



ATTORNEY GENERAL; MINISTER FOR COMMERCE

Our Ref: 44-07937



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

Dear Mr Abetz

GOVERNMENT RESPONSE TO REPORT 63

I refer to the tabling of the above Report on 19 September 2013. The following comprises the Government response to the Report in accordance with Standing Order 191(1).

The Report contained two recommendations:

Recommendation 1

The Committee recommends that the Department of the Attorney General develop a costing model for court fees that demonstrates at or below cost recovery for each individual fee and report to the Legislative Council on its progress by 31 March 2014.

Recommendation 2

The Committee recommends that the notices of motion previously placed against the following instruments:

- Children's Court (Fees) Amendment Regulations (No. 2) 2012;
- Civil Judgments Enforcement Amendment Regulations 2012;
- Coroners Amendment Regulations 2012;
- District Court (Fees) Amendment Regulations (No. 3) 2012;
- Evidence (Video and Audio Links Fees and Expenses) Amendment Regulations (No. 2) 2012;
- Magistrates Court (Fees) Amendment Regulations (No. 3) 2012;
- State Administrative Tribunal Amendment Regulations (No. 3) 2012; and
- Supreme Court (Fees) Amendment Regulations (No. 3) 2012,

be discharged from the notice paper.

With regard to Recommendation 1, the Department of the Attorney General has an existing costing model for court fees, which is consistent with the Government's current policy on fee setting and the associated cost of services, largely contained in the *"Costing and Pricing Government Services: Guidelines for use by Agencies in the Western Australian Public Sector"*, 5th edition April 2007, published by the Department of Treasury.

Furthermore, legal advice from the State Solicitor's Office that was provided to the Joint Standing Committee is clear that:

...it is sufficient if the fee imposed under each relevant Act as a whole reflect a reasonable estimation of the cost of the operations of the relevant court or tribunal under the Act, and there is a rational basis for the division of those estimated costs between the different kinds of fee. ...it is not necessary that the revenue for particular fees be matched to the exercise of the particular functions to which those fees relate.

The appropriate approach for determining fees, as outlined in the guidelines, is for a fee to be set on the basis that gives a reasonable expectation that cost recovery will not be exceeded. The Department's agreed and applied principle is to maintain the existing level of recovery when a fee is to be increased.

The Department arrived at this principle by:

- Examining existing fee structures within all jurisdictions to ensure compliance to the guidelines;
- Basing the cost of service calculations (for groups of services or where possible individual services) on the most recently completed financial year data;
- Estimating current year and future year revenues from expected court fees;
- Calculating cost recovery associated with major costing groups by jurisdiction and where possible for individual fees; and
- Comparing this to the previous year.

Furthermore, the Department has 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.

Consequently, I do not support Recommendation 1 on the basis that:

- The methodology used by the Department of the Attorney General to allocate and determine the costs associated with the fees in the eight instruments is consistent with the State Government's Costing and Pricing Guidelines.
- Legal advice from the State Solicitor's Office indicates that:
 - the fees contained in the amendment regulations are legally valid and that the practice of assessing cost recovery at a higher level than a fee for fee basis is appropriate;
 - it is not necessary that the revenue for particular fees be matched to the exercise of the particular functions to which those fees relate; and
 - cost recovery rates in most areas for court fees are only 20-30% and are quite clearly not over recovering costs.

In relation to Recommendation 2, the Government notes that the Committee discharged the notices of motion.

Yours sincerely



Hon. Michael Mischin MLC
ATTORNEY GENERAL; MINISTER FOR COMMERCE

19 NOV 2013