

27th November 2017

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Acting Board CEO & Victorian Legal Services Commissioner
Level 5, 555 Bourke Street
Melbourne 3000

Dear ██████████

Victoria Lawyers' Practising Certificate Fees Review - Submission on Practising Certificate Fees Regulatory Impact Statement

I refer to the Regulatory Impact Statement (RIS) regarding the proposed changes to practising certificate fees in Victoria and make the following submission on behalf of the Victorian Division of the Association of Corporate Counsel (ACC) Australia.

We note the preferred approach set out in the RIS (Option 3) provides for the practising certificate fees for corporate and government in-house lawyers to be significantly reduced, reflecting the low risk profile and regulatory costs generated, based on the low rate of complaints, by in-house lawyers and the fact they do not receive trust money. We understand that corporate and government practising certificate fees will be reduced from \$353 to \$240 and \$220 respectively if Option 3 is adopted by the Government.

Background to ACC Australia

ACC Australia is part of a global network of more than 42,000 in-house counsel employed by over 10,000 organisations in more than 85 countries. ACC Australia is proud to represent the interests of approximately 4,000 Australian in-house lawyers working for corporations and government. ACC Australia currently represents a large proportion of in-house lawyers in Victoria, with national membership growing each year.

We believe that the growth in number of in-house lawyers has outstripped the growth in other practitioner classes over recent years and that this growth is driven by factors including the unique value that in-house lawyers can provide to their clients as a result of developing a deeper understanding of their client's context and objectives, special skills and experience (e.g. in managing external legal services providers) and efficiencies associated with obtaining legal services in-house. The vast majority of ACC Australia's Victorian members hold corporate or government practising certificates. In general, an in-house lawyer's employer will pay for his or her practising certificate.

Submission

ACC Australia supports the Victorian Legal Services Board's (the Board) preference, as set out on page 3 of the RIS, to adopt Option 3 in setting practising certificate fees in Victoria and the Board's proposal to evaluate practising certificate fees as set out in section 10 of the RIS.

In relation to the principles underlying the approach taken in Option 3, we consider that it is appropriate that:

- Practising certificate fees not be set with a view to recovering the full cost of regulating the legal profession in circumstances where the provision of high quality legal services by Victorian legal practitioners and their effective regulation and education not only benefits their immediate clients but society in general;

- It is appropriate for efficiency reasons that practising certificate fees closely reflect the relative costs of regulating each class of practitioner without unjustified cross-subsidisation between classes; and
- Social policy and equity considerations be taken into consideration in setting fees in addition to efficiency considerations.

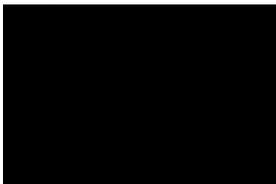
Our view is that Option 3 reflects these principles and is consistent with Government policy as set out in section 156(2) of the *Legal Profession Uniform Law Application Act 2014* and the *Victorian Government Cost Recovery Guidelines* (Department of Treasury and Finance, January 2013).

We note that Option 3 provides for differing levels of subsidy for practising certificate fees (out of interest earned on trust moneys) which is intended to minimise the level of fee increases experienced by small and large law firms, community sector and volunteer lawyers. The RIS (p60) estimates the level of subsidy per class at:

- 0% for barristers and in-house lawyers
- 20% for employees
- 50% for principals
- 80% for principals with trust authorisation
- 60-75% for community sector employees and principals
- 100% for volunteers

We support the proposal in relation to subsidisation of volunteers and community sector lawyers for equity and social policy reasons for the reasons set out in the RIS. We note that the rationale for subsidising other classes of certificate held by sole practitioners and law firm lawyers extends beyond a recognition of the benefits to consumers who place their money in trust accounts resulting from the effective regulation of the legal profession, and to include the aims of reducing barriers to entry for e.g. part-time and regional lawyers and the potential impacts on sole practitioners and small law practices associated with a full cost recovery approach (RIS p53-54). Given that Option 3 provides for the same level of subsidisation of fees within each class of (non-community sector) principal and employee practitioner certificates regardless of work arrangements or the size or location of practices, we agree with the Board's proposal that its mid-term review of the regulations in 2023-24 include an evaluation of data and feedback relating to the impacts of this aspect of the proposed regulations.

Yours sincerely



Jonathan Fenwick
Victoria Division President
ACC Australia