



EXPLANATORY MEMORANDUM

Land Legislation Amendment Bill 2014

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Background

The *Land Legislation Amendment Bill 2014* amends the *Registration of Deeds Act 1856*, *Strata Titles Act 1985*, *Transfer of Land Act 1893* and *Valuation of Land Act 1978* to empower fees prescribed in regulations under these Acts to be greater than cost recovery and for the expiring of the relevant empowering section under each Act on 31 December 2019, unless expiry is postponed by proclamation.

The Bill also amends the *Land Information Authority Act 2006* (“LIA Act”) to require the Minister for Lands, when reviewing the LIA Act and the effectiveness of the operations of the Western Australian Land Information Authority (“Authority”) every five years under section 93 of that Act (“LIA Act Review”), to consider matters relating to the setting of prescribed fees under the *Registration of Deeds Act 1856*, *Strata Titles Act 1985*, *Transfer of Land Act 1893* and *Valuation of Land Act 1978*

The Bill

Part 1 – Preliminary

Clause 1 Short Title

The short title will be the *Land Legislation Amendment Act 2014*.

Clause 2 Commencement

Provides that Part 1 comes into operation on the day of Royal Assent and the rest of the Act on a day fixed by proclamation.

Part 2 – *Land Information Authority Act 2006* amended

Clause 3 Act amended

Provides that Part 2 amends the *Land Information Authority Act 2006*.

Clause 4 Section 94A inserted

Inserts new section 94A.

Section 94A(1) provides that, without limiting the matters that are considered in a LIA Act Review, the Minister must also consider how prescribed fees under the *Registration of Deeds Act 1856*, *Strata Titles Act 1985*, *Transfer of Land Act 1893* and *Valuation of Land Act 1978* have been calculated and whether, since the last review, the Authority has achieved efficiencies in its operations that would enable prescribed fees to be reduced or not increased.

Section 94A(2) provides that the Minister, in considering how prescribed fees have been calculated, is to consider and have regards to the principles and methodologies applied in determining the prescribed fees and how those principles and methodologies were applied in determining each prescribed fee.

Section 94A(3) provides that the requirement that the Minister, in carrying out the LIA Act Review, does not have to consider how prescribed fees have been calculated under each Act if the section of the Act authorising prescribed fees greater than cost recovery (“Authorising Section”) has expired. This provides a mechanism to expire the section once all the Authorising Sections have expired.

Section 94A(4) provides that the section expires on a day fixed by proclamation which, under section 94A(5), can’t be before the expiry of the Authorising Section in all of the *Registration of Deeds Act 1856*, *Strata Titles Act 1985*, *Transfer of Land Act 1893* and *Valuation of Land Act 1978*. As it is possible that some Authorising Sections may expire before others, the subsection keeps section 94A in operation until all the Authorising Sections have expired.

Part 3 – *Registration of Deeds Act 1856* amended

Clause 5 Act amended

Provides that Part 3 amends the *Registration of Deeds Act 1856*.

Clause 6 Sections 22AA and 22AB inserted

Inserts new sections 22AA and 22AB authorising prescribed fees greater than cost recovery and providing for the expiring of the section authorising prescribed fees greater than cost recovery on 31 December 2019 unless the expiration of the section is postponed.

Section 22AA(1) provides that regulations under section 22 of the *Registration of Deeds Act 1856* may prescribe a fee payable to the Registrar of Deeds greater than the amount, or an estimate of the amount, required to recover costs incurred in connection with the matter in relation to which the fee is charged or relevant to the scheme to which the fee relates or the performance of any function to which the fee relates.

Section 22AA(2) provides that section 45A of the *Interpretation Act 1984* is not limited by the section. Section 45A provides that a power under a written law to prescribe or impose a fee for a licence includes the power to prescribe a fee that will allow recovery of expenditure that is relevant to the scheme or system under which the licence is issued.

Section 22AB(1) provides for section 22AA to expire on 31 December 2019 unless, under section 22AB(2), the Governor on the recommendation of the Minister for Lands, postpones the expiry by proclamation to a specified date.

Section 22AB(3) provides that the Minister for Lands must be satisfied, on the basis of the last LLIA Act Review laid before Parliament, that the expiry of the Authorising Section should be postponed. Under section 22AB(4), there is no limit on the number of times the expiry of the Authorising Section can be postponed. Each postponement cannot be longer than five years.

Section 22AB(5) applies section 42 of the *Interpretation Act 1984* and provides that the proclamation made by the Governor under section 22AB(2) is treated as if it were a regulation. The proclamation must be laid before Parliament and is subject to disallowance.

Section 22AB(6) provides that the expiry of section 22AA does not affect the validity of any regulations made under section 22 of the *Registration of Deeds Act 1856* before the expiry.

Part 4 – *Strata Titles Act 1985* amended

Clause 7 Act amended

Provides that Part 4 amends the *Strata Titles Act 1985*.

Clause 8 Sections 131A and 131B inserted

Inserts new sections 131A and 131B authorising prescribed fees greater than cost recovery and providing for the expiring of the section authorising prescribed fees greater than cost recovery on 31 December 2019 unless the expiration of the section is postponed.

Section 131A(1) provides that regulations under section 130 of the *Strata Titles Act 1985* may prescribe a fee payable to the Registrar of Titles greater than the amount, or an estimate of the amount, required to recover costs incurred in connection with the matter in relation to which the fee is charged or relevant to the scheme to which the fee relates or the performance of any function to which the fee relates. Section 131A(2) makes clear that, for the purpose of section 131A(1), the definition of 'scheme' in the *Strata Titles Act 1985* does not apply.

Section 131A(3) provides that section 45A of the *Interpretation Act 1984* is not limited by the section. Section 45A is referred to above in relation to clause 6.

Section 131B(1) provides for section 131A to expire on 31 December 2019 unless, under section 131B(2), the Governor on the recommendation of the Minister for Lands, postpones the expiry by proclamation to a specified date.

Section 131B(3) provides that the Minister for Lands must be satisfied, on the basis of the last LLIA Act Review laid before Parliament, that the expiry of the Authorising Section should be postponed. Under section 131B(4), there is no limit on the number of times the expiry of the Authorising Section can be postponed. Each postponement cannot be longer than five years.

Section 131B(5) applies section 42 of the *Interpretation Act 1984* and provides that the proclamation made by the Governor under section 131B(2) is treated as if it were a regulation. The proclamation must be laid before Parliament and is subject to disallowance.

Section 131B(6) provides that the expiry of section 131A does not affect the validity of any regulations made under section 130 of the *Strata Titles Act 1985* before the expiry.

Fees prescribed under the *Strata Titles Act 1985* and payable to a local government, Western Australian Planning Commission and to a strata company are not affected by the proposed amendments.

Part 5 – *Transfer of Land Act 1893* amended

Clause 9 Act amended

Provides that Part 5 amends the *Transfer of Land Act 1893*.

Clause 10 Sections 182AA and 182AB inserted

Inserts new sections 182AA and 182AB authorising prescribed fees greater than cost recovery and providing for the expiring of the section authorising prescribed fees greater than cost recovery on 31 December 2019 unless the expiration of the section is postponed.

Section 182AA(1) provides that regulations under section 181 of the *Transfer of Land Act 1893* may prescribe a fee payable to the Registrar of Titles greater than the amount, or an estimate of the amount, required to recover costs incurred in connection with the matter in relation to which the fee is charged or relevant to the scheme to which the fee relates or the performance of any function to which the fee relates.

Section 182AA(2) provides that section 45A of the *Interpretation Act 1984* is not limited by section 182AA. Section 45A is referred to above in relation to clause 6. The section also provides that, in setting prescribed fees, the ability to take into account the amount of any compensation paid by the State under the Act but unable to be recovered, is not limited by section 182AA.

Section 182AB(1) provides for section 182AA to expire on 31 December 2019 unless, under section 182AB(2), the Governor on the recommendation of the Minister for Lands, postpones the expiry by proclamation to a specified date.

Section 182AB(3) provides that the Minister for Lands must be satisfied, on the basis of the last LLIA Act Review laid before Parliament, that the expiry of the Authorising Section should be postponed. Under section 182AB(4), there is no limit on the number of times the expiry of the Authorising Section can be postponed. Each postponement cannot be longer than five years.

Section 182AB(5) applies section 42 of the *Interpretation Act 1984* and provides that the proclamation made by the Governor under section 182AB(2) is treated as if it were a regulation. The proclamation must be laid before Parliament and is subject to disallowance.

Section 182AB(6) provides that the expiry of section 182AA does not affect the validity of any regulations made under section 181 before the expiry.

Part 6 – Valuation of Land Act 1978 amended

Clause 11 Act amended

Provides that Part 6 amends the *Valuation of Land Act 1978*

Clause 12 Sections 50 and 51 inserted

Inserts new sections 50 and 51 authorising prescribed fees greater than cost recovery and providing for the expiring of the section authorising prescribed fees greater than cost recovery on 31 December 2019 unless the expiration of the section is postponed.

Section 50(1) provides that regulations under section 49 of the *Valuation of Land Act 1978* may prescribe a fee payable to the Valuer-General greater than the amount, or an estimate of the amount, required to recover costs incurred in connection with the matter in relation to which the fee is charged or relevant to the scheme to which the fee relates or the performance of any function to which the fee relates.

Section 50(2) provides that section 45A of the *Interpretation Act 1984* is not limited by section 50. Section 45A is referred to above in relation to clause 6.

Section 51(1) provides for section 50 to expire on 31 December 2019 unless, under section 51(2), the Governor on the recommendation of the Minister for Lands, postpones the expiry by proclamation to a specified date.

Section 51(3) provides that the Minister for Lands must be satisfied, on the basis of the last LLIA Act Review laid before Parliament, that the expiry of the Authorising Section should be postponed. Under section 51(4), there is no limit on the number of times the expiry of the Authorising Section can be postponed. Each postponement cannot be longer than five years.

Section 51(5) applies section 42 of the *Interpretation Act 1984* and provides that the proclamation made by the Governor under section 51(2) is treated as if it were a regulation. The proclamation must be laid before Parliament and is subject to disallowance.

Section 51(6) provides that the expiry of section 50 does not affect the validity of any regulations made under section 49 before the expiry.