

10 January 2018

Ms Katie Miller
Executive Director, Legal Practice
Executive Director for the Barwon region
Victoria Legal Aid
570 Bourke Street
Melbourne VIC 3001

Via email: [REDACTED]

Dear Ms Miller

Practising Certificate Fees Review: Response to Submission

Thank you for your email of 29 November 2017 enclosing Victoria Legal Aid's (VLA) submission to the formal public consultation stage of the Practising Certificate Fees Review (the review) and the Regulatory Impact Statement (RIS) process.

On behalf of the Victorian Legal Services Board (the Board), I wish to thank VLA for its active participation in the review, and express the Board's appreciation for the written submissions made by VLA to the various stages of the process.

The Board notes VLA's support for its preferred option. The Board also notes the recommendation from VLA that private practitioners who carry out legally aided work should pay the same fee as VLA's solicitors.

The proposed introduction of subsidised fees for community legal sector practitioners recognises the public benefits that flow from ensuring disadvantaged and vulnerable Victorians have access to legal services.

In its submission, VLA expressed concern about the potential impacts on private practitioners who carry out legally aided work as these practitioners cannot pass through any cost increases to clients and are subject to a fixed fee structure from VLA that usually only increases in line with inflation. The VLA is concerned that any increase in fees will disproportionately affect VLA's external partners, and that an increase in costs will shrink the pool of legal practitioners performing this work, adversely affecting access to justice.

Throughout the review, the Board has been mindful of the costs incurred by private legal practitioners in running their practices and has sought to ensure that fees for practising certificates do not create barriers to entry for new or existing practitioners or disproportionately affect sole practitioners and small law practices.

The economic analysis produced for the RIS concludes that the fees under the Board's preferred option are likely to represent between 0.44 per cent and 0.61 percent of revenue and as such are unlikely to constitute a significant portion of business costs. Therefore, while the Board notes VLA's concerns, in the absence of any supporting information to the contrary, it does not agree that one-off increases in practising certificate fees ranging from \$46 to \$90 per annum will lead to the adverse impacts VLA is concerned about.

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VLA also expressed a view that private practitioners who engage in legally aided work represent a lower regulatory burden than other private practitioners because of the measures VLA puts in place including threshold standards, training and resources. VLA also states that it manages any complaints and subjects its external partners to quality auditing.

As noted by VLA, the Board did not specifically consider the impacts of private legal aid practitioners as a sub-class of all private practitioners when setting the stratified fee options. It should be noted that the Board also did not consider other factors including size of practice, location of practice, practitioner regulatory record and areas of law in determining fees for practising certificates.

While the stratified fee approach will eliminate some cross-subsidies between practising certificate types, cross-subsidies within practising certificate fee types have not been examined. To do so would introduce a level of administrative complexity that would have cost implications for the administration of the scheme and for individual practitioners who would be required to provide additional information to the Board at grant or renewal to determine what fee was applicable. Given the analysis in the RIS shows the overall impacts of the fees are not significant, the creation of an administratively complex system that sets different fees based on factors other than practising certificate class is not warranted.

The Board is committed to evaluating the impacts of the fees on the profession and is proposing a two-stage evaluation strategy. We welcome VLA's offer to provide data on the effects of the new fee structure on practitioners undertaking legally aided work to assist us in the evaluation process.

The Board is grateful to VLA for the feedback provided regarding its website and information services, in particular user experiences. The Board already provides a single point of contact for some large organisations including large law firms and government departments and would be happy to talk further with VLA about its particular needs. We are interested in exploring opportunities to improve the provision of information to practitioners through the website and other methods and would appreciate a chance to engage further on these issues with VLA.

The Board has now had the opportunity to consider all of the submissions received and is not proposing to make any adjustments to the proposed fee settings in Option 3 in light of those submissions.

The Board has decided to formally recommend new fees for practising certificates for the 2018-19 financial year and beyond, in line with Option 3 as outlined in the RIS, to the Attorney-General and the Governor-in-Council. It is intended that new regulations prescribing those fees will be in place to replace the current regulations which are due to expire in late February 2018.

Once again I would like to thank you for contributing to the formal consultation stage of the review. Your submission and our response will be published, together with all other submissions and responses, on our website.

Yours sincerely



Fiona R Bennett
Chairperson