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LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

RW: LR

28th of March 2006

Attention: Ms Julie Copley
Legal, Constitutional and Administrative Review Committee
Parliament House
George Street
Brisbane Qld 4000

facsimile: 3406 7070

Dear Ms Copley

RE: REVIEW OF THE ACCESSIBILITY OF ADMINISTRATIVE JUSTICE

Please find enclosed the response prepared by Caxton Legal Centre Inc. in relation to the Discussion Paper (December 2005) provided to us in relation to the Committee's review of administrative justice.

We thank you for granting us an extension of time to finalise our submission. If you wish to discuss any aspect of our submission, please do not hesitate to contact our office.

Yours faithfully

Ms Ros Williams
For Caxton Legal Centre Inc.

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No31

A REVIEW OF
The Accessibility of Administrative Justice

DISCUSSION PAPER DECEMBER 2005
RESPONSE FROM CAXTON LEGAL CENTRE INC.

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1. INTRODUCTION

1.1 Background to this Submission

This submission is prepared in response to an invitation issued by the *Legal, Constitutional and Administrative Review Committee* (the Committee) to make comment on the Discussion Paper entitled 'The Accessibility of Administrative Justice'.

The Committee has resolved to "review the continuing effectiveness of Queensland Legislation which provides access to information and simplified procedures for the judicial review of administrative decisions (...specifically) the accessibility of the mechanisms provided by that legislation."[1] The Committee acknowledges that relevant legislation "will not fulfil its functions unless administrative justice is accessible to the people who wish to use it, and unless those people receive sufficient relevant information and assistance."[2] The discussion paper examines the mechanisms providing for freedom of information (FOI) and judicial review in Queensland and identifies a number of options regarding how relevant issues may be addressed.

Caxton Legal Centre Inc. is responding to the issues raised in the Discussion Paper having specific regard to the issues raised by our clients' experiences in this area of law.

1.2 Recommendations

We have identified a number of gaps in the freedom of information and judicial review processes available in Queensland. The key recommendations we wish to make can be summarised as follows:

Recommendation 1
The process for obtaining information from government departments and the processes for reviewing administrative decisions should be as accessible and streamlined as possible.

Recommendation 2
Access to one's own personal information should remain a free FOI process and entitlement to fee-waivers for all other matters on the grounds of financial hardship should be incorporated into the *FOI Act*.

Recommendation 3
Community-based-non-profit organisations (in particular, community legal centres and public interest organisations) should be entitled to obtain FOI fee waivers or pay minimum fees.

[1] Legal, Constitutional and Administrative Review Committee Discussion Paper (Discussion Paper) December 2005 page i
[2] Ibid

Recommendation 4
A review process for re-considering any FOI costs charged needs to be retained as part of the FOI regime.

Recommendation 5
Further data should be collected about the average processing time of FOI applications and the first free search period should apply universally and should not be removed once an applicant's search exceeds the set time period.

Recommendation 6
If fees are to remain part of the FOI scheme (or to increase) we support the introduction of a fees cap – especially in public interest FOI inquiries.

Recommendation 7
Relevant agencies should be required to provide assistance to individuals making FOI applications – particularly early on in the process - to assist applicants to refine the description of materials sought through FOI. If a requirement for initial consultation and or mediation with individuals querying government records or decisions were to be introduced, this would need to be properly funded to ensure that the people employed to undertake such work have appropriate skills and training.

Recommendation 8
An integrated and consistent approach regarding the dissemination of information about FOI (which is both extensive and accessible in form) must be adopted by government and other bodies subject to the *FOI Act* and an integrated approach to the identification of "personal information" should be adopted.

Recommendation 9
Priority must be given to the making of timely responses and the timely release of information in response to FOI applications. This requires proper resourcing of FOI units by government departments/authorities/relevant bodies.

Recommendation 10
Data revealing the true impact of fees and charges on individual use of FOI processes should be collected and the FOI Act should be amended to facilitate the capturing of such data.

Recommendation 11
Accessible and affordable internal and external FOI review processes should remain in place.

Recommendation 12
Filing fee waiver processes (based on the grounds of financial hardship) in judicial review applications should be simplified.

Recommendation 13
A waiver form, such as the one used in the family court, is a relatively simple way of obtaining a waiver and arguably could be easily adapted for use in the Supreme Court.

Recommendation 14
We recommend that the government investigates the viability of vesting additional judicial review powers with the Magistrates Court of Queensland. Complex judicial review cases should remain in the superior courts, however, and any Magistrates determining judicial review case must be properly trained in this field. Alternatively, specialist magistrates could be appointed to deal with administrative law matters. Both the magistrates and judges would need to be granted power to remit cases to the more appropriate forum when necessary.

Recommendation 15
A coordinated whole-of-government approach to providing comprehensive and accessible community education about the operation of administrative law processes and associated complaints processes is required.

Recommendation 16
Information provision to the public about administrative processes needs to take into account both the various ways in which different individuals seek information about such matters (telephone, face-to-face contact, the internet or the use of published materials) and their special needs, especially in terms of language and literacy difficulties.

Recommendation 17
Practical Guidelines for Preparing Statements of Reasons should be introduced and decision-makers should be properly educated about how to draft such reasons so that they are comprehensive and understandable.

Recommendation 18
Cultural sensitivity training for employees of government departments and statutory authorities should be properly funded and should be made mandatory to address the needs of Aboriginal and Torres Strait Islander peoples and those people who are disadvantaged (especially in terms of disability or ethnicity) and who are trying to access administrative law processes and remedies.

Recommendation 19
If costs awards against legal aid in this jurisdiction are to be capped, we submit that the same benefits should be extended to community legal centres but that also the cap should be much lower than $5,000.00

Recommendation 20
Alternatively or additionally, consideration should be given to ways of amending Section 49 of the *Judicial Review Act (Qld)* (which provides for indemnity or limited costs orders) so that such orders can be more easily obtained.

Recommendation 21
A government policy should be adopted whereby courts are ultimately enabled to waive fees in public interest and pro bono litigation and limit associated costs (or securities for costs) and undertakings as to damages.

Recommendation 22
The government should provide more extensive ongoing funding to the Prisoner's Legal Service to more fully enable it to act for prisoners in judicial review matters.

Recommendation 23
The *Judicial Review Act (Qld)* should be amended to allow more time for the filing of applications for judicial review and the current 28 day time period should be extended to three months.

Recommendation 24
Government officials should be required to have to make decisions in a timely way and this could be incorporated into the Practical Guidelines mentioned in recommendation 17.

Recommendation 25
Reviews of decisions in the Small Claims Tribunal involving want of jurisdiction or denial of natural justice should be available in a less formal and less costly forum than the Supreme Court. If recommendation 14 is not adopted, some alternative arrangement for the review of Small Claims Tribunal decisions by a panel of 3 magistrates or a District Court Judge could be considered.

1.3 About Caxton Legal Centre

Caxton Legal Centre Inc (the Centre) is Queensland's oldest non-profit, community-based, legal service. Established in 1976, the Centre operates free legal advice and information services, specialist legal casework services (including an advice program for seniors experiencing domestic violence), three clinical legal education programs and social work support services. In addition, the Centre undertakes both community development activities and extensive community legal education and is a well-respected publisher of several major legal works, including the *Queensland Law Handbook*, the *Lawyer's Practice Manual* and the *Incorporated Associations Manual*, as well as fifteen self-help kits. The Centre also undertakes law reform activities in areas of law relevant to the community we service.

The Centre employs ten effective full time staff (including five solicitors, two social workers and a publications coordinator). However, the majority of our direct client services are provided by more than two hundred volunteer solicitors, barristers, articled clerks and law students who generously give of their time in assisting the Centre to further its aim of promoting 'access to justice'.

1.4 About our Client Base

The Centre annually provides approximately twelve thousand advices and information services. Our clients range from individuals through to other community based support services. Most clients are assisted through the provision of one-off advice and information. A limited number of our clients may receive ongoing casework assistance, depending upon the nature of their legal problem and the available resources of the Centre for addressing that problem. We regularly provide advice regarding administrative law matters.

We advise relatively equal numbers of men and women and we advise both individuals and representatives of community-based organisations. The majority of our clients are economically and/or socially disadvantaged and we regularly see clients who present with some form of organic or acquired learning difficulty or disability – particularly clients suffering from various mental health problems. Of specific importance in relation to this review is the fact that many of our clients also have literacy difficulties. More than a third of the Centre's clients are in receipt of some form of means-tested Centrelink entitlement. The vast majority of our clients fall into the category of the "working poor" with average mean incomes near or below the poverty line.

1.5 About our experience in the field of breaches of Freedom of Information and Judicial Review

Although Caxton Legal Centre Inc., like most community legal centres, advises clients across a wide range of legal matters, we have tended to develop expertise in areas of law typically described as falling within the general arena of 'poverty law' and we regularly deal with complaints relating to access to justice. In the past, we have published self-help brochures relating to administrative law processes as well as a self-help kit on Freedom of Information. (The updating of our *FOI Kit* has been on hold pending the review of this area of law.) Our *Queensland law Handbook* includes two significant chapters on 'Complaints about Government' and 'Freedom of Information'.

Globally speaking, approximately half our work involves civil law and we estimate that approximately 5% of our direct client work specifically is in the field of administrative law.

Because we provide advice in areas of law, which are not traditionally considered commercially viable by the private profession, clients often approach us for advice purely because of our experience in certain areas of law such as complaints against government departments. Clients seeking advice in such matters come from a range of social backgrounds. (It should be noted that many of our clients attend at our service simply to find out about their rights. This is particularly true of representatives from community-based organisations.)

Unfortunately, due to the way in which our entry of data is processed into our records system, we are unable to specify exactly how many clients we have

advised in the area of administrative law in recent years as most will be recorded as 'civil law' enquiries. We conservatively estimate that we would specifically advise at least 200 clients per year about freedom of information or judicial review processes. We find that there can be an overlap between enquiries relating to administrative law, freedom of information and privacy law, and complaints against the police, local councils, government departments (particularly in relation to housing, health, families and education), and complaints regarding decisions of the Small Claims Tribunal.

It follows that Caxton Legal Centre Inc. is well placed to comment on the usefulness and accessibility of freedom of information and judicial review processes in the context of its impact upon our clients.

This submission is informed by the experiences of our clients, the legal and social work expertise of our staff, management committee, volunteer solicitors, barristers, academics, and law students, and our practical knowledge of and work with the other community organisations.

1.6 Some general observations

In our experience the sorts of situations at a state level causing clients to seek advice about freedom of information or related matters tend to relate to the following types of issues:

(a) Most common disputes:

a. Complaints about neighbours and the Department of Housing;
b. Family law disputes and matters involving the Department of Communities (Families);
c. Complaints about the Health Department and medical treatments;
d. Dog Complaints and enquiries about local council dog complaints investigations;
e. Complaints about local councils;
f. Complaints about education involving TAFEs, Universities and schools, and
g. Personal injury claims where parties need to access pre-existing health/hospital/employment records.

(b) Less common disputes:

a. Complaints relating to the deaths of (or injuries to) hospital patients and mental health regulated patients;
b. Complaints relating to decisions made in the Office of the State Coroner;
c. Complaints relating to decisions of the office of the Commissioner for Children Young People and the Child Guardian (specifically regarding 'blue cards');
d. Criminal investigations and enquiries about individual's criminal histories or relevant records or police complaints;
e. Enquiries about Queensland Fire and Rescue Service Investigations;
f. Disputes about decisions made by other boards and tribunals;

g. Employment and financial disputes involving government departments;
h. Disputes relating to access to disability services or funding, and
i. Certain licensing disputes.

(c) On the other hand, the enquiries we receive relating to judicial review, apart from recurring complaints about the process/decisions in the Small Claims Tribunal, tend to be more random in nature. Recently, we have noted an increasing number of enquiries regarding the availability of judicial review in relation to decisions made by educational institutions.

(It should be noted that we also advise many clients about freedom of information in relation to Commonwealth government departments, such as Centrelink and Veterans Affairs. Furthermore, clients seeking advice about immigration matters, environmental law disputes, prison/parole disputes and tenancy disputes in the Small Claims Tribunal are usually referred to the following community legal centres – the Refugee and Immigration Legal Service, the Environmental Defender's Office, the Prisoner's Legal Service and the Tenant's Union for more specialised advice.)

The clients we see who are involved in administrative law disputes are often extremely stressed. This is because they have usually already been trying to act for themselves without legal representation for some time by the time they contact us and they are typically engaged in disputes that threaten to affect them in the most direct of ways – that is, by affecting their accommodation, their health, their education, their liberty and their family structures. Our clients regularly express significant frustrations about their dealings with the bureaucratic processes of government departments and it should be noted that many of our clients may be dealing with a number of different departments at any one time. Similarly, clients who seek advice about judicial review of decisions from the Small Claims Tribunal typically describe their earlier experiences in the Tribunal as having been very stressful.

Caxton Legal Centre Inc. considers that it is critically important that the process for obtaining information from government departments and the processes for reviewing administrative decisions should be as accessible and streamlined as possible, in order to limit the stressors experienced by clients who need to rely on administrative law remedies and processes.

2. 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 AND/OR ADMINISTRATIVE REFORM NECESSARY?

2.1 Overview

Caxton Legal Centre Inc has been engaged in a number of test cases involving government departments where FOI has been required and we have observed, first hand, the importance of FOI in the democratic processes. We

are also aware of public interest test cases brought by other community legal centres and understand the importance of FOI in safeguarding the community's best interests.

We consider that the fees associated with freedom of information applications can be a serious discouragement to clients (both individuals and community organisations) in seeking access to justice. It is vital that access to one's own personal information remains a free FOI process and we consider that entitlement to fee-waivers for all other matters, on the grounds of financial hardship is important in ensuring access to justice for worthy clients.

2.2 Problems associated with the current fees regime

As already noted, our client group is generally a financially disadvantaged one. In our experience, even a $34.40 application fee can be a significant deterrent to our clients taking steps to exercise their freedom of information rights in appropriate circumstances. Larger deposits are simply prohibitive for such clients and, of course, the additional fees charged for long searches are a real disincentive to many clients to begin the FOI process – particularly for our clients who generally have no capacity to make such payments.

Incorporated community-based-non-profit organisations face similar difficulties when making FOI applications. Should the government decide to introduce different classes of fees for different classes of applicants, we consider that the public interest organisations and community-based-non-profit organisations (such as community legal centres) should be entitled to obtain fee waivers or pay the minimum fees determined.

Where costs are to be incurred, it is critical that any preliminary assessments of costs made are accurate so that assessments are not used (either deliberately or unintentionally) to discourage worthy FOI applications. It is important that a review process to consider any costs charged remains possible.

We consider that the two hour threshold before charges apply is not equitable, especially given that a modest FOI request may still take some hours to organise. We note that the discussion paper does not state the average time taken to process applications. Further data should be collected about the average processing time for applications and we consider that the first free search period should apply universally and not be removed once an applicant's search exceeds the set time period. It seems wholly inequitable that a scenario involving two equally worthy applicants could result in one party paying nothing because their search involves 1 hour and 55 minutes of processing time and that a similarly placed individual whose search takes 2 hours 15 minutes has to pay for the first 1 hour and 55 minutes as well as the next 20 minutes. If a time limited free threshold is to be maintained we support an equal free time period for all applicants.

If fees are to remain as they are (or to increase) we support the introduction of a fees cap – especially in public interest FOI inquiries. The recent debacles experienced within the Queensland Health Department demonstrate the

importance of government accountability and openness to public scrutiny and unlimited fee schedules could hinder appropriate investigations concerning the conduct of government departments and officials.

2.3 Access to information about FOI processes, resourcing and reviews

We strongly support the subject agencies being required to provide assistance to individuals making FOI applications – particularly early on in the process when consultation and refining of the description of materials sought through FOI can greatly limit both the costs incurred by the applicant and the time required to comply with FOI requests.

In preparing this response we had cause to search the websites of a range of government departments and it was interesting to note that some government department/authority websites displayed a very prominent and informative section on FOI, while others did not. It is essential that an integrated and consistent approach in the dissemination of information about FOI be adopted within government and we endorse the extensive provision of accessible information and consultation processes concerning FOI.

It appears that some government departments have difficulty in complying with the time constraints for FOI document provision and we appreciate that it is a very difficult task for certain under-resourced sections of the public service to meet their obligations. However, given the objectives of the FOI legislation (see page 5 of the Discussion Paper) including the focus on government accountability and serving the public interest, we consider that all FOI units/sections within departments should be properly resourced. Our Centre was recently involved in a major case where important documentation was not released in a timely fashion and this necessitated our applying to the Information Commissioner for a review, the outcome of which was the ultimate provision of the documents required. Nevertheless, this caused our organisation significant additional work and delayed preparation on an important case. We consider that priority must be given to the timely release of application and that this requires proper resourcing by government of FOI units/workers in all government and associated departments/bodies.

The discussion paper (at pages 8-9) notes that despite the steady increase in the number of applications for FOI access, there has been "no significant effect on applications for access or amendment caused by the current fees and charges regime". [3] What is not clear from the tabled statistics is whether or not the demographic of applicants includes a broad cross-section of the community and indeed, the discussion paper goes on to acknowledge that no data is currently collected to show "the number of applicants who, once receiving a preliminary assessment of charges, do not pursue their applications."[4] In order to accurately assess the true impact of fees and charges on individual use of FOI processes, such data should be collected and we support any amendment of the FOI Act that would facilitate the capturing of such data.

[3] Discussion Paper page 9.
[4] Ibid

Last year we had cause to assist a client who sought assistance to obtain certain information under his freedom of information rights. After discussing his finances, it appeared clear that our client (a Centrelink beneficiary) had no savings to pay any FOI fees without experiencing genuine financial hardship. He was experiencing extremely poor health and was very stressed when he attended to seek legal advice about the matter. (After undertaking an internet search to ascertain what was required in relation to making an FOI application to the relevant body, we telephoned the relevant body on behalf of our client, only to be told emphatically by the telephonist that FOI was not available. After we explained that her employer's website in fact specified that FOI was available, she made further enquiries and apologised for her error.) We assisted our client to draft up his written request for FOI and sought a fee waiver for him on the basis of financial hardship. (Because of the time delays involved in getting the material he required, our client then had to seek a 3-month adjournment of a hearing in the AAT.) What might otherwise have appeared to be a relatively straightforward FOI process, in fact, was not. We mention this case example simply to illustrate the obstacles – including the financial obstacles - faced by clients considering FOI action.

Within the last week we have advised another client who sought assistance in responding to an FOI application to the Department of Housing. Our client's sole source of income was a disability benefit and the nature of the dispute had greatly stressed our client. The client had received a very detailed letter from the Department outlining which documents would/would not be released. Our client appeared confused by the complexity of the content of the letter and needed help wording the request for a review. Our client appeared not to have a very clear understanding about FOI purposes and processes and we consider that, had the client obtained some clear guidance from the department at the outset, then the need for a review may have been eliminated. Again, this anecdote is included to demonstrate the fact that FOI processes are often quite inaccessible for disadvantaged self-represented persons.

We appreciate that there are certain vexatious and unstable individuals who may be prone to misusing FOI processes, thus placing a burden on public service resources and staff. However, it is critically important that a system which is designed to benefit the whole of our community is not derailed by a fees regime covertly designed to limit vexatious FOI applications. Ultimately, FOI was never intended to be a self-funded 'utility' and the cost of operating an efficient and effective FOI system is simply one of the costs which the government should bear on behalf of the whole community. We have previously recommended that there should be early and active engagement between departments and individuals regarding FOI processes, and we submit that time invested at the early stage of enquiries and applications could assist to minimise the conflicts which might otherwise spiral into 'vexatious' applications.

We agree that the use of FOI for commercial gain should not be subsidised by public funds (see page 12 of the Discussion Paper), however, the discussion paper does not give any examples of when and how often this occurs. Any

measures taken to limit such activity should not, in turn, affect ordinary appropriate FOI applications, which are being made in the public benefit or in the democratic spirit of the FOI regime. We agree that it is important for applicants to "limit the scope of their applications and to be specific in terms of the information they are seeking,"[5] however, we consider that this same outcome could be achieved with appropriate education and early consultation between parties.

Anecdotally, it seems that many clients are unaware that there are no fees associated with obtaining personal information, and this is one example of how education through easily disseminated information is important. Of course, the question of 'what is personal information' is not always a straightforward matter and again education and information about these issues needs to be made freely available to the public so that FOI can be used effectively and freely. Inadequate training of staff handing FOI requests can lead to applicants being asked to pay for information, which is really "personal information" and it is important that this issue is addressed through the proper training and resourcing of FOI units.

Access to one's file can involve a formal application process and this adds to the frustrations of individuals seeking to access such information. We are aware for example, that the Youth Advocacy Centre has indicated that young people under an order of the Department of Child Safety need to go through a formal process to access their own file and this can add to the stressors in their lives. Again it is vital that such processes are made as accessible as possible.

It is also worth noting, as a final comment, that FOI information needs to be 'accessible' in the true sense. For example, to use a federal scenario, Centrelink data includes many acronyms and in order to understand Centrelink data released under FOI one needs to have access to a 10 page list of the relevant acronyms. The discussion paper lists as one of the arguments in favour of a substantially government funded FOI regime that "agencies and departments will be encouraged to develop and maintain effective record keeping thereby enhancing accountability and open government". We fully support this goal.

It is critically important that no-cost internal and external FOI review processes remain in place. Our organisation has had cause to rely on these review processes on a limited number of occasions and this has assisted us in our endeavours to properly represent our clients. Certain individual employees in government departments who have control over the release of information sometimes have a vested interest in not releasing certain documents, and without access to some form of second-tier accessible and affordable review mechanism, individuals can be prevented from obtaining proper access to justice.

[5] Discussion Paper Page 12

3. 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?

3.1 Overview

The enormous costs associated with Supreme Court litigation are well known and we consider that the filing fees and costs associated with judicial review are, in reality, a serious discouragement to clients seeking access to justice in the field of administrative law. Based on our observations, counsel's fees for the settling of initial documents and initial appearance/s could easily be $2,500 and low income earners, in our experience, rarely have the capacity to afford such outlays, let alone filing fees and their own solicitor's costs. Furthermore, given that the existing administrative law remedies evolved out of the older, extremely complicated prerogative writs, judicial review remains a complex and highly specialised area of legal practice. In our experience, it is simply beyond the ability of our general client group to successfully run judicial review cases as self-represented litigants and it is interesting to note the high proportion of senior counsel appearing in judicial review cases (see page 14 of the Discussion Paper). Appendix B of the Discussion Paper, demonstrates that a large number of judicial review applications relate to commercial interests, as opposed to the sorts of matters encountered by our clients as outlined earlier. Of some 212 cases listed in Appendix B, only 2 involve cases relating to council animal disputes, 1 relates to a community organisation, a couple relate to education issues and none appear to relate to housing provision. Having regard to the sorts of enquiries we receive relating to administrative law, it would seem that clients such as ours simply do not take their cases through the judicial review process. In our experience Legal Aid is very rarely given in such civil law disputes and any grants of aid in such cases would be exceptional ones.

The 'unbundling' approach to obtaining legal representation, which is common in family law matters (that is, where clients seek legal assistance at critical stages of a case, such as in the drafting of an application or settlement of orders and during actual court hearings) arguably is not an appropriate practice in judicial review cases and we surmise that many legal practitioners would be hesitant to expose both their clients and themselves to adverse costs orders, which might ensue in poorly managed 'unbundled' cases proceeding in the Supreme Court. Despite the attempt to simplify the law with the introduction of statutory orders for review under the *Judicial Review Act (Qld) 1991*, we consider that judicial review remains inaccessible because of its highly technical nature and because it is conducted in the very formal arena of the Supreme Court, with its various rigid listing and appearance practices and constraints imposed by the *Uniform Civil Procedure Rules (Qld) 1999*.

3.2 Fee waivers

Because our clients are usually financially disadvantaged, the costs and fees associated with the Supreme Court and judicial review applications are a real disincentive to our clients taking action in this arena. At the very least, we

consider that entitlement to a waiver of filing fees on the grounds of financial hardship assists in ensuring access to justice for worthy clients.

The filing fee in Supreme Court cases is significant ($455-$910) and many of our clients are simply unable to pay such a fee. *The Uniform Civil Procedure Rules* (see Rule 971) currently provide for exemptions to be granted relieving an applicant from paying the Supreme Court's filing fee. However, as things stand, an applicant seeking such an exemption currently needs to file a supporting affidavit on this point together with their application and then needs to appear in the court on the issue. Therefore, applicants are faced with a complex process at the very outset of proceedings just to obtain a filing fee waiver, and for many – especially self-represented litigants, this complexity will act as a real deterrent against them even beginning an application.

A waiver form such as the one used in the family court (see copy and information attached) is a relatively simple way of obtaining a waiver and arguably could be easily adapted for use in the Supreme Court. In family law matters, clients either simply sign (by swearing or affirming) the relevant form and provide a copy of their social security card or set out another reasonable case showing their financial circumstances of hardship. This process may require some 'discretion' to be exercised at the registry but in our submission would assist in the processing of applications, and would provide financially disadvantaged individuals with greater access to justice.

We appreciate that there is some risk that unmeritorious applications may be brought if the process is too simple and inexpensive, however, one option to guard against this (requiring a minor amendment to Rule 576 of the *Uniform Civil Procedure Rules*) might be for the Court, on its own motion, to be able to dismiss an application at a directions hearing. (This is a possible alternative to the court using its powers to declare someone a vexatious litigant, however, both powers should be exercised cautiously when dealing with disadvantaged people who are often the most likely to be exposed to unfair treatment while at the same time being the least capable of explaining and arguing their position in formal adjudicated disputes)

3.3 Accessibility and impact of judicial review

Because of the high costs associated with the jurisdiction, we have concern about judicial review only being available in the Supreme Court. The risk of an adverse costs order clearly is always a consideration for lawyers and clients, and based on our experience of our volunteer lawyers' advices to clients, we know that clients are regularly advised that judicial review is 'not a commercially viable option'.

We are aware from anecdotal evidence that once an application for judicial review is threatened or commenced, the offending government department or statutory body will often suddenly take steps to address the problem which has precipitated the judicial review action. In this context, judicial review seems a most cumbersome and time-consuming avenue to pursue to obtain relief – even though it is, of course, helpful when problems are resolved by sudden department action.

As to the issue of judicial review only being available in the Supreme Court, our other major concern is that it is simply impossible, in our experience, for self-represented litigants to appear in such matters because of the complexity involved with judicial review applications. The fact that there may be low numbers of judicial review applications does not mean that there is no real need for judicial review. In our experience a costs analysis ultimately leads to many clients who might otherwise want to bring a judicial review application to simply not take steps to enforce their rights.

3.4 Options for the introduction of Magistrates Court judicial review powers

We believe that judicial review needs to be simplified, but not at any cost. If the Supreme Court is to retain jurisdiction in judicial review cases, we believe that there should be two tiers in the judicial review process – like that in the federal jurisdiction where both the Federal Court and the Federal Magistrates Court have powers to deal with federal judicial review matters and guidelines determine which matters are heard in which court. The Federal Magistrates Court is more affordable and is therefore a more accessible forum, and the sharing of this jurisdiction would appear to make administrative justice in federal matters more accessible and effective.

A similar option might be possible in Queensland if the Magistrates Court could be vested with additional powers to deal with judicial review. Given the ramifications of complex or important judicial review cases, it seems desirable that certain judicial review cases should still be heard in the superior courts and certainly, if the Magistrates Court were vested with judicial review powers, it would be extremely important for Magistrates to be properly trained in this field. Indeed, under such an arrangement it may be more appropriate to designate specialist magistrates to deal with administrative low matters – such as has occurred with the appointment of specialist family law magistrates in the past. If such a scheme were introduced, both the magistrates and judges would need to be granted power to remit cases to the move appropriate forum, as happens where the Federal Court remits matters back to the Federal Magistrates Court . Accordingly, such a scheme at a state level would enable complex cases to be determined in the Supreme Court and less complex matters to be determined in the Magistrates Court. (The amount of money involved in a dispute should not be the sole determining factor about jurisdiction because decisions in certain cases have the potential to affect vast numbers of people. Referral of cases should be dependent on complexity, quantum and importance.

4. KEY ISSUE 3. IS INFORMATION RELEVANT TO, AND ABOUT, GOVERNMENT DECISIONS AND ACTIONS ADEQUATE AND ACCESSIBLE? HOW CAN IT BE IMPROVED?

4.1 Overview

In short, we do not consider that sufficient relevant and accessible information about government decisions and actions is available.

Information provision needs to take into account the various ways in which different individuals seek information about such matters – whether it is by telephone or face-to-face contact with departments/authorities (potentially at times requiring on the part of the relevant staff-member special skills for dealing with persons experiencing disadvantage or requiring the services of an interpreter), an internet search, or perusal of published materials.

Similarly decision-makers need to be better trained about how to issue comprehensive reasons for their decisions.

Furthermore, we do not consider that the public is adequately educated about administrative law processes and what is required of government and relevant statutory authorities – let alone their own rights in this area of law. A coordinate whole-of-government approach to providing comprehensive community education in this regard is required.

4.2 Comprehensive reasons for decisions

We are aware that decision-makers sometimes fail to give sufficiently detailed reasons for decisions and have observed that this can be particularly problematic in special interest matters (especially environmental cases) where a lack of clear reasons for decisions, or reasons given in global terms only, can make it very difficult for the merit of community-based special interest cases to be assessed and appropriate litigation commenced.

We are aware that the Administrative Review Council (ARC) has produced "Practical Guidelines for Preparing Statements of Reasons".[6] Such guidelines do not exist in Queensland and the introduction of such guidelines hopefully would assist to remedy the current problems faced when decision-makers fail to give adequate and comprehensive reasons for decisions.

4.3 Use of the internet

As previously noted, some websites are very informative in terms of administrative/FOI processes while others are not. A uniform approach to the way in which government and statutory authorities share such information with the public should be adopted. While there is an increasing level of information available about government/authority decision making processes on the internet – we submit that the internet alone is not an acceptable way of disseminating information on administrative processes. Many of our clients cannot afford computers or internet access and a large proportion of our clients face problems accessing the internet because of illiteracy problems or intellectual disability. Many older clients are simply excluded from the process because they have never been trained in the use of the internet and computers. Information must be disseminated in a wider variety of ways, which take account of the special needs of disadvantaged members of the community.

[6] Available at www.law.gov.au/arc