

21 December 2012

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Dear Ms De Cicco



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ADVICE ON THE ADEQUACY OF REGULATORY IMPACT STATEMENT

Thank you for seeking advice on the Regulatory Impact Statement (RIS) on the proposed *Victorian Civil and Administrative Tribunal (Fees) Regulations 2013*.

The Victorian Competition and Efficiency Commission (VCEC) advises on the adequacy of RISs as required under section 10(3) of the *Subordinate Legislation Act 1994* (the Act). I advise the final version of the RIS received by the VCEC on 21 December 2012 meets the requirements of section 10 of the Act.

The VCEC's advice is based on the adequacy of the evidence presented in the RIS and is focused on the quality of the analysis. **Therefore, the VCEC's advice the RIS is adequate does not represent an endorsement of the proposal.**

The VCEC interprets adequacy as relating to the quality of the analysis — its robustness and transparency. The RIS should satisfy the requirements of the *Victorian Guide to Regulation*, including being transparent about gaps in the available data and the extent to which the analysis supports the preferred option and addresses the matters raised in sections 10(1) and 10(2) of the Subordinate Legislation Act

The RIS states the objectives of the proposed regulations are to ensure an appropriate balance is achieved between user contributions and public contributions to the cost of VCAT activities. The VCEC notes analysing options to achieve this objective is made difficult as the data available to VCAT to estimate the costs of its activities is extremely limited, despite the ten year sunset period for Victorian regulations being known well in advance. This difficulty is compounded by the complexity of the existing Victorian Civil and Administrative Tribunal (VCAT) fee structure. This limits the ability of VCAT and the Department of Justice to robustly analyse the proposed fees.

In this context, the VCEC acknowledges that a comprehensive analysis of each of the proposed fees in the RIS is impractical and that it is adequate to focus on the most significant policy decisions pending the collection of robust cost data and further analysis. Consequently, the VCEC's advice that the RIS is adequate is based on the RIS transparently presenting the judgements made and the limitations of the evidence used to make these judgements. Stakeholders are therefore able to test these judgements through the public consultation process and their views will be important in deciding whether or not to set VCAT fees at the levels proposed.

In reaching this view, the VCEC notes the following aspects of the RIS that may be of interest to stakeholders during the public consultation process. In particular, stakeholders may wish to consider the appropriateness of judgements and supporting data regarding:

- the public and private benefits of different dispute resolution activities and the appropriate size of user and taxpayer contributions to VCAT's costs

- the ability of different user groups to pay proposed fees and the extent to which this may alter behaviour
- the relativity between fees charged for appropriation-funded VCAT lists and Trust-funded lists, given differences in the funding arrangements for these lists.

Given the limitations discussed above and acknowledged in the RIS, the Government is proposing that Regulations expire in 2016 and that a 'substantial review' be undertaken to inform the design of future VCAT fees. The VCEC considers that for a future RIS on VCAT fees to be assessed as adequate such a review will need to include:

- Comprehensive analysis of the underlying costs of VCAT's activities, with a focus on the highest cost and volume activities.
- Development of clear, coherent and robust policy principles to inform judgements about the design of the fee structure and decisions about the appropriate proportion of costs to recovery from users of VCAT supported by evidence and data.
- Design of a framework for presenting the analysis of proposed fees that will aid stakeholder understanding and engagement — for example, undertaking analysis of smaller groups of comparable fees (grouped by VCAT list, authorising Act or other classification as appropriate), which appears to be preferable to a single analysis of all VCAT fees.

In the interests of transparency, it is government policy VCEC's advice be published with the RIS when it is released for consultation.

If you have any questions, please contact RegulationReview@vcec.vic.gov.au.

Yours sincerely



Dr Matthew Butlin

Chair

Victorian Competition and Efficiency Commission