



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: Prop:DHgl1591519

10 October 2018

Review of Proposed Terms and Conditions
NSW Land Registry Services
DX 17 Sydney

Dear Sir/Madam,

NSW Land Registry Services (“NSW LRS”) Customer Terms - Proposed Terms and Conditions

The Law Society of NSW appreciates the opportunity to comment on the NSW LRS Customer Terms - Proposed Terms and Conditions (“Terms and Conditions”). The Law Society’s Property Law Committee has contributed to this submission.

We support the consolidation of the different sets of customer terms and conditions into a single set. The Law Society does however have a number of concerns with specific clauses in the Terms and Conditions which we set out below.

1. Clause 1.1.2 - Identification of Non-Regular Customers

We note the new obligations under this clause for Non-Regular Customers to provide photo identification to prove that they are the Lodging Party. We suggest the clause should clarify whether this photo identification will be sighted or retained. If it is to be retained, further consideration will need to be given to a retention policy and any applicable privacy implications.

We note that where the person lodging documents is an employee of the Lodging Party, satisfactory evidence must be provided to prove that the person is an employee of the Lodging Party. It would be helpful if some guidance could be provided as to what will be considered as satisfactory evidence. Again it should be clarified if this evidence is to be sighted or retained, and if retained, the same considerations as mentioned in the preceding paragraph apply.

2. Clause 1.4 - Dealing with the Lodging Party only

The Law Society is concerned that this clause does not take into account that documents may be lodged by an agent as the Lodging Party, on behalf of a practitioner. This will often, but not always, be a regional practitioner. Where a requisition is raised by NSW LRS, it is critical that the practitioner can contact NSW LRS and not be restricted from doing so because they are not the Lodging Party. It is particularly important that direct communication is facilitated to enable compliance with the strict timeframes that apply in relation to requisitions.

We suggest that this clause needs to be reworked to recognise that agents often lodge documents on behalf of practitioners and that in the context of a requisition being raised, the appropriate communication channel is directly between NSW LRS and the practitioner. While we appreciate that in the first instance the initial requisition will be issued to the agent as the Lodging Party, thereafter communication should take place between NSW LRS and the relevant practitioner. This is more efficient for both NSW LRS and the practitioner, as the practitioner is much better placed to respond, especially in instances where further information is required.

We understand that at present some flexibility is provided in the context of requisitions and that in most cases NSW LRS will be amenable to communicating directly with the relevant practitioner. The Law Society submits that this needs to continue and does not support clause 1.4 as currently drafted.

3. Clause 1.5.1 – Postal Lodgment

Clause 1.5.1 refers to further information on the NSW LRS website in relation to postal lodgment. We suggest that a link be inserted to this further information.

4. Clause 3.2 - Property Information Counter Services and prohibitions on in person attendees

The Law Society queries the rationale for the prohibitions set out in clause 3.2 in relation to “in person attendees” supplied with Property Information. We are also concerned that subclauses 3.2.3 and 3.2.4 may preclude the very purpose for which the Property Information is being obtained.

The reference to “dealing” with the Property Information in subclause 3.2.4 is potentially very broad and therefore problematic.

We understand that an official search from NSW LRS may only be obtained through the Counter Services. An official search may be required as evidence in litigation. As currently drafted, subclauses 3.2.3 or 3.2.4 might cast doubt on a practitioner’s ability to use such a search for this purpose.

We submit that subclauses 3.2.3 and 3.2.4 should be deleted. We also suggest further consideration be given to the purpose of clause 3.2 as a whole.

5. Clause 5.17 - Waiver of requisition fee

Clause 5.17 refers to a “formal request for a review of the relevant Requisition”. Please confirm that NSW LRS does not intend a change to the current process.

6. Definitions

The drafting of several of the definitions should be further reviewed. A number of the definitions appear to be circular or include typographical errors, such as the definition of “ePlan Administrator”, “HLRV Application” and “Property Information”.

In relation to the definition of “Requisition”, we suggest that reference be made to the fact that sometimes a requisition seeks the provision of supporting information.

We suggest that the words “, in accordance with the prescribed fee”, or words to that effect, be added to the end of the definition of “Requisition Fee”.

In our view, the definition of "Rules" should be expanded to include a reference to the NSW Participation Rules.

It would be helpful if the definition of "Urgent Document" could provide greater guidance as to what will be considered urgent. We also suggest that the references to an Order of Court, caveat or writ should be illustrative only.

We would be pleased to meet with you to further discuss the matters raised in this submission. Any questions should be directed to Gabrielle Lea, Policy Lawyer on 9926 0375 or email: gabrielle.lea@lawsociety.com.au.

Yours faithfully,



Doug Humphreys OAM
President