

## **Legal Profession Uniform Law Application (Practising Certificate Fees) Regulations 2017**

### **Regulatory Impact Statement**

This Regulatory Impact Statement for the proposed *Legal Profession Uniform Law Application (Practising Certificate Fees) Regulations 2017* (the proposed Regulations) has been prepared in accordance with the requirements of the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation*.

The aim of this Regulatory Impact Statement (RIS) is to explain the background to and objectives of the proposed Regulations, identify some alternative approaches to meeting those objectives and estimate the costs and benefits of the Regulations and alternative approaches. In this way, the RIS will assist members of the public in providing comment on the proposed Regulations.

The RIS should be read in conjunction with the accompanying appendices produced by Rivers Economic Consulting. The appendices provide greater detail about the activity-based costing exercise and other economic analysis undertaken by Rivers Economic Consulting on behalf of the Victorian Legal Services Board and Commissioner (VLSB+C) to support this RIS.

Public comments and submissions are now invited in response to the proposed Regulations and the information provided in this RIS and the appendices. All submissions will be treated as public documents and published on the VLSB+C website.

Comments and submissions should be made in writing by no later than 5pm on 30 November 2017 to:

Practising Certificate Fees RIS  
Victorian Legal Services Board and Commissioner  
GPO Box 492  
Melbourne Vic 3000

Or email: [pcfreesris@lsbc.vic.gov.au](mailto:pcfreesris@lsbc.vic.gov.au)

All written comments and submissions will be considered prior the Regulations being made.

## Executive Summary

The *Legal Profession Uniform Law Application (Practising Certificate Fees) Interim Regulations 2017* (the interim Regulations) are due to expire on 28 February 2018. These Regulations set fees for practising certificates for the 2017-18 financial year.

New Regulations need to be made under the *Legal Profession Uniform Law Application Act 2014* (the Act) to ensure that the Victorian Legal Services Board (the Board) can continue to charge fees for practising certificates for the 2018-19 financial year and beyond. As the interim Regulations are due to expire before the end of the 2017-18 financial year, the new Regulations will also include transitional arrangements that enable current fees for practising certificates granted for the 2017-18 year to continue to be charged until 30 June 2018.

Under section 156(2) of the Act, regulations setting fees are made on the recommendation of the Board. In making a recommendation the Board must take into account:

- the costs of regulating different classes of legal practitioners; and
- any representations made to the Board by a local professional association regarding appropriate levels of fees for classes of Australian legal practitioners whose home jurisdiction is Victoria and who are members of that association.

The requirements of the *Subordinate Legislation Act 1994* (the Subordinate Legislation Act) and the Government's approaches to cost recovery and public consultation as set out in the Victorian Guide to Regulation and the Cost Recovery Guidelines must be followed in developing new regulations. As the practising certificate fees will impose cumulative costs on the legal profession and its clients of more than \$2 million per annum, the Board is required to prepare a Regulatory Impact Statement (RIS) that considers a range of options for setting these fees and includes:

- the problem the Regulations will address;
- the objectives of the proposed Regulations;
- an assessment of the costs and benefits of the preferred option; and
- an assessment of the costs and benefits of alternatives that could also address the objectives.

### The existing system

The cost of regulating the legal profession is fully recovered from users of the system: legal practitioners and their clients. There is no contribution from the taxpayer through government appropriations, with the costs split between revenue from fees (the fee stream) and revenue from other sources into the Public Purpose Fund (PPF), primarily interest from clients' money held in solicitors' trust accounts (the interest stream).

In 2015-16, the cost of legal regulation was estimated to be \$20.25 million: the fee stream contributes approximately \$7.6 million (38.4 per cent) to these costs with the interest stream contributing the remaining 61.6 per cent of funding. Existing fees are currently set under a tiered structure which sets a flat fee for all practising certificate classes with the exception of practitioners authorised to receive trust money who pay a higher fee. The current fees are as follows:

- \$522 for a practising certificate with trust authorisation; and
- \$353 for a practising certificate without trust authorisation.

There is no charge for volunteer practising certificates under the Act.

Under Victoria's Cost Recovery Guidelines, those who benefit from regulation or give rise to it should make an equitable contribution towards the cost of that regulation. The RIS identifies two key groups of beneficiaries and cost recovery streams:

- legal practitioners and their clients, who contribute through the fee stream; and
- clients with money held in trust (a subset of all clients) who make an additional contribution commensurate with their level of risk through the interest stream (i.e. clients' contribution through foregone interest increases in proportion with the material loss they would suffer if their legal practitioner proved to be dishonest or incompetent).

### Objective

The objective of the proposed Regulations is to fund the regulation of the legal profession in an efficient and equitable way that aligns with government policy, and which

- minimises administrative costs;
- does not deter legal practitioners from running trust accounts; and
- promotes community sector legal services.

Based on stakeholder feedback, in assessing options to meet the objectives, the Board has also considered it a priority that 40 per cent of the costs of regulation be recovered from fees.

Consideration has also been given to ensuring that the fees do not create a barrier to entry to the legal profession.

### The base case – what is the problem?

The RIS considers the 'base case' which is the position if no regulations are made. If no fees were set for practising certificates, then regulation of the legal system would be entirely funded by users of legal services who place funds to be held in trust by their legal practitioner. That is to say, the costs of regulating the legal profession would need to be recovered from the interest stream without any contribution from the fee stream. In 2015/16 the interest stream generated \$28 million in revenue for the PPF. While the decision to charge fees has been made because it is in line with government policy to recover the costs of regulation and not because of revenue requirements, a consequence of the base case would be no revenue from fees into the PPF. Therefore, the base case would not meet the Government's cost recovery objectives as some legal practitioners who give rise to the need for regulation and their clients who are beneficiaries would be making no contribution to the cost of regulation. As a consequence, there may be reduced funding for non-regulatory services and/or a scaling back of regulatory services and/or increased cost pressures from frivolous activities.

### Development of fee options

In January 2017, the Board released a Discussion Paper for public consultation. The Discussion Paper, which was available on the VLSB+C website, canvassed four options for setting new fees and included information about the problem to be addressed in setting fees, the legislative basis for the fees, and factors required to be taken into consideration when setting new fees, including government policy parameters. Written submissions were received from the Association of Corporate Counsel Australia (ACCA), Federation of Community Legal Centres (FCLC), Telstra, Victoria Legal Aid, the Victorian Bar and the Law Institute of Victoria (LIV).

In April 2017, following stakeholder feedback in response to the Discussion Paper, the Board engaged Rivers Economic Consulting to conduct an independent review of the costs of regulation within the VLSB+C. Activity-based data was collected about the time and resources used to undertake regulatory activities. As a result, the VLSB+C have a rich data set of the costs incurred in granting and renewing practising certificates; handling complaints

(including the cost of handling an enquiry and undertaking a preliminary assessment); the investigation of disputes (including the costs of a consumer dispute and a disciplinary dispute); the costs incurred in undertaking trust account investigations and the costs associated with simple and complex external interventions. The independent report has been published as an accompanying set of appendices to this RIS. Nine fee options were developed following the activity-based costing exercise.

**Table 1: Original nine options developed by Rivers Economic Consulting**

Option	Fee structure	Cost recovery (from practitioners)	Shortfall funding
Option 1	Existing (tiered fees – with and without trust authorisation)	100 per cent recovered. Existing fee structure for all classes with a larger fee for practitioners with trust authorisation.	<b>No</b>
Option 2	Single fee	100 per cent recovered. Same fee for all classes.	<b>No</b>
Option 3	Existing (tiered fees – with and without trust authorisation)	50 per cent recovered. Existing fee structure for all classes with a larger fee for practitioners with trust authorisation.	<b>Yes</b> To be funded from foregone interest from trust accounts.
Option 4	Single fee	50 per cent recovered. Same fee for all classes.	<b>Yes</b> To be funded from foregone interest from trust accounts.
Option 5	Existing (tiered fees – with and without trust authorisation)	Approximately 38 per cent cost recovery. Current fee units for all certificate classes with a larger fee for practitioners with trust authorisation.	<b>Yes</b> To be funded from foregone interest from trust accounts.
Option 6	Existing (tiered fees – with and without trust authorisation)	25 per cent recovered. Current fee units for all certificate classes with a larger fee for practitioners with trust authorisation.	<b>Yes</b> To be funded from foregone interest from trust accounts.
Option 7	Fully stratified fees	100 per cent recovered. Fees set at 100 per cent cost recovery for all certificate classes.	<b>No</b>
Option 8	Fully stratified fees	57 per cent recovered. Fees set at 100 per cent cost recovery for all certificate classes with the exception of principals with trust: this fee will be set at the same rate as principals without trust.	<b>Yes</b> from principals with trust who will pay less than 100 percent. To be funded from foregone interest from trust accounts.

Option	Fee structure	Cost recovery (from practitioners)	Shortfall funding
Option 9	Fully stratified fees	55 per cent recovered.  Fees set at 100 per cent cost recovery for all certificate classes with the exception of principals with trust: this fee will be set at the same rate as principals without trust. In addition, community sector practitioners will only pay 75% of the applicable fee.	<b>Yes</b> from principals with trust who will pay less than 100 percent and community sector practitioners who will pay only 75% of the applicable fee.  To be funded from foregone interest from trust accounts.

Options 1 to 4 were the original options from the Discussion Paper. Option 5 proposed that the existing fees be maintained. Options 6 to 9 were new options developed by Rivers Economic Consulting for the Board's consideration. The activity-based costing data enabled a more accurate calculation to be made of the resources employed to regulate the different classes of practising certificates. Options 7-9 proposed stratified fee approaches that apply a different fee to the practising certificate classes with higher fees applying to those classes that require more resources to regulate.

In July 2017, the Board conducted a stakeholder forum and sought feedback from the stakeholders that had made submissions to the Discussion Paper on the nine options developed by Rivers Economic Consulting. In August 2017, further written submissions were received from the LIV and Victoria Legal Aid.

Following receipt of this feedback, during September 2017, the Board refined the options further to four options for the purpose of this RIS. Options 5 and 7 were retained from the original options and two new options were developed using the fee structure in Option 9 as the base but incorporating different approaches to mitigate the impact of fee increases on private law firms.

#### The four options

The four options examined in this RIS are:

- **Option 1:** 39.51 per cent recovery from the fee stream employing the existing tiered fee structure (previously referred to as Option 5 in the original nine options);
- **Option 2:** 100 per cent recovery from the fee stream employing a stratified fee structure (previously referred to as Option 7 in the original nine options);
- **Option 3:** 40.02 per cent recovery from the fee stream employing a stratified fee structure (based on the fees set under Option 9 in the original nine options) with the costs of:
  - employees, principals with trust authorisation, and principals partially recovered through fees and with the balance recovered through the interest stream, and
  - community sector practitioners being partially recovered through fees to be set at the level of government practitioners and with the balance being recovered through the interest stream.
- **Option 4:** 54.73 per cent recovery from the fee stream employing a stratified fee structure (based on the fees set under Option 9 in the original nine options) with the costs of:
  - principals with trust authorisation being partially recovered through fees (set at the same level as principals without trust authorisation) and the balance being recovered through the interest stream,
  - community sector practitioners being partially recovered through fees to be set at the same level as government practitioners and with the balance being recovered through the interest stream; and

- a phased-in implementation approach for fee increases rising to 45 per cent cost recovery pending the outcomes of a review in five years with no fee increases rising above 10 per cent per annum.

The RIS groups the options as tiered fees and fully stratified fees for ease of comparison and assesses the options against efficiency, equity and effectiveness criteria.

Option 1 retains the current *tiered fee* structure. Practising certificates with trust authorisation continue to pay a higher fee than other practising certificates under this option. The additional amount paid by legal practitioners with trust authorisation would partially cover the costs of trust account investigations with a mixed funding approach between fees and interest income.

Options 2, 3 and 4 recover regulatory costs through *stratified fees* for all practising certificate classes. Under a stratified fee approach, fees are set according to practising certificate class meaning that the costs of legal regulation are not equally shared across all legal practitioners. Instead, legal practitioners pay differing fees depending on their practising certificate class. Option 2 represents the full recovery of costs through stratified fees. Option 3 represents partial cost recovery through stratified fees, with discounts provided for employees and principals with and without trust authorisation (however principals with trust authorisation pay a higher fee than principals without trust authorisation, reflecting the higher costs of regulating the former). Under Option 4 the costs of trust account regulation are paid for by the interest stream, meaning that fees for principals with trust authorisation are set at the same level as for principals without trust authorisation. Under Options 3 and 4, the fees for employees and principals in the community sector are subsidised by interest to the same level as government practitioners.

#### The preferred option

**Option 3** is the preferred option based on the multi-criteria analysis set out in section 7 of this RIS.

The preferred option is to move to a stratified fee structure, rather than retain the current tiered approach. Under this option, the costs of regulating principals with and without trust authorisation, employees and community sector practitioners will be partially subsidised by the interest stream. As this option introduces a stratified fee structure, some practitioners will pay more for their fees while other practitioners will receive a fee reduction, thereby reflecting the costs of regulating the different classes of legal practitioners required to be considered by the Board under the Act.

Option 3 performs well under the multi-criteria analysis on equity, efficiency and effectiveness grounds as well as providing for 100 per cent cost recovery for barristers, corporate and government practitioner classes. There are no cross-subsidies between practising certificate classes. Some groups are subsidised by the interest stream, namely principals with and without trust authorisation, employees and legal practitioners who work for community legal services. Volunteers are not charged a fee under the Act and their costs are also met by the interest stream under Option 3.

The Board is required under the Act to take account of representations made by professional associations about the level of fees that should be set. Based on this feedback the Board considers the most appropriate and equitable level of overall revenue received from fees should be 40 per cent of the cost of regulation with the remaining 60 per cent to be funded from the interest stream.

The Board considers that funding the system in this way equitably splits the cost of regulating the system between the two groups of beneficiaries as the interest stream meets 60 per cent of the overall costs of regulation by paying for the costs of volunteers, subsidising the costs of regulating principals and employees and making a contribution to the costs of regulating practitioners who work in the community sector. This contribution is considered to be equitable as people who put their money in trust receive considerable benefits from effective regulation of the legal profession generally, as well as in particular the regulation of trust accounts. Subsidising practitioners who work for



community legal services is also considered appropriate given the public benefits that flow from ensuring disadvantaged and vulnerable Victorians have access to legal services. The Board considers a 40-60 per cent split between revenue from fees and interest reasonably reflects the benefits received by consumers of legal services who place their money in solicitors' trust accounts.

### The cost of regulation

As noted above, the cost of legal regulation was estimated to be \$20.25 million in 2015-16. Since then, funding to the Victorian Civil and Administrative Tribunal (VCAT) has been reduced by a total of \$571,766 from 2015-16 funding levels due to reduced case load upon the introduction of the Uniform Law (\$335,533 reduction in 2016-17 and \$236,233 reduction in the 2017-18 Budget). The Board has agreed to apply these savings to the options in the form of an efficiency dividend. These reductions have been applied to the fees under Options 2, 3 and Option 4.

The efficiency dividend has been apportioned in line with the original percentages attributed to each of the practitioner classes in the activity-based costing analysis meaning there is no efficiency dividend for government practitioners. The dividend has not been applied to the fees under Option 1 as these are existing fees. However, the savings do have an impact on the overall level of cost recovery that is derived from the existing fees.

### Comparison of options

A comparison of fees, annual revenue and the percentage of cost recovery through fees for all options is set out in the following table:

**Table 2: Comparison of fees, revenue and cost recovery for the options**

	Current tiered fees (with and without trust and costs partially recovered through fees)	Stratified fees (costs fully recovered through fees)	Stratified fees (costs partially recovered through fees + community employees and principals fee = gov't fee)	Stratified fees (fee for trust = without trust + community employees and principals fee = gov't fee)
<b>Practising certificate class</b>	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>	<b>Option 4</b>
Employees	\$353	\$515	\$399	\$512
Employees (community sector)	\$353	\$515	\$220	\$220
Principal with trust	\$522	\$3,344	\$612	\$893
Principal	\$353	\$897	\$427	\$893
Principal (community sector)	\$353	\$897	\$220	\$220
Corporate	\$353	\$244	\$240	\$240
Volunteer	\$0	\$0	\$0	\$0
Government	\$353	\$223	\$220	\$220
Barrister	\$353	\$349	\$346	\$346
Total revenue	\$7.78m	\$19.68m	\$7.88m	\$10.77m
% recovered through fees	39.51%	100.00%	40.02%	54.73%
PV of 10-year revenue	\$80.56m	\$183.44m	\$80.08m	\$108.83m

A comparison of the fee options and percentage change from the current fees is presented in Table 3 below.



**Table 3: Comparison of percentage change from current fees**

Practising certificate class	Option 1 (% change)	Option 2 (% change)	Option 3 (% change)	Option 4 (% change)
Employees	\$353 (0%)	\$515 (46%)	\$399 (13%)	\$512 (45%)
Employees (community sector)	\$353 (0%)	\$515 (46%)	\$220 (-38%)	\$220 (-38%)
Principal with trust	\$522 (0%)	\$3,344 (540%)	\$612 (17%)	\$893 (71%)
Principal	\$353 (0%)	\$897 (154%)	\$427 (21%)	\$893 (152%)
Principal (community sector)	\$353 (0%)	\$897(154%)	\$220 (-38%)	\$220 (-38%)
Corporate	\$353 (0%)	\$244 (-31%)	\$240 (-32%)	\$240 (-32%)
Volunteer	\$0 (0%)	\$0 (0%)	\$0 (0%)	\$0 (0%)
Government	\$353 (0%)	\$223 (-37%)	\$220 (-38%)	\$220 (-38%)
Barrister	\$353 (0%)	\$349 (-1%)	\$346 (-2%)	\$346 (-2%)

### Specific Stakeholder Questions

In addition to inviting public comments in general, the Board is particularly interested in stakeholder feedback regarding:

- differentiating between fees based on practitioner type (or other category);
- the extent to which practitioners pass costs of practising certificate fees on to their clients;
- the likely effect changes in these costs may have on practitioner and client behaviour;
- whether there are other reasons why a different balance between the fee and interest streams is preferable; and
- whether the level of information services currently provided for practitioner certificate applications is desirable.

### Next steps

It is proposed to have new regulations in place by 28 February 2018 to replace the expiring regulations. It is proposed to make the regulations as soon as possible to ensure there is adequate time for implementation prior to the renewal period for practising certificates. In particular, changes will need to be made to the online practising certificate portal to accommodate the new fees.

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## Section 1: About this Regulatory Impact Statement

Section 156(1)(b) of the *Legal Profession Uniform Law Application Act 2014* (the Act) states that the Governor-in-Council may make regulations prescribing fees for Australian practising certificates.

The Victorian Legal Services Board (the Board) is recommending that the proposed *Legal Profession Uniform Law Application (Practising Certificate Fees) Regulations 2017* (the proposed Regulations) be made to replace the *Legal Profession Uniform Law Application (Practising Certificate Fees) Interim Regulations 2017* (the interim Regulations) which are due to expire on 28 February 2018. The interim Regulations prescribe fees to be paid for Australian practising certificates under the Act for the 2017-18 financial year. As the interim Regulations are due to expire before the end of the 2017-18 financial year, the proposed Regulations will also include transitional arrangements that enable current fees for practising certificates granted for the 2017-18 year to continue to be charged until 30 June 2018.

Under section 156(2) of the Act, the proposed Regulations are made on the recommendation of the Board. In making a recommendation, section 156(3) of the Act states that the Board must take into account:

- the costs of regulating different classes of legal practitioners; and
- any representations made to the Board by a local professional association regarding appropriate levels of fees for classes of Australian legal practitioners whose home jurisdiction is Victoria and who are members of that association.

This Regulatory Impact Statement (RIS) formally assesses the proposed Regulations against the requirements in the *Subordinate Legislation Act 1994* (Subordinate Legislation Act) and the *Victorian Guide to Regulation*. As required under the Subordinate Legislation Act, this RIS will:

- describe the problem to be addressed by the proposed Regulations (that is the need for practising certificate fees);
- set out the objectives of the proposed Regulations;
- explain the effects of the proposed Regulations and outline alternative approaches which would achieve the same objectives;
- assess the costs and benefits of the proposed Regulations and the alternative approaches; and
- detail planned and completed consultation processes.

## Section 2: Consultation on the proposed Regulations and RIS

A primary function of the RIS process is to enable public consultation to occur on the proposed Regulations, the alternative approaches and the estimated costs and benefits of all options before the Regulations are finalised. The Board welcomes feedback on the proposed Regulations and the impact assessment detailed in this RIS.

The public consultation process for the setting of new fees for practising certificates commenced in September 2016. The VLSB+C invited preliminary comment from the Law Institute of Victoria (LIV), the Victorian Bar, Association of Corporate Counsel Australia (ACCA) and the Federation of Community Legal Centres (FCLC) on four initial options and the potential impact of new practising certificate fees on small law practices in Victoria. In October 2016, additional feedback was sought from the 16 Law Associations formally connected with the LIV to further inform the decision-making process around the impact of new practising certificate fees on small law practices and their clients.

In January 2017, a Discussion Paper was formally released by the VLSB+C for public consultation. The Discussion Paper, which was available on the VLSB+C website, canvassed four options for setting new fees and included information about the problem to be addressed in setting fees, the legislative basis for the fees, and factors required to be taken into consideration when setting new fees, including government policy parameters. Written submissions in response to the discussion paper were received from the ACCA, FCLC, Telstra, Victoria Legal Aid, the Victorian Bar and the LIV.

The submission made by the ACCA suggested the regulatory resources consumed in regulating in-house lawyers is significantly less than the cost of regulating private practitioners. The ACCA suggested that on the basis of in-house lawyers low cost of regulation, a separate and lower cost category of practising certificate fees should exist to cover government and corporate practising certificate holders.

Telstra's submission also supported lower fees for corporate lawyers on the basis that this class of practitioner poses a low regulatory risk. Telstra expressed support for charging higher fees for practitioners with trust authorisation as the regulatory risk justifies a higher fee for certificates with trust authorisation. Telstra did not support full cost recovery through practising certificate fees as it might create incentives for non-compliance or non-engagement with the regulatory regime.

The submission made by the FCLC suggested that lower salaries in the sector and the lack of ability for community practitioners to pass on the cost of a practising certificate to their clients should exempt the community sector from the requirements of full cost recovery on equity grounds. The FCLC recommended that practising certificate fees remain the same or alternatively a separate category be created for community practitioners with the same fee.

The submission received from VLA also included support for the development of a further category of practising certificate with reduced fees for practitioners engaged with legal aid work. The reduced fee would be based on a lower regulatory burden attributed to this group. The VLA submission notes there is a need for a balance to be struck between maximising the availability of legal aid services and maintaining the viability of the legal services market in Victoria more generally.

The submission received from the Victorian Bar expressed support for the concept of cost recovery from those giving rise to the regulatory cost, going on to identify solicitors with trust authorisation as a group giving rise to significant regulatory costs. The Bar identified the low level of complaints received by the VLSB+C in relation to the conduct of barristers and on this basis proposed a separate practising certificate category for barristers with

a reduced fee. The Bar also highlighted the work of its Ethics Committee as making a contribution to lower regulatory costs for barristers.

The LIV expressed concerns about the scope of the review, the analysis provided in the Discussion Paper and the options. In summary, the LIV stated the Discussion Paper:

- lacked recognition of the public benefit provided by the regulation of the legal profession;
- should have reviewed the whole system of regulation more broadly; and
- did not adequately assess the financial impacts of the proposed changes.

The LIV also called for further analysis on the efficiency of the costs of regulation and suggested that the review be extended by 18 months on the basis that system-wide issues had not been adequately considered. In its submission, the LIV made four recommendations which were:

- the review process should be undertaken by an independent body;
- changes to the regulatory model, or the mix between trust account income and fee income should be revenue neutral: the LIV did not believe that a case has been made for an increase in revenue from fees;
- current fee units and tiered fees should remain: the LIV stated there should be no change to existing arrangements unless part of a broader review of the legal profession regulation; and
- a suggestion from the LIV that a full review of the Victorian legal profession regulatory framework be undertaken.

To ensure the Board could satisfactorily address the issues raised in the submissions received to the Discussion Paper, the Board engaged the services of Rivers Economic Consulting to undertake an independent assessment of the VLSB+C's regulatory costs. This assessment would allow the Board to more accurately identify the costs associated with regulating the different classes of practising certificates and independently assess the efficiency of the Board's regulatory activities.

On 27 July 2017, the VLSB+C invited the professional associations, the Small Business Commissioner and all organisations that had made a submission to the Discussion Paper to attend a stakeholder forum at which Rivers Economic Consulting outlined the results of the independent assessment of the VLSB+C's regulatory costs. Rivers Economic Consulting identified and explained nine potential fee options to stakeholders at that briefing. In August 2017, the VLSB+C received written feedback from the LIV and Victoria Legal Aid about the nine options. The Board also specifically consulted with Law Firms Australia in order to receive some preliminary feedback on the potential impacts of the options on large law firms. Law Firms Australia expressed an initial view that its members may be concerned about options that resulted in large law firms subsidising the costs of regulating smaller firms and sole practitioners.

Following this further round of written and verbal feedback, two of the original nine options were retained (Options 5 and 7) and a further two new options were developed based on Option 9 but mitigating the impact of fee increases. This means there are four options analysed in this RIS. However, the appendices documents prepared by Rivers Economic Consulting which provide information about the original nine options are also available for public consideration and review by interested stakeholders.

The Board appreciates the feedback it has received to date from stakeholders and has noted, in particular, concerns about the likely effect of fee increases on private sector law firms and potential cross-subsidisation between small and large law firms raised by particular stakeholders. In addition to the options outlined in this RIS, stakeholders are directed to the proposed evaluation strategy in section 10 of the RIS which has been



designed to enable impacts of the fees to be considered at two separate stages over the life of the proposed Regulations.

This RIS now provides the next step in the consultation process. It is the formal consultation period required under the Subordinate Legislation Act and provides an opportunity to comment on the proposed Regulations before they are finalised. Public input provides valuable information and perspectives. Feedback continues to be sought from all stakeholders as well as anyone who may consider they may be impacted by the fees and are not represented by the professional associations and other organisations who have already contributed to the review. This may include lawyers who are not members of a particular professional association and consumers of legal services who may be directly or indirectly affected by the fees that are set for practising certificates.

The RIS and appendices will be circulated to key stakeholders and made available on the VLSB+C website during the consultation period. Written comments are required by no later than 5pm on 30 November 2017.

## Section 3: Background

### 3.1: Legislative framework

On 1 July 2015, the Legal Profession Uniform Law (Uniform Law) became the governing legislation for all legal practitioners in Victoria and New South Wales (NSW), replacing the Legal Profession Acts and associated regulations of those States. Its introduction represents the most significant regulatory change for legal practitioners in a decade and is an important step towards a national legal profession.

The Uniform Law creates a common legal services market across Victoria and NSW underpinned by a uniform regulatory system. The Uniform Law governs matters including practising certificate types and conditions, maintaining and auditing of trust accounts, continuing professional development requirements, complaints handling processes, billing arrangements and professional discipline issues.

The Uniform Law is applied in Victoria by the *Legal Profession Uniform Law Application Act 2014* (the Act). The Uniform Law framework includes the Uniform Law; Uniform General Rules; Uniform Continuing Professional Development (CPD); Legal Practice and Professional Conduct Rules for Solicitors; Uniform CPD and Professional Conduct Rules for Barristers; and Uniform Admission Rules.

The objectives of the Uniform Law are to promote the administration of justice and an efficient and effective Australian legal profession by:

- providing and promoting interjurisdictional consistency in the law applying to the Australian legal profession;
- ensuring legal practitioners are competent and maintain high ethical and professional standards in the provision of legal services;
- enhancing the protection of clients of law practices and the protection of the public generally;
- empowering clients of law practices to make informed choices about the services they access and the costs involved;
- promoting regulation of the legal profession that is efficient, effective, targeted and proportionate; and
- providing a co-regulatory framework within which an appropriate level of independence of the legal profession from the executive arm of government is maintained.

The Board and the Victorian Legal Services Commissioner (the Commissioner) are the local regulators responsible for regulating lawyers in Victoria. They work closely with the Legal Services Council, the Commissioner for Uniform Legal Services Regulation, the NSW regulators and the Victorian professional associations to ensure the efficient and equitable regulation of legal practitioners under the Uniform Law.

The Board is responsible for a range of functions, including:

- administration, management and oversight of practising certificates including grant, renewal, suspension and cancellation;
- maintenance of the register of legal practitioners and law practices;
- local registration of foreign lawyers;
- setting professional indemnity insurance requirements;
- administration of funds under the Uniform Law (including the PPF and the Fidelity Fund);

- determination of claims against the Fidelity Fund;
- administration, management and oversight of all law practice and barristers' clerks trust accounts in Victoria;
- appointment of external interveners to law practices and applications to the Supreme Court for appointment of receivers;
- meeting the expenses of the Commissioner;
- meeting the expenses of the Victorian Civil and Administrative Tribunal (VCAT) Legal Practice List;
- the awarding of grants and the administration of a grants program; and
- the provision of funding for Victoria Legal Aid, the Victorian Law Reform Commission, the LIV and the Victorian Bar.

The Commissioner is responsible for receiving and handling all complaints made against legal practitioners within Victoria. In addition, the Commissioner educates the legal profession about issues of concern to the profession and consumers of legal services. The Commissioner also produces material for consumers of legal services to inform them about their rights and obligations when dealing with legal practitioners.

The LIV performs functions under delegations from and contracts with the Board for:

- investigation of claims against the Fidelity Fund;
- carrying out trust account investigations;
- assessment of the trust account course;
- auditing legal practices;
- undertaking external examinations of legal practices; and
- administering CPD requirements.

The Victorian Bar holds a delegation from the Board for administering the practising certificates of all barristers, making disqualification orders and administering CPD requirements. In addition, the Victorian Bar holds a delegation from the Commissioner for dealing with complaints.

### 3.2: The legal profession in Victoria

As shown in Table 4, 21,488 legal practitioners received practising certificates in Victoria in 2016-17. The following tables provide an overview of the legal profession in Victoria, including the types of practising certificates, positions held by legal practitioners and information about where legal practitioners are located throughout Victoria.

**Table 4: Legal practitioners by practising certificate type**

Practising certificate type	2015-16	2016-17
Employee <sup>1</sup>	7,657 (37.2%)	8,195 (38.1%)
Principal with trust authorisation	3,490 (17.0%)	3,460 (16.1%)
Principal	4,836 (23.5%)	2,845 (13.2%)
Corporate	3,874 (18.8%)	2,764 (12.9%)
Volunteer	319 (1.6%)	340 (1.6%)
Government <sup>2</sup>	370 (1.8%)	1,821 (8.5%)
Barrister <sup>3</sup>	47 (0.2%)	2,063 (9.6%)
<b>Total</b>	<b>20,593</b>	<b>21,488</b>

Source: VLSB+C annual reports and internal management reports

There were 24,053 legal positions registered in Victoria (see Table 5). This is higher than the total number of registered legal practitioners due to some legal practitioners maintaining positions with more than one entity. For example, a legal practitioner may be an employee of a law firm while also volunteering at a community legal service.

**Table 5: Legal practitioners by position type**

Position Type	2015-16	2016-17
Employee	8,080 (35%)	8,455 (35%)
Sole practitioner	5,321 (23%)	5,258 (22%)
Corporate lawyer	3,141 (14%)	3,251 (14%)
Partner	2,204 (9%)	2,217 (9%)
Director	1,810 (8%)	2,013 (8%)
Volunteer at Community Legal Service <sup>4</sup>	774 (3%)	785 (3%)
Supervising lawyer	124 (<1%)	135 (<1%)
Government	1,615 (7%)	1,939 (8%)
<b>Total</b>	<b>23,069</b>	<b>24,053</b>

Source: VLSB+C annual reports and internal data

<sup>1</sup> This category also includes employees who have trust authorisation

<sup>2</sup> A new category of government legal practitioner was introduced under the Uniform Law. Government legal practitioners were previously counted in the corporate category.

<sup>3</sup> A new category of barrister was introduced under the Uniform Law. Barristers were previously counted in the principal category. The 2015-16 data shows the number of barristers who amended or applied for a practising certificate after November 2015.

<sup>4</sup> This category was previously known as community legal centre

As shown in Table 6, the majority of legal practitioners registered in Victoria are based in the inner city area (55 per cent) followed by the suburbs (34 per cent).

**Table 6: Location of legal practitioners by position type**

Location	Solicitors		Barristers		Total	
	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17
City	9,652	9,896	1,969	1,955	11,621	11,851
Suburbs	6,725	7,197	61	94	6,786	7,291
Country	1,484	1,582	10	17	1,494	1,599
Interstate	184	213	2	4	186	217
Overseas	503	526	3	4	506	530
<b>Total</b>	<b>18,548</b>	<b>19,414</b>	<b>2,045</b>	<b>2,074</b>	<b>20,593</b>	<b>21,488</b>

Source: VLSB+C annual reports and internal management reports

### 3.3: Why is there a requirement to hold a practising certificate?

The legal profession plays a critical role in our society delivering economic and social benefits to clients and broader society. Legal practitioners help us navigate the complex rules that govern our society, gaining significant skills and expertise which they apply to the benefit of their clients.

As then NSW Supreme Court Chief Justice Spigelman stated in 2007:

*“In all spheres of conduct it is essential that individuals and corporations know that they can pursue their lives with a reasonable degree of security both of their person and of their property. This is not possible without the active involvement of lawyers. Lawyers perform a critical role in the promotion of social order by the administration of the law in a manner which answers the fundamental requirements of justice namely, fair outcomes arrived at by fair procedures. The fairness of the procedures is as essential as the correctness or fairness of the outcomes. When people talk about having their ‘day in court’ this is a matter that is of significance to their sense of freedom and personal autonomy.”<sup>5</sup>*

The requirement to hold a practising certificate is a key consumer protection aimed at ensuring that those who engage in legal practice in Victoria are competent and can meet the high ethical and professional standards demanded of those who provide legal services.

In a practical sense, clients rely on their legal practitioners to explain what is expected of them in order to comply with the law and to perform actions or create documents on their behalf that assist them in meeting their obligations or furthering their interests. Legal practitioners have a great deal of power in this relationship as they hold or have access to complex information that their client lacks. As a result, when a client engages a legal practitioner they do not always have the necessary means to determine whether they are receiving an appropriate standard of service. Often a client is engaging a legal practitioner to assist them with complex or difficult matters that may have serious impacts for their finances, reputation or in some cases personal freedom. Therefore, when a legal practitioner is incompetent or acts unethically this can have significant ramifications for the particular client and has flow through effects by undermining general confidence in the legal profession.

<sup>5</sup> Access to Justice and Access to Lawyers Address by the Honourable JJ Spigelman AC Chief Justice of New South Wales to the 35<sup>th</sup> Australian Legal Convention Sydney, 24 March 2007

The process of engaging a legal practitioner often means it is necessary for clients to hand over money to their legal practitioner to be held in trust on their behalf. Additional protections are built in to the system for legal practitioners who wish to hold trust money on a client's behalf. These additional protections ensure the client's funds are safeguarded and properly accounted for at all times, thereby ensuring that the legal practitioner is also protected from any perception of improper or illegal behaviour when holding a client's money. For a law practice to be authorised to operate a trust account, at least one legal practitioner in the law practice must hold a current practising certificate authorising the receipt of trust money.

As noted earlier in this RIS, the Board is responsible for assessing and processing practising certificate applications for all Victorian registered solicitors. For Victorian barristers, the Board has delegated this function to the Victorian Bar.

Table 7 shows the number and distribution of practising certificates issued by class until 2015-16 and Table 8 shows the six year average growth in the number of practising certificates being issued on the previous year.

**Table 7: Legal practitioners by class of practising certificate**

Practising Certificate Class	Employees	Principal with trust authorisation	Principal	Corporate	Volunteer	Government (new class type)	Barrister (previously under principal)	Total
<b>2009-10</b>	6,119	3,435	3,608	2,657	209	-	-	<b>16,028</b>
%	38.18%	21.43%	22.51%	16.58%	1.30%	-	-	<b>100.00%</b>
<b>2010-11</b>	6,419	3,463	3,849	2,791	205	-	-	<b>16,727</b>
%	38.38%	20.70%	23.01%	16.69%	1.23%	-	-	<b>100.00%</b>
<b>2011-12</b>	6,679	3,477	4,075	2,977	245	-	-	<b>17,453</b>
%	38.27%	19.92%	23.35%	17.06%	1.40%	-	-	<b>100.00%</b>
<b>2012-13</b>	6,929	3,459	4,383	3,106	277	-	-	<b>18,154</b>
%	38.17%	19.05%	24.14%	17.11%	1.53%	-	-	<b>100.00%</b>
<b>2013-14</b>	7,074	3,476	4,567	3,305	303	-	-	<b>18,725</b>
%	37.78%	18.56%	24.39%	17.65%	1.62%	-	-	<b>100.00%</b>
<b>2014-15</b>	7,292	3,469	4,804	3,533	333	-	-	<b>19,431</b>
%	37.53%	17.85%	24.72%	18.18%	1.71%	-	-	<b>100.00%</b>
<b>2015-16</b>	7,657	3,490	4,836	3,874	319	370	47	<b>20,593</b>
%	37.18%	16.95%	23.48%	18.81%	1.55%	1.80%	0.23%	<b>100.00%</b>

Source: VLSB+C annual reports and internal reports

**Table 8: Six-year average growth in the number of legal practitioner by class of practising certificate 2009-10 to 2015-16**

Year	Growth rate on previous year by practising certificate class							Total
	Employees	Principal with trust authorisation	Principal	Corporate	Volunteer	Government (new class type)	Barrister (previously under principal)	
2010-11	4.90%	0.82%	6.68%	5.04%	-1.91%	-	-	<b>4.36%</b>
2011-12	4.05%	0.40%	5.87%	6.66%	19.51%	-	-	<b>4.34%</b>
2012-13	3.74%	-0.52%	7.56%	4.33%	13.06%	-	-	<b>4.02%</b>
2013-14	2.09%	0.49%	4.20%	6.41%	9.39%	-	-	<b>3.15%</b>
2014-15	3.08%	-0.20%	5.19%	6.90%	9.90%	-	-	<b>3.77%</b>
2015-16	5.01%	0.61%	0.67%	9.65%	-4.20%	-	-	<b>5.98%</b>
<b>Six-year average growth rate</b>	<b>3.81%</b>	<b>0.27%</b>	<b>5.03%</b>	<b>6.50%</b>	<b>7.62%</b>	-	-	<b>4.27%</b>

### 3.4: What are the current practising certificate fees?

Currently, the fee for a practising certificate in Victoria under the Regulations is 36.50 fee units (\$522) for a practising certificate with trust authorisation and 24.71 fee units (\$353) for a practising certificate without trust authorisation. Section 73(5) of the Act states that a fee or surcharge is not payable for an Australian practising certificate that authorises the holder to engage in legal practice only as a volunteer at a community legal service or otherwise on a pro bono basis. The Regulations reduce the amount of the fee payable for practising certificates that are applied for after 1 October of a financial year. Table 9 outlines the fees that are payable for 2017-18 financial year.

**Table 9: Practising certificate fees for 2017-18 practising year**

Practising certificate type	Application received 1 July – 30 September	Application received 1 October – 31 December	Application received 1 January – 31 March <sup>6</sup>	Application received 1 April – 30 June <sup>7</sup>
Principal of a law practice authorised to receive trust money (includes Foreign practitioners)	\$522	\$393	\$262	\$131
Principal of a law practice not authorised to receive trust money (includes barristers & Foreign practitioners)	\$353	\$264	\$176	\$88
Employee of a law practice authorised to receive trust money	\$522	\$393	\$262	\$131
Employee of a law practice not authorised to receive trust money	\$353	\$264	\$176	\$88
Corporate legal practitioner	\$353	\$264	\$176	\$88
Government legal practitioner	\$353	\$264	\$176	\$88
Volunteer at a CLS / pro bono	Nil	Nil	Nil	Nil

<sup>6</sup> As the interim Regulations will expire on 28 February 2018, fees for the period 1 March- 31 March will be prescribed by the proposed Regulations.

<sup>7</sup> These fees will also be prescribed by the proposed Regulations.



For existing legal practitioners based in Victoria, an application for renewal of an Australian practising certificate must be made on or before 30 April. A person who was not an Australian legal practitioner on 30 April must apply on or before 30 June.

Fees are usually set for a 10 year period. However, practising certificate fees have been reviewed and new fees set twice within the last 10 years, in 2007 and more recently in 2012. This is largely the result of the significant changes that have occurred over that time in the regulation of the legal profession.

When the fees were last set in 2012, the Board recommended that they be in place for a period of five years due to the level of uncertainty that existed at the time about the cost of regulation under the uniform scheme. It was thought that reviewing the fees within five years would provide sufficient time for the Uniform Law to come into operation, thereby providing a clearer indication of the cost of regulation under this framework. This decision followed an earlier decision in 2007 to set fees for a three year period following the introduction of the *Legal Profession Act 2004* and a similar desire to ensure that the fees properly reflected the costs of the new regulatory environment. Moreover, when the current fees were established in 2012, the cost base was set narrowly at \$8.15 million<sup>8</sup>. Rather than setting the fees on a 'full cost recovery' basis:

- *Practitioner with trust authorisation* = \$1,113
- *Practitioner without trust authorisation* = \$329

'partial cost recovery' fees were set at:

- *Practitioner with trust authorisation* = \$446
- *Practitioner without trust authorisation* = \$302

In terms of setting the cost base narrowly, for example, it was determined that indirect costs, Board administrative and IT expenses *may* be covered by the PPF so these costs were excluded from the recoverable cost base.<sup>9</sup> Similarly, it was determined the PPF could meet the expenses of external interventions so these costs were also excluded<sup>10</sup>. However, no further explanation was provided as to why such determinations were made.

A higher fee for practising certificates with trust authorisation was set in 2012 in recognition that there were a large number of complaints against practitioners with trust authorisation.

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<sup>8</sup> The full cost base was calculated at \$23.89 million. See the Regulatory Impact Statement for the proposed Legal Profession (Practising Certificate Fees) Regulations prepared by the Legal Services Board (10 January 2012).

<sup>9</sup> These costs were calculated at \$8.99 million. Legal Services Board, (10 January 2012) Regulatory Impact Statement for the proposed Legal Profession (Practising Certificate Fees) Regulations.

<sup>10</sup> External intervention costs were estimated to be \$1.34 million. Legal Services Board, (10 January 2012) Regulatory Impact Statement for the proposed Legal Profession (Practising Certificate Fees) Regulations.

## Section 4: What are the costs of regulating the legal profession?

A full activity-based costing (ABC) exercise was undertaken to identify the functions that arise in regulating the legal profession in Victoria to set the basis for cost recovery. Functions which are undertaken by the Board or the Commissioner or delegated to professional associations, which contribute to the regulation of the legal profession, are described in detail in sections 4.5 to 4.11. As a summary, the costs incurred through regulating the legal profession are divided into three main parts:

- Direct (staff, delegated and overhead) and indirect costs of regulatory services attributable to unique outputs;
- Direct (delegated) costs of regulatory services not attributable to the aforementioned unique outputs; and
- Direct overhead costs of regulatory services not attributable to the aforementioned unique outputs.

### 4.1: Direct (staff, delegated and overhead) and indirect costs of regulatory services attributable to unique outputs

Total direct and indirect costs attributable to unique outputs are summarised in Table 10 and estimated to be \$16.16 million in 2015-16. These costs include direct staff (including salary related on costs) and indirect overhead costs<sup>11</sup> which relate to the following 'unique outputs' of the VLSB+C.

- Practitioner services (18,639 certificates);
- Trust management (3,435 certificates);
- CPD compliance + delegation LIV (20,691 certificates);
- Complaints handling (enquiries) (5,389 enquiries);
- Complaints handling (preliminary assessments) (1,446 assessments);
- Complaints handling (consumer disputes) (448 disputes);
- Complaints handling (disciplinary) (219 actions);
- Compliance audits (20 audits);
- Trust account investigations (400 investigations);
- External interventions (15 interventions);
- Unqualified practice investigations and prosecutions (48 investigations/prosecutions); and
- Trust deficiency investigations and prosecutions (3 investigations/prosecutions).

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<sup>11</sup> For a full discussion of the salary related on cost and overhead cost multipliers used and determination of hourly charge out rates see section A2.1 of Appendix 2.

**Table 10: Estimated total direct<sup>12</sup> and indirect costs attributable to unique outputs – 2015-16<sup>13</sup>**

Unique output (regulatory service)	Direct staff and indirect overhead costs	Direct delegated and overhead costs	Total direct and indirect costs <sup>14</sup>
Practitioner services <sup>15</sup>	\$2,386,294	\$876,199	\$3,262,493
Practitioner services (trust management)	\$647,703	\$0	\$647,703
Practitioner services (CPD compliance + delegation LIV)	\$20,662	\$167,890	\$188,552
Complaint handling (Enquiries)	\$412,384	\$0	\$412,384
Complaint handling (Preliminary assessments)	\$883,993	\$0	\$883,993
Complaint handling (Consumer disputes)	\$2,667,502	\$89,016	\$2,756,518
Complaint handling (Disciplinary)	\$2,021,189	\$49,535	\$2,070,724
Compliance audits <sup>16</sup>	\$34,011	\$187,000	\$221,011
Trust account investigations	\$508,898	\$2,534,210	\$3,043,108
External interventions	\$396,742	\$1,822,000	\$2,218,742
Unqualified practice investigation and prosecution	\$297,714	\$0	\$297,714
Trust deficiency investigation and prosecution	\$155,035	\$0	\$155,035
<b>Total</b>	<b>\$10,432,130</b>	<b>\$5,725,850</b>	<b>\$16,157,980</b>

#### 4.2: Direct (delegated) costs of regulatory services not attributable to unique outputs

Total direct delegated costs not attributable to unique outputs are estimated to be \$3.52 million for 2015-16 as shown in Table 11 and relate to:

- Legal expenses;
- LIV external counsel fees;
- Victorian Bar complaints handling;
- VCAT;
- Legal Services Council – Uniform Law; and
- Cost offset against legal expenses and external interventions.

<sup>12</sup> Includes delegated costs where attributable.

<sup>13</sup> See Table A2.50 in Appendix 2 for source of estimates.

<sup>14</sup> All estimates have been rounded to whole numbers for presentation purposes and therefore any manual estimation will be subject to rounding error.

<sup>15</sup> Withdrawal of the practising certificate delegation to the LIV occurred in 2014-15 with a reduction of the PPF funding allocation to the LIV.

<sup>16</sup> Funding to the LIV for compliance audits commenced in 2014-15.

**Table 11: Total direct delegated costs not attributable to unique outputs – 2015-16<sup>17</sup>**

Direct delegated cost category	Total direct delegated cost
Legal expenses	\$1,626,000
LIV external counsel fees	\$118,450
Vic Bar Complaints handling	\$74,440
VCAT	\$1,528,520
Legal Services Council – Uniform Law <sup>18</sup>	\$519,000
Cost offset against legal expenses and external interventions	-\$347,736
<b>Total direct delegated cost</b>	<b>\$3,518,674</b>

### 4.3: Direct overhead costs of regulatory services not attributable to the unique outputs

These costs represent direct overhead corporate and strategic projects that relate to particular regulatory functions, but which are not attributable to unique outputs and are, instead, incurred as part of non-process related work. Total direct overhead costs not attributable to unique outputs are estimated to be \$0.75 million for 2015-16 as shown in Table 12 and summarised as follows:

- Managerial activities such as meetings, preparation of Board papers and recruitment;
- Professional development activities by staff;
- Development of procedures, such as templates and workflows within the complaints management system and the production of fact sheets;
- Development of the determinations register;
- Co-ordinating with LIV and meeting with LIV in relation to the Service Level Agreement;
- Projects such as the data analysis project, 'power of attorney' and debt recovery work;
- Reporting on investigation numbers, review of investigations and continuous improvement;
- Records management;
- Outreach programmes;
- Training of new investigators;
- Building relationships with external stakeholders (training package for LIV trust account inspectors, Memorandum of Understanding with Victoria Police).

<sup>17</sup> See Table A3.8 of Appendix 3 for source of estimates.

<sup>18</sup> The first contribution made to the Legal Services Council towards the Uniform Law was in 2014-15. The *Legal Profession Uniform Law Application Act 2014* came into effect on 1 July 2015.

**Table 12: Total direct overhead costs for regulatory services – non-attributable to unique outputs – 2015-16<sup>19</sup>**

Direct overhead cost category	Total direct overhead cost
Direct overhead cost of activities for practitioner services (general practitioner services, trust account management and CPD compliance and delegation to LIV)	\$9,983
Direct overhead cost of activities for complaint handling (enquiries, preliminary assessment)	\$211,296
Direct cost offset of activities for complaint handling (consumer disputes)	-\$335,564
Direct overhead cost of activities for complaint handling (disciplinary)	\$186,730
Direct overhead cost of activities for trust account investigations	\$289,137
Direct overhead cost of activities for external interventions, unqualified practice and trust deficiency + other	\$388,823
<b>Total cost</b>	<b>\$750,404</b>

#### 4.4: Summary of total costs of regulatory services

The total cost of regulatory services including direct staff, indirect overheads and direct delegated/overheads are summarised in Table 13 and are estimated to be \$20.43 million per annum. The total budgeted cost for 2015-16 is given as \$20.25 million per annum and the difference of \$0.17 million is attributable to potential estimation errors with respect to times or probabilities of activities with respect to the ABC exercise and/or variations in salary amounts which are not necessarily at the mid-point of each salary band.

<sup>19</sup> See Table A4.1 of Appendix 4 for source of estimates.

**Table 13: Estimated and budgeted cost<sup>20</sup> of regulatory services for the VLSB+C 2015-16<sup>21</sup>**

<b>Cost category</b>	<b>Amount</b>
<b>Direct staff and indirect overhead and direct delegated/overhead costs attributable to unique outputs</b>	
Practitioner services	\$3,262,493
Practitioner services (Trust management)	\$647,703
Practitioner services (CPD compliance + delegation LIV)	\$188,552
Complaint handling (Enquiries)	\$412,384
Complaint handling (Preliminary assessments)	\$883,993
Complaint handling (Consumer disputes)	\$2,756,518
Complaint handling (Disciplinary)	\$2,070,724
Compliance audits	\$221,011
Trust account investigations	\$3,043,108
External interventions	\$2,218,742
Unqualified practice investigation and prosecution	\$297,714
Trust deficiency investigation and prosecution	\$155,035
<b>Sub-total</b>	<b>\$16,157,980</b>
<b>Direct delegated costs not attributable to unique outputs</b>	
Legal expenses	\$1,626,000
LIV external counsel fees	\$118,450
Vic Bar Complaints handling	\$74,440
VCAT	\$1,528,520
Legal Services Council - Uniform law	\$519,000
Offset against legal expenses and external interventions	-\$347,736
<b>Sub-total</b>	<b>\$3,518,674</b>
<b>Direct overhead cost of activities not attributable to unique outputs</b>	
Practitioner services	\$9,983
Complaint handling (Enquiries and preliminary assessment)	\$211,296
Complaint handling (Consumer disputes)	-\$335,564
Complaints handling (Disciplinary)	\$186,730
Trust account investigations	\$289,137
External interventions, unqualified practice and trust deficiency + other	\$388,823
<b>Sub-total</b>	<b>\$750,404</b>
<b>Total estimated costs</b>	<b>\$20,427,058</b>
Total budget for 2015-16	\$20,253,405
Total estimated costs less total budgeted costs for 2015-16	\$173,653

The contribution of these costs to the 'per unit' cost of practising certificates by class is highlighted in detail in sections 4.5 to 4.11.

## 4.5: Practitioner services

'Practitioner services' includes all the activities and costs involved with receiving, reviewing and processing new applications and renewals of practising certificates for legal practitioners in Victoria. The role of accrediting solicitors is administered by VLSB+C while the Victorian Bar undertakes the process for barristers with VLSB+C oversight.<sup>22</sup>

<sup>20</sup> The following costs are excluded from the cost of regulation (non-regulatory): Grants (VLA, VLF, VLRC and VLSB Major Grants and Projects) and related grants expenditure, legal education, Fidelity Fund claims and administration costs, VLAB costs and non-regulatory indirect costs.

<sup>21</sup> See Table A5.1 of Appendix 5 for source of estimates.

<sup>22</sup> As set out in Table 4, solicitors comprise 19,414 or 90.3 per cent of the 21,488 legal practitioners in Victoria in 2016/17. Barristers comprise the remaining 2,074, or 9.7 per cent of the total.

Practitioner services also undertake activities to uphold the integrity of the trust account system by identifying non-compliance in the movement of money into and out of law practices. This is achieved by:

- ongoing monitoring of trust accounts and transactions; and
- reporting on bank accounts of legal practitioners without trust authorisation.

Other functions undertaken by practitioner services include:

- registering new law practices;
- reviewing requests for exemptions from practising certificate conditions; and
- CPD compliance activities.

### Estimated attributable costs of practitioner services per practising certificate

New applications and renewals for practising certificates are submitted through VLSB+C's online portal. The main period for renewals of practising certificates is from April through to June each year, although applications for grants of practising certificates can be received at any time over the course of a year.

Legal practitioners who are renewing their practising certificate are required to log into the online portal and fill in their details, including making any necessary disclosures.

The 'per unit' cost of practitioner services is estimated to be \$168.59 for all practising certificate classes except for barristers where the per unit cost is \$58.57. The total estimated and attributable cost of practitioner services is estimated to be around \$3.26 million.<sup>23</sup>

### Estimated attributable cost of monitoring of trust accounts per practising certificate

The main activities undertaken by staff in monitoring trust accounts are:

- registering trust accounts – this process includes liaising with the banks for information;
- downloading and uploading information from banks on trust accounts;
- undertaking trust interest reconciliations with banks, including following up work on trust accounts that have not been registered with the Board;
- undertaking activities in relation to the Statutory Deposit Account (SDA) which includes sending out information to law practices on a quarterly basis and processing exemptions;
- responding to trust irregularity letters and other correspondence;
- registering new external examiners; and
- conducting annual trust account audits.

The 'per unit' cost of monitoring of trust accounts is estimated to be \$188.56 for principals with trust authorisation only. The estimated attributable direct and indirect cost of monitoring of trust accounts is estimated to be around \$0.65 million.<sup>24</sup>

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<sup>23</sup> See Tables A2.2 to A2.4 of Appendix 2 for sources of estimates.

<sup>24</sup> See Tables A2.3 and A2.7 for more detailed information and source of these estimates.



Estimated attributable cost of continuing professional development (CPD) compliance activities per practising certificate

The VLSB+C incur costs in relation to CPD compliance requirements. This work is undertaken notwithstanding that CPD compliance is delegated to the LIV. The direct staff and indirect overhead cost per activity (20,691 certificates per annum associated with CPD requirements) is estimated to be \$1.00 and requires on average 0.006hrs of processing work<sup>25</sup>. The total cost of this support activity is estimated to be around \$20,691.

In addition to internal staff and indirect overhead costs, there were \$167,890 of direct delegated costs incurred by the VLSB+C in relation to CPD requirement activities.

The 'per unit' cost of CPD compliance is estimated to be \$10.01 for all practising certificate classes except for barristers with a 'per certificate' cost of \$1.00 instead<sup>26</sup>. The estimated attributable direct and indirect cost of CPD compliance activities is estimated to be around \$0.19 million<sup>27</sup>.

## 4.6: Complaint handling

The VLSB+C have three teams that deal with complaints received by the Commissioner. The assessment and resolution team primarily deals with all general enquiries, preliminary assessment and allocation of new complaints and mediation of complaints relating to service issues. The dispute resolution and review team mediates and determines complaints that mainly concern legal costs (consumer disputes). The disciplinary investigations team investigates, determines and prosecutes complaints concerning the professional conduct of lawyers (disciplinary investigations).

### 4.6.1: Enquiry Services

The VLSB+C's enquiries service manages a wide range of concerns and queries about lawyers and legal matters more generally. Enquiries can be made in writing, email or in person but most are made over the telephone. In 2015-16, 5,389 enquiries were received and managed by the service.

Senior VPS 5 level staff are assigned to handle enquiries to ensure that the complex range of issues presented are resolved efficiently. The service provides detailed information on how a potential complaint will be handled and will make suggestions to assist enquirers resolve issues themselves. The service also directs enquirers who have issues that fall outside of VLSB+C's jurisdiction to the relevant regulatory or other service.

Estimated attributable costs of complaint handling – enquiries – per practising certificate

The 'per unit' cost of enquiry services is estimated to be \$0.57 for corporate practising certificates, \$10.11 for barristers, \$11.16 for employees, and \$49.34 for both the principal practising certificate classes. No costs were attributed to volunteer and government practising certificate classes.<sup>28</sup>

### 4.6.2: Complaints – Preliminary Assessment

The Assessment & Resolutions team undertake preliminary assessments of all complaints made to the Commissioner on a formal basis, usually by way of completion of a VLSB+C complaint form. In 2015-16, the team completed 1,446 preliminary assessments. These complaints are 'triaged' depending on their nature. They may be allocated to the appropriate team as consumer disputes or disciplinary investigations. They may also be closed in some circumstances such as where the issues in dispute are outside the time limitations

<sup>25</sup> See Table A2.9 of Appendix 2 for source of estimates

<sup>26</sup> See Table A2.10 of Appendix 2 for source of estimates.

<sup>27</sup> See Tables A2.4 of Appendix 2 for source of estimates.

<sup>28</sup> See Section A2.5 of Appendix 2 for source of estimates

applicable under the Uniform Law for bringing complaints, or where the matter is best investigated by another agency, such as the Victoria Police, or where the issues have already been brought before a court.

Many complaints, however, can be addressed without need for formal investigation. These are handled by senior VPS 5 staff within the assessment and resolutions team specialised in alternative dispute resolution.

#### Estimated attributable costs of complaint handling – preliminary assessments – per practising certificate

The 'per unit' cost of enquiry services is estimated to be \$2.54 for government practising certificates, \$7.73 for corporate practising certificates, \$22.69 for employees, and \$72.04 for principal practising certificates and \$141.83 for principals with trust authorisation. No costs were attributed to volunteer and barrister certificate classes.<sup>29</sup>

There are approximately 7.5 FTE<sup>30</sup> associated with the assessment and resolutions team with approximately 0.5 of a VPS3, 1 VPS4, 5 VPS5, 1 VPS6, and 0.1 of an EO3.

#### 4.6.3: Complaints – Consumer Disputes

In 2015-16, 448 complaints were allocated as consumer disputes to the dispute resolution and review team. The majority of consumer disputes involve legal costs and bills, including issues surrounding costs disclosure obligations, costs agreements and costs estimates. The team includes accredited mediators and a senior lawyer specialised in legal costing. Initially, staff specialising in dispute resolution engage the parties, usually by telephone, identifying the issues in dispute and assisting each party towards settlement. Some complaints are also referred for formal mediation with an accredited staff member.

Consumer disputes that do not settle by negotiation or mediation, and those that involve professional conduct issues that require further investigation, are handled by an investigations officer. These disputes are further investigated and can involve a formal assessment of the legal costs by a specialist costs lawyer. The parties are afforded further opportunities to settle their dispute by agreement; however, if there is no agreement, the investigations officer makes a recommendation to the Commissioner for final determination of the dispute.

A determination can involve an order as to the amount of costs that are to be paid or refunded as appropriate and can include payment of compensation to the aggrieved party. A consumer dispute determination may also involve any orders as set out below in section 4.6.4 with the exception of imposing a fine or practising certificate condition or bringing a charge to VCAT. The Commissioner has made 28 consumer dispute determinations to 31 July 2017 since the introduction of the Uniform Law on 1 July 2015.

The Commissioner's new power under the Uniform Law to make final determinations in disputes about legal costs has resulted in fewer disputes being referred to VCAT over time. A small number of complaints that are not suitable for determination, such as those exceeding the VLSBC+C monetary limitations are closed without resolution but the parties are advised of their rights to apply for resolution to VCAT or to the Supreme Court of Victoria, Costs Court division.

#### Estimated attributable costs of complaint handling – consumer disputes – per practising certificate

The 'per unit' cost of consumer disputes is estimated to be \$40.30 for barristers, \$50.95 for principal practising certificates, \$148.26 for employees and \$141.83 for principals with trust authorisation. No costs were attributed to volunteer, government and corporate certificate classes.<sup>31</sup>

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<sup>29</sup> See Section A2.6 of Appendix 2 for source of estimates

<sup>30</sup> Approximately 27.12% of staff in this team are involved with non-process work.

<sup>31</sup> See Section A2.7 of Appendix 2 for source of estimates

There are approximately 7.8 FTE<sup>32</sup> associated with dispute resolution & review team with approximately 1.5 of a VPS4, 5 VPS5s, 1 VPS6, and 0.1 of an EO3.

#### 4.6.4: Complaints – Disciplinary Investigations

In 2015-16, 219 complaints about the professional conduct of a lawyer were investigated for potential disciplinary action by the disciplinary investigations team. Conduct that may commonly be the subject of investigation are alleged breaches of the Act or Uniform Rules such as conflicts of interest or a failure to act in a timely manner or acting without or contrary to the instructions of the client. Conduct outside of legal practice may also be subject to investigation.

The Commissioner can also initiate an investigation about the conduct of a lawyer even where no complaint has been made or if a complaint has been withdrawn (Commissioner-initiated investigation). This is a significant consumer protection power as it enables the Commissioner to investigate conduct that may be improper or unsatisfactory in situations where clients and/or witnesses may not be aware of the conduct or may not wish to raise a complaint.

A Commissioner-initiated investigation may be undertaken in any number of circumstances including, for example, following receipt of a trust account investigation report, an adverse media report or as a result of a referral from another agency, such as the Office of Public Prosecutions or a court.

Following an investigation, the Commissioner has a range of powers. Where the Commissioner is satisfied the lawyer has engaged in unsatisfactory professional conduct, the Commissioner may:

- order a caution or a reprimand;
- order an apology;
- order the lawyer or law practice to redo the legal work at no cost, or to reduce or waive the costs for that work;
- order further training, education, counselling or supervision;
- issue a fine up to \$25,000;
- recommend a condition be applied to the lawyer's practising certificate; and

The Commissioner may also initiate and prosecute proceedings in VCAT if satisfied the conduct may amount to unsatisfactory professional conduct or professional misconduct.

#### Estimated attributable costs of complaint handling – disciplinary actions – per practising certificate

The 'per unit' cost of disciplinary actions is estimated to be \$7.86 for corporate practising certificates, \$53.03 for employees, \$90.82 for barristers, \$153.10 for principal practising certificates and \$301.42 for principals with trust authorisation. No costs were attributed to volunteer and government certificate classes.<sup>33</sup>

There are approximately 10.8 FTE<sup>34</sup> associated with the disciplinary investigations team with approximately 5 VPS4, 4.5 VPS5, 1 VPS6, and 0.1 of an EO3.

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<sup>32</sup> This staffing budget for this team is 29.39% less than the staff levels required for consumer disputes based on the Activity Based Costing analysis.

<sup>33</sup> See Section A2.8 of Appendix 2 for source of estimates

<sup>34</sup> Approximately 17.75% of staff in this team are involved with non-process work

#### 4.7: Compliance audits

The Board may audit law practices for their compliance with the Uniform Law. Audits are considered where a legal practitioner or law practice has a complaint or pattern of conduct that reveals potential systemic issues which may be aided by the audit process. The LIV has a delegated function to conduct compliance audits on behalf of the Board. Funding to the LIV for compliance audits commenced in 2014-15. Therefore, this is a new cost that has arisen since the fees were last reviewed in 2012.

##### Estimated attributable cost of compliance audits per practising certificate

There were 20 compliance audits as at 30 June 2016 with an estimated cost of \$0.23 million.<sup>35</sup> A typical compliance audit comes at a cost of around \$1,646<sup>36</sup> and a straightforward simple interaction with a practice involves around \$54.81. The cost per certificate is estimated to be \$54.69 for the 'principal with trust authorisation' certificate class and \$12.26 for the 'principal' certificate class.<sup>37</sup>

#### 4.8: Trust account investigations

The Board is responsible for the oversight of all trust accounts held by law practices in Victoria. To ensure law firms comply with general trust account regulations, trust accounts are audited regularly. Trust account investigations aim to identify unusual activity in connection with money held in trust accounts.

While VLSB+C staff continue to monitor trust accounts (as described in the practitioner services section), the Board has delegated its general trust account surveillance and investigations functions to the LIV. VLSB+C staff have been working with the LIV to replace the previous approach of investigating all trust accounts at least once every five years with a risk-based scheme. There were around 400 trust account investigations completed in 2015-16.

Trust account inspections are initiated by identifying issues through risk profiling of law practices. Data used in profiling is drawn from reporting on complaints; trust account irregularities; failures to respond to VLSB+C requests and intelligence received from external examiners and other practitioners.

##### Estimated attributable cost of trust investigations per practising certificate

The 'per unit' cost of trust account investigations is estimated to be \$877.05 for the principal with trust authorisation class and \$14.83 for barristers. The total estimated and attributable cost of trust account investigations is estimated to be around \$3.04 million.<sup>38</sup>

There are approximately 3.2 FTE<sup>39</sup> associated with the trust account investigations team with approximately, 1 VPS3, 2 VPS6, and 0.1 of an EO3.

#### 4.9: External interventions, unqualified practice/trust deficiency investigations and prosecutions

The Board can appoint external interveners in a variety of circumstances including where the Board believes that a law practice is not appropriately handling trust money, has committed a serious breach or where the

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<sup>35</sup> See Section A2.9 of Appendix 2 for source of estimates

<sup>36</sup> See Table A2.30 of Appendix 2 for source of estimates

<sup>37</sup> See Section A2.9 of Appendix 2 for source of estimates

<sup>38</sup> See Section A2.10 of Appendix 2 for source of estimates

<sup>39</sup> Approximately 41.17% of staff in this team are involved with non-process work

practice is in contravention of the legislation. External interventions also occur when legal practitioners are no longer able to run their practice due to health reasons or death.

An external intervention requires the appointment of a supervisor, manager or receiver under Chapter 6 of the Uniform Law. The Board has the power to appoint a supervisor or manager to a law practice or to apply to the Supreme Court of Victoria for an order appointing a receiver to a law practice. The external interventions power helps to protect the interests of the general public and the trust money and property of clients.

VLSB+C's resourcing of an external intervention varies depending on the circumstances of the particular legal practitioner or law firm. In some cases, internal staff may handle the intervention, while in others the intervention will be allocated to the LIV or to an external legal practitioner. To ensure external interventions are appointed in a timely and efficient manner, the Board maintains a panel of experienced external legal practitioners ready to be engaged.

A law practice that is the subject of an external intervention must pay the costs associated with the external intervention process. However, in practice this may not occur as typically a law practice subject to the external intervention is financially insolvent or does not have the means to pay. Where the expenses are not met by the law practice, the Act specifies that the expenses may be met by the PPF (see section 136(3)(v) of the Act).

**Table 14: External interventions**

Type of external intervention	Continuing from 2014-15	Commenced 2015-16	Closed during 2015-16	Ongoing interventions as at June 2016
Receiverships	3	1	1	3
Managements	4	14	9	9
Supervisions	0	1	1	0

Source: VLSB+C annual reports

There were 15 external interventions continuing or commenced over the course of 2015-16. Costs of external intervention vary significantly. For example, an intervention that occurs due to the death or incapacity of a sole practitioner with only a small number of clients would not be as resource-intensive to manage as an external intervention that occurs as a result of the failure of a large law firm, particularly where that failure is the result of dishonest or incompetent behaviour. The resourcing of an external intervention is also influenced by the firm's work and location: if the law practice specialises, interveners with corresponding skills are required and any person appointed to take over the practice would need to be located within a reasonable proximity. These requirements can present challenges for resourcing interventions in regional and rural areas. For a simple, moderately complex, and complex external intervention the average cost would be around \$1,579<sup>40</sup>, \$5,120 and \$19,750 – respectively.

Other work undertaken in 2015-16 by the external interventions team includes 48 unqualified practice investigations and prosecutions with simple and complex investigations and prosecutions costing around \$2,915<sup>41</sup> and \$3,288 – respectively.

There were also 3 trust deficiency investigations conducted by this team in 2015-16 at a cost of \$14,635<sup>42</sup> for a simple investigation and \$37,043 for a complex investigation.

<sup>40</sup> See Table A2.40 of Appendix 2 for source of estimates.

<sup>41</sup> See Table A2.45 of Appendix 2 for source of estimates

<sup>42</sup> See Table A2.48 of Appendix 2 for source of estimates

These investigations form part of the Board's responsibilities for overseeing the management of trust accounts held by law practices and barristers' clerks and are undertaken in response to complaints or when a trust account investigation identifies unusual activity.

[Estimated attributable cost of external interventions, unqualified practise/trust deficiency investigations per practising certificate](#)

The 'per unit' cost of external interventions is estimated to be \$549.03 for the principal with trust authorisation class, \$28.41 for employees and \$41.01 for principals. The total estimated and attributable cost of external interventions is estimated to be around \$2.22 million.<sup>43</sup>

The 'per unit' cost of unqualified practice investigations and prosecutions is estimated to be \$14.39 for all practising certificate classes. The total estimated and attributable cost of unqualified practice investigations and prosecutions is estimated to be around \$0.3 million.<sup>44</sup>

The 'per unit' cost of trust deficiency investigations and prosecutions is estimated to be \$845.13 for the principal with trust authorisation class. The total estimated and attributable cost of trust account investigations and prosecutions is estimated to be around \$0.16 million.<sup>45</sup>

There are approximately 7 FTE<sup>46</sup> associated with the external interventions team (including unqualified practice investigations and prosecutions and trust deficiency investigations) with approximately 2 VPS4s, 3 VPS5s, 2 VPS6s, and 0.1 of an EO3.

## 4.10: Direct costs of delegation of regulatory services *not attributable to unique outputs*

The following set of costs related to direct delegated costs<sup>47</sup> for 2015-16 which are not attributable to unique outputs (regulatory services). These costs include block funding for:

- Legal expenses;
- LIV external counsel fees;
- Vic Bar complaints handling;
- VCAT;
- Legal Services Council - Uniform Law contributions; and
- An offset against direct delegated costs of legal expenses and external interventions recovered.

### 4.10.1: Legal expenses

Legal expenses include the costs incurred by the Commissioner in securing external counsel to support investigations and prosecute disciplinary breaches. Over the last five years, legal expenses have varied from as much as \$2.78 million in 2011-12 down to \$1.30 million in 2014-15.

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<sup>43</sup> See Section A2.11 of Appendix 2 for source of estimates

<sup>44</sup> See Section A2.12 of Appendix 2 for source of estimates

<sup>45</sup> See Section A2.12 of Appendix 2 for source of estimates

<sup>46</sup> Approximately 51.68% of staff in this team are involved with non-process work

<sup>47</sup> It should be noted that the use of the words 'delegated costs' in this context reflects that these functions are performed by someone other than the VLSB+C. Some of these functions may be formerly delegated (e.g. Vic Bar complaints handling) while others are costs that flow from formal responsibilities under the Act (e.g. VCAT, Legal Services Council).



The 'per unit' cost of legal expenses is estimated to be \$1.51 for corporates, \$10.21 for employees, \$17.48 for barristers, \$264.75 for principals with trust authorisation and \$220.70 for other principals. The block funding cost of legal expenses was \$1.63 million in 2015-16.<sup>48</sup>

#### 4.10.2: LIV external counsel fees

Over the last five years to 2015-16, an amount of block funding has been allocated to the LIV for engagement of counsel for advice and appearance work in relation to both delegated and contracted services.

The 'per unit' cost of LIV external counsel fees is estimated to be \$6.35 for all practising certificate classes except barristers who incur no cost. The cost of legal expenses was \$0.12 million in 2015-16.<sup>49</sup>

#### 4.10.3: Victorian Bar complaints handling

The Commissioner has delegated to the Victorian Bar responsibility for the handling and resolution of some consumer matter complaints about barristers and some disciplinary investigations where the person making the complaint is also a barrister. The Board allocates funding for this delegation, which is used for the purposes of the administration and overheads incurred by the Victorian Bar. This investigation and dispute resolution work is managed by the Victorian Bar's Ethics Committee. The Ethics Committee will make recommendations as to the determination of complaints where a consumer matter complaint cannot be resolved and regarding action that should be taken after a disciplinary matter investigation, to the Commissioner, who will make the final decision.

The Ethics Committee is comprised of a number of senior barristers who undertake this work on a voluntary basis. This important voluntary contribution made by the Ethics Committee has a direct influence on the costs base of the VLSB+C in complaint handling. Costs allocated to the barrister practising certificate class would be greater if this contribution was not made.

The 'per unit' cost of complaints handling by the Victorian Bar has been calculated at \$36.28 for barristers. The block funding cost of legal expenses was \$0.74 million in 2015-16.<sup>50</sup>

#### 4.10.4: VCAT

VCAT's Legal Practice List is responsible for the review of administrative decisions under the Uniform Law, including practising certificate determinations and the making of disciplinary orders against lawyers for unsatisfactory professional conduct or professional misconduct and a decreasing number of consumer disputes. The Board pays an amount each financial year to meet the expenses of VCAT in performing functions under the Uniform Law and the Act.

The 'per unit' cost of VCAT is estimated to be \$5.80 for corporates, \$39.15 for employees, \$67.04 for barristers, \$222.49 for principals with trust authorisation and \$113.01 for other principals. The block funding cost of legal expenses was \$1.53 million in 2015-16.<sup>51</sup>

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<sup>48</sup> See Appendix 3 for source of estimates.

<sup>49</sup> See Appendix 3 for source of estimates.

<sup>50</sup> See Appendix 3 for source of estimates.

<sup>51</sup> See Appendix 3 for source of estimates. Also, see Addendum 1 to this RIS which sets out dividends that have been applied to the options as a result of VCAT efficiency gains realised since 2015-16.



#### 4.10.5: Legal Services Council - Uniform Law contributions

The Legal Services Council is a five-member body that is responsible for setting the rules and policies which underpin the Uniform Law, monitoring the overall operation of the Uniform Law framework and ensuring it is applied consistently across participating jurisdictions. The Board must contribute an amount of money determined by the Attorney-General as Victoria's contribution to the funding of the Legal Profession Uniform Framework. The first contribution made to the Legal Services Council towards the Uniform Law was in 2014-15. Therefore, this is a new cost that has arisen since the fees were last reviewed in 2012. The 'per unit' cost of this contribution has been calculated at \$25.08 across all the practising certificate classes. The block funding cost of the Legal Services Council was \$0.52 million in 2015-16.<sup>52</sup>

#### 4.11: Direct overhead costs of regulatory services *not attributable* to unique outputs

As discussed earlier in this RIS there are some costs involving direct overhead corporate and strategic projects that relate to particular regulatory functions but are not directly attributable to unique outputs and are, instead, incurred as part of non-process related work. The direct overhead costs discussed in Table 15 reflect staff time not captured in direct processing work around practitioner services, complaints, investigations, prosecutions and interventions.

**Table 15: Allocation of direct overhead costs not attributable to unique outputs per certificate by class type<sup>53</sup>**

Class type	Direct overhead cost of activity by class type	Volume of certificates by class type	Direct overhead cost per certificate by class type
<b>Practitioner services</b>			
Employees	\$4,182.36	7,809	<b>\$0.54</b>
Principal with trust authorisation	\$1,839.73	3,435	<b>\$0.54</b>
Principal	\$1,448.75	2,705	<b>\$0.54</b>
Corporate	\$1,411.80	2,636	<b>\$0.54</b>
Volunteer	\$164.42	307	<b>\$0.54</b>
Government	\$935.66	1,747	<b>\$0.54</b>
Barrister	\$0.00	2,052	<b>\$0.00</b>
<b>Total</b>	<b>\$9,982.72</b>	<b>20,691<sup>54</sup></b>	
<b>Complaint handling (enquiries and preliminary assessments)</b>			
Employees	\$42,343.87	7,809	<b>\$5.42</b>
Principal with trust authorisation	\$116,445.64	3,435	<b>\$33.90</b>
Principal	\$46,578.25	2,705	<b>\$17.22</b>
Corporate	\$4,869.54	2,636	<b>\$1.85</b>
Volunteer	\$0.00	307	<b>\$0.00</b>
Government	\$1,058.60	1,747	<b>\$0.61</b>
Barrister	\$0.00	2,052	<b>\$0.00</b>
<b>Total</b>	<b>\$211,295.90</b>	<b>20,691</b>	

<sup>52</sup> See Appendix 3 for source of estimates.

<sup>53</sup> See Appendix 4 for source of estimates.

<sup>54</sup> This was the number of practising certificates at the time of the ABC exercise in May 2017.

Class type	Direct overhead cost of activity by class type	Volume of certificates by class type	Direct overhead cost per certificate by class type
<b>Complaint handling (disputes)</b>			
Employees	-\$140,936.80	7,809	-\$18.05
Principal with trust authorisation	-\$167,781.91	3,435	-\$48.84
Principal	-\$16,778.19	2,705	-\$6.20
Corporate	\$0.00	2,636	\$0.00
Volunteer	\$0.00	307	\$0.00
Government	\$0.00	1,747	\$0.00
Barrister	-\$10,066.91	2,052	-\$4.91
<b>Total</b>	<b>-\$335,563.82</b>	<b>20,691</b>	
<b>Complaint handling (disciplinary)</b>			
Employees	\$37,345.92	7,809	\$4.78
Principal with trust authorisation	\$93,364.80	3,435	\$27.18
Principal	\$37,345.92	2,705	\$13.81
Corporate	\$1,867.30	2,636	\$0.71
Volunteer	\$0.00	307	\$0.00
Government	\$0.00	1,747	\$0.00
Barrister	\$16,805.66	2,052	\$8.19
<b>Total</b>	<b>\$186,729.60</b>	<b>20,691</b>	
<b>Trust account investigations</b>			
Employees	\$0.00	7,809	\$0.00
Principal with trust authorisation	\$289,136.76	3,435	\$84.17
Principal	\$0.00	2,705	\$0.00
Corporate	\$0.00	2,636	\$0.00
Volunteer	\$0.00	307	\$0.00
Government	\$0.00	1,747	\$0.00
Barrister	\$0.00	2,052	\$0.00
<b>Total</b>	<b>\$289,136.76</b>	<b>20,691</b>	
<b>External interventions/unqualified practice/trust deficiency investigations prosecutions /other</b>			
Employees	\$38,882.32	7,809	\$4.98
Principal with trust authorisation	\$330,499.69	3,435	\$96.22
Principal	\$19,441.16	2,705	\$7.19
Corporate	\$0.00	2,636	\$0.00
Volunteer	\$0.00	307	\$0.00
Government	\$0.00	1,747	\$0.00
Barrister	\$0.00	2,052	\$0.00
<b>Total</b>	<b>\$388,823.16</b>	<b>20,691</b>	

Based on the sum of the per certificate costs identified in sections 4.5 to 4.11 – the ‘per unit’ certificate costs are identified as follows in Table 16.

**Table 16: Summary of estimated per certificate costs - by practising certificate class**

Practising Certificate Class	Estimated per certificate cost
Employees	\$526.61
Principal with trust authorization	\$3,423.74
Principal	\$935.29
Corporate	\$242.58
Volunteer	\$216.56
Government	\$219.70
Barrister	\$370.80

The main drivers/cost components of these per certificate costs are illustrated in Table 17.

**Table 17: Summary of cost components per certificate cost by practising certificate class**

Cost category	Employees	Principal (with trust)	Principal	Corporate	Volunteer	Government	Barrister
Practitioner services	\$168.59	\$168.59	\$168.59	\$168.59	\$168.59	\$168.59	\$58.57
Practitioner services (Trust management)	\$0.00	\$188.56	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Practitioner services (CPD compliance + delegation LIV)	\$10.01	\$10.01	\$10.01	\$10.01	\$10.01	\$10.01	\$1.00
Complaint handling (enquiries)	\$11.16	\$49.34	\$49.34	\$0.57	\$0.00	\$0.00	\$10.11
Complaint handling (Preliminary assessments)	\$22.69	\$141.83	\$72.04	\$7.73	\$0.00	\$2.54	\$0.00
Complaint handling (Consumer disputes)	\$148.26	\$401.24	\$50.95	\$0.00	\$0.00	\$0.00	\$40.30
Complaint handling (Disciplinary)	\$53.03	\$301.42	\$153.10	\$7.86	\$0.00	\$0.00	\$90.82
Compliance audits	\$0.00	\$54.69	\$12.26	\$0.00	\$0.00	\$0.00	\$0.00
Trust account investigations	\$0.00	\$877.05	\$0.00	\$0.00	\$0.00	\$0.00	\$14.83
External interventions	\$28.41	\$549.03	\$41.01	\$0.00	\$0.00	\$0.00	\$0.00
Unqualified practice investigation and prosecution	\$14.39	\$14.39	\$14.39	\$14.39	\$14.39	\$14.39	\$14.39
Trust deficiency investigation and prosecution	\$0.00	\$45.13	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Direct delegated cost of Legal expenses	\$10.21	\$264.75	\$220.70	\$1.51	\$0.00	\$0.00	\$17.48
Direct overhead cost of external counsel fees	\$6.35	\$6.35	\$6.35	\$6.35	\$6.35	\$6.35	\$0.00

Cost category	Employees	Principal (with trust)	Principal	Corporate	Volunteer	Government	Barrister
Direct delegated cost of Vic Bar Complaints handling	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$36.28
Direct delegated overhead cost of VCAT	\$39.15	\$222.49	\$113.01	\$5.80	\$0.00	\$0.00	\$67.04
Direct delegated cost of LS Council	\$25.08	\$25.08	\$25.08	\$25.08	\$25.08	\$25.08	\$25.08
Direct delegated cost offset against legal expenses and external interventions	\$0.00	-\$80.99	-\$25.71	\$0.00	\$0.00	\$0.00	\$0.00
Direct overhead cost of activities for practitioner services	\$0.54	\$0.54	\$0.54	\$0.54	\$0.54	\$0.54	\$0.00
Direct overhead cost of activities for complaint handling (enquiries and preliminary assessment)	\$5.42	\$33.90	\$17.22	\$1.85	\$0.00	\$0.61	\$0.00
Direct cost offset for complaints (consumer disputes)	-\$18.05	-\$48.84	-\$6.20	\$0.00	\$0.00	\$0.00	-\$4.91
Direct overhead cost of activities for complaints (disciplinary)	\$4.78	\$27.18	\$13.81	\$0.71	\$0.00	\$0.00	\$8.19
Direct overhead cost of activities for trust account investigations	\$0.00	\$84.17	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Direct overhead cost of activities for external interventions, unqualified practice and trust deficiency + other	\$4.98	\$96.22	\$7.19	\$0.00	\$0.00	\$0.00	\$0.00
Adjustment for estimation error	-\$8.39	-\$8.39	-\$8.39	-\$8.39	-\$8.39	-\$8.39	-\$8.39
<b>Total per certificate cost</b>	<b>\$526.61</b>	<b>\$3,423.74</b>	<b>\$935.29</b>	<b>\$242.58</b>	<b>\$216.56</b>	<b>\$219.70</b>	<b>\$370.80</b>

#### 4.12: What costs are excluded from the costs of regulatory services?

Funds are paid out to a number of public bodies and to fund additional activities undertaken by the Board and Commissioner that have been determined to be non-regulatory in nature. The beneficiaries of these costs are much broader than the regulated legal profession. Therefore, these costs (as shown in in Table 18) have not been included for the purposes of assessing the basis for cost recovery<sup>55</sup>.

<sup>55</sup> It is not proposed to recover any portion of these costs from practising certificate fees.

**Table 18: Other costs (excluded from the costs of regulation)**

Functions	2011-12 \$'000	2012-13 \$'000	2013-14 \$'000	2014-15 \$'000	2015-16 \$'000
Grants and other payments	32,088	31,195	32,008	34,514	34,844
Payments to professional associations for legal education programs	2,901	2,837	2,431	2,523	2,598
Fidelity Fund claims/costs	853	1,018	3,485	3,210	2,103
Victorian Legal Admissions Board	1,172	1,172	1,113	1,138	1,172
Indirect costs of the above functions	1,711	1,559	1,371	1,135	1,167
<b>Total other costs</b>	<b>38,725</b>	<b>37,781</b>	<b>40,408</b>	<b>42,520</b>	<b>41,884</b>

Source: VLSB+C annual reports and internal management reports

#### 4.12.1: Grants and other payments

Funding is provided to:

- Victoria Legal Aid (VLA) which is a statutory body that provides free legal information and education to Victorians as well as legal advice and representation for people who meet eligibility criteria, based on their financial situation, the nature and seriousness of their problem and their individual circumstances;
- Victoria Law Foundation (VLF) which is a statutory body that delivers programs and provides legal information to help Victorians in dealing with legal issues and seeking legal help for problems; and
- Victorian Law Reform Commission (VLRC) which is an independent body that develops, reviews and recommends reform of Victorian law.

The Board also operates a grants program that funds law-related services and activities for the benefit of the Victorian community. These services and activities can be for the purpose of law reform, legal education, judicial education, legal research or any other purpose which the Board considers appropriate. All grants are approved by the Attorney-General.

#### 4.12.2: Payments to professional associations for legal education programs

Funding is distributed to professional associations for a wide range of purposes including policy and research and delivering legal ethics training. The beneficiaries of these activities include members of the public, members of the professional associations and the broader legal profession.

#### 4.12.3: Fidelity Fund claims/costs

The Fidelity Fund is managed by the Board to provide compensation to clients who have lost money or property due to the dishonest or fraudulent behaviour of a lawyer, an employee of a law practice or a barrister's clerk. The Fidelity Fund receives annual contributions from legal practitioners with practising certificates with trust authorisation, community legal services and approved clerks.

#### 4.12.4: Victorian Legal Admissions Board

The Victorian Legal Admissions Board (VLAB) is established under section 19 of the Act and assesses the suitability of law graduates for admission to the Supreme Court of Victoria. Applicants are required to pay admission fees to meet the expenses of the VLAB. However, the Act also enables additional expenses that are not currently being met through admission fees to be covered.

4.12.5: Indirect costs

Indirect costs include staff costs, administration costs, occupancy costs and IT expenses related to the functions of administering grants, providing education to the legal profession and consumers of legal services and administering the Fidelity Fund.

4.13: Recovering the cost of regulating the legal profession

The costs of regulating the legal profession are fully recovered from those who benefit from and give rise to the system - legal practitioners and their clients. Costs are split between revenue from fees (the fee stream) and revenue from other sources, principally interest from solicitors' trust accounts (the interest stream). This revenue is paid into the PPF as shown in Figure 1.

Figure 1: Public Purpose Fund sources and uses of funding



There is no contribution from consolidated revenue or any other source of public funding and therefore non-users do not pay for the system.

4.13.1: Public Purpose Fund

The Act requires the Board to maintain the PPF in three separate accounts: the General Account, the Statutory Deposit Account (SDA) and the Distribution Account. The Act sets out details about what money is to be paid into and withdrawn from each account.

In general, the money deposited into the General Account includes revenue from the fee stream, revenue from the interest stream and any profits and earnings from PPF investments. Other revenue may include fines, money transferred from the Fidelity Fund and other money received by the VLSB+C that is not accredited to any of the other accounts. The General Account funds the costs of legal regulation.

The Act requires that each law practice with a general trust account have a corresponding individual SDA held by the Board. The balance in the SDA accounts is the sum of each of the individual SDAs. Amounts deposited with the Board are held on trust for the law practice and are repayable on demand. A proportion of the funds held in the account are effectively invested by the Board in accordance with the Board's Investment Policy Statement. This investment is facilitated by a financial arrangement with the Board's main banker as approved by the Treasurer.

Under the Act, 50 per cent of the surplus of the General Account at 30 June of a given year is to be transferred to the Distribution Account during the following year. Funding is provided from this account to VLA, VLF and VLRC and to other grant recipients for law related services and activities.

As set out in Table 13, in 2015-16 the cost of legal regulation was estimated to be \$20.25 million: the fee stream contributed approximately \$7.6 million (38.4 per cent) to these costs with the interest stream contributing the remaining 61.6 per cent of funding (see Figure 1). The PPF also funds all the costs set out in Table 18 which have been excluded from the costs of regulation for the purpose of this RIS. The two key revenue streams are described below.

#### 4.13.2: Practising certificate fees

The fee stream represents the fees paid by legal practitioners when they apply for or renew their practising certificate. Legal practitioners may pass none, some or all of these costs through to their clients through the fees they charge for legal services. This provides a key income stream of the PPF which is directly affected by the fees set in the proposed Regulations. This RIS will examine options for setting fees in terms of the amount of revenue generated by fees and the costs and benefits of changing the amount received from fees.

#### 4.13.3: Trust account interest

Lawyers and approved barristers' clerks hold money in trust on behalf of their clients. Examples include money to pay for disbursements such as fees for lodging documents or payments for required reports and money paid in advance for legal services to be provided by a lawyer. It may also include money due to be received by a client from the proceeds of a court action or an estate, or required to be paid by a client as part of a property settlement.

Trust funds are kept in a separate account and subject to extensive regulation to ensure that the monies are appropriately accounted for and dealt with. Trust accounts do not earn interest for the lawyer or the client. Instead, under the Act, interest generated on funds held in trust must be paid into the PPF. Therefore, this RIS will not examine options for changing the amount of revenue generated by interest.

Aside from providing the main source of funding for the regulation of legal professionals, interest from trust accounts also contributes to a range of grants, including to Victoria Legal Aid, Victoria Law Foundation, the Victorian Law Reform Commission and professional associations for legal education programs. Therefore, any amendments to practising certificate fees necessarily impact on the trust account interest available to fund these programs.

A comparison of key revenue streams over time is illustrated in Table 19.

**Table 19: Public Purpose Fund Revenue**

Revenue	2010-11 \$'000	2011-12 \$'000	2012-13 \$'000	2013-14 \$'000	2014-15 \$'000	2015-16 \$'000
Investment revenue	30,651	27,351	28,000	29,473	33,553	50,703
Interest of law practice residual trust accounts	35,953	31,730	23,360	24,473	28,473	28,369
Interest on operating accounts	711	570	467	248	471	778
Practising certificate fees revenue	4,810	4,986	5,973	6,235	6,535	7,128
Other revenue	542	1,166	534	705	472	383
<b>Total PPF revenue</b>	<b>72,667</b>	<b>65,803</b>	<b>58,334</b>	<b>61,134</b>	<b>69,504</b>	<b>87,361</b>

Source: VLSB+C annual reports



#### 4.14: Are the costs in delivering regulatory services efficient?

The Victorian Government's *Cost Recovery Guidelines* note that fees should be set using a cost base that reflects the efficient cost of regulation. The fundamental question then becomes: 'is the cost base 'efficient'?' (i.e. does it represent the 'minimum' amount of resources required for regulating practitioners in Victoria?)

The VLSB+C consider their current costs to be efficient and have processes in place to identify further opportunities for improvement in the future. This view is based on the fact that the costs associated with regulating the legal system in Victoria include costs that are:

- driven by routine or automated simple processes with limited opportunities for efficiency gains through process improvements (e.g. automated acceptance of applications for practising certificates and basic tasks undertaken to check applications as outlined in section 4.5);
- associated with activities for which senior staff are accountable for oversight and identifying opportunities for process improvements that will yield efficiency gains (see, for example, changes to the way trust investigations are targeted on the basis of risk as outlined in section 4.8); or
- incurred where activities are outsourced to other agencies (such as the LIV or the Victorian Bar) that are able to perform the function under delegation from the VLSB+C reflecting their particular experience in those activities.

Further analysis undertaken during the ABC exercise revealed the following key findings as outlined in section 4.14.1.

##### 4.14.1: An efficiency analysis of regulatory services provided by the VLSB+C

Estimated times taken to provide unique outputs by VLSB+C staff based on the findings of the ABC exercise are summarised in Table 20.

**Table 20: Time required (hrs) per activity relating to unique outputs**

Unique output	Hrs required per activity <sup>56</sup>
Practitioner services	1.15
Practitioner services (Trust management)	1.55
Practitioner services (CPD compliance + delegation LIV)	0.01
Complaint handling (Enquiries)	0.57
Complaint handling (Preliminary assessments)	4.40
Complaint handling (Consumer disputes)	13.3
Complaint handling (Disciplinary)	70.75
Compliance audits	12.07
Trust account investigations	6.58
External interventions	193.20
Unqualified practice investigation and prosecution	47.60
Trust deficiency investigation and prosecution	383.26

<sup>56</sup> Times taken from Appendix 2 activity based costing tables (e.g. Table A2.2)

The following sections outline the main observations around efficiency (time taken to undertake tasks) based on the main unique outputs (groupings of outputs).

### Practitioner services

Automation around the practising certificate application process has introduced efficiencies. However, there are a number of issues that are a key consideration for the cost of practitioner services. Firstly, of the 1.15hrs taken on average to process applications around 0.41hrs of time is driven by information support provided to practitioners or their representatives with respect to online applications. This is regarded by the VLSB+C as an *important* component of the service provided to practitioners and is not considered to be *unnecessary* in terms of delivering regulatory services. However, it is noted that these costs constitute a high proportion of the 'per unit' costs of the practising certificate application process and, therefore, the VLSB+C are interested in feedback from the regulated profession regarding the continuing value of such services.

Secondly, approximately 0.17hrs is spent by the VLSB+C in processing work when online applications go into 'pending' because the practitioner (or their representative) has not been able to confirm professional indemnity insurance, has not provided all the information required or where payment has not been made. There may be an opportunity to reduce the number of applications that are being submitted without the right information, payment and adequate insurance through more automated 'rejection' prompts in future - depending on logistical constraints such as whether or not payments are received in bulk.

With regards to monitoring of trust accounts approximately 0.39hrs of the total 1.55hrs per certificate is spent on daily banking including confirming trust and SDA bank reports and assessment. In this regard, the VLSB+C is currently looking at how daily banking processes may be automated and save on costs for both the VLSB+C and the banks involved in trust management (daily banking).

### Complaint handling

*Benchmarking* of complaint handling services involves a comparison of different complexities (simple, medium and high) of complaints being managed as part of *equivalent regulatory environments*<sup>57</sup>. This comparison reveals that the time spent on handling phone complaints ranges from 0.10hrs for simple complaints, to 5hrs for medium complaints, and to 8hrs for more complex complaints. For online/letter complaints, the times range from 1hr for simple complaints, to 8hrs for medium complaints, and to 20hrs for more complex complaints. The times presented above for the VLSB+C with respect to complaint handling (see Table 20) are therefore deemed to be in line with typical times associated with complaint handling (not including disciplinary activities). With respect to disciplinary activities, it is estimated that it takes approximately 2 weeks of work for one individual and this includes processing referrals received from other complaints teams; closing complaints; adverse findings; proceeding to VCAT and filing charges; and appeals of VCAT decisions. Therefore, 70.75hrs around disciplinary complaints is not seen to be onerous given the work required or unnecessary from the perspective of regulatory services.

### Trust account investigations

With regard to trust account investigations the amount of time spent by VLSB+C staff reflects the preparation of lists for risk based investigations and directs trust account investigation process work delegated to the LIV. This precursory work by the VLSB+C adds around 6.5hrs of time to an average investigation. This work forms a crucial part of the move towards risk based regulation as it identifies high risk situations for the LIV to investigate and is therefore deemed to be necessary. However, the time spent on such precursory work (currently labour intensive) presents an opportunity in future for investigating the possibility of a more automated approach and/or more economies of scale.

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<sup>57</sup> Based on ABC work undertaken for similar complaint handling environments across other sectors of government.

### External interventions

Time taken to facilitate the organisation of external interventions, on average, is given as 193.2hrs. This is made up of a weighted sum of simple, medium and highly complex interventions amounting to two days, one week, and three and a half weeks of work for one person, respectively. These times are not regarded as being unduly high for the type of external interventions represented under these different levels of complexity and necessary for organising external intervention in law firms where, for example, a principal has passed away (simple), does not have capacity to manage their obligations (medium) or has undertaken questionable activities (complex).

With respect to unqualified practice investigations and prosecutions 47.6hrs is a reasonable amount of time as it reflects the weighted sum of simple cases and complex cases of half a week's work by one person for both case types.

Trust deficiency investigations and prosecutions make up 383.26hrs of time required (the highest time required for processing a unique regulatory service) and made up of a weighted sum of simple (107.63hrs) and complex cases (275.63hrs). The external interventions team will spend up to 95.58hrs for a simple case and 261.2hrs undertaking investigation type activity such as gathering evidence, interviewing persons of interest, conferring with Victoria Police, engaging a forensic accountant etc. Some of this time is being driven by a lack of information coordination with LIV around trust account investigations and therefore resulting in *duplication* (i.e. 'starting from scratch'). The extent of this duplication is unknown however is an area of potential efficiency gains that might be looked at more closely.

### Delegation to LIV and other external service providers (non-LIV) and meeting VCAT expenses

The VLSB+C delegates certain activities to the LIV and external service providers (non-LIV), as well as meeting VCAT expenses amounting to \$6.47million in 2015-16. LIV trust account investigations costs (\$2.48 million), VCAT costs (\$1.53 million) and external intervention (non-LIV) costs (\$1.43 million) – make up a combined 83.96% of all delegated costs<sup>58</sup>.

Table 21 compares the average growth rate of per unit costs on the previous year for delegated (expense) items between 2011-12 and 2015-16 with the average percentage change in the CPI and the average growth rate of fee units set by the Treasurer during the same time period. As illustrated in Table 21, the average growth in trust account investigations costs at 2.83% is higher than CPI growth of 2.1% and slightly higher than the increase in fee units set by the Treasurer (2.62%) which incorporates an efficiency dividend. VCAT per hearing and determination costs have grown on average by approximately 3.8 times the rate of increase in fee units. External interventions have grown on average by approximately 15 times the rate of increase in fee units (however there has been a substantial reduction in costs as the VLSB+C switched to non-LIV external providers in 2015-16). In this way, delegated activities or expenses have become less efficient over time<sup>59</sup>.

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<sup>58</sup> See Table A7.2 of Appendix 7 for more details

<sup>59</sup> For a more detailed discussion see Section A7.2 of Appendix 7

**Table 21: Growth rate of average cost of activity and comparison with average change in CPI and change in fee units set by the Treasurer of Victoria - 2011-12 and 2015-16**

Cost category	2012-13 (growth rate per unit cost on previous year)	2013-14 (growth rate per unit cost on previous year)	2014-15 (growth rate per unit cost on previous year)	2015-16 (growth rate per unit cost on previous year)	Average Growth rate of per unit costs	Average % change in CPI	Average growth rate of fee units set by Treasurer
LIV - Trust account investigations cost per investigation	0.09%	4.22%	3.25%	3.75%	<b>2.83%</b>	<b>2.1%</b>	<b>2.62%</b>
VCAT (heard and determined) cost per hearing	Unknown	-43.96%	47.73%	26.45%	<b>10.07%</b>	<b>2.1%</b>	<b>2.62%</b>
LIV + Non-LIV External interventions cost per closing balance	136.96%	13.25%	19.61%	-10.69%	<b>39.78%</b>	<b>2.1%</b>	<b>2.62%</b>

## Section 5: The problem to be addressed

In accordance with Government guidelines, this RIS is required to identify and describe the problem to be addressed by the proposed regulations. In other words, why are the Regulations being proposed? Section 5 of this RIS provides the basis or intervention logic behind the need for the proposed Regulations (or feasible alternatives) including the government provision of regulatory services discussed in section 4 that give rise to the need for cost recovery by way of regulated fees. Prior to discussing these problems in more detail in section 5.2 of this RIS, the base case is established in order to understand the consequences of inaction (i.e. having no relevant practising certificate fees regulations).

### 5.1: The base case

The term 'base case' means the situation that would apply if there were no relevant regulations. The various components of the base case include:

- the relevant provisions of the Act;
- no regulations or prescribed fees under the Act; and
- what stakeholders would be likely to do in the absence of regulations.

The base case provides the benchmark for estimating the incremental costs and benefits of the proposed regulations in section 7 of this RIS. The base case provides a point of comparison with which to analyse different options by considering what would happen if the proposed Regulations were not made. In this case, if the proposed Regulations are not made, the current Regulations will expire in February 2018.

Without regulations in place there would be no basis for the Board to charge any fees for practising certificates for the 2018-2019 financial year and beyond. Therefore, under the base case no fees would be set and all the costs of regulating legal practitioners in Victoria would be funded from the interest stream. The problems posed by adopting the base case are discussed further in section 5.2.

### 5.2: The nature and extent of the problem – lack of cost recovery from fees

The total budget allocated to VLSB+C regulatory services, estimated to be \$20.25m in 2015-16, is summarised in Table 22.

**Table 22: Total direct salary, salary related on costs and indirect and direct overheads associated with VLSB+C regulatory services – 2015-16**

Cost category	\$ Amount <sup>60</sup>
Salaries and wages - Complaints & Intervention	\$3,698,014
Salaries and wages - Practitioner Services	\$1,047,549
Salaries and wages – executive directly involved in process work	\$383,280
Adjustment for staff not directly involved in process work	-\$750,404
<b>Total direct salary costs (including executive salary costs directly attributable to regulatory services)<sup>61</sup></b>	<b>\$4,378,439</b>
Annual Leave (Provision)	-\$14,721
Payroll Tax	\$387,138
FBT Expense	\$32,090
LSL Exp to Provision Non Revaluation Movement	\$19,944
WorkCover Levy	\$58,924
Super Contributions	\$708,573
Training	\$152,750
Adjustment for staff not directly involved in process work <sup>62</sup>	-\$196,744
<b>Total salary related on-costs</b>	<b>\$1,147,954</b>
Depreciation Computer and Communications equipment	\$100,000
Depreciation Office Equipment	\$7,000
Depreciation of intangible asset	\$141,000
Amortisation Building Leasehold improvement	\$256,000
Amortisation Motor Vehicles -Vic Fleet	\$15,000
Motor Vehicle - Car Parking	\$28,260
Motor Vehicle - Running Costs	\$12,361
Other staff costs (OHS, Health & Wellbeing, Entertainment)	\$41,161
Cleaning Service Contract	\$31,965
Outgoings not included in Commercial Rent (Rates, Water, Electricity, Gas etc)	\$298,961
Occupancy - other maintenance & expenses	\$19,068
Rental Commercial	\$644,983
Administration expenses	\$796,971
Corporate Operations support (IT and facilities)	\$1,035,534
Finance, Risk and People support	\$937,825
Regulatory, Reform and Liaison (Policy)	\$186,144
CEO's office	\$542,047
Board and Committee member fees (including superannuation)	\$324,000
Consultants - other	\$25,750
Investment advice	\$153,000
Auditing	\$130,000
Information Technology	\$306,000
Adjustment for non-regulatory indirect costs (Grants, FF, com & education) approx. 7-8%	-\$523,086
Adjustment for staff not directly involved in process work <sup>63</sup>	-\$806,163
<b>Total indirect overhead costs</b>	<b>\$4,703,781</b>
Depreciation of intangible asset (Axiom dep attributable directly to practitioner services)	\$261,000
External contractors - Practitioner Services	\$96,205
External contractors - Complaints and intervention	\$153,454

<sup>60</sup> Figures are presented as whole numbers for ease of presentation and may be subject to rounding errors.

<sup>61</sup> These salaries apply to direct processing work around complaints and intervention and practitioner services only.

<sup>62</sup> Based on the product of total salary related on-costs and the ratio of strategic/non-process work undertaken by VLSB+C staff (\$750,404) to the sum of salaries and strategic/non-process work undertaken by VLSB+C staff (\$4,378,439 + \$750,404)

<sup>63</sup> Based on the product of total indirect overhead costs and the ratio of strategy work (\$750,404) to the sum of salaries and strategy work (\$4,378,439 + \$750,404)



Cost category	\$ Amount <sup>60</sup>
Information Technology (directly attributable to practitioner service - 80% of Fujitsu contract)	\$181,000
Salaries and wages - Practitioner Services direct IT support	\$222,542
Super Contributions - Practitioner Services direct IT support	\$21,142
Consultants - Melbourne University Data Integrity Project	\$55,000
Consultants - direct	\$13,400
External Interventions (non-LIV)	\$1,426,000
Compliance Audits (non-LIV)	\$8,000
LIV - Trust Account Investigations	\$2,479,210
LIV - External Interventions	\$396,000
LIV - Compliance Audits	\$179,000
LIV - CPD Compliance	\$167,890
Vic Bar - Practitioner Services	\$94,310
<b>Total direct overhead and delegated costs attributable to unique outputs</b>	<b>\$5,754,153</b>
Adjustment for strategic/non-process work undertaken by VLSB+C staff	\$750,404
Legal expenses - Investigations and Litigation	\$1,626,000
LIV - External Counsel Fees	\$118,450
Vic Bar - Complaints Handling	\$74,440
VCAT	\$1,528,520
Legal Services Council - Uniform Law	\$519,000
Less: adjustment for VLSB+C cost recoveries	-\$347,736
<b>Total direct overhead and delegated costs not attributable to unique outputs</b>	<b>\$4,269,078</b>
<b>Total salary, salary related on-costs and indirect overhead costs</b>	<b>\$20,253,405</b>

The base case would not meet the Government's cost recovery objectives as some legal practitioners who give rise to the need for regulation and their clients who are beneficiaries would be making no contribution to the cost of regulation and this would lead to reduced funding for non-regulatory services and/or scaling back of regulatory services and/or increased cost pressures from frivolous activities.

#### [Less funding available for grants, legal aid, law reform and legal education](#)

If no fees were set for practising certificates, then regulation of the legal system would be entirely funded by users of legal services who place funds to be held in trust by their lawyer. That is to say, the costs of regulating the legal profession would need to be recovered from the interest stream without any contribution from the fee stream.

In 2015/16 the interest stream generated \$28 million in revenue for the PPF. While the decision to charge fees has been made because it is in line with government policy to recover the costs of regulation from the regulated entities and not because of revenue requirements, a consequence of the base case would be no revenue from fees into the PPF.

With no funding coming from fees, around 72.3 per cent of the current interest stream would be required to meet the costs of regulating the legal profession and, therefore, a consequence of the base case is that there would be less funding available for legal aid, law reform and legal education.

#### [Potential scaling back of regulatory functions](#)

Alternatively, some regulatory functions carried out by the VLSB+C and delegated functions to the LIV and the Victorian Bar may need to cease or be significantly scaled back. This would increase the risk of practising certificates being issued to unsuitable applicants; breaches going undetected; and delays in acting on incompetent or dishonest practices.



[Risk of frivolous activity increasing the cost of regulatory services](#)

Moreover, with no fees under the base case, individuals who are qualified as Australian lawyers but who do not necessarily require a practising certificate (as they are working in other fields and not engaging in legal practice) may decide to apply for one if there is no cost in doing so. This may lead to an increase in costs for the Board in processing additional practising certificates that are not required.

### **5.3: What are the factors to be considered in setting new fees for practising certificates?**

The key problem to be examined in this RIS is how to ensure that practising certificate fees are set at an appropriate level. Primarily, it is essential to ensure that the costs of regulating the legal profession can continue to be recovered by those who benefit or give rise to the need for regulation.

Other factors that have been examined in setting fees include ensuring that the fees do not create a barrier to entry to the legal profession or the uptake of certain practising certificates and minimising the impacts on business, including ensuring sole practitioners and small law firms are not disproportionately affected by the impacts of the new fees.

#### **5.3.1: The need for cost recovery and government policy**

Prescribed fees for services are governed by the Act which enable regulations to be made to set fees for regulating practitioners. Under section 156(2) of the Act, regulations setting fees are made on the recommendation of the Board. In making a recommendation the Board must take into account:

- the costs of regulating different classes of legal practitioners; and
- any representations made to the Board by a local professional association regarding appropriate levels of fees for classes of Australian legal practitioners whose home jurisdiction is Victoria and who are members of that association.

However, the level of fees is set by regulations and is therefore assessed in this RIS.

The practising certificate fees will potentially apply to all legal practitioners in Victoria who are required to hold a practising certificate, namely:

- principals of a law practice who are authorised to receive trust money;
- principals of a law practice who are not authorised to receive trust money;
- employees of a law practice;
- barristers;
- corporate legal practitioners; and
- government lawyers.

Currently, practising certificates are categorised into three types for the purposes of fees:

- practising certificates with trust authorisation;
- practising certificates without trust authorisation; and
- volunteer practising certificates which do not attract a fee.

The Government's Cost Recovery Guidelines<sup>64</sup> state that regulatory fees should be set on a full cost-recovery basis because that ensures that both efficiency and equity objectives are met. In practice this means setting and collecting fees to cover the costs of regulating the legal profession in Victoria, including the issuing of practising certificates, monitoring compliance, investigations, external interventions and responding to complaints. The Cost Recovery Guidelines make it clear that the cost base for determining the cost of regulating the legal profession in Victoria should include all efficient regulatory costs, not just the costs incurred in issuing practising certificates and addressing complaints.

The need for cost recovery is about the recuperation of costs of regulatory services provided by the VLSB+C that, to some extent, provide 'private benefits to individuals, entities or groups, or reflect the costs their actions impose.'<sup>65</sup> The default position of government policy is full cost recovery to ensure that both efficiency and equity objectives are met and to reduce fiscal pressure. Reducing the reliance on general tax revenue means that such revenue can be diverted to more appropriate uses in the economy.<sup>66</sup> However, as discussed earlier in this RIS, the funding of legal regulation in Victoria is a fully cost recovered model that does not require any contribution from consolidated revenue or non-users of the legal system. Hence, with regards to practising certificate fees the primary reasons for full cost recovery are the objectives of efficiency and equity.

#### Efficiency objective – what amount should be paid?

Appropriate fees will ensure that scarce resources are not wasted through frivolous activity and put to their best uses in the economy. The requirement for the efficient pricing of, or providing an appropriate 'price signal' for, regulatory services (i.e. allocative efficiency) involves fees which reflect the costs of regulatory services including: practitioner services (including monitoring of trust accounts); complaint handling; compliance audits; trust account investigations; external interventions, unqualified practice/trust deficiency investigations and prosecutions. This ensures that only those who value the regulatory services at or above the 'efficient' price will wish to allow for such services to be provided and there is not an over-utilisation of resources committed to this regulatory activity.

#### Equity objective – who should pay?

The costs of regulatory services as discussed in section 4 need to be recovered from those who contribute to the need for government regulation or from those who benefit from government activities having to pay the associated costs<sup>67</sup>. This avoids the situation where groups in society have to pay all the associated costs regardless of whether or not they give rise to the need for, or benefit from, regulatory services around legal practitioners.

It is important to consider that the regulatory activities being undertaken by the VLSB+C are in relation to minimising the risks arising from *some* legal practitioners behaving poorly<sup>68</sup> with respect to their clients. The potential for this risk, and subsequent need for consumer protection, arises in part from *information asymmetry* where the legal practitioner providing the service has more expert knowledge than the client who therefore cannot judge the true value of that service. Therefore, given the nature of the legal services being provided, and on *first principles*, those who give rise for the need for risk-based regulatory activities by the VLSB+C or

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<sup>64</sup> *Cost Recovery Guidelines* January 2013 Incorporating the information formerly published in the *Guidelines for Setting Fees and User-Charges Imposed by Departments and Central Government Agencies*, Department of Treasury and Finance

<sup>65</sup> *Cost Recovery Guidelines* January 2013 Incorporating the information formerly published in the *Guidelines for Setting Fees and User-Charges Imposed by Departments and Central Government Agencies*, Department of Treasury and Finance

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<sup>67</sup> *Cost Recovery Guidelines* January 2013 Incorporating the information formerly published in the *Guidelines for Setting Fees and User-Charges Imposed by Departments and Central Government Agencies*, Department of Treasury and Finance

<sup>68</sup> For example, overcharging, providing poor service or mismanaging trust funds.

'risk exacerbators', should pay for those regulatory activities. Put simply, this means that legal practitioners who give rise to the risks and the need to regulate should pay for these risk-mitigation activities.

Moreover, it is understood that lawyers may pass these costs through to their clients as part of the charges for their services. However, this is deemed to be suitable as the main beneficiaries of regulatory/consumer protection type activities are generally clients and consistent with the cost recovery guidelines in terms of 'those who benefit from government activities having to pay the associated costs'.

Therefore, it is also important to note that those contributing to the cost of regulation of trust account activities (i.e. the practitioners who give rise to the activity) are not the only beneficiaries of such activity and that it is appropriate for clients to contribute to such specific regulatory services through foregone interest. This is considered to be more equitable than the base case as it ensures legal practitioners who give rise to the need for regulation and potentially all consumers of legal services (who benefit from the regulation) make a contribution to the costs.

Consumers who place their money in solicitors' trust accounts face greater potential losses if their legal practitioner is dishonest or incompetent. In some cases, significant amounts of clients' money may be held in solicitors' trust accounts. Therefore, those clients receive additional benefits from the effective regulation of trust accounts. Given that the true mix of benefits remains unknown it is suggested by the Board that 100 per cent of the costs of regulating trust accounts should be met by the beneficiaries of that regulation (consumers who place their money in a solicitor's trust account).

In some cases, there are mechanisms available that could more accurately match costs to their source, such as charging consumers of legal services who make a complaint or legal practitioners for the cost of investigations (or a proportion or capped component of those costs). However, these mechanisms may have undesirable consequences, such as deterring clients from lodging complaints. Such mechanisms may also be inappropriate for other reasons such as, it would not be appropriate to charge a practitioner for the costs of an investigation that found the practitioner was not at fault.

This RIS also recognises that there is a 'capacity-to-pay' constraint that is experienced by certain members of society and therefore issues around access to justice, particularly for those accessing legal services being provided by volunteers or community service practitioners. Both these situations should be taken into consideration in setting fees. In particular, the Act does not permit charging fees for volunteers.

Finally, the Board is required under the Act to take account of representations made by professional associations about the level of fees that should be set. Based on this feedback, the Board considers the appropriate and most equitable level of overall revenue received from fees should be 40 per cent of the cost of regulation with the remaining 60 per cent to be funded from the interest stream.

The Board considers that funding the system in this way equitably splits the cost of regulating the system between the two groups of beneficiaries as the interest stream meets 60 per cent of the overall costs of regulation by paying for the costs of volunteers, subsidising the costs of regulating principals and employees and making a contribution to the costs of regulating practitioners who work in the community sector. This contribution is considered to be equitable as people who put their money in trust receive considerable benefits from effective regulation of the legal profession generally, as well as in particular the regulation of trust accounts. Subsidising practitioners who work for community legal services is also considered appropriate given the public benefits that flow from ensuring disadvantaged and vulnerable Victorians have access to legal services. The Board considers a 40-60 per cent split between revenue from fees and interest reasonably reflects the benefits received by consumers of legal services who place their money in solicitors' trust accounts.

#### Effectiveness – are there any adjustment costs?

The effectiveness of fees is considered in the context of any adjustment costs as driven by:

- **Fee management costs:** by legal and technical, as well as, administrative cost considerations (i.e. management costs); and/or
- **Unintended consequences:** where legal practitioners are deterred from taking out practising certificates with trust authorisation as a result of fees being set too high (outlined in more detail below):

The handling of trust money and the operation of solicitors' trust accounts are closely regulated in Victoria. Legal practitioners, law practices and barristers' clerks must observe strict requirements as set out in the Uniform Law. Every law practice that is required to maintain a trust account must also deposit money into a statutory deposit account and arrange for their trust accounts to be audited annually. Solicitors' trust accounts are an effective way of offering consumer protection, eliminating bad debts by requiring deposits up front; and securing more effective financial arrangements through banks.

Legal practitioners receiving trust money must maintain a practising certificate with trust authorisation. The system established by the Act seeks to ensure that trust money and trust accounts are adequately supervised and managed by the law practice and its employees. Therefore, it is a consideration that fees should not be set so high as to deter legal practitioners from applying for or maintaining a practising certificate with trust authorisation when they need such authorisation because they are receiving trust money (for example, money received during a conveyancing transaction).

The Board is keen to ensure that law practices maintain trust accounts and that there are sufficient numbers of legal practitioners within law practices who hold practising certificates with trust authorisation. This is to avoid situations where clients' funds are inappropriately managed. A fee measure that influenced a further decrease in the number of practitioners with trust authorisation would be a perverse outcome and is not supported.

#### 5.3.2: Other factors for consideration in relation to setting fees

There are a number of other factors that need to be examined in setting fees which are of concern to the VLSB+C including:

- ensuring that the fees do not create barriers to the uptake of certain practising certificates which may lead to increased regulatory risks or unintended social outcomes; and
- minimising the impacts on small business by ensuring sole practitioners and small law practices are not disproportionately affected by the impacts of the fees.

#### Preventing barriers to entry

Consideration must also be given to ensuring that the fees do not create a barrier to entry to the legal profession. Fees set too high for practising certificates might make it financially difficult for new practitioners to enter the legal profession and may also discourage some existing practitioners from renewing their practising certificate – in particular legal practitioners with lower levels of remuneration, for example, part-time legal practitioners, junior legal practitioners and those operating in rural and regional Victoria. The potential impacts on barriers to entry are considered as part of the RIS in the 'competition impact' section (see section 9). In addition, Options 3 and 4 have been specifically developed for this RIS to take account of feedback expressed by stakeholders about the impacts of one-off fee increases on the private sector.

Mitigating impacts on small business

A high fee level also has the potential to discourage small law practices, including sole practitioners, from maintaining a practising certificate with trust authorisation, in turn leaving them vulnerable to not being paid for billed work and potentially reducing their areas of practice.

There is also greater regulatory risk as some practitioners may consider practising outside of their practising certificate conditions, exposing them to disciplinary action and their clients to increased risk as they would not necessarily be aware of the limitations on their capacity to receive trust money and lack of regulatory protection.

The potential impacts on small business are specifically considered as part of this RIS in the 'impact on small business' section (see section 8), in particular the impacts for sole practitioners and small law practices.

## Section 6: Objective and Overview of Feasible Options

### 6.1: Objective of the regulations

The objective of the proposed Regulations is to fund the regulation of the legal profession in an efficient and equitable way that aligns with government policy and which;

- minimises administrative costs;
- does not deter legal practitioners from operating trust accounts; and
- promotes community sector legal services.

Based on stakeholder feedback, in assessing options to meet the objectives the Board has also considered it a priority that 40 per cent of the costs of regulation be recovered from fees.

Consideration has also been given to ensuring that the fees do not create a barrier to entry to the legal profession.

### 6.2: Overview of feasible options

This section of the RIS identifies feasible options for the multi-criteria analysis in section 7. Here the RIS identifies practicable alternative means of achieving the policy objective identified in section 6.1 above.

As the 'base case' (see section 5.1 in this RIS for details) is the benchmark for measuring the costs and benefits of the alternatives, the base case cannot itself be an alternative, although the likely financial and other consequences of the base case have been discussed in sections 5.1 and 5.2 of this RIS.

Possible options are considered in the next sections and grouped in terms of those that recover costs fully through fees and those that recover costs fully through a combination of fees and interest income. The options have been developed and refined following feedback received from stakeholders during the course of the review and incorporates the outcomes of the ABC exercise undertaken for the Board. As noted earlier in this RIS, originally, nine options were developed for the Board's consideration. The original nine options have been included in the appendices that accompany this RIS. Following consultation with stakeholders, six of the original options have not been pursued further with the Board deciding that they are not feasible options for the purpose of this RIS. However, the Board continues to welcome views on all options and has published the appendices to maximise the information available to stakeholders.

Two of those original options have been analysed further for the purposes of this RIS.<sup>69</sup> Two additional options has also been specifically developed for the purposes of the RIS following stakeholder feedback indicating concern about the potential impacts of fee increases on private law firms. As a result, the following four fee options have been put forth as alternatives for setting fees for VLSB+C regulatory services as summarised in Table 23 with Option 3 being the proposed option.<sup>70</sup>

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<sup>69</sup> These two options are Option 1 (this option was Option 5 of the original nine options set out in the appendices) and Option 2 (referred to as Option 7 in the appendices).

<sup>70</sup> In the original analysis conducted by Rivers Economic Consulting, nine options were identified as potentially feasible. See appendices for further information about the options. Two additional options were developed following stakeholder feedback (Options 3 and 4 in the RIS) based on the original Option 9 in the appendices. Following consideration of all the options and stakeholder feedback, the Board has decided to examine four options for the purposes of the RIS.



**Table 23: Fee Options for VLSB+C regulatory services**

Option	Fee structure	Cost recovery (from practitioners)	Shortfall in fee revenue
Option 1	Existing (tiered fees – with and without trust authorisation)	<b>39.51 per cent cost recovery from fees.</b>	Yes
		Current fee units for all certificate classes with a larger fee for practitioners with trust authorisation.	To be funded from foregone interest from trust accounts.
		Barristers, corporate and government practitioners paying greater than 100 per cent of their costs.  Cost of volunteers will be funded from interest	Barristers, government and corporate practitioners are cross-subsidising private law firms.
Option 2	Fully stratified fees	<b>100 per cent recovered from fees</b>  Fees set at 100 per cent cost recovery for all certificate classes.  Cost of volunteers recovered from other practitioners.	No
Option 3 (the proposed option)	Fully stratified fees with cap on level of increase for private sector	<b>40.02 per cent recovery from fees</b>	Yes
		Barristers, corporate and government practitioners will pay 100 per cent of their costs.	To be funded from foregone interest from trust accounts.
		Principals (with and without trust) and employees will be subsidised from interest.  Community sector practitioners will pay less than 100 per cent and equal to government.  Cost of volunteers will be recovered from interest.	
Option 4	Fully stratified fees with phased in implementation of fee increases to 45% cap pending review	<b>54.73% per cent recovery from fees</b>	Yes
		Principals with trust will pay less than 100 per cent and equal to principal.	To be funded from foregone interest from trust accounts.
		Community sector practitioners will pay less than 100 per cent and equal to government.  Cost of volunteers will be recovered from interest.	

### 6.2.1: Option 1: Current tiered fees

In cases where different types of regulatory activity or different types of legal practitioner give rise to substantially different costs, it may be preferable to charge different fees on this basis. For example, if one type of legal practice or practitioner poses different risks or requires greater regulatory activity, then charging a higher fee for their practising certificates would be more equitable (because users of higher risk legal services would contribute a greater cost) and more efficient (because different practitioners would receive a clearer price signal about the regulatory risks of their activities).



When the current Regulations were made five years ago, the decision was made to charge a higher fee for lawyers who were authorised to work with trust accounts. This decision was made on the basis that a large proportion of regulatory costs were attributable to regulated lawyers who operate trust accounts, including a large proportion of complaints received. In theory, this approach is more efficient because it sends a more cost-reflective price signal to those practitioners who are responsible for a large proportion of regulatory costs (and recovers the cost of that activity either from the practitioners or their clients). This is the basis of having a tiered fee option where practitioners with trust authorisation pay more for their practising certificates.

Option 1 would retain the current tiered fee structure. Practising certificates with trust authorisation would continue to attract a higher fee than other practising certificates for all these options. The additional amount paid by legal practitioners with trust authorisation would cover (in part) the costs of trust account investigations with the balance being funded by the trust account interest revenue stream.

Option 1 has the potential for the unintended consequence of deterring the use of trust accounts due to the discrepancy in the fees between practitioners with and without trust accounts. Charging a higher fee for legal practitioners with trust authorisation also disadvantages smaller practices for whom a single practising certificate with trust authorisation is a larger component of costs than for larger practices that are able to distribute the costs of a single practising certificate with trust authorisation across numerous other employees.

The higher fee for practising certificates with trust authorisation under this option takes into consideration the higher costs associated with trust account management and investigations. However, there is cross-subsidisation under this option as the employee practising certificate class and principal with and without trust practising certificate classes are subsidised by the corporate, government and barrister practising certificate classes (around \$0.52 million of cross subsidisation), as well as through interest income (\$11.91 million).

The cost of volunteers would be recovered from interest income.

**Table 24: Option 1**

Class of practising certificate	Fee	No of certificates	Revenue	% cost recovered by class of practising certificate
<b>Option 1 – Current tiered fees (with and without trust authorisation) and 39.51% of cost recovered through fees</b>				
Employee	\$353.00	7,809	\$2,756,577	68.95%
Principal with trust authorisation	\$522.00	3,435	\$1,793,070	15.63%
Principal	\$353.00	2,705	\$954,865	39.53%
Corporate	\$353.00	2,636	\$930,508	146.83%
Volunteer	\$0.00	307	\$0	0.00%
Government	\$353.00	1,747	\$616,691	160.67%
Barrister	\$353.00	2,052	\$724,356	102.11%
<b>Total revenue</b>			<b>\$7,776,067</b>	<b>39.51%</b>
Total cost recovered			\$19,681,639	
<b>% of total cost recovered through fees</b>			<b>39.51%</b>	
<b>% of total cost recovered through trust interest</b>			<b>60.49%</b>	
PV of 10-year revenue 2018-19 to 2027-28			\$80,563,623	

### 6.2.2: Option 2: Fully stratified fees (100 per cent recovery from fees)

Stratified fee options are more efficient than tiered fees because they are able to send a more cost-reflective price signal to those practitioners who are responsible for a larger or smaller proportion of regulatory costs. These reasons as well as feedback from consultation form the basis of consideration for the stratified fee options in this RIS.

Option 2 represents the full recovery of regulatory costs through stratified fees for all practising certificate classes. Under the fully stratified fee approach set out in Option 2, the costs of legal regulation would not be equally shared across all practitioners and individual legal practitioners would pay differing fees for a practising certificate depending on their practising certificate class. Under Option 2, the cost of volunteers would be recovered from all other classes of practising certificate.<sup>71</sup>

However, like Option 1, fully stratified fees under Option 2 may also result in unintended consequences in relation to deterring the use of trust accounts as there is a substantial difference between fees for principals with and without trust authorisation. Stakeholders have also raised concerns that the one-off fee increases for principals and employees may also have negative impacts for private law firms.

It is also important to note that fully stratified fee options provide the most complex administrative fee structure. It is estimated that there will be a one-off cost of \$150,000 to put into place a stratified fee structure. These costs will apply to options 2, 3 and 4 which all introduce stratified fee structures.

**Table 25: Option 2**

Class of practising certificate	Fee	No of certificates	Revenue	% cost recovered by class of practising certificate
<b>Option 2 – Fully stratified fees and 100% of cost recovered through fees</b>				
Employee	\$515	7,809	\$4,023,386	100.64%
Principal with trust authorisation	\$3,344	3,435	\$11,485,866	100.10%
Principal	\$897	2,705	\$2,424,424	100.37%
Corporate	\$244	2,636	\$642,326	101.36%
Volunteer	\$0.00	307	\$0	0.00%
Government	\$223	1,747	\$389,521	101.48%
Barrister	\$349	2,052	\$716,115	100.94%
<b>Total revenue</b>			<b>\$19,681,639</b>	<b>100.00%</b>
Total cost recovered			\$19,681,639	
<b>% of total cost recovered through fees</b>			<b>100.00%</b>	
<b>% of total cost recovered through trust interest</b>			<b>0.00%</b>	
PV of 10-year revenue 2018-19 to 2027-28			\$183,444,190	

### 6.2.3: Option 3: Stratified fees with overall level of cost recovery from fees capped at 40 per cent

This option retains the more efficient stratified fee approach (as set out in Option 2) but seeks to limit the level of recovery from fees to an overall cap of 40 per cent. This option is based on consultation feedback from the LIV that “a ceiling of \$8.23 million should be taken through the practising certificate fees and \$12.02 million through

<sup>71</sup> This is accomplished by adding \$3.26 to each of the remaining classes of practising certificate.

trust account interest income.” This equates to an overall level of 41 per cent cost recovery from fees when calculated using the original total cost recovery base of \$20.25 million.<sup>72</sup>

Under this option, barristers, corporate and government practitioners will pay 100 per cent of their costs of regulation as per Option 2. However, the employee and principal classes (with and without trust) will have their costs subsidised by the interest stream to minimise the level of fee increases experienced by those classes. As such their fees will not be as high as proposed under Option 2. Under Option 3, around 77.94 per cent of costs is recovered from employees and 18.32 per cent of costs is recovered from principals with trust authorisation. Also under Option 3, 47.82 per cent of costs are recovered from principals (see Table 26). The level of fees for employees is maintained at around 93 per cent of the level of fees for principals; and the level of fees for principals is maintained at around 70 per cent of the level of fees for principals with trust authorisation – under this option.

Under this option, community sector practitioners (principals and employees) are subsidised by the interest stream and will pay the same amount in fees as government practitioners. The costs of volunteers are also subsidised from the interest stream.

**Table 26: Option 3**

Class of practising certificate	Fee	No of certificates	Revenue	% cost recovered by class of practising certificate
<b>Option 3 – Fully stratified fees and 40.02% of cost recovered through fees</b>				
Employee	\$399	6,808	\$2,716,392	77.94%
Employee (community sector)	\$220	1,001	\$219,924	42.91%
Principal with trust authorisation	\$612	3,435	\$2,102,220	18.32%
Principal	\$427	2,492	\$1,064,084	47.82%
Principal (community sector)	\$220	213	\$46,797	24.60%
Corporate	\$240	2,636	\$633,729	100.00%
Volunteer	\$0.00	307	\$0	0.00%
Government	\$220	1,747	\$383,823	100.00%
Barrister	\$346	2,052	\$709,422	100.00%
<b>Total revenue</b>			<b>\$7,876,391</b>	<b>40.02%</b>
Total cost recovered			\$19,681,639	
<b>% of total cost recovered through fees</b>			<b>40.02%</b>	
<b>% of total cost recovered through trust interest</b>			<b>59.98%</b>	
PV of 10-year revenue 2018-19 to 2027-28			\$80,082,053	

#### 6.2.4: Option 4: Stratified fees with phased-in implementation

This option also retains the more efficient stratified fee approach. Under this option, barristers, corporate and government practitioners will pay 100 per cent of their costs of regulation as per Options 2 and 3. In addition, the employee and principal without trust authorisation classes will also pay 100 per cent of the costs of regulation. 100 per cent of the costs of regulating trust accounts will be funded from the interest stream, resulting in principals with trust authorisation paying the same fee as principals without trust authorisation. However, in response to stakeholder concerns about the impact of fee increases for private law firms, this option

<sup>72</sup> Consultation letter from LIV to the VLSB+C dated 29 August 2017.

proposes a phased-in implementation of fee increases, mitigating the level of annual increase to a maximum of 10 per cent per practising certificate class, rising to an overall level of 45 per cent cost recovery by the fifth year at which point a review of the impacts of the fees would be undertaken.

As is the case under Option 3, the community sector practitioners (principals and employees) are subsidised by the interest stream and will pay the same amount in fees as government practitioners. The costs of volunteers are also subsidised from the interest stream.

**Table 27: Option 4**

Class of practising certificate	Fee	No of certificates	Revenue	% cost recovered by class of practising certificate
<b>Option 4 – Stratified fees and 54.73% of cost recovered through fees (the proposed option)</b>				
Employee	\$512	6,808	\$3,485,441	100.00%
Employee (community sector)	\$220	1,001	\$219,924	42.91%
Principal with trust authorisation	\$893	3,435	\$3,067,501	26.73%
Principal	\$893	2,492	\$2,225,390	100.00%
Principal (community sector)	\$220	213	\$46,797	24.60%
Corporate	\$240	2,636	\$633,729	100.00%
Volunteer	\$0.00	307	\$0	0.00%
Government	\$220	1,747	\$383,823	100.00%
Barrister	\$346	2,052	\$709,422	100.00%
<b>Total revenue</b>			<b>\$10,772,027</b>	<b>54.73%</b>
Total cost recovered			\$19,681,639	
<b>% of total cost recovered through fees</b>			54.75%	
<b>% of total cost recovered through trust interest</b>			45.25%	
PV of 10-year revenue 2018-19 to 2027-28			\$108,825,712	

In recognition that there will be fee increases for the principal and employee classes under Option 4, a phased-in implementation approach is proposed which will ensure fee increases are kept to a maximum of 10 per cent per annum with the overall level of cost recovery from fees to be frozen at 45 per cent<sup>73</sup> pending the outcomes of a review.<sup>74</sup> Whether or not the freeze is lifted and the regulations amended to set a new implementation phase will depend on the outcomes of the review.

Table 28 sets out the proposed phase-in of fee increases under Option 4.

<sup>73</sup> The 45 per cent freeze point is calculated using the total cost of regulation of \$19.68 million which is the amount less the VCAT efficiency dividend discussed in Addendum 1 to the RIS.

<sup>74</sup> See Section 10.2 of the RIS which sets out the details of the proposed review.

**Table 28: Proposed phase-in of fee increases under Option 4**

Class	Phased-in implementation over 10 years									
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Employees	\$384	\$399	\$415	\$431	\$447	\$447	\$447	\$447	\$447	\$447
Employees (community sector)	\$220	\$220	\$220	\$220	\$220	\$220	\$220	\$220	\$220	\$220
Principal with trust authorisation	\$574	\$612	\$649	\$686	\$723	\$723	\$723	\$723	\$723	\$723
Principal	\$388	\$427	\$470	\$517	\$568	\$568	\$568	\$568	\$568	\$568
Principal (community sector)	\$220	\$220	\$220	\$220	\$220	\$220	\$220	\$220	\$220	\$220
Corporate	\$240	\$241	\$241	\$241	\$241	\$241	\$241	\$241	\$241	\$241
Volunteer	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Government	\$220	\$220	\$220	\$220	\$220	\$220	\$220	\$220	\$220	\$220
Barrister	\$346	\$346	\$346	\$346	\$346	\$346	\$346	\$346	\$346	\$346
<b>Estimated revenue (millions) from fees</b>	<b>\$7.5m</b>	<b>\$7.9m</b>	<b>\$8.2m</b>	<b>\$8.6m</b>	<b>\$8.9m</b>	<b>\$8.9m</b>	<b>\$8.9m</b>	<b>\$8.9m</b>	<b>\$8.9m</b>	<b>\$8.9m</b>

Table 29 provides a summary comparison and contrast of Options 1 to 4.

**Table 29: Summary of comparison and contrast of options 1 to 4**

Option	Fee revenue (\$ million)	% of cost recovery from fees	Nature and amount of specific subsidisation (\$ million)	Shortfall (\$ million)	Adjustment cost (ICT investment required) (\$ million)	Adjustment cost (Unintended consequences)
Option 1	\$7.78	39.51%	\$0.52 subsidisation between classes of practitioner \$11.91 subsidisation of practitioners from client trust interest foregone	\$11.90	minor costs of modifying electronic/hardcopy	Less than Options 2 and 4
Option 2	\$19.68	100%	N/A	\$0	\$0.15 one-off	High and greater than Options 1, 3 or 4
Option 3	\$7.88	40.02%	\$11.81 subsidisation of practitioners from client trust interest foregone	\$11.81	\$0.15 one-off	Less than Options 2 and 4
Option 4	\$10.77	54.73%	\$8.91 subsidisation of practitioners from client trust interest foregone	\$8.91	\$0.15 one-off	Less than Option 2 but higher than Options 1 and 3.

## Section 7: Costs and benefits of each of the options

The costs and benefits of the proposed fee options are considered relative to the 'base case' of no regulations and the continued operation of other related legislation, as identified in section 5.1 of this RIS. Qualitative criteria for fees regulations are applied to a multi-criteria analysis. The evaluation is made with respect to the achievement of the policy objectives identified in section 6 of this RIS. With respect to fee options the objective is to fund the regulation of the legal profession in an efficient and equitable way which:

- minimises administrative costs;
- does not deter legal practitioners from taking out practising certificates with trust authorisation; and
- promotes community sector legal services.

Based on stakeholder feedback, in assessing options to meet the objectives, the Board has also considered it a priority that 40 per cent of the costs of regulation be recovered from fees.

Consideration has also been given to ensuring that the fees do not create a barrier to entry to the legal profession.

### 7.1: Assessment of fee options

This section undertakes an assessment of the costs and benefits of the proposed and alternative fee options (1 to 4) by discussing each option in terms of its expected incidence and distribution of costs and benefits, relative to the 'base case' (defined in section 5.1 of the RIS). The evaluation of the relative benefits and costs of each option has been conducted in relation to how well the policy objectives identified in section 6 of this RIS are likely to be achieved and how well the option adheres to the principles of the Cost Recovery Guidelines and Guide to Regulation. The following criteria and weightings in Table 30 have been used to assess the ability of options to meet the policy objective and are applied to a multi-criteria analysis (MCA).

**Table 30: Criteria used by MCA for Options 1 to 4**

Criterion	Description	Weighting
Efficiency	Price of regulatory services reflects the true value of those services in terms of the cost of provision and benefits provided. Options with more efficient prices (compared to the base case) receive a higher score.	33.3%
Equity	Measures the scale and nature of any cross-subsidisation from one group to another. Options with <i>smaller or more equitable cross-subsidies</i> between groups (compared to the base case) receive a higher score.	33.3%
Effectiveness	Options that deter practitioners from taking out practising certificates or lead to additional administrative costs through the need for ICT investment, receive a lower score.	33.3%

Each option is scored against each of the aforementioned criteria on a scale of -10 to +10 with the base case reflecting a score of '0' as it reflects the situation that will occur in the absence of the proposed regulations (see section 5.1 of this RIS). Each option is scored relative to the base case score of '0'.



### 7.1.1: Additional assumptions for assessment of fee options

Under section 5.3.2 of this RIS it is noted that consideration must also be given to ensuring that the fees do create a barrier to entry to the legal profession. It has been noted by stakeholders that fees set too high for practising certificates might make it financially difficult for new practitioners to enter the legal profession and may also discourage some existing practitioners from renewing their practising certificate. However, analysis in Appendix 8 of this RIS shows that there is very little variation or material difference in the effects of fees between options on either the hourly cost of fees or the percentage of income/revenue affected apart from part-time sole practitioners with trust account authorisation. Apart from part-time sole practitioners, the hourly cost of fees ranges from \$0.12 to \$2.38<sup>75</sup> and the percentage of income/revenue affected ranges from 0.21 per cent to 3.13 per cent<sup>76</sup>. Therefore, a criterion for analysis against potential barriers to entry has not been provided and instead, the potential impacts on barriers to entry of the preferred Option are considered and *discussed in detail* as part of the RIS in the 'competition impact' section (see section 9).

Section 5.3.2 of the RIS also notes that a consideration that fees may have the potential to:

- discourage small law practices, including sole practitioners, from maintaining a practising certificate with trust authorisation, in turn leaving them vulnerable to not being paid for billed work and potentially reducing their areas of practice; and
- encourage small businesses to consider practising outside of their practising certificate conditions, exposing them to disciplinary action and their clients to increased risk as they would not necessarily be aware of the limitations on their capacity to receive trust money and lack of regulatory protection.

However, the potential impacts on small business are specifically considered as part of this RIS in the 'impact on small business' section (see section 8), in particular the impacts for sole practitioners and small law practices.

It is noted that for all options, there would be additional costs incurred as a result of the ongoing administration of regulations including one-off costs involved in preparing regulations, advertising and implementation. However, these costs are not considered as part of the multi-criteria analysis as it is assumed that they are part of the normal machinery of government.

It is assumed that legal practitioners may pass through some of the additional practising certificate fee costs ranging between \$0.12 per hour to \$2.38 per hour (including other operating costs) to their clients where legal services are deemed to be a necessary service. Under this environment clients are likely to be less price sensitive<sup>77</sup>.

Funding arrangements for non-regulatory legal services (e.g. Victoria Legal Aid, Victoria Law Foundation) are not the subject of this RIS, and the objective of the proposed Regulations is not to determine the revenue available for these services. As a result, options have not been scored or compared in terms of how much revenue they do or do not generate for non-regulatory services. However, compared to the base case, any fee (or increase in the fee) for practising certificates will have the indirect effect of increasing funds available in the interest stream to cover the cost of these other services, so this is noted where relevant in the discussion of different options below.

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<sup>75</sup> See Table A8.4 of Appendix 8. Note this is an assessment that was undertaken in relation to the original nine options prepared by Rivers Economic Consulting. However, this analysis is still applicable for the purposes of the RIS because the analysis did include an assessment of the fees in Option 1 (Option 5 in that analysis), Option 2 (Option 7 in that analysis with slightly higher fees) and Options 3 and 4 (Option 9 in that analysis with no allowance for a 40 per cent cap) and Option 4 (Option 9 in that analysis with no allowance for phased in implementation).

<sup>76</sup> See Table A8.5 of Appendix 8.

<sup>77</sup> See full discussion and analysis of price sensitivity in Appendix 9. Again, noting that this analysis was in relation to the original nine options but for the reasons discussed above, this analysis is still relevant for the purposes of this RIS.



### 7.1.2: Efficiency criterion – analysis of fee options

The efficiency criterion in relation to the setting of fees only reflects the full cost of production and setting fees and on this basis ensures that the right signals are being sent (i.e. the price being paid reflects the full cost of provision). A departure from the full cost recovery principle cannot be justified given it is the potential for poor behaviour by practitioners that gives rise to regulatory activity costs.

The base case does not provide any price signals to practitioners regarding failings in relation to practitioner services, complaints, trust account investigations or external intervention activities, and is therefore awarded a score of +0.

Option 2, represents full cost recovery stratified fees and is therefore awarded a score of **+10** with regards to efficiency. The full cost recovery price is deemed to represent an efficient price, as only those who give rise to regulatory activities pay for those activities. Whilst the differences in the level of fees under each of the options is not considered to be significant enough to alter the level of behaviour by practitioners and effect the allocation of VLSB+C resources per se – the setting of fees under Option 2 most accurately reflects the efficient cost of providing services. Hence full cost recovery prices under Option 2 state the true value of regulatory activities of the VLSB+C to practitioners and is deemed to be a favourable option in relation to efficiency as compared to the base case.

Options 3 and 4 also represent stratified fees. However, Option 4 fully recovers the costs of providing practitioner services *except for discounts* provided for employees and principals working in the community sector and principals with trust authorisation. On the other hand, Option 3 provides *additional discounts* for employees; principals with trust authorisation and principals as shown in Panel 1 such that prices less accurately reflect the true cost of providing VLSB+C services for these classes of practitioners. For this reason, Options 3 and 4 are scored **+8** and **+9**, respectively with regards to efficiency.

**Panel 1: Percentage of cost recovered by class of practising certificate under Options 3 and 4**

Class of practising certificate	Option 3	Option 4
<b>Employee</b>	<b>77.94%</b>	<b>100.00%</b>
Employee (community sector)	42.91%	42.91%
<b>Principal with trust authorisation</b>	<b>18.32%</b>	<b>26.73%</b>
<b>Principal</b>	<b>47.82%</b>	<b>100.00%</b>
Principal (community sector)	24.60%	24.60%
Corporate	100.00%	100.00%
Volunteer	0.00%	0.00%
Government	100.00%	100.00%
Barrister	100.00%	100.00%

A tiered fee structure under Option 1 does not send as an efficient signal as stratified fees do. That is to say, a tiered fee does not necessarily accurately reflect the true costs incurred for each practitioner class. Therefore, Option 1 is awarded a score of **+7** with regards to efficiency.

### 7.1.3: Equity criterion – analysis of fee options

The discussion of equity in this RIS deals with the consideration of cross-subsidisation. This is examined both in terms of society more broadly (trust account clients) and smaller groups in society (practitioners). Under the

base case, foregone interest from trust account clients would pay for regulatory services provided by the VLSB+C to an amount of around \$19.68 million per annum<sup>78</sup>. The base case is awarded a score of +0.

Equity with respect to appropriation in general

In considering whether or not different users of the legal system are making an equitable contribution to the cost of regulation, consideration is given to whether those users are meeting the Board’s optimal split of 40 per cent cost recovery from fees and 60 per cent cost recovery from interest. Given the cost of regulation has been priced at \$19.68 million, this results in \$7.87million being collected from fees and \$11.81 million from interest.

Option 4 captures an appropriate amount of contribution from consumers through trust account interest as the full costs of regulating trust accounts are recovered through interest. As discussed in section 5.3.1 of this RIS, it is deemed to be equitable to recover 100 per cent of the cost of regulating trust accounts from trust account interest. With respect to the proportionality of 54.73 per cent of the total cost of \$19.68 million being recovered from practitioners, this is a higher amount than the optimal 40 per cent and, therefore, Option 4 is awarded a score of **+8**.

In terms of general appropriation, Option 2 which involves recovering full costs of regulating services through fees is not favourable in terms of equity as it eliminates any contribution by those consumers who place their money in trust and fail to reflect that such consumers are a subset of consumers of legal services who have more invested (in some cases significant amounts of money) and therefore, bear more risk than other consumers of legal services should their legal practitioner provide to be dishonest or incompetent. Therefore, Option 2 is determined to be the least ideal from an equity perspective in terms of appropriation. With respect to the proportionality of the total cost of \$19.68 million being recovered from practitioners – Option 2 is awarded a score of **+5**.

Options 1 and 3 are an improvement on equity grounds in terms of appropriation, as compared to the base case – as practitioners who give rise for the need for regulation would pay for activities associated with regulating legal services. Moreover, the amount recovered through fees under each of these options is less than 100 per cent and there is a reliance on foregone interest from trust account clients under these options which is deemed to be equitable. With respect to the proportionality of the total cost of \$19.68 million being recovered from practitioners Option 1 is awarded a score of **+9** and Option 3 is awarded a score of **+10**.

The scoring comparisons are illustrated in the Table 31.

**Table 31: Illustration of scoring methodology for equity with respect to appropriation in general**

Optimal % recovered from practitioners through fees	Option	% of recovery of \$19.68 million through fees	Divergence of % recovered from optimal (absolute difference)	Scoring with '0' divergence awarded a score of +10
40%	1	39.51%	0.49%	9
40%	2	100.00%	60.0%	5
40%	3	40.02%	0.02%	10
40%	4	54.75%	14.75%	8

Equity with respect to smaller groups in society (practitioners)

Option 2 with its fully stratified fee structure, will result in the least amount of internal cross-subsidisation of practitioners by other practitioners and therefore its equity score remains unadjusted (in a proportionality sense) from **+5**. Options 3 and 4 allow for lower fees for community service practitioners (employers and principals)

<sup>78</sup> The cost base revised in light of the VCAT savings.

and in this way, consider the ability of these providers and their clients to pay and therefore the net equity score for Option 3 is maintained at **+10** and for Option 4 at **+8**.

Option 1 eliminates cross-subsidisation between the two broad classes of practitioners with and without trust account authorisation. However, as this option does not stratify fees between classes of practising certificate, there would be \$0.52 million of cross-subsidisation under this option. In this way, the equity score for Option 1 has been adjusted by -1 (a negative score for this cross-subsidisation issue involving smaller groups in society). In terms of net equity (i.e. the positive score in terms of appropriation in general less the negative score in terms of cross-subsidisation by smaller groups) – Option 1 is consequently awarded a score of **+8**.

#### 7.1.4: Effectiveness criterion – analysis of fee options

##### Effectiveness and ICT investment

With regards to each of the options and costs of implementing fee structures, the base case is awarded a +0.

The implementation of fees under Option 1 requires no more investment and minimal complexity would result from changing the relevant number of fee units in the regulations and therefore there would only be minor adjustment costs in terms of modifying electronic/hardcopy forms under this option. Therefore, the score for effectiveness in terms of administrative costs of implementing the fees for this option is allocated as **-1**.

On the other hand, Options 2, 3 and 4 would require a modest one-off ICT investment estimated to be \$150,000 to accommodate a stratified fee structure for each class of practising certificate as compared to the base case. Therefore, the effectiveness score for these options in terms of investment requirements are given as **-2** for each option.

##### Effectiveness and unintended consequences

With regards to each of the options and unintended consequences that may flow, the base case is awarded a +0.

Option 2 would have the maximum effect in unintended consequences, as it sets the highest fees overall and in particular may deter practitioners from using trust accounts. Therefore, its effectiveness score is adjusted by -4. In terms of net effectiveness (i.e. the negative score in terms of administrative costs of implementing fees structures and the negative score in terms deterring practitioners from using trust accounts) – Option 2 is consequently awarded a net score of **-6**.

Option 1 would have the smallest impact on deterring practitioners from using trust accounts (with the fee for a principal with trust authorisation equal to \$522) and therefore, the effectiveness score for this option is adjusted by -1. In terms of net effectiveness (i.e. the negative score in terms of administrative costs of implementing fees structures and the negative score in terms deterring practitioners from using trust accounts) – Option 1 is consequently awarded a net score of **-2**.

Option 3 would have a slightly higher impact on deterring practitioners from using trust accounts than Option 1 (with the fee for a principal with trust authorisation equal to \$612) and therefore, the effectiveness score for this option is adjusted by -1. In terms of net effectiveness – Option 3 is consequently awarded a net score of **-3**.

Option 4 also would have a slightly higher impact on in relation to the use of trust accounts due to the proposed phase-in implementation approach which sets the fee for a principal with trust authorisation at \$574 which is slightly higher than Option 1. Fees for principals and employees progressively increase leading to a fee of \$723 by year 5 which is higher than Options 1 and 3. Therefore, in terms of net effectiveness (i.e. the negative score

in terms of administrative costs of implementing fees structures and the negative score in terms deterring practitioners from using trust accounts) – the score for this option is adjusted by -2 leading to a net score of -4.

A summary of the analysis of fee options 1 to 4 according to the aforementioned criteria and against the base case is provided in Table 32.

**Table 32: Summary and comparison of options 1 to 4 against criteria of efficiency, equity and effectiveness**

Base Case/ Fee option	Regulatory costs covered by	Efficiency (practitioners)	Equity (cross subsidisation)	Effectiveness
Base case	Trust account interest	Underpriced – over-utilised services	\$19.68m subsidisation of practitioners from client trust interest foregone (too high)	No costs or disincentive effects with regards to trust account use
Option 1	Fees and trust account interest	Priced – understates true value of regulatory activities	\$0.52m subsidisation between classes of practitioner  \$11.90m contribution from consumers through trust account interest (slightly above optimum amount)	Minor costs of modifying electronic/hardcopy  Disincentive with regards to trust account use but less than all other options
Option 2	Fees	Priced – captures true value	No contribution from consumers through trust account interest (significantly below optimum amount)	Minor costs of modifying electronic/hardcopy + \$0.15 one-off ICT investment  High disincentive with regards to trust account use and greater than options 1, 3 or 4
Option 3	Fees and trust account interest	Priced – understates true value of regulatory activities	\$11.80m contribution from consumers through trust account interest (in line with optimum amount)	Minor costs of modifying electronic/hardcopy + \$0.15 one-off ICT investment  Disincentive with regards to trust account use but less than Options 2 and 4
Option 4 (the proposed option)	Fees and trust account interest	Priced – understates true value of regulatory activities	\$8.91m contribution from consumers through trust account interest (below optimum amount)  Consideration of additional stratification for community legal service practitioners	Minor costs of modifying electronic/hardcopy + \$0.15 one-off ICT investment  Disincentives with regards to trust account use but less than Option 2.

The overall scores and comparison of fee options against the base case using the MCA is summarised in table 33.

**Table 33: MCA fee options**

	Efficiency	Weighting <sup>79</sup> 33.3%	Equity	Weighting 33.3%	Effectiveness	Weighting 33.3%	Total weighted score
Base case/option	Score	Weighted score	Score	Weighted score	Score	Weighted score	
Base case	+0	<b>+0</b>	+0	<b>+0</b>	+0	<b>+0</b>	<b>+0</b>
Option 1	+7	<b>+2.33</b>	+8	<b>+2.67</b>	-2	<b>-0.67</b>	<b>+4.33</b>
Option 2	+10	<b>+3.33</b>	+5	<b>+1.67</b>	-6	<b>-2.00</b>	<b>+3.00</b>
Option 3 (the proposed option)	+8	<b>+2.67</b>	+10	<b>+3.33</b>	-3	<b>-1.00</b>	<b>+5.00</b>
Option 4	+9	<b>+3.00</b>	+8	<b>+2.67</b>	-4	<b>-1.33</b>	<b>+4.34</b>

As shown in table 31, Option 3 (the proposed fees option) provides the highest and weighted score of +5.00. On this basis, **Option 3**, the proposed fees based on a stratified fee structure, is selected as the **preferred option**.

<sup>79</sup> The three criteria have been weighted equally at 33.3 per cent each.

## Section 8: Impacts on small business

### 8.1: Small business impact assessment

Where the costs of compliance with regulations comprise a significant proportion of business costs, small businesses<sup>80</sup> may be affected. As shown in Table 34 there are an estimated 7,021 small businesses in Victoria associated with providing legal services and subject to practising certificate fees with 41.73% being sole practitioners (with one legal practitioner in each business) and 28.76% being barristers. Sole practitioners with more than one employee have been added to the 'Law Firm' type of law practice.

**Table 34: Summary of the number of small businesses by type of law practice and number of employees**

Type of law practice	Number of employees					Total small business	% of small business
	1	2 to 3	4 to 5	6 to 10	11 to 20		
Community legal practice	4	8	6	10	13	41	0.58%
Foreign law practice	20	2	1	1	0	24	0.34%
Incorporated legal practice	694	385	144	112	58	1,393	19.84%
Law firm	10	412	99	48	23	592	8.43%
Sole practitioner	2,930	0	0	0	0	2,930	41.73%
Unincorporated legal practice	10	4	0	2	6	22	0.31%
Barrister	2,019	0	0	0	0	2,019	28.76%
<b>Total no.</b>	<b>5,687</b>	<b>811</b>	<b>250</b>	<b>173</b>	<b>100</b>	<b>7,021</b>	<b>100.00%</b>
% of small business	81.00%	11.55%	3.56%	2.46%	1.42%		

As illustrated in Table 35, the proposed stratified fees under Option 3 will result in a minimum of \$220 for a business with one principal to a maximum of \$7,621.50 for a business with 3 principals and an average of 14.5 employees. Taking the revenue of a small business to be between \$50,000 for a community service practice and \$100,000 for a single practitioner business then the proposed fees are likely to represent between 0.44 per cent<sup>81</sup> and 0.61 per cent<sup>82</sup> of revenue. Therefore, for these business, which represent 81 per cent of small businesses (see Table 34), it is unlikely that the proposed fees will constitute a significant portion of business costs.

In the case where there may be one principal and an average of 1.5 employees (and assuming that revenues/incomes is *conservatively only* \$50,000 for each person per annum for a community practice and \$100,000 for each person for other type law practices) - the proposed fees would constitute between 0.44 per cent<sup>83</sup> and 0.48 per cent<sup>84</sup> of revenue/income. Again, proposed fees are unlikely to constitute a significant portion of business costs.

<sup>80</sup> The Australian Bureau of Statistics (ABS) definition of a small business is one that has less than 20 full-time employees.

<sup>81</sup> \$220/\$50,000

<sup>82</sup> \$612/\$100,000

<sup>83</sup> \$550/\$125,000

<sup>84</sup> \$1,210.50/\$250,000



**Table 35: Summary of per business impact of proposed fees per firm under Option 3 by different size small businesses**

Type of law practice	1 principal/ barrister	1 principal and an average of 1.5 employees	1 principal and an average of 3.5 employees	1 principal and an average of 7 employees	3 principals and an average of 14.5 employees
Community legal practice	\$220	\$550	\$990	\$1,760	\$3,850
Foreign law practice	\$612	\$1,210.50	\$2,008.50	\$3,405	\$7,621.50
Incorporated legal practice	\$612	\$1,210.50	\$2,008.50	\$3,405	\$7,621.50
Law firm	\$612	\$1,210.50	\$2,008.50	\$3,405	\$7,621.50
Sole practitioner	\$612	\$1,210.50	\$2,008.50	\$3,405	\$7,621.50
Unincorporated legal practice	\$612	\$1,210.50	\$2,008.50	\$3,405	\$7,621.50
Barrister	\$346	\$0.00	\$0.00	\$0.00	\$0.00

There are an estimated 90 business in Victoria with more than 20 employees (not including government and non-legal employers). This brings the total number of legal services businesses in Victoria to 7,111 with small business comprising 98.73 per cent and large business comprising a modest 1.2 per cent of all businesses. Table 36 shows that the total cost incurred for all small business as a result of the proposed fees is estimated to be \$5.70 million. Given that Option 3 recovers \$7.89 million from fee revenue, the amount recovered from small business is anticipated to be around 72 per cent, despite small business constituting 98.73 per cent of all businesses. That is to say not only does small business not incur a disproportionate amount of cost as a result of the preferred option (Option 3) - this sector would be subsidised by the 90 large businesses. For these reasons, it is determined that Option 3, the preferred option, would not have a disproportionate impact on small business.

**Table 36: Summary of total cost impact of proposed fees for all firms under Option 3 - by different size small businesses<sup>85</sup>**

Type of law practice	Number of employees					Total small business	% of small business cost
	1	2 to 3	4 to 5	6 to 10	11 to 20		
Community legal practice	\$880	\$4,400	\$5,940	\$17,600	\$50,050	\$78,870	1.38%
Foreign law practice	\$12,240	\$2,421	\$2,009	\$3,405	\$0	\$20,075	0.35%
Incorporated legal practice	\$424,728	\$466,042	\$289,224	\$381,360	\$442,047	\$2,003,401	35.15%
Law firm	\$6,120	\$498,726	\$198,841	\$163,440	\$175,295	\$1,042,422	18.29%
Sole practitioner	\$1,793,160	\$0	\$0	\$0	\$0	\$1,793,160	31.46%
Unincorporated legal practice	\$6,120	\$4,842	\$0	\$6,810	\$45,729	\$63,501	1.11%
Barrister	\$698,574	\$0	\$0	\$0	\$0	\$698,574	12.26%
<b>Total cost</b>	<b>\$2,941,822</b>	<b>\$976,431</b>	<b>\$496,014</b>	<b>\$572,615</b>	<b>\$713,121</b>	<b>\$5,700,003</b>	<b>100.00%</b>
% of small business cost	51.61%	17.13%	8.70%	10.05%	12.51%	100.00%	

It is observed however in Table 36 that incorporated legal practices would incur 35.15 per cent of the total cost to small business (i.e. \$2 million) despite only constituting around 20 per cent of the volume of small businesses.

<sup>85</sup> Estimated by taking the product of estimates in Table 34 and 35.



## Section 9: Impacts on competition

### 9.1: Competition assessment

As government regulation can have a significant impact on the competitiveness of the economy, regulatory proposals are subjected to a competition test to ensure that any impacts on competition are justifiable because of overall benefits to the community.

The proposed Regulations have been assessed and it has been determined that they do not have a negative impact on competition in Victoria because the proposed Regulations if adopted:

- are unlikely to affect the market structure of the legal profession (the proposed stratified fees are unlikely to reduce the number of participants in the market or increase the size of incumbent firms);
- will not make it more difficult for new firms or individuals to engage in legal practice;
- will not affect some firms or individuals more substantially than others;
- will not restrict the ability of legal practitioners to choose the price, quality, range or location of the services they provide;
- will not lead to higher ongoing costs for new entrants that existing law practices would not have to meet; and
- will not affect the ability or incentive to innovate or develop new legal services.

As shown in Table 37, an assessment conducted estimated that the hourly cost of stratified fees for practitioners are likely to be between only \$0.07 per hour to a maximum of \$0.62 for part time sole practitioners with trust authorisation and with clients bearing a share of costs. Given these low impacts and the fact the fees proposed under the preferred option are even lower than the fees that formed the basis of this assessment, under the preferred fee option - barriers to entry in the market are considered to be *negligible*.

The likelihood of passing on the additional cost of practising certificate fees is considered by this RIS to be determined by the price sensitivity of supply and demand for legal services rather than cultural practices.

Moreover, the impact on demand (sales) from an increase in the hourly cost from fees is expected to range from 0.1 per cent<sup>86</sup> to a maximum of 0.89 per cent for part time sole practitioners or part time sole practitioners with trust authorisation. From this perspective it is clear that the proposed fees are unlikely to constitute a significant barrier to entry.

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<sup>86</sup> See Table A9.2 of Appendix 9 for source of estimate. These estimates were based on the proposed fees under Option 9 which were the basis for the fees under Option 3. As the fees proposed under Option 3 are lower, the impacts are expected to be even less than estimated.

**Table 37: Hourly cost of fees borne by practitioners and clients<sup>87</sup>**

Affected stakeholder	Hourly cost of fee	Hourly cost borne by practitioners	Hourly cost borne by clients
Part time sole practitioner	\$1.30	<b>\$0.57</b>	<b>\$0.73</b>
Part time sole practitioner (with trust authorisation)	\$1.30	<b>\$0.62</b>	<b>\$0.68</b>
Full time sole practitioner	\$0.51	<b>\$0.22</b>	<b>\$0.29</b>
Full time sole practitioner (with trust authorisation)	\$0.51	<b>\$0.24</b>	<b>\$0.27</b>
SME	\$0.51	<b>\$0.24</b>	<b>\$0.27</b>
Large firm	\$0.51	<b>\$0.24</b>	<b>\$0.27</b>
Community sector employee part time	\$0.31	<b>\$0.16</b>	<b>\$0.14</b>
Public sector employee part time	\$0.31	<b>\$0.16</b>	<b>\$0.14</b>
Community sector employee full time	\$0.12	<b>\$0.07</b>	<b>\$0.06</b>
Public sector employee full time	\$0.12	<b>\$0.07</b>	<b>\$0.06</b>

## 9.2: Impact of preferred option on Victorian legal services

The extent to which the preferred approach would place the Victorian legal profession at a competitive disadvantage with other jurisdictions has been assessed below. Currently, Victoria's fees are competitive when compared with other jurisdictions. Section 11 of this RIS sets out a comparison of fees charged for practising certificates across all jurisdictions. As can be seen from the interstate analysis, there is little uniformity amongst jurisdictions in the fees set for practising certificates.

Under the preferred approach, Option 3, Victoria's fees for solicitors would generally be lower than those in the ACT, NT, South Australia, Queensland, Tasmania and Western Australia<sup>88</sup>; and above those in NSW. Fees for barristers would also be significantly less than those paid by the majority of barristers in NSW<sup>89</sup>; compare favourably with most other Australian jurisdictions including ACT, NT, Queensland<sup>90</sup>, South Australia, Tasmania, and WA.

<sup>87</sup> See Table A9.1 of Appendix 9 for source of estimate.

<sup>88</sup> The exceptions are the fee for a community legal centre (unrestricted fee) in the NT which is only \$115 and fees for community legal centre practising certificates and locum certificates in Tasmania are all below \$300, noting a fee of \$220 is proposed for community practitioners. .

<sup>89</sup> Fees for barristers in NSW range from \$156 for a reader in regional NSW through to \$6,246 for a silk practising in the Sydney CBD. When compared with the proposed fee of \$346 only readers and juniors with 1-2 years' experience in NSW would pay less than the preferred option under the Regulations.

<sup>90</sup> Except for Barristers of less than 1 year.

## Section 10 Implementation and evaluation

### 10.1: Review and Evaluation

The development of an evaluation strategy is required for any new regulatory proposal that imposes a noticeable burden on a sector of the public. This is consistent with the Government's commitment to a culture of continuous improvement. Therefore, an evaluation strategy has been prepared to enable the Board to assess the effectiveness of the new fees during the 10-year life of the proposed Regulations.

The evaluation strategy will assess the estimated level of cost recovery against the actual revenue received from practising certificate fees. The evaluation strategy will also enable the Board to assess whether the objectives of the proposed Regulations are being met, or whether there is a need to make amendments to the fee structure to achieve the desired outcomes.

The evaluation strategy ensures that the professional bodies will have an opportunity to be consulted. It is proposed to conduct two post-implementation evaluations. The first evaluation will occur during the life of the Regulations to assess whether any adjustments are required to the fees to ensure the objectives of the Regulations are continuing to be achieved, in particular to evaluate the effect of the proposed fees on private sector law firms and the cost of practising certificates as a proportion of costs for small and big law firms. The evaluation will also assess whether the Board's assessment that a 40/60 per cent split between revenue from fees and interest continues to be appropriate.

The second evaluation will occur in the lead up to the remaking of the Regulations to inform the fee design and setting of new fees.

#### 10.1.1: Evaluation – Stage 1: Review of the implementation of the fees

The first evaluation of the new fees will be conducted during the 2023-24 financial year to assess whether the objectives of the regulatory proposal are being met. That is whether the fees are funding the efficient and equitable regulation of the legal profession.

Data is collected by the Board on a financial year basis on both the costs of legal regulation and the revenue received from practising certificate fees. Much of this data is published in the Board's annual report.

It is proposed to assess the first five years of data following the introduction of the new fees (i.e. 2018-19, 2019-20, 2020-21, 2021-22, 2022-23 financial years) to ascertain whether the fees are appropriate or should be adjusted.

The following data will be collected by the Board:

- the costs of legal regulation – equivalent data to that which has been prepared for this RIS will be gathered on the total costs of regulation. This will provide an opportunity for the costs of any changes to the regulatory framework that may have arisen during the implementation phase of the Regulations to be quantified.
- the revenue received from practising certificate fees – five financial years of data will be compared to assess whether the fees are generating the required level of cost recovery.

- the number of practising certificates – five years of data will be compared to assess whether the fees are having any unintended impacts on the growth in practising certificates being issued or the types of practising certificates that are being maintained.

Given the funding mix of fees and interest, it is proposed to collect data to evaluate the benefits of regulation to consumers of legal services who place their money in trust. Such data may include:

- specific information about the different purposes and types of trust money held in solicitors' trust accounts, including motivating factors for consumers using solicitors' trust accounts; and
- data about the amounts of money held by different types of clients and time periods for those monies to be held in trust.

The Board will also consult with professional bodies representing solicitors and barristers during the evaluation period to gather data and feedback on the impacts of the fees on legal practitioners. Given stakeholder feedback about the likely effect of fee increases on private sector law firms and potential cross-subsidisation between small and large law firms, it is proposed that the data and feedback collected from professional bodies would focus on these aspects in particular.

The data will be assessed against the following criteria:

- whether the revenue received from fees continues to represent an equitable contribution to the costs of legal regulation (including whether the 40-60 split continues to provide the most appropriate and equitable contribution) or whether other factors have emerged that should result in a change to the funding mix; and
- whether there are any perverse or unintended consequences arising from the implementation of the new fees that needs to be addressed.

A five year period has been selected to ensure the evaluation draws on sufficient data and provide sufficient time to make any necessary adjustments to the fees in the first half of the life of the Regulations. Amendments may be made to the Regulations at this stage in light of the review.

### 10.1.2 Evaluation – Stage 2

The second evaluation will commence in the 2026-27 financial year in the lead up to the Regulations sunsetting during the second half of 2027.

The purpose of this evaluation will be to assess the impacts of the Regulations with a view to informing the design and development of new fees to take effect during the 2028-29 financial year.

The second evaluation will take into account the outcomes of the first evaluation, including the data collected, the resulting analysis and any adjustments that were made to the fees as a result of the first evaluation. In addition, fresh data will be collected for the financial years 2023-24 and 2024-25 on:

- the costs of legal regulation – equivalent to data collected for the first evaluation. This will provide an opportunity for any changes to the regulatory framework that may have arisen since the first evaluation to be costed;
- the revenue received from practising certificate fees – four financial years of data will be compared to assess whether the fees are generating the required level of cost recovery. This will include any adjustments that were made as a result of the first evaluation; and

- the number of practising certificates: four years of data will be compared to assess whether the fees are having any unintended impacts on the growth in practising certificates being issued or the types of practising certificates that are being maintained. This data will build on trends identified in the earlier evaluation.

The Board will also consult with professional bodies representing solicitors and barristers during the evaluation period to gather data and feedback on the impacts of the fees on legal practitioners. The data will be assessed against the following criteria:

- whether the revenue received from fees continues to represent an equitable contribution to the costs of legal regulation or whether other factors have emerged that should result in a change to the funding mix;
- whether any changes to the Regulations and/or fees as a result of the first evaluation have had the desired effects; and
- whether there are any new perverse or unintended consequences since the first evaluation that need to be addressed or corrected in relation to the future design of the fee structure.

## 10.2: Implementation plan

The following implementation plan has been developed to support the introduction of the new practising certificate fees. While there are no foreseeable issues regarding implementation of the new fees, the implementation plan outlines how the Board will communicate the changes and ensure it is easy for legal practitioners to comply.

**Table 39: Implementation Plan**

Issue	Commentary
Communication with regulated entities	<p>The Board will provide relevant information to the professional bodies ahead of the new fees coming into effect.</p> <p>The Board will also publish information on the VLSB+C website about the new fees and will include information in the notes that accompany online practising certificate application and renewal forms.</p>
Transitioning to the new regime	<p>Practising certificates for the 2018-19 financial year will be available for renewal through the Board's online portal <i>LSB Online</i> from the beginning of April.</p> <p>The proposed move to stratified fees may require additional changes to be made to the online portal. It is proposed to have the new regulations in place by early 2018 to provide sufficient time for IT changes to be made.</p>
Achieving compliance	<p>As payment of the practising certificate fee must be made prior to a practising certificate being issued, the Board does not foresee any enforcement issues associated with the payment and collection of the new fees.</p> <p>However, there will continue to be the potential for individuals to avoid obtaining a practising certificate and engage in an unqualified practice. This is an offence under the Uniform Law.</p> <p>It is not expected that the proposed fee increases would be a trigger for non-compliance with the requirement to hold a practising certificate. However, the Board has strong processes and procedures in place to identify and take</p>

Issue	Commentary
	enforcement action against those who seek to engage in unqualified legal practice.
Establish clear accountabilities between the Department and the regulator	The Board will continue to work closely with the Department of Justice and Regulation (DJR) during the implementation phase to ensure that DJR is aware of any implementation issues.
Implementation risks and monitoring	The Board will be responsible for monitoring implementation, tracking progress and addressing unforeseen implementation issues as they arise. This will include ongoing engagement with the professional bodies during implementation to help identify and manage any issues that may arise.

## Section 11: Practising certificate fees in other jurisdictions

The following table sets out fees charged in other jurisdictions for practising certificates.

**Table 40: Fees in other jurisdictions**

Jurisdiction	Fees
Australian Capital Territory 2017-18	<p><b>Solicitors</b>  <i>Restricted</i>            Private: \$810            In house: \$810            Government: \$565            Non- ACT: \$434            Volunteer: nil</p> <p><i>Unrestricted</i>            Private: \$1,267            In house: \$1,118            Government: \$799            Non- ACT: \$788            Volunteer: nil</p> <p><b>Barristers</b>  <i>Silk</i>: \$3,340  <i>Junior 13+ years</i>: \$2,662  <i>Junior 6-12 years</i>: \$2,215  <i>Junior 3-5 years</i>: \$1,510  <i>Junior 1-2 years</i>: \$1,210  <i>Readers</i>: \$482  <i>Government and statutory office holders</i>: \$537</p>
New South Wales	<p><b>Solicitors</b>            \$380</p> <p><b>Barristers</b>  <i>Silk</i>            CBD: \$6,371            Regional: \$4,458            Statutory office holder: \$1,505  <i>Junior 5+ years</i>            CBD: \$2,377            Regional: \$1,661            Statutory office holder: \$914  <i>Junior 2-5 years</i>            CBD: \$828            Regional: \$577            Statutory office holder: \$828  <i>Junior 1-2 years</i>            CBD: \$257            Regional: \$193            Statutory office holder: \$257  <i>Readers</i>:            CBD: \$176            Regional: \$156</p>



Jurisdiction	Fees
	<p><i>Academic</i>            CBD: \$570            Regional: \$570</p>
Northern Territory	<p><b>Solicitors</b>  <i>Unrestricted: \$1610</i>  <i>Restricted: \$1449</i>  <i>Community legal centre (unrestricted): \$115</i></p> <p><b>Barristers</b>  <i>Unrestricted: \$1610</i>  <i>Restricted: \$1449</i></p>
Queensland	<p><b>Solicitors</b>  <i>Principal: \$929.74</i>  <i>Non-principal: \$464.87</i></p> <p><b>Barristers</b>  <i>Silk: \$4,200</i>  <i>12 Years +: \$1,700</i>  <i>10 Years +: \$1,600</i>  <i>9 Years: \$1,500</i>  <i>8 Years: \$1,400</i>  <i>7 Years: \$1,350</i>  <i>6 Years: \$1,300</i>  <i>5 Years: \$1,250</i>  <i>4 Years: \$1,000</i>  <i>3 Years: \$900</i>  <i>2 Years: \$600</i>  <i>1 Year: \$400</i>  <i>Less than 1 Year: \$300</i></p> <p><b>Employed Bar</b>  <i>Silk \$450</i>  <i>Junior \$220</i>  <i>Political \$400</i></p>
South Australia	<p><b>Solicitors</b>            \$608</p> <p><b>Barristers</b>            \$608</p>
Tasmania	<p><b>Solicitors</b>  <i>Principal: \$1,168.70</i>  <i>Employee: \$872.65</i>  <i>Corporate: \$447.95</i>  <i>Locum: \$300</i>  <i>Community Legal Centre: \$120.90</i></p> <p><b>Barristers</b>            \$447.95</p>
Western Australia	<p><b>Solicitors</b>            \$1,250</p> <p><b>Barristers</b>            \$1,250</p>

## Addendum 1: Efficiency Dividend

The VLSB+C pay an amount each financial year to meet the expenses of VCAT in performing its functions under the Uniform Law and the Act. VCAT's Legal Practice List is responsible for the review of administrative decisions under the Uniform Law, including practising certificate determinations, resolution of consumer matter disputes and the making of disciplinary orders against lawyers for unsatisfactory professional conduct or professional misconduct. The ABC exercise allocated direct costs of VCAT per certificate by class type equal to \$1,528,520 in 2015-16.

**Table 1A: Allocation of direct delegated cost VCAT per certificate by class type**

Class type	Direct delegated cost of activity by class type <sup>91</sup>	Volume of certificates by class type <sup>92</sup>	Direct delegated cost per certificate by class type
Employees	\$305,704.00	7,809	\$39.15
Principal with trust authorisation	\$764,260.00	3,435	\$222.49
Principal	\$305,704.00	2,705	\$113.01
Corporate	\$15,285.20	2,636	\$5.80
Volunteer	\$0.00	307	\$0.00
Government	\$0.00	1,747	\$0.00
Barrister	\$137,566.80	2,052	\$67.04
Total	\$1,528,520.00	20,691	

The ABC exercise undertaken for the Board relied upon the 2015-16 actual financial figures as this was the most accurate information available at the time the ABC report was finalised in May 2017. However, since 2015-16 there has been efficiency savings realised in the VCAT budget over two financial years. VCAT funding has reduced by a total of \$571,766 from 2015-16 funding levels due to reduced case load upon the introduction of the Uniform Law (\$335,533 reduction in 2016-17 and \$236,233 reduction in the 2017-18 budgets).

These reductions mean there is an opportunity for the Board to apply an 'efficiency dividend' to the fees under the stratified fee options (Options 2, 3 and 4).

**Table 1B: Proposed VCAT efficiency dividend per certificate by class type**

Class type	Efficiency dividend by class type	Volume of certificates by class type	Efficiency dividend per certificate by class type
Employees	\$114,353.20	7,809	\$14.64
Principal with trust authorisation	\$285,883.00	3,435	\$83.23
Principal	\$114,353.20	2,705	\$42.27
Corporate	\$5,717.66	2,636	\$2.17
Volunteer	\$0.00	307	\$0.00
Government	\$0.00	1,747	\$0.00
Barrister	\$51,458.94	2,052	\$25.08
Total	\$571,766.00	20,691	

<sup>91</sup> Direct delegated costs – VCAT in Table A3.5 (\$1,528,520) is apportioned as 20% (employees), 50% (principal with trust authorisation), 20% (principal), 1% (corporate), 0% (volunteer), 0% (government), and 9% (barrister).

<sup>92</sup> See Table A1.1 for source of volumes for practising certificates for 2016-17.

The efficiency dividend has been apportioned in line with the original percentages attributed to each of the practitioner classes. Therefore, there is no efficiency dividend for volunteers or government practitioners as no costs from VCAT were apportioned to those practitioners.

There is no change to the fees under Option 1 as these are the existing fee levels. However, the VCAT savings reduce the overall cost of regulation meaning the percentage of cost recovery from fees under Option 1 increases to 39.5 per cent.

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## Addendum 2: Proposed regulations

### **Legal Profession Uniform Law Application (Practising Certificate Fees) Regulations 2017**

The Governor in Council, on the recommendation of the Victorian Legal Services Board, makes the following Regulations:

Dated:

Responsible Minister:

MARTIN PAKULA  
Attorney-General

Clerk of the Executive Council

#### **1 Objective**

The objective of these Regulations is to prescribe fees to be paid for Australian practising certificates under the **Legal Profession Uniform Law Application Act 2014** for the remainder of the 2017/2018 financial year and for the financial years 2018/2019, 2019/2020, 2020/2021, 2021/2022, 2022/2023, 2023/2024, 2024/2025, 2025/2026, 2026/2027 and 2027/2028.

#### **2 Authorising provision**

These Regulations are made under section 156 of the **Legal Profession Uniform Law Application Act 2014**.

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### 3 Commencement

These Regulations come into operation on 1 March 2018.

### 4 Practising certificate fees until 30 June 2018

- (1) For the purposes of section 73(1)(a) of the **Legal Profession Uniform Law Application Act 2014** the prescribed fee for an Australian practising certificate for the financial year beginning on 1 July 2017 and ending on 30 June 2018 is—
  - (a) for a practising certificate authorising the holder to receive trust money, 36·50 fee units;
  - (b) for a practising certificate not authorising the holder to receive trust money, 24·71 fee units.
- (2) Despite subregulation (1), if an Australian practising certificate is only to be in force for part of the financial year referred to in subregulation (1), the fee for that practising certificate is—
  - (a) in the case of a practising certificate that is to take effect between 1 March and 31 March—50% of the relevant prescribed fee;
  - (b) in the case of a practising certificate that is to take effect between 1 April and 30 June—25% of the relevant prescribed fee.
- (3) A fee under subregulation (2) must be rounded to the nearest whole dollar.

### 5 Practising certificate fees from 1 July 2018

- (1) This regulation applies to the following financial years—
  - (a) 1 July 2018 to 30 June 2019;

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- (b) 1 July 2019 to 30 June 2020;
  - (c) 1 July 2020 to 30 June 2021;
  - (d) 1 July 2021 to 30 June 2022;
  - (e) 1 July 2022 to 30 June 2023;
  - (f) 1 July 2023 to 30 June 2024;
  - (g) 1 July 2024 to 30 June 2025;
  - (h) 1 July 2025 to 30 June 2026;
  - (i) 1 July 2026 to 30 June 2027;
  - (j) 1 July 2027 to 30 June 2028.

(2) For the purposes of section 73(1)(a) of the **Legal Profession Uniform Law Application Act 2014** the prescribed fee for an Australian practising certificate for a financial year to which this regulation applies is—

- (a) for a practising certificate for a principal of a law practice that is a community legal service, 15·48 fee units;
- (b) for a practising certificate for a principal of any other law practice which authorises the holder to receive trust money, 43·04 fee units;
- (c) for a practising certificate for a principal of any other law practice which does not authorise the holder to receive trust money, 30·03 fee units;
- (d) for a practising certificate for an employee of a law practice that is a community legal service, 15·48 fee units;
- (e) for a practising certificate for an employee of any other law practice, 28·06 fee units;
- (f) for a practising certificate for a corporate legal practitioner, 16·88 fee units;

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- (g) for a practising certificate for a government legal practitioner, 15·48 fee units;
  - (h) for a practising certificate for a barrister, 24·34 fee units.
- (3) Despite subregulation (2), if an Australian practising certificate is only to be in force for part of a financial year, the fee for that practising certificate is—
- (a) in the case of a practising certificate that is to take effect between 1 July and 30 September—the relevant prescribed fee;
  - (b) in the case of a practising certificate that is to take effect between 1 October and 31 December—75% of the relevant prescribed fee;
  - (c) in the case of a practising certificate that is to take effect between 1 January and 31 March—50% of the relevant prescribed fee;
  - (d) in the case of a practising certificate that is to take effect between 1 April and 30 June—25% of the relevant prescribed fee.
- (4) A fee under subregulation (3) must be rounded to the nearest whole dollar.