

# REGULATORY IMPACT STATEMENT

## **Victorian Civil and Administrative Tribunal (Fees) Regulations 2013**

**December 2012**

*This Regulatory Impact Statement has been prepared in accordance with the requirements of the Subordinate Legislation Act 1994. Its purpose is to inform interested parties regarding a proposal to make new regulations. Comments are invited and should be addressed to the Regulations Officer, Courts Policy, Strategic Policy and Legislation, Department of Justice, GPO Box 4356, Melbourne, Victoria 3001 or by email to [legalpolicysubmissions@justice.vic.gov.au](mailto:legalpolicysubmissions@justice.vic.gov.au) by 5pm on **15 February 2012**.*

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## Summary

Users of the civil jurisdictions of Victorian courts and tribunals make significant contributions to the costs of the justice system through payment of a range of fees established in various sets of regulations. The regulations establishing fees in the three principal court jurisdictions, the Magistrates', County and Supreme Courts, have all been remade during 2012.

This Regulatory Impact Statement (RIS) relates to the Victorian Civil and Administrative Tribunal (Fees) Regulations. To accurately reflect the manner in which VCAT operates and the addition of new jurisdictions over past years, the proposed regulations will update fee levels, the structure of the fees, and create some new fees including in the case of new jurisdictions.

These required updates reflect that VCAT's jurisdictions and services have changed significantly in the period since its fees were last assessed, as a result of considerable changes in the nature and mix of matters heard. VCAT is now hearing more and more complex matters, including planning and domestic building disputes heard over multiple days and involving several parties and legal representatives. The time and expertise required for VCAT to resolve matters like these needs to be appropriately reflected in user fees.

Given the changes in VCAT's jurisdiction in recent years and the current moves to increase cost recovery levels in the Victorian civil courts, there is a need to increase the levels of cost recovery being achieved via user fee revenue at VCAT. Given the recent adoption of a 50% cost recovery level in the Magistrates' Court - the jurisdiction with which VCAT is most reasonably compared - an increase in the current cost recovery levels in respect of the appropriations-funded lists of 14.0% is required.

There is also a need to better differentiate the various fees charged within VCAT to account for the increasingly wide variation in the nature of the cases heard and the circumstances of persons bringing cases. Improved differentiation will help to ensure that greater degrees of cost recovery are attained in complex cases - particularly those of a commercial nature - while retaining accessible and affordable justice for applicants.

In the development of the proposed regulations it has become clear that VCAT does not collect cost data that would allow for fees to be set accordingly. After making new fee regulations in early 2013, on completion of the current process of consultation, the Department of Justice will assist VCAT to improve its data collection arrangements. Following the collection of sufficient data, analysis will be undertaken to assess a range of options for new fee regulations – that will replace those proposed in this RIS. Thorough analysis of robust costing data will allow government to choose a structure and level of fees for VCAT from a new range of options, either on the sunset of the proposed regulations in 2016, or during the life of the regulations proposed in this RIS.

Ideally, fees would be charged on the basis of the costs of each of the activities undertaken by VCAT. However, data on the costs of these activities is not available and the fees have consequently been set according to the current expenditure of VCAT in each list and the qualitative nature of those lists. This is considered to be the best proxy for fees set on the basis of activity costs, as it is possible to assess which activities are generally undertaken in each list, or under each enactment.

Feedback is sought, in response to the proposals in this RIS, primarily on:

- the broad policy framework for the new fee arrangements in the proposed regulations;
- the proposal to align jurisdictions and fee levels
- the new fee levels that are described in the proposed regulations; and
- the changes to current individual fee levels.

In addition, specific questions on relevant topics are included throughout the RIS.

### ***Cost recovery***

A key issue to be determined in setting fees for VCAT is the level of cost recovery to be attained. The question here is what proportion of Tribunal costs should be borne by users of Tribunal services, and what proportion should be borne by government (i.e. all taxpayers). The work of the civil courts and tribunals provides a mix of public and private benefits and, as a result, the costs of running the justice system and of access to it should be shared between taxpayers and users.

Specifically, VCAT offers private benefits in being able to resolve a particular dispute in a timely, informal and cost-effective manner and having access to mechanisms to enable enforcement of the decisions made. The main public benefit is in the public confidence that results from the existence of a tribunal that can resolve disputes in this timely, informal and cost-effective manner and protect the property and individual rights of all citizens. The low cost and the absence of detailed procedural obligations in bringing a dispute to VCAT are of particular value in this respect.

The appropriate relative size of user and taxpayer contributions is a matter of judgement, given that these benefits cannot be quantified in aggregate terms. In VCAT, cost recovery in the recent past has been around 15%. However, in conformity with the approach taken to cost recovery in Victoria's court system generally, the Government takes the view that it is appropriate to raise VCAT's cost recovery to 45% of the total government appropriation funding to VCAT.

There are some functions of VCAT where 100% cost recovery is appropriate. For example, the Major Cases List within the Planning and Environment List has been reinstated on the basis that user contributions fully cover the cost of running the List and allow these matters to be heard quickly. Entry into the List is by election of the applicant. The cases that enter the Major Cases List are large and complex and would otherwise demand a significant amount of VCAT's resources to resolve, causing an inequitable burden on other Tribunal users if a reasonable cost recovery level is to be achieved in the Planning and Environment List more broadly.

There are other functions of VCAT where cost recovery is limited by the statutory restrictions placed on the recovery of costs in certain matters and VCAT's historical financial arrangements to meet these restrictions. For example, VCAT has a completely separate set of regulations and funding arrangements covering fees charged in the Guardianship List. In a number of lists that have a protective function no fees are currently charged, either because a policy decision has been made to maintain zero fees, or because the enabling statutory scheme requires it.

There are further lists where recovered costs are returned to trust funds rather than to VCAT, further limiting costs recovery. The Residential Tenancies, Retail Tenancies, Domestic Building and Owners Corporations Lists are all fully funded by Trust funds. These comprise of funds collected under relevant statutory schemes from relevant industry participants or interest on moneys held on their behalf and are administered by government departments unrelated to VCAT. Any fees recovered in these Trust-funded lists are returned to the relevant Trust and VCAT is only able to retain some of the fees that are charged to Tribunal users.

These factors limit cost recovery in VCAT.

### ***The Tribunal's cost base***

In determining the appropriate cost recovery level it is necessary to determine the appropriate cost base as clearly and accurately as possible. As VCAT is required to fund different Lists from different sources, historically VCAT has accounted on the basis of list rather than on the basis of activity, and has accounted for the appropriation and Trust funded Lists separately. There is therefore insufficient activity based costing data to support the setting of individual fees at levels that reflect the costs of each particular activity.

As a result, the most appropriate manner of assessing VCAT's costs in appropriation-funded Lists is to assess the expenditure of government-appropriated funds in each of the relevant Lists. This approach leads to the proposal in this RIS to set and assess VCAT fees by reference to the level of cost recovery measured against VCAT's expenditure, rather than the level of VCAT's costs. This expenditure would otherwise come from taxpayer funds.

### ***Fee structures***

A further issue in respect of fee setting is the structure of the user fees to be charged. As in many fee contexts there is a trade-off between equity and efficiency. A comprehensive set of individual fees, each relating to specific functions carried out by the Tribunal, can achieve equity between different users of Tribunal services by ensuring that the fees paid in individual cases reflect the value of Tribunal resources used in those cases. However, this comprehensive approach is likely to be inefficient as the cost of administering a complex fee structure, including the need to collect large numbers of small fee payments, is likely to be large when compared with the fee revenue obtained. Conversely, a "block fee" structure, under which all litigants pay the same fee, achieves good efficiency performance but may achieve poor equity outcomes.

This issue has been the subject of a number of reviews over recent decades. The existing fee structure of the Tribunal reflects the conclusions of these reviews and is characterised as a "modified block fee" structure. That is, commencement fees are set as a block fee - primarily based on the enactment under which the proceedings are brought - with additional fees in relation to specific processes being set on a separate cost recovery basis against the cost of the activities involved in those specific processes. In the context of recent reviews of the fee structures for the Magistrates', County and Supreme Courts it has been determined that this basic fee structure should be maintained for the time being, with limited changes being made to the levels and types of fees currently being charged.

In the VCAT context, the “fee structure” also encompasses two other elements: the wider fee structure, which ascribes particular jurisdictions to various fee levels proposed to be charged, and the structure of individual jurisdictions, which may ascribe claims to a different fee level according to the value of the claim, or a related threshold. In summary, the VCAT “fee structure” encompasses:

- An overall modified block fee structure with a combination of block fees for commencement and specific fees such as hearing, alternative dispute resolution and registry fees payable for those particular activities and services;
- A seven-level commencement fee structure, in which particular jurisdictions are ascribed to fee levels according to the nature of the jurisdiction, the complexity of the legal and factual issues arising, and the consequent resources required of VCAT to resolve them;
- Certain jurisdictions being tied to a tiered fee structure, again corresponding to the complexity of the disputes (such as a lower fee for claims of up to \$10,000, a medium level fee for claims of between \$10,000 and \$100,000, and a higher fee for claims of over \$100,000).

As noted above, it is currently not proposed to alter these fundamental fee structures until more accurate costing data is available. However, by altering the allocation of particular jurisdictions to certain fee levels and introducing new fees for those activities for which costing data is available and/or separate treatment is appropriate, it is proposed to “restructure” various VCAT fees to attain more appropriate levels of cost recovery.

### ***The proposed approach***

The government proposes to recognise the mix of public and private benefits of the activities provided by VCAT, consistent with the approach taken in the setting of fees for Victoria’s courts, by setting cost recovery for VCAT at 45%, on average, of current expenditure in government appropriation funded Lists.

Currently VCAT only recovers costs at an average of 14% in these Lists. The increase in fees to an average of 45% cost recovery is proposed to be staged over three years to allow for smoother implementation and adjustment for users and the legal profession. Following this increase in the fee levels that apply to various Lists it is proposed that fees will be restructured such that an appropriate fee level is applied to each jurisdiction in VCAT. This is intended to increase cost recovery for matters that are of a more commercial nature and where higher fees are more appropriate to the nature of the claim. This limited restructure of fees involves a range of specific changes to the current fees, as follows:

1. A new "Level 3" fee of 8.2 fee units would be established. This would then be subject to the general cost increase of 56%, in line with all other commencement fees, becoming a fee of 12.8 fee units, and would be charged in respect of a range of matters that currently attract the "community fee" of 3.1 fee units but where the nature of the matters being heard is believed to justify a higher fee.
  - Quantitatively, the main area in which this new fee of 12.8 fee units will apply is the Civil Claims List. More than 7,400 of the 8,900 matters heard in this list would move from a fee of 3.1 fee units to a fee of 12.8 fee units under this option. These

essentially relate to disputes under the Australian Consumer Law and Fair Trading Act (and to a lesser extent the Domestic Building Contracts Act) where the amount in dispute is less than \$10,000. Matters in this list involving larger amounts in dispute would only be subject to the general fee increase. For most, this would mean a move from 25.7 fee units to 40.1 fee units.

- The second key area of impact for the 12.8 fee unit fee is the Owners' Corporation List. Approximately 3,100 cases were heard in this list in 2011-12, with all subject to the community fee of 3.1 fee units. Under this proposal, over 2,500 will move to the 12.8 fee unit fee.
2. Reallocation of a range of fees would be undertaken, particularly in the Planning and Environment, Land Valuation and Owners' Corporations Lists, so that:
    - The standard fee for planning matters in the Planning and Environment List would be a commencement fee of 80.4 fee units, compared with 25.7 fee units at present. For a relatively small proportion of matters relating to higher valued property, the fee would rise from 51.5 fee units to 160.8 fee units;
    - Around two thirds of matters within the Land Valuation List would also be initially charged a commencement fee of 160.8 fee units, compared with 17.5 fee units in most cases (and in some cases 27.7 fee units) at present. Most of the remaining matters in this list would be charged 40.8 fee units, compared with 17.5 fee units at present. These changes would ensure that higher fees are paid in relation to disputes over higher-valued property, rather than a single fee level being applicable;
    - Virtually all matters in the Real Property List would be subject to a fee of 40.1 fee units. By comparison, currently around one third of these matters are subject to the 3.1 fee unit community fee, while two thirds are subject to a fee of 25.7 fee units;
    - Around 15% of matters in the Owners' Corporation List, or more than 500 matters, would be subject to a move from the current community fee of 3.1 fee units to a fee of 40.1 fee units. These are matters brought under the Owners' Corporation Act where the amount in dispute is between \$10,000 and \$100,000.
  3. A widening of the application of hearing fees would be undertaken, so that all matters that currently attract a commencement fee would be subject to payment of a hearing fee on day two and subsequently. This will increase equity among all users of VCAT.
  4. An increase in the size of the hearing fees would be adopted, so that the hearing fees payable in most cases would be equivalent to 80% of those payable in the County Court. In common with Supreme and County Court hearing fees, these fees increase if a matter is going to take a long time to hear, with higher fees applying from day 5 and higher fees again applying from day 10.
  5. A new "complex cases" hearing fee would be established, with VCAT determining which cases should be allocated this fee. Cases allocated to this sub-list would be liable to pay higher hearing fees, calculated to recover 45% of average hearing costs.
  6. Removal of the \$5 million minimum development value threshold for non-residential projects to be eligible for transfer to the Major Cases List, with the obvious benefit of a greater number of users being able to elect to commence in this List, and with the indirect benefit to users of the standard Planning and Environment List that a greater amount of resources would be applied to their matters, with more Major Cases List matters not being processed within that List.

7. Revision of the fees payable in respect of the Major Cases List, to reflect current experience in relation to the cost of processing these cases and continue to meet the objective of charging fees at full cost recovery levels.
8. Establishment of mediation fees, to be set at a level equivalent to 45% of the estimated cost of carrying out this activity, thus ensuring that users of mediation make a contribution to cost recovery.
9. Revision of the current administrative fees on the basis of newly conducted activity based costing estimates, with the fees to be set at a 45% cost recovery level.
10. Adoption of a 56% general fee increase, to be charged in respect of all other fees not subject to the adjustments highlighted above.

The expected revenue to be derived from the proposed regulations is set out in Table S1 below.

**Table S1: Expected revenue under the preferred approach (Option 3)**

List	Expenditure (2011-12)	Expected revenue (year 1)	Expected revenue (year 2)	Expected revenue (year 3)	Cost recovery (%)
<b>a) Lodgement Fees</b>					
<b>APPROPRIATIONS FUNDED LISTS</b>					
<b>Civil Division</b>	<b>\$3,092,427</b>	<b>\$1,402,374</b>	<b>\$1,667,180</b>	<b>\$1,931,986</b>	<b>62.5%</b>
Civil Claims List	\$2,900,294	\$1,332,319	\$1,583,897	\$1,835,475	63.3%
Real Property List	\$192,133	\$70,055	\$83,283	\$96,511	50.2%
<b>Administrative Division</b>	<b>\$12,026,872</b>	<b>\$3,429,111</b>	<b>\$4,076,619</b>	<b>\$4,724,129</b>	<b>39.3%</b>
General/OBR List/Taxation	\$2,580,712	\$535,918	\$637,113	\$738,309	28.6%
Land Valuation List	\$288,808	\$133,071	\$158,198	\$183,326	63.5%
Planning & Environment List	\$8,561,061	\$2,760,122	\$3,281,308	\$3,802,494	44.4%
<b>Human Rights Division</b>	<b>\$881,843</b>	<b>\$137,191</b>	<b>\$163,096</b>	\$189,002	<b>21.4%</b>
Anti Discrimination/ Health and Privacy/ Mental Health	\$881,843	\$137,191	\$163,096	\$189,002	21.4%
<b>Total commencement fee revenue (appropriations funded lists)</b>	<b>\$15,404, 851</b>	<b>\$4,968,675</b>	<b>\$5,906,896</b>	<b>\$6,845,117</b>	
<b>b) Hearing Fees</b>					
Standard		\$196,791	\$196,791	\$196,791	
Complex Cases List		\$208,305	\$238,063	\$267,821	
<b>c) Administrative fees</b>					
<b>Human Rights</b>	<b>\$5,462,818</b>	<b>\$1,400,000</b>	<b>\$1,400,000</b>	<b>\$1,400,000</b>	<b>25.6%</b>

<b>Division</b>					
Guardianship List	\$5,462,818	\$1,400,000	\$1,400,000	\$1,400,000 <sup>1</sup>	25.6%
<b>TOTAL APPROPRIATIONS FUNDED</b>	<b>\$20,867,668.85</b>	<b>\$4,968,675</b>	<b>\$8,347,068</b>	<b>\$9,390,451</b>	<b>45.0%</b>
<b>Major Cases List</b>	<b>\$2,000,000</b>	<b>\$2,000,000</b>	<b>\$2,000,000</b>	<b>\$2,000,000</b>	<b>100.0%</b>
<b>Civil Division</b>	<b>\$16,409,910</b>			<b>\$3,995,209</b>	24.3%
Domestic Building List	\$2,688,480	\$400,274	\$475,857	\$551,439	20.5%
Owners Corporations List	\$999,650	\$662,189	\$787,229	\$912,268	91.3%
Retail Tenancies List	\$586,821	\$125,895	\$149,668	\$173,440	29.6%
Residential Tenancies List	\$12,134,959	\$1,853,631	\$2,203,646	\$2,358,062	19.4%
<b>Administrative Division</b>	<b>\$1,421,357</b>	<b>\$40,867</b>	<b>\$48,584</b>	<b>\$56,300</b>	4.0%
Legal Practice List	\$1,421,357	\$40,867	\$48,584	\$56,300	4.0%
<b>TOTAL TRUST FUNDED</b>	<b>\$17,831,267</b>	<b>\$3,082,856</b>	<b>\$3,664,983</b>	<b>\$4,247,111</b>	<b>23.8%</b>
<b>TOTAL</b>	<b>\$40,698,936</b>	<b>\$13,786,540</b>	<b>\$15,412,051</b>	<b>\$17,037,562</b>	41.86%
<b>Adjusted Total</b>	<b>\$40,698,936</b>	<b>\$12,386,540</b>	<b>\$14,012,051</b>	<b>\$15,637,562</b>	38.42%

Source: VCAT

**Note:** The adjusted total revenue figure excludes \$1.4m in revenue derived from the Guardianship and Administration (Fees) Regulations 2008, which partly funds the Guardianship and Administration List, which is otherwise funded from appropriations expenditure.

The proposed fees are set out in Table S2 below. This table sets out the fees currently payable and proposed in each VCAT list, according to the enactment under which the fee is charged. It also includes the hearing fees and administrative fees payable. Fees presented in bold italics have been set at a different fee level than at present. The remaining fees change only by the general level of the fee increase, which is equal to 56% in real terms in 2015.

**Table S2: Proposed fees regulations by list and enactment**

		2013	2014	2015
Enabling enactment	<b>Current fee</b>	<b>35%</b>	<b>40%</b>	<b>45%</b>
<b>ADMINISTRATIVE DIVISION</b>				
<b>General list</b>				
Accident Compensation Act 1985;	<b>\$ 322.0</b>	\$ 364.6	\$ 433.5	\$ 502.5
Adoption Act 1984 section 129A(1)(a) (decisions regarding fitness to adopt and approval to adopt);	<b>\$ -</b>	\$ -	\$ -	\$ -
Associations Incorporation Act 1981;	<b>\$ 322.0</b>	\$ 364.6	\$ 433.5	\$ 502.5

<sup>1</sup> Fee revenue derived from the Guardianship and Administration (Fees) Regulations 2008.



Births, Deaths and Marriages Registration Act 1996;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Cemeteries and Crematoria Act 2003;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Children, Youth and Families Act 2005;	\$ -	\$ -	\$ -	\$ -
Co-operatives Act 1996;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Country Fire Authority Act 1958;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Dangerous Goods Act 1985;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Disability Act 2006 section 50 (decision as to disability);	\$ -	\$ -	\$ -	\$ -
Domestic Animals Act 1994 section 98(2) (declaration and registration of dangerous dogs);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Drugs, Poisons and Controlled Substances Act 1981;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Electoral Act 2002;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Electricity Safety Act 1998;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Emergency Management Act 1986;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Emergency Services Superannuation Act 1986;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Equipment (Public Safety) Act 1994;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Estate Agents Act 1980 section 81(5A) (claims against guarantee fund);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Fisheries Act 1995;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Freedom of Information Act 1982 applications under section 50(2) if— the application is for the review of a deemed decision under section 53 refusing to grant access to a document; or the applicant is a natural person and the document to which access is sought contains information relating to the applicant's personal affairs;	\$ -	\$ -	\$ -	\$ -
For the commencement of proceedings under section 50(2) of the Freedom of Information Act 1982 except— applications for review of a deemed decision under section 53 refusing to grant access to a document; or if the applicant is a natural person and the document to which access is sought contains information relating to the applicant's personal affairs	\$ 219.3	\$ 248.1	\$ 295.7	\$ 342.1
Fundraising Act 1998;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Gas Safety Act 1997	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Livestock Disease Control Act 1994;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Local Government Act 1989 sections 38(2A) and 48 (decisions of municipal electoral tribunal), section 133 (decision of the Minister imposing a surcharge) and clause 8 of Schedule 12 (decisions of returning officer concerning how-to-vote cards);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Metropolitan Fire Brigades Act 1958;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Motor Car Traders Act 1986 section 79 (claims against guarantee fund);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5

Parliamentary Salaries and Superannuation Act 1968;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Public Health and Wellbeing Act 2008 section 204;	\$ -	\$ -	\$ -	\$ -
Road Management Act 2004;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
State Employees Retirement Benefits Act 1979;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
State Superannuation Act 1988;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Superannuation (Portability) Act 1989;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Transport Accident Act 1986;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Supported Residential Services (Private Proprietors) Act 2010; Section 206	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Transport Superannuation Act 1988;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Travel Agents Act 1986 section 46 (claims against approved compensation schemes);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Victims of Crime Assistance Act 1996;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Victoria State Emergency Service Act 2005;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Victorian Plantations Corporation Act 1993;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5

<b>Land Valuation List</b>				
Flora and Fauna Guarantee Act 1988 section 43(12) (claims for compensation);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Health Services Act 1988 section 67 (compulsory acquisition of land);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Land Acquisition and Compensation Act 1986;				
<b>Where compensation sought is &lt; \$1 million</b>	\$ 322.0	\$ 731.8	\$ 869.6	\$ 1,007.4
<b>Where compensation sought is &gt;= \$1 million</b>	\$ 322.0	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8
Local Government Act 1989 section 183 (differential rating);	\$ 161.6	\$ 182.9	\$ 218.0	\$ 251.9
Mineral Resources (Sustainable Development) Act 1990 section 88 (compensation for loss caused by work under a licence);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Pipelines Act 2005 section 154;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
<b>Planning and Environment Act 1987 sections 94(5) (compensation as a result of order to stop development or cancellation or amendment of permit) and 105 (compensation for loss caused by reservation of land, restriction of access or road closure);</b>	\$ 322.0	\$ 731.8	\$ 869.6	\$ 1,007.4
Subdivision Act 1988 section 19 (valuation of land for public open space);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Valuation of Land Act 1960 Part III (disputes on the value of land);				
<b>Where the net annual value of the property is less than \$60,000,</b>	\$ 161.6	\$ 364.6	\$ 433.5	\$ 502.5

<i>the site value is less than \$750,000 or the capital improved value is less than \$1 million</i>				
<i>Where the net annual value of the property is \$60,000 or more, the site value is \$750,000 or more, or the capital improved value is \$1 million or more</i>	\$ 161.6	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8
Water Act 1989 section 266(6) (setting tariffs, fees under tariffs, valuation equalisation factors and valuations).	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5

<b>Occupational and Business Regulation List</b>				
Adoption Act 1984 section 129A(1)(b) (decisions regarding approval of adoption agencies) and 129A(1)(c) (decisions regarding accreditation of bodies);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Agricultural and Veterinary Chemicals (Control of Use) Act 1992;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Architects Act 1991;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Biological Control Act 1986;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Children's Services Act 1996;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Dairy Act 2000;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Dangerous Goods Act 1985;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Disability Act 2006 section 45 (registration of a disability service provider);	\$ -	\$ -	\$ -	\$ -
Domestic Animals Act 1994 section 98(1) (registration of premises to conduct a domestic animal business);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Education and Training Reform Act 2006, Division 14 of Part 2.6 and Part 4.8;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Estate Agents Act 1980 except sections 56B(1) (see real property list) and 81(5A) (see general list);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Firearms Act 1996 section 182 (decisions of Firearms Appeals Committee);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Fundraising Act 1998	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Gambling Regulation Act 2003;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Health Practitioner Regulation National Law (applied in Victoria by the Health Practitioner Regulation National Law (Victoria) Act 2009) Part 8, Divisions 12 & 13	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Health Services Act 1988 section 110 (decisions of Minister or Chief General Manager under Part 4);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Liquor Control Reform Act 1998;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Local Government Act 1989 sections 30, 81D, 81E, 81J(1)(b), 81K, 81L, 81Q and 81R;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Meat Industry Act 1993 section 24 (licences to operate meat processing facilities, alteration of buildings);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5

Mineral Resources (Sustainable Development) Act 1990;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Motor Car Traders Act 1986 except sections 45 (see civil claims list) and 79 (see general list)	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Occupational Health and Safety Act 2004;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Owner Drivers and Forestry Contractors Act 2005 section 41 (dispute between contractor and hirer);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Owners Corporations Act 2006 Parts 4 and 6;				
<i>Where the claim is for the sum of &lt;\$10,000</i>	\$ 38.8	\$ 116.5	\$ 137.8	\$ 160.4
<i>Where the claim is for the sum of \$10,000 or more but less than \$100,000, or has no monetary value</i>	\$ 38.8	\$ 364.6	\$ 433.5	\$ 502.5
<i>Where the claim is for the sum of \$100,000 or more but less than \$1 million</i>	\$ 38.8	\$ 731.8	\$ 869.6	\$ 1,007.4
<i>Where the claim is for the sum of \$1 million or more</i>	\$ 38.8	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8
Prevention of Cruelty to Animals Act 1986 section 33 (licensing of scientific establishments and breeding establishments);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Private Security Act 2004 Part 7;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Professional Boxing and Combat Sports Act 1985 (licences, permits and registration);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Sex Work Act 1994	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Public Health and Wellbeing Act 2008 section 207;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Bus Safety Act 2009;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Racing Act 1958;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Rail Safety Act 2006 Part 7;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Second-Hand Dealers and Pawnbrokers Act 1989 sections 9B and 14 (correction of register);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Surveying Act 2004 section 33 (review of decision, finding or determination);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Therapeutic Goods (Victoria) Act 1994 section 71 (licensing of wholesale supply);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Transport (Compliance and Miscellaneous) Act 1983 except section 56 (see planning and environment list);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Travel Agents Act 1986 except section 46 (see general list);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Veterinary Practice Act 1997 section 55 (registration and discipline);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Victoria State Emergency Service Act 2005 section 31(2)(d);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Victoria State Emergency Service Regulations 1995 regulation 12 (discipline of members)	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Wildlife Act 1975;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5

Working with Children Act 2005.	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
<b>Planning and Environment List</b>				
Aboriginal Heritage Act 2006;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Catchment and Land Protection Act 1994 section 48 (land use conditions and land management notices);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Conservation, Forests and Lands Act 1987 section 76 (variation and termination of land management co-operative agreements);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Environment Protection Act 1970 except sections 33(1)(b) & 33A(1)(b)	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Environment Protection Act 1970 sections 33(1)(b) & 33A(1)(b)				
<b><i>If the proceedings are in respect of a development of any kind where the estimated cost of the development is less than \$1 million</i></b>	\$ 38.8	\$ 731.8	\$ 869.6	\$ 1,007.4
<b><i>If the proceedings are in respect of a development of any kind where the estimated cost of the development is \$1 million or more</i></b>	\$ 38.8	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8
<b><i>If the proceedings are entered into the Major Cases List within the Planning and Environment List after meeting the threshold conditions for entry into that List</i></b>	N/A	\$ 3,257.80	\$ 3,257.80	\$ 3,257.80
Flora and Fauna Guarantee Act 1988; sections 34(3), 41 and 41A (interim conservation orders);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
<b>Heritage Act 1995;</b>	<b>322</b>	<b>762</b>	<b>904</b>	<b>1047</b>
<b>Local Government Act 1989; sections 185 (imposition of special rate or charge) and 185AA (imposition of special rate or charge);</b>	<b>322</b>	<b>762</b>	<b>904</b>	<b>1047</b>
<b>Mineral Resources (Sustainable Development); Act 1990 except sections 88 (see land valuation list), 94 and 95 (see occupational and business regulation list);</b>	<b>322</b>	<b>762</b>	<b>904</b>	<b>1047</b>
Owners Corporations Act 2006 Part 6;				
<b><i>Where the claim is for the sum of &lt;\$10,000</i></b>	\$ 38.8	\$ 116.5	\$ 137.8	\$ 160.4
<b><i>Where the claim is for the sum of \$10,000 or more but less than \$100,000, or has no monetary value</i></b>	\$ 38.8	\$ 364.6	\$ 433.5	\$ 502.5
<b><i>Where the claim is for the sum of \$100,000 or more but less than \$1 million</i></b>	\$ 38.8	\$ 731.8	\$ 869.6	\$ 1,007.4
<b><i>Where the claim is for the sum of \$1 million or more</i></b>	\$ 38.8	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8
<b>Planning and Environment Act 1987</b>				
<b>Sections 39(1), 87, 89, 93, 114, 120, 121, 123, 149, 149A, 149B and 184;</b>	\$ 38.8	\$ 731.8	\$ 869.6	\$ 1,007.4

<b>Sections 78, 81, 82, 82B, 97P and 97Q, and sections 77, 79, 80 and 87A if the estimated cost of the development is less than \$1,000,000</b>	\$ 322.0	\$ 731.8	\$ 869.6	\$ 1,007.4
<b>Sections 77, 79, 80 and 87A if the estimated cost of the development is \$1 million or more but less than \$5 million</b>	\$ 322.0	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8
<b>Sections 77, 79, 80 and 87A if the estimated cost of the development is \$5 million or more</b>	\$ 1,290.6	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8
<b>Sections 77, 79, 80 and 87A where the proceedings are entered into the Major Cases List within the Planning and Environment List after meeting the threshold conditions for entry into that List</b>	\$ 3,188.0	\$ 3,257.80	\$ 3,257.80	\$ 3,257.80
Plant Biosecurity Act	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
<b>Subdivision Act 1988; section 40;</b>	\$ 38.8	\$ 364.6	\$ 433.5	\$ 502.5
Subdivision Act 1988 except sections 34A, 34B, 34D, 34E, 34G;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Transport Act 1983 section 56 (decisions of the Public Transport Corporation or Roads Corporation);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Water Act 1989 except sections 19 (see real property list) and 266(6) (see land valuation list);	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Water Industry Act 1994 except section 74 (see real property list).	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
<b>Taxation List</b>				
Business Franchise Acts;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
First Home Owner Grant Act 2000;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Taxation Administration Act 1997.	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5

<b>CIVIL DIVISION</b>				
<b>Civil Claims List</b>				
Australian Consumer Law and Fair Trading Act 2012				
<b>Where the amount sought is &lt;\$10,000</b>	\$ 38.8	\$ 116.5	\$ 137.8	\$ 160.4
Where the amount sought is \$10,000 or more but less than \$100,000, or where no monetary value is sought	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Where the amount sought is \$100,000 or more but less than \$1 million	\$ 645.3	\$ 731.8	\$ 869.6	\$ 1,007.4
<b>Where the amount sought is \$1 million or more</b>	\$ 645.3	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8
Domestic Building Contracts Act 1995				
<b>Where the amount sought is &lt;\$10,000</b>	\$ 38.8	\$ 116.5	\$ 137.8	\$ 160.4

Where the amount sought is \$10,000 or more but less than \$100,000, or where no monetary value is sought	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Where the amount sought is \$100,000 or more but less than \$1 million	\$ 645.3	\$ 731.8	\$ 869.6	\$ 1,007.4
<b>Where the amount sought is \$1 million or more</b>	<b>\$ 645.3</b>	<b>\$ 1,462.3</b>	<b>\$ 1,737.9</b>	<b>\$ 2,014.8</b>
Motor Car Traders Act 1986 section 45 (rescission of agreement of sale of motor car);	\$ 38.8	\$ 43.9	\$ 52.6	\$ 60.1
Owner Drivers and Forestry Contractors Act 2005;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Owners Corporations Act 2006 Part 6 and Part 11, Divisions 1, 2, 3 and 4;				
<b>Where the amount sought is &lt;\$10,000</b>	<b>\$ 38.8</b>	<b>\$ 116.5</b>	<b>\$ 137.8</b>	<b>\$ 160.4</b>
<b>Where the amount sought is \$10,000 or more but less than \$100,000, or where no monetary value is sought</b>	<b>\$ 38.8</b>	<b>\$ 364.6</b>	<b>\$ 433.5</b>	<b>\$ 502.5</b>
<b>Where the amount sought is \$100,000 or more but less than \$1 million</b>	<b>\$ 38.8</b>	<b>\$ 731.8</b>	<b>\$ 869.6</b>	<b>\$ 1,007.4</b>
<b>Where the amount sought is \$1 million or more</b>	<b>\$ 38.8</b>	<b>\$ 1,462.3</b>	<b>\$ 1,737.9</b>	<b>\$ 2,014.8</b>
Retirement Villages Act 1986.	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
<b>Domestic Building List</b>				
Australian Consumer Law and Fair Trading Act 2012				
<b>Where the amount sought is &lt;\$10,000</b>	<b>\$ 38.8</b>	<b>\$ 116.5</b>	<b>\$ 137.8</b>	<b>\$ 160.4</b>
Where the amount sought is \$10,000 or more but less than \$100,000, or where no monetary value is sought	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Where the amount sought is \$100,000 or more but less than \$1 million	\$ 645.3	\$ 731.8	\$ 869.6	\$ 1,007.4
<b>Where the amount sought is \$1 million or more</b>	<b>\$ 645.3</b>	<b>\$ 1,462.3</b>	<b>\$ 1,737.9</b>	<b>\$ 2,014.8</b>
Domestic Building Contracts Act 1995				
<b>Where the amount sought is &lt;\$10,000</b>	<b>\$ 38.8</b>	<b>\$ 116.5</b>	<b>\$ 137.8</b>	<b>\$ 160.4</b>
Where the amount sought is \$10,000 or more but less than \$100,000, or where no monetary value is sought	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Where the amount sought is \$100,000 or more but less than \$1 million	\$ 645.3	\$ 731.8	\$ 869.6	\$ 1,007.4
Where the amount sought is \$1 million or more	\$ 645.3	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8
House Contracts Guarantee Act 1987;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Owners Corporations Act 2006 Part 6 and Part 11, Divisions 1, 2, 3 and 4.				

Where the amount sought is <\$10,000	\$ 38.8	\$ 116.5	\$ 137.8	\$ 160.4
Where the amount sought is \$10,000 or more but less than \$100,000, or where no monetary value is sought	\$ 38.8	\$ 364.6	\$ 433.5	\$ 502.5
Where the amount sought is \$100,000 or more but less than \$1 million	\$ 38.8	\$ 731.8	\$ 869.6	\$ 1,007.4
Where the amount sought is \$1 million or more	\$ 38.8	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8

### Legal Practice List

Australian Consumer Law and Fair Trading Act 2012 (disputes between a legal practitioner and a client of a legal practitioner)				
Where the amount sought is <\$10,000	\$ 38.8	\$ 116.5	\$ 137.8	\$ 160.4
Where the amount sought is \$10,000 or more but less than \$100,000, or where no monetary value is sought	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Where the amount sought is \$100,000 or more but less than \$1 million	\$ 645.3	\$ 731.8	\$ 869.6	\$ 1,007.4
Where the amount sought is \$1 million or more	\$ 645.3	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8
Legal Profession Act 2004.				
Application to determine complaint	\$ -	\$ -	\$ -	\$ -
Application to set aside costs agreement	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Application to hear disciplinary charge	\$ -	\$ -	\$ -	\$ -
Application to re-hear disciplinary charge	\$ -	\$ -	\$ -	\$ -
Review of decision of Legal Services Board	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Application for non publication	\$ -	\$ -	\$ -	\$ -
Application to declare person disqualified	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Application to revoke disqualification order	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5

### Owners Corporation List

Australian Consumer Law and Fair Trading Act 2012				
<b>Where the amount sought is &lt;\$10,000</b>	<b>\$ 38.8</b>	<b>\$ 116.5</b>	<b>\$ 137.8</b>	<b>\$ 160.4</b>
Where the amount sought is \$10,000 or more but less than \$100,000, or where no monetary value is sought	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Where the amount sought is \$100,000 or more but less than \$1 million	\$ 645.3	\$ 731.8	\$ 869.6	\$ 1,007.4



<b>Where the amount sought is \$1 million or more</b>	<b>\$ 645.3</b>	<b>\$ 1,462.3</b>	<b>\$ 1,737.9</b>	<b>\$ 2,014.8</b>
Subdivision Act 1988 Part 5, and sections 36 and 39 (other disputes);	<b>\$ 322.0</b>	\$ 364.6	\$ 433.5	\$ 502.5
Owners Corporations Act 2006 Part 6, Part 11 and Part 12.				
Where the amount sought is <\$10,000	<b>\$ 38.8</b>	\$ 116.5	\$ 137.8	\$ 160.4
Where the amount sought is \$10,000 or more but less than \$100,000, or where no monetary value is sought	<b>\$ 38.8</b>	\$ 364.6	\$ 433.5	\$ 502.5
Where the amount sought is \$100,000 or more but less than \$1 million	<b>\$ 38.8</b>	\$ 731.8	\$ 869.6	\$ 1,007.4
Where the amount sought is \$1 million or more	<b>\$ 38.8</b>	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8
<b>Real Property List</b>				
Australian Consumer Law and Fair Trading Act 2012				
Where the amount sought is <\$10,000	<b>\$ 38.8</b>	\$ 116.5	\$ 137.8	\$ 160.4
Where the amount sought is \$10,000 or more but less than \$100,000, or where no monetary value is sought	<b>\$ 322.0</b>	\$ 364.6	\$ 433.5	\$ 502.5
Where the amount sought is \$100,000 or more but less than \$1 million	<b>\$ 645.3</b>	\$ 731.8	\$ 869.6	\$ 1,007.4
Where the amount sought is \$1 million or more	<b>\$ 645.3</b>	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8
Estate Agents Act 1980 section 56B(1) (disputes about commission and outgoings);	<b>\$ 322.0</b>	\$ 364.6	\$ 433.5	\$ 502.5
Owners Corporations Act 2006 Part 6 and Part 11;				
Where the amount sought is <\$10,000	<b>\$ 38.8</b>	\$ 116.5	\$ 137.8	\$ 160.4
Where the amount sought is \$10,000 or more but less than \$100,000, or where no monetary value is sought	<b>\$ 38.8</b>	\$ 364.6	\$ 433.5	\$ 502.5
Where the amount sought is \$100,000 or more but less than \$1 million	<b>\$ 38.8</b>	\$ 731.8	\$ 869.6	\$ 1,007.4
Where the amount sought is \$1 million or more	<b>\$ 38.8</b>	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8
Property Law Act 1958 Part IV;	<b>\$ 322.0</b>	\$ 364.6	\$ 433.5	\$ 502.5
Sale of Land Act 1962 section 44;	<b>\$ 322.0</b>	\$ 364.6	\$ 433.5	\$ 502.5
Subdivision Act 1988 sections 36 and 39 (other disputes);	<b>\$ 38.8</b>	\$ 364.6	\$ 433.5	\$ 502.5
Water Act 1989 section 19 (civil liability arising from various causes);	<b>\$ 38.8</b>	\$ 364.6	\$ 433.5	\$ 502.5
Water Industry Act 1994 section 74 (liability of licensee).	<b>\$ 38.8</b>	\$ 364.6	\$ 433.5	\$ 502.5

<b>Residential Tenancies List</b>				
Australian Consumer Law and Fair Trading Act 2012				
Where the amount sought is <\$10,000	\$ 38.8	\$ 116.5	\$ 137.8	\$ 160.4
Where the amount sought is \$10,000 or more but less than \$100,000, or where no monetary value is sought	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Where the amount sought is \$100,000 or more but less than \$1 million	\$ 645.3	\$ 731.8	\$ 869.6	\$ 1,007.4
Where the amount sought is \$1 million or more	\$ 645.3	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8
Disability Act 2006 Part 5 Division 2;	\$ -	\$ -	\$ -	\$ -
Housing Act 1983;	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Landlord and Tenant Act 1958;	\$ 38.8	\$ 43.9	\$ 52.6	\$ 60.1
Owners Corporations Act 2006 Part 6 and Part 11, Divisions 1, 2, 3 and 4;				
Where the amount sought is <\$10,000	\$ 38.8	\$ 116.5	\$ 137.8	\$ 160.4
Where the amount sought is \$10,000 or more but less than \$100,000, or where no monetary value is sought	\$ 38.8	\$ 364.6	\$ 433.5	\$ 502.5
Where the amount sought is \$100,000 or more but less than \$1 million	\$ 38.8	\$ 731.8	\$ 869.6	\$ 1,007.4
Where the amount sought is \$1 million or more	\$ 38.8	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8
Residential Tenancies Act 1997; except Part10	\$ 38.8	\$ 43.9	\$ 52.6	\$ 60.1
Residential Tenancies Act 1997; Part 10	\$ -	\$ -	\$ -	\$ -
Retirement Villages Act 1986.	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Supported Residential Services (Private Proprietors) Act 2010; Sections 105 and 121;	\$ -	\$ -	\$ -	\$ -
Supported Residential Services (Private Proprietors) Act 2010; Section 123	\$ 38.8	\$ 43.9	\$ 52.6	\$ 60.1

<b>Retail Tenancies List</b>				
Australian Consumer Law and Fair Trading Act 2012				
Where the amount sought is <\$10,000	\$ 38.8	\$ 116.5	\$ 137.8	\$ 160.4
Where the amount sought is \$10,000 or more but less than \$100,000, or where no monetary value is sought	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Where the amount sought is \$100,000 or more but less than \$1 million	\$ 645.3	\$ 731.8	\$ 869.6	\$ 1,007.4
Where the amount sought is \$1 million or more	\$ 645.3	\$ 1,462.3	\$ 1,737.9	\$ 2,014.8

Retail Leases Act 2003.				
Where the amount sought is less than \$100,000, or where no monetary value is sought	\$ 322.0	\$ 364.6	\$ 433.5	\$ 502.5
Where the amount sought is \$100,000 or more	\$ 645.3	\$ 731.8	\$ 869.6	\$ 1,007.4
<b>HUMAN RIGHTS DIVISION</b>				
<b>Anti-discrimination List</b>				
Equal Opportunity Act 2010				
All except section 89(5)(a)	\$ -	\$ -	\$ -	\$ -
Section 89(5)(a)	\$ -	\$ 43.9	\$ 52.6	\$ 60.1
Racial and Religious Tolerance Act 2001 section 23A	\$ -	\$ -	\$ -	\$ -
<b>Guardianship List</b>				
Disability Act 2006 Part 5 Division 3, Part 7, Part 8 Divisions 1, 3 and 5	\$ -	\$ -	\$ -	\$ -
Guardianship and Administration Act 1986	\$ -	\$ -	\$ -	\$ -
Instruments Act 1958 Division 6 of Part XIA	\$ -	\$ -	\$ -	\$ -
Medical Treatment Act 1988 section 5C (enduring powers of attorney)	\$ -	\$ -	\$ -	\$ -
Trustee Companies Act 1984	\$ -	\$ -	\$ -	\$ -
Annual Administration Fee (see Guardianship and Administration (Fees) Regulations 2008)	\$ 112.80	TBC	TBC	TBC
<b>Health and Privacy List</b>				
Assisted Reproductive Treatment Act 2008	\$ 322.0	\$ -	\$ -	\$ -
Health Records Act 2001	\$ -	\$ -	\$ -	\$ -
Information Privacy Act 2000	\$ -	\$ -	\$ -	\$ -
Public Health and Wellbeing Act 2008 section 122	\$ -	\$ -	\$ -	\$ -
<b>Mental Health List</b>				
Mental Health Act 1986; section 79 (decisions of Secretary),	\$ 322.0	\$ -	\$ -	\$ -
Mental Health Act 1986; section 120 (decisions of Mental Health Review Board).	\$ -	\$ -	\$ -	\$ -

<b>TRANSFER FEES</b>				
Planning and Environment Act 1987				
Sections 82 and 82B from the Planning and Environment List to the Major Cases List within the Planning and Environment List after meeting the threshold requirements for entry into that List	<b>\$ 2,754.1</b>	\$ 2,526.1	\$ 2,388.2	\$2,250.4
Environment Protection Act 1970				
Section 33B from the Planning and Environment List to the Major Cases List within the Planning and Environment List after meeting the threshold requirements for entry into that List	<b>\$ 2,754.1</b>	\$ 2,526.1	\$ 2,388.2	\$2,250.4

<b>HEARING FEES</b>				
For hearing proceedings in the Major Cases List within the Planning and Environment List, for each day or part of a day.	<b>\$ 3,193.9</b>	\$ 3,226.0	\$ 3,226.0	\$ 3,226.0
For hearing proceedings where the Tribunal or principal registrar is of the opinion that the proceeding is a complex case having regard to: (a) more than one member is or is likely to be appointed to hear the proceeding; and (b) the hearing of the proceeding is likely to take 2 or more days - For each day or part of a day after the first day.	<b>\$ -</b>	\$ 1,427.2	\$ 1,631.4	\$ 1,834.4
For hearing all other proceedings for which a fee is payable under Part 1 of this Table on commencement -	<b>\$ -</b>			
(a) for days 2 to 4, per day or part of a day;	<b>\$ -</b>	\$ 368.4	\$ 368.4	\$ 368.4
(b) for days 5 to 9, per day or part of a day;	<b>\$ -</b>	\$ 616.5	\$ 616.5	\$ 616.5
(c) for day 10 and any subsequent day, per day or part of a day.	<b>\$ -</b>	\$ 1,028.7	\$ 1,028.7	\$ 1,028.7
<b>ALTERNATIVE DISPUTE RESOLUTION FEES</b>				
Fee payable per party for each full day spent in alternative dispute resolution.	<b>\$ -</b>	\$ 238.1	\$ 271.9	\$ 305.7
Fee payable per party for each half day spent in alternative dispute resolution.	<b>\$ -</b>	\$ 132.8	\$ 151.6	\$ 170.4

<b>SPECIFIC FEES</b>				
For the issue of a summons or subpoena to witness or produce documents	<b>\$ 12.5</b>	\$ 16.8	\$ 19.2	\$ 21.6
For inspection of a proceeding file by a person who is not party to the proceeding is	<b>\$ 32.6</b>	\$ 91.1	\$ 104.1	\$ 117.1
For inspection of each additional proceeding file at the same time as the first proceeding file by a person who is not party to the proceeding	<b>\$ 4.0</b>	\$ 83.6	\$ 95.5	\$ 107.5
For the provision by the registrar of a copy of a document from a proceedings file	<b>\$ 0.50</b>	\$ 0.60	\$ 0.60	\$ 0.60
For a person who is not party to proceedings to inspect the register	<b>\$ -</b>	\$ 10.2	\$ 11.7	\$ 13.2
For each request for the registrar to search the register and to provide a copy of the results of that search	<b>\$ 0.50</b>	\$ 51.8	\$ 59.2	\$ 66.6
For preparation of a s 145 certificate by the principal registrar	<b>\$ -</b>	\$ 53.9	\$ 61.6	\$ 69.3
For the issue of a warrant under the Act or any enabling enactment	<b>\$ 77.7</b>	\$ 111.5	\$ 126.6	\$ 142.8

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## 1. Background

The proposed regulations would establish fees payable by users of a range of Victorian Civil and Administrative Tribunal (VCAT) services. They are intended to replace the existing Victorian Civil and Administrative Tribunal (Fees)(Interim) Regulations 2012, which are due to sunset on 17 June 2013<sup>2</sup>.

The proposed regulations will have a limited lifespan of three years, rather than the usual 10 years<sup>3</sup>. During this three year period a substantial review of VCAT's financial and administrative systems and procedures will be undertaken, along with a review of the *Victorian Civil and Administrative Tribunal Act 1998* and the other legislative arrangements governing VCAT. This work will seek to ensure that better information is available in relation to the costs incurred at VCAT thus enabling fees to be set on a more informed basis. Both VCAT and the government will also consider broader questions of the appropriate fee structure to be adopted as well as the question of the appropriate level of cost recovery to be achieved in different contexts.

The approach taken to the development of the proposed fees is therefore to seek to address pressing issues in relation to the operation and funding of VCAT while deferring consideration of broader fee changes pending further data collection and analysis.

### 1.1. VCAT as a jurisdiction

#### 1.1.1. Overview

Tribunals provide for the resolution of certain types of disputes in a timely and cost-effective way and operate either within the executive arm of government or on a quasi-judicial basis. VCAT is intended to provide a forum for the resolution of civil disputes and other non-criminal matters that is accessible, efficient and cost effective.

VCAT was established in July 1998 and amalgamated 15 boards and tribunals into a single administrative tribunal, dealing with a wide range of disputes. A significant purpose for the establishment of VCAT was to achieve greater consistency in decision-making across existing administrative boards and tribunals. The amalgamation was also expected to achieve efficiency gains, particularly given that some of the existing tribunals operated on a relatively small scale.

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<sup>2</sup> These interim regulations have the practical effect of further extending the operation of the Victorian Civil and Administrative Tribunal (Fees) Regulations 2001, since they re-establish the regulations without substantive amendment. The 2001 regulations were due to sunset on 17 December 2011, pursuant to the Subordinate Legislation Act 1994, but were extended to 17 December 2012 via the Subordinate Legislation (Victorian Civil and Administrative Tribunal)(Fees) Extension Regulations 2011.

<sup>3</sup> Section 5 of the Subordinate Legislation Act 1994 causes all regulations to sunset on the tenth anniversary of the date on which they come into effect, unless they are repealed as a result of some other regulatory provision. The current regulations have been extended in operation for one additional year, pursuant to Section 5A of the Subordinate Legislation Act 1994.

VCAT deals with disputes about:

- purchase and supply of goods;
- discrimination;
- domestic building works;
- guardianship and administration;
- disability services, health and privacy, mental health;
- legal profession services;
- owners corporations (body corporate);
- residential tenancies; and
- retail tenancies.

VCAT also deals with disputes between people and government (both State and Local) in areas such as:

- land valuation
- licences to carry on businesses (including travel agents, motor car traders and others)
- planning and environment
- State taxation
- other government decisions (such as Transport Accident Commission decisions and freedom of information issues).

VCAT is divided into three divisions: the Civil Division, the Administrative Division and the Human Rights Division. There are 17 "Lists", spread across these divisions. The Lists group particular types of cases together for administrative purposes and to allow the development and application of particular expertise within each List.

The work of VCAT is regulated by the *Victorian Administrative and Tribunal Act 1998* (VCAT Act) with associated rules and regulations and by a series of "enabling enactments" relating to particular areas of law, such as planning (*Planning and Environment Act 1987*) and guardianship (*Guardianship and Administration Act 1986*). The VCAT Act governs the general operation of VCAT and some of the particulars relevant to certain Lists while the scope of VCAT's review jurisdiction is generally determined by the various enabling enactments.

Decisions of VCAT can be appealed to the Supreme Court of Victoria on questions of law.

### **1.1.2. VCAT Lists**

The following provides a brief description of each List. It discusses the types of cases considered, the characteristics of the users and stakeholders in each List, VCAT's approach to hearings in each List and the funding arrangements for the List.

#### **a. Civil Division**

##### ***Civil Claims List***

The Civil Claims List deals with disputes between buyers and sellers of goods and services. It deals with claims based on the contract between a buyer and seller and on consumer legislation, which



has changed significantly over the last few years. Consumers and traders may bring disputes to the Civil Claims List in respect of:

- Items that won't perform
- Services that are not up to scratch
- Repairs or servicing that was late or unsatisfactory
- Not being paid for services supplied
- Misleading or deceptive conduct, false representation and unconscionable conduct<sup>4</sup>.

A total of 8,928 matters were dealt with in this List in 2011-12. Of these, 7,886 involved amounts of less than \$10,000, while 959 involved amounts of between \$10,000 and \$100,000. In only 83 matters was the amount in dispute more than \$100,000.

### ***Owners Corporation List***

The Owners Corporation List deals with disputes under the *Owners Corporations Act 2006*. An owners corporation, formerly called a "body corporate", manages the common property in apartment and unit complexes, such as foyers, carparks, lifts, utilities, gardens, and pathways between units. Owners corporations also have rules relating to occupants' behaviour on common property or affecting common property.

Most disputes heard in this List relate to non-payment of owners corporation fees. Cases are becoming more complex as a result of larger-scale unit developments, including high-rise apartment blocks. Non-fee disputes are routinely referred to mediation unless assessed as unsuitable or if parties choose not to participate. Fee disputes are usually straightforward, so are usually set down for immediate hearing.

A total of 3,084 applications were received in 2011-12, a 22% increase on the previous year. 2,550 of these disputes involved less than \$10,000, while 391 had no monetary value. In 138 cases, the amount in dispute was between \$10,000 and \$100,000, while in only 5 cases was the amount in dispute greater than \$100,000.

### ***Domestic Building List***

VCAT has unlimited jurisdiction to hear and determine domestic building disputes. These disputes range from arguments about the standard of work in small projects, such as bathroom and kitchen renovations, to disputes involving substantially costly high-rise apartment blocks. The List also hears applications for review of decisions by warranty insurers in relation to domestic building contracts. Matters before the List are often technically and legally complex.

Applications are dealt with according to the monetary value of the claim: those involving less than \$20,000 are, as a general rule, listed directly for hearing which, depending on the nature of the claim, may last an hour or a whole day. Applications where the amount claimed is between \$20,000

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<sup>4</sup> <http://www.vcat.vic.gov.au/disputes/civil-disputes>

- \$100,000 are referred directly to mediation. Where the amount claimed exceeds \$100,000 the file is initially reviewed by the Head of List (or a Senior Member) to assess whether the parties should be referred to mediation or to a directions hearing.

There was a 21% increase in applications to this List in 2011-12. Small claims (less than \$10,000) increased by 21% and standard claims (\$10,000 - \$100,000) increased by 41%. The number of complex claims (exceeding \$100,000) decreased slightly. In total, 1,229 applications were made in 2011-12 with 433 involving less than \$10,000, 466 involving between \$10,000 and \$100,000 and 121 involving larger amounts. In 209 cases there was no monetary amount in dispute.

### ***Real Property List***

The Real Property List hears a range of disputes relating to real estate, including: liability for damages caused by the taking, use or flow of water between properties; estate agent commissions; the acquisition or removal of easements; and property co-ownership disputes.

VCAT refers most co-ownership disputes to mediation or compulsory conference as the first step in the proceeding. These processes have proved to be particularly successful in resolving co-ownership disputes. Similarly, claims under the *Water Act 1989* are often referred to mediation or compulsory conference as an early step in the proceeding. In some cases appropriate expertise at mediation or in conferences is necessary or helpful in achieving a resolution. It has been particularly useful to engage building consultant mediators or engineer Members to convene the mediation or compulsory conference in *Water Act* matters, as their expertise can be utilised in exploring possible solutions to arrest the unwanted flow of water.

In technically complex cases, VCAT encourages experts to meet and prepare joint reports before hearing their evidence concurrently. This helps identify areas of agreement and disagreement, narrowing the disputed issues and often leading to settlement.

The Real Property List received only 192 applications during 2011-12.

### ***Residential Tenancies List***

The Residential Tenancies List determines disputes under the *Residential Tenancies Act 1997*. These include disputes between residential landlords and tenants and disputes between rooming house and caravan park owners and residents. The List also hears some applications under the *Disability Act 2006* and the *Supported Residential Services (Private Proprietors) Act 2010*.

There are around 60,000 applications annually to this List, representing the highest proportion of VCAT cases of any of the Lists. Applications typically relate to non-payment of rent, the state of repair or cleanliness of the premises, bond refunds, and the obligations of landlords or owners to provide and maintain premises fit for occupation.

VCAT adopts flexible hearing practices and various informal appropriate dispute resolution (ADR) techniques where it would assist parties to reach a settlement on the hearing day. Feedback has

shown that parties in residential tenancies disputes usually prefer this approach over referral to a separate mediation, as it saves time and money and expedites decision-making about the future of the tenancy.

The major dispute types are applications for possession of the property and unpaid rent (12,421 applications) and applications to retain part or all of the bond paid due to damage or unpaid rent (9,483 applications).

### ***Retail Tenancies List***

The Retail Tenancies List deals with disputes between landlords and tenants of retail premises.

Cases are usually managed through mediation or compulsory conferences, (although the parties may have already participated in mediation through the office of the Small Business Commissioner). These and other methods of ADR are often successful in resolving the disputes, and on terms that may not have been achieved had the matter been determined by a hearing.

There were 328 applications heard in this List in 2011-12, with the amounts in dispute varying widely.

## **b. Administrative Division**

### ***General List***

The General List hears applications for review of government decisions, including Freedom of Information (FOI) decisions and decisions made by the Transport Accident Commission (TAC) and the Victims of Crime Assistance Tribunal.

A substantial majority of applications in this List (813 of 1,145 applications) relate to the TAC. These applications are predominantly resolved by agreement of the parties. Where applicants represented themselves there has been increased use of ADR processes in recent times. VCAT has also increased emphasis on assisting parties to resolve FOI applications using ADR. This is the next most numerous category of application, with 182 applications received in 2011-12.

### ***Land Valuation List***

The Land Valuation List includes applications by landowners seeking to review the valuation or classification of their land for rating or taxation purposes. This List also includes disputed claims arising from the compulsory acquisition of land for public purposes, or damage to land caused by mining, under a number of different Acts.

VCAT refers every matter to a compulsory conference in the first instance, achieving high settlement rates. Parties can request prior directions hearings and often find these useful for obtaining orders for document exchange. The vast majority of valuation applications are settled in compulsory

conferences. Valuer Members assist parties to resolve their disputes through informal discussions based on accepted valuation methodology.

Valuation matters comprise 81% of cases in this List. VCAT received 112 valuation appeals in 2011-12. Land acquisition and mining matters comprised 19% of the list in 2011-12.

### ***Legal Practice List***

The Legal Practice List includes disciplinary charges brought against lawyers by the Legal Services Commissioner and appeals by lawyers against Legal Services Board decisions that affect their professional status. The List also deals with some disputes between lawyers and clients about legal costs or unprofessional services.

A total of 173 applications were made to this List in 2011-12, of which 135 were made under the *Legal Practice Act 2004* and the remainder were made under the *Fair Trading Act 1999*.

### ***Occupational and Business Regulation List***

The Occupational and Business Regulation List includes hearings about the conduct of disciplinary proceedings relating to a number of occupational groups, the review of licensing decisions including those of the Business Licensing Authority, decisions made by registration boards concerning professional registrations, and provisional improvement notices issued by WorkSafe.

VCAT actively encourages the use of compulsory conferences in the List.

A total of 267 applications were made to this List in 2011-12. The main Acts under which these were brought were the *Health Practitioner Regulation National Law (Victoria) Act 2009* (42 applications), the *Liquor Control Reform Act 1998* (27 applications), the *Racing Act 1958* (24 applications) and the *Working with Children Act 2005* (39 applications).

### ***Planning and Environment List***

The Planning and Environment List reviews decisions made about planning and environmental matters, including decisions whether to grant, refuse or amend permits or to impose permit conditions. VCAT may also make orders in this List to stop a development from proceeding and may hear and determine applications for declarations and applications to cancel or amend permits VCAT has previously granted.

Most of VCAT's decisions are made under the *Planning and Environment Act 1987*, but VCAT also has jurisdiction under a range of other Acts such as the *Environment Protection Act 1970* and the *Water Act 1989*.

VCAT's case management committee reviews cases before they are listed to assess the likely issues, the most appropriate form of proceeding, the required Member expertise, the amount of time needed, and whether the case is suitable for hearing in the "Short Cases List" ( a subset of the

Planning and Environment List (see below)). All major cases are initially referred to mediation. Of those that do not settle, the disputed issues are generally greatly narrowed, reducing hearing time and expense.

The Major Cases List recommenced on 3 January 2012 on a user pays basis, following a similar pilot during 2010-11. The Major Cases List is a subset of the Planning and Environment List and is designed to provide a dedicated and expedited service for major development matters that is accessible at the option of a party. The matters eligible to be included in the Major Cases List include proposed dwelling developments with a project cost greater than \$10 million and other developments without residential aspects with a project cost greater than \$5 million. The List operates on a user pays basis and applicants wishing to have their case included in the Major Cases List are required to pay application and hearing fees. Timelines are strictly applied, with the objective of finalising applications within 18 weeks. The Major Cases List has expedited the determination of major development proposals.

To expedite the hearing of shorter, less complex planning matters VCAT also operates a Short Cases List within the Planning and Environment List. This was introduced to handle matters that can be resolved within a 2 hour hearing. In this sub-list, Members are encouraged to provide oral decisions at the conclusion of the hearing.

There were a total of 3,873 applications under the Planning and Environment list, of which 3,832 were brought under the *Planning and Environment Act 1987*. Of the total, 3,260 were standard claims, 516 were heard in the Short Cases List and 97 were heard in the Major Cases List.

### ***Taxation List***

The Taxation List has jurisdiction to carry out merits reviews of the Commissioner of State Revenue's taxation assessments. State levies and taxes are paid under a number of Victorian taxing Acts, for example, the *Land Tax Act 2005*, *Payroll Tax Act 1971* and the *First Homeowner Grant Act 2000*.

Applications for merits reviews are referred from the Commissioner upon an applicant's request. The taxpayer may rely upon any factual or legal ground in his or her notice of objection and, subject to leave, upon further factual or legal grounds. Because disputes have already been through the Commissioner's conciliation processes, ADR is not routinely used but mediation may be used if parties request it or it is appropriate. Most cases are listed for at least one directions hearing to ensure procedural issues are properly addressed. In simple matters, VCAT allows parties to request by consent that directions hearings be vacated and directions given in writing.

A total of 82 applications were made under the list in 2011-12, with 31 being made under the *Land Tax Act 1958* and 30 under the *Taxation Administration Act 1997*. Fourteen applications were made under the *First Homeowner Grant Act 2000*.

### **c. Human Rights Division**

### ***Anti-discrimination List***

The Anti-discrimination List primarily hears cases in which applicants allege they have been unlawfully discriminated against. In April 2010, the Victorian Government passed the *Equal Opportunity Act 2010*, which replaced the *Equal Opportunity Act 1995*. Under the new Act a person can apply directly to VCAT for resolution of their complaint or they can lodge a complaint with the Victorian Equal Opportunity and Human Rights Commission (VEOHRC). Lodging a complaint with VEOHRC does not preclude a party from withdrawing that complaint and instead making an application to VCAT.

The List also includes applications for exemptions from the *Equal Opportunity Act 2010*, for example, if an applicant needs to discriminate between persons to achieve a just outcome overall. Occasionally VCAT will hear applications to strike out frivolous or vexatious complaints and applications for interim orders to prevent parties from acting in a way that would prejudice the outcome of a complaint that is before VCAT.

The list achieves a high settlement rate. Some cases are referred straight to mediation or compulsory conference.

There were 316 applications made in this List in 2011-12. The major types of matter involved were employment (76 applications), impairment (65 applications), victimisation (39 applications) and sex discrimination (23 applications).

### ***Guardianship and Administration List***

The Guardianship and Administration List makes protective orders under the *Guardianship and Administration Act 1986* and other legislation. The most common of these orders are guardianship and administration orders, which involve appointing substitute decision-makers where there is a need to do so and when it is in the best interests of cognitively impaired adults. The List also makes orders about enduring powers of attorney (including those for medical treatment) and enduring powers of guardianship. The List also hears matters under the *Disability Act 2006*, including making orders for the compulsory treatment of intellectually disabled persons who pose a significant risk of seriously harming others.

To facilitate participation by represented persons in hearings, VCAT schedules hearings close to where the person resides if appropriate and where possible. VCAT has conducted hearings at hospitals, nursing homes and community health care centres as well as in court and tribunal complexes across Victoria.

Matters are commonly referred to mediation or compulsory conference at an early stage. Although presiding Members must make final orders, in appropriate cases ADR offers families the best opportunity to resolve their issues amicably. In a significant number of cases parties have withdrawn their applications following ADR without VCAT needing to make final orders.

There were 10,898 applications made in this List in 2011-12. The majority (5,951 applications) were for reassessments of an existing administration order. A total of 1,401 were applications for an administration order to be made and 2,248 were for applications for a guardianship order to be made.

### ***Mental Health List***

The Mental Health List includes appeals against decisions of the Mental Health Review Board, made under the *Mental Health Act 1986*, about applicants' involuntary treatment.

Members are required to make orders about involuntary treatment, therefore it is usually not appropriate to use ADR to resolve applications. However, VCAT supports parties wherever possible to resolve matters in ways that maximise their participation and control, particularly given that many applicants are self-represented and face significant communication barriers. When applications are received, directions are made in chambers to avoid the need for parties to attend VCAT more than once. Applicants can choose to make their submissions prior to or after the other party's submissions are made, they maintain a right of reply throughout and the hearing process is informal.

This is a small list, with only 29 applications being made in 2011-12.

### ***Health and Privacy List***

The Health and Privacy List includes complaints referred to VCAT by the Health Services Commissioner under the *Health Records Act 2001* and by the Privacy Commissioner under the *Information Privacy Act 2000*. The List also includes applications for review of public health orders made by the Chief Medical Officer under the *Public Health and Wellbeing Act 2008*, and appeals against certain decisions of the Patient Review Panel under the *Assisted Reproductive Treatment Act 2008*.

Information privacy and health records referrals comprise the majority of cases. VCAT assesses privacy matters for their suitability for ADR and wherever possible refers them to mediation, where they are commonly settled. When it suits parties, VCAT conducts mediations and hearings in regional areas.

A total of 38 applications were made in 2011-12.

### **1.1.3. VCAT funding mechanisms**

VCAT receives funding from a number of sources. The various Lists are funded primarily from either government appropriations or from various specific-purpose trust funds. User fees are charged in respect of applications to most Lists, although most applications in the Human Rights Division are free.

Where fees are charged in respect of applications to appropriations funded Lists, the revenue received is retained by VCAT and contributes to the funding of its activities. However, revenue

received in respect of trust funded Lists is remitted to the trust funds in question, thus partially offsetting the funding that comes to VCAT from those trusts.

Trust funds are normally made up of levies paid by people undertaking activities that may give rise to a dispute that will be resolved within VCAT, or the interest arising from those levies. For example, the Domestic Building List is funded by a levy on the issue of building permits, which is collected by the Victorian Building Commission and directed to a trust fund. The Retail Tenancies List is funded by the interest on the bonds paid by residential tenants and held in trust during their tenancy.

Table 1.1, below, sets out the funding sources for each of the lists discussed above.

**Table 1.1: Summary of VCAT structure and funding sources**

Division	Lists	Funding source
<b>Civil</b>	Civil Claims	Appropriation
	Owners Corporations	Trust
	Domestic Building	Trust
	Real Property	Appropriation
	Residential Tenancies	Trust
	Retail Tenancies	Trust
	Credit <sup>5</sup>	Appropriation
<b>Administrative</b>	General	Appropriation
	Land Valuation	Appropriation
	Legal Practice	Trust
	Occupational and Business Regulation	Appropriation
	Planning and Environment	Appropriation
	Taxation	Appropriation
	<b>Human Rights</b>	Anti-discrimination
	Guardianship	Appropriation/Annual Fee <sup>6</sup>
	Mental Health	Appropriation
	Health and Privacy	Appropriation

## 1.2. The existing regulations

As a general rule, all courts and tribunals charge a range of user fees in their civil jurisdictions. This reflects the fact that both public and private benefits arise from the role of courts and tribunals in resolving civil disputes. Public benefits include, most obviously, the availability of a fair and impartial mechanism for dispute resolution, which is fundamental to a well-functioning society and to enforcing property rights necessary for trade. Further, the rules of precedent mean that trials of

<sup>5</sup> On 1 July 2010, the *Credit (Commonwealth Powers) Act 2010* (Cth) came into effect and repealed the *Consumer Credit (Victoria) Act 1995* (Vic), transferring jurisdiction over consumer credit matter from VCAT to the courts.

<sup>6</sup> The Guardianship List is partially funded by fees obtained under specific regulations providing for an annual administration fee payable to VCAT out of the estate of persons who have an administrator – see the *Guardianship and Administration (Fees) (Further Amendment) Regulations 2012*.



private matters lead to the development of generally applicable rules of conduct and an understanding of how they are to be applied to a range of different circumstances. This is an important source of public benefit in the context of the work of the superior courts.

The private benefits associated with the resolution of disputes in civil courts and tribunals relate to the ability to enforce private claims and obtain restitution for losses incurred due to the fault of others. Key benefits of a court or tribunal decision in this regard are that it is authoritative and the basis for the decision is transparent by virtue of courts being required to provide reasons for their decisions.

The Victorian Civil and Administrative Tribunal (Fees)(Interim) Regulations 2012 set a varying range of fees. No fee is charged for some matters, particularly matters that are heard in the Human Rights Division. This reflects the high premium placed on accessibility in relation to these matters. In other cases, fees are charged but they are generally not currently set at levels that are expected to defray more than a small proportion of the costs incurred by VCAT in dealing with the relevant disputes. The only current exception is the Planning and Environment Major Cases List.

The great majority of fee revenue is obtained via commencement fees, which are payable at the time that an application for a matter to be listed is made to VCAT. In addition, hearing fees are payable in a small proportion of cases while a small number of additional fees are payable in respect of various administrative activities that VCAT may undertake on request.

The commencement fee payable will be one of the following:

- A fee of 3.1 fee units (currently \$38.80). This is the "community fee", payable by individuals in a wide range of matters, including many residential tenancies matters, motor car trader-related disputes and disputes involving less than \$10,000 brought under fair trading or domestic building contracts legislation;
- A fee of 12.9 fee units (currently \$161.60). This fee is payable in respect of disputes under the *Local Government Act 1989*, the *Valuation of Land Act 1960*, and in respect of many disputes under consumer credit laws;
- A fee of 17.5 fee units (currently \$219.30) is payable for a wide range of *Freedom of Information Act 1982* applications;
- A fee of 25.7 fee units (currently \$322.00) is regarded as the "standard" fee, payable in a very wide range of circumstances;
- A fee of 51.5 fee units (currently \$645.30) is payable in respect of disputes over more than \$100,000 in relation to fair trading, domestic building contracts or retail tenancies matters;
- A fee of 103 fee units (currently \$1,290.60) is payable in respect of disputes under the *Planning and Environment Act 1987* involving more than \$5 million.

Table 1.2 summarises the fees payable by List. Historically, decisions about the appropriate fees to be charged in each List have not been made on the basis of a full analysis of the costs incurred in disposing of matters. Rather, they are based on VCAT's own assessments about the likely complexity and resource use of typical matters brought under the relevant enabling enactment.

**Table 1.2: Summary of Existing VCAT Fees by List**

List	Fee	Comments
General	25.7 fee units	Payable for the vast majority of applications in this List. Zero fee payable for some <i>Public Health and Wellbeing Act 2008</i> , <i>Disability Act 2006</i> and <i>Freedom of Information Act 1982</i> applications.
Land Valuation	25.7 fee units	Payable for the majority of applications. Fee of 12.9 fee units payable in respect of some rating and <i>Land Valuation Act</i> matters.
Occupational and Business Registration	25.7 fee units	Payable in respect of almost all applications under this List.
Planning and Environment	25.7 fee units	Payable in respect of almost all applications in this List. Fee of 51.5 fee units payable in respect of \$5 million + disputes, \$3,000 payable in respect of Major Cases List. Fee of 3.1 fee units payable in respect of some environment protection, planning and environment and owners corporation matters.
Taxation	25.7 fee units	Payable in respect of all matters in this List.
Civil Claims	3.1 - 51.5 fee units	A wide range of fees payable in this List. For <i>Australian Consumer Law and Fair Trading Act 2012</i> applications, a 3 part fee structure depending on amount in dispute.
Credit	3.1 - 103 fee units	As above, but the fee of 103 fee units is payable by credit providers in some circumstances where more than 3,000 contracts are affected by the application.
Domestic Building	3.1 - 51.5 fee units	A wide range of fees payable in this List. For <i>Australian Consumer Law and Fair Trading Act 2012</i> applications, a 3 part fee structure depending on amount in dispute.
Legal Practice	0 or 25.7 fee units	
Owners' Corporation	3.1 - 51.5 fee units	Considerable variation in fees chargeable. Three part <i>Australian Consumer Law and Fair Trading Act 2012</i> fee structure, as described above.
Real Property	3.1 - 51.5 fee units	Most fees in this List are set at either 3.1 or 25.7 fee units.
Residential Tenancies	0 - 51.5 fee units	Community fee payable for most matters in this List.
Retail Tenancies	0 - 51.5 fee units	<i>Retail Leases Act 2003</i> fee of 25.7 fee units. Other matters in this List are <i>Australian Consumer Law and Fair Trading Act 2012</i> matters, which are subject to 3 part fee structure noted above.
Anti-discrimination	0	No fees payable in this list.
Guardianship	0	No fees payable in this list.
Health and Privacy	0 - 25.7 fee units	No fees payable in this list, except for applications under <i>Assisted Reproductive Technology Act 2008</i> .
Mental Health	0 - 25.7 fee units	Fee of 25.7 fee units payable for applications to review decision of Secretary, zero fee for review of decisions of Mental Health Review Board.

As noted above, there is a three part fee structure in respect of matters brought under the *Australian Consumer Law and Fair Trading Act*. This is as follows:

- 3.1 fee units are payable in respect of disputes involving less than \$10,000;
- 25.7 fee units are payable in respect of disputes involving \$10,000 - \$100,000; and
- 51.5 fee units are payable in respect of disputes involving more than \$100,000.

These disputes are heard under a range of Lists, depending on the nature of the transactions that have given rise to them.

### **Hearing fees**

Hearing fees are only payable in respect of retail tenancies and domestic building contracts disputes. A daily fee of 10.3 fee units (\$129.10) is payable for the first five days, a daily fee of 20.6 fee units (\$258.10) on days 6 to 9 and a daily fee of 25.7 fee units (\$322.00) thereafter.

### **Other fees**

Other fees payable in relation to VCAT applications are fees for administrative functions:

- For lodgement of a bill of costs for assessment by the registrar: 12.9 fee units;
- For the issue of a summons to a witness: 1 fee unit;
- For inspection of a file by a person not party to the proceedings: 2.6 fee units;
- For the inspection of additional files at the same time: \$4.00;
- For provision by the registrar of a copy of the register or a document: 50c per page;
- For the issue of a warrant of possession under of the *Residential Tenancies Act 1997*: \$77.70.

## **2. Objective of proposed regulations**

The objective of the proposed regulations is to ensure that users of VCAT make an appropriate contribution to the costs incurred in adjudicating their matters. An appropriate contribution is one which:

- Recognises that the work of the courts and tribunals yields a mix of private and public benefits;
- Ensures that user contributions reflect this mix; and
- Ensures that user fees do not prevent access to justice for users.

### 3. Nature and extent of the problem

#### 3.1 Overview

As noted above, the objective of the proposed regulations is to ensure users of VCAT make an appropriate contribution to the costs incurred in adjudicating their matters.

In determining the appropriate contribution, a balance must be found between user contributions and public or taxpayer-funded contributions to the cost of VCAT activities. This requires weighing the objective of ensuring that individuals contribute to the cost of dispute resolution against the need to ensure that the costs of VCAT do not rise to levels that effectively restrict access to it by people who have relevant disputes that require resolution. The degree of price sensitivity of VCAT users can be expected to vary significantly according to the nature of the dispute in question.

#### 3.2. VCAT Expenditure

In 2011-12, VCAT's total recurrent expenditure was \$39.40 million, an increase of 4.0% on the \$37.90 million expenditure incurred in 2010-11. Table 3.1 below provides a breakdown of this total expenditure into broad cost categories.

**Table 3.1: Major VCAT recurrent expenditure items - 2011/12 and 2010/11**

<b>Expenditure</b>	<b>2011/12</b>	<b>2010/11</b>
Administrative staff salaries	\$11.01m	\$10.29m
Member salaries	\$14.56m	\$13.19m
Salary-related on-costs	\$4.73m	\$4.48m
Operating costs	\$9.10m	\$9.94m
<b>Total</b>	<b>\$39.40m</b>	<b>\$37.90m</b>

Source: VCAT Annual Report 2011-12, p 59.

Table 3.2 below summarises VCAT expenditure by List.

**Table 3.2: VCAT expenditure by List (\$m) - 2011/12 and 2010/11**

<b>List</b>	<b>2011-12</b>	<b>% of total</b>	<b>2010-11</b>
<b>Appropriations funded</b>			
General/OBR/Taxation	2.27	5.8%	2.72
Land Valuation	0.35	0.9%	0.51
Planning & Environment	8.84	22.4%	8.49
Major Cases <sup>7</sup>	0.60	1.5%	0.99

<sup>7</sup> A sub-list of the Planning and Environment List.

Real Property	0.16	0.4%	0.14
Retail Tenancies	0.44	1.1%	0.41
Civil Claims	3.00	7.6%	2.78
Guardianship <sup>8</sup>	5.42	13.8%	5.23
Anti-Discrimination	0.82	2.1%	0.55
Credit <sup>9</sup>	NA	0%	0.29
<b>Funded from external sources</b>			
Residential Tenancies	12.13	30.8%	10.27
Domestic Building	2.69	6.8%	2.76
Legal Practice	1.42	3.6%	1.38
Owners' Corporations	1.00	2.5%	1.22
Health Professions <sup>10</sup>	0.26	0.7%	0.36
<b>TOTAL</b>	<b>39.40</b>	<b>100.0%</b>	<b>37.90</b>

Source: VCAT Annual Report 2010-11, p 59.

Table 3.2 identifies the three most costly Lists in 2011/12: the Residential Tenancies List, which accounts for 30.8% of total VCAT expenditure, the Planning and Environment List (22.4%) and the Guardianship List (13.8%). These three Lists collectively account for 67% or just over two thirds of VCAT expenditure.

### 3.3. VCAT funding sources

As Table 3.2 suggests, the various lists are funded through several different sources. Table 3.3 below sets out VCAT's funding sources.

**Table 3.3: VCAT funding sources - 2011/12 and 2010/11**

Source	2011/12	% of total	2010/11
<b>Commencement fees</b>	<b>2.96<sup>11</sup></b>	<b>7.5%</b>	<b>2.30</b>
Appropriations	17.10	43.4%	18.42
Residential Tenancies Fund	12.13	30.8%	10.27
Domestic Building Fund	2.69	6.8%	2.56
Guardianship and Administration Trust Fund	1.50	3.8%	1.40
Retail Tenancies Fund	0.35	0.9%	0.35
Victorian Property Fund	1.00	2.5%	1.22

<sup>8</sup>Funded from a combination of appropriations and trust funds. Trust funding accounted for \$1.5 million of the total in 2011-12.

<sup>9</sup>On 1 July 2010, the *Credit (Commonwealth Powers) Act 2010 (Cth)* came into effect and repealed the *Consumer Credit (Victoria) Act 1995*, transferring jurisdiction over consumer credit matters from VCAT to the courts. VCAT has continued to hear and finalise matters brought under the repealed Act. However, this list will cease to exist in the short term.

<sup>10</sup>A sub-list of the General/OBR/Taxation List.

<sup>11</sup>Total of fees received in respect of appropriations-funded lists, including the Major Cases List, which are retained by VCAT. Commencement fee revenue in respect of trust funded lists is excluded here to avoid double-counting.

Health Boards	0.26	0.7%	-
<b>Total</b>	<b>39.40</b>	100.0%	<b>37.90</b>

Source: VCAT Annual Report 2011-12, pp 58- 59, VCAT Annual Report 2010-11, p 58.

Table 3.3 shows that the direct government funding through appropriations accounted for 43.4% of VCAT revenue in 2011-12, with indirect government funding through the Retail Tenancies Fund accounting for a further 0.9%. Commencement fee revenue accounts for 7.5% of total revenue. In addition, the \$1.5 million revenue from the Guardianship and Administration Trust Fund (3.8% of total VCAT revenue) is derived from annual fees charged to persons whose estates are managed by the Guardianship and Administration Board. The remaining 45.4% of VCAT revenue is derived from the various trust funds identified in Table 3.3.

Table 3.4 below provides comparative data for the level of government appropriations used to fund VCAT and the three major court jurisdictions.

**Table 3.4: Government appropriations as a percentage of court and tribunal expenditures<sup>12</sup>**

Supreme Court	County Court	Magistrates Court	VCAT
76.0%	68.0%	69.8%	43.4%

Sources: Productivity Commission (2012). *Report on Government Services*, p 7.26., VCAT (2012) *Annual Report*, p 59.

A notable feature of the above table is that the proportionate level of government funding is highest for the Supreme Court and lowest for VCAT as a quasi-judicial tribunal. The gap between the level of government funding for VCAT and that for the County Court (that with the next lowest proportion of government funding) is also substantial.

However, as noted above, while direct government funding contributions are low in percentage terms, so too are direct user fees. This reflects the use of specific funds sources, established under other, specific legislation to fund particular Lists, either wholly or in part. As shown in Table 3.3, the Residential Tenancies List, Domestic Builders List, Legal Practice List and Owners Corporations (Victorian Property Fund) jurisdiction are all wholly funded from these specific sources, while the Guardianship and Administration List is partly funded from such a specific source. Funding from these specific sources for these five Lists totalled \$17.67 million in 2011-12, or 45.4% of total VCAT expenditure.

Conceptually, these funds are largely derived from either direct user levies or from interest accrued on user funds held in trust: for example, the Residential Tenancies Fund comprises interest earned on bond monies held by the Residential Tenancies Bond Authority on behalf of Victorian private-sector tenants. Conceptually, therefore, participants in specific markets (e.g. the residential tenancies market, the domestic building market) are, due to the operation of specific legislation, self-funding mechanisms for resolving disputes arising in those markets. In some cases, these costs

<sup>12</sup> Data for 2009-10. Courts data relate to civil matters only and are taken from RoGS 2011, p 7-25. VCAT data are from the VCAT 2009/10 Annual Report, p 5. Note that the latter document reports \$19.65 million in government appropriations but states that \$1.88 million of this total constitutes fee revenue.

are wholly borne by consumers (e.g. residential tenancies) while, in others, both consumers and producers effectively contribute (e.g. domestic building).

The conceptual merits of such arrangements are beyond the scope of the current RIS, as they are established under separate legislative heads of power. Moreover, because these arrangements relate to the funding of specific VCAT lists, they arguably have little or no impact on the remaining VCAT lists.

Table 3.5 below compares cost recovery levels at VCAT and in the three Victorian court jurisdictions. It shows that the overall level of cost recovery achieved at VCAT is substantially below that achieved in the court system. Indeed, it is currently less than half the cost recovery level being achieved in the Magistrates' and County Courts and significantly less than half the level achieved in the Supreme Court. Moreover, new court fees regulations made during 2012 in all of these court jurisdictions will further increase cost recovery levels across the courts and widen the gap between cost recovery levels in the courts and in VCAT. Pursuant to government policy, cost recovery targets of 50% have been adopted in the Magistrates' and County Courts and a 40% cost recovery target has been adopted in the Supreme Court.<sup>13</sup>

**Table 3.5: Cost recovery in Victorian courts and tribunals<sup>14</sup>**

Supreme Court	County Court	Magistrates	VCAT <sup>15</sup>
35.7% <sup>16</sup>	32.0%	30.2%	14.0%

**Sources:** Productivity Commission (2012). *Report on Government Services*, p 7.26., VCAT (2012) *Annual Report*, pp 58-9. Note that the courts data relates to 2010-11, while the VCAT data relates to 2011-12.

While the overall level of cost recovery achieved within VCAT is low, there is significant variation in levels of cost recovery between Lists. Table 3.6 compares commencement fee revenue and expenditure for each List. The Lists are divided into two groups, those funded through appropriations and those funded via trust funds.

**Table 3.6: VCAT Cost Recovery Levels by List - 2011/12**

List	Expenditure	Lodgement fee revenue	Cost recovery
<b>APPROPRIATIONS FUNDED LISTS</b>			
<b>Civil Division</b>	<b>\$3,092,427</b>	<b>\$641,889</b>	<b>20.8%</b>
Civil Claims List	\$2,900,294	\$619,639	<b>21.4%</b>
Real Property List	\$192,133	\$22,250	<b>11.6%</b>
<b>Administrative Division</b>	<b>\$12,026,872</b>	<b>\$1,593,568</b>	<b>13.3%</b>
General/OBR	\$2,580,712	\$278,201	<b>10.8%</b>

<sup>13</sup> This target cost recovery level includes the Probate Office.

<sup>14</sup> Data for the courts relate to civil matters only and are taken from RoGS 2011, p 7-25. VCAT data are from the VCAT 2010-11 Annual Report, as noted above.

<sup>15</sup> Appropriations funded lists only.

<sup>16</sup> Includes Probate Office revenue and expenditures.

List/Taxation List			
Land Valuation List	\$288,808	\$22,829	7.9%
Planning & Environment List	\$8,561,061	\$1,292,538	15.1%
<b>Human Rights Division</b>	<b>\$881,843</b>	<b>\$0</b>	<b>0.0%</b>
Anti Discrimination/ Health and Privacy/ Mental Health Lists	\$881,843	\$0	0.0%
<b>TOTAL APPROPRIATIONS FUNDED</b>	<b>\$15,404,851</b>	<b>\$2,235,457</b>	<b>14.5%</b>
<b>Major Cases List<sup>17</sup></b>	<b>\$596,291</b>	<b>\$596,291</b>	<b>100%</b>
<b>TRUST FUNDED LISTS</b>			
<b>Civil Division</b>	<b>\$16,409,910</b>	<b>\$2,429,137</b>	<b>14.8%</b>
Domestic Building List	\$2,688,480	\$334,793	12.5%
Owners Corporations List	\$999,650	\$110,687	11.1%
Retail Tenancies List	\$586,821	\$129,666	22.1%
Residential Tenancies List	\$12,134,959	\$1,853,991	15.3%
<b>Administrative Division</b>	<b>\$1,421,357</b>	<b>\$ 0</b>	<b>0.0%</b>
Legal Practice List	\$1,421,357	\$0	0.0%
<b>TOTAL TRUST FUNDED</b>	<b>\$17,831,267</b>	<b>\$2,429,137</b>	<b>13.6%</b>
<b>Human Rights Division</b>	<b>\$5,462,818</b>		
Guardianship List	\$5,462,818	\$1,136,389	20.8%
<b>TOTAL</b>	<b>\$39,295,227</b>	<b>\$5,800,983</b>	<b>14.8%</b>
<b>Adjusted Total</b>	<b>\$39,295,227</b>	<b>\$4,664,594</b>	<b>11.9%</b>

Source: VCAT

Table 3.6 shows that cost recovery levels in individual lists range from zero in the Anti-Discrimination, Health and Privacy and Mental Health Lists of the Human Rights Division to maximums of 22.1% in the Retail Tenancies List (funded by a trust) and 21.4% in the Civil Claims List (funded by government appropriation). Overall cost recovery levels are similar for the appropriations funded lists (14.0%) and the trust funded lists (13.6%).

Cost recovery in the Guardianship List is shown as 20.8%. However, the \$1.1 million in fee revenue shown against this list is not derived from the VCAT fees regulations. Rather, it is derived from annual fees charged to persons represented by the Guardianship and Administration Board under the Guardianship and Administration (Fees) Regulations 2008. Consequently, two figures are shown

<sup>17</sup> Note: the Major Cases List is formally a sub-list of the Planning and Environment List and therefore is part of the group of "appropriations funded lists". However, it has been listed separately here, as it is administered on a "full cost recovery" basis, so that there is, in practice, no funding of this sub-list from appropriations. Moreover, excluding the MCL enables a more accurate view of the global cost recovery being achieved within the Appropriations funded lists to be provided.



in respect of total cost recovery. The figure of 14.8% represents cost recovery including the fees charged under the guardianship regulations. However, the "adjusted total" shows the total lodgement fee revenue collected under the current VCAT fees regulations (\$4.7 million in 2011-12) and the percentage cost recovery this represents (11.9% in 2011-12).

### **3.4. Implications of changes in fee levels**

Table 3.6 draws a distinction between appropriations funded Lists and Trust-funded lists. This reflects the fact that the treatment of fee revenue received by VCAT differs significantly between these two types of List. As discussed above, fee revenue relating to appropriations funded Lists is retained by VCAT, while that relating to trust funded Lists is forwarded to those trust funds and is reinvested back into those funds.

This distinction is an important one from the perspective of the taxpayer. Changes in the amount of fee revenue obtained in respect of trust funded Lists have no effect on the appropriation from the budget required to fund VCAT's operations. The reverse is true for appropriations funded Lists. This implies that consideration of cost recovery issues in respect of VCAT fees should be conducted primarily with reference to the appropriations funded Lists.

It should be noted that, although fee revenue obtained in Trust-funded lists has no effect on the appropriation from taxpayer funds required to fund VCAT's operations, all the options canvassed for VCAT's fees at this time include raising fees in Trust-funded lists in like manner to those in appropriation funded lists. There are a number of specific reasons for this:

- Under each of the relevant statutory schemes, the number of contributors to the Trusts is far greater than the number of Trust-funded litigants before VCAT. As a result, it is reasonable that those litigants making use of VCAT's services contribute further to the private benefit they receive by the resolution of their dispute (notwithstanding that they may have made a prior contribution to the Trust fund). In this sense, the funding provided by Trusts is broadly comparable to appropriation funding – in that, VCAT users are a subset of Trust contributors, and their fees act as cost recovery for the relevant Trust
- As a matter of equity between VCAT users, it is considered reasonable that users pay the same amount for the same service through VCAT's processes, irrespective of a prior contribution to a Trust scheme. This conclusion is based on a fundamental assumption that the prior contribution to the Trust scheme is sufficiently minimal that it is still reasonable to expect a further fee to be charged (comparable to the fact that the vast majority of litigants in appropriation-funded lists are taxpayers, indirectly contributing to the appropriation funding of VCAT)
- VCAT believes it is necessary to charge equivalent fees in Trust-funded lists and appropriation-funded lists, in order to maintain the flexibility to ascribe statutory jurisdictions to either appropriation or Trust-funded lists, or both (particularly as the regulations set fees by enabling enactment, not by list). For example, certain matters under the *Australian Consumer Law and Fair Trading Act 2012* can be listed by VCAT either in an appropriation funded list or a Trust-funded list, depending on the subject matter of the

dispute. Different fees applying to Trust-funded lists would create the ability for “forum-shopping” within VCAT that would reduce equity among VCAT users.

These factors are largely based on qualitative judgements about the nature of claims in Trust-funded lists, and generalisations about the nature of the schemes providing Trust funding. Specific feedback is sought from stakeholders as to whether the judgements are considered appropriate, and particularly:

- Is it reasonable that fees in Trust-funded lists are increased in the same manner as those in appropriation-funded lists (despite the cost recovery levels in appropriation-funded lists determining the fee levels)?
- Is it reasonable that VCAT litigants in Trust-funded lists contribute to the recovery of costs to the Trusts, even where they may have made a prior contribution to the Trust?
- Is it correct to assume that only a minimal number of Trust contributors use the services of VCAT, and therefore that it is reasonable that they contribute “again” to the cost of the resolution of their disputes?

### 3.5. Historical cost recovery levels in the Victorian justice system

The policy objective of the proposed regulations (achieving an appropriate user contribution to the costs of civil disputes) is based on a recommendation of the 1984 Civil Justice Committee report<sup>18</sup>. In relation to civil courts, this policy has been in place for almost three decades. Despite this, only limited data on historical levels of cost recovery in the Victorian justice system are available.

The main source of data on this issue that has been identified is contained in the set of RIS published prior to the adoption of the 2001 court fees regulations.<sup>19</sup> These RIS, published in 2001, reported both the proportion of court costs covered by user fees at that time (i.e. under the previous regulations in force prior to 2001) and the expected contribution to court costs that would be achieved immediately following the adoption of the current regulations. These percentages are reproduced in Table 3.7 below. Table 3.7 also shows the proportionate contribution to court costs made by user charges in the 2010-11 financial year. In all cases, the comparisons cited relate to the civil jurisdiction of each court.

**Table 3.7: Historical cost recovery in the Victorian Courts (civil divisions)**

Court	2001 (actual)	Post-2001 (estimated)	2010/11 (actual)	2012/13 (estimated)

<sup>18</sup> Victorian Law Foundation/Law Department of Victoria (1984). *Report To The Honourable The Attorney-General Concerning The Administration Of Civil Justice In Victoria.*

<sup>19</sup> These are the Supreme Court (Fees) Regulations 2001, the County Court (Court Fees) Order 2001 and the Magistrates' Court (Fees, Costs and Charges) Regulations 2001. The Supreme and County court regulations will remain in effect until December 2012, while interim regulations have been adopted in respect of the Magistrates Court regulations.

<b>Magistrates'</b>	44.9%	40.8%	30.2%	50%
<b>County</b>	41.2%	48.5%	32.0%	50%
<b>Supreme</b>	38.0%	43.4%	35.7%	40%

**Sources:** Various RIS, Productivity Commission *Report on Government Services*, courts administration data.

Table 3.7 shows that the percentage of cost recovery attained in the civil jurisdictions immediately prior to the 2001 regulations coming into effect ranged from 38.0% to 44.9%. The expected level of cost recovery upon the adoption of the 2001 regulations was slightly higher overall, ranging between 40.8% and 48.5%. Following proclamation of the new regulations cost recovery levels were expected to modestly increase in the County and Supreme Courts, but modestly decline in the Magistrates' Court.

Table 3.7 also shows that the level of cost recovery achieved in all jurisdictions declined substantially after the adoption of the 2001 regulations. Recognising the need to address this long-term decline in cost recovery, the new fees regulations adopted in each jurisdiction during 2012 is expected to increase cost recovery to levels slightly higher than those obtained in 2001.

Table 3.8 below provides data on the extent of cost recovery within VCAT since 2003-04. It relates exclusively to the appropriations funded Lists and measures application fee revenue as a percentage of appropriations expenditure.<sup>20</sup> It should be noted that the appropriations data included in Table 3.8 excludes appropriations allocated to the Guardianship and Human Rights Lists. This reflects the fact that no commencement fees are charged in respect of these lists. Hence, the issue of cost recovery in these Lists is not relevant to the discussion of the future of the VCAT fees regulations.

**Table 3.8: Cost recovery at VCAT - appropriations funded lists**

<b>Year</b>	<b>Appropriations (\$m)</b>	<b>Application fees (\$m)</b>	<b>% cost recovery</b>
2003-04	11.7	1.4	11.5%
2004-05	12.0	1.4	11.6%
2005-06	12.5	1.4	11.2%
2006-07	12.9	1.5	11.9%
2007-08	13.9	1.8	12.9%
2008-09	14.1	1.9	13.6%
2009-10	15.0	1.9	12.6%
2010-11	16.3	2.3	14.1%
2011-12	16.0	2.2	14.0%

**Source:** VCAT Annual Reports.

Table 3.8 shows that, in contrast to the position in relation to the courts, there has been no decline in cost recovery at VCAT in recent years in percentage terms. Rather, overall cost recovery appears to have been characterised by a gradual rising trend. Thus, while cost recovery in 2003-04 was

<sup>20</sup> While a small number of additional fees exist, and hearing fees are payable in a few circumstances, VCAT fee revenue is almost entirely obtained from application fees. Thus, the structure of VCAT fees can, broadly speaking, be characterised as a block fee structure.

11.5%, in the most recent two years it was 14.1% and 14.0% respectively - the highest levels yet attained. This increase in cost recovery has been achieved despite a 62% increase in the average cost per case finalised between 2003-04 and 2011-12, from \$270.98 to \$439.33.<sup>21</sup>

### 3.6. Increase in complexity of matters at VCAT

There have been an increasing number of complex cases determined at VCAT since the commencement of the VCAT fee regulations in 2001. This arises from a range of factors, including:

- more complaints in Lists where VCAT holds exclusive jurisdiction (such as the Domestic Building List or cases commenced under the *Australian Consumer Law and Fair Trading Act 2012*);
- more use of legal representation;
- specialisation in VCAT litigation within the legal profession;
- increasing reliance by parties on expert evidence and expert witnesses;
- greater complexity in Planning and Environment List proceedings;
- rising costs of development; and
- complexity in areas such as disciplinary proceedings for health professionals and legal practitioners.

It is important to note that the government, VCAT and the Department of Justice do not have specific statistical evidence to support the assumptions that these factors influence the complexity of cases at VCAT. Neither is there specific data to support the conclusion that matters at VCAT are growing ever more complex. However, it is the experience of VCAT's officers and decision-makers that the complexity of cases is increasing, for the reasons set out above. Stakeholders are specifically asked to provide feedback as to whether they consider the complexity of disputes before VCAT is increasing, and whether they believe the above factors to be relevant causes of increased complexity.

This increase in complexity is reflected in increases in the average cost per case finalised at VCAT. Between 2002-03 and 2011-12, the average cost per case finalised at VCAT increased by 71.6%, from \$255.96 to \$439.33. Over the same period, the CPI increased by only 26.1%<sup>22</sup>. This means that the real cost per case finalised has increased by more than one third (36.1%) over the period.

The increased complexity is also reflected in increased fee revenue at VCAT. Table 3.8 above shows that lodgement fee revenues in the appropriations-funded Lists of VCAT rose from \$1.4 million in 2003-04 to \$2.2 million in 2011-12, an increase of 57.1% in nominal terms, or around 24.6% in real terms. Given that VCAT fees have remained largely unchanged over the period, this indicates that a higher proportion of cases are being brought .

The greater average complexity of matters dealt with by VCAT are reflected in the generally declining timeliness performance exhibited by VCAT in recent years. Table 3.9, below, compares

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<sup>21</sup> Source: VCAT Annual Reports (various).

<sup>22</sup> CPI All Groups, Melbourne, June 2012 vs June 2003. (177.7/140.9).

timeliness performance for 2006-07 with that for 2011-12<sup>23</sup>. It compares both the median number of weeks taken to resolve a matter once lodged and the 80th percentile - that is, the number of weeks within which 80% of matters commenced are resolved. Table 3.9 provides separate data for each of the VCAT Lists.

**Table 3.9: VCAT Timeliness Performance – 2006/07 and 2011/12 (by List)**

	Median		80th percentile		Increase	
	2006/07	2011/12	2006/07	2011/12	Median	80th %
<b>Civil Claims</b>	8	14	13	24	75.0%	84.6%
<b>Residential Tenancies</b>	2	3	2	3	50.0%	50.0%
<b>Domestic Building</b>	14	16	35	35	14.3%	0.0%
<b>Legal Practice</b>	12	17	33	46	41.7%	39.4%
<b>Retail Tenancies</b>	6	12	21	32	100.0%	52.4%
<b>Real Property</b>	14	21	31	36	50.0%	16.1%
<b>Planning &amp; Environment</b>	16	22	24	34	37.5%	41.7%
<b>Land Valuation</b>	108	25	129	48	-76.9%	-62.8%
<b>General</b>	24	34	46	73	41.7%	58.7%
<b>Occup. &amp; Bus. Reg.</b>	19	19	30	41	0.0%	36.7%
<b>Taxation</b>	20	36	33	79	80.0%	139.4%
<b>Guardianship</b>	5	5	20	13	0.0%	-35.0%
<b>Anti-Discrimination</b>	12	14	41	39	16.7%	-4.9%

Source: VCAT Annual Reports (various)

Table 3.9 shows that the median time taken to resolve matters increased in 10 of the 13 Lists over the period since 2006-07. The increases ranged from 14.3% in the Domestic Building List to 100% in the Retail Tenancies List. The 80th percentile resolution time increased in nine of 13 Lists, with the increases ranging from 16.1% in the Real Property List to 139.4% in the Taxation List. Substantial increases in average time to resolution were recorded in the two Lists with the largest throughput of cases: the median resolution time rose 75% in the Civil Claims List and 37.5% in the Planning and Environment List, while the 80th percentile resolution times increased by more than this amount in both cases.

### 3.6.1. Example of response to increasing complexity of cases – Major Cases

Increasing delays and costs at VCAT are burdening individual complainants whose determinations are delayed as well as the taxpayer and those levied for the purposes of trusts, who are assisting in funding these disputes. An example of a successful response to these difficulties is the Major Cases List.

<sup>23</sup> VCAT commenced publishing timeliness data in its current form, in which the median and 80th percentile figures are provided, in 2006-07. Hence, this represents the earliest, comparable data available.

The Major Cases List recommenced on 3 January 2012 on a user pays basis, following the completion of a government-funded trial of the List in 2010-11. Hearings for matters in the List are expedited where a user chooses to pay the full cost recovery hearing fee to enter the List.

Entry into the List is available where the planning proposal in dispute is worth more than \$5 million in the case of commercial developments or more than \$10 million in the case of residential developments. The fees have been set at full cost recovery levels to ensure that other cases in the Planning and Environment List are not disadvantaged by a diversion of scarce resources to major cases.

The Major Cases List is an example of the benefits arising from distinguishing between different categories of cases in terms of their nature and complexity.

### **3.6.2 Proposal for further responding to complexity of cases**

The proposed regulations adopt a further response in relation to “complex cases”, applying a higher level of hearing fees to cases that are designated as complex. Cases are determined to be complex if they require determination by more than one VCAT member and are to be heard over more than one day.

This type of change in the fee structure should not impede VCAT’s role as a venue for informal, inexpensive and efficient determination of disputes. It is intended that the complex cases hearing fee will target cases that are commercial in nature and waiver provisions will continue to apply to cases that should be excepted from the general fee arrangements.

#### **Cost recovery target**

The implications of the above are twofold. First, given the changes in VCAT's jurisdiction in recent years and the current moves to increase cost recovery levels in the Victorian civil courts, consistent policy approaches suggest that there is a need to increase the levels of cost recovery being achieved via user fee revenue at VCAT. Given the recent move to adopt a 50% cost recovery level in the Magistrates' Court - the jurisdiction with which VCAT is most reasonably compared - a substantial increase in the current cost recovery levels in respect of the appropriations funded Lists of 14.0% is required.

Second, there is a need to better differentiate the various fees charged within VCAT to account for the increasingly wide variation in the nature of the cases being heard and the circumstances of persons bringing cases. Improved differentiation will help to ensure that greater degrees of cost recovery are attained in higher value or longer cases while retaining high levels of affordability and accessibility for individuals and small businesses seeking a forum for the cost-effective resolution of smaller disputes.

### **3.8. Costs data and impacts of fee changes**

VCAT fees are not set on a list by list basis. Rather, they are set according to the particular basis for VCAT's jurisdiction, classified according to the provision of the enabling enactment that gives rise to VCAT's jurisdiction to hear the complaint. There are over 230 individual commencement fees in the current regulations.

Although fees are set according to the basis for jurisdiction, there is no comparable costs data available that would allow for these fees to be adjusted according to appropriate cost recovery targets. The lack of this detailed costs data is unlikely to change in the near future, notwithstanding the current intention to improve significantly the quality of financial and management data collected by VCAT.

As shown in the tables included in section, VCAT allocates resources by list (not by statutory jurisdiction). The resources dedicated to a particular list could be divided by the number of matters in each list to give an approximation of the cost of each list. This could then be used to set a fee based on a set cost recovery level for each list.

However, this would not account for the quite different types of matters that are heard within each list, even where they are related to similar subject matter or are sufficiently comparable to be efficiently grouped together. For example, the General List hears appeals from general administrative decisions, but these range from a high volume of matters concerning Transport Accident Commission decisions to applications regarding restricted breed dogs under the *Domestic Animals Act 1994*, to a significant number of Freedom of Information related applications. In other lists, matters that arise under similar legislative provisions may concern vastly different monetary claims or complexity of subject matter – such as in the Planning and Environment List, where developments under review pursuant to the *Planning and Environment Act 1987* may be of less than \$10,000 or over \$20 million in value. Very different fee and cost recovery levels may therefore be appropriate within the same list. Consequently, cost recovery levels set according to list have limited significance and attempts to set cost recovery targets at a list by list level are similarly limited.

These factors constrain the potential to set individual fees according to quantitative cost recovery targets.

### **3.9. Overview of fee-setting considerations within VCAT**

Fee setting policy in the courts context has historically focused on the issue of the relative merits of "block" fees compared with specific purpose fees. A block fee is defined as a single large fee payable on filing of proceedings that is calculated so as to retrieve a substantial proportion of the administrative costs likely to be incurred throughout the process. Conversely, multiple "specific purpose" fee systems seek a closer alignment between the individual fees paid and the cost of individual administrative actions taken within courts or tribunals.

Block fee systems have the substantial advantages of greater certainty in revenue for the court or tribunal in question and substantially lower administrative costs, which are limited to the costs of fee calculation and collection. However the block fee system is less nuanced and may be more

difficult to align with a user pays approach. This issue is amplified where administrative costs that could be recovered through a more nuanced fee structure vary widely across cases due to different cases following different processes including early resolution through appropriate dispute resolution.

Specific purpose fees on the other hand can achieve a greater equity as between different court users. As suggested above, this is likely to be the case where there is wide variation between the costs of finalising matters of the same broad type that would otherwise be subject to payment of the same block fee.

However, specific purpose fees may be expensive to administer. These expenses will be high where there is a wide range of potential process steps a matter may pass through.

The question of which approach to fee setting should be preferred is a generic one, reflecting a standard equity versus efficiency trade-off that is recognised in the Department of Treasury and Finance Cost Recovery Guidelines.

The Victorian court system has historically adopted what can generally be regarded as a "modified block fee structure" in which the majority of fee revenue is obtained via block fees, but a number of additional, specific purpose fees are charged. An example of the latter is hearing fees, which may generate significant revenue. This hybrid approach was adopted in the recent review and remaking of the fees regulations applicable to the three Victorian court jurisdictions.<sup>24</sup> The hybrid approach is also taken in relation to court fees in a number of comparable jurisdictions, both interstate and internationally.

The current VCAT fees are closer in nature to a simple block fee structure, since the substantial majority of fee revenue is derived from commencement (block) fees. However, a small number of administrative fees are also charged, as are hearing fees in limited circumstances.

However, increasing the role of specific purpose fees may now be justified, given that:

- VCAT is hearing longer and more complex cases across a broader range of jurisdictions than when it was established; and
- VCAT is more often using ADR processes to resolve disputes and the current commencement fees do not include the costs of VCAT providing this service.

These changes affect the cost of particular cases and should be factored into the fees charged for the particular matter.

The current block fee structure sets out 7 different levels of commencement fee. This is appropriate given the widely differing nature of the matters brought before VCAT. The key considerations in terms of fee setting are:

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<sup>24</sup> The recently made Magistrates' Court (Fees) Regulations 2012, County Court (Fees) Regulations 2012 and Supreme Court (Fees) Regulations 2012 have been made on this basis. Regulatory Impact Statements explaining the basis for the decision to persevere with the existing modified block fee structure can be found at [www.vcec.vic.gov.au](http://www.vcec.vic.gov.au).



- What are the costs of resolving matters of the relevant type?  
and
- What level of user contribution (i.e. cost recovery level) is appropriate, given the public and private benefits of the decision and the importance of maintaining access to justice?

Given the data issues discussed above, VCAT has historically made intuitive judgements about the appropriate fees for matters brought under specific enactments. This continues to be the only feasible and appropriate approach in the current circumstances. However, as noted elsewhere, changes in VCAT's jurisdiction and changes in the way in which specific types of matters are dealt with combine to mean that reallocation of fee levels is appropriate and necessary in some areas. In particular:

- longer hearings involve substantially more resources than shorter hearings yet are currently subject to the same commencement fee. Equity suggests that hearing fees should apply across the board and should be tiered such that fees are relatively higher per day for longer cases;
- the systematic use of ADR by VCAT also means that there is a strong case for recovery of some of the associated costs from users, since this is now also a significant use of VCAT resources;
- administrative type fees have historically been set without regard to specific cost analysis and should be reset taking into account cost estimates;
- some matters that are currently subject to the "community fee" are now considered to require a higher level of contribution from users.

These matters are discussed in further detail below.

### **3.10. Specific issues in relation to the current fees arrangements**

The preceding sections have highlighted the problems that exist in relation to the data that is required to analyse the current VCAT fees arrangements and develop a new set of fees. As a result, it is proposed that better costs data will be collected in future and further amendments to VCAT fees may be proposed in light of differences between this data and the data previously provided.

Despite these limitations, available data and VCAT experience does enable a number of issues in relation to the current fee structure to be identified and addressed.

At a fundamental level, it can be argued that there is insufficient differentiation in the fee levels charged at VCAT, given the widely differing matters considered in the jurisdiction and the very widely differing resource demands that they impose. Like the Victorian courts, VCAT charges commencement fees, which generate a substantial proportion of the total fee revenue obtained. However, whereas a range of other fees are charged in the various court jurisdictions, which also

generate significant revenue, this is not the case at VCAT, where commencement fees currently account for more than 90% of all revenue earned.

The result of this heavy reliance on commencement fees is that parties to VCAT matters pay similar amounts in fees regardless of whether their matter is resolved quickly and at low cost or proceeds to a relatively lengthy hearing, incurring substantially greater costs. This implies that there are significant inequities between users of the jurisdiction. It also suggests that there are inequities between users and taxpayers, if those whose matters incur substantial VCAT costs make minimal contributions to those costs, leaving the taxpayer to subsidise a very high proportion of total costs. By contrast, the wider range of fees charged in the courts generally enables the courts to set fees proportionate to the costs incurred by the jurisdiction and the fees paid by the litigant.

There are currently seven commencement fee levels charged by VCAT. At the time that VCAT is given jurisdiction to resolve a particular type of dispute, a decision is also made as to the appropriate fee level to be charged for making an application to VCAT to resolve a dispute.

A problem that can arise in these circumstances is that the nature of the matters being brought pursuant to various enactments can change over time. Thus, for example, there have been significant increases in the proportion of parties being legally represented at VCAT and the length and complexity of hearings may increase over time in some areas.

Further, VCAT has identified a number of circumstances in which the current allocation of certain types of matter to particular fee levels is no longer appropriate. Specifically, having regard to the nature of the disputes in question and the costs incurred by VCAT, the fees currently charged are considered to be unduly low, relative to the wider fee structure currently in place in the jurisdiction.

For this reason the proposed regulations amend the existing fee structure, as explained below.

### **Adoption of a new "Level 3" fee**

Applicants bringing a wide range of matters heard at VCAT currently pay the "Level 2" commencement fee of 3.1 fee units (equivalent to \$38.80 in 2011-12). VCAT refers to this fee as the "community fee". This fee represents only a small contribution to the costs incurred by VCAT in resolving a dispute, regardless of whether the matter proceeds to hearing or not.

Having regard to the nature of the matters in question, VCAT is of the view that a new "Level 3" fee is required that sits between the "community fee" of 3.1 fee units and the current level 3 fee of 12.7 fee units. This would ensure that applicants make a more substantive contribution to VCAT's dispute resolution costs. A key area in which such a change is required is that of small claims, in which less than \$10,000 is in dispute, brought in the Civil Claims List. These claims are numerous, with almost 8,000 of the total of 15,000 matters lodged in the various appropriation funded lists during 2011-12 falling within this category. Thus, any increase in this fee would have a substantial impact on VCAT's revenue.

It is possible that any significant fee increase in this area could discourage applicants from bringing very small scale disputes of the kind that would previously have been dealt with by the Small Claims Tribunal to VCAT. However, given the significant dispute resolution costs incurred by VCAT, this is considered to constitute a necessary change to current incentives.

The proposed regulations do not propose to eliminate the current "community fee" but rather, to narrow its application. VCAT notes that many matters brought under the *Australian Consumer Law and Fair Trading Act 2012*, the *Domestic Building Contracts Act 1995* and the *Owners Corporation Act 2006* jurisdictions are increasingly commercial in nature, and/or involve large claims, but are currently charged the community fee.

VCAT believes that proceedings under these enabling enactments usually involve parties with the ability to pay a higher fee and raise questions with a lesser public benefit than some other cases as the decisions turn on the facts of the case and do not inform a general understanding of the scope of the relevant law. Moreover, many matters brought under these enactments are believed by VCAT to be more costly to run than others for which the community fee is currently also charged. Fee differentiation should be adopted to recognise these differences.

By contrast, matters brought under the *Residential Tenancies Act 1997* are individual and personal in nature but those bringing proceedings are often living in community housing and in dispute with the Director of Housing. Furthermore, the Residential Tenancies List is funded by the interest from tenants' bonds, and so there is less scope for arguing that those who use the Residential Tenancies List should cover the costs of their applications, as costs are already covered in part by those who use the List. Again, fee differentiation should allow for this to be recognised in appropriate fee levels.

It is important to note in this context that the key judgements supporting this new fee are based on the experience of officers and decision-makers of VCAT as to the nature of the litigants and application within the various Lists – not on specific data or statistical information. In providing feedback on this RIS, stakeholders are specifically asked:

- whether their experience of VCAT reflects increasingly commercial matters arising in the Civil Claims List, and in the *Australian Consumer Law and Fair Trading Act 2012*, *Domestic Building Contracts Act 1995* and the *Owners Corporation Act 2006* jurisdictions;
- whether litigants in these jurisdictions are generally able to pay a higher fee to access VCAT, and whether a higher fee is appropriate for these jurisdictions.

### **Increase in fees for larger disputes**

The current fee structure establishes a number of "thresholds" in terms of the dollar amount in dispute in certain areas. The fees charged vary according to the amount in dispute. This differentiation implicitly reflects two factors: the likely complexity of the dispute and consequent resource requirements of VCAT to reach a decision, and the probable ability to pay of the person bringing the dispute.

However, VCAT is of the view that the current extent of this fee differentiation has become insufficient over time. This problem arises in part because the thresholds are set in dollar terms, and thus subject to erosion by inflation, but also as a result of the higher proportion of matters brought to VCAT that are of a commercial nature and are resource intensive.

VCAT notes, with regard to the use of monetary thresholds generally, the higher the amount in dispute the more likely it is that the parties will be legally represented and the more likely it is that expert witnesses will be called. This will inevitably increase the complexity of the case. Higher amounts in dispute therefore require greater preparation time on the part of the member hearing the matter, more work by the registry, and more Tribunal time taken up on routine processes. In general, in more substantial claims, more documents are likely to be filed and relied on by the parties, and more substantial interlocutory steps are likely to be undertaken or required in order to progress the matter to hearing. A similar difference can be found between the preparation time, registry time and interlocutory proceedings required in the Magistrates' Court when compared with the Supreme Court.

VCAT notes that a clear example of this is the Land Valuation List, where a high proportion of cases require relatively lengthy hearings combined with significant preparation times on the part of tribunal members while the fees are only 12.9 fee units or 25.7 fee units. The case for change is also strengthened by the observation that this is a jurisdiction in which cost orders are usually made, so that the successful party will not generally be expected to bear the cost of the fees.

It is important to note in this context that the key judgements supporting the introduction of new thresholds are based on the experience of officers and decision-makers of VCAT as to the nature of the litigants and application within the various lists – not on specific data or statistical information. In providing feedback on this RIS, stakeholders are specifically asked:

- whether their experience of VCAT reflects that matters involving large claims, or property of a higher value, take longer to resolve, or involve more complex issues for VCAT to determine;
- whether it is appropriate that higher fees be charged at of VCAT for matters involving large claims, or property of a higher value.

### **Domestic Building List**

Matters in which more than \$1 million is in dispute are becoming substantially more common in the Domestic Building List. Given the current fee structure, there is increasingly a need for substantial subsidisation of these types of matters, whereas the very limited number of such matters heard in previous years meant that this issue previously had limited importance.

### **Owners Corporation List**

In the case of the *Owners Corporations Act*, an additional policy consideration is that the proceedings brought under this Act are very similar in nature to those brought under the *Australian Consumer Law and Fair Trading Act* and the *Domestic Building Contracts Act*. As such, it is important

to maintain consistency in the monetary thresholds and fee levels applied to these Acts, so as to prevent forum-shopping.

As in other Lists noted above, the number of matters being brought to VCAT that fall within the upper thresholds in terms of amount in dispute is increasing. It is expected that this trend will continue into the future.

### **Hearing fees**

Some of the almost 90,000 matters finalised by VCAT annually are finalised without proceeding to a formal hearing. Around 13 - 15% of matters commenced are withdrawn by the applicant in a typical year. For the remaining cases, VCAT's 2011-12 Annual Report provides a general description of the dispute resolution process undertaken within the jurisdiction:

*The process of resolving cases begins when a person or party refers a matter to VCAT or lodges an application with Registry and pays the prescribed fee. Some disputes are settled using Alternate Dispute Resolution (ADR) processes such as mediation and compulsory conferences. Many cases, however, proceed directly to a full hearing.*

*In certain disputes, the parties involved may agree at any time to resolve their differences without mediation, a directions hearing, a compulsory conference or a hearing. If the case does proceed to a hearing, there is still an opportunity to settle prior to the hearing and determination of the case.*

*A full hearing may take from 15 minutes to an hour in small civil disputes, owners corporation and residential tenancies matters. In other jurisdictions, hearings can take up to a day or longer. In the more complicated cases, a hearing may be held over a period of several days due to the nature of the issues involved<sup>25</sup>.*

As suggested above, the substantial majority of VCAT hearings have a duration of less than one day. In common with all Victorian courts, hearing fees are only charged in respect of second and subsequent days. This reflects the view that the initial commencement fee paid includes a contribution toward the cost of the first hearing day.

VCAT data shows that only around 584 of the days of hearings conducted by the Tribunal in 2011-12 related to second and subsequent days of hearing the same matter. Thus, only a very small proportion of the almost 90,000 cases lodged in that period require second or subsequent hearing days and are potentially liable to having hearing fees charged. The actual incidence of hearing fees being charged is much lower than this, however, as the current VCAT fees regulations provide for hearing fees to be charged in only very limited circumstances. Specifically, hearing fees are charged in respect of matters brought under the *Domestic Building Contracts Act 1995* and the *Retail Tenancies Reform Act 1998*, as well as for matters heard in the Major Cases List.

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<sup>25</sup> VCAT (2012). *Annual Report 2011-12*, p 17.

The fees currently charged in these contexts are as follows:

- For matters brought under the *Domestic Building Contracts Act 1995* or the *Retail Tenancies Reform Act 1998*:
  - Hearing fees are charged from day 2 onward where the amount in dispute is less than \$10,000 and from day 1 for other matters;
  - Hearing fees of \$129.10 per day are charged in respect of days 2 to 5;
  - Hearing fees of \$258.10 per day are charged in respect of days 6 to 9; and
  - Hearing fees of \$322.00 per day are charged thereafter.
- For matters heard under the Major Cases List:
  - Hearing fees of \$3,193.00 per day are charged from day 1.

These provisions of the existing regulations in relation to hearing fees mean that no fees are charged in respect of the great majority of hearings conducted by VCAT. No hearing fees at all are charged in respect of matters brought under the great majority of enactments, while hearing fees are also not charged in respect of the first hearing day of matters brought under the *Domestic Building Contracts Act* and the *Retail Tenancies Reform Act*.

This approach to the charging of hearing fees creates inequities between VCAT users who have matters proceed to a hearing which lasts more than a single day, as some will be charged fees while most will not, with only the specific enactment under which the matter is heard determining whether a fee is payable. As VCAT's jurisdiction has been expanded over time, it appears that this situation has not been addressed by explicit policy decisions.

Further, fees charged are very low in relation to the costs of running hearings. The hearing fee of \$3,193 payable in the Major Cases List represents the full calculated cost of a hearing day when conducted by a multi-member panel. While single-member hearings will cost less than this, the fees cited above will recover only a small proportion of the costs involved. Therefore increasing the level of cost recovery at VCAT implies increasing hearing fees.

### **Complex cases**

VCAT notes in its Annual Report 2011-12 (p 8) that it is experiencing a general increase in the length and complexity of the matters brought before it. It has also identified increases in the number of "complex cases" - defined as those in which more than \$100,000 is in dispute - which it hears, and in the complexity of this specific subset of cases.

Complex cases are more likely to proceed to hearing and, in such circumstances, to result in relatively lengthy hearings that may often require the appointment of multi-member panels. Despite this, there is limited differentiation in the level of fees payable in respect of complex cases. For example, in the Civil Claims List, a complex claim involving an amount of between \$100,000 and \$1 million being in dispute will attract a commencement fee of 50.5 fee units (currently \$645.30), compared with 25.7 fee units (\$322.00) for a claim in which between \$10,000 and \$100,000 is in dispute. Moreover, even complex claims will not attract a hearing fee, unless brought under one of the two enactments noted above.

Given the substantially higher hearing costs likely to be incurred by VCAT in relation to complex claims, there is a case for the wider application of hearing fees and for the amount of these hearing fees to be differentiated, so that higher fees are payable in respect of hearings of complex matters.

### Major Cases List

As noted above, the Major Cases List was reinstated on a user pays basis in 2012, following the prior operation of the List on a trial basis during 2010-11. The Major Cases List is intended to be a "full cost recovery" jurisdiction. Given this objective and recent changes in VCAT's cost structure, new fees will need to be set as part of the proposed new VCAT regulations. Appendix 3 sets out the cost base from which the proposed new fees for the Major Cases List are derived.

### Administrative Fees

VCAT's current fees regulations include a small number of fees that are levied in respect of specific administrative functions, largely undertaken by the VCAT Registry. These are set out in Table 3.10 below.

**Table 3.10: Current Administrative Fees**

1.	For lodgement of a bill of costs for assessment by the registrar	12.9 fee units
2.	For the issue of a summons to witness	1 fee unit
3.	For inspection of a proceeding file by a person who is not a party to the proceeding	2.6 fee units
4.	For inspection of each additional proceeding file at the same time as the first proceeding file by a person who is not a party to the proceeding	\$4
5.	For the provision by the registrar of a copy of the register or a document from a proceedings file	50c per page
6.	For the issue of a warrant of possession under section 351 of the <b>Residential Tenancies Act 1997</b>	6.2 fee units

These fees have not historically been set by reference to specific cost calculations. However, VCAT has undertaken costing calculations in respect of the activities associated with these fees as part of the process of developing the proposed fee regulations. These calculations are based on process analyses and thus constitute "bottom up" costings. The calculations undertaken are set out in Appendix 2. They demonstrate, unsurprisingly, that there is little proportionality between the size of the current administrative fees and the costs of the activities to which they relate, with current cost recovery levels estimated to be between 2% and 26% for different fees.

These cost calculations form the basis for the setting of the administrative fees component of the proposed regulations, as discussed in the following sections. However, it should be noted that, in

contrast to the fees set for similar activities in the court jurisdictions, the government takes the view that it would be inappropriate to set these fees at 100% cost recovery. This is for a number of reasons. First, because the costings have been developed specifically for this analysis, and it is necessary to undertake further work to ensure their accuracy and consistency. Secondly, because no data is available to establish whether particular VCAT users who pay these fees are parties to a proceeding, implying a lack of data about the total cost to VCAT users of matters including necessary administrative activities. Finally, the increase in fees (from the current) would be extremely significant, which is not considered appropriate for specific administrative fees, contrasting with block commencement fees where a range of activities/services are provided to those paying the increased fee. As a result, the general rule used to determine the appropriate size of these fees is that the level of cost recovery achieved should be consistent with the global target level of cost recovery adopted under each option.

Feedback is sought from stakeholders as to whether this is considered an appropriate approach, and as to whether it would be appropriate to set fees at levels reflecting 100% cost recovery for administrative fees.

#### **Appropriate Dispute Resolution Fees**

As noted above, VCAT has relied increasingly in recent years on ADR processes, primarily on mediation. The increased use of ADR has had the twin benefits of helping to control the average cost of dispute resolution at VCAT and helping to ensure the timeliness of dispute resolution.

The current fees do not include a fee for the conduct of mediation even though mediation is conducted by a VCAT member and is therefore costly to VCAT. This means that VCAT users are currently making no direct contribution to the cost of these ADR activities. By contrast courts mediation is often conducted by private mediators at the cost of the parties. Parties also often use private arbitrations to resolve disputes prior to hearing and this is again at the parties' cost. The estimated cost of conducting mediation is \$757.09 for a half-day and \$1,361.38 for a full-day (see Appendix 2). There is a clear case for the adoption of mediation fees to ensure that users contribute to the costs of these key VCAT activities.

## **4. Identification and assessment of options**

Four feasible options for achieving the identified objective of the proposed regulations have been identified. The four options are:

- Remaking the existing fees without substantive amendment, thus retaining the fees at their existing levels pending the review;
- Regulating to increase fee levels to enable the achievement of a 30% cost recovery target as an interim measure;



- Regulating to move toward a 45% cost recovery target over a three year period, with fees being set at levels that would achieve 35% cost recovery in year 1, 40% cost recovery in year 2 and 45% cost recovery in year 3; and
- Moving immediately to achieve 45% cost recovery.

The benefits and costs associated with each of these options are identified and assessed below.

## 4.1. Option 1: Retain fees at existing levels

### 4.1.1. Description

This option would involve remaking the existing regulations without amendment. Given that almost all of the fees are set in terms of fee units this would mean that the dollar value of each fee would continue to be revised upward annually in line with the rate determined by the Treasurer each year in the budget context. Table 4.1, below, sets out the expected revenue implications of Option 1.

**Table 4.1: Expected revenue under Option 1**

List	Expenditure	Lodgement fee revenue	Cost recovery
<b>APPROPRIATIONS FUNDED LISTS</b>			
<b>Civil Division</b>	<b>\$3,092,427</b>	<b>\$641,889</b>	<b>20.8%</b>
Civil Claims List	\$2,900,294	\$619,639	21.4%
Real Property List	\$192,133	\$22,250	11.6%
<b>Administrative Division</b>	<b>\$12,026,872</b>	<b>\$1,593,568</b>	<b>13.3%</b>
General/OBR List/Taxation	\$2,580,712	\$278,201	10.8%
Land Valuation List	\$288,808	\$22,829	7.9%
Planning & Environment List	\$8,561,061	\$1,292,538	15.1%
<b>Human Rights Division</b>	<b>\$881,843</b>	<b>\$0</b>	<b>0.0%</b>
Anti Discrimination/ Health and Privacy/ Mental Health	\$881,843	\$0	0.0%
<b>TOTAL APPROPRIATIONS FUNDED</b>	<b>\$15,404,851</b>	<b>\$2,235,457</b>	<b>14.5%</b>
<b>Major Cases List<sup>26</sup></b>	<b>\$2,000,000</b>	<b>\$2,000,000</b>	<b>100%</b>
<b>TRUST FUNDED LISTS</b>			
<b>Civil Division</b>	<b>\$16,409,910</b>	<b>\$2,429,137</b>	<b>14.8%</b>
Domestic Building List	\$2,688,480	\$334,793	12.5%

<sup>26</sup> Note: the Major Cases List is formally a sub-list of the Planning and Environment List and therefore is part of the group of "appropriations funded lists". However, it has been listed separately here, as it is administered on a "full cost recovery" basis, so that there is, in practice, no funding of this sub-list from appropriations. Moreover, excluding the MCL enables a more accurate view of the global cost recovery being achieved within the Appropriations funded lists to be provided.

Owners Corporations List	\$999,650	\$110,687	11.1%
Retail Tenancies List	\$586,821	\$129,666	22.1%
Residential Tenancies List	\$12,134,959	\$1,853,991	15.3%
<b>Administrative Division</b>	<b>\$1,421,357</b>	<b>\$ 0</b>	<b>0.0%</b>
Legal Practice List	\$1,421,357	\$0	0.0%
<b>TOTAL TRUST FUNDED</b>	<b>\$17,831,267</b>	<b>\$2,429,137</b>	<b>13.6%</b>
<b>Human Rights Division</b>	<b>\$5,462,818</b>		
Guardianship List	\$5,462,818	\$1,136,389	20.8%
<b>TOTAL</b>	<b>\$39,295,227</b>	<b>\$5,800,983</b>	<b>14.8%</b>
<b>Adjusted Total</b>	<b>\$39,295,227</b>	<b>\$4,664,594</b>	<b>11.9%</b>

Source: VCAT

#### 4.1.2. Expected benefits

By comparison with the unregulated base case, adoption of this alternative would ensure that VCAT could continue to charge user fees. Thus, users would continue to contribute to the operations of VCAT. The fact that the fees would continue to be specified in terms of fee units, and would therefore have their real value broadly maintained over time, implies that the level of cost recovery achieved, as a percentage of VCAT costs in the relevant lists, would remain broadly constant.

As noted above, the total revenue obtained from commencement fees collected under the authority of the current regulations was approximately \$4.7 million in 2011-12. This level of revenue would be expected to continue to be collected annually (in real terms) over the proposed three year life of the transitional regulations. In addition, revenue of \$2.0 million per annum would be obtained from Major Cases List fees. Thus, total expected revenue would be around \$6.7 million per annum under this option.

A key benefit of this option is that it avoids possible instability in the structure and level of the VCAT fees over the medium term and associated stakeholder confusion. Any transitional regulations that implement substantive changes in the current fees risk creating a situation in which a second set of substantive changes would be implemented within three years. By contrast, under this option, only a single set of substantive fee changes would be required.

#### 4.1.3. Expected costs

A cost of this option is that it fails to align VCAT's fees arrangements with those adopted during 2012 in respect of the Victorian courts.

It also fails to address the very low current cost recovery in VCAT. This would necessitate a continuation of the current high level of subsidy from the taxpayer. The 2011-12 level of (net) government appropriations to VCAT was \$16.0 million. A similar level of appropriations would need to be retained over the three year life of the proposed regulations, implying total taxpayer funding of up to \$50 million over this period.

Moreover, VCAT faces increasing difficulty in meeting timeliness targets for dispute resolution, given increases in the level of complexity and length of matters being heard. The adoption of this option would not enable any additional resources to be generated directly by VCAT that would potentially be available to address these issues.

## **4.2. Option 2: Adopt a 45% cost recovery target immediately**

### **4.2.1. Description of the option**

This option would involve increasing cost recovery in VCAT's appropriations funded lists from the current level of 14.0% to 45%. This represents an approximate 221% increase in the existing level of cost recovery. However, this option would not involve a simple "across the board" increase in all current VCAT fees as that would fail to address the problems identified above at 3.10.

Given the above, a range of specific changes would be made to the current fees, to recognise the current deficiencies, make fees more appropriate to the current nature of VCAT's work, and support the achievement of improved cost recovery across the tribunal. It should be noted that these targeted changes to the fee structure are not the product of a complex analysis of a full range of cost and behavioural data. In large part, they are based on the limited data currently available (such as case volumes etc), and the experience of administrative and quasi-judicial staff of VCAT in conducting the business of the tribunal. Feedback from stakeholders is sought on the appropriateness of the following targeted changes;

1. A new "Level 3" fee of 8.2 fee units would be established. This would then be subject to the general cost increase of 56%, in line with all other commencement fees, becoming a fee of 12.8 fee units, and would be charged in respect of a range of matters that currently attract the "community fee" of 3.1 fee units but where the nature of the matters being heard is believed to justify a higher fee. It should be noted, in this context, that the "community fee" of 3.1 fee units originated from that part of VCAT's jurisdiction that derived from specific consumer protection tribunals, such as the Small Claims Tribunal and the Residential Tenancies Tribunal, whose fees were not set in relation to cost recovery. These fees were not reassessed in detail, and not in relation to cost, when the relevant jurisdictions were transferred to VCAT. According to VCAT's experience of administering these jurisdictions, the nature and mix of matters in a number of the relevant lists has altered significantly; for example, the small claims jurisdiction is now part of the Civil Claims List, and includes a high number of disputes between businesses, rather than purely small consumer matters brought by individual citizens. The new "Level 3" fee, commencing at 8.2 fee units, is more

appropriate to the current mix of matters. However, the proposal does not alter this fee level where the relevant considerations and intuitive judgements indicate that the “community fee” is still appropriate – such as in certain jurisdictions in the Residential Tenancies List, where a high volume of short and simple matters is heard, in which the majority of users have already made an indirect contribution through the Victorian Property Fund<sup>27</sup>. For these matters, the fee will remain at the “community fee” level;

- Quantitatively, the main area in which this new fee of 12.8 fee units will apply is the Civil Claims List. More than 7,400 of the 8,900 matters heard in this List would move from a fee of 3.1 fee units to a fee of 12.8 fee units under this option. These essentially relate to disputes under the Australian Consumer Law and Fair Trading Act (and to a lesser extent the Domestic Building Contracts Act) where the amount in dispute is less than \$10,000. Matters in this list involving larger amounts in dispute would only be subject to the general fee increase. For most, this would mean a move from 25.7 fee units to 40.1 fee units.
  - The second key area of impact for the 12.8 fee unit fee is the Owners' Corporation List. Approximately 3,100 cases were heard in this List in 2011-12, with all subject to the community fee of 3.1 fee units. Under this proposal, over 2,500 will move to the 12.8 fee unit fee.
2. Reallocation of a range of fees would be undertaken, particularly in the Planning and Environment, Land Valuation and Owners' Corporations Lists, so that:
- The standard fee for planning matters in the Planning and Environment List would be a commencement fee of 80.4 fee units, compared with 25.7 fee units at present. For a relatively small proportion of matters relating to higher valued property, the fee would rise from 51.5 fee units to 160.8 fee units;
  - Around two thirds of matters within the Land Valuation List would also be initially charged a commencement fee of 160.8 fee units, compared with 17.5 fee units in most cases (and in some cases 27.7 fee units) at present. Most of the remaining matters in this List would be charged 40.8 fee units, compared with 17.5 fee units at present. These changes would ensure that higher fees are paid in relation to disputes over higher-valued property, rather than a single fee level being applicable;
  - Virtually all matters in the Real Property List would be subject to a fee of 40.1 fee units. By comparison, around one third of these matters are subject to the 3.1 fee unit community fee, while two thirds are subject to a fee of 25.7 fee units;
  - Around 15% of matters in the Owners' Corporation List, or more than 500 matters, would be subject to a move from the current community fee of 3.1 fee units to a fee of 40.1 fee units. These are matters brought under the Owners' Corporation Act where the amount in dispute is between \$10,000 and \$100,000.

As noted above, these changes are not based on a comprehensive study of costing and related data, intended to find the optimum solution solely for the benefits and cost recovery in the Planning and Environment List. Rather, the new fee level has been arrived at to assist with overall cost recovery in VCAT, in recognition of the value of developments being processed in the List, the volume of matters brought and the resulting processing and

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<sup>27</sup> For example, the “community fee” level will continue to apply to all matters brought under the *Residential Tenancies Act 1997*; except Part 10.

delay times, and the anecdotal evidence of VCAT staff that litigants are prepared to pay substantially higher fees (if this will contribute to more rapid disposal of planning matters). VCAT believes that the proposed fee level would – as well as providing an important contribution to the cost recovery of VCAT overall, given the volume of planning matters – add significantly to the efficiency of both VCAT as a whole and the Planning and Environment List in particular, thereby reducing processing times and delay.

3. A widening of the application of hearing fees would be undertaken, so that all matters that currently attract a commencement fee would be subject to payment of a hearing fee on day two and subsequently. This will increase equity among all users of VCAT.
4. An increase in the size of the hearing fees would be adopted, so that the fees payable in most cases would be equivalent to 80% of those payable in the County Court. In common with Supreme and County Court hearing fees, these fees increase as a matter progresses, with higher fees applying from day 5 and higher fees again applying from day 10. According to costings undertaken by VCAT, basing these fees solely on cost would lead to extremely high hearing fees that are out of proportion with the fees charged in the Victorian court jurisdictions. These latter fees have been set having regard to the fees set in the Federal Court.
5. A new "complex cases" hearing fee would be established, with VCAT determining which cases should be allocated to this list. Cases allocated to this sub-list would be liable to pay higher hearing fees, calculated to recover 45% of average hearing costs. This reflects the more commercial nature of such cases, which implies that most of these matters will be heard by a multi-member (i.e. two or more members) panel, rather than by a single VCAT member. Moreover, the more commercial nature of these cases also suggests a higher average capacity to pay among applicants. This fee would address a fundamental equity issue currently experienced by VCAT – that certain matters with highly complex issues, require a disproportionate use of VCAT's resources, even when compared to matters issued under the proposed commencements fees with the proposed standard hearing fees.
6. Removal of the \$5 million minimum development value threshold for non-residential projects to be eligible for transfer to the Major Cases List, with the obvious benefit of a greater number of users being able to elect to commence in this list, but with the indirect benefit to users of the standard Planning and Environment List that a greater amount of resources would be applied to their matters, with more Major Cases List matters not being processed within that List.
7. Revision of the fees payable in respect of the Major Cases List, to reflect current experience in relation to the cost of processing these cases and continue to meet the objective of charging fees at full cost recovery levels.
8. Establishment of mediation fees, to be set at a level equivalent to 45% of the estimated cost of carrying out this activity, thus ensuring that users of mediation make a contribution to cost recovery. While mediation fees have been set on a 45% cost recovery basis, it should be noted that they remain lower than ordinary hearing fees, when considered on a "per party" basis. That is, each party to mediation will pay a fee set on the basis of 22.5% cost recovery, so that a total of 45% cost recovery is incurred. Moreover, while there may be some concern regarding the incentive effects involved, it must be noted that VCAT has the power to require parties to participate in mediation before agreeing to hear a matter.

Given this, no negative behavioural effects are expected to be generated as a result of the setting of a significant mediation fee for the first time.

9. Revision of the current administrative fees on the basis of newly conducted activity based costing estimates, with the fees to be set at a 45% cost recovery level.
10. Adoption of a 56% general fee increase, to be charged in respect of all other fees not subject to the adjustments highlighted above.

#### **4.2.2. Expected benefits of the option**

Option 2 has the benefit of making substantive changes to the existing fees arrangements that address the various weaknesses of the current fees regulations, as identified in Section 3. The key benefits arising from these changes are:

##### **More appropriate cost recovery levels**

This option moves cost recovery levels in respect of the appropriations funded Lists to a level that is broadly consistent with that adopted in the Victorian court system, from a starting point in which users make only a very small relative contribution to dispute resolution. This means that taxpayers will no longer be required to meet over 85% of the costs of the resolution of the largely private disputes through the VCAT system.

The application of the general fee increase of 56% to commencement fees in trust funded Lists, combined with the restructuring of a small number of these fees, will mean that commencement fee revenue in these Lists will, overall, rise from around \$2.4 million at present to around \$4.2 million, which represents 23.8% cost recovery (see below). These changes have no impact on taxpayer appropriations. However, it means that the user contribution to the cost of dispute resolution in these Lists will also be increased significantly, with an offsetting reduction in the funding requirement from the various trust funds.

This approach is preferable to the alternative of retaining fees in trust funded Lists at their current levels as it maintains the current general relativities between fees in the two parts of VCAT's jurisdiction (appropriation funded and trust funded Lists) and ensures that all users of VCAT services are required to make an increased contribution to dispute resolution costs, in line with the decision to move VCAT cost recovery generally up to similar levels to those achieved in the courts<sup>28</sup>.

The trust funds that pay for the operation of certain Lists have, in most cases, a wider range of public purposes. This means, in effect, that increased user funding which reduces the VCAT call on trust fund revenue enables additional expenditures to be made on these other activities.

##### **Improved matching between fees and costs**

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<sup>28</sup> While it is arguable that users of the trust funded lists have already made a contribution to their dispute resolution costs through their contribution to the trust fund itself, in reality this contribution is a very small one in relation to average dispute resolution costs. Thus, while all residential tenants effectively contribute to the residential tenancies trust fund through the foregone interest on their security bonds, the amounts involved are very small in relation to VCAT's average dispute resolution cost, while only a small proportion of these contributors actually bring a case to VCAT.

In some areas, the proposed fees would be set on the basis of specific, activity based costings. These include administrative fees, alternative dispute resolution fees and hearing fees. This implies equity and efficiency gains, since there would, for the first time, be a proportionality established between the extent of the use of VCAT resources in these areas and the size of the user contribution obtained via the fees. Almost all of these fees would be set at levels that ensured that the user contribution was equivalent to the aggregate cost recovery target - i.e. 45%.

The one exception to this rule would be hearing fees charged in ordinary cases (i.e. those that did not fall under either the complex cases fee or the Major Cases List). These fees would be set at a level equivalent to 80% of the fees charged in the County Court. This departure from cost based fee setting reflects the fact that, in resetting the fees regulations across the Victorian courts jurisdictions, the view has been taken that proportionality should be observed in respect of the size of the hearing fees adopted in the different jurisdictions. In this respect, it should be noted that the Supreme and County Court hearing fees increase in a staged approach according to the number of days of hearing – with the intention of providing an incentive to settle matters or limit the issues in dispute. This approach is considered appropriate for VCAT, for these same reasons. The Magistrates' Court hearing fees are not staged in this manner. Furthermore, the County Court hearing fees are set at 80% of the Supreme Court's hearing fees, to reflect the Victorian court hierarchy. It is for these reasons that VCAT 's hearing fees have been set at 80% of the County Court hearing fees.

Further, a significant perceived benefit of the proposed regulations in terms of better matching of fees and costs is that the wider application of hearing fees - to be adopted for all matters extending beyond a single hearing day, rather than only those brought under two specific enactments, as at present - means that users who make the largest calls on VCAT resources will make a more proportionate contribution to those costs than at present.

In responding to VCAT's proposed hearing fees, stakeholders are specifically asked whether they consider the setting of VCAT's hearing fees at 80% of the County Court hearing fees to be appropriate. This may include specific feedback on whether stakeholders agree that;

- VCAT hearing fees should reflect the court hierarchy, as do fees in the County Court;
- A staged increase in hearing fees, with higher fees for hearing days 2-4, 5-6, and 10+, increases the likelihood of disputes settling, or the narrowing of issues in dispute.

### **Major Cases List: Activity and Revenue Estimation**

As stated earlier, the regulations propose to remove the \$5 million threshold for developments not containing a dwelling to enter the Major Cases List. VCAT has estimated that, as a result of the removal of the project value threshold for non-residential developments, around 40% of developments valued at less than \$1 million and 60% of developments valued at \$1 - \$5 million are likely to be heard in the List. Based on these estimates and the actual level of activity during 2011-12, VCAT has estimated the full year level of List activity as being 320 cases. In addition, new Major Cases List fee levels have been derived in order to keep them aligned with VCAT costs and ensure that full cost recovery is achieved, as per government policy.

Based on these assumptions, VCAT has estimated that Major Cases List revenue in a full year will be around \$2.0 million. This will be approximately evenly split between commencement fee revenue and hearing fee revenue. These estimates are reflected in Table 4.2, below, as well as the equivalent tables estimating the impact of the other fees options considered.

### Expected revenue

Table 4.2 sets out the expected revenue that would be derived from the fees under this option. The calculations contained in this, and the following, tables are based on 2011-12 expenditure figures for each list and 2011-12 activity levels. However, one exception to this rule is the treatment of the Major Cases List.

**Table 4.2: Expected revenue under Option 2**

List	Expenditure (2011-12)	Expected revenue	Cost recovery (%)
<b>a) Lodgement Fees</b>			
<b>APPROPRIATIONS FUNDED LISTS</b>			
<b>Civil Division</b>	<b>\$3,092,427</b>	<b>\$1,931,986</b>	<b>62.5%</b>
Civil Claims List	\$2,900,294	\$1,835,475	63.3%
Real Property List	\$192,133	\$96,511	50.2%
<b>Administrative Division</b>	<b>\$12,026,872</b>	<b>\$4,724,129</b>	<b>39.3%</b>
General/OBR List/Taxation	\$2,580,712	\$738,309	28.6%
Land Valuation List	\$288,808	\$183,326	63.5%
Planning & Environment List	\$8,561,061	\$3,802,494	44.4%
<b>Human Rights Division</b>	<b>\$881,843</b>	<b>\$189,002</b>	<b>21.4%</b>
Anti Discrimination/ Health and Privacy/ Mental Health	\$881,843	\$189,002	21.4%
<b>Total commencement fee revenue (appropriations funded lists)</b>		<b>\$6,845,117</b>	
<b>b) Hearing Fees</b>			
Standard		\$196,791	
Complex Cases List		\$267,821	
<b>c) Administrative fees</b>			
<b>Human Rights Division</b>	<b>\$5,462,818</b>	<b>\$1,400,000</b>	<b>25.6%</b>
Guardianship List	\$5,462,818	\$1,400,000 <sup>29</sup>	25.6%
<b>TOTAL APPROPRIATIONS FUNDED</b>	<b>\$20,867,668.85</b>	<b>\$9,390,451</b>	<b>45.0%</b>
<b>Major Cases List</b>	<b>\$2,000,000</b>	<b>\$2,000,000</b>	<b>100.0%</b>

<sup>29</sup> Fee revenue derived from the Guardianship and Administration (Fees) Regulations 2008.



<b>Civil Division</b>	<b>\$16,409,910</b>	<b>\$3,995,209</b>	24.3%
Domestic Building List	\$2,688,480	\$551,439	20.5%
Owners Corporations List	\$999,650	\$912,268	91.3%
Retail Tenancies List	\$586,821	\$173,440	29.6%
Residential Tenancies List	\$12,134,959	\$2,358,062	19.4%
<b>Administrative Division</b>	<b>\$1,421,357</b>	<b>\$56,300</b>	4.0%
Legal Practice List	\$1,421,357	\$56,300	4.0%
<b>TOTAL TRUST FUNDED</b>	<b>\$17,831,267</b>	<b>\$4,247,111</b>	<b>23.8%</b>
<b>TOTAL</b>	<b>\$40,698,936</b>	<b>\$17,037,562</b>	<b>41.86%</b>
<b>Adjusted Total</b>	<b>\$40,698,936</b>	<b>\$15,637,562</b>	<b>38.42%</b>

Source: VCAT

**Note:** The adjusted total revenue figure excludes \$1.4m in revenue derived from the Guardianship and Administration (Fees) Regulations 2008, which partly funds the Guardianship and Administration List, which is otherwise funded from appropriations expenditure.

Table 4.2 shows that fee revenue in respect of the appropriations funded Lists would be expected to be approximately \$9.4 million under this option, representing 45% cost recovery, when compared with the total funding of \$20.9 million applied to these Lists. This figure includes \$1.4 million in fee revenue in respect of the Guardianship and Administration List that is derived under separate regulations (see note to Table 4.2).

Table 4.2 also shows that \$4.2 million in commencement fee revenue would be derived in respect of the trust funded Lists. When compared with the total expenditure on these Lists of \$17.8 million, this represents a cost recovery level of 23.8%. This highlights the fact that the 45% cost recovery target has been applied only in respect of the appropriations funded Lists, where it is important to ensure, at the aggregate level, an appropriate balance between user contributions and taxpayer contributions. No equivalent consideration arises in respect of the trust funded lists, since taxpayers do not contribute to their funding. Rather, any fee revenue obtained is simply passed through to the trust funds that have been established wholly or in part for the purpose of funding these activities, thus reducing the net cost to the trust fund.

In addition, \$2 million in revenue would be obtained in respect of the Major Cases List, representing full cost recovery for this List. While this list is formally a part of the appropriations funded Planning and Environment List, it has been listed separately, since there is no appropriations funding for this sub-list, given the full cost recovery based fee structure.

Total cost recovery across all VCAT activities, and taking into account the revenue from both the proposed fees regulations and the Guardianship and Administration (Fees) Regulations 2008 is \$17.0 million and represents approximately 41.9% cost recovery, a level quite similar to the 45% cost recovery target in respect of the lists funded from budget appropriations.

The allocation of commencement fees to different fee levels (i.e. among the nine proposed fee levels) is generally based on broad judgements as to the average cost of finalising cases of that type

and the appropriate level of user contribution. However, whereas an overall cost recovery target has also been used in arriving at the final fee structure in relation to appropriations funded lists, this factor is, as explained above, not relevant in the case of trust funded lists.

#### **4.2.3. Expected costs of the option**

Table 4.2 shows that the total revenue expected to be generated under the fees is estimated at \$14.2 million per annum under this option. This compares with around \$5.3 million at present, representing an increase in revenue of around \$8.9 million, or 168%. Given that these calculations are based on the continuation of current activity levels at VCAT, this 168% can, in a notional sense, also be considered to represent the average fee increase. That said, it is apparent that the actual fee increases experienced by individual users of VCAT would vary widely.

The general level of fee increase adopted under this option is 56%. This is the increase in commencement fees that will be experienced by VCAT users whose fees have not been subject to restructure on one of the specific grounds noted above. However, given the substantial contrast between the 56% "general" fee increase and the 168% expected increase in fee revenue, it is clear that the majority of the additional revenue expected to be obtained under this option derives from the restructuring undertaken, rather than from the general increase in revenue.

Considered in terms of the volume of matters affected and, hence, the proportionate contribution to the expected revenue increase, the key impacts are felt in the Civil Claims List and the Planning and Environment List.

##### ***Civil Claims List***

Of approximately 15,000 matters commenced within the appropriations-funded lists, around 8,900 are commenced in the Civil Claims List. Of these, 7,886 matters involve claims for amounts of less than \$10,000. For this group, the current fee of 3.1 fee units will be replaced by a fee of 13.3 fee units, an increase of 329%.

##### ***Planning and Environment List***

A total of 3,775 matters were heard in the Planning and Environment List in 2011-12. All matters heard in this list will be subject to restructured fees. Most matters currently attract a fee of 25.7 fee units, although a small number currently attract a fee of 3.1 fee units. The proposed fee for all matters heard in this list under this option would be 83.6 fee units. This represent an increase of 225% for those matters currently attracting a fee of 25.7 fee units and approximately 2600% for those matters currently attracting a fee of 3.1 fee units.

##### ***Owners' Corporation List***

Among the trust funded Lists, the major change occurs in respect of the Owners' Corporation List. A total of 3,068 matters were heard under this List in 2011-12. Of these, 2,534 related to amounts in dispute of less than \$10,000. For this group, the fee would rise from 3.1 fee units to 13.3 fee units

under this option, as with the Civil Claims list. As a result of this change, cost recovery in this List will rise from around 27.5% at present to around 91.3%, as shown in Table 4.2.

As a general comment, it can be noted that the majority of the increase in fee revenue that would be obtained under this option derives from the high volume of cases that are currently charged the community fee of 3.1 fee units but would be affected both by the re-classification of their fees to the new "level 3" fee of 8.2 fee units, followed by the application of the general fee increase of 56% to this new base, to obtain a new fee of 13.3 fee units.

### ***Hearing fees***

It was noted above that hearing fees for ordinary cases have been set at a level that represents 80% of the daily hearing fees charged in the County Court, rather than at a 45% cost recovery level, consistent with the headline cost recovery objective under this option. This necessarily means that hearing fees will recover a smaller than average proportion of costs and, by implication, that to reach the 45% cost recovery target, other fees will need to be set at higher than target levels.

This, in turn, means that users of the VCAT jurisdiction whose matters proceed to hearings, and notably those whose matters are heard over an extended period, will make a smaller proportionate contribution to cost recovery than those that settle earlier, or are settled via the use of mediation. This reflects the fact that, while hearing fees will escalate with the length of the case, even the highest fee payable, which applies from the tenth day of a hearing, will recover only around 32% of the costs of a hearing day.

That said, the size of this impact is likely to be relatively small. It is estimated that there were 438 ordinary hearing days subject to fee payment in 2011-12 (i.e. those relating to days 2 and thereafter). Thus, given an average cost of \$3,095 per day, the expected revenue at a 45% cost recovery level would be  $(438 \times \$3,095 \times 0.45) = \$610,025$ . By contrast, expected ordinary fee revenue is \$196,791. This means that the loss of revenue resulting from the adoption of a lower set of hearing fees is around \$413,234. This is a relatively small amount when considered in relation to the expected total revenue figure of \$15.6 million per annum under this option.

It should also be noted, in this context, that the hearing fees applicable to complex cases have, in fact, been set at a 45% cost recovery level.

### ***Behavioural impacts***

The fact that the majority of users of the appropriations funded Lists (over 10,000 of the 15,000 commencements in 2011-12, or almost two thirds of users ) would experience fee increases of over 300% under this option could potentially lead to significant behavioural changes. That is, given that the matters in question relate to disputes in which the amount claimed is less than \$10,000, it is possible that a fee increase from \$38.80 to \$167 (in current, 2012-13 dollar terms) could discourage a proportion of potential VCAT users from commencing actions.

It should be noted, however, that the revenue estimates set out in Table 4.2 are predicated on the assumption that current activity levels would remain unchanged - i.e. that there would be no behavioural impacts as a result of this change. This reflects two factors. First, this constitutes a simplifying assumption, which enables the revenue implications of different fees options to be compared on a "steady state" basis. Second, it reflects VCAT advice, which indicates that they do not believe that there will be any significant behavioural response by users to these fee changes. This reflects, in part, the view that users of the tribunal face a range of costs in addition to the fees paid to VCAT itself, which are likely to substantially exceed the cost of the VCAT fee. Thus, while VCAT fees themselves would increase by very substantial proportionate amounts, in many cases, under this option the impact on the users' total costs would be much more moderate.

### **4.3. Option 3: Adopt a 45% cost recovery target through staged fee increases**

#### **4.3.1. Description of the option**

Recognising that the adoption of a 45% cost recovery target implies an approximate tripling of current cost recovery levels, this option would involve moving to adopt the same ultimate cost recovery target via a three-stage process. This would see a move to 35% cost recovery occurring initially, with subsequent moves to 40% and then 45% cost recovery occurring over a two year period. The general level of fee increase (i.e. that applied to fees not covered by the fee restructure) would, when compared with the existing fee levels, be 13% in year 1, 35% in year 2 and 56% in year 3.

#### **4.3.2. Expected benefits of the option**

The key benefit of option 3 is that it would initially adopt a significantly smaller level of fee increase, similar to that proposed under option 4 (discussed below). This would provide the opportunity to assess user responses to the initial stage of the fee increases and determine whether the behavioural impacts observed differ from the above-mentioned assumption of minimal impact. Given that, even under this staged option, the initial increases would more than double fee revenue, there is necessarily significant uncertainty as to actual user responses. The adoption of a staged approach provides the opportunity for consideration of the potential need to modify the policy should the initial impacts differ significantly from those anticipated.

Table 4.3, below, sets out the expected revenue implications of Option 3.

**Table 4.3: Expected revenue under Option 3**

List	Expenditure (2011-12)	Expected revenue (year 1)	Expected revenue (year 2)	Expected revenue (year 3)	Cost recovery (%)
<b>a) Lodgement Fees</b>					
<b>APPROPRIATIONS FUNDED LISTS</b>					
<b>Civil Division</b>	<b>\$3,092,427</b>	<b>\$1,402,374</b>	<b>\$1,667,180</b>	<b>\$1,931,986</b>	<b>62.5%</b>
Civil Claims List	\$2,900,294	\$1,332,319	\$1,583,897	\$1,835,475	63.3%
Real Property List	\$192,133	\$70,055	\$83,283	\$96,511	50.2%

<b>Administrative Division</b>	<b>\$12,026,872</b>	<b>\$3,429,111</b>	<b>\$4,076,619</b>	<b>\$4,724,129</b>	<b>39.3%</b>
General/OBR List/Taxation	\$2,580,712	\$535,918	\$637,113	\$738,309	28.6%
Land Valuation List	\$288,808	\$133,071	\$158,198	\$183,326	63.5%
Planning & Environment List	\$8,561,061	\$2,760,122	\$3,281,308	\$3,802,494	44.4%
<b>Human Rights Division</b>	<b>\$881,843</b>	<b>\$137,191</b>	<b>\$163,096</b>	\$189,002	<b>21.4%</b>
Anti Discrimination/ Health and Privacy/ Mental Health	\$881,843	\$137,191	\$163,096	\$189,002	21.4%
<b>Total commencement fee revenue (appropriations funded lists)</b>		<b>\$4,968,675</b>	<b>\$5,906,896</b>	<b>\$6,845,117</b>	
<b>b) Hearing Fees</b>					
Standard		\$196,791	\$196,791	\$196,791	
Complex Cases List		\$208,305	\$238,063	\$267,821	
<b>c) Administrative fees</b>		\$529,913	\$605,317	\$680,721	
<b>Human Rights Division</b>	<b>\$5,462,818</b>	<b>\$1,400,000</b>	<b>\$1,400,000</b>	<b>\$1,400,000</b>	25.6%
Guardianship List	\$5,462,818	\$1,400,000	\$1,400,000	\$1,400,000 <sup>30</sup>	25.6%
<b>TOTAL APPROPRIATIONS FUNDED</b>	<b>\$20,867,668.85</b>	<b>\$4,968,675</b>	<b>\$8,347,068</b>	<b>\$9,390,451</b>	<b>45.0%</b>
<b>Major Cases List</b>	<b>\$2,000,000</b>	<b>\$2,000,000</b>	<b>\$2,000,000</b>	<b>\$2,000,000</b>	<b>100.0%</b>
<b>Civil Division</b>	<b>\$16,409,910</b>			<b>\$3,995,209</b>	24.3%
Domestic Building List	\$2,688,480	\$400,274	\$475,857	\$551,439	20.5%
Owners Corporations List	\$999,650	\$662,189	\$787,229	\$912,268	91.3%
Retail Tenancies List	\$586,821	\$125,895	\$149,668	\$173,440	29.6%
Residential Tenancies List	\$12,134,959	\$1,853,631	\$2,203,646	\$2,358,062	19.4%
<b>Administrative Division</b>	<b>\$1,421,357</b>	<b>\$40,867</b>	<b>\$48,584</b>	<b>\$56,300</b>	4.0%
Legal Practice List	\$1,421,357	\$40,867	\$48,584	\$56,300	4.0%
<b>TOTAL TRUST FUNDED</b>	<b>\$17,831,267</b>	<b>\$3,082,856</b>	<b>\$3,664,983</b>	<b>\$4,247,111</b>	<b>23.8%</b>
<b>TOTAL</b>	<b>\$40,698,936</b>	<b>\$13,786,540</b>	<b>\$15,412,051</b>	<b>\$17,037,562</b>	41.86%
<b>Adjusted Total</b>	<b>\$40,698,936</b>	<b>\$12,386,540</b>	<b>\$14,012,051</b>	<b>\$15,637,562</b>	38.42%

<sup>30</sup> Fee revenue derived from the Guardianship and Administration (Fees) Regulations 2008.

**Source:** VCAT

**Note:** The adjusted total revenue figure excludes \$1.4m in revenue derived from the Guardianship and Administration (Fees) Regulations 2008, which partly funds the Guardianship and Administration List, which is otherwise funded from appropriations expenditure.

Table 4.3 shows that commencement fee revenue in the appropriations funded Lists would rise from \$5.0 million in year 1 to \$5.9 million in year 2 and \$6.8 million in year 3 under option 3. Similarly, commencement fee revenue in the trust funded lists would rise from \$3.1 million to \$3.7 million and \$4.2 million, respectively.

Total fee revenue under Option 3 is \$12.4 million in year 1, rising to \$14.0 million in year 2 and \$15.6 million - as for option 2 - in year 3.

### **4.3.3. Expected costs of the option**

Option 3 would yield less revenue in years 1 and 2 than option 2 and delay the move to the identified target level of 45% cost recovery. The loss of revenue compared with option 2 is \$3.2 million in year 1 and \$1.6 million in year 2, giving a total of \$4.8 million.

In addition, the adoption of Option 3 would imply that there would be very frequent changes in fee levels during the three-year life of the proposed regulations. This would result from the combination of the three real increases to be adopted and the three annual increases in the dollar value of fees that would occur as a result of the operation of the Monetary Units Act 2004<sup>31</sup>. Thus, fee increases, or changes, would occur:

- On commencement, in approximately March 2013;
- On 1 July 2013;
- On the anniversary of commencement, in March 2014;
- On 1 July 2014;
- On the anniversary of commencement, in March 2015;
- On 1 July 2015;
- On replacement of the regulations, prior to March 2016.

Thus, there would be seven fee increases in less than three years under this option. This is likely to cause administrative difficulties and costs for VCAT, as well as potential confusion and concern among VCAT users.

## **4.4. Regulate to achieve 30% cost recovery**

### **4.4.1. Description of the option**

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<sup>31</sup> This Act affects most fees regulations and ensures that their real value is maintained over time by increasing them annually by a percentage identified by the Treasurer in the budget context and generally reflective of the level of price movements over the previous year. These fee increases come into effect on 1 July each year.

Under this proposal, a range of changes to VCAT fees would be made in order to achieve a 30% target level of cost recovery in respect of appropriations funded Lists. This option would not involve a simple, across the board increase in current fee levels. This reflects two factors:

- First, given the current 14.5% level of cost recovery in relation to these Lists, such an approach would involve a 114% increase in all VCAT fees. Such an increase would be likely to lead to excessive fees being charged in some areas and create strong negative responses from some users;
- Second, as noted in relation to option 2, Section 3.8 highlights a range of significant, specific problems with the current fee structure. Having identified these problems, it would be inappropriate - in the context of a substantial change to existing fees - to fail to address them via targeted changes in the fee structure.

Given these factors, this option would involve adopting the same fee restructure as is proposed under Options 2 and 3, above. Thus, this option would differ from the above options in that the general level of fee increase would be adjusted so as to achieve a 30% cost recovery target.

#### 4.4.2. Expected benefits of the option

Option 4 can be seen as providing a more moderate level of fee increase. It would involve approximately doubling current cost recovery levels, rather than tripling them, as under Options 2 and 3. Particularly in light of the intention to remake the regulations in 2016, such an approach could be seen as constituting an appropriate interim step toward a higher cost recovery model for VCAT funding. It would also enable user responses to a more modest fee increase to be assessed prior to any decision being taken as to whether it is appropriate to further increase cost recovery.

Moreover, given that this option would also implement the fee restructures proposed under Options 2 and 3, there would be no general fee increase proposed under this option. Rather, given the additional revenue generated by the proposed fee restructuring, there would be an 8% reduction in the level of the remaining fees. This means that users bringing actions under much of the legislation in respect of which VCAT has jurisdiction would experience no fee increase at all.

Table 4.4, below, sets out the expected revenue on a list by list basis under this option.

**Table 4.4: Expected revenue under Option 4**

List	Expenditure (2011-12)	Expected revenue	Cost recovery (%)
<b>a) Lodgement Fees</b>			
<b>APPROPRIATIONS FUNDED LISTS</b>			
<b>Civil Division</b>	<b>\$3,092,427</b>	<b>\$1,137,568</b>	<b>36.8%</b>
Civil Claims List	\$2,900,294	<b>\$1,080,741</b>	<b>37.3%</b>
Real Property List	\$192,133	<b>\$56,827</b>	<b>29.6%</b>
<b>Administrative Division</b>	<b>\$12,026,872</b>	<b>\$2,781,600</b>	<b>23.1%</b>
General/OBR	\$2,580,712	<b>\$434,722</b>	<b>16.8%</b>

List/Taxation			
Land Valuation List	\$288,808	<b>\$107,943</b>	<b>37.4%</b>
Planning & Environment List	\$8,561,061	<b>\$2,238,935</b>	<b>26.2%</b>
<b>Human Rights Division</b>	<b>\$881,843</b>	\$111,285	<b>12.6%</b>
Anti Discrimination/ Health and Privacy/ Mental Health	\$881,843	\$111,285	<b>12.6%</b>
<b>Total commencement fee revenue (appropriations funded lists)</b>		<b>\$4,030,453</b>	
<b>b) Hearing Fees</b>			
Standard		<b>\$196,791</b>	
Complex Cases List		<b>\$178,547</b>	
<b>c) Administrative fees</b>		<b>\$454,509</b>	
<b>Human Rights Division</b>	<b>\$5,462,818</b>	<b>\$1,400,000</b>	<b>25.6%</b>
Guardianship List	\$5,462,818	<b>\$1,400,000</b>	<b>25.6%</b>
<b>TOTAL APPROPRIATIONS FUNDED</b>	<b>\$20,867,668.85</b>	\$6,260,301	<b>30.0%</b>
<b>Major Cases List</b>	<b>\$2,000,000</b>	<b>\$2,000,000</b>	<b>100%</b>
<b>Civil Division</b>	<b>\$16,409,910</b>	<b>\$2,467,579</b>	<b>15.0%</b>
Domestic Building List	\$2,688,480	\$324,691	<b>12.1%</b>
Owners Corporations List	\$999,650	\$537,150	<b>53.7%</b>
Retail Tenancies List	\$586,821	\$102,123	<b>17.4%</b>
Residential Tenancies List	\$12,134,959	\$1,503,615	<b>12.4%</b>
<b>Administrative Division</b>	<b>\$1,421,357</b>	<b>\$33,150</b>	2.3%
Legal Practice List	\$1,421,357	\$33,150	2.3%
<b>TOTAL TRUST FUNDED</b>	<b>\$17,831,267</b>	\$2,500,729	<b>14.0%</b>
<b>TOTAL</b>	<b>\$40,698,936</b>	<b>\$12,161,030</b>	<b>29.9%</b>
<b>Adjusted Total</b>	<b>\$40,698,936</b>	<b>\$10,761,030</b>	<b>26.4%</b>

Source: VCAT

**Note:** The adjusted total revenue figure excludes \$1.4m in revenue derived from the Guardianship and Administration (Fees) Regulations 2008, which partly funds the Guardianship and Administration List, which is otherwise funded from appropriations expenditure.

Table 4.4 shows that option 4 would achieve 30% cost recovery in respect of the appropriations funded Lists but fees would contribute only 14.0% to the costs of trust funded Lists. Total annual fees revenue under this option would be \$10.76 million, equivalent to 26.4% of total VCAT expenditure. This represents an increase of approximately \$5.5 million on current fees revenue.



#### **4.4.3. Expected costs of the option**

While the adoption of option 4 would approximately double current VCAT fee revenues and cost recovery levels the resulting level of cost recovery (30%) would remain substantially below the 40% level recently adopted in respect of the Supreme Court and the 50% level adopted in respect of both the County and Magistrates' Courts. The Magistrates' Court, in particular, can be regarded as being the nearest to an equivalent jurisdiction within the Victorian system of courts and tribunals. The substantial difference in cost recovery levels that would exist between the two jurisdictions under this option - with VCAT achieving little more than half the cost recovery level of the Magistrates' Court - can be seen as a source of significant inequity between users of the two jurisdictions.

While the longer-term evolution of fee structures and cost recovery levels in the VCAT jurisdiction will be significantly dependent on the outcome of analysis of better costs data, there is a clear view within government that VCAT should achieve similar levels of cost recovery to those achieved by the courts. This being the case, the adoption of a significantly lower level of cost recovery during a three-year interim period is, arguably, difficult to justify.

## **5. Conclusion**

### **5.1. Overview**

The discussion set out in Section 3 highlights two general problems in relation to the current VCAT fee regulations:

- that the overall level of cost recovery is unduly low, when considered in relation to that adopted in the courts and, in particular, in the Magistrates' Court, which is the most comparable court jurisdiction for VCAT; and
- that the current fee structure is deficient both in terms of the relativities between the fees charged in respect of different matters and in respect of the absence of fees in some areas.

At the same time, two constraints on moves to address these problems were identified. First, VCAT accounting systems do not enable detailed and reliable data to be generated in relation to the costs of particular activities or of finalising cases brought under particular enabling enactments. Second, there is some uncertainty regarding the impact on VCAT users of fee increases of the size that would be required in order to align VCAT cost recovery levels with those attained in the court system.

These latter constraints have led to a threshold decision being taken to insert a specific sunset clause into the proposed regulations such that they will have only a three year lifespan. The purpose of this approach is to enable VCAT fees to continue to be collected, and some progress toward the two goals of increasing cost recovery levels and improving the fee structure to be made, pending the analysis of improved costs data that will provide an improved information base to underpin future fee setting.

The lack of informative costs data at present limits the options that can be regarded as feasible.

Tables 5.1 and 5.2 below summarise the impacts of these four options. Table 5.1 shows the total revenue that would be collected under each option, both annually and over the proposed three year life of the regulations, as well as the general level of fee increase that would occur. It also highlights the size of the maximum fee increase that would occur. These percentage increases arise as a result of the combination of reallocation of a specific fee to a new fee level and the application of the general fee increase to the new fee level.

**Table 5.1: Expected impact of feasible fees options**

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>	<b>Option 4</b>
General fee increase (%)	0%	56%	13%/35%/56%	- 8%
Maximum fee increases (%)	0%	2598%	1864% (yr 1) 2598% (yr 3)	1575%
Annual Revenue	\$6.7 million	\$15.6 million	\$12.4/\$14.0/\$15.6 million	\$10.8 million
<b>Total Revenue (3 years)</b>	<b>\$20.1 million</b>	<b>\$46.8 million</b>	<b>\$42.0 million</b>	<b>\$32.4 million</b>

Table 5.1 shows that as a result of the proposed fee restructurings, combined with the expansion in the application of hearing fees, it would be possible to move from the current level of cost recovery to a 30% cost recovery outcome without any general increase in fee levels. That is, around 160 commencement fees set under a range of enactments would remain the same, in terms of fee units, while there would be 69 fees identified as requiring a change to a new fee level. In fact, under Option 4, which results in a 30% cost recovery outcome, the general fee level would decline by 8%. Nonetheless, a small number of fees would rise by several hundred percent under this option.

Option 2, which would see a 45% level of cost recovery being achieved, differs from Option 4 in that it would apply a 56% general increase to all fees, rather than an 8% reduction. Thus, fees that were not subject to restructure would increase by this amount, in terms of fee units. Fees subject to restructure would have this 56% increase applied after the re-allocation of the fee to a new fee level. This means that the maximum fee increase under this option is 2598%.

Option 3 would adopt a staged approach to moving to full cost recovery. This implies that a 13% general fee increase would be adopted in year 1, rising to a 35% increase on current fee levels in year 2 and 56% in year 3, in line with Option 2. Over the expected three year life of the regulations, this staged approach would yield \$4.8 million less revenue than the immediate adoption of a 45% cost recovery target, as required under Option 2.

Over the life of the regulations, both Options 2 and 3 would result in expected revenue more than doubling compared with Option 1's re-making of the existing fee regulations. Option 3 would increase revenue by \$12.3 million, or around 60%, compared with Option 1.

Table 5.2, below, sets out the expected percentage cost recovery for each appropriations funded List at each cost recovery level.

**Table 5.2: Cost recovery by List**

List	Current	30%	35%	40%	45%
<b>Appropriations Funded Lists</b>					
Land Valuation	7.9%	37.4%	47.6%	56.5%	65.4%
General/OBR/Taxation	10.8%	16.8%	21.4%	25.5%	29.5%
Real Property	11.6%	29.6%	37.6%	44.7%	51.7%
Planning and Environment	14.1%	24.4%	31.1%	36.9%	42.8%
Civil Claims	21.4%	37.3%	47.4%	56.3%	65.2%
Guardianship	25.6%	25.6%	25.6%	25.6%	25.6%
Human Rights	0.0%	0.0%	0.0%	0.0%	0.0%
<b>Trust Funded lists</b>					
Domestic Building	13%	12%	15%	18%	21%
Owners Corporations	44%	54%	66%	79%	91%
Retail Tenancies	19%	17%	21%	26%	30%
Residential Tenancies	13%	12%	15%	18%	21%
Legal Practice	3%	2%	3%	3%	4%

Table 5.2 shows that cost recovery levels within individual Lists currently differ widely. Zero cost recovery occurs in the Human Rights List, where no fees are charged. However, among the Lists in which fees are charged, cost recovery varies from a low of 7.9% in the Land Valuation List to a high of 25.6% in the Guardianship and Administration List. The fees charged in this List are set under the Guardianship and Administration (Fees) Regulations, rather than the VCAT fee regulations. Moreover, the fee is paid by all persons whose estates are under administration, rather than by users of the List per se. Among the Lists which have revenue derived from the VCAT fees regulations, the highest current level of cost recovery is 21.4%.

Table 5.2 shows that, while there would continue to be significant differences between Lists in terms of the level of cost recovery achieved under all of the options considered, the degree of difference would be diminished substantially by the proposed fee restructuring. Whereas cost recovery levels now vary by almost a factor of three (i.e. 7.9% vs 21.4%), they would vary from 16.8% to 37.4% under Option 4 and from 29.5% to 65.4% under Options 2 and 3.

The continuing differences in cost recovery levels between Lists reflect three factors. First, there are constraints imposed by the decision to adopt only a limited restructuring of the fees in the current context of making interim, or transitional, regulations. Second, VCAT believes there continue to be differences in the appropriate level of cost recovery in different contexts, having regard to the nature of the matters being considered. Third, the variation within Lists in the types of matters considered means that it is not meaningful to set out specific list by list cost recovery targets.

Stakeholders are asked to consider:

- Do you believe the proposed levels of cost recovery in each list are appropriate? If not, why not?
- If you believe an alternative cost recovery level is appropriate, please identify this and set out your reasoning.

### **Trust Funded Lists**

Table 5.2 also shows that cost recovery levels are generally lower in respect of the trust funded Lists than the appropriations funded Lists. The exception is the Owners' Corporation List, which currently obtains 44% cost recovery. The remaining Lists have current cost recovery levels of between 3% and 19%. Under the proposed regulations, cost recovery levels in the trust funded Lists would generally rise by 56% compared with current levels - reflecting the fact that most of these fees will simply be subject to the general fee increase of this percentage. Again, the exception is the Owners' Corporation List, which will see its level of cost recovery move from 44% to 91% - an increase of around 107%.

### **Impact of fee restructuring**

The main Lists in respect of which fee restructuring has been undertaken are the Civil Claims List, the Land Valuation List, the Planning and Environment List and the Owners' Corporations List. As Table 5.2 demonstrates, the first two of these Lists would, following the fee restructuring, demonstrate the highest level of cost recovery among the appropriations funded lists, at 65.2% and 65.4% respectively. The relative position of the Civil Claims List is unchanged, as it currently has the highest level of cost recovery among the Lists. By contrast, the Land Valuation List currently has the lowest level of cost recovery among appropriations funded Lists, at 7.9%. Hence, it will experience both the largest actual and proportionate levels of increase in cost recovery.

Cost recovery in the Planning and Environment List would continue to be in the mid-range, at 42.8%. Among the trust funded Lists, the Owners' Corporation List would move to a position of near full cost recovery, with expected cost recovery at 91%.

## **5.2. Assessment against the unregulated base case**

Because the context for the adoption of the proposed regulations is one in which existing regulations are sunsetting, the various options must be assessed against an unregulated base case. In this base case, no fees would be charged to users of VCAT. This means that taxpayers would bear all of the relevant costs.

Consistent with the discussion contained in the earlier sections of this RIS, the following criteria have been identified as relevant to the determination as to which option should be preferred.

- Equity between court users and taxpayers;
- Equity between different groups of court users;

- Access to justice;
- Transitional considerations;
- Impact on VCAT service levels.

Because these criteria must be assessed largely qualitatively, a Multi-Criteria Analysis has been developed to enable the assessment of the various options. This involves scoring each of the options on each criterion, measured against the unregulated base case. The preferred option is that which receives the highest overall score.

The following discusses the relevance of each of these criteria and the rationale for the score given to each option.

### **Scoring and weighting**

Where an option is judged as being superior to the unregulated base case in respect of a particular criterion, it receives a positive score. Conversely, where it is considered inferior, it receives a negative score. Options are scored on a scale of - 10 to + 10, consistent with the VCEC's guidance note on the use of MCA.

Each criterion has been weighted evenly reflecting the importance of each to the proper functioning of the fee regulations in the courts and tribunals system.

#### ***Criterion 1: Equity between court users and taxpayers***

As discussed above, it is widely accepted that the operation of the courts and tribunals gives rise to both public and private benefits. This mix of public and private benefits implies that the cost of funding those operations should be shared between taxpayers and users of court services. The relative size of the public and private benefits associated with VCAT's operations is, of necessity, a matter of subjective judgement. Based on the nature of VCAT's operations overall, and the mix of public and private benefits delivered, the government takes the view that VCAT's level of cost recovery should be increased from the current level of 14% to a level of up to 45% - similar to that proposed for the Victorian court jurisdictions.

Options which achieve cost recovery levels consistent with this view must score more highly on this criterion than those associated with lower levels of cost recovery. Given that taxpayers only subsidise VCAT's appropriations funded Lists, the relevant measure of cost recovery relates to these Lists.

All of the options considered receive positive scores. This reflects the fact that, in the unregulated base case, there would be no recovery of VCAT's costs. Option 2 would result in 45% cost recovery in VCAT's appropriations funded lists and scores highest on this criterion, with +10 points. Option 3 would achieve an average level of 40% cost recovery over the three year life of the regulations, given that actual cost recovery would rise from 35% in year 1 to 45% in year 3. Given this, this option scores +9 points.

Option 4 would yield 30% cost recovery and scores +6 points, while Option 1 would yield approximately 14.5% cost recovery and scores +3 points.

### ***Criterion 2: Equity between different groups of court users***

This criterion relates to the question of the degree of proportionality in user contributions through the fee structure. An equitable outcome suggests one in which there is a clear relationship between the size of the fees paid and the resource cost to VCAT of resolving disputes, considered across a range of different kinds of dispute. That said, the VCAT fee structure has historically deliberately set fees at very low levels - or even charged no fees in some areas (notably the Human Rights Division) - in recognition of the high level of public interest in ensuring access to VCAT for these cases.

Options 2, 3 and 4 all incorporate a restructuring of the existing fees charged at VCAT, in recognition of a number of specific problems with the existing regulations, as set out in Section 3. The same fees relativities are therefore set under each of these options, notwithstanding that the actual level of cost recovery achieved differs between the options. Thus, all three of these options score equally against this criterion. These three options score + 6 against this criterion. The fact that this score is not higher reflects the fact that, although VCAT has a high level of confidence in the benefits of the specific changes being made, the current lack of detailed data on costs and related matters means that there is not a sufficient basis for a broader fee restructure and nor is there sufficient information to enable the optimal fee relativities to be established and demonstrated.

The remaining option, Option 1, would merely re-establish the current fee structure. This option is superior to the unregulated base case, in that it does ensure a significant degree of proportionality between fees paid and resources used. Thus, this option scores + 3 points.

### ***Criterion 3: Access to Justice***

All of the options considered would imply some reduction in effective access to justice compared with the base case of having no fees. This is because all would involve higher total costs than in the base case. While the existence of discretionary fee waiver powers would potentially limit any negative impact in this regard, it must be noted that only relatively limited use of these powers is currently made by VCAT. It is difficult to predict what change could occur under the different options.

Given these factors, all options score negatively when assessed in relation to the base case. However, the size of these negative scores is moderated, in the case of the higher cost recovery options, by the observation that even at VCAT, a substantial proportion of the parties employ legal representatives and/or expert witnesses and, in general, incur substantial costs associated with their use of VCAT to resolve their disputes which are likely to significantly exceed the amount of the fees paid in many or most cases.

Thus, Option 2, which involves the highest level of cost recovery, scores - 5 points. Option 3, which involves a slightly lower level of cost recovery in two of the three years of the operation of the proposed regulations, scores - 4. Option 4, which involves 30% cost recovery, scores - 3, while Option 1, which would retain the existing cost recovery level of around 14.5%, scores - 1.

### ***Criterion 4: Transitional considerations***

As discussed above, the proposed regulations have been made on the basis of limited data about costs and it is proposed that improved data will be collected and considered within the three year lifespan of the proposed regulations.

In this context, there is merit in ensuring that the size of any short-term changes is limited in order to minimise the disruption that may be caused by transitioning to further changes if the proposed regulations are replaced. More generally, the need to avoid unduly frequent and large changes in the fees regulations should be considered.

All options receive a positive score against this criterion, since all would continue to charge fees to VCAT users, using fee structures broadly similar to that currently adopted. By contrast, in the unregulated base case, no fees could be charged.

Option 1 scores most highly against this criterion, since it would simply ensure the continuation of the existing arrangements for a further three years, pending the completion of the proposed review. It therefore scores + 10. Option 4 scores next highest, since the extent of the average fee increases imposed would be lowest of the remaining three options. However, given that it would double the existing level of cost recovery, as well as undertaking a limited fee restructure, it scores only + 5 points. Option 2 scores lowest, as it would immediately more than triple existing cost recovery levels. Hence, it scores only + 1 points. Finally, Option 3 scores slightly higher than Option 2, given that it would adopt a progressive approach to increasing cost recovery such that, in year 1, cost recovery under this option would be only slightly higher than under Option 4. Thus, option 3 scores + 3 points.

**Criterion 5: Impact on VCAT service levels**

VCAT's current operations are characterised by significant resource constraints which have led to the average time taken to resolve many disputes to expand significantly in recent years, as shown in Section 3. Given the current severe constraints on the availability of additional, appropriations based funding, the ability of the fees regulations to yield significant additional revenue will be determinant of VCAT's ability to fund improved services for users. That is, more timely dispute resolution can be considered to amount to an important service quality improvement. Feedback to VCAT from users indicates that this timeliness issue is particularly important in several Lists, for example the Planning and Environment List.

Option 2, which would generate the highest revenue increase, scores highest on this criterion, with a score of + 10. Option 3, which achieves a similar revenue outcome by year 3 and has the next highest level of revenue in years 1 and 2 scores slightly lower, at + 9 points. Option 4, which would yield two thirds of the revenue of Option 2, scores + 6 points, while Option 1, which would yield only around one third of the revenue of Option 2, scores + 3 points. All options receive a positive score against this criterion, since no revenue would be generated in the unregulated base case.

**Table 5.2: Multi-Criteria Analysis of VCAT fees options**

Criterion	Option 1: Remake fees at existing	Option 2: Restructure fees and move	Option 3: Restructure fees and move	Option 4: Restructure fees and
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	<b>levels</b>	<b>to 45% cost recovery</b>	<b>progressively from 35% to 45% cost recovery</b>	<b>move to 30% cost recovery</b>
Equity between court users and taxpayers	+3	+ 10	+ 9	+6
Equity between different VCAT user groups	+3	+6	+6	+6
Access to justice	-1	-5	-4	-3
Transitional considerations	+10	+1	+3	+5
Impact on VCAT service levels	+3	+10	+9	+6
<b>Total</b>	<b>+ 18</b>	<b>+ 22</b>	<b>+ 23</b>	<b>+ 20</b>

Table 5.2 shows that Option 3 scores highest, with 23 points. This is only one point higher than Option 2, which it closely resembles. Option 3 scores higher in respect of the transitional considerations criterion, given that it would move by stages to the target cost recovery level.

Option 4 scores slightly lower with 20 points, while Option 1 scores 18 points. All four options are clearly preferable to the unregulated base case, since this would yield no user contribution to the costs of running VCAT, contrary to both past practice and cost recovery principles.

Given the above, it is proposed to proceed to adopt Option 3.

### **5.3. Behavioural impacts**

The analysis contained in the preceding sections has been based on the assumption that there would be no significant behavioural responses from VCAT users, in terms of potential users being discouraged from listing matters with VCAT as a result of being liable to pay larger fees. This assumption has been adopted notwithstanding that all fees would rise by at least 56% under the preferred option and that a range of individual fees would rise by substantially greater amounts. Given that fees have not increased to reflect increased costs and that higher fees are proposed to be charged in lists where the user is expected to have the ability to pay those fees, it is not expected that behavioural changes will impact substantially on these estimates.

However, the following indicative calculations are presented by way of sensitivity analysis with respect to this assumption.

The approach taken in order to demonstrate the potential impact on fee revenue and cost recovery that would result from any significant behavioural impact in response to the fees is to identify a



small number of key areas in which there is a conjunction of particularly high rates of fee increase and very large numbers cases in which users are subject to those fees. Table 5.3 summarises the results of these calculations. The fees analysed are as follows:

### Civil Claims List

A total of 8928 cases were heard in the Civil Claims List in 2011-12. This represents almost 60% of the 15,000 cases heard in total across all appropriations funded lists. Of this number, 7886 were small claims, in respect of which the amount in dispute is less than \$10,000. The current fee of \$38.80 would rise to \$160.40, in 2012-13 dollar terms, by 2015 under Option 3. This is an increase of over 300% in real terms.

### Planning and Environment List

A total of 3385 ordinary cases (i.e. those that were not major cases) were heard in this list in 2011-12. Most were subject to the standard commencement fee of \$322. However, this fee would rise to \$1,007 by 2015 under Option 3, an increase of over 200% in real terms.

### Assumed behavioural impact

Table 5.3 shows the results of two indicative levels of behavioural response to the fee increases. These are a 10% reduction in demand and a 25% reduction in demand.

**Table 5.3: Indicative calculation of possible behavioural responses on fee revenue**

	Planning & Environment	Civil Claims	Total
Number of cases	3385	7886	11,271 (75.1%)
10% of cases	338.5	788.6	1,127
25% of cases	846.25	1971.5	2,818
Fee	\$1,007	\$1,007	
Revenue loss with 10% reduction in demand	\$340,869	\$794,120	<b>\$1,134,990</b>
Revenue loss with 25% reduction in demand	\$852,174	\$1,985,300	<b>\$2,837,474</b>

Table 5.3 shows that 75% of the total of 15,000 commencements in the appropriations funded Lists in 2011-12 relate to matters within the Planning and Environment and Civil Claims Lists that would be subject to fee increases of between 200% and 300% approximately. If it is assumed that fee increases of this magnitude would reduce commencements of these types of actions at VCAT by 10%, the loss of revenue would be expected to be approximately \$1.1 million, by comparison with the total estimated for year 3 under Option 3. Similarly, if there were a 25% reduction in commencements, fee revenue would be \$2.8 million lower than estimated.

Given that annual revenue at 45% cost recovery is expected to be \$15.6 million in the absence of behavioural change, it is clear that such behavioural responses would have a quite significant impact

on revenue, even if restricted to those areas in which fees are increased significantly beyond the standard 56% real increase.

However, it must also be noted that a reduction in demand for VCAT's services of such a magnitude would enable VCAT to respond by reducing the resources allocated to these Lists. Given that the majority of VCAT's costs are staff-related, it is clear that there is, in the medium term, the possibility of reducing costs in response to any sustained reduction in demand. Moreover, even though a proportion of costs are fixed, the fact that average cost recovery is not expected to exceed 45% under the proposed regulations suggests that the cost reductions achievable would be likely to match or exceed the revenue losses estimated above. That is, if a 25% reduction in demand were able to be matched by a cost reduction of  $(25\% \times 45\%) = 11.25\%$  in costs in the given list, then the net impact on appropriations funding would be zero. Similarly, a 4.5% reduction in cost in response to a 10% reduction in demand would also yield an outcome that was neutral with respect to funding requirements from appropriations.

Given these factors, it is believed that the impact of any behavioural changes on the net appropriations funding requirement that has been estimated above would be likely to be small. Moreover, even in the event of significant behavioural change, the expected revenue under the proposed regulations would be substantially higher than at present.

## 6. Consultation

The proposed regulations have been developed following extensive consultation with VCAT, with the proposed fees being closely reflective of the tribunal's views as to the appropriate level of cost recovery and appropriate fee restructuring.

Officers of the Department of Justice have also consulted with representatives of other government departments and business units, including those responsible for administering trust funds that provide funding to a number of VCAT's trust-funded lists. These consultations will continue both through this RIS process, and with respect to submissions received. The increased fee revenue derived in trust funded Lists will be monitored by the relevant parties in order to assess whether any changes are required to the structures supporting the trust funded Lists. In particular, it should also be noted that the jurisdiction and operation of the Domestic Building List is likely to be significantly amended by reforms to the domestic building consumer protection framework that are currently being developed.

The release of this RIS provides opportunity for consultation with VCAT users in relation to the proposed fees. Public comment in response to the RIS and the draft regulations will be received for greater than 28 days following the release of the RIS, as required by the *Subordinate Legislation Act 1994*. While the Victorian Guide to Regulation indicates that a 60-day consultation period is preferred and should be adopted where possible, this is not regarded as feasible in the current circumstances. This reflects the fact that interim regulations have already been made for a six month period to prevent the existing regulations from lapsing, while replacement regulations must be in place prior to these interim regulations themselves sunseting.

## **7. Evaluation and enforcement**

As noted above, a three-year sun-setting clause is to be included in the proposed regulations.

It is a general requirement that fees must be paid before processes related to them can proceed. The vast majority of fees are collected at the time of issuing an application at the registry. In the medium term, it should be noted that responsibility for the implementation and enforcement of VCAT's fees will become the responsibility of the Courts Executive Service, currently being established by the Government.

The Department of Justice will work together with VCAT to monitor the impacts of the fees over the life of the proposed regulations, and evaluate the outcomes for individual litigants, individual lists, and for the tribunal as a whole.

Both VCAT and the department have recognised, during the course of developing the proposed regulations, the need for increased and improved data collection and analysis, in order to provide a robust costing basis for the understanding and setting of appropriate fees at VCAT. Ideally, all the activities of the tribunal, including the numerous activities covered by the block commencement fee, would have full costings, allowing an accurate analysis of the contributions of users in relation to cost recovery.

As part of the evaluation of the proposed regulations, the Department of Justice and VCAT will work together to:

- Identify the necessary data to be collected;
- create systems to record the appropriate data;
- develop costings from the full data set that encompass the full costs of particular activities; and
- develop and analyse a range of options for the nature of the fee structure and the level of fees at VCAT on the basis of costing data.

This work will allow the government to adopt future regulations that are based on a rigorous analysis of costing data, when the currently proposed regulations sunset in 2016, or prior to that date.

Prior to the remaking of VCAT's fees in three years' time, the proposed regulations will be evaluated against their performance for users and the tribunal, and against possible methods of developing court fee policy based on greater levels of data. This will allow government to assess the relative merits of different approaches to VCAT fees, prior to the making of new fee regulations in 2016.

## 8. Statement of Compliance with National Competition Policy

The National Competition Policy Agreements (“NCPA”) set out specific requirements with regard to all new legislation adopted by jurisdictions that are party to the agreements. Clause 5(1) of the Competition Principles Agreement sets out the basic principle that must be applied to both existing legislation, under the legislative review process, and to proposed legislation:

*The guiding principle is that legislation (including Acts, enactments, Ordinances or Regulations) should not restrict competition unless it can be demonstrated that:*

- (a) The benefits of the restriction to the community as a whole outweigh the costs; and*
- (b) The objectives of the regulation can only be achieved by restricting competition.*

Clause 5(5) provides a specific obligation on parties to the agreement with regard to newly proposed legislation:

*Each party will require proposals for new legislation that restricts competition to be accompanied by evidence that the restriction is consistent with the principle set out in sub-clause (1).<sup>32</sup>*

Accordingly, every regulatory impact statement must include a section providing evidence that the proposed regulatory instrument is consistent with these NCP obligations. The recently released OECD Competition Assessment Toolkit<sup>33</sup> provides a checklist for identifying potentially significant negative impact on competition in the RIA context. This is based on the following three questions:

- Does the proposed regulation limit the number or range of suppliers?
- Does the proposed regulation limit the ability of suppliers to compete?
- Does the proposed regulation limit the incentives for suppliers to compete vigorously?

According to the OECD, if all three of these questions can be answered in the negative, it is unlikely that the proposed regulations will have any significant negative impact on competition.

The proposed regulations do not act directly in any of the above ways. Therefore, it can be concluded that they are unlikely to have any significant negative impact on competition.

In sum, it has been concluded that the proposed regulations are fully compliant with the requirements of the National Competition Policy.

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<sup>32</sup> Clause 5, Competition Principles Agreement, 11 April 1995 accessed at [www.ncc.gov.au/pdf/PIAg-001.pdf](http://www.ncc.gov.au/pdf/PIAg-001.pdf)

<sup>33</sup> See *Integrating Competition Assessment into Regulatory Impact Analysis*. OECD, Paris, 2007. (DAF/COMP(2007)8).

## **Appendix 1: Proposed VCAT (Fees) Regulations 2013**

## STATUTORY RULES 2012

### *Victorian Civil and Administrative Tribunal Act 1998*

### **Victorian Civil and Administrative Tribunal (Fees) Regulations 2012**

The Governor in Council makes the following Regulations:

Dated:

Responsible Minister:

ROBERT CLARK  
Attorney-General

Clerk of the Executive Council

#### **1 Objectives**

The objectives of these Regulations are to prescribe—

- (a) fees payable for the commencement, hearing and alternative dispute resolution of proceedings in VCAT;
- (b) fees payable for—
  - (i) the issuing of warrants and summons to witnesses;
  - (ii) inspection of the register;
  - (iii) the provision of ancillary services by VCAT;
- (c) other matters relating to fees payable under the **Victorian Civil and Administrative Tribunal Act 1998**.

#### **2 Authorising provision**

These Regulations are made under section 161 of the **Victorian Civil and Administrative Tribunal Act 1998**.

### **3 Commencement**

These Regulations come into operation on 1 March 2013.

### **4 Revocation**

The Victorian Civil and Administrative Tribunal (Fees) Interim Regulations 2012 are **revoked**.

### **5 Definitions**

In these Regulations—  
*alternative dispute resolution* includes—

- (a) compulsory conference under section 83 of the Act;
  - (b) mediation under section 88 of the Act—  
if a member or a mediator provided by the Tribunal is required to be present at the alternative dispute resolution;
- commencement*, in relation to a proceeding, includes the lodgement of—
- (a) an application;
  - (b) a claim;
  - (c) a counterclaim;
  - (d) a third party notice;
  - (e) any other originating process;

*hearing* includes any accompanied site visits or any inspection occurring as part of a hearing;

*the Act* means the **Victorian Civil and Administrative Tribunal Act 1998**;

*Victoria Planning Provisions* has the same meaning as in the **Planning and Environment Act 1987**.

### **6 Fees**

- (1) The fees set out in the Scale of Fees in Schedule 1 are payable at the Tribunal as specified in that Schedule and in accordance with this regulation.



- (2) For the period commencing 1 March 2013 and ending 28 February 2014, the fee is the amount specified in column 3 of Schedule 1 for the relevant item.
- (3) For the period commencing 1 March 2014 and ending 28 February 2015, the fee is the amount specified in column 4 of Schedule 1 for the relevant item.
- (4) For the period commencing 1 March 2015, the fee is the amount specified in column 5 of Schedule 1 for the relevant item.
- (5) If a proceeding is commenced under more than one enabling enactment, only one fee is payable.
- (6) If the fees differ according to the enabling enactment concerned, the applicable fee is the higher or highest fee in the Scale of Fees in Schedule 1 for that enactment.

#### **7 Reduction of fees payable**

- (1) For the purposes of section 132 of the Act, the principal registrar may reduce a fee payable under Part 2 or Part 3 of Schedule 1 if he or she considers it appropriate having regard to—
  - (a) the number of parties to the proceeding;  
and
  - (b) the likely length of any alternative dispute resolution or hearing of the proceeding.
- (2) For the purposes of section 132 of the Act, the principal registrar may reduce a fee payable under the Act or the regulations to an amount that is not less than the relevant fee payable in the previous year if—
  - (a) a fee has been tendered to the principal registrar that is not less than the relevant fee payable in the previous year; and

- (b) the principal registrar considers that the cost to the Tribunal of collecting the difference between the amount of the fee tendered and the correct fee exceeds the amount of that difference.

**8 Inspection of register of proceedings**

- (1) For the purposes of section 144(4) of the Act, the prescribed fee for a person who is not party to a proceeding to inspect the register is—
  - (a) for the period commencing 1 March 2013 and ending 28 February 2014, 0.8 fee units;
  - (b) for the period commencing 1 March 2014 and ending 28 February 2015, 0.9 fee units;
  - (c) for the period commencing 1 March 2015, 1.1 fee units.
- (2) For the purposes of section 144(4) of the Act, the prescribed fee for each request for the principal registrar to search the register and to provide a copy of the results of that search is—
  - (a) for the period commencing 1 March 2013 and ending 28 February 2014, 4.1 fee units;
  - (b) for the period commencing 1 March 2014 and ending 28 February 2015, 4.7 fee units;
  - (c) for the period commencing 1 January 2015, 5.3 fee units.

**9 Principal registrar's certificate**

For the purposes of section 145(2) of the Act, the prescribed fee is—

- (a) for the period commencing 1 March 2013 and ending 28 February 2014, 4.3 fee units;
- (b) for the period commencing 1 March 2014 and ending 28 February 2015, 4.9 fee units;
- (c) for the period commencing 1 March 2015, 5.5 fee units.

**10 Inspection of proceeding files**

- (1) For the purposes of section 146(3) of the Act, the prescribed fee for inspection of one proceeding file by a person who is not party to the proceeding is—
  - (a) for the period commencing 1 March 2013 and ending 28 February 2014, 7.3 fee units;
  - (b) for the period commencing 1 March 2014 and ending 28 February 2015, 8.3 fee units;
  - (c) for the period commencing 1 March 2015, 9.3 fee units.
- (2) For the purposes of section 146(3) of the Act, the prescribed fee for inspection of each additional proceeding file at the same time as the first proceeding file under subregulation (1) by a person who is not party to the proceeding is—
  - (a) for the period commencing 1 March 2013 and ending 28 February 2014, 1.3 fee units;
  - (b) for the period commencing 1 March 2014 and ending 28 February 2015, 1.5 fee units;
  - (c) for the period commencing 1 March 2015, 1.7 fee units.
- (3) For the purposes of section 146(3) of the Act, the prescribed fee for the provision by the principal registrar of a copy of a document from a proceeding file is 60 cents per page.

**11 Fee for issue of warrant**

The prescribed fee for the issue of a warrant under the Act or any enabling enactment is—

- (a) for the period commencing 1 March 2013 and ending 28 February 2014, 8.9 fee units;
- (b) for the period commencing 1 March 2014 and ending 28 February 2015, 10.1 fee units;
- (c) for the period commencing 1 March 2015, 11.4 fee units.

**12 Fee for issue of witness summons or subpoena**

The prescribed fee for the issue of a witness summons or subpoena to a witness or to produce documents under the Act or any enabling enactment is—

- (a) for the period commencing 1 March 2013 and ending 28 February 2014, 8.9 fee units;
- (b) for the period commencing 1 March 2014 and ending 28 February 2015, 10.1 fee units;
- (c) for the period commencing 1 March 2015, 11.4 fee units.

**13 Expiry**

These Regulations expire on 28 February 2016.

**SCHEDULE 1**  
**SCALE OF FEES**

**PART 1 - FEES FOR  
COMMENCEMENT OR  
TRANSFER OF PROCEEDINGS**

Column 1 Item No.	Column 2 Description	Column 3 Fee payable	Column 4 Fee payable	Column 5 Fee payable
1.	No fee is payable for the commencement of proceedings under the following enabling enactments or provisions of enabling enactments—			
1.1	<b>Adoption Act 1984</b> section 129A(1)(a);			
1.2	<b>Assisted Reproductive Treatment Act 2008</b> ;			
1.3	<b>Children, Youth and Families Act 2005</b> ;			
1.4	<b>Disability Act 2006</b> ;			
1.5	<b>Equal Opportunity Act 2010</b> except section 89(5)(a);			
1.6	<b>Freedom of Information Act 1982</b> applications under section 50(2) if— (a) the application is for the review of a deemed decision under section 53 refusing to grant access to a document; or (b) the applicant is a natural person and the document to which access is sought contains information relating to the applicant's personal affairs;			
1.7	<b>Guardianship and Administration Act 1986</b> ;			
1.8	<b>Health Records Act 2001</b> ;			
1.9	<b>Information Privacy Act 2000</b> ;			
1.10	<b>Instruments Act 1958</b> ;			
1.11	<b>Legal Profession Act 2004</b> Part 4;			
1.12	<b>Medical Treatment Act 1988</b> ;			
1.13	<b>Mental Health Act 1986</b> (except section 79);			
1.14	<b>Public Health and Wellbeing Act 2008</b> sections 122 and 204;			
1.15	<b>Racial and Religious Tolerance Act</b>			

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	<b>2001</b> section 23A;			
1.16	<b>Residential Tenancies Act 1997</b> Part 10;			
1.17	<b>Supported Residential Services (Private Proprietors) Act 2010</b> sections 105 and 121;			
1.18	<b>Trustee Companies Act 1984.</b>			
2.	For the commencement of proceedings under the following enabling enactments—			
2.1	<b>Credit Act 1984</b> sections 47, 62, 74(5), 76, 81, 85B (if the application is not made by a credit provider), 93, 95(1), 97, 104, 106, 107(8), 110(1), 111, 112, 114, 115, 116(7), 118 and 139(6);			
2.2	<b>Equal Opportunity Act 2010</b> section 89(5)(a);			
2.3	<b>Landlord and Tenant Act 1958;</b>			
2.4	<b>Motor Car Traders Act 1986</b> section 45;			
2.5	<b>Residential Tenancies Act 1997</b> except Part 10;			
2.6	<b>Supported Residential Services (Private Proprietors) Act 2010</b> section 123;	3.5 fee units	4.2 fee units	4.8 fee units
3	For the commencement of proceedings under the following enabling enactments—			
3.1	<b>Australian Consumer Law and Fair Trading Act 2012</b> where the claim is for a sum less than \$10,000;			
3.2	<b>Domestic Building Contracts Act 1995</b> where the claim is for a sum less than \$10,000;			
3.3	<b>Owners Corporation Act 2006</b> except section 191, where the claim is for a sum less than \$10,000.	9.3 fee units	11.0 fee units	12.8 fee units
4.	For the commencement of proceedings under the following enabling enactments—			
4.1	<b>Credit Act 1984</b> for any application			

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	(other than an application by the Director) to the Tribunal that is not otherwise referred to in these Regulations;			
4.2	<b>Local Government Act 1989</b> section 183.	14.6 fee units	17.4 fee units	20.1 fee units
5.	For the commencement of proceedings under section 50(2) of the <b>Freedom of Information Act 1982</b> except—			
	(a) applications for review of a deemed decision under section 53 refusing to grant access to a document; or			
	(b) if the applicant is a natural person and the document to which access is sought contains information relating to the applicant's personal affairs.	19.8 fee units	23.6 fee units	27.3 fee units
6.	For the commencement of proceedings under the following enabling enactments—			
6.1	<b>Aboriginal Heritage Act 2006;</b>			
6.2	<b>Accident Compensation Act 1985;</b>			
6.3	<b>Accident Towing Services Act 2007;</b>			
6.4	<b>Adoption Act 1984</b> section 129A except section 129A(1)(a);			
6.5	<b>Agricultural and Veterinary Chemicals (Control of Use) Act 1992;</b>			
6.6	<b>Architects Act 1991;</b>			
6.7	<b>Associations Incorporation Act 1981;</b>			
6.8	<b>Australian Consumer Law and Fair Trading Act 2012—</b>			
	(a) where the claim is for a sum of \$10,000 or more but less than \$100,000; or			
	(b) where the claim has no monetary value;			
6.9	<b>Biological Control Act 1986;</b>			
6.10	<b>Births, Deaths and Marriages Registration Act 1996;</b>			
6.11	<b>Building Act 1993;</b>			
6.12	<b>Bus Safety Act 2009;</b>			
6.13	<b>Catchment and Land Protection Act 1994;</b>			

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- 6.14 **Cemeteries and Crematoria Act 2003;**
- 6.15 **Chattel Securities Act 1987;**
- 6.16 **Children's Services Act 1996;**
- 6.17 **Climate Change Act 2010;**
- 6.18 **Conservation, Forests and Lands Act 1987;**
- 6.19 **Conveyancers Act 2006;**
- 6.20 **Co-operatives Act 1996;**
- 6.21 **Country Fire Authority Act 1958;**
- 6.22 **Credit Act 1984** sections 85, 85B and 86 if—
- (a) the application is made by a credit provider; and
  - (b) the number of contracts that are the subject of the application does not exceed 3000;
- 6.23 **Dairy Act 2000;**
- 6.24 **Dangerous Goods Act 1985;**
- 6.25 **Domestic Animals Act 1994;**
- 6.26 **Domestic Building Contracts Act 1995** where—
- (a) the amount sought is \$10 000 or more, but is less than \$100 000; or
  - (b) where no specific amount is sought;
- 6.27 **Drugs, Poisons and Controlled Substances Act 1981** section 69B;
- 6.28 **Duties Act 2000;**
- 6.29 **Education and Training Reform Act 2006;**
- 6.30 **Electoral Act 2002;**
- 6.31 **Electrical Safety Act 1998;**
- 6.32 **Emergency Management Act 1986;**
- 6.33 **Emergency Services Superannuation Act 1986;**
- 6.34 **Environment Protection Act 1970**, except sections 33(1) and 33A(1);
- 6.35 **Equipment (Public Safety) Act 1994;**
- 6.36 **Estate Agents Act 1980;**
- 6.37 **Firearms Act 1996;**
- 6.38 **First Home Owner Grant Act 2000;**



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- 6.39 **Fisheries Act 1995;**
- 6.40 **Flora and Fauna Guarantee Act 1988;**
- 6.41 **Fundraising Act 1998;**
- 6.42 **Gambling Regulation Act 2003;**
- 6.43 **Gas Safety Act 1997;**
- 6.44 **Health Practitioner Regulation National Law (Victoria) Act 2009;**
- 6.45 **Health Services Act 1988;**
- 6.46 **Heritage Act 1995;**
- 6.47 **House Contract Guarantee Act 1987;**
- 6.48 **Land Tax Act 1958;**
- 6.49 **Legal Profession Act 2004** except Part 4;
- 6.50 **Liquor Control Reform Act 1998;**
- 6.51 **Livestock Disease Control Act 1994;**
- 6.52 **Local Government Act 1989** except section 183;
- 6.53 **Major Sporting Events Act 2009;**
- 6.54 **Major Transport Projects Facilitation Act 2009;**
- 6.55 **Meat Industry Act 1993;**
- 6.56 **Metropolitan Fire Brigades Act 1958;**
- 6.57 **Mineral Resources (Sustainable Development) Act 1990;**
- 6.58 **Motor Car Traders Act 1986** except applications under section 45;
- 6.59 **Occupational Health and Safety Act 2004;**
- 6.60 Occupational Health and Safety Regulations 2007;
- 6.61 **Owner Drivers and Forestry Contractors Act 2005;**
- 6.62 **Owners Corporation Act 2006** section 191, or under any other provision where—
  - (a) the claim is for the sum of \$10,000 or more but less than \$100,000; or
  - (b) the claim has no monetary value;
- 6.63 **Parliamentary Salaries and Superannuation Act 1968;**

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- 6.64 **Payroll Tax Act 2007;**
- 6.65 **Pipelines Act 2005;**
- 6.66 **Plant Biosecurity Act 2010;**
- 6.67 **Prevention of Cruelty to Animals Act 1986;**
- 6.68 **Private Security Act 2004;**
- 6.69 **Professional Boxing and Combat Sports Act 1985;**
- 6.70 **Property Law Act 1958;**
  
- 6.71 **Public Health and Wellbeing Act 2008** section 207;
- 6.72 **Racing Act 1958;**
- 6.73 **Relationships Act 2008;**
- 6.74 **Retail Leases Act 2003** where—
  - (a) the amount sought is less than \$100,000; or
  - (b) no specific amount is sought;
- 6.75 **Retirement Villages Act 1986;**
- 6.76 **Road Management Act 2004;**
- 6.77 Road Safety (Vehicles) Regulations 2009;
- 6.78 **Sale of Land Act 1962;**
- 6.79 **Second-Hand Dealers and Pawnbrokers Act 1989;**
- 6.80 **Sex Work Act 1994;**
- 6.81 **State Employees Retirement Benefits Act 1979;**
- 6.82 **State Superannuation Act 1988;**
- 6.83 **Subdivision Act 1988;**
- 6.84 **Superannuation (Portability) Act 1989;**
- 6.85 **Supported Residential Services (Private Proprietors) Act 2010** section 206;
- 6.86 **Surveying Act 2004;**
- 6.87 **Taxation Administration Act 1997;**
- 6.88 **The Constitution Act Amendment Act 1958;**
- 6.89 **Therapeutic Goods (Victoria) Act 2010;**
- 6.90 **Transport Accident Act 1986;**
- 6.91 **Transport (Compliance and**

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	<b>Miscellaneous) Act 1983;</b>			
6.92	<b>Transport Superannuation Act 1988;</b>			
6.93	<b>Travel Agents Act 1986;</b>			
6.94	<b>Unclaimed Money Act 2008;</b>			
6.95	<b>Valuation of Land Act 1960</b> where:			
	(a) the net annual value of the property is less than \$60,000; or			
	(b) the site value is less than \$750,000; or			
	(c) the capital improved value is less than \$1 million;			
6.96	<b>Veterinary Practice Act 1997;</b>			
6.97	<b>Victims of Crime Assistance Act 1996;</b>			
6.98	<b>Victoria State Emergency Service Act 2005;</b>			
6.99	Victoria State Emergency Service Regulations 2006;			
6.100	<b>Victorian Plantations Corporation Act 1993;</b>			
6.101	<b>Water Act 1989;</b>			
6.102	<b>Water Industry Act 1994;</b>			
6.103	<b>Wildlife Act 1975;</b>			
6.104	<b>Working With Children Act 2005.</b>	29.1	34.6	40.1
		fee	fee	fee
		units	units	units
7.	For the commencement of proceedings under the following enabling enactments—			
7.1	<b>Australian Consumer Law and Fair Trading Act 2012</b> where the claim is for a sum of \$100,000 or more but less than \$1 million			
7.2	<b>Domestic Building Contracts Act 1995</b> where the claim is for a sum of \$100,000 or more but less than \$1 million;			
7.3	<b>Environment Protection Act 1970</b> sections 33(1) and 33A(1) if the proceedings are in respect of a development of any kind where the estimated cost of the development is less than \$1 million;			

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- 7.4 **Land Acquisition and Compensation Act 1986** where the claim is for compensation of an amount less than \$1 million;
- 7.5 **Owners Corporation Act 2006** except section 191, where the claim is for a sum of \$100,000 or more but less than \$1 million;
- 7.6 **Planning and Environment Act 1987** except sections 77, 79, 80 and 87A if the proceedings are in respect of a development of any kind where the estimated cost of the development is \$1 million or more;
- |     |   |                      |                      |                      |
|-----|---|----------------------|----------------------|----------------------|
| 7.7 | <b>Retail Leases Act 2003</b> where the amount sought is \$100 000 or more. | 58.4<br>fee<br>units | 69.4<br>fee<br>units | 80.4<br>fee<br>units |
|-----|---|----------------------|----------------------|----------------------|
8. For the commencement of proceedings under the following enabling enactments—
- 8.1 **Australian Consumer Law and Fair Trading Act 2012** where the claim is for a sum of \$1 million or more;
- 8.2 **Credit Act 1984** sections 85, 85B and 86 if—
- (a) the application is made by a credit provider; and
  - (b) the number of contracts that are the subject of the application exceeds 3000;
- 8.3 **Domestic Building Contracts Act 1995** where the claim is for a sum of \$1 million or more;
- 8.4 **Environment Protection Act 1970** sections 33(1) and 33A(1) if—
- (a) the proceedings are in respect of a development of any kind where the estimated cost of the development is \$1 million or more; and
  - (b) the proceedings are not entered in the Major Cases List within the Planning and Environment List;
- 8.5 **Land Acquisition and Compensation Act 1986** where the claim is for compensation of \$1 million or more;

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8.6	<b>Owners Corporation Act 2006</b> except section 191, where the claim is for a sum of \$1 million or more;			
8.7	<b>Planning and Environment Act 1987</b> sections 77, 79, 80 and 87A if— (a) the proceedings are in respect of a development of any kind where the estimated cost of the development is \$1million or more; and (b) the proceedings are not entered in the Major Cases List within the Planning and Environment List;			
8.8	<b>Valuation of Land Act 1960</b> where: (a) the net annual value of the property is \$60,000 or more; (b) the site value is \$750,000 or more; or (c) the capital improved value is \$1 million or more.	116.7 fee units	138.7 fee units	160.8 fee units
9.	For the commencement of proceedings under the following enabling enactments—			
9.1	<b>Environment Protection Act 1970</b> sections 33 and 33A if the proceedings are in respect of a development of any kind where the proceedings are, by election of the applicant, entered into the Major Cases List within the Planning and Environment List;			
9.2	<b>Planning and Environment Act 1987</b> sections 77, 79, 80 and 87A if— (a) the proceedings are in respect of a development that does not include a dwelling (within the meaning of the Victoria Planning Provisions) where the proceedings are, by election of the applicant, entered in the Major Cases List within the Planning and Environment List; or (b) the proceedings are in respect of a development where— (i) the estimated cost of that development is \$10 million	260.0 fee units	260.0 fee units	260.0 fee units

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	or more; and			
	(ii) the proceedings are, by election of the applicant, entered in the Major Cases List within the Planning and Environment List.			
10.	For the commencement of a proceeding under any enabling enactment not shown in this Schedule.	29.1 fee units	34.6 fee units	40.1 fee units
11.	For the transfer of proceedings under the following enabling enactments—			
11.1	<b>Environment Protection Act 1970</b> sections 33 and 33A if the proceedings are in respect of a development of any kind where the proceedings are, by election of the applicant, entered into the Major Cases List within the Planning and Environment List.			
11.2	<b>Planning and Environment Act 1987</b> sections 82 and 82B if—			
	(a) the proceedings are in respect of a development that does not include a dwelling (within the meaning of the Victoria Planning Provisions) where the proceedings are entered in the Planning and Environment List and are subsequently transferred to the Major Cases List within the Planning and Environment List; or			
	(b) the proceedings are in respect of a development of any kind where—			
	(i) the estimated cost of that development is \$10,000,000 or more; and			
	(ii) the proceedings are entered in the Planning and Environment List and are subsequently transferred to the Major Cases list within the Planning and Environment List.	201.6 fee units	190.6 fee units	179.6 fee units

**PART 2 - HEARING FEES**

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1.	For hearing proceedings in the Major Cases List within the Planning and Environment List, for each day or part of a day.	257.5 fee units	257.5 fee units	257.5 fee units
2.	For hearing proceedings where the Tribunal or principal registrar is of the opinion that the proceeding is a complex case having regard to whether— (a) more than one member is or is likely to be appointed to hear the proceeding; and (b) the hearing of the proceeding is likely to take 2 or more days— For each day or part of a day after the first day.	113.9 fee units	130.2 fee units	146.4 fee units
3.	For hearing all other proceedings for which a fee is payable under Part 1 of this Schedule on commencement— (a) for days 2 to 4, per day or part of a day; (b) for days 5 to 9, per day or part of a day; (c) for day 10 and any subsequent day, per day or part of a day.	29.4 fee units	29.4 fee units	29.4 fee units
		49.2 fee units	49.2 fee units	49.2 fee units
		82.1 fee units	82.1 fee units	82.1 fee units

**PART 3 - ALTERNATIVE  
DISPUTE RESOLUTION FEES**

1.	For alternative dispute resolution in all proceedings for which a fee is payable under Part 1 of this Schedule on commencement— (a) fee payable per party for each full day spent in alternative dispute resolution, where the alternative dispute resolution is of longer than a half day's duration (b) fee payable per party for each half day spent in alternative dispute resolution, where the alternative dispute resolution is of equal to or less than half a day's duration.	19.0 fee units	21.7 fee units	24.4 fee units
		10.6 fee units	12.1 fee units	13.6 fee units

Victorian Civil and Administrative Tribunal (Fees) Regulations 2012  
S.R. No. /2012  
Schedule 1

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**ENDNOTES**

<sup>1</sup> Reg.4: S.R. 147/2012.

<sup>1</sup> S.R. No. 54/2007.

<sup>1</sup> S.R. No. 118 /2009.

<sup>1</sup> S.R. No. 130/2006.



## Appendix 2: Cost calculations for Administrative and ADR Fees

Specific Fee	Class.	Time (mins)	Rate/Min	Total Cost per Activity	Current fee	Cost recovery
<b>Warrant for Possession RTA 1997</b>						
Request for Warrant received/accepted	VPS 2	3	\$0.519	\$1.56		
Payment receipted on database	VPS 4	3	\$0.789	\$2.37		
Payment receipted cash register	VPS 2	3	\$0.519	\$1.56		
Search for Files location	VPS 2	3	\$0.519	\$1.56		
File retrieved from filing room	VPS 2	8	\$0.519	\$4.16		
Update Database re: file location	VPS 2	3	\$0.519	\$1.56		
Monitor/Supervise/Assist	VPS 3	6	\$0.661	\$3.96		
Search Database	VPS 2	3	\$0.519	\$1.56		
Prepare Warrant for Possession	VPS 2	15	\$0.519	\$7.79		
Sign Warrant for Possession	VPS 6	10	\$1.22	\$12.23		
Update Database re: file location	VPS 2	3	\$0.519	\$1.56		
Post/Fax warrant to Police and notify person who requested Warrant	VPS 2	15	\$0.519	\$7.79		
Return File	VPS 2	6	\$0.519	\$3.12		
Update Database re: file location	VPS 2	3	\$0.519	\$1.56		
Receive returned Warrant for Possession	VPS 2	3	\$0.519	\$1.56		
File retrieved from filing room	VPS 2	8	\$0.519	\$4.16		
Update Database re: file location	VPS 2	3	\$0.519	\$1.56		
Return File	VPS 2	6	\$0.519	\$3.12		
Cost to lodge warrant with Police, execute warrant and return warrant to VCAT	Senior Constable	240	\$0.796	\$190.94		
<b>Sub-Total</b>				\$253.65		
Corporate Overheads	25.10%			\$63.67		
<b>Total cost to issue Warrant for Possession</b>				<b>\$317.31</b>	<b>\$77.70</b>	<b>24%</b>
<b>Summons to Witness</b>						
Request for Issue of Summons to Witness received/accepted	VPS 2	2.5	\$0.519	\$1.30		
Payment receipted	VPS 2	2.5	\$0.519	\$1.30		
Search for File location	VPS 2	2.5	\$0.519	\$1.30		
File retrieved from pending room	VPS 2	5	\$0.519	\$2.60		
Monitor/Supervise/Assist	VPS 3	5	\$0.661	\$3.30		
Search Database	VPS 2	2.5	\$0.519	\$1.30		
Check Summons to Witness	VPS 2	5	\$0.519	\$2.60		
Sign Summons to Witness	VPS 6	7.5	\$1.22	\$9.17		
Update database	VPS 2	2.5	\$0.519	\$1.30		
Post/Fax Summons to Witness to party requesting issue	VPS 2	10	\$0.519	\$5.19		
Return File to Pending	VPS 2	2.5	\$0.519	\$1.30		
Receive returned Summons to Witness with Affidavit of Service	VPS 2	2.5	\$0.519	\$1.30		
File retrieved from pending room	VPS 2	5	\$0.519	\$2.60		
Update database	VPS 2	2.5	\$0.519	\$1.30		
Return File to Pending	VPS 2	5	\$0.519	\$2.60		
<b>Sub-total</b>				\$38.44		
Corporate Overheads	25.10%			\$9.65		

<b>Total cost to issue Summons to Witness</b>				<b>\$48.09</b>	<b>\$12.50</b>	<b>25.99%</b>
<b>Inspection of a proceeding file</b>						
Request for Inspection of a proceeding file received/accepted	VPS 2	3	\$0.519	\$1.56		
Payment receipted	VPS 2	3	\$0.519	\$1.56		
Search Database	VPS 2	3	\$0.519	\$1.56		
Search for File Location	VPS 2	3	\$0.519	\$1.56		
File retrieved from filing room	VPS 2	8	\$0.519	\$4.16		
Monitor/Supervise/Assist	VPS 3	6	\$0.661	\$3.96		
Check File	VPS 2	10	\$0.519	\$5.19		
Update Database re: file location	VPS 2	3	\$0.519	\$1.56		
Refer to Member	VPS 2	3	\$0.519	\$1.56		
Take file to Member	VPS 2	5	\$0.519	\$2.60		
Member reads file and makes recommendation	Member	30	\$4.73	\$141.76		
Collect file from Members' Chambers	VPS 2	5	\$0.519	\$2.60		
Update Database re: file location	VPS 2	3	\$0.519	\$1.56		
Supervise the inspection of the proceeding file	VPS 2	60	\$0.519	\$31.17		
Return File to filing room	VPS 2	8	\$0.519	\$4.16		
Update Database re: file location	VPS 2	3	\$0.519	\$1.56		
<b>Sub-Total</b>				<b>\$208.06</b>		
Corporate Overheads	25.10%			\$52.22		
<b>Total cost to process request for Inspection of Proceeding File</b>				<b>\$260.28</b>	<b>\$32.60</b>	<b>12.52%</b>
<b>Additional Inspection of a proceeding file</b>						
Search Database	VPS 2	3	\$0.519	\$1.56		
Search for File Location	VPS 2	3	\$0.519	\$1.56		
File retrieved from filing room	VPS 2	2	\$0.519	\$1.04		
Monitor/Supervise/Assist	VPS 3	6	\$0.661	\$3.96		
Check File	VPS 2	10	\$0.519	\$5.19		
Update Database re: file location	VPS 2	3	\$0.519	\$1.56		
Member reads file and makes recommendation	Member	30	\$4.73	\$141.76		
Update Database re: file location	VPS 2	3	\$0.519	\$1.56		
Supervise the inspection of the proceeding file	VPS 2	60	\$0.519	\$31.17		
Update Database re: file location	VPS 2	3	\$0.519	\$1.56		
<b>Sub-Total</b>				<b>\$190.92</b>		
Corporate Overheads	25.10%			\$47.92		
<b>Total cost to process request for Inspection of additional Proceeding File</b>				<b>\$238.84</b>	<b>\$4.00</b>	<b>1.67%</b>
<b>Warrant to Remove</b>						
Request for Warrant received/accepted	VPS 2	3	\$0.519	\$1.56		
Payment receipted on database	VPS 4	3	\$0.789	\$2.37		
Payment receipted cash register	VPS 2	3	\$0.519	\$1.56		
Search for Files location	VPS 2	3	\$0.519	\$1.56		
File retrieved from filing room	VPS 2	8	\$0.519	\$4.16		
Update Database re: file location	VPS 2	3	\$0.519	\$1.56		
Monitor/Supervise/Assist	VPS 3	6	\$0.661	\$3.96		
Search Database	VPS 2	3	\$0.519	\$1.56		
Prepare Warrant for Possession	VPS 2	15	\$0.519	\$7.79		

Sign Warrant for Possession	VPS 6	10	\$1.22	\$12.23		
Update Database re: file location	VPS 2	3	\$0.519	\$1.56		
Post/Fax warrant to Police and notify person who requested Warrant	VPS 2	15	\$0.519	\$7.79		
Return File	VPS 2	6	\$0.519	\$3.12		
Update Database re: file location	VPS 2	3	\$0.519	\$1.56		
Receive returned Warrant for Possession	VPS 2	3	\$0.519	\$1.56		
File retrieved from filing room	VPS 2	8	\$0.519	\$4.16		
Update Database re: file location	VPS 2	3	\$0.519	\$1.56		
Return File	VPS 2	6	\$0.519	\$3.12		
Cost to lodge warrant with Police, execute warrant and return warrant to VCAT	Senior Constable	240	\$0.796	\$190.94		
<b>Sub-Total</b>				\$253.65		
Corporate Overheads	25.10%			\$63.67		
<b>Total cost to issue Warrant for Possession</b>				<b>\$317.31</b>	<b>\$77.70</b>	<b>24.49%</b>
<b>Digital Recording</b>						
Request for Audio Recording received/accepted	VPS 3	3	\$0.661	\$1.98		
Update Database re: file location	VPS 3	2	\$0.661	\$1.32		
Payment receipted cash register	VPS 2	3	\$0.519	\$1.56		
Scan & email receipt to Digital Recording Manager	VPS 3	2	\$0.661	\$1.32		
Print Request	VPS 3	1	\$0.661	\$0.66		
Verify details of case and request	VPS 3	10	\$0.661	\$6.61		
Burn audio CD and check recording sheets	VPS 3	60	\$0.661	\$39.65		
Convert to Windows media	VPS 3	5	\$0.661	\$3.30		
Notify member to get permission to release CD	VPS 3	3	\$0.661	\$1.98		
Member emails Digital Recording Manager	Member	3	\$4.73	\$14.18		
Read response from Member and record on spreadsheet	VPS 3	5	\$0.661	\$3.30		
Send audio CD to ground floor to distribute	VPS 3	3	\$0.661	\$1.98		
Contact client to collect or post	VPS 2	10	\$0.519	\$5.19		
Post by registered post including cost of postage	VPS 2	5	\$0.519	\$2.60		
Update spreadsheet re: collection	VPS 2	2	\$0.519	\$1.04		
<b>Sub-Total</b>				\$86.68		
Corporate Overheads	25.10%			\$21.76		
<b>Total cost to provide audio recording per proceeding for the first day</b>				<b>\$108.43</b>	<b>\$55.00</b>	<b>50.72%</b>
<b>Additional Audio Recordings</b>						
Burn audio CD and check recording sheets	VPS 3	60	\$0.661	\$39.65		
Convert to Windows media	VPS 3	5	\$0.661	\$3.30		
<b>Sub-Total</b>				\$42.95		
Corporate Overheads	25.10%			\$10.78		
<b>Total cost to provide audio recording per proceeding for subsequent days</b>				<b>\$53.73</b>	<b>\$55.00</b>	<b>102.37%</b>
<b>Mediation per Day</b>						
Upon lodgement of application, file referred to member to determine if matter suitable for mediation	VPS 2	30	\$0.519	\$15.58		
Make entries on Database						

Send hearing notices to parties						
Place documents in appropriate file						
Enter decision to Mediate						
List for Mediation						
Review mediation file 2 days before hearing	VPS 3	30	\$0.661	\$19.82		
Consider responses from partyies						
File terms of settlement						
If not settled list for hearing						
Determine if matter suitable for Mediation	Deputy President	15	\$5.91	\$88.61		
Conduct Mediation	Mediator	360	\$2.725	\$981.00		
<b>Sub-Total</b>				\$1,105.02		
Corporate Overheads	23.2%			\$256.36		
<b>Total cost of Mediation - per day</b>				<b>\$1,361.38</b>	<b>\$0.00</b>	<b>0.00%</b>
<b>Mediation per Half Day</b>						
Upon lodgement of application, file referred to member to determine if matter suitable for mediation						
Make entries on Database	VPS 2	30	\$0.519	\$15.58		
Send hearing notices to parties						
Place documents in appropriate file						
Enter decision to Mediate						
List for Mediation						
Review mediation file 2 days before hearing	VPS 3	30	\$0.661	\$19.82		
Consider responses from partyies						
File terms of settlement						
If not settled list for hearing						
Determine if matter suitable for Mediation	Deputy President	15	\$5.91	\$88.61		
Conduct Mediation	Mediator	180	\$2.725	\$490.50		
<b>Sub-Total</b>				\$614.52		
Corporate Overheads	23.2%			\$142.57		
<b>Total cost of Mediation - per half day</b>				<b>\$757.09</b>	<b>\$0.00</b>	<b>0.00%</b>
<b>Inspection of Register, Result</b>						
Lodgement of request to inspect a register received/accepted						
Payment receipted in cash register						
Search database	VPS 2	30	\$0.519	\$15.58		
Retrieve file						
Check database and file for orders under section 101						
Refer to Member						
Member reads response and considers request pursuant to section 101	Deputy President	15	\$5.908	\$88.61		
Prepare response	VPS 5	15	\$0.942	\$14.13		
Notify requestor of outcome of inspection						
<b>Sub-Total</b>				\$118.33		
Corporate Overheads	25.10%			\$29.70		
<b>Total cost of inspection of the Register- per proceeding</b>				<b>\$148.03</b>	<b>\$0.00</b>	<b>0.00%</b>
<b>s 145 Certificate</b>						
Lodgement of request to inspect a register received/accepted	VPS 2	30	\$0.519	\$15.58		

Payment receipted in cash register						
Search database						
Retrieve file						
Check database and file for orders under section 101						
Refer to Member						
Member reads response and considers request pursuant to section 101	Deputy President	15	\$5.908	\$88.61		
Prepare Certificate under section 145	VPS 5	20	\$0.942	\$18.84		
Notify requestor of outcome of inspection						
<b>Sub-Total</b>				\$123.04		
Corporate Overheads	25.1%			\$30.88		
<b>Total cost of inspection of the Register- per proceeding</b>				<b>\$153.92</b>	<b>\$0.00</b>	<b>0%</b>

### Appendix 3: Costings for Major Cases List Fees

Costs covered by commencement fee		
<b>Practice Day (1 Hour)</b>	Constituted by Deputy President	\$428
	Constituted by Ordinary Member	\$745
	Hearing Room Hire (including Breakout)	\$108
<b>Mediation (3 Hours)</b>	ADR Staff Salaries	\$113
	Staff Salaries	\$879
<b>Interlocutory Hearing Cost (Daily)</b>	Service Costs	\$449
<b>Costs (Preparation/Site costs/Writing)</b>		\$536
<b>TOTAL COST</b>		<b>\$3,258</b>

Notes:

1. Commencement fee covers the costs of preliminary, interlocutory hearings and mediation activities. These are costed in line with estimated average time inputs.

Daily Hearing Costs		
<b>Hearing Costs</b>	Single Senior Member+ 55% loading to cover 2 Member Panels <sup>34</sup>	\$2,197
	Room Hire	\$180
<b>Costs (Preparation/Site/Writing)</b>	Single Senior Member daily rate/per day	\$1,418
<b>TOTAL COST</b>		<b>\$3,795</b>

Note:

1. Total Daily Hearing Cost is factored down by 15% to allow for those cases settled at mediation **\$3,226**

<sup>34</sup> VCAT estimates that 55% of matters heard in the Major Cases List are heard by two member panels, with the remainder being heard by single-member panels.

## Appendix 4: Annual Revenue Estimates for Cost Recovery Options

Cost Recovery Analysis		Restructure Fees		Scenario One		Scenario Two		Scenario Three		Scenario Four	
Cost Recovery				30%		35%		40%		45%	
	No of Cases Lodged 2011/2012	Fee Units	Revenue (\$)	Estimated Commencement Fee	Expected Revenue	Estimated Commencement Fee	Expected Revenue	Estimated Commencement Fee	Expected Revenue	Estimated Commencement Fee	Expected Revenue
<b>Commencement Fees</b>											
<b>Civil Division</b>											
Small Claim <\$10,000 (including no value)	7886	8.2	\$810,255	\$94	\$744,711	\$116	\$918,068	\$138	\$1,091,424	\$160	\$1,264,780
Standard Claim \$10,001 - \$100,000	959	25.7	\$308,818	\$296	\$283,837	\$365	\$349,910	\$434	\$415,982	\$503	\$482,054
Complex Claim \$100,001 - \$1m	78	51.5	\$50,333	\$593	\$46,261	\$731	\$57,030	\$869	\$67,799	\$1,007	\$78,568
Complex Claim \$1m +	5	103.0	\$6,453	\$1,186	\$5,931	\$1,462	\$7,312	\$1,738	\$8,692	\$2,015	\$10,073
<b>Civil Claims List</b>	<b>8928</b>		<b>\$1,175,859</b>		<b>\$1,080,741</b>		<b>\$1,332,319</b>		<b>\$1,583,897</b>		<b>\$1,835,475</b>
<b>Real Property List</b>	<b>192</b>	<b>25.7</b>	<b>\$61,828</b>	<b>\$296</b>	<b>\$56,827</b>	<b>\$365</b>	<b>\$70,055</b>	<b>\$434</b>	<b>\$83,283</b>	<b>\$503</b>	\$96,511
<b>Administrative Division</b>											
General - Freedom of Information	79	17.5	\$17,323	\$202	\$15,921	\$248	\$19,628	\$295	\$23,334	\$342	\$27,040
General - Other	1066	25.7	\$343,274	\$296	\$315,506	\$365	\$388,951	\$434	\$462,395	\$503	\$535,839
OBR	267	25.7	\$85,980	\$296	\$79,025	\$365	\$97,420	\$434	\$115,816	\$503	\$134,211
Taxation	82	25.7	\$26,406	\$296	\$24,270	\$365	\$29,919	\$434	\$35,569	\$503	\$41,218
<b>General/OBR List/Taxation</b>	<b>1412</b>		<b>\$472,982</b>		<b>\$434,722</b>		<b>\$535,918</b>		<b>\$637,113</b>		<b>\$738,309</b>

Level 1	66	51.5	\$42,589	\$593	\$39,144	\$731	\$48,256	\$869	\$57,369	\$1,007	\$66,481
Level 2	58	103.0	\$74,854	\$1,186	\$68,799	\$1,462	\$84,814	\$1,738	\$100,830	\$2,015	\$116,845
<b>Land Valuation List</b>	<b>124</b>		<b>\$117,444</b>		<b>\$107,943</b>		<b>\$133,071</b>		<b>\$158,198</b>		<b>\$183,326</b>
Ordinary Cases	3775	51.5	\$2,435,989	\$593	\$2,238,935	\$731	\$2,760,122	\$869	\$3,281,308	\$1,007	\$3,802,494
Major Cases (is full cost recovery in 2012/13)	222										
<b>Planning &amp; Environment List</b>	<b>3997</b>		<b>\$2,435,989</b>		<b>\$2,238,935</b>		<b>\$2,760,122</b>		<b>\$3,281,308</b>		<b>\$3,802,494</b>
<b>Human Rights Division</b>											
<b>Anti Discrimination/ Health and Privacy/ Mental Health</b>	376	26	\$121,080	\$296	\$111,285	\$365	\$137,191	\$434	\$163,096	\$503	\$189,002
<b>Total Commencement Fee Revenue</b>	15,029		<b>\$4,385,182</b>		<b>\$4,030,453</b>		<b>\$4,968,675</b>		<b>\$5,906,896</b>		<b>\$6,845,117</b>
<b>Other Revenue</b>											
Guardianship List			\$1,400,000		\$1,400,000		\$1,400,000		\$1,400,000		\$1,400,000
Specific Fee Revenue					\$454,509		\$529,913		\$605,317		\$680,721
Total Other Revenue					\$1,854,509		\$1,929,913		\$2,005,317		\$2,080,721
<b>Hearing Fees</b>											
<b>Normal Hearing Fees</b>	<b>Days</b>										
	345	29.4	\$127,092	N/A	\$127,092	N/A	\$127,092	N/A	\$127,092	N/A	\$127,092
	63	49.2	\$38,838	N/A	\$38,838	N/A	\$38,838	N/A	\$38,838	N/A	\$38,838
	30	82.1	\$30,861	N/A	\$30,861	N/A	\$30,861	N/A	\$30,861	N/A	\$30,861
<b>Total Normal Hearing Days</b>			<b>\$196,791</b>		<b>\$196,791</b>		<b>\$196,791</b>		<b>\$196,791</b>		<b>\$196,791</b>
<b>Complex Hearing Fees</b>	146	97.6	\$178,547	\$1,223	\$178,547	\$1,427	\$208,305	\$1,631	\$238,063	\$1,834	\$267,821
<b>Total Hearing Days</b>			<b>\$375,339</b>		<b>\$375,339</b>		<b>\$405,097</b>		<b>\$434,854</b>		<b>\$464,612</b>
		<b>Total Revenue</b>	<b>\$6,160,520</b>		<b>\$6,260,301</b>		<b>\$7,303,684</b>		<b>\$8,347,068</b>		<b>\$9,390,451</b>
<b>TRUST REVENUE</b>											
<b>Domestic Building List</b>											
Level 3	422	8.2	\$43,322	\$94	\$39,817	\$116	\$49,086	\$138	\$58,355	\$160	\$67,624



Level 6	646	25.7	\$208,038	\$296	\$191,210	\$365	\$235,720	\$434	\$280,230	\$503	\$324,741
Level 7	149	51.5	\$95,847	\$593	\$88,093	\$731	\$108,600	\$869	\$129,107	\$1,007	\$149,613
Level 8	5	103	\$6,062	\$1,186	\$5,571	\$1,462	\$6,868	\$1,738	\$8,165	\$2,015	\$9,462
Total	1,221		\$353,268		\$324,691		\$400,274		\$475,857		\$551,439
<b>Owners Corporations List</b>											
Level 3	2,534	8.2	\$260,376	\$149	\$376,481	\$183	\$464,120	\$218	\$551,758	\$252	\$639,397
Level 6	529	25.7	\$170,294	\$296	\$156,518	\$365	\$192,953	\$434	\$229,388	\$503	\$265,822
Level 7	3	51.5	\$1,935	\$593	\$1,779	\$731	\$2,193	\$869	\$2,607	\$1,007	\$3,021
Level 8	2	103	\$2,580	\$1,186	\$2,372	\$1,462	\$2,924	\$1,738	\$3,476	\$2,015	\$4,028
	3,068		\$435,185		\$537,150		\$662,189		\$787,229		\$912,268
<b>Retail Tenancies List</b>											
	328										
Level 3	3	8.2	\$308	\$94	\$283	\$116	\$349	\$138	\$415	\$160	\$481
Level 6	300	25.7	\$96,606	\$296	\$88,792	\$365	\$109,461	\$434	\$130,130	\$503	\$150,799
Level 7	22	51.5	\$14,196	\$593	\$13,048	\$731	\$16,085	\$869	\$19,123	\$1,007	\$22,160
			\$111,111		\$102,123		\$125,895		\$149,668		\$173,440
<b>Residential Tenancies List</b>											
Level 2	38,891	3.1	\$1,510,643	\$36	\$1,388,443	\$44	\$1,711,650	\$52	\$2,034,856	\$61	\$2,358,062
Total			\$1,635,951		\$1,503,615		\$1,853,631		\$2,203,646		\$2,553,662
<b>Legal Practice List</b>											
Level 6	110	25.7	\$35,422	\$296	\$32,557	\$365	\$40,136	\$434	\$47,714	\$503	\$55,293
Level 7	1	51.5	\$645	\$593	\$593	\$731	\$731	\$869	\$869	\$1,007	\$1,007
Total			\$36,068		\$33,150		\$40,867		\$48,584		\$56,300
		<b>Total Trust Revenue</b>	<b>\$2,571,583</b>		<b>\$2,500,729</b>		<b>\$3,082,856</b>		<b>\$3,664,983</b>		<b>\$4,247,111</b>