

Policy

Overpayment and Refunds

Practising Certificate fees, surcharges & fidelity fund contributions

<b>Introduction</b>	1.1	Practising certificate fees, surcharges and fidelity fund contributions are set out in the <i>Legal Profession Uniform Law Application Act 2014</i> (Vic) (“the Application Act”), the <i>Legal Profession Uniform Law</i> (“the Uniform Law”), the <i>Legal Profession (Practising Certificate Fees) Regulations 2012</i> (Vic) (“the (PC Fees) Regulations”) and the <i>Legal Profession Uniform Law Application Regulations 2015</i> (Vic) (“the Application Regulations”).
	1.2	The policy provides for the refund of relevant practising certificate fees and surcharges and fidelity fund contributions by the Board and its delegates.
<b>Legislative Background</b>	2.1	Under sections 73 of the Application Act, 225 of the Uniform Law and rule 12(2) of the <i>Legal Profession Uniform General Rules 2015</i> (“the Uniform General Rules”), any application for grant or renewal of a practising certificate must be accompanied by the prescribed fee and any fidelity fund contribution payable.
	2.2	Current practising certificate fee levels, which are to apply until 30 June 2017, are prescribed by the (PC Fees) Regulations.
	2.3	The Board determines the amount of contribution payable by each class of fidelity fund contributor, having regard to actuarial advice and the solvency level of the fidelity fund (s.225(2) and (3) of the Uniform Law).
	2.4	A late application for renewal of a practising certificate must be accompanied by payment of a surcharge of a specified percentage of the prescribed fee: <ul style="list-style-type: none"> <li>when it is being made after 30 April but before the end of the financial year (s.75 of the Application Act); or</li> <li>when it is being made in the first 3 months of a financial year, unless it is accompanied by a statutory declaration stating that the applicant has not been engaging in legal practice since the end of the previous financial year, and, that as at the end of the previous financial year, he or she did not intend to engage in legal practice, explaining why that intention has changed (s.73(2) and (3) of the Application Act);</li> </ul> <p>unless the application is for a practising certificate that authorises only legal practice as a volunteer at a community legal service or otherwise on a pro bono basis.</p>
	2.5	Sections 73 and 75 of the Application Act also provide that the Board may refund all or part of a surcharge if it considers that there are special circumstances.
<b>Guidelines</b>	3.1	The Board will deal with refund of practising certificate fees, late payment surcharges and fidelity fund contributions in accordance with this policy.  <i>Practising Certificate applications withdrawn or rejected</i>
	3.2	Where an application for grant or renewal of a practising certificate is not required to be considered by the Board or its delegates, any practising certificate fee (including any late payment surcharge) and fidelity fund contribution that accompanied the application will be refunded in full.

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- 3.3 Where an application for grant or renewal of a practising certificate is refused by the Board or its delegates, the practising certificate fee (including the late payment surcharge) and fidelity fund contribution that accompanied the application will be refunded in full.

*Current practising certificate (refund of fees and contributions)*

- 3.4 After a practising certificate has been granted or renewed by the Board, the Board will not refund the practising certificate fee or fidelity fund contribution except for in the circumstances outlined in paragraphs 3.5 – 3.8 below.

- 3.5 Notwithstanding paragraph 3.4 above, where:

- the Board has cancelled the practising certificate following surrender of the practising certificate by the practitioner on or before 15 July; or
- the Board or Tribunal has cancelled, amended or suspended the practising certificate (other than in circumstances involving surrender of the practising certificate by the practitioner on or before 15 July) and, upon application from an affected practitioner, the Board is satisfied that there are special circumstances that warrant the refund;

the Board will refund the practising certificate fee (excluding the late payment surcharge) and fidelity fund contribution, or, in the case of practising certificate that is amended, the difference in fee between the original practising certificate and the final practising certificate (if any).

- 3.6 Special circumstances in relation to refund of a practising certificate fee (excluding surcharge) and fidelity fund contribution include where the applicant demonstrates personal or financial hardship. An ordinary or foreseeable absence from practice for part of a financial year will not generally constitute special circumstances, without other relevant factors or circumstances.

*Current practising certificates (refund of late lodgement surcharges)*

- 3.7 Notwithstanding paragraph 3.4, the Board will refund all or part of a late lodgement surcharge, upon application from an affected practitioner, where, in the opinion of the Board, there are special circumstances that warrant refund of the late lodgement surcharge. Special circumstances include where the practitioner was unable to lodge an application on time due to factors beyond his or her control, such as ill health.

*Overpayments*

- 3.8 In circumstances where an applicant pays with their application an amount that exceeds the correct practising certificate fee or fidelity fund contribution, the Board will refund the overpayment, except in the circumstances outlined in paragraph 3.9 below.

- 3.9 Where an applicant for a practising certificate has overpaid the practising certificate fee or fidelity fund contribution by an amount less than \$5, the Board will not refund the amount, unless it is requested by the applicant.

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**Management & Implementation**

- 4.1 This policy applies to the Board, the CEO, staff working on Board functions and delegates of the Board when they are performing any of the relevant functions in Part 4 of the Application Act.
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- 4.2 Pursuant to s.44 of the Application Act, the Board has delegated its powers in relation to grant, renewal, amendment, suspension and cancellation of a practising certificate under Part 3.3 of the Uniform Law and Part 4 of the Application Act to:
- the Victorian Legal Services Commissioner; and
  - the Victorian Bar Inc to exercise insofar as they apply to Australian legal practitioners who practise solely as barristers.
- 4.3 The delegations do not prevent the Board from exercising these functions.
- 4.4 This policy will be communicated to relevant staff of the Board and delegates and further training will be available if required.
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# Victorian Legal Services **BOARD**

**Document Control**

*(Internal use only)*

**Responsible for review and update**

Manager, Policy & Regulation