

VICTORIAN LEGAL SERVICES BOARD REVIEW OF LAWYERS' PRACTISING CERTIFICATE FEES

DISCUSSION PAPER – TELSTRA SUBMISSION

Telstra appreciates the opportunity to make a submission in response to the Board's discussion paper.

About Telstra

Telstra is one of the biggest employers of corporate lawyers in Australia. We employ about 170 lawyers in Australia, located in Melbourne, Sydney, Brisbane, Canberra, Perth and Adelaide, and globally in Hong Kong, Singapore, UK, USA and China. The highest proportion of our lawyers are based in Victoria. Approximately 100 Telstra lawyers hold Victorian corporate practising certificates. The annual cost of Victorian practising certificate fees for Telstra lawyers is approximately \$34,400. Under the four options set out in the paper, the annual costs for its Victorian practitioners would increase to \$45,600 (Option 3), \$51,700 (Option 4), \$91,300 (Option 1) or \$103,300 (Option 2).

Impacts on corporate lawyers

The discussion paper examines the estimated effects on sole practitioners, law firms and community and public sector employee practitioners of the four options being considered by the Board. The paper does not consider the estimated effects on corporate legal practitioners. Given corporate lawyers comprise 14% of the profession, are the second largest segment after private practice, and are twice the number of government practitioners, the Board should address the effects on corporate lawyers before it develops the Regulatory Impact Statement.

The paper on page 33 states that lawyers may pass on the costs of practising certificates through to their clients as part of the charges for their services. This may be true in private practice – but corporate lawyers don't have direct clients to pass on the costs of practising certificate fees.

The paper on page 33 states that if lawyers cannot pass their costs through to their clients, a fee of \$456 to \$1623 is unlikely to have a substantial effect on a practitioner's decision to practice law, compared to the much larger start up and fixed costs associated with practising law. That may be correct, but the total costs of practising certificates will impact the decisions of some companies as to how many lawyers to have in their internal legal teams.

Cross-subsidisation

Practising certificate fees currently pay for 36% of the cost of legal regulation and interest stream from trust accounts pays for 64% of the annual cost of regulation. The paper notes at page 36 that according to the Victorian Guide to Regulation, general government policy is that fees should be set on a full cost recovery basis to avoid cross-subsidisation. In putting forward the option of 100% recovery of costs via practising certificate fees, the Board states that "this would result in a more equitable funding arrangement because all legal practitioners, who give rise to the need for regulation, and all clients would contribute to the cost of regulating legal services (rather than only those clients who place money in trust accounts)."

If the Board is seeking to avoid cross-subsidisation, then arguably corporate lawyers should be paying substantially lower fees than their private practice and sole practitioner counterparts. Two of the highest costs of legal regulation in Victoria relate to complaint handling (\$313 per certificate in 2015-16) and trust account investigations (\$120 per certificate in 2015-16). Whilst all legal practitioners give rise to the need for regulation, in practice, complaints against corporate lawyers would be a very small proportion of the total number of complaints handled by the Board and corporate lawyers do not have trust accounts. The contribution made by corporate practitioners by

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way of practising certificate fees is therefore likely to exceed the cost of disciplining and handling complaints relating to corporate practitioners. Imposing fees for corporate practitioners that is the same as lawyers with trust authorisation represents a hidden subsidy by corporate lawyers of the cost of regulating the profession as a whole.

Options proposed in the paper

Table 1 on page 6 sets out a comparison of current fees and options being considered by the Board:

Practising certificate type	Current fee	Option 1 (100% from fees – tiered approach)	Option 2 (100% from fees – single fee)	Option 3 (50/50 equal mix – tiered approach)	Option 4 (50/50 equal mix – single fee)
Without trust authorisation	\$344	\$914	\$1033	\$456	\$517
With trust authorisation	\$509	\$1623	\$1033	\$811	\$517
Total revenue (from fee stream)	\$7.6 M	\$21 M	\$21 M	\$10.5 M	\$10.5M

Our view is that legal practitioners with trust authorisation should pay a higher amount than lawyers without trust authorisation as they pose the risk of misusing or misappropriating their clients' money in trust accounts. The interest stream (Interest foregone by clients who deposit money into trust accounts) should also continue to contribute to the cost of legal regulation

We believe the costs of legal regulation should not be entirely borne by practising certificates of lawyers (or their employers) as set out in Options 1 and 2. We note that a 100% cost recovery model with a tiered approach (ie where trust account holders pay a higher amount) in Option 1 would result in a tripling of fees for lawyers with trust authorisation, with the additional amount rightly covering the costs of trust account investigations. The paper notes at page 44 that an increase of this nature may be a disincentive for existing practitioners who have trust authorisation to continue holding that type of practising certificate. However, the impact of more than doubling the fees for lawyers without trust authorisation under Option 1 should also be considered.

The paper suggests on page 46 that tripling fees for lawyers without trust authorisation under Option 2 would mainly impact potential new and existing low paid lawyers. We say that the tripling of fees also has an impact on corporate lawyers and their employers. Such fee increases could also have the unintended consequence of deterring people who hold a practising certificate but who aren't currently practising as a lawyer (people who work in commercial – not legal- roles and who pose low regulatory risk) from keeping their practising certificates current.

The paper notes that not using the interest stream would have the effect of freeing up around \$14M to fund other services like Victorian Legal Aid. Services like Victorian Legal Aid are critically important and we note that a 50/50% split would still allow for a freeing up of a significant amount of money to Victorian Legal Aid.

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Conclusion

Our view is that corporate lawyers should continue to pay a lower practising certificate fee based on the lower costs of regulating corporate lawyers, including the low volume of complaints and disciplinary actions taken, and no trust authorisation. However, of the 4 options in the paper, Option 3 would be the most preferred given it is consistent with our view that lawyers with trust authorisation should pay an additional amount to cover the costs of regulating trust accounts.