

19 December 2016

Michael McGarvie
Victorian Legal Services Commissioner
CEO, Victorian Legal Services Board
Level 5, 555 Bourke Street
Melbourne 3000

Dear Mr McGarvie

Practising Certificate Fees Regulations and the Regulatory Impact Statement process

Thank you for your recent correspondence to the past president of the Victoria Division of ACC Australia, Mei Ramsay dated 2 December 2016 regarding the potential changes to the practising certificate fee structure in Victoria.

As of early November 2016, I am the new president for the Victorian Division of ACC Australia and wish to take this opportunity to introduce myself and provide a response to the proposed increase to the practising certificate fee in Victoria from the view of the in-house profession.

As the Victoria Legal Services Board (VLSB) notes, a key issue for the VLSB is to recommend that practising certificate fees are set at an appropriate level to ensure the costs of regulating the legal profession can continue to be recovered by those who benefit or give rise to the need for regulation in an equitable way and without drawing on consolidated revenue.

While all lawyers and the community generally benefit from the regulatory oversight of the profession by the Board, we believe that in-house lawyers, specifically government and corporate legal practitioners constitute a negligible percentage of the regulatory burden, including investigations and disciplinary matters. Although we are unable to locate any specific data on the level of regulatory resources consumed in regulating in-house lawyers compared to private practitioners, a review of the disciplinary register supports this belief.

As such, ACC Australia submits that an additional tier to the proposed practising certificate fee structure should be considered, whereby the tiered fee structure breaks the 'Without trust account authorisation' class into two subclasses of (i) in-house lawyers (Government and Corporate Practising Certificate holders) and (2) private practitioners, with the cost of the in-house practising certificate being set at a lower level to reflect the lower proportion of regulatory costs consumed by in-house lawyers on a per capita basis.

With respect to the specific pricing options outlined by for consideration, ACC Australia considers that there are societal benefits and other social policy and equity considerations that mitigate against seeking to recover all regulatory costs through practising certificate fees.

For example, in-house lawyers are generally able to provide pro bono legal services to the community as part of their employers' corporate social responsibility programs and many do so outside of work hours. In fact, many in-house legal departments in the public and private sectors have partnered with law firms and community legal centres, such as Justice Connect, in undertaking pro bono work for the community. Furthermore, ACC Australia has been working closely with the Australian Pro Bono Centre in promoting in-house lawyers to undertake pro bono work with a pro bono program tailored for in-house lawyers set to be trialled by ACC Australia in 2017.

Many in-house lawyers also have dual functions within their organisation (e.g. board secretary, risk and compliance functions), and substantial increases in practising certificate fees may reduce the number of those dual office holders who choose to keep their practising certificates. Increasing practising certificate fees for in-house lawyers will not only increase the costs to businesses of managing their legal affairs but may also tend to reduce the availability of in-house legal practitioners being able to provide pro bono services.

On that basis, as a fall back to the introduction of an additional tiered structure for practising certificates which reflects the lower proportion of regulatory costs consumed in regulating in-house lawyers, ACC submits option 3 as set out in the information pack dated 2 December 2016 is most appropriate.

We encourage the VLSB to consider an alternative fee structure for in-house lawyers and continue to consult with ACC Australia throughout this process.

Please do not hesitate to contact Deon Wong, Senior Legal & Advocacy Counsel, ACC Australia at d.wong@acc.com if you wish to discuss this further.

We look forward to continue to work with the VLSB as this is progressed further.

Kind regards



Jonathan Fenwick
Victoria Division President
ACC Australia