



Australian Government
Attorney-General's Department
Access to Justice Division

12/18496-06

7 May 2013

Ms Julie Dennett
Committee Secretary
Senate Standing Committee on
Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Ms Dennett

Inquiry into the impact of federal court fee increases since 2010 on access to justice in Australia

Thank you for your invitation for the Attorney-General's Department to respond to statements about the Department included in evidence received from the Law Council of Australia.

Paragraph 23 of the evidence received from the Law Council of Australia includes a statement that the former Attorney-General provided a commitment to making public the review of 2010 changes to court and tribunal fees. The Department cannot agree with this statement and points to the following documents on the record:

- On 22 October 2010, former Attorney-General McClelland wrote to the then President of the Law Council of Australia to propose a commitment to monitor the impact of the new fees in the federal courts, and for the Attorney-General's Department to conduct a review of the new fee arrangements after the regulations have been in place for 12 months. This review was to include consultations with the Law Council. This letter did not refer to making the review public.
- On 21 June 2011, the Department wrote to stakeholders, including the Law Council of Australia, inviting submissions on the fee changes as part of the review. This letter made clear that the outcome of the review was not intended to be publicly available.
- On 19 August 2011, former Attorney-General McClelland wrote to the then President of the Law Council of Australia recognising the Law Council's stated position about publication, but outlining the former Attorney-General's view that outcomes derived from the review process would be used for departmental purposes and input had been sought on this basis.

Paragraph 23 of the evidence received from the Law Council of Australia also refers to the Department's response to the Senate order of 7 February 2013. The Attorney-General provided his response to the Senate order on behalf of the Government, which was tabled on 27 February 2013.

Paragraph 24 of the Law Council's evidence seeks to summarise the 'findings' of the review based on the Government's response to the Senate order. Recognising that there is no formal report of the Department's review, the Government's response to the Senate order provides information to outline the way in which key issues arising from the 2010 changes, including stakeholder suggestions to the review, have been addressed by measures included in the 2013 framework. In particular:

- Paragraph 24(b): the Department notes that the Government's response to the Senate order did not include an assessment that, in many cases, new flat fees impeded the provision of justice.
- Paragraph 24(c): the Department does not agree with the statement that it considers flexible and alternative payment options as less important following reinstatement of fee waivers and exemptions. The Government's response to the Senate order indicates that it is anticipated there would be less pressure for the courts to introduce a variety of flexible payment options as result of fee exemptions, and that the Department will continue to monitor and discuss flexible payment options with the courts.

The Department would be happy to elaborate on any aspects of this response at an appearance before the Committee.

Yours sincerely

Louise Glanville
First Assistant Secretary
Access to Justice Division