

10 January 2018

Ms Sarah Fregon
Chief Executive Officer
Victorian Bar Inc.
Owen Dixon Chambers East
Level 5, 205 William Street
Melbourne VIC 3000

Via email: [REDACTED]

Dear Ms Fregon

Practising Certificate Fees Review: Response to Submission

Thank you for your email of 30 November 2017 enclosing the Victorian Bar's (the Bar) 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 the Bar for its active participation in the review, and express our appreciation for the written submissions made by the Bar to both the Discussion Paper and RIS stages of the review.

As you are aware, the Board has put forward its preferred option of a stratified fee structure, where fees are differentiated based on existing practising certificate classes. Under this efficient proposal, classes that carry a low regulatory burden receive fee reductions, while those that carry higher risk profiles and regulatory demands see only modest fee increases – the largest increase being \$7.50 per month for principals with trust accounts. There is also no cross-subsidisation between practitioner classes.

This preferred option is a simple and minimalist model that aligns with the government's policy principles for setting new fees. The overall level of cost recovery from fees rises by only 1.6 per cent, with 60 per cent of regulatory costs funded by the interest stream from trust accounts.

The Board's responses to the issues raised by the Bar in its submission are outlined below.

Differentiating between fees based on practitioner class or other category

We are pleased the Bar agrees with the establishment of a separate category of fees for barristers based on the regulatory costs incurred by the Victorian Legal Services Board and Commissioner (VLSB+C). The Bar recognises and welcomes that this approach has resulted in a modest fee reduction for barristers of 2 per cent under Options 3 and 4. The Board notes that barrister class fees will not increase under any of the options.

However, the Bar has noted the percentage of cost recovery from barristers has been set at 100 per cent, but that other solicitor classes (principals with trust, employees and principals without trust authorisation), have been afforded a subsidy of varying levels from the interest stream. The Bar has advanced a number of submissions as to why barristers should also be afforded a similar subsidy, noting in particular that barristers are also sole practitioners running small businesses and as such are similar to principals without trust.

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The fees under the options in the RIS for principals with trust authorisation, principals without trust authorisation and employee practising certificate classes have all increased, recognising the Activity-Based Costing (ABC) exercise undertaken for the RIS which demonstrates that these classes of practising certificate generate the highest levels of regulatory cost. Under the preferred option, Option 3, the Board is not proposing that these classes will be required to meet the full 100 per cent cost recovery as in Option 2 or 4. This is because there has been significant stakeholder feedback expressing concerns about the impacts for private law firms if these practising certificate classes are required to pay 100 per cent of the costs of regulation.

The Board has sought to mitigate those impacts through subsidies from the interest stream despite the RIS Small Business impact assessment concluding none of the proposed options would have more than negligible business impacts. The fees for these three classes however are still increasing under Option 3, whereas barristers' fees are decreasing. Option 3 proposes that employees will pay 78 per cent of the cost it takes to regulate that class of practitioner; principals without trust authorisation will pay 48 per cent; and principals with trust authorisation will pay 18 per cent.

Barristers will see fee reductions because they will no longer be subsidising other classes of practitioners, with fees wholly being based on the regulatory costs of barristers. The Board notes the Bar's comments about the low rate of complaints against barristers, the fact barristers do not receive trust money and the significant contributions made by the Ethics Committee and Bar Counsel towards the resolution of complaints and assessments of barristers' fitness to practice. These factors have contributed to the lower regulatory profile enjoyed by barristers and the corresponding fee reduction proposed by the Board. However, the Bar has not provided any new supporting evidence that current fee levels or the proposed reduced fee levels are causing or may cause any business impacts that might benefit from mitigation from the interest stream by way of a subsidy similar to that proposed for classes where fees are actually increasing.

Likely effect of changes on practitioner and client behaviour

We disagree that the Bar should be concerned that a subsidy is being provided to principals without trust, given their comparability as a small legal business subject to similar costs and market pressures. The Board is providing the subsidy only to mitigate stakeholder concerns about fee increases on private law firms. Barristers' fees by comparison are decreasing and therefore the subsidy should not be required or justified on equity grounds. The Bar has not provided any supporting evidence about what adverse impacts may result.

40-60 split between fees and interest

The Board is pleased the Bar is supportive of the 40-60 fees to interest stream proposed in Option 3, the preferred option.

In closing, the Board notes the Bar's preferred option is Option 3 but subject to the qualification that the Bar considers barristers should benefit from a subsidy from the interest stream similar to that proposed to be provided to principals without trust authorisation on equity grounds. The Board does not support a subsidy for the barrister class.

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.

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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 the VLSB+C website as the next stage in the review.

Yours sincerely



Fiona R Bennett
Chairperson