



Regulatory Impact Statement

Real Property Regulation 2019

A Regulation under the Real Property Act 1900

June 2019

Submissions accepted until Friday, 12 July 2019

Forward all submissions to: ORG-Admin@finance.nsw.gov.au

By mail: *Real Property Regulation 2019*

Office of the Registrar General

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2-24 Rawson Place

SYDNEY NSW 2000



**Office of the
Registrar General**



Office of the Registrar General

Regulatory Impact Statement – *Real Property Regulation 2019*

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1. Consultation process

Making a submission

Anyone wanting to comment on any matter relevant to the proposed Regulation, whether or not it is addressed in this Regulatory Impact Statement (RIS) is invited to make a written submission. However, matters covered by the principal Act – the *Real Property Act 1900* – are not the subject of the consultation process.

All submissions must be received by 5pm on 12 July 2019.

Please send all submissions to ORG-Admin@finance.nsw.gov.au

If you wish to submit your comments in paper, please forward these to:

Real Property Regulation 2019
Office of the Registrar General
McKell Building
2-24 Rawson Place
HAYMARKET NSW 2000

Additional copies of this discussion paper and the proposed Regulation can be downloaded from www.registrargeneral.nsw.gov.au/publications

Important note: release of submissions

All submissions will be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission.

Please note that there may be circumstances where legislation, like *the Government Information (Public Access) Act 2009*, would apply, requiring release of some information.

It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

Commencement

After the Minister for Customer Service has finalised the Regulation, it will be submitted to the Governor for approval. When approved, the Regulation will be published on the NSW Government website at <https://www.legislation.nsw.gov.au>

It is proposed that the Regulation will commence on **1 September 2019**.

2. Executive summary

The proposed *Real Property Regulation 2019* (the 'proposed Regulation') has been developed by the Office of the Registrar-General, a unit of the Department of Customer Service, and is proposed by the Minister for Customer Service, the Hon Victor Dominello, MP.

The current *Real Property Regulation 2014* (the 'current Regulation') came into force on 1 September 2014 and is due for automatic repeal on 1 September 2019 under the *Subordinate Legislation Act 1989* as part of the Government's commitment to review regulations every 5 years.

The proposed Regulation has been prepared to replace the current Regulation on 1 September 2019. It is made under the general regulation-making power of the *Real Property Act 1900* (the 'Act') as well as various sections of the Act which specifically allow or require regulations to be made.

The attached proposed Regulation is a draft. This Regulatory Impact Statement ('RIS') has been prepared to give interested parties an opportunity to review the proposed Regulation and provide comments and suggestions. Submissions received will be considered and may result in changes to the proposed Regulation.

The proposed Regulation will be finalised and published on the NSW Legislation website to enable it to commence on 1 September 2019.

3. Legislative background

3.1 Real Property Act 1900

The Torrens System in NSW is governed by the *Real Property Act 1900*. The Registrar-General is responsible for the administration of the Act and maintains a Register (the Torrens Register) for the purposes of the Act.

The Torrens System is a system based on registration. No dealing, until registered, will pass any estate or interest in land under the provisions of the Act. Subject to exceptions, the recording of an estate or interest gives the registered proprietor an 'indefeasible' estate or interest in the land, which is backed by a State guarantee. This State guarantee means that a person who suffers loss or damage because of the operation of the Act will receive compensation from the Torrens Assurance Fund.

As well as establishing the Torrens Register and the system of title guarantee, the Act also sets out the Registrar-General's functions, authorities, obligations, powers and discretions. The Act interacts with other legislation, including the *Conveyancing Act 1919* and the strata and community titles legislation.

The Act allows regulations to be made. These include regulations for the payment of fees, requirements for the lodgment of dealings, caveats and priority notices, the service of notices, the maximum amount that the Registrar-General may pay in settlement of claims against the Torrens Assurance Fund without further authorisation from the Minister, provisions relating to an administrative review of decisions of the Registrar-General and other ancillary matters.

3.2 Other legislation

The *Land and Property Information NSW (Authorised Transaction) Act 2016* established the framework to allow a private sector operator to perform titling and registry services in NSW under delegation from, but with the oversight of, the Registrar-General. In July 2017, the NSW Government granted a 35-year Concession to Australian Registry Investments Pty Ltd (trading as NSW Land Registry Services "NSW LRS"). Titling and registry services are carried out under the land title legislation, including the *Real Property Act 1900* and its Regulation, as well as the Conveyancing Rules and the Lodgment Rules made by the Registrar-General under s. 12E and s. 12F of the Act.

4. Objectives of the proposed Regulation

The objective of the proposed Regulation is to provide for:

- the form of lodgment of dealings, caveats and priority notices,
- the manner in which an official search of the Register is to be requested.
- the times at which information in the Register is to be made available for searches and the manner in which such information is to be provided to an applicant.
- the payment of fees and a mechanism for the adjustment for inflation of fees prescribed by the Act,
- the particulars to be included in certain notices given to the NSW Trustee and Guardian relating to applications for foreclosures.
- the service of certain documents.
- the maximum amount that the Registrar General may pay in settlement of claims against the Torrens Assurance Fund without further authorisation from the Minister,
- administrative review of decisions of Registrar-General.

5. Assessment of options to achieve objectives

5.1 Real Property Act 1900

Remaking the Regulation provides the best option to achieve the objectives of the Act. As noted, the Torrens System is a system based on registration. In the absence of regulations which specify the requirements for dealings to ensure they are in a form capable for registration or recording, the objects of the Act could not be properly fulfilled. Without regulations, it could be expected that instruments lodged with NSW LRS would not be complete or in proper form and would require the raising of requisitions representing additional costs to the community and in some instances significant delay in their registration.

The Regulation provides well-recognised and acceptable standardised requirements for the lodgment of dealing and caveats under the Torrens System. Together with the Conveyancing Rules and the Lodgment Rules made under the Act, the Regulation provides instruction and guidance to practitioners and the wider community. By providing these accepted standards, this represents to the community an effective, cost saving and efficient manner for the purposes of ensuring timely recording on the Torrens Register.

The making of regulations is provided for in various sections of the Act. The Regulation provides the necessary details to achieve the objectives of the Act and in so doing, support the integrity of the Torrens System. The Regulation prescribes the fees payable to NSW LRS for titling and registry services and ensures any fee increases are capped to CPI. It also provides for the period of retention of plans and documents lodged in electronic form, service of certain notices, requirements relating to the administrative review of decisions of the Registrar General under s. 121 of the Act as well as other ancillary matters.

The remake of the Regulation offers the best option to ensure that recognised requirements are maintained and enforced as well as providing support for more recent provisions of the Act. It ensures consistency and compliments the legislative provisions of the Act. The Regulation provides clear and well accepted standards whilst at the same time retaining sufficient flexibility to adapt to the introduction of new technologies.

Remaking the Regulation is the preferred option.

5.2 Best practice procedure (Self-Regulation)

An alternative to statutory regulation would be the adoption and implementation of best practice guidelines. The Registrar-General provides extensive documentation by way of Registrar-General Guidelines (the making of which are provided for under the Act). The Registrar-General's Guidelines as well as NSW LRS Circulars provide guidance and information about matters including the preparation and completion of documents for registration. These publications are supplementary to the matters provided for within the Regulation.

Allowing practitioners, the survey or conveyancing industries or, the general community to adopt their own standards rather than conforming to the requirements specified under the Regulation would not encourage consistency. There is no guarantee that the documents would be compatible with the Torrens Register and may not evolve with changes to systems used by the Registrar-General to maintain the Torrens Register. This would undermine the objectives of the Act.

This Option is not considered viable.

5.3 Allow Regulation to Lapse

Allowing the Regulation to lapse would result in the current Regulation being repealed in 1 September 2019 with no replacement Regulation being made. While the Act would continue to exist, many provisions would be unworkable, and the objectives of the Act could not be achieved. Remaking the Regulation is necessary to achieve the objectives of the Act.

The Regulation is an important legislative instrument which provides the necessary administrative details to support the performance of the Registrar-General's powers and functions under the Act. It also prescribes the fees payable to NSW LRS for titling and registry services and ensures any fee increases are capped to CPI. Without the Regulation, NSW LRS would not be able to enforce compliance with matters relating to, for example, the form of dealings and caveats lodged with the Registrar-General which would compromise the effectiveness of the Torrens Register.

5.4 Include matters in the *Real Property Act 1900*

It may be possible to include the matters prescribed in the Regulation in the Act rather than in the Regulation, however, conveyancing practice and the matters currently provided for in the Regulation are continually reviewed and where change is necessary it is more efficient and speedier to amend the Regulation than to amend the Act.

There is an ongoing need for flexibility in the matters covered by the Regulation to facilitate responses to changing needs. For example, to support electronic conveyancing, to provide for changes in fees payable and to adapt to the introduction of new technologies. Keeping the regulatory matters separate from the Act and retaining the Regulation is the preferred option. Regulations form a customary part of legislation and are intended to contain details of a technical and ancillary nature. It is considered that the Regulation achieves this purpose.

This Option is not considered viable.

6. Summary of main differences between current and proposed Regulation

The proposed Regulation remakes the current Regulation with minor changes. These changes include reference to the application of the Conveyancing Rules and the Lodgment Rules in addition to the provisions of the Regulation, simplifying wording used throughout the Regulation to adopt plain English language, updating the period for the retention of plans and documents lodged in electronic form, and updating terminology used because of the introduction of the Authorised Transaction Act. The Regulation also includes the fee unit amount for the 2019/2020 financial year.

A summary of the proposed changes is set out below:

Current Regulation	Proposed Regulation	Reason for Change
1. Name of Regulation	Real Property Regulation 2019	N/A
2. Commencement	Date of Commencement – 1 September 2019	N/A
	New clause 4 – “Application of other instruments”	<ul style="list-style-type: none"> The <i>Real Property Amendment (LPI Authorised Transaction) Regulation 2017</i> introduced amendments to the current Regulation because of the commencement of the Authorised Transactions Act. Amendments included the repeal of several provisions which dealt with matters now forming part of Conveyancing Rules made by the Registrar-General under s. 12E of the Act and the Lodgment Rules made by the Registrar-General under s. 12F of the Act. New clause 4 confirms that the Regulation applies in addition to the Conveyancing Rules and the Lodgment Rules.
4. Lodgment of dealings, caveats and priority notices	<ul style="list-style-type: none"> Renumbered as clause 5. Current clause 4(1) has been removed from the proposed Regulation. Subclause numbering has been updated. 	As the requirement to lodge dealings, caveats and priority notices is covered in s. 36(1D)(c) of the Act, there is no need to repeat this requirement in the Regulation.
7. Caveats: particulars of estate or interest claimed	Reference to Schedule number has been updated.	N/A
8. Caveats applying to part of land only: description of part	Reference to Schedule number has been updated.	N/A
9. Annexure of plans to dealings, caveats and priority notices	Wording and terminology updated, including reference to the words “ <i>in the office of the Registrar-General</i> ” being replaced with the words “ <i>with the Registrar-General</i> ”.	Following the separation of the former Land and Property Information on 1 July 2016, the Office of the Registrar General was established as a separate unit. The change in the wording reflects the correct terminology to be adopted resulting from this change and is consistent with changes made to other legislative instruments.

Current Regulation	Proposed Regulation	Reason for Change
10. Public Searches	Wording simplified.	N/A
17. Fees payable to the Registrar-General	Renumbered as clause 12.	N/A
18. Period for retention of documents.	<ul style="list-style-type: none"> Renumbered as clause 13 and modification of current wording. The period for retention of documents has been increased from 12 months to 7 years. 	<ul style="list-style-type: none"> Section 12AA of the Act allows the Registrar General to require production of certain documents where a person has lodged a plan in electronic form. Clause 13 of the proposed Regulation prescribes the period for the retention of documents for the purposes of section 12AA(2)(b) and (c). The period for retention has been increased to 7 years to maintain consistency with provisions such as the <i>Conveyancing (General) Regulation 2018</i> (cl. 34). It is also consistent with the period that a subscriber must retain evidence supporting an electronic Registry Instrument or other electronic document, as set out in the NSW Participation Rules (clause 6.6)
19. Statement to accompany notice to NSW Trustee and Guardian of intention to apply for foreclosure order	Renumbered as clause 14 and modification of current wording.	N/A
20. Service of notices on caveator: Prescribed person	Renumbered as clause 15 and insertion of ACN of the prescribed person.	N/A
21. Services of notices relating to lease where proprietor of lease is bankrupt.	Renumbered as clause 16.	N/A
23. Settlement of claims	Renumbered as clause 18 and modification of current wording.	N/A
23A. Administrative review of decisions of the Registrar-General	Renumbered as clause 17 and updated to include relevant provision in the Act.	N/A
24. Savings	Renumbered as clause 19 and modification of current wording.	N/A
25. Transitional	Removed as the provisions are historical transitional provisions.	N/A
Schedule 1 Fees	<ul style="list-style-type: none"> Wording has been updated and modified throughout. <u>Part 2 – Adjustment of fees for inflation</u> The fee unit amount for the 2019-2020 financial year has been inserted. 	N/A

Current Regulation	Proposed Regulation	Reason for Change
Schedule 3	Renumbered as Schedule 2 and modification of current wording.	N/A
Schedule 4	Renumbered as Schedule 3, updates legislative provisions and updates terminology used.	N/A

7. Discussion of the proposed Regulation

This part of the Regulatory Impact Statement;

- Discusses the provisions of the proposed Regulation;
- Weighs up the costs and benefits of the proposed changes to the Regulation on legal practitioners, the banking and non-banking industry, land owners, government and the general community

7.1 Part 1 – Preliminary (sections 1 – 3)

7.1.1 Objective of Part

Includes the name of the Regulation, date of commencement and definitions used in the Regulation.

7.1.2 Overview of provisions

These provisions are machinery in nature.

7.1.3 Proposed amendments

The amendments are confined to an updating of the provisions to reflect commencement of the proposed Regulation on 1 September 2019 and do not give rise to any costs.

7.2 Part 2 – Dealings and caveats (sections 4 – 9)

7.2.1 Objective of Part

Provides for the matters relating to the payment of fees, and the form and manner in which certain dealings and caveats should be lodged.

7.2.2 Overview of provisions

These provisions provide for the payment of prescribed fees for the lodgment of a dealing, caveat or priority notice as prescribed in Schedule 1 of the Regulation. The Part also sets standardised requirements for dealings so that when they are lodged they are in a form able to be registered.

7.2.3 Proposed amendments

- New clause 4 has been added which confirms the application of the provisions of the Regulation in addition to the those of the Conveyancing Rules and the Lodgment Rules.
- Wording and terminology in clause 9 has been updated, including reference to the words “*in the office of the Registrar-General*” being replaced with the words “*with the Registrar-General*”.

7.2.4 Assessment of costs and benefits of proposed amendments

The amendments do not give rise to any costs. The insertion of new clause 4 confirms the application of the Conveyancing Rules and Lodgment Rules made under the Act and clarifies that in the event of an

inconsistency, the provisions of the Regulation prevail. The change in the terminology used in clause 9 reflects the correct terminology to be adopted resulting from the separation of the former Land and Property Information on 1 July 2016 into separate business units and the establishment of the Office of the Registrar General.

7.3 Part 3 – Searches (sections 10 – 11)

7.3.1 Objective of Part

Provides the way a request for an official search of the Torrens Register is to be made. Provision is also made for the times information in the Torrens Register is made available to the public for searches and the manner in which the information is provided as well as the fees payable when a search is undertaken.

7.3.2 Overview of provisions

A request for an official search of the Torrens Register must be made in an approved form and on the payment of the prescribed fee. The provisions also clarify the times and manner in which searches are provided to the public when attending the registry personally or when requesting a search electronically.

7.3.3 Proposed amendments

The amendments include an updating of the current provisions and do not give rise to any new or additional costs.

7.4 Part 4 – Miscellaneous (sections 12 – 19)

7.4.1 Objective of Part

Includes provisions detailing matters in which various sections of the Act specifically allow or require regulations to be made.

7.4.2 Overview of provisions

Provides for a number of matters including the particulars to be included in certain notices given to the NSW Trustee and Guardian relating to applications for foreclosures, the service of certain documents, the maximum amount that the Registrar-General may pay in settlement of claims against the Torrens Assurance Fund without further authorisation from the Minister, and, the administrative review of decisions by the Registrar-General under section 121 of the Act.

7.4.3 Proposed amendments

The amendments include an updating of the current provisions. Clause 13 of the proposed Regulation has been changed to increase the period for the retention of a plan or other document where lodged in electronic from 12 months to 7 years for the purposes of section 12AA of the Act.

7.4.4 Assessment of costs and benefits of proposed amendments

The amendments do not give rise to any appreciable costs. There is an increase in the period for retention of supporting documents (from 12 months to 7 years), where a plan is lodged in electronic form. This is consistent with provisions such as the *Conveyancing (General) Regulation 2018*. It also reflects the period that Subscribers participating in eConveyancing are required to retain evidence supporting an electronic Registry Instrument or other electronic document, as set out in the NSW Participation Rules. By including constant time provisions, there is less confusion and practitioners, industry and the general community can be reassured that the same periods apply across similar legislative enactments.

7.5 Part 5 – Schedule 1 – Fees

7.5.1 Objective of Schedule

Schedule 1 sets out the prescribed fees for the lodgment of dealings, caveats and priority notices.

7.5.2 Overview of provisions

Section 3B(2) of the Act provides, amongst other things, that a fee prescribed under the Act for or in respect of the exercise of a titling and registry function is, when the function is exercised by the authorised operator, the maximum fee that is payable.

7.5.3 Proposed amendments

Part 2 of Schedule 1 provides a mechanism to calculate fees payable for titling and registry services provided by NSW LRS and ensures any fee increases are capped to CPI. The fee unit amount for the 2019/2020 financial year has been inserted.

7.6 Part 6 – Schedule 2 – Particulars of estate or interest to be specified in caveats

7.6.1 Objective of Schedule

Schedule 2 provides the particulars of the estate or interest claimed by a caveator which must be specified in a caveat.

7.6.2 Overview of provisions

Section 3B(2) of the Act provides, amongst other things, that a fee prescribed under the Act for or in respect of the exercise of a titling and registry function is, when the function is exercised by the authorised operator, the maximum fee that is payable.

7.6.3 Proposed amendments

There are no amendments made to Schedule 2.

7.7 Part 7 – Schedule 3 – Description in caveats of part of land

7.7.1 Objective of Schedule

Schedule 3 details the particulars which are required to be included where a caveat relates to part only of land or a current lease.

7.7.2 Overview of provisions

Clause 8 of the proposed Regulation is concerned with caveats lodged under s. 74F of the Act. Where the caveat relates to part only of the land described in a folio of the Register or a current lease, Schedule 3 provides the particulars which must be included to describe that part.

7.7.3 Proposed amendments

The changes update the legislative provisions and terminology used and do not give rise to any costs.



New South Wales

Real Property Regulation 2019

under the

Real Property Act 1900

[The following enacting formula will be included if the Regulation is made:]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Real Property Act 1900*.

Minister for Customer Service

Explanatory note

The object of this Regulation is to remake, with minor changes, the provisions of the *Real Property Regulation 2014*, which is repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the form and lodgment of dealings, caveats and priority notices,
- (b) the manner in which a request for an official search of the Register kept under the *Real Property Act 1900* (the *Act*) is to be made,
- (c) the times at which information in the Register is to be made available to the public for searches and the manner in which such information is to be provided to an applicant,
- (d) the payment of fees and a mechanism for the adjustment for inflation of fees prescribed under the *Act*,
- (e) the particulars to be included in certain notices given to the NSW Trustee and Guardian relating to applications for foreclosures,
- (f) the service of certain documents,
- (g) the maximum amount that the Registrar-General may pay in settlement of claims against the Torrens Assurance Fund without further authorisation from the Minister,
- (h) administrative review of decisions of the Registrar-General.

This Regulation is made under the *Real Property Act 1900*, including sections 12AA (2) (b) and (c), 61 (2A), 74N (1) (d), 91 (2) and (5), 96B, 96J, 115, 115A, 116, 121 (8), 135 (3) (b), 135D and 144 (the general regulation-making power).

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Real Property Regulation 2019

under the

Real Property Act 1900

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Real Property Regulation 2019*.

2 Commencement

This Regulation commences on 1 September 2019 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Real Property Regulation 2014*, which is repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

- (1) In this Regulation:

fee unit—see Part 2 of Schedule 1.

the Act means the *Real Property Act 1900*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Dealings and caveats

4 Application of other instruments

The provisions of this Regulation apply in addition to the provisions of the lodgment rules and the conveyancing rules made under the Act. However, to the extent of any inconsistency, the provisions of this Regulation prevail.

5 Lodgment of dealings, caveats and priority notices

- (1) Schedule 1 sets out the prescribed fees for the lodgment of dealings, caveats and priority notices.

Note. See section 3B (2) of the Act.

- (2) Despite subclause (1), if a dealing, caveat or priority notice is to be lodged electronically, the prescribed fee set out in Schedule 1 must be paid in accordance with the participation agreement (within the meaning of the *Electronic Conveyancing National Law (NSW)*) under which the lodgment is authorised.

6 Joint tenancy or tenancy in common to be stated

- (1) The following applications and dealings must state whether the persons concerned take as joint tenants or as tenants in common and, if they take as tenants in common, the shares in which they take:

- (a) an application by 2 or more persons to be registered as proprietors of land,
- (b) a transfer, mortgage, charge or lease in favour of 2 or more persons.

- (2) If the persons take as tenants in common, and if the shares in which they take are expressed as fractions, the shares must be stated by means of fractions having a common denominator and each numerator or denominator of the fraction must be an integer (for example: “A takes as to five-tenths, B takes as to three-tenths and C takes as to two-tenths”).

7 Caveats: particulars of estate or interest claimed

The following caveats must specify the particulars set out in Schedule 2 in relation to the estate or interest to which a caveator claims to be entitled:

- (a) a caveat lodged under section 74B of the Act against a primary application,
- (b) a caveat lodged under section 74F of the Act against a dealing, possessory application or delimitation plan, or against an application for cancellation of an easement or extinguishment of a restrictive covenant.

8 Caveats applying to part of land only: description of part

- (1) This clause applies to a caveat lodged under section 74F of the Act against a dealing, possessory application or delimitation plan, or against an application for cancellation of an easement or extinguishment of a restrictive covenant.

- (2) A caveat to which this clause applies that relates to part only of the land described in a folio of the Register or a current lease must describe the part in accordance with the requirements of Schedule 3.

9 Annexure of plans to dealings, caveats and priority notices

- (1) A plan must not be annexed to a dealing, caveat or priority notice lodged with the Registrar-General unless the Registrar-General approves the annexure of the plan.

- (2) Unless the Registrar-General otherwise approves, a lease of premises for a term of more than 25 years must show the leased premises in a plan annexed to the lease that complies with the requirements of the lodgment rules (if any).

Part 3 Searches

10 Official searches

- (1) A request for an official search of the Register must be made in the form approved by the Registrar-General.
- (2) The prescribed fee for an official search is the fee set out in Schedule 1.

11 Public searches

For the purposes of section 96B of the Act:

- (a) the prescribed times at which information in the Register is to be made available are:
 - (i) in the case of information in the Register provided in printed form—8.30 am to 4.30 pm each day (other than a Saturday, Sunday or public holiday) or, where the function of responding to a search request is exercised by the authorised operator, the ordinary business hours of the authorised operator, or
 - (ii) in the case of information in the Register provided in electronic form—between the hours of 1 am and midnight each day (subject to scheduled maintenance or unavoidable system interruptions), and
- (b) the prescribed manner in which information in the Register is to be made available to an applicant is:
 - (i) by providing a digital image of the document to the applicant in a form approved by the Registrar-General, or
 - (ii) by furnishing a certificate to the applicant in accordance with section 96C, 96D or 96G of the Act, and
- (c) the prescribed fee is the fee set out in Schedule 1.

Part 4 Miscellaneous

12 Fees payable to the Registrar-General

- (1) The fees specified opposite the matters listed in Schedule 1 are payable to the Registrar-General in respect of those matters.
- (2) A fee is payable:
 - (a) before the service to which the fee relates is provided, or
 - (b) at such time and in accordance with such conditions as the Registrar-General may agree with the person paying the fee.

Note. See section 3B (2) of the Act.

13 Period for retention of documents

For the purposes of section 12AA (2) (b) and (c) of the Act, the period prescribed is:

- (a) for a plan or other document that has been lodged otherwise than for the purpose of its being registered or recorded—the period of 7 years, or
- (b) for a plan or other document that has been registered or recorded—the period of 7 years.

14 Statement to accompany notice to NSW Trustee and Guardian of intention to apply for foreclosure order

For the purposes of section 61 (2A) of the Act, a statement accompanying a notice to the NSW Trustee and Guardian of intention to make an application for a foreclosure order must contain the following particulars:

- (a) a statement that the notice is given under section 61 (2A) of the Act,
- (b) the full name and last known address of the mortgagor concerned and the date and place of his or her death,
- (c) the amount due and owing under the mortgage at the date the notice is given, or at such other date as may be specified in the notice.

15 Service of notices on caveator: prescribed person

For the purposes of section 74N (1) (d) of the Act, Toll Transport Pty Limited (ACN 006 604 191) is a prescribed person.

16 Service of notices relating to lease where proprietor of lease is bankrupt

For the purposes of section 91 (2) and (5) of the Act, the prescribed manner of serving a notice is by serving it in the manner provided in section 170 of the *Conveyancing Act 1919*.

17 Administrative review of decisions of Registrar-General: section 121

- (1) **Applications not to be made before request for internal review: section 121 (8) (d)**

A person is not entitled to make an application under section 121 of the Act in relation to a decision of the authorised operator unless:

 - (a) the person has requested an internal review of the decision by the authorised operator, and
 - (b) the authorised operator has notified the person of the outcome of that internal review or the person has not, within 21 days of the lodgment of that request (or such other period as the authorised operator and person agree on), been notified of the outcome of that internal review.

(2) **Application to include supporting information and evidence: section 121 (8) (c)**

An application for a review by the Registrar-General under section 121 of the Act must include all the supporting information and evidence that the applicant seeks to rely on in the review.

(3) **Notice and reasons for decisions to be given in writing: section 121 (8)**

The notice of a decision on a review under section 121 of the Act, and the reasons for the decision, must be given by the Registrar-General to the persons referred to in section 121 (6) of the Act in writing.

18 Settlement of claims

For the purposes of section 135 (3) (b) of the Act, the maximum amount that may be paid by the Registrar-General (without the approval of the Minister) in settlement of a claim is \$500,000.

19 Savings

Any act, matter or thing that, immediately before the repeal of the *Real Property Regulation 2014*, had effect under that Regulation continues to have effect under this Regulation.

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Real Property Regulation 2019 [NSW]
Schedule 1 Fees

Schedule 1 Fees

(Clauses 5, 10, 11 and 12)

Note. Section 3B (2) of the Act provides that a fee prescribed under this or any other Act for or in respect of the exercise of a titling and registry function is, when the function is exercised by the authorised operator, the maximum fee that is payable and the authorised operator can accept a lesser fee for or in respect of the exercise of the function.

Part 1 Fees payable

The fees specified by this Part are exclusive of GST. GST may be added to any such fee to the extent that the fee is consideration for a taxable supply (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth).

Item	Matter for which fee payable	Fee (in fee units)
Advertisements		
1	On advertisement, under section 12 (1) (h1) of the Act, of the intended exercise or performance of any power, authority, duty or function conferred or imposed on the Registrar-General by the Act	The cost incurred in publishing the advertisement
Production of documents		
2	For each Crown grant, certificate of title or other document produced once for the purpose of the subsequent lodgment of any application, request, dealing or plan	0.3888
3	For each Crown grant, certificate of title or other document produced once for the purpose of multiple subsequent lodgments (not exceeding 8) of any application, request, dealing or plan during a period not exceeding 3 months	0.7777
Applications, requests and dealings		
4	On lodgment of an application, request or dealing for which no fee is otherwise specifically provided	1.2655
5	On lodgment of a primary application to bring land under the Act under section 14 of the Act	18.9786
6	On lodgment of a resumption application to bring land under the Act under section 31A of the Act	3.4254
7	In addition to any other item, on lodgment of an application (other than an application to dispose of Crown land arising from the closing of a public road under the <i>Roads Act 1993</i>), request, dealing or caveat that will result in making, altering or removing more than 1 recording—for each additional recording	1.2618
8	On lodgment of an application to dispose of Crown land arising from the closing of a public road under the <i>Roads Act 1993</i> , regardless of how many recordings will ensue	2.5237
9	On lodgment of an application or request for amendment of a folio of the Register, Crown grant or certificate of title	1.2655
10	On lodgment of an application for the determination under Part 14A of the Act of the position of the common boundary of adjoining lands	1.2655
11	For every sketch or diagram accompanying an application, request or dealing	1.2618

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Real Property Regulation 2019 [NSW]
Schedule 1 Fees

Item	Matter for which fee payable	Fee (in fee units)
12	In addition to any other item, for the creation of a certificate of title on any application, request or dealing (other than under section 111 of the Act)—for each certificate	1.2618
Caveats		
13	On lodgment or recording of a caveat	1.2655
14	On withdrawal or partial withdrawal of a caveat under section 74M (1) of the Act	1.2655
15	On lodgment of a request for withdrawal or partial withdrawal of a Registrar-General's caveat (no fee is payable for withdrawal or partial withdrawal of a Registrar-General's caveat consequent on lodgment and registration of a dealing)	1.2655
16	On lodgment of a request for the Registrar-General to direct the manner of service of a notice on a caveator under section 74N (1) (e) of the Act	1.2655
17	On lodgment of an application for preparation of a notice for service on a caveator under section 74C (3), 74I (1) or (2), 74J (1) or 74JA (2) of the Act	1.2655
18	On lodgment of a notice of a change of name of a caveator or of the address for service of a notice on a caveator	1.2655
Priority notices		
19	On lodgment of a priority notice under section 74T of the Act	0.3442
20	On lodgment of an application for an extension of a priority notice under section 74V of the Act	0.1426
21	On withdrawal of a priority notice under section 74X of the Act	0.1426
Certificates of title		
22	On lodgment of an application for a new certificate of title under section 111 of the Act	1.2655
Authentication of forms		
23	In addition to any other item, for examination and authentication of any dealing, application, request or caveat that is required by any Act to be in an approved form which contains departures from the approved form and which is not a form licensed by the Registrar-General	1.2618
Searches and digital images		
24	For providing a certificate under Part 11A of the Act:	
	(a) to a person attending at an office	0.1296
	(b) by electronic means	0.0867
25	For supplying a digital image of a document under Part 11A of the Act:	
	(a) to a person attending at an office	0.1296
	(b) by electronic means	0.0867

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Real Property Regulation 2019 [NSW]
Schedule 1 Fees

Item	Matter for which fee payable	Fee (in fee units)
26	On lodgment of an application for a certified copy of a folio, dealing, record or instrument comprising part of the Register—for each copy	1.2618
27	For a request for a search of the Register by the Registrar-General—for the initial search of the Register, including investigation as to title reference, a copy of the relevant folio and delivery fee	3.4254
28	In addition to item 27, for inclusion in the search of any additional document forming part of the Register—for each document	0.1296
29	In the case of a request for aggregated data or other information from the Register that, in the opinion of the Registrar-General, is a search for which the above schedule of fees is not appropriate	2.3144 per hour or part hour spent in carrying out the search
Reports		
30	For supplying a Lease Folio Data Extract Report or a Lease Folio Caveats, Writs and Other Dealings Report:	
	(a) to a person attending at an office	0.3129
	(b) by electronic means	0.3129
Lodgment support services (LSS) for electronic conveyancing		
31	For supplying to an Electronic Lodgment Network (<i>Electronic Conveyancing National Law (NSW)</i> —section 13) the following electronic services:	
	(a) the suite of lodgment support services (known as “LSS 1”) comprising initial supply of title data, verifications that documents are in an appropriate form for electronic lodgment and automated checks for changes in title data initially supplied	0.1300
	(b) the suite of lodgment support services (known as “LSS 2”) comprising initial supply of title data and verifications that documents are in an appropriate form for electronic lodgment	0.0867
	(c) the lodgment support service (known as “LSS 3”) comprising supply of updated title data following changes in title data initially supplied	0.0434
32	For a requisition sent by the Registrar-General requiring correction, re-execution or the supply of additional information in support of a dealing, application, request or caveat lodged for registration or recording	0.4629
Miscellaneous		
33	On depositing an instrument declaratory of trusts	1.2618
34	On depositing any other instrument not specified	1.2618
35	For recording of any memorial or notification not otherwise provided for	1.2618
36	On lodgment of a request for delivery of a document or documents under section 23A (3) (c) of the Act (no fee is payable if the request is made during the currency of the primary application)	0.3129

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Real Property Regulation 2019 [NSW]
Schedule 1 Fees

Item	Matter for which fee payable	Fee (in fee units)
37	For furnishing a certificate of ownership (<i>Local Government Act 1993</i> —section 700 (2) or <i>Environmental Planning and Assessment Act 1979</i> —section 10.9 (2)) and incorporating in it any information as to subsisting encumbrances or interests	1.2618
38	In addition to item 37, for supplying each additional document forming part of the Register	0.1296
39	In addition to any other item, for any dealing, application, request or caveat that refers to more than 20 folios of the Register	1.2618
40	On an application for a review by the Registrar-General of a decision under section 121 of the Act	2.7700

Part 2 Adjustment of fees for inflation

Calculation of fee unit for purposes of Regulation

- (1) For the purposes of this Regulation, a *fee unit* is:
 - (a) in the financial year 2019–20—\$103.41, and
 - (b) in each subsequent financial year—the amount calculated as follows:

$$\$100 \times \frac{A}{111.3}$$

where:

A is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

Note. 111.3 is the CPI number for the March quarter of 2017.

- (2) The amount of a fee unit and the amount of a fee calculated by reference to a fee unit is to be rounded to the nearest cent (and an amount of 0.5 cent is to be rounded down).
- (3) However, if the amount of a fee unit calculated for any financial year is less than the amount that applied for the previous financial year, then the amount for that previous financial year applies instead.
- (4) As soon as practicable after the CPI number for the March quarter is first published by the Australian Statistician, the Registrar-General is required to publish on the NSW legislation website a notice of the amount of the fee unit for the next financial year. That notice may be published by the addition of an editorial note relating to the amount of the fee unit in the in force version of this Regulation published on the NSW legislation website.
- (5) The Registrar-General is also required to give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year resulting from the application of the amount of fee unit calculated under this clause.
- (6) This clause operates to change an amount of a fee that is calculated by reference to a fee unit and that change is not dependent on the publication of a notice by the Registrar-General under this clause.
- (7) In this clause:

CPI number means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

financial year means a period of 12 months commencing on 1 July.

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Real Property Regulation 2019 [NSW]
Schedule 1 Fees

Editorial note. Fee unit amount calculated under this clause:

Financial year	Fee unit amount
2019–20	\$103.41

Schedule 2 Particulars of estate or interest to be specified in caveats

(Clause 7)

- 1** Particulars of the nature of the estate or interest in land claimed by the caveator.
- 2** The facts on which the claim is founded, including (if appropriate) a statement as to the manner in which the estate or interest claimed is derived from the registered proprietor of the estate or interest or the primary or possessory applicant against which the caveat is to operate.
- 3** If the caveator's claim is based (wholly or in part) on the terms of a written agreement or other instrument, particulars of the nature and date of that agreement or instrument and the parties to it.
- 4** If the caveator claims as mortgagee, chargee or covenant chargee, a statement of the amount (if readily ascertainable) of the debt or other sum of money charged on the land (or, if the amount is not readily ascertainable, the nature of the debt, annuity, rent-charge or other charge secured on the land).
- 5** If the caveator claims as lessee for a term or for a renewal or extension of a term, particulars of the duration of the term or renewed or extended term and its commencing date (and, if the agreement for the term, renewal or extension includes an option for the renewal or extension of the term or to purchase the reversion, a statement to the appropriate effect).
- 6** If the caveator claims an easement, particulars of the land or authority that has or is intended to have the benefit of the easement.
- 7** If the caveator claims a profit à prendre, particulars of the land or authority intended to have the benefit of the profit à prendre.
- 8** If the caveator claims a right to the benefit of a restriction on the use of land, particulars of the land or authority intended to have the benefit of the restriction.
- 9** If the caveator claims a right to the benefit of a positive covenant, particulars of the land or authority intended to have the benefit of the covenant.
- 10** It is not necessary to specify:
 - (a) whether the estate or interest claimed is legal or equitable, or
 - (b) the quantum of the estate or interest claimed (except as provided in items 4 and 5), or
 - (c) how the estate or interest claimed ranks in priority with other estates and interests in the land.

Schedule 3 Description in caveats of part of land

(Clause 8)

- 1 Except where item 2, 3 or 5 applies, the description of the part must refer to the part:
 - (a) as a lot or portion in a current plan within the meaning of the *Conveyancing Act 1919*, or
 - (b) as a proposed lot in a plan lodged for registration or recording:
 - (i) under Division 3 of Part 23 of the *Conveyancing Act 1919*, or
 - (ii) under the *Strata Schemes Development Act 2015*,
but only if the plan has not been so registered or recorded at the time of lodgment of the caveat, or
 - (c) if the Registrar-General so approves—as the land shown in a plan annexed to or endorsed on the caveat, which plan must contain sufficient information to establish, to the satisfaction of the Registrar-General, the relationship of the plan to the boundaries of the land comprised in the folio of the Register or the current lease to which the caveat relates.
- 2 If the claim of the caveator is in respect of:
 - (a) premises within an existing building, or
 - (b) a proposed lot in a proposed strata plan or other proposed plan of subdivision which, at the time of lodgment of the caveat, has not been lodged with the Registrar-General for registration or recording, or
 - (c) a parcel for which description in accordance with item 1 is inappropriate,
the description of the part must be in such other form or manner as will enable the Registrar-General to identify the part to which the claim relates.
- 3 If the claim of the caveator is in respect of an unregistered easement over part of the land comprised in a folio of the Register or a current lease, the description must identify the site of the easement:
 - (a) if the Registrar-General so approves—as the land shown in a plan annexed to or endorsed on the caveat, or
 - (b) as the land shown in a plan which defines the site of the easement and which is registered or recorded with the Registrar-General.
- 4 It is not necessary for a plan referred to in item 3 to define precisely the site of an easement intended to be created in respect of an existing tunnel, pipe, conduit, wire or other similar object which is underground, or is within or beneath an existing building, so long as the plan shows the approximate position of the easement.
- 5 If mines or minerals constitute the part of the land comprised in the folio of the Register or current lease to which the claim of the caveator relates, it is sufficient to specify or describe the mines or minerals concerned.