



Better Regulation Statement – New pricing framework for land title related products and services

*Real Property Amendment (Fees) Regulation 2016;
Conveyancing (General) Amendment (Fees) Regulation 2016;
Strata Schemes (Freehold) Development (Fees) Regulation 2016;
Strata Schemes (Leasehold) Development (Fees) Regulation 2016.*

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Introduction

The Minister for Finance, Services and Property has approved the introduction of a new pricing framework for land title related products and services provided by the Titling and Registry Services (TRS) arm of Land and Property Information (LPI). The new pricing framework has resulted in amendments to the Regulations noted above, with the proposed new fees to apply from 1 July 2016.

A Better Regulation Statement is required for significant new and amending regulatory proposals. A Better Regulation Statement must demonstrate that the better regulation principles have been applied in the development of a regulatory proposal. LPI's new pricing framework is a significant regulatory proposal because it represents a new approach that is more far reaching than simply increasing fees in line with the Consumer Price Index. It therefore requires a Better Regulation Statement.

This Better Regulation Statement has been prepared in accordance with the New South Wales Government's Guide to Better Regulation and documents the analysis undertaken to apply the better regulation principles and to ensure the statutory instrument is required, reasonable and responsive. The Better Regulation Statement demonstrates that:

- a. the proposed pricing framework is justified,
- b. sound regulatory development and consultation processes were followed in developing the regulatory proposal, and
- c. the impacts of the regulatory proposal, including the new fees, are well understood.

A copy of each of the proposed Regulations is attached.

The following seven better regulation principles are the cornerstone of the Government's commitment to good regulation and have been applied in the development of this regulatory proposal:

1. *The need for government action should be established*
2. *The objective of government action should be clear*
3. *The impact of government action should be properly understood by considering the 3 costs and benefits of a range of options, including non-regulatory options*
4. *Government action should be effective and proportional*
5. *Consultation with business and the community should inform regulatory development*
6. *The simplification, repeal, reform or consolidation of existing regulation should be considered*

7. *Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness*

Principle 1: The need for government action should be established

Fees for land title related products and services are mainly regulated fees set out in schedules to the *Real Property Regulation 2016; Conveyancing (General) Regulation, Strata Schemes (Freehold) Development Regulation and Strata Schemes (Leasehold) Development Regulation*. Over time, the fee schedules have become increasingly complex as more and more individual products and services have been separately defined. Additional time based fees for some services mean that the schedules also lack transparency as to fees actually payable. As well, the current fee structure advantages large commercial property developers who benefit from an effectively lower 'per lot' cost to lodge a plan.

It is in the public interest to improve the simplicity, transparency and fairness of the fee structure by streamlining the pricing framework for land title related products and services.

Further, the government has recently announced that a thirty five year concession to manage Titling and Registry Services (TRS) operations will be offered to private sector bidders. Introducing a new pricing framework ahead of this process will provide bidders with greater certainty around pricing of land title related products and services.

Principle 2: The objective of government action should be clear

The objectives of the new pricing framework are to:

- simplify the existing fee structure and product delivery model
- improve transparency of overall fees payable for services
- better relate fees payable to the benefit derived from the service provided
- improve industry compliance with standards set by the Registrar General.

The strategies to be used to achieve these objectives are:

- Align all core document lodgment products to a single price point and reduce the number of price points for other core regulated land title products
- Implement plan registration fees based on the number of lots in a plan, replacing the current mix of base lodgment fee, fees for each lot and additional time based fees for plan examination
- Cease retail supply of online title searches, relying instead on authorised information brokers to supply this service to all customers, and remove the fee for this service from the regulations
- Introduce requisition fees for non-compliant documents and plans lodged for registration.

Under the new fee structure, the number of price points for LPI products and services will be reduced from 44 to 18. Variations in fees applicable to documents lodged for registration – real property dealings, water access licence dealings and deeds - that currently range between \$105.50 and \$219.00 will be eliminated. These varied fees will be replaced with a single standard fee applicable to all documents lodged for registration in the Torrens register, Water Access Licence Register or General Register of Deeds. Fees for other related products and services will also be standardised at one of several price points.

Fees associated with the registration of deposited plans, strata plans, community plans and other plan types currently comprise a two tiered standard lodgment fee, and additional fees based on the number of lots in the plan and the time spent by LPI in examining the plan to determine whether it complies with requirements for registration. Under the new fee structure fees will be based solely on the number of lots in the plan.

As well as simplifying fees and improving transparency, this structure will be more equitable. It will remove the effective 'per lot' discounts currently available to large commercial developers.

LPI currently retails online title search products to the public via an 'online shop' and to government agencies through a 'Webgov' portal. LPI also has agreements with a range of authorised information brokers who supply the same services as those retailed by LPI. The fee payable by brokers to access title searches and related products is provided for in the regulations. Over 90% of customers already use information brokers in preference to LPI's online channels. There is no longer any reason for LPI to duplicate the services provided by information brokers in a mature and competitive market. The new pricing framework will increase the price payable by brokers for search products from \$7.53 to \$8.51. NSW is currently one of the cheapest jurisdictions in Australia for title search products and the planned increase in the wholesale price paid by brokers is unlikely to impact on this status.

LPI currently issues requisitions to customers who lodge non-compliant documents and plans for registration, but does not impose fees for the double handling this involves. Evidence from other jurisdictions where requisition fees already apply indicates that introduction of requisition fees in NSW will drive behavioural change in the conveyancing industry. It is also hoped that requisition fees may encourage practitioners to take up digital lodgment channels in greater numbers. These channels are available for both plan and document lodgments. They offer automated checks to ensure that plans and documents meet requirements for registration. To assist industry adapt to the change, a six month grace period will apply, with the fees to be imposed from 1 January 2017.

Principle 3: The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options

Maintaining the existing fee structure for land title related products and services with increases dependent on movements in the CPI will perpetuate current complexities and pricing irrationality that have evolved over time.

As the proposal concerns fees for government services, non-regulatory options are not appropriate. Under the proposal, the only action required is to simplify and amend existing regulations.

The proposal includes elements that have already been adopted successfully in other jurisdictions, for example requisition fees and withdrawal from online retailing of title search products.

Implementation costs are minimal and the additional compliance burden on industry in terms of requisition fees is justified.

Principle 4: Government action should be effective and proportional

Amending the Regulations provides the most efficient and effective means of realising the objectives. The regulatory proposal is clear and does not involve any new costs to government in monitoring and enforcing compliance. While fees to some consumers will increase as a result of the new pricing framework, fees for the majority will be lower. Examples of customers who will experience lower costs include people selling property, for whom the transfer fee will drop from \$219.00 to \$136.30 and people subdividing land for dual occupancy purposes, for whom the fee will drop from at least \$1,465.00 to \$574.00.

Principle 5: Consultation with business and the community should inform regulatory development

Consultation with customers in the property conveyancing industry and key stakeholders, such as the Law Society of NSW and Institution of Surveyors is a vital component of LPI's process of regulatory review and development.

LPI has commenced an extensive awareness campaign to alert its customers, including other government agencies and the general public regarding the new pricing framework.

On 2 May 2016, the Minister for Finance, Services and Property, the Hon Domenic Perrottet MP, announced LPI's new pricing framework and the decision that LPI would no longer operate as an online retailer of title search products. On the same day, LPI published communications detailing the new pricing structure for LPI land

title related products and services. On 4 May 2016 LPI published further communications explaining arrangements for access to title search products from 1 July 2016. These communications are posted on the LPI website www.lpi.nsw.gov.au. At the same time, these communications were emailed to LPI customers and representative bodies. The communications included email addresses for customers to use if they wished to make inquiries or comment on the new pricing framework and access arrangements for title searches.

Public reaction to the announcements has been minimal. LPI has received less than 40 responses. Only two aspects of the new pricing framework have attracted negative reaction. One is the proposal that fees for plan registration and pre-examination of plans will be based on the number of lots in the plan. Large scale developers have queried the impact of these fees on plans that include hundreds of lots or strata units. The introduction of requisition fees from 1 January 2017 has also prompted a few comments. Four negative responses have been received in relation to the decision to withdraw from retailing online title search products.

LPI has responded to all comments received and held meetings with key stakeholders to work through their issues, especially the effect of lot-based fees on the plan pre-examination service. Pre-examination is an optional service and the fee for it had been priced to reflect that. However, as a result of industry comment this fee has been reduced to an amount equal to the plan lodgment fee (plus GST).

Principle 6: The simplification, repeal, reform or consolidation of existing regulation should be considered

The new pricing framework has the effect of significantly simplifying and reforming the existing regulations. Repeal of the regulations is not currently a realistic option, as they support provisions in principle land title legislation. The commencement of strata title reforms later this year will enable consolidation of the current *Strata Schemes (Freehold Development) Regulation* and *Strata Schemes (Leasehold Development) Regulation* into a single *Strata Schemes (Development) Regulation 2016*. It is not possible to consolidate the other regulations into a single instrument as each Regulation deals with entirely separate matters and products, prescribed under separate legislation.

Principle 7: Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness

LPI continually monitors the efficiency and effectiveness of the legislation and associated regulations it administers.

Generally fees for land title related products and services are increased annually in line with the Consumer Price Index (CPI), in accordance with government policy. Periodically a more fundamental review is undertaken to ensure that fees remain proportionate, consistent and comprehensive.

In 2015, the government endorsed one such fundamental review as part of the overall scoping study undertaken by NSW Treasury to determine whether TRS should be opened up for greater private sector investment through a concession agreement. The amending regulations are an outcome of that review.

If a concession agreement proceeds, a robust pricing framework is an important prerequisite, given that the agreement is likely to include provisions that restrict future fee increases to a rate below CPI, and the possibility that the Goods and Services Tax may apply to all products and services provided by the successful bidder for the concession.