



**Land & Property  
Information**

## Regulatory Impact Statement

### Real Property Regulation 2014

*A Regulation under the  
Real Property Act 1900*

Submissions accepted until: **Tuesday 1 July 2014**

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## **1. Introduction**

### **1.1. Title and proponent of the proposed Regulation**

The *Real Property Regulation 2014* has been developed by the Registrar General and Land and Property Information (LPI), a Division of the Office of Finance and Services, and is proposed by the Minister for Finance and Services, the Hon Dominic Perrottet MP.

### **1.2. Why the Regulation is being made**

The proposed Regulation will replace the existing *Real Property Regulation 2008*. The existing Regulation is to be repealed on 1 September 2014 under section 10 of the *Subordinate Legislation Act 1989* as part of the Government's commitment to review regulations every 5 years to ensure they remain relevant.

This Regulation is made under the general regulation-making power under the *Real Property Act 1900* (the Act) as well as various sections of the Act which specifically allow or require regulations to be made.

### **1.3. Status of the proposed Regulation**

The attached Regulation is a draft. It has been released with this Regulatory Impact Statement so that interested parties can review and provide comments and suggestions. Submissions received will be considered and may result in amendments to the proposed Regulation. The Regulation will be finalised and published on the NSW Legislation website to enable it to commence on 1 September 2014.

## **2. Legislative background**

### **2.1. *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, is effectual to pass any estate or interest in land under the provisions of the Act. Subject to exceptions, the recording of an estate or interest provides the registered proprietor an "indefeasible" estate or interest in the land which is backed by a State guarantee. This State guarantee provides that in circumstances where a person suffers loss or damage as a result of the operation of the Act, compensation may be payable from the Torrens Assurance Fund.

In addition to the establishment of the Torrens Register and the system of title guarantee, the Act also sets out the Registrar General's functions, authorities, obligations, powers and discretions for the Torrens System of registration to be operative and effective. The Act interacts with other legislation including the *Conveyancing Act 1919* and the various strata and community titles legislation.

In order to fulfil its objectives and to support its administration, the Act provides for the making of regulations. These include regulations for the payment of fees, requirements for the lodgment of dealings, applications and caveats, including requirements relating to the form and content of instruments and plans, the 'reasonable steps' to be undertaken to confirm the identity of a mortgagor for the purposes of the Act, 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 other ancillary matters.



### **3. Objectives of the proposed Regulation**

The objectives of the proposed *Real Property Regulation 2014* are to make provisions with respect to the following:

- the lodgment of dealings, applications and caveats, including requirements relating as to the form and content of certain instruments and plans
- the manner in which a requisition for an official search of the Register kept under the Act is to be made
- the times 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
- the reasonable steps that a mortgagee must take to ensure that the identity of a person who executed a mortgage, or on whose behalf the mortgagee was executed, as mortgagor is the same person who is, or is to become, the registered proprietor of the relevant land.
- the payment of fees
- the period during which the Registrar General may require production in electronic format or hard copy of certain documents lodged in electronic form
- 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 reasonable steps that a witness must take to ensure the identity of a person executing an application, dealing or caveat
- the maximum amount that the Registrar General may pay in settlement of claims against the Torrens Assurance Fund without further authorisation from the Minister.

### **4. Assessment of options to achieve objectives**

#### **4.1. Remake the Regulation**

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 the lodgment of instruments 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 in LPI 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 dealings, applications and caveats under the Torrens System including requirements relating to the form and content of instruments and plans. In so doing, 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 support for achieving the objectives of the Act and in supporting the integrity of the Torrens System.



LPI is the key provider of land administration services in New South Wales. The Regulation is an important piece of legislation in this regard and is part of a range of legislative measures and initiatives supporting the introduction of electronic conveyancing not only for New South Wales but across Australia.

The remake of the Regulation offers the best option to ensure that recognised requirements are maintained and enforced. 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.

#### **4.2. 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 Directions (the making of which are provided for under the Act). The Registrar Generals Directions and other publications such as LPI 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.

#### **4.3. Allow Regulation to lapse**

Allowing the Regulation to lapse would result in the current Regulation being repealed in 1 September, 2014 with no replacement Regulation being made. While the Act would continue to exist, a number of 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 support for the performance of the Registrar General's powers and functions under the Act. Without the Regulation, LPI would not be able to enforce compliance with matters relating to, for example, the form of applications, dealings and caveats lodged with the Registrar General which would compromise the effectiveness of the Torrens Register.

As noted, the Regulation also compliments a range of other legislative enactments relating to the administration of land in NSW and supports the national approach for the lodgment and registration of land dealings to be performed electronically.

Allowing the Regulation to lapse is not considered viable.



#### **4.4. 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 e.g. to support the introduction of 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.



## 5. Summary of main differences between current and proposed Regulation

The proposed Regulation remakes the current *Real Property Regulation 2008* with a number of changes aimed at streamlining and clarifying procedures as well as adopting measures in line with national standards.

A summary of the proposed changes is set out below.

Current Regulation	Proposed Regulation	Reason for change
<b>1. Name of Regulation</b>	Real Property Regulation 2014	
<b>2. Commencement</b>	Date of Commencement – 1 September 2014	
<p><b>5. Certain Instruments to comply with Schedule requirements</b></p> <p>Specifies the requirements for instruments intended to be lodged with the Registrar General,</p>	<p>The clause has been amended to now apply only to instruments lodged in paper form.</p>	<p>Schedule 2 of the Regulation sets out the requirements as to form and content of instruments when lodged with LPI.</p> <p>These requirements do not apply to the lodgment of instruments in electronic form lodged through an electronic lodgment network which are subject to requirements set by the provider of the electronic lodgment network.</p> <p>The Regulation has been amended to now only apply to the lodgment of instruments in paper form.</p>
<p><b>9. Annexure of plans to dealings or caveats</b></p> <p>Specifies the requirements for plans annexed to a dealings or caveats.</p>	<p>Reference to plans being “endorsed on” dealings or caveats has been removed.</p> <p>Consequential amendments have been made to similar references where appearing in Schedules 5 and 6 of the Regulation.</p>	<p>The approved forms for dealings and caveats published by the Registrar General do not provide a facility for the endorsement of plans.</p> <p>The Regulation has been amended to ensure where a plan is to be annexed to a dealing or caveat, it must be in the form of an annexure which complies with the requirements specified in Schedules 5 and 6 of the Regulation.</p>



Current Regulation	Proposed Regulation	Reason for change
<p><b>11. Public Searches</b></p> <p>Prescribes the times and manner in which information in the Torrens Register is to be made available.</p>	<p>Clause 11(a) has been amplified to include reference to the times that information on the Torrens Register is made available to the public in electronic form.</p>	<p>The Regulation currently refers to the times a person who personally attends LPI can access information. The Regulation has now been updated to include reference to the times access to LPI's electronic facility (through the "LPI On-Line Shop") is available for the obtaining of information on the Torrens Register.</p>
<p><b>Part 3A. Reasonable steps in confirming identities of mortgagors.</b></p> <p>Prescribes the steps a mortgagee is to take in order to be deemed to have met the requirement to take reasonable steps to confirm the identity of a mortgagor for the purposes of section 56C of the Act before presenting a mortgage for lodgment.</p>	<p>Current Part 3A of the Regulation has been removed (clauses 11A – 11D). New clause 14 has been added to Part 4 of the Regulation replacing the current "reasonable steps" a mortgagee is to take to confirm the identity of a mortgagor for the purposes of section 56C of the Act before presenting a mortgage for lodgment.</p>	<p>A new standard has been introduced in new clause 14 which adopts the national verification of identity standard which currently applies to the electronic lodgment of mortgages.</p> <p>The <i>Electronic Conveyancing (Adoption of National Law) Act 2012</i> applies the Electronic Conveyancing National Law (NSW) as the centrepiece of the legal framework to allow for the electronic preparation, lodgment and registration of land dealings.</p> <p>The Electronic Conveyancing National Law (NSW) allows the Registrar General to make rules (the "Participation Rules") which apply to persons wishing to lodge dealings electronically. These are based on Model Participation Rules approved by the Australian Registrars' National Electronic Conveyancing Council (ARNECC).</p> <p>The amendment to the Regulation replaces the current verification requirements with the Nationally agreed verification requirements set out in the Participation Rules determined by the Registrar General subject to minor modifications as set out in the Regulation.</p> <p>The proposed amendment will ensure that one standard of verification will now apply to both manually and electronically lodged mortgages.</p>



Current Regulation	Proposed Regulation	Reason for change
<p><b>14. Statement to accompany notice to Public Trustee of intention to apply for foreclosure order.</b></p> <p>Prescribes the particulars which must be included in a notice to be given to the Public Trustee relating to applications for foreclosure.</p>	<p>Current clause 14 has been renumbered to new clause 15 and has removed reference to the "Public Trustee" where appearing in the current Regulation and inserting instead reference to the "NSW Trustee and Guardian".</p>	<p>On 1 July 2009, the Public Trustee and the Office of the Protective Commission merged and the "NSW Trustee and Guardian" commenced operations. The Regulation makes amendments consequential as a result of the enactment of the <i>NSW Trustee and Guardian Act 2009</i>.</p>
<p><b>17. Settlement of Claims</b></p> <p>Prescribes the maximum amount the Registrar General may pay in settlement of a claim without first obtaining Ministerial consent.</p>	<p>Current clause 17 has been renumbered to new clause 19. The amount of "\$250,000" has been replaced with the maximum amount of "\$500,000" representing the amount the Registrar General may pay in settlement of a claim for compensation without the need to first obtain Ministerial approval.</p>	<p>The Act provides that the Registrar General may settle any claim for payment of compensation from the Torrens Assurance Fund. A restriction on the maximum amount the Registrar General may pay in settlement without the need to obtain Ministerial consent is currently prescribed at \$250,000.</p> <p>The amount has been increased to \$500,000 to reflect current market prices and to assist in the speedier settlement of claims administratively.</p>
<p><b>Schedule 1 Fees</b></p>	<p>The draft Regulation attached does not include the amendments to the fees set out in Schedule 1. Fees payable will be amended by the <i>Real Property Amendment (Fees) Regulation 2014</i> commencing 1 July 2014.</p>	



Current Regulation	Proposed Regulation	Reason for change
<p><b>Schedule 2 Requirements for certain instruments</b></p> <p>Instruments intended to be lodged with the Registrar General must comply with the requirements set out in Schedule 2.</p> <p>Item 10 - currently sets out requirements relating to the manner and verification of alterations.</p> <p>Item 15 – currently sets out the requirements relating to the preparation of annexures to instruments.</p>	<p>Schedule 2, Item 10 is now expanded to include additional requirements to clearly indicate the identity of the person who made an alteration to an instrument and to specify the date the alteration was made.</p> <p>Schedule 2, Item 15 has been amended by the addition of a new Item 15(d) to prevent photographs from being annexed to an instrument without obtaining the consent of the Registrar General.</p> <p>Previous Item 15(d) has been renumbered to item 15(e).</p>	<p>Where an instrument has been altered, questions have been asked about the identity of the person who made the alteration as well as when the alteration was made.</p> <p>The additional requirements aim to clearly indicate who made an alteration to an instrument and when.</p> <p>Annexures to instruments should be confined to matters relevant to the estate or interest being recorded. Photographs do not relate to the terms or conditions of instruments such as leases and should not form part of a registered instrument.</p> <p>The proposed amendment to the Regulation will not allow photographs to be included in an annexure, additional sheet or inserted sheet to an instrument except with the consent of the Registrar General.</p>



Current Regulation	Proposed Regulation	Reason for change
<p><b>Schedule 5 Requirements for plans annexed to or endorsed on dealings (other than leases of premises) or caveats</b></p> <p>Plans forming annexures to dealings must comply with the requirements set out in Schedule 5.</p> <p>Item 7 required a statement on each plan annexure sheet to indicate the reduction ratio at which the plan was drawn.</p> <p>Item 9 currently sets out requirements relating to the manner and verification of alterations.</p> <p>Item 17 currently requires plans annexed to dealings to be compiled plans and not plans of survey.</p>	<p>Reference to the endorsement of plans on dealings has been removed wherever previously referred to in Schedule 5.</p> <p>Item 7 has been removed as a separate item and is now included within Item 3(a). All remaining Items have been consequentially renumbered.</p> <p>Item 9 has been renumbered as Item 8. New Item 8 has been expanded to clarify that any alteration to a plan must be made by the person who prepared the plan.</p> <p>New Item 8 also include a requirement (in line with proposed amendments to Schedule 2 set out above) to clearly indicate the identity of the person who made an alteration to a plan and to specify the date the alteration was made.</p> <p>Item 17 has been renumbered as Item 16. New Item 16 has been amended to remove reference to caveats.</p> <p>New Item 17 has been added to prevent a registered plan being annexed to a dealing or caveat.</p>	<p>When a plan is annexed, any alteration to the plan must be made by the person who prepared the plan. The amendment is consistent with current requirements applying to the lodgment of deposited plans.</p> <p>Where an instrument has been altered, questions have been asked about the identity of the person who made the alteration as well as the date the alteration was made.</p> <p>The additional requirements aim to clearly indicate who made an alteration to an annexed plan and when.</p> <p>New Item 16 has been amended to reflect LPI practice to accept plans of survey as annexures to caveats.</p> <p>New Item 17 has been added to clarify that a registered plan may be referred to in a dealing but cannot be included as an annexure. This is in line with present office practice.</p>



Current Regulation	Proposed Regulation	Reason for change
<p><b>Schedule 6 - Requirements for plans annexed to or endorsed on leases of premises</b></p> <p>Plans forming annexures to leases of premises must comply with the requirements set out in Schedule 6.</p> <p>Item 12 currently sets out requirements relating to the manner and verification of alterations.</p>	<p>Reference to the endorsement of plans on leases of premises has been removed wherever previously referred to in Schedule 6 (including removal of current Item 17). All remaining Items have been consequentially renumbered.</p> <p>Item 12 has been expanded to clarify that any alteration to a plan must be made by the person who prepared the plan.</p> <p>Item 12 also includes a requirement (in line with proposed amendments to Schedule 2 set out above) to clearly indicate the identity of the person who made an alteration to a plan and to specify the date the alteration was made.</p> <p>New Item 19 has been added to prevent a registered plan being annexed to a lease</p>	<p>When a plan is annexed to a lease, any alteration to the plan must be made by the person who prepared the plan. The amendment is consistent with current requirements applying to the lodgment of deposited plans</p> <p>Where an instrument has been altered, questions have been asked about the identity of the person who made the alteration to the instrument as well as the date the alteration was made.</p> <p>The additional requirements aim to clearly indicate who made an alteration to an annexed plan and when.</p> <p>New Item19 has been added to clarify that a registered plan may be referred to in a dealing but cannot be included as an annexure. This is in line with present office practice.</p>



## **6. Impact assessment 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.

### **6.1 Impact of individual clauses of the proposed Regulation**

#### **6.1.1 Part 2 Dealings and caveats**

##### **Objective of part**

To set out provisions relating to the lodgment of dealings and caveats, including requirements as to form and content of instruments and plans where a plan is an annexure to dealing or caveat.

##### **Proposed amendments**

- Clause 5 has been amended to now apply only to instruments lodged in paper form.
- Clause 9 has been amended to remove reference to the endorsement of plans on dealings or caveats

##### **Assessment of costs and benefits of proposed amendment**

The amendments do not give rise to any costs. The amendment to clause 5 has been made to limit the requirements set out in Schedule 2 of the Regulation to apply to the lodgment of paper instruments only and not to instruments lodged in an electronic form. Instruments lodged electronically are subject to the requirements set by the provider of the electronic lodgment network.

The amendment to clause 9 reflects the Registrar General's practice to not accept plans endorsed on dealings. Where a plan is to be annexed to a dealing it must comply with Schedules 5 and 6 of the Regulation.

#### **6.1.2 Part 3 Searches**

##### **Objective of part**

To provide for matters including the manner in which a requisition for an official search is to be made and, the times the Register is to be made available for searches and the manner in which information in the Register is to be provided.

##### **Proposed amendments**

- Clause 11 has been amended to make additional reference to the times at which information in the Register is made available through LPI's electronic facility.

##### **Assessment of costs and benefits of proposed amendment**

The amendment does not give rise to any costs. The amendment is of benefit to the public in providing additional information as to the times information on the Torrens Register is available in electronic form.



### 6.1.3 Part 4 Miscellaneous

#### Objective of part

To provide for matters of a miscellaneous nature including provisions for the payment of fees and for the particulars to be included in certain notices to be given to the NSW Trustee and Guardian relating to applications for foreclosures. Additionally, to provide for the steps that a mortgagee must take to be deemed to have complied with the requirement in section 56C of the Act to have taken “reasonable steps” to confirm the identity of a mortgagor and, to provide for the maximum amount that the Registrar General may pay in settlement of claims against the Torrens Assurance Fund without further authorisation from the Minister.

#### Proposed amendments

##### Clause 14

Clause 14 has replaced the current “reasonable steps” a mortgagee is considered to take in order to be deemed to have complied with section 56C of the Act presently existing in Part 3A (clauses 11A – 11D) of the Regulation.

Section 56C(1) of the Act requires that “... *the mortgagee must take reasonable steps to ensure that the person who executed the mortgage, or on whose behalf the mortgage was executed, as mortgagor is the same person who is, or is to become, the registered proprietor of the land that is security for the payment of the debt to which the mortgage relates*”.

Section 56C(2) states that the mortgagee is to be considered as having taken reasonable steps to ensure the identity of the mortgagor if the mortgagee has taken the steps prescribed by the regulations.

These ‘reasonable steps’ are presently set out in Part 3A (sections 11A – 11D) of the Regulation. The current requirements are based on the standard set by the Commonwealth *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

When this standard was adopted in the present Regulation, it was implemented as an interim measure to be amended to align with the National verification of identity standard being developed for the new electronic environment for completing and lodging real property transactions. National Electronic Conveyancing (known as e-conveyancing) is the new environment for completing real property transactions and lodging land title dealings throughout Australia.

The *Electronic Conveyancing (Adoption of National Law) Act 2012* which applies the Electronic National Law (NSW) has set up the legal framework to allow for the lodgment and registration of land dealings to be performed electronically. In order to lodge dealings electronically, a person (such as a solicitor, conveyancer or bank), must be a subscriber.

The National Law allows the Registrar General to determine the rules (the “Participation Rules”) that subscribers must abide by if they wish to participate in e-conveyancing. The Participation Rules govern a number of matters, one of which is the obligation of a subscriber to verify the identity of their clients. The Registrar General has adopted the Model Participation Rules, developed and approved by the Australian Registrar’s National Electronic Conveyancing Council (ARNECC), as the Participation Rules for e-conveyancing.

ARNECC was established by an Intergovernmental Agreement to ensure a consistent national approach to the regulation of electronic conveyancing. The standards adopted have been, and continue to be, subject to extensive consultation. It was always the objective that New South Wales adopt the national standard when it was introduced and the Regulation is consistent with this objective.



The amendment to the Regulation will replace present Part 3A with new clause 14 (within Part 4 of the Regulation) which now applies the National standard set out in the Participation rules subject to some minor modifications in the Regulation. To comply with the national standard, a mortgagee or its agent must conduct a "face-to-face" in-person interview with the person being identified who must produce original documents to establish their identity.

#### **Clause 15**

Clause 15 replaces previous clause 14. On July 1 2009, with the enactment of the *NSW Trustee and Guardian Act 2009*, the Public Trustee and the Office of the Protective Commissioner merged and the "NSW Trustee and Guardian" commenced operations. An amendment was made to the Act to insert "NSW Trustee and Guardian" in place of the words "Public Trustee". The present amendment is in further consequence of the enactment.

#### **Clause 19**

Clause 19 replaces previous clause 17. Section 135 of the Act provides for the settlement of claims for compensation from the Torrens Assurance Fund. Section 135(3) imposes restrictions on the power of the Registrar General to settle claims including a restriction on the maximum amount the Registrar General may pay in settlement without the need to obtain Ministerial consent. The maximum amount payable is presently prescribed in the Regulation as \$250,000. To reflect current market prices, the Regulation has been amended to increase the maximum amount payable to \$500,000. This amendment will facilitate a speedier settlement of administrative claims and reduce recourse to the Court system.

### **Assessment of costs and benefits of proposed amendment**

#### **Clause 14**

The Participation rules have been adopted after extensive national consultation and the identification standard has been agreed to by key stakeholders such as the Australian Bankers' Association. The amendment reflects the understanding that the present reasonable steps were an interim measure to be amended to align with the verification of identity standard applying to the electronic lodgment of mortgages. The need for the amendment is important. It will simplify arrangements for stakeholders by consistently applying the national verification standards across both paper and electronic dealings.

The requirement on mortgagees is still to take reasonable steps to confirm the identity of the mortgagor and it is anticipated that many mortgagees will continue with existing procedures. However, if a mortgagee wishes to continue to be covered by the presumption of compliance with section 56C(2) of the Act it will need to adapt its processes to adhere to the national verification standard. It is important to note that it is not compulsory to adopt the National standard nor is it the only process that will comply with the requirement in section 56C of the Act. Mortgagees can make their own decisions based on their assessment of risk and cost.

Whilst there may be a cost to mortgagees to adapt their processes, this is not considered appreciable, as many mortgagees have already adapted their processes in order to participate in electronic conveyancing. In addition, there are cost benefits to mortgagees in having one standard applying across Australia and for the standard to apply to both paper and electronic mortgages.

#### **Clauses 15 and 19**

The amendments to clauses 15 and 19 do not give rise to any costs. Increasing the amount that the Registrar General can pay out in a settlement without first obtaining Ministerial authorisation will allow claims up to \$500,000 to be settled quicker and more efficiently than is currently available.



## **6.1.4 Schedule 2 – Requirements for certain instruments**

### **Objective of Schedule**

To set minimum standards for preparation of dealings including text, font and for the making of alterations.

### **Proposed amendments**

- Item 10 has been amended by adding further identification requirements where alterations are made to an instrument. New Item 10(3) now requires the identity of the person who made the alteration to be made clear by printing the name of the person in instances where the alteration was noted by way of initial, or, where the alteration was signed and the name cannot be ascertained from the signature. New Item 10(3) also requires inclusion of the date the alteration was made.
- Item 15 has been amended by renumbering the existing requirements to include a new Item 15(d). An annexure, additional sheet or inserted sheet to an instrument must not include photographs except with the prior written consent of the Registrar General.

### **Assessment of costs and benefits of proposed amendment**

The additional identification requirements for noting alterations have been inserted to ensure that it can be clearly ascertained who amended an instrument and when the amendment was made. There should be no cost to comply with these additional requirements. Rather, practitioners and lodging parties will need to advise their clients of the new requirements in readiness for their introduction.

The amendment to Item 15 will prevent photographs from being included with an instrument as an annexure, additional sheet or inserted sheet except with the consent of the Registrar General. There has been a growing incidence of photographic images included as annexures, predominantly with leases. The photographs do not relate to the terms and conditions of the lease. The Torrens Register should be confined to matters relevant to the terms and conditions of a lease rather than to matters which may be of interest to the parties to dealing, but are not integral to the interest in the land. In most cases, the annexures amount to significant additional pages and cause an added unnecessary administrative burden to LPI. An added concern is the loss of clarity and quality of the photographic images when scanned and later reproduced.

Cost benefits to practitioners and the general public include less cumbersome and lengthy documents. This will save time and cost when assembling and collating documents. Removing clutter will increase efficiency by ensuring documents deal only with matters relevant to the interest or estate created. The proposal will also provide administrative and cost benefits to LPI by reducing resources presently spent in ensuring all pages to the annexure exist, are numbered sequentially and can be scanned and reproduced effectively.

## **6.1.5 Schedule 5 – Requirements for plans annexed to dealings (other than leases of premises) or caveats**

### **Objective of Schedule**

To set minimum standards for the preparation of plan to be annexed to a dealing (other than a lease of premises) or caveat.

### **Proposed amendments**

- Item 3(a) has been amended by including the requirement to note the reduction ratio at which the plans are drawn on each sheet. This is not an additional requirement but simply has consolidated previous Item 7 within Item 3.
- New Item 8(1) has been amended to clarify that the person who may make an alteration to an annexed plan is the person who prepared the plan. This requirement is in line with the Registrar General's requirements where alterations are made to plans generally. Item 8(4) has been expanded to specify that a signature or initial noting an alteration should be placed as near as practicable to the alteration by the person who prepared the plan and made the alteration. The alteration must be dated and clearly identify who made it.

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- New Item 16 has been amended to remove reference to a plan annexed to a caveat to be in the form of a compiled plan. This amendment reflects the Registrar General's practice in accepting a plan of survey as an annexure to a caveat.
  - A new Item 17 has been added to Schedule 5. Whilst dealing can make reference to a registered plan or caveat, a copy of the registered plan cannot be annexed to a dealing or caveat. LPI presently requests the removal of the copy of the registered plan and the amendment to the Regulation reflects current LPI practice.

### **Assessment of costs and benefits of proposed amendment**

The proposed amendments clarify existing LPI practice relating to plans annexed to dealings (other than leases of premises) and caveats. The benefit to the community in the amendments relating to the identity of the person who made the alteration and the date the alteration was made have been discussed in the assessment of costs and benefits of the proposed amendment to Schedule 2 above.

### **6.1.6 Schedule 6 – Requirements for plans annexed to leases of premises**

#### **Objective of Schedule**

To set minimum standards for the preparation of plan to be annexed to a lease of premises.

#### **Proposed amendments**

- Item 12 has been amended in the same manner to that set out in Item 8 in Schedule 5 above.
- New Item 19 has been added to Schedule 6 in the same manner to that set out in new Item 17 in Schedule 5 above.

### **Assessment of costs and benefits of proposed amendment**

The proposed amendments clarify existing LPI practice relating to plans annexed to leases of premises. The benefit to the community in the amendments relating to the identity of the person who made the alteration and the date the alteration was made have been discussed in the assessment of costs and benefits of the proposed amendment to Schedule 2 above.

## **7. Consultation**

The current standard in the Regulation prescribing the 'reasonable steps' a mortgagee is considered to take in order to be deemed to have complied with section 56C of the Act was introduced as an interim measure to be amended to align with the verification of identity standard applying to the new electronic environment for completing and lodging real property transactions throughout Australia. The standard introduced in new clause 14 adopts the Participation Rules and the verification standard which after extensive national consultation has been agreed to by key stakeholders such as the Australian Bankers' Association.

ARNECC continues to consult with stakeholders concerning developments or changes to arrangements for National Electronic Conveyancing, including changes to the Model Participation Rules.

It is proposed to circulate copies of the draft Regulation and this Regulatory Impact Statement to the following organisations and individuals:

- The Law Society of NSW
- Office of Fair Trading
- NSW Trustee and Guardian
- Institution of Surveyors NSW Inc.
- Australian Bankers' Association
- Australian Institute of Conveyancers NSW Division
- Mortgage & Finance Association of Australia (MFAA)
- Customer Owned Banking Association (COBA)
- Australian Finance Conference.



The Regulatory Impact Statement will be published on the LPI website and a notice placed in the Government Gazette and the Sydney Morning Herald.

**SUBMISSIONS WILL BE TAKEN UNTIL TUESDAY 1 JULY 2014.**



New South Wales

## Real Property Regulation 2014

under the

Real Property Act 1900

[If this Regulation is made, the following enacting formula will be included:]

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

Minister for Finance and Services

### Explanatory note

The object of this Regulation is to remake, with some changes, the provisions of the *Real Property Regulation 2008* which is repealed on 1 September 2014 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the lodgment of dealings, applications and caveats, including requirements relating to the form and content of certain instruments and plans,
- (b) the manner in which a requisition for an official search of the Register kept under the *Real Property Act 1900* 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 reasonable steps that a mortgagee must take to ensure that the person who executed a mortgage, or on whose behalf the mortgage was executed, as mortgagor is the same person who is, or is to become, the registered proprietor of the relevant land,
- (e) the payment of fees,
- (f) the period during which the Registrar-General may require production in electronic format or hard copy of certain documents lodged in electronic form,
- (g) the particulars to be included in certain notices given to the NSW Trustee and Guardian relating to applications for foreclosures,
- (h) the service of certain documents,
- (i) the reasonable steps that a witness must take to ensure the identity of a person executing an application, dealing or caveat,
- (j) the maximum amount that the Registrar-General may pay in settlement of claims against the Torrens Assurance Fund without further authorisation from the Minister.

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# Public consultation draft

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Real Property Regulation 2014 [NSW]  
Explanatory note

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This Regulation is made under the *Real Property Act 1900*, including sections 12AA (2) (b) and (c), 56C, 61 (2A), 74N (1) (d), 91 (2) and (5), 96B, 117 (5), 135 (3) (b) and 144 (the general regulation-making power).

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# Public consultation draft

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Real Property Regulation 2014 [NSW]

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## Real Property Regulation 2014

under the

Real Property Act 1900

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Real Property Regulation 2014*.

#### 2 Commencement

This Regulation commences on 1 September 2014.

**Note.** This Regulation replaces the *Real Property Regulation 2008* which is repealed on 1 September 2014 under section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definition

(1) In this Regulation:

*the Act* means the *Real Property Act 1900*.

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

## Part 2 Dealings and caveats

### 4 Lodgment of dealings and caveats

- (1) A dealing or caveat that is intended to be lodged at the office of the Registrar-General must:
  - (a) be lodged in the manner approved by the Registrar-General, and
  - (b) be accompanied by the relevant fee set out in Schedule 1.
- (2) Despite subclause (1) (b), if a dealing or caveat is to be lodged electronically, the relevant 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.

### 5 Certain instruments in paper form to comply with Schedule 2 requirements

Each of the following instruments must comply with the requirements set out in Schedule 2 if the instrument is intended to be lodged at the office of the Registrar-General in paper form:

- (a) an application or dealing that is required by the Act or any other Act to be in an approved form,
- (b) a caveat referred to in section 74B or 74F of the Act,
- (c) a declaration of trust (or a duplicate or an attested copy) lodged in accordance with section 82 of the Act.

### 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 3 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 4.

## **9 Annexure of plans to dealings or caveats**

- (1) A plan must not be annexed to a dealing or caveat lodged in the office of the Registrar-General unless the Registrar-General so approves.
- (2) A plan that is annexed to a dealing (other than a lease of premises) or caveat must comply with the requirements of Schedule 5.
- (3) A plan that is annexed to a lease of premises must comply with the requirements of Schedule 6.
- (4) 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 Schedule 6.

## Part 3 Searches

### 10 Official searches

- (1) A requisition for an official search of the Register must be made in the form approved by the Registrar-General.
- (2) A requisition is to be limited to parcels of land held by one proprietor or jointly held by 2 or more proprietors.
- (3) A requisition may be lodged personally, by post, by facsimile or by other means approved by the Registrar-General.
- (4) The relevant fee set out in Schedule 1 must, if required by the Registrar-General, be paid before delivery of the office copy of a certificate of the result of a search.
- (5) If a requisition is withdrawn after the commencement but before completion of a search, such fees as the Registrar-General determines having regard to the work done up to the time of withdrawal must be paid.
- (6) The Registrar-General may require an interim payment of fees before completion of a search.

### 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 New South Wales Standard Time each day (other than a Saturday, Sunday or public holiday), or
  - (ii) in the case of information in the Register provided in electronic form—between the hours of 1.00 am and midnight New South Wales Standard Time 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 copy of the information to the applicant in printed, electronic or other form approved by the Registrar-General, or
  - (ii) in the case of information contained in a computer folio of the Register, by furnishing a certificate to the applicant in accordance with section 96D or 96G of the Act, or
  - (iii) in the case of information contained in a bound volume to which the public has access, by permitting the applicant to inspect the bound volume, and
- (c) the prescribed fee is the relevant 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.

### 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 12 months commencing on the day on which it was lodged, or
- (b) for a plan or other document that has been registered or recorded—the period of 12 months commencing on the day on which it was registered or recorded.

### 14 Prescribed reasonable steps for confirming identity of mortgagor

- (1) For the purposes of section 56C of the Act, a mortgagee is to be considered as having taken reasonable steps to ensure that the person who executed a mortgage, or on whose behalf the mortgage was executed, as mortgagor is the same person who is, or is to become, the registered proprietor of the land that is security for the payment of the debt to which the mortgage relates if the mortgagee or the mortgagee's agent has taken the steps set out in the verification of identity standard in the participation rules.
- (2) For that purpose, the participation rules as in force from time to time, are adopted with the following modifications:
  - (a) a reference to a subscriber is to be read as a reference to a mortgagee,
  - (b) a reference to a subscriber agent is to be read as a reference to the mortgagee's agent (if any),
  - (c) a reference to the person being identified is to be read as a reference to the person who executed a mortgage, or on whose behalf the mortgage was executed, as mortgagor,
  - (d) references to client authorisations are to be disregarded.
- (3) In this clause:  
*participation rules* means the participation rules determined under the *Electronic Conveyancing National Law (NSW)*.

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

A statement accompanying a notice given to the NSW Trustee and Guardian under section 61 (2A) of the Act must contain the following particulars:

- (a) a statement that the notice is given pursuant to 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.

## 16 Service of notices on caveator: prescribed person

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

## 17 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*.

## 18 Ensuring identification by eligible witnesses

(1) For the purposes of section 117 (5) of the Act, a witness is to be considered as having taken reasonable steps to ensure the identity of a person executing an application, dealing or caveat if the witness has taken the steps set out in this clause.

(2) The witness must sight:

- (a) an original of a primary photographic identification document in respect of the other person, or
- (b) an original of a primary non-photographic identification document in respect of the other person and an original of a secondary identification document in respect of the other person.

(3) A document referred to in this clause does not include a document that has expired (other than in the case of an Australian passport that has been expired for less than 2 years).

(4) In this clause:

***primary non-photographic identification document*** means any of the following:

- (a) a birth certificate or birth extract issued by a State or Territory,
- (b) a citizenship certificate issued by the Commonwealth,
- (c) a citizenship certificate issued by a foreign government and, if the certificate is in a language other than English, a document purporting to contain an English translation of the certificate,
- (d) a birth certificate issued by a foreign government, the United Nations or an agency of the United Nations and, if the certificate is in a language other than English, a document purporting to contain an English translation of the certificate,
- (e) a pension card issued by Centrelink that entitles the person in whose name the card is issued to financial benefits.

***primary photographic identification document*** means any of the following:

- (a) a licence or permit issued under a law of a State or Territory or equivalent authority of a foreign country for the purpose of driving a vehicle that contains a photograph of the person in whose name the licence or permit is issued,
- (b) a passport issued by the Commonwealth,
- (c) a passport or a similar document issued for the purpose of international travel that:
  - (i) contains a photograph and the signature of the person in whose name the document is issued, and
  - (ii) is issued by a foreign government, the United Nations or an agency of the United Nations, and
  - (iii) if it is in a language other than English, is accompanied by a document purporting to contain an English translation of the document,

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# Public consultation draft

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Real Property Regulation 2014 [NSW]  
Part 4 Miscellaneous

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- (d) a Photo Card issued under the *Photo Card Act 2005*,
- (e) a card issued under a law of the Commonwealth or another State or Territory for the purpose of proving the person's age which contains a photograph of the person in whose name the card is issued,
- (f) a national identity card issued for the purpose of identification that:
  - (i) contains a photograph and the signature of the person in whose name the document is issued, and
  - (ii) is issued by a foreign government, the United Nations or an agency of the United Nations, and
  - (iii) if it is in a language other than English, is accompanied by a document purporting to contain an English translation of the document.

**secondary identification document** means any of the following:

- (a) a notice that was issued to an individual by the Commonwealth, a State or Territory within the preceding 12 months that:
  - (i) contains the name of the individual and his or her address, and
  - (ii) records the provision of financial benefits to the individual under a law of the Commonwealth, State or Territory (as the case may be),
- (b) a notice that was issued to an individual by the Australian Tax Office within the preceding 12 months that:
  - (i) contains the name of the individual and his or her address, and
  - (ii) records a debt payable to or by the individual by or to the Commonwealth under a Commonwealth law relating to taxation,
- (c) a notice that was issued to an individual by a local government body or utilities provider within the preceding 3 months that contains the name of the individual and his or her address.

## 19 Settlement of claims

For the purposes of section 135 (3) (b) of the Act, the amount that may be paid by the Registrar-General in settlement of a claim must not exceed \$500,000.

**Note.** Section 135 (3) (b) of the Act provides that a higher amount than the amount prescribed by this clause may be paid in a particular settlement if the Minister has approved of the settlement.

## 20 Savings

Any act, matter or thing that, immediately before the commencement of this Regulation, had effect under the *Real Property Regulation 2008* is taken to have effect under this Regulation.

## 21 Transitional

- (1) Section 56C of the Act, as inserted by the *Real Property and Conveyancing Legislation Amendment Act 2009*, does not apply in respect of any mortgage executed before the insertion of that section (whether accepted for lodgment or not).
- (2) An amendment made to section 117 of the Act by the *Real Property and Conveyancing Legislation Amendment Act 2009* does not apply in respect of any application, dealing or caveat executed before the commencement of the amendment.

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# Public consultation draft

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Real Property Regulation 2014 [NSW]  
Schedule 1 Fees

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## Schedule 1 Fees

(Clauses 4, 10, 11 and 12)

Item	Matter for which fee payable	Fee
<b>Copies</b>		
1	On lodgment of an application for a certified copy of a registered instrument or part of it affecting land under the provisions of the Act—for each copy	\$104.50
2	For supplying a copy of a document or part of a document in the custody of the Registrar-General:	
(a)	to any person attending an office of the Land and Property Information Division, Department of Finance and Services	\$13.90
(b)	by electronic means to any agent licensed by the Land and Property Information Division, Department of Finance and Services	\$7.20
(c)	to any person by some other means	Such reasonable fee (determined by the Registrar-General) as is warranted by the work involved in providing the service
3	On lodgment of an application for a copy of a document in the custody of the Registrar-General, other than a certified copy or a copy available to any person attending an office of the Land and Property Information Division, Department of Finance and Services	Such reasonable fee (determined by the Registrar-General) as is warranted by the work involved in preparing the copy
<b>Advertisements</b>		
4	On advertisement, pursuant to 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	Such reasonable fee (determined by the Registrar-General) as is warranted by the cost incurred in publishing the advertisement
<b>Production of documents</b>		
5	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	\$40.00
6	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	\$80.00
<b>Applications, requests and dealings</b>		
7	On lodgment of a primary application to bring land under the Act pursuant to section 14 of the Act	\$1,354.00
8	On lodgment of a resumption application to bring land under the Act pursuant to section 31A of the Act	\$215.30

# Public consultation draft

Real Property Regulation 2014 [NSW]  
Schedule 1 Fees

Item	Matter for which fee payable	Fee
	In addition, for each quarter-hour or part of a quarter-hour in excess of the first hour occupied in examining the application	\$53.00
9	On lodgment of an application under section 45D of the Act by a person in possession of land to be recorded as proprietor of an estate or interest in that land	\$104.50
	In addition, for each quarter-hour or part of a quarter-hour occupied in examining the application	\$53.00
10	On lodgment of a transfer by way of discharge of mortgage where a mortgagee has been recorded as registered proprietor pursuant to section 12B of the Act	\$104.50
11	On lodgment of a dealing for registration or recording of a unilateral severance of a joint tenancy pursuant to section 97 of the Act	\$104.50
12	On lodgment of a dealing to transfer an estate in land that changes the tenancy of co-tenants without altering their shares	\$104.50
13	On lodgment of a dealing to transfer the ownership of an estate in land pursuant to section 46 of the Act	\$209.00
14	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 or dealing that will result in more than one recording on a folio of the Register, for each additional recording	\$104.50
15	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	\$209.00
16	On lodgment of an application or request for amendment of a folio of the Register, Crown grant or certificate of title	\$104.50
17	On lodgment of an application to record in the Register an appurtenant easement created by a deed	\$104.50
	In addition, for each quarter-hour or part of a quarter-hour occupied in processing the application	\$53.00
18	On lodgment of an application under section 81A of the Act for the extinguishment of a restrictive covenant	\$104.50
	In addition:	
	(a) for each quarter-hour or part of a quarter-hour occupied in examining the application	\$53.00
	(b) for the Registrar-General's costs of giving notice under section 81D of the Act by way of registered post	Such reasonable fee (determined by the Registrar-General) as is warranted by the cost incurred in posting the notice
19	On lodgment of an application under section 49 of the Act for the cancellation of an easement that has been abandoned or extinguished	\$104.50
	In addition, for each quarter-hour or part of a quarter-hour occupied in examining the application	\$53.00

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# Public consultation draft

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Real Property Regulation 2014 [NSW]  
Schedule 1 Fees

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<b>Item</b>	<b>Matter for which fee payable</b>	<b>Fee</b>
20	On lodgment of an application for the determination under Part 14A of the Act of the position of the common boundary of adjoining lands	\$104.50
21	For every plan, sketch or diagram accompanying an application, request or dealing	\$104.50
22	For the creation of a certificate of title on any application, request or dealing (other than pursuant to section 111 of the Act), for each certificate, an additional	\$104.50
23	On lodgment of an application, request or dealing for which no fee is otherwise provided	\$104.50
<b>Caveats</b>		
24	On lodgment or recording of a caveat	\$104.50
25	On withdrawal or partial withdrawal of a caveat pursuant to section 74M (1) of the Act	\$104.50
26	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)	\$104.50
27	On lodgment of a request for the Registrar-General to direct the manner of service of a notice on a caveator pursuant to section 74N (1) (e) of the Act	\$104.50
28	On lodgment of an application for preparation of a notice for service on a caveator pursuant to section 74C (3), 74I (1) or (2), 74J (1) or 74JA (2) of the Act	\$104.50
29	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	\$104.50
<b>Authentication of forms</b>		
30	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, an additional	\$104.50
<b>Official searches</b>		
31	On requisition for an official search of a folio of the Register (whether or not requiring the continuation of a search from the date of a previous search of that folio or the date of a prior certificate of result of a search)	\$212.00
	In addition, for each quarter-hour or part of a quarter-hour occupied in the search after the first hour	\$53.00
<b>Public searches</b>		
32	On the lodgment of a requisition requiring dispatch of information by post, facsimile or other means approved by the Registrar-General—for an initial search of a folio of the Register, including investigation as to title reference, a copy of the relevant folio and the transmission fee	\$53.00
	In addition, for each quarter-hour or part of a quarter-hour occupied in the search after the first quarter-hour	\$53.00

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# Public consultation draft

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Real Property Regulation 2014 [NSW]  
Schedule 1 Fees

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<b>Item</b>	<b>Matter for which fee payable</b>	<b>Fee</b>
	In addition, for inclusion in the initial search of any additional document forming part of the Register (per document)	\$13.90
<b>Searches generally</b>		
33	In the case of a requisition for an official search of a manual folio, a computer folio certificate or a search of a historical record that, in the opinion of the Registrar-General, is a search for which the above schedule of fees is not appropriate	Such reasonable fee (determined by the Registrar-General in negotiation with the requesting party) as is warranted by the cost incurred in carrying out the search
<b>Certificates of title</b>		
34	On lodgment of an application for a new certificate of title under section 111 of the Act	\$209.00
<b>Reports</b>		
35	For supplying a Lease Folio Data Extract Report:	
	(a) to any person attending an office of the Land and Property Information Division, Department of Finance and Services	\$41.70
	(b) by electronic means to any agent licensed by the Land and Property Information Division, Department of Finance and Services	\$28.80
	(c) by electronic means to any person via the website of the Land and Property Information Division, Department of Finance and Services	\$33.75
36	For supplying a Lease Folio Caveats, Writs and Other Dealings Report:	
	(a) to any person attending an office of the Land and Property Information Division, Department of Finance and Services	\$27.80
	(b) by electronic means to any agent licensed by the Land and Property Information Division, Department of Finance and Services	\$14.40
	(c) by electronic means to any person via the website of the Land and Property Information Division, Department of Finance and Services	\$19.35
<b>Lodgment support services (LSS) for electronic conveyancing</b>		
37	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	\$10.80
	(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	\$7.20

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# Public consultation draft

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Real Property Regulation 2014 [NSW]  
Schedule 1 Fees

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<b>Item</b>	<b>Matter for which fee payable</b>	<b>Fee</b>
(c)	the lodgment support service (known as “LSS 3”) comprising supply of updated title data following changes in title data initially supplied	\$3.60
<b>Miscellaneous</b>		
38	On depositing an instrument declaratory of trusts	\$104.50
39	On depositing any other instrument not specified	\$104.50
40	On lodgment of an application for a statement of reasons under section 121 of the Act	\$104.50
41	For recording of any memorial or notification not otherwise provided for	\$104.50
42	On lodgment of a request for delivery of a document or documents pursuant to section 23A (3) (c) of the Act (no fee is payable if the request is made during the currency of the primary application)	\$25.20
43	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 151 (2)) and incorporating in it any information as to subsisting encumbrances or interests	\$53.00
	In addition, for each quarter-hour or part of a quarter-hour occupied in preparing the certificate of ownership after the first quarter-hour	\$53.00
	In addition, for supplying each additional document forming part of the Register	\$13.90
44	For supplying information in response to a written inquiry as to the manner in which a proposed dealing or plan should be drawn, or as to whether a proposed dealing or plan is entitled to registration, or in response to a written inquiry that necessitates any searching or investigation	Such reasonable fee (determined by the Registrar-General) as is warranted by the cost incurred in supplying the information, searching or investigating
45	In addition, for any dealing, application, request or caveat that refers to more than 20 folios of the Register	\$104.50 for each group of 20 folio references or part of that number

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# Public consultation draft

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Real Property Regulation 2014 [NSW]  
Schedule 2 Requirements for certain instruments

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## Schedule 2 Requirements for certain instruments

(Clause 5)

- 1 The text must be clearly printed or written across the width of each sheet of paper used.
- 2 Unless the Registrar-General otherwise approves, all text must be in the English language.
- 3 The text must be printed or written on only one side of each sheet.
- 4 The sheets used must have clear margins:
  - (a) on the first sheet—of not less than 25mm at the top and 10mm on each side and at the bottom, and
  - (b) on each subsequent sheet—of not less than 10mm on each side and at the top and bottom.
- 5 The paper used must be:
  - (a) archival paper of a quality approved by the Registrar-General, that is:
    - (i) white and free from discolouration and blemishes, and
    - (ii) not less than 80 grams per square metre, and
    - (iii) 297mm in length by 210mm in width (standard A4), or
  - (b) such other paper as may be approved by the Registrar-General.
- 6
  - (1) Unless the Registrar-General otherwise approves, all letters, numbers and other symbols appearing in text must be in a font style that is:
    - (a) at least 10 point (1.8mm) in size, and
    - (b) dense black or dense dark blue in colour, and
    - (c) open in formation and construction, and
    - (d) in an upright style.
  - (2) The lines must not overlap. A carbon copy, or a copy in which the typewritten characters blur or spread, or are liable to mark or damage an adjacent sheet, will not be accepted.
  - (3) Handwriting and any imprint of a seal must be clear and legible and in dense black or dense dark blue ink.
  - (4) All symbols used must be letters unless:
    - (a) the Registrar-General otherwise approves, or
    - (b) this Schedule otherwise provides.
- 7 All typewriting, printing, handwriting and any imprint of a seal must be to a standard that will enable it to be clearly reproduced by the imaging processes employed by the Registrar-General.
- 8 Typewriting, printing, writing or seals must not extend into the margin.
- 9 Typewriting, printing, writing or signatures must not extend into any seal.
- 10
  - (1) Alterations must be made by striking through the matter intended to be altered and not by rubbing, scraping or cutting the surface of the paper or by using correction fluid.

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# Public consultation draft

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Real Property Regulation 2014 [NSW]  
Schedule 2 Requirements for certain instruments

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- (2) Signatures or initials noting alterations by interlineation or the striking through of matter must be placed in the margin as near as practicable to the alteration.
  - (3) In addition, the name of the person noting the alteration must be printed in cases where:
    - (a) the person initials an alteration, or
    - (b) the person notes an alteration by signature but the person's name cannot be clearly ascertained.
  - (4) The date of the alteration must be included.
- 11** The pages of an annexure to a dealing must be numbered sequentially in the centre of the foot of each page as "Page ..... of ..... pages" and the annexure:
- (a) must be identified (on the annexure itself) as an annexure to the dealing, and
  - (b) must be signed, on the first and last pages, by the parties to the dealing (or, if a party is a body corporate, by a person who has attested the affixing of the seal of the body corporate or who has otherwise signed on its behalf), and
  - (c) must be referred to in the body of the dealing.
- 12** An additional or inserted sheet intended to form part of a dealing:
- (a) must be attached to the dealing in a manner acceptable to the Registrar-General, and
  - (b) if it contains matter that would normally be inserted in a form approved by the Registrar-General—must be signed by the parties to the dealing (or, if a party is a body corporate, signed by a person who has attested the affixing of the seal of the body corporate or who has otherwise signed on its behalf).
- 13** If, apart from any matter contained in an additional or inserted sheet, it is not readily apparent from the body of a dealing that the additional or inserted matter is intended to form part of the dealing:
- (a) a note referring to the additional or inserted matter (or covenants by number where appropriate) must be added to the body of the dealing, and
  - (b) a note identifying the additional or inserted matter must be added to the additional or inserted sheet containing that matter.
- 14** Dimensions referred to in a dealing:
- (a) in the case of dimensions of length, must be expressed in metres and not in any other unit of measurement of length (whether or not related to the metre), and
  - (b) in the case of dimensions of area, must be expressed in square metres, hectares or square kilometres and not in any other unit of measurement of area (whether or not related to the square metre, hectare or square kilometre).
- 15** Annexures, additional sheets or inserted sheets may be prepared by means of a photographic or similar process approved by the Registrar-General and, if so prepared:
- (a) must comply with items 1–14, and
  - (b) must contain only printing that is permanent and legible with a dense black image free from excessive background, and
  - (c) must be so prepared that the process does not affect the quality of the paper, and
  - (d) must not include photographs, except with the consent of the Registrar-General, and

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# Public consultation draft

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Real Property Regulation 2014 [NSW]  
Schedule 2 Requirements for certain instruments

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- (e) must be authenticated by original signatures.

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# Public consultation draft

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Real Property Regulation 2014 [NSW]  
Schedule 3 Particulars of estate or interest to be specified in caveats

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## **Schedule 3 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.

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# Public consultation draft

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Real Property Regulation 2014 [NSW]  
Schedule 4 Description in caveats of part of land

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## Schedule 4 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 (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*,  
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 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 in the office of 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.

## **Schedule 5 Requirements for plans annexed to dealings (other than leases of premises) or caveats**

(Clause 9)

- 1 A plan must identify the land to which it relates.
- 2 A plan must be drawn in a manner and to a scale that allows all details and notations to be clearly reproduced by the imaging processes used by the Registrar-General.
- 3 A plan must contain the following particulars:
  - (a) a statement on each sheet of the reduction ratio at which the plan is drawn,
  - (b) the north point (which must be directed upwards) and the meridian to which it relates,
  - (c) complete dimensions (including area) of every parcel comprised in the plan,
  - (d) sufficient information to define any proposed easement, or any proposed variation of an existing easement, and its relationship to the boundaries of any affected parcel,
  - (e) if prepared by a registered land surveyor within the meaning of the *Surveying and Spatial Information Act 2002*, the signature of the surveyor,
  - (f) the date of preparation of the plan,
  - (g) the signature of each person who has signed the dealing or caveat to which the plan is annexed.
- 4 The description of the part of the land shown in the plan must agree with the description of that part shown in the dealing or caveat.
- 5 The lengths shown on a plan must be expressed in metres and not in any other unit of measurement of length (whether or not related to the metre), without the use of any symbol or abbreviation to represent the metre as the unit of measurement employed.
- 6 Area measurements shown on a plan must be expressed in the following units of measurement:
  - (a) areas of less than one hectare must be expressed in square metres accompanied by the symbol “m<sup>2</sup>”,
  - (b) areas of one hectare or more but less than 10,000 hectares must be expressed in hectares (using not more than 4 significant figures) accompanied by the symbol “ha”,
  - (c) areas of 10,000 hectares or more must be expressed in square kilometres accompanied by the symbol “km<sup>2</sup>”.
- 7 Unless the Registrar-General otherwise approves, all words, letters, figures and symbols appearing on a plan:
  - (a) must be shown in capital letters (except as provided by item 6), and
  - (b) must be open in formation and construction, and
  - (c) must be drawn in an upright style, and
  - (d) must be in the English language.
- 8 (1) A plan may be altered only by the person who prepared the plan striking through the matter to be altered.  
(2) In particular, a plan may not be altered by the use of correction fluid or by rubbing, scraping or cutting the surface of the sheet on which the plan is drawn.

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# Public consultation draft

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Real Property Regulation 2014 [NSW]  
Schedule 5 Requirements for plans annexed to dealings (other than leases of premises) or caveats

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- (3) The Registrar-General may require a sheet on which a plan is drawn to be replaced if, in the opinion of the Registrar-General any alteration on the sheet will render it unsuitable for imaging.
  - (4) Signatures or initials noting alterations by interlineation or the striking through of matter must be placed as near as practicable to the alteration by the person who prepared the plan and made the alteration.
  - (5) In addition, the name of the person noting the alteration must be printed in cases where:
    - (a) the person initials an alteration, or
    - (b) the person notes an alteration by signature but the person's name cannot be clearly ascertained.
  - (6) The date of the alteration must be included.
- 9** If lodged as an annexure, a plan must be neatly and clearly drawn without colour or edging.
- 10** Each plan sheet must consist of paper, or some other medium approved by the Registrar-General.
- 11** A plan must be drawn on only one side of a plan sheet and must be drawn on a matt surface.
- 12** Each plan sheet must be free from blemishes and creases.
- 13** Each plan sheet must be 297mm in length by 210mm in width (standard A4) and have clear margins of at least 10mm on each side and at the top and bottom.
- 14** If a plan is endorsed on a dealing or caveat, it must be drawn in such a manner that the lines and notation of the plan do not obscure or interfere with any writing or printing on the dealing or caveat.
- 15** Where the original plan is not available, an annexed plan may be a reproduction prepared by means of a photographic or similar process approved by the Registrar-General and, if so prepared:
  - (a) must comply with items 1–14, and
  - (b) must contain only printing that is permanent and legible with a dense black image free from excessive background, and
  - (c) must be so prepared that the process does not affect the quality of the paper, and
  - (d) must be authenticated by original signatures.
- 16** Plans annexed to dealings must be compiled plans and not plans of survey except with the consent of the Registrar-General.
- 17** A registered plan must not be annexed to a dealing or caveat.

## Schedule 6 Requirements for plans annexed to leases of premises

(Clause 9)

- 1 For the purposes of this Schedule, *premises* means a building or part of a building, unless the Registrar-General approves otherwise.
- 2 A plan must identify the premises to which it relates.
- 3 Premises that comprise the whole of a building may be defined by measurements in a plan.
- 4 Premises that comprise part of a building may be identified in a plan by showing the outer walls of the building and defining the leased area by reference to:
  - (a) internal walls and fixtures, or
  - (b) dimensions.
- 5 The description of any premises shown in a plan must agree with the description of those premises shown in the lease.
- 6 A plan must be drawn in a manner and to a scale that allows all details and notations to be clearly reproduced by the imaging processes used by the Registrar-General.
- 7 A plan must be neatly and clearly drawn without colour or edging.
- 8 A plan must contain the following particulars:
  - (a) the north point (which must be directed upwards),
  - (b) if the Registrar-General so requires, dimensional connections of the leased premises to the title boundaries,
  - (c) a statement as to the floor level on which the premises are located, where appropriate,
  - (d) sufficient information to define any proposed easement and its relationship to the boundaries of the affected parcel,
  - (e) the signature of each person who has signed the lease to which the plan is annexed.
- 9 The lengths shown on a plan must be expressed in metres and not in any other unit of measurement of length (whether or not related to the metre), without the use of any symbol or abbreviation to represent the metre as the unit of measurement employed.
- 10 Area measurements shown on a plan must be expressed in square metres accompanied by the symbol “m<sup>2</sup>”.
- 11 Unless the Registrar-General otherwise approves, all words, letters, figures and symbols appearing on a plan:
  - (a) must be shown in capital letters (except as provided by item 10), and
  - (b) must be open in formation and construction, and
  - (c) must be drawn in an upright style, and
  - (d) must be in the English language.
- 12 (1) A plan may be altered only by the person who made the plan striking through the matter to be altered.

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# Public consultation draft

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Real Property Regulation 2014 [NSW]  
Schedule 6 Requirements for plans annexed to leases of premises

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- (2) In particular, a plan may not be altered by the use of correction fluid or by rubbing, scraping or cutting the surface of the sheet on which the plan is drawn.
  - (3) The Registrar-General may require a sheet on which a plan is drawn to be replaced if, in the opinion of the Registrar-General, any alteration on the sheet will render it unsuitable for imaging.
  - (4) Signatures or initials noting alterations by interlineation or the striking through of matter must be placed as near as practicable to the alteration by the person who prepared the plan and made the alteration.
  - (5) In addition, the name of the person noting the alteration must be printed in cases where:
    - (a) the person initials an alteration, or
    - (b) the person notes an alteration by signature but the person's name cannot be clearly ascertained.
  - (6) The date of the alteration must be included.
- 13** Each plan sheet must consist of paper, or some other medium approved by the Registrar-General.
- 14** A plan must be drawn on only one side of a plan sheet and must be drawn on a matt surface.
- 15** Each plan sheet must be free from blemishes and creases.
- 16** Each plan sheet must be 297mm in length by 210mm in width (standard A4) and have clear margins of at least 10mm on each side and at the top and bottom.
- 17** Where the original plan is not available, an annexed plan may be a reproduction prepared by means of a photographic or similar process approved by the Registrar-General and, if so prepared:
  - (a) must comply with items 1–16, and
  - (b) must contain only printing that is permanent and legible with a dense black image free from excessive background, and
  - (c) must be so prepared that the process does not affect the quality of the paper, and
  - (d) must be authenticated by original signatures.
- 18** Plans annexed to leases must be compiled plans and not plans of survey except with the consent of the Registrar-General.
- 19** A registered plan must not be annexed to a lease.