

10 January 2018

Ms Belinda Wilson  
President  
Law Institute of Victoria  
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Melbourne VIC 3000

*Via email:* [president@liv.asn.au](mailto:president@liv.asn.au)

Dear Ms Wilson

### **Practising Certificate Fees Review: Response to Submission**

Thank you for your email of 30 November 2017 enclosing the Law Institute of Victoria (LIV) submission to the formal public consultation stage of the Practising Certificate Fees Review (the review) and the Regulatory Impact Statement (RIS) process.

On behalf of the Victorian Legal Services Board (the Board), I wish to thank the LIV for its active contribution to the review, in particular its written submissions at key points of this process.

As you are aware, the Board has put forward its preferred option of a stratified fee structure, where fees are differentiated based on existing practising certificate classes. Under this efficient proposal, classes that carry a low regulatory burden receive fee reductions, while those that carry higher risk profiles and regulatory demands see only modest fee increases – the largest increase being \$7.50 per month for principals with trust accounts. There is also no cross-subsidisation between practitioner classes.

This preferred option is a simple and minimalist model that aligns with the government's policy principles for setting new fees. The overall level of cost recovery from fees rises by only 1.6 per cent, with 60 per cent of regulatory costs funded by the interest stream from trust accounts.

The Board has considered the issues raised in the LIV's submission and has outlined its responses below.

### **Broader efficiency review of legal regulation in Victoria**

The LIV's submission is largely framed by its overarching view that there should be a broad review of Victoria's legal profession regulatory system. The LIV acknowledges that a review of this nature would need to be undertaken over an extended timeframe, which leads to its call for the establishment of an interim fee model.

While the Board notes the LIV's call for a broader review, this issue is outside the direct scope of the current review of practising certificate fees – a fact acknowledged by LIV in its submission. The decision to undertake a wide-ranging review of regulatory arrangements is a matter for the Government and the Attorney-General. It is inappropriate for the Board to comment on the merits of such a proposal.

## **Cost of regulatory arrangements in Victoria vs. NSW**

The Board does not accept the LIV's assertion that the cost of regulating the Victorian legal profession is significantly higher than in NSW.

The LIV seeks to rely on what it calls a 'benchmarking' exercise comparing costs between NSW and Victoria. It is not clear what data the LIV is relying on as no source documents for the financial figures are provided. There is also no further break down of the broad costs beyond some general footnotes. This lack of transparency makes it difficult for any testing of the analysis to be undertaken.

The Board is steadfast in its view that any benchmarking undertaken as part of the RIS must use credible and comparable data. Undertaking a meaningful and accurate benchmarking exercise between Victoria and NSW would require the full co-operation of multiple NSW regulators (the NSW Law Society, the Office of the Legal Services Commissioner and the NSW Bar), including extensive information sharing and administrative coordination. It would be an expensive and time-consuming task that is not commensurate with the impact of the proposed practising certificate fees.

The Board notes the LIV produced its original analysis comparing costs between NSW and Victoria in March 2017 ahead of the Victorian Legal Services Board and Commissioner (VLSB+C) Activity-Based Costing (ABC) exercise. The ABC exercise produced empirical, granular data about the regulatory costs in Victoria. The Board published all of the detail of this work alongside the RIS, however the LIV has not updated its analysis in light of this detailed and independently produced work.

Through the ABC exercise, the VLSB+C were benchmarked against similar Victorian complaint handling bodies, using comparable ABC data. This benchmarking is included in the RIS and shows the VLSB+C operates efficiently against comparable Victorian government regulators.

## **Alternative fee model suggested by LIV**

The Board has examined the alternative fee model proposed by the LIV but concluded it is inferior to the Board's preferred option.

The ABC exercise undertaken by the Board has shaped the options presented in the RIS, including its preferred option. This evidence provides a credible basis upon which to set fees that better reflect the costs incurred by the different classes of practising certificates. In particular, the options in the RIS (with the exception of Option 1 which retains current fee levels) eliminate cross-subsidies between the practising certificate classes.

The LIV model would result in a continuation of cross-subsidies between practising certificate classes. Under the LIV proposal, corporate and government practitioners would pay in excess of 100 per cent of the costs of regulating their classes. The LIV acknowledges these cross-subsidies in its submission but does not provide a policy rationale for their continuation. Similarly, barristers would pay less than 100 per cent of the costs of regulating their class, but LIV provides no evidence or information to justify this further reduction.

The LIV indicates its main concern with the Board's preferred option is that it imposes increases that could have unintended consequences. However, the analysis outlined in the RIS demonstrates that there is no indication the Board's preferred option (or indeed any of the proposed options) would result in detrimental impacts to the community or the profession.

## **Fee increases for principals**

The LIV states that the proposed fee increases for principals with and without trust authorisation will have a reasonable likelihood of causing detriment to these groups. The LIV points to previous information it has provided about potential impacts of fee options, and previous submissions on the benefits provided by the legal profession to the community.

# Victorian Legal Services BOARD

This previous information was considered by the Board when selecting its preferred option, which is why it has been designed to minimise fee increases for the private sector. As noted earlier, the largest increase would be a modest \$7.50 per month for principals with trust authorisation.

The LIV does not provided any new information to support the assertion that fee increases of this size will have a detrimental impact to the community or the profession.

The Board disagrees with the LIV's assertion that the RIS does not give adequate consideration to equity, small business and competition impacts. The small business and competition assessments in the RIS are based on additional economic analysis focussed on the impacts of various fee options. The analysis finds there will be no detrimental impacts resulting from any of the fee options.

Equity considerations formed a key part of the RIS with all options specifically assessed against equity criteria. The RIS assessed equity considerations in terms of what groups were contributing and whether that contribution was equitable. The RIS also assessed the level of cross-subsidisation between practitioner classes. As can be seen from the RIS, the Board's preferred Option 3 performed well on all equity criteria.

## **Stratified fee structure**

The Board disagrees with the LIV's claim that the introduction of a stratified fee structure is administratively complex. The proposed stratification is a simple concept that is based on existing practising certificate classes. It aligns with existing regulatory constructs and requires minimal administrative adjustments.

As indicated in the RIS, introducing this structure to PC fees will require a one-off modest ICT investment.

The Board agrees that further stratification runs the risk of introducing a level of complexity that outweighs additional benefits, which is why there is no suggestion that fees consider the size or location of practice, area of law or a practitioner's regulatory record.

## **Conclusion**

The Board has now had the opportunity to consider all of the submissions received and is not proposing to make any adjustments to its preferred option in light of those submissions.

The Board has decided to formally recommend new fees for practising certificates for the 2018-19 financial year and beyond, in line with Option 3 as outlined in the RIS, to the Attorney-General and the Governor-in-Council. It is intended that new regulations prescribing those fees will be in place to replace the current regulations which are due to expire in late February 2018.

Once again I would like to thank the LIV for making important contributions throughout the formal consultation stage of the review. Your submission and our response will be published, together with all other submissions and responses, on the VLSB+C website.

Yours sincerely



Fiona R Bennett  
**Chairperson**