



Commissioner for
Better Regulation
Red Tape Commissioner

GPO Box 4379
Melbourne Victoria 3001
Telephone: 03 9092 5800

21 June 2018

Mr Donald Speagle
Deputy Secretary
Civil Justice
Department of Justice and Regulation
Level 26, 121 Exhibition Street
MELBOURNE VIC 3000

Dear Mr Speagle 

REGULATORY IMPACT STATEMENT FOR THE SUPREME COURT (FEES) REGULATIONS 2018

I would like to thank the staff of the Supreme Court of Victoria for working with the Office of the Commissioner for Better Regulation on the preparation of the Regulatory Impact Statement (RIS) for the proposed Supreme Court (Fees) Regulations 2018, which will replace the Supreme Court (Fees) Interim Regulations 2017 which sunset on 1 October 2018.

Under section 10 of the *Subordinate Legislation Act 1994*, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of all RISs prepared in Victoria. As you know, the Commissioner's role is to advise on the adequacy of the analysis presented in the RIS, rather than the merits or otherwise of policy or regulatory proposals. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 19 June 2018 meets the adequacy requirements of the *Subordinate Legislation Act 1994*.

As the RIS notes, the civil justice system provides the means for resolving disputes between parties, enforcing legal rights and obtaining remedies through binding orders, and the Supreme Court, as the superior court in Victoria, deals with the most serious criminal and civil cases. The Court also provides services through the Probate Office (which deals with applications for grants of probate and administration related to Victorian property and assets), and the Costs Court (which determines cost matters arising from court proceedings, and hears costs disputes between legal practitioners and their clients). The Court of Appeal hears appeals against criminal and civil decisions made by other Victorian courts and the Victorian Civil and Administrative Tribunal.

The Regulations set fees to cover the cost, or a portion of the cost, of the services the Supreme Court provides in relation to civil matters, including hearing fees, case management fees, and various administrative fees (such as for document filing).

The current fee structure has been largely unchanged since 2012. Since that time, however, the Supreme Court has introduced a series of measures that have changed the way it delivers

its services. The Court has also undertaken significant work to improve its understanding of its costs and their drivers, and established a consistent and transparent set of principles to guide the estimation of costs and setting of fees. The RIS explains that the following principles have been used to guide the development and assessment of the fees:

1. the fee structure should reflect the role of the Supreme Court in Victoria's civil justice system;
2. access to justice is to be safeguarded;
3. fees should be applied equitably;
4. the fee structure should support and enable efficient court operations; and
5. fees should be easy for users to understand and for the Supreme Court to administer.

The RIS acknowledges the inherent tension 'between reflecting identified costs, and giving effect to the policy objectives of the guiding principles ...', noting that the analysis has sought, in particular, 'to balance the value of the imposition of fees with ensuring that access to justice is maintained'.

The RIS outlines how these trade-offs have been considered in comparing three options for setting fees:

- a modification of current arrangements — which, like the proposed Regulations, would incorporate a differential fee structure and some revised fee categories, but would not reflect the impact of recent reforms to the way services are delivered;
- full cost recovery; and
- restructured fees, which incorporate a differential fee structure and some revised fee categories, and set fees to more closely reflect the different cost structures of each area of the Court (the proposed Regulations).

The RIS explains why the Court considers the proposed Regulations strike the best balance between the principles, and would better address the current misalignment of fees with the cost of service provision and how services are provided.

It estimates that the proposed changes to the structure and level of fees will increase total fee revenue to about \$20.2 million per year (in 2018-19 dollars) from about \$19.345 million, as well as increasing the proportion of costs recovered by the fees from 33.9 per cent to 35.4 per cent.

The proposed changes reflected in the proposed Regulations include:

- introducing three tiered fee levels, called 'Corporate', Standard', and 'Concession' (the latter capped at \$300), and waivers continuing to be available — the aim being to maximise cost recovery from larger corporate and government users, while minimising the potential for fees to become a barrier to justice for others;
- setting different commencement fees for some matters in the Court of Appeal, and new fees for Commercial Court and non-Commercial Court matters, to reflect the different costs of providing these services,
- setting hearing fees in the Court of Appeal that distinguish between trial days and other hearings;
- setting the mediation fee in the Common Law Division at a half day rate, rather than the current hourly rate, which aligns with the rate set in the Commercial Court;
- basing the commencement fees in the Costs Court on the value of the claim, not the originating jurisdiction, to better reflects the cost of service provision, and introducing new fees for matters involving costs disputes between solicitors and clients;
- introducing a new fee for the issue of warrants; and
- differentiating the most common probate fee (Grant of Representation fee) by value, to reflect the differing capacity of applicants to pay. The thresholds were chosen to maximise the availability of the lower fee for the greatest number of applicants, and were identified based on a review of estate values from 2015-16. Despite these

changes, the costs of the probate office will still be significantly over-recovered, although the level of recovery will fall from 425.7 per cent to 389.2 per cent.

The RIS also outlines the commitment of the Court and Department of Justice and Regulation to:

- monitor the new fee regime for the first 18 months of implementation so that any remaining or emerging implementation risks can be identified and addressed effectively; and
- evaluate the fees in 2023, drawing on information sources and performance indicators that are outlined in the RIS, and that will be developed further during initial implementation of the proposed fees.

It is government practice that this letter be published with the RIS when it is released for public consultation.

Should you wish to discuss any issue raised in this letter, or the implications of new information or policy options identified through the public consultation process for your proposal, please do not hesitate to contact me on (03) 9092 5800.

Yours sincerely



Anna Cronin

Commissioner for Better Regulation