

Regulatory Impact Statement

Proposed Water (Resource Management) Regulations 2017



Acknowledgements

The Department of Environment, Land, Water and Planning (the department) acknowledges its responsibility for this regulatory impact statement (RIS) that sets out the impacts of the proposed Water (Resource Management) Regulations 2017.

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Executive Summary

The *Water (Resource Management) Regulations 2007* (the current regulations) prescribe—

- fees for applying for ministerial approval in relation to transactions in water shares and water allocations under water shares and to use ‘water share’ water on land (Part 2);
- water register fees for dealings in water shares and searching or amending the water register (Part 3);
- the purposes for which application for a take and use licence can be made in a declared system (Part 4);
- the persons who may be considered an ‘occupier’ of land for the purpose of obtaining a water-use registration (Part 4A); and
- a requirement to notify the Minister prior to constructing or altering a small private dam within a rural residential area (Part 5).

The current regulations will sunset on 30 November 2017, ten years and five months after coming into effect. The proposed *Water (Resource Management) Regulations 2017* (the proposed regulations) will replace the current regulations with only one substantive amendment: Part 5 of the current regulations will not be re-made. This means that there will no longer be a requirement to notify the Minister prior to construction or alteration of a small private dam not on a waterway.

Water resource management in Victoria

Major legislative changes were enacted in Victoria in 2005 to enable more efficient and sustainable management of Victoria’s water resources, particularly for agricultural purposes including irrigation and stock watering. The *Water (Resource Management) Act 2005* (2005 Act) amended the *Water Act 1989* (the Water Act) by converting existing water entitlements into separate elements covering the right to take water itself, delivery of it and its use on land. The key purpose of these changes was to facilitate trading in water rights, thus helping to ensure that water resources are, as far as possible, applied to their highest value uses.

The Victorian Water Register (VWR) was established under the Water Act in July 2007 as part of implementing the National Water Sector Reform Agenda agreed between the Commonwealth, State and Territory Governments. Its functions are: to provide a secure and authoritative database recording the ownership of certain water rights across Victoria; to provide the platform through which all trades in these rights are recorded; and to provide the basis of an authoritative system of water accounting. The broader purpose of the VWR is to facilitate the responsible, transparent and sustainable use of the State’s water resources, including facilitating—

- (a) the monitoring of, and reporting in relation to, records and information about water-related rights and the allocation and use of water resources; and
- (b) a market for water-related entitlements and water resources by providing publicly available records and information and other records and information about ownership and use of water-related rights.

Part 5A of the Water Act specifies the types of records and information that must be kept on the VWR and the roles and responsibilities of the Minister, the Victorian Water Registrar (Registrar) and water corporations in relation to those records. The VWR holds records and information on:

- water shares recorded by the VWR, together with mortgages and limited term transfers (leases) relevant to these water shares;

- licences to take and use surface water and groundwater;
- related works licences;
- water-use licences and water-use registrations;
- allocations of available water under water shares;
- standing directions for assignment (trade) of water allocations; and
- water corporations' delivery of allocated water to rights holders.

The capabilities of the VWR mean that:

- volumes of water rights can be tracked and reconciled in relation to the relevant water systems and trading zones;
- workflow for processing water dealing and water dealings are audited; and
- statistics and reports on amounts of take and use, directions of trade, and prices paid can be generated.

Application fees for certain water rights transactions

The primary regulatory impact of the current regulations is to support the ongoing maintenance of the VWR by prescribing a set of fees that enable the recovery of—

- the costs of approving and recording dealings in water shares and allocations of water under shares (regulated under Part 3A of the Water Act) and using that water on land (regulated under Part 4B of the Water Act) [collectively referred to in this RIS as “water rights”];
- the administrative costs incurred by the water corporations, Registrar and the VWR in recording and allowing searches of information on a wider range of water rights, licences to take and use water, and works licences and agreements to supply water under section 124(7) of the Water Act.

The main regulatory impact of the proposed regulations (Parts 2 and 3 of the proposed regulations) is to prescribe the fees to be charged to transactors in water rights. The costing model adopted at the time of the establishment of the VWR was based on fully recovering the costs incurred by water corporations and the Registrar in processing transactions in water rights and making an appropriate contribution to the fixed operating costs of the VWR. The Department of Land, Water and Planning (DELWP) believes that this approach to fee-setting is consistent with the Department of Treasury and Finance (DTF) *Cost Recovery Guidelines* and continues to be appropriate to the specific circumstances in question.

It should be noted that these fees imposed via the regulations are extremely modest in relation to the value of water traded annually. For example, in 2015-16, around 2.7 million megalitres (ML) of water was traded, with prices averaging around \$220/ML, suggesting that the value of the traded water was around \$594 million. Conversely, the total revenue generated by the fees established by the current regulations was less than \$1.0 million during this period¹.

¹ See: Victorian Water Register (2016) *Victorian Water Trading Annual Report 2015 – 16*.
http://waterregister.vic.gov.au/images/documents/Victorian%20Water%20Trading%20Annual%20Report_2015-16_Web.pdf, p 4, p 10.

Importantly, continued investment in improvements to the VWR and associated systems has enabled the most numerous transaction type, the water allocation transfer, to be completed online. Over 70% of these transactions are now carried out online, with transactors benefiting from a substantially reduced fee. Work is continuing with a view to enabling other major transactions to be processed online, with the potential for significant reductions to occur in the relevant costs and, hence, fees.

The analysis presented below in chapter 3 of this RIS shows that the current total costs of the VWR, including the associated registration functions, are essentially unchanged from their 2009 levels. This primarily reflects the fact that it has been necessary for the VWR to invest in improved IT support services in recent years in order to enhance the reliability of the operating platform of the VWR and avert any risk of transactions not being able to be processed due to service interruptions.

Chapter 3 of this RIS shows that the current fees, while unchanged in real terms since 2009, are continuing to fully recover the identified cost base. This is to be expected given that, as noted above, the costs being recovered have not increased over this time. Moreover, while detailed costings are not available in respect of all transactions types, the analysis has demonstrated that there is a quite close relationship between fees and costs in respect of the major transactions types. For example, the total revenue generated from fees relating to the registration of transfers is shown in appendix 2 to be very similar to the total costs incurred, while the fees collected by water corporations for processing water share transfers and for manually processing allocation trades have also been shown to be well matched with the costs incurred by those bodies in carrying out these tasks.

Given these factors, three options relating to fees have been identified and analysed, as follows:

- Option 1 proposes that the existing fee structure should be re-established without amendment in the proposed regulations (preferred option);
- Option 2 proposes that a modified cost base be used in determining the cost recovery based fees, which would remove the DELWP contribution to the VWR operating costs, on the basis that it should not be considered as a substantial user of this service, and include the whole of the IT support cost in the cost base, on the basis that this is an unavoidable cost; and
- Option 3 adopts the same cost base as option 1, but differs in that it would seek to recover the relevant cost base (less the DELWP contribution) entirely from transactors in water rights. This would represent the adoption of a consistent approach with that used in recovering the costs of the Victorian Land Registry and would be predicated on the view that water rights-holders who do not undertake transactions in their rights are not substantial beneficiaries of the operations of the VWR

The merits of the three options have been assessed using a Multi-Criteria Analysis, the results of which are summarised below.

DELWP contends that all water right holders significantly benefit from having tenure of their ownership securely recorded with integrity in a State register of water rights. It should also be recognised the Land Registry System has a very large number of transactions so it is more efficient to recover the full cost of the Land Registry System via the transaction fee rather than also charging land owners on an annual basis. The VWR does not have this scale of transactions and this option would result in a significant cross subsidy from transactors to water right holders as well as a significant increase to the transaction fee.

Given that the fees set in the current regulations and proposed to be prescribed in the proposed regulations recoup costs other than those incurred by VWR (i.e. those of the water corporations and the Registrar), the overall size of the fee increases entailed by the adoption of either option 2 or option 3 would be lower than the percentage contributions to VWR’s costs identified above. As noted in chapters 5.2 and 5.3 of this RIS, the maximum fee increase payable under option 2 would be \$32.29, while the maximum percentage fee increase would be 35.0%. By contrast, the largest absolute fee increase under option 3 would be \$95.48, while the largest percentage increase would be 79%.

Table S1: Multi-criteria analysis of feasible options

Criterion	Option 1	Option 2	Option 3
<i>Ensuring appropriate price signals are sent by setting fees that recover the relevant cost base (Efficiency).</i>	5 x 0.25 = 1.25	3 x 0.25 = 0.75	5 x 0.25 = 1.25
<i>Ensuring that the fee structure facilitates the operation of an efficient water market (Efficiency)</i>	5 x 0.25 = 1.25	4 x 0.25 = 1.0	2 x 0.25 = 0.5
<i>Ensuring that all user groups contribute to cost recovery through payment of cost-based fees (Equity):</i>	4 x 0.5 = 2.0	5 x 0.5 = 2.5	2.5 x 0.5 = 1.25
Total	4.5	4.25	3

Table S1 summarises the scores allocated to each option under each criterion. It shows that option 1 scores highest, with 4.5 points, while option 2 received second highest score, of 4.25 points and option 3 receives the lowest score, of 3 points. Thus, option 1 constitutes the preferred option.

Option 1 scores highest because it receives the maximum possible score in respect of the first two assessment criteria while achieving the second highest score in respect of column 3. Consequently, it is proposed to remake the regulations on the basis of the maintenance of the fees at their current levels.

Parts 4, 4A and 5 of the current regulations

Three additional elements of the current regulations have been reviewed. The proposed regulations will remake parts 4 and 4A of the current regulations without amendment (refer Parts 4 and 5 of the proposed regulations), but will allow Part 5 of the current regulations to lapse. The rationale for these choices and the impact of allowing Part 5 to lapse are discussed below.

Part 4 – Prescribed purposes for licences to take and use water under s.51(1) of the Water Act

Section 51(1) of the Water Act provides that a person may apply to the Minister for a licence to take and use water. Section 51(1AA)(b) states that such an application may not be made to take and use water in a declared water system unless the water is to be used for a “prescribed purpose”.

Part 4 of the current regulations gives effect to this provision by specifying that “a prescribed purpose”² is the watering of cattle or other stock by a person who occupies land adjacent to a waterway, subject to certain conditions. In essence, the conditions are that the person must hold a licence under section 130 or 138 of the *Land Act 1958* which permits the grazing of cattle for conservation purposes for less than one month per year and that the water frontage of the land in question has been fenced off to prevent stock access to the waterway³. Part 4 is thus permissive in effect, enabling water to be used for certain purposes.

DELWP has reviewed the operation of Part 4 of the current regulations, including by considering whether the issue of what other “prescribed purposes” could potentially be declared under Part 4. DELWP has concluded that these regulations are functioning appropriately, in accordance with the wider water use policies of the government, and should be remade unchanged. Part 4 of the proposed regulations will replicate the regulations set out in Part 4 of the current regulations.

Part 4A – Prescribed persons to be occupiers for water-use registrations

It is an offence under section 64J of the Water Act to use water from a declared water system on land—

- for irrigation, without a water-use licence (or other authorisation), and
- for purposes other than irrigation, without a water-use registration (or other authorisation).

A person who may apply for a water-use registration must be an “occupier” of land, who is defined in section 64APAA of the Water Act as a prescribed person or a person of a prescribed class of person, who has a right of access to the land or responsibility for the provision of a service to the land.

Part 4A of the current regulations expands the range of persons prescribed to be “occupiers” of land who can be issued with a water-use registration under the Water Act. Part 4A is also permissive in effect.

DELWP has reviewed the operation of this part of the current regulations, including considering whether any other persons should be prescribed to be “occupiers” under Part 4A. DELWP has concluded that this element of the regulations is functioning appropriately, in accordance with the wider water use policies of the government, and should be remade unchanged. Part 5 of the proposed regulations will replicate the regulations in Part 4A of the current regulations.

Part 5 – Private dams

Part 5 of the current regulations requires an occupier of land in a rural residential area to notify the Minister of their intention to construct or alter an existing small private dam not on a waterway. The purpose of the notification is to enable the extent to which such dams are placing additional demands on natural water resources to be monitored and to inform future policy development in this area.

It is not proposed to remake these requirements in the proposed regulations as the regulation has been less effective than intended in achieving its policy objective to improve the management of domestic and stock water use. DELWP will consider this matter further when it investigates, in accordance with Action 8.4 of the Government’s *Water for Victoria* plan, the introduction of reasonable use limit for domestic and stock rights under section 8 of the Water Act to ensure consistency and fairness in access to water resources in consultation with the community and relevant stakeholders.

² This is currently the only prescribed purpose identified pursuant to section 51(1AA)(b) of the Water Act).

³ Former holders of licences under the Land Act are also eligible in circumstances in which those licences are being cancelled for conservation purposes.

As noted above, it is proposed to remake the regulations with no changes to the current fees. That is, the proposed regulations will set the fees, in terms of fee units, at the same level as the current regulations. Table S2, below, shows the proposed fees, expressed as both fee units and in dollar terms, using the current (2017-18) value of a fee unit.

Table S2: Proposed fees – Water (Resource Management) Regulations 2017

Application Type	Current Regulation	Current Fee Unit	Fee	Proposed Regulation	Proposed Fee Unit	Fee
Issue a water share	r.5	13.57	\$193	r.6	13.57	\$193
Issue a water share by holder of interstate right	r.6	13.57	\$193	r.7	13.57	\$193
Variation of a water share	r.7	11.43	\$162.50	r.8	11.43	\$162.50
Transfer ownership of water share	r.8	13.57	\$193	r.10	13.57	\$193
Give a limited term transfer	r.9	13.57	\$193	r.11	13.57	\$193
Give a water allocation assignment under—	r.10			r.13		
(a) Automated lodgement		3.20	\$45.60		3.20	\$45.60
(b) Other		8.04	\$85.90		6.40	\$85.90
Divide a water share	r.11	11.43	\$162.50	r.14	11.43	\$162.50
Consolidate water shares	r.12	11.43	\$162.50	r.15	11.43	\$162.50
Surrender a water share	r.13	11.43	\$162.50	r.16	11.43	\$162.50
Cancel a water share where interstate rights are obtained	r.14	13.57	\$193	r.17	13.57	\$193
Ministerial approval to take interstate water	r.15	13.57	\$193	r.18	13.57	\$193
Ministerial approval to take water outside associated water system	r.16	11.43	\$162.50	r.19	11.43	\$162.50
Associate or revoke association of a water share with land	r.17	11.43	\$162.50	r.20	11.43	\$162.50
Use water on land—	r.18			r.21		
(a) Automated lodgement		3.02	\$45.60		3.02	\$45.60
(b) Other		6.04	\$85.90		6.04	\$85.90
Give a standing direction	r.18A	6.04	\$85.90	r.12	6.04	\$85.90
Revoke a standing direction	r.18B	6.04	\$85.90	r.9	6.04	\$85.90
Group Applications						
Water share group application	r.19(a)	11.43	\$162.50	r.22(a)	11.43	\$162.50
Water share consolidation	r.19(b)	11.43	\$162.50	r.22(b)	11.43	\$162.50
Water share divide	r.19(c)	11.43	\$162.50	r.22(c)	11.43	\$162.50
Water share issue	r.19(d)	13.57	\$193	r.22(d)	13.57	\$193
Water share transfer	r.19(e)	13.57	\$193	r.22(e)	13.57	\$193
Water limited term transfer	r.19(f)	13.57	\$193	r.22(f)	13.57	\$193
Water take	r.19(g)	11.43	\$162.50	r.22(g)	11.43	\$162.50
Water allocation—	r.19(h)			r.22(h)		
(i) automated lodgement		3.20	\$45.60		3.20	\$45.60
(ii) Other		6.04	\$85.90		6.04	\$85.90
Water Register Fees						
Water share or related dealings						

Application Type	Current Regulation	Current Fee Unit	Fee	Proposed Regulation	Proposed Fee Unit	Fee
Transfer of ownership of a water share under section 84J(1)(a) of the Act	r.21(a)	8.71	\$121.90	r.24(a)	8.71	\$121.90
Limited term transfer of a water share under section 84J(1)(b) of the Act	r.21(b)	8.71	\$121.90	r.24(b)	8.71	\$121.90
Surrender of a limited term transfer of a water share under section 84JA of the Act	r.21(c)	4.36	\$62.00	r.24(c)	4.36	\$62.00
Transmission of a water share to the legal personal representative of the deceased owner of the water share under section 84K of the Act	r.21(d)	8.71	\$121.90	r.24(d),(e) and (f)	8.71	\$121.90
Transmission under section 84L of the Act to the survivor of joint owners of a water share	r.21(e)	8.71	\$121.90	r.24(g), (h) and (i)	8.71	\$121.90
Transmission of a water share under section 84M of the Act to the trustee in bankruptcy of the owner of the water share	r.21(f)	8.71	\$121.90	r.24(j)	8.71	\$121.90
Memorandum of common provisions under section 84P of the Act	r.21(g)	8.71	\$121.90	r.24(k)	8.71	\$121.90
<i>Mortgage related dealings</i>						
Mortgage of a water share under clause 1 of Schedule 12A of the Act	r.22(1)	4.36	\$62.00	r.25(1)	4.36	\$62.00
Variation of the terms of a recorded mortgage of a water share under clause 2(3) of Schedule 12A	r.22(2)	4.36	\$62.00	r.25(2)	4.36	\$62.00
Variation of the principal sum or interest secured by a recorded mortgage of Water share under clause 2(3) of Schedule 12A	r.22(3)	4.36	\$62.00	r.25(3)	4.36	\$62.00
Variation of priority of the recorded mortgages of a water share under clause 3 of Schedule 12A	r.22(4)	4.36	\$62.00	r.25(4)	4.36	\$62.00
Transfer of a mortgage of a water share under clause 4 of Schedule 12A	r.22(5)	4.36	\$62.00	r.25(5)	4.36	\$62.00
Discharge of a mortgage of a water share under clause 10 of Schedule 12A	r.22(6)	4.36	\$62.00	r.25(6)	4.36	\$62.00
Matter to arbitration under clause 19 of Schedule 15	r.23(2)	4.36	\$62.00	r.26(2)	4.36	\$62.00
Certificate by a recording body under section 84ZK of the Act for	r.24	4.36	\$62.00	r.27	4.36	\$62.00

Application Type	Current Regulation	Current Fee Unit	Fee	Proposed Regulation	Proposed Fee Unit	Fee
the purposes of proceedings in any court or tribunal						
<i>Searching or Amending the Water Register</i>						
Accessing an online search facility	r.27(a)	1	\$14.20	r.30(a)	1	\$14.20
Current information records	r.27(b)(i)	1.91	\$27.20	r.30(b)(i)	1.91	\$27.20
Non-current information or records	r.27(b)(ii)	1.91	\$27.20	r.30(b)(ii)	1.91	\$27.20
Documents	r.27(b)(iii)	1	\$14.20	r.30(b)(iii)	1	\$14.20
<i>Correct or amend the water Register</i>						
Correct or amend	r.28	8.71	\$121.90	r.31(1)(b)	8.71	\$121.90

1. Introduction

Significant legislative changes were enacted in Victoria in 2005 to enable more efficient and sustainable management of Victoria's water resources. In particular, the *Water (Resource Management) Act 2005* (2005 Act) amended the *Water Act 1989* (Water Act) by converting existing water entitlements into separate elements covering the water itself, delivery of it and its use on land. Appendix 1 sets out the nature of the water entitlements created via these legislative changes. The key purpose of these changes was to facilitate trading in water rights, thus helping to ensure that water resources are, as far as possible, applied to their highest value uses.

Rights to take water and use it on land in non-declared systems continue to be regulated under take and use licences issued under section 51 of the Water Act. In declared water systems, rights to take water were unbundled into water shares, allocations of water and rights to use water on land.

The VWR was established under the Water Act in July 2007 as part of implementing the National Water Sector Reform Agenda agreed between the Commonwealth, State and Territory Governments. Its role is to provide a secure and authoritative database recording the ownership of certain water rights across Victoria; to provide the platform through which all trades in these rights are recorded; and to provide the basis of an authoritative system of water accounting. The VWR's function as the platform for the conduct of water trades and recording of changes in the status of water rights is a substantial one: in 2015-16 there were 3,327 water right transfers, 521 new mortgages issued, 1,279 mortgages discharged, and 15,626 allocation trades.

The VWR was established under Part 5A of the Water Act. The broader purpose of the VWR is to facilitate the responsible, transparent and sustainable use of the State's water resources, including facilitating—

- (a) the monitoring of, and reporting in relation to, records and information about water-related rights and the allocation and use of water resources; and
- (b) a market for water-related entitlements and water resources by providing publicly available records and information and other records and information about ownership and use of water-related rights.

Part 5A of the Water Act specifies the types of records and information that must be kept on the VWR and the roles and responsibilities of the Minister, the Registrar and water corporations in relation to those records. The VWR holds records and information on:

- water shares recorded by the VWR, together with mortgages and limited term transfers (leases) relevant to these water shares;
- licences to take and use surface water and groundwater;
- related works licences;
- water-use licences and water-use registrations;
- water allocations of water under water shares;
- standing directions for assignment (trade) of water allocations; and
- water corporations' delivery of water to rights holders.

The capabilities of the VWR mean that:

- volumes of water rights can be tracked and reconciled in relation to the relevant water systems and trading zones;
- workflows for processing water dealing and water dealings are audited; and

- statistics and reports on amounts of take and use, directions of trade, and prices paid can be generated.

The Government's strategic plan for managing Victoria's water resources, *Water for Victoria*, sets out a number of actions which will support water users obtaining essential information about water entitlements, seasonal allocations, trade and transfers. As noted above, the VWR is the authoritative record of water rights. The VWR facilitates transactions that underpin water markets in Victoria.

Water for Victoria recognises that the ongoing maintenance and development of the VWR is critical to enable the government to fulfil its statutory obligations, support market development and water corporation strategic planning and the provision of information to water resource managers and the public. Action 9.4 of *Water for Victoria* commits DELWP to improving water market information and systems by moving applications online through enhancements of the VWR. Ensuring that water market information and systems continue to support effective markets means that buyers and sellers can continue to make informed decisions.

To this end it is important that the proposed regulations be made to prescribe fees that recover costs for developing and maintaining the VWR.

1.1 Responsibility for the VWR

DELWP is the body primarily responsible for the administration, maintenance and enhancement of the VWR. It does this on behalf of the Minister for Water who has a statutory responsibility under Part 5A of the Water Act to establish and maintain the IT system for the VWR and ensure the system's integrity, efficiency, viability, compatibility and consistency (refer sections 84C(1) and 84EA, Water Act). The Minister's statutory responsibility extends to maintaining records and information in relation to water-use licences, water-use registrations, bulk and environmental entitlements, amounts of water allocated to each water share under section 33AC, works licences issued under section 67 of the Water Act, and licences to take and use water issued under section 51 (refer section 84C(2), Water Act).

In the practical sense, these duties and obligations are undertaken by Victoria's four rural water corporations, Coliban Region Water Corporation and Melbourne Water Corporation as delegates of the Minister. In addition to their delegated powers and functions, the Act requires these corporations to record and maintain the records and information specified in Division 5 of Part 5A of the Water Act. The water corporations are responsible for establishing and maintaining records and information on services delivered under section 222(1) of the Water Act, water allocation assignments, standing directions (for assignment of water allocations), consumption of allocated water, temporary transfers of a take and use licence, volume of water consumed under a take and use licence and water supply agreements with rural water corporations (refer section 84C(3), Water Act).

Division 2 of Part 5A of the Water Act requires the appointment of the Registrar of the VWR. The Registrar has a statutory responsibility under the Act for recording certain information about water share transactions, including transfers, mortgages, limited term transfers and discharges of mortgage, on the VWR, and ensuring accuracy, reliability and accessibility of that information (refer sections 84C(2A) and 84G).

All these agencies work collaboratively to ensure that the VWR continues to work efficiently and effectively and to identify any enhancements and improvements that may be required.

1.2 The Current Regulations

VWR

The main regulatory impact of the current regulations is to support the ongoing maintenance of the VWR by prescribing a set of fees that enable the recovery of—

- the costs of approving dealings in water shares licences, water-use registrations and water-use licences and assignments of (trades) allocations of water under water shares including the administrative costs incurred by the water corporations and the Registrar in recording these “water rights”; and
- the administrative costs incurred by the water corporations and the Registrar in recording and allowing searches of information on a wider range of water rights, licences to take and use water, works licences and agreements with rural water corporations to supply water under section 124(7) of the Water Act.

Maintenance and improvements to the VWR since its inception has required several amendments to the current regulations which have removed regulatory and administrative burden on water right holders when applying for transaction approvals.

The 2013 amendments for group applications

In 2013, the current regulations were amended following enhancements to the VWR which allowed for some online submissions to be given near instant approval and notification. These types of applications included:

- assignments by a person for all or part of a water allocation available under a water share held by that person to another person under Division 5 of Part 3A of the Water Act (approval under 33X); and
- the use of water on land under section 64K (approval under 64K(2) and (3)).

VWR enhancements also provided for the granting of consolidated group applications. These different classes of group applications have been defined under Part 1 of the current regulations and will be replicated in Part 1 of the proposed regulations. The introduction of consolidated group applications means that applicants can apply for a variety of approvals in a single transaction thereby reducing the burden from applying for each approval separately and has allowed for a reduction in administration costs for the Minister’s delegates in approving each application. The new arrangements applied to:

- a water allocation group application as an application for a combination of approvals involving assignments of all or part of an allocation (section 33X);
- taking water from a Victorian water system under a right obtained in another State or Territory (section 33AG);
- taking water from a water system outside the one associated with the water share under which the allocation is made, including at an interstate location (section 33AI) and the use of water on land.

The 2014 amendments for standing directions on assignment of water allocations

The Water Act was amended in 2014 to enable a water share holder to transfer, with the approval of the Minister, the whole of the right to future water allocations under the water share. The owner of the share can issue a standing direction to a water corporation nominating the person to whom the right to future water allocations under the water share is to be transferred. The direction is issued for an unspecified

period and remains in effect until it is revoked. Standing directions have since been recognised in numerous group applications as defined in the current regulations.

Given the types of fees prescribed in the current regulations, the persons that will be primarily affected by the proposed regulations include irrigators and other holders of water entitlements and other persons with an interest in participating in water trading.

Other matters

Parts 4 and 4A of the current regulations also respectively deal with a range of related matters that enable -

- the issue of water-use registrations in declared systems⁴ for certain types of activities, and
- the issue of take and use licences for watering cattle and other stock when their owner loses access to Crown land abutting a waterway.

These are discussed in chapter 6 of this RIS. Persons affected by Parts 4 and 4A include those persons who require an authorisation to take and use water in a declared system where they do not own the land for which the water is to be used or those persons who have lost access to a waterway because fencing has been erected.

Part 5 of the current regulations require a person who occupies land within a rural residential area to give written notice to the Minister⁵ prior to constructing or altering a small private dam not on a waterway, under a right under section 8 of the Water Act. This requirement was inserted into the current regulations following the release of the Northern Region Sustainable Water Strategy in November 2009, which announced the government's policy to improve the regulation of water intercepted by domestic and stock water dams, and came into effect on 1 January 2011.

The notification requirement was seen as a first step toward gaining a better understanding of the impact of farm dams in peri-urban areas on water resources and as helping to inform future decisions on whether more active management is required to protect other water users and the environment.

Since January 2011, the water corporations have recorded only 197 dam notifications. This is equivalent to an average of about 35.8 dams per annum, although most of these notifications were incurred in the first two years of the operation of Part 5. The low level of notification activity has meant that it has not been possible to employ this data for policy purposes, as was originally intended. It is therefore not proposed to remake Part 5 in the proposed regulations. DELWP will instead be investigating alternative legislative and non-legislative options to best achieve the policy objectives (refer to *Water for Victoria*, chapter 8.3).

The Government is committed to reducing unnecessary and burdensome regulation on business and the community. Not remaking Part 5 of the current regulations is consistent with this commitment.

⁴ The Water Act defines a declared water system as a system that has become declared under Section 6A of the Act. In these water systems, the old water rights and take and use licences have been converted into unbundled entitlements. At present, the declared water systems are the Broken, Bullarook, Campaspe Goulburn, Loddon, Murray, Ovens Werribee and Thomson/Macalister systems. See: <http://waterregister.vic.gov.au/water-dictionary?start=20>

⁵ In practice, notification is provided to the relevant water corporation.

Sunset date

The current regulations were due to sunset on 26 June 2017 as a result of the operation of the *Subordinate Legislation Act 1994*⁶. Prior to sunset, they were extended for five months until 30 November 2017 to allow more time for the preparation of this RIS. The proposed Regulations are intended to replace the current regulations with few amendments. The proposed regulations will be made under section 324 of the Water Act.

2. Objectives of the proposed regulations

The stated objectives in regulation 1 of the proposed regulations are to prescribe—

- (a) to facilitate the effective and sustainable management of water generally;
- (b) to equitably recover the cost of administering applications to the Minister that relate to dealings and recordings in, and obtaining information from, the VWR;
- (c) to allow valuers to search the VWR for information or records to assist in the making of land valuations;
- (d) to identify the purposes for which a licence under section 51 of the Act may be issued within a declared water system; and
- (e) to specify persons and classes of person as occupiers of land for the purposes of applying for and being granted a water-use registration.

These objectives are consistent with two of the purposes of the Water Act set out in section 1 of that Act: to promote the orderly, equitable and efficient use of water resources (section 1(c)) and to foster the provision of responsible and efficient water services suited to various needs and various consumers (section 1(h)).

The regulations will be made under section 324 of the *Water Act 1989*.

⁶ The Subordinate Legislation Act 1994 automatically repeals all regulations 10 years after they take effect, unless they are sooner repealed or extended.

3. Nature and extent of the problem

3.1 Fee-setting

3.1.1 Overview

The key issue in prescribing fees is to ensure that the costs incurred by the VWR, the Registrar, Victoria's four rural water corporations, Coliban Region Water Corporation and Melbourne Water Corporation in processing transactions in water rights are recovered from users in a manner that is both efficient and equitable, as well as being consistent with the *DTF Cost Recovery Guidelines*.

Addressing this problem in practice involves determining the appropriate cost base. In particular, the question of how the fixed costs of the VWR should be allocated between transactors in water rights and holders of water rights more generally must be determined. As noted, the VWR supports the functioning of the water market by providing an authoritative, centralised record of water rights. In doing so it provides significant benefits to both:

- holders of water rights as a group; and
- that subsection of rights-holders who undertake transactions in water rights (e.g. purchases, sales or leases) in any given year.

This implies that both groups should contribute to the costs of the VWR.

Recognising this issue, the Victorian government imposes an annual levy on water corporations, currently set at \$12.89 for each water rights-holder for which they are responsible. This annual levy represents the contribution of water rights-holders to the fixed costs of the VWR. Separately, the proposed regulations set fees payable by transactors in water rights which ensure that they make appropriate contributions to the costs incurred by VWR and the water corporations in processing transactions, including an appropriate contribution to the VWR's fixed costs.

This broad approach to addressing the problem identified above was developed at the time of the introduction of the current regulations in 2007, with limited changes being made in 2009 following recognition that the cost recovery objectives identified in 2007 were not being met in practice. The following discussion sets out the current approach to cost recovery, as set out in the RIS in respect of the 2007 and 2009 regulations, identifies the relevant cost base and its evolution over time and demonstrates the results of the current fees regulations and broader funding model. This provides the basis for consideration of the merits of the feasible alternative designs for the replacement regulations identified in chapter 5.

Current approach to cost recovery

The RIS prepared for the current Regulations (2007 RIS) recognised a cost recovery model in which:

- the establishment costs of the VWR would be borne by government (DELWP);
- transactors would pay the variable costs of processing these transactions, which are incurred by the relevant water corporations and the Registrar;
- the fixed costs of maintaining the VWR (i.e. those elements of the VWR's annual costs that do not vary with transaction volumes) would be jointly funded by transactors, who would pay 54% of VWR fixed costs, and water rights-holders as a group, who would pay 46%; and
- the cost of major upgrades and improvements to the VWR would be paid by DELWP.

The water rights-holders' contribution to the fixed costs of the VWR was to be recovered via a charge imposed by water corporations in respect of each water right they administered. Water corporations were to be able to choose whether and how to recover this charge from water rights-holders.

The funding model established in the 2007 RIS elaborated three cost-sharing principles in pursuit of the objective of ensuring an efficient and equitable cost allocation, as follows:

Principle 1 - *The Government will bear the set up or capital costs of the water register in recognition of the public good water resource management benefits that will be provided by a rigorous, single state-wide register, and that the market has failed in providing a water register. Hence the capital costs of building the water register will not be recovered from these fees.*

Principle 2 - *The variable costs borne by the water corporations and the Water registrar in processing and approving each application or transaction will be recovered from the users – that is persons using the water register to trade in water entitlements. Users should also make a contribution to the fixed costs of the register.*

Principle 3 - *All owners of water shares and other water entitlements recorded in the State water register receive a significant benefit from the register and should therefore contribute to the water register fixed operating costs. A component of the annual operating cost of the water register could be recovered either through an annual use charge included with the water rate charged by water corporations. Alternatively, (and this is the preferred option) the contribution to fixed operating costs could be recovered directly from water corporations who currently recover a component of their current registers costs through a service charge on their customers.*

The 2007 funding model was modified slightly in 2009, when amending regulations were made. The amending regulations made a number of changes to the fees established in 2007, in response to the fact that fee revenue had fallen short of expectations, when considered as a proportion of the costs incurred by VWR⁷. The 2009 RIS prepared in respect of these fee changes set out a modified cost recovery model, based on five principles. The two key differences in approach to cost recovery encapsulated in the modified set of principles identified in the 2009 RIS were: (1) the explicit recognition given to the fact that DELWP is a user of the services provided by the VWR and, therefore, should contribute to its operating costs and (2) the explicit recognition of the desirability ensuring the different water corporations applied uniform application fees, both on equity grounds and as a means of ensuring that only efficient costs are recovered from users. As noted in Principle 4, below, DELWP was identified as a user of the VWR on the basis that it receives benefits in terms of the water accounting and reporting functions of the VWR, which constitute important inputs assisting it to monitor the state and use of Victoria's water resources and formulate appropriate policy positions over time.

The 2009 principles are as follows:

Principle 1 – *The Government will bear the set-up or capital costs of the water register in recognition of the public good water resource management benefits that will be provided by a rigorous, single state-wide register, and that the market has failed to provide such a register.*

⁷ According to the 2009 RIS: “The parties also recognised in 2008 that staffing of the VRW was under resourced, and that proper resourcing was necessary so that the full potential of the VRW could be realised and so that the operation of the register could be sustained into the future. The parties agreed that due to the significant public and private benefits of the register, it is appropriate for the additional resourcing to be met equally by Government and by user and beneficiary contributions.”

Principle 2 – *The costs borne by the Water Corporations and the Water Registrar in processing applications will be recovered directly from the users through the application fee (the users being the persons making the applications).*

Principle 3 – *The users described in Principle 2 also primarily benefit from the platform provided by the water register that enables the transactions to be processed and approved. Therefore, a component of the application fee should go towards the water register’s fixed annual costs.*

Principle 4 – *Beneficiaries of the water register should pay. All owners of water entitlements recorded in the State water register benefit from a secure register of water entitlements and should contribute to the operating costs accordingly. This contribution is collected by the Water Corporations via their bulk water service charges. The Government also benefits from the water accounting and reporting provided by the water register and should contribute towards the operating cost of the water register accordingly.*

Principle 5 – *The application fees should be the same across the State because the Water Corporations are using the same water register and workflows, and customers trade water between Water Corporations. This has previously been requested by the Water Corporations on behalf of users. The application fee should also be administratively efficient.*

The appropriate size of DELWP’s user contribution was identified in the 2009 RIS as being 20% of the VWR operating costs. Table 3.1 is reproduced from the 2009 RIS and sets out the modified cost allocations established at that time.

Table 3.1: Cost allocations established in the 2009 amending regulations

Water register set-up costs including major enhancements and developments	Government pays 100% set-up costs
Water register fixed annual operating costs including annual IT and salary costs	50% met by entitlement holder beneficiary contributions
	20% met by Government funding
	30% met by a share of the application fees
Costs borne by the Water Corporations and the Water Registrar in processing applications	100% met by the application fees

It should be noted that the fees imposed via the regulations are extremely modest in relation to the value of water traded annually. For example, in 2015-16, around 2.7 million ML of water was traded, with prices averaging around \$220/ML. Conversely, the total revenue generated by the fees established by the current regulations was less than \$1.0 million during this period⁸.

3.1.2 Evolution of the VWR cost base over time

Table 3.2 summarises the annual costs of maintaining the VWR and processing the various transactions involving water shares and water allocations. It compares:

- the initial, *ex ante* estimates published in the RIS published in 2007, prior to the adoption of the current regulations;
- the updated estimates contained in the 2009 RIS, which discussed changes to the fees established in the proposed 2007 regulations to address a revenue shortfall; and
- the current cost base, based on the budgeted FY 2016-17 costs of maintaining VWR operations.

⁸ See: Victorian Water Register (2016) *Victorian Water Trading Annual Report 2015 – 16*. http://waterregister.vic.gov.au/images/documents/Victorian%20Water%20Trading%20Annual%20Report_2015-16_Web.pdf, p 4, p 10.

Table 3.2: Total estimated costs of maintaining the VWR and processing water transactions

Costs	2007 RIS	2009 RIS	2016-17 budget
VWR Fixed costs	\$1,153,521	\$1,597,000	\$2,952,000
Less Capital costs ⁹	\$0	\$0	\$750,000
Adjusted fixed costs	\$1,153,521	\$1,597,000	\$2,202,000
VWR Variable costs	\$614,172	\$614,172	\$364,000
Total VWR operational costs	\$1,767,693	\$2,211,172	\$2,566,000
As % of 2007 costs (nominal)	100.0%	125.1%	145.2%
- As % of 2007 (real) ¹⁰	100.0%	118.4%	117.5%
- As % of 2009 (real)		100.0%	99.3%

Sources: 2007 RIS, 2009 RIS, VWR Operating Budget 2016-17, VWR internal data.

Note: “Fixed costs” in this context constitute all VWR costs that do not vary with the number of individual transactions processed. A majority of these costs are IT-related, reflecting the substantially automated nature of the VWR system. Variable costs are those that vary with transaction numbers and relate to the manual (cf. online) processing which continues to be undertaken in respect of certain transaction types. The move to online processing of other transaction types, together with other IT changes that have streamlined VWR processes, account for the significant reductions in variable costs experienced since 2009.

It should be noted that the *ex-ante* cost estimates contained in the 2007 RIS are included in table 3.2 largely for the sake of completeness. As discussed above, and explained at length in the 2009 RIS, it was rapidly realised that the initial estimates of the costs of operating the VWR had been substantially underestimated. This being the case, the relevant cost comparisons are between the costs identified in the 2009 RIS, which were based on actual experience in operating the VWR, and the budgeted costs for the current financial year.

Table 3.2 shows that there have been considerable changes over the past decade in the relative size of the fixed and variable costs incurred by the VWR. Whereas the VWR’s fixed costs are currently more than \$600,000 higher than their estimated 2009 level, variable costs have fallen by more than 40%, from \$614,172 to \$364,000 due primarily to increasing automation of transaction processing, including the move to online completion of some transaction types.

Box 1: Variable costs of processing water transactions

The variable costs associated with registering transactions in water rights were accounted for as part of the VWR budget in the 2007 and 2009. These costs are funded via the fees established in the regulations. Appendix 2 provides a reconciliation of the fees and revenues associated with the registration of transactions in water rights.

⁹ Due to changes in the funding of the VWR IT support functions adopted in 2015 – 16, this item in the operating budget now includes an element of capital expenditures, as well as the operational cost. VWR staff estimate the capital element of these IT related expenditures at \$750,000. As the VWR data presented in the RIS published in 2007 and 2009 not include capital expenditures, this figure has been netted out of the 2016 – 17 VWR operating budget in order to obtain a comparable cost base.

¹⁰ Real cost comparisons use Melbourne all groups CPI index figures: June Qtr. 2007 = 87.9, June Qtr. 2009 = 92.9, June Qtr. 2016 = 108.6.

This change is a product of the very substantial investments in IT that have been undertaken in the intervening years in order to improve the efficiency and reliability of VWR operations. An example of the impact of these changes is given by the fact that more than 75% of all water allocation trades are now undertaken online, rather than being completed manually.

The efficiency impact of the investment programme undertaken is revealed by the comparison of the total VWR operational costs between the different years in table 3.2. This shows that the current budgeted costs of the VWR are virtually identical in real terms to those incurred 2009.

3.1.3 Cost and revenue comparisons

The existing fees were assessed on the basis of an objective of fully recovering the ongoing costs of the VWR from the users, albeit that DELWP has identified itself as a user of the services of the VWR and adopted a view in 2009 that it should make a contribution of around 20% to these ongoing costs of the VWR. Table 3.4, below, compares the budgeted costs and revenues of the VWR over the five years to 2016-17. This medium-term comparison of costs and revenues is presented in order to provide a more reliable picture of the operating position of the VWR, given the sometimes significant year-to-year variation in transactions volumes (and hence revenues and, to a lesser extent, costs) that was identified above. However, as discussed below, a number of factors must be taken into account when comparing the revenue and cost data presented in Table 3.4 in order to obtain a reliable picture. These include changes in the budget treatment of various items over time.

Table 3.4: Budgeted VWR revenues and expenditures, 2012-13 to 2016-17

	2012/13 Budget	2013/14 Budget	2014/15 Budget	2015/16 Budget	2016-17 Budget
FUNDING					
Fixed Funding					
DELWP Contribution	\$332,132	\$333,000	\$340,000	\$340,000	\$1,100,000 ¹¹
Rights-holder levies	\$965,000	\$1,000,000	\$947,000	\$960,000	\$953,000
Total fixed funding	\$1,297,132	\$1,333,000	\$1,287,000	\$1,300,000	\$2,053,000
Variable Funding					
Allocation Trade application fees	\$150,000	\$250,000	\$313,000	\$356,000	\$371,000
Water Share application fees	\$170,000	\$160,000	\$163,000	\$167,000	\$170,000
Registrar Transaction Fees	\$120,000	\$100,000	\$92,000	\$154,000	\$120,000
Search Fees	\$170,000	\$150,000	\$132,000	\$185,000	\$200,000
Online bore construction licence fees	\$7,570	NA	NA	\$41,000	\$60,000
Transaction fees returned to water corporations	-\$4,821	-\$5,000	-\$50,000	\$0	NA
Total variable revenue	\$612,749	\$655,000	\$650,000	\$903,000	\$921,000

¹¹ Includes \$750,000 contribution to fund capital upgrade expenditures. Equivalent contributions were not incorporated within the operating budget data in earlier years.

	2012/13 Budget	2013/14 Budget	2014/15 Budget	2015/16 Budget	2016-17 Budget
TOTAL FIXED & VARIABLE	\$1,909,881	\$1,988,000	\$1,937,000	\$2,203,000	\$2,974,000
<i>Section 29 Unspent Revenue (see text below)</i>	\$213,082	\$587,685	\$925,948	\$1,130,494	\$271,000
<i>Water registrar revenue held in Trust</i>	\$0	\$0	\$94,932	\$0	NA
TOTAL FUNDING	\$2,122,963	\$2,575,685	\$2,957,880	\$3,333,494	\$3,245,000
EXPENDITURE					
Salary & Contractor Expenses					
Salaries Expenses	\$700,000	\$621,586	\$660,000	\$757,861	\$979,000
Other	\$46,655	\$16,944	\$25,120	\$21,850	\$26,000
Total Salary Related Expenses	\$746,655	\$638,530	\$685,120	\$779,711	\$1,005,000
Non-Discretionary IT Expenses					
Application support/Base IT support	\$151,000	\$125,250	\$750,000	\$750,000	\$1,100,000
Axapta Software Licence	\$46,000	\$47,500	\$47,500	\$47,500	\$27,000
Application Software Licences	\$60,000	\$80,000	\$50,000	\$54,000	\$70,000
Hosting	\$330,000	\$390,000	\$340,500	\$310,000	\$350,000
Disaster recovery testing	\$90,000	\$35,000	\$35,000	\$70,000	\$0
Other	\$5,000	\$3,000	\$4,620	\$26,310	\$46,000
Total Non-Discretionary IT Expenses	\$682,000	\$680,750	\$1,227,620	\$1,257,810	\$1,593,000
Discretionary IT expenses					
Misc. IT costs	\$15,524	\$1,000	\$0	\$0	\$0
Minor enhancements	\$210,000	\$210,000	\$0	\$0	\$0
Total Discretionary IT expenses	\$225,524	\$211,000	\$0	\$0	\$0
Total IT expenses	\$907,524	\$891,750	\$1,227,620	\$1,257,810	\$1,843,454
Discretionary Expenses Other					
Application Forms	\$15,000	\$75,000	\$50,000	\$40,000	\$40,000
ABA Statements	\$25,000	\$35,000	\$35,000	\$26,000	\$26,000
Annual broker audit ¹³	NA	NA	\$50,000	\$50,000	\$52,000
Meeting Expenses	\$8,000	\$8,000	\$4,000	\$5,000	\$3,000
Travel	\$10,000	\$5,000	\$10,000	\$8,000	\$5,000
Telephony	\$3,000	\$3,500	\$3,500	\$3,500	\$5,000
Vic Maps	\$1,000	\$0	NA	\$25,000	\$10,000
Minor Incidentals	\$2,000	\$1,500	\$1,000	\$1,000	\$3,000

¹² Includes approximately \$750,000 in capital upgrade expenditures not previously accounted for in the Operating Budget data. See explanation in following text.

¹³ Broker audits were instituted following the implementation of online water allocation transfers.

	2012/13 Budget	2013/14 Budget	2014/15 Budget	2015/16 Budget	2016-17 Budget
Contractors/Business Analyst (FY17)	\$100,000	\$386,000	NA	NA	\$210,000
<i>Discretionary Expenses Other</i>					
Total discretionary expenses	\$164,000	\$514,000	\$153,500	\$158,500	\$354,000
TOTAL EXPENDITURE	\$1,818,179	\$2,044,280	\$2,066,240	\$2,196,021	\$2,952,000¹⁴
FUNDING LESS EXPENDITURE¹⁵	\$304,784	\$531,405	\$891,640	\$1,137,473	\$293,000

Source: DELWP

The following additional detail in relation to the budget data set out in Table 3.4, is provided in order to present a clearer picture of the VWR's finances and position in relation to cost recovery.

Financial Management Act 1994 — Section 29 unspent revenue

The VWR is authorised to retain unspent revenues from year to year in accordance with section 29 of the *Financial Management Act 1994* (FM Act). Unspent revenues retained under this authorisation have typically amounted to between \$200,000 and \$300,000 per annum in recent years. This accumulation of funds is the result of a deliberately adopted conservative budgeting strategy, which has the objective of ensuring that funds are available to meet short term contingencies in a timely fashion. This reflects the fact that experience with the operation of the VWR indicates the not infrequent need to address IT issues that can arise without warning. Being able to do so in a timely fashion ensures the continuous operation of the VWR, thus ensuring that the market in water rights is not disrupted.

This approach has been determined to be the only feasible means of ensuring this outcome, given that the alternative of seeking specific budget allocations to address these contingencies after they arise would, in many cases, not enable a timely response. As indicated in Table 3.4, the bulk of the \$1.1 million identified as having been retained in accordance with the section 29 authorisation as of the 2015 – 16 budget has subsequently been expended or committed to upgrades and enhancements of the VWR.

DELWP Contribution/capital expenditures

As set out in table 3.4, above, the 2016 – 17 VWR Operating Budget includes an element of capital expenditures within the IT expenses identified. These capital items were not included in the Operating Budget data in earlier years. As noted, these are valued at an estimated \$750,000, although there is necessarily some uncertainty surrounding this amount, given the fact that the same IT service providers undertake both operational works and upgrade works that are appropriately classified as being capital expenditures in nature. Consistent with this move to include capital expenditures in the figures, the DELWP contribution of \$1.1 million recorded for 2016-17 includes an amount of \$750,000 which is intended to fund this capital expense, whereas the DELWP contribution amounts recorded in respect of previous years do not include any capital element.

¹⁴ Includes \$750,000 in capital expenditures, which should be excluded in order to make this figure comparable with that for previous years.

¹⁵ Note that this is a cumulative total, incorporating the unspent revenue retained in accordance with a Section 29 authorisation, as shown in the revenue section of the table. Where Section 29 funds are subsequently spent on capital upgrades, as in 2016-17, this total can diminish substantially.

In order to make direct comparisons between the 2016-17 figures and the equivalent data for the earlier years set out in Table 3.4, it is necessary to net out these capital items. Netting out the capital expenditure from the total DELWP contribution yields an adjusted departmental contribution of \$368,495 in respect of DELWP's role as a user of the VWR. This amount is closely comparable with the equivalent contributions made in previous years.

Similarly, it is necessary to net out the capital expenditure figure of \$750,000 from the total expenditure figure for 2016 – 17 in order to obtain an adjusted expenditure total which is comparable with the figures provided for previous years in table 3.4. This adjusted figure totals \$2,202,000, and is virtually identical to the 2015 – 16 expenditure figure of \$2,196,021. Table 3.4 shows that total expenditure has increased from \$1,818,179 to \$2,952,000 in the four years to 2016 – 17. However, when the capital expenditure item of \$750,000, which is included for the first time in 2016-17 is removed, it yields a “like for like” comparison figure of \$2,202,000. This represents a 21.1% expenditure increase in nominal terms in the four years to 2016 – 17, or around 12.0% in real terms¹⁶. As shown in table 3.2, however, the longer term perspective is one of static real costs, with budgeted expenditure for 2016 – 17 being almost identical in real terms to that identified in the 2009 RIS.

3.1.4 User funding

The DELWP contribution to VWR operational expenditure, in respect of its role as a user of the services provided by the VWR, has been constant over the five years covered by table 3.4. Excluding the additional \$750,000 contribution recorded in 2016 – 17 in respect of capital expenditures, the departmental contribution has varied between \$332,132 and \$350,000.

Similarly, table 3.4 shows that revenue from rights-holder levies, which are currently set at \$12.89 per water right, (see “fixed funding sources”) has been constant over the five years to 2016 – 17, varying by little more than 5%, from a low of \$947,000 to a high of \$1 million. This reflects the fact that the size of the levy is fixed in dollar terms, while there has been no significant change in the number of water rights subject to the fee. It can be noted that revenue from this source is listed under the heading of fixed funding sources.

Conversely, revenue from transactions, including transactions in water rights and fee revenue in respect of water register searches, is identified under the heading “variable funding” and has, in fact, varied quite widely over the same period. Total variable revenue has ranged between \$612,749 and \$921,000 over the period, with the 2016 – 17 figure being almost 50% higher than the 2012 – 13 figure. This variation substantially reflects seasonal rainfall variation: as noted above, higher transactions volumes are typically recorded in respect of water rights in periods of low rainfall where the relative scarcity of water can significantly increase. Table 3.4 shows that most of the variation in the variable funding revenue over the period arises from changes in revenues from water allocation trade applications. Revenues from this source were substantially higher in 2015 – 16 than in previous years and are expected to be higher again in 2016 – 17. However, given recent substantial rains DELWP anticipates that revenues will fall significantly in 2017 – 18.

Table 3.5 shows the funding contributions from these three sources in percentage terms over the past five years.

¹⁶ Using the Melbourne all groups CPI index (June 2016/June 2012 = 108.6/100.4).

Table 3.5: Relative contribution of different funding sources

	2012-13	2013-14	2014-15	2015-16	2016-17	Average
DELWP	\$332,132	\$333,000	\$340,000	\$340,000	\$350,000	\$339,026
DELWP %	17.4%	16.8%	17.6%	15.4%	15.7%	16.5%
Rights-holder levies	\$965,000	\$1,000,000	\$947,000	\$960,000	\$953,000	\$965,000.00
Levy %	50.5%	50.3%	48.9%	43.6%	42.9%	47.0%
User charges¹⁷	\$612,749	\$655,000	\$650,000	\$903,000	\$921,000	\$748,350
User %	32.1%	32.9%	33.6%	41.0%	41.4%	36.5%

Table 3.5 shows that, on average over the past five years, slightly less than half of the revenue accruing to the VWR (47.0%) has been derived from the levy payable by water rights holders, while slightly more than one third (36.5%) has been derived from user charges relating to both transactions in water rights and register searches.

The average contribution made by DELWP in respect of its role as a user of the VWR has been 16.5% over this period. While this is slightly below the 20% government contribution identified as appropriate in the 2009 RIS, DELWP has also continued to fund the capital costs of improving the high-level functionality of the VWR. VWR data indicates that approximately \$4.0 million in capital expenditure was funded by DELWP in the four years to 2015 – 16, with a further \$750,000 being contributed in 2016-17, as noted in the discussion of the data in Table 3.4, presented above. Thus, the total DELWP contribution has met or exceeded the 20% benchmark set in 2009 in recent years.

Cost recovery - VWR

Table 3.4 shows that the VWR has fully recovered its operating costs from the three funding sources identified over the past five years. As discussed above, the conservative budgeting approach that has historically been adopted has meant that operating surpluses have been accrued in some years, as authorised by section 29 of the FM Act, with these accrued surpluses having been applied from time to time to address emerging IT issues and ensure the ongoing functionality of the VWR. Increased security of IT services has been achieved in recent years through the adoption, for the first time, of a long-term contract specifying the provision of a dedicated IT service team at all times. Despite this significant improvement in assured functionality and the fact that the fees contained in the current regulations have not been changed in real terms¹⁸ since 2009, full cost recovery continues to be achieved. This is because the operating cost efficiencies derived through continuing capital expenditures applied to funding IT innovations and improvements has resulted in the operating costs of the VWR remaining slightly below their 2009 levels, despite broadly similar transaction levels.

¹⁷ Identified as “Total variable revenue” in Table 3.4, which reproduces the DELWP Operating Budget data.

¹⁸ Note that all fees contained in the current regulations are expressed in terms of fee units, in line with the provisions of the *Monetary Units Act 2004*, and as a consequence are adjusted annually by a percentage announced by the Treasurer in the budget context, which broadly reflects the annual CPI movement across Victoria. Thus, their value is maintained in real terms over time, without explicit changes being made to the regulations.

Given that an appropriate balance continues to be maintained between revenues and costs, there is a strong argument for maintaining the current level of fee revenue – i.e. ensuring that the fees adopted as part of the proposed regulations yield a revenue neutral outcome, vis-à-vis the existing regulations, in relation to the revenue flowing to the VWR. However, option 2, discussed below, presents an alternative view, based on a different conceptual treatment of the key issues.

Cost recovery – Water corporations

The processing of the various transactions in water rights involves inputs from water corporations as well as the VWR. Indeed, given the move to online processing of some transaction types within VWR, these manual processing inputs are now primarily undertaken within the water corporations. In most cases, these transactions are processed by the water corporations in the first instance, with the change subsequently being recorded on the VWR¹⁹. Thus, the fees contained in the existing and proposed regulations must provide for the recovery of the costs incurred by water corporations as well as the costs of the VWR.

A questionnaire was distributed to each of the relevant water corporations in order to obtain current information as to the costs incurred in processing the major types of transactions in water rights. The responses received indicated that around 90% of the most common types of transactions (i.e. transfers of water shares and water allocation trades) are processed by one water corporation: Goulburn-Murray Rural Water Corporation (GMW). Perhaps reflecting the considerably higher volume of these transactions processed by GMW, substantially more detail on processing costs was provided by GMW than the other water corporations. Given its preponderant role in processing transactions in water rights, and the fact that it was the only corporation to provide a complete set of estimates of the costs involved in processing these transactions, these costings have been used as the basis for the overall cost estimation.

Table 3.6 summarises the cost estimates provided by GMW. Appendix 3 includes process breakdowns for the processing by water corporations of a share transfer and a water allocation trade, respectively. These should be regarded as indicative only, as they relate to a single water corporation, which provided the most detailed data. However, they provide a general understanding of the methods adopted by the water corporations in providing the updated costs estimates for the processing of the main transaction types and of the main activities involved.

Table 3.6: Estimated water corporation costs of processing transactions in water rights

Transaction	Direct labour cost (time)	On-costs & overheads (\$)	Total
Water share transfer	\$70.11 (88 min.)	\$51.67 (+73.7%)	\$121.78
Allocation trade (manual)	\$26.22 (35 min.)	\$18.01 (+68.7%)	\$44.23
Allocation trade (online)	NA	\$3.11	\$3.11

Source: Goulburn Murray Water

¹⁹ The key exception is online water allocation transfers which are undertaken directly through the VWR, with no involvement by the water corporations. Of note, however, is that online allocation transfers currently account for more than three quarters of allocation transfers.

Table 3.6 shows that the average time taken to process a water share transfer application is slightly less than 1.5 hours, with the actual approval and registration process estimated to take around 49 minutes and the remaining time being taken up by a range of administrative processing tasks. The direct cost of this labour input is estimated at \$70.11, while on-costs and overheads add a further \$51.67, or 73.7% to this direct labour cost. It can be noted that this on cost and overhead percentages fee is close to the benchmark 75% on-costs overhead allowance recommended by the Office of the Commissioner for Better Regulation (OCBR) in the RIS context.

The time taken to manually process applications for water allocation trades is significantly less, at 35 minutes, yielding a direct labour cost of \$26.22. On costs and overheads add a further \$18.01, or 68.7% to this direct labour cost. Thus the total cost incurred by the water corporations in processing a water share transfer application is \$121.78, while the costs incurred in the processing and application for an allocation trade is \$44.23.

Of note is the fact that no direct labour costs have been identified in respect of online applications for allocation trades. The exception being where trading rules necessitate online applications to be manually assessed and processed. This reflects the fact that the water corporation generally has no direct role in these transactions, which are completed directly on the VWR platform. However, a nominal \$3.11 in overhead costs is allocated to these transactions. This provides for covering the water corporation's cost where online applications need to be manually processed, and in dealing with customer queries regarding these applications.

Table 3.7 compares the costs incurred by the water corporations in processing these transactions with the currently applicable fees. Table 3.7 shows that a proportion of the fee received by the water corporations is passed through to the VWR, in recognition of the costs incurred by it in relation to these transactions.

Box 3.1: Fee “pass-through” arrangements

Where an application fee or transaction fee is collected directly by a water corporation, a portion is “passed-through” to DELWP. This pass-through amount is intended to enable the recovery of the costs incurred by VWR in registering the transaction. In this case, DELWP, which has portfolio responsibility for the VWR, receives the funds, and accounts for this revenue in a specific VWR budget revenue line. VWR operating expenditure is accounted against this revenue. In the following tables, these “pass-throughs” are labelled as pass-throughs to VWR, as this is the final destination of the funds.

In the case of online services (e.g. online allocation trades), the application fee is collected by DELWP; that is, it is paid via the VWR website, which is managed directly by DELWP. In these cases, DELWP receives the fee, makes an internal transfer of the relevant proportion of the fee to VWR's operating budget line and transfers the remaining proportion of the fee to the relevant water corporation.

The amounts passed through to the VWR were derived as the result of a prospective cost analysis, which was set out in the 2007 RIS. The amounts passed through to the VWR are not prescribed in regulations. Rather, they are agreed between the organisations involved.

Thus, the total cost base against which the current fee must be benchmarked is the sum of the costs incurred by the water corporation and the fee pass through to the VWR.

Table 3.7: Transaction costs and fees payable to water corporations

Transaction	WC cost	Pass through to VWR	Total cost	Fee	Difference ²⁰
Share transfer (within Water corporation)	\$121.78	\$57.06	\$178.84	\$189.20	\$10.34 (+5.8%)
Share transfer (between water corporation)	\$121.78 + (est. \$162 ²¹)	\$5.93		\$189.20	
Alloc. Trade (within water corporation)	\$44.23	\$32.00	\$76.23	\$84.20	\$7.97 (+10.5%)
Alloc. Trade (between water corporations)	\$44.23 + (est. \$60 ²²)	\$16.53		\$84.20	

Table 3.7 shows that there is a close match between the total cost (i.e. cost reported by GWM plus the amount passed through to the VWR in respect of its costs) and the current fee in the case of both share transfers occurring within water corporations and allocation transfers occurring within corporations.

DELWP believes that it is highly likely that the position is similar in relation to transfers and allocation trades taking place between corporations.²³ However, it is not possible to obtain estimates of the additional costs incurred by water corporations where the buyer and seller are customers of different corporations and the processing of transfers requires co-ordination between two corporations. This reflects the fact that the majority of transfers occur within water corporations, as noted above. That is, the relatively infrequent nature of this kind of transaction (i.e. transfers between corporations) has meant that water corporations have been unable to reliably estimate this cost.

The 2007 RIS estimated (see table 3.7) that the variable cost of processing a water share transfer occurring between water corporations would be approximately 1/3 higher than the cost of processing an equivalent transfer within a water corporation (\$127 vs \$95). If this ratio is applied to the within corporations cost of \$121.78 identified in table 3.7, it would suggest a total water corporation cost of more than \$162.

Similarly, the 2007 RIS estimated that allocation trades between corporations would cost approximately 1/3 more than the equivalent trades occurring within the water corporations. This would suggest a total water corporation cost for between corporation allocation trades of around \$60.

The pass-through of a proportion of the fee collected by the water corporation to the VWR was established in 2007 as a means of ensuring that a contribution to the fixed costs of the VWR was made in respect of all transactions. However, the size of these contributions varied widely between transaction types and, as shown in table 3.7, this continues to be the case. The 2007 RIS indicates that this substantial variability in

²⁰ The residual amount is, in effect, retained by the water corporation that charges the fee.

²¹ See following text.

²² See following text.

²³ That is, transfers and allocation trades where the buyer is a customer of a different water corporation to the seller, so that co-ordination between two different water corporations is required in order to complete the transaction.

the size of the contributions made to VWR fixed costs reflected two key factors. The first was the fact that it was considered equitable to charge rights holders the same transaction fee, regardless of whether a transfer was occurring within or between water corporations, while the second was the desire of the then government to ensure that the fees established did not exceed those in place under the previously existing arrangements relating to temporary and permanent transfers of water rights (see 2007 RIS, p 22).

DELWP believes that the current fees continue to be well accepted by stakeholder groups and that, particularly in light of this historical background, there is no merit in revisiting this issue of the variable contributions to VWR fixed costs.

3.2 Managing water use issues

In addition to prescribing fees which enable the relevant costs of the VWR and the relevant water corporations to be recovered, the regulations address three other matters, which are discussed below.

3.2.1 Prescribed purposes for applications to take and use water from a declared water system

Section 51 of the Water Act provides that a person may apply to the Minister for a licence to take and use water. Section 51(1AA)(b) states that such an application may not be made to take and use water in a declared water system unless the water is to be used for a prescribed purpose. Apart from this exception allowed under section 51(1AA), all water rights in a declared water system are held as water shares²⁴ and allocations of water made in respect of water shares, not as take and use licences.

Many of Victoria's waterways have strip of Crown land that runs alongside the bed and banks of the waterway (Crown frontage). Approximately 30,000 kilometres of Victoria's 170,000 kilometres of waterway frontage is Crown land. Section 8 of the Water Act provides a right to take water where a person has direct access to a waterway and where that person occupies land adjacent to the waterway and the bed and banks of the waterway have remained the property of the Crown. A person can occupy the strip of Crown land under a licence issued under sections 130 or 138 of the *Land Act 1958* (Land Act), which gives the person a right under section 8 of the Water Act to take and use water from the waterway for domestic and stock use.

In 2009, as a measure to protect this land from degradation, the then government introduced riparian land management programs which committed the government to acting collaboratively with landholders to undertake works such as fencing between the private land and Crown land to manage stock access, revegetation, weed management and provision of infrastructure to support off-stream stock watering.

However, where a landholder with a Crown frontage licence constructs fencing to prevent or manage stock access to the Crown land frontage, they lose direct access to the waterway to water stock. They require a take and use licence under section 51 of the Water Act to enable extraction to water their stock.

Because access to water for stock is a critical issue for landholders many landholders were initially reluctant to participate in riparian land management programs that would potentially remove existing water access. The government therefore introduced a new type of take and use licence, to be granted to a landholder

²⁴ Or a bulk entitlement or environmental entitlement, which is not relevant for the purposes of this RIS.

who holds a Crown frontage grazing licence under the Land Act and agrees to fence for riparian protection purposes and who manages stock access in the long term. This removes the need for the landholder to purchase water on the open market, although landholders are still subject to a licence application fee, an annual service fee and a renewal of licence application fee, as are all other take and use licence holders.

Part 4 of the current regulations, replicated in Part 4 of the proposed Regulations, gives effect to section 51(1AA)(b) by specifying that a prescribed purpose²⁵ is the watering of cattle or other stock by a person who occupies land adjacent to the waterway, subject to certain conditions. In essence, the conditions are that the person must hold a licence under section 130 or 138 of the *Land Act 1958* which permits the grazing of cattle for conservation purposes for less than one month per year and that the water frontage of the land in question has been fenced off to prevent stock access²⁶. The amount of water authorised to be taken under the licence is determined based on the applicant's previous water usage. Unlike other take and use licences, this class of take and use licence cannot be traded.

Within this context, Part 4 of the regulations is permissive in nature. That is, the provisions of section 51(1AA)(b) in relation to applications for licences to take and use water from a declared water system can only be given practical effect if a specific purpose is prescribed.

3.2.2 Registration authorising the use of water from a declared water system

In a declared system it is an offence to use water on land without a water-use licence (for irrigation) or a water-use registration (for any other purpose). Therefore, any water from a declared system used for any purpose except for irrigation must be used on land that is the subject of a water-use registration.

Section 64AP of the Water Act states that the Minister may, on receiving an application from an owner or "occupier" of land, grant that person a water-use registration authorising the use of water from a declared water system for purposes other than the irrigation on the land owned by that person.

In most cases, only the owner or occupier of land would choose to apply water to land so they may gain benefit from the applied water. In a few cases, there are circumstances where persons with water apply the water to land they do not own or "occupy" (in the ordinary meaning of "occupy").

Section 64APAA of the Act provides for a broader definition of the term occupier, for the purposes of section 64AP. This states that an occupier is:

"...a prescribed person, or a person of a prescribed class of person, who has a right of access to the land or responsibility for the provision of a service to the land"

This allows other classes of persons to apply for and hold a water-use registration. This is of particular importance where a person has a responsibility for the provision of a service requiring the use of water on land but is not the owner or occupier of the land.

²⁵ This is currently the only prescribed purpose identified pursuant to Section 51(1AA)(b).

²⁶ Former holders of licences under the Land Act are also eligible in circumstances in which those licences are being cancelled for conservation purposes.

Part 4A of the current regulations and replicated in Part 5 of the proposed regulations, prescribes the following persons and classes of persons as occupiers for the purpose of sections 64AP and 64APAA:

- the Victorian Environmental Water Holder who often waters land with the permission of the land owner but without being an owner or occupier of that land; for example, the Barmah forest.
- an incorporated body responsible for supplying or delivering water to land owned by persons who that incorporated body represents. In some semi-rural areas, groups of land owners form an incorporated syndicate to organise delivery of water to each of their properties. Each land owner may own a water share and hold a water-use licence or registration to use water on their property. However, some water is lost through the shared delivery infrastructure (through seepage and evaporation) and it also needs to be accounted for under the water-use registration scheme). These water losses are generally covered by a water share held by the syndicate, and linked to a water-use registration in the name of the syndicate. The syndicate does not own the land where the water use (the losses) occurs. It needs to be prescribed as an occupier of land to be able to hold a water use registration.
- a person responsible for the construction or maintenance of roads on land that requires the use of water (e.g. for dust suppression), but does not own or occupy the land where the water is used; and
- a person responsible for undertaking an activity requiring the use of water for other dust suppression purposes and does not own or occupy the land where the water is used.

Part 4A of the current regulations is permissive in effect. This aspect of the regulations constitutes an element of the larger scheme for regulating use of water on land to ensure the application of large amounts of water to land doesn't cause environmental harm. The current regulations cover **all** situations identified by DELWP to date where a person holding water taken from a declared system needs to apply that water to land (that is not irrigation) and is not an owner or occupier of the land.

4. Outline of fees prescribed in the current regulations

4.1 Fees regulations

Chapter 3, above, discusses the nature of the policy problem addressed via the imposition of the fees which form the central part of the current regulations. In particular, it sets out the approach taken to determine which costs (and what proportions of those costs) should be recovered from transactors in water rights and other users of the VWR and in what proportions. Parts 2 and 3 of the regulations set a range of fees in accordance with the conceptual approach and methodology set out in chapter 3. Further detail on the establishment of the different fees at certain levels is contained in the 2007 RIS²⁷. In general, the average time required to process each type of transaction was estimated and the cost of this time input was calculated. The fees were then set to recover these estimated variable costs, while also providing a contribution to the fixed costs of the VWR. As noted above, however, the size of this contribution to fixed costs varies substantially, in part because of the then government policy of ensuring that the resulting fees were not higher than those which they replaced.

These relate to the full range of transactions in water rights. Tables 4.1, 4.2 and 4.3, below, set out the resulting fees. The fees are necessarily established in terms of fee units, as required by the *Monetary Units Act 2004*. Hence, the dollar figures contained in these tables reflect the 2016-17 value of a monetary unit.

Table 4.1 Fees for applications manually processed by the water corporations

APPLICATION	2016-17 APPLICATION FEE	PORTION PASSED THROUGH TO VWR
Allocation trade		
Within corporation# and interstate trades	\$84.20	\$32.00
Between corporation trades	\$84.20	\$16.53
Cancel a water share	\$189.20	\$65.84
Consolidate water shares	\$159.30	\$65.84
Divide a water share	\$159.30	\$71.64
Issue a water share	\$189.20	\$67.81
Approve a limited term transfer (LTT)	\$189.20	\$65.44
Approve a water share transfer		
Within corporation	\$189.20	\$57.06
Between corporation	\$189.20	\$5.93
Within corporation divide and transfer	\$189.20	\$42.83
Between corporation divide and transfer	\$189.20	\$5.93

"corporation" means the water corporation acting as the Minister's delegate for determining these types of applications.

²⁷ The 2007 RIS is available here: <http://www.betterregulation.vic.gov.au/Searchable-RIS-Archive/Search-for-a-RIS/2006-07>

Table 4.2: Fees for transactions/applications manually processed by the Victorian Water Registrar

TRANSACTION/APPLICATION	2016-17 APPLICATION FEE	PORTION PASSED THROUGH TO DELWP
Water share transfer	\$121.40	\$29.15
Limited term transfer	\$121.40	\$29.15
Application by a surviving water share owner	\$121.40	\$29.15
Application by a legal personal representative for a water share	\$121.40	\$29.15
Application by a trustee in bankruptcy for a water share	\$121.40	\$29.15
Application to correct or amend the recorded name in the VWR	\$121.40	\$29.15
Memorandum of Common Provisions for a water share mortgage	\$121.40	\$29.15
Surrender of a limited term transfer	\$60.80	\$14.59
Record a mortgage on a water share	\$60.80	\$14.59
Discharge a mortgage on a water share	\$60.80	\$14.59
Variation of a mortgage on a water share	\$60.80	\$14.59
Transfer a mortgage on a water share	\$60.80	\$14.59
Variation in priority of a recorded mortgage on a water share	\$60.80	\$14.59

Table 4.3 Fees for applications/transactions made online via the VWR website

TRANSACTION/APPLICATION	2016-17 APPLICATION FEE	PORTION PASSED THROUGH TO WATER CORPORATIONS
Allocation trade application	\$44.70	DELWP passes through \$10.42 to the relevant water corporation
Purchasing a copy of a record	\$13.90	DELWP retains the whole fee
Application for a bore construction licence ²⁸ (i.e. a works licence)	\$235.00	DELWP passes through \$202.50 to the relevant water corporation

Among the fees identified in Tables 4.1 – 4.3, the most commonly charged fees are:

- the fee for determining a ‘within corporation’ share transfer; and
- the fee for determining a ‘within corporation’ allocation trade.

In 2015-16 the VWR recorded 15,626 allocation trades, 3,327 water share transfers, 1,279 mortgages discharged and 521 new mortgages.

²⁸ Note that the fee to apply for a bore construction licence (i.e. a works licence) is not a prescribed fee, but is included here for completeness. The water corporations set this fee pursuant to the delegation to them of the Minister’s power under section 67(2) to set the fee for a works licence application. The water corporations agreed to a common fee with the implementation of the online bore construction licence application facility. They also agreed that DELWP should retain \$32.50 per application to defray the cost it incurs in providing this service.

5. Identification and assessment of feasible alternatives - fees

The analysis in chapter 3 demonstrates that the total costs associated with processing transactions relating to water rights have remained broadly constant since the establishment of the VWR in 2007 - 08. As a result, the existing fees, which have not changed in real terms since 2009, continue to fully recover the attributed costs of both the VWR and the water corporations. This suggests that the overall level of the current fees continues to be appropriate.

Chapter 3 also shows that there is a good match between the fees paid to the water corporations and the costs incurred by them in respect of each of the two main transactions types — i.e. transfers of water shares and of allocation rights. Conversely, however, the substantial changes made to the VWR's operating arrangements since its establishment in 2007 means that there is no longer any significant variable cost to it arising from the processing of individual transactions. This being the case, the model for setting the various individual fees set out in the 2007 RIS, which involved setting fees at a level which recovered the variable costs incurred by the VWR in processing each transaction type and adding a contribution to the fixed recurrent costs of the VWR, is arguably no longer appropriate.

The rest of this chapter discusses fees options in the light of this background.

5.1 Option 1: Remake the regulations with unchanged fees

5.1.1 Expected benefits of Option 1

The analysis presented in chapter 3 demonstrates that the current fee structure continues to achieve full cost recovery, in respect of both the operating costs of the VWR and the costs incurred by the water corporations in processing transactions in water rights. In this respect the fees are consistent with both the objective identified in the 2007 RIS and general government policy in relation to the setting of regulatory fees, as set out in the *DTF Cost Recovery Guidelines*.

In addition, chapter 3 shows that there is a good match between the costs incurred by the water corporations in processing the two transactions that constitute the great majority of total transactions numbers (i.e. trade in water shares and allocation rights) and the fees charged in respect of those transactions. This implies that the fees paid to the water corporations demonstrate a quite high level of equity between different user groups.

The current fees have remained unchanged since 2009, save for annual adjustments made to ensure that their real value is maintained over time. The fees are modest in relation to the value of the water rights being traded²⁹ and are considered to be well accepted by all user groups. Thus, remaking the current fees without amendment-

- would be positively received by stakeholders;
- would mean that clarity and certainty as to fee levels would be retained; and
- would minimise transitional costs resulting from making the proposed regulations.

²⁹ For example, the total volume of water allocations traded in 2015-16 was around 2.7 million ML, while the price per megalitre averaged around \$220. See: Victorian Water Register (2016) *Victorian Water Trading Annual Report 2015 – 16*. http://waterregister.vic.gov.au/images/documents/Victorian%20Water%20Trading%20Annual%20Report_2015-16_Web.pdf, p 4, p 10.

5.1.2 Expected costs of Option 1

While chapter 3 demonstrates a quite good matching of costs and revenues at the level of the individual fees paid to water corporations, the same cannot be said in relation to the fees paid to the VWR. As explained in the 2007 RIS, these fees were initially established via a process of estimating the average costs that would be incurred by the VWR in processing each transaction type and incorporating a contribution toward recovery of the VWR's fixed costs. However, the fact that the variable processing costs have now largely been eliminated means that the 2007 fee setting model is no longer directly relevant. This can be seen as arguing for a resetting of these fees in a manner which reflects the current VWR cost structure. Thus, a cost associated with option 1 is arguably that potential inequities and inefficiencies will arise from the continuation of the existing fee structure and that the opportunity to achieve a more logical and equitable outcome in respect of fees paid to the VWR would be lost. That said, given the modest overall revenue from the existing fees (less than \$1.0 million per annum) the size of any such inequities and inefficiencies will necessarily be modest.

5.2 Option 2: Adopt a revised cost base to underpin cost recovery based fee-setting

Option 1, involves remaking the existing fees without amendment. It implicitly continues the use of the current cost base to determine the appropriate amount of revenue to be obtained via fee setting. However, there is an arguable case to adopt two significant modifications to the current cost base. Option 2 involves resetting the fees to ensure full recovery of this larger, modified cost base. The two changes to the cost base that would be adopted under option 2 are:

- removal of the DELWP "user contribution" to the operating costs of the VWR; and
- inclusion of the full cost of the IT support contract in the calculation of VWR operating costs.

5.2.1 Expected benefits of Option 2

Option 2 can be considered to achieve better equity and efficiency outcomes by adopting a more appropriate cost base for use in the determination of the fees to be set.

User contribution

As noted above, the 2009 RIS identifies the Victorian government as a user of the VWR for the following reasons:

"The Government also benefits from the water accounting and reporting provided by the water register and should contribute towards the operating cost of the water register accordingly."

Further to this, DELWP utilises the VWR to support water resource planning, to administer the Minister for Water's water allocation carryover rules, and to implement the Minister's legislative responsibilities to ensure each allocation under water rights is in accordance with the resource manager's water allocation determinations. In these various ways, the VWR data supports DELWP's efforts to ensure that water resources are managed as well as possible for the benefit of the community as a whole.

However, from an alternative perspective, no contribution to VWR operating costs should be required from DELWP. Several arguments can be adduced in support of this view:

- Firstly, the VWR was established to facilitate the responsible, transparent and sustainable use of the State's water resources, including facilitating the establishment and operation of a water market (see Water Act, sections 84 and 84B). While section 84B also states that a purpose of the VWR is “facilitating the monitoring of, and reporting in relation to records and information about water related entitlements and allocation, and use of water resources”, this purpose is necessarily secondary to the other purposes noted above. Given these overriding objectives, it is clear that the VWR would have been established regardless of any perceived benefits to government. The identified benefits to government can therefore be considered to be largely incidental in nature.
- Secondly, these benefits are essentially associated with DELWP policy making processes to ensure effective resource planning. That is, the data identified in the above statement from the 2009 RIS essentially constitute inputs to ongoing government policy processes. As a general rule, the costs of government policy development are excluded from the cost bases used in determining cost recovery based fee setting. Symmetry would therefore suggest that any benefits flowing toward better policy development should also be excluded.
- Thirdly, DELWP has both funded the initial establishment of the VWR and continues to contribute substantially to its ongoing operations by funding capital expenditures directed toward its enhancement. As shown in chapter 3, above, these typically amount to over \$1 million per annum. This can be seen as constituting an adequate contribution in respect of the benefits DELWP receives from the existence of the VWR.

IT support costs

Chapter 3 also reports that the current annual cost of the recently outsourced IT support contract is budgeted at \$1.1 million. DELWP estimates that only around \$0.75 million of this total will be expended on ongoing operational costs (including bug fixes and minor enhancements), with the remaining \$350,000 of consultant resources being available to be used for capital upgrade purposes. On this basis, \$350,000 has been “netted out” from the cost base calculations³⁰.

Option 2 is based on an alternative approach which would see the full \$1.1 million IT support cost being included in the cost based used to determine the fees. The reasons for proposing this alternative perspective are twofold:

Firstly, having undertaken a 2014 review of its IT support requirements, DELWP reached the view that the current IT support contract cost (i.e. \$1.1 million) represents the minimum necessary cost to ensure that service standards (including service continuity) are maintained at acceptable levels. That is, it is necessary to have a dedicated team of consultants available at all times to ensure that critical issues can be addressed in a timely and effective manner, and a contract value of \$1.1 million was found to be the minimum necessary expenditure to achieve this result. From this perspective, even though some consulting resources are expected to be available each year to carry out capital upgrade works, no proportion of the total IT support cost represents an “avoidable cost”. Given this, the full contract cost should be counted as an operational cost.

³⁰ Chapter 3 shows that a total of \$750,000 has been netted out of the approved 2016 – 17 VWR Operating Budget. However, the remaining portion (i.e. approximately \$328,000) has been netted out of other IT-related cost items.

Secondly, there is necessarily significant uncertainty as to the value of any “capital works” that will be provided within the cost of the IT support contract. This reflects two factors, i) the robustness of the \$750,000 estimate of the costs of operational expenditures is untested and unknown. Thus, it is possible that the full value of the contract may, in fact, be expended on addressing operational requirements, leaving no resources available to undertake capital upgrades and ii) to the extent that spare resources are available within the contract, they will only translate into valuable capital expenditures to the extent that appropriate capital upgrade projects have been identified and can effectively and efficiently be completed by the contractors that are on site as part of the IT support contract.

Given the above reasons, the key potential benefit of including the full \$1.1 million cost of the IT support contract within the cost base used to determine the fees is that it arguably provides a fee structure which is more consistent with the funding principles for the VWR and water corporations (as was set out in the 2009 RIS) and which continue to be endorsed by DELWP. That is, option 2 would ensure that the full set of operating costs incurred by the VWR and the water corporations in processing transactions in water rights are recovered from the users of the VWR’s services.

5.2.2 Expected costs of Option 2

Impact on the cost base

The total, noncapital operating expenditure budgeted to 2016 – 17 was calculated in chapter 3 as being \$2,202,000. Adding the additional \$350,000 identified above would yield an adjusted cost base of \$2,552,000.

Conversely, the budgeted revenue from fees and entitlement charges (i.e. excluding the DELWP contributions) sums to \$1,891,139. The difference between these two figures is therefore \$661,000. Thus, if fees were to continue to be set on the basis of full cost recovery under option 2, they would need to rise by an amount sufficient to generate this amount in additional revenue.

A number of different fees options could clearly be developed to generate the required additional revenue. However, there is a clear argument for ensuring that the responsibility for funding this expanded cost base is spread evenly across all contributing groups. The required increase in revenue is equal to $\$661,000/\$1,891,139 = 35.0\%$.

Thus, full cost recovery could be achieved if all user fees, together with the levy charged to water corporations in respect of each water right which they administer, were to be increased by this percentage amount.

Importantly, however, the modified cost base proposed under option 2 differs from option 1 only in relation to the VWR. That is, the water corporation costs included under Option 2 are unchanged from those set out in Option 1. This means that the required 35.0% increase would be applied only to that part of the fee retained by the VWR. Thus, for fees initially paid to the VWR, the 35.0% increase would be applied to the current fee less the amount passed through to the water corporations. For example, the VWR retains \$92.25 of the \$121.40 fee for registering a transfer of water share ownership. Thus, the 35.0% increase would be applied to the \$92.25, yielding a new total fee of \$153.69.

Conversely, in relation to fees initially paid to water corporations, where a proportion of the fee revenue is passed through to the VWR, the 35.0% increase would apply only to the component of the fee that is passed through to the VWR.

Tables 5.1 to 5.3 highlight the impact of adopting option 2 on fees paid to the VWR and fees paid to the water corporations, respectively.

Table 5.1: Fee impact of adopting option – fees paid to VWR

Transaction	Current fee	Pass-through [to WCs See Table 4.2]	Fee retained by VWR	New retained fee ³¹	New total fee	Increase
Water share transfer	\$121.40	\$29.15	\$92.25	\$124.54	\$153.69	\$32.29
Limited term transfer	\$121.40	\$29.15	\$92.25	\$124.54	\$153.69	\$32.29
Application by a surviving water share owner	\$121.40	\$29.15	\$92.25	\$124.54	\$153.69	\$32.29
Application by a legal personal representative for a water share	\$121.40	\$29.15	\$92.25	\$124.54	\$153.69	\$32.29
Application by a Trustee in Bankruptcy for a water share	\$121.40	\$29.15	\$92.25	\$124.54	\$153.69	\$32.29
Application to correct or amend the recorded name in the VWR	\$121.40	\$29.15	\$92.25	\$124.54	\$153.69	\$32.29
Memorandum of Common Provisions for a water share mortgage	\$121.40	\$29.15	\$92.25	\$124.54	\$153.69	\$32.29
Surrender of a limited term transfer	\$60.80	\$14.59	\$46.21	\$62.38	\$76.97	\$16.17
Record a mortgage on a water share	\$60.80	\$14.59	\$46.21	\$62.38	\$76.97	\$16.17
Discharge a mortgage on a water share	\$60.80	\$14.59	\$46.21	\$62.38	\$76.97	\$16.17
Variation of a mortgage on a water share	\$60.80	\$14.59	\$46.21	\$124.54	\$153.69	\$32.29
Transfer a mortgage on a water share	\$60.80	\$14.59	\$46.21	\$124.54	\$153.69	\$32.29
Variation in priority of a recorded mortgage on a water share	\$60.80	\$14.59	\$46.21	\$124.54	\$153.69	\$32.29

Table 5.1 shows that adopting option 2 would have the effect of increasing the fee for recording a water share transfer by \$32.29, which is equal to an increase of approximately 26.6% on the current fee of \$121.40. The same increase would apply in relation to other transactions involving a change in the ownership of a water share. In addition, a range of fees relating to mortgages on water shares would increase by \$16.17. This also represent an increase of approximately 26.6% on the current fee of \$60.80.

³¹ 135.0% of the old retained fee

Table 5.2: Fee impact of adopting option 2 – fees paid to water corporations

Application	2016-17 application fee	Portion passed through [to VWR]	New pass-through amount	Current fee net of pass-through	New fee	Increase	% increase
Allocation trade							
Within corporation	\$84.20	\$32.00	\$43.20	\$52.20	\$95.40	\$11.20	13.3%
Between corporations	\$84.20	\$16.53	\$22.32	\$67.67	\$89.99	\$5.79	6.9%
Cancel a water share	\$189.20	\$65.84	\$88.88	\$123.36	\$212.24	\$23.04	12.2%
Consolidate water shares	\$159.30	\$65.84	\$88.88	\$93.46	\$182.34	\$23.04	14.5%
Divide a water share	\$159.30	\$71.64	\$96.71	\$87.66	\$184.37	\$25.07	15.7%
Issue a water share	\$189.20	\$67.81	\$91.54	\$121.39	\$212.93	\$23.73	12.5%
Approve a limited term transfer (LTT)	\$189.20	\$65.44	\$88.34	\$123.76	\$212.10	\$22.90	12.1%
Approve share transfer			\$0.00	\$0.00	\$0.00	\$0.00	
Within corporation	\$189.20	\$57.06	\$77.03	\$132.14	\$209.17	\$19.97	10.6%
Between corporations	\$189.20	\$5.93	\$8.01	\$183.27	\$191.28	\$2.08	1.1%
Within corporation divide and transfer	\$189.20	\$42.83	\$57.82	\$146.37	\$204.19	\$14.99	7.9%
Between corporation divide and transfer	\$189.20	\$5.93	\$8.01	\$183.27	\$191.28	\$2.08	1.1%

Table 5.2 illustrates the impact of adopting option 2 on the fees paid to water corporations in respect of manually processed transfers. The size of the impact on these fees is generally smaller, since only a minority of the fee revenue is passed through to the VWR. Moreover, it is also more variable, since the pass-through amounts themselves vary widely, particularly when comparing transfers/trades conducted within and between water corporations.

Thus, the highest absolute and percentage fee increase in this group is that of \$25.07 (15.7%) for dividing a water share, while the smallest absolute and percentage increases are those of \$2.01 (1.1%) for approving ‘between water corporation’ share transfers, with or without division of the share.

The most commonly charged fees are:

- the fee for approving a within corporation share transfer, which would rise \$19.97 (10.6%); and
- the fee for processing and allocation trade within corporation, which would rise \$11.20 (13.3%).

Table 5.3 Applications/transactions made online via the VWR website

Transaction/ Application	2016-17 Application fee	Portion retained	New retained amount	New fee	Difference	% difference
Allocation trade application	\$44.70	\$34.28	\$46.28	\$56.70	\$12.00	26.8%
Purchasing a copy of record	\$13.90	\$13.90	\$18.77	\$18.77	\$4.87	35.0%
Application for a bore construction licence	\$235.00	\$32.50	\$43.88	\$246.38	\$11.38	4.8%

Table 5.3 shows the impact of adopting option 2 on fees paid online to the VWR. It shows that the fee for processing a water allocation trade online would increase by \$12.00, or 26.8%. The fee for purchasing a copy of a VWR record would increase by \$4.87, or 35.0%. Also included on the table is the application fee for a bore construction licence. This fee is not prescribed in regulations but is set by the water corporations under the delegation to them of the Minister’s power under section 67(2) of the Water Act to set the fee for a works licence application. However, as option 2 is based on the concept of a single percentage increase to be applied to all fees charged in relation to the VWR are, it is assumed that this fee would also be increased. In this case the percentage increase in the fee is low, at 4.8%, reflecting the fact that the majority of the fee collected is passed through to the water corporations. This fee would increase by \$11.38.

Water rights levy

In addition to the above increases, the adoption of option 2 would require an increase in the levy paid in respect of each water right. As noted above, this levy is imposed on the water corporations by the VWR. Consequently, the required 35.0% increase would apply to the entire amount of the levy. This would imply an increase in the size of the levy from the current \$12.89 to \$17.40 – an increase of \$4.51.

Summary of cost impacts

In summary, the above calculations demonstrate that the adoption of option 2 would have a modest impact on water rights holders and transactors, when considered in absolute terms. No individual fee would rise by more than \$32.29, although transactors in water rights would pay more than one fee. Specifically:

- Those transferring water shares would pay both the fee to the VWR and the fee to the water corporation, whilst also being at least notionally liable for an increased rights levy³²; and
- Those conducting allocation trades would pay the fee to the VWR and would also be liable for an increased rights levy.

This being the case, it is arguable that option 2 would better achieve the stated objectives of fee setting in relation to water rights transactions. That is, option 2 arguably achieves a more equitable outcome in terms of the allocation of the costs of the VWR among transactors and rights holders. This conclusion

³² Note that, while the levy is imposed on water corporations, there is no obligation for the authorities to impose a specific charge on rights holders to recover this cost.

follows if the rationale for not factoring in an explicit user contribution from DELWP to the cost base, set out in the benefits section above, is accepted.

5.3 Option 3: Recover all VWR costs from transactors

The third option considered during the development of the proposed regulations involves recovering all of the operating costs of the VWR from transactors in water rights, rather than recovering these costs in part from all water rights-holders via the levy charged to water corporations. This option would, therefore, see the obligation to pay the water rights-holder levy removed in its entirety, while the transactions fees charged by water corporations would be increased by an amount sufficient to offset this lost revenue.

It is clearly possible to formulate option 3 on the basis of either the assumptions of option 1 or option 2 in relation to:

- the DELWP contribution to the VWR operating budget; and
- the proportion of the external IT support contract cost that should be included in the operating budget.

However, the following discussion adopts the assumptions of option 1 in relation to both of these issues – i.e. effectively assuming that the DELWP would continue to make a “user contribution” to the VWR operating budget and that only the identified “operating cost” component of the IT support services contract cost would be included in the VWR operating budget. Adopting these assumptions enables the impact of adopting the specific conceptual change which characterises option 3 to be compared directly with the current fees regulations. It also recognises the reality that-

- adopting option 3 would involve a significant increase in the current level of transactions fees; and
- further increasing the cost base to be recorded, by altering the above assumptions, is likely to give rise to strongly negative stakeholder reactions, given the consequent size of the fee increases implied.

5.3.1 Expected benefits of Option 3

The primary benefit of adopting option 3 is that it is arguably conceptually preferable to retrieve the full costs of VWR operations from water rights transactors.

The view taken in the 2007 RIS was that all water-rights holders benefit from the existence of the VWR, since it provides an authoritative source of information on the ownership of water rights and, therefore, contributes to their security of tenure. Specifically, the 2007 RIS stated:

“It is equitable for the private beneficiaries to contribute to the water register’s fixed operating costs as they benefit from its operation. This includes all owners of water shares and water entitlements recorded in the register because the register is the mechanism by which they receive their annual water allocation, it provides security for their water share, and enables them to trade”.
(p 20).

However, in addition to providing security of tenure, the establishment of the VWR was also seen as a tool for encouraging a more efficient market in those rights. From this view, the costs of the VWR are substantially attributable to its role in supporting a fully functioning water market. This, in turn, suggests

that transactors in water rights are overwhelmingly the beneficiaries of the VWR and should, as a result, bear all of the operating costs of the VWR. From this view, the VWR's role, in helping to underpin security of tenure, is an ancillary benefit for which non-transacting rights-holders should not have to pay.

A key consideration in this regard is one of consistency. The VWR performs a similar function to the Victorian Land Registry in that it records property rights. In contrast to the current practice in relation to VWR, all of the operating costs of the Land Registry are recovered through fees charged to transactors in land. Thus, the adoption of option 3 would represent a move toward a consistent approach in this regard.

However, the number of land transactions are in the order of 750,000 per annum. This includes 230,000 land transfers, the issuing of 220,00 mortgages and the discharging of 200,000 mortgages. In comparison, in 2015-16 the VWR recorded 3,327 water share transfers, 521 new mortgages issued, 1,279 mortgages discharged, and 15,626 allocation trades.

It is administratively more efficient to recover the full cost of the Land Registry system from transactors rather than also charging a levy on all land owners or on councils (for example). Also, due to the large number of land transactions each year the full cost of the Land Registry system can be absorbed in the transaction fees without a significant increase to the fee.

In sum, option 3 may be considered preferable to either option 1 or option 2 on grounds of its consistency with the approach to cost recovery for the Land Registry. However, to the extent that the certainty as to water rights tenure provided by the existence of the VWR is seen as providing a substantial benefit to all water rights holders, independent of their transactions activity, it can be argued that adopting option 3 would entail the provision of a significant cross subsidy from transactors to the entitlement holders – i.e. because only those rights-holders that engage in transactions would contribute to the cost of the VWR under this model. Moreover, option 3 would require a significant increase to the application fees, which would be likely to have limited acceptability to rights-holders, or at least those who engage in rights-related transactions.

5.3.2 Expected costs of Option 3

Option 3 would necessarily entail a substantial increase in the fees payable by transactors in water rights. As shown in chapter 3, the operating budget of the VWR for 2016-17 is \$2,203,000. The budgeted revenue from the water levy imposed on the relevant water corporations for the year is \$953,000, while the budgeted revenue from transactions fees is \$921,000. Under option 3, there would be zero revenue from the water levy. Thus, transactions fee revenues would need to increase by \$953,000 to ensure full cost recovery. This is equal to an increase of $(\$953,000/\$921,000) = 103.5\%$.

Tables 5.4 to 5.6, below, highlights the impact of option 3 on the range of transactions fees. Consistent with the approach taken in option 2, it has been assumed that the required 103.5% increase in the revenue retained by the VWR from transactions fees would be obtained through an across the board increase in the retained component of each fee.

Table 5.4: Fee impact of adopting Option 3 – fees paid to VWR

Transaction	Current fee	Pass-through to WCs	Fee retained by VWR	New retained fee ³³	New total fee	Increase
Water share transfer	\$121.40	\$29.15	\$92.25	\$187.73	\$216.88	79%
Limited term transfer	\$121.40	\$29.15	\$92.25	\$187.73	\$216.88	79%
Application by a surviving water share owner	\$121.40	\$29.15	\$92.25	\$187.73	\$216.88	79%
Application by a legal personal representative for a water share	\$121.40	\$29.15	\$92.25	\$187.73	\$216.88	79%
Application by a Trustee in Bankruptcy for a water share	\$121.40	\$29.15	\$92.25	\$187.73	\$216.88	79%
Application to correct or amend the recorded name in the VWR	\$121.40	\$29.15	\$92.25	\$187.73	\$216.88	79%
Memorandum of Common Provisions for a water share mortgage	\$121.40	\$29.15	\$92.25	\$187.73	\$216.88	79%
Surrender of a limited term transfer	\$60.80	\$14.59	\$46.21	\$94.04	\$108.63	79%
Record a mortgage on a water share	\$60.80	\$14.59	\$46.21	\$94.04	\$108.63	79%
Discharge a mortgage on a water share	\$60.80	\$14.59	\$46.21	\$94.04	\$108.63	79%
Variation of a mortgage on a water share	\$60.80	\$14.59	\$46.21	\$94.04	\$108.63	79%
Transfer a mortgage on a water share	\$60.80	\$14.59	\$46.21	\$94.04	\$108.63	79%
Variation in priority of a recorded mortgage on a water share	\$60.80	\$14.59	\$46.21	\$94.04	\$108.63	79%

Table 5.4 shows that adopting option 3 would have the effect of increasing the fee for recording a water share transfer by \$95.48 which is equal to an increase of approximately 79% on the current fee of \$121.40. The same increase would apply in relation to other transactions involving a change in the ownership of a water share. In addition, a range of fees relating to mortgages on water shares would increase by \$47.83. This also represent an increase of approximately 79% on the current fee of \$60.80.

³³ 203.5% of current retained fee

Table 5.5: Fee impact of adopting option 3 – fees paid to water corporations

Application	2016-17 Application fee	Portion passed through to VWR	New pass-through amount	Current fee net of pass-through	New fee	Increase	% increase
Allocation trade							
Within authority	\$84.20	\$32.00	\$65.12	\$52.20	\$117.32	\$33.12	39.3%
Between authorities	\$84.20	\$16.53	\$33.64	\$67.67	\$101.31	\$17.11	20.3%
Cancel a water share	\$189.20	\$65.84	\$133.98	\$123.36	\$257.34	\$68.14	36.0%
Consolidate water shares	\$159.30	\$65.84	\$133.98	\$93.46	\$227.44	\$68.14	42.8%
Divide a water share	\$159.30	\$71.64	\$145.79	\$87.66	\$233.45	\$74.15	46.5%
Issue a water share	\$189.20	\$67.81	\$137.99	\$121.39	\$259.38	\$70.18	37.1%
Approve a limited term transfer (LTT)	\$189.20	\$65.44	\$133.17	\$123.76	\$256.93	\$67.73	35.8%
Approve share transfer							
Within authority	\$189.20	\$57.06	\$116.12	\$132.14	\$248.26	\$59.06	31.2%
Between authorities	\$189.20	\$5.93	\$12.07	\$183.27	\$195.34	\$6.14	3.2%
Within authority divide and transfer	\$189.20	\$42.83	\$87.16	\$146.37	\$233.53	\$44.33	23.4%
Between authority divide and transfer	\$189.20	\$5.93	\$12.07	\$183.27	\$195.34	\$6.14	3.2%

Table 5.5 illustrates the impact of adopting option 3 on the fees paid to water corporations in respect of manually processed transfers. The size of the impact on these fees is generally smaller, since only a minority of the fee revenue is passed through to the VWR. Moreover, it is also more variable, since the pass-through amounts themselves vary widely, particularly when comparing transfers/trades conducted within and between corporations.

Thus, the highest absolute and percentage fee increase in this group is that of \$74.15 (46.5%) for dividing a water share, while the smallest absolute and percentage increases are those of \$6.14 (3.2%) for approving ‘between corporation’ share transfers, with or without division of the share.

The most commonly charged fees are:

- the fee for approving a ‘within corporation’ share transfer, which would rise \$59.06 (31.2%); and
- the fee for processing a ‘within corporation’ allocation trade, which would rise \$33.12 (39.3%).

Table 5.6 Applications/transactions made online via the VWR website

Transaction/ Application	2016-17 Application Fee	Portion retained by VWR	New retained amount	New Fee	Difference	% Difference
Allocation trade application	\$44.70	\$34.28	\$69.76	\$80.18	\$35.48	79.4%
Purchasing a copy of record	\$13.90	\$13.90	\$28.29	\$28.29	\$14.39	103.5%
Application for a bore construction licence	\$235.00	\$32.50	\$66.14	\$268.64	\$33.64	14.3%

Table 5.6 shows the impact of adopting option 3 on fees paid online to the VWR. It shows that the fee for processing a water allocation trade online would increase by \$35.48, or 79.4%. The fee for purchasing a copy of a VWR record would increase by \$14.39, or 103.5%. Also included on the table is the application fee for a bore construction licence. This fee is not set via the current regulations but is set by the water corporations under the delegation to them of the Minister’s power under section 67(2) of the Water Act to set the fee for a works licence application. However, as option 3 is based on the concept of a single percentage increase to be applied to all fees charged in relation to the VWR are, it is assumed that this fee would also be increased. In this case the percentage increase in the fee is low, at 14.3%, reflecting the fact that the majority of the fee collected is passed through to the water corporations. This fee would increase by \$33.64.

Summary of cost impacts

In sum, the above calculations demonstrate that the adoption of option 3 would have a significantly larger impact on transactors in the water market than would option 2. Fees would rise by up to \$95.48, or 79%, compared with a maximum increase of \$32.29 under option 2. As with option 2, numerous transactors in water rights would pay more than one fee (e.g. those transferring water shares would pay both the fee to the VWR and the fee to the water corporation).³⁴

Under option 3, the water rights-holder levy would be abolished. However, given the relatively modest size of this charge (\$12.89), the net impact of adopting this option on transactors would remain substantial – that is, the additional fees that transactors would pay under this option would substantially outweigh the cost reduction they would see as a result of the abolition of the rights-holder levy.

5.4 Parts 4 and 4A of the current regulations

As discussed in chapter 3.2 of this RIS, Parts 4 and 4A of the current regulations (Parts 4 and 5 of the proposed regulations) are permissive in nature and give effect to certain provisions of the Water Act which effectively enable water to be taken from declared systems for certain limited purposes that are additional to the core purposes of the water management framework. Review of the operation of these regulatory frameworks by DELWP has led to the conclusion that all appropriate and legitimate water uses are addressed via these parts of the regulations and that no feasible alternatives can be identified in this area.

³⁴ Note that, while the levy is imposed on water corporations, there is no obligation for the authorities to impose a specific charge on rights holders to recover this cost.

As the Minister's delegates for issuing water-use registrations, the water corporations are in the best position to identify those classes of persons who may require a water-use registration but who are not currently permitted to do so under legislation. Identification of these classes of persons generally arises upon enquiry by relevant water users to their closest corporation. In considering the proposal to remake the proposed regulations DELWP has concluded that all appropriate and legitimate water uses identified to date are addressed in Parts 4 and 5 of the proposed regulations.

6. Conclusion

6.1 Fees regulations

The key element of the proposed regulations is the establishment of a set of fees to be charged to transactors in water rights. As discussed above, three options have been identified, which differ according to how the relevant cost base for recovery is defined and from what user group the costs should be recovered. The three options discussed have been assessed using a Multi-Criteria Analysis (MCA). Three assessment criteria have been identified, two of which relate primarily to the efficiency of the cost recovery arrangements contained in each option and the third of which relates primarily to the equity implications of those cost recovery arrangements. The following discussion identifies and explains each of the three criteria in term and scores each of the three options against each criterion. Each option is scored on a 10 point scale, ranging from – 5 to + 5 points. Because the proposed regulations are intended to replace sunseting regulations, each score is assessed against a base case in which the current regulations sunset – i.e. there are no regulations in place. Thus, a negative score indicates an outcome in relation to the relevant criterion that is inferior to what would occur in the unregulated base case, while a positive score indicates an outcome that is preferred to the base case.

Weightings have been applied to the three criteria. This reflects the fact that, while two efficiency related criteria have been identified, compared with only one equity related criterion, DELWP believes that equity and efficiency considerations should, overall, have equal weighting in the choice of the preferred option. Thus, criteria 1 and 2 are given weightings of 0.25, while criterion 3 is given a weighting of 0.55.

Criterion 1: Ensuring efficient price signals are sent by setting fees to recover the relevant cost base.

As discussed in the *DTF Cost Recovery Guidelines*, it is economically efficient for the costs of regulating an industry to be recovered from industry participants, since this internalises fully the costs of producing the outputs of that industry. Achieving this outcome implies ensuring, on the one hand, that all relevant costs are identified and recovered through the adoption of regulatory fees and, on the other, that costs that are not directly relevant to the regulation of industry are excluded from the cost base.

In the base case, in which the current regulations were not remade, there would be no authority to charge fees for any of the transactions recorded on the VWR. Only the water rights levy could continue to be charged, since this is not authorised by the current regulations. Given this, all three of the options considered are superior to the base case in terms of this criterion and therefore receive positive scores.

Both options 1 and 3 seek to recover the same cost base, differing only in terms of the scope of the population that is charged fees in order to achieve the cost recovery outcomes. The identified cost base includes the recovery of the (fully distributed) costs incurred by the water corporations, together with the operational costs incurred by the VWR in processing all transactions through the VWR. By contrast, option 2 recovers a larger cost base which includes a proportion of the capital costs associated with the ongoing development of the VWR (i.e. that which is included within the IT support services contract) and includes that part of the operating costs of the VWR which is attributable to DELWP as a user of its services.

DELWP believes that the appropriate cost base is that identified in options 1 and 3, for two reasons. Firstly, this cost base is consistent with the policy adopted by the Victorian government at the time of the decision to establish the VWR, which was that DELWP would fund the capital costs of developing and putting into place the VWR, while users would fund the operational costs of the register. Second, as set out in the 2009 RIS, it is believed to be economically efficient for DELWP to contribute to the operational costs of the VWR to the extent that DELWP is a user of its services. Options 1 and 3 provide for a DELWP contribution,

whereas option 2 arguably creates a situation in which water rights holders and transactors are not subsidised by DELWP as an ongoing user of the VWR.

Consequently, options 1 and 3 score 5 points against this criterion, while option 2 scores 3 points.

Criterion 2: Ensuring that the fee structure facilitates the operation of an efficient water market

An efficient fee structure recovers the required cost base while minimising any disincentives to the trade in water rights, thus supporting the operation of an efficient market in these rights. In the base case, no fees could be charged, as the regulations authorising them would not be remade. Hence, all three options receive positive scores on this criterion, as all are preferable to the base case.

Option 1 scores five points against this criterion, because it recognises that water rights holders benefit from the existence of the VWR, regardless of whether they undertake trading activity in a particular year and therefore sets fees and charges which distribute the costs of operating the VWR across all water rights holders. Conversely, option 3 would eliminate the existing water rights holder levy and recover the operating costs of the VWR entirely from transactors in water rights. This would result in a substantially higher transactions fees, which would be expected to have some negative impact on the trade in water rights, albeit that the size of this impact would be limited by the fact that the fees would still be relatively small in comparison with the value of the water rights being traded. Given this, option 3 scores only two points against this criterion.

In common with option 1, option 2 would ensure cost recovery from both transactors and non-transacting rights holders. However, the fact that the cost base adopted under this option includes an element of VWR capital costs and also sees water rights holders effectively cross subsidising the DELWP's use of the VWR means that the fees charged are significantly higher than under option 1. Option 2 therefore rates less highly than Option 1, scoring four points against this criterion.

Criterion 3: Ensuring that all user groups contribute to cost recovery through payment of cost based fees

In the base case, with the regulations not remade, there would be no ability to charge fees and no contribution to cost recovery by transactors. Only the water rights levy would continue to be charged, as it is not authorised via the regulations. Given this, all of the options considered have superior performance to the base case against this criterion and thus receive positive scores.

Option 1 scores 4 points against this criterion, since it ensures that transactors, other water rights holders and DELWP, all of which groups have been identified as beneficiaries of the VWR make contributions to its costs. However, option 2 scores slightly higher, at 5 points, because section 5.2.1. provides a clear argument that, while DELWP does use the information generated via the VWR, the nature of its use, the specific context of the implementation of the VWR and the underwriting of the VWR's capital upgrade costs by DELWP combine to suggest that it should not be expected to also make a contribution to the annual operating costs of the register.

Option 3 scores lower again, at 2.5 points, because neither DELWP nor non-transacting water rights holders would make any contribution to VWR costs under this option.

Table 6.1: Multi-criteria analysis of feasible options

Criterion	Option 1	Option 2	Option 3
<i>Ensuring appropriate price signals are sent by setting fees that recover the relevant cost base (Efficiency).</i>	5 x 0.25 = 1.25	3 x 0.25 = 0.75	5 x 0.25 = 1.25
<i>Ensuring that the fee structure facilitates the operation of an efficient water market (Efficiency)</i>	5 x 0.25 = 1.25	4 x 0.25 = 1.0	2 x 0.25 = 0.5
<i>Ensuring that all user groups contribute to cost recovery through payment of cost-based fees (Equity):</i>	4 x 0.5 = 2.0	5 x 0.5 = 2.5	2.5 x 0.5 = 1.25
Total	4.5	4.25	3

Table 6.1 summarises the scores allocated to each option under each criterion. It shows that option 1 scores highest, with 4.5 points, while option 2 received second highest score, of 4.25 points and option 3 receives the lowest score, of 3 points. Thus, option 1 constitutes the preferred option.

Option 1 scores highest because it receives the maximum possible score in respect of the first two assessment criteria, while achieving the second-highest score in respect of criterion 3.

6.2 Prescribed purpose for applying for a take and use licence and prescribed persons as occupiers

DELWP has reviewed the elements constituting Parts 4 and 4A of the current regulations. The department proposes to recommend retention of both elements set out in Parts 4 and 5 of the proposed Regulations

Section 51 of the Water Act provides that a person may apply to the Minister for a licence to take and use water. Section 51(1AA)(b) states that such an application may not be made to take and use water in a declared water system unless the water is to be used for a “prescribed purpose”.

Part 4 of the current regulations gives effect to this provision by specifying that “a prescribed purpose”³⁵ is the watering of cattle or other stock by a person who occupies land adjacent to a waterway, subject to certain conditions. In essence, the conditions are that the person must hold a licence under section 130 or 138 of the *Land Act 1958* which permits the grazing of cattle or riparian management and that the Crown land water frontage in question has been fenced off to prevent stock access³⁶. Part 4 is thus permissive in effect, enabling water to be used for certain purposes.

³⁵ This is currently the only prescribed purpose identified pursuant to Section 51(1AA)(b).

³⁶ Former holders of licences under the Land Act are also eligible in circumstances in which those licences are being cancelled for conservation purposes.

Similarly, Part 4A of the current regulations (Part 5 of the proposed regulations) effectively expands the range of persons who can be declared to be “occupiers” of land and thus able to be issued with a water use registration under the Water Act. It is therefore also permissive in effect.

DELWP has reviewed the operation of parts 4 and 4A of the current regulations, including by considering the issue of what other “prescribed purposes” could potentially be declared under Part 4 of the proposed regulations and whether any other persons should be declared to be “occupiers” under Part 5 of the proposed regulations. It has concluded that these parts of the regulations are functioning appropriately, in accordance with the wider water use policies of the government, and should be remade unchanged.

7. Monitoring and evaluation

VWR Fees

The fees which constitute a key element of the regulations are kept under constant review within the VWR and DELWP. This is because the VWR is accounted for as a distinct business unit within the broader portfolio and that it has, since its establishment, been operated as part of the broader objective of ensuring that the VWR is and continues to be self-funding, taking into account both its fee-based and non-fee based income. The monitoring process will continue following the passage of the proposed regulations to replace the existing regulations. Should a situation of significant under-recovery of VWR's cost base arise, an appropriate response would be developed which would be expected to entail a revised fee structure. That said, the current fees have been maintained at the same real level for several years and have continued to contribute appropriately to the achievement of a full cost recovery outcome. Hence it is not anticipated that significant fee changes will be required in the short to medium term future.

DELWP will also continue to look for opportunities to reduce fees to reflect further efficiencies in determining applications and increased capability for digital/online approvals.

8. Consultation

During the development of the proposed regulations and this RIS, consultation was undertaken with the following key stakeholders:

- Water and Catchments Group, DELWP;
- The Victoria Water Registrar (VWR);
- Gippsland and Southern Rural Water Corporation;
- Grampians Wimmera Mallee Water Corporation;
- Goulburn-Murray Rural Water Corporation (GMW);
- Lower Murray Urban and Rural Water Corporation; and
- Melbourne Water Corporation.

The consultation undertaken included a number of discussions with these stakeholders, which occurred over a period of twelve months during 2016 and 2017 it enabled these entities to consider and provide advice on the relevance and need to continue the legislative scheme as provided in the regulations. All stakeholders advised that they considered the regulations necessary. Moreover, they indicated the view that the fee structure established in the current regulations continues to be appropriate and that changes to these fees are unnecessary and undesirable.

Further consultation will be undertaken with the community as a whole when the RIS and exposure draft of the proposed new regulations are released. In particular, the RIS consultation process will constitute the key mechanism through which those stakeholders who have not yet been consulted will have the opportunity to put forward any additional or contrary views on the key issues to those outlined above.

It is intended that the RIS and the proposed regulations will be released in August 2017 for a period of no less than 28 days in accordance with the legislative requirements set out in section 11 of the *Subordinate Legislation Act 1994*.

9. Statement of compliance with National Competition Policy

The National Competition Policy Agreements 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).³⁷

Therefore, all RIS must provide evidence that the proposed regulatory instrument is consistent with these National Competition Policy obligations. The OECD *Competition Assessment Toolkit*³⁸ provides a checklist for identifying potentially significant negative impact on competition in the RIA context. This is based on the following four 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 to the incentives for suppliers to compete?
- Does the proposed regulation limit the choices and information available to consumers?

According to the OECD, if all four of these questions can be answered in the negative, it is unlikely that the proposed regulations will have any significant negative impact on competition and further investigation of competition impacts is not likely to be warranted.

The fees which form the central element of the proposed regulations are essential to the operation of the VWR. The VWR itself is clearly pro-competitive in effect, as it provides both an authoritative record of the ownership of water rights and an efficient and transparent platform through which transactions in water rights can be processed and recorded. By both ensuring an authoritative ownership record and facilitating transactions in water rights, the VWR helps provide the conditions for an efficient market, which ensure that scarce water resources flow to their highest value uses. To this extent, the VWR is clearly a procompetitive mechanism, while the fees established in these regulations are an important element in ensuring the continued functioning of the VWR.

In a specific sense, the fees, by imposing transactions costs, theoretically have some effect in reducing transactions volumes and, to this extent, limiting the procompetitive effects identified above. However, as

³⁷ *Competition Principles Agreement*, Clause 5. 1995. See: www.ncc.gov.au

³⁸ See OECD (2011) *Competition Assessment Toolkit. Volume 1: Principles*, pp 8-9. OECD, Paris, 2011.

discussed in previous chapters of this RIS, the size of the fees years very modest in relation to the value of the water rights being transacted. This means that the practical extent of their impact in limiting transactions numbers will be very small. Moreover, as set out in the *DTF Cost Recovery Guidelines*, setting fees at levels that fully recover the costs of service provision is generally consistent with both economic efficiency and equity principles.

Consequently, the fees regulations are not believed to have any material anti-competitive impact, and can be considered to be pro-competitive to the extent that they facilitate the continued operation of the VWR.

Appendix 1: Description of the various water Rights

The primary regulatory impact of the current regulations is to support the ongoing maintenance of the VWR by prescribing a set of fees that enable the recovery of—

- A. the costs of approving and recording dealings in water shares and allocations of water under shares (regulated under Part 3A of the Water Act) and using that water on land (regulated under Part 4B of the Water Act) [collectively referred to in this RIS as “water rights”];
- B. the administrative costs incurred by the water corporations and the VWR in recording and allowing searches of information on a wider range of water rights, licences to take and use water, works licences and agreements to supply water under section 124(7) of the Water Act.

The Water Act establishes the framework for water access rights and regulation of related works. The VWR website also contains details about Victoria’s water regulatory framework and includes descriptions of various water rights. Further information can be found at <http://waterregister.vic.gov.au/>.

A. Approving and recoding dealings

Water shares

A water share is an ongoing entitlement to a share of the water available in a water system. The water share gives a person a right to a share of water in the dams. Features of a water share include its water system, its reliability and the volume. The volume of a water share is defined as the maximum amount of allocation that can be made against it each year.

The water that is actually in the dam in any given year is allocated against water shares.

The seasonal allocation is the percentage of the water share volume available under current resource conditions, as determined by the resource manager. Water shares can be high or low-reliability. Allocations of water are made to high-reliability water shares before low-reliability shares.

A person can buy and sell a water share separately from land. A water share does not have to stay with the property if the land is sold. A person does not have to own land to hold a water share. If the holder of the share wants to use water on land they need to have a water-use licence. They also need a delivery share to have water delivered to the land if the land is in an irrigation district. A water share is a separate asset that can be mortgaged.

The VWR reports on how many water shares there are in a water system here and on prices paid for water share trade.

Water-use licences, Water-use registrations.

Water Use Licences

A water-use licence is an entitlement to irrigate a specific parcel or parcels of land. The licence sets out the conditions for use, such as how much water can be used on the holder’s land in a single irrigation season. A person will need a water-use licence if they have been supplied with water for irrigation from the regulated Murray, Goulburn, Broken, Loddon, Campaspe, Bullarook, Werribee or Macalister systems. The licence is tied to the land. If the holder sell’s their property the water-use licence automatically transfers to the new owner, unless part of the property is sold separately.

Water-use registration

A water-use registration authorises the use of water apart from irrigation, like stock and domestic or some industrial uses.

Allocation account

An allocation account in the VWR records allocations made to a water share or shares throughout the year. It keeps track of any water that is available to use or trade. Allocation accounts are maintained securely on the VWR. Along with allocations made to a water entitlement, it records all water use, trades and carryover.

All water shares must be linked to an allocation account to record the allocation available. Allocation accounts can also be linked to one or more water-use licences or water-use registrations so that the water can be used on land. More than one water share can be linked to the same allocation account, but each water share must have the same trading zone as the account.

Allocation trade

An allocation trade is a trade of a water allocation from one allocation account to another.

Standing directions

Under section 33TA of the Water Act, an owner of a water share may give a direction to a water corporation under which the whole of the right to future water allocations under a water share is transferred to the person nominated in the direction (a standing direction). This means that a person can link their water share to an allocation account that they do not hold and where their name is not on the account. Under this scenario the future allocations made to the water share go to the account holder.

B. Recording and Searching

Take and Use Licences

A take and use licence is a fixed term entitlement to take and use water from a waterway, catchment dam, spring, soak or aquifer. Each licence is subject to conditions set by the Minister and specified on the licence. A take and use licence is an ongoing entitlement to take and use water from a catchment dam, spring or soak.

Take and use licences are issued and managed according to caps on the resource, known as permissible consumptive volumes. The Department of Environment, Land, Water and Planning has released guidelines on how to determine resource share such as caps in groundwater and unregulated systems.

Most take and use licences are now stored in the VWR. However, older licences that have not been recently renewed or otherwise transacted on may still be kept in the relevant water corporation's system, so a copy of record is not yet available in the VWR.

Works licences

A works licence is a licence to construct, operate, alter, decommission or remove works associated with the extraction of water (i.e. bores, pumps and dams). Each licence is subject to conditions set by the Minister and specified in the licence.

Most works licences are now stored in the VWR. However, older licences that have not been recently renewed or otherwise transacted may still be kept in the relevant water corporation's system, so the copy of record will not yet be available in the VWR.

Section 124(7) water supply agreements

A water corporation may enter an agreement with any person to supply water from its works. These agreements may be recorded in the VWR.

Appendix 2: Costs and revenues associated with processing applications via the VWR

As noted in chapter 3, the registration of changes in the ownership of water rights is carried out by the Registrar. Two FTE staff are employed in entering these changes on the VWR, at a total direct cost of \$208,000 per annum. No specific data was available in relation to the on costs and corporate overheads associated with this function. Consequently, the OCBR recommended benchmark of 75% of direct labour costs has been applied as an estimate. This implies that the full cost of this function is equal to \$208,000 x 1.75 = \$364,000.

A proportion of the revenue from a number of the fees set out in the regulations is retained by the Department to defray these costs. The following table sets out the numbers of each type of transaction recorded in 2015 – 16 and the fees paid in each case. The table shows the total fee paid by the transactors, the amount passed through to the VWR as a contribution to the operating costs of the VWR and the amount retained by DELWP to fund the registration function.

Table A2: Revenue from registration function – 2015-16

Revenue for Recording Officers					
Transaction	No.	Fee	Pass through	Retained	Retained revenue
Ownership transfer	3126	\$ 121.40	\$ 29.15	\$ 92.25	\$ 288,373.50
Mortgage changes	1839	\$ 60.80	\$ 14.59	\$ 46.21	\$ 84,980.19
Other ownership	313	\$ 121.40	\$ 29.15	\$ 92.25	\$ 28,874.25
Total					\$ 402,227.94

Table A2 shows that the estimated retained revenue in respect of the registration function in 2015 – 16 was proximally \$402,000. This represents a cost recovery level of around 110%. However, as noted elsewhere in this RIS, the number of transactions in water rights varies substantially with rainfall conditions. The number of transactions has proven to be unusually high in 2015 – 16. Thus, average revenues will be lower than those recorded in table A2.³⁹ It is therefore believed that the current fee level continues to ensure a good matching of revenue and costs over the medium term.

³⁹ E.g., Table 3.4 shows that variable revenue was at least 30% higher in 2015-16 than any of the three previous years.

Appendix 3: Process outline for water rights transfers

The following tables provide process breakdowns for the processing by water corporations of a share transfer and a water allocation trade, respectively. They should be regarded as indicative only, as they relate to a single water corporation, which provided the most detailed data. The time and cost estimates derived by the water corporations for completion of each of these transactions have been used as the basis for verifying that the relativities between the main fees contained within the existing regulations continue to be appropriate, despite the changes that have occurred in the processes followed in completing the various transactions undertaken.

Table A3.1: Water share transfer process

Task	Time (Minutes)
Inbound mail	8
Receipting	7
Barcode and enter in Star and create in the VWR	12
Scan	6
Ballot and profiling	3
Process application in the VWR	23
Approval	26
Printing	3
Total	88

Table A3.2: Water allocation trade process

Task	Time (Minutes)
Inbound mail	7
Receipting	5
Barcode and enter in Star and create in the VWR	5
Scan	1
Ballot and profiling	1
Process application in the VWR	10
Approval	5
Printing	1
Total	35

