



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: BLC:DHI1619834

20 December 2018

Matthew Sedgwick
Consumer and Corporations Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: regmod@treasury.gov.au

Dear Mr Sedgwick,

Modernising Business Registers Program – Review of Registry Fees

The Law Society of NSW welcomes the opportunity to comment on the Modernising Business Registers Program (“MBRP”) Review of Registry Fees (“Review”) consultation paper. The Law Society’s Business Law Committee contributed to this submission.

Overview

The Law Society has supported and contributed to the MBRP from the outset and supports its objective of “making it simpler and faster to start and run a business”.¹ Simplifying and modernising registry fees is an important part of the MBRP. Lawyers and their clients are extensive users of registry services and the Law Society strongly endorses the need to simplify and modernise registry fees as part of the MBRP.

1. Do you agree that the principles of making fees simpler, easier to understand and more equitable are the best guide to review registry fees? Should any other principles be considered?

On the basis that cost recovery is a fundamental tenet of an equitable charging model, the Law Society agrees that the principles of making fees simpler, easier to understand and more equitable are the best guide to reviewing registry fees. The Law Society considers that all fees should be reviewed on the basis of cost recovery only. The community is entitled to share in any cost reductions afforded by improved technology so that the fees charged should not exceed the proper and reasonable cost of the services provided. The lower the fee, the more users are likely to benefit from the system. We believe the principle of cost recovery is equally as important as the principles set out above.

¹ Treasury (Commonwealth), *Modernising Business Registers Program Review of Registry Fees – Consultation Paper November 2018*, 5.

2. How could the registration and annual review system be reformed to make it simpler and more equitable?

The Law Society supports the principle of minimising the cost to small business. We agree that smaller companies should pay a lower review fee than large companies. While creating a two-tiered system marginally increases the complexity of the process, this complexity is being successfully navigated by the Australian Securities and Investments Commission and the Australian Taxation Office. At this stage, the Law Society does not express a preference for the appropriate test, but strongly supports the principle that smaller companies should pay a lower fee than larger companies.

The Law Society also supports the principle of lowering registration fees for small proprietary companies.

3. Do you support the introduction of differentiated rates of annual review fees between small and large businesses?

3.1 If yes, what definition of small business do you support and how should the notification of small business status occur?

See our response to Question 2 above. The Law Society supports differentiated rates and does not have a preference as to the definition of small business, in this context.

4. How could the late fee system be reformed to incentivise compliance and make the system simpler and more equitable?

The Law Society supports the principle of enhanced notifications and interfaces. Prevention is far better than penalty. The option of imposing an interest charge, in lieu of very heavy late payment fees, should be explored further and considered in more detail.

5. Do you support the introduction of interest on late payments rather than the late payment fee?

5.1 If yes, what interest rate should be charged and when should it be applied?

See our response to Question 4 above. The Law Society prefers interest on late payments to late payment fees but only to the extent that the amount charged does not exceed the current late payment fees.

6. Do you support lowering late payment fees but increasing late lodgement fees, or eliminating late review fees?

6.1 If yes, by how much should the fees change?

See our responses to the questions above. As to fees, the most important principle is that of cost recovery only. Secondly, there should be some incentive for timely lodgment of documentation and a reasonable penalty for late lodgment.

7. How could search fees be reformed to make data more accessible, the system simpler and more equitable?

The Law Society supports the option of abolishing fees for searches of publicly available electronic information held on the modernised business register. We also agree that search

fees could be retained, on a cost recovery only basis, for the retrieval of older paper-based data.

8. Should an infrastructure fee be introduced if it is payable by users of an API or comparable technology?

While in our opinion the consultation paper makes out a good case for the imposition of a fee to reimburse the cost of providing the service and to cover the cost of future system upgrades, these issues are outside our areas of expertise.

9. Should funds raised from an infrastructure fee be set aside to cover the costs of upgrading the registry and/or a testing environment?

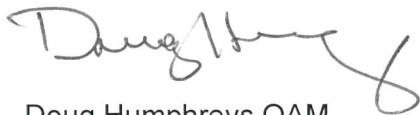
See our response to Question 8 above.

10. Is the Document Verification Service charging model appropriate, or is there an alternative model that should be considered?

We express no opinion as to the appropriate charging model as this topic is outside our areas of expertise.

The Law Society looks forward to continuing its involvement in the MBRP process, including this Review. If you have any questions about this submission, please contact Liza Booth, Principal Policy Lawyer, at liza.booth@lawsociety.com.au or on (02) 9926 0202.

Yours sincerely,



Doug Humphreys OAM
President