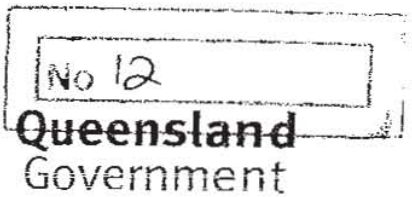
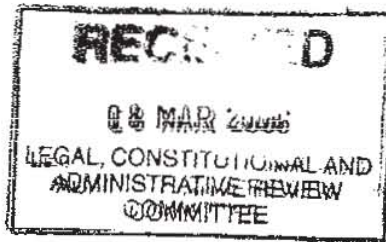




Hon Henry Palaszczuk MP
Member for Inala



Minister for Natural Resources,
Mines and Water

Ref CTS 08028/05

- 7 MAR 2006
Dr Lesley Clark MP
Chair
Legal, Constitutional and Administrative
Review Committee
Parliament House
Brisbane Qld 4000

Dear *Lesley* Dr Clark

I refer to your letter of 1 December 2005 concerning the Discussion Paper prepared by the Legislative, Constitutional and Administrative Review Committee, *The Accessibility of Administrative Justice*.

Thank for the invitation to make submissions in relation to this matter. Please find attached a completed response form.

If you require any further information regarding this matter, please do not hesitate to contact Mr Robert Zubrinich, Manager, Administrative Review of the Department on telephone 389 63705.

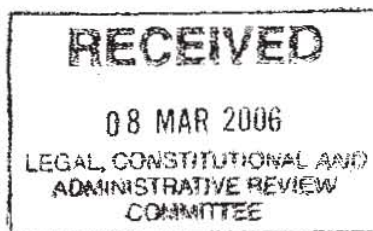
Yours sincerely

Henry Palaszczuk MP
Minister for Natural Resources,
Mines and Water

Att

Level 13 Mineral House
41 George Street Brisbane Qld 4000
PO Box 15456 City East
Queensland 4002 Australia
Telephone +61 7 3896 3688
Facsimile +61 7 3210 6214
Email NRMW@ministerial.qld.gov.au
Website www.nrm.qld.gov.au

No



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: Hon H Palaszczuk MP, Minister for Natural Resources, Mines and Water
Address: PO Box 15456, City East Qld
Contact number: 3896 3688
Email: nrm@ministerial.qld.gov.au

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

The processing charges levied under the FOI Act encourage applicants to limit the terms of their applications, and to identify more clearly the documents to which they seek access. This contributes to the efficiency and responsiveness of the FOI Process. Therefore, in this regard, the charging regime has had a beneficial impact on the administration of FOI in Queensland.

Furthermore, after some initial teething difficulties, the charging regime has been bedded down and is operating well. Also, the evidence available to NRMW does not indicate that the charging regime has had a significant effect on members of the public's willingness to pursue FOI requests. Indeed, NRMW's FOI workload has remained relatively constant at approximately 250 applications for each of the last four years.

However, the charging regime has added significantly to the complexities involved in processing FOI requests. For example, distinguishing between personal and non-personal affairs documents as the basis of a processing charge can be laborious and time-consuming. While this is an acceptable cost for personal/non-personal applications, the introduction of different fee structures for different categories of documents would likely impose a very heavy burden on the resources of agencies which deal with FOI requests. This effect would potentially be multiplied by the fact that documents often contain matter of differing types. Determining the predominant nature of a mixed-type document would potentially be very time consuming and complex.

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 costs of pursuing actions under Judicial Review are no different than are attracted to any action before the courts. Further, Judicial Review is often an option that is available after less-costly options have been pursued (such as internal review).

Further, the introduction of an alternative method of resolving disputes about administrative justice would potentially duplicate existing mechanisms, such as pursuing concerns through the Office of the Ombudsman.

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

Existing mechanisms, such as FOI, Judicial Review, Annual Reports and Statements of Affairs provide a variety of mechanisms through which members of the public can obtain information about government responsibilities, decisions and actions. Furthermore, the continued growth in the use of new technologies such as the internet has significantly increased the availability of relevant information to the public. For example, information on FOI, Privacy, Judicial Review and the like are available on the NRMW website, while there is a wealth of information available elsewhere (such as the internet sites for the Queensland Ombudsman and the Queensland Information Commissioner). While these efforts can always be improved, there has been significant headway made in this regard in the last five years.

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

NRMW has no evidence to indicate any specific groups are denied or constrained in their ability to access administrative justice. Indeed, the use that NRMW's client base (which is geographically dispersed and drawn from diverse socio-economic and cultural backgrounds) makes of those mechanisms is indicative of its accessibility.

However, mechanisms that effectively limit those who pursue repeated, vexatious, and unmeritorious applications would be welcomed. While only a small number of clients pursue such actions, those who do can have a disproportionate impact on agency activities.

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

NRMW's experience is that administrative justice in Queensland functions relatively efficiently and effectively, and is generally in line with other Australian jurisdictions.