



**Victorian Equal Opportunity  
& Human Rights Commission**

7 February 2013

The Regulations Officer  
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Strategic Policy and Legislation  
Department of Justice  
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To the Regulations Officer

**VCAT Fee Regulations**

The Victorian Equal Opportunity and Human Rights Commission (the **Commission**) refers to the letter received from the Attorney General on 11 January 2013, inviting the Commission to make submissions on the proposed Victorian Civil and Administrative Tribunal (Fees) Regulations 2013 (**Draft Regulations**).

The Commission appreciates the opportunity to comment on the Draft Regulations and highlight our areas of interest below.

The Commission welcomes the Government's decision not to propose commencement fees, hearing fees or alternative dispute resolution fees for matters under the Anti-Discrimination List in the Human Rights Division, except in relation to a community-level fee for exemption applications under section 89(5)(a) of the *Equal Opportunity Act 2010*.

We also welcome the decision not to impose new fees in respect of other matters in the Human Rights Division and agree with the statement at page 33 of the Regulatory Impact Statement (**RIS**) that there is a high premium on accessibility in matters within the Human Rights Division. Imposing fees in this Division would only serve to discourage applicants to pursue their claims, thereby reducing access to justice for potentially vulnerable or disadvantaged applicants.

However, the Commission notes that the criteria for the new "complex cases" fee could be clarified. Unlike the new general hearing fee and alternative dispute resolution fees, there is no precondition that the fee applies to "proceedings for which a fee is payable under Part 1 of this Schedule".

Instead, the only conditions are that the Tribunal or principal registrar is of the opinion the proceeding is a complex case, having regard to whether:

- a. more than one member is or is likely to be appointed to the proceeding; and
- b. the hearing of the proceeding is likely to take 2 or more days.

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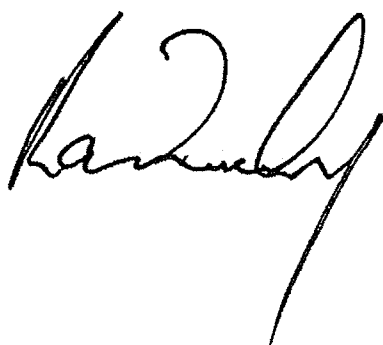
The RIS notes that the complex cases fee is intended to be in relation to applications of a commercial nature (page 46), and that "complex cases" were defined in the VCAT Annual Report for 2011-12 as cases where more than \$100,000 is in dispute (page 54). However, the Draft Regulations do not specifically exclude non-commercial cases in relation to the complex case fee, and it is important for this point to be clarified.

Given the past practice of only one Tribunal member hearing Anti-Discrimination matters, and given that Human Rights Division matters are usually not high value commercial cases, it is unlikely the complex case fee will apply. However, in the Anti-Discrimination list, many cases are heard over more than two days and involve complex issues. Applicants are often unrepresented which can contribute to the length and complexity of matters, due to unfamiliarity with the law or Tribunal procedure. There is also no legislation to prevent a future case from having two Tribunal members assigned to it, and in some cases that may be appropriate due to complexity or if there are issues raised that relate to other lists (such as the civil list or the residential tenancies list) and the matters are heard together.

The Commission submits that the complex cases fee should not apply to applications within the Human Rights Division and particularly the Anti-Discrimination List, for the same reasons there should be no commencement or general hearing/mediation fees (as noted above). To avoid confusion, the Draft Regulations should be amended to clarify this position.

The Commission has already spoken with a member of the Courts Policy team to raise this issue. However, if the Department of Justice has any queries about this submission, we are happy to discuss it. The responsible officer may wish to contact Jennifer Jones, Senior Legal Adviser, on 9032 3421.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Karen Toohey', with a long, sweeping underline.

**Karen Toohey**  
**Acting Commissioner**