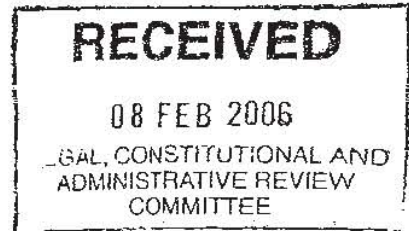


No 5



Legal, Constitutional and Administrative Review Committee

THE ACCESSIBILITY OF ADMINISTRATIVE JUSTICE

RESPONSE FORM

This form can be used to send your views to the committee. Please send it to:

The Research Director
Legal, Constitutional and Administrative Review Committee
Parliament House
George Street
Brisbane Qld 4000
Or fax it to: 07 3406 7070
Or email it to: lcarc@parliament.qld.gov.au

Your details

Name: Alec Lucke

Address: _____

Contact number: _____

Email: _____

Submissions close on Friday, 17 March 2006

Extensions to the closing date may be given. If you need more time to make a submission, or if you require further information, contact the committee's secretariat on (07) 3406 7307

Copies of this paper and all other LCARC publications are available on the Internet via the committee's home page at: www.parliament.qld.gov.au/committees/legalrev.htm

The committee's discussion paper identifies five key issues for discussion and response. Please send the committee your views about those key issues – by filling out this form; or by sending the committee a letter or email.

Key issue 1: What is the effect, if any, of the fees and charges regime under the FOI Act on access to information and the amendment of documents? Is amendment of the FOI Act and/or administrative reform necessary?

Factors for consideration include:

- processing charges (impact of introduction, amount, whether applicants are encouraged to specify information they require, appropriateness of two-hour threshold, effect on timely release of information)
- assistance provided by agencies to applicants (consultation with applicants to reduce charges)
- agency filing systems (effect of processing charges, safeguard on access charges regarding documents lost or misplaced)
- access charges (possible capping, internal reviews of decisions on charges, accuracy of preliminary assessments)
- quantum of access charges for different classes of information/applicants (e.g. commercial information, public interest applicants)
- deposits (possible refunds, consistency in requirement for payment of deposit)
- reduction or waiver of charges (circumstances in which available, application process)
- review of decisions regarding FOI fees and charges
- the reporting requirements contained in section 108
- benefits/deficiencies of current regime
- fairness/efficiency of current regime

Key issue 1: The estimate of charges for FOI may inhibit the applicant & force a reduction to the amount of material sought. Where there is a dispute about the amount of documentation available the applicant has little option but to accept that certain documents may not exist or cannot be located.

Key issue 2: Do costs associated with an application under the Judicial Review Act affect genuine challenges to administrative decisions and actions? If so, can this be addressed?

Factors for consideration include:

- alternate and less expensive processes (alternate dispute resolution, alternative methods of case management such as problem-solving judicial case management)
- legal representation (assistance required by litigants in person, ways in which an apparent high level of unmet demand for legal assistance might be met)
- section 49 costs orders (width of discretion for appropriate costs orders, legislative guidance regarding the courts' discretion, 'upfront' orders for 'public interest' applicants)
- standing and costs
- public interest matters (costs funding)
- model litigant principles

The effectiveness of judicial review has to be questioned as it is not cost effective. Judicial Review serves only to allow the government to argue that they provide a means by which a challenge can be mounted against an administrative decision. In actual fact there is no merits review & judicial review provides no guidance of the matter disputed.

Key issue 3: Is information relevant to, and about, government decisions and actions adequate and accessible? How can it be improved?

Factors for consideration include:

- the adequacy of written statements of reasons under Part 4 of the Judicial Review Act
- the availability of information and preliminary advice about administrative justice mechanisms
- information and assistance about procedural requirements
- government information available free of charge
- co-ordination between agencies in the provision of information
- compliance by agencies with statutory requirements, such as the publication of statements of affairs

information about government decisions is not adequate. The consultation process is a farce & the weak & disadvantaged are seen as fair game. DNR & M promote the concept of "dot in a farmer." Our problem is the culture. We need in-depth review of every government agency, with a view to greater accountability & a fresh co-operative approach.

Key Issue 4: Can a diversity of people access administrative justice? If not, how can this be improved?

Factors for consideration include:

- people who may have difficulty accessing administrative justice
- factors which may affect access to administrative justice by those people (socio-economic disadvantage, cultural background, remoteness from mainstream legal services)
- assistance provided to access administrative justice
- persistent applications to courts
- persistent applications to agencies

As a person from a group who has exhausted every avenue of administrative justice I have to say that conspiracy & political intervention flourishes. If you are in conflict with the Government & they may lose, they will legislate. In franker moments senior people within Departments will tell you you cannot beat them. Legal advice warns against trying.

So-called independent bodies like the Ombudsman - must be exactly that - fearless & passionate, but - Cabinet appoints & calls the tune. The system of administrative justice in Queensland is hopelessly compromised. Gaining access is not helpful if the system fails you.

Topic 5: Is access to administrative justice effective and efficient? Is reform necessary?

Factors for consideration include:

- the complexity and changed nature of government
- the interrelationship of the FOI Act and Judicial Review Act with other administrative law mechanisms
- the response of administrative justice 'remedies' to grievances
- time limits imposed by the FOI Act
- time limits imposed by the Judicial Review Act

Reform is not a strong enough word. We need to go right back to basics. We need to build an accountable system with checks & balances from start to finish. Bandaid or cosmetic surgery will not help. I do not believe that any State Department would survive a proper inquiry any better than the Health Dept. In the past we have seen enquiries in Police, Children Services, & now Health.

I am sorry to be so negative but I have been widely exposed to the matters under review & in the absence of administrative justice the only remaining option is to walk away or take legal action at the potential risk of self destruction.