

MUNICIPAL ASSOCIATION OF VICTORIA

6 May 2016

Director
Dispute resolution
Civil Justice Division
Department of Justice and Regulation
Level 24, 121 Exhibition Street
Melbourne VIC 3000

Dear Sir/Madam

The Municipal Association of Victoria (MAV) welcomes the opportunity to respond to the Regulatory Impact Statement (RIS) for the *Victorian Civil and Administrative Tribunal (Fees) Regulations 2016*.

It is understood that the *Victorian Civil and Administrative Tribunal (Fees) Regulations 2013* will sunset on 1 July 2016, at which time new rules, which are the subject of the RIS, are proposed to come into operation.

Local government appears at the Tribunal as both applicants and respondents, although more commonly as the respondent. The appearances are for a limited number of matters:

- planning and subdivision matters
- valuation of land for rating purposes, public open space, and compulsory acquisition
- differential rates
- special rates and charges
- domestic animals including registration of businesses and declaration of dangerous and restricted breed dogs
- councillor conduct

The instances where a council will be the applicant are generally limited to applications for enforcement orders on planning matters.

The major reason why councils will initiate proceedings at VCAT, in their capacity as responsible authority, is to apply for an enforcement order under section 114 of the *Planning and Environment Act 1987* where a use or development of land is in breach of that Act, a planning scheme, a condition of a planning permit or an agreement under section 173.

For councils, as the responsible authority exercising a statutory responsibility, the pursuit of enforcement orders is not taken lightly as this is integral to the protection of the planning system and planning schemes. Additionally, there is a community expectation that councils will properly enforce the planning scheme and any permits issued under it.



The fees for enforcement matters have increased substantially since 2013:

Date	Enforcement fee
Before July 2013	\$47 (with no hearing fee)
July 2013	\$805.10 plus daily hearing fee
Currently	\$1081.20 plus daily hearing fee (after day one) of \$399.80
Proposed	\$1112.20 plus a daily hearing fee of \$458.10

The MAV strongly opposes the proposed fee structure that would see a further increase in the fee for enforcement matters. Councils have raised their concerns about enforcement fees at the MAV's State Council over a number of years.

Although the proposed tiered fee structure is supported, 'government users' cannot be considered to be in the same category as corporate entities. Councils have a reduced 'capacity to pay' and are funded by the community. Actions initiated by councils at VCAT are in direct response to councils fulfilling their statutory obligations. The continued increase in fees will act as a further disincentive for councils to take enforcement action.

Councils have also advised that they would like to see fees reimbursed for enforcement matters where they are successful. This is a standard procedure under section 115C of the VCAT Act for proceedings under the *Domestic Building Contracts Act 1995*, the *Owners Corporation Act 2006* and the *Residential Tenancies Act 1997*.

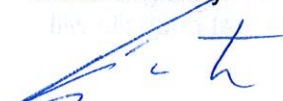
The MAV recommends that:

- Consideration be given to the concession or standard fee being applicable to councils for enforcement matters. This option would have limited revenue implications for VCAT but provide substantial relief to councils in undertaking their duties.
- Section 115C of the VCAT Act be amended to enable council to have fees reimbursed as part of an enforcement order proceeding.

We would also like to raise a concern about the proposed fee for Statements of Grounds. This is a process that could be streamlined to reduce impact on VCAT. A fee will limit access to justice for those seeking to be a party to a matter.

We look forward to your positive consideration of our submission.

Yours sincerely



GARETH HATELY
MANAGER OF PLANNING, BUILDING AND INFRASTRUCTURE