

Your Ref:

Quote in reply: 21000328/5: Access to Justice/ Pro Bono Section

E-MAILED  
26 September 2007

The Research Director  
Legal, Constitutional and Administrative Review Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

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Dear Sir

The Queensland Law Society commends the Legal, Constitutional and Administrative Review Committee for broadening the terms of reference of its inquiry, *The Accessibility of Administrative Justice*, to include merits review of administrative decisions and actions.

Queensland Law Society is well placed to make comment about administrative law reform in Queensland as members constitute significant participants in administrative decision-making processes.

#### Possible Reform Regarding Administrative Appeals

The Queensland Law Society supports the adoption of a state based administrative appeals tribunal in Queensland.

In a similar manner to that which was canvassed and adopted in Western Australia<sup>1</sup>, the Society supports the adoption of such a tribunal in order to advance the public interest and to improve public decision making. Merits review has the potential to steadily improve the quality and consistency of administrative decision making in this jurisdiction.

In the past in Queensland the need for a state-based generalist merits review tribunal has been identified in order to broaden the reach of administrative remedies, simplify procedures and enhance access to administrative justice.

Recommendations for a merits review body to be established in Queensland were first made in the Fitzgerald Report in 1989. The report of the Queensland Electoral and Administrative Review Commissions (EARC) in 1993 commented that existing review rights were not comprehensive; there lacked a widespread system of internal review by agencies and certain decisions were excluded from

<sup>1</sup> See *Delivering Administrative Justice in WA: The emergence of the State Administrative Tribunal*, Michael Barker and Ralph Simmonds, ALRC, Reform Issue 84 Autumn 2004

judicial review and from review by the Ombudsman. As Kirby J stated in 1997, "If it were left to the courts, at the behest of individual citizens, to enforce the law in the nooks and crannies of public administration, many with complaints would be bound to be disappointed."<sup>2</sup>

EARC noted the ability of a general administrative review body to provide an open, fair, impartial, flexible, quick and cost-effective system of merits review.

Community groups in Queensland have also raised concerns about the efficacy of the present administrative law system, including the lack of available information regarding administrative and government decisions, the costs and limitations of judicial review.

Presently, judicial review of administrative decisions is limited to review of the decision-making process and does not address unjust or unreasonable outcomes. In Queensland many complainants lack standing to raise significant issues of concern through judicial review.



The Queensland Law Society contends that an additional system of merits review, as is in place in many other Australian jurisdictions, is required to address issues of substance related to administrative decisions.

#### **Scope for reforms to provide for proportional dispute resolution in Queensland**

The implementation of a generalist merits review tribunal in Queensland would better serve the public interest, improve consistency of administrative decision-making and provide costs savings to citizens and government.

Our system of government relies on accountability of executive action and it is vital to ensure the application of these checks and balances to the operation of administrative decision-making. The evolution of review mechanisms must keep pace with the expanding purview of government decision-making bodies. For instance, Government out-sourcing creates new issues in the field of administrative law and has the potential to remove many categories of decision from the jurisdiction of existing review bodies. As a consequence, the ability for individuals to pursue review is limited.



As a vehicle to achieve merits review in Queensland the Queensland Independent Commission for Administrative Review (QICAR) proposed by EARC is an appropriate place to commence consideration of the appropriate model for reform. While this structure may need to be updated to better accommodate the scope of contemporary administrative decision-making it does provide a sound platform from which to build. There would be benefits to government in terms of resource sharing and efficiency if the numerous existing review bodies were merged into a single entity.

Other models for generalist merits review bodies already exist in the Commonwealth jurisdictions, Victoria, the Australian Capital Territory, New South Wales and Western Australia.

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<sup>2</sup> Kirby, Michael, 'Have we achieved RN Spann's vision of administrative law?' (1997) 56(1) *Australian Journal of Public Administration* 3 at 7.

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As the former Chief Justice of the High Court, Sir Gerard Brennan, in 1998 said: "Although more rigorous political control of the Executive Government is not to be expected and judicial supervision is limited to ensuring that executive action is lawful, the exercise of some administrative powers—notably those that affect individual interests—needs to be subject to external merits review."

The Queensland Law Society supports the adoption of a state based administrative appeals tribunal in Queensland and sees benefits to the government and the community in such action through improved administrative decision-making, public access to appropriate and flexible review mechanism as well as increased administrative efficiency compared with existing tribunal system. The Society commends the QICAR model as an appropriate point from which to commence consideration of a model for Queensland reform in light of the experience of other jurisdictions.

We thank you for providing us the opportunity to comment on this issue and look forward to receiving the report of the Committee



Yours faithfully

A handwritten signature in cursive script, appearing to read "Megan Mahon".

Megan Mahon  
**President**

