



## ATTORNEY GENERAL; MINISTER FOR COMMERCE

Our Ref: 44-12799

Mr Peter Abetz MLA  
Chair  
Joint Standing Committee on Delegated Legislation  
GPO Box A11  
PERTH WA 6837

Dear Mr Abetz

### **GOVERNMENT RESPONSE TO REPORT 75: IDENTIFYING A SYSTEMIC ISSUE ARISING OUT OF NINE COURT AND TRIBUNAL INSTRUMENTS**

I refer to the tabling of the above Report on 18 September 2014. The following is the Government response to the three recommendations contained in Report 75: *Identifying a Systemic Issue Arising out of Nine Court and Tribunal Instruments* in accordance with Standing Order 191(1).

#### **Recommendation 1**

*The Committee recommends that the Department of the Attorney General provide Explanatory Memoranda showing percentages of cost recovery achieved where an activity associated with a fee in each court or tribunal is sufficiently identifiable and quantifiable.*

The Department of the Attorney General in future Explanatory Memoranda will show percentages of cost recovery achieved where an activity associated with a fee in each court is sufficiently identifiable and quantifiable.

#### **Recommendation 2**

*The Committee recommends that the Department of Treasury identify those agencies that lack homogeneous services to the Department of the Attorney General. The Committee further recommends that the Department of the Attorney General then engage in a dialogue with those identified agencies as to how they cost such services.*

Officers from the Department of the Attorney General and the Department of Treasury have met and discussed whether there are agencies that lack homogeneous services from which the Department of the Attorney General could obtain a benefit by engaging in dialogue. The Department of Treasury confirmed that they are unaware of any such agencies with which officers from the Department of the Attorney General could discuss how they cost services.

I also note that the Committee's Report shows that no other jurisdiction in Australia is able to allocate court costs at an individual 'fee for service level', and the Committee's view that: "in contrast Western Australia appears more rigorous in that it could at least produce a costing spreadsheet. No other jurisdiction was able to provide a sample spreadsheet".

Consequently, no further action will be taken in respect of Recommendation 2.

### **Recommendation 3**

*The Committee recommends that the Department of the Attorney General request assistance from the Department of Treasury to begin the development of a 'fee for service' cost-demand model for court and tribunal fees.*

Officers from the Department of the Attorney General have met with the Department of Treasury to discuss this issue. Treasury officers advised that if the Department of the Attorney General formally made the request it would take the Department of Treasury approximately 12 months to determine if it was possible to develop such a model and that this would need to wait until other work priorities had been finalised.

In this context it is noted that the Department of the Attorney General has already conducted a pilot project, to establish a fee by fee cost setting process for the District Court. This project was abandoned because it was difficult to verify the assumptions that needed to be made to cost on a fee by fee basis and to further develop the model would have been prohibitively expensive.

The methodology used by the Department of the Attorney General to allocate and determine the costs associated with the fees in the nine instruments is consistent with the State Government's Costing and Pricing Guidelines. The Department's model for allocating and determining the costs associated with the court fees is sufficiently robust on an individual court by court level as well as differentiating costs between civil and criminal jurisdictions with a specific court.

It is noted that in Finding 3 there was no evidence of cross-subsidisation in the costing of fees either at a whole of court or individual fees for service level. Further, it is noted that, "Based on the overall level of 'whole of court and tribunal' recovery the Committee doubts that fees are currently over-recovering."

Furthermore the Committee in its report agrees that for those fees that lack a standardised repeatable process, this complexity necessarily makes the allocation of costs to a specific fee impractical.

Consequently, Recommendation 3 is not supported. I do not intend in the current budgetary circumstances that the Government wastes further resources in attempting to develop an alternate model when it is obvious the existing model is sufficiently robust.

However, as has occurred historically, action will be taken to improve the costing model for court and tribunal fees on an annual basis and the Department of the Attorney General will seek the advice and assistance of the Department of Treasury as part of that process as appropriate.

Yours sincerely



Hon. Michael Mischin MLC  
**ATTORNEY GENERAL; MINISTER FOR COMMERCE**

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