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

Dear Sir

**Re: LCARC Discussion Paper *The Accessibility of Administrative Justice***

Thank you for the opportunity of providing a submission to the Legal, Constitutional and Administrative Review Committee in response to the Discussion Paper, *The Accessibility of Administrative Justice*.

Legal Aid Queensland has had the opportunity and benefit of viewing the Queensland Law Society's submission to the Committee on this issue and endorses and adopts the Society's submission.

There are a number of additional matters that Legal Aid Queensland also wishes to raise or emphasise in this submission.

**1. Appeals from Administrative Decisions**

The need for a generalist state based administrative appeals tribunal has been well documented in previous reports, namely, EARC, *Report on Appeals from Administrative Decisions*, 1993, PCEAR, *Report on Appeals from Administrative Decisions*, 1995, and LCARC, *Review 1999*. LCARC considered the current system in Queensland was burdensome, costly, confusing, unwieldy and wasteful and concluded that a government response was "long overdue". Legal Aid Queensland shares this view.

Legal Aid Queensland supports the adoption of a state based administrative appeals tribunal in Queensland. Like the Queensland Law Society, Legal Aid Queensland supports the establishment of a general administrative review body that would provide an open, fair, impartial, flexible, fast and cost-effective system of merit review.

For some time now, Legal Aid Queensland has supported the creation of a Queensland Consumer and Administrative Tribunal along the lines of the Victorian Consumer and Administrative Tribunal. This would provide a "one stop shop" for most personal legal matters which are important to citizens. The tribunal would operate without the need for legal representation in most matters. Currently Queensland has a proliferation of tribunals and it is very difficult for an individual to know where to go to have their legal rights determined. A tribunal would provide an accessible mechanism for citizens to seek merits review of administrative decisions of government.

A matter of concern that Legal Aid Queensland wishes to raise with the Committee is the progressive erosion by this government of administrative review rights. Over the past several years we have observed the development of a culture within government of disregarding the *Legislative Standards Act 1992* in the enactment of legislation. Section 4(3) of that Act states:

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation—

(a) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and

(b) is consistent with principles of natural justice...

Legal Aid Queensland agrees with the statement in section 4(1) of the *Legislative Standards Act 1992* that "fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law". One has only to peruse the contents and comments of the Scrutiny of Legislation Committee's *Alert Digests* during the life of this government to gain a sense of how frequently, and with minimal justification, the government is breaching legislative standards in the legislation that is being passed by the Parliament.

An area of particular concern to Legal Aid Queensland has been the active steps taken by the government to deny prisoners access to administrative review of decisions affecting them. Prisoners are one of the groups in our community most vulnerable to government abuse of power. The new *Corrective Services Act 2006* has significantly curtailed the capacity of prisoners to gain information about administrative decisions that affect them and to engage in judicial review of those decisions. (For a detailed analysis of the *Corrective Services Act 2006* and its impacts, Legal Aid Queensland would refer the Committee to an article by Chris Butler and Paulette Dupuy, "Denying Administrative Justice to Prisoners in Queensland", *Alternative Law Journal*, Vol 32:2, June 2007.)

The *Corrective Services Act 2006* abolished judicial review in relation to decisions concerning prisoner classification and transfer. In its *Alert Digest* that dealt with the *Corrective Services Bill 2006*, the Scrutiny of Legislation Committee queried:

... whether the absence, or limited nature of, avenues of review provided in relation to a range of significant administrative decisions affecting prisoners, and the general absence of express obligations to accord natural justice, are reasonable in the circumstances. (*Alert Digest*, Issue No 4 of 2006 11-12)

Judicial review provides a means of questioning the absolute authority of prison officials and the way they exercise this authority. It requires government officers to make reasonable decisions, based on reasonable and relevant considerations and to adopt fair processes when making these decisions. To remove this accountability and external scrutiny of decision-making in the closed environment of a prison is dangerous, and invites abuses of power.

Queensland has seen the consequences of a closed, unaccountable prison system in the 1988 report of the Kennedy Inquiry into prisons in Queensland. It would be unfortunate if we failed to learn from these past institutional failures and allowed a culture and climate to develop in our prisons today that would permit a repetition of the abuses of power that were endemic in the past.

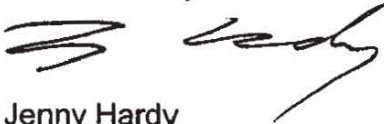
## 2. Availability of information about administrative justice

Legal Aid Queensland currently provides a legal information and legal advice service to Queenslanders on personal legal issues including administrative law. Community legal centres also provide free legal advice to Queenslanders on a range of legal issues including administrative law. Legal Aid Queensland and the community legal centres are well placed to provide information regarding administrative justice provided they are adequately resourced for this purpose.

Currently, Legal Aid Queensland provides a duty lawyer and legal advice service at the Administrative Appeals Tribunal. A generalist and centralised Queensland administrative review tribunal would allow Legal Aid Queensland to provide legal services to Queenslanders more effectively and efficiently and would further enhance Queenslanders access to administrative justice.

We thank you for the opportunity to comment on these issues and look forward to receiving the report of the Committee

Yours sincerely



Jenny Hardy  
Chief Executive Officer  
Legal Aid Queensland