provide for review. The Assistant Treasurer replied that he could assure the Committee that he had taken careful account of its concerns but remained of the view that those particular decisions should not be subject to external merits review. The Assistant Treasurer further advised that, should circumstances change and a need for merits review arise, he would be happy to reconsider the matter. The Attorney-General also wrote to the Assistant Treasurer, noting that the matters which he raised in opposition to external review were individually and cumulatively matters of significance. However, the Attorney-General could not agree that these factors weighed heavily against external merits review. The Attorney-General advised that similar arguments could be advanced for avoiding external review of many other administrative decisions, including ones of greater economic or political significance. The Attorney-General advised that he regretted that the Assistant Treasurer had not accepted his advice on this occasion.

The matter must now stand for the time being. It is, as I say, disappointing that the regulations cannot be amended and that the Committee must report to the Senate that the regulations are deficient in respect of independent external merits review. Nevertheless, the Committee notes that its concerns were endorsed by the President of the Administrative Review Council and by the Attorney-General and the Committee is grateful for this. The Committee will continue to monitor any amendments of the principal Regulations with a view to correcting this breach of its principles.

## Report of the Law Reform Committee of the Victorian Parliament on Regulation Efficiency Legislation

The Report of the Law Reform Committee of the Victorian Parliament on Regulation Efficiency Legislation (October, 1997) examines the use of legislation directed towards making government regulatory processes more efficient.

An alternative compliance regime is described in the Report as a mechanism for a person to meet regulatory objectives using means other than those prescribed in the relevant subordinate legislative instrument. In granting an alternative compliance mechanism, the government does not exempt a business from the regulations; rather, business may propose and government may approve an alternative arrangement which departs from the prescriptive details of the regulation to meet the objectives of the regulations.

The Report notes that, historically, the scope of the concept of Regulatory Efficiency Legislation has always been confined to subordinate legislative instruments. The Committee decided that extending the concept to primary legislation was not warranted because the concept evolved out of the system for control of subordinate instruments, because much of the complaint about over-regulation is directed at subordinate legislative instruments and because the Committee believed that there would be objections in principle to allowing an individual or business to be exempted from primary laws by way of an alternative compliance regime.

The Report notes the context of regulatory reform, including developments in the OECD, Canada and the USA, competition policy reform in Australia, mutual recognition and the report of the Small Business Deregulation Task Force. The Report also looks at existing models for regulatory efficiency legislation, including the accredited licensee system under the Victorian *Environment Protection Act 1970*, third party certification schemes under Building legislation and the compliance and enforcement module of the National

Road Transport Law. Other areas noted are regulatory impact statements and models such as the Commonwealth Legislative Instruments Bill.

Under the Committee's model, the Minister responsible for Regulatory Efficiency Legislation (REL) and the Minister responsible for the regulation that is the subject of an alternative compliance mechanism (ACM) act jointly as the decision makers in relation to granting the ACM. The REL would contain minimum criteria for the approval of ACM and criteria for approval would be published, and public comment invited. When approved, the ACM would be tabled in both Houses of Parliament. The Scrutiny of Acts and Regulations Committee would scrutinise the ACM using similar criteria to those it uses for subordinate legislation. Breach of an ACM would be treated as a breach of the original regulation, but the responsible Ministers would also have a discretion to impose additional civil penalties if necessary.

The Minister responsible for the regulation, in consultation with the Minister responsible for REL, can vary, suspend or terminate an ACM, as long as reasonable notice has been provided, unless notice is waived where public interest warrants.

The Committee made a number of other recommendations.

***The Government Response to the Law Reform Committee's Report on Regulatory Efficiency Legislation***

The Government response to the Law Reform Committee's Report was handed down on 20 May 1998. The Government referred to the recommendation that REL be enacted to allow businesses to obtain approval for ACMs to operate in place of prescriptive regulations and noted that this is consistent with the Government's small business policy.

The Government supported the recommendation that a business seeking to implement an ACM be able to apply to the responsible Minister, but felt that the requirement to obtain the approval of two Ministers may be too burdensome.

The Government supported the recommendation that public comment be sought on approval criteria and proposed ACMs. It also agreed that decisions on applications should be published and that ACMs be subject to review by the Scrutiny of Acts and Regulations Committee, which would have the same power to report and recommend disallowance as it has for regulations. While the Government agreed that ACMs should, as a general rule, be public documents, it was also of the view that businesses may have to make a commercial decision as to whether they wish to disclose confidential information to the degree required in the Report.

The Government supported the recommendations that the Minister responsible for the regulation should have the power to revoke an ACM after giving notice to the business setting out reasons and giving the business the opportunity to make submissions. Where there is a substantial risk to the public, the Minister should be able to suspend the ACM for 14 days without notice.

The Government Response referred to a number of other recommendations of the Report.
The Committee's internet address is: http://avoca.vicnet.net.au/~lawref/

## 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.