \$33.7 million in 2027 dollars (\$37.6 million in 2013, \$33.7 million in 2014, and \$39.5 million in 2015).

¹³⁶ We understand that due to AASB accounting rules, significant expenditure that affects the quality of PEXA's platform is recorded as opex rather than capex. Increased opex spending may therefore reflect re-investment in PEXA's platform.

¹³⁷ PEXA's submission to IPART, November 2025, p. 77.

¹³⁸ Ibid., pp. 48 and 53-54.

¹³⁹ Ibid., Table 16 and Table 18.

¹⁴⁰ Draft Report, p. 13; See also PEXA's 2021 Annual Report which notes on page 38 that *"PEXA operates its business within a complex and evolving regulatory environment in Australia...Changes to laws and regulations, or their interpretation and application, can be unpredictable and outside of PEXA's control"*.

¹⁴¹ Australian Government Treasury (2025), *Impact Analysis: Excessive Pricing Prohibition for Supermarkets*, p. 17.

225. In those circumstances, we consider that regulation of PEXA should remain towards the more light-handed end of the regulatory spectrum and that IPART should calibrate its regulation accordingly. IPART should retain the existing regulatory framework while continuing to monitor price and non-price outcomes.
226. Retaining the existing framework would not leave PEXA's prices unregulated. Its regulated fees would remain subject to the existing constraint on annual increases, and IPART would retain the ability to investigate and recommend stronger intervention if subsequent evidence did provide a clear basis for doing so. This approach recognises that PEXA's market position justifies continuing oversight, while avoiding a material price reset that cannot presently be supported with sufficient confidence.
227. Ongoing monitoring should extend beyond changes in PEXA's published fees. It should provide IPART with sufficient information to assess developments in:
- 227.1 regulated prices, revenues and transaction volumes;
 - 227.2 operating and capital expenditure, profitability and returns;
 - 227.3 investment in the platform, including cybersecurity, resilience and innovation;
 - 227.4 service quality and reliability, including outages, failed or delayed settlements, requisition rates and complaints; and
 - 227.5 market conditions, including developments affecting entry, interoperability and other potential competitive constraints.
228. IPART should assess the monitored indicators collectively and over an appropriate period. No single measure should determine whether stronger intervention is warranted. Higher profitability may reflect the exercise of market power, but may also reflect the continued absence of crucial intangibles, increased scale, successful investment, innovation or improved operating performance. Similarly, stable prices may warrant scrutiny if accompanied by declining investment or service quality.
229. The analytical tools discussed in Section 6.3 would be relevant to that assessment. A BBM, profitability measures, comparator evidence, historical prices and excessive-pricing principles could each provide useful information. Their purpose would not be to calculate a uniquely correct regulated price, but to assess collectively whether developments in any of the indicators (such as material real price increases, significant price rebalancing, sustained increases in profitability or deterioration in investment or service quality) provide a sufficiently clear and robust basis for closer investigation.
230. These types of developments would be triggers for review. Stronger intervention should follow only where a holistic assessment, using multiple tools and reasonable sensitivities, establishes that existing outcomes are unreasonable and that the proposed response is likely to improve outcomes for consumers. Any intervention should be directed to the concern identified and could range from addressing a particular price or service-quality issue to more prescriptive price-setting if an appropriate price could then be determined with sufficient confidence.

6.5.1 Implementation if a significant reduction is nevertheless adopted

231. For the reasons set out above, we do not consider that a reliable basis for the proposed 20% reduction in PEXA's revenues has been established. Our primary recommendation is therefore that the reduction should not be implemented.
232. This is reinforced by the depreciation sensitivities in Section 4.2. Even if it were to be accepted that PEXA's intangible asset base could be accurately valued using historical costs (a point on which we disagree with IPART, as outlined in Section 3.2), IPART's assumption that capital depreciation starts in the year of purchase does not reflect the economic usage of the assets employed by a digital platform or allow for

capital recovery of PEXA's early investments under a BBM. Applying alternative depreciation profiles that may better reflect the period in which PEXA's assets generated economic value increases the estimated NRR by approximately 4% to 9% relative to IPART's approach. That analysis concerns the amount and timing of the revenue requirement under a mis-specified BBM; it does not provide confirmation that significant revenue reductions would be correct either immediately upon the commencement of the regulatory period or in future years. If IPART retains a BBM, in addition to further consideration of the value of PEXA's intangible assets, it should also determine an appropriate depreciation profile and recalculate both the amount and path of any resulting adjustment.

233. Only after that exercise would a separate implementation question arise. An immediate adjustment would provide customers with the benefit of any reduction from the commencement of the regulatory period. A phased adjustment would delay some of that benefit, but may be appropriate if immediate implementation would create a demonstrated risk to efficient investment, service quality or the secure and reliable operation of the platform.
234. We do not consider that the premise for choosing between those options has been established and therefore do not recommend either implementation option at this stage. If IPART reaches a different conclusion, it should first ensure that the proposed revenue path incorporates an economically appropriate depreciation profile. Any additional phasing should then be adopted only to the extent necessary to manage demonstrated transition risks and should not duplicate the deferral already reflected in that depreciation profile.

Annexes

A A non-technical explanation of building block models

235. This Annexure provides a non-technical introduction to BBMs, providing an overview of the mechanics of the model, as well as the key inputs.

A.1 An overview of the mechanics of a BBM

236. BBMs seek to align prices with the costs and investments required to create goods or services.¹⁴² BBMs use forward-looking projections of a firm's efficient costs and an initial estimate of its capital asset base (referred to as either the "initial asset base" (IAB) or the regulatory asset base (RAB)), to calculate a notional revenue requirement (**NRR**) of an efficient firm in the industry.^{143 144} Implied prices can be calculated by dividing the NRR by forecast volumes.
237. For both the projection of future costs and the estimation of the value of the firm's RAB, regulators attempt to identify the costs that would be incurred by an efficient firm. This framing prevents inefficient costs inflating the NRR and feeding through into higher prices, to the detriment of consumers.¹⁴⁵ It also serves to incentivise firms to properly evaluate the costs and benefits of future expenses and investments. If the regulator judges these are not efficient, these may not be recoverable in their entirety through future revenue allowances.
238. The NRR allows the regulated firm to recover opex and other non-capitalised costs in the year they are incurred.¹⁴⁶ The firm also recognises the return of capital over time against revenue through depreciation charges to longer-lifespan capital assets.^{147 148} Additionally, the firm is permitted to earn a normal economic return on its remaining capital assets each period to compensate investors.^{149 150} This return is calculated by estimating the firm's weighted average cost of capital (WACC).
239. The core components of the NRR – opex, depreciation, and return on assets - are illustrated in Figure 8 below. The blue building block represents opex (including other non-capitalised costs). These are costs incurred by the regulated firm that the firm is permitted to recover directly through its revenues in the current period. The orange building block represents depreciation, while the red building block represents the firm's return on assets. Both components relate to the firm's capital assets. Depreciation provides the firm with the ability to recover the reduction in the economic value of its assets (sometimes referred to as return *of* capital). The return on assets component compensates the firm for the opportunity cost of having capital 'tied up' in a regulated business (sometimes referred to as return *on* capital). The return on assets and the depreciation components of a firm's NRR allow it to earn a return over and above the costs it incurs in the current period (i.e., over and above its opex).
240. Annual capex investment, net of depreciation, forms part of the asset base against which the firm is permitted to earn its normal economic return each year.¹⁵¹ This asset base is then rolled forward to the following year, affecting future returns. When net capital expenditures exceed asset depreciation, the

¹⁴² Petersen, Bull and Dermody (2016), Access regulation in Australia, p. 3 and p.50.

¹⁴³ Ibid., pp. 70–73.

¹⁴⁴ We note that IPART refers to this as the IAB in the Draft Report.

¹⁴⁵ Petersen, Bull and Dermody (2016), Access regulation in Australia, pp. 55–56.

¹⁴⁶ Ibid., p.70 and p.89.

¹⁴⁷ Ibid., pp. 69–73.

¹⁴⁸ This depreciation accounts for both the existing RAB and new capex incurred during the year.

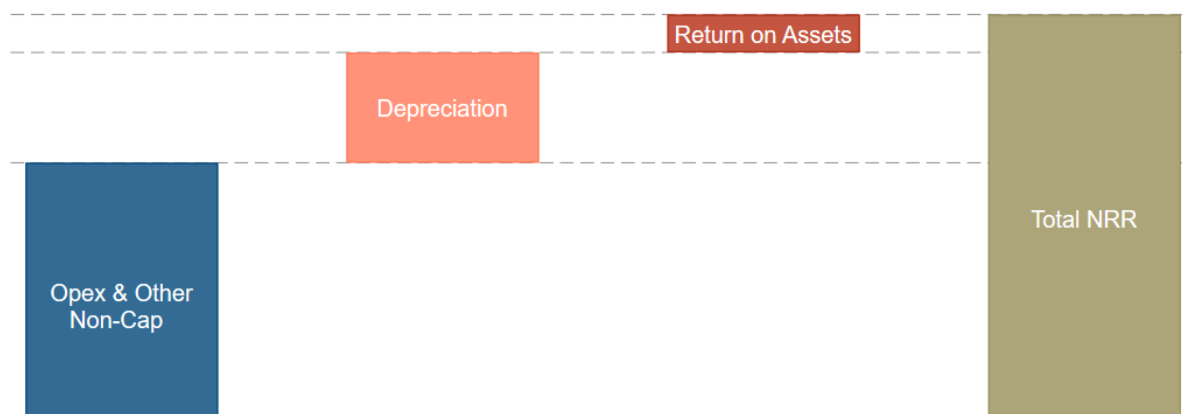
¹⁴⁹ A normal economic return is defined as the minimum rate of return that would be required to compensate investors for the opportunity costs of their capital investments with the firm, given the risk profile of the company.

¹⁵⁰ Note that net tax allowances are also a building block in the standard BBM framework. We do not discuss tax allowances in this high-level overview for simplicity.

¹⁵¹ Petersen, Bull and Dermody (2016), Access regulation in Australia, p.77.

asset base will grow, leading to an upward trajectory in real dollar returns on the firm's capital assets. When depreciation exceeds new capex, the real dollar return will fall over time.

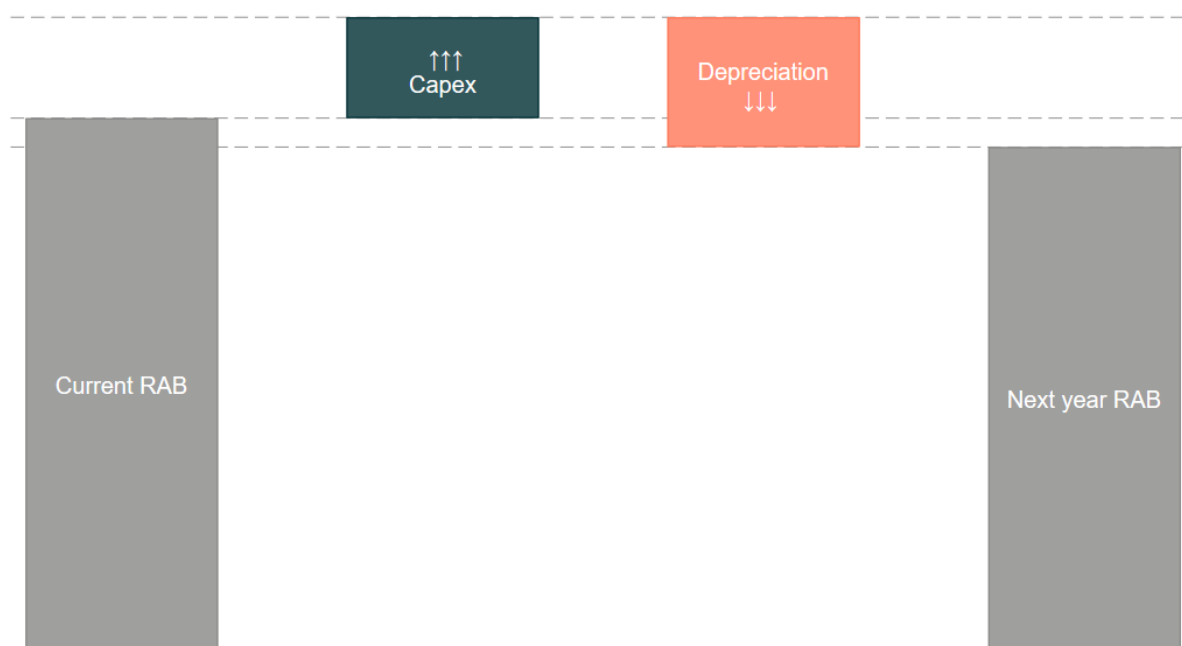
Figure 8: Illustrative summary of the core components of the NRR



Source: RBB Summary

241. The year-on-year evolution of the RAB for a firm with depreciation that exceeds new capex is shown in Figure 9 below. The amount of opex does not contribute to the next year's RAB, as all opex is compensated for, or recovered, in the same period.

Figure 9: Evolution of RAB when depreciation exceeds capex



Source: RBB Summary

242. As such, the depreciation rate used in the BBM impacts on the regulated firm's NRR as it affects the rate at which capital investments are returned (through depreciation) and the compensation received for the time-value and risk associated with the Capex investments (through the cost of capital).¹⁵² On one hand, higher annual depreciation (caused by shorter asset lifespans) increases the NRR in the near term because the firm recovers its (depreciated) capital expenditures faster (or over a shorter time period).

¹⁵² Petersen, Bull and Dermody (2016), Access regulation in Australia, pp. 80–82.

Conversely, lower annual depreciation (caused by longer asset lifespans) reduces the capital recovery component of the NRR in each year as depreciation is spread over a longer time period.

A.2 The key inputs into a BBM

243. The key inputs into a BBM are summarised in Table 5 below.

Table 5: Summary of key inputs into BBM model

BBM input	Description
Projected future costs	The efficient level of future costs in each year of the regulatory period. This must be estimated separately for opex cost items and specific capex assets. This is due to the different treatments of opex and capex in the BBM, and the different depreciation schedules applied to different capital assets.
Initial asset base	A current valuation of the firm's capital assets which must be recovered by the firm through the return of capital (depreciation) and return on capital (compensation paid to investors for the time value of their money). This valuation must be based on the asset base of an efficient firm in the industry.
Useful asset lives	The economic lifespan over which capital assets generate value.
Regulatory depreciation rate	The rate at which capital is returned to the firm over its useful life.
Return on capital / WACC	The time value of money and any additional risk premium which the firm must pay to investors.

Source: Adapted from Petersen, G., Bull, M., and Dermody, C., *Access Regulation in Australia* (Sydney: Lawbook Co., 2016).

B An overview of regulated industries in Australia

244. Table 6 below provides a brief overview of several regulated industries in Australia and the regulatory frameworks that apply to them. The key takeaways are:

244.1 Most of the regulated industries in Australia exhibit natural monopoly characteristics. Gas transmission and distribution pipelines that exhibit natural monopoly characteristics are classified as ‘scheme pipelines’ and are subject to revenue caps determined using a BBM. Australia Post similarly operates a ‘statutory monopoly’ over the distribution of standard reserved letter services in Australia, which is overseen by the ACCC. The Productivity Commission’s 2019 review of the Economic Regulation of Airports found that some airport services, such as runways, exhibit natural monopoly characteristics. The Senate Standing Committee on Environment and Communications noted that “[i]t is generally accepted that [electricity] networks are a natural monopoly”.

244.2 Many regulated industries in Australia use a BBM. Electricity networks, gas transmission and distribution pipelines, water utilities, railways, postal services, and maritime ports have all been subject to forms of BBM regulation. BBMs are also used to inform prices established through commercial negotiations between airport operators and airlines.

244.3 Most of the regulated industries are capital intensive and rely on long-lived physical assets. This is reflected in the regulatory arrangements for telecommunications, under which regulatory principles, access rights, and long-term cost recovery arrangements are established over a 30-year period. The regulation of Australian electricity networks similarly reflects an understanding that transmission and distribution are capital intensive operations.

Table 6: An overview of regulated industries in Australia

Industry	Description	Regulatory model
Electricity networks (heavy handed)	The Australian Energy Regulator (AER) oversees high-voltage Transmission Networks Service Providers (TNSPs) and lower-voltage Distribution Network Service Providers (DNSPs).¹⁵³ Australian electricity networks are regulated based on an understanding that electricity transmission and distribution networks are capital intensive operations where increased output results in declining average costs. It is generally accepted that networks are a natural monopoly.¹⁵⁴	Price and revenue caps are calculated using a BBM for a five-year period.¹⁵⁵ The regulator assesses efficiency using econometric techniques, namely multilateral total factor productivity (MTFP) benchmarking to inform the assessment of efficient expenditure allowances.¹⁵⁶ Operators are subject to a Capital Expenditure Sharing Scheme (CESS) in which they retain a portion of financial benefit from capex underspend, and bear a corresponding penalty for overspend.¹⁵⁷
Gas transmission and distribution (heavy handed)	The AER regulates gas transmission pipelines and distribution networks. The regulatory framework provides for varying degrees of regulatory intervention (full regulation, light regulation, and no regulation depending on the degree of market power the pipeline possesses and the extent to which that market power may be constrained. anded regulation.¹⁵⁸	For ‘full regulation’ pipelines, revenue caps are established using a BBM, tariffs require approval by the AER, and operators are subject to access arrangements.¹⁵⁹ For ‘light regulation’ pipelines, operators are subject to transparency and negotiation requirements, and binding arbitration. The shadow of a regulatory

¹⁵³ Petersen, Bull and Dermody (2016), *Access Regulation in Australia*, pp. 5, 171-174.

¹⁵⁴ Senate Standing Committees on Environment and Communications (2015), *The Performance and Management of Electricity Network Companies – Interim Report*, p. 22.

¹⁵⁵ Petersen, Bull and Dermody (2016), *Access Regulation in Australia*, Footnote 6.

¹⁵⁶ AER (2014) *Benchmarking Factsheet*;

¹⁵⁷ Australian Energy Regulator (2025), *Capital Expenditure Incentive Guideline for Electricity Network Service Providers*.

¹⁵⁸ Petersen, Bull and Dermody (2016), *Access Regulation in Australia*, pp. 229–270

¹⁵⁹ Ibid., pp. 304–309

Industry	Description	Regulatory model
		arbitration mechanism in the event bilateral negotiations break down encourages settlement.
Airports (light touch)	Airports in Australia operate under a light-handed and regulatory regime.¹⁶⁰ It comprises annual monitoring of the major airports by the ACCC with five-yearly reviews of the system by the Productivity Commission.¹⁶¹ The current light-handed approach is designed to facilitate commercial negotiations between airport operators and promote the efficient investment cycle in what is well characterised as a large, lumpy investment cycle.¹⁶²	Major airport operators routinely use Shadow BBMs to establish appropriate prices.¹⁶³ In the event commercial negotiations break down, airlines can apply for a formal service declaration, which could result in arbitration by the ACCC. The most recent Productivity Commission review in 2019 found that even though some airport services, like runways display natural monopoly characteristics, there was no evidence that Australia's four major airports had systematically exercised substantial market power.¹⁶⁴
Maritime ports (heavy handed and light touch)	Maritime port regulation is state based. Consequently, there is significant divergence in regulatory model across jurisdictions.¹⁶⁵ In Victoria, the Essential Services Commission (ESC) oversees the Port of Melbourne. The Port of Melbourne itself calculates - its permitted return using a BBM (i.e., heavy-handed), which the ESC audits.¹⁶⁶ In New South Wales, ports operate under a light-handed framework. Port operators are subject to requirements to publish tariff schedules and submit information reports to government.¹⁶⁷ In Queensland, the Queensland Competition Authority (QCA) imposes a negotiate-arbitrate regime on declared terminals.¹⁶⁸ In South Australia, the Essential Services Commission of South Australia (ESCOSA) regulates using a light-handed approach. ESCOSA publishes periodic monitoring reports and conducts 5-year pricing reviews to assess whether price re-regulation is warranted.¹⁶⁹	State regimes range from price monitoring and disclosure to BBM-based revenue controls and negotiate-arbitrate access regimes.¹⁷⁰
Telecommunications and broadband networks (heavy handed)	The ACCC regulates the National Broadband Network (NBN), which is the primary wholesale broadband infrastructure operator. Intervention consists of a modular approach: "module 0" establishes access rights, and long-term cost recovery methods for a 30 year period; "modules 1 and 2" relate to shorter iterative regulatory cycles where the ACCC and NBN adjust price controls, service level commitments, and reflect structural variations due to technological developments.¹⁷¹	The ACCC calculates allowable revenue on an annual basis with reference to the regulatory settings described by the modules.
Railways (heavy handed)	The Hunter Valley Rail Network and Central Queensland Coal Network are heavily regulated by ACCC and QCA respectively. Both of these railway networks are critical	For Hunter Valley Rail Network and Central Queensland Coal Network, BBM is used to calculate the cap on the total revenue that may be earned from a

¹⁶⁰ Productivity Commission, *Economic Regulation of Airports, Inquiry Report No. 92*, 2019, p. 4.

¹⁶¹ Productivity Commission, *Economic Regulation of airports – the commission's draft report – speech by Paul Lindwall*, 2019.

¹⁶² Ibid.

¹⁶³ Productivity Commission, *Economic Regulation of Airports, Inquiry Report No. 92*, 2019, p. 14

¹⁶⁴ Ibid., p. 4.

¹⁶⁵ Petersen, Bull and Dermody (2016), *Access Regulation in Australia*, Chapter 11, pp. 375–403.

¹⁶⁶ *Port of Melbourne Regulatory Framework*; Petersen, Bull and Dermody (2016), *Access Regulation in Australia*, pp. 354–357.

¹⁶⁷ Petersen, Bull and Dermody (2016), *Access Regulation in Australia*, Chapter 11.

¹⁶⁸ Ibid., pp. 353–354.

¹⁶⁹ Ibid., pp. 346–350.

¹⁷⁰ Ibid., pp. 339–374.

¹⁷¹ Ibid., pp. 312–314.

Industry	Description	Regulatory model
	logistical links to coal mines in Hunter Valley and Queensland, with pricing regulation informed by BBM. ¹⁷²	segment of track. ¹⁷³ Railway operators are also subject to a corresponding “floor limit”, which mandates that any specific train service must at least cover the direct, incremental operating, and maintenance costs from the operation of the train. ¹⁷⁴ ARTC must also consult with the Rail Capacity Group (consisting of major coal producers and train operators) when deciding capex. ¹⁷⁵
Water utilities (heavy handed and light touch)	Economic regulation of water utilities occurs at the state level.¹⁷⁶ Retail water distribution and wastewater treatment include local water distribution networks, sewage collection infrastructure, wastewater treatment facilities, and direct residential and commercial customer services. Bulk water services comprise water harvesting, dam storage infrastructure, desalination plants, and high-pressure bulk transmission pipelines. In New South Wales, IPART oversees both retail and bulk water services by setting maximum prices underpinned by a BBM.¹⁷⁷ In Victoria, the Essential Services Commission (ESC) oversees both retail and bulk water services with price regulation based on the PREMO (Performance, Risk, Engagement, Management, Outcomes) framework, underpinned by a BBM.¹⁷⁸ In South Australia, ESCOSA regulates both retail and bulk water services.¹⁷⁹ ESCOSA enforces a price control regime based on a BBM.¹⁸⁰ In Queensland, the QCA oversees all water services, adopting a heavy-handed BBM framework for bulk water services and a light-handed price monitoring regime for retail water services.¹⁸¹ In Western Australia, the Economic Regulation Authority (ERA) oversees all water services.¹⁸² The ERA conducts periodic pricing reviews, which serve as recommendations to state government.¹⁸³	The regulatory model varies by state. New South Wales, Victoria, and South Australia use BBM-based price or revenue controls for water services; Queensland applies a BBM to bulk water and price monitoring to retail water; Western Australia conducts periodic pricing reviews to make recommendations to state government.
Postal services (heavy handed)	Australia Post operates a statutory monopoly over the distribution of standard reserved letter services in Australia, overseen by the ACCC. The ACCC applies a price notification and surveillance regime, in which Australia Post must submit a formal pricing notification to the ACCC when it proposes to increase prices. ¹⁸⁴	The ACCC uses a BBM to assess whether a proposed price increase is fair. ¹⁸⁵ On this basis, the ACCC decides whether or not to object to a price increase. National government holds ultimate authority over the approval of a price increase.

¹⁷² ACCC, *Hunter Valley Rail Network Access Undertaking*, 2021; ACCC, *Hunter Valley Coal Network Access Undertaking annual compliance – Background and ACCC approach*, 2024, p. 6. Aurizon, *Aurizon Network 2017 Access Undertaking*, 2026; Aurizon, *Aurizon Access Undertaking: Risk Allocation Analysis – Report to Queensland Resources Council*, 2013.

¹⁷³ ACCC, *Hunter Valley Rail Network Access Undertaking*, 2021; Aurizon, *Aurizon Network 2017 Access Undertaking*, 2026.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Petersen, Bull and Dermody (2016), *Access Regulation in Australia*, pp. 105–108.

¹⁷⁷ IPART / Sydney Water, *Sydney Water Price Proposal 2025–30*, 2024.

¹⁷⁸ ESC, *Water Pricing Framework and Approach*, 2016.

¹⁷⁹ Petersen, Bull and Dermody (2016), *Access Regulation in Australia*, pp. 106–107.

¹⁸⁰ ESCOSA, *SA Water Regulatory Determination*, 2024.

¹⁸¹ Queensland Competition Authority (2024), *Seqwater Bulk Water Price Review & South East Queensland Retail Water Price Monitoring Framework*.

¹⁸² Petersen, Bull and Dermody (2016), *Access Regulation in Australia*, p. 107.

¹⁸³ ERA, *Inquiry into the Efficient Costs and Tariffs of the Water Corporation, Aqwest and the Busselton Water Board*, 2012.

¹⁸⁴ Australia Post, *Price Notification*, 2026.

¹⁸⁵ Ibid.

Industry	Description	Regulatory model
Fuel prices (light touch)	The ACCC monitors fuel prices, but does not otherwise directly intervene with price controls, revenue determinations, or profit limits. ¹⁸⁶	The ACCC tracks domestic wholesale and retail fuel prices against international benchmarks, exchange rates, and Terminal Gate Prices (i.e., indicative wholesale prices at refinery and import terminals). ¹⁸⁷
Domestic airlines (light touch)	The ACCC monitors fares, costs, profits, capacity, and general competition on a quarterly basis, but otherwise does not directly intervene in the market. ¹⁸⁸	The ACCC collects data from major airline operators such as Qantas, Jetstar, Virgin Australia, and Rex. ¹⁸⁹ Based on these data, the ACCC publishes quarterly reports that evaluate competition, prices, and capacity levels.
General insurance (light touch)	The national government has previously directed the ACCC monitor prices, costs, and profits of home, contents, and strata and small business insurance. This monitoring was introduced specifically to assess the impact of the cyclone reinsurance pool. ¹⁹⁰	Insurers retain the ability to set prices, with broader prudential and conduct regulation overseen by regulators. The ACCC's involvement in the market – at the national government's behest – has not resulted in any price intervention; instead, the ACCC's actions were limited to monitoring.
Retail electricity (light touch)	The AER and ESC monitor retail electricity prices, and mandate tariff comparison tools. The AER sets the Default Market Offer (in Victoria, the ESC sets the Victorian Default Offer), which is the regulated maximum price retailers can charge residential and business customers on standing offer contracts. The Default Market Offer is reviewed on an annual basis. ¹⁹¹	The AER (or in Victoria, the ESC) sets the Default Market Offer price. This price is calculated accordingly to wholesale, network, environmental, and retail costs plus a retail margin. ¹⁹² The Default Market Offer also serves as a reference price for comparison against market offers.
Supermarkets (light touch)	The ACCC monitors general retail supermarket price levels and conducts market studies to ensure the effective functioning of competition. ¹⁹³ From July 2026, large supermarket retailers are prohibited from charging excessive retail grocery prices. ¹⁹⁴	Grocery prices are assessed against supply costs and a reasonable margin – prices above this level are considered excessive and are prohibited. ¹⁹⁵ This has moved the regulatory model from light touch monitoring towards ex post price regulation.

Source: RBB Summary

¹⁸⁶ ACCC, *Report on the Australian petroleum market*, March 2026.

¹⁸⁷ Ibid.

¹⁸⁸ ACCC, *Domestic airline competition in Australia*, June 2026.

¹⁸⁹ Ibid., p. 9.

¹⁹⁰ ACCC, *Insurance monitoring*, June 2026.

¹⁹¹ AER, *2026-27 Default Market Offer*, May 2026; ESC, *Victorian Default Offer 2026–27*, May 2026.

¹⁹² Ibid.

¹⁹³ ACCC, *Supermarkets inquiry*, February 2025.

¹⁹⁴ ACCC, *Compliance and enforcement guidelines on the supermarkets excessive pricing prohibition*, June 2026.

¹⁹⁵ Ibid.