

Regulatory Impact Statement

Land Tax Regulations 2015

State Revenue Office of Victoria

October 2015

This Regulatory Impact Statement has been prepared in accordance with the requirements of the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation*.

Table of Contents

Executive Summary.....	1
1. Introduction	3
1.1. Notices of Acquisition	3
1.2. Land Tax Clearance Certificates	4
2. The Regulatory Proposal	5
3. Purpose of this Regulatory Impact Statement.....	6
4. Nature and extent of the problem.....	7
4.1. Background	7
4.2. Cost-recovery principles	8
5. Objectives of the proposed Regulations.....	9
6. The Proposed Fee	10
6.1. Process for providing land tax clearance certificates	10
6.2. Estimating the cost base	13
6.3. Setting the fee for a land tax clearance certificate.....	16
6.3.1. Options relating to the structure of the application fee.....	17
6.3.2. Consideration of feasible options	21
6.4. Proposed land tax clearance certificate fee.....	23
7. Fees and charges for similar services in Australian jurisdictions	25
8. Competition assessment.....	26
9. Conclusion and recommendation.....	27
10. Consultation	28
11. Evaluation strategy	29
12. Implementation and communication	30
Appendix 1 – Detailed Cost Base	31
Appendix 2 – Calculation of separate fees for online and paper applications	32

Executive Summary

Context

The State Revenue Office (SRO) administers Victoria's taxation legislation and is responsible for the collection of a number of taxes, duties and levies, as well as the administration of the first home owner grant scheme on behalf of the Federal Government. As part of this role, the SRO is responsible for the administration and enforcement of the *Land Tax Act 2005* (the Act).

Section 103 of the Act forms the basis for the administrative procedure in which the SRO determines the land holdings of an owner for the purposes of administering land tax. Under this provision, a person who acquires land in Victoria must give notice of the acquisition to *prescribed persons* within a *prescribed period*. In addition, the notice must contain *prescribed information*, be in the *prescribed form* and be given in the *prescribed manner*.

Section 105 of the Act requires the Commissioner, upon application and receipt of the prescribed fee, to issue a certificate showing any land tax due and unpaid on a particular land (a clearance certificate). A clearance certificate is the means by which an applicant obtains information regarding any outstanding land tax liability on the land referred to in the application. The main benefit being that it provides a definitive statement of outstanding land tax which can be used in real property settlements.

Objective

This Regulatory Impact Statement (RIS) has been prepared on the basis that the prescribed fee for a clearance certificate application imposes costs in excess of \$2 million a year on at least one sector of the public and therefore constitutes a significant economic burden. The notice of acquisition matters prescribed in the proposed regulations are replicated from the 2005 Regulations and are not considered to constitute a significant economic or social burden on the public.

The objective of the proposed Regulation is to ensure that the costs associated with processing applications for land tax clearance certificates are fully recovered from applicants. The current fees prescribed for the provision of land tax clearance certificates were established based on the cost of delivering the services at the time. As a result of increased take up in using the online system and incremental cost increases during this time, the cost to the SRO in providing this service has moderately increased above what is currently being recovered.

Proposed fee

The fee options considered for land tax clearance certificates were in relation to the different types of fee structures available and levels of cost sharing. Three feasible options were identified and considered in detail, including having no fee, maintaining separate fees for paper and online applications or setting one fee for all applications. The preferred option is to change the structure of the fees so that there is one fee for all applications that is specified in fee units which are updated annually to reflect changes in costs. This is due to the small and declining number of paper applications received and the eventual phase out of paper applications.

The proposed Regulations establish the prescribed fee as 1.16 fee units to be paid in respect of each application for a land tax clearance certificate. This equates to \$15.80 in 2015-16, which is an increase of 5.3 per cent (or 80 cents) for online applications and a decrease of 21 per cent (or \$4.20) for paper applications. The proposed fee is estimated to generate revenue of approximately \$21.79 million over the life of the regulations.

Implementation and communication

The new fee will take effect upon commencement of the Regulations, which is expected to be on 19 December 2015.

The SRO will use its website, subscriber mailing lists and consultative forums to update taxpayers, their representatives and industry peak bodies about the changes proposed by these Regulations.

1. Introduction

The State Revenue Office (SRO) administers Victoria's taxation legislation and is responsible for the collection of a number of state taxes, duties and levies, as well as the administration of the first home owner grant scheme.

As part of this role, the SRO is responsible for the administration and enforcement of the *Land Tax Act 2005* (the Act). Land tax is an annual tax on the site value of all land owned in Victoria at midnight on December 31 of the year before the assessing year. Each landowner is assessed for land tax on the aggregate taxable value of all taxable land owned.

Land tax applies unless the land is exempt or the total taxable value of a taxpayer's landholdings is below the relevant statutory threshold. There are a range of land tax exemptions available. The most common exemptions include:

- land used as a principal place of residence;
- land used for primary production;
- land used for rooming houses, residential care facilities and retirement villages;
- land that is used exclusively for charitable purposes.

Revenue raised under the Act provides funds for Government programs such as education, health, law and order and other community services.

Certain areas of the Act permit requirements to be prescribed by subordinate legislation. The current Land Tax Regulations 2005 (the 2005 Regulations), which came into force in January 2006, currently perform this function.

1.1. Notices of Acquisition

Section 103 of the Act forms the basis for the administrative procedure in which the SRO determines the land holdings of an owner. Under this provision, a person who acquires land in Victoria must give notice of the acquisition to *prescribed persons* within a *prescribed period*. In addition, the notice must contain *prescribed information*, be in the *prescribed form* and be given in the *prescribed manner*.

These matters are currently prescribed in the 2005 Regulations, which provide that—

- a) the person for the receipt of the notice is the Registrar of Titles;
- b) the period within which the notice of acquisition must be given is one month after the acquisition of the land;

- c) the information that must be contained in the notice is the particulars that would be set out in regulation 15(2) of the Local Government (General) Regulations 2004¹ if in paragraph (a)(vii) of that regulation for "(for the purpose of preparing voters rolls)" there were substituted "(for State Revenue Office data matching purposes)"; and
- d) the manner for giving the notice is in writing.

The Act further provides that where the land transfer is conducted using an electronic lodgement network, a person is not required to give notice of the acquisition in writing to the Registrar of Titles. This is because following the introduction of the national electronic lodgement network for land transfers in Victoria in 2014, the SRO now has access to this information electronically via the electronic lodgement network. The requirement to lodge a notice of acquisition in writing to the Registrar is retained for those transfers that are not lodged through the electronic network.

Obtaining information about land ownership in this form is essential in determining the land holdings of an owner in order to administer land tax.

To minimise regulatory burden on purchasers, the requirements prescribed in the 2005 Regulations largely mirror the notice of acquisition requirements for Council purposes as prescribed in the Local Government (General) Regulations 2004.

1.2. Land Tax Clearance Certificates

Section 105 of the Act requires the Commissioner, upon application from an owner, purchaser or mortgagee and receipt of the prescribed fee, to issue a certificate showing any land tax due and unpaid on a particular land (clearance certificate).

A land tax clearance certificate is the means by which an applicant obtains information regarding any outstanding land tax liability on the land referred to in the application. The applicant is usually the owner or purchaser of the property.

The primary benefit of the clearance certificate to the applicant is that it provides a definitive statement of outstanding land tax which can be used in real property settlements to make accurate adjustments between vendor and purchaser.

The fees currently payable are prescribed in the 2005 Regulations as—

- a) \$20; or
- b) \$15, if the application for the certificate is made using the Land Tax Clearance certificate online system.

¹ Reg. 5(c): S.R. No. 130/2004.

2. The Regulatory Proposal

The proposed Regulations are intended to replace the 2005 Regulations which will sunset on 20 December 2015.

A copy of the proposed Regulations is attached to this RIS as Attachment 1. These Regulations prescribe matters which are necessary to give effect to the Act. The substantive provisions of the proposed Regulations are contained in Regulations 6 and 7.

Regulation 6: Notice of Acquisition

The proposed Regulations provide that, for the purposes of section 103 of the Act—

- a) the prescribed person for the receipt of the notice is the Registrar of Titles;
- b) the prescribed period within which the notice of acquisition must be given is one month after the acquisition of the land;
- c) the prescribed information that must be contained in the notice is the particulars that would be set out in regulation 15(2) of the Local Government (General) Regulations 2015² if in paragraphs (a)(vi) and (a)(viii) of that regulation for "(for the purpose of preparing voters' rolls)" there were substituted "(for State Revenue Office data matching purposes)"; and
- d) the prescribed manner for giving the notice is in writing.

Regulation 7: Certificate as to land tax due

The proposed Regulations establish the prescribed fee as 1.16 fee units to be paid in respect of each application for a land tax clearance certificate.

² S.R. No. 119/2015.

3. Purpose of this Regulatory Impact Statement

Section 10 of the *Subordinate Legislation Act 1994* requires that a Regulatory Impact Statement (RIS) be prepared in respect of a proposed statutory rule or amendment. Exemptions to this requirement can be sought if it can be shown that the proposed rule is not likely to impose ‘a significant economic or social burden on a sector of the public’. Under the *Victorian Guide to Regulation*, proposals that impose gross costs of \$2 million or more a year on any sector of the public will generally be considered to impose a significant burden and therefore require a RIS.

In relation to Notices of Acquisition, the matters prescribed by the proposed Regulations are replicated from the 2005 Regulations and are not considered to constitute a significant economic or social burden on the public. This is because purchasers of land in Victoria are already required to provide this information to their local council within month of acquiring the property. Similarly, the proposed Regulations prescribe the person who shall receive the notice of acquisition as the Registrar of Titles, rather than the SRO. This is to simplify the conveyancing process by minimising the number of Government Departments and/or Agencies that a purchaser or their representative must deal with (purchasers are required to lodge a Transfer of Land form with the Registrar of Titles upon the acquisition of land).

In contrast, the clearance certificate application fee prescribed by the proposed Regulations is considered to constitute a significant economic burden on at least one sector of the public — those individuals and entities intending to obtain a land tax clearance certificate — and therefore requires the preparation of a RIS.

This RIS applies the Victorian Government’s Cost Recovery Guidelines to determine the appropriate fee for the provision of land tax clearance certificates by the SRO. This is done in reference to requirements in the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation*.

The assessment framework of this RIS:

- examines the nature and extent of the rationale for regulation,
- outlines the objectives of the proposed Regulations, and
- explains the effects of the proposed Regulations.

Feasible alternatives to the proposed Regulations are considered and assessed. The RIS also examines potential impacts on competition and outlines the proposed implementation and communication strategy.

The process followed in the development of this RIS has been determined after discussions with the Commissioner for Better Regulation.

4. Nature and extent of the problem

4.1. Background

Land tax is charged annually on land holdings which are not exempt and which exceed the statutory threshold. The Act requires the Commissioner, upon application from an owner, purchaser or mortgagee and receipt of the prescribed fee, to issue a clearance certificate showing the land tax due and unpaid on the particular land.

A clearance certificate is the means by which an applicant obtains information regarding any outstanding land tax liability on the land referred to in the application. The main benefit of obtaining a clearance certificate is that it provides a definitive statement of outstanding land tax, which can be used in real property settlements to make accurate adjustments between a vendor and purchaser.

In most cases, the vendor will apply for a certificate early in the conveyancing process and attach it to the 'Vendor's Statement' (ie. the section 32 statement) so that prospective purchasers are aware of any land tax liabilities owing. It is also quite common for the vendor to apply for an updated certificate during the conveyancing process. This is generally encouraged by the SRO, as evidenced by the SRO's practice of issuing updated certificates free of charge provided the application is received within 90 days of the original certificate issuing and the request is within the same calendar year.

The Act also provides that land tax shall be a first charge on the land and, notwithstanding any disposition of the land, any purchaser or holder thereof will be liable for payment of that tax so long as it remains unpaid. However, the clearance certificate indemnifies the purchaser from incurring any tax liability not stated in the certificate, provided the purchaser obtains a clearance certificate of their own. In the absence of the SRO providing a clearance certificate, a purchaser could be held liable for prior year land tax liabilities which are yet to be assessed. There is no other avenue available to a potential purchaser to independently obtain this information and level of protection.

The current fees for the provision of land tax clearance certificates, as outlined in the 2005 Regulations, were established based on the cost of delivering the services at the time. The fees prescribed in the 2005 Regulations are \$20 for paper applications or \$15 for applications made using the SRO's Land Tax Clearance Certificate online system.

These fees were set over 10 years ago and at a time when the SRO had just introduced the Land Tax Clearance Certificate online system. As a result of increased take up of the online system and incremental cost increases during this time, the cost to the SRO in providing this service has moderately increased above what is currently being recovered.

4.2. Cost-recovery principles

Cost recovery is the recuperation of the costs of government provided or funded products, services or activities that provide, at least in part, private benefits to individuals, entities or groups. Cost recovery is a method of recovering all or part of the cost of particular activities undertaken by government agencies from individuals or businesses, based on the user pays principle.

The task of setting cost recovery fees involves determining whether to recover costs from users or others who benefit; those whose actions give rise to it; or taxpayers more generally. Whether costs should be user pays or more generally funded by taxpayers depends on the type of activity and the existence of any public benefits.

The SRO's provision of clearance certificates gives rise to a cost to government (through the SRO) in processing the section 105 applications and subsequent issuing of the clearance certificate. These activities are therefore subject to cost recovery consideration.

The Cost Recovery Guidelines apply to cost recovery arrangements of government departments and agencies, and include the recovery of the costs incurred by the Government in providing goods and services.

Victorian Government policy is that regulatory fees and user charges should generally be set on a full cost recovery basis. However, if it is determined that full cost recovery is not consistent with other policy objectives of the government, it may not be considered appropriate to introduce a full cost recovery regime.

Consideration may be given to a regime of partial cost recovery (if it can be demonstrated that a lower than full cost recovery does not jeopardise other objectives) and/or to rely on other funding sources (such as general taxation) to finance the activity.

When designed and implemented appropriately, the adoption of cost recovery has the potential to advance efficiency and equity objectives. However, the Cost Recovery Guidelines note that 'efficiency and equity considerations may need to be balanced against each other in determining the appropriate form of cost recovery'.

5. Objective of the proposed Regulation

The objective of the proposed Regulation is to ensure that the costs associated with processing applications for land tax clearance certificates are fully recovered from applicants, consistent with the Cost Recovery Guidelines.

6. The Proposed Fee

Cost recovery provides a transparent way for government agencies and regulators to identify and fund the cost of undertaking certain activities without the need to rely solely on revenue secured through the budget appropriation process.

The Cost Recovery Guidelines apply when fees or charges are proposed for the following types of activities:

- government provision of a good or service, such as the issuing of a certificate of title or a working with children check or by providing access to land valuation data.
- regulatory activities, such as registrations, licensing, issuing of permits, and compliance and enforcement.

This RIS applies the Cost Recovery Guidelines to determine the appropriate fee which should be attributed to the provision of a land tax clearance certificate. It draws on relevant guidance provided in the *Victorian Guide to Regulation* and covers the following issues:

- Process for providing land tax clearance certificates
- Estimating the cost base
- Setting the fee

6.1. Process for providing land tax clearance certificates

Applications for clearance certificates can be made online via the SRO's land tax clearance certificate online service or by completing a Property Inquiry Application Form and mailing to the SRO (paper application).

Automated online applications

Online applications can be fully automated and certificates delivered back to the applicant within 24 hrs provided the information contained in the application matches SRO records and there are no other matters on hand which may affect the liability. For example, unallocated payments, an objection on foot or a pending amendment request.

The SRO estimates that around 70 per cent of online applications are fully automated through the online system. On occasion, these automated certificates will require amendment and be reissued by staff. For example, if the applicant advises that the property should be exempt or that payment has been made.

Online applications which cannot be automated

Online applications which cannot be fully automated are referred to SRO staff for rectification and completion. There are a number of reasons why an application may require manual intervention by the SRO, including the following:

- *Data discrepancies* – discrepancies between the data provided in an application and the data recorded by the SRO, such as property and vendor details. This requires the SRO to undertake further research and analysis to determine correct information and update as applicable. This often requires the SRO to request additional information from the applicant including—
 - Requests for Vendor Clarification – if the vendor listed in the application is not the same as the owner registered on title with the SRO and the Registrar of Titles, then further clarification is requested from the applicant. If the response is that the person is not a vendor, executor or mortgagee then the application is cancelled.
 - Requests for Copy of Plan / Rates Notice – if the property information provided in the application is not sufficient to process the request or identify the land, then a copy of a rates notice, plan or certificate of title is requested from the applicant. This often occurs where a property has been newly created following a subdivision of the land.
 - Deceased Estates – if the vendor listed on the application is an executor and the SRO has not been notified of the Estate, further information (ie. the name and address of the Executor and the date of death) is requested from the applicant so the correct land tax liability can be determined and the clearance certificate issued correctly.
- *Future Year Applications* – Each year the SRO receives clearance certificate applications late in the year where the settlement date is in the next calendar year. In these instances, the SRO generally will not issue a clearance certificate until after 1 January, once the new tax year liability is created. This is to ensure that the most up to date information on land tax liabilities are included in the clearance certificate to be used at settlement.

It is estimated that around 30 per cent of online applications require manual intervention by SRO staff. Online applications are generally referred to staff at the VPS 2 and VPS 3 level in the first instance. The time required to rectify these issues ranges from a couple of minutes (ie. minor discrepancies in vendor name or property address which can be easily rectified) up to several days if further data is required to verify an application (ie. deceased estates, newly created properties). The SRO estimates that these applications, on average, take approximately 5 minutes to resolve.

Depending on the issues preventing the issuing of the certificate, some applications may be escalated to staff at the VPS 4 level for resolution. For example, deceased estate matters, requests which require a manual certificate to be generated (special taxpayers and large land holders) or where there is an objection on hand which may affect the land tax liability. It is estimated that up to 10 per cent of applications requiring manual intervention are escalated to staff at VPS 4 level and in some instances may require additional involvement from staff at different levels, including direct involvement by the Team Leader or Branch Manager.

The turnaround time for non-automated online clearance certificates is up to 10 working days from the day the application is received by the SRO.

Paper applications

Due to significant improvements to the land tax clearance certificate online system since the 2005 Regulations were made, the number of paper applications has considerably reduced to less than 0.5 per cent of all applications received. In 2014-15, fewer than 570 paper applications were submitted to the SRO.

Paper applications are generally processed by staff at the VPS 2 level. The process requires the staff member to review the information provided in the application form to determine whether the application can be entered into the SRO's database for cross checking and generation of the clearance certificate. If a manual certificate is required to be generated, the application is referred to staff at the VPS 4 level for processing. The SRO estimates that paper applications take, on average, approximately 10 minutes to input the information and process the certificate.

The turnaround time for paper applications is up to 10 working days from the day the application is received by the SRO.

Other activities associated with the clearance certificate process

There are a number of other activities directly associated with the land tax clearance certificate service which require significant staff time but are not necessarily specific to a particular application type. Examples of these associated activities include:

- *Answering and responding to customer enquiries* – On average, the SRO receives 13,000 phone calls and 3,000 emails, letters and faxes each year regarding the clearance certificate service. These cover a variety of reasons such as:
 - requests for updated certificates,
 - requests for amendments to exempt land status which may affect the land tax liability,
 - requests for refund of payments made in respect of the outstanding land tax liability stated in the certificate,

- disputes relating to the land tax liabilities stated in the certificate,
- notification of deceased estates that would affect a liability.

Customer enquiries are primarily actioned by staff at the VPS 3 and VPS 4 levels. On occasion, customer enquiries and other matters may be escalated to the Team Leader or Branch Manager for action. For example, where fraudulent activity is suspected in relation to an application, a customer raises issues around customer service, or an application raises privacy questions, these will generally be referred to the Team Leader or Branch Manager for resolution.

- *Creating & maintaining online registered user accounts* – Where organisations or individuals frequently apply for land tax clearance certificates (ie. conveyancers and solicitors), they can lodge a request with the SRO to become a registered user of the online system. The benefit of becoming a registered user is that users can easily create, save and manage multiple certificate applications and update requests with secure encrypted payment available by Visa, MasterCard or monthly direct debit.

Requests to become a registered user are processed by staff at the VPS 3 level. An email will be sent to the user with the username and a temporary password upon registration. The initial set up and account creation takes on average 30 minutes. After the account is created, staff at the VPS 3 level provide assistance to registered users as required, such as when they have forgotten their password or user name. Rather than impose a separate fee for the creation of online registered user accounts, the cost of this activity has been absorbed into the overall cost of the clearance certificate service as registered users are responsible for around 97 per cent of all online applications.

- *Stakeholder management* – The Team leader, Branch Manager and staff at VPS level 4 are also required to develop and maintain internal and external stakeholder relationships (ie. Landata, SAI Global and other high volume online registered users), identify and implement process improvements and identify the training or information needs of stakeholders to ensure the efficient processing of applications for land tax clearance certificates.

6.2. Estimating the cost base

The Cost Recovery Guidelines state that cost recovery charges should be set according to an ‘efficient’ cost base. This means that costs should be the minimum necessary to deliver the service whilst achieving the required quality.

Demonstrating ‘efficiency’ can be quite difficult, however in calculating the estimated cost base for the land tax clearance certificate service, the SRO has employed a number of techniques to ensure that the costs are based on the minimum cost recovery necessary to deliver the clearance certificate service whilst maintaining high quality service. This included—

- Identifying all of the relevant input activities and associated costs involved in the provision of land tax clearance certificates. This process highlighted that:
 - there had been a reduction in the number of paper applications lodged, which in turn has reduced the number of staff required to process clearance certificate applications.
 - improvements to the Land Tax Clearance certificate online system have resulted in a reduction in the level of complexity and time required to resolve data discrepancies, thereby minimising the involvement of staff at higher VPS classifications.
 - there is some scope to further reduce the number of applications requiring manual intervention over time. This could be achieved by improving the accuracy and reliability of the SRO's land tax database as well as providing targeted training sessions and educational materials for registered online users to ensure accurate information is provided in applications. It is not anticipated that these improvements will have much impact on the overall costs associated with the clearance certificate service in the short term. However, the SRO will continue to monitor these numbers and review the process to ensure that the fee continues to reflect the actual cost of the clearance certificate service.
- Ongoing consultation with industry and registered users regarding the level of service provided and whether the fee imposed matches the service provided. Stakeholders and registered users are encouraged to provide feedback and comments on how the Land Tax Clearance certificate online system is operating. The SRO uses this feedback to make appropriate adjustments and improvements to the online system to ensure the process is efficient and effective.
- Comparing the fees against those charged in other jurisdictions that provide similar land certificate services. This includes the fees imposed by other Revenue Offices for the provision of land tax certificates as well as the fees imposed by Victorian councils for the provision of land information certificates which involves a similar process.

Costing methodology, assumptions and calculations

Estimating the efficient cost base requires an identification of all relevant operating and overhead costs to be recovered. These must be integral or directly related to the activity. Costs that are not integral or directly related to the activity should be excluded. In particular, costs of the broad development of policy/regulation and general parliamentary servicing roles of government have been excluded from the cost base, consistent with Cost Recovery Guidelines.

The main costs associated with the clearance certificate service provided by the SRO are the labour costs involved in processing applications, the IT costs associated with maintaining and improving the land tax clearance certificate online system and costs associated with valuations.

Table 1: Summary of Costs³

<u>Cost Summary</u>	
Salaries	480,366
On costs @ 20%	96,073
Administration costs and overheads	207,919
Indirect Costs	<u>1,902,369</u>
Total Cost	<u>\$2,686,727</u>
<i>Cost per application (based on average 170,000 applications⁴)</i>	<i>\$15.80</i>

Salary costs

In determining the *salary costs* involved, an analysis of the existing clearance certificate process was undertaken to identify the relevant input activities and associated costs involved in the provision of land tax clearance certificates. Where possible, reasonable estimates were made regarding the average time required to complete individual activities (ie. processing of the different types of applications). These estimates were based on internal KPI's attached to these activities and using data on the number and types of applications received in preceding years and the time and level of staff required to process those applications.⁵ This was not possible for some of the activities identified (for example, customer enquiries) as the activity cannot always be directly attributed to a particular application, therefore these activities were grouped together and allocated an overall time cost using data obtained in preceding years on level of activity (ie. number of calls) and staffing requirements.⁶

Direct wage costs for each officer involved in the clearance certificate process were estimated by using the midpoint of each position classification, rather than actual salaries. VPS salaries are taken from the VPS Workplace Determination 2012. Costs of staff time involved in other activities, such as policy development, technical advice and supporting data analysis have not been included and will not be recovered through the fees.

³ Further detail on the cost calculation is located in Appendix 1.

⁴ Cost per application is based on an average of 170,000 applications per year, which reflects the 10 year average number of certificates issued by the SRO.

⁵ These activities have been used to determine the variable number of FTE's required to process paper applications and online applications as detailed in Appendix 2.

⁶ These activities have been used to determine the fixed number of FTE's required for the overall clearance certificate service as detailed in Appendix 2.

An additional 20 per cent of salary has been added to provide for *on costs* such as leave entitlements, WorkCover, superannuation and payroll tax. This figure of 20 per cent was determined based on the specific salary on costs for the State Revenue Office.

The *administration costs and overheads* have been determined using a pro-rata approach based on budget allocation as a percentage of the total budget. Administration costs and overheads include operating costs, corporate overheads, accommodation costs, supplies (ie. stationery) and services (ie. telephones).

Indirect costs

The *indirect costs* are calculated inclusive of:

- software and hardware support;
- maintenance costs;
- software licences;
- IT equipment;
- valuation costs; and
- maintenance, development and amortisation of the land tax database and clearance certificate online system.

The costs associated with IT activities (ie. excluding valuation costs), have been determined using a pro-rata approach based on the estimated IT costs incurred for the activity as a percentage of total IT costs.

The valuation costs have been determined using a pro-rata approach as valuations are used for multiple purposes. This involved identifying the number of valuations used in the clearance certificate process as a percentage of the total valuations received, apportioning against total valuation costs, and then apportioning the cost to account for the multiple uses.

6.3. Setting the fee for a land tax clearance certificate

In general, costs of government services can be recovered directly from private parties, including individuals or businesses that directly benefit from a government good or service, or can be paid for by taxpayers through budget appropriations.

The *Victorian Guide to Regulation* states that, in the case of a RIS prepared for fees and charges, the range of different options will be narrower than for other types of regulations, and is likely to include consideration of—

- different levels of service provision that are to be funded through fees;
- different types of fee structures; and
- different levels of cost sharing.

General government policy is that regulatory fees and user charges should be set on a full cost recovery basis because it ensures that both efficiency and equity objectives are met.

In this case, full cost recovery will promote the efficient allocation of SRO resources by sending the appropriate price signals about the value of the resources being used in the provision of land tax clearance certificates. Further, it will ensure that those who benefit from the provision of a clearance certificate pay the associated cost. Those parties who do not benefit should not have to bear the costs.

A departure from full cost-recovery would result in the Victorian community providing a subsidy to land owners and purchasers who apply to the SRO for a land tax clearance certificate.

The Cost Recovery Guidelines list some reasons why divergence from full cost recovery may be desirable or justified, including:

- practical implementation issues that make cost recovery infeasible;
- there are benefits to unrelated third parties;
- social policy or vertical equity considerations outweigh efficiency objectives;
- full cost-recovery might adversely affect the achievement of other policy objectives.

In relation to the setting of land tax clearance certificate fees, none of these circumstances exist. The purpose of a land tax clearance certificate is to assist vendors and purchasers of land. It is not intended to serve a significant public benefit and therefore the SRO considers that applicants should be required to pay a fee that reflects the costs of the services being performed.

In considering the fee options available for land tax clearance certificates, the SRO has primarily considered the different types of fee structures available and levels of cost sharing. These factors are discussed in the following sections.

6.3.1. Options relating to the structure of the application fee

In some cases it can be desirable to impose different fees for different levels of service. This may allow a greater degree of equity as it can ensure that applicants for more complicated or time consuming services pay the higher costs associated with those services.

In the case of land tax clearance certificates, there is little scope to distinguish between types of applications for what is a relatively simple process. However, during the preparation of this RIS, the SRO noted that there are variations between the costs of processing paper applications and online applications, as well as variations in the costs of online applications which are fully automated and those which require manual input. These cost differences are primarily reflected in the time taken to process the various applications.

As a result, there are several options that might be considered when deciding how the fee for a land tax clearance certificate should be structured, including:

- maintaining separate fees for online and paper applications;
- specifying separate fees for automated online applications (ie. no manual input required), online transactions that require manual intervention and paper applications; or
- specifying separate fees for simple online applications, complex online applications (those requiring substantial manual intervention) and paper applications.

As fees can be specified in dollar terms or in fee units, consideration has also been given to specifying the fee in fee units.

Maintaining separate fees for online and paper applications at current level

This option would involve setting the fees at \$15 per online application and \$20 per paper application as currently prescribed in Regulation 6 of the 2005 Regulations. Given that the existing application fees are set in dollar amounts, the fees would remain unchanged until the proposed Regulations sunset in 2025.

This option has advantages and disadvantages for stakeholders. A key benefit of this option is that it provides certainty to online registered users as they are already aware of the current fees. Further, it provides ongoing certainty for all land owners, purchasers and the general conveyancing industry around the application fee amount.

However, the cost of this option is that it fails to align the fees with the actual cost of providing the services and does not address future incremental growth in costs. The level of under recovery would therefore continue to grow every year.

This option also necessitates the continuation of the current level of subsidy provided by the wider community (as state taxpayers) while SRO costs are being under recovered. As noted earlier, this service is provided predominantly for private or commercial purposes and therefore this option is not considered feasible or practical.

Specifying separate fees for fully automated online applications (ie. no manual input required) and online applications that require manual intervention

Another factor affecting the time taken to process a clearance certificate application is the level of manual intervention that may be required from SRO staff. As previously indicated, when an online application is received, the data is cross checked with the SRO's land tax database to verify that the correct customer and property details have been provided, thus ensuring the clearance certificate will be issued with the correct information.

The SRO's internal systems are set up to automatically cross check this information upon receipt of an application. Where a discrepancy is identified, the application is put aside and

allocated to a staff member for further review. Many of the applications which result in manual intervention (approx. 80 per cent) arise from discrepancies with the property and vendor details. This can be the result of incorrect or insufficient information being provided in the application or as a result of inaccuracies in the SRO's land tax database.

Setting separate fees for online applications based on the level of staff involvement in processing the application as well as separate fees for paper applications would provide a higher level of equity than setting one fee for all online applications. It would also prevent cross-subsidisation, whereby applicants who have provided the correct information would, in effect, be subsidising part of the costs incurred by those applicants who have not provided sufficient or accurate information.

This option would also potentially encourage applicants to ensure that the information supplied in the application matches the information held by the SRO (for example, by ensuring the application matches information contained in land tax assessments previously issued) prior to submitting an application. This would in turn reduce the number of online applications which require manual intervention.

On the other hand, this option causes administrative difficulties for both the SRO and applicants, as an application for a clearance certificate must be accompanied by the prescribed fee. If separate fees are prescribed based on the level of staff involvement in processing the application, the correct fee amount cannot be determined, let alone paid, at the time of submitting an application. Adopting this option would therefore result in delays in processing applications as payment of the fee is required prior to the issuing of a certificate.

The SRO considers that this option is impractical and creates uncertainty for both applicants and the SRO. The SRO recognises the need to reduce the number of applications requiring manual intervention and is in the process of implementing a number of measures which are intended to improve the accuracy and reliability of the SRO's land tax database. In addition, the SRO has begun monitoring applications by online registered users with a view to identifying common issues and discrepancies, which will then be used to provide targeted training sessions and information materials for online users.

Specifying separate fees for simple online applications and complex online applications (those requiring substantial manual intervention)

Another factor which can affect the time taken to process a land tax clearance certificate application is the level of complexity associated with the processing of an application. For example, applications made on behalf of, or in respect of, large land holders, special taxpayers, deceased estates or newly created properties can increase the amount of time required to resolve discrepancies and issue a clearance certificate. Complex applications often require a manual certificate to be generated and issued, which also increases the time and costs involved.

The amount of time associated with these more complex applications is dependent on whether sufficient information has been provided to the SRO in the application. Given the small number of complex applications that are received along with the varying levels of complexity involved, it is difficult to determine an average amount of time required to process these applications. For this option to be effective, it is likely that the fee would need to be made up of a variable component as well as a base fixed charge to ensure that applicants are fully covering the costs of the service provided. However, this would also make the fee calculation more complex and uncertain.

Similar to the preceding option, this option causes administrative difficulties for both the SRO and applicants. If separate fees are prescribed based on the level of complexity and processing time, the correct fee amount cannot be determined at the time of submitting an application. Adopting this option could therefore result in further delays and costs in processing applications as the applicant would need to estimate the fee amount likely to be payable at the time of submitting the application and then appropriate adjustments would need to be made prior to the SRO issuing the certificate. This option is considered impractical and inefficient by the SRO.

Specifying the fee in fee units to allow for annual indexation

The option of specifying a fee in terms of fee units is the standard method for setting fees in regulations. It involves determining the value of the current fee, based on the current costs of providing a clearance certificate and specifying that amount as a number of fee units⁷.

Each year, the Victorian Government automatically indexes most fees and fines for inflation, so that the real value of those fees and fines is maintained. The indexation of fees ensures that the user, rather than the general taxpayer, pays the cost of a service provided.

The *Monetary Units Act 2004* governs the indexation of fee units and fine units. The Treasurer sets the indexation rate for each financial year and the value of the fee unit is published in the Government Gazette and major newspapers before 1 June in the preceding financial year.

In accordance with government policy, the proposed fee will be set in terms of fee units, rather than dollar terms. Setting the fee in this way provides a mechanism for the automatic indexation of the value of the fee in line with movements in inflation. This will align with financial year increases which apply to other government fees and charges and will correspond with Agency and Departmental Budget processes.

The indexed fee will apply until the Regulations sunset in 2025, subject to any changes in process, at which time the SRO will again be required to cost the clearance certificate service and alter the fee if it no longer reflects the actual cost of providing the service. It is anticipated that the fee will continue to reflect an efficient cost base over time as the fee will be expressed

⁷ the value of a fee unit for 2015-16 is \$13.60

in fee units and linked to the annual rate set by the Treasurer. This annual rate is typically less than wages growth and is set through consultation to ensure fee levels remain appropriate.

6.3.2. Consideration of feasible options

The objectives of the proposed Regulations can potentially be achieved by several options. The SRO has analysed the following three alternatives in detail:

- *Option 1:* No application fee prescribed (base case scenario);
- *Option 2:* Prescribing separate fees for online and paper applications based on current costs and indexation;
- *Option 3:* Prescribing one fee for all applications based on current costs and indexation.

Cost/revenue comparison for each of the options

The following table summarises the expected revenue impacts of the alternative fee amounts considered. This comparison has been developed on the basis that the SRO receives on average 170,000 applications each year⁸, of which approximately 0.3 per cent are paper applications.

	Revenue	Cost	Net Revenue
Option 1: No fee	\$0	\$2,686,727	(\$2,686,727)
Option 2: separate fees for online and paper applications	\$2,696,602	\$2,686,727	\$9,875
Option 3: one fee for all applications	\$2,686,000	\$2,686,727	(\$727)

Option 1: No application fee (Base case)

Failure to prescribe a fee would mean that no recovery of the costs of the resources that the SRO must devote to processing clearance certificate applications and issuing clearance certificates will be possible. Thus, taxpayers will be required to subsidise the provision of these certificates to land owners, purchasers and mortgagees.

This option is not recommended as, in effect, Victorian taxpayers (through budget appropriations to the SRO) would need to subsidise all costs associated with providing this service which is inconsistent with both the equity and efficiency objectives of cost recovery and general government policy.

⁸ It is difficult to predict the number of land tax clearance certificate applications that are likely to be received in future years, therefore a reasonable estimate was drawn from SRO records of applications received for the past ten years, which indicate an average of 170,000 applications per year.

Option 2: Prescribing separate fees for online and paper applications based on current costs and indexation

Under this option, the following fees for a land tax clearance certificate would be prescribed based on the method of application—

- the fee for an online application would be specified as 1.16 fee units per application, which equates to \$15.80 in 2015-16; and
- the fee for a paper application would be specified as 2.53 fee units per application, which equates to \$34.40 in 2015-16.⁹

The separate fee for online applications was introduced in 2003 to encourage the use of the SRO's new clearance certificate online system, as well as reflect the cost differential in processing paper and online applications.

Over time the number of paper applications has considerably reduced. For example, in 2013-14, less than 1 per cent of all applications received were paper applications (approx. 1150 applications) in comparison to over 70 per cent of applications in 2002-2003. This dropped further in 2014-15 to less than 0.3 per cent of all applications (fewer than 570 paper applications were received).

Maintaining separate fees for online and paper applications would provide a higher level of equity than one fee for all applications. It would also prevent cross-subsidisation, whereby online applicants subsidise the additional costs incurred by paper applicants.

From a cost recovery perspective, the additional cost associated with processing paper applications is minimal given the small number of paper applications received¹⁰ and would have no impact on the fee for online applications. Whilst this option would result in a minor over-recovery of costs, the revenue generated from a higher fee for paper applications is negligible as a proportion of the total fees collected.

In line with many other businesses, the SRO is moving towards an online, digital approach to all of its services. Providing high quality online services as a preferred and default position enables the SRO to deliver more efficient and timely services to customers across all revenue lines. To this extent, it is anticipated that paper applications will be phased out over the coming years, with online applications becoming the primary method for obtaining a land tax clearance certificate. The SRO considers the imposition of a separate fee for paper applications as inconsistent with this direction as it may continue to inadvertently encourage the use of paper applications. This because it makes the availability of paper applications known to applicants,

⁹ The proposed fees were derived by dividing the estimated cost per application by the current value of a fee unit. The value of a fee unit for the financial year commencing 1 July 2015 is \$13.60. Therefore, the proposed fees are $\$15.74/\$13.60 = 1.16$ fee units for an online application and $\$34.42/\$13.60 = 2.53$ fee units for a paper application

¹⁰ Further detail on the cost calculation is located in Appendix 2.

by presenting them with two options for lodgement — online or paper. For these reasons, this option is not recommended.

Option 3: Prescribing one fee for all applications based on current costs and indexation

The cost recovery analysis¹¹ determined that the average cost per application is \$15.80. Accordingly, under this option, the fee for a land tax clearance certificate would be specified as 1.16 fee units per application, which equates to \$15.80 in 2015-16.

A benefit of prescribing one fee amount for all applications is that it will fully recover the cost to the SRO in providing the clearance certificate service, resulting in a revenue neutral position. There is no way to recover these costs other than through the prescribed fee or budget appropriations. It will also enable the SRO to meet its general functions (the administration of Victoria's taxation legislation and collection of taxes and duties) without significant diversion of resources. This is considered to be in accordance with stated government policy.

Initial consultation indicates that a nominal increase in the fee for online applications will have minimal impact on the number of applications made by the conveyancing industry. Furthermore, the proposed fee remains a minor cost within the context of the overall conveyancing process.

This option will also reduce the cost of administering differential fees and simplify the application process for vendors, purchasers and mortgagees. It is not anticipated that abolishing the higher fee for paper applications will result in an increase in the number of these applications. Other jurisdictions that offer both online and paper applications for the same fee have not experienced any increase in the number of paper applications as a result.

Due to the small and declining number of paper applications received and the eventual phase out of paper applications, this is the SRO's preferred option.

6.4. Proposed land tax clearance certificate fee

It is proposed that the fee for a land tax clearance certificate be specified to be 1.16 fee units. This equates to \$15.80 in 2015-16, an increase of 5.3 per cent (or 80 cents) for online applications and a decrease of 21 per cent (or \$4.20) for paper applications.

The proposed fee has been derived by dividing the estimated cost per application by the current value of a fee unit. The value of a fee unit for the financial year commencing 1 July 2015 is \$13.60. Therefore, the proposed fee unit is $\$15.80/\$13.60 = 1.16$ fee units.

It should be noted that the fee units established via the above calculation is rounded to two decimal places, as provided by the *Monetary Units Act 2004*.

¹¹ Refer to Part 6.2 – Estimating the Cost Base

The actual dollar fee payable is to be derived by multiplying the number of fee units by the current value of the fee unit and rounding to the nearest 10 cents in accordance with the *Monetary Units Act 2004*.

Impact of proposed fee

It is difficult to predict the number of land tax clearance certificates that are likely to be issued in a future year, however a reasonable estimate can be drawn from the number of certificates issued in previous years. Records of land tax clearance certificates issued for the past ten years indicate an average number of 170,000 certificates per year.

The total cost of preparing land tax clearance certificates for 2015-16 is estimated to be:

Average cost of clearance certificate x Average number of certificates issued

➤ $\$15.80 \times 170,000 = \2.69 million

For the ten year operation of the regulations, this represents an NPV of \$21.79 million¹².

¹² NPV is calculated using a discount rate of 4 per cent.

7. Fees and charges for similar services in Australian jurisdictions

The proposed fees and charges have been calculated on the basis of the cost to the State Revenue Office of Victoria in providing the land tax clearance certificate service.

A comparison of the current and proposed land tax clearance certificate fees, with fees levied in other Australian jurisdictions is included below. A comparison of the proposed land tax clearance certificate fees with the fee imposed by Local Governments in Victoria for a land information certificate¹³. Comparisons with some of the other jurisdictions is complicated by variations in the level of information provided in certificates to buyers and sellers, as well as the means by which online certificates are processed.

Similar to a land tax clearance certificate issued by the SRO, local councils are required to provide a land information certificate to a purchaser, vendor or mortgagee upon request. The land information certificate primarily includes information about rates and charges owed to the council in respect of the land.

A comparison of the current and proposed land tax clearance certificate fees, with fees levied in other Australian jurisdictions is included below.

Jurisdiction	Online	Paper
Victoria's existing fees	\$15	\$20
Victoria's proposed fee	\$15.80	
New South Wales	\$15*	\$15
Queensland	\$30.65*	\$37.95
South Australia	\$31.25	
Western Australia	\$38.50	
Tasmania	\$11.33	
Australian Capital Territory	\$103#	
Northern Territory	N/A^	
Local Government fee	\$25.80	

* All online applications are processed through Client Service Providers and incur additional processing fees

Certificate includes rates, land tax and other charges

^ No land tax is imposed

As can be seen in the above table, the proposed fee for Victoria compares favourably with other jurisdictions that also charge for the provision of a land clearance certificate and remains at the lower end of the scale.

¹³ This has been taken from the RIS of the Local Government (General) Regulations 2015 which was released for public consultation on 27 August 2015

8. Competition assessment

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, through the legislative review process, and to proposed new 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).

Accordingly, every regulatory impact statement must consider whether the proposed regulatory instrument restricts competition and if so, whether the restriction is consistent with these obligations.

In general, fees are not considered to have adverse competition impacts when they are set on a full cost recovery basis (as is the case here) and imposed equally on public and private sector entities, as they simply ensure that the relevant parties are paying the cost of the service being provided.

9. Conclusion and recommendation

The proposed Regulations prescribe the fee to be imposed for the provision of land tax clearance certificates by the SRO to ensure the appropriate recovery of the cost of providing the service is met by the users of the service. The objective of achieving full cost recovery has been arrived at through the application of the government's fees and charges guidelines to the specific circumstances to which the proposed Regulations relate.

As the assessment found, the proposed fee structure is the most appropriate in terms of meeting the objective of full cost recovery and equity for applicants. The proposed fee is considered to be superior to the alternative options in achieving full cost recovery whilst also ensuring the SRO can process clearance certificate applications in a timely, efficient and responsible manner.

10. Consultation

The SRO has developed the proposed Regulations.

Initial consultation was undertaken with industry stakeholders through the State Taxes Consultative Council meeting on 13 March 2015 which consisted of the following stakeholders:

- Australian Institute of Conveyancers
- CPA Australia
- Institute of Chartered Accountants Australia
- Institute of Public Accountants
- Law Institute of Victoria
- Property Council of Australia
- The Tax Institute
- Victorian Automobile Chamber of Commerce

There was very limited feedback received from stakeholders during the initial consultation phase. The feedback that was received indicated that a nominal increase in the fee for online applications was unlikely to impact on applications for a clearance certificate made by the conveyancing industry. It was also advised that the proposed fee remains a minor cost within the context of the overall conveyancing process.

The public release of this RIS constitutes the next stage in the consultation process. A primary function of the RIS process is to allow the public to comment on the proposed Regulations before they are finalised. Public input provides valuable information and perspectives and improves the overall quality of Regulations. The SRO will use its website, subscriber mailing lists and the above consultative forum to notify relevant stakeholders of the release of this RIS and the draft Regulations.

Public comment in response to the RIS and the draft Regulations is welcome and encouraged. The consultation period for this RIS will be 28 days, as required by the *Subordinate Legislation Act 1994*, with written comments required by no later than 5.00pm, Friday 27 November 2015.

While the *Victorian Guide to Regulation* indicates that a 60-day consultation period is preferred and should be adopted where applicable, this is not considered necessary or appropriate in the current situation, given the extremely limited scope of the proposed Regulations and, hence, the limited extent of the issues arising from them.

11. Evaluation strategy

The SRO will continue to monitor the internal clearance certificate process, including the number of applications received (in total and by type), the number of non-automated online applications received, the reasons for manual intervention and the IT and labour costs arising from the service. It is anticipated that the SRO will review the clearance certificate process within two years of the commencement of the proposed Regulations to assess any impact arising from the implementation of these changes.

The SRO will also closely monitor the impact of the proposed Regulations on the conveyancing industry and the wider community. Specifically, the SRO will monitor and consult with affected stakeholders (conveyancing peak bodies such as Australian Institute of Conveyancers and Property Council of Australia, as well as with taxpayers and their representatives) on the effect of the change to the fee for land tax clearance certificates as well as the changes to the notice of acquisition form.

This consultation will commence within 18 months of the commencement of the proposed regulations.

12. Implementation and communication

If the proposed application fee for a land tax clearance certificate is implemented, the new fee will take effect upon commencement of the Regulations. It is anticipated that this will occur on 19 December 2015.

Implementation of the changes to the fee structure will be supported by training of SRO staff, modifications to the online system, manual application form and the SRO website.

In relation to the Notice of Acquisition requirements, the SRO, in consultation with Local Government Victoria, will re-design the Notice of Acquisition form to capture the prescribed information as specified in the revised Local Government (General) Regulations. The SRO will use its website, subscriber mailing lists and consultative forums to notify relevant stakeholders of the new form.

Notification of a decision to make or not to make the Regulations will be announced in the Victoria Government Gazette and a major newspaper.

The SRO will use its website, subscriber mailing lists and consultative forums to update taxpayers, their representatives and industry peak bodies about the changes proposed by these Regulations.

Appendix 1 – Detailed Cost Base

The following costs have been used to determine the cost base.

Detailed Costing				
<u>Salaries¹⁴</u>				
Grade	Position Title	FTE	Midpoint Salary	Total Cost
VPSG – 2	Customer Service Officer	3	51,027	153,081
VPSG – 3	Senior Customer Service Officer	2	64,910	129,820
VPSG – 4	Branch Technical Officer	2	77,469	154,938
VPSG – 5	Team Leader	0.2	92,540	18,508
VPSG – 6	Branch Manager	0.2	120,095	24,019
Total Salaries		7.4		<u>480,366</u>
<u>On costs @ 20%</u>				96,073
<u>Administration costs and overheads¹⁵</u>				207,919
Total salaries, on costs and overheads				<u>784,358</u>
<u>Indirect Costs</u>				
Direct IT costs, valuation costs, costs directly associated with the ongoing maintenance of the land tax database and clearance certificate online system				1,902,369
Total indirect costs				<u>1,902,369</u>
Total Cost				<u>\$2,686,727</u>
<i>Cost per application (based on average 170,000 transactions¹⁶)</i>				<i>\$15.80</i>

¹⁴ The above salaries are inclusive of both fixed and variable salary costs. Salary costs have been calculated by multiplying the midpoint salary by the number of FTE's. Refer to appendix 2 for a breakdown of the fixed and variable salary costs.

¹⁵ Administration and overhead costs have been determined based on the SRO's corporate overhead costs as a percentage of total costs, then multiplied by the salaries (including on costs) of staff involved in the clearance certificate process. This equates to an overhead cost of 36 per cent.

¹⁶ Costings are based on an average of 170,000 applications per year, which reflects the 10 year average number of certificates issued by the SRO. This figure has been used as the number of clearance certificates issued each year fluctuates greatly, therefore a reasonable estimate was drawn from the number of certificates issued in previous years.

