

Report of the Review of Scales of Legal Professional Fees in Federal Jurisdictions

On 11 May 1998, the Attorney-General released the report of the Review of Scales of Legal Professional Fees in Federal Jurisdictions, which was set up to review comprehensively the fees scales which apply in federal courts with a view to developing a simpler structure and more appropriate charging rates.

The review was chaired by the Attorney-General's Department and comprised representatives from a range of interested bodies, including the High Court, the Federal and Family Courts and the Law Council of Australia.

The structure of the fee scales proposed in the report is quite different from that currently in use. The report recommends new fee scales which will provide incentives to encourage parties to settle at early stages rather than to carry on with unnecessarily costly proceedings. The proposed scales also encourage solicitors and their clients to agree to fee scales at the outset of their relationship rather than relying on Court-set scales.

It will be up to each Federal Court—the Federal Court, the Family Court and the High Court—whether to adopt the recommendations of the report.

High Court, Federal Court and AAT biennial increase in fees

In 1996, new regulations in the *High Court of Australia (Fees) Regulations*, in the *Federal Court of Australia Regulations* and in the *Administrative Appeal Tribunal Regulations* provided for biennial increases for specified court fees. The first of these increases took effect on

1 July 1998. Details of the new fees were gazetted on 3 June 1998.

In the case of the High Court and the Federal Court, the fee for each specific type of filing, service, execution etc have been calculated, as well as the amounts for hearing, setting down and daily hearing fees. In the case of the Administrative Appeals Tribunal, the new application fee, lower application fee and standard application fee have been calculated.

Senate Committee inquiry into the Contracting Out of Government Services

On 14 May 1998, the Senate Finance and Public Administration References Committee presented the Second Report of its inquiry into the contracting out of Government services.

The Committee's First Report of its inquiry was reported on in *Admin Review* 49. That Report dealt specifically with the contracting out of information technology services. In the Second Report, the Committee addresses the broader issues associated with outsourcing generally.

Accountability through Parliament

The Report discusses the role of Parliament as a vital mechanism for public sector accountability and notes that current public sector annual reporting mechanisms may need to be modified to ensure that reporting of contracted out services provides sufficient information to the parliament. The Committee suggests that once a contract has been awarded, the bulk of its provisions should be in the public domain and notes that other jurisdictions have no problems with publishing contracts.

Accountability through audit

The Committee recommends, as a bare minimum, that standard contract clauses, tailored as necessary to reflect the particular circumstances of each contract, be used as the means of providing audit access to relevant third party information and records.

Accountability through the Freedom of Information Act

The Committee noted that the administrative law provisions most at risk in the case of contracted government services are access to the Ombudsman and to freedom of information.

Citing the Administrative Review Council Discussion Paper on *The Contracting Out of Government Services: Access to Information*, the Report endorses the view expressed by the Council in that paper on the need to balance the desirability of maintaining accountability through information access rights in a contracting situation and the interests of the contractors, who might fear disclosure of commercially sensitive information.

The Report notes the options identified by the Council to ensure that access to information is not lost or diminished by the contracting out of services, as set out in the Council Discussion Paper. The report supports the Council's preferred option of an amendment to the FOI Act deeming documents in the possession of the contractor that relate directly to the performance of the contractor's contractual obligations to be in the possession of the government agency, and therefore accessible under the FOI Act with the current exemptions. Noting that while this is not a perfect solution, as the Council pointed out, its

success will depend on the contractor's adherence to its record-keeping obligations which can be monitored by periodic auditing.

Accountability through the Ombudsman

While the Committee felt that complaints against service providers should be dealt with by those service providers in the first instance, where service recipients fail to receive satisfaction from the service provider, they should have the right to complain to the Ombudsman. As an interim measure, the Committee recommended an extension of the Ombudsman's jurisdiction on a case-by-case basis for sensitive areas of service delivery. It will revisit at a later stage the question whether a legislative extension of the Ombudsman's jurisdiction to cover all contracted out government services is warranted.

Government Response to the Report of the Joint Select Committee on Certain Family Law Issues

The Joint Select Committee's report on its inquiry into the operation and effectiveness of the Child Support Scheme was tabled in December 1994. The former Government tabled an interim response in March 1995 which addressed 53 of the 163 recommendations. In November 1997, the Government tabled its response to the remaining Joint Committee's recommendations.

The Government's responses to the major recommendations concerning the review of Child Support Agency decisions are: