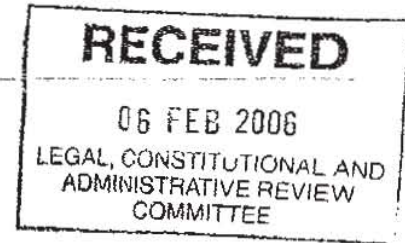


**Jaana Hokkanen**



**From:** Martin Taylor  
**Sent:** Monday, 6 February 2006 3:10 PM  
**To:** LCARC  
**Cc:** Larissa Waters  
**Subject:** Submission to the Inquiry into the accessibility of administrative justice



## National Parks Association of Queensland Inc.

www.npaq.org.au  
 PO Box 1040, Milton Centre Q4064  
 ABN 60 206 792 095  
 Tel. +61 (0) 7 3367 0878  
 Fax +61 (0) 7 3102 6233

The Research Director  
 Legal, Constitutional and Administrative Review Committee  
 Parliament House, George Street  
 BRISBANE QLD 4000  
 Email: lcarc@parliament.qld.gov.au  
 By email ONLY

Dear Director

The National Parks Association of Queensland (NPAQ) is a non-profit, public-interest association incorporated under the Associations Incorporation Act 1981 for the purpose of promoting National Parks in Queensland.

Our ability to pursue our mission effectively is hampered by the excessive costs and unreasonable limitations on access to government information through the Freedom of Information Act (FOIA) and to judicial review under the Judicial Review Act (JRA).

It is quite right that the Committee has linked these two important Acts together in this inquiry as both are key to access to justice and both work or should work together. In particular, a clear process for making and documenting decisions and having those records of decision open to public access would greatly reduce the time and cost of having to do discovery in the context of a lawsuit and perhaps prevent lawsuits being filed.

### RECOMMENDATIONS:

#### JRA: COSTS

NPAQ feels that the costs of bringing suit under the JRA provide a significant barrier to public-interest non-profit groups trying to protect the public interest against poor government decisions or inaction. Filing fees are unreasonably high especially for small community groups, and could be entirely obviated if agencies were required to publish records of decision (see below). Records of decision should become the basis of any judicial review documentary record and the court would not have any cost to bear in building a separate case file- they would simply have to refer to and analyse the already existing record of decision to arrive at a conclusion if the decision was in accord with law or not. Subsidiary filings would be minimised and the costs of litigation greatly reduced. We believe that all public-interest non-profit groups should enjoy free representation and exemption from court fees and costs regardless of outcome, unless it could be clearly shown that a case was brought vexatiously or frivolously.

Judicial review could also be streamlined and unnecessary litigation avoided by providing a tribunal-review layer between the decision maker and the courts. Applicants could appeal to this tribunal to review a decision. The reviewing tribunal would review the record of decision, and come to a judgement either to remand the decision or uphold it. If applicants are still unsatisfied with the tribunal decision, they could then have recourse to the courts for redress.

#### JRA: RECORDS OF DECISION

Statements of reasons are a minimum requirement for public access to justice. All final decisions of government agencies to adopt a plan, issue a permit, licence, lease, change zoning etc should be supported by a Record of Decision (ROD). The ROD is the entire dossier of documents considered by the decision maker in arriving at a decision. This record should be open access to the public by either posting to a website or at a minimum by web-publishing an index of documents that could be obtained under FOIA. Exempt material would be marked as such in the index or redacted in the final copy posted to the website. Such open access to the entire record of documents used by a decision maker to arrive at a decision would prevent a great deal of unnecessary litigation under the JRA and unnecessary applications under FOIA. Potential applicants would be able to see the entire decision record and make a n informed opinion about the validity of the decision under the Act without recourse to costly legal discovery. The concept of records of decision open to public view is practiced in US law.

#### FOIA: FEES

NPAQ recommends fee waivers for bona-fide non-profit, public interest, non-government organisations (NGOs). A process should

be permitted whereby NGOs can apply to the Information Commissioner to be classified as a non-profit or charity acting in the public interest. Once classification is approved, all fees for FOIA requests would be waived including application fees. Public interest non-profit NGOs are the backbone of a democracy and the major vehicle through which citizens can act to seek redress for poor or unlawful government decisions. The US law of the same name has just such a provision and it is very successful in delivering greater access to justice. Concerns about "frivolous" or excessive FOIA applications have been shown to be unwarranted.

#### FOIA: FULL ONLINE POSTING OF RECORDS OF DECISION

Fees and manpower to fill FOIA requests would largely be obviated if government enshrined in legislation a program with deadlines for web-publishing ALL non-exempt documents leading to a decision when a decision has been reached. There is no restriction imposed by technology in this respect. Fast electronic scanners and software for complex electronic filing of large volumes of documents are all available. To the extent that information is posted online, FOIA requests for searches and making hardcopies, and appeals for review of FOIA decisions would become largely unnecessary.

#### FOIA: EXEMPT MATERIAL

NPAQ agrees that only material that is likely to result in actual harm (unfair loss of business, disruption of delicate negotiations, chilling effect on confidential sources, affecting a police investigation etc) as a result of release should be exempt rather than exemptions for whole classes of documents.

#### FOIA: SPATIAL DATA

Open access to spatial data is fundamental to the ability of non-profits to understand what is being done or allowed to be done by governments, and where. Open access to spatial data would also allow NGOs to ground-truth activities or data to provide an independent check on accuracy of government spatial data.

Spatial (or GIS) data area treated to an entirely different regime of secrecy, fees and licences than other government information.

No government-sourced information should be treated as a "product" for commercial sale. Citizens have already paid for its production through taxes. This is particularly so for spatial data which can be provided essentially costfree by posting to websites as for example done by Geoscience Australia. Nowhere is the barrier to public access more evident than in Natural Resources and Mines Dept where NGOs and citizens have to pay a fee of \$2000 to get the cadastral database for Queensland for example. All spatial data that is in final form for release should be posted online for easy access. The whole complex "licensing" regime practiced in respect of spatial data would be made irrelevant if this was done. As for other material FOIA exemptions could still apply where disclosure would be likely to result in harm, as for example revealing the nest locations of an endangered bird at risk of poaching.

#### FOIA: ORGANISATIONAL STRUCTURES

It is quite unreasonable that the directory of responsible staff in an agency like the Environmental Protection Agency not be posted online for ready reference so that citizens can reach the appropriate responsible person on a specific issue. Universities all have faculty "phonebooks" online, why can't public agencies? The alternative is that citizens are forced to call a central operator and guess at the organisation structure and who might be the person they want to contact.

Yours sincerely,



Martin Taylor PhD  
Executive Coordinator