

11 April 2016

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

Dear Mr McGarvie

Victoria Lawyers' Practising Certificate Fees Review – ACC Australia Supplementary Submission

Thank you for the opportunity to meet with one of your staff members Ben Coffey on 31 March 2017 to discuss the Victorian Legal Services Board and Commissioner's (VLSBC) current review of lawyers' practising certificate fees. We appreciate the opportunity to engage with the VLSBC and on the recommendation by Ben we wish to put forward this supplementary submission for consideration.

Further to our initial submission to VLSBC, dated 19 December 2016, we request the VLSBC to consider the points below when developing its proposed cost model(s) to the Board.

1) Regulatory costs of in-house lawyers

From the details provided during the discussion and outlined in the VLSBC's Discussion Paper (Table 5 on page 15), we would encourage further information and modelling of the costs of regulating lawyers holding corporate and government practising certificates (*in-house lawyers*).

We hold the position that the cost of regulating in-house lawyers in Victoria is less than the costs of regulating counterparts in private practice. In particular, the main sources of cost to the VLSBC in regulating in-house lawyers would appear to be in the processing of applications for, and issuing of, corporate and government practising certificates, reasonable oversight and an appropriate proportion of the VLSBC's overheads, but would not include direct costs and overheads associated with oversight of private practitioners management of trust accounts, associated investigations and disciplinary proceedings.

Based on our understanding, the incidence of complaints against in-house lawyers resulting in regulatory investigations or disciplinary proceedings are likely to be zero on a year to year basis. The VLSBC will have access to the statistics to verify this.

However, the VLSBC Discussion Paper averages all regulatory costs across the profession as a whole, which we believe indicates that the regulatory costs applicable to in-house lawyers are higher than they actually are.

For these reasons, while we strongly support the VLSBC's regulation of the legal profession, we would welcome a more detailed analysis of the costs of regulating different classes of lawyers and for that information and modelling being taken into consideration in setting practising certificate fees.

2) Use of interest on trust monies to defray regulatory costs

We note that a substantial amount of the costs of regulating the legal profession are recovered from interest earned on monies held in trust by private law firms for consumers of legal services, including

companies and other employers of corporate and government legal practitioners.

To the extent that part of the regulatory costs of managing the legal profession will continue to be recovered from interest earned on moneys held in trust, we submit that the employers of in-house lawyers have a legitimate interest, as consumers of legal services, in seeing that revenue is applied in such a way that *appropriately* minimises the costs imposed on them by way of practising certificate fees. Of course, we acknowledge that not all trust monies belong to corporate or government entities who employ in-house lawyers, and further acknowledge that determining the appropriate balance of revenue sources for the regulation of the profession is a complex public policy issue.

3) Next Steps

We understand that the VLSBC will be developing a draft Regulatory Impact Statement (RIS) in consultation with stakeholders which will then be published as part of the next phase of the consultation process. To the extent that the draft RIS recommends a change in the mix of revenue sources used to regulate the legal profession, we encourage that analysis to have regard to modelling of regulatory costs according to classes of practitioner using the data that the VLSBC has at hand.

If there is any specific information that ACC Australia may be able to provide to assist with that exercise or if you would like to discuss any other aspect of ACC Australia's submission or activities, please do not hesitate to contact Deon Wong, Senior Legal & Advocacy Counsel, ACC Australia at [REDACTED].

In the interim, we look forward to the release of the RIS and the opportunity to comment further on this very important issue.

Again, we thank you for the opportunity to make a further submission on this matter and for engaging with ACC Australia throughout this process.

Kind regards



Jonathan Fenwick
Victoria Division President
ACC Australia