



COMMISSIONER FOR
BETTER REGULATION

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Melbourne Victoria 3001
Telephone: 03 9092 5800

19 October 2017

Mr Russell Daily
Acting Board CEO & Commissioner
Victorian Legal Services Board and Commissioner
GPO Box 492
Melbourne VIC 3000

Dear Mr Daily

I would like to thank the staff of the Victorian Legal Services Board and Commissioner (VLSBC) for working with our team on the preparation of the Regulatory Impact Statement (RIS) for the proposed *Legal Profession Uniform Law Application (Practising Certificate Fees) Regulations 2017*. These Regulations are being proposed as the current arrangements sunset on 28 February 2018.

Under section 10 of the *Subordinate Legislation Act 1994* (the Act), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of all RIS prepared in Victoria. The Commissioner's role is to advise on the adequacy or otherwise of the analysis presented in the RIS, rather than the merits or otherwise of policy or regulatory proposals. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise you that the final version of the RIS received by us on 19 October 2017 meets the adequacy requirements of the Act.

The proposed Regulations set fees for practising certificates issued by the VLSBC. They do not prescribe requirements for legal practitioners to hold a certificate, or any of the information practitioners must provide or processes they must complete in order to apply for a certificate.

Fees for certificates recover the costs of regulating the legal profession. In the absence of fees these costs are covered entirely by interest earned from the Public Purpose Fund (PPF). This fund comprises money held in solicitors' trust accounts on behalf of their clients.

Under the current regulations two different fees are charged depending on whether or not the practitioner is authorised to work with trust accounts. These fees were set in 2012 based on analysis at the time that suggested the costs of regulating practitioners who were authorised to work with trust accounts were higher due to a larger number of complaints.

The analysis in this RIS focuses 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' (p.4). The VLSBC notes in the RIS that its Board considers the most equitable way to fund the costs of certificates to be covering 40 per cent of costs through fees with the other 60 per cent funded using interest from the PPF, on the basis that 'people who put their money in trust receive considerable benefits from effective regulation' (p8).

The VLSBC notes in the RIS that in January 2017 it released a discussion paper outlining four options for setting new fees. Following consultation and in response to stakeholder feedback, the VLSBC commissioned an independent review of the costs of regulating the profession. The more detailed understanding of these costs allowed the VLSBC to consider a wider range options, and in July 2017 the VLSBC consulted again with stakeholders on nine different options for setting new fees (detailed in an appendix to this RIS). Following feedback from this consultation the VLSBC narrowed its focus to four options (two from the initial set of options, and two resulting from the independent review of their costs). These four options are analysed in this RIS.

In this RIS the VLSBC proposed to set fees for nine different classes of legal practitioners, based on the findings of the independent review. The review found that the costs of regulating legal practitioners varied sufficiently between these different classes to warrant charging separate fees. The proposed fees for each class are based on the costs established under that review, and recover different levels of these costs for different classes due to other considerations and concerns about potential unintended consequences. For example, employees and principals will have their fees subsidised by interest from the PPF 'to minimise the level of fee increases experienced by those classes' (p. 60), and legal practitioners providing community legal services will have their fees subsidised by interest from the PPF to reflect 'the public benefits that flow from ensuring disadvantaged and vulnerable Victorians have access to legal services'.

The VLSBC has committed to undertaking a mid-term evaluation of these regulations in 2023-24. This will be a valuable opportunity to review the impacts of this proposal.

It is government practice that this letter be published with the RIS when it is released for public consultation.

Should you wish to discuss any issue raised in this letter, or the implications of new information or policy options identified through the public consultation process for your proposal, please do not hesitate to contact me on (03) 9092 5800.

Yours sincerely



Anna Cronin

Commissioner for Better Regulation