No 16

RECEIVED
15 MAR 2006
LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

13 March 2006

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Dear Ms Newton,

Re: The Accessibility of Administrative Justice

Thank you for the opportunity to comment on the Legal, Constitutional and Administrative Review Committee's paper entitled "The Accessibility of Administrative Justice".

Council officers have provided responses to me on the key issues raised in the paper. However, it is important to record that officers are concerned that the concept of administrative justice, referred to in the paper as "a reference to these rights conferred by the FOI Act and the Judicial Review Act", is an artificially constrained concept when viewed in the local government operating environment.

Whilst Council officers appreciate the need to confine the review, it is crucial to remember that administrative rights are further protected by the Fundamental Legislative Principles which must be followed by local government when drafting local laws and subordinate local laws. Additionally, Magistrates Courts play a role enabling a dissatisfied party to seek further review of decisions made by local government officers; and the Ombudsman also serves as an external position of referral for complainants.

The General Complaints Process, in accordance with the provisions of the *Local Government Act 1993*, is another mechanism by which administrative justice may be obtained. Brisbane City Council has also engaged a senior officer in the role of Disputes Commissioner, with the responsibility of independent review of specified decisions by Council officers. Therefore, so far as Council is concerned, there is a need to place the review, and Council's responses to the review, in context of Council's existing administrative and regulatory environment.

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?

The fees and charges regime appears to have little or no impact on access to information and amendment to documents. Application numbers to Council for FOI have remained constant despite increases in fees, and few have been deemed withdrawn due to non – payment. There have been no applications made to Council to amend documents since the commencement of the legislation.

In circumstances where an applicant's request is couched in very wide terms eliciting many possible documents in response, Council invites applicants to 'refresh' their applications to enable the scope of the application to better reflect the information sought, and thereby limit the exposure to charges. Approximately 75% of the work involved in an FOI application is done by the time an estimate of charges can be given, so this process is of major benefit to the applicant but of little benefit to Council. Council does not ask for a deposit.

Realistically, current fees and charges do not in any way adequately recompense Council for the time expended by staff in locating and copying documents. The sifting of documents is a task undertaken initially by an experienced administrative officer, who in turn assists Council's FOI officer. Given the importance of the provision of this information, and the need to carefully distinguish between personal affairs information and other information, it is not appropriate that a junior member of staff undertake these tasks.

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?

Council's recent experiences of judicial review applications have involved requests for review of decisions made in the course of major commercial transactions. Applications to review decisions relating to the award of tenders, or to apply for the taking of land under the *Acquisition of Land Act 1967*, are some examples of this. In these cases, the applicants have been sophisticated operators, with the benefit of expert legal advice.

Judicial review applications in minor matters are in fact quite infrequent. For example, it is relatively uncommon for Council to receive an application to review a decision with respect to a dangerous dog declaration, possibly due to the availability of an internal review process under the relevant local law.

The Supreme Court was established to try serious and complex matters, where the Court's time is extremely valuable, and access to the Court comes at a cost. There seems to be no reason why an applicant for judicial review should be financially advantaged (in terms of removal of exposure to costs) as compared to any other litigant.

Judicial review applications are the final "link" in a long chain of reviews, particularly for Council where the General Complaints Process will exist as a mandatory system to review administrative decisions, together with Council's informal processes and processes incorporated into local laws. As there will be many prior opportunities to resolve matters, Court hearings for judicial review should now become even more infrequent.

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

Under the *Freedom of Information Act 1992,* Council is required to publish a very detailed statement of affairs, which sufficiently answers the need for the public to have adequate and accessible information relevant to government decisions and actions. Additionally, most agencies are, like Council, eager to use websites (as well as more traditional means) to inform the public about activities, policies, and decisions.

Somewhat ironically, the protection of personal privacy has resulted in a need for Council to make FOI applications to other agencies, in order to obtain evidence to enable enforcement action to commence. There needs to be a mechanism to allow for more co-ordination between agencies, so as to ensure timely release of information, and to avoid ensuing delays.

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

The services provided by Legal Aid Queensland and by community legal centres are of great assistance to those who choose to access administrative justice.

Sadly, Council has had experience with persons who are mentally ill, who suffer from a personality disorder, or who have an ulterior motive or an improper purpose, abusing or attempting to abuse the system. Currently, checks and balances within the administrative and judicial systems themselves are generally insufficient to ameliorate that problem.

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

In commenting on this issue, Council wishes to make clear that there is in fact little relationship in its experience between judicial review and FOI. Judicial review does not automatically follow from FOI applications, nor does the converse occur. Any correlation that may exist, exists between a request for a statement of reasons under *Judicial Review Act 1991,* and an application for judicial review.

One area where reform is needed is to the time limits that apply within legislation. Time limitations within FOI legislation are generally appropriate for both applicant and agency, although different time limits need to be imposed on external review. If, due to a backlog, a letter from the Information Commissioner is sent about a matter occurring or correspondence produced many months previously, Council officers will need sufficient time to reassess the matter so that Council may meaningfully respond.

On the other hand, time limits for commencing judicial review actions seem reasonable. As an applicant for a statutory order of review is not limited to the grounds set out in the application but may apply to the court to amend the grounds, there seems to be no injustice that the period to lodge an application remains at 28 days after the "relevant day". This ensures a swift entry onto court lists, enabling the parties to agree a subsequent timetable with the court.

There could, however, be a potential prejudice to the decision-maker if an applicant wishes to commence an application "out of time". One final point is that an application for a statutory order of review should not be able to be commenced until after a statement of reasons has been delivered.

Yours faithfully

Jude Munro
CHIEF EXECUTIVE OFFICER