



cutting through complexity™

Regulatory costing project

IP Australia

FINAL REPORT

23 July 2014



**The contacts at KPMG
in connection with this
report are:**

Tony Hof

Partner,
Advisory

Phone: +61 2 6248 1220

Mob: 0401 998 013

thof@kpmg.com.au

Adam Mason-Jefferies

Associate Director,
Advisory

Phone: +61 3 9288 6029

Mob: 0408 036 800

amjefferies@kpmg.com.au

Inherent Limitations

This report has been prepared as outlined in the Introduction Section. The services provided in connection with this engagement comprise an advisory engagement, which is not subject to assurance or other standards issued by the Australian Auditing and Assurance Standards Board and, consequently no opinions or conclusions intended to convey assurance have been expressed.

The findings in this report are based on a qualitative study and the reported results reflect a perception of those organisations consulted during the engagement. Any projection to the wider stakeholder group is subject to the level of bias in the method of sample selection, that is a different sample of individuals or organisations consulted may have resulted in a different result.

No warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by those organisations and individuals consulted as part of the process.

We have not sought to independently verify the estimates provided during the consultations unless otherwise noted within the report.

KPMG is under no obligation in any circumstance to update this report, in either oral or written form, for events occurring after the report has been issued in final form.

The findings in this report have been formed on the above basis.

Third Party Reliance

This report is solely for the purpose set out in the Introduction Section and for IP Australia's information, and is not to be used for any other purpose.

This report has been prepared at the request of IP Australia in accordance with the terms of KPMG's contract dated 29 May, 2014. Other than our responsibility to IP Australia, neither KPMG nor any member or employee of KPMG undertakes responsibility arising in any way from reliance placed by a third party on this report. Any reliance placed is that party's sole responsibility.

	Executive Summary	4
1.	Introduction	7
2.	Key findings	
	Overview	14
	Patents	15
	Trade marks	17
	Designs	19
	Plant breeder's rights	21
	Professional standards	23
	Regulatory costs incorporating the financial costs	25

Executive Summary

Introduction

The Australian Government has committed to reduce the regulatory burden for individuals, businesses and community organisations by at least \$1 billion per year. All Government department portfolios have been asked to complete an audit of their existing regulations, including measuring the compliance cost of the regulations on businesses and individuals.

To fulfil its requirements, IP Australia is required to report to the Department of Industry by the end of July outlining the regulatory costs of Acts, Regulations and supporting guidelines it is responsible for administering. In most part this relates to the regulatory costs associated with five pieces of Commonwealth legislation (and supporting regulations) and two international agreements that relate to patents and trademarks.

Importantly, this report does not make any findings in relation to the efficiency and/or effectiveness of the regulations, just an assessment of the regulatory costs on Australian businesses and individuals.

Approach

To develop the regulatory cost estimates, KPMG completed the following key stages:

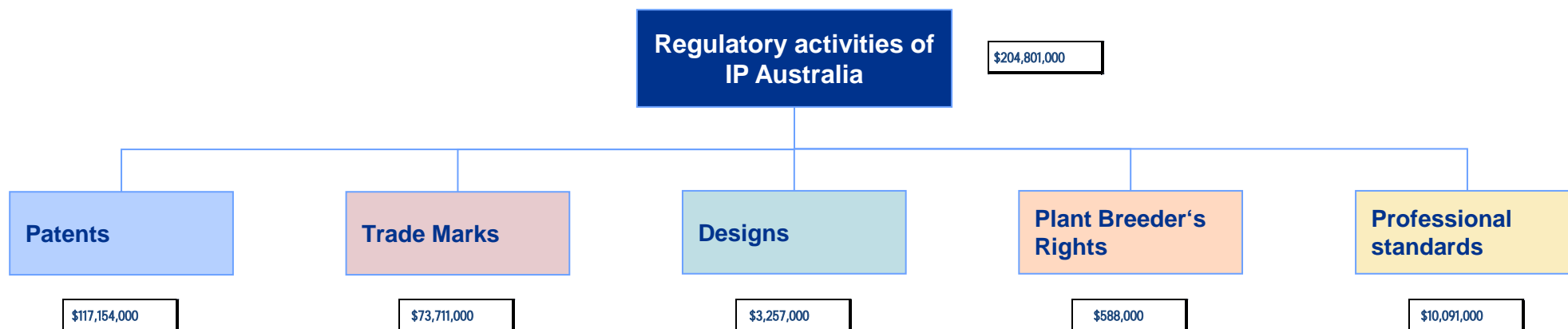
- Stage 1 Project kick-off – This stage was used to agree the project management parameters, including the frequency and form of progress reporting, and key milestones.
- Stage 2 Desktop review – It was agreed that KPMG, with IP Australia’s assistance, will develop and agree on the key areas and activities that will form the basic framework for the costing analysis. The key areas agreed to at the project kick-off meeting were patents, trade marks, designs, plant breeder’s rights and professional standards. The second element of stage 2 was to identify the key requirements that fit within each of the groups.
- Stage 3 Develop the information collection tool – During this stage a detailed information collection tool was developed to support the consultations. The information collection tool was tailored for each scope area. The data collection tool was provided to IP Australia for comment and consideration prior to the consultation phase.
- Stage 4 Consultation – This stage involved facilitating three internal workshops with selected IP Australia staff and consultations with key industry stakeholders. The internal workshops with IP Australia staff sought to identify initial ranges for time and cost estimates. These initial estimates were then subsequently tested with the key industry stakeholders, which included five attorney firms and five Qualified Persons associated with the Plant Breeders’ Rights scheme. A total of 16 attorney firms and five Qualified Persons were invited to participate in the study by IP Australia.
- Stage 5 Reporting – The final stage saw the development of costing spreadsheet and this report.

Key findings

Headline results

The compliance costs to Australian business and individuals associated with IP Australia’s core regulatory activities is \$204,801,000 per annum. This figure represents the mid-point of the ranges identified for key regulatory activities. The lower range of the regulatory cost is \$131,737,000 and the upper range is \$277,864,000 per annum. These compliance costs do not include fees charged by IP Australia for particular activities. Further breakdown of the compliance costs in each scope area is provided in section 2 of this report. An analysis of the regulatory costs including IP Australia fees is provided on page 25.

The following diagram outlines the mid-points of the compliance costs across each of the key areas within the scope of the study.



Numbers may not add due to rounding

1. Introduction

Project overview

KPMG was engaged to assist IP Australia prepare regulatory costings estimates in support of the Government's Deregulation and productivity agenda.

Specifically, the project developed regulatory costing estimates for Australian business and individuals associated with the *Patents Act 1990*, the *Patents Regulations 1991*, the *Trade Marks Act 1995*, the *Trade Marks Regulations 1995*, the *Designs Act 2003*, the *Designs Regulations 2004*, the *Plant Breeder's Rights Act 1994* and the *Plant Breeder's Rights Regulations 1994*.

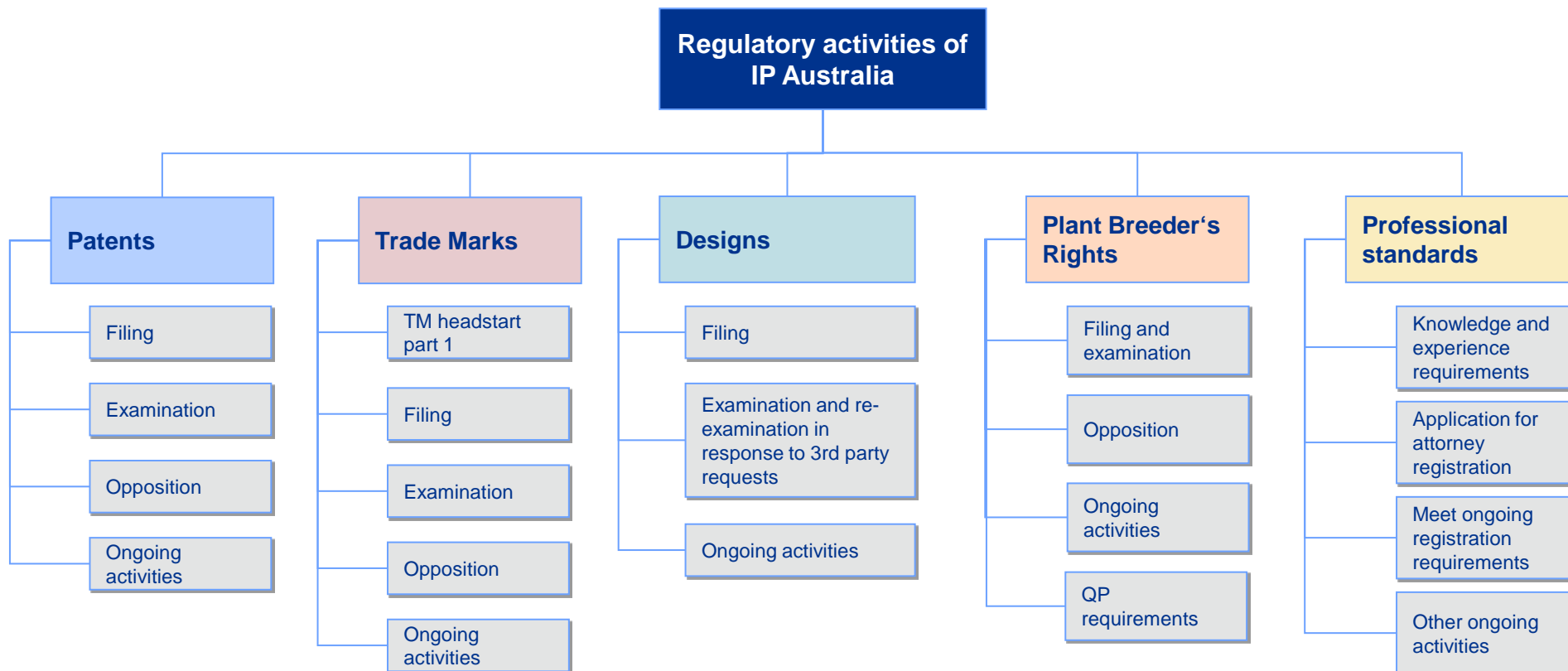
At its core these regulatory activities relate to tasks such as: filling the various applications; meet the formality requirements; meeting the examination requirements; making any associated renewals; and pay maintenance fees.

Scope

In total five key areas and their supporting activities were identified as in scope for this project:

- Patents – filing, examinations, oppositions and various ongoing activities (amendments, maintenance and extensions)
- Trade Marks – filing (including TM Headstart), examinations, oppositions and various ongoing activities (renewals and extensions)
- Designs – filing, examination and re-examination in response to third party requests and various ongoing activities (including maintenance and extensions)
- Plant Breeder's Rights – filing (including examination), opposition and various ongoing activities (amendments and maintenance)
- Professional Standards – knowledge and experience requirements, applications of various qualifications, ongoing registration requirements and various other ongoing activities.

The following diagram outlines the key regulatory areas that are within the scope of this engagement. Regulatory cost estimates were developed for each of these areas. Full results are provided in section 2 of this report.



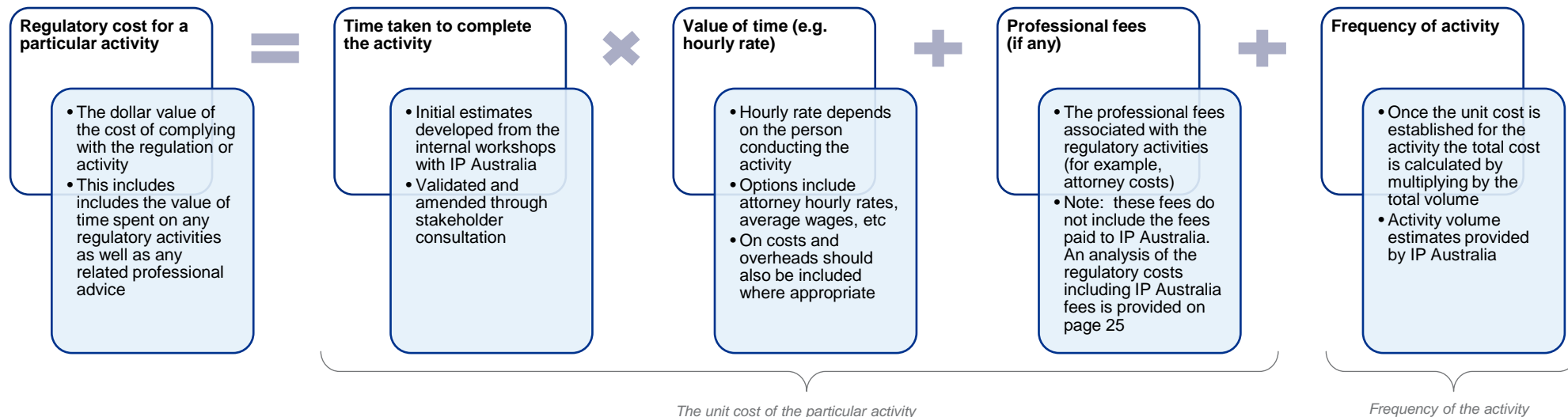
Defining 'regulation'

The Australian Government Guide to Regulation (March, 2014) establishes that regulation is 'any rule endorsed by government where there is an expectation of compliance' (page 3). In the context of this report, regulation includes the requirements outlined in the various Acts and Regulations, as well as the requirements established by the customs and practices of IP Australia and its stakeholder (for example, any guidance notes where there is an expectation to comply). These regulatory costs include the cost of the applicant's time and any external fees to third parties (for example, attorneys). The diagram below outlines each element that contributes to the regulatory cost of a particular activity.

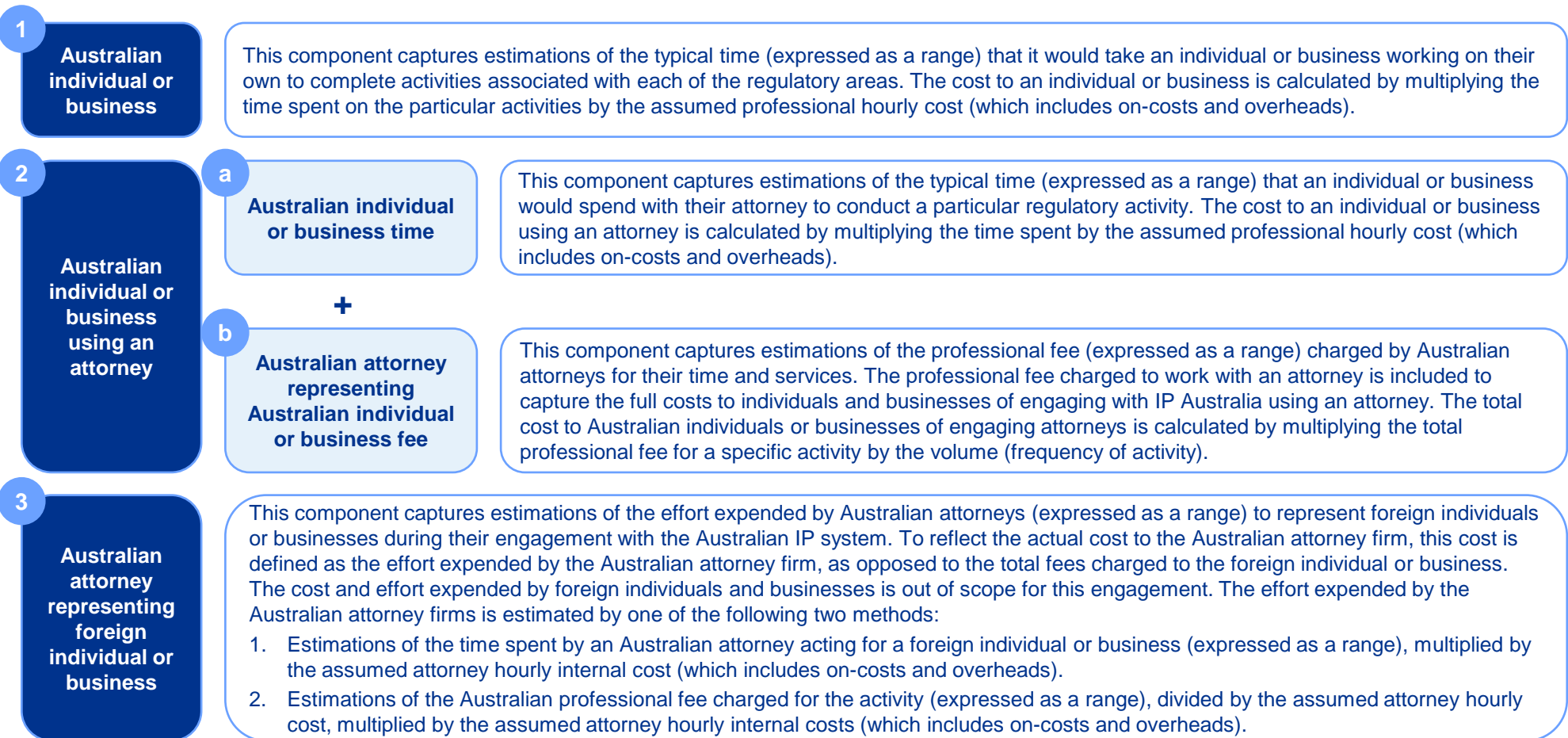
Importantly, this report does not make any findings in relation to the efficiency and/or effectiveness of the regulations, just an assessment of their costs on Australian businesses and individuals.

Costing regulation

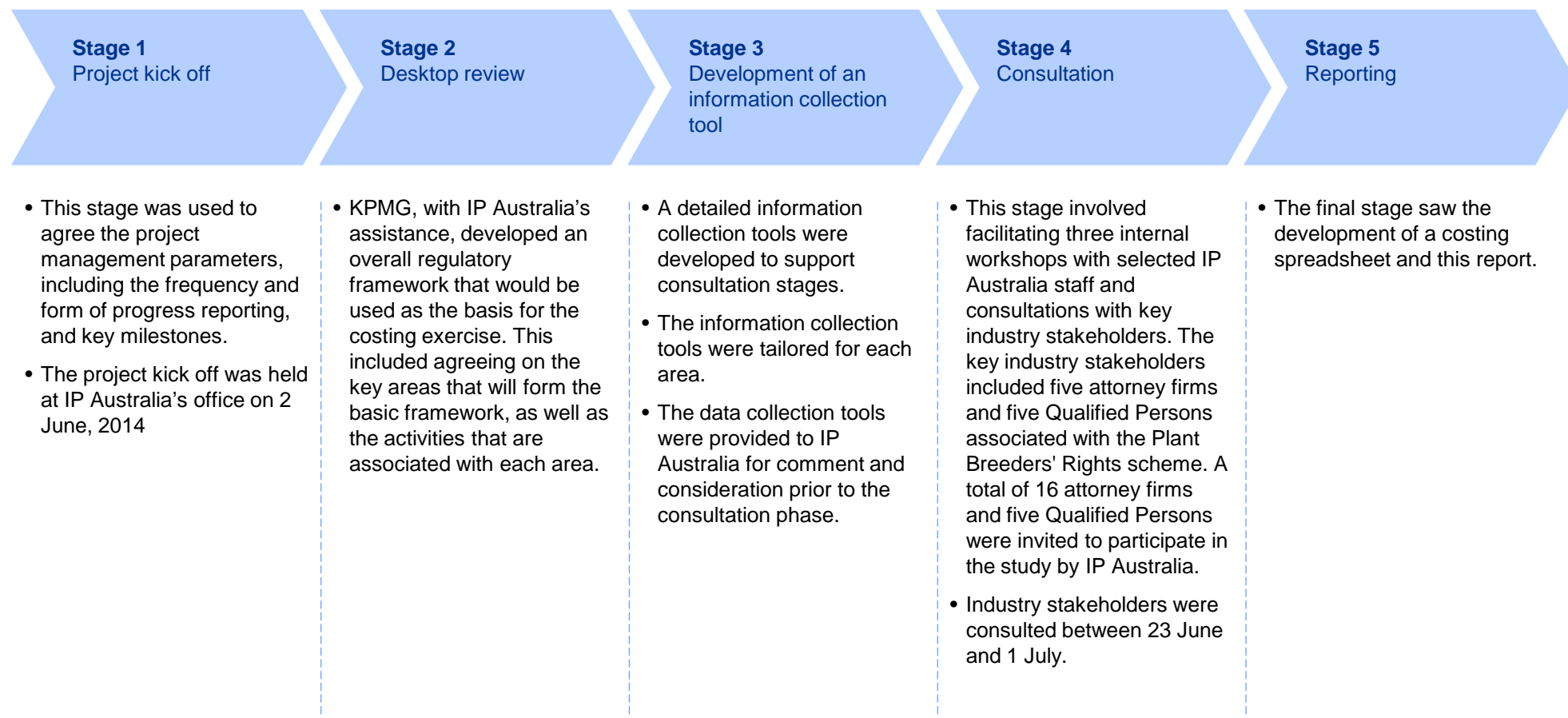
Information was collected to produce cost estimates for each regulatory area and the associated activities. Estimates were provided for the costs of 'typical' activities (i.e. the normal or average cost of an activity). The estimates also only include the cost of the activities over and above what would be considered normal business practices (i.e. the marginal cost of engaging with IP Australia's regulatory system). For example, when filing a patent application, the regulatory cost was taken to start at the point the applicant decides to file, and therefore enters the regulatory system. The regulatory costs would *not include* the strategic, research, marketing or other activities that are undertaken prior to filing as a part of normal business practices, but would *include* the costs (including an professional advice) to draft the specification and file the application.



A data collection framework was designed to collect information on the regulatory costs (expressed as a range) for each of the key regulatory areas. The data collection framework also recognises the three different ways Australian businesses and individuals can interact with IP Australia's regulatory system. Further details on each of the three components are outlined below. Throughout this report, further references to 'individuals' means individual people and individual businesses.



A five phase approach was employed to complete the project within an five week timeframe, as illustrated below:



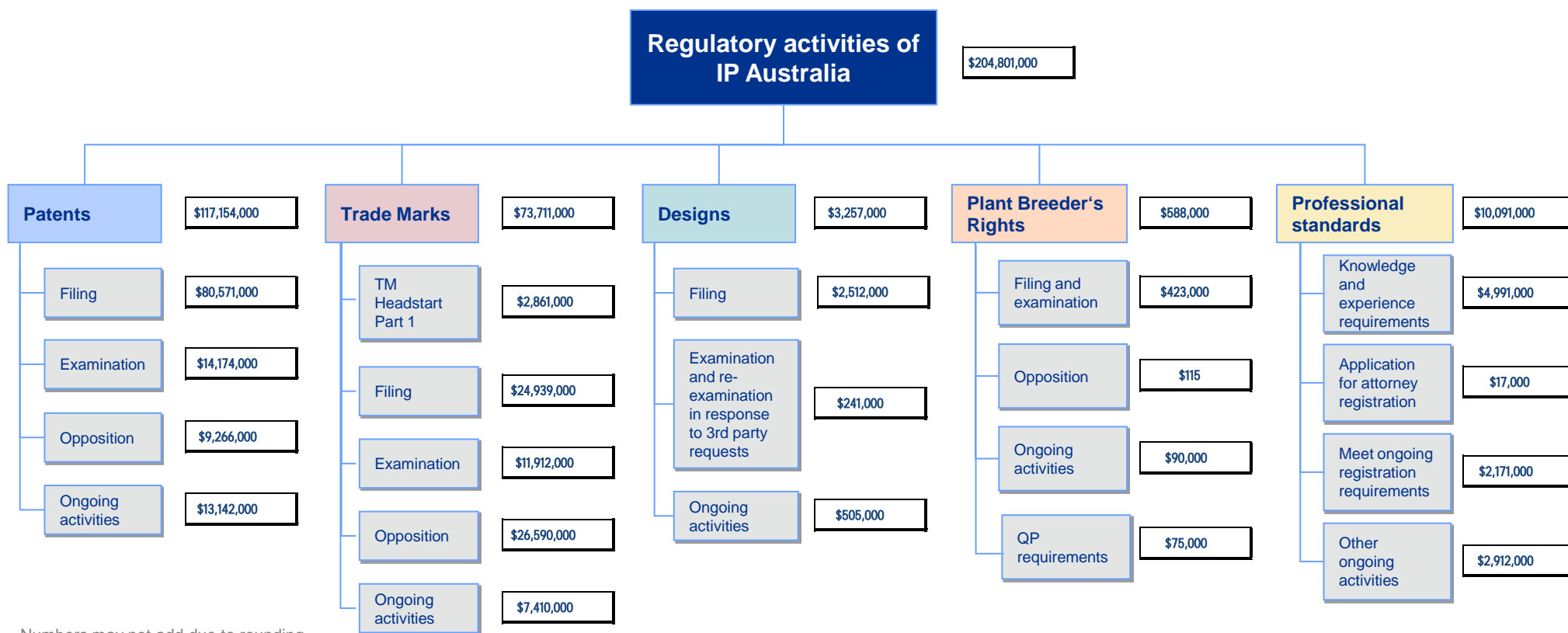
2. Key findings

2. Key findings

Overview of key findings for IP Australia

The compliance costs to Australian business and individuals associated with IP Australia's core regulatory activities is \$204,801,000 per annum. This figure represents the mid-point of the ranges identified for key regulatory activities. The lower range of the regulatory cost is \$131,737,000, and the upper range is \$277,864,000 per annum.

The diagram below outlines how the mid-points of the compliance costs are distributed across the key areas and activities. Further breakdown of the compliance costs across each of the rights is provided on the following pages. An analysis of the regulatory costs including IP Australia fees is provided on page 25.



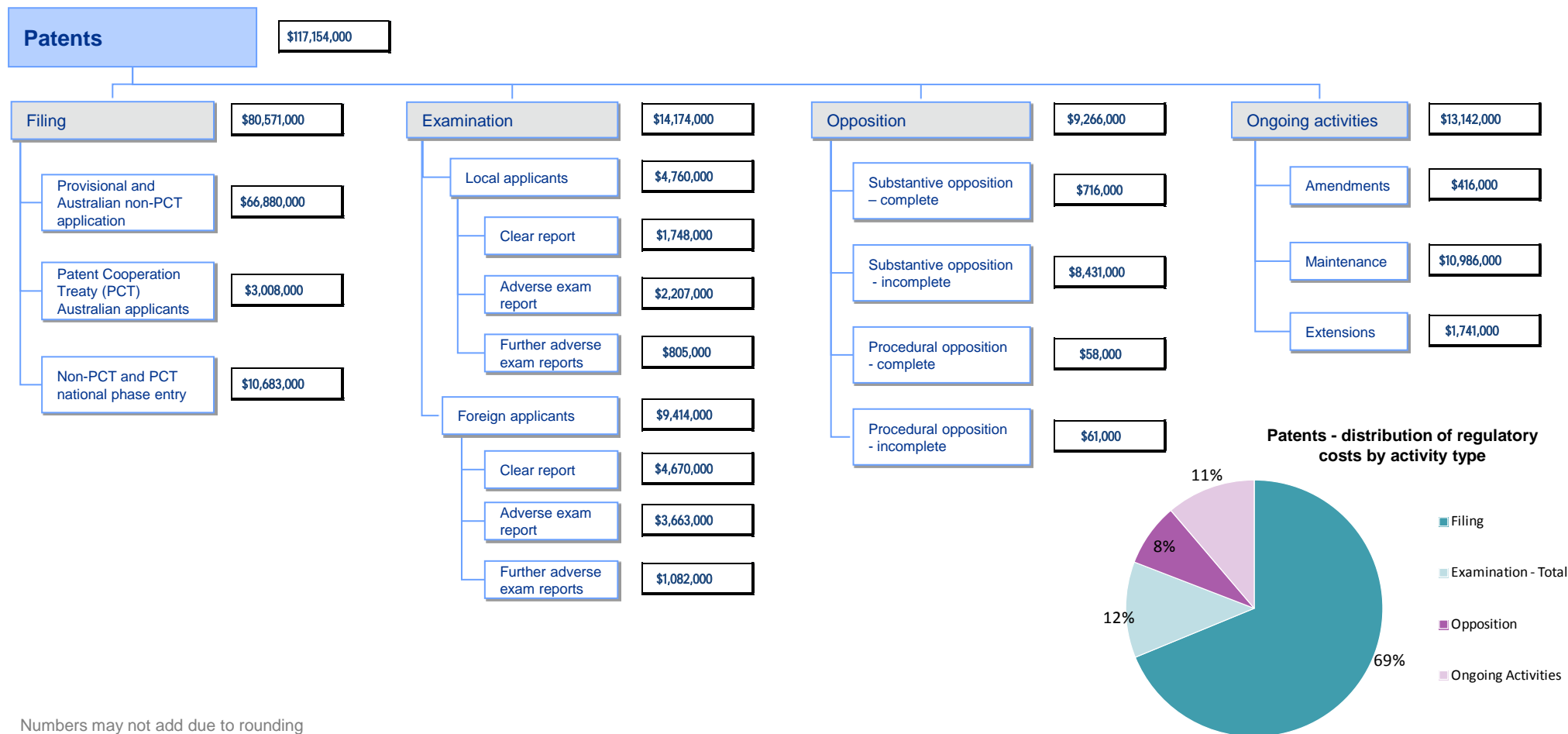
Numbers may not add due to rounding

Note on Plant Breeder's Rights: Costs related to oppositions and comments from 3rd parties are low due to low volumes (1 in a typical year).

2. Key findings

Patents

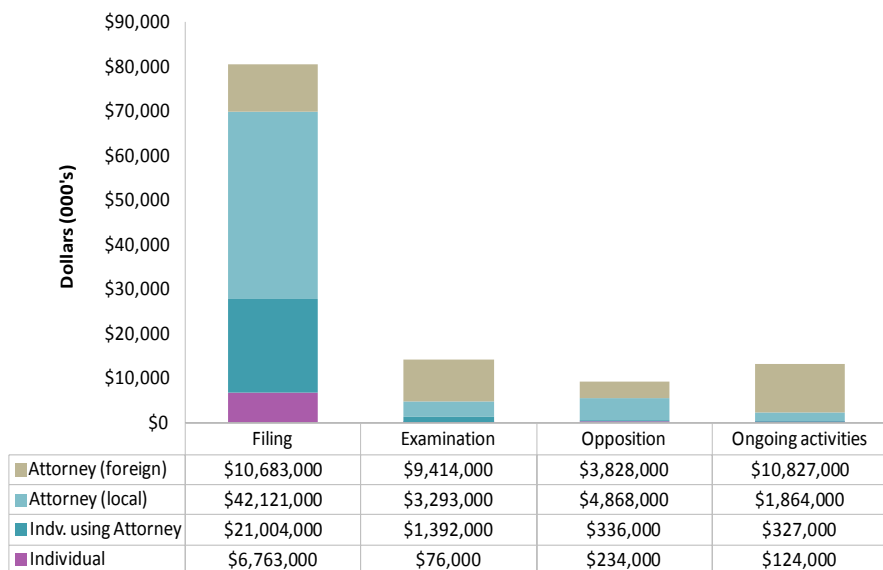
The cost of regulatory activities related to patents for Australian business and individuals is \$117,154,000 per annum. This figure represents the mid-point of the ranges identified for key regulatory activities. The lower range of the compliance cost is \$63,738,000, and the upper range is \$170,569,000 per annum.



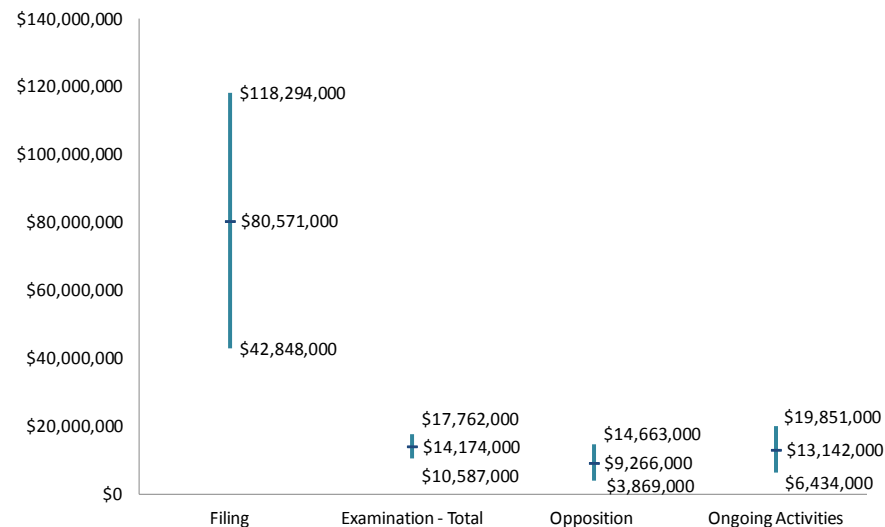
Numbers may not add due to rounding

The following graphs outline the distribution of the regulatory costs by the key activities and methods individuals and businesses use to interact with the system, and the estimated regulatory costs expressed as a range.

Distribution of regulatory costs by activity and cost type

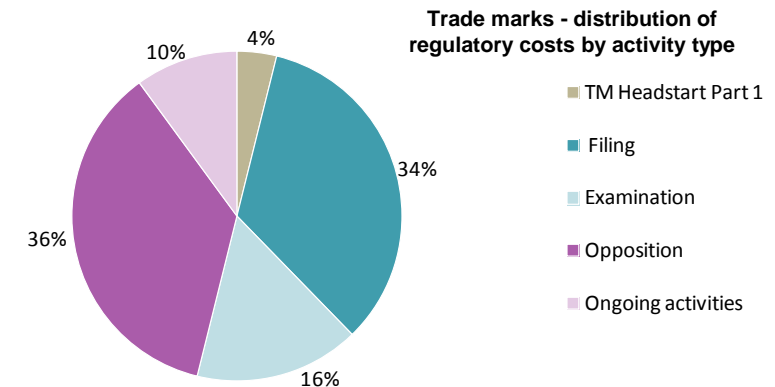
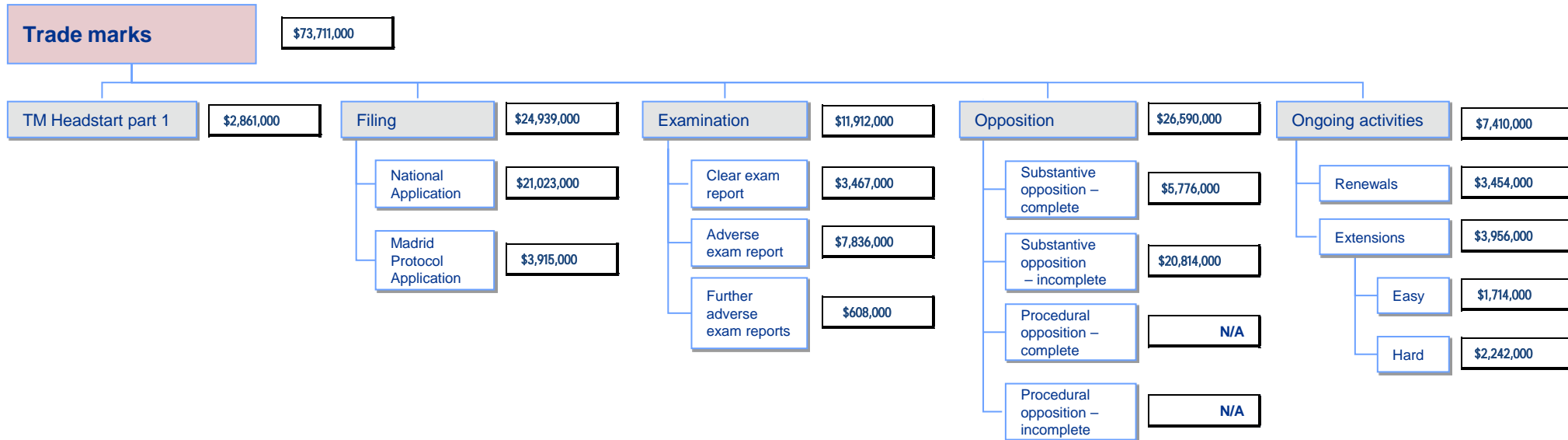


Distribution of regulatory costs by activity type (by cost range)



2. Key findings Trade marks

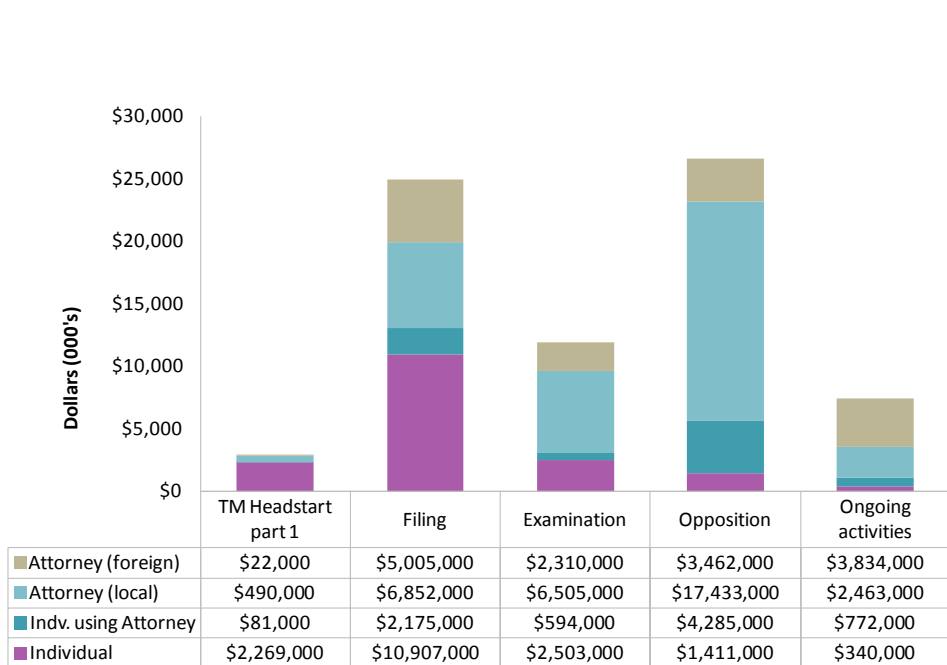
The cost of regulatory activities related to trade marks for Australian business and individuals is \$73,711,000 per annum. This figure represents the mid-point of the ranges identified for key regulatory activities. The lower range of the regulatory cost is \$57,474,000, and the upper range is \$89,948,000 per annum.



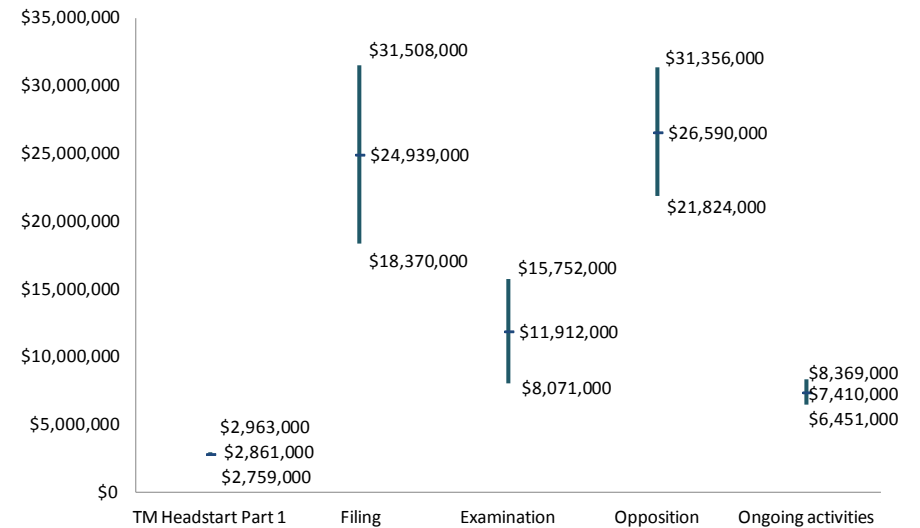
Numbers may not add due to rounding

The following graphs outline the distribution of the regulatory costs by the key activities and methods individuals and businesses use to interact with the system, and the estimated regulatory costs expressed as a range.

Distribution of regulatory costs by activity and cost type

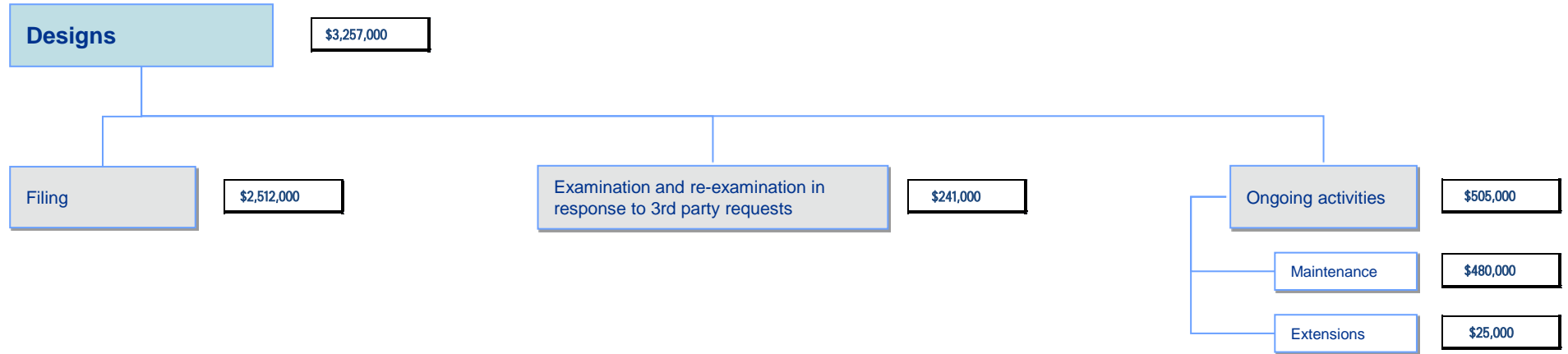


Distribution of regulatory costs by activity type (by cost range)

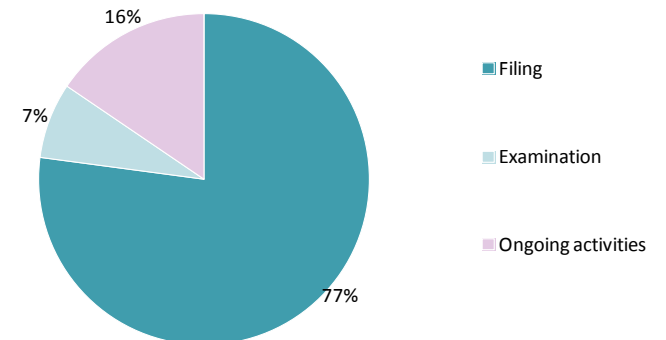


2. Key findings Designs

The cost of regulatory activities related to designs for Australian business and individuals is \$3,257,000 per annum. This figure represents the mid-point of the ranges identified for key regulatory activities. The lower range of the regulatory cost is \$2,366,000, and the upper range is \$4,148,000 per annum



Designs - distribution of regulatory costs by activity type

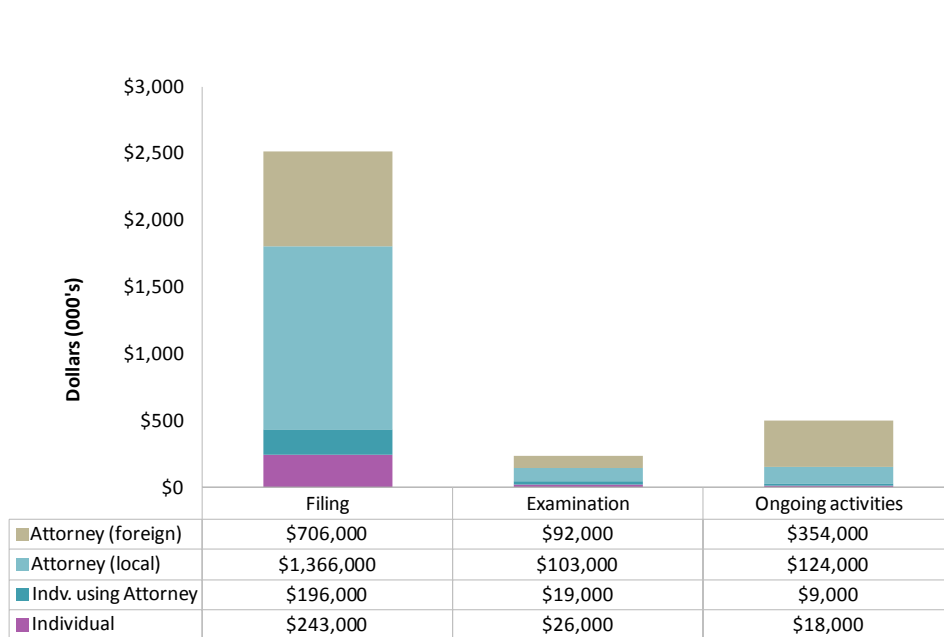


Numbers may not add due to rounding

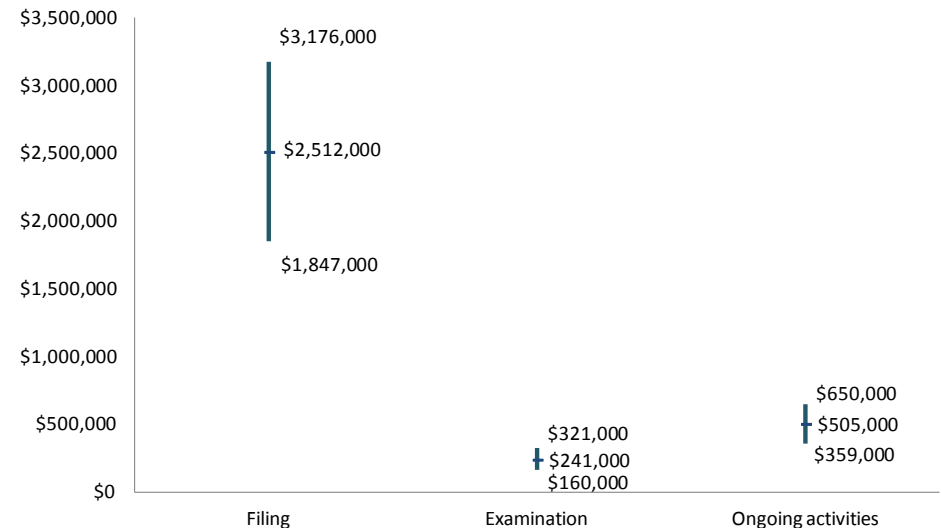
2. Key findings Designs

The following graphs outline the distribution of the regulatory costs by the key activities and methods individuals and businesses use to interact with the system, and the estimated regulatory costs expressed as a range.

Distribution of regulatory costs by activity and cost type

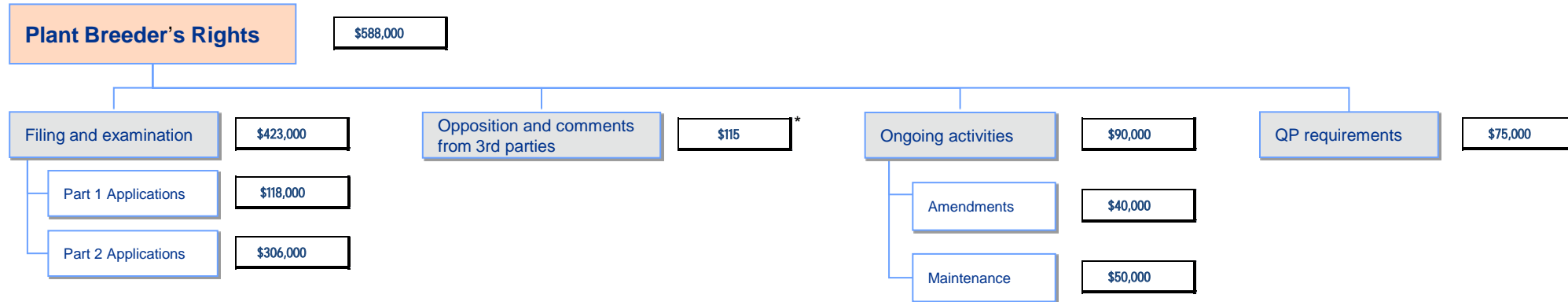


Distribution of regulatory costs by activity type (by cost range)

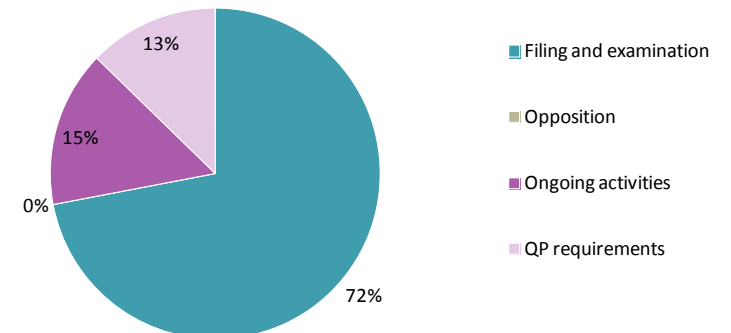


2. Key findings Plant Breeder's Rights

The cost of regulatory activities related to plant breeder's rights for Australian business and individuals is \$588,000 per annum. This figure represents the mid-point of the ranges identified for key regulatory activities. The lower range of the regulatory cost is \$328,000 and the upper range is \$848,000 per annum



Plant Breeder's Rights - distribution of regulatory costs by activity type



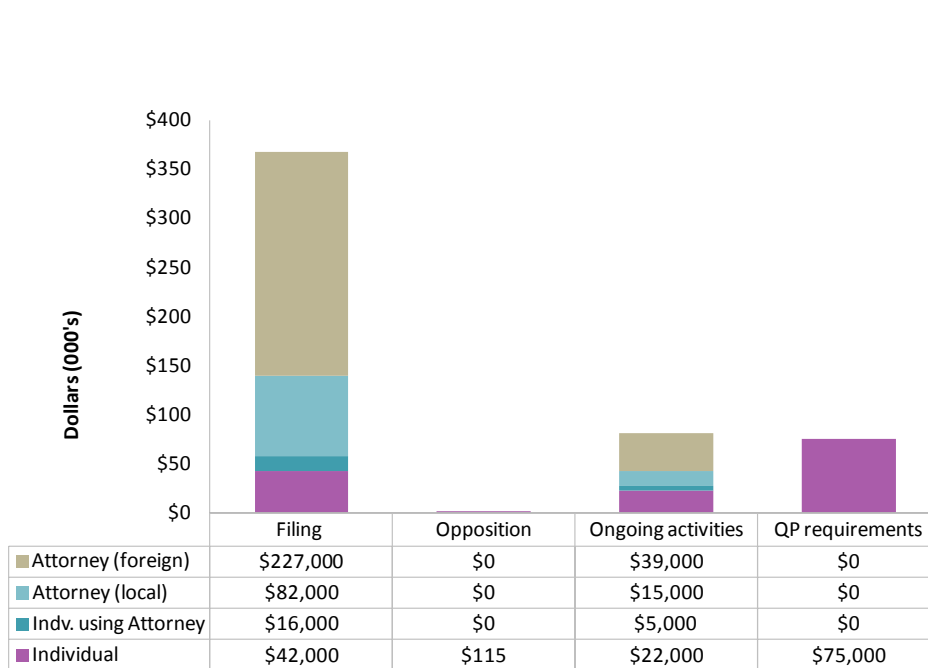
Numbers may not add due to rounding

* Note: Costs related to oppositions and comments from 3rd parties are low due to low volumes (1 in a typical year). The assumption behind this calculation is 1-2 hours of an individual's time multiplied by the assumed professional hourly cost and 2-3 hours of an agent's time multiplied by the assumed QP hourly cost.

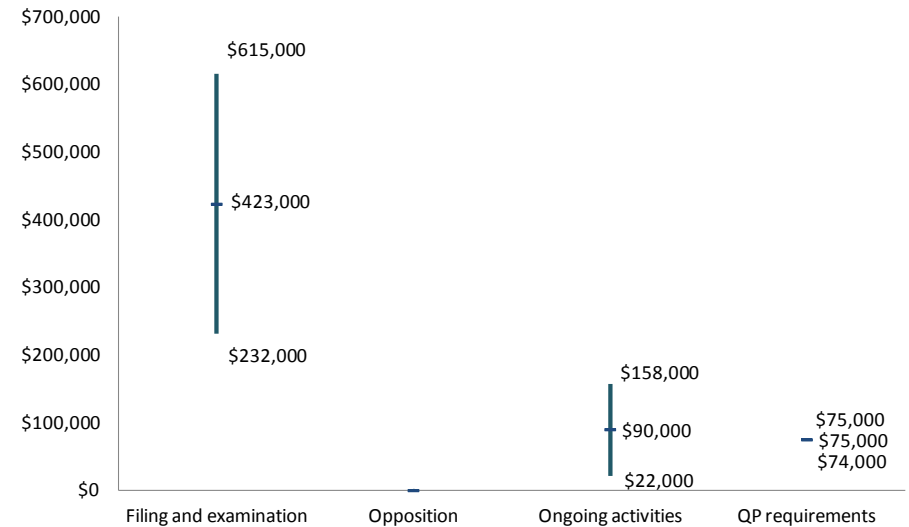
2. Key findings Plant Breeder's Rights

The following graphs outline the distribution of the regulatory costs by the key activities and methods individuals and businesses use to interact with the system, and the estimated regulatory costs expressed as a range.

Distribution of regulatory costs by activity and cost type



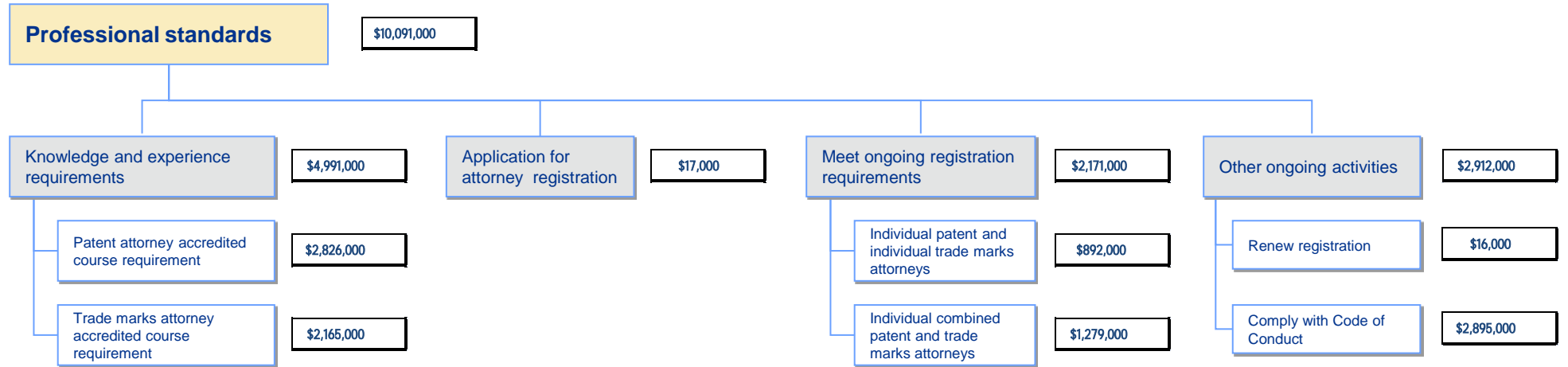
Distribution of regulatory costs by activity type (by cost range)



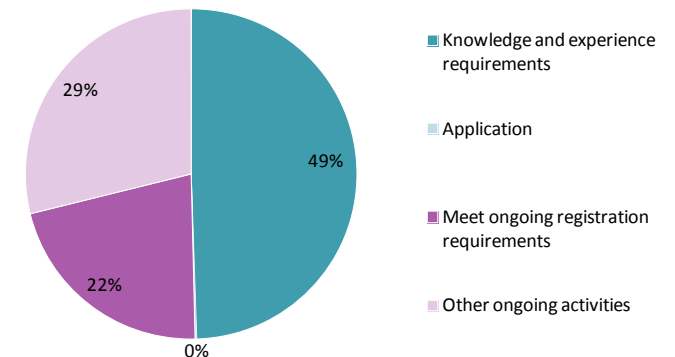
2. Key findings

Professional Standards

The cost of regulatory activities related to professional standards for Australian business and individuals is \$10,091,000 per annum. This figure represents the mid-point of the ranges identified for key regulatory activities. The lower range of the regulatory cost is \$7,831,000, and the upper range is \$12,351,000 per annum



Professional standards - distribution of regulatory costs by activity type



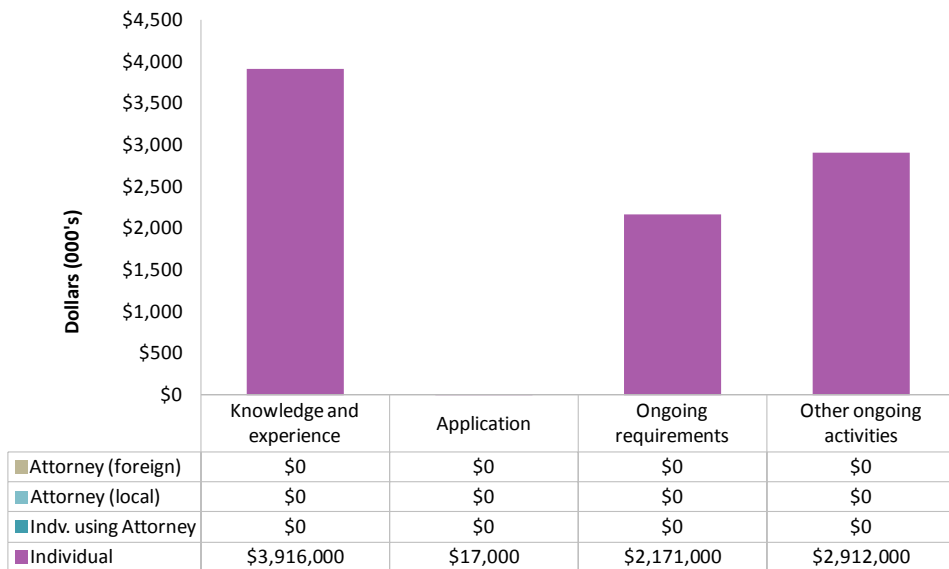
Numbers may not add due to rounding

2. Key findings

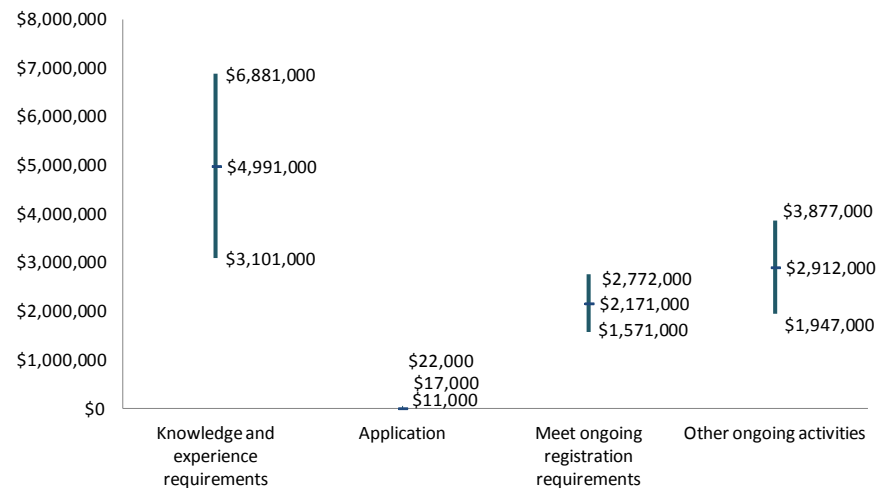
Professional Standards

The following graphs outline the distribution of the regulatory costs by the key activities and methods individuals and businesses use to interact with the system, and the estimated regulatory costs expressed as a range.

Distribution of regulatory costs by activity and cost type



Distribution of regulatory costs by activity type (by cost range)



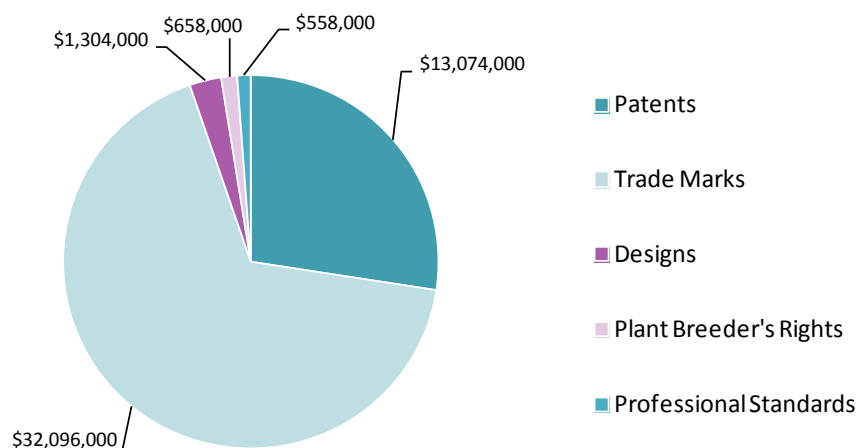
2. Key findings

Regulatory costs incorporating the financial costs

The analysis above outlines the total compliance costs of meeting IP Australia's regulatory requirements. That is the time and effort expended by Australian businesses and individuals interacting with Australia's IP system.

In addition to compliance costs, those interacting with IP Australia's regulatory system also pay fees. These fees are paid to IP Australia to recover the costs of administering the system. The table on the right outlines that Australian businesses and individuals paid an estimated \$47.7 million in fees associated with the activities included within the scope of this study. These fees represents about 19% of the total regulatory costs.

**Estimated IP Australia fees
(Australian businesses and individuals)**



Numbers may not add due to rounding

Right/activity	Compliance costs	Est. Fees	Total	Fees as a percentage of
Patents				
Filing	\$ 80,571,000	\$ 5,623,000	\$ 86,194,000	7%
Examination	\$ 14,174,000	\$ 2,252,000	\$ 16,426,000	14%
Opposition	\$ 9,266,000	\$ 97,000	\$ 9,363,000	1%
Ongoing activities	\$ 13,142,000	\$ 4,601,000	\$ 17,743,000	26%
Other		\$ 502,000	\$ 502,000	n/a
Patents total	\$ 117,153,000	\$ 13,074,000	\$ 130,227,000	10%
Trade Marks				
Filing	\$ 27,800,000	\$ 12,766,000	\$ 40,566,000	31%
Examination	\$ 11,912,000	\$ 10,625,000	\$ 22,537,000	47%
Opposition	\$ 26,590,000	\$ 1,003,000	\$ 27,593,000	4%
Ongoing activities	\$ 7,410,000	\$ 5,816,000	\$ 13,226,000	44%
Other		\$ 1,885,000	\$ 1,885,000	n/a
Trade Marks total	\$ 73,712,000	\$ 32,096,000	\$ 105,808,000	30%
Designs				
Filing	\$ 2,512,000	\$ 636,000	\$ 3,148,000	20%
Examination	\$ 241,000	\$ 122,000	\$ 363,000	34%
Opposition	\$ -	\$ 2,000	\$ 2,000	n/a
Ongoing activities	\$ 505,000	\$ 426,000	\$ 931,000	46%
Other		\$ 119,000	\$ 119,000	n/a
Designs total	\$ 3,258,000	\$ 1,304,000	\$ 4,562,000	29%
Plant Breeder's Rights				
All activities (PBR total)	\$ 588,000	\$ 658,000	\$ 1,246,000	53%
Professional Standards				
All activities (PS total)	\$ 10,091,000	\$ 558,000	\$ 10,649,000	5%
Total (\$million)	\$ 204.80	\$ 47.69	\$ 252.49	19%

Numbers may not add due to rounding