

VICTORIAN CIVIL AND ADMINISTRATIVE  
TRIBUNAL (FEES) REGULATIONS 2016  
Regulatory Impact Statement



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## Glossary of acronyms and terms

Acronym or term	Meaning
ACLFTA	<i>Australian Consumer Law and Fair Trading Act 2012</i>
Activity-based costing	The costing methodology used to determine the direct costs identified in this document. This is explained in detail in Section 5.5
ADR	Alternative dispute resolution
Appropriations	Appropriations provide the funding for government services. They are approved by Parliament through annual Appropriation Acts, which authorise money to be paid from the Treasury
CBR	Commissioner for Better Regulation
Corporate costs	The costs of providing corporate services to VCAT including the cost of human resource management, financial services, infrastructure maintenance and communications costs
CSV	Court Services Victoria
Direct costs	The direct costs of salaries and wages, leave provisions and superannuation, measured through activity costing
DJR	Department of Justice and Regulation
DSCV	Dispute Settlement Centre of Victoria
EPA	Environment Protection Authority
External funding	Funding sourced from trust funds and regulators
Fees	Fees charged by VCAT, in accordance with fee regulations under the <i>Victorian Civil and Administrative Tribunal Act 1998</i> or the <i>Guardianship and Administration Act 1986</i>
Fol	Freedom of Information
FTE	Full-time equivalent
General appropriations	Appropriations provided for the general government sector <sup>1</sup>
HR	Human resources
Indirect funding	CSV meets certain VCAT costs that are not passed on to VCAT or shown in VCAT's financial summary. These include some corporate overhead costs, and the salaries of VCAT's president and vice-presidents (which are included in the budgets for their respective Courts)

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<sup>1</sup> Victorian Auditor-General's Office. 2012. Portfolio Departments and Associated Entities: Results of the 2011–12 Audits. Retrieved from <http://www.audit.vic.gov.au/publications/2012-13/20121128-Portfolio-Departments/20121128-Portfolio-Departments.html#s013>

Acronym or term	Meaning
Jurisdiction	For the purposes of this document, the meaning is confined to how VCAT deals with a matter for which it has a statutory responsibility and the extent of its powers in dealing with the matter
KPI	Key Performance Indicator
NCAT	New South Wales Civil and Administrative Tribunal
Original jurisdiction	VCAT is deciding a matter for the first time
Overhead costs	The costs associated with VCAT's judicial officers, members and employees such as training, information technology and rent
Protective jurisdiction	VCAT is deciding a matter about a person who is unable to make decisions in their own interest
QCAT	Queensland Civil and Administrative Tribunal
Review jurisdiction	VCAT is reviewing the decision of another decision-maker
RIS	Regulatory Impact Statement
SMAH	Short Mediation and Hearing
TAC	Transport Accident Commission
VCAT	Victorian Civil and Administrative Tribunal
Workload	A measure of resource usage derived from the activity-based costing methodology, which considers FTE and the direct costs of VCAT's judicial officers, members and employees



## Executive summary

This Regulatory Impact Statement (**RIS**) discusses the proposed Victorian Civil and Administrative Tribunal (Fees) Regulations 2016 (the **Proposed Regulations**), which will determine fees payable for proceedings issued by the Victorian Civil and Administrative Tribunal (**VCAT**) under the **Victorian Civil and Administrative Tribunal Act 1998** (VCAT Act) and about 130 other Acts that confer jurisdiction on the Tribunal. The Proposed Regulations are due to commence operation on 1 July 2016, and replace the Victorian Civil and Administrative Tribunal (Fees) Regulations 2013 (the **Existing Regulations**).

The RIS explains how the efficient cost of VCAT's various activities in issuing, hearing and determining proceedings, including activities associated with its alternative dispute resolution (ADR) processes, were estimated.

Three possible options for restructuring VCAT's fees are presented. The design of these options considers the estimated costs, the broader public benefits that VCAT provides, and specific policy considerations. Each of the options is assessed against criteria that reflect the stated objectives in replacing the VCAT fee regulations, and a preferred option is determined. The Proposed Regulations presented in the RIS have been drafted to reflect this option.

The RIS also provides details of proposed arrangements for implementation, monitoring and evaluation of the new fee structure.

### **Background**

VCAT's function in the Victorian justice system is to provide an independent review of government decision-making and a low-cost, accessible, and efficient avenue for resolving civil disputes.

In 2014–15 the total cost of funding VCAT was \$51.9 million. Of this, approximately \$22 million was sourced externally from statutory trusts and other funding partners.<sup>2</sup> The balance of VCAT's funding (\$29.9 million) was provided by the government from the consolidated fund.

During 2014–15 fees charged by VCAT amounted to approximately \$12 million. Around \$4.1 million of these fees related to matters funded by external agencies, and were remitted back to the funding source or offset against funding received from the relevant funding partner.

The Existing Regulations were introduced in 2013, following the release of a RIS in late 2012 (the **2012 RIS**). When the Existing Regulations were introduced, VCAT did not have sufficient historical cost data to enable differentiation between the various fees charged by VCAT or to account for the increasingly wide variation in the nature of the cases heard and equitably assess the circumstances of people involved in proceedings. The government agreed to help VCAT improve its data collection processes and, following collection of sufficient data, analyse options for new fee regulations to replace those made in 2013.

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<sup>2</sup> Funds sourced from statutory trusts and other funding partners are generally applied to specific aspects of VCAT's operations. For example, funds received from the Residential Tenancies Fund are used to fund VCAT's Residential Tenancies Division.

Since 2013 VCAT has collected substantial relevant cost data. A thorough analysis of that data has resulted in the proposal of a range of new options for the structure and level of VCAT fees, as detailed in this RIS. The proposed options aim to balance economic efficiency (by aligning fees with cost-recovery principles) with the policy of promoting and enhancing access to justice for all Victorians.

## **Policy**

Victoria's *Cost Recovery Guidelines*<sup>3</sup> (the **Guidelines**) underpin the preparation of this RIS and the Proposed Regulations. The Guidelines were used to develop two sets of guiding principles – for costing and fee setting. Full details of these principles are set out in Section 2.

The Guidelines require fees to be set on the basis of efficient costs, which accounts for direct and indirect costs. An analysis of full costs is considered the mandatory starting point for developing a fee framework, and full cost recovery is the default pricing position. Full cost recovery promotes the efficient allocation of resources, is transparent and avoids or reduces the need to rely on general taxation revenue.

However, the Guidelines also recognise that there are circumstances in which full cost recovery may not be possible or appropriate, for example, where full cost recovery is not practical or legal, or where charging the full cost could undermine other policy objectives.

## **Costing principles**

The costing principles provided a framework for identifying the full cost of VCAT's activities and the application of a costing framework supports transparency in its cost structure.

The purpose of producing a detailed cost structure is to ensure that the varying costs associated with different dispute resolution mechanisms, and with various types or classes of claims, can be identified, allocated, and accounted for. The analysis and modelling in this RIS is based on actual financial outcomes and case-throughput data from 2014–15.<sup>4</sup>

Using the costing principles the following methodology was adopted.

1. Determine the classes of matters for activity costing.
2. Estimate the direct costs for different classes of matters.
3. Determine and allocate indirect costs.
4. Finalise the classes of matters to be reflected in the fee schedule.
5. Estimate efficient costs.

The steps above are explained in Section 5, and illustrated with examples from the Civil Claims List and the Planning and Environment List.

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<sup>3</sup> Department of Treasury & Finance, January 2013.

<sup>4</sup> 2014–15 is the last full financial year for which financial and workload data is available.

## **Fee-setting principles**

After identifying the cost of VCAT's activities the fee-setting principles were applied to develop options for fee structures. These options were intended to reflect the role of VCAT in Victoria's civil justice system, safeguard access to justice, apply fees equitably, support and enable efficient VCAT operations, and be consistent with broader social and economic policy objectives. These objectives include:

- promoting fair and increased access to justice
- safeguarding human rights and the rights of those who are unable to look after their own interests
- simplicity and administrative efficiency.

There is a natural tension between reflecting identified costs, and giving effect to the policy objectives discussed above. The fee structure options and Proposed Regulations reflect the balance struck between those considerations to improve alignment of VCAT's costs and fees.

## **Fees and cost recovery**

Adequate funding of VCAT ensures it can provide fair, effective and efficient resolution of civil disputes, and can independently review government decision-making. These mechanisms are essential to a strong Victorian economy, and a fair and just society.

Taxpayers also share in the substantial economic and social benefits that are generated by an effectively-functioning civil and administrative tribunal. It is therefore appropriate that, to some extent, VCAT's activities are subsidised by taxpayers.

However, since taxpayers don't necessarily share in the substantial private benefits that some VCAT users may obtain when their proceedings are resolved by VCAT, it is also appropriate that VCAT users make a direct contribution towards costs, through the payment of fees.

The fees charged for VCAT's services are an important and appropriate contribution to the funding of its operations. During 2014–15 the overall level of cost recovery for VCAT was approximately 23 per cent. In the absence of fees, funding the shortfall would increasingly be subsidised by taxpayers and funding partners, and users would make no direct contribution towards the cost of VCAT.

Commencing a proceeding at VCAT is a serious and formal step; one that is likely to have significant implications for all parties involved. Before commencing a proceeding, it is important for a potential VCAT applicant to consider and, where appropriate, take advantage of other, less formal, dispute resolution mechanisms that may be available.

The relative attractiveness of these other mechanisms may be diminished, however, if they incur fees and VCAT services do not. It is also likely to increase demand for these services and have a detrimental effect on VCAT's capacity to resolve matters in a timely fashion. This would effectively inhibit access to justice, undermine VCAT's role in Victoria's civil justice system, and compromise the efficiency of VCAT's dispute resolution services.

## **Fee options**

The three options for fees examined in detail in this RIS were selected from a larger range of options considered. More information on these can be found in Section 7.

### **Preferred option – Option 3**

The Proposed Regulations have been framed to give effect to **Option 3**, the preferred option. Option 3 aims to maximise cost recovery from larger corporate and government users, while minimising the potential for fees to become a barrier to justice for other users. It does this by creating three, tiered, fee levels, called ‘Corporate’, ‘Standard’, and ‘Concession’.

The fees proposed at the Corporate Fee level under Option 3 broadly reflect the full, efficient cost of VCAT’s activities in providing those services.

As discussed in Section 8, Option 3 also reflects the application of policies designed to enhance and promote access to justice, most notably:

- a Standard Fee level that provides discounted fees for individuals and small business
- a Concession Fee level that provides automatic access to lower fees for health care card holders
- a decision to reduce fees for matters related to people’s homes.

The current statutory waiver arrangements continue to apply, permitting the waiver of fees for individuals on grounds of financial hardship.

Under Option 3 the total revenue for fees is expected to be approximately \$13.5 million per annum. The value of fees charged, but not subsequently remitted to funding bodies, is expected to be about \$9 million per annum (in 2014–15 dollars).<sup>5</sup>

### **Non-preferred option – Option 1 (variation on current arrangements)**

**Option 1** represents an adaptation of the current arrangements. Under Option 1, the structural reforms and policy considerations described in Section 6 are applied, and current cost-recovery levels are maintained. Option 1 has significant strengths in terms of the incentives it creates for VCAT users, equity considerations, and administrative efficiency. Of the options considered, Option 1 is the closest to the current arrangements in terms of the total fees VCAT would be expected to charge.

Generally, fees for individuals would be lower under Option 1 than in 2014–15, and in some cases, considerably lower. The current statutory waiver arrangements would also continue to apply, permitting the waiver of fees for individuals on grounds of financial hardship.

Under Option 1 there would be no increase in the total fees collected compared with 2014–15, with the value of fees charged, but not remitted to funding bodies, expected to be approximately \$8 million.

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<sup>5</sup> Except where otherwise specified, 2014–15 dollars have been used throughout this RIS because it is the last year for which full application volume data and financial data is available.

### **Non-preferred option – Option 2 (full cost recovery)**

**Option 2** sets fees at full cost recovery for all matters for which a fee may be lawfully charged. Consistent with the *Victorian Guide to Regulation*, fees in the full cost recovery option do not consider the nature of the services, and are not modified to account for broader policy considerations or the public and private benefits generated by VCAT. Accordingly, Option 2 does not provide discounted fees for individuals or health care card holders.

The current statutory waiver arrangements continue to apply, permitting the waiver of fees, for individuals on grounds of financial hardship and, where fees are currently prohibited by enabling legislation, no fees would apply.

Generally, under full cost recovery, fees would increase substantially with many increasing by over 100 per cent. The highest fee increases would be in the Human Rights Division (around 1425 per cent), small claims in the Civil Division (over 900 per cent), residential tenancy matters (over 360 per cent) and the Administrative Division (around 200 per cent).

Under Option 2 new fees would apply in a number of areas, most notably for first hearing days in all matters valued at over \$100,000. In smaller matters, the first hearing day fee is included in the application fee.

Under Option 2, however, the total revenue for fees is expected to be approximately \$51.9 million per annum. The value of fees charged, but not remitted to funding bodies, is expected to be about \$30 million per annum (in 2014–15 dollars). These figures assume that application volumes do not change, as a result of the increased costs of participation at VCAT or otherwise.

### **Determining the preferred option**

The three options have been scored against criteria designed to reflect the overall objectives in restructuring VCAT fees, and against a base case of no regulations and no fees being charged at all. Further details about the criteria, and how they are applied and measured, are provided in Section 7.

Table ES-1 summarises the strengths and weaknesses of the three options against the base case for each criterion. Scores range between -10 and 10.

**Table ES-1:** Assessment of options against base case of no regulation.

Criterion	Option 1 (adaptation of status quo)	Option 2 (full cost recovery)	Option 3 (preferred option)
<p><b>1. Supports VCAT's intended role</b></p> <p>Weighting: 30 per cent</p>	<p><b>Strengths:</b> Supports the use of informal dispute resolution; reduces risk of VCAT being used for matters more appropriately dealt with elsewhere.</p> <p><b>Weaknesses:</b> Imposition of moderate fees may undermine access to VCAT to some extent.</p>	<p><b>Strengths:</b> Likely to eliminate the risk of VCAT being used for matters more appropriately dealt with elsewhere.</p> <p><b>Weaknesses:</b> Imposition of high fees may significantly undermine VCAT's claim to being a 'low cost' jurisdiction.</p>	<p><b>Strengths:</b> Best supports informal dispute resolution; reduces risk of VCAT being used for matters more appropriately dealt with elsewhere.</p> <p><b>Weaknesses:</b> Imposition of moderate fees, and higher fees for some classes of users and for types of proceedings, may undermine access to VCAT to some extent.</p>
<b>Assessment</b>	<b>5</b>	<b>-7</b>	<b>7</b>
<p><b>2. Vertical Equity</b></p> <p>Weighting: 15 per cent</p>	<p><b>Strengths:</b> Some correlation between value of matter, capacity to pay and fees.</p> <p><b>Weaknesses:</b> Uses value of matter as an imperfect proxy for capacity to pay.</p>	<p><b>Weaknesses:</b> There is no consideration of capacity to pay.</p>	<p><b>Strengths:</b> Stronger correlation between value of matter, capacity to pay and fees.</p> <p><b>Weaknesses:</b> Uses value of matter as an imperfect proxy for capacity to pay.</p>
<b>Assessment</b>	<b>5</b>	<b>0</b>	<b>7</b>
<p><b>3. Horizontal Equity</b></p> <p>Weighting: 15 per cent</p>	<p><b>Strengths:</b> Fees set to reflect the use of services at the application stage and hearing stage.</p>	<p><b>Strengths:</b> Fees set to reflect activity costs; strong correlation between what users pay and the services they receive.</p>	<p><b>Strengths:</b> Fees set to substantially reflect activity costs; correlation between what users pay and the services they receive.</p>
<b>Assessment</b>	<b>5</b>	<b>10</b>	<b>7</b>
<p><b>4. Efficiency</b></p> <p>Weighting: 30 per cent</p>	<p><b>Strengths:</b> Reduced application volumes; reduced net cost to government.</p> <p><b>Weaknesses:</b> Increased administration costs; relatively slower dispute resolution.</p>	<p><b>Strengths:</b> Significantly reduced application volumes; significantly reduced net cost to government; very expeditious dispute resolution.</p> <p><b>Weaknesses:</b> Increased administration costs.</p>	<p><b>Strengths:</b> Reduced application volumes; reduced net cost to government; expeditious dispute resolution.</p> <p><b>Weaknesses:</b> Increased administration costs.</p>
<b>Assessment</b>	<b>5</b>	<b>10</b>	<b>7</b>
<p><b>5. Simplicity of structure</b></p> <p>Weighting: 10 per cent</p>	<p><b>Weaknesses:</b> Fee structure somewhat complex; difficult to explain in simplified form.</p>	<p><b>Weaknesses:</b> Highly complex fee structure; individual fees set to reflect cost structures with no smoothing.</p>	<p><b>Weaknesses:</b> Fee structure somewhat complex but amenable to simplified explanation.</p>
<b>Assessment</b>	<b>-5</b>	<b>-7</b>	<b>-5</b>
<b>Overall assessment</b>	<b>4.0</b>	<b>1.7</b>	<b>5.8</b>
<b>Effect on revenue</b>	<p>No change</p> <p>Total fee revenue: \$12 m</p> <p>Net fee revenue: \$8 m</p>	<p>Significant increase</p> <p>Total fee revenue: \$52 m</p> <p>Net fee revenue: \$30 m</p>	<p>Small increase</p> <p>Total fee revenue: \$13.5 m</p> <p>Net fee revenue: \$9 m</p>

## **The preferred option in detail**

Option 3 was assessed as the preferred option. A summary of the significant differences between Option 3 and the status quo are set out below.

### **Differential fee rates**

The most significant change to the status quo in the preferred option is the introduction of differential fees at three rates: Corporate, Standard and Concession.

The Corporate Fee would apply to larger corporations and government agencies. The Standard Fee, set at 70 per cent of the Corporate Fee, would apply to natural persons, small business and not-for-profit organisations. The Concession Fee will be accessible to holders of a Commonwealth health care card. The proposed concessional fees are significantly lower than the current fees, and each fee will be capped at a maximum of \$150 for 2016–17 and 11 fee units thereafter.

Importantly, the new Concession Fee will mean lower application costs for a significant number of VCAT users for whom fees are a significant barrier to justice. The current statutory waiver arrangements continue to apply, permitting the waiver of fees for individuals on grounds of financial hardship. Health care card holders will pay no fees for residential tenancy matters and no fees for civil claims with a value of \$10,000 or less.

### **First hearing day fee**

The preferred option unbundles the first hearing day fee from the application fee for higher-value matters, as well as matters that have no monetary value. This allows for lower application fees, which is particularly beneficial for users who are not required to pay a hearing day fee or those whose matters do not proceed to hearing.

This step supports equity, and is consistent with the Guidelines: only applicants whose matters proceed to hearing will be required to contribute to the costs of a hearing.

The hearing day fee structure has been redesigned to ensure there are financial incentives for the early settlement of proceedings including prior to hearing. This, in turn, incentivises the use of various forms of alternative dispute resolution.

Matters valued at up to \$10,000 and matters for which no application fee is payable are to be exempt from all hearing day fees. Matters between \$10,000 and \$100,000 will not attract a first hearing day fee.

### **Revised fee thresholds**

Some matters, such as under the ***Australian Consumer Law and Fair Trading Act 2012*** (ACLFTA), are subject to fees that vary with the value of the claim. Option 3 has recalibrated several of these thresholds to include more matters covered by the lower or lowest fee brackets. This is to ensure that the pursuit of lower-value civil claims remains economical.

### **Other changes**

In addition to revising VCAT's fee structure to promote efficiency and access to justice, the opportunity has been taken to consider the following issues related to VCAT's current fee structure:

- the complexity of VCAT's current fee advice to users, which cites about 130 enabling Acts with multiple entries for some of those Acts

- a community perception, evidenced during stakeholder consultation, that fees for some VCAT matters are too high for some groups of users and make it uneconomical for them to pursue small claims
- the criteria used to determine which matters are ‘complex’
- the poor alignment between VCAT costs and its current fee structure.

In the Proposed Regulations, the policy of not charging fees for proceedings that arise under certain Acts is continued, including, for example, applications under the ***Children, Youth and Families Act 2005***, the ***Mental Health Act 2014***, and the ***Racial and Religious Tolerance Act 2001***.

The current statutory waiver provisions set out in the VCAT Act are not affected by the Proposed Regulations. It is expected that VCAT will develop a revised waiver policy that works consistently with the proposed revisions to the structure of VCAT’s fees, to be introduced when the Proposed Regulations commence.

Section 8 provides considerably more detail about the preferred option, including how the fees were derived from the specific costs of dealing with matters.

### **Implementation, monitoring and evaluation**

The way the revised fee structure is presented to VCAT users will change substantially (see Attachment 1 for fee values and Attachment 2 for fees expressed as fee units). This will enable a better understanding of user fees, which will flow-on to more efficient administrative processes. Nevertheless, such a substantial change to the fee structure will result in some significant, but manageable, transition risks for VCAT.

Late in 2015, VCAT commenced transition planning, in anticipation of a possible change to the fee structure involving tiered Corporate, Standard and Concession fees, with different fees applying in different divisions. The quantum of fees will not be finalised until after the formal consultation period on the RIS has been completed.

Following implementation in July 2016 the new fee regime will be monitored for a period of at least 18 months to ensure that any remaining or emerging implementation risks are addressed effectively.

Particular focus will be placed on the impact of changes such as the:

- introduction of first hearing day fees
- treatment of complex cases
- outcomes of the introduction of the three-tiered fee structure, the removal of fees for eligible concession fee payers for civil claims valued at less than \$10,000 and residential tenancy matters, and the operation of waiver arrangements.

Any emerging problems could be addressed through providing information to users, changing administrative practices and, if necessary, amendments to the regulations.

The fee structure introduced in 2016 will be independently evaluated after five years. Key Performance Indicators (KPIs) for the evaluation will be determined as part of the implementation stage, prior to new fees commencing in July 2016.

More details regarding implementation, monitoring and evaluation are set out in Section 9.



## Comparison of Proposed Regulations and Existing Regulations

Table ES-2 provides a comparison of the preferred fee structure with the current fee structure for a selection of headline matters in each division. Comparisons of the current full VCAT fee structure with the proposed fees can be found in Attachment 3.

The Proposed Regulations are in Attachment 4.

**Table ES-2:** Comparison (for selected matters) of 2014–15 fees and the proposed fees in 2014–15 dollars.

Fees	2014-15 Fee	Corporate		Standard		Concession	
		Fee	% increase	Fee	% increase	Fee	% increase
<b>A: Administrative Division</b>							
<b>Application fees for planning and environment matters</b>							
<b>Matters for which application fees apply but no 1st hearing day fees apply</b>							
Change of conditions applications - irrespective of value	\$986.40	\$1,112.20	13%	\$778.50	-21%	\$150.00	-85%
VicSmart matters - irrespective of value	\$986.40	\$1,112.20	13%	\$778.50	-21%	\$150.00	-85%
Costs applications (no hearing day fees apply)	Nil	\$847.40	New fee	\$593.20	New fee	\$150.00	New fee
<b>Review of a planning decision (hearing day and site visit fees also apply)</b>							
Single dwellings irrespective of value	\$986.40	\$1,112.20	13%	\$778.50	-21%	\$150.00	-85%
	\$1,903.90	\$1,112.20	-42%	\$778.50	-59%	\$150.00	-92%
<b>Multiple dwelling or non-dwelling development valued at</b>							
≤\$1 million	\$986.40	\$1,244.60	26%	\$871.20	-12%	\$150.00	-85%
>\$1 million & ≤\$5 million	\$1,903.90	\$1,469.60	-23%	\$1,028.70	-46%	\$150.00	-92%
>\$5 million & ≤\$15 million	\$1,903.90	\$1,840.00	-3%	\$1,288.00	-32%	\$150.00	-92%
>\$15 million & ≤\$50 million	\$1,903.90	\$2,211.10	16%	\$1,547.80	-19%	\$150.00	-92%
>\$50 million or the value is not specified	\$1,903.90	\$2,581.80	36%	\$1,807.30	-5%	\$150.00	-92%
Lodging a statement of grounds	Nil	\$72.80	New fee	\$51.00	New fee	\$25.50	New fee
<b>Application fees for matters other than planning and environment matters</b>							
Administrative Review	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%
Legal Practice disciplinary matters	Nil <sup>1</sup>	\$1,112.20	New fee	\$778.50	New fee	\$150.00	New fee
<b>B: Civil Division</b>							
<b>Civil Division matters</b>							
<b>Matters for which application fees apply but no 1st hearing day fees apply</b>							
Claims with a monetary value up to and including \$3,000	\$55.60	\$83.40	50%	\$58.40	5%	\$0.00	-100%
(claims valued between \$500 and \$3,000)	\$158.59	\$83.40	-47%	\$58.40	-63%	\$0.00	-100%
Claims valued over \$3,000 up to and including \$10,000	\$158.90	\$242.30	52%	\$169.60	7%	\$0.00	-100%
Claims over \$10,000 up to and including \$100,00	\$525.60	\$622.30	18%	\$435.60	-17%	\$150.00	-71%
Additional fee to hear a matter as an injunction	Nil	\$278.00		\$194.60		\$97.30	
<b>The following claims attract a 1st hearing day fee if a hearing is required</b>							
Claims over \$100,000 up to and including \$500,000	\$986.40	\$1,019.50	3%	\$713.70	-28%	\$150.00	-85%
Claims over \$500,000 up to and including \$1 million	\$986.40	\$1,390.20	41%	\$973.10	-1%	\$150.00	-85%
Claims over \$1 million up to and including \$5 million	\$1,903.80	\$1,760.90	-8%	\$1,232.60	-35%	\$150.00	-92%
Claims of more than \$5 million or the value is not specified	\$1,903.80	\$2,131.60	12%	\$1,492.10	-22%	\$150.00	-92%
Claims with no monetary value or the value is nil	\$525.60	\$622.30	18%	\$435.60	-17%	\$150.00	-71%
Real property - co-ownership matters	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%
<b>C: Human Rights Division</b>							
<b>Application Fees</b>							
Exemption from the Equal Opportunity Act 2010	\$55.60	\$847.40	1424%	\$593.20	967%	\$150.00	170%
<b>D: Residential Tenancies Division</b>							
<b>Application Fees</b>							
For matters with a value between \$1 and \$10,000	\$55.60	\$83.40	50%	\$58.40	5%	\$0.00	-100%
<b>E: Hearing Day Fees</b>							
<b>For matters other than Major Cases and Complex Matters</b>							
Day 1 except for matters valued between \$1 and \$100,000	N/A	\$458.10	New fee	\$320.70	New fee	\$150.00	New fee
Days 2-4	\$389.30	\$458.10	18%	\$320.70	-18%	\$150.00	-61%
Days 5-9	\$651.40	\$917.50	41%	\$642.30	-1%	\$150.00	-77%
Day 10 and subsequent days	\$1,087.00	\$1,377.00	27%	\$963.90	-11%	\$150.00	-86%

<sup>1</sup> Legislation taking effect in July 2015 removed the prohibition on charging fees for these matters. Fees were introduced in 2015-16.

Note: Percentages in highlight denote fees where there has been no increase or there is a decrease in fees

Source: Process modelling

## Questions

The RIS invites specific response to the following matters that distinguish the proposed fee structure from the current fee structure. These matters are discussed in more detail in the following sections.

### **1. Whether the move towards a divisional fee structure as opposed to a list-based fee structure is desirable?**

The proposed regulations have been drafted in such a way that they can be broken-up and explained to users on a division-by-division basis. A divisional fee structure with four fee tables is being proposed because it enables fees to be differentiated on the basis of cost without introducing different fees for similar matters of the same value. Alternatively, a list-based fee structure, with nine fee tables, would more accurately reflect the cost of dealing with matters. The implications of a list-based fee structure are discussed in greater detail in section 6, below.

Readers are asked to comment on whether a list-based fee structure could be expected to result in 'list shopping' and, to what extent. Particularly in cases where, for example, the fee for dealing with a matter of a specified value may be lower in the Civil Claims List than in the Building and Property List, thereby encouraging applicants to lodge in the former rather than the latter. VCAT contends that list shopping increases its costs and would result in delays in dealing with matters that had been lodged in an inappropriate list.

### **2. Whether the current small claims threshold of \$10,000 should be increased?**

The formal definition of a small claim is one valued at \$10,000 or less.<sup>6</sup> This definition has not changed for over 20 years, whereas the purchasing power of \$10,000 over that 20-year period has decreased substantially. The question is whether the lower fee for small claims should be applied to matters valued at up to \$15,000 or even \$25,000? This fee change could be achieved through regulations even though the definition of small claims would not change in the ACLFTA. An increase in the threshold and the wider application of the lower fee would also mean greater use of the more streamlined dispute resolution mechanisms currently used for small claims, which do not involve as much case management.

### **3. Whether the proposed definition and threshold for establishing which parties should pay the Corporate Fee are reasonable and workable?**

Given the objectives of promoting equity, access to justice, and adopting a fee schedule that is easy to understand the proposed adoption of the \$200,000 turnover figure for small business is of particular interest.

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<sup>6</sup> ACLFTA, section 183.

The \$200,000 threshold is used in other jurisdictions such as New South Wales, and the Australian Bureau of Statistics (ABS) has existing data on the number of businesses in this category. The threshold is only relevant to incorporated business and associations, including bodies corporate, because sole traders and partnerships are treated as individuals for the purposes of taxation and VCAT fees. Business turnover rates are regularly calculated in Business Activity Statements completed for taxation purposes, and the level of proof required by VCAT would be a statutory declaration to this effect.

The introduction of a Corporate Fee also recognises that VCAT fees are tax deductible for business applicants but they are only tax deductible for individuals if the matter relates to how the individual earns his or her income.

#### **4. Whether the proposed way of identifying complex cases is considered to be more reasonable than the current arrangements?**

Currently, if more than one member is required to hear a matter, and if the hearing is expected to last two or more days, it is regarded as a complex matter and higher hearing day fees apply after the first hearing day.

Under the proposed regulations, the Principal Registrar of VCAT will need to form an opinion as to whether a matter is a complex case. The decision will be made with regard to the following criteria. The matter:

- relates to an occupational licence or professional registration including disciplinary matters<sup>7</sup>
- has a large number of witnesses listed to give evidence, which requires listing over two or more days
- requires expert witnesses to give evidence
- there are three or more parties to the proceeding, including any parties that have joined the proceeding after lodgement
- has a substantial amount of documentary evidence
- requires a VCAT panel to hear the matter
- requires one of VCAT's presidential officers to hear the matter.

As discussed in Section 6 of the RIS, consideration has been given to charging a higher application fee at lodgement if the application meets one or more of the specified criteria. Alternatively, a gap fee could be charged if the matter was recognised as complex at a later stage, and the applicant would be invoiced for the gap fee at that stage. Under such an approach the matter would be stayed until the gap fee was paid. This approach has not been taken, for a number of practical and policy reasons.

Instead, it is proposed that higher hearing day fees apply to complex cases (as defined above) for all hearing days including the first hearing day.

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<sup>7</sup> The *Legal Profession Uniform Law Applications Act 2014* took effect in July 2015 and, as a result, there is no statutory prohibition on charging fees for legal practice disciplinary matters and a fee was introduced for such matters in 2015–16.

## **5. Whether a fee for submitting a Statement of Grounds for third party objections to planning applications should be introduced?**

In response to the significant increase in the volume of Statements of Grounds<sup>8</sup> being received by VCAT from third party objectors<sup>9</sup> in planning matters, a new fee is proposed for submitting a Statement of Grounds. The fee will only apply to third party objectors who wish to become parties to the matter. Such submissions increase VCAT costs by increasing the matters in dispute, and the length and number of hearings including mediations and formal hearings. As a result, these submissions can also increase the number of hearing days and therefore increase the costs for applicants. Readers are asked to address the following issues.

- Taking into account the costs outlined in Section 5 that cover registry, member and corporate overheads, which costs should be recovered by fees for submitting a Statement of Grounds?
- Specifically, whether it is appropriate to provide concessions for this fee given the relatively low fee being proposed as the Corporate Fee (\$72.80) and, in this context, whether charging a flat fee of \$72.80 (without discounts for individuals and health care card holders) would deter genuine objectors from submitting a Statement of Grounds?

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<sup>8</sup> A Statement of Grounds amends an application by the third party seeking to appear and present a submission on a planning matter, or simply requests that their views be considered. The statement must set out the grounds on which the third party objects to a development proposal. The applicant must serve the statement on both the applicant and the respondent in the matter.

<sup>9</sup> Third party objectors are objectors who are neither the applicant nor the respondent in a matter.

## 1. Background

The Victorian Civil and Administrative Tribunal (VCAT) was established by the *Victorian Civil and Administrative Tribunal Act 1998* (the VCAT Act) to provide Victorians with a “low cost, accessible, efficient and independent Tribunal delivering high-quality dispute resolution of civil disputes”<sup>10</sup> and other non-criminal matters.

### The scope of matters dealt with at VCAT

VCAT’s jurisdiction has increased considerably since it was established in 1998. In 2014–15 VCAT received 86,474 applications covering a wide range of matters including the protection of individual rights, commercial and private transactions, and decisions of government affecting individuals and others. Such disputes generally fall into three categories.

Protection of rights:

- applications related to administration and guardianship orders
- matters related to human rights and equal opportunity
- discrimination.

Disputes about goods and services relating to:

- purchase and supply of goods
- discrimination in the supply of goods and services
- domestic building works
- disability services, health and privacy, mental health
- legal profession services
- owners corporations (body corporate)
- residential tenancies
- retail tenancies.

Disputes between people and government (both state and local) regarding:

- land valuation
- registration or licences to carry-on businesses (including health professionals, travel agents, motor car traders and others)
- planning and environment
- other government decisions such as Transport Accident Commission (TAC) decisions and Freedom of Information (Fol) decisions.

Applications to VCAT come from all community sectors, and relate to a wide variety of social, economic and environmental interests.

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<sup>10</sup> Pizer, J. 2012. Annotated VCAT Act (4<sup>th</sup> ed). Page 1 See also VCAT’s Service Charter. Low cost in this context means at a low cost to the user. In other places in this RIS low cost is used to mean the relative cost to VCAT of providing services to resolve a type of matter.

## VCAT divisions and lists

VCAT's workload is dealt with through its four divisions: the Administrative Division, the Civil Division, the Human Rights Division and the Residential Tenancies Division. There are nine lists across these divisions. The lists group particular types of cases together for administrative purposes and to allow the development and application of particular expertise within each division.

VCAT lists can be distinguished by the type of matter being dealt with. List titles describe the primary type of matter dealt in the list. Divisions and lists are organised as follows.

### Administrative Division

- Legal Practice List
- Planning and Environment List
- Review and Regulation List

### Civil Division

- Building and Property List
- Civil Claims List
- Owners Corporations List

### Human Rights Division

- Guardianship and Administration List
- Human Rights List

### Residential Tenancies Division

- Residential Tenancies List

Further detail on the matters handled by each List can be found in VCAT's Annual Report (see <https://www.vcat.vic.gov.au/resources/document/annual-report-201415>).

## VCAT fees

Fees are charged for dealing with matters brought to VCAT in accordance with section 161 of the VCAT Act and are set out in the Victorian Civil and Administrative Tribunal (Fees) Regulations 2013 (the Existing Regulations). The Existing Regulations expire on 30 June 2016.

In the absence of new regulations no fees could be charged after 30 June 2016 for matters brought to VCAT. If no fees were charged it is likely that VCAT would be inundated with work, much of which could be more appropriately dealt with through other mechanisms. For the purposes of discussion in this regulatory impact statement (RIS), it is assumed that current funding levels would be maintained. Therefore, any significant increase in applications would need to be met through productivity measures, including the introduction of new case handling processes, and would lead to delays in finalising matters. There is also a risk that the number of frivolous or vexatious applications would increase.

In order to support effective and efficient VCAT operations it is proposed to replace VCAT's fee regulations.

The Proposed Regulations set out in Attachment 4 of this RIS would establish fees payable by users of VCAT services from 1 July 2016. The Proposed Regulations will have a lifespan of 10 years.<sup>11</sup> Given that VCAT fees can be regarded as imposing an economic burden on the community, under the provisions of the *Subordinate Legislation Act 1994*, a RIS must be prepared and released for public consultation prior to the regulations being replaced.

Generally VCAT fees are set by VCAT's fee regulations. There are some exceptions:

- Fees for guardianship matters and those related to administration orders are set in accordance with section 58A(1) of the *Guardianship and Administration Act 1986* (the Guardianship Act), which allows VCAT to collect one type of fee only – for annual fees that are paid in respect of estates subject to an administration order. Therefore, no fees can be applied to applications or reviews related to guardianship and administration orders.
- There are a number of statutory provisions preventing VCAT from charging fees for some matters, for example, applications related to bonds under Part 10 of the *Residential Tenancies Act 1997*.

## Fees and VCAT's role in civil justice

Tribunals, as distinct from courts, are generally established to provide expeditious and relatively informal resolution of civil matters that cannot be resolved through mutual agreement between the parties or are still in dispute following review by an ombudsman and/or complaint-handling bodies.

In Victoria, VCAT is the lowest level of dispute resolution available to civil litigants where binding decisions can be issued.

Fees are relevant to the role of VCAT in Victoria's civil justice system to the extent that they encourage optimum use of VCAT. No fees or very low fees may encourage use of VCAT rather than an ombudsman or other complaint-handling bodies. If fees are too high it may encourage use of the courts, which are more costly to fund.

In Victoria, there are a number of complaint- and dispute-handling bodies that should be the first port-of-call for those with a grievance including:

- the ombudsman who can investigate complaints related to government departments
- the Legal Services Commissioner who can consider complaints about the behaviour of legal professionals
- the Freedom of Information Commissioner who can consider complaints about how government departments handle freedom of information requests
- various occupational licensing and professional registration bodies who can consider complaints about service providers
- the Dispute Settlement Centre of Victoria (DSCV), which is a free dispute resolution service funded by the Victorian Government.

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<sup>11</sup> Section 5 of the *Subordinate Legislation Act 1994* causes all regulations to sunset on the 10th anniversary of the date on which they come into effect, unless they are repealed as a result of some other regulatory provision.

Applicants wanting to avoid the cost of legal representation may favour lodging their matters with VCAT rather than a court, as VCAT generally encourages self-representation and makes efforts to ensure that proceedings are relatively informal. The Productivity Commission has found that the average cost of a matter coming to VCAT is substantially less than for taking a matter to a court.<sup>12</sup>

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<sup>12</sup> *Access to Justice*, Productivity Commission, 2014.



## 2. Principles

Victoria's *Cost Recovery Guidelines*<sup>13</sup> have guided the review of VCAT fees. The guidelines were applied to the review and used to develop two sets of guiding principles – for costing and fee-setting.

### Costing principles

The purpose of the costing principles has been to identify the full cost of VCAT's activities for each of the VCAT lists and, thereby, identify the appropriate cost base for setting fees. These principles also support transparency in VCAT's cost structure.

#### **1. The full costs of delivering VCAT services are to be identified including direct and indirect costs**

Indirect costs include the following:

- The cost of VCAT's judicial members, being the president and vice-presidents. The costs associated with the judicial members are part of the cost to government of providing VCAT services and need to be accounted for
- Overhead costs that are not associated with salary costs such as training and information technology costs
- Corporate costs including the costs of VCAT's CEO, and office and corporate services such as human resources (HR) and finance
- Rental costs and other similar costs that apply specifically to VCAT
- VCAT's share of the costs of Court Services Victoria (CSV) services.

Costs are to be excluded only where there is no cost to government for the relevant goods or services. Any excluded costs are to be separately identified (see Section 5.5).

#### **2. Corporate and overhead costs are to be allocated to lists**

To the extent that it is possible, corporate costs are to be allocated to the list that incurs the costs.

Remaining costs are to be allocated on a pro rata workload<sup>14</sup> basis (as determined by the activity-costing methodology because workload is the best measure of the relative resource usage of the lists), unless the costs relate specifically to certain types of matters, when they would be allocated on a per matter basis.

#### **3. Costs are to be based on actual 2014–15 expenses and case-throughput**

This is the last full financial year for which financial and workload data is available.

#### **4. The fee structure is to reflect efficient VCAT operations**

The cost of the efficient processes or systems is to be reflected in the fee structure.

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<sup>13</sup> Department of Treasury & Finance, January 2013.

<sup>14</sup> For an explanation of workload see the Glossary and Section 5.

## **5. VCAT activities are to be modelled to determine costs of types of applications or types of claims within a list<sup>15</sup>**

This is to identify the different cost structures of different types of dispute resolution mechanisms, and different types or classes of claims that are made within a list.

## **Fee-setting principles**

The following fee-setting principles have guided the development of the fees framework in this RIS.

### **1. The fee structure is to reflect the role of VCAT in Victoria's civil justice system**

VCAT was established to deal with the majority of civil and administrative matters in Victoria, using dispute resolution mechanisms with as little legal formality as possible, providing expeditious and inexpensive resolution of matters.

Fees should encourage optimal use of VCAT relative to less formal dispute-handling mechanisms and the courts. In economic terms the fees should support allocative efficiency.<sup>16</sup>

### **2. Access to justice is to be safeguarded**

See further discussion below.

### **3. Fees are to be applied equitably**

Fees may be regarded as equitable if those who benefit from a VCAT service pay for that service and are not subsidising the cost of services they do not use.

Fees may also be regarded as equitable if those with proportionately greater means pay more than those with lesser means.

These views are also relevant to ensuring access to justice is safeguarded (Principle 2).

### **4. The fee structure is to support and enable efficient VCAT operations**

Fees should encourage the use of the lowest cost but most effective dispute resolution mechanisms available within VCAT.

The fee structure should be sufficiently streamlined so as to support efficient administrative processes.

In economic terms the fees should support productive efficiency.<sup>17</sup>

### **5. Fees should be consistent with government policy objectives**

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<sup>15</sup> VCAT lists are the lowest organisational unit within VCAT. Lists are the most disaggregated unit for performance reporting. As indicated in Section 1, lists group particular types of cases together for administrative purposes. Lists are therefore the most appropriate unit to use for analysing application and costing information.

<sup>16</sup> Allocative efficiency occurs when goods and services are used at their optimum level. Allocative efficiency cannot be achieved if productive efficiency is poor (see the following footnote).

<sup>17</sup> Productive efficiency is defined as producing goods and services for the lowest cost. Productive efficiency can exist without allocative efficiency.

Victoria's *Cost Recovery Guidelines* require that full cost recovery is to be pursued unless there are explicit policies or practical reasons for not pursuing it, and cross-subsidisation is to be avoided.

An assumption of full cost recovery is to be made where high levels of private benefit relative to public benefit are associated with the resolution of matters, and where higher levels of economic, social or environmental risk are associated with the type of matter.

An assumption of full cost recovery is to be made where services are optional and users exercise a choice in requesting the service.

No fees are to be charged where there is a legislated or policy basis for not charging fees, for example, where matters relate to the protection of human rights and the protection of the rights of people who are unable to look after their own interests.

### **Access to justice**

Access to a fair and impartial justice system is a fundamental tenet of the rule of law. The concept of access to justice figures prominently in all discussions of court and tribunal fees. A well-functioning justice system should provide timely and affordable justice. This means delivering fair and equitable outcomes as efficiently as possible, and resolving disputes early, expeditiously and at the most appropriate level.

The Productivity Commission in its report on *Access to Justice* released in September 2014 used the term "access to justice" to mean, "making it easier for people to resolve their disputes".<sup>18</sup>

The following considerations have been taken into account in supporting access to justice in the course of the fees review.

- The level of fees is a consideration where access would be limited or denied for a significant number of potential VCAT users if the cost was prohibitive or at least so great as to be a major disincentive, particularly when VCAT is the most appropriate body to deal with the matter.

Nevertheless, the VCAT fee is only one component of the cost to users when bringing a matter to VCAT. Other costs such as the need to take time off work, arrange for childcare or other care, and travel to and from VCAT may be more significant considerations for some users.<sup>19</sup> For litigants who chose to retain legal representation, the cost is likely to be much higher again.

- Similarly, over-use of VCAT services, perhaps in preference to more informal dispute-settling mechanisms, potentially creates delays in dealing with matters and thereby effectively limits access to other users.

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<sup>18</sup> *Access to Justice*, Productivity Commission, 2014, page 3.

<sup>19</sup> *Access to Justice*, Productivity Commission, 2014, page 117: a small business applicant with a civil dispute valued at \$5,000 (for which a fee of \$158.90 was payable in 2014–15) may face additional costs of around \$1,000 in staff time and attending hearings.

- VCAT has in place an Alternative Dispute Resolution (ADR) program comprising mediation and compulsory conferencing. This program has been successful in resolving matters without recourse to a formal hearing, and in narrowing-down issues in disputes, thereby lowering the need for multi-day hearings. When properly derived fees result in lower fees for the most cost-effective mechanism for resolving matters, and result in expeditious dispute resolution, access to justice is supported.
- The availability of fee waivers and other fee relief arrangements also supports access. Section 132 of the VCAT Act provides for VCAT’s Principal Registrar to waive fees if the payment of the fee would cause the person responsible for its payment financial hardship. No regulations are required for fee waivers on these grounds.
- No fees are charged for a range of matters where the interests of highly disadvantaged individuals or human rights are involved. Matters where no fees are charged are determined by existing enabling legislation or by government policy.<sup>20</sup>

## Applying the principles

The costing principles and fee-setting principles underpin the development of options set out in this RIS. By nature, there is some tension between these principles. This means that decisions must be made about how, and the extent to which, the application of one principle (for example, access to justice) will be pursued in favour of another (for example, efficiency).

In practice, a balance is to be found between the competing principles. This balance reflects the intent of the *Cost Recovery Guidelines* – that users of government services are mindful of the costs associated with providing those services. The extent to which fees are charged means that the cost of government services are, to a greater or lesser extent, borne by the taxpayer.

Charging fees for VCAT services is a mechanism that will assist users in selecting the most appropriate service for their needs. It also ensures that, where appropriate, users bear some of the cost of those services, to the extent they are able. The existence of fee waiver arrangements means that individuals experiencing financial hardship can still access VCAT services when necessary.

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<sup>20</sup> For example, no fees are charged for applications for Guardianship Orders because the *Guardianship and Administration Act 1986* prohibits the charging of such fees. No fees are charged for matters under the *Powers of Attorney Act 2014* by virtue of government policy because, like guardianship and administration orders, the matters before VCAT relate to safeguarding the interests of persons who are unable to look after their own interests.

### 3. Funding arrangements

This section of the RIS sets out VCAT's current funding arrangements based on financial information for 2014–15.

In July 2014 CSV came into effect. CSV is an independent statutory authority established to provide the administrative services and facilities necessary for the Victorian courts and VCAT to operate independently of the direction of the executive branch of government. The Victorian courts and VCAT are funded by the government through CSV. There are no separate funding arrangements set out in the state budget specifically for VCAT.

VCAT also receives revenue from external funding sources. In 2014–15 the total cost of providing VCAT was \$51.896 million. Table 1 provides a summary of VCAT's 2014–15 funding and expense allocations.<sup>21</sup>

**Table 1: VCAT revenue and expenses 2014–15.**

FUNDING	2014-15 \$m		
<b>Court Services Victoria</b>			
Special Appropriations			
VCAT Member costs	14.691		
Judicial costs - Supreme Court and County Court	1.535		
General Appropriations	6.025		
Application and Hearing Day fees available to VCAT			
Civil Claims List	1.674		
Planning and Environment List	5.512		
Other Lists	0.707		
<b>Sub-total</b>	<b>30.144</b>		
<b>External funding sources</b>			
Domestic Building Fund	3.258		
Guardianship and Administration Fund	2.002		
Health Boards and Racing Authorities	0.533		
Legal Services Board	1.484		
Office of the Small Business Commissioner	0.350		
Residential Tenancies Fund	12.242		
Victorian Property Fund	1.761		
Other	0.122		
<b>Sub-total</b>	<b>21.752</b>		
<b>Total funding</b>	<b>51.896</b>		
EXPENDITURE	2014-15 \$m	VCAT Expenditure allocated to Lists	2014-15 \$m
<b>VCAT operational expenditure</b>			
Salaries to staff	10.908	Building and Property	4.604
Salaries to full-time members	9.935	Civil Claims	5.960
Sessional members	8.314	Guardianship	7.081
Salary related on-costs	6.387	Human Rights	1.333
Operating costs	12.445	Legal practice	2.446
Indirect Costs	3.907	Owners Corporation	1.910
<b>TOTAL</b>	<b>51.896</b>	Planning & Environment	12.034
		Residential Tenancies	13.647
		Review and Regulation	2.882
		<b>Total</b>	<b>51.896</b>
Note: General Appropriations include a productivity dividend of \$0.704 million, paid by CSV, and recovered from VCAT. The productivity dividend is charged annually on government funded bodies and VCAT's share is determined by CSV. It was paid out of fees charged on VCAT.		Note: Residential Tenancies List expenditure includes one-off project costs funded from carry over from 2013-14. These costs have not been used for the purposes of setting fees.	

Source: Annual Report 2014-15, CSV, VCAT

<sup>21</sup> As discussed in Section 5, VCAT's funding and expense allocations reflect VCAT budgetary arrangements rather than actual workload, which varies marginally from the budgetary allocations.

The government meets the full cost of VCAT, other than the costs that are funded by external bodies. In 2014–15 the portion of the costs of VCAT met by the government totalled \$30.144 million.

VCAT receives funding from a range of external bodies, primarily Trust Funds and regulatory bodies. In 2014–15 the portion of the costs of VCAT met by external bodies totalled \$21.752 million

Funding received from external bodies is targeted to meet the costs associated with specific matters. These matters include:

- residential tenancy matters funded by the Residential Tenancies Fund
- domestic building contract disputes funded by the Domestic Building Fund
- owners corporation matters funded by the Victorian Property Fund
- retail tenancy matters funded by the Small Business Commissioner
- legal practice matters funded by the Legal Services Board
- health practitioner registration matters funded by the Australian Health Professions Regulation Authority (APHRA)
- builder registration matters funded by the Victorian Building Authority
- racing industry licensing matters funded by Racing Victoria
- guardianship and administration matters funded by the Guardianship and Administration Fund, but in this case the fund only meets part of the costs of these matters.

## VCAT Fees

In 2014–15 VCAT charged fees totalling \$12.037 million. Of this amount, \$4.143 million related to matters covered by external funding agencies. Those funds were remitted to the funding source or otherwise offset against the funding due to VCAT from the relevant source. The remaining \$7.894 million related to the cost of matters funded by the government. Amounts equivalent to these fees were appropriated to CSV.

## 4. The nature of the problem

Replacing the VCAT fee regulations is considered necessary to safeguard VCAT's ability to meet its statutory responsibilities effectively and efficiently. In the absence of fee regulations VCAT could not legally charge fees from July 2016 onwards.

If no fees were charged it is highly likely that VCAT would become the first port-of-call for the vast majority of civil disputes for which it has jurisdiction because its decisions are binding and the service would be free. Very large increases in applications could be expected, many of which could be more appropriately dealt with through other mechanisms, and some of which may be frivolous or vexatious. There would also be a significant increase in unmet demand, and in the time taken to finalise some matters.

A large increase in applications would effectively inhibit access to justice and undermine VCAT's role in Victoria's civil justice system. It would also undermine the role of other, less formal dispute-handling bodies such as DSCV.

Equity between VCAT users and the general community would diminish because VCAT users who gain substantial private benefits through accessing VCAT services would not be contributing to the costs of VCAT, which would substantially increase the burden on taxpayers.

If no fees were charged, the government would need to reconsider how best to manage demand in order to safeguard access to justice.

It is government policy that fees apply to matters at VCAT. This policy is reflected in Victoria's *Cost Recovery Guidelines*, which are designed to support efficiency and equity in the supply of government services by charging fees that have been robustly and transparently devised.

Requiring payment for VCAT services allows the government to send an important signal to the community about the costs involved in providing those services, and, when they generate private benefits, it ensures those who benefit from VCAT services help to pay for them.

Additionally, the Victorian Government's requirement for levied charges for VCAT services is consistent with other Australian governments. Charging fees for dealing with civil matters is the practice of all Australian states and territories.

### Secondary issues

The need to replace VCAT's fee regulations provides an opportunity to address a number of issues related to the design of the current fee structure. These issues include:

- the complexity of VCAT's current fee advice to users, which cites about 130 enabling Acts with multiple entries for some of those Acts
- the community concern that fees for small claims are inhibiting access to justice by making it uneconomical for individuals to pursue small claims
- the community perception that fees for some VCAT matters are too high for some groups of users
- the poor alignment between VCAT costs and its current fee structure.

## **The fee schedule is long and complicated**

VCAT's current fee regulations are complex, citing about 130 enabling Acts, with multiple entries for some of those Acts. The translation of the fee regulations into advice for users is a 10-page document that lists fees by division, list and enabling legislation.

Feedback from VCAT users is that the fees are complicated to understand and users have considerable difficulty working out the relevant piece of enabling legislation before they can lodge an application.

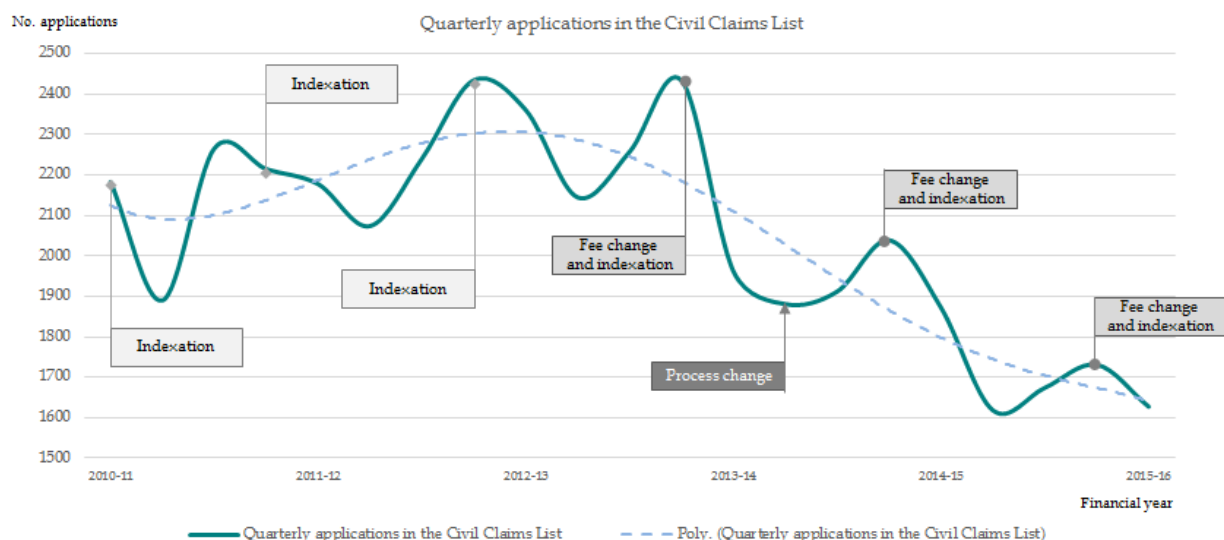
The regulations to be introduced in 2016 provide an opportunity to simplify the fee schedule and to improve the user-friendliness of the advice on fees.

## **The affordability of fees**

Following significant increases to fees in 2013–14 there was a downturn in some types of applications. A number of key stakeholders consider that VCAT is becoming unaffordable for applicants with small claims and for low-income earners who are not eligible for fee waivers.

VCAT fees increase annually in accordance with the annual indexation of fee units that applies to all government fees and charges. In addition, there have been three increases in fee units over-and-above indexation in June 2013 and July 2014 and 2015. Historical data demonstrates a consistent pattern of lower claim levels coinciding with over-and-above fee increases compared with fee increases due to annual indexation (Figure 1). There has been some speculation that the decrease in application volumes reflects the following effects:

- the impact of higher fees, because applications are very sensitive to price
- periodic downturns in consumer sentiment resulting in fewer consumer or trader claims after a lag period
- a process change introduced in early 2014 has had a downward impact on application volumes.



**Figure 1:** Impact of fee increases and other changes on VCAT application volumes in the Civil Claims List.

Figure 1 is consistent with application volumes being sensitive to price. It shows a pattern of lower application volumes over years when fee increases occurred, compared with the consistent pattern of growth over years when only indexation applied.



However, the data does not indicate that changes in application volumes are explained by changes in consumer sentiment, albeit with some timelag in effect. For example, there were historically average levels of consumer sentiment at the end of 2012 that should not have had an impact on application volumes when fees were increased in July 2013, and the high level of consumer sentiment in December 2013 should have been reflected in higher application volumes by July 2014 but this did not occur.

The process change introduced in early 2014 requires applicants to notify the respondent of the claim being lodged with VCAT. Previously VCAT served this notice. The notice is served by mail and therefore adds an additional step in the application process. The process change may have had a small impact but this was not apparent in application volumes, which behaved in accordance with previous seasonal variations. Application volumes also continued to decline well after the process change had taken effect so it is unlikely to explain the overall decrease in applications.

There may be other explanations for the continuing downturn in civil claims, however, the consistent pattern of lower claim levels related to fee increases lends support to the idea that application volumes are particularly sensitive to price, even if other factors are contributing to the variation. See also the discussion of the Civil Claims List in Section 5.

VCAT has also experienced a downturn in applications in some areas that cannot be explained by the increase in fees.

External events and changes to VCAT's jurisdiction have resulted in lower than historically anticipated applications across the Administrative Division, affecting the Planning and Environment List, the Legal Practice List and the Review and Regulation List. Analysis of related application data showed the following.

- The caretaker periods associated with general municipal council elections in October 2012 reduced the number of applications for planning matters in the latter part of 2012–13. This was a short-term impact and is no longer affecting application volumes.
- Changes to the responsibilities of municipal councils in relation to some planning matters reduced the number of applications for planning matters in 2013–14 and continues to do so. This change can be regarded as permanent with a steep decrease in application volumes at the time the new arrangements took effect. Since then, however, application volumes in the Planning and Environment List have increased.
- Changes to the way compensation applications to TAC are administered can also be considered permanent, which has reduced the number of such applications from 2013–14 onwards. Further downturn in these applications was anticipated in 2014–15 as the new arrangements became fully active.
- The establishment of a Freedom of Information Commissioner in late 2012 is another permanent change that has resulted in fewer FoI applications to VCAT since that time, and created a lower benchmark for such applications.

It should also be noted that new legislation covering legal practice matters that came into effect in July 2015:

- is expected to reduce the number of matters that need to be referred to VCAT because the authority of the Legal Services Commissioner has been expanded

- removed the restriction on charging fees for disciplinary matters considered by VCAT, which are subject to fees in accordance with VCAT’s fee regulations with effect from July 2015.

**The alignment between costs and fees**

Previously, the determination of VCAT’s fees has been based on a basic-level analysis of VCAT’s direct costs. The analysis did not take into account the other indirect costs borne by government.

The more robust costing methodology used in this RIS provides a mechanism for allocating costs for different types of matters on the basis of the actual workload involved in resolving them. It also takes into account the direct costs involved in providing VCAT and the indirect costs associated with VCAT’s operations that are met by the government.

Additionally, VCAT’s current fee structure has not changed markedly since VCAT was established in 1998.

The combination of these factors has resulted in a poor alignment between VCAT costs and fees in many areas. For example, Table 2 shows the disparity in cost-recovery levels in the Administrative Division.

**Table 2:** Varying cost recovery levels in the Administrative Division.

<b>Applications to change planning conditions</b>	
Direct cost (2014-15)	\$503.81
Full estimated cost (2014-15)	\$1,407.80
2014-15 fee	\$986.40
Level of cost recovery	70.1%
<b>Legal Practice disciplinary matters</b>	
Direct cost (2014-15)	\$2,773.60
Full Estimated cost (2014-15)	\$4,279.79
2014-15 fee	\$525.60
% cost recovery	12.3%

Replacing VCAT fee regulations provides an opportunity to reconsider the inclusion of rarely-used fee points. It also provides an opportunity to better understand how VCAT’s fees compare with its total costs, and to improve the alignment between them.

**Changing nature of applications**

A further problem arises from the retention of a fee structure that was established in 1998. VCAT’s dispute-resolution practices, and the nature and value of matters, have changed markedly over that time but the fee schedule has not been amended to account for these changes.

VCAT has increased the use of ADR in recent years. Currently, almost all matters in the Civil Division that have no monetary value<sup>22</sup> or are valued at \$100,000 or more are referred to mediation or compulsory conferencing in an effort to resolve the matter or narrow the dispute prior to hearing. ADR is a limited resource and it is applied to higher-value and complex cases only. In the Administrative Division it is generally used for major cases, complex planning cases and for some administrative review matters.

At present, the costs of ADR are poorly reflected in the application fees, resulting in:

- poor alignment between costs and fees
- fees nominally covering the costs of hearings that are unnecessary to resolve an increasingly significant number of applications.

In addition, VCAT's current fee schedule does not differentiate the value of claims over \$1 million but the number of such claims is growing annually. For example, in 2014–15 there were 467 planning matters valued at over \$1 million, with 81 of those being valued at over \$20 million. A separate fee for civil matters valued at over \$1 million was introduced in 2013. Prior to that the highest fees applied to matters valued at over \$100,000. Replacing VCAT's fee regulations provides an opportunity to revise fee thresholds and to introduce new and revised thresholds where the analysis indicates it is warranted and it is consistent with fee-setting guidelines. Further discussion of the relationship between costs and fees for higher-valued matters is in Section 6.

## Objectives

Replacing VCAT's fee regulations will offset the impending expiry of the Existing Regulations, resolve some of the issues outlined previously, and support:

- VCAT's role in Victoria's civil justice system
- access to justice
- equity between users
- efficiency through use of the lowest-cost but effective, dispute-resolution mechanisms, and in administrative arrangements
- simplicity of fees and fee structures so they are easier for users to understand and VCAT to administer.

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<sup>22</sup> There is a wide range of matters that go to VCAT that do not have a monetary value. Examples in the Civil Division are disputes related the rules of an owners corporation, or an injunction to stop a landlord changing the locks on premises subject to a retail lease. Examples in the Administrative Division are most of the administrative review decisions such as the review of a decision to refuse a Working With Children Check.

## 5. How VCAT’s activity was costed

The *Cost Recovery Guidelines* require fees to be set on the basis of efficient costs, which takes account of direct and indirect costs. If there are inefficiencies in current processes the costs arising from these inefficiencies need to be excluded from the costs on which fees are based.

The costing methodology enables costs to be allocated to activities using the guidelines for submissions to the Department of Treasury and Finance (DTF) for funding of new initiatives, with the exception that the allowance for overhead costs was excluded and actual VCAT overhead costs were included. The following steps were involved.

1. Determine the classes of matters for activity costing.
2. Estimate the direct costs for different classes of matter.
3. Determine and allocate indirect costs.
4. Finalise the classes of matters to be reflected in the fee schedule.
5. Estimate efficient costs.

The steps are explained in detail below, and illustrated with examples from the Civil Claims List and the Planning and Environment List to show how the methodology was applied. These two lists have been chosen for illustrative purposes because they represent the highest-volume list (Civil Claims List) and the highest-cost list (Planning and Environment List) that are not funded by trust funds or other external funding bodies.

### Costing methodology

#### **Step 1: Determining relevant classes of matters for activity costing**

Classes of matters for activity costing were initially determined using the current fee schedule so that the fees could be assessed for alignment with the actual costs of dealing with matters. This categorisation of matters was then tested with VCAT members, registrars, and administrative staff to determine if there were other categories of matters that were handled differently or needed different dispute-resolution approaches.

Table 3 sets out the categories of matters that were initially identified for costing purposes in the Civil Claims List (A) and the Planning and Environment List (B). The matters listed in italics in Table 3 are categories of matters identified for costing for which no lodgement fees are charged.

**Table 3:** Categorisation of Civil Claims List matters and Planning and Environment List matters.

A	B
<b>Civil Claims List</b>	<b>Planning and Environment List Applications</b>
<b>Categories of applications</b>	<b>Categories of applications</b>
1 Small claims - less than \$10,000	1 Planning & Environment Act applications
2 Claims between \$10,000 and \$99,999	2 Change of Condition Applications
3 Claims between \$100,000 and \$999,999	3 Standard cases
4 Transfers from MCV	4 Complex cases
5 Claims of no monetary value	5 Major Cases
6 Injunctions	6 Declarations
7 <i>Non-attendance reviews</i>	7 Enforcement
8 <i>Costs applications</i>	8 Vic Smart
	9 Land valuation related applications
	10 Environment Protection Act
	11 Water Act
	12 <i>Appeals from the Supreme Court</i>
	13 <i>Costs applications</i>
	14 <i>Lodging a statement of grounds</i>

## **Step 2: Estimating direct costs**

Process modelling was used as an activity-based costing method to identify tasks and group them as activities that are undertaken to manage and deal with applications from the point at which they are lodged with VCAT until the matter is finalised. A process model was developed for the Civil Claims List (Figure 2A) and the Planning and Environment List (Figure 2B). The model allocates time, and the costs of that time, to each activity. The average times used in modelling were based on data that was available or was estimated through discussion between the Senior Economic Analyst responsible for the modelling, VCAT members and registry staff. Times and cost calculations accounted for possible variations in the time taken to complete an activity, which is particularly relevant with hearing times, compulsory conferencing and mediations. Rules were used to determine the allocation of costs.

For example, listings for small claim hearings can vary between 30 and 120 minutes. After considering the volume of hearings listed for the possible hearing times, small-claim hearings were costed at an average of 45 minutes (Table 4A), and hearings for change of condition applications were costed at an average of 120 minutes (Table 4B)<sup>23</sup>.

**Table 4:** Finding average activity costs.

<b>A</b>			<b>B</b>		
<b>Small Claim Hearings</b>			<b>Change of Condition Application hearings</b>		
<b>Duration</b> (mins)	<b>Volume</b>	<b>Time taken</b> (mins)	<b>Duration</b> (mins)	<b>Volume</b>	<b>Time taken</b> (mins)
30	2661	79830	45	4	180
60	1910	114600	60	6	360
90	212	19080	90	33	2970
120	29	3480	120	69	8280
<b>Total</b>	4812	216990	180	28	5040
<b>Average</b>		45.1	<b>Total</b>	140	16830
			<b>Average</b>		120.2

Source: Process modelling

In calculating hearing times the following approach was taken.

- The duration in minutes reflects the time a matter was listed for and, consequently, how long a hearing room was booked for. The listing duration is determined by a member as an estimate of the time needed to resolve the matter. This information is held by VCAT in list diaries.
- The cost was calculated based on the period of time the hearing was listed for, and member and staff time required for the period. If the matter was not finalised in this time it would be listed for a further hearing and those costs have been taken into account in the costs for further hearing days (the second and subsequent hearing days).

<sup>23</sup> It should be noted that where outliers were encountered (the most significant of which was a legal practice matter that has had more than 30 hearing days and is continuing) they have been discounted from the average calculation. Some outliers were considered to be data errors. For example, for small claims in the Civil Claims List there were a small number of matters listed for a full-day hearing, which is contrary to listing practices. The full-day listings were treated as data errors or outliers and excluded from the analysis because they were inconsistent with VCAT practice, whereby small claim matters are listed for periods between 30 and 120 minutes (see Table 4).

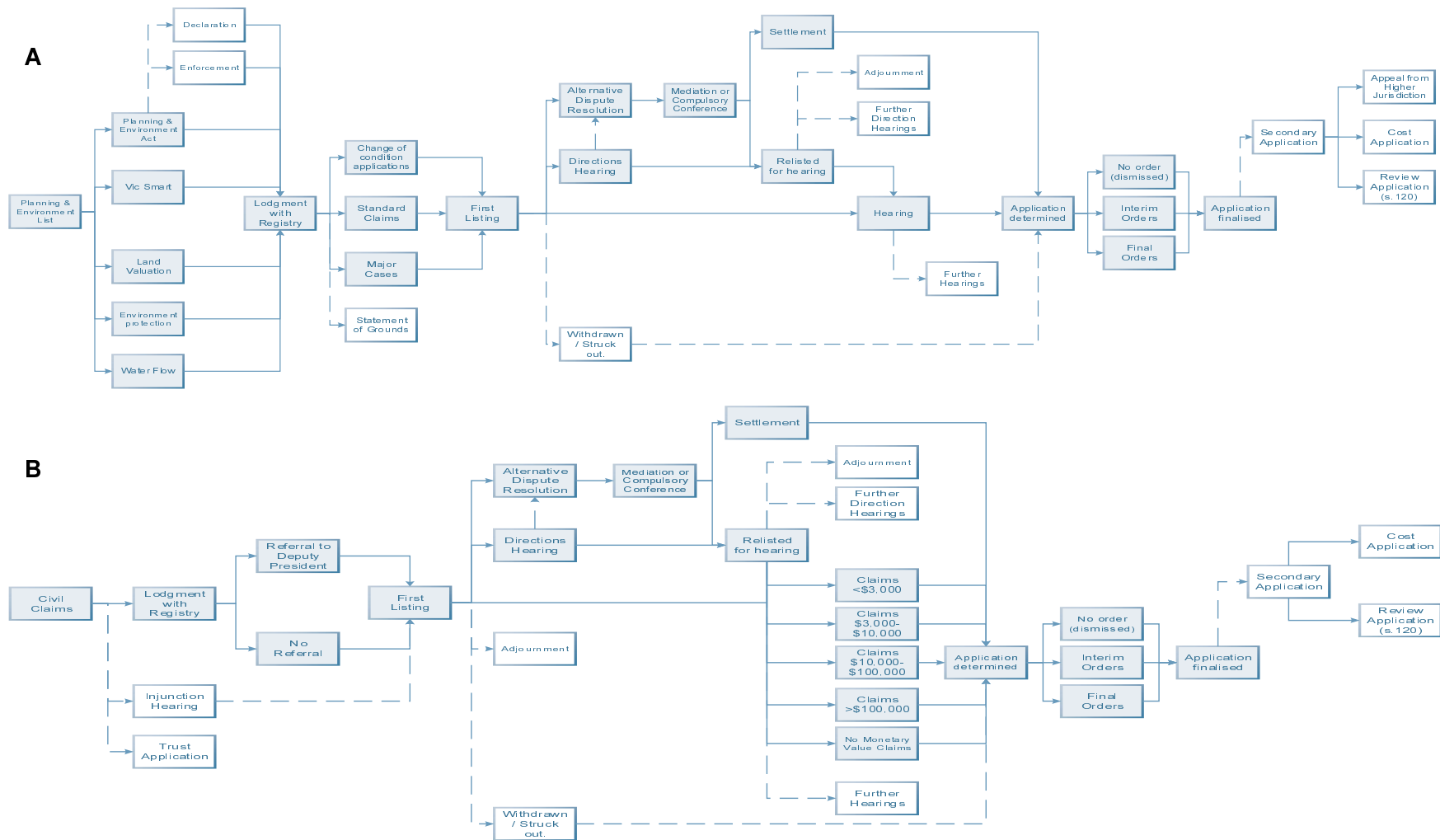


Figure 2: Process models for the Civil Claims List (A) and the Planning and Environment List (B).

- The mean was used in the calculation of time rather than the median or the mode because it better reflected actual resource usage. If the median or the mode were used small claim hearings would have been costed at an average of 30 minutes, thereby underestimating the costs of small claim hearings by 1403 hours.

The direct costs that were calculated include salaries and on-costs such as superannuation and annual leave. An average full-time equivalent (FTE) resource usage and related expenditure was determined for each step in the process, for each category of claim. By way of example, Table 5 shows groups of activities (groups of tasks), volumes and direct unit costs for small claim matters in the Civil Claims List (A) and Change of Condition Applications in the Planning and Environment List (B). The hearing costs in (A) and (B) reflect the average time allocated to those hearings, as set out in Table 4.

The direct unit costs, calculated as indicated in Table 5, are the weighted average costs for matters up to and including the first hearing day. One implication of this methodology is that all applications are regarded as having the same costs from the time of lodgement until the first hearing day has occurred. When applications are received there is generally no way of knowing if an application will be withdrawn, will settle early through mediation or will require a formal hearing day. The way these average costs have been used to set fees is further discussed in Section 6.

The current fee structure uses a single block application fee for all matters up to and including the first hearing day. This means that there is some inherent cross-subsidisation, with withdrawn matters and matters settling early effectively cross-subsidising those that require a formal hearing day. Further discussion of block fees is provided in Section 6.

**Table 5:** Examples of activity costs.

A			B		
Small Claims Activity	Volume	Direct Unit Cost	Change of Condition Applications Activity	Volume	Direct Unit Cost
1 Application Processing	5734	\$88.74	1 Application processing	149	\$82.02
2 Initial Listing	5679	\$4.34	2 Application withdrawn/struck out	8	\$6.29
4 Withdrawn or Dismissed	1068	\$17.19	3 Dismissed	1	\$30.96
5 Additional follow-up	1976	\$9.89	4 Registry processes matter	9	\$2.86
6 Screening for short mediation	782	\$15.47	5 Case Management Committee	140	\$1.76
7 Short mediation	610	\$99.58	6 Listed for hearing	140	\$4.19
8 Not settled at short mediation	214	\$6.71	7 Adjournments	101	\$58.85
9 Additional listings	386	\$14.67	8 Hearing	140	\$292.46
10 Directions hearings and Adjournments	472	\$126.41	9 Orders made	140	\$30.96
11 Hearings	4205	\$185.77	10 Customer Service	149	\$52.23
12 Orders made and processing them	4205	\$23.21	11 Other costs	149	\$19.66
13 Customer Service	5734	\$44.88	<b>Total</b>	<b>149</b>	<b>\$503.81</b>
<b>Total</b>	<b>5734</b>	<b>\$322.52</b>			

Source: Process modelling

The activity-costing methodology allowed activities and associated costs to be identified whenever a matter and its corresponding file was ‘touched’ by either a VCAT member or a registry staff member. In this step, no other activities are measured such as members conferring on matters or staff attending meetings or the cost of staff supervision, nor were indirect costs allocated at this stage.

### **Step 3: Determining and allocating indirect costs**

The *Cost Recovery Guidelines*<sup>24</sup> require direct and indirect costs to be taken into account when determining fees. Indirect costs have been allocated to lists using one of three allocation methods, depending on what drives the cost.

- Where the costs are clearly attributable to a specific list, for example, the use of judicial resources for hearing matters, they have been allocated on an actual-use basis.
- Where costs are shared costs and the sharing is driven by or reflects resource usage, they have been allocated on a workload basis, which reflects the activity-based costing outcomes of the fees review. In other words, at the list level indirect costs have been allocated proportionately to the list's share of direct costs.
- Where costs are shared costs and the sharing is driven by the volume of matters, they have been allocated on a per matter basis.

The preference for distribution on a workload basis is grounded in equity, i.e., that fees should reflect the costs of the activity rather than cross-subsidising other costs. The workload allocation recognises that a low-cost matter, generally one that could be resolved in a very short hearing, attracts a lower allocation of costs than a more costly matter that would generally need more case management. If the per matter method was used all costs would attract the same cost allocation.

A similar process can be used to allocate the indirect costs against the various types of matters heard in the list, which each being responsible for a portion of the indirect costs proportionally to the direct costs (excluding hearing day costs) that they impose. Even this methodology creates some potential anomalies in a small number of situations. For example, where particular types of matters are less resource intensive than the list average, the costs allocated will be higher than their actual contribution to resource use. Nonetheless, the government does not consider that this undermines the validity of the broad approach. Rather, in the small number of cases in which this produces seemingly anomalous results, a manual adjustment has been made to fees so they better reflect actual underlying costs.

Specifically, the indirect costs that have been identified and the way in which they were allocated to matters are as follows.

#### **1. The costs of VCAT's judicial officers**

VCAT's judicial officers undertake list-related work and have corporate governance responsibilities. The list-related work includes dealing with and hearing matters. VCAT's judicial officers typically hear matters where an applicant has requested a review (other than the non-attendance reviews referred to in Table 3), in highly complex and long running matters, or matters where, by statute, a judicial officer is required to hear it.

The list-related costs have been allocated to each list on an actual-use basis.

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<sup>24</sup> Victorian Department of Treasury & Finance, January 2013.



The estimated proportion of corporate governance costs have been allocated to lists on a workload basis, as determined by activity costing at Step 2. As a result, the allocation of judicial costs is not uniform across VCAT. For example, from a total cost of \$1.535 million, the share of 2014–15 judicial costs allocated was:

- \$380,000 to the relatively small Legal Practice List that handled 168 matters
- \$4,000 to the very large Residential Tenancies List that handled 59,184 matters.<sup>25</sup>

## **2. Costs related to the CEO's office**

The CEO's office includes the provision of corporate services for all lists and meets some list-specific costs. The following treatment of the CEO's office costs has been used.

- The costs of one-off projects such as the introduction of online application lodgement have been excluded.
- Some costs such as the fees for executing warrants have been allocated to the list that incurred the cost, in this case, the Residential Tenancies List.
- Other costs have been allocated to lists on a list-workload basis, where the workload has been determined for each type of matter by the activity costing in Step 2 rather than the number of matters in the list.

## **3. Other costs**

Other costs of VCAT borne by the government include rent, depreciation costs and the costs of using Magistrates' Court venues in regional areas. These costs have also been allocated using a mixed methodology.

- Magistrates' Court costs have been allocated on a per matter basis to the Residential Tenancies List, the Civil Claims List and the Guardianship List only.
- Other costs have been allocated on a workload basis, as determined by the activity costs at Step 2.

The inclusion of the costs of VCAT's judicial officers and other costs borne by the government increases VCAT's cost basis when compared to figures provided in the 2012 RIS (that preceded the making of the Existing Regulations).

Some costs were not identified and therefore no allowance has been made for:

- the cost of capital because this cost is no longer charged to individual agencies
- third-party costs, such as the costs of a hearing room in a hospital, if VCAT is not charged for the service.

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<sup>25</sup> It should be noted that the costs of these judicial officers are not otherwise reflected in fees for the Supreme Court or the County Court. Additionally, these corporate governance costs are only for judicial officers, corporate governance costs related to VCAT Members are allocated in accordance with Step 5.

#### **Step 4: Finalising the classes of matters**

Process modelling helped to identify and cost matters, and finalise the categories in each list.

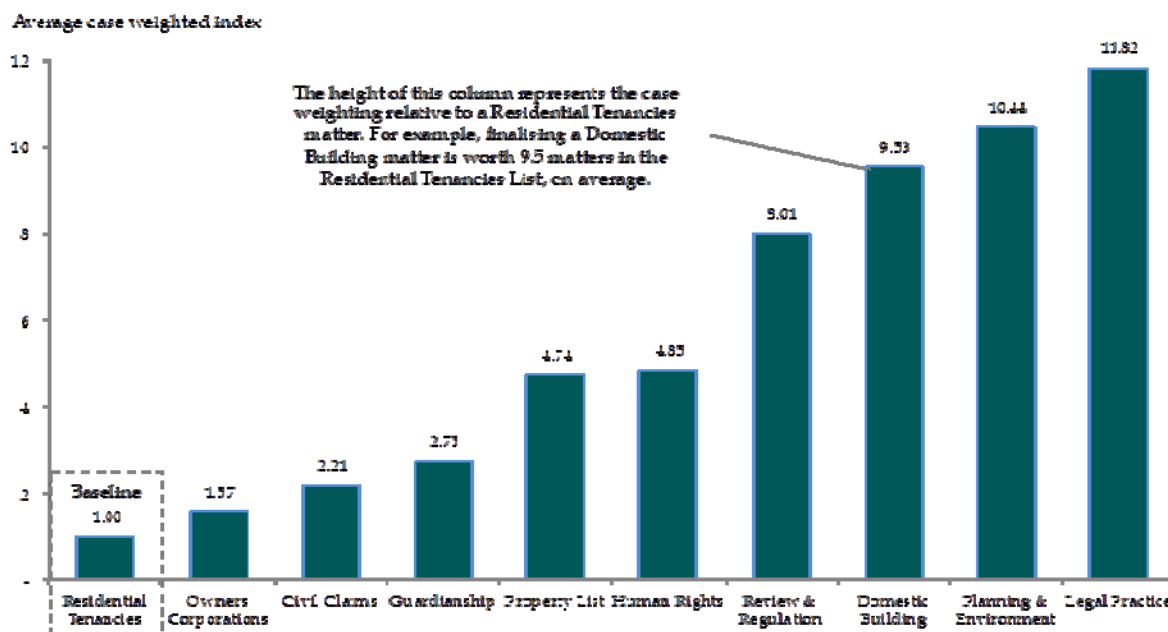
- Injunctions were identified as a type of matter that is handled differently because the urgency of these matters results in almost immediate listing. In the 2014–15 fee structure injunctions do not have a specific fee, although many of them are charged for as matters with no monetary value because, often, the immediacy of the situation prevents the exact value of the matter from being determined.
- Costs applications did not attract an application fee in 2014–15 because these are relatively new and arise from amendments to the VCAT Act since the last RIS was released. Instead, such applications were regarded as ‘post-hearing applications’ and an additional hearing day fee was charged if it proceeded to a hearing.
- Applications for non-attendance reviews occur when a respondent did not attend the initial hearing and exercises a right under section 120 of the VCAT Act to have the matter re-opened. The matter would have been determined *ex parte*. Previously, no application fee has been charged for re-opening matters in these circumstances but an additional hearing day fee was charged if the matter proceeded to a hearing. Such reviews require the matter to be considered *de novo*. Activity-based costing showed that the costs involved in these applications are significant but are typically less than the original hearing because the VCAT file already exists and a member can revisit the matter rather than repeat each activity. Nevertheless, it is possible that directions hearings or ADR participation may be required in reconsidering the matter.
- There are a small number of matters transferred between lists. The transfer activities and related costs were identified but were not allocated to any classes of matters. They are therefore not reflected in the costs of matters for which fees are charged. These costs were not allocated to lists because they were not material (for example, 39 matters from almost 7000<sup>26</sup> in the Civil Claims List were transferred to another list). They also represent a source of inefficiency and the related costs have therefore been excluded.
- The costs to VCAT from appeals in the Supreme Court were estimated for the Planning and Environment List. There was one such matter in 2014–15. This cost has been excluded from the total costs used to determine fees because it was not material. If the cost had been included it would add \$1.66 to each matter and would have no bearing on the number of fee units assigned.
- Lodging a Statement of Grounds<sup>27</sup> in planning matters has been identified as an activity that can be expected to cost VCAT around \$625,000 per annum. Given the large volume of such matters, a relatively small fee would defray this cost.

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<sup>26</sup> In a list with total costs of \$4.733 million the total cost associated with administering the transfers was less than \$14,000, which amounts to less than 0.3 per cent of total costs. See Table 8.

<sup>27</sup> A Statement of Grounds amends an application by the third party seeking to appear and present a submission on a planning matter, or simply requests that their views be considered. The statement must set out the grounds on which the third party objects to a development proposal. The applicant must serve the statement on both the applicant and the respondent in the matter.

Costing the activities of each list enabled comparisons of cost structures across lists. This process showed different cost structures for different lists (Figure 3). Residential tenancy matters have the lowest cost structure and have been assigned a value of one for the purposes of comparison.



**Figure 3:** Relative costs of lists, using a residential tenancy matter as the baseline.

The values attributed to each of the lists in Figure 3 are measures of the workload that is typically required to resolve a matter. For example, the workload required in the Civil Claims List is 2.21 times that required in the Residential Tenancies List and, in the Planning and Environment List, 10.44 times the workload is required.

In interpreting the information in Figure 3 it is important to recall that the data relates to the workload of dealing with an average matter in each list, whereas, in fact, there is considerable variation within and between lists.

Figure 3 also indicates that lists in the same division tend to group together, although this grouping is not perfect given the costs of the domestic building component of the Building and Property List are significantly higher than that of other lists in the Civil Division (the Civil Claims List, the Property List that forms part of the Building and Property List, and the Owners Corporation List).

Further discussion of the inherent differences in the cost structure of VCAT lists, and the way this is reflected in the proposed fee schedule, is provided in Section 6.

### **Step 5: Estimating efficient costs**

The direct costs have been traced using process modelling for each list (as indicated in Step 1).

As noted in the discussion of Step 1, the activity-costing methodology allowed activities and associated costs to be identified whenever a matter and its corresponding file was ‘touched’ by either a VCAT member or a registry staff member. Other activities that were not measured included:

- members conferring on matters

- VCAT members (but not judicial officers – see Step 3) and staff undertaking corporate governance responsibilities, such as attending meetings and being members of Corporate Governance committees.
- staff attending meetings
- the cost of staff supervision.

To account for these costs 10 per cent has been added to the costs derived from process modelling. This is the estimate arising from a VCAT survey of the average time that members and VCAT's vice-presidents and deputy presidents spent on training and management activities in the period July 2011 to June 2014. In the worked examples below this is the 'CMA' column, being the allowance for corporate management and other requirements.

The aggregated data was validated by reference to resource availability (numbers of members and staff) to ensure that the number of members and staff used in the modelling process, together with the CMA adjustment, was consistent with the actual resources available to VCAT. This verification step could only be achieved when modelling was complete.

The other significant adjustment made to costs was a 33 per cent reduction in customer service costs, which reflected a recent review of customer service that identified inefficiencies in service provision and ways of improving services. Specifically, costs arising from multiple call points (effectively a small call centre for each division), and practices resulting in several user calls to address queries, have increased the overall costs of customer service substantially. The reduction was incorporated into the activity costs at Step 2 rather than being applied as a separate calculation.

In relation to corporate costs and costs for centralised activities, no adjustment has been applied in consideration of whether these costs are efficient. They are, therefore, considered current actual costs.

## VCAT list costs

To provide examples of the cost analysis performed for each of VCAT's lists a more detailed discussion of the costs related to the Civil Claims List and the Planning and Environment List follows. The examples provided here indicate how VCAT's budget is allocated to lists and how the activities of those lists relate to the budget. All amounts are for 2014–15.

### **Civil Claims List**

With some restrictions, VCAT can hear and determine a cause of action that arises under any provision of ACLFTA. The Civil Claims List also deals with matters related to six other Acts, some of which could be lodged with other lists in the Civil Division. The Civil Claims List receives around 8 per cent of all matters lodged with VCAT.

The nominal funding arrangements for the list are set out in Table 6. The allocations reflect VCAT's budgetary arrangements. They are regarded as 'nominal' for the purpose of this RIS because funding and expenses are allocated to VCAT's lists on a 'home list' basis, whereby member funding and costs are held against a home list for each member. In practice, VCAT members may frequently hear matters in several lists. The activity-costing methodology used for the fees review allocated costs to lists determined by the volume of matters dealt with rather than the member involved.

**Table 6:** Allocation of funding and expenses for the Civil Claims List.

Allocations	Amount \$m
<b>Revenue allocation</b>	
Special Appropriations	
VCAT Members	2.433
Judicial Officers	0.043
General Appropriations*	0.545
Fees charged	1.674
<b>Total Revenue</b>	<b>4.695</b>
<b>Expenses allocation</b>	
Members payroll	2.356
VCAT staff payroll	1.905
Corporate Services	1.386
Indirect costs	0.313
<b>Total Expenses</b>	<b>5.960</b>
<b>Fees collected</b>	<b>1.674</b>
<b>Level of cost recovery 2014-15</b>	<b>28%</b>

\* Includes a productivity dividend of \$149,000

Source: VCAT financial data

For example, members on circuit will hear matters in the Residential Tenancies List, the Guardianship List and the Civil Claims List. If a Guardianship List member hears matters in a regional venue, small claims and residential tenancy matters will be added to the list and heard by the Guardianship List member. VCAT's budget allocates all the Guardianship List members to the Guardianship List, thereby attributing a proportion, albeit small, of Civil Claims List and Residential Tenancies List costs to the Guardianship List. This practice also applies when a Residential Tenancy or Civil Claims List member is on circuit.

For this reason VCAT's budget practices have not been used in estimating the cost of matters for the fees review. The costing methodology used for the fees review ensures that the resources required to deal with matters in a list are recognised in that list. This avoids the potential for incorporating cross-subsidies that would occur if budget allocations were used.

The nominal costs of running the Civil Claims List are set out in Table 6. The costs include direct costs, and a range of overhead and indirect costs including rent, depreciation, use of Magistrates' Court venues, and centralised corporate services. Indirect costs also include the judicial salaries of the VCAT president and two vice-presidents.

The fees charged in the Civil Claims List in 2014–15 are of the order of \$1.674 million. As a result the Civil Claims List is operating at a cost recovery level of 28 per cent.

As discussed in Section 4, VCAT fees rose substantially across all types of matters in 2013–14. This coincided with an overall 15.3 per cent decrease in the number of claims in comparison to the small increases (in the order of three to five per cent) in prior years.

Analysis of case data shows that, while other factors may have been influential:

- the higher fee for claims with no monetary value is associated with a reduction in the number of these claims
- the number of claims for less than \$500, for which the fee remained low, was relatively steady

- matters valued at more than \$500 and less than \$3000 had a higher than average decrease in lodgement rates in 2013–14, suggesting that fewer applicants were willing to pay the increased fees for this range of small claims
- lodgements for matters valued between \$20,000 and \$50,000 decreased by more than 20 per cent, however, further analysis indicated that the 2013–14 lodgement rate was only 6.5 per cent lower than 2011–12, and an unusual 16 per cent increase in this category of claims in 2012-13 was responsible for the anomaly
- there appears to be strong growth in claims over \$100,000 but a small dataset makes these comparisons unreliable.

A summary of the number of initiations, related costs and fees for matters handled in the Civil Claims List is shown in Table 7. The costs information covers costs up to and including the first hearing day because fees are currently charged on this basis.

Table 7 also demonstrates the mis-alignment between costs and fees. As the last column of this table shows there is a highly variable relationship between fees and costs with 2014–15 application fees representing between 11 and 44 per cent of estimated full costs.

**Table 7:** Types of matters and related costs in the Civil Claims List.

Type of matter	Number	Direct Costs		Full Estimated Costs		Fees <sup>1</sup>	
		Total	Unit Costs	Total	Unit Costs	\$	As a % of full unit costs
<b>Claims</b>							
Small claims - less than \$10,000	5,734	\$ 1,849,356	\$ 322.52	\$ 3,212,385	\$ 560.23	\$55.60 or \$158.90	9.9% or 28.4%
Claims between \$10,000 and \$99,999	908	\$ 868,094	\$ 956.05	\$ 1,313,736	\$ 1,446.85	\$ 525.60	36.3%
Claims greater than \$100,000	69	\$ 115,127	\$ 1,668.51	\$ 153,838	\$ 2,229.53	\$ 986.40	44.2%
Claims of no monetary value	86	\$ 67,583	\$ 785.85	\$ 102,638	\$ 1,193.47	\$ 525.60	44.0%
Transfers from MCV	20	\$ 7,260	\$ 285.30	\$ 9,715	\$ 485.75	\$55.60 or \$158.90	11.4% or 32.7%
Injunctions	39	\$ 18,358	\$ 470.72	\$ 31,035	\$ 795.77	Variable according to value	
<b>Total claims<sup>2</sup></b>	<b>6,856</b>	<b>\$ 2,925,778</b>	<b>\$ 426.75</b>	<b>\$ 4,823,347</b>	<b>\$ 703.52</b>		
<b>Other applications &amp; matters</b>							
Transfers to other Lists	39	\$ 7,279	\$ 186.65	\$ 13,520	\$ 346.66	N/A	
Further hearing days <sup>3</sup>	680	\$ 176,209	\$ 259.15	\$ 193,830	\$ 285.06		
days 2-4						\$ 389.40	136.6%
days 5-9						\$ 651.40	228.5%
day 10 and subsequent days						\$ 1,087.00	381.3%
Review applications	494	\$ 135,346	\$ 273.98	\$ 238,168	\$ 482.12	\$0 or \$389.40	0% or 80.8%
Costs applications	10	\$ 2,511	\$ 251.15	\$ 4,457	\$ 445.72	\$0 or \$389.40	0% or 87.4%
<b>Total other applications and matters</b>	<b>8,118</b>	<b>\$ 321,346</b>		<b>\$ 449,975</b>			
<b>Total for all matters</b>	<b>14,974</b>	<b>\$ 3,247,125</b>		<b>\$ 4,732,863</b>	<b>\$ 686.42</b>	average for 6,895 matters	

1. The unit costs and fees include the first hearing day and ADR where used

2. VCAT's Annual Report 2014-15 indicates that 6,895 matters were dealt with in this List. 6,895 includes 39 transfers to other Lists, which are included here under other applications

3. Costs are average costs. The average is driven by the large number of small claim hearings, but range is from \$210 for a small claim, through \$431 for a matter valued between \$10,000 and \$100,000 and \$1,718 for matters valued over \$100,000.

Source: Process modelling

The cost estimates in Table 7 are derived from the process modelling for the Civil Claims List and, therefore, apply to groupings of matters. Where there is a high level of homogeneity in the way matters are dealt with, as is generally the case with small claims, average costs are a good reflection of actual costs.

Where large claims (matters valued at greater than \$100,000) are concerned costs can vary considerably. The average costs in Table 7 (\$2230) include a 23-minute directions hearing, a 3-hour 15-minute mediation or compulsory conference, and a six-hour hearing. The actual costs for larger matters (say, over \$500,000) will be closer to \$2980 if the matter involves two directions hearings and two half-day mediations or compulsory conferences. See Section 6 for a discussion of how this variation is reflected in the proposed fees.

Additionally, at the aggregated level, it appears that further hearing day fees are over-recovering average costs. It should be noted, however, that the average cost of further hearing days is driven by the relatively large number of short further hearing times associated with small claims, which average only 60 minutes for a further hearing. For larger matters that have a further hearing day of six hours, the costs are closer to \$1500 per day. Given the cost disparity, there is currently a Principal Registrar Direction in place that reduces the daily hearing fee for small matters to zero. It is proposed to formalise this practice through a provision in the Proposed Regulations, which are the subject of this RIS.

Table 8 provides the activity costing data, showing the component of costs to be recovered through the proposed application fee. Table 8 demonstrates how full estimated costs have been estimated for the purposes of determining the proposed application fees.

The direct costs are the costs identified through process modelling. They comprise salary costs – the costs of members and staff – and their on-costs as described in Step 2 above. The hearing related costs have been excluded to provide the full direct costs related to the application fee only. The estimated full costs include the indirect costs as determined by Step 3 of the methodology, including applying a reduced cost to the actual cost of customer service to reflect efficient costs.

**Table 8:** Civil Division efficient costs calculations.

Civil Division: Full Costs calculation							
Steps 1 and 4 Claim Category	Volume	Step 2 Full direct cost		Step 3		Step 5	Total Efficient Unit Costs for Appl'n Fee
		Including 1st hearing day	Excluding first hearing day <sup>1</sup>	VCAT Corporate Costs <sup>2</sup>	Indirect costs <sup>2</sup>	CMA allowance	
Small claims - less than \$10,000	5734	\$322.52	\$322.52	\$160.12	\$45.34	\$32.25	\$560.23
Claims between \$10,000 and \$99,999	908	\$956.05	\$702.64	\$348.82	\$45.34	\$70.26	\$1,167.07
Claims greater than \$100,000	69	\$1,668.51	\$704.71	\$349.85	\$45.34	\$70.47	\$1,170.37
Claims of no monetary value	86	\$785.85	\$570.39	\$283.17	\$45.34	\$57.04	\$955.93
Transfers from MCV	20	\$285.30	\$285.30	\$141.00	\$45.34	\$28.53	\$500.18
Injunctions	39	\$470.72	\$470.72	\$232.63	\$45.34	\$47.07	\$795.77
Costs applications	10	\$251.15	\$251.15	\$124.12	\$45.34	\$25.11	\$445.72
Review applications	494	\$273.98	\$273.98	\$135.40	\$45.34	\$27.40	\$482.12

1. Except for matters that go direct to hearing, which are highlighted, where the full cost up to and including the first hearing day is being recovered from application fees.

2. VCAT corporate costs include the costs of the CEO's office and other costs such as IT, communications, training and development and some rent costs. Indirect costs include costs met by CSV (such as some rent, financial, HR and IT services), but not judicial costs.

Source: Process modelling

## Planning and Environment List

The Planning and Environment List handles matters related to 24 Acts of Parliament including the development, use or valuation of land, planning permits issued by local councils, gaming premises approvals, water and Environment Protection Authority (EPA) licensing and approvals, Aboriginal heritage, the valuation of land for rating purposes, and compensation arising from the compulsory acquisition of land.

In 2014–15, 95.5 per cent of applications were made under the *Planning and Environment Act 1987* (Planning and Environment Act) and related to development permits that had been considered by local government authorities. The second-largest category of applications related to land valuations but these represented only 3.5 per cent of applications. By and large, the Planning and Environment List exercises a review jurisdiction, in that it reviews the decisions of primary decision makers rather than making original decisions.

The Planning and Environment List is supported by a mixture of funding sources as indicated in Table 9.

**Table 9:** Allocation of funding and expenses to the Planning and Environment List in 2014–15.

Allocations	Amount \$m
<b>Revenue allocation</b>	
Special appropriations	
VCAT Members	6.889
Judicial Officers	0.071
General Appropriations*	0.808
Fees Charged	5.512
<b>Total Revenue</b>	<b>13.280</b>
<b>Expenses allocation</b>	
Members payroll	6.381
VCAT staff payroll	2.458
Corporate Services	2.619
Indirect costs	0.576
<b>Total Expenses</b>	<b>12.034</b>
<b>Fees collected</b>	<b>5.512</b>
<b>Level of cost recovery 2014-15</b>	<b>46%</b>

\* Includes a productivity dividend of \$492,000

Source: VCAT financial data

Funding is primarily by way of special appropriations amounting to \$6.960 million and general appropriations totalling \$6.320 million, which covers the full costs of VCAT's judicial officers and members. The expenses, which are also outlined in Table 9, include direct costs paid by VCAT and indirect costs that cover a range of corporate services such as rent, depreciation, centrally-provided corporate services, and the judicial salaries of the VCAT president and two vice-presidents. The Planning and Environment List is operating at a cost-recovery level of 46 per cent of total costs.

Table 10 provides a summary of the number of initiations, related costs and fees for matters handled in the list. The costs information covers costs up to and including the first hearing day because fees are currently charged on this basis.



**Table 10: Cost and related fees for Planning and Environment List matters.**

Type of matter	Number	Direct Costs		Full Estimated Costs		Fees <sup>1</sup>	
		Total	Unit Costs	Total	Unit Costs	\$	As a % of full unit costs
<b>Claims</b>							
Environment and Planning Act							
Change of condition applications	149	\$ 75,068	\$ 503.81	\$ 209,762	\$ 1,407.80	\$ 986.40	70.1%
Enforcement	81	\$ 270,353	\$ 3,337.69	\$ 354,370	\$ 4,374.94	\$ 986.40	22.5%
Declarations	62	\$ 206,937	\$ 3,337.69	\$ 271,246	\$ 4,374.94	\$ 986.40	22.5%
Standard cases	1847	\$ 4,917,119	\$ 2,662.22	\$ 7,057,450	\$ 3,821.03	\$ 986.40	25.8%
						\$ 1,903.90	49.8%
Major Cases <sup>2</sup>	225	\$ 583,726	\$ 2,594.34	\$ 929,693	\$ 4,131.97	\$ 3,442.40	83.3%
						\$6,851.70	165.8%
VicSmart applications <sup>3</sup>	7	\$ 6,517	\$ 931.01	\$ 16,957	\$ 2,422.45	\$ 986.40	40.7%
Complex cases	242	\$ 718,668	\$ 2,969.70	\$ 1,136,649	\$ 4,696.90	\$ 986.40	21.0%
						\$ 1,903.90	40.5%
Environment Protection Act	11	\$ 37,441	\$ 3,403.74	\$ 48,237	\$ 4,385.15	\$ 986.40	22.5%
Land valuation applications	104	\$ 364,874	\$ 3,508.41	\$ 480,840	\$ 4,623.47	\$ 986.40	21.3%
						\$ 1,903.90	41.2%
Water Act	1	\$ 3,404	\$ 3,403.74	\$ 4,385	\$ 4,385.15	\$ 525.60	12.0%
<b>Total claims</b>	<b>2,729</b>	<b>\$ 7,184,107</b>	<b>\$ 2,632.51</b>	<b>\$ 10,509,590</b>	<b>\$ 3,851.08</b>		
<b>Other applications &amp; matters</b>							
Further hearing days <sup>4</sup>	659	\$ 640,381	\$ 972.25	\$ 1,120,666	\$ 1,701.43		
days 2-4						\$ 389.30	22.9%
days 5-9						\$ 651.40	38.3%
day 10 and subsequent days						\$ 1,087.00	63.9%
Appeals from the Supreme Court	1	\$ 1,592	\$ 1,591.95	\$ 3,922.23	\$ 3,922.23	\$ -	0.0%
Costs applications <sup>5</sup>	1	\$ 350	\$ 349.91	\$ 1,042.27	\$ 1,042.27	\$0 or \$389.40	0% or 33.6%
<b>Total other applications and matters</b>	<b>661</b>	<b>\$ 642,323</b>		<b>\$ 1,125,631</b>			
<b>Total for all matters</b>		<b>\$ 7,826,429</b>	<b>\$ 2,867.87</b>	<b>\$ 11,635,221</b>	<b>\$ 4,263.55</b>	<b>average for 2,729 matters</b>	

<sup>1</sup> The unit costs and fees include the first hearing day and ADR where used

<sup>2</sup> Major cases applicants also pay a 1st hearing day fee if they proceed to a hearing, taking the total fee to \$6,851.70.

<sup>3</sup> The full costs for VicSmart matters incorporates a larger proportion of corporate costs compared with other matters (see Table 11 discussion). If the same methodology was used for allocating costs to VicSmart matters as other matters a higher level of cost recovery would be indicated.

<sup>4</sup> Higher fees apply to Major Cases and complex cases

<sup>5</sup> A hearing day fee applies if the matter goes to a hearing

Source: Process modelling

The costs identified through process modelling are direct costs and some overhead costs such as the cost of members and staff, and their on-costs.

Table 10 shows the unit costs of dealing with matters until they are satisfactorily resolved. The headline, average cost of addressing applications is \$3851.

Applicants for planning and environment matters may apply for entry to the Major Cases List, for which a separate, higher application fee and hearing day fees apply. Entry to the Major Cases List provides a streamlined service, and a guaranteed time of no more than 14 weeks from date of lodgement to commencement of final hearing. This facility will continue to apply under the new fees regime.

With the exception of major cases, the fee structure for the Planning and Environment List is built on the same fee structure as other VCAT lists but with fee thresholds for different fees above and below \$1 million only. For major cases, application and hearing day fees apply and, in 2014–15, there was a monetary threshold of \$10 million for an application involving a dwelling to be eligible to enter the list. Applications for entry to the Major Cases List are only otherwise eligible if they pertain to certain planning and environment matters.

A comparison between Table 7 and Table 10 shows that Planning and Environment List cost structures are significantly higher than those of the Civil Claims List. This suggests that linking Planning and Environment List fees with fees in the Civil Division does not necessarily result in a well-grounded fee structure. This is discussed further in Section 6.

Table 10 indicates that there is a highly variable relationship between fees and costs. Excluding major cases (see discussion below), the application fees varied between 12 per cent and 70 per cent of costs.

The majority of major cases now go to ADR and about 46 per cent settle at ADR. This has changed since fees were last set in 2013, at full cost recovery, with progressively more matters being referred to ADR. The ADR costs, and individual case management raise the unit cost of matters compared with standard Planning and Environment List matters. As a result, the fees now under-recover costs for those matters that settle at ADR and over-recover costs for those matters that go to a hearing. See Section 6 for a discussion of how this issue has been dealt with in the restructure of fees.

In complex cases, between 21 per cent and 40 per cent of costs, representing services up to and including the first hearing day, are being recovered through fees. At the point of application these matters are recognised as standard matters but when complexity is recognised they are re-classified. Currently, the additional costs of complex matters are recovered only by way of the differentiated hearing fees for second and subsequent hearing days, with applicants paying \$1723.90 per day in further hearing day fees. See Section 6 for a further discussion.

In 2015, legislative amendments to the Planning and Environment Act required VCAT (and municipal councils) to take into account the number of objections to planning matters when considering applications. Such objections are referred to as third-party objections, which are objections to developments from parties who are neither the applicant nor the respondent in a matter before VCAT. Third-party objectors are required to lodge a Statement of Grounds with VCAT.

Third-party objections result in additional costs in finalising applications including registry processes, the length of ADR sessions, the need for and length of site visits, hearing times (primarily because the applicant and the respondent must address objector concerns), and writing and processing orders (to ensure that all matters raised by objectors are addressed).

The process modelling based on advice from members and registry staff indicates that, at current rates, VCAT could reasonably expect to spend over \$625,000 per annum in dealing with third-party objection matters. This translates to a cost of \$72.80 per matter, comprising registry staff processing costs (\$11.78) and member time dealing with statements (\$29.82), as well as a default public sector overhead rate of 175 per cent.<sup>28</sup> In Table 11, which sets out the costs of how matters were dealt with in 2014–15, this cost is absorbed into the cost of standard cases, major cases and complex cases because the cost of processing Statements of Grounds were, then, an integral part of dealing with the matter at hand.

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<sup>28</sup> This cost allocation assumes that only about 10 per cent of third-party objectors will elect to become a party to the matter and, therefore, takes into account related time for extended hearing times, and consideration of issues in dispute and decision writing. The application of the default public sector overhead rate means that some costs such as overhead costs related to the provision of hearing rooms and public spaces at VCAT are not taken into account.

Table 11 provides the activity-costing data and shows the component of costs to be recovered through the proposed application fee. It demonstrates how full estimated costs have been calculated to determine the proposed application fees. Section 6 sets out the other considerations for setting fees using the total efficient costs shown in the final column of Table 11.

**Table 11: Planning and Environment List efficient cost calculations.**

Administrative Division: Full Costs calculation							
Steps 1 and 4 Claim Category	Volume	Step 2 Full direct cost		Step 3		Step 5	Total Efficient Unit Costs for Appl'n Fee
		Including 1st hearing day	Excluding first hearing day <sup>1</sup>	VCAT Corporate Costs <sup>2</sup>	Indirect costs <sup>2</sup>	CMA allowance	
<b>Planning and Environment Act</b>							
Change of condition applications	149	\$503.81	\$503.81	\$642.41	\$211.20	\$50.38	\$1,407.80
Enforcement	81	\$3,337.69	\$386.07	\$492.28	\$211.20	\$38.61	\$1,128.16
Declarations	62	\$3,337.69	\$386.07	\$492.28	\$211.20	\$38.61	\$1,128.16
Standard cases	1,847	\$2,662.22	\$534.39	\$681.40	\$211.20	\$53.44	\$1,480.42
Major Cases	225	\$2,594.34	\$836.80	\$1,067.00	\$211.20	\$83.68	\$2,198.67
VicSmart applications	7	\$931.01	\$931.01	\$1,187.13	\$211.20	\$93.10	\$2,422.45
Complex cases	242	\$2,969.70	\$956.03	\$1,219.03	\$211.20	\$95.60	\$2,481.85
Environment Protection Act	11	\$3,403.74	\$337.10	\$429.84	\$211.20	\$33.71	\$1,011.85
Land valuation applications	104	\$3,508.41	\$433.71	\$553.02	\$211.20	\$43.37	\$1,241.30
Water Act	1	\$3,403.74	\$337.10	\$429.84	\$211.20	\$33.71	\$1,011.85
Costs applications	1	\$349.91	\$349.91	\$446.17	\$211.20	\$34.99	\$1,042.27

1. Except for matters that go direct to hearing, which are highlighted, where the full cost up to and including the first hearing day is being recovered from application fees.

2. VCAT corporate costs include the costs of the CEO's office and other costs such as IT, communications, training and development and some rent costs. Indirect costs include costs met by CSV (such as some rent, financial, HR and IT services), but not judicial costs.

Source: Process modelling

Table 11 also sets out how indirect costs are allocated for the purpose of setting application fees. The Planning and Environment List includes a diverse mix of activities. Some of these, such as VicSmart, go straight to a short hearing and do not incur other processing costs. Other activities, including applications for major and complex cases, are more resource intensive, and generally involve case management activities such as practice day hearings, mediations and/or compulsory conferences.

As discussed above, however, the methodology used to allocate indirect costs means that VicSmart applications attract a similar allocation of indirect costs as major and complex cases, even though they are less resource intensive. However, because a different fee structure is applied (a single application fee, which includes hearing costs, rather than separate application and hearing day fees), the actual fee proposed for VicSmart matters will cover mainly the full direct costs of these applications, and a smaller proportion of the indirect costs.

## 6. Designing a new fee schedule

Currently VCAT fees are differentiated by class of matter, stage of proceedings (for example application fees and hearing day fees) and the type of ancillary service being provided. Following recent amendments of the VCAT Act,<sup>29</sup> it will also be possible to set differential fees that will apply to particular classes of party.

Prior to the release of this RIS and the formal consultation period associated with it, two preliminary rounds of consultations with major stakeholders were conducted in the latter part of 2014 and 2015, respectively, in order to inform the development of new regulations.

In designing the proposed fee structure the primary considerations were:

- applying Victoria's *Cost Recovery Guidelines*, other government policy and the fee-setting principles set out in Section 2.
- adjusting the structure of fees to address matters raised in Section 4.

The proposed fee structure seeks to improve access to justice and increase equity in fees while supporting efficient dispute resolution and administrative practice. This required policies and principles to be balanced by practical considerations to determine the preferred fee structure and the level of fees.

### Consultation

Through the initial consultation period in late 2014, VCAT sought to explore some matters that were proposed during formal consultation on the 2012 RIS (which preceded making of the Existing Regulations) but were unable to be acted on at that time. The main matters arising through these consultations were as follows.

- The introduction of a differentiated fee structure, where individuals and small businesses paid lower fees than corporate entities, was seen by many stakeholders as providing more equity and improving access to justice
- Complex cases need to be redefined to better reflect the factors that make a matter complex rather than relying on the definition in the fee regulations, which considers a case complex if the proceeding requires more than one member to hear the matter and is likely to take two or more days
- Determining the impact of the 2013–14 increase in fees on application volumes to assess price sensitivity.

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<sup>29</sup> Made by Part 7 of the *Justice Legislation Amendment Act 2015*.

Throughout the second consultation period in late 2015 VCAT sought feedback on options for the new fee structure. Following consultations these options were refined for inclusion in the RIS.<sup>30</sup> Some of the options included increasing fees to recover 100 per cent of VCAT costs, retaining the current fee structure and fee levels, introducing a three-tier fee structure with a Corporate Fee and reduced fees for individuals, small businesses and health care card holders, and introducing different fee schedules for VCAT's four divisions.

- There was a minority of stakeholders who felt that there should be no fees for accessing VCAT services
- Generally there was good support for introducing differentiated Corporate, Standard and Concession fees but some stakeholders considered that the Concession Fee was too high and would discourage some applications. Other stakeholders argued that a lower Standard Fee would encourage claims against service providers that are not warranted
- There was mixed support for a Concession Fee for residential tenancy matters because, currently, applicants in that list who possess a health care card automatically receive a fee waiver
- There was strong support for charging separate hearing fees for larger matters.

## Applying policy and principles

Considerations of policy and principles have contributed to shaping the proposed fees that are set out below. The source of these considerations is indicated in parentheses.

- The fee structure should be easy for users to understand and for VCAT to administer (*Cost Recovery Guidelines* and fee-setting principles)
- Fees related to residential matters including residential tenancy matters, and domestic building and planning matters for single dwellings should be relatively low, and no fees should be charged to health care card holders for residential tenancy matters (guidance from the Attorney-General)
- The historical practice of not charging fees where VCAT's protective jurisdiction is engaged should continue (enabling legislation and guidance from the Attorney-General)
- The level of fees has been driven by the costs associated with high-volume matters and high-cost matters (*Cost Recovery Guidelines*). In the proposed fee schedule, the working assumption has been that matters should be grouped with other matters of similar cost structure or similar content (practical consideration)
- The level of fees has been linked to the value of matters, where a monetary value is applicable, with lower fees proposed for matters of lower value and higher fees for matters of higher value. This strengthens equity and reflects the principles of 'willingness to pay' and 'ability to pay' (guidance from the Attorney-General with

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<sup>30</sup> It should be noted that fees charged in respect of annual fees for estates subject to Administration Orders under the *Guardianship and Administration Act 1986* will not be pursued at this time because those fee regulations do not expire until 2018. The government proposes to deal with these fees through a separate process where matters other than fees can also be taken into account.

respect to access to justice, *Cost Recovery Guidelines* (equity), and fee-setting principles)

- Waiver arrangements will continue as a safety net in circumstances where the payment of fees would cause financial hardship. Health care card holders lodging residential tenancy claims and small claims will pay no fees because these applicants have already been assessed as facing financial hardship (guidance from the Attorney-General with respect to access to justice, fee-setting principles).

### **Level of cost recovery**

The percentage of costs that is recovered through fees is generally referred to as the level of cost recovery. According to the *Cost Recovery Guidelines* an analysis of full costs is the mandatory starting point for developing a fee framework, and full cost recovery is the default pricing position. Full cost recovery is preferred because it promotes the efficient allocation of resources, is transparent, and avoids or reduces the need to rely on general taxation revenue.<sup>31</sup>

The *Cost Recovery Guidelines* also recognise that there are circumstances in which full cost recovery may not be possible or appropriate, for example, when full cost recovery is not practical or legal, or where charging the full cost could undermine other policy objectives. In relation to VCAT fees, such considerations include:

- promoting fairer and greater access to justice by taking account of the capacity to pay, and through mechanisms such as fee-reduction arrangements and waivers for individuals and low-income earners
- legislated provisions requiring that no fees be charged, as is the case for bond matters in the Residential Tenancies List
- matters related to the protection of human rights and the protection of the interests of people who are unable to look after their own interests
- ensuring fees are not a barrier to pursuing civil justice that would otherwise enable some unscrupulous traders to avoid accountability, especially where a consumer has little market power and no other means to redress a perceived problem.

### **Addressing existing issues**

In order to address some of the current problems related to its fee schedule a thorough revision of VCAT's fee structure has been undertaken. The primary changes reflected in the proposed fee schedules in Attachment 1 (showing dollar values) and Attachment 2 (showing fee units) are to:

- generally describe application fees in plain English rather than in terms of statute, making the fee schedule easier for users to understand

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<sup>31</sup> *Cost Recovery Guidelines*, State Government of Victoria, 2013, page 21.

- change some of the threshold values at which fees are charged including changing the \$500 threshold value to \$3000 so that the fee is not the sole determining factor for bringing small claims to VCAT, and counterbalance this with the introduction of some new high-value threshold points at \$500,000 and over \$1 million
- differentiate fees more by the type of matter to enable matters that are relatively low cost to attract relatively low fees, and higher-cost matters to attract higher fees, and align fee schedules with VCAT’s divisional structure to reflect the cost structure of different divisions
- introduce differential fees at three rates – Corporate (applying to corporate and government applicants), Standard (applying to small businesses and individuals) and Concession (for applicants holding a federal government health care card) to ensure fees are equitable
  - the Corporate Fee would be full cost, the Standard Fee would be 70 per cent of the Corporate Fee (business applicants with a turnover of less than \$200,000 in the previous financial year would be eligible to apply to pay the Standard Fee), the Concession Fee would be half the Standard Fee and would be capped at \$150 in 2016-17 and 11 fee units thereafter
- introduce a first hearing day fee for matters valued at \$100,000 or more and for matters that have no monetary value so that only those matters proceeding to a hearing would be required to pay a hearing day fee.

Further discussion of these matters is set out below.

### **Class of matter**

#### **Nomenclature**

VCAT’s fee schedule is based on the legislative power through which it has the jurisdiction to deal with matters. The fee schedule refers to about 130 enabling Acts and, separately, to many sections of those Acts.

In the guidance for users that will be developed from the proposed regulations, enabling legislation should only be referred to in order to identify matters for which no fee is payable. Otherwise, fees should be described by categories of matters, using plain English descriptors instead of the enabling legislation. For example, contractual matters related to domestic building works would not be referred to as matters under the *Domestic Building Contracts Act 1995* or matters under the ACLFTA but as matters involving disputes about domestic building works. This approach would make it easier for VCAT users to understand the fee schedule.

## Reflecting cost structures

Given the variability of cost structures across the lists (see Figure 2) it could be argued that each list should have its own fee schedule. This approach has been considered but will not proceed because it would result in nine different fee schedules, which would confuse users and encourage 'list shopping' and avoidance of higher fees. List shopping arises primarily because applicants are focused on the lowest fee rather than on which list is the most appropriate to hear the matter. A number of lists can hear matters under the provisions of the ACLFTA and many matters can be lodged in VCAT's Civil List even though they relate to more specialised issues. A fee structure with different fees for different lists may encourage some applicants to frame their application for a particular list, based on cost alone.

For example, list shopping could occur where a domestic building matter (nominally a matter under the *Domestic Building Contract Act 1995*) with a higher fee could legitimately be framed and lodged as a civil matter (under the ACLFTA) in the Civil Claims List. Domestic building matters are typically more costly than other civil claims because there are often multiple parties (the builder, the builder's client, the electrician, the plumber, the quantity surveyor etc), with parties often joining a matter after it has commenced. If different fees for different lists were pursued:

- users are likely to be confused
- users would be encouraged to frame their matters to avoid higher fees
- registry staff would need to closely scrutinise applications to minimise the risk of inappropriate lodgements
- applicants could seek to challenge VCAT about the appropriate list for lodging a matter
- matters are likely to be delayed if VCAT pursued a higher, but appropriate, fee and the applicant disagreed with VCAT's assessment of the matter.

To avoid this problem VCAT has historically adopted a VCAT-wide fee structure. Other, more resource-intensive measures could be taken to curtail list shopping such as requiring registry staff to determine the list in which a matter would be lodged. However, this would mean applications could not be completed online, which would increase costs, reduce efficiency and undermine VCAT's goal of increasing online lodgements to effectively streamline the end-to-end application process.

Alternatively, fees could be set for each division rather than for VCAT as a whole. In this scenario, higher fees would apply to higher-cost divisions and lower fees to lower-cost divisions. The analysis of VCAT costs indicates that the Administrative Division has a higher cost structure than the Civil Division, which has a higher cost structure than the Residential Tenancies Division (Figure 3).

Differentiating fees in this way would enable lower fees to be applied to a large number of small civil matters. This approach provides a more equitable basis for setting fees. 'Division shopping' is less likely than list shopping because lists dealing with similar matters are grouped together in a division. For example, the Civil Claims List and the Building and Property List are both lists in the Civil Division.



The anomaly noted in Section 5 regarding the higher cost structure of building matters in the Building and Property List reflects the cost of dealing with higher-value matters in that list, which attract higher fees, compared to the lower-value matters generally handled in other lists in the Civil Division, which do not require the same level of case management to resolve. Fees for complex matters in the Civil Division therefore reflect the costs of these matters in the Building and Property List.

The RIS invites comment on the move in favour of a divisional fee structure as opposed to a list-based fee structure. In particular, comments are sought on whether a list-based fee structure could be expected to increase list shopping where, for example, the fee for dealing with a matter of a specified value may be lower in the Civil List than it is in the Building and Property List.

#### **Revisions to classes of matter**

As discussed in Section 5, **injunctions** have been identified as a separate class of matter, with higher average cost structures than claims of similar value because their urgency displaces other matters and requires hearings to be arranged at short notice. These matters go straight to hearing without any other case management.

VCAT has proposed charging an additional fee for injunctions. If an injunction matter returns to VCAT after it is determined, a further hearing day fee would be applicable if a hearing is required.

All injunctions will be heard in the Civil Division, irrespective of the type of matter. This arrangement will help to keep fee schedules simple.

There are a small number of **administrative review** matters dealt with in the Human Rights Division and the Residential Tenancies Division. In future, all administrative review matters will be dealt with in the Administrative Division but they will be heard by the member best qualified to deal with the matter regardless of that member's 'home' list. For example, applications for exemption from the *Equal Opportunity Act 2010* will be listed in the Administrative Division but will be heard by a member whose home list is the Human Rights List. This arrangement will also help to keep fee schedules simple.

**Costs applications** and applications for the **review of matters under section 120 of the VCAT Act** (the applicant was not in attendance at the hearing where a matter was determined) currently attract a hearing day fee if the matter proceeds to a hearing but no application fee. The analysis of costs for these types of matters indicates that a separate, single fee would be more appropriate, and result in lower costs to the user if the matter proceeds to a hearing, with other applicants sharing the costs through the application fee.

A new category of matter, **Lodging a Statement of Grounds**, is to be introduced in the Administrative Division. VCAT is experiencing sharp growth in the number of Statement of Grounds being lodged. For example, one planning matter in 2014–15 attracted over 1300 Statements of Grounds. Almost all were on pre-printed forms, and over 100 indicated that the objector wanted to be considered a party to the proceedings. Additional costs arise when third-party objectors are involved in proceedings. To date the costs of dealing with such lodgements have been absorbed by the government as part of the cost of dealing with planning applications. A small fee for lodging a Statement of Grounds would be structured in the same way as other fees and would be designed to:

- optimise the use of VCAT services, and avoid frivolous or vexatious claims as is the practice in setting other fees

- ensure VCAT users contribute to the cost of the proceedings they choose to enter
- be based on estimated costs
- meet policy objectives by providing the same discounts for individuals and health care card holders, for the same reasons as applies to other fees<sup>32</sup>, even though fees are already low with the Corporate Fee set at \$72.80.

Readers of the RIS are invited to make submissions on the introduction of this fee and in doing so address the following issues.

- Taking account of the costs outlined above, which costs should be recovered by fees?
- Specifically, whether it is appropriate to provide concessions for this fee, given the relatively low cost of the proposed Corporate Fee (\$72.80)?
- Whether charging a flat fee at \$72.80 (without discounts for individuals and health care card holders) would deter genuine objectors from submitting a Statement of Grounds?

### **Complex cases**

The definition of a complex matter has also been revised. Currently, if more than one member is required to hear a matter, and the hearing is expected to last two or more days, it is regarded as a complex matter.

In 2015 Deloitte completed a cost-benefit analysis of ADR for VCAT. Issues related to complexity were reviewed because case complexity is considered important in determining whether ADR is likely to be beneficial in resolving a matter. The insights gained from the review, and from international jurisdictions, have been used in developing the criteria proposed for recognising a matter as a complex.

The National Center for State Courts in the United States defines complex matters as follows.

*Complex litigation is the category of cases requiring more intensive judicial management. Complexity may be determined by multiple parties, multiple attorneys, geographically dispersed plaintiffs and defendants, numerous expert witnesses, complex subject matter, complicated testimony concerning causation, procedural complexity, complex substantive law, extensive discovery, choice of law, requisites of a class-certification order, complex damage determinations, diversity, and res judicata implications for plaintiffs not within the proposed class. Mass torts and class actions are examples of two types of well-known complex actions.*<sup>33</sup>

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<sup>32</sup> Business applicants can claim tax deductibility for these fees so it is reasonable to provide a discount for individual applicants. In this context, for policy reasons, the government has decided to provide discounts for health care card holders as well so there is consistency in treatment across VCAT fees.

<sup>33</sup> See <http://www.ncsc.org/Topics/Civil/Complex--Litigation/Resource--Guide.aspx>

It is proposed that higher hearing day fees apply to complex cases for all hearing days, including the first. A complex case is defined as one that fulfils at least one of the following criteria:

- relates to an occupational licence or professional registration including disciplinary matters<sup>34</sup>
- has a large number of witnesses listed to give evidence, which requires listing over two days or more
- expert witnesses are to give evidence
- there are three or more parties to the proceeding, including any parties that have joined the proceeding after lodgement
- has a substantial amount of documentary evidence
- requires a VCAT panel to hear the matter
- requires one of VCAT’s presidential members to hear the matter.

VCAT already has mechanisms in place that recognise matters as complex. In the Administrative Division a Case Management Committee screens matters to determine hearing requirements including whether a matter should go to ADR or be heard as a complex matter, for which a higher hearing day fee currently applies.

In the Civil Division no matters are currently recognised as complex because the fee regulations stipulate that a complex matter is one that requires at least two members to hear it. Historically, the Civil Division has not used panels of members to hear matters, so the regulations do not currently allow complex matters to be recognised in that division. Nevertheless, the heads of lists review all domestic building matters over \$25,000 and civil matters over \$15,000 for referral to ADR. The same mechanism, together with the criteria above, is proposed to determine if a civil matter is a complex matter.

The application fee for complex matters is the same as for ordinary matters of the same value. Consideration has been given to setting a higher fee for applications for complex matters. This would be charged either on lodgement (if the matter could be recognised as complex at that time) or prior to the first hearing, when the matter was recognised as complex. In cases where the matter was recognised as complex after lodgement, VCAT would need to charge (effectively invoice) the applicant for a gap fee.

A higher fee (or gap fee) for complex cases was rejected. Such a fee may result in a number of undesirable impacts such as:

- unexpected costs to the applicant, which could be challenged and lead to increased costs in dealing with the matter
- introducing potential delays in the dispute-resolution process
- being interpreted as a revenue-raising activity by VCAT or the government
- potentially introducing a debt management risk that has not existed previously

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<sup>34</sup> The *Legal Profession Uniform Law Application Act 2014* took effect in July 2015 and, as a result, there is no statutory prohibition on charging fees for legal practice disciplinary matters and a fee was introduced for these matters in 2015–16.

- applicants may consider that VCAT had failed to disclose the conditions on which the matter would be dealt with, particularly if payment of the gap fee was a condition of further handling of the matter.

For these reasons the government has decided not to apply a gap fee for ordinary matters that become complex cases. Instead, complex cases would attract higher hearing day fees, which would take into account the higher costs of dealing with such matters at hearings.

The RIS invites specific response as to whether the proposed way of identifying complex cases is considered more reasonable than the current arrangements.

### The monetary value of matters

Monetary value has been used, historically, as a basis for differentiating fees. This is based on the assumption that matters with high monetary value reflect the capacity of the applicant to pay a higher fee.

Following the increase in fees in 2013–14, the fee for small claims valued between \$1 and \$499 did not rise, other than through indexation, but the fee for small claims valued between \$500 and \$9999 rose by 200 per cent (see Table 12).

This did not appear to impact on the volume of very small claims but the volume of other small claims decreased by 18.8 per cent. Over the same period, however, there was also an increase in lodgements for matters valued at over \$100,000, albeit small.

While factors other than fees will inform a person’s decision to lodge a matter, Table 12 indicates that the impact of fee increases fell disproportionately on small claims valued between \$500 and \$9999, and on claims with no monetary value.

**Table 12:** Changes in fees and application volume, Civil Claims List, 2013–14.

Civil List claim amount	2012-13 Fee (in 2012-13 \$)	2013-14 Fee (in 2012-13 \$)	Percentage increase	2012-13 Lodgments	2013-14 Lodgments	Percentage change
No monetary value	\$ 322.00	\$ 364.60	13%	350	238	-32.0%
From \$1 to \$499	\$ 38.80	\$ 38.80	0%	896	893	-0.3%
From \$500 to \$9,999	\$ 38.80	\$ 116.50	200%	6,765	5,491	-18.8%
From \$10,000 to \$99,999	\$ 322.00	\$ 364.60	13%	1,102	1,066	-3.3%
From \$100,000 to \$999,999	\$ 645.30	\$ 731.80	13%	84	95	13.1%
\$1 million and more	\$ 645.30	\$ 1,462.30	127%	8	11	37.5%
<b>Total</b>				<b>9,205</b>	<b>7,794</b>	<b>-15.3%</b>

Note: the percentage increase is simply the percentage difference between the 2012-13 fee and the 2013-14 fee, expressed in 2012-13 dollars so that the comparison is reliable. No weighting has been applied to take account of the volume of matters

Source: VCAT data

In response it is proposed to:

- change the upper threshold for the lowest fee point for small claims in the Civil Claims List from \$500 to \$3000
- charge no fees for health care card holders whose applications relate to matters with a value of up to \$10,000

- maintain the fee for claims of no monetary value in order to encourage applicants to more accurately assess the value of the claim they are making but set fees for matters that genuinely have no monetary value (such as most administrative review matters) at an appropriate point in the scale relative to the cost of dealing with these matters
- introduce additional fee points for higher-valued claims in the Civil Division, for example, at \$500,000 and \$5 million, in order to improve vertical equity and assist in future-proofing the fee schedule
- take account of the changing nature of planning and development applications by setting threshold values for fees on claims valued at \$1 million, \$5 million, \$15 million and \$50 million.<sup>35</sup>

For matters with relatively low value in other lists, it is proposed to:

- retain very low levels of cost recovery for residential tenancy matters (for this reason, the proposed fees for residential tenancy matters are the same in Options 1 and 3, which effectively locks in the 2015–16 fee unit levels)
- reflect the low value of other matters such as VicSmart applications.<sup>36</sup>

The current fee schedule differentiates fees according to monetary value. Historically, the monetary value of a matter has been used, and is proposed to continue to be used, as a proxy for the applicant’s capacity and willingness to pay.<sup>37</sup> This approach is consistent with Victoria’s *Cost Recovery Guidelines*, which allows fees to be set to reflect vertical equity considerations (those with greater means are asked to pay more for the services they use), particularly in cases where providing discounted fees is regarded as necessary to support access to a government service.

Currently, the level of fees is not set on the basis of costing and related data but to assist with overall cost recovery, and in recognition of the value of the matters, the volume of matters, and anecdotal evidence of VCAT staff that litigants are prepared to pay substantially higher fees especially if improvements can be made to processing times.<sup>38</sup>

A more considered approach has been adopted for this RIS, based on the costs identified for groups of matters and the difference in case management levels depending on the value of the matter.

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<sup>35</sup> The revised fee thresholds reflect a combination of changing patterns of applications since the current fees were set, particularly the growth in applications valued over \$1 million. Fee variations have been determined based on the need for more case management as the value of matters rises. Similarly, complex matters typically need more case management than standard matters. Table 13 sets out the estimated costs of case management for applications of varying values.

<sup>36</sup> VicSmart is a streamlined planning permit process applying to low-value, low-impact planning applications such as building a front fence, providing parking places, and subdivision applications where the area of either lot is reduced by less than 15 per cent.

<sup>37</sup> Other countries have taken a different approach. For example, the Netherlands has adopted a fee structure where fees are based on income and are effectively means tested. Some years ago New Zealand investigated basing fees on the level of private benefit associated with different types of matters but has since abandoned this approach. The United Kingdom operates on a strict cost-recovery model, where fees are high, but there are also corresponding high levels of fee waivers provided to support access to justice considerations.

<sup>38</sup> *Regulatory Impact Statement 2012*, pages 52 and 59.

Generally, the activity costing for VCAT's fees review used the following monetary thresholds:

- no monetary value
  - depending on the list involved, some matters were costed separately such as the resolution of co-ownership matters in the Building and Property List and change of condition applications in the Planning and Environment List
- \$1 to \$10,000 for different types of matters
- \$10,000 to \$100,000 for different types of matters
- greater than \$100,000 for different types of matters with further distinctions for
  - standard matters
  - complex matters, either in accordance with the definition of complex in the fees regulations or in recognition of the more resource-intensive case management required by some matters because of their inherent characteristics
  - major cases.

Table 13 sets out how the fees for different values of standard matters were calculated for planning matters. In the proposed fees 'standard' planning matters attract the same application fee as 'complex' matters for the following reasons.

- It is not always possible to recognise a matter as complex when it is lodged. Complexity may become apparent when the matter is being dealt with, particularly in situations where additional parties join the matter after it is lodged (see discussion above).
- It enables a simplified fee schedule.
- It minimises the risk that uncertainty about the total fees payable may deter some applicants from bringing a case and therefore be inconsistent with access to justice considerations.

Currently, fees for standard and complex matters only vary for hearing day fees. However, the costing analysis identified the costs of dealing with these matters, up to but not including the first hearing day, as \$1480 and \$2482, respectively, which reflects the increased cost of case management for complex matters. The cost of case management was derived from process modelling and a unit case management (CM) value was calculated based on the full cost of one directions hearing plus one ADR session at \$734.79.

**Table 13:** Setting fees for different claim amounts.

Basis for attribution	Applied to matters	Volume	Proposed Corporate Fee	Increase or decrease from standard matter fee	% of full cost being recovered	Aggregate Fee Estimate
Average cost of standard matters minus 30% of a CM increment, as below	Valued at ≤ \$1 million	448	\$1,244.60	-\$225	84.1%	\$557,581
<b>Average cost of standard matters</b>	Valued at > \$1 million and ≤ \$5 million and matters of no monetary value*	1,383	\$1,469.60	\$0	99.3%	\$2,032,457
Average cost + ½ CM increment as below	Valued at > \$5 million and ≤ \$15 million	171	\$1,840.00	\$370	74.1%	\$313,744
Average cost + 1 CM increment as below	Valued at > \$15 million and ≤ \$50 million	49	\$2,211.00	\$371	89.1%	\$107,942
Average cost + 1½ CM increments as below, or <b>Average cost of complex matters</b>	Valued at > \$50 million	19	\$2,582.00	\$371	104.0%	\$48,197
		<b>2,069</b>				<b>\$3,059,921</b>
<b>Value of matters based on full cost</b>						
Standard matters		1,827	\$1,480.42			\$2,704,726
Complex matters		242	\$2,481.85			\$600,608
Total		2,069				\$3,305,334
<b>Extent of over recovery (-ve value represents under recovery)</b>						<b>\$245,413 -7.4%</b>
Case management (CM) increment value = full cost of 1 Directions Hearing + 1 ADR session			\$734.79			

\* As discussed elsewhere, similar types of matters and matters with similar cost structures are grouped together for the purpose of setting this fee

Source: derived from process modelling

These costs are reflected in the fee differentials for the Corporate Fee shown in Table 13. The fee varies from less than the full cost of a standard matter (for matters valued at less than \$1 million) to the full cost of a complex matter (for matters valued over \$50 million). The exact dollar amounts reflect the attribution of case management costs, with a preference for relatively equal increments between fee levels.

Table 13 demonstrates that this allocation of application fees results in aggregate fee estimates that are 7.4 per cent lower than the aggregate fees based on recovering the full costs of standard and complex matters.<sup>39</sup> It also details the cost-recovery potential of the proposed fees. For matters valued up to \$5 million, the standard matter cost is the relevant cost and for matters valued over \$5 million, the complex matter cost is the relevant cost.

Similar methodology was used to set the differential fees for matters of different value in the Civil Division but with the following parameters:

- the relevant range of costs is between \$1167 for standard Civil List matters and \$2215 for complex property matters
- the value of the case management increment is \$747.49
- the proposed fees vary between \$1019.50 for matters valued between \$100,000 and \$500,000, and \$2131.60 for matters valued over \$5 million (in Option 3 where the Corporate Fee recovers 100 per cent of costs), with no potential over-recovery of costs.

The scaled fees give effect to improved vertical equity, whereby matters of greater value are recognised as a proxy for greater means, and those of greater means are asked to pay more for the same VCAT service than those of lesser means. Nevertheless, fees are still based on the costs involved in case management.

### **Major cases**

The majority of major cases now go to ADR and about 46 per cent settle at that stage. This has changed since fees were last set in 2013, and the increasing use of ADR is expected to continue.

In setting fees for major cases the fee values were determined by adding the value of two directions hearings and ADR sessions (two CM increments in Table 13) to the value of the related standard matter. Fee calculations are, therefore, based on current practice rather than costs arising from the activity-based costing methodology. This situation will need to be monitored if the proposed fee schedule is adopted in July 2016.

It should be noted that this approach has reduced the application fee for major cases valued at less than \$15 million. The hearing day fees have also reduced, other than for the tenth and subsequent days.

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<sup>39</sup> These figures suggest that marginal over-recovery may occur for matters valued over \$50 million, however, the \$100 difference between the average cost of complex matters and the fee for matters valued over \$50 million is not material (about 4 per cent of cost or about 0.0002 per cent of the value of the matter). This fee is considered justifiable on vertical equity grounds.



For matters under specified sections of the *Planning and Environment Act 1987* and the *Environment Protection Act 1970* the current eligibility for entry to the Major Cases List will remain in force but the eligibility restriction of \$10 million for an application involving a dwelling has been removed in the proposed fee structure. A permit holder may still elect to enter the Major Cases List at the time of lodgement or, if the permit holder is the respondent, may elect to move the matter into the Major Cases List on payment of a gap fee, which is the difference between a Standard Fee for an individual objecting to a permit and the Major Cases List fee for a matter valued at \$5 million.

### **Class of party**

Due to recent amendments to the VCAT Act, fees can now be differentiated by class of party. A number of such differentiations have been considered based on similar distinctions made by courts and tribunals in other states.

Two specific considerations resulted in making distinctions between classes of parties.

1. VCAT fees are tax deductible for business applicants but are not for individual applicants unless the claim relates to how they earn their income. In effect, this means that individuals are paying higher fees than business applicants and a discount on the full fee is therefore reasonable.
2. The *Cost Recovery Guidelines* support the provision of a 50 per cent concession on any fee payable for services regarded as a basic right.<sup>40</sup> It is intended that the regulations will feature a concession rate that is 50 per cent of the application and hearing day fees otherwise payable by individuals and capped initially at \$150 and 11 fee units thereafter. This concession will be available to health care card holders, reflecting the fact that a robust assessment of their capacity to pay has already been completed by Centrelink.

The following distinctions are deemed the most reasonable and administratively efficient to use in a revised fee structure.

- A natural person would pay a lower Standard Fee than the full Corporate Fee:
  - a 30 per cent discount on the Corporate Fee for individuals would align the Standard Fee with the tax deductible value of the Corporate Fee, thereby improving equity.
- Health care card holders would be recognised as a class of party and pay a Concession Fee at 50 per cent of the Standard Fee:
  - in 2014–15, 9 per cent of Victorians over 15 years old held a health care card<sup>41</sup> but only 2.2 per cent of VCAT applications received a fee waiver, which means the new Concession Fee has the potential to lower the cost of application fees for an additional 2,750 (or over 5 per cent of) VCAT users
  - notwithstanding the introduction of a Concession Fee, full fee waivers would be available for small claims and to applicants for whom paying the fee would cause financial hardship

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<sup>40</sup> Fees for the provision of an adoption history and admission to public places are discounted on this basis.

<sup>41</sup> *Social Health Atlas of Australia*, Public Health Information Development Unit, University of Adelaide, June 2015

- the Concession Fee would be capped at \$150 (or 11 fee units after 2016-17) to improve affordability given that, in 2014–15, fees over \$158.90 attracted a disproportionately large number of waiver applications, with the average of waived fees around \$190 (noting that the next higher fee was \$525.60)
  - concession arrangements for health care card holders could have been structured so that these applicants were charged the Standard Fee if it was less than \$150 but this approach was not taken because, in 2014–15, the median fee waived was \$55.60, which reflects the large number of very small claims in the Civil Claims List and the Residential Tenancy List (accounting for 982 applications or 52 per cent of all waiver applications), and also indicates that significant financial hardship issues were already affecting applicants paying low fees.
- Other applicants, primarily business or public sector applicants, would pay the full Corporate Fee.
  - Start-up businesses and business applicants with a turnover in the previous financial year of less than \$200,000<sup>42</sup> and not-for-profit bodies would be eligible to pay the Standard Fee:
    - Australian Bureau of Statistics (ABS) data (see further discussion below) indicates that around 60 per cent of businesses have an annual turnover of less than \$200,000 and the Standard Fee provides a discount for this significant proportion of businesses
    - the threshold of \$200,000 for business applicants reflects the practice of New South Wales<sup>43</sup> in its civil jurisdictions, including New South Wales Civil and Administrative Tribunal (NCAT)
    - concern has been raised about low profit margins in some industry sectors regardless of turnover but the tax deductibility of VCAT fees for business applicants serves to offset some of the costs.

Based on 2014–15 application data<sup>44</sup> and data on Australian businesses from the ABS<sup>45</sup>, the proportion of parties in each class of party is set out in Table 14.

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<sup>42</sup> Business owners have knowledge of their turnover figures from their Business Activity Statements. Business applicants applying to pay the Standard Fee will need to sign a statutory declaration to this effect.

<sup>43</sup> NSW's civil jurisdiction is generally similar to that of Victoria, albeit with variations in the jurisdictions of individual courts and tribunals. The application of the \$200,000-turnover threshold applies across all its courts and tribunals.

<sup>44</sup> VCAT records whether applicants are business applicants or individual applicants. ABS data (see next footnote) has been used to estimate the proportion of business applicants with a turnover in excess of \$200,000 per annum.

<sup>45</sup> *Counts of Australian Businesses, including Entries and Exits - June 2010 to June 2014*, Australian Bureau of Statistics.

**Table 14:** Class of party breakdown by division.

Class of Party	Division			
	Administrative	Civil	Human Rights*	Residential Tenancies
Business and public sector applicants	10.5%	18.3%	80.0%	24.0%
Individuals	83.1%	76.9%	20.0%	68.4%
Concession card holders	6.3%	4.8%		7.6%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

\*Only applications for exemption from the Equal Opportunity Act are relevant. Numbers are very small, so the 80/20 estimate has been used reflecting that most applications are business related.

Source: VCAT database, ABS data for 2013-14

VCAT application data indicates that 48 per cent of applicants lodging civil claims are businesses. Since civil claims cover a very wide range of matters the ABS average for Victorian businesses has been used to assess the percentage of business applicants who would be eligible to pay the Standard Fee.<sup>46</sup> The ABS data indicates that 62 per cent of companies turnover \$200,000 or less so it is assumed that 62 per cent of the 48 per cent of business applicants will be eligible to pay the Standard Fee rather than the Corporate Fee. This effectively reduces the number of business applicants for civil matters to only 18.25 per cent. It is estimated that the discounts available to business applicants will amount to around \$925,000 per annum in foregone fees compared with no discount.

The number of health care card holders is based on the assumption that 10 per cent of individuals (but not businesses paying the Standard Fee) will be eligible to pay the Concession Fee.

In addition to improving the vertical equity of the fee structure, the introduction of Standard and Concession fees should address problems raised by some external stakeholders about the affordability of VCAT fees. Under the proposed fee restructure it is estimated that an additional 2750 VCAT users will have access to lower fees. In addition, from the comparison of proposed and current fees in Attachment 3, it is evident that the Standard Fee is also more affordable for the majority of VCAT applications.

The RIS invites specific response to the proposed definition and thresholds for establishing which parties should pay the Corporate Fee. Given the objectives of promoting equity, access to justice and adopting a fee schedule that is easy to understand the proposed adoption of the \$200,000 turnover figure for small business is of particular interest.

### **Block fees**

Block fees are routinely used by courts and tribunals to avoid charging a large number of small fees for each stage of a dispute-resolution process, and to avoid possible delays in the dispute-resolution process. Block fees are more efficient to administer and make more sense to users, particularly those who simply want to have their matters resolved. Block fees are also efficient in encouraging optimal use of services if they reflect true costs, and most applicants use the services covered by these fees.

<sup>46</sup> In contrast, for domestic building matters the Other Residential Building Construction industry code has been used to determine the proportion of applicants lodging domestic building matters who would be eligible to pay the Standard Fee.

Currently, VCAT charges a single application fee for dealing with a matter up to and including the first formal hearing day. The application fee covers the actual application, pre-hearing consideration of the matter by a VCAT member, participation in ADR (mediation or compulsory conferences) where it is considered helpful, clarification of any legal issues by a VCAT member or judicial officer as required, and the first formal hearing day. Generally, small matters go straight to a hearing and very little additional case management is required for this group of claims.

Most matters with no monetary value and those valued over \$25,000 will be screened for possible participation in mediation or for compulsory conferencing, with a proportion of these matters, particularly those of no monetary value, going to ADR.<sup>47</sup> In contrast, all matters valued over \$100,000 in the Civil Division will be provided with an opportunity to participate in ADR. The resolution of matters valued over \$100,000 in the Civil Division generally also involves one or more directions or interlocutory hearings and may involve multiple ADR sessions. As the value of a matter rises it is also more likely to require multiple ADR sessions and the use of (sometimes multiple) compulsory conferencing, as opposed to voluntary involvement in mediation. The increasing use of ADR increases the costs of matters, particularly of high-value matters<sup>48</sup>, and these higher costs have been factored into the fee structure for matters valued over \$100,000.

The increasing use of ADR, and settlement of matters at ADR or soon after, is evidence that some application fees are inadvertently covering the cost of services such as a formal hearing that many VCAT users do not need. Conversely, some users will avail themselves of ADR and also proceed to a first hearing day but they will pay no more than the user who does not participate in ADR or whose matter settles early. In addition, a significant number of matters are withdrawn or dismissed prior to hearing.

In light of the more intensive management of higher-valued matters, and those with no monetary value, an application fee that generally includes the cost of the first opportunity to settle a matter and finalise it is proposed that:

- for lower valued matters up to \$100,000 this will include the cost of the first hearing day
- for civil matters with no monetary value and higher-valued matters this will include the cost of ADR, directions hearings and other interlocutory hearings prior to but not including the first hearing day.

This would provide an incentive to use VCAT services efficiently, with higher fees applying as the length of hearings increased. In Options 1 and 3, set out in Section 7, hearing day fees are structured so that higher fees apply as the number of hearing days increases. In Option 3, full cost recovery is applied for Corporate Fees from day 10 onwards.

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<sup>47</sup> The threshold for screening for ADR is not fixed and varies according to the list. It is based on historical experience of the likelihood that ADR will be effective in resolving issues more quickly than proceeding to a hearing.

<sup>48</sup> *Cost benefit analysis of Alternative Dispute Resolution*, Deloitte Access Economics, 2015.

There are a range of matters that routinely proceed directly to a hearing, where they are usually resolved without other VCAT action. These include the vast majority of small claims, injunction applications in all lists and VicSmart, and Change of Condition applications in the Planning and Environment List. It is proposed to retain a single block fee for such matters. Where an injunction matter returns to VCAT after the injunction is fulfilled the matter would not attract another application fee but would attract a hearing day fee.

VCAT's current practice is to not charge any further hearing day fees (for the second or subsequent days) for matters valued at \$10,000 or less. This practice will continue for both pragmatic and policy reasons (avoidance of large numbers of waiver applications and supporting access to justice by retaining low fees for lower-valued matters), and the government will take the opportunity to write this exemption into the Proposed Regulations (see Attachment 4), which means, for the purposes of restructuring fees, the costs related to small claims have been excluded from the calculation of the cost of further hearings.<sup>49</sup> This will increase the fees for hearing days and, in practice, increase the level of cost recovery.

With the exception of the matters that proceed directly to hearing, the proposed application fees are based on the costs of dealing with matters up to but not including the first hearing day for all matters valued at \$100,000 and over.

Together, the application fee and the hearing day fee also recover corporate overheads and indirect costs, to the extent possible under the options outlined in Section 7. Generally, a more significant proportion of cost recovery has been applied to the cost of the application fee rather than the cost of hearing fees. Overhead costs directly related to hearings, such as the provision of hearing rooms have been factored into hearing day fees.

In the Planning and Environment List, ADR is routinely used for major cases and complex cases but is not generally used for what could otherwise be regarded as standard cases. In order to differentiate between the costs related to major cases, complex cases and standard matters, a separate, higher, hearing day fee has been applied to complex cases and major cases, which reflects the actual costs of hearing these matters.

## **Waivers**

The widespread practice of fee waiver arrangements in civil jurisdictions is closely linked with the themes of access and equity. The International Framework for Tribunal Excellence uses the availability of fee waivers as one of the measures of accessibility.

Section 132 of VCAT's legislation provides that VCAT can waive any application, hearing or administrative fees made under the Act or the fee regulations if payment would cause financial hardship. Currently, only natural persons can apply for a waiver. The provisions do not apply to matters under the Guardianship and Administration Acts.

In 2014–15 VCAT waived fees to the value of \$358,000 or about 3 per cent of total fee value. Over 94 per cent of the 2002 applications for waivers were approved. Currently, full fee waivers are the main mechanism available to VCAT to ensure that a lack of financial means does not become a barrier to justice. With the introduction of a more affordable Concession Fee, it is expected that fewer people seeking access to VCAT will need to rely on a fee waiver.

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<sup>49</sup> Currently this practice reduces fees charged by VCAT by around \$200,000 per annum.

However, the safety net financial hardship criteria – and the possibility of a further reduction or full fee waiver – would still apply to those who could not afford to pay the Concession Fee. **Additionally those applicants who hold health care cards and are making applications for residential tenancy matters or claims valued up to \$10,000 will face no fees related to their proceedings.**

Providing exemptions to fees for certain matters for health care card holders is expected to make fees more affordable. It is expected that VCAT will develop a revised waiver policy that works consistently with the proposed revisions to the structure of VCAT's fees, to be introduced when the Proposed Regulations commence. These waiver arrangements are expected to improve efficiency for other applicants. The challenge is to improve the efficiency of the waiver application process, decrease the dependence on subjective decision-making and minimise foregone fees without introducing a barrier to justice.

It is proposed that the concession fee will be capped at \$150, for each fee. Capping the fee at this level is expected to mean that fees would be affordable for more applicants. The average value of waived fees is about \$190, with a higher percentage of waivers sought for matters attracting high fees. Capping the Concession Fee is a practical response that should result in more applicants contributing to meeting VCAT's costs.

### **Fees for ancillary services**

VCAT charges fees for ancillary services that cover:

- issuing a summons or a subpoena to witness or produce documents
- inspection of a register, file or files by a person who is not a party to a proceeding
- photocopying
- a copy of a register search
- a certificate that certifies the contents of a register.

In 2014–15 fees to the value of around \$81,500 (less than 7 per cent of fee revenue) were collected for ancillary services.

The fees review did not conduct activity costing of these fees because they are generally low volume, low-value fees. Instead, some consolidation of fees has occurred, which reflects the low frequency of some activities attracting fees (see the last page of Attachment 3). Nevertheless, as a matter of government policy, the discount for health care card holders has been applied to these fees.

## 7. Options

The options considered in this section reflect the application of the policies and principles set out in this RIS. Each of the options is assessed against criteria to compare the advantages and disadvantages. In each case, the assessment is against the base case that would arise in the event that the regulations were not replaced and, therefore, no fees would be charged for VCAT services.

### Criteria for assessing options

Using the principles that have guided the VCAT fees review, and in light of the issues with the current VCAT fee schedule and the objectives of reviewing VCAT fees (see page 24), the criteria set out in Table 15 have been adopted for assessing the suitability of fee options.

**Table 15:** Criteria for assessing potential options for future VCAT fee schedules.

Criterion	Weighting
1 Supports VCAT in its intended role	30%
2 Equity	30%
a) Vertical equity	(15%)
b) Horizontal equity	(15%)
3 Efficiency	30%
4 Simplicity of fee structure	10%

In light of the significance of access to justice for effective VCAT operations and its importance to VCAT's stakeholders a separate criterion was considered for this issue. However, it has not been pursued because elements of access to justice arise from supporting VCAT's intended role, equity considerations and efficiency. Therefore considerations of access to justice have been brought to bear on these other criteria as discussed below. The criteria, how they have been interpreted, and the weighting that has been applied are as follows.

1. VCAT's fee structure plays a significant role in determining whether VCAT can continue to operate effectively as the lowest level of formal dispute resolution in Victoria. A fee structure that encourages litigants to take matters to VCAT rather than attempt to resolve the matter informally in the first instance would undermine VCAT's role in the civil justice system, as would a fee structure that encourages litigants to take matters to a court. Similarly, a fee structure that discourages litigants with genuine claims could steadily undermine the social, economic, environmental or regulatory fabric of Victoria.

A good alignment between costs and fees, taking account of the public benefit inherent in VCAT, would send effective price signals to users and help ensure that VCAT services were neither over- nor under-used.

Access to justice is incorporated into this criterion to the extent that it means that it is easy for users to bring a matter to VCAT when it is the most appropriate body to deal with the matter.

Because of the significance of the role of VCAT in the civil justice system this criterion is given a weight of 30 per cent.

2. Equity is one of the benchmark criteria arising from the *Cost Recovery Guidelines*.
  - Horizontal equity means users only pay for the services they use, not for services they do not use. Where VCAT fees are concerned, very strong horizontal equity would require fees to be highly disaggregated so that users only paid for the elements of the dispute-resolution mechanisms that they participated in. This would result in separate fees for many activities such as lodging applications, lodging additional information, directions hearings, mediations, compulsory conferencing, hearing days and providing a statement of reasons. Conversely, uniform block fees, where everyone paid the same fee, irrespective of how their matter was dealt with would result in poor horizontal equity.
  - Vertical equity means those with greater financial means contribute proportionately more than those with lesser means. On this basis, access to justice can be linked to vertical equity. In terms of VCAT fees, this means that applicants with lesser means pay lower fees for the same service, i.e., fees are discounted to provide for capacity to pay. Generally, where court and tribunal fees are concerned, the monetary value of matters is taken as a proxy for the capacity to pay, although this can only be regarded as a partial indicator. Similarly, being in receipt of a health care card is taken as evidence of a reduced capacity to pay.

Equity has been allocated an overall weighting of 30 per cent, with horizontal equity and vertical equity considered of equal importance.

3. Efficiency in dispute resolution and administration is treated as a separate criterion and focuses on how VCAT operates internally rather than its external operations in resolving disputes. Access to justice is incorporated in this criterion to the extent that it means that matters are dealt with expeditiously. Efficiency reflects the use of the lowest-cost and the most timely dispute-resolution mechanisms. It also takes account of the level of alignment between the cost of providing the service and the fee charged for that service.

Efficiency has been allocated a weighting of 30 per cent.

4. Simplicity of fees, particularly related to how easy the fee structure is for users to understand, is a separate criterion because of the extent to which this issue has been raised by users. It has been allocated a weighting of 10 per cent.

### **The base case**

Advice from the Commissioner for Better Regulation is that the options presented in the RIS need to be assessed against the base case of no regulation<sup>50</sup> and, therefore, no fees. To compare the options discussed below with the base case it is necessary to make some other assumptions about how VCAT would operate under such no-fee arrangements. Those assumptions are:

- VCAT is likely to receive a significant increase in applications because the service would be free to the user

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<sup>50</sup> *Victorian Guide to Regulation*, page 23.



- enabling legislation would not be amended to limit the scope of VCAT’s responsibilities
- current funding levels would be maintained but not increased in response to increased demand
- there would be continuing restrictions on other resources such as the infrastructure available to VCAT for its operations and, associated with that, limits to the number of VCAT members and staff who could be employed.

The base case has been assigned a score of zero for each criterion, making its total score zero. The assessment of the base case against the criteria is shown in Table 16. This table also sets out the meaning of each zero score.

**Table 16:** Assessing the base case

Criterion	Weighting	Score	Describing the base case in terms of the assessment criteria
1 Supports VCAT's intended role	30%	0	If there were no fees there would be a large increase to application volumes. Users would be encouraged to use VCAT rather than other mechanisms available to resolve disputes, including other free services, because VCAT decisions are binding and can be enforced. Over-use would compromise access to justice.
2 Equity	30%	0	Without fees vertical equity does not exist. No users are required to pay fees, even if they have substantial means.
a) Vertical equity	15%	0	Horizontal equity is also irrelevant because the concept of only paying for services that are used is not relevant.
b) Horizontal equity	15%	0	
3 Efficiency	30%	0	Large application volumes would undermine the efficiency of VCAT administration and dispute resolution. Matters would not be heard expeditiously, thus limiting justice. Considerable re-engineering of processes would be required to ensure that case administration and case management were effective.
4 Simplicity of fee structure	10%	0	The fee structure is very easy to understand because there are no fees.
<b>Total</b>	<b>100%</b>	<b>0</b>	

An option can be regarded as better than having no fees if it scores higher than zero. The higher the score the better the option is considered to be. The following scoring system has been used:

- 10 Very much better than the base case
- 7 Much better than the base case
- 5 Better than the base case
- 0 Same as the base case
- 5 Worse than the base case
- 7 Much worse than the base case
- 10 Very much worse than the base case

Under this scoring system the maximum score that an option could get is 10.

## Options

The fees review provided the opportunity to thoroughly revise VCAT’s fee structure, and to consider a range of options. Their salient features and reasons for pursuing them, or otherwise, are set out in Table 17, which provides a brief assessment of all options against the assessment criteria set out in Table 16 in comparison to the base case.

As indicated in Table 17, the options being examined in this RIS are:

- Option 1. Retaining current cost recovery levels but restructuring fees in accordance with the discussion in Section 6. This option has been pursued because it has significant strengths, as indicated in the summary assessment in Table 17, and it is the closest of the strong options to the current arrangements, in terms of the quantum of fees arising from the option.
- Option 2. Full cost recovery. In accordance with the *Cost Recovery Guidelines* it is general government policy for charges to be set on a full cost recovery basis.
- Option 3. The Corporate Fee is based on full cost recovery and, otherwise, fees are restructured in accordance with the discussion in Section 6. This option has also performed well in the summary assessment in Table 17 and is derived from the full cost recovery option, albeit with significant modifications as set out in Section 6. It therefore sends clearer price signals to VCAT users about the real costs involved in using its services than Option 1.

Other options discussed in Table 17 have not been fully assessed because they present significant risks for efficient dispute resolution or administrative practice, and/or because they would be even more difficult for users to understand and navigate than the current fee structure.

### **Option 1: Retaining current cost recovery levels**

Option 1 is the closest option to the current arrangements that is presented in this RIS.

Under Option 1 the revised fee structure arrangements described in section 6 would be applied to VCAT's fees. The overall level of cost recovery would be the same as in 2014–15, namely 26 per cent of the costs funded by government. Table 18 illustrates how Option 1 would apply, with reference to a number of headline fees in each division.

The discussion in Section 6 explains how fees for matters with different monetary values were derived.

Generally, fees for individuals would be lower than they were in 2014–15 and, in some cases, considerably lower. Given that price sensitivity has been evident historically, it would be reasonable to expect that a lower fee for a large proportion of users would encourage additional applications, although users would also take into account other costs they may bear such as the costs relating to taking time off work. The full waiver would continue to be available. Otherwise, the assumption is that those with greater means will continue to use VCAT to the extent that they currently do.

**Table 17:** Options for VCAT fees

Short title	Main features	Summary comparison with the base case
<p>A. The status quo</p>	<p>The current fee structure would be maintained.</p> <p>Uniform application fees across VCAT would be based on the value of matters that cover the cost of dealing with a matter up to and including the first hearing day.</p> <p>Fees would be scaled to provide for vertical equity.</p> <p>Some rarely-used fee points could be removed to make the fee scale a little easier for users to understand.</p>	<p>Compared with the base case, option A:</p> <ul style="list-style-type: none"> <li>- supports VCAT's role well</li> <li>- horizontal equity is better than the base case but is not strong</li> <li>- vertical equity is reasonable</li> <li>- would lead to more efficient dispute resolution because of lower application volumes</li> <li>- the fee structure would be more complex to administer with limited capacity to improve because of its base in legislation</li> </ul> <p>Given the opportunity to undertake a thorough review, this option has not been pursued.</p>
<p>B. Retaining current cost recovery levels</p>	<p>The fee structure would be thoroughly reviewed but it would replicate the overall level of cost recovery achieved through the current fee structure.</p> <p>It would provide for a three-tier structure for each division with Corporate, Standard and Concession fees.</p> <p>Matters of similar cost structure or type would be grouped together so that the fee structure was easy to understand.</p>	<p>Compared with the base case, option B:</p> <ul style="list-style-type: none"> <li>- better supports VCAT's role</li> <li>- has stronger horizontal equity</li> <li>- vertical equity is better and stronger than the status quo</li> <li>- would lead to more efficient dispute resolution because of lower application volumes</li> <li>- the fee structure would be more complex to administer than the base case but considerably better than the status quo.</li> </ul> <p>This is <b>Option 1</b> considered below.</p>

Short title	Main features	Summary comparison with the base case
C: Full cost recovery	<p>Each type of matter would be assigned a fee that represented the average cost in each list of dealing with that type of matter.</p> <p>Fees would be blocked (application and hearing day fees would apply) but fees would maximise the fit between costs and fees.</p>	<p>Compared with the base case, Option C:</p> <ul style="list-style-type: none"> <li>- encourages the use of less formal and less costly dispute-settling arrangements but would also encourage the use of higher-cost courts (because court fees do not recover full costs)</li> <li>- discourages applications for some types of matters such as small claims and matters of no monetary value</li> <li>- has very strong horizontal equity with fees truly reflecting the costs of services that are actually used</li> <li>- performs similarly with respect to vertical equity</li> <li>- would lead to highly efficient dispute-settling mechanisms</li> <li>- with a multitude of fee points this option would be more complex for users to understand.</li> </ul> <p>In light of the efficiency of dispute settling and strong alignment between costs and fees, this is <b>Option 2</b> considered below.</p>
D. The Corporate Fee recovers close to full costs	<p>Fees would be set for each division, and the three-tiered fee structure of option B would be used but the Corporate Fee would be set at full cost recovery in the first instance with other adjustments in accordance with the discussion in Section 6.</p> <p>Other matters would be allocated fees so that the fee structure was relatively simple to understand and administer. This option increases the level of cost recovery achieved through options A and B.</p>	<p>Compared with the base case, option D:</p> <ul style="list-style-type: none"> <li>- better supports VCAT's role</li> <li>- has stronger horizontal equity</li> <li>- vertical equity is better and stronger than the status quo</li> <li>- would lead to more efficient dispute resolution because of lower application volumes</li> <li>- the fee structure would be more complex to administer than the base case, but considerably better than the status quo.</li> </ul> <p>This is <b>Option 3</b> considered below.</p>

Short title	Main features	Summary comparison with the base case
<p>E. Different fees for different lists</p>	<p>Fees would be set for each List, using similar principles to those of option D.</p>	<p>Compared with the base case, option E:</p> <ul style="list-style-type: none"> <li>- supports VCAT's role well</li> <li>- has stronger horizontal equity</li> <li>- vertical equity is better and stronger than the status quo</li> <li>- would lead to more efficient dispute resolution because of lower application volumes</li> <li>- the fee structure would be more complex to administer than the base case, and considerably worse than the status quo or other options because there would be nine different fee schedules, and users will be motivated to lodge matters in lower-cost lists even if they don't belong there, leading to inefficiencies.</li> </ul> <p>This option has not been pursued.</p>
<p>F. Fees on a page</p>	<p>VCAT fees would be highly aggregated and described on a single A4 page.</p> <p>It would be very easy for users to understand and for VCAT to administer.</p> <p>Corporate, Standard and Concession fees could be accommodated with this approach.</p> <p>This option reduces the alignment between VCAT costs and VCAT fees considerably.</p> <p>It would involve higher risks for VCAT in setting fees to deliver optimum use of VCAT services.</p>	<p>Compared with the base case, option F:</p> <ul style="list-style-type: none"> <li>- better supports VCAT's role</li> <li>- has stronger horizontal equity but not as strong as other options</li> <li>- vertical equity is better but not as strong as other options</li> <li>- would lead to more efficient dispute resolution because of lower application volumes</li> <li>- the fee structure would be more complex to administer than the base case.</li> </ul> <p>Unlike other options, this option cannot be tailored to different types of matters and has not been pursued.</p>

Short title	Main features	Summary comparison with the base case
<p>G. Invoicing for services rendered</p>	<p>Fees would generally be set in accordance with option D in that a three-tiered fee structure would be in place. However, fees would be more highly disaggregated by stage of proceeding. For example, an hourly fee component would apply for a directions hearing. At the conclusion of a matter an invoice would be sent covering the services that were provided. Invoices could be sent out more regularly for long-running matters or higher-valued matters.</p>	<p>Compared with the base case, option G:</p> <ul style="list-style-type: none"> <li>- is strong in supporting VCAT's role</li> <li>- performs very well on horizontal equity</li> <li>- performs better on vertical equity</li> <li>- would require extensive new administrative systems</li> <li>- would be subject to human error</li> <li>- many users would not be able to quickly or accurately estimate fees, resulting in justifiable complaints</li> </ul> <p>This option has not been pursued because it would:</p> <ul style="list-style-type: none"> <li>- potentially be a source of conflict between VCAT and some applicants due to the uncertainty related to user costs</li> <li>- introduce the need to monitor and manage debt, thereby undermining efficiency and introducing new debt risk, which would be minimised if payment was required prior to the matter proceeding further, although some additional costs would have been incurred</li> <li>- potentially result in delays in the dispute settlement process.</li> </ul>

Short title	Main features	Summary comparison with the base case
<p>H. Invoicing for selected matters only</p>	<p>Fees would be set in accordance with option D, with the capacity to invoice applicants for additional costs related to their matters. For example, applicants whose matters are recognised as complex would initially pay the fees related to standard matters. Once the matter was recognised as complex an invoice would seek payment of the additional costs of dealing with the matter. Invoicing in this way could also be used if matters required additional ADR sessions that were not covered by the standard fees.</p>	<p>Compared with the base case, option H:</p> <ul style="list-style-type: none"> <li>- is strong in supporting VCAT's role</li> <li>- performs better on horizontal equity</li> <li>- performs better on vertical equity</li> <li>- would introduce additional administrative inefficiencies and risk</li> <li>- detract from the simplicity of the fee structure.</li> </ul> <p>This option has not been pursued because it would:</p> <ul style="list-style-type: none"> <li>- require significant investment in administrative processes in order to support efficiency</li> <li>- potentially be a source of conflict between VCAT and some applicants because of the uncertainty related to user costs</li> <li>- introduce the need to monitor and manage debt, thereby undermining efficiency and introduce new debt risk, which would be minimised if payment was required prior to the matter proceeding further, although some additional costs would have been incurred</li> <li>- potentially result in delays in the dispute settlement process for relevant matters.</li> </ul>

Against the base case where no fees are charged the advantages of Option 1 are as follows.

- There would be some incentives for applicants to use informal or no-fee options to resolve matters early and, as a result, application volumes would be constrained compared with the base case.
- With fees set to reflect the use of services that are needed at the application stage and at the hearing stage horizontal equity would come into play and be reasonably strong.
- Vertical equity would be reasonably strong because higher fees for more highly-valued matters would mean there was good correlation with ability to pay.
- Efficiency in dealing with matters would improve because VCAT would be better positioned to deal with matters reasonably expeditiously.
- Administrative efficiency would be better because existing systems would better manage application volumes.

Against the base case where no fees are charged the disadvantages of Option 1 are as follows.

- Different fees for matters in different divisions means that the fee structure would not be as easy for users to understand, and the simplicity that is characteristic of no fees in the base case would be lost.

Using the assessment criteria and scoring scheme set out above, Option 1 scores 4.0 points (see Table 19).



**Table 18:** Option 1 – restructuring the current cost-recovery arrangements.

Fees	Corporate Fee	Standard Fee	Concession Fee	2014-15 Fee
<b>A: Administrative Division</b>				
<b>Application fees for planning and environment matters</b>				
<b>Matters for which application fees apply but no 1st hearing day fees apply</b>				
Change of conditions applications - irrespective of value	\$940.00	\$658.00	\$150.00	\$986.40
VicSmart matters - irrespective of value	\$940.00	\$658.00	\$150.00	\$986.40
Costs applications (no hearing day fees apply)	\$715.00	\$500.50	\$150.00	New Fee
<b>Review of a planning decision (hearing day and site visit fees also apply)</b>				
Single dwellings irrespective of value	\$940.00	\$658.00	\$150.00	\$986.40
Multiple dwelling or non-dwelling development valued at				\$1,903.90
≤\$1 million	\$1,032.70	\$722.90	\$150.00	\$986.40
>\$1 million & ≤\$5 million	\$1,231.30	\$861.90	\$150.00	\$1,903.90
>\$5 million & ≤\$15 million	\$1,536.00	\$1,075.20	\$150.00	\$1,903.90
>\$15 million & ≤\$50 million	\$1,840.00	\$1,288.00	\$150.00	\$1,903.90
>\$50 million or the value is not specified	\$2,145.00	\$1,501.50	\$150.00	\$1,903.90
Lodging a Statement of Grounds	\$60.90	\$42.60	\$21.30	
<b>Application fees for matters other than planning and environment matters</b>				
Administrative Review	\$715.00	\$500.50	\$150.00	\$525.60
Legal Practice disciplinary matters*	\$940.00	\$658.00	\$150.00	New fee in 15-16
* Legislation taking effect in July 2015 removed the prohibition on charging fees for these matters, but no fee applied in 2014-15. The comparable fee of \$525.60 was introduced in 2015-16.				
<b>B: Civil Division</b>				
<b>Application Fees</b>				
<b>Matters for which application fees apply but no 1st hearing day fees apply</b>				
Claims with a monetary value up to \$3,000	\$83.40	\$58.40	\$0.00	\$55.60
(claims valued between \$500 and \$3,000)	\$83.40	\$58.40	\$0.00	\$158.59
Claims valued over \$3,000 up to and including \$10,000	\$242.30	\$169.60	\$0.00	\$158.90
Claims over \$10,000 up to and including \$100,000	\$516.40	\$361.50	\$150.00	\$525.60
Additional fee to hear a matter as an injunction	\$83.40	\$58.40	\$29.20	New Fee
<b>The following claims attract a 1st hearing day fee if a hearing is required</b>				
Claims over \$100,000 up to and including \$500,000	\$834.10	\$583.90	\$150.00	\$986.40
Claims over \$500,000 up to and including \$1 million	\$1,151.90	\$806.30	\$150.00	\$986.40
Claims over \$1 million up to and including \$5 million	\$1,469.60	\$1,028.70	\$150.00	\$1,903.80
Claims of more than \$5 million or the value is not specified	\$1,787.40	\$1,251.20	\$150.00	\$1,903.80
Claims of no monetary value or the value is nil	\$516.40	\$361.50	\$150.00	\$525.60
Real property - co-ownership matters	\$715.00	\$500.50	\$150.00	\$525.60
<b>C: Human Rights Division</b>				
<b>Application Fees</b>				
Exemption from the Equal Opportunity Act 2010	\$715.00	\$500.50	\$150.00	\$55.60
<b>D: Residential Tenancies Division</b>				
<b>Application Fees</b>				
For matters with a value between \$1 and \$10,000	\$83.40	\$58.40	\$0.00	\$55.60
<b>E: Hearing Day Fees</b>				
<b>Hearing day fees for matters other than Major Cases and Complex Matters</b>				
Day 1 except for matters valued between \$1 and \$100,000	\$382.50	\$267.80	\$133.90	New Fee
Days 2-4	\$382.50	\$267.80	\$133.90	\$389.30
Days 5-9	\$766.10	\$536.30	\$150.00	\$651.40
Day 10 and subsequent days	\$1,149.80	\$804.90	\$150.00	\$1,087.00

Notes: 1. The Civil matters here are not directly comparable to those in Table 23 because consumer claims, domestic building, owners corporations, retail tenancy and real property matters have been brought together in these claims categories.  
 2. Comparison of fees with 2014-15 fees needs to be done with caution because in 2014-15 the application fee included the first hearing day fee for all matters other than Major Cases. The proposed fees only include the first hearing day for matters valued under \$100,000.

Source: Process modelling

**Table 19: Assessment of Option 1**

Criterion	Weighting	Score	Comment relative to base case of no fees
1 Supports VCAT's intended role	30%	5	Better than the base case. There would be an incentive for VCAT users to resolve matters early or to try to resolve them more informally.
2 Equity	30%	5	Better than the base case. Vertical equity is reasonably good. Those with the capacity to pay are asked to pay more.
a) Vertical equity	15%	5	
b) Horizontal equity	15%	5	Better than base case - VCAT users are paying differential fees for different services
3 Efficiency	30%	5	Better than the base case because lower application volumes will mean that administrative systems are better placed to deal with matters and time to finalisation would be more timely.
4 Simplicity of fee structure	10%	-5	Worse than the base case, simply because there is a fee structure
<b>Total</b>	<b>100%</b>	<b>4.0</b>	

### **Option 2: Full cost recovery**

Option 2 sets fees at full cost recovery. In accordance with the *Victorian Guide to Regulation* (as updated in 2014) the full cost recovery option is presented here without the modifications for policy considerations, which are considered in Options 1 and 3. Therefore, there is no fee discount provided for individuals or health care card holders but the current waiver arrangements, whereby fees can be waived on grounds of financial hardship, still apply because this provision is provided for in the VCAT Act rather than in the fee regulations. The waiver arrangements noted in the other options would apply under this option. The waiver arrangements are independent of how fees are set.

Where no fees are stipulated in enabling legislation, no fees would apply.

VCAT is achieving close to full recovery of direct costs in those lists or matters (set out in Section 3) where funding arrangements with external parties provide for cost recovery. The areas not currently covered by full cost recovery or close to full cost recovery arrangements are:<sup>51</sup>

- Civil Claims List matters
- Planning and Environment List matters
- real property matters in the Building and Property List
- most matters handled by the Review and Regulation List
- civil disputes between lawyers and clients in the Legal Practice List
- human rights matters.

Table 20 demonstrates the impact of full cost recovery on the fee schedule with reference to a number of headline fees in each division. This table also shows the increase in fees that would occur compared with the 2014–15 fee structure.

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<sup>51</sup> This list does not include the Guardianship List, fees for which are set out in different regulations and are not subject to this RIS.

Table 20: Option 2 – fees based on full cost recovery.

Fees	Standard Fee	Total efficient costs	2014-15 Fee	Percentage Increase
<b>A: Administrative Division</b>				
<b>Application fees for planning and environment matters</b>				
<b>Matters for which application fees apply but no 1st hearing day fees apply</b>				
Change of conditions applications - irrespective of value	\$1,407.80	\$1,407.80	\$986.40	43%
VicSmart matters - irrespective of value	\$2,422.40	\$2,422.45	\$986.40	146%
Costs applications (no hearing day fees apply)	\$1,042.20	\$1,042.27	New Fee	N/A
<b>Review of a planning decision (hearing day and site visit fees also apply)</b>				
Single dwellings irrespective of value	\$1,480.40	\$1,480.42	\$986.40	50%
			\$1,903.90	-22%
<b>Multiple dwelling or non-dwelling development valued at</b>				
≤\$1 million	\$1,480.40	\$1,480.42	\$986.40	50%
>\$1 million & ≤\$5 million	\$1,480.40	\$1,480.42	\$1,903.90	-22%
>\$5 million & ≤\$15 million	\$2,481.80	\$2,481.85	\$1,903.90	30%
>\$15 million & ≤\$50 million	\$2,481.80	\$2,481.85	\$1,903.90	30%
>\$50 million or the value is not specified	\$2,481.80	\$2,481.85	\$1,903.90	30%
Lodging a statement of grounds	\$72.80	\$72.80	Nil	N/A
<b>Application fees for matters other than planning and environment matters</b>				
Administrative Review	\$1,477.30	\$1,477.32	\$525.60	181%
Legal Practice disciplinary matters*	\$2,342.30	\$2,342.31	New fee in 15-16	N/A
* Legislation taking effect in July 2015 removed the prohibition on charging fees for these matters, but no fee applied in 2014-15. The comparable fee is \$525.60.				
<b>B: Civil Division</b>				
<b>Application Fees</b>				
<b>Civil Claims - matters for which application fees apply but no 1st hearing day fees apply</b>				
Claims with a monetary value up to \$3,000	\$560.20	\$560.23	\$55.60	908%
(claims valued between \$500 and \$3,000)	\$560.20	\$560.23	\$158.59	253%
Claims valued over \$3,000 up to and including \$10,000	\$560.20	\$560.23	\$158.90	253%
Claims over \$10,000 up to and including \$100,000 (Civil Claims)	\$1,170.30	\$1,170.37	\$525.60	123%
Additional fee to hear a matter as an injunction	\$446.40	\$446.42	Nil	N/A
<b>Claims - the following claims attract a 1st hearing day fee if a hearing is required</b>				
Claims over \$100,000 up to and including \$500,000 (Civil Claims)	\$1,170.30	\$1,170.37	\$986.40	19%
Claims over \$500,000 up to and including \$1 million (Building)	\$1,218.80	\$1,218.89	\$986.40	24%
Claims over \$1 million up to and including \$5 million (Real Prop)	\$1,887.40	\$1,887.41	\$1,903.80	-1%
Claims of more than \$5 million or unspecified value (Retail Tenancies)	\$2,215.00	\$2,215.07	\$1,903.80	16%
Claims of no monetary value or the value is nil	\$1,170.30	\$1,170.37	\$525.60	123%
Real property - co-ownership matters	\$781.20	\$781.20	\$525.60	49%
<b>C: Human Rights Division</b>				
<b>Application Fees</b>				
Exemption from the Equal Opportunity Act 2010	\$852.00	\$852.01	\$55.60	1432%
<b>D: Residential Tenancies Division</b>				
<b>Application Fees</b>				
For matters with a value between \$1 and \$10,000	\$258.00	\$258.07	\$55.60	364%
<b>E: Hearing Day Fees</b>				
<b>Hearing day fees for matters other than Major Cases and Complex Matters</b>				
Day 1 except for matters valued between \$1 and \$100,000	\$1,378.90	\$1,378.97	\$0.00	New Fee
Days 2-4	\$1,378.90	\$1,378.97	\$389.30	254%
Days 5-9	\$1,378.90	\$1,378.97	\$389.30	254%
Day 10 and subsequent days	\$1,378.90	\$1,378.97	\$651.40	112%

Notes: 1. Civil Division matters have not been grouped. The cost of a small civil claim ≠ the cost of a small domestic building claim.

2. The full efficient costs in this table are not comparable to costs in Tables 7 and 10 because the application costs in this table do not include the costs of the first hearing day.

3. Comparison of fees with 2014-15 fees needs to be done with caution because in 2014-15 the application fee included the first hearing day fee for all matters other than Major Cases. The proposed fees only include the first hearing day for matters valued under \$100,000.

Source: Process modelling

Under full cost recovery very few fees would decrease. Generally, fees would increase substantially, many by over 100 per cent. The highest fee increases would occur in the Administrative Division (around 200 per cent) and for small claims in the Civil Division (over 900 per cent).

It should be noted that the fees in this table are not directly comparable to the fees in Table 18 or Table 22 because those tables group similar types of matters, and the policy considerations set out in Section 6 are in effect. The Civil Division fees in Table 20 relate to specific Civil Division matters only. Other Civil Division matters of similar value have different full costs, depending on the level of case management required.

Only those applications where the value of the matter (tangible or non-tangible) exceeded the fee would be likely to come to VCAT.

Of particular interest, from a policy standpoint, are the implications of the proposed fees for the following issues:

- there would be few, if any, frivolous or vexatious applications
- there would be substantially fewer small claims, and none valued at less than \$500 because the application fee would be greater than \$500
- an application fee of more than \$1,000 would discourage many matters with no monetary value
- VicSmart matters would attract a fee that is 146 per cent higher than the current fee reflecting the fact that these matters, while of small volume and low inherent value (see discussion in Section 6), require significant VCAT resources to resolve primarily because they generally require an average hearing of two hours with the equivalent time being required to provide a statement of reasons and prepare Orders. It should be noted that:
  - no separate hearing day fee applies to these matters so the costs of these matters are only being recovered through the application fee
  - the high fee for VicSmart is largely the result of applying indirect costs to the full cost of dealing with these matters (as discussed elsewhere in the RIS)
  - in the other options, because of the very low volume of these matters, VicSmart applications are grouped with other planning and environment applications rather than listed as a separate fee, with the effect of substantially lowering the application fee.

First hearing day fees would apply to all cases except those where the hearing day fee was incorporated into the application fee, namely:

- VCAT-wide civil claims with a value of less than \$10,000, costs applications and applications for review
- VicSmart and change of conditions applications in the Planning and Environment List.

Hearing day fees for second and subsequent days would apply to all matters, including claims valued between \$1 and \$10,000.<sup>52</sup>

While there would still be arrangements in place to consider waiver applications, there would be a considerable increase in such applications.

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<sup>52</sup> As indicated in Section 6, the modelling for the fees review aggregated the costs of all hearing days after day one, resulting in a uniform daily cost for second and subsequent hearing days in Option 2.

Against the base case where no fees are charged the advantages of Option 2 are as follows.

- VCAT’s relatively informal dispute-handling practices would be retained and these may be sufficient incentive for users to bring matters to VCAT even if fees were higher than those of the courts.
- Applicants who could establish that paying fees would cause financial hardship would be eligible for waivers and therefore able to access VCAT for its intended purpose.
- Horizontal equity would be very strong, with fees truly reflecting the costs of services that are provided, albeit with block fees for the pre-hearing and hearing stages.
- There would be a perceived improvement in efficiency because anticipated lower application volumes would support more timely resolution of matters.

Against the base case where no fees are charged the disadvantages of Option 2 are as follows.

- VCAT’s role in the civil justice system could be undermined:
  - VCAT’s role as a “low cost and accessible” tribunal would be undermined because only a minority of current users<sup>53</sup> would be able to afford the fee, or users would be deterred from applying because the cost of bringing a matter to VCAT would be high relative to the expected benefits of doing so. Most small claims (over 80 per cent of the work of the Civil Claims List), which is VCAT’s bread-and-butter work, would be managed elsewhere or applicants would forego the opportunity of having their matters dealt with.
  - For all civil matters where there is shared jurisdiction with the courts, many litigants would choose not to pay the higher VCAT fees and take matters to the Magistrates’ Court for claims valued at less than \$100,000 or to the County Court for claims valued at more than \$100,000. Court fees are lower because they significantly under-recover the costs of the courts. Nevertheless, costs other than VCAT fees, such as the need for legal advice or representation, will influence this decision. Given that the courts have higher cost structures than VCAT, a movement of applications from VCAT to the courts would represent less than optimal use of limited resources.
  - Applicants for some matters that have no monetary value, such as administrative review matters, and matters with relatively low value would be discouraged from coming to VCAT and there may be no other body able to assist. Under such arrangements elements of Victoria’s economic, social, environmental and regulatory fabric could be weakened.

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<sup>53</sup> The minority would be 25 per cent if (i) the overall 8 per cent of Corporate Fee payers are not deterred from paying the fee, and (ii) the 17 per cent of matters (best estimate) that are of higher value lodged by individuals proceeded because other applicants could not afford the fee or the cost of bringing a matter to VCAT would be too high relative to the expected benefits of doing so.

- Access would be restricted for matters where only VCAT has jurisdiction, for example planning matters, most administrative review matters, retail tenancies, domestic building, and administration orders, to the extent that VCAT services would only be accessed where the tangible and intangible value of doing so was somewhat greater than the application fee.
- Vertical equity would be poor because those who can afford to pay more would not be paying more.
- The fee structure would be complex for users to understand and for VCAT to administer because there would be a multitude of fee points reflecting different fees for different types of matters in different lists. This could confuse many users, who would be seeking the most beneficial fee arrangement for their purposes. Different fees for similar types of matters would also encourage some users to tailor their matters to be eligible for lower fees.<sup>54</sup> The simplicity that is characteristic of no fees in the base case would be lost.
- A sharp increase in applications for fee waivers could be expected, thereby diminishing efficiency.

In summary, it is likely that the Option 2 fee structure would result in highly efficient cost recovery, but would likely entail a substantial downturn in applications.

Under a full cost recovery option the value of fees charged by VCAT that were not remitted to funding bodies would be in the order of \$30 million. This is on the assumption that application volumes did not change and there were no waiver applications. If this option was to be implemented the following would need to be considered:

- Waiver applications mean that full cost recovery could not be achieved. If full cost recovery was to be achieved some fees would have to be set above full cost recovery to account for the shortfall.
- Given that the majority of applications to VCAT, which are small claims, would be facing fee increases of over 300 per cent<sup>55</sup> significantly fewer applications would be anticipated. In 2013–14 when significant fee increases occurred<sup>56</sup> a decrease of 15.5 per cent in applications occurred, which could be regarded as the lower bound for the decrease in applications under Option 2. As an extreme upper bound, 75 per cent of applications could be lost, based on the proportion of applicants otherwise paying Corporate Fees and high-value applications from individuals. The likely impact would be within this range but, given the impact of other considerations, it is not possible to predict the impact with any certainty.

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<sup>54</sup> For example, this situation could occur where a domestic building matter with a higher fee (nominally a matter under the *Domestic Building Contract Act 1995*) could arguably be lodged as a civil matter (under the ACLFTA) and would attract a lower fee. This would result in the need for registry staff to closely examine applications and follow-up correct fees.

<sup>55</sup> Residential tenancy matters would face fee increases in the order of 364 per cent and, for small civil claims, the increase would be between 253 and 908 per cent (see Table 20).

<sup>56</sup> Commonly around 13 per cent but with no fee increases for residential tenancy matters and small claims valued up to \$500, and increases as high as 200 per cent for some matters (see Table 13).

Against the base case and using the assessment criteria set out above, Option 2 scores 1.7 points (see Table 21). Option 2 would be preferable to the base case, particularly where horizontal equity and productive efficiency are concerned, however, it scores more poorly than Option 1. The overall poor performance is driven by:

- the high likelihood that fees based on full costs would be a barrier to justice for the majority of current VCAT users
- the complexity of the fee structure with different fee points for every type of matter in each list, making it difficult for users to navigate and increasing the incentive to minimise fees by lodging matters in an inappropriate but lower cost list.

**Table 21:** Assessment of Option 2.

Criterion	Weighting	Score	Comment relative to base case of no fees
1 Supports VCAT's intended role	30%	-7	Much worse than the base case. With full cost recovery only around 25% of current VCAT users who are business applicants (but not small businesses) or individuals with large claims are likely to be able to afford to use VCAT. VCAT could not claim to be "low cost" or to deal with the majority of civil claims in Victoria.
2 Equity	30%		
a) Vertical equity	15%	0	Same as the base case because there is no distinction made on the basis of capacity to pay
b) Horizontal equity	15%	10	Very much better than base case - VCAT users are paying differential fees for different services
3 Efficiency	30%	10	Very much better than the base case. Matters will be dealt with very expeditiously by VCAT Members. Strong fee revenue relative to application volume would allow for investment in improved business processes.
4 Simplicity of fee structure	10%	-7	Much worse than the base case. There would be a complex fee structure with different fees for each type of matter. Users are likely to find the fee schedule more difficult to navigate than the current fee structure and means users will focus on fee levels rather than the type of matter when submitting applications.
<b>Total</b>	<b>100%</b>	<b>1.7</b>	

### **Option 3: The Corporate Fee fully recovers costs**

Option 3 aims to maximise cost recovery through the Corporate Fee, which has been set at full cost recovery in the first instance. The following aspects of the restructuring of fees discussed in Section 6 also apply:

- discounted fees would apply to individuals, small businesses, not-for-profit organisations and health care card holders
- there will be no daily hearing fees for civil claims with a value of up to \$10,000.
- there would be fewer Standard Fee points than in Option 2 because similar types of matters and matters with similar cost structures are grouped together. Grouping of matters has been done so as to simplify the fee structure, but calculating a single efficient cost across a broader number of matters means that the proposed Corporate Fee for some matters will under-recover full costs set out in option 2
- matters of lower value would attract lower fees, e.g., some fees for lower-valued claims, particularly for claims under \$10,000 and residential tenancy claims, have been set well below cost recovery
- matters related to where people live would attract lower fees
- the fee structure would be relatively easy to understand and administer

- hearing fees for Corporate Fee payers are set at full cost recovery from day 10 onwards
- fee waivers would continue to be available in relevant cases.

Table 22 sets out some headline fees that would be payable under Option 3 in each division.

**Table 22:** Option 3 – where the Corporate Fee recovers full costs.

Fees	Corporate Fee	Standard Fee	Concession Fee	2014-15 Fee
<b>A: Administrative Division</b>				
<b>Application fees for planning and environment matters</b>				
<b>Matters for which application fees apply but no 1st hearing day fees apply</b>				
Change of conditions applications - irrespective of value	\$1,112.20	\$778.50	\$150.00	\$986.40
VicSmart matters - irrespective of value	\$1,112.20	\$778.50	\$150.00	\$986.40
Costs applications (no hearing day fees apply)	\$847.40	\$593.20	\$150.00	New Fee
<b>Review of a planning decision (hearing day and site visit fees also apply)</b>				
Single dwellings irrespective of value	\$1,112.20	\$778.50	\$150.00	\$986.40
Multiple dwelling or non-dwelling development valued at				\$1,903.90
≤\$1 million	\$1,244.60	\$871.20	\$150.00	\$986.40
>\$1 million & ≤\$5 million	\$1,469.60	\$1,028.70	\$150.00	\$1,903.90
>\$5 million & ≤\$15 million	\$1,840.00	\$1,288.00	\$150.00	\$1,903.90
>\$15 million & ≤\$50 million	\$2,211.10	\$1,547.80	\$150.00	\$1,903.90
>\$50 million or the value is not specified	\$2,581.80	\$1,807.30	\$150.00	\$1,903.90
Lodging a statement of grounds	\$72.80	\$51.00	\$25.50	New Fee
<b>Application fees for matters other than planning and environment matters</b>				
Administrative Review	\$847.40	\$593.20	\$150.00	\$525.60
Legal Practice disciplinary matters*	\$1,112.20	\$778.50	\$150.00	New fee in 15-16
* Legislation taking effect in July 2015 removed the prohibition on charging fees for these matters, but no fee applied in 2014-15. The comparable fee is \$525.60.				
<b>B: Civil Division</b>				
<b>Civil Division matters</b>				
<b>Matters for which application fees apply but no 1st hearing day fees apply</b>				
Claims with a monetary value up to and including \$3,000	\$83.40	\$58.40	\$0.00	\$55.60
(claims valued between \$500 and \$3,000)	\$83.40	\$58.40	\$0.00	\$158.59
Claims valued over \$3,000 up to and including \$10,000	\$242.30	\$169.60	\$0.00	\$158.90
Claims over \$10,000 up to and including \$100,000	\$622.30	\$435.60	\$150.00	\$525.60
Additional fee to hear a matter as an injunction	\$83.40	\$58.40	\$29.20	Nil
<b>The following claims attract a 1st hearing day fee if a hearing is required</b>				
Claims over \$100,000 up to and including \$500,000	\$1,019.50	\$713.70	\$150.00	\$986.40
Claims over \$500,000 up to and including \$1 million	\$1,390.20	\$973.10	\$150.00	\$986.40
Claims over \$1 million up to and including \$5 million	\$1,760.90	\$1,232.60	\$150.00	\$1,903.80
Claims of more than \$5 million or the value is not specified	\$2,131.60	\$1,492.10	\$150.00	\$1,903.80
Claims of no monetary value or the value is nil	\$622.30	\$435.60	\$150.00	\$525.60
Real property - co-ownership matters	\$847.40	\$593.20	\$150.00	\$525.60
<b>C: Human Rights Division</b>				
<b>Application Fees</b>				
Exemption from the Equal Opportunity Act 2010	\$847.40	\$593.20	\$150.00	\$55.60
<b>D: Residential Tenancies Division</b>				
<b>Application Fees</b>				
For matters with a value between \$1 and \$10,000	\$83.40	\$58.40	\$0.00	\$55.60
<b>E: Hearing Day Fees</b>				
<b>Hearing day fees for matters other than Major Cases and Complex Matters</b>				
Day 1 except for matters valued between \$1 and \$100,000	\$463.40	\$324.40	\$150.00	New Fee
Days 2-4	\$463.40	\$324.40	\$150.00	\$389.30
Days 5-9	\$926.80	\$648.80	\$150.00	\$651.40
Day 10 and subsequent days	\$1,390.20	\$973.10	\$150.00	\$1,087.00

Notes: 1. The Civil matters here are not directly comparable to those in Table 23 because consumer claims, domestic building, owners corporations, retail tenancy and real property matters have been brought together in these claims categories.  
2. Comparison of fees with 2014-15 fees needs to be done with caution because in 2014-15 the application fee included the first hearing day fee for all matters other than Major Cases. The proposed fees only include the first hearing day for matters valued under \$100,000.

Source: Process modelling.

Under Option 3, the total fees charged by VCAT are expected to increase by about \$1 million, to approximately \$9 million (almost 30 per cent of the costs funded by government).



Against the base case where no fees are charged the advantages of Option 3 are as follows:

- VCAT's role in the civil justice system would be better supported. The Corporate Fee would send good price signals to VCAT users about the cost of bringing a matter to VCAT. This would help to inform applicant choice between VCAT and other dispute-handling options but keep other fees low enough to encourage use of VCAT rather than the courts. Frivolous or vexatious claims would be constrained. Compared to Option 2 fees would be less of a consideration in bringing matters to VCAT.
- Horizontal equity would be reasonably strong with fees set to reflect the use of services that are needed at the application stage and at the hearing stage.
- Vertical equity would be reasonably strong (and stronger than for other options) because higher fees for more highly-valued matters would mean that there was good correlation with ability to pay.
- Efficiency would be better because there would be adequate resources to employ staff and for some investment in business improvements, thereby enabling the necessary level of administrative support to ensure matters could be dealt with reasonably quickly.
- Matters could be dealt with expeditiously, and long pending times avoided.
- Efficiency in resolving matters would improve by current standards, as measured by time to finalisation.

Against the base case where no fees are charged the disadvantages of Option 3 are as follows:

- Where fees are higher than those of the courts some litigants will be encouraged to use the courts, if they have jurisdiction.<sup>57</sup> However, additional costs are more likely to be incurred when taking matters to a court – such as those arising from the stronger need for legal advice and legal representation – so any leakage of applications to the courts is likely to be low and primarily apply to big business or very large consumer claims, where such additional costs may not be regarded as justified on the basis of the value of the claim.
- The fee structure would not be as easy for users to understand as for the base case and therefore simplicity is compromised.
- Fees would be more of an issue in relation to access to justice than is the case for Option 1.

Against the assessment criteria set out in section 6, Option 3 scores 5.8 points (see Table 23), which is better than the Option 2 score.

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<sup>57</sup> For example, certain high value civil claims, where VCAT has concurrent jurisdiction with the County, Supreme and Federal Courts.

**Table 23:** Assessment of Option 3.

Criterion	Weighting	Score	Comment relative to base case of no fees
1 Supports VCAT's intended role	30%	7	Much better than the base case. Price signals would be stronger than the base case and serve to limit inappropriate use of VCAT. With different fees for different classes of party the risk of a sharp drop in applications is low. There would be incentives to settle matters informally, eg through use of Ombudsmen, or early.
2 Equity	30%		
a) Vertical equity	15%	7	Much better than the base case. Vertical equity is good and better than Option 1. Those with the capacity to pay are asked to pay more.
b) Horizontal equity	15%	7	Much better than base case - VCAT users are paying differential fees for different services
3 Efficiency	30%	7	Much better than the base case. Matters will be dealt with reasonably expeditiously by VCAT Members, there would be capacity to invest in some business improvements.
4 Simplicity of fee structure	10%	-5	Worse than the base case, simply because there is a fee structure (but not as poor as Option 2 because the fees would be less confusing for users).
<b>Total</b>	<b>100%</b>	<b>5.8</b>	

### Comparison of options

Table 24 provides a comparison of the Standard Fee (the most commonly paid fee) across the three options with the full cost of providing the service. It is evident from Table 24 that there are variable levels of cost recovery for application and hearing day fees but these variations are generally less than the variations that exist between the current fees and full efficient costs that are evident in Tables 8 and 11.

**Table 24:** Comparison of options with full efficient costs.

Fees	Standard Fee					
	Option 1		Option 2		Option 3	
	Value	% of full cost	Value	% of full cost	Value	% of full cost
<b>A: Administrative Division</b>						
<b>Application fees for planning and environment matters</b>						
<b>Matters for which application fees apply but no 1st hearing day fees apply</b>						
Change of conditions applications - irrespective of value	\$658.00	47%	\$1,407.80	100%	\$778.50	55%
VicSmart matters - irrespective of value	\$658.00	27%	\$2,422.40	100%	\$778.50	32%
Costs applications (no hearing day fees apply)	\$500.50	48%	\$1,042.20	100%	\$593.20	57%
<b>Review of a planning decision (hearing day and site visit fees also apply)</b>						
Single dwellings irrespective of value	\$658.00	44%	\$1,480.40	100%	\$778.50	53%
Multiple dwelling or non-dwelling development valued at						
≤\$1 million	\$722.90	49%	\$1,480.40	100%	\$871.20	59%
>\$1 million & ≤\$5 million	\$861.90	58%	\$1,480.40	100%	\$1,028.70	69%
>\$5 million & ≤\$15 million	\$1,075.20	43%	\$2,481.80	100%	\$1,288.00	52%
>\$15 million & ≤\$50 million	\$1,288.00	52%	\$2,481.80	100%	\$1,547.70	62%
>\$50 million or the value is not specified	\$1,501.50	61%	\$2,481.80	100%	\$1,807.40	73%
Lodging a Statement of Grounds	\$42.60	59%	\$72.80	100%	\$51.00	70%
<b>Application fees for matters other than planning and environment matters</b>						
Administrative Review	\$500.50	34%	\$1,477.30	100%	\$593.20	40%
Legal Practice disciplinary matters*	\$658.00	28%	\$2,342.30	100%	\$778.50	33%
* Legislation taking effect in July 2015 removed the prohibition on charging fees for these matters, but no fee applied in 2014-15. The comparable fee is						
<b>B: Civil Division</b>						
<b>Application Fees</b>						
<b>Matters for which application fees apply but no 1st hearing day fees apply</b>						
Claims with a monetary value up to \$3,000	\$58.40	10%	\$560.20	100%	\$58.40	10%
(claims valued between \$500 and \$3,000)	\$58.40	10%	\$560.20	100%	\$58.40	10%
Claims valued over \$3,000 up to and including \$10,000	\$169.60	30%	\$560.20	100%	\$169.60	30%
Claims over \$10,000 up to and including \$100,000	\$361.50	31%	\$1,167.00	100%	\$435.60	37%
Additional fee to hear a matter as an injunction	\$58.40	13%	\$446.40	100%	\$58.40	13%
<b>The following claims attract a 1st hearing day fee if a hearing is required</b>						
Claims over \$100,000 up to and including \$500,000	\$583.90	50%	\$1,170.30	100%	\$713.70	61%
Claims over \$500,000 up to and including \$1 million	\$806.30	66%	\$1,218.80	100%	\$973.10	80%
Claims over \$1 million up to and including \$5 million	\$1,028.70	55%	\$1,887.40	100%	\$1,232.60	65%
Claims of more than \$5 million or the value is not specified	\$1,251.20	56%	\$2,215.00	100%	\$1,492.10	67%
Claims of no monetary value or the value is nil	\$361.50	31%	\$1,170.30	100%	\$435.60	37%
Real property - co-ownership matters	\$500.50	64%	\$781.20	100%	\$593.20	76%
<b>C: Human Rights Division</b>						
<b>Application Fees</b>						
Exemption from the Equal Opportunity Act 2010	\$500.50	59%	\$852.00	100%	\$593.20	70%
<b>D: Residential Tenancies Division</b>						
<b>Application Fees</b>						
For matters with a value between \$1 and \$10,000	\$58.40	23%	\$258.00	100%	\$58.40	23%
<b>E: Hearing Day Fees</b>						
<b>Hearing day fees for matters other than Major Cases and Complex Matters</b>						
Day 1 except for matters valued between \$1 and \$100,000	\$267.80	19%	\$1,378.90	New Fee	\$324.40	24%
Days 2-4	\$267.80	19%	\$1,378.90	100%	\$324.40	24%
Days 5-9	\$536.30	39%	\$1,378.90	100%	\$648.80	47%
Day 10 and subsequent days	\$804.90	58%	\$1,378.90	100%	\$973.10	71%

Table 25 summarises the assessment of the three options against the base case whereby no fees would be charged for VCAT services.

**Table 25:** Overall assessment of the options.

Criterion	Weighting	Option 1	Option 2	Option 3	Comment
1 Supports VCAT's intended role	30%	5	-7	7	Option 3 scores most highly because fees provide stronger incentives to use more informal dispute resolution mechanisms where they are available but are less likely to make the courts a more attractive option for litigants
2 Equity	30%				Option 3 provides the best outcome on vertical equity because those with greater means are paying proportionately more than those with lesser means.
a) Vertical equity	15%	5	0	7	
b) Horizontal equity	15%	5	10	7	Option 2 (full cost recovery) scores most highly on horizontal equity because fees are best structured to ensure that users are paying for the services they use, but not for services they don't use.
3 Efficiency	30%	5	10	7	Option 2 score higher than the other options because there would be fewer applications, allowing more expeditious resolution of matters
4 Simplicity of fee structure	10%	-5	-7	-5	Options 1 and 3 rate the same. The problem with full cost recovery in Option 2 is that there would be a plethora of fees.
<b>Total</b>	<b>100%</b>	<b>4.00</b>	<b>1.70</b>	<b>5.80</b>	Option 3 performs better overall because it is stronger than Option 1 against those criteria where full cost recovery scores highly.

The major strengths and weaknesses of each of the options are as follows.

- Option 1 shows less volatility against the assessment criteria than Option 2 but is not as strong as Option 3 on most criteria. There is no single criterion where it scores higher than either of the other options.
- Option 2 (full cost recovery) scores well on horizontal equity and efficiency measures but its weaknesses relate to the lack of support for VCAT in its intended role and the very complicated fee structure that would arise from full cost recovery.
- Option 3 is the strongest option in relation to supporting VCAT's role and vertical equity and has strong scores against other criteria as well, making it, overall, the better option.

## 8. The preferred option

Option 3 has, as its anchor, the assumption of maximising cost recovery on the basis of the Corporate Fee while minimising the risk of over-recovery. The fee schedule sets out Corporate, Standard and Concession fees.

- The Corporate Fee is payable by corporate entities, other than small businesses, and government agencies. The Corporate Fee is set at 100 per cent of cost recovery with other adjustments as set out below.
- The Standard fee is payable by individuals, small businesses that turnover less than \$200,000 per annum and not-for-profit organisations. The Standard Fee is 70 per cent of the Corporate Fee. The majority of applicants will be paying the Standard Fee.
- The Concession Fee is payable by individuals who hold a federal government health care card. The Concession Fee is 50 per cent of the Standard Fee and capped at \$150 except for civil claims valued at \$10,000 or less and for all residential tenancy matters, where health care card holders will pay no fee.

The fee schedule has been designed so that it can be presented on three pages:

1. The Administrative Division
2. The Civil Division
3. The Human Rights Division and the Residential Tenancies Division.

The fee structure has been adjusted to take into account the policy and practical considerations discussed in Section 6, including:

- describing fees for different types of matters in plain English instead of in terms of legislation
- the introduction of Corporate, Standard and Concession fees
- revised thresholds for most civil matters
- the introduction of first hearing day fees for matters valued at over \$100,000 and those of no monetary value, noting that no hearing day fees are payable for matters without application fees
- in order to minimise the number of fee points and make it easier for applicants to understand which fee applies to their application higher volume matters are used to determine fees for similar types of matters that have different costs, for example, there were only seven VicSmart matters in the Planning and Development List in 2014–15 so it has been allocated a fee that is the same as ‘other’ planning matters to avoid an additional fee point
- where the Standard Fee is higher than current fees it is because the matters have considerably higher cost structures than is reflected in current fees
- where matters vary by monetary value the fees charged reflect the outcome of the fees review, which indicates that matters of higher value are more costly to resolve, therefore, the differential fees have been based on the greater need for directions hearings and the higher likelihood of additional ADR sessions per matter as the value of matters rises

- the fees for major cases are nominally set at full cost recovery with higher fees for higher-valued matters to reflect the additional case management involved, and there is no reduction in fees for individuals and health care card holders because entry to the Major Cases List is voluntary
- fees for matters related to domestic residences have been discounted including Residential Tenancy Division fees, fees for higher-valued domestic building matters (which flow through to fees for all higher-valued matters in the Civil Division) and planning matters related to a single dwelling.

This section of the RIS discusses the advantages and disadvantages of the preferred option in comparison with the current fee structure. A detailed comparison of the proposed fees and the current fees (in 2014–15 dollars) is in Attachment 3.

## VCAT's intended role

The proposed fee schedule, incorporating Corporate, Standard and Concession fees better supports VCAT's role as the lowest level of formal dispute resolution in Victoria.

It will encourage litigants to use VCAT services rather than court services. For example, under the proposed fee schedule the Standard Fee to lodge a civil matter at VCAT that is valued at \$25,000 would be \$435.60 in 2014–15 dollars. In comparison, lodging such a matter with the Magistrates' Court would have incurred a fee of \$496.00 in 2014–15. The relevant VCAT fee was \$525.60, which was higher than the Magistrates' Court fee.

On the other hand, business applicants and individuals with large claims may find it less costly to take a matter to a court, if the court has jurisdiction, and no legal representation is required. However, VCAT's preference for litigants to represent themselves could be a deciding factor if the applicant prefers not to use legal representation to avoid an additional expense.

The imposition of fees would also discourage applicants from using VCAT where a dispute could be resolved by an ombudsman or complaint-handling scheme that usually charge no fees to lodge a complaint. Similarly, vexatious, frivolous and ill-founded claims will be discouraged.

## Access to justice

Access to justice, as discussed in Section 2, is about making it easier for people to access VCAT. There are a number of ways this can be achieved – through lower fees, access to cost-effective dispute resolution mechanisms, the availability of waivers and charging no fees where VCAT's protective jurisdiction is engaged.

Option 3 better supports access to justice in the following ways:

- Where Standard and Concession fees are lower than the current fee, cost is likely to be less of a determining factor in a user's decision to take a matter to VCAT. The proposed fees will therefore make it easier for some people to do so. As a result, there may be increases to application volumes.
- To the extent that the level of fees determine user behaviour, the introduction of a tiered fee structure also means cost will be less of a consideration for litigants because affordability would be improved. However, other factors such as the need to take time off work would still impact on the decision to lodge a matter.

- With lower application fees that provide access to ADR, particularly for matters valued at over \$100,000, many applicants will have access to dispute-resolution arrangements that are effective, without paying fees that (partially) cover the costs of a hearing day they will not use. Such a fee structure is likely to be an incentive to use ADR.
- Waiver arrangements will continue to be in place where paying fees may cause financial hardship (noting that most applications by holders of health care cards will not attract a fee).
- The fee structure continues to apply no fees where VCAT’s protective jurisdiction is engaged, for example, where an applicant is a person with a disability or the applicant’s human rights are at risk.
- Setting fees in a way that supports VCAT’s role in Victoria’s civil justice system promotes the appropriate use of VCAT services.

Conversely, the disadvantages of the proposed fee structure compared with the current fee structure are evident for matters valued over \$100,000 and matters with no monetary value when it is necessary for a matter to go to a formal hearing. The total costs of having a matter valued over \$100,000 and matters with no monetary value dealt with by VCAT will increase, which may discourage some applicants from pursuing matters to a hearing. For example, the fee for a matter valued at \$150,000 that requires one hearing day was \$986.40 in 2014–15, whereas under the proposed fee regime the cost to an individual would be \$1038.10 – a five per cent increase. Nevertheless, a \$52 increase in fees for a matter valued at \$150,000 is not expected to be a barrier to justice for such applicants.

On balance, the proposed fee structure better supports access to justice.

## Equity

Horizontal equity, where VCAT users pay for the services they access and do not pay for services they do not use, is improved because applicants whose matters do not go to a hearing are not, even partially, supporting the cost of hearings. As a result, there is a fee differential between users whose matters settle before a hearing and those whose matters require a hearing to be resolved. This means litigants with claims of no monetary value and those valued in excess of \$100,000 who proceed to a hearing will generally pay more than current applicants because the cost of hearings is, at present, shared by all VCAT users not just those whose matters go to a hearing.

Vertical equity, where users who can afford to pay more do pay more, is improved. The introduction of a tiered fee structure involving Standard and Concession fees means that fees will be less of an issue for those with less ability to pay. The introduction of some higher monetary thresholds helps to future-proof the fee structure and, relative to the value of matters (monetary value or importance for economic or social well-being), such fees could be regarded as reasonable.

The Standard Fee substantially compensates individuals unable to claim a tax deduction on the VCAT fee and better supports vertical equity. Health care card holders, who generally have lesser means, would be asked to pay a lower fee. On balance, equity should be greater under the proposed fee structure than the current fee structure.

## More efficient dispute resolution

There may be an increase in small civil matters arising from the lower fees for individuals, which could have long-term efficiency impacts. On the other hand, the proposed fee structure is likely to be an incentive for applicants to participate in ADR, thereby increasing the proportion of matters that are resolved using a lower-cost dispute-resolution mechanism.

Marginally higher application volumes could be expected under the new fee structure. More applications may result in longer times to finalisation especially for those matters that go to a formal hearing. Such an outcome would be a negative impact on productive efficiency.

On balance, if ADR is used more frequently and fewer hearing days are required, more efficient dispute resolution will be achieved.

## A simpler fee structure

The fee structure will be easier for VCAT users to understand and navigate than it currently is because applicants will not need to know what piece of enabling legislation supports their application to VCAT.

Plain English guidance will enable an applicant to quickly determine which division will deal with their matter, and the fees for each division will be on one page. Some redundant fee points have been removed, thereby providing fewer fee points and more clarity.

## Total fees

The value of the proposed fees is estimated to increase by \$1.120 million in comparison with the current fees. The value of the discounts for the Standard and Concession fees is estimated to be around \$1.705 million. The value of not charging hearing day fees for small matters (including first hearing days) in the Civil Division is \$405,000.

## Conclusion

It is likely that the Option 3 fee structure would result in a small increase in applications compared with the current arrangements, and a small decrease in applications for fee waivers, which would continue to be available on grounds of financial hardship. Such a fee structure may also encourage applicants to settle matters at ADR and, therefore, fewer formal hearing days would be required. Nevertheless, fees higher than 2014–15 fees would apply to administrative review and legal profession disciplinary matters, reflecting the higher cost structures of these matters. Some applicants with larger claims whose matters proceed to a hearing may also pay more in total fees.

On balance, compared with the current fee structure, the proposed fees:

- provide a good incentive to lodge matters with VCAT when it is the most appropriate dispute-resolution mechanism, thereby supporting VCAT in its intended role
- enhance access to justice through differential fees, including reduced concession rates
- demonstrate strong equity between users through the application of hearing day fees for larger matters and higher fees for matters of higher value
- should be much easier for VCAT users to understand and for staff to administer.

## 9. Implementation, monitoring and evaluation

The introduction of a thoroughly revised fee schedule will require careful short-term and long-term management at VCAT. This section of the RIS addresses implementation, monitoring and evaluation of the new fee regime. Outcomes of the monitoring and evaluation of the Proposed Regulations may indicate further amendment is required to fees over the life of the Regulations.

### Implementation

The way the revised fee structure is presented to VCAT users will change substantially (see Attachment 1). This will enable better user understanding of fees, and flow-on to more efficient administrative processes. Nevertheless, such a substantial change to the fee structure and the way it is presented to VCAT users will result in some significant transition risks that VCAT will need to manage. There is also likely to be some confusion for applicants about which fees apply following introduction of the new fee structure.

Late in 2015 VCAT commenced transition planning on the basis that the fee structure would change in presentation, with the introduction of tiered Corporate, Standard and Concession fees and with different fees applying in different Divisions. The quantum of fees will not be finalised until after the formal consultation period on the RIS has been completed.

Preparation for the new fee regime involves:

- risk identification and mitigation
- a communications plan to ensure that members, staff and VCAT users have easy access to accurate information about changes to fees
- staff training so that
  - there is minimum disruption to VCAT processes, including hearings, as of 1 July
  - the fee structure is well understood by counter staff, call centre staff and registry staff
  - staff are fully aware of changes that may cause concern to VCAT users such as the introduction of new fees
- provision of information to VCAT's judicial officers, deputy presidents, heads of lists, senior members, members and sessional members so that they are aware of the fee arrangements that relate to matters they are dealing with
- updating of online information and systems, and hard copy forms and brochures
- updating of staff manuals.

### Monitoring

Following implementation in July 2016 VCAT will monitor the new fee regime for a period of at least 18 months to ensure that any remaining or emerging implementation risks are effectively addressed. Monitoring will enable VCAT to establish if:

- there are any unintended consequences of the changes, especially where access to justice is concerned



- the fee schedules are easy for users to understand and VCAT to administer, which will be assessed through feedback with VCAT’s users form
- the fees for major cases accurately reflect costs
- projections regarding the total fees to be collected were correct including the impact of the introduction of Corporate, Standard and Concession fees on the overall level of cost recovery.

Particular focus will be placed on changes such as:

- the impact of the introduction of first hearing day fees on
  - participation in ADR
  - the number of first and subsequent hearing days
- the outcomes of the introduction of differentiated Corporate, Standard and Concession fees, in particular:
  - the proportion of applicants in each fee category
  - the impact on applications for waivers
- the impact of the new fees on application volumes for all lists
- whether the waiver arrangements are effective from both the users’ perspective and administratively
- the operation of the more objective criteria for determining complexity and the impact on the number of matters recognised as complex
- gaining a better understanding of the volume of different ancillary fees, which are currently treated as a single pool of fees for administrative purposes.

Emerging problems with the Regulations could be addressed through:

- providing information to users
- changing administrative practice
- amendments to the regulations, if necessary.

## Mid-term evaluation

In accordance with government policy, the fee structure introduced in 2016 will be independently evaluated in 2021 in order:

- to enable VCAT users to comment on the fee structure and raise issues of concern
- for other stakeholders to raise issues that should be considered before the fees are restructured
- for the government to understand how costs have changed since the regulations were replaced
- to determine the extent to which the objectives of the current review have been achieved

- to identify changes that may be needed to better achieve those objectives or other objectives that emerge in the intervening period.

The revised fee structure has been developed to address a range of issues that face the government and VCAT in the delivery of VCAT services. In summary they are:

- the complexity of VCAT's current fee advice to users, which causes considerable confusion
- the community perception that fees for some VCAT matters are too high for some groups of users.
- the community concern that the fees for small claims are inhibiting access to justice by making it uneconomical for individuals to pursue small claims
- the poor alignment between VCAT costs and its current fee structure.

The evaluation will need to take account of a range of factors that may affect VCAT operations other than the revised fee schedule such as the effect of any changes in compliance processes when bringing a matter to VCAT, any changes to VCAT's jurisdiction over the period, changes to the role of other bodies responsible for dispute resolution and changes in the economy that could be expected to be reflected in applications to VCAT. Primarily, the evaluation will test the hypothesis that the revised fee schedule introduced in 2016 progressively delivered better outcomes than the current fee schedule for the following objectives.

1. Supporting VCAT's role in Victoria's civil justice system as measured by:
  - increases in the volume and proportion of matters, particularly claims valued up to \$10,000
  - VCAT effectiveness based on views of stakeholder groups and VCAT users
  - VCAT self-assessment of its effectiveness.
2. Supporting access to justice as measured by:
  - increased use of ADR
  - shorter times to finalisation
  - lower levels of vexatious or frivolous claims (that detract time from dealing with genuine matters).
3. Improving equity between users as measured over the period by:
  - changes in the proportion of users paying Corporate, Standard and Concession fees who are also applying for fee waivers.
4. Improving efficiency by supporting use of the lowest-cost but most effective dispute-resolution mechanisms, and in administrative arrangements as measured by:
  - progressively shorter time to finalisation
  - decreases in VCAT member and registry staff resource usage per application
  - no real increase in the value of waivers after the first full year of operation
  - improved case flow as assessed by members

- a decrease in problems with fee processing reported by registry staff.
5. Simplicity of fees and fee structures that are easier for users to understand and VCAT to administer as measured by:
- increased staff satisfaction with fees processing
  - increased user satisfaction with the fees schedule
  - decreases in complaints about the fee schedule.

The baseline data for the evaluation is the data collected and analysed for this RIS. Information and data for the evaluation will be drawn from several sources such as:

- VCAT case management system data
- VCAT financial management system data
- stakeholder consultation on the strengths and weaknesses of the revised fee schedules
- member and staff satisfaction surveys
- VCAT user satisfaction surveys.

The data will necessarily involve collecting and storing five years of operational data and survey information from a number of sources. This data will be managed by VCAT's Business Analysis Team over the course of the next five years in order to ensure that it is accessible for an evaluation when required.

The Department of Justice and Regulation (the department) will be responsible for ensuring that the mid-term evaluation is completed, and for liaising with the Commissioner for Better Regulation about its adequacy and transparency. The evaluation is expected to occur over a period of at least six months in order to allow sufficient time for stakeholder consultation, data collection and analysis.

During the implementation phase for the new fee schedule the department will determine whether any additional KPIs for the mid-term evaluation are necessary or if processes need to be implemented to ensure that the relevant data is collected and available at the time of the evaluation.

## Proposed fees for 2016–17 (expressed in 2014–15 dollars)

Proposed Administrative Division Fee Schedule (in 2014-15 dollars)			
	Corporate Fee	Standard Fee*	Concession Fee*
<b>Part 1: Application fees for Planning and Environment matters</b>			
<b>Matters for which application fees apply but no 1st hearing day fees apply</b>			
Change of conditions applications - irrespective of value	\$1,112.20	\$778.50	\$150.00
VicSmart matters - irrespective of value	\$1,112.20	\$778.50	\$150.00
<b>Matters for which application fees apply and 1st hearing day fees apply</b>			
<b>Review of a planning decision (hearing day and site visit fees also apply)</b>			
Single dwellings irrespective of value	\$1,112.20	\$778.50	\$150.00
Multiple dwelling or non-dwelling development (including matters with no monetary value)			
≤\$1 million	\$1,244.60	\$871.20	\$150.00
>\$1 million & ≤\$5 million	\$1,469.60	\$1,028.70	\$150.00
>\$5 million & ≤\$15 million	\$1,840.00	\$1,288.00	\$150.00
>\$15 million & ≤\$50 million	\$2,211.10	\$1,547.80	\$150.00
>\$50 million	\$2,581.80	\$1,807.30	\$150.00
No monetary value	\$1,469.60	\$1,028.70	\$150.00
Other planning, environment, land valuation and water flow matters	\$1,112.20	\$778.50	\$150.00
Lodging Statement of Grounds	\$72.80	\$51.00	\$25.50
Planning and Environment Act 1987 applications under sections 87, 89 or 93	\$225.10	\$157.60	\$78.80
<b>Part 2: Application fees for matters other than planning and environment matters (hearing</b>			
Administrative Review	\$847.40	\$593.20	\$150.00
Legal Practice costs disputes	See Civil Division fees for claims with a monetary value		
Legal Practice disciplinary matters	\$1,112.20	\$778.50	\$150.00
Other administrative matters	\$847.40	\$593.20	\$150.00
Costs applications (no hearing day fees apply)	\$847.40	\$593.20	\$150.00
Non-attendance applications	\$225.10	\$157.60	\$78.80
<b>Part 3: Application fees for Major Cases - Planning and Environment matters only</b>			
Major cases valued at			
≤\$1 million	\$2,727.40	\$2,727.40	\$2,727.40
>\$1 million & ≤\$5 million	\$2,952.50	\$2,952.50	\$2,952.50
>\$5 million & ≤\$15 million	\$3,323.20	\$3,323.20	\$3,323.20
>\$15 million & ≤\$50 million	\$3,694.00	\$3,694.00	\$3,694.00
>\$50 million	\$4,064.70	\$4,064.70	\$4,064.70
No monetary value	\$2,952.50	\$2,952.50	\$2,952.50
<b>Part 4: Hearing day (and Site visit) fees</b>			
<b>Major Cases</b>			
Day 1	\$3,190.80	\$3,190.80	\$3,190.80
Days 2-4	\$3,190.80	\$3,190.80	\$3,190.80
Days 5-9	\$3,190.80	\$3,190.80	\$3,190.80
Day 10 and subsequent days	\$3,190.80	\$3,190.80	\$3,190.80
<b>Complex Cases</b>			
Day 1	\$3,190.80	\$2,233.60	\$150.00
Days 2-4	\$3,190.80	\$2,233.60	\$150.00
Days 5-9	\$3,190.80	\$2,233.60	\$150.00
Day 10 and subsequent days	\$3,190.80	\$2,233.60	\$150.00
<b>Other matters where hearing day fees apply</b>			
Day 1 except for matters valued between \$1 and \$100,000	\$458.10	\$320.70	\$150.00
Days 2-4	\$458.10	\$320.70	\$150.00
Days 5-9	\$917.50	\$642.30	\$150.00
Day 10 and subsequent days	\$1,377.00	\$963.90	\$150.00

\* Concession fees apply to holders of a Commonwealth Health Care Card. Individuals and businesses with a turnover of less than \$200,000 may pay the Standard fee.

## Proposed Civil Division Fee Schedule (in 2014-15 dollars)

	Corporate Fee	Standard Fee*	Concession Fee*
<b>Part 1: Application fees</b>			
<b>Injunctions</b>			
Application to hear a matter as an injunction (additional fee)	\$278.00	\$194.60	\$97.30
<b>Claims with a monetary value</b>			
Consumer claims valued between \$1 and \$3,000	\$83.40	\$58.40	\$0.00
Claims over \$3,000 up to and including \$10,000	\$242.30	\$169.60	\$0.00
Claims over \$10,000 up to and including \$100,00	\$622.30	\$435.60	\$150.00
Claims over \$100,000 up to and including \$500,000	\$1,019.50	\$713.70	\$150.00
Claims over \$500,000 up to and including \$1 million	\$1,390.20	\$973.10	\$150.00
Claims over \$1 million up to and including \$5 million	\$1,760.90	\$1,232.60	\$150.00
Claims of more than \$5 million or for an unspecified value	\$2,131.60	\$1,492.10	\$150.00
Additional fee for transferring a matter from the Magistrates' Court	\$83.40	\$58.40	\$29.20
<b>Real property matters</b>			
Co-ownership matters	\$847.40	\$593.20	\$150.00
Flow of water and other real property matters	\$622.30	\$815.60	\$150.00
<b>Other matters</b>			
Non-attendance (review) applications (Section 120 VCAT Act)	\$83.40	\$58.40	\$29.20
Costs applications (Section 109 VCAT Act)	\$476.60	\$333.60	\$150.00
Other matters not listed above (includes matters with no value or the value is nil)	\$622.30	\$435.60	\$150.00
<b>Part 2: Hearing day fees (do not apply to matters valued between \$1 and \$10,000)</b>			
<b>For Complex Matters</b>	(discounts apply only to complex cases)		
Day 1	\$2,343.50	\$1,640.50	\$150.00
Days 2-4	\$2,343.50	\$1,640.50	\$150.00
Days 5-9	\$2,343.50	\$1,640.50	\$150.00
Day 10 and subsequent days	\$2,343.50	\$1,640.50	\$150.00
<b>For matters valued over \$10,000 other than Complex Matters</b>			
Day 1 except for matters valued between \$1 and \$100,000	\$463.40	\$324.40	\$150.00
Days 2-4	\$463.40	\$324.40	\$150.00
Days 5-9	\$926.80	\$648.80	\$150.00
Day 10 and subsequent days	\$1,390.20	\$973.10	\$150.00

\* Concession fees apply to holders of a Commonwealth Health Care Card. Individuals and businesses with a turnover of less than \$200,000 may pay the Standard fee.

<b>Proposed Human Rights Division Fee Schedule (in 2014-15 dollars)</b>			
Application fees for different types of matters	Application fees		
	Corporate Fee	Standard Fee*	Concession Fee*
Annual Administration Fee where an Administration Order is in place	Not applicable	\$119.20	Not applicable
Exemption from the Equal Opportunity Act 2010	\$847.40	\$593.20	\$150.00
<b>Part 2: Hearing day fees</b>			
<b>For Complex Matters</b>			
Day 1	\$2,343.50	\$1,640.50	\$150.00
Days 2-4	\$2,343.50	\$1,640.50	\$150.00
Days 5-9	\$2,343.50	\$1,640.50	\$150.00
Day 10 and subsequent days	\$2,343.50	\$1,640.50	\$150.00
<b>For matters valued over \$10,000 other than Complex Matters</b>			
Day 1 except for matters valued between \$1 and \$100,000	\$463.40	\$324.40	\$150.00
Days 2-4	\$463.40	\$324.40	\$150.00
Days 5-9	\$926.80	\$648.80	\$150.00
Day 10 and subsequent days	\$1,390.20	\$973.10	\$150.00

\* Concession fees apply to holders of a Commonwealth Health Care Card. Individuals and businesses with a turnover of less than \$200,000 may pay the Standard fee.

<b>Proposed Residential Tenancies Division User Fee Schedule (in 2014-15 dollars)</b>			
Application fees for different types of matters - residential tenancy matters only	Proposed Application fees		
	Corporate Fee	Standard Fee*	Concession Fee*
Bond related matters	\$0.00	\$0.00	\$0.00
Matters related to terms and conditions of tenancy for group homes for people with disabilities	\$83.40	\$58.40	\$0.00
Supported residential services	\$83.40	\$58.40	\$0.00
<b>Other tenant/landlord matters, including injunctions</b>			
For matters with a value between \$1 and \$10,000	\$83.40	\$58.40	\$0.00
For matters with a value exceeding \$10,000	\$242.30	\$169.60	\$0.00
Issuing a warrant	\$145.60	\$101.90	\$0.00
<b>Part 2: Hearing day fees (do not apply to matters valued between \$1 and \$10</b>			
<b>For matters valued over \$10,000</b>			
Day 1 except for matters valued between \$1 and \$100,000	\$463.40	\$324.40	\$0.00
Days 2-4	\$463.40	\$324.40	\$0.00
Days 5-9	\$926.80	\$648.80	\$0.00
Day 10 and subsequent days	\$1,390.20	\$973.10	\$0.00

\* Concession fees apply to holders of a Commonwealth Health Care Card. Individuals and businesses with a turnover of less than \$200,000 may pay the Standard fee.

Note: the Corporate Fee would be paid by DHHS and other social housing providers

## Proposed fees for 2016–17 (expressed in fee units)

<b>Administrative Division Fee Schedule (in fee units)</b>	
	<b>Corporate Fee</b>
<b>Part 1: Application fees for Planning and Environment matters</b>	
<b>Matters for which application fees apply but no 1st hearing day fees apply</b>	
Change of conditions applications - irrespective of value	84.0
VicSmart matters - irrespective of value	84.0
<b>Matters for which application fees apply and 1st hearing day fees apply</b>	
<b>Review of a planning decision (hearing day and site visit fees also apply)</b>	
Single dwellings irrespective of value	84.0
Multiple dwelling or non-dwelling development (including matters with no monetary value)	
≤\$1 million	94.0
>\$1 million & ≤\$5 million	111.0
>\$5 million & ≤\$15 million	139.0
>\$15 million & ≤\$50 million	167.0
>\$50 million or the value is not specified	195.0
No monetary value	111.0
Other planning, environment, land valuation and water flow matters	84.0
Lodging Statement of Grounds	5.5
Planning and Environment Act 1987 applications under sections 87, 89 or 93	17.0
<b>Major cases valued at</b>	
≤\$1 million	206.0
>\$1 million & ≤\$5 million	223.0
>\$5 million & ≤\$15 million	251.0
>\$15 million & ≤\$50 million	279.0
>\$50 million or the value is not specified	307.0
no monetary value or where the value is nil	223.0
<b>Part 2: Application fees for matters other than planning and environment</b>	
Administrative Review	64.0
Legal Practice disciplinary matters	84.0
Legal Practice costs disputes	
Claims valued between \$1 and \$3,000	6.3
Claims over \$3,000 up to and including \$10,000	18.3
Claims over \$10,000 up to and including \$100,000	47.0
Claims over \$100,000 up to and including \$500,000	77.0
Claims over \$500,000 up to and including \$1 million	105.0
Claims over \$1 million up to and including \$5 million	133.0
Claims of more than \$5 million or for an unspecified value	161.0
Additional fee for transferring a matter from the Magistrates' Court	6.3
Other administrative matters	64.0
Costs applications (no hearing day fees apply)	64.0
Non-attendance applications	17.0
<b>Part 3: Hearing day and Site visit fees</b>	
<b>Major Cases</b>	
Day 1	241.0
Days 2-4	241.0
Days 5-9	241.0
Day 10 and subsequent days	241.0
<b>Complex Cases</b>	
Day 1	241.0
Days 2-4	241.0
Days 5-9	241.0
Day 10 and subsequent days	241.0
<b>Other matters where hearing day fees apply</b>	
Day 1 except for matters valued between \$1 and \$100,000	35.0
Days 2-4	35.0
Days 5-9	70.0
Day 10 and subsequent days	105.0

The Standard Fee is 70% of the Corporate Fee, rounded to the nearest 10c

The Concession Fee is 50% of the Standard Fee, rounded to the nearest 10c

<b>Proposed Civil Division Fee Schedule (in fee units)</b>	
	<b>Corporate Fee</b>
<b>Part 1: Application fees</b>	
<b>Injunctions</b>	
Application to hear a matter as an injection (additional fee)	21.0
<b>Claims with a monetary value</b>	
Consumer claims with a monetary value up to and including \$3,000	6.3
Claims over \$3,000 up to and including \$10,000	18.3
Claims over \$10,000 up to and including \$100,00	47.0
Claims over \$100,000 up to and including \$500,000	77.0
Claims over \$500,000 up to and including \$1 million	105.0
Claims over \$1 million up to and including \$5 million	133.0
Claims of more than \$5 million or the value is not specified	161.0
Additional fee for transferring a matter from the Magistrates' Court	6.3
<b>Real property matters</b>	
Co-ownership matters	64.0
Flow of water and other real property matters	47.0
<b>Other matters</b>	
Non-attendance (review) applications (Section 120 VCAT Act)	6.3
Costs applications (Section 109 VCAT Act)	36.0
Other matters not listed above (includes matters with no value or the value is nil)	47.0
<b>Part 2: Hearing day fees (do not apply to matters valued between \$1 and \$10,000)</b>	
<b>For Complex Matters</b>	
Day 1 except for matters valued between \$1 and \$100,000	177.0
Days 2-4	177.0
Days 5-9	177.0
Day 10 and subsequent days	177.0
<b>For matters other than Complex Matters</b>	
Day 1 except for matters valued between \$1 and \$100,000	35.0
Days 2-4	35.0
Days 5-9	70.0
Day 10 and subsequent days	105.0

The Standard Fee is 70% of the Corporate Fee, rounded to the nearest 10c

The Concession Fee is 50% of the Standard Fee, rounded to the nearest 10c



## Proposed Human Rights Division Fee Schedule (in fee units)

Application fees for different types of matters	Corporate Fee
Annual Administration Fee where an Administration Order is in place where the income from the estate exceeds \$21,242 in the previous financial year (2014-15 threshold)	9.0
Exemption from the Equal Opportunity Act 2010	64.0
<b>Part 2: Hearing day fees (do not apply to matters valued between \$1 and \$10,000)</b>	
<b>For Complex Matters</b>	
Day 1 except for matters valued between \$1 and \$100,000	177.0
Days 2-4	177.0
Days 5-9	177.0
Day 10 and subsequent days	177.0
<b>For matters valued over \$10,000 other than Complex Matters</b>	
Day 1 (only for matters valued over \$100,000)	35.0
Days 2-4	35.0
Days 5-9	70.0
Day 10 and subsequent days	105.0
The Standard Fee is 70% of the Corporate Fee, rounded to the nearest 10c	
The Concession Fee is 50% of the Standard Fee, rounded to the nearest 10c	

## Proposed Residential Tenancies Division Fee Schedule (in fee units)

Application fees for different types of matters - residential tenancy matters only	Corporate Fee
Bond related matters	0.0
Matters related to terms and conditions of tenancy for group homes for people with disabilities	6.3
Supported residential services	6.3
<b>Other tenant/landlord matters, including injunctions</b>	
For matters with a value between \$1 and \$10,000	6.3
For matters with a value exceeding \$10,000	18.3
Issuing a warrant	11.0
<b>Part 2: Hearing day fees (do not apply to matters valued between \$1 and \$10,000)</b>	
<b>For matters valued over \$10,000</b>	
Day 1 except for matters valued between \$1 and \$100,000	35.0
Days 2-4	35.0
Days 5-9	70.0
Day 10 and subsequent days	105.0

The Standard Fee is 70% of the Corporate Fee, rounded to the nearest 10c

All Concession Fees for residential tenancy matters are \$0

## Comparison of 2014–15 fees with proposed fees

**Table 3-1: Applications commenced under the Australian Consumer Law and Fair Trading Act 2012 (except residential tenancy matters), the Owners Corporations Act 2006 (except section 191), Domestic Building Contracts Act 1995, Legal Profession Uniform Law Application Act 2014 section 99**

Class of Matter	2014-15	Proposed 2016-17 fees expressed in 2014-15 dollars						Comment
		Corporate Fee		Standard Fee		Concession Fee		
		Amount	% increase	Amount	% increase	Amount	% increase	
Claims with nil value or not for a sum	\$525.60	\$622.30	18%	\$435.60	-17%	\$150.00	-71%	
Claims valued between \$1 and \$500	\$55.60	\$83.40	50%	\$58.40	5%	\$0.00	-100%	Amended threshold - was \$499. No fee applies in Civil Division and Residential Tenancies Division.
						\$29.20	-47%	
Claims valued between \$501 and \$3,000	\$158.90	\$83.40	-48%	\$58.40	-63%	\$0.00	-100%	Amended threshold - was \$499. No fee applies in Civil Division and Residential Tenancies Division.
						\$29.20		
Claims valued between \$3,001 and \$10,000	\$158.90	\$242.30	52%	\$169.60	7%	\$0.00	-100%	Amended threshold - was \$499. No fee applies in Civil Division and Residential Tenancies Division.
						\$29.20		
Claims valued between \$10,001 and \$100,000	\$525.60	\$622.30	18%	\$435.60	-17%	\$150.00	-71%	Amended threshold - was \$99,000
Claims valued between \$100,001 and \$500,000	\$986.40	\$1,019.50	3%	\$713.70	-28%	\$150.00	-85%	New threshold
Claims valued between \$500,001 and \$1 million	\$986.40	\$1,390.20	41%	\$973.10	-1%	\$150.00	-85%	New threshold
Claims valued between \$100,000.001 and \$5 million	\$1,903.90	\$1,760.90	-8%	\$1,232.60	-35%	\$150.00	-92%	New threshold
Claims valued at more than \$5 million or for a sum that is not specified	\$1,903.90	\$2,131.60	12%	\$1,492.10	-92%	\$150.00	-92%	New threshold

Note: By far the majority of VCAT applications, other than Residential Tenancy matters (see page 95), attract fees set in the table above.

**Table 3-2: Specifically prescribed application fees under the Victorian Civil and Administrative Tribunal (Fees) Regulations 2013**

Class of Matter	2014-15	Proposed 2016-17 fees expressed in 2014-15 dollars						Comment
		Corporate Fee		Standard Fee		Concession Fee		
		Amount	% increase	Amount	% increase	Amount	% increase	
<b>ADMINISTRATIVE DIVISION</b>								
<b>Legal Practice List</b>								
Legal Profession Uniform Law Applications Act 2014 section 91 applications relating to complaints, disciplinary proceedings or applications for non-publication	No fee	\$1,112.20	N/A		N/A		N/A	The Legal Profession Uniform Law Applications Act 2014 will result in significantly fewer applications and removes the statutory prohibition on charging fees for disciplinary matters. A fee was introduced in 2015-16. Costs disputes attract the same fees as civil matters
Legal Practice Uniform Law (Victoria)	No fee	\$1,112.20	N/A		N/A		N/A	
Legal Profession Uniform Law Applications Act 2014 other than section 91	\$525.60	See Table 3-1						
Australian Consumer Law and Fair Trading Act 2012 (claims regarding legal fees valued at ≥ \$25,000 with fees according to value - see Table 3-1)	\$525.60							
	\$986.40							
	\$1,903.90							

Class of Matter	2014-15	Proposed 2016-17 fees expressed in 2014-15 dollars						Comment
		Corporate Fee		Standard Fee		Concession Fee		
		Amount	% increase	Amount	% increase	Amount	% increase	
<b>Planning and Environment List</b>								
Aboriginal Heritage Act 2006	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Catchment and land Protection Act 1994 section 48 (land use conditions and land management notices)	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Climate Change Act 2010	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Conservation, Forests and Lands Act 1987 section 76 (variation and termination of land management co-operative agreements)	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Education and Training Reform Act 2006	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Environment Protection Act 1970	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Except section 33 (1) and 33A(1)	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00		
Claims under section 33(1) and 33A(1) where the estimated cost of the development is less than \$1 million	\$986.40	\$1,112.20	13%	\$778.50	-21%	\$150.00		
Claims under section 33(1) and 33A(1) where the estimated cost of the development is \$1 million or more	\$1,903.90	\$1,112.20	-42%	\$778.50	-59%	\$150.00		
Claims under sections 33(1) and 33A(1) where the application is entered into the Major Cases List	\$3,442.40	See Major Cases List below						
Flora and Fauna Guarantee Act 1988 sections 34(3), 41, 41A (interim conservation orders) and 43(12)(claims for compensation)	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Gambling Regulation Act 2003	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Health Services Act 1988 section 67 (compulsory acquisition of land)	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Heritage Act 1995	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Land Acquisition and Compensation Act 1986		\$1,112.20		\$778.50		\$150.00		
Claims for compensation of less than \$1 million	\$986.40	\$1,112.20	13%	\$778.50	-21%	\$150.00	-85%	Small numbers of applications (9 in 2014-15) makes fee differentiation unnecessary
Claims for compensation of \$1 million or more	\$1,903.90	\$1,112.20	-42%	\$778.50	-59%	\$150.00	-92%	

Class of Matter	2014-15	Proposed 2016-17 fees expressed in 2014-15 dollars						Comment
		Corporate Fee		Standard Fee		Concession Fee		
		Amount	% increase	Amount	% increase	Amount	% increase	
Local Government Act 1989 sections 183 (differential rating)	\$297.90	\$1,112.20	273%	\$778.50	161%	\$150.00	-50%	Small numbers of applications (8 in 2014-15) makes fee differentiation unnecessary
Local Government Act 1989 section 185 (imposition of special rate or charge);	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Local Government Act 1989 section 185AA (imposition of special rate or charge);	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Major Transport Projects Facilitation Act 2009	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Mineral Resources (Sustainable Development) Act 1990	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Petroleum Act 1998	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Pipelines Act 2005 section 154	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	
Planning and Environment Act 1987								
Claims under sections 87, 89 or 93	\$55.60	\$225.10	305%	\$157.60	183%	\$78.80	42%	Fee remains heavily discounted - 80% of the regular fee
Claims under sections 77, 79, 80 and 87A where the estimated cost of the development is								
≤\$1 million	\$986.40	\$1,244.60	26%	\$871.20	-12%	\$150.00	-85%	
>\$1 million & ≤\$5 million	\$1,903.90	\$1,469.60	-23%	\$1,028.70	-46%	\$150.00	-92%	
>\$5 million & ≤\$15 million	\$1,903.90	\$1,840.00	-3%	\$1,288.00	-32%	\$150.00	-92%	
>\$15 million & ≤\$50 million	\$1,903.90	\$2,211.10	16%	\$1,547.80	-19%	\$150.00	-92%	
>\$50 million or the value is not specified	\$1,903.90	\$2,581.80	36%	\$1,807.30	-5%	\$150.00	-92%	
Not for a sum or of nil value	\$1,903.90	\$1,469.60	-23%	\$1,028.70	-46%	\$150.00	-92%	
Claims under sections 77, 79, 80 and 87A where the proceeding is entered in the <b>Major Cases List</b> within the Planning and Environment List where the value is								Previous flat fee has been replaced.
≤\$1 million	\$3,442.40	\$2,727.40	-21%	\$2,727.40	-21%	\$2,727.40	-21%	
>\$1 million & ≤\$5 million	\$3,442.40	\$2,952.50	-14%	\$2,952.50	-14%	\$2,952.50	-14%	
>\$5 million & ≤\$15 million	\$3,442.40	\$3,323.20	-3%	\$3,323.20	-3%	\$3,323.20	-3%	
>\$15 million & ≤\$50 million	\$3,442.40	\$3,694.00	7%	\$3,694.00	7%	\$3,694.00	7%	
>\$50 million or the value is not specified	\$3,442.40	\$4,064.70	18%	\$4,064.70	18%	\$4,064.70	18%	
Not for a sum or of nil value	\$3,442.40	\$2,952.50	-14%	\$2,952.50	-14%	\$2,952.50	-14%	

Class of Matter	2014-15	Proposed 2016-17 fees expressed in 2014-15 dollars						Comment	
		Corporate Fee		Standard Fee		Concession Fee			
		Amount	% increase	Amount	% increase	Amount	% increase		
Single dwelling irrespective of value		\$1,112.20		\$778.50		\$150.00		New fees - previously varied with value. 1st day hearing fees do not apply.	
Change of condition applications, irrespective of value		\$1,112.20		\$778.50		\$150.00			
VicSmart, irrespective of value		\$1,112.20		\$778.50		\$150.00			
Lodging a Statement of Grounds	No fee	\$72.80		\$51.00		\$25.50		New fee	
All other planning and environment matters	\$986.40	\$1,112.20	13%	\$778.50	-21%	\$150.00	-85%		
Plant Biosecurity Act 2010 sections 48 (accreditation to issue assurance certificates) and 59 (review of the Minister's determination on costs)	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%		
Subdivision Act 1988 except Part 5	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%		
Traditional Owner Settlement Act 2010	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%		
Urban Renewal Authority Victoria Act 2003	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%		
Valuation of Land Act 1960 where –	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%	Fee differential has been removed	
(a) the net annual value of the property is less than \$60,000; or		\$1,112.20		\$778.50		\$150.00			
(b) the site value is less than \$750,000; or		\$1,112.20		\$778.50		\$150.00			
(c) the capital improved value is less than \$1 million		\$1,112.20		\$778.50		\$150.00			
Valuation of Land Act 1960 where –	\$1,903.90	\$1,112.20	-42%	\$778.50	-59%	\$150.00	-92%		
(a) the net annual value of the property is \$60,000 or more; or		\$1,112.20		\$778.50		\$150.00			
(b) the site value is \$750,000 or more; or		\$1,112.20		\$778.50		\$150.00			
(c) the capital improved value is \$1 million or more		\$1,112.20		\$778.50		\$150.00			
Water Act 1989 except section 19 (see Building & Property List)	\$525.60	\$1,112.20	112%	\$778.50	48%	\$150.00	-71%		
<b>Review and Regulation List</b>									
Accident Compensation Act 1985	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%		
Accident Towing Services Act 2007	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%		
Adoption Act 1984 section 129A(1)(a) (decisions regarding fitness to adopt and approval to adopt)	No fee	\$847.40		\$593.20		\$150.00		New fee	
Adoption Act 1984 section 129A(1)(b) (decisions regarding approval of adoption agencies)	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%		
Adoption Act 1984 section 129A(1)(c) (decisions regarding accreditation of bodies)	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%		

Class of Matter	2014-15	Proposed 2016-17 fees expressed in 2014-15 dollars						Comment
		Corporate Fee		Standard Fee		Concession Fee		
		Amount	% increase	Amount	% increase	Amount	% increase	
Agricultural and Veterinary Chemicals (Control of Use) Act 1992	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Architects Act 1991	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Associations Incorporation Reform Act 20012	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Biological Control Act 1986	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Births, Deaths and Marriages Registration act 1996	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Building Act 1993 (Division 12 of Part 12A and sections 25J and 182A and clause 10(3) and 10(4) of Part 2 of Schedule 7)	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Bus Safety Act 2009	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Cemeteries and Crematoria Act 2003	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Children, Youth and Families Act 2005	No fee	No fee		No fee		No fee		
Children's Services Act 1996	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Co-operatives National Law	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Conveyancers Act 2006 (sections 33 inquires into the conduct of licensees and 34 determination on inquiry, 146 and 187)	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Country Fire Authority Act 1958	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Dairy Act 2000	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Dangerous Goods Act 1985	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Disability Act 2006 section 45 (registration of a disability service provider);	No fee	\$847.40		\$593.20		\$150.00		New fee
Domestic Animals Act 1994	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Drugs, Poisons and Controlled Substances Act 1981	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Education and Care Services National Law (Victoria)	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Education and Training Reform Act 2006 Division 14 of Part 2.6 and Part 4.8	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Electoral Act 2002	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Electricity Safety Act 1998	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	

Class of Matter	2014-15	Proposed 2016-17 fees expressed in 2014-15 dollars						Comment
		Corporate Fee		Standard Fee		Concession Fee		
		Amount	% increase	Amount	% increase	Amount	% increase	
Emergency Management Act 1986	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Emergency Services Superannuation Act 1986	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Equipment (Public Safety) Act 1994	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Estate Agents Act 1980 except sections 56A(4) and 56B(1)	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Firearms Act 1996 section 182 decisions of Firearms Appeals Committee	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
First Home Owner Grant Act 2000	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Fisheries Act 1995	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Freedom of Information Act 1982 applications under section 50 if— the application is for the review of a deemed decision under section 53 refusing to grant access to a document; or the applicant is a natural person and the document to which access is sought contains information relating to the applicant's personal affairs.	No fee	No fee		No fee		No fee		
Freedom of Information Act 1982 applications except applications under section 50 if— the application is for the review of a deemed decision under section 53 refusing to grant access to a document; or the applicant is a natural person and the document to which access is sought contains information relating to the applicant's personal affairs.	\$380.00	\$847.40	123%	\$593.20	56%	\$145.60	-62%	
Fundraising Act 1998	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Gas Safety Act 1997	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Health Practitioner Regulation National Law Act 2009	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Health Practitioner Regulation National Law (Victoria)	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Health Services Act 1988 sections 57C and 110 (decisions of Minister or Chief General Manager under Part 4)	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	

Class of Matter	2014-15	Proposed 2016-17 fees expressed in 2014-15 dollars						Comment
		Corporate Fee		Standard Fee		Concession Fee		
		Amount	% increase	Amount	% increase	Amount	% increase	
Liquor Control Reform Act 1998	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Livestock Disease Control Act 1994	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Local Government Act 1989 sections 30, 38(2A), 48, 81D, 81E, 81J(1)(b), 81K, 81L, 81Q, 81R and 240A and clause 8 of Schedule 12	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Major Sporting Events Act 2009	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Meat Industry Act 1993 section 24 (licences to operate meat processing facilities, alteration of buildings)	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Metropolitan Fire brigades Act 1958	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Motor Car Traders Act 1986 except section 45 (see Civil Claims List)	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Occupational Health and Safety Act 2004	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Owners Corporations Act 2006 section 191	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	Generally of no monetary value
Parliamentary Salaries and Superannuation Act 1968	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Pharmacy Regulation Act 2010 section 62	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Pipelines Act 2005 sections 64, 83 and 182	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Prevention of Cruelty to Animals Act 1986 section 33 (licensing of scientific establishments and breeding establishments)	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Private Security Act 2004 Part 7	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Professional Boxing and Combat Sports Act 1985 (licences, permits and registration)	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Public Health and Wellbeing Act 2008 section 207	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Racing Act 1958	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Rail Safety (Local Operations) Act 2006 Part 7	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Relationships Act 2008 Part 2.4 of Chapter 2	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	



Class of Matter	2014-15	Proposed 2016-17 fees expressed in 2014-15 dollars						Comment
		Corporate Fee		Standard Fee		Concession Fee		
		Amount	% increase	Amount	% increase	Amount	% increase	
Road Management Act 2004	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Road Management (General) Regulations 2016	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Road Safety Act 1986	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Road Safety (Vehicles) Regulations 2009 regulation 128 (external review of decisions relating to registration of vehicles) and 215	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Seafood Safety Act 2003	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Second-Hand Dealers and Pawnbrokers Act 1989 sections 9B, 14 and 18A	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Sex Work Act 1994	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Small Business Commissioner Act 2003; Section 11A	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
State Employees Retirement Benefits Act 1979	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
State Superannuation Act 1988	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Superannuation (Portability) Act 1989	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Supported Residential Services (Private Proprietors) Act 2010 Section 206	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Surveying Act 2004 section 33 (review of decision, finding or determination)	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Taxing Act	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Therapeutic Goods (Victoria) Act 2010 section 30	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Transport Accident Act 1986	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Transport (Compliance and Miscellaneous) Act 1983	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Transport Superannuation Act 1988	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Travel Agents Act 1986	\$525.60							VCAT no longer has jurisdiction
Unclaimed Money Act 2008 sections 59, 61 and 63	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Veterinary Practice Act 1997 section 55 (registration and discipline)	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Vexatious Proceedings Act 2014		\$847.40		\$593.20		\$150.00		New jurisdiction
Victims of Crime Assistance Act 1996	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Victoria State Emergency Service Act 2005	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Victoria State Emergency Service Regulations 2006	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Victorian Plantations Corporation Act 1993	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Wildlife Act 1975	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Working with Children Act 2005	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	

Class of Matter	2014-15	Proposed 2016-17 fees expressed in 2014-15 dollars						Comment
		Corporate Fee		Standard Fee		Concession Fee		
		Amount	% increase	Amount	% increase	Amount	% increase	
Workplace Injury Rehabilitation and Compensation Act 2013	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Applications for awarding of costs		\$847.40		\$593.20		\$150.00		New fee to apply across the Division
Non-attendance reviews		\$225.10		\$157.60		\$78.80		
Additional fee to transfer of a proceeding from the Magistrates' Court		\$83.40		\$58.40		\$29.20		New fee
<b>CIVIL DIVISION</b>								
<b>Building and Property List</b>								
Australian Consumer Law and Fair Trading Act 2012	See Table 3-1	See Table 3-1						
Building Act 1993 except Division 12 of Part 12A and sections 25J and 182A and clause 10(3) and (4) of Part 2 of Schedule 7	\$525.60	\$622.30	18%	\$435.60	-17%	\$150.00	-71%	
Domestic Building Contracts Act 1995	See Table 3-1	See Table 3-1						
Estate Agents Act 1980 sections 56A(4) and 56B(1)(disputes about commission and outgoings)	\$525.60	\$622.30	18%	\$435.60	-17%	\$150.00	-71%	
House Contracts Guarantee Act 1987	\$525.60	\$622.30	18%	\$435.60	-17%	\$150.00	-71%	
Owners Corporations Act 2006 Part 6 and Part 11	See Table 3-1	See Table 3-1						
Property Law Act 1958 Part IV	\$525.60	\$847.40	61%	\$593.20	13%	\$150.00	-71%	
Retail Leases Act 2003 where the amount sought is less than \$100,000 or no specific monetary amount is sought in the claim	\$525.60	\$622.30	18%	\$435.60	-17%	\$150.00	-71%	
Retail Leases Act 2003 where the amount sought is \$100,000 or more	\$986.40	See Table 3-1						
Sale of Land Act 1962 section 44	\$525.60	\$622.30	18%	\$435.60	-17%	\$150.00	-71%	
Water Act 1989 section 19 (civil liability arising from various causes)	\$525.60	\$622.30	18%	\$435.60	-17%	\$150.00	-71%	
<b>Civil Claims List</b>								
Australian Consumer Law and Fair Trading Act 2012	See Table 3-1	See Table 3-1						
Credit Act 1984	Variable							Removed from fee schedule. VCAT no longer has jurisdiction

Class of Matter	2014-15	Proposed 2016-17 fees expressed in 2014-15 dollars						Comment
		Corporate Fee		Standard Fee		Concession Fee		
		Amount	% increase	Amount	% increase	Amount	% increase	
Domestic Building Contracts Act 1995	See Table 3-1	See Table 3-1						
Motor Car Traders Act 1986 section 45 (rescission of agreement of sale of motor car);	\$55.60	\$83.40	50%	\$58.40	5%	\$0.00	-100%	
Owner Drivers and Forestry Contractors Act 2005	\$525.60	\$622.30	18%	\$435.60	-17%	\$150.00	-71%	
Owners Corporations Act 2006 Part 6 and Part 11, Division 1, 2, 3 and 4	See Table 3-1	See Table 3-1						
Retirement Villages Act 1986	\$525.60	\$622.30	18%	\$435.60	-17%	\$150.00	-71%	
<b>Owners Corporations List</b>								
Australian Consumer Law and Fair Trading Act 2012	See Table 3-1	See Table 3-1						
Company Titles (Home Units) Act 2013	\$525.60	\$622.30	18%	\$435.60	-17%	\$150.00	-71%	
Owners Corporations Act 2006 Part 6 and Part 11	See Table 3-1	See Table 3-1						
Subdivision Act 1988 Part 5	\$525.60	\$622.30	18%	\$435.60	-17%	\$150.00	-71%	
Additional fee for a matter to be heard as an injunction		\$278.00		\$194.60		\$97.30		New fees to apply across the Division
Applications for awarding of costs		\$476.60		\$333.60		\$150.00		
Non-attendance reviews		\$83.40		\$58.40		\$29.20		
Additional fee to transfer of a proceeding from the Magistrates' Court		\$83.40		\$58.40		\$29.20		New fee

Class of Matter	2014-15	Proposed 2016-17 fees expressed in 2014-15 dollars						Comment
		Corporate Fee		Standard Fee		Concession Fee		
		Amount	% increase	Amount	% increase	Amount	% increase	
<b>RESIDENTIAL TENANCIES DIVISION</b>								
<b>Residential Tenancies List</b>								
Australian Consumer Law and Fair Trading Act 2012 for matters valued between \$1 and \$10,000	See Table 3-1	\$83.40		\$58.40		\$0.00		Revised, flat lower fee is to apply for matters valued over \$10,000
Australian Consumer Law and Fair Trading Act 2012 for matters valued over \$10,000	See Table 3-1	\$242.30		\$169.60		\$0.00		Revised, flat lower fee is to apply for matters valued over \$10,000
Disability Act 2006 except section 45	No fee	No fee		No fee		No fee		
Housing Act 1983	\$525.60	\$622.30	18%	\$435.60	-17%	\$150.00	-71%	Hearing day fees apply - see below
Landlord and Tenant Act 1958;	\$55.60	\$83.40	50%	\$58.40	5%	\$0.00	-100%	
Owners Corporations Act 2006 Part 6 and Part 11, Division 1, 2, 3 and 4		Part 6 matters heard in the Administrative Division - Review and Regulation List Part 11 matters heard in the Civil Division - Owners Corporation List						
Residential Tenancies Act 1997; <b>except</b> Part 10;	\$55.60	\$83.40	50%	\$58.40	5%	\$0.00	-100%	
Residential Tenancies Act 1997; Part 10;	No fee	No fee		No fee		No fee		
Supported Residential Services (Private Proprietors) Act 2010 sections 105, 121	No fee	No fee		No fee		No fee		
Supported Residential Services (Private Proprietors) Act 2010 section 123	\$55.60	\$83.40	50%	\$58.40	5%	\$0.00	-100%	
Retail Leases Act 2003; where the amount sought is \$100,000 or more	\$986.40	Matters handled in the Building and Property List						

**HUMAN RIGHTS DIVISION**

<b>Guardianship List</b>							
Guardianship and Administration Act 1986;	No fee	No fee		No fee		No fee	
Instruments Act 1958 Division 6 of Part XIA;	No fee	No fee		No fee		No fee	
Medical Treatment Act 1988 section 5C (enduring powers of attorney);	No fee	No fee		No fee		No fee	
Trustee Companies Act 1984;	No fee	No fee		No fee		No fee	
Annual Administration Fee	Subject to separate regulations						
<b>Human Rights List</b>							
Assisted Reproductive Treatment Act 2008;	No fee	No fee		No fee		No fee	
Disability Act 2006 except section 45	No fee	No fee		No fee		No fee	
Equal Opportunity Act 2010							
Claims under section 89(5)(a)	\$55.60	\$847.40	1424%	\$593.20	967%	\$150.00	170%
All other matters	No fee	No fee		No fee		No fee	
Health Records Act 2001	No fee	No fee		No fee		No fee	
Mental Health Act 1986; section 79 (decisions of Secretary)	\$525.60						Now redundant
Mental Health Act 1986; section 120 (decisions of Mental Health Review Board);	No fee						Now redundant
Mental Health Act 2014	No fee	No fee		No fee		No fee	
Privacy and Data Protection Act 2014	No fee	No fee		No fee		No fee	
Public Health and Wellbeing Act 2008 sections 122 and 204	No fee	No fee		No fee		No fee	
Racial and Religious Tolerance Act 2001;	No fee	No fee		No fee		No fee	

Table 3-3 – Hearing and other fees under the Victorian Civil and Administrative Tribunal (Fees) Regulations 2013

Class of Matter	2014-15	Proposed 2016-17 fees expressed in 2014-15 dollars						Comment
		Corporate Fee		Standard Fee		Concession Fee		
		Amount	% increase	Amount	% increase	Amount	% increase	
<b>HEARING FEES</b>								
<b>For hearing proceedings in the Major Cases List in the Administrative Division</b>								
Day 1	\$3,409.30	\$3,190.80	-6%	\$3,190.80	-6%	\$3,190.80	-6%	
Days 2-4	\$3,409.30	\$3,190.80	-6%	\$3,190.80	-6%	\$3,190.80	-6%	
Days 5-9	\$3,409.30	\$3,190.80	-6%	\$3,190.80	-6%	\$3,190.80	-6%	
Days 10+	\$3,409.30	\$3,190.80	-6%	\$3,190.80	-6%	\$3,190.80	-6%	
<b>Complex cases - Administrative Division</b>								
Day 1	\$1,723.90	\$3,190.80	85%	\$2,233.60	30%	\$150.00	-91%	New fee
Days 2-4	\$1,723.90	\$3,190.80	85%	\$2,233.60	30%	\$150.00	-91%	
Days 5-9	\$1,723.90	\$3,190.80	85%	\$2,233.60	30%	\$150.00	-91%	
Days 10+	\$1,723.90	\$3,190.80	85%	\$2,233.60	30%	\$150.00	-91%	
<b>Complex cases - Civil Division</b>								
Day 1		\$2,343.50		\$1,640.50		\$150.00		New fees
Days 2-4		\$2,343.50		\$1,640.50		\$150.00		
Days 5-9		\$2,343.50		\$1,640.50		\$150.00		
Days 10+		\$2,343.50		\$1,640.50		\$150.00		
<b>For hearing all other proceedings valued in excess of \$10,000 or of no monetary value</b>								
Day 1 - only for matters valued in excess of \$100,000 or of no monetary value		\$463.40		\$324.40		\$150.00		New fee
Days 2-4	\$389.30	\$463.40	19%	\$324.40	-17%	\$150.00	-61%	
Days 5-9	\$651.40	\$926.80	42%	\$648.80	0%	\$150.00	-77%	
Days 10+	\$1,087.00	\$1,390.20	28%	\$973.10	-10%	\$150.00	-86%	

Class of Matter	2014-15	Proposed 2016-17 fees expressed in 2014-15 dollars						Comment
		Corporate Fee		Standard Fee		Concession Fee		
		Amount	% increase	Amount	% increase	Amount	% increase	
<b>OTHER FEES</b>								
For the transfer of proceedings under the following enabling enactments -								
Environment Protection Act 1970 section 33B if the proceedings are entered in the Planning and Environment List and then transferred into the Major Cases List within the Planning and Environment List	\$2,456.00	\$2,184.60	-11%	\$2,184.60	-11%	\$2,184.60	-11%	
Planning & Environment Act 1987 sections 82 and 82B if the proceedings are entered in the Planning & Environment List and are subsequently transferred into the Major Cases List within the Planning & Environment List	\$2,456.00	\$2,184.60	-11%	\$2,184.60	-11%	\$2,184.60	-11%	
For the purposes of section 146(3) of the VCAT Act for the provision by the registrar of a copy of a document from a proceedings file	60c per page	60c per page		60c per page		60c per page		No change in fee arrangements
For the issue of a warrant to remove a resident under section 129 of the Supported Residential Services (Private Proprietors) Act 2010	\$133.70	\$145.60	9%	\$101.90	-24%	\$0.00	-100%	Fee set at 2015-16 level
For the issue of a warrant of possession under section 351 of the <b>Residential Tenancies Act 1997</b>	\$133.70	\$145.60	9%	\$101.90	-24%	\$0.00	-100%	Fee set at 2015-16 level
For the issue of a summons or subpoena to witness or produce documents	\$19.90	\$21.20	7%	\$21.20	7%	\$8.00	-60%	Fee set at 2015-16 level
For the purposes of section 146(3) of the VCAT Act for the inspection of a proceeding file by a person who is not a party to the proceeding	\$109.90	\$107.20	-2%	\$107.20	-2%	\$39.70	-64%	These two fees have been consolidated into one fee. Fee set at 2015-16 level
For the purposes of section 146(3) of the VCAT Act for the inspection of each additional proceeding file at the same time as the first proceeding file by a person who is not a party to the proceeding	\$100.60	\$107.20	7%	\$107.20	7%	\$39.70	-61%	
For the purposes of section 144(4) of the VCAT Act for the inspection of the register by a person who is not a party to the proceeding	\$11.30	\$66.20	486%	\$66.20	486%	\$11.90	5%	These two fees have been consolidated into one fee.
For the purposes of section 144(4) of the VCAT Act for each request to search the register and provide a copy of that result	\$62.20	\$66.20	6%	\$66.20	6%	\$11.90	-81%	The first fee is almost never used. Fee set at 2015-16 level
For the purposes of section 145(2) of the VCAT Act for each certificate certifying the contents of the register	\$64.90	\$68.80	6%	\$68.80	6%	\$26.50	-59%	Fee set at 2015-16 level

**Proposed Regulations**