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Practising Certificate Fees RIS  
Victorian Legal Services Board and Commissioner  
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Dear Victorian Legal Services Board

### **Review of Lawyers' Practising Certificate Fees – Regulatory Impact Statement (RIS)**

Thank you for the opportunity to respond to the RIS regarding the review of practising certificate (PC) fees. Victoria Legal Aid (VLA) recognises that considerable effort has gone into addressing stakeholder concerns, and producing a comprehensive statement which explains the reasons for the Board's final recommendations.

When considering the fee options proposed in the RIS, VLA applied the same criteria it has advanced throughout this consultation. VLA considers that any new fee structure:

- must not have a significant adverse effect upon the financial viability of smaller legal service providers, including those who carry out 72% of the legally assisted matters funded by VLA
- should protect, as far as possible, revenue flowing to the Public Purposes Fund (PPF) for the benefit of VLA and other legal and community bodies, and
- should reflect the different levels of regulatory burden which different classes of practitioners place on the Board, including the lower risk posed by legal aid practitioners.

VLA considers that Option 3 strikes the most appropriate balance between these competing interests, and therefore supports the Board's preferred option, subject to the further recommendations in this letter.

### **Specific Stakeholder Questions**

The Board has invited stakeholders to respond to a series of specific stakeholder questions. VLA would like to respond to four of those questions.



*Differentiating between fees based on practitioner type (or other category)*

*The extent to which practitioners pass the costs of practising certificate fees to their clients*

*The likely effect changes in these costs may have on practitioner and client behaviour*

Private practitioners carrying out legally aided work cannot pass any increased cost of PC fees on to their clients. The fees they receive from VLA are fixed, and usually only increase in line with inflation. These increases will not keep pace with the fee increases proposed in Option 3, and will have to be absorbed by practitioners. This means that *any* increase in fees will disproportionately affect VLA's external partners.

As noted in previous responses, private firms carrying out legally aided work often function with marginal business cases, and VLA is concerned that an increase in costs will shrink the pool of legal practitioners performing this work, adversely affecting access to justice for underprivileged, disabled and vulnerable clients.

When it reviewed the regulatory costs of different classes of practitioners, the LSB did not consider the costs of private legal aid practitioners, as a sub-class of all private practitioners. VLA recognises that the data for this may not be currently available. However, as VLA has submitted in previous responses, such practitioners represent a lower regulatory burden, because they have had to meet the threshold standards for panel membership; they have access to VLA's training and resources; they are subject to quality auditing; and VLA manages any complaints from their clients.

For these reasons, VLA considers that private practitioners carrying out legally aided work should pay the same amount for PC fees as VLA's own solicitors. VLA could regularly share its list of panel practitioners with the Board for the purpose of identifying those who would qualify.

If this recommendation is not accepted, it would still be important to monitor the impact of the new fee structure on this class of practitioners, and this should be incorporated into the review mechanism proposed by the Board in Section 10 of the RIS. VLA could assist with this process, and share data about its panel practitioner numbers with the Board. VLA would also consider working with the Board to find other ways of monitoring the impact of the fee changes, such as conducting surveys. This could be an ongoing or annual project, not limited to the 2023-24 financial year.

*Whether the level of information services currently provided for practitioner certificate applications is desirable.*

To answer this question, VLA consulted staff who manage the renewals process each year, and handle queries from staff about PC's. In the relatively short time allowed, they wished to make some comments, but would also welcome the opportunity to take part in a more detailed review of the website and other information services, and users' experiences.

- It is felt that the information on the website is presented in a static way. It was suggested that the Board could explore ways to make it more interactive, based on tasks or desired outcomes

i.e. user-centred, linking information with the action people need to take. For example, information about working in Victoria on an interstate PC, linked to the steps to be taken to transition to a Victorian PC.

- It would be useful for VLA to have access to information to help manage the PC renewals process and PCs, on demand. The better sharing of information would reduce VLA's own administrative burden.
- The Board should be encouraged to consider the introduction of interactive PC applications.
- VLA staff are complimentary about the Board's telephone staff, who are helpful, and respond well to most questions. However, VLA staff who manage the bulk renewal process, and have complex or unique questions, often require a higher level of assistance. The Board could consider nominating business partners for larger organisations, as a single point of contact on these issues.

### **Conclusion and recommendations**

1. VLA supports the Board's preferred fee structure, Option 3.
2. VLA is concerned that any increase in PC fees may disproportionately impact its external partners, because they often operate on tight margins, and cannot pass these increases on to their clients. Private practitioners who carry out legally aided work place a lower burden on regulatory authorities. For this reason, VLA recommends that they should pay lower PC fees, as if they were VLA practitioners. VLA could share data with the Board to identify these practitioners.
3. If this recommendation is not accepted, the Board should still ensure that the effect of any new fee structure on the pool of practitioners undertaking legally aided work is monitored as part of its review process in 2023-24, and earlier if possible. VLA could provide data to assist with this.
4. VLA welcomes a review of the information provided about PC's, including the organisation of the website, information sharing, and the provision of dedicated services to larger legal practices. We would be happy to engage further on this topic.



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