

- the current levels of welfare service provision by the non-government welfare sector;
- the adequacy of current monitoring of performance standards for services delivered by the non-government welfare sector;
- the costs and benefits provided by increased contracting out of government services;
- the role of government in standards setting and monitoring of accountability standards; and
- the role of government in measuring the efficiency and effectiveness of new service delivery arrangements.

The inquiry will focus particularly on the improved planning and provision of health and related community services, home and community care and aged care and disability services, in the context of continued government responsibility for such services.

The closing date for submissions is 1 August 1997.

#### **Senate Committee comments on Legislative Instruments Bill 1996**

In this section of the last issue of *Admin Review* it was reported that the Senate Standing Committee for the Scrutiny of Bills had reported on the Legislative Instruments Bill 1996 in its Alert Digest No 5 of 1996. The Attorney-General's responses to the Committee's comments were discussed in the Committee's Ninth Report of 1996. The Committee reports that the Attorney-General has responded to the concerns expressed in the Committee's Ninth Report.

The Committee's Fourth Report of 1997, dated 19 March 1997, discusses three issues.

- While noting the benefits of national schemes of legislation, the Committee had concerns about the exemption of these schemes from disallowance and expressed the view that the norm should be that all subordinate legislation should be subject to Parliamentary scrutiny. Precluding Parlia-

mentary power should occur only where just and weighty reasons warrant such a provision on a case by case basis. The Attorney-General's response (which is reproduced as an Attachment to the Report) notes that subclause 61(7) does not approve a general rule that subordinate legislation relating to national schemes should not be subject to Parliamentary review and disallowance, indicating that this matter should be considered when Parliament enacts the particular national scheme.

The Attorney-General also noted that his Department would be making a submission in response to the Position Paper on *Scrutiny of national schemes of legislation*. This position paper was produced by the Working Party of Representatives of Scrutiny of Legislation Committees throughout Australia and was tabled in the Senate on 16 October 1996.

- The Committee had also expressed concern about the exclusion of instruments dealing with terms and conditions of persons employed by the Commonwealth, for example, determinations under the *Public Service Act 1922* and the *Remuneration Tribunal Act 1973*. The Attorney-General's response noted that this matter had also been raised by the Senate Standing Committee on Regulations and Ordinances. The Chair of that Committee had written to the Minister for Industrial Relations seeking his agreement to withdrawal of the exemption and the Minister would be writing to that Committee about the issue.
- The third concern expressed related to the regulation by Schedule 4 of the interaction between the substantive provisions of the Bill and Rules of Court. While clause 7 provides that Rules of Court are not legislative instruments, Schedule 4 provides that the Bill, with some exceptions, can apply to those Rules as if they were legislative instruments. Schedule 4 also provides that the provisions of the Bill which are to apply to Rules of Court may be modified or adapted by regulations made under the Acts

regulating those Courts. The Committee had been concerned that modification by regulation might mean that Rules do not need to be registered and therefore are not subject to parliamentary scrutiny. While the Attorney was of the view that this would not occur, he undertook to consider an amendment to the Bill that would make clear that a modification or adaptation could not operate to affect the operation of Part V of the Act.

The Committee's Sixth Report of 1997 (dated 7 May 1997) noted that the Committee had received a letter from the Minister for Industrial Relations in response to the Committee's concerns about the proposed exemption of public sector employment instruments from the Bill. The Report attaches a copy of the Minister's letter.

The Minister advised that it was the Government's position that the exemption should be retained. He noted that the exemption was not intended to have the effect that the position in relation to instruments which are currently required to be tabled, publicly notified, scrutinised and subject to disallowance, should be changed and that the Government would introduce amendments to ensure that these processes, as they currently operate, would remain undisturbed. However, the Minister explained that the exemption would still mean that certain public sector instruments, for example, agency-level agreements under the *Workplace Relations Act 1996* and determinations made to resolve specific issues affecting particular named individuals, would be removed from the requirements of the Bill. In mentioning these examples, the Minister referred to privacy considerations and the inappropriateness of applying the sunset provisions of the Act.

### **Australian Law Reform Commission Report No 82 - *'Integrity: but not by trust alone'***

The Australian Law Reform Commission's report on its inquiries into the complaints and disciplinary systems of the Australian Federal

Police and the National Crime Authority was tabled in the Parliament on 10 December 1996.

The ALRC criticised the current Australian Federal Police (AFP) complaints system and recommended the introduction of a formal complaints procedure for the National Crime Authority (NCA). In relation to both complaints systems, the ALRC recommended that the level and effectiveness of external scrutiny should be increased by the establishment of an external complaints and anti-corruption authority, the National Integrity and Investigations Commission. In respect of complaints against the AFP, that Commission would replace the role that the Ombudsman currently performs and, in the case of complaints against the NCA which currently handles any complaints internally, it would be the first external agency to handle such complaints.

The National Integrity and Investigations Commission (NIIC) would have two separate Divisions (sharing the same infrastructure and an information system): one to deal with complaints (the Office of the Commissioner for Complaints) and the other to deal with corruption (the Office for Anti-Corruption). Under the ALRC's scheme, the NIIC would have the full range of investigative and inquisitorial powers of a royal commission. It would have different investigative procedures depending on the category of the matter, so that:

- for Category A – serious criminality, corruption and significant public interest matters – the NIIC would investigate the matter itself with the power to request that the AFP or NCA, whichever the investigation relates to, provide personnel and/or facilities and equipment;
- for Category B – misconduct – the NIIC could refer the matter to the AFP or NCA for internal investigation, conduct a joint investigation with the relevant agency, investigate the matter itself or refer it to the head of the agency for consideration and response;
- for Category C – customer service matters – the AFP and NCA would deal with these