



Commissioner for
Better Regulation
Red Tape Commissioner

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24 August 2018

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

Dear Mr ~~Speagle~~ *Donald,*

**REGULATORY IMPACT STATEMENT FOR THE COUNTY COURT (FEES)
REGULATIONS 2018**

I would like to thank the staff of the County Court of Victoria for working with the Office of the Commissioner for Better Regulation on the preparation of the Regulatory Impact Statement (RIS) for the proposed County Court (Fees) Regulations 2018, which will replace the County Court (Fees) Interim Regulations which sunset on 14 December 2018.

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

I am pleased to advise that the final version of the RIS received by us on 24 August 2018 meets the adequacy requirements of the Subordinate Legislation Act.

As the RIS notes, the civil justice system provides the means for resolving disputes between parties, enforcing legal rights and obtaining remedies through binding orders, with the County Court being the primary trial court for Victoria and primary appellate court for Magistrates' Court appeals. It is the court of choice for relatively large matters (valued at \$100 000 or more), or when applicants believe the specialist expertise of the Supreme Court in dealing with the most complex matters is not required.

The Regulations set fees to cover the cost, or a portion of the cost, of the services the County Court provides in relation to civil matters, including commencement fees, hearing fees, case management fees, and various administrative fees (such as for searching an electronic file).

The current fee structure has been in place since 2012. Since that time, a number of changes have been made to the Court's organisation and practices, with more emphasis being given to case management and early settlement (particularly reflecting the role of Judicial Registrars in the Court and in the increasing emphasis on judicial mediation), and improvements in administrative efficiency, and in the Court's interface with litigants (such as through electronic filing).

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

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

In some cases, applying these principles has involved consideration of relativities with fees charged in other Courts, particularly the Supreme Court. This has been done to avoid fee-related disincentives to use the County Court when it is the most appropriate jurisdiction.

The RIS acknowledges the inherent tension between these principles, and notes that this means 'decisions must be made about how, and the extent to which, the application of one principle (for example, access to justice) will be pursued in favour of another (for example, efficiency)'.

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

- 80 per cent relativity between Supreme Court and County Court fees (option 1) — fees would be restructured but the current 80 per cent fee relativity would be maintained. Like option 3 (the proposed Regulations), a differential fee structure would be introduced and there would be some revised fee categories;
- full cost recovery (option 2); and
- restructured fees (proposed Regulations) (option 3) — fees would be restructured in the same way as option 1 but the current eighty per cent fee relativity would not be maintained. Like option 1, a differential fee structure would be introduced and there would be some revised fee categories.

The RIS explains clearly why the Court considers the proposed Regulations strike the best balance between the principles, including by encouraging the early settlement of matters and avoiding under-utilisation of Court resources.

It estimates that the proposed changes to the structure and level of fees will increase total fee revenue to about \$11.0 million per year (in 2018-19 dollars/fee units values) compared to \$10.7 million if the current fee structure was maintained, increasing the proportion of costs recovered by fees from 32 per cent to 33 per cent.

The changes in the proposed Regulations include:

- introducing three tiered fee levels:
 - 'Corporate' — set as close as possible to full cost, while ensuring a small gap between the County Court fee and the proposed Supreme Court fee;
 - 'Standard' — set at 50 per cent of the Corporate Fee; and
 - 'Concession' — set at 50 per cent of the Standard Fee (capped at \$250, with a minimum level of one fee unit), automatically available to litigants who hold Commonwealth Health Care Cards;
- continuing fee waivers, but with streamlined arrangements (including applying automatic waivers for litigants receiving legal aid or pro bono legal representation, and for prisoners);
- introducing a new Judicial Mediation fee due to the increasing use of judicial mediation to bring matters to an early settlement;
- unbundling the Setting Down fee from the First Trial Day fee;
- introducing an 'other hearing day' fee that will apply to the second and subsequent day of interlocutory and other applications hearings; and
- introducing new fees for expediting a matter in the Commercial Division, and for matters such as for the Court to issue a warrant, and for searching and copying electronic files.

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

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

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

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

Yours sincerely



Anna Cronin
Commissioner for Better Regulation

Cc:

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