

# Land Title and Other Legislation Amendment Regulation (No. 1) 2013

Explanatory notes for SL2013 No. 252

made under the

*Land Act 1994*

*Land Title Act 1994*

*Water Act 2000*

## General Outline

### Short title

*Land Title and Other Legislation Amendment Regulation (No. 1) 2013*

### Authorising law

Sections 284 and 448 of the *Land Act 1994*

Sections 7, 35 and 199 of the *Land Title Act 1994*

Sections 148 153 and 1014 of the *Water Act 2000*

### Policy objectives and the reasons for them

1. Clarification about the application of retail and wholesale fees for land title searches (Queensland Globe)

The policy objective of these amendments is to provide clarity about application of the regulated retail fee and the regulated wholesale fee respectively for title search information.

It confirms the retail fee applies to the provision of information from the titles registry directly to end-user customers, for example, i.e. within an office of the registry including via an online alternative delivery channel such as the administering department's Queensland Globe platform; which is distinct from the wholesale fee charged to third party online information product distributors engaged under s.284 of the *Land Act 1994* and s.35 of the *Land Title Act 1994*.

The amendments are required because the current wording of the respective regulations does not articulate that end-users may obtain title search information directly from the titles registry other than “within an office” of the registry, that is, directly via an online platform without third party distributor involvement.

## 2. Electronic Conveyancing (e-conveyancing) Lodgement Support Service (LSS)

The policy objectives of these amendments are to define the necessary LSS Bundle 1 and Bundle 2 products and fees to provide certainty to stakeholders and to provide the legislative basis for charging and recovering the relevant fees from Electronic Lodgement Network Operators for national e-conveyancing system transactions in Queensland.

These amendments are necessary to support Queensland’s participation in the national e-conveyancing system which was introduced by the *Electronic Conveyancing National Law (Queensland) Act 2013*.

## 3. Lodgement Hours for Regional Offices of the Titles Registry

The policy objective of these amendments is to provide the chief executive with operational flexibility to determine the lodgement hours of regional offices of the titles registry that accept documents lodged under the *Land Act 1994*, the *Land Title Act 1994*, and the *Water Act 2000*.

These amendments are required to ensure that stakeholders have certainty about the availability of titling lodgement services in regional locations in order to improve service outcomes and deliver resource efficiencies to government within a framework that reflects current business needs.

# Achievement of policy objectives

## 1. Clarification about the application of retail and wholesale fees for land title searches (Queensland Globe)

These amendments will meet the policy objective by modifying wording in the relevant fee items in the *Land Regulation 2009* and the *Land Title Regulation 2005* to differentiate the fees charged by the administering department to third party distributor entities engaged under section 284 of the *Land Act 1994* and section 35 of the *Land Title Act 1994*.

This is the most appropriate way to achieve the policy objective because the relevant Acts prescribe that fees should be defined by regulation and the use of a regulation to define the fees allows for the regular review of the fee structure in line with government policy on indexation of fees and charges.

## 2. E-Conveyancing LSS

These amendments will meet the policy objective by amending the *Land Regulation 2009* and the *Land Title Regulation 2005* to define the necessary LSS products and the relevant fees.

This is the most appropriate way to achieve the policy objective because the *Land Act 1994* and the *Land Title Act 1994* provide that fees should be defined by regulation and the use of regulations to define the fees allows for efficiency in any review of the fee structure in line with government policy on indexation of fees and charges.

### 3. Lodgement Hours for Regional Offices of the Titles Registry

These amendments will meet the policy objective by amending the *Land Title Regulation 2005* to allow the chief executive to decide the lodgement hours for regional offices of the titles registry.

Consequential amendments to the *Water Regulation 2002* provide consistency in relation to lodging, in the titles registry, documents under the *Water Act 2000* and clarify that such documents are subject to the same administrative requirements as documents lodged under the *Land Title Act 1994* (as defined in the *Land Title Regulation 2005*).

This is the most appropriate way to achieve the policy objective because the *Land Title Act 1994* provides that a regulation is the appropriate method to prescribe the locations and lodgement hours of offices of the titles registry, as well as requirements for documents or prescribed forms to be lodged in the registry.

## **Consistency with policy objectives of authorising law**

### 1. Clarification about the application of retail and wholesale fees for land title searches (Queensland Globe)

The amendments are consistent with one of the main objectives of the *Land Title Act 1994* which is to assist the keeping of the registers in the land registry and is also consistent with the policy intent of section 35 (Entitlement to search register) of the *Land Title Act 1994*.

The amendments are also consistent with one of the objectives of the *Land Act 1994* which is efficient administration of land to which the *Land Act 1994* applies and section 284 (Entitlement to search a register) of the *Land Act 1994*.

### 2. E-Conveyancing Lodgement Support Service (LSS)

The amendments are consistent with one of the main objectives of the *Land Title Act 1994* which is to continue and improve the system for registering title to and transferring interests in freehold land.

The amendments are also consistent with one of the objectives of the *Land Act 1994* which is the efficient administration of land to which the *Land Act 1994* applies.

### 3. Lodgement Hours for Regional Offices of the Titles Registry

The amendments are consistent with one of the main objectives of the *Land Title Act 1994* which is to continue and improve the system for registering title to and transferring interests in freehold land.

The amendments are also consistent with one of the objectives of the *Land Act 1994* which is the efficient administration of land to which *Land Act 1994* applies; and with section 151 (Application of the *Land Title Act 1994* to water allocations register) of the *Water Act 2000*.

## **Inconsistency with policy objectives of other legislation**

### **1. Clarification about the application of retail and wholesale fees for land title searches (Queensland Globe)**

The amendments are not inconsistent with the policy objectives of any other legislation.

### **2. Electronic Conveyancing Lodgement Support Service (LSS)**

The amendments are not inconsistent with the policy objectives of any other legislation. The amendments are consistent with the objective of the *Electronic Conveyancing National Law (Queensland) Act 2013* which is to promote efficiency throughout Australia in property conveyancing by providing a common legal framework that enables documents in electronic form to be lodged and processed under the land titles legislation of each participating jurisdiction.

### **3. Lodgement Hours for Regional Offices of the Titles Registry**

The amendments are not inconsistent with the policy objectives of any other legislation.

## **Benefits and costs of implementation**

### **1. Clarification about the application of retail and wholesale fees for land title searches (Queensland Globe)**

The amendments will benefit interested parties by providing them with the ability to conveniently conduct a title search online directly from the titles registry through the Queensland Globe platform for the same fee as a traditional paper title search without the need to attend a titles registry office.

There will be a small cost to the government in providing the product online via the Queensland Globe and this will be met through funding for the Queensland Globe; and a small cost in processing payments – similar to existing administration for searches conducted at titles registry offices, and this will be met through standard budget allocations.

### **2. Electronic Conveyancing Lodgement Support Service (LSS)**

Electronic conveyancing subscribers will achieve significant efficiencies and related benefits by being able to prepare, complete, digitally sign, settle and lodge property and title related transactions on behalf of their clients in a digital environment without the need to physically attend settlement conferences, draw bank cheques for the various disbursements and fees, or lodge paper documents in the titles registry. Additionally, subscribers will have the option to utilise a LSS product which ensures data integrity and provides greater certainty in achieving timely title registration as well as saving time, effort and cost by negating the need for further

title searches to identify whether any material change has occurred on a title between the time a contract is drawn up and when the transaction is settled. It is anticipated the community may benefit from competition factors due to efficiencies able to be realised across industry.

While there is a small administrative cost to government to implement the amendments and notify stakeholders, this will be met from existing allocations. The amendments will benefit government through continuity of a legislative basis for charging the relevant LSS fees.

The benefits and costs of the implementation of the national electronic conveyancing system in Queensland were considered when the *Electronic Conveyancing National Law (Queensland) Act 2013* was passed.

### 3. Lodgement Hours for Regional Offices of the Titles Registry

The amendments will provide government with the operational flexibility to adjust regional lodgement hours to reflect business needs accounting for titling lodgement volumes and competing demands for resource allocation. This will benefit stakeholders by providing certainty about service provision; and the government by providing the opportunity to improve service outcomes and achieve savings.

## **Consistency with fundamental legislative principles**

### 1. Clarification about the application of retail and wholesale fees for land title searches (Queensland Globe)

The amendments are not inconsistent with fundamental legislative principles.

The amendments have sufficient regard to the rights and liberties of individuals because they only require the payment of a fee for the provision of the relevant product and do not impose any other obligations.

The amendments have sufficient regard to the institution of Parliament because no administrative or legislative power is delegated and the amendments are made in accordance with, and do not exceed, the regulation making power granted by Parliament in the authorising Acts.

The use of subordinate legislation to prescribe the relevant products and fees is more appropriate than utilising primary legislation because the prescribed fees are regularly reviewed and updated based on government policy which requires a streamlined and flexible approach to amendment within a short time period. This also has the added advantage of reducing the time and resources required to amend the regulated fees.

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The use of subordinate legislation to prescribe the relevant products and fees is more appropriate than utilising primary legislation because the prescribed fees are regularly reviewed and updated based on government policy which requires a streamlined and flexible approach to amendment within a short time period. This provides efficiencies by reducing the time and resources required for any amendments.

### 3. Lodgement Hours for Regional Offices of the Titles Registry

The amendments are not inconsistent with fundamental legislative principles.

While the amendments do provide the chief executive of the administering department with responsibility to determine lodgement hours for regional offices (which may be perceived as affecting the rights or legitimate expectations of individuals), the amendments certainly have sufficient regard to the rights and liberties of individuals because the administrative power is given to the chief executive who is the most senior and most appropriate officer and can properly undertake consultation with stakeholders in order to make an informed decision about appropriate lodgement hours based on lodgement volumes and the resources available to the department to service those volumes. Additionally, section 2 of the *Land Title Regulation 2005* requires that notice be provided to the public of the times when an office of the registry may accept documents and so individuals can be made aware of the hours during which titling lodgements can be made at relevant offices.

The amendments have sufficient regard to the institution of Parliament because no legislative power is delegated and the amendments are made in accordance with, and do not exceed, the regulation making power granted by Parliament in the authorising Act.

The *Land Title Act 1994* authorises the use of subordinate legislation to prescribe titles registry office locations and the framework for setting the hours during which lodgements can be made at those locations. This is more appropriate than utilising primary legislation because factors may be subject to change based on demographics, titling lodgement volumes, staff resourcing, and government priorities including the expansion of e-business options. Therefore a regulation is the most appropriate way to achieve the policy objective and it best provides a streamlined and efficient means of making any necessary amendments.

## **Consultation**

### 1. Clarification about the application of retail and wholesale fees for land title searches (Queensland Globe)

The product will appeal to members of the public as an option for one-off search requests. As there is no particular external stakeholder group, and in any case no adverse impact on any group, no external consultation has been undertaken.

## 2. E-Conveyancing LSS

Extensive stakeholder consultation has been undertaken both locally and nationally in relation to the governance, operation and mechanics of the national e-conveyancing system, including the nature of the LSS products. No direct stakeholder consultation regarding the quantum of the proposed fees was undertaken, given the independent jurisdictional responsibilities for setting fees charged to subscribers completing transactions in different states (in line with existing independent jurisdictional responsibilities for titles registry fee structures).

There will no adverse impact on subscribers because the LSS products essentially replace or provide an alternative format and mode for delivering much the same content as existing title search information products which are relied on as part of due diligence in the paper-based transaction environment and are priced consistently.

LSS Bundle 1, as an example, includes the Title Activity Check feature which negates the need for subsequent title searches ordinarily undertaken in the paper environment prior to settlement.

## 3. Lodgement Hours for Regional Offices of the Titles Registry

Given that this proposal is a part of good governance and seeks to allow for a level of operational efficiency and flexibility, on a needs basis, within the regional office structure of the administering department, and given that no decisions have yet been made about invoking that flexibility, no consultation has been undertaken with external stakeholders. However, appropriate public notice would be provided to stakeholders before any adjustment to lodgement hours at a regional office of the titles registry.