



## Commissioner for Better Regulation

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22 March 2016

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

Dear Mr Speagle, *Donald*

I would like to thank you and the staff of the Department of Justice and Regulation for working with us on the preparation of the Regulatory Impact Statement (RIS) for the proposed Victorian Civil and Administrative Tribunal (Fees) Regulations 2016.

As you know, under section 10 of the *Subordinate Legislation Act 1994*, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of analysis presented in all RIS prepared in Victoria. In doing so, the Commissioner's role is not to provide a view on the merits of any policy or regulatory proposal contained in a RIS, but to advise specifically only on the adequacy or otherwise of the RIS overall. To be adequate, the RIS must contain analysis that is logical, draws on relevant evidence, is transparent about assumptions used, and is proportionate to the proposal's expected effects. The RIS must also provide a suitable basis for public consultation, which is an important step in the policy development process.

I am pleased to advise you that the final version of the RIS received by us on 22 March 2016 meets the adequacy requirements of the Act.

In providing this advice, we note that, as the Department observes in the RIS, the Victorian Civil and Administrative Tribunal (VCAT) was established to provide a 'low cost, accessible, efficient and independent Tribunal delivering high quality dispute resolution of civil disputes' and other non-criminal matters. VCAT's responsibilities have increased over time, contributing to a complicated fee structure. VCAT's funding arrangements are also complex.

A RIS was last prepared for these Regulations in 2012. Since then the Department and VCAT have undertaken significant work to obtain more detailed data on the costs of different VCAT processes. This work has enabled the fees proposed in this RIS to reflect more accurately the direct and indirect costs of different VCAT processes within and across Lists, and also to reflect changes to dispute resolution practices.

The Department has also developed specific pricing principles to underpin the level and structure of fees proposed in this RIS. These have provided a transparent basis for the proposed fees. In

particular, the RIS is clear about the need to ensure access to justice for the community, the equitable sharing of VCAT's costs and the efficiency of VCAT's operations.

Although the proposed Regulations improve the alignment of fees with costs, overall VCAT fees will continue to significantly under-recover the costs of VCAT's services, even though total fee revenue will increase by about \$1 million per year under this proposal. About 26 per cent of VCAT's total costs would be recovered through these proposed fees, compared with about 23 per cent currently.

The proposed level of cost recovery reflects the Department's objective to ensure access to justice, which it aims to achieve by providing discounted fees to individuals and low-income earners. The major shift in the fee structure proposed in this RIS is the introduction of three-tiered fees for most matters, involving:

- a Corporate Fee (set at full cost recovery) for larger businesses and government agencies;
- a Standard Fee (70 per cent of the Corporate Fee) for individuals, start-up businesses and small businesses, and not-for-profit organisations; and
- a Concession Fee (half the Standard Fee, capped at \$150 in 2016-17 and 11 fee units thereafter) for applicants holding a Commonwealth government health care card.

Other aspects of the proposed fee structure include:

- changes in some of the threshold levels at which fees are charged;
- changes in how complex matters are defined, to enable the fees for such matters to better reflect their costs; and
- the introduction of a first day hearing fee for matters valued at \$100 000 or more and for those which have no monetary value, so that only those proceeding to a hearing need pay a hearing day fee.

Given the complexity of VCAT's operations and the large number of different fees that apply, the analysis in this RIS has focussed on:

- outlining VCAT's cost base;
- explaining the application of costing and pricing principles; and
- discussing some options which highlight the main choices made by the Department.

The Department's efforts to identify the costs associated with different VCAT processes are to be commended the consultation on this RIS will enable stakeholder feedback on the assumptions, judgements and principles underpinning the proposed fees.

We also note the importance of the Department's evaluation strategy, including its commitment to monitor the operation of the proposed new fees and to review them in five years' time. Given the uncertainties about the effects of the proposed fees in practice, this monitoring and review will be vital to ensure the fees meet their intended objectives and to ensure the effective operation of VCAT in its vital work for the Victorian community.

As you are aware, 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**