

**THE ACCESSIBILITY OF ADMINISTRATIVE JUSTICE
LCARC RECOMMENDATIONS**

No.	RECOMMENDATION	RESPONSE
1	<p>The <i>Judicial Review Act 1991</i> and <i>Freedom of Information Act 1992</i> should be amended to require a decision maker's written advice of a decision or action to include notice of:</p> <ul style="list-style-type: none"> • the right to request a statement of reasons (where applicable); and • any other rights to access administrative justice available in the circumstances. 	<p><i>Freedom of Information Act 1992</i></p> <p>Supported</p> <p>The proposed Right to Information Bill will make provision to require a notice of a decision to include information about the right to request a statement of reasons and rights of review.</p> <p>The Information Commissioner will also publish guidelines for agencies on preparing statements of reasons for decisions not to disclose documents on public interest grounds (Government response to <i>The Right to Information Report</i> recommendation 86)</p> <p><i>Judicial Review Act</i></p> <p>Supported in principle</p> <p>The Government agrees that it is desirable for persons affected by decisions that are subject to judicial review to be aware of their right to request a statement of reasons. However, it does not support mandating such notice on a decision by decision basis without considering the operational implications and whether it is most appropriate for the information being provided in this way. The Government will, in the context of the implementation of the Right to Information legislation and the Queensland Civil and Administrative Tribunal legislation, review the adequacy and availability of information about access to administrative justice including the right to statements of reasons.</p>

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2	<p>The Public Service Commissioner should prepare guidelines to assist decision-makers to prepare statements of reasons. These guidelines should be available generally to all decision-makers who may be required, under the Judicial Review Act 1991, to provide a statement of reasons, including those decision-makers beyond the responsibility of the Public Service Commissioner.</p>	<p>Supported</p> <p>The Government will, in the context of the implementation of the Right to Information policy and legislation reforms and the Queensland Civil and Administrative Tribunal legislation, ensure that there are adequate guidelines for assisting decision-makers to prepare statements of reasons.</p>
3	<p>The Attorney-General and Minister for Justice should ensure that information about administrative justice, including information about rights of access and procedural matters is accessible via a single, user-friendly telephone and on-line entry point. Although accessible via one entry point, the information service should be provided co-operatively and by way of a shared funding between existing organisations, such as Legal Aid Queensland, which currently provide information and advice about administrative justice.</p>	<p>Supported</p> <p>The Government will, in the context of the Right to Information policy and legislation reforms and the Queensland Civil and Administrative Tribunal legislation, review the adequacy and availability of this information about administrative justice, including rights of access and procedural matters.</p>
4	<p>The <i>Freedom of Information Act 1992</i> should be amended to require every agency to adopt and maintain a scheme which relates to the general publication of information by the agency and is approved by the Information Commissioner.</p>	<p>Supported</p> <p>Publication schemes are a key element of the Queensland Government's commitment to the greater proactive release of information (Government response to <i>The Right to Information</i> Report recommendation 108).</p> <p>The adoption of publication schemes by agencies will improve public accessibility and enable people to more accurately understand what types of documents government holds.</p> <p>The Queensland Government will develop a whole-of-government information policy framework based on information policy principles, strategies and standards that position the use of Right to Know legislation as the act of "last resort" in accessing government information (Government response to <i>The Right to Information</i> Report recommendations 2 and 3).</p>

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5	<p>Consistent with section 4 of the <i>Freedom of Information Act 1992</i>, rights to access information held by Queensland government should be available to all people, generally, with exemption provisions balancing competing public interests between access and the protection of certain types of information.</p>	<p>Supported</p> <p>The proposed Right to Information Bill will clearly state that its object is to provide a right of access to information held by the Government unless, on balance, it is contrary to the public interest to provide that information (Government response to <i>The Right to Information</i> Report recommendations 17, 18 and 19).</p> <p>As discussed in the Government response to <i>The Right to Information</i> Report, a reduced number of the current exemptions will be retained in the Bill. These exemptions are matters where it has been determined, legislatively, that the public interest in applying that particular exemption is so high that no other public interest consideration should be permitted to tip the balance in favour of disclosure.</p> <p>The majority of the remaining exemptions in the current FOI Act will be reframed and treated as “harm factors” within a public interest test.</p> <p>The Government is also committed to ensuring equal access for all to information. The whole-of-government strategic information policy will aim to maximise equality of access to information across all sections of the community. Advice on how to apply for information and complaints procedures must be targeted in a way that ensures it reaches all sections of the community. Administrative release of information should also occur in a way that meets the needs of those who are at a social disadvantage or who cannot, because of their location or personal circumstances, readily access information through electronic means.</p>

6	<p>Restrictions on the scope of judicial review should be contained in the <i>Judicial Review Act 1991</i></p>	<p>Supported in principle</p> <p>The Government agrees as a starting point that restrictions on the scope of judicial review should be contained in the <i>Judicial Review Act 1991</i>. However, in some cases it may be preferable for those using the affected legislation for the restriction to be stated in that legislation. The more important consideration is that such restrictions can be justified as documented in explanatory notes and through review by the Scrutiny of Legislation Committee and the Parliament.</p> <p>Schedule 1 to the <i>Judicial Review Act 1991</i> lists some enactments that provide for non-review or limited review of decisions and others to which this Act does not apply. The Government will give consideration to the updating the Schedule on an ongoing basis</p>
7	<p>The Attorney-General should ensure the regime of fees and charges in the regulations made under the authority of the <i>Freedom of Information Act 1992</i> is:</p> <ul style="list-style-type: none"> • simplified – currently, the administrative burden imposed on agencies by the many facets of the current regime is too great; • imposed consistently and uniformly by departments and agencies; • without charge for people seeking their personal information; • fair – ensuring an application represents a genuine need or interest to access information and, at the same time, does not prohibit people with a genuine need or interest from accessing the information; and • relative to costs of delivery – <ul style="list-style-type: none"> – an independent review of the impact of the <i>Freedom of Information Act 1992</i> is suggested; 	<p>Supported</p> <p>As discussed in the Government response to <i>The Right to Information Report</i>, the Government will consider options for a simplified, consistent and fair charging regime in the course of the development of the proposed Right to Information Bill.</p> <p>Rights of access to and amendment of personal information will be moved to privacy legislation that is being developed simultaneously with the proposed Right to Information Bill. There will continue to be no charge for such applications (Government response to <i>The Right to Information Report</i> recommendations 11).</p> <p>Strategic and operational reviews of the new legislation will be conducted four years after commencement, with subsequent five yearly strategic reviews (Government response to <i>The Right to Information Report</i></p>

	<p>and - section 108 of the <i>Freedom of Information Act 1992</i> should be amended to require the provision of adequate and informative data.</p>	<p>recommendations 140).</p> <p>In addition, annual report cards of agency performance will be tabled with the Legal, Constitutional Administrative Review Committee. The proposed Right to Information Bill and regulation will provide for an annual report to Parliament on the operation of the new legislation. The Bill will also clearly articulate any necessary data collection and record keeping requirements for agencies (Government response to <i>The Right to Information</i> Report recommendations 113, 114, 115).</p>
8	<p>The <i>Uniform Civil Procedure Rules</i> should be amended to allow for voluntary neutral evaluation in proceedings under the <i>Judicial Review Act 1991</i>. The neutral evaluator should seek to identify and reduce the issues of fact and law that are in dispute, including by way of assessing the relative strengths and weaknesses of each party's case and offering an opinion as to the likely outcome of the proceedings.</p>	<p>Supported in principle</p> <p>The Government supports the intention of the recommendation but notes that a range of strategies are already in place in support of this outcome. In the preliminary stages to a judicial review proceeding, there are many opportunities for applicant to have the relative strengths and weaknesses of their cases explained.</p> <p>The following extract from the Queensland Courts Website sets out one of these options:</p> <p>“The Self-Representation Civil Law Service (SRCLS) provides free, confidential and impartial legal advice to self-represented litigants who are conducting proceedings (including applications) in the civil trial jurisdiction of the Brisbane Supreme and District Courts.</p> <p>The service is independently operated by the Queensland Public Interest Law Clearing House Incorporated (QPILCH) and was launched in December 2007 as part of the access Courts initiative.</p> <p>The SRCLS assists current and potential self-represented litigants. However, the degree of assistance provided is determined by means testing and priority is given to those litigants who cannot afford</p>

		<p>private representation.</p> <p>The SRCLS solicitor and volunteer solicitors from QPILCH member law firms assist litigants by:</p> <ul style="list-style-type: none"> • providing legal advice • drafting documents (including pleadings, affidavits, court forms, submissions and correspondence) • conducting legal research • suggesting other options for the resolution of court proceedings • assisting with associated problems • referring appropriate cases for further advice, support or representation”. <p>The State and its agencies are also subject to the model litigant principles which include avoiding litigation wherever possible and not defending indefensible claims. The Court can order alternative dispute resolution as part of a proceeding, however, this also has its cost.</p> <p>In cases where preliminary processes are not effective in deterring actions for which there is no reasonable basis for review, the court will direct the conduct of proceeding as it considers appropriate.</p>
9	<p>Section 49 of the <i>Judicial Review Act 1991</i> should be amended to make it clear that, to assist parties to judicial review proceedings to litigate meritorious applications, including in public interest matters, the Court is encouraged to exercise the power under the section to make a costs order at an early stage in proceedings.</p>	<p>Not supported</p> <p>Section 49 allows for costs orders that are more favourable than would be appropriate under the general law. It allows the court to order that a party indemnify an applicant’s reasonable legal costs or that a party only bear the party’s own costs. It is consistent with the intent of the Act that persons aggrieved by a decision should have a practical means of challenging that decision. It is in the best interests of a party intending to make an application for an order under</p>

		section 49(1)(d) or (e) to do so at an earliest appropriate point in a proceeding.
10	For the purposes of assisting the Supreme Court to reach a determination under section 7 of the <i>Judicial Review Act 1991</i> with a greater degree of precision, section 7 should be amended to identify criteria conferring standing.	<p>Not supported</p> <p>This recommendation is not supported. Whether a person is aggrieved by a decision and therefore has standing involves the court taking into account all the circumstances of a matter, giving relevant matters appropriate weight and having regard to relevant precedent. This allows the court to take into account all relevant factors to an extent that would not be possible through statutory prescription. It also provides a degree of flexibility and scope for argument as to standing that would not be permitted if standing were prescribed by statute.</p>
11	<p>Section 8 of the <i>Freedom of Information Act 1992</i> and section 4(b) of the <i>Judicial Review Act 1991</i> should be amended to extend the application of the Acts to public or private body performing functions or engaging in activities which, although private in character, are also of public interest and concern and involve funds that are provided or obtained (in whole or in part):</p> <ul style="list-style-type: none"> • out of amounts appropriated by Parliament; or • from a tax, charge, fee or levy authorised by or under an enactment. <p>The broadening of the scope of application of the Act may raise the need for limited amendment to:</p> <ul style="list-style-type: none"> • section 11 of the <i>Freedom of Information Act 1992</i> (Act not to apply to certain bodies etc) - for example, to ensure that a private lawyer providing legal aid services was not acting within the scope of that Act; and • part 1, division 5 of the <i>Judicial Review Act 1991</i>. 	<p>Supported in principle</p> <p>As discussed in the Government response to <i>The Right to Information Report</i>, the Queensland Government is strongly committed to the accountability and transparency of bodies established or funded by the government, or which are contracted to carry out functions on behalf of government.</p> <p>However, there are good public interest reasons for not capturing these entities within the scope of the proposed Right to Information Bill and <i>Judicial Review Act 1991</i>, for example where the proportion of funding received from the government is low, where the costs of compliance could significantly compromise service delivery (particularly in the case of smaller entities) or where compliance with the Act would place an undue impost on the non-government organisation.</p> <p>Non-government organisations that receive funding or support from the Queensland Government already provide large volumes of information to government, which may then be accessed through the current <i>Freedom of Information Act</i></p>

1992. This access will continue under the proposed Right to Information Bill.

The Government considers that the 'public interest' information sought from these bodies is already available from relevant agencies through existing accountability and reporting obligations or, if the information is not readily accessible, could be made available through improved reporting and information publication arrangements.

To ensure that appropriate information is being provided to the government by non-government organisations, Queensland Government agencies are currently:

- evaluating reporting and accountability arrangements for non-government organisations, and will report to the Premier on the information that government collects from these organisations by the end of 2008; and
- identifying information provided by funded or contracted organisations that is suitable for proactive release through departmental publication schemes.

The Public Accounts Committee (PAC) is also currently conducting an inquiry into whether the frameworks and systems used by government in delivering and reporting funding to and from non-government organisations are providing sufficient information to stakeholders to make informed decisions. The outcomes of the PAC inquiry, together with the information obtained through departmental reviews, will be used by government to develop a whole-of-government reporting and information publication framework for non-government organisations.

The Government has accepted the Solomon Report recommendation that private sector bodies with public functions such as regulatory functions (for example the Bar

		<p>Association of Queensland) should be subject to the legislation in relation to their performance of those functions. These entities will be captured by the proposed Right to Information Bill (Government response to <i>The Right to Information Report</i> recommendation 28).</p> <p>Whether it is appropriate for the <i>Judicial Review Act 1991</i> to apply to specific decisions of particular private entities needs to be considered on a case by case basis, as in the <i>Corrective Services Act 2006</i> example provided by the Committee.</p>
12	<p>The <i>Financial Management Standard 1997</i> should be amended to require annual reporting of contracts, including those with commercial-in-confidence clauses, entered into by government entities. The requirement should be for information regarding:</p> <ul style="list-style-type: none"> • all contracts with private providers, regardless of value; and • where commercial-in-confidence clauses are contained in a contract – <ul style="list-style-type: none"> - the accountable officer or equivalent; and - the reasons for non-disclosure. 	<p>Supported in principle</p> <p>The Government supports that information about government contracts should be made available, but does not necessarily believe that the <i>Financial Management Standard 1997</i> is the most appropriate vehicle for this. There also needs to be further consideration of whether it is practicable to include all contracts, without any lower threshold for disclosure.</p> <p>As stated at the response to recommendation 11 above, application can currently be made for a significant amount of information provided by private providers in compliance with existing accountability and reporting obligations. Those bodies with public functions, such as regulatory functions, will be subject to the proposed new Right to Information legislation.</p> <p>In addition, as of 1 January 2008, the State Procurement Policy requires agencies to publish details of all awarded contracts and standing offer arrangements with a value of \$100,000 or more on the Queensland Government Chief Procurement Office website.</p>
13	<p>The Public Service Commissioner should issue a directive to ensure that, where government agencies engage non-</p>	<p>To be further considered</p>

	government entities to carry out functions prescribed by statute, the terms of contract should give the agency a right of access to documents produced in the course of performing those functions.	The Government will consider this matter after the evaluation of reporting and accountability arrangements for non-government organisations and the work of the Public Accounts Committee mentioned in recommendation 11.
14	Legislative change should provide that an apology by an agency regarding a decision or action affecting an individual does not constitute an admission of liability and will not be relevant to a determination of fault or liability, unless specifically excluded.	<p>Supported in principle</p> <p>As a general principle, the Government supports public sector agencies and staff making apologies to members of the public adversely affected by administrative decisions made in error.</p> <p>Where an incident may give rise to personal injuries proceedings, Part 1 of Chapter 4 of the <i>Civil Liability Act 2003</i> applies. It provides a reasonable balance by allowing individuals to express regret about an incident without being concerned that the expression of regret may be construed or used as an admission of liability on a claim or in a proceeding based on a claim. The position for public sector agencies and staff is the same as for any other person.</p>
15	<p>A general administrative tribunal should be established:</p> <ul style="list-style-type: none"> • to exercise original jurisdiction and to review, on the merits, administrative decisions – <ul style="list-style-type: none"> – with a minimum of formality; – by way of inquisitorial, not adversarial, methods; and – using techniques to ensure the proportional resolution of disputes, including by way of ‘early-neutral evaluation’; • to amalgamate, co-locate where practicable and standardise the services and adjudicative functions of existing tribunals, boards and other bodies hearing administrative appeals; and • with evaluation of the administrative and economic impact of the general administrative tribunal by way of an established evaluation framework, enabling 	<p>Partially supported</p> <p>The Government supports the broad intention of this recommendation. The Government’s Queensland Civil and Administrative Tribunal initiative, announced by the Premier on 12 March 2008, will result in the amalgamation of a number of existing bodies and tribunals.</p> <p>An independent panel of three experts, chaired by former Queensland Court of Appeal Justice the Hon. Glen Williams AO QC, was established to provide advice on how best to implement the amalgamated civil and administrative tribunal, including determining the scope of the jurisdiction of the new tribunal. In June 2008, the panel delivered its first report to Government. The report includes 48 recommendations and identifies 23 tribunals and the functions of five other bodies</p>

	<p>statistical and financial reporting to the Attorney-General.</p>	<p>for inclusion in the new tribunal.</p> <p>It was not within the Panel's terms of reference to consider whether particular decisions in legislation should be subject to merits review where no right of review currently exists. As the Panel has commented, this would be "a separate exercise requiring an exhaustive examination of the statute book". It would also require extensive work to assess its impact in terms of the numbers, types and complexity of matters needing to be decided by the proposed review body.</p> <p>It is the Queensland Government's intention to establish a civil and administrative tribunal by the second half of 2009. Any necessary legislation to implement the new tribunal is to be introduced into Parliament by March 2009.</p> <p>The Department of Justice and Attorney-General is also developing an administrative review policy for approval by government to provide guidance to agencies about the bodies that should undertake external review when new rights of review are granted or when changes to review mechanisms are made for current review rights. The policy will also provide broad guidelines for when a decision should be subject to internal and/or external review.</p> <p>The Government's current priority is the successful implementation of this tribunals amalgamation project. The Government does not propose during its current term to review whether a general merits based review should be provided for decisions under legislation for which no review right currently exists.</p>
16	<p>Administrative justice in Queensland should provide a range of mechanisms to ensure that matters are dealt with in ways which reflect the nature of the dispute and what the person in dispute with a public body wishes to achieve. This should</p>	<p>Supported in Principle</p> <p>Right to Information</p>

	<p>include Ministers ensuring that:</p> <ul style="list-style-type: none"> • departments and agencies give priority to improving first-instance decision-making and reducing error rates, including by way of undertaking relevant training, such as the good decision-making training delivered by the Office of the Ombudsman; • departments and agencies have a 'one-door' approach for complaints; and • when an individual makes a complaint or appeals, the initial decision is always reviewed by the department or agency, even if internal review is not a statutory requirement in the circumstances. 	<p>The Information Commissioner will publish guidelines to assist agencies to provide quality first-instance decision-making in relation to the application of the proposed Right to Information Bill (Government response to <i>The Right to Information Report</i> recommendation 43). The guidelines will include guidance about the application of the public interest test and providing statements of reasons.</p> <p>The Information Commissioner will also have a role in directing officers to relevant guidelines, decisions or case law, particularly in the case of smaller agencies and organisations.</p> <p>The Government has accepted a recommendation of the Solomon Report to make internal review optional for applicants under the proposed Right to Information Bill. The proposed Bill will require agencies to make internal review available to applicants who wish to use it (Government response to <i>The Right to Information Report</i> recommendation 89).</p> <p>Generally</p> <p>The Government will, in the context of the implementation of the Right to Information legislation and the Queensland Civil and Administrative Tribunal legislation, review the adequacy and availability of this information for promoting quality first instance decision-making and administrative justice complaint and review processes.</p>
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