

VICTORIAN LEGAL SERVICES BOARD AND COMMISSIONER

LEGAL PROFESSION UNIFORM LAW APPLICATION (PRACTISING CERTIFICATE FEES) REGULATIONS 2017 REGULATORY IMPACT STATEMENT

TELSTRA SUBMISSION

Telstra appreciates the opportunity to make a submission in response to the Regulatory Impact Statement (RIS) for the proposed Legal Profession Uniform Law Application (Practising Certificate Fees) Regulations 2017. This follows our submission in response to the Legal Services Board's Discussion Paper of January 2017 and participation in the stakeholder forum in July 2017.

We are pleased that the feedback and written submissions received by the Board through its consultation process, and the cost modelling undertaken by Rivers Economic Consulting, has helped shape the RIS and inform the Board's preferred option. We are pleased to see the additional and refined options set out in the RIF.

Impacts on corporate lawyers

We note that the analysis in the RIS focusses on determining the appropriate fee for certificates based on a recent review of costs, with the objective being to fund the regulation of the legal profession in an efficient and equitable way.

Our view is that legal practitioners with trust authorisation should pay a higher amount than lawyers without trust authorisation as they pose a risk of misusing or misappropriating their clients' money in trust accounts. The interest stream (Interest foregone by clients who deposit money into trust accounts) should also continue to contribute to the cost of legal regulation.

We strongly support the principle that practitioner classes that carry a lower regulatory burden, like corporate lawyers, should pay lower fees. Corporate lawyers should pay a lower practising certificate fee than employees or principals in the private sector based on the lower costs of regulating corporate lawyers, including the low volume of complaints and disciplinary actions taken, and no trust authorisation.

Options in the RIS

Page 8 of the RIS sets out a comparison of fees, revenue and cost recovery for the four options:

Practising certificate class	Option 1 (39.5% from fees – current fees)	Option 2 (100% from fees – stratified fees)	Option 3 (40% from fees – fully stratified fees)	Option 4 (54.7% from fees – stratified fees phased in)
Employees	\$353	\$515	\$399	\$512
Employees (community sector)	\$353	\$515	\$220	\$220
Principal with trust	\$522	\$3,344	\$612	\$893
Principal	\$353	\$897	\$427	\$893
Principal (community sector)	\$353	\$897	\$220	\$220
Corporate	\$353	\$244	\$240	\$240

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Volunteer	\$0	\$0	\$0	\$0
Government	\$353	\$223	\$220	\$220
Barrister	\$353	\$349	\$346	\$346
Total revenue	\$7.78 M	\$19.6 M	\$7.88M	\$10.7 M

We support the Board's preference for Option 3 given that the proposed fees align with the level of risk and regulatory oversight incurred by each practitioner class. Corporates, like other practitioner classes that carry a lower regulatory risk, should pay lower fees than those classes which attract higher regulatory risk. We note that employee and principal classes (with and without trust) will have their costs subsidised by the interest stream to minimise their fee increases. We think the 40/60 contribution (between fees and interest stream) is a reasonable split and note it does not significantly diverge from the current contribution split.

In relation to the other options:

We note that Option 1 (current fees) involves corporate, government and barrister practising certificate classes subsidising employee and principal with and without trust practising certificates classes which we do not agree with on equity grounds.

Option 2 provides for full cost recovery through fees. The costs of legal regulation should not be entirely borne by practising certificates of lawyers (or their employers) - instead consumers who place their money in trust should also contribute through the interest stream. Option 2 would result in a 6-fold increase of fees for principals with trust authorisation, which may have the unintended consequence of deterring the use of trust accounts due to the discrepancy in fees between practitioners with and without trust accounts.

Option 4 has a 54.7% contribution from fees, and phased in fee increases for principal and employee classes. We do not have a particular view on this phased in approach but simply note that we agree with the principle of corporate lawyers, like government lawyers and barristers (and community sector lawyers), paying lower fees on fairness and equity grounds.

Conclusion

We agree that corporate lawyers, like other practitioner classes that carry a lower regulatory burden, should pay lower fees based on the lower costs of regulation. We support Option 3 as the preferred option.

30 November 2017