

**Legislative Council
HANSARD**

Wednesday 27 September 2023

[excerpt]

MOTION

International Access to Information Day and Tasmania's Right to Information Act 2009

[11.05 a.m.]

Ms WEBB (Nelson) - Mr President, I move -

- (1) That the Legislative Council notes -
 - (a) 28 September 2023 is International Access to Information Day; and
 - (b) the 30-year anniversary of legislation enshrining Tasmanians' Right to Information on the State statutes is also being celebrated on 28 September 2023.

- (2) The Legislative Council further -
 - (a) Notes the report, *Transparent failure: Tasmania's ineffective right to information system and how to fix it* (the Report), released by the Environmental Defenders Office Tasmania (EDO) in July 2023;
 - (b) Acknowledges the EDO's analysis that its report indicates the administration of Tasmania's freedom of information remains the most secretive in Australia;
 - (c) Acknowledges the Report is informed by the EDO's review of the handling of applications under the State's *Right to Information Act 2009* (RTI Act), the analysis of which found Tasmania ranked last on a range of measures when compared with national jurisdictions, including:
 - (i) the highest rate of refusals, with Tasmanians more likely to have their freedom of information applications refused than citizens anywhere elsewhere in Australia;
 - (ii) a high rate of errors, with up to 70 per cent of RTI Act refusals over the past five years overturned on review by the state Ombudsman;

- (iii) disturbingly slow review times, which see Tasmanians waiting almost three years, on average, to have refused RTI Act applications reviewed;
 - (iv) a large and growing backlog of unresolved reviews; and
 - (v) a low level of government accountability, with analysed data indicating the RTI Act is not being administered in a way that allows for the efficient public scrutiny of government decisions; and
- (d) Agrees in any democracy, access to government information and public scrutiny of government decisions is a critical component of government accountability.
- (3) And further, the Legislative Council calls on the Tasmanian Government to back its commitment to governing with openness, fairness and transparency by commissioning an independent review of the *Right to Information Act 2009*, including its objectives, implementation and administration.

Mr President, I rise to speak to this motion because all of us here would agree that access to information is the cornerstone of a healthy democracy and 28 September 2023, that is tomorrow, is International Day for Universal Access to Information. When I looked into this, I went to the United Nations website on the International Day for Universal Access to Information and it said this about the day:

Informed citizens can make informed decisions, for instance, when going to the polls. Only when citizens know how they are governed, can they hold their governments accountable for their decisions and actions. Information is power. Therefore, universal access to information is a cornerstone of healthy and inclusive knowledge societies.

Universal access to information means that everyone has the right to seek, receive and impart information. This right is an integral part of the right to freedom of expression. The media plays a crucial role in informing the public about issues of interest, but it relies on the ability to seek and receive information too. Hence, the right to universal access to information is also bound up with the right to freedom of the press.

In the lead-up to International Day for Universal Access to Information, I regard it as highly relevant for us to take time to consider the importance of its statutory basis in this state, our Tasmanian Right to Information Act 2009. Right to information legislation, or freedom of information legislation as it was previously known here and is known in some other jurisdictions, is a foundation for citizens being able to exercise their right to access information from governments that represent them.

When I looked at the second reading speech of our Tasmanian Right to Information Act 2009, I found it stated thus:

The Right to Information Bill is legislation for today and for the future, dedicated to improving democratic government in Tasmania by increasing the accountability of the executive to the people of Tasmania; by increasing the ability of the people of Tasmania to participate in their own governance; and by acknowledging that information collected by public authorities is collected for and on behalf of the people of Tasmania.

However, despite those statements in the second reading speech from 2009, with claims to be legislating 'for the future', here we are in 2023 with concerns about our RTI system and its dysfunction across many years becoming louder and louder, and calls raised for reform.

This culminated most recently in a report prepared by the Environmental Defenders Office and published in July this year, 2023, titled *Transparent Failure: lutruwita/Tasmania's ineffective right to information system and how to fix it*.

I seek leave to table the report as part of my contribution.

Leave granted.

Ms WEBB - Prompted by the release of this report, on 11 August 2023, a number of civil society groups wrote an open letter to the Premier calling for review and improvement of the Tasmanian RTI system. Those groups included: Community Legal Centres Tasmania, the Environmental Defenders Office, the Human Rights Law Centre, Planning Matters Alliance Tasmania, The Australia Institute, and the Tasmanian Council of Social Service.

That open letter to the Premier pointed to the importance of a well-functioning RTI system, saying this:

The right to information is enshrined in several international agreements, including Article 19 of the International Covenant on Civil and Political Rights.

Also:

RTI is a critical component of Australia's system of government and helps to ensure that decision-makers are accountable for their decisions. A well-functioning RTI system helps maintain trust in our political system.

The key phrase there is 'a well-functioning RTI system'. There is no-one, I would say, in this state who could claim that what we have currently is 'a well-functioning RTI system'.

What we do have though is 30 years of history in access to information legislation here in Tasmania. Our original Freedom of Information Act 1991 was replaced by the Right to Information Act in 2009. The RTI act was a result of review and reform of that previous FOI act, with the firm intention of improvement to meet contemporary and future standards. In fact, again, looking to the second reading speech from 2009, there was an outline of the genesis of the 2009 act. It said this:

In August 2008 the Premier, David Bartlett, announced a 10-point plan to strengthen trust in democracy and political processes in Tasmania. That agenda included a review of the Freedom of Information Act 1991 with a view to improving transparency in the operations and decision-making processes of the Government through better access to information for all Tasmanians.

Further, he commented:

... Tasmania has taken a leading role in the current nationwide review of government information handling processes.

It was pleasing to see back then the second reading speech noting tri-partisan engagement in the development of the bill and a 'high degree of consensus' was noted on the direction for the changes needed. The bill was explicitly based on the 'push' model for proactive disclosure, in which disclosure of information must occur unless its disclosure would be contrary to the public interest - and the bill from 2009 clarified the test for determining this.

With the passage of the Right to Information Act 2009, I imagine there was considerable optimism on a new era of transparency and accountability in Tasmania. A nation-leading role, broad political support and a contemporary 'push' model based on proactive disclosure should have set us up for a very positive new culture in relation to access to information in this state. However, as we all know, when it comes to a policy or piece of legislation, success is all in the implementation and, in particular, the investment to underpin it. On those fronts, it appears that the RTI act has never reached its full potential and, in fact, has been a longstanding source of concern and complaint.

The second reading speech back then in 2009 also was somewhat prescient. It stated:

This bill hopes to change the prevailing view that this sort of legislation is a means to block the disclosure of information, instead of a means to encourage and streamline disclosure with a framework of protection in limited circumstances.

In the time since its passing, I think we can say this aspiration has never been effectively and fully achieved.

The Environmental Defenders Office report, referred to in this motion, released in July, describes two key complaints that have been made over time since the passage of the 2009 act. It says those two complaints are:

- (1) When a request for information is made to a public authority or Minister's office ..., it is common for the decision-maker to apply the Act in a way that prevents disclosure, often incorrectly.

This leads to the perception of a growing 'culture of secrecy' where public authorities are actively preventing proper scrutiny of public administrative decision-making.

- (2) It takes on average nearly three years for an application for access to information to be finalised when it proceeds to an external review by the Tasmanian Ombudsman. In the event information is ultimately released it may no longer be of any use.

Both problems have received widespread media coverage and a commitment to improved transparency and accountability by Government, yet this attention has not translated to a perceptible change in how RTI applications are processed by public authorities or the Tasmanian Ombudsman's Office.

We have also seen frequent media articles in recent years noting the insufficiencies and failures in the performance of our nationally-worst RTI system. To mention just a few of the many recent examples of *Mercury* headlines - our local paper - over the years, I noted one from 21 May 2016, headline 'Push to close Right to Information loophole'. From 9 April 2018, 'State lags the nation in Right to Information access and speed'. From 4 December 2020; 'Arms-length minister under fire for RTI meetings'. From 23 August 2022, 'Secret state, Tasmania least likely to grant Right to Information requests'. From 1 April 2023; 'Tasmania politics: Boom in right to information requests hits bureaucratic brick wall'. That is just a flavour of some of those.

In a *Mercury* article from 14 November 2022 that I would like to quote from, we have yet another RTI-related headline which was in the context of reporting on the annual report from the Ombudsman's Office for 2021-22. That article quoted from the annual report:

Of the 19 external review decisions completed by the 2021-22 reporting year only three affirmed the decisions of the relevant public authority. The significant majority varied or set aside the decisions and two of the decisions in which the public authority's decision was affirmed included significant criticism of the manner in which the assessed disclosure application had been handled. That 95 per cent of the external reviews dealt with in the 2021-22 financial year identified issues with the manner in which the public authority had responded to a request for assessed disclosure is of concern.

That is fairly much an understatement, I would have thought: criticism of 95 per cent of the external reviews dealt with in that year. It went on to say:

The express object of the RTI Act is clear in relation to its prodisclosure focus seeking to increase government accountability and acknowledging that the public has a right to information held by public authorities who are acting on behalf of the people of Tasmania. Too often, sadly, adherence to this object is not evident in practice and a closed, and at times obstructive, approach is taken when responding to requests for assessed disclosure which come before my office.

That was in the *Mercury* article quoting the annual report from the Ombudsman. The article stated this in its comments:

The report noted that there are 100 further appeals awaiting review, roughly the same as a year before. The average wait time for a review is 587 days.

Tasmania has been dubbed the nation's 'most secret state'. Former premier Gutwein promised reform in 2020 and revealed that 30 per cent of RTI requests received no information at all, by far the worst performance in the nation.

The Government has itself acknowledged deficiencies in the operation of the RTI act in this state. In the 2022-23 state Budget, additional funding was provided to the Ombudsman's Office which was described in the budget material in this way by the Government:

And, in recognition of the important role that Right to Information plays in promoting openness and transparency within Government, the Budget provides \$500 000 over two years to improve and speed up RTI capability and practice in the State Service.

This will provide centralised training for skilled RTI practitioners, resulting in a smoother more efficient process to action Right to Information requests.

Such is the commitment, Mr President. We know things have been awry for quite some time. We know that our nation-leading 2009 act has not delivered on its intended outcome of strengthening our democracy through increased transparency and accountability. Those civil society groups that wrote to the Premier on 11 August this year noted as much. They said:

In recent years, there has been a mounting perception that Tasmanian government agencies are increasingly obstructing public access to information.

While the Tasmanian Government has emphasised its commitment to governing with openness, fairness and transparency, concerning new data has been published that confirms there is an urgent need for action to fix problems that are plaguing Tasmania's failing RTI system.

The EDO report reviewed the handling of applications under the Right to Information Act 2009 by government departments, statutory authorities and the Tasmanian Ombudsman's Office. The report's finding highlighted serious deficiencies in the administration of RTI laws over an extended period. From the Executive Summary of that report I quote:

There is a mounting perception that lutruwita/Tasmanian government departments and authorities are increasingly willing to use exemptions under lutruwita/Tasmania's Right to Information Act 2009 (RTI Act) to obstruct public access to information, particularly where that information might be damaging to either the Government or industries that it regulates.

It further said this:

Our analysis confirms that lutruwita/Tasmania's right to information regime is foundering; public authorities are failing to give effect to the objects of the RTI obligations by providing access to information.

In fact, lutruwita/Tasmania has Australia's highest error rate in the interpretation of right to information legislation by public authorities and Australia's highest rate of refusal to grant access to information.

EDO has also found that Tasmanians will also experience delays of nearly three years for external review of RTI decisions.

That report and the analysis that was done within it drew on data from a range of sources including statistics from the Ombudsman's Office; published decisions by the Ombudsman in relation to external reviews; annual reports from the Ombudsman's Office; Department of Justice annual reports in relation to the administration of the RTI act; and documents produced by the Ombudsman in response to RTI applications from Community Legal Centres and to questions put from the EDO.

The report presents 10 key findings. They include things such as Tasmania having the lowest rate of RTI applications being granted in full. In four out of the five most recent reporting years at least 70 per cent of RTI decisions were being overturned by the Tasmanian Ombudsman, either in full or in part when external reviews were applied, demonstrating that public authorities are consistently misapplying the RTI act to deny public access to information. It had a finding relating to the last year for which records were available, being 2021-22, that public authorities misapplied parts of the RTI act in nearly every decision reviewed by the Ombudsman.

The report has another finding on the average time taken to challenge decisions by a public authority denying access to information through seeking an external review. That has blown out from an average of back in 2016-17 of 230 days through to 2021-22 of 987 days. A further finding was that since 2012 there has been almost a linear increase in the number of RTI external review applications filed in each reporting period. However, there was no marked change in the number of external reviews conducted over the same period which has caused that growing backlog of undecided external review applications.

Despite that growing workload and backlog of RTI external review applications, the total revenue for the Ombudsman's Office has, when adjusted for inflation, remained relatively constant from 2012-13 through to 2021-22.

Further in the findings of the report it notes that while more staff within the Ombudsman's Office have recently been dedicated to external review of RTI decisions, the efficiency of processing the reviews has not increased by an equivalent rate. A further finding sheds more light on that where it discovers that close to half the time it takes for the Ombudsman's Office to complete an external review of an RTI decision is attributable to the review being stalled in the draft or preliminary review stage. This suggests more senior staff are needed in the Ombudsman's Office to ensure reviews can be completed in a timely manner and not stalled at that early work stage, before getting ticked off by the senior person to finalise the review.

They also have a finding that there is a need for the RTI act to be reviewed and amended to better facilitate public access to government information, and further funding and resources will be required to ensure the obligations under the act can be fulfilled.

It is important to be quite clear when we are reflecting on those key findings from the report and before looking at the recommendations made for how to fix it, it is important to be clear and consider the consequences of a dysfunctional RTI system.

The Right to Information Act 2009 lays out very clear objects. Object (1) says:

- (1) The object of this Act is to improve democratic government in Tasmania -
 - (a) by increasing the accountability of the executive to the people of Tasmania; and
 - (b) by increasing the ability of the people of Tasmania to participate in their governance; and
 - (c) by acknowledging that information collected by public authorities is collected for and on behalf of the people of Tasmania and is the property of the State.

When the act is not being implemented as it should, the object of the act is not being fulfilled, which means less accountability of the executive to the people of Tasmania and decreased ability of the people of Tasmania to participate in their governance.

That is what has prompted those civil society groups to note, in their open letter to the Premier, that:

The current lack of transparency in government decision-making and administration is threatening the health of Tasmania's democracy.

It is not a flippant statement; it is a factual statement. No wonder they then go on to strongly urge the Government to take actions outlined to fix the failing RTI system.

I found it interesting in the EDO report to note the case studies that they presented, which showed experiences of both EDO and its clients that demonstrated the consequences of a dysfunctional system. It gives us compelling insights into those consequences and the way in which we can see those objects of the act not being fulfilled; for example:

Citizens seeking to pursue legal action losing the opportunity to do so when information sought from regulators was initially refused, but then the refusal was overturned on appeal, which took 842 days, meaning the ability to pursue legal avenues had elapsed.

Similarly, citizens seeking access to information in order to participate in a statutory public comment process being initially denied access to requested information, only to have that overturned on review, but 1104 days later, far too late to facilitate informed comment in the statutory process. Therefore that citizen was denied the opportunity to participate fully in that process.

We have also seen the consequences of a dysfunctional RTI system highlighted in the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings. In the report of the commission of inquiry tabled just yesterday in parliament, the commission discusses the failings of the current RTI system in supporting victims/survivors.

In the inquiry's report - volume 7, chapter 17, section 6: Record keeping and access to information - it says:

To support a claim of civil liability or application for redress, victim-survivors of institutional child sexual abuse often need access to information held by government. This information can also be critical helping victim-survivors understand the context in which the abuse occurred and the response at the time (if any). It may also provide a sense of recognition and acknowledgement of the abuse and harm it caused. For some victim-survivors, access to this information can help to fill gaps in their personal story. This role is particularly important for victim-survivors who have been in state care.

Further:

Individuals have a legislative right to access government information, unless an exemption applies. Despite this right, in hearings, consultations and statements to our Commission of Inquiry, victim-survivors and their representatives described systemic barriers to exercising this right, including costs, poor record keeping, lengthy delays, refusals and extensive redactions, with many resorting to slow and non-binding review processes.

This evidence highlighted an administrative culture that was not pro-disclosure and which, combined with a complex legislative scheme and insufficient resourcing, limits the release of information in practice.

There is no doubt that we have a problem when it comes to the RTI system. Fixing it should be a matter of priority. The Tasmanian Government has publicly committed to openness, fairness and transparency. The Government will no doubt point to some limited efforts it is making to respond to the longstanding and repeated concerns raised over our dysfunctional RTI system. These include, as I mentioned earlier, an additional \$500 000 in the Tasmanian budget over two years, which was intended to provide training for RTI officers within government agencies.

I note that the Government has also put in place the Right to Information Uplift Project, which has the stated aim to improve the way people get information held by the Tasmanian Government. This project, it appears, follows the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings and the matters that were arising within the context of that commission of inquiry, where it was being identified that victims/survivors were having a difficult time getting information held by Government.

I understand that the Uplift Project, begun in response to the commission of inquiry, is intending to:

- improve the process for getting information;
- create the same training for RTI officers across Government; and
- look at ways to give more information.

The website indicates a survey was open until 1 September 2023 for people who had used the RTI system to complete and provide feedback. I believe that some people were proactively contacted and invited to complete that survey, but I am not aware that it was publicised widely.

The survey is no longer accessible. What the questions were or what information was sought cannot be seen. The website also provides an address to which people can send an email to about their experiences with RTI.

However, I find this a fairly minimal and fairly invisible effort and it is quite disappointing to note. Where is the more detailed information publicly available about the scope of this Uplift Project, its time frame, the key steps that will play out, and who is conducting the project? It appears to be done within DPAC rather than an independent review. Will a discussion paper be produced and submissions for feedback sought to feed through, perhaps, into a final report and recommendations on a way forward? Which external experts have been involved in informing this review? This is all unclear.

They are only some of the questions that I have about this Uplift Project. I feel that it has been put in place as a bit of kneejerk response to what was arising out of the commission of inquiry. I hope we can build on that and can do something more comprehensive and thorough - along the lines that the commission is recommending, that the EDO and its report recommends and as this motion calls for.

The EDO report certainly highlights that much more can and should be done by the Tasmanian Government to address the chronic delays and errors that are plaguing decisions in our RTI system. It calls on the Tasmanian Government to back its commitment to governing with openness, fairness and transparency by taking urgent action to fix our failing RTI system. The report makes 12 recommendations.

The first category of recommendations relates to reform of authorities' decision-making.

The first recommendation relates to the act, including an amendment to include an express statement requiring routine and active release of information to be the preferred method of disclosure of government information.

The second recommendation is again to amend the act to introduce an explicit presumption that all information sought under the act is disclosable to a member of the public:

The presumption will only be rebutted where the public authority is satisfied that the information falls into a category of exempt information under the act and that it would be contrary to the public interest to disclose the information.

Recommendation 3 is that an independent review of the existing exemptions from disclosure under the RTI act be undertaken with a view to recommending amendments to clarify commonly misunderstood or misapplied provisions.

There is a further category of recommendations that relate to the reform of the external review process.

Recommendation 4 says:

The RTI Act be amended to provide a review period of 30 days to replace or qualify the current provision that an external review be resolved "as soon as reasonably practicable".

We can see the problem - when it can push out beyond 1000 days, it might not be enough of a constraint.

Recommendation 5 suggests:

The RTI Act be amended to remove the requirement that the Ombudsman provide a "preliminary decision" to public authorities and Ministers where a decision is averse to them and invite their input.

Recommendation 6 talks about amending the act:

... to provide the Tasmanian Civil and Administrative Tribunal with jurisdiction for external review of assessed disclosure decisions, as an alternative and/or consecutive to a review by the Ombudsman.

A further category of recommendations relates to capacity building and making improvements there.

Recommendation 7 says:

A comprehensive audit of the management and release of government information be conducted, with a focus on incorporating "technology-assisted" compilation and review of information.

Recommendation 8 says:

The Ombudsman's Office or another suitably qualified independent body be engaged to provide training to public authorities that focuses on the appropriate application of the RTI Act's exemptions and the public interest test.

Recommendation 9:

The Ombudsman to be required to publish all decisions on external review applications.

Currently, only some are published.

Recommendation 10:

Additional resources should be deployed to the RTI jurisdiction of the Tasmanian Ombudsman's Office as a matter of urgency to arrest and reverse the growing backlog of external review applications.

Recommendation 11:

Resourcing and staff distribution in the Ombudsman's Office, and particularly the RTI section, take into account the demonstrated need for the Office to have sufficient officers at both junior (drafting) and senior (settling/making) levels.

So we do not see things being stalled in the draft stage due to a lack of time and attention from a senior person.

The final recommendation relates to a proposal for an independent review. Recommendation 12:

The RTI Act be amended to require regular independent reviews of its operation and implementation.

In relation to that final recommendation 12 which aligns with the call made in the motion that we are considering here today, the EDO notes this in the report:

While we expect the implementation of our recommendations would result in a great improvement to the RTI system, experience both in Tasmania and interstate demonstrates that amending the RTI Act may not be sufficient to resolve all the barriers in providing an effective system for accessing information.

Legislative change must be accompanied by strong leadership and rigorous properly resourced compliance mechanisms to ensure the intent of legislation is fulfilled in its interpretation and implementation.

To this end, we recommend that there be a requirement for regular, (e.g. 3 to 5-yearly) independent reviews of both the operation and implementation of the RTI Act with consideration given to the extent ... to which the objects of the RTI Act are being achieved; ... the extent to which additional legislative measures, if any, are considered necessary to achieve the objects of the RTI Act within the periods required under the RTI Act, including by the introduction of performance standards and other mandatory requirements; and ... whether public authorities and the Ombudsman's Office have been sufficiently resourced to fulfil their functions and obligations under the RTI Act; and ... any other matter that the Ombudsman considers should be subject to the review.

The reviews and the government's responses to them should be tabled in Parliament.

I note that call, because that adds that further level of public visibility and accountability within this parliamentary context.

Earlier, I referred to the commission of inquiry report and the issues raised in that report relating to the RTI system. The commission also made a recommendation on how to fix the system which is well aligned with those that I have just mentioned from the EDO report. The relevant recommendation from the commission of inquiry report is recommendation 17.8 and it says this:

The Tasmanian Government should review and reform the operation of the *Right to Information Act 2009* and the *Personal Information Protection Act 2004* to ensure victims/survivors of child sexual abuse in institutional

contexts can obtain information relating to that abuse. This review should focus on what needs to change to ensure:

- a. people's rights to obtain information are observed in practice
- b. this access is as simple, efficient, transparent and trauma-informed as possible.

It then goes on with a second part to that recommendation. It says:

The review should consider reforms to the *Right to Information Act 2009* and the *Personal Information Protection Act 2004* to:

- a. include an explicit presumption in favour of disclosure in the *Right to Information Act 2009* and *Personal Information Protection Act 2004*
- b. embed the public interest test in specific exemptions in the *Right to Information Act 2009*, tailored to those exemptions
- c. streamline the interface between the *Right to Information Act 2009* and the *Personal Information Protection Act 2004* to overcome what has, by default, become a two-step process to obtain personal information
- d. require that a personal information custodian under the *Personal Information Protection Act 2004* 'must provide' rather than 'may provide' personal information upon request from an individual who is the subject of that information, subject to any appropriate exemptions to that requirement
- e. include a 'reasonableness' test in the *Right to Information Act 2009* as part of the assessment of whether to withhold personal information relating to a person or third party other than the person making the request for information
- f. strengthen and streamline internal and external review processes in the *Right to Information Act 2009* and *Personal Information Protection Act 2004*, with a focus on options to enforce decisions of the Ombudsman and to apply for review by the Tasmanian Civil and Administrative Tribunal
- g. provide an automatic fee waiver for right to information applications relating to child sexual abuse made under the *Right to Information Act 2009* by victim-survivors or a person acting on their behalf.

It has a third element to their recommendation, which is:

The Tasmanian Government should consider centralising management of access to information processes in a specialist unit or department, supported by access to information liaison officers located in government departments and agencies.

A fourth part of the recommendation is:

The Tasmanian Government should provide funding to government departments, agencies and the Ombudsman, as the case may be, to:

- a. ensure access to information requests are processed within statutory timeframes
- b. speed up external review of right to information decisions
- c. provide trauma-informed training for the Tasmanian State Service in relation to victim-survivor access to information.

There is a lot of alignment there. This is a resounding call now from various avenues, both civil society, from Tasmanian citizens themselves, from experts on this topic matter in our state and now from our commission of inquiry, whose report has just been tabled.

In conclusion, we would all appreciate that a commitment to improving accountability and transparency in our governance is an investment in the health of our democracy. I believe that the RTI act 2009 was spot-on in its objectives as I mentioned earlier: increasing the accountability of the executive; increasing the ability of the people of Tasmania being able to participate in their governance; and by acknowledging that information collected is for and on behalf of the people of Tasmania. They are all spot-on and we must give effect to them in actuality.

It is important that we honestly acknowledge that since its passage in 2009, implementation of the RTI act has fallen short in delivering on those objects, the act. We have had this brought to our attention time and again over many years. However, our state has this opportunity. We can make a tangible difference now, positive progress by undertaking a purposeful and thorough review. Such a review will provide guidance on how best to address things where they are falling short and changes or improvements that should be considered.

It is well past time to be considering tweaks or small adjustments or small new investments. This is time for comprehensive and thorough action. I encourage members to support the call in this motion for such a review to be undertaken and for us to encourage the Government that it will only be positive outcomes that come for our state, particularly vulnerable members of our state as we have had highlighted through the commission inquiry. It is a responsibility of any government of the day to ensure that access to information is something that is available to all citizens.

[...]

Ms WEBB (Nelson) - Mr President, I thank those members who made contributions; I appreciate that. I will make a couple of responses on some matters raised in those contributions.

I appreciate the Government will, of course, wish to tout its efforts in various ways on transparency, or efforts towards that end. Some of those are perfectly valid to be laying claim to and pointing out as improvements. I would be the last to deny the Government the opportunity to pat themselves on the back for that. There have been improvements on some policy areas. There have been improvements on some routine disclosures and datasets being made more regularly available and really to be praised.

However, it does not excuse us for not addressing glaring problems raised over and over again. I will say straight off the bat, any suggestion from the Government that what I am raising is based only on the recent EDO report published in July is absolutely ridiculous. I quoted *Mercury* articles raising concerns from back to 2016. I could have gone right back to 2013 or 2014. This is not an issue recently raised in one report. It is an issue raised by numerous stakeholders from the community, academic experts, civil society, members of parliament, the media - who rely on a functional RTI system. Our fourth estate requires access to information to undertake its job in our democracy. While the Government may want to quibble with a couple of points of data in the EDO report, which I will get to, to suggest I am making this motion and making this call for review based on one report is absolutely ridiculous. Let me put that to rest right now.

Some of the efforts the Government has been making have been made kicking and screaming, dragged to it, including, for example, ministerial diaries disclosures, which is good to see now. They are still really not up to scratch and do not put us anywhere near of the front of the pack in terms of their detail. We were late getting the next ones out and had to be prompted. I would be pleased to see the next quarterly set up on time. We will wait and see. Mr President, we might have to put another media release out if it is not.

Ms Forrest - Best not to hold your breath.

Ms WEBB - I do not think I will be holding my breath. I could be in trouble, I reckon.

Mr Willie - Just copy and paste your media release ready for the next one.

Ms Forrest - Yes, you would be ready to go; when we arrive, just say, 'As I said'.

Ms WEBB - It also astonished me to hear in that list of apparent success stories from this Government that they are pointing to donation reform. Five years after it was committed to we still have not finished dealing with it in this Chamber because of delay after delay after delay from this Government. Five years, Mr President. It is astonishing to point to that as a success story.

Ms Forrest - It will only be success if it goes back down and gets passed.

Ms WEBB - To bring us the worst in the nation donation disclosure laws to consider in this place, five years after it was promised and then try to point to that as some sort of success of transparency is an absolute joke. Quite frankly, an absolute joke. I note the other things in that list which were interesting: publication of submissions in response to consultations being published publicly on the website is a good thing. It does not happen in a timely enough manner. Sometimes those submissions are not published until the relevant bill consulted on is tabled in the other place.

Mr Willie - Even debated in some certain cases downstairs.

Ms WEBB - Absolutely. Again, it is the most minimal, the most not functionally effective way to do it, to have to do it at the last minute, when it is the least useful in providing information into the legislative development process to make available publicly submissions made on consultations, say, to exposure drafts or to discussion papers put out in developing legislation. Those should be put up pretty much as soon as the consultation period finishes and the relevant department has considered the information provided in those submissions, straight up.

Ms Forrest - It is about timely disclosure, not just disclosure, is it not?

Ms WEBB - That is absolutely right, effective, timely and full disclosure to the greatest extent possible is what a genuine commitment would look like. Ministers defer their RTI requests to their departmental officers to assess. That is as it should be. It really is not something to congratulate yourself about. It is a basic transparency measure and an appropriate way to ensure ministerial interference. I note there was one media article, I might have had it in my list, where one minister of this Government was pulled up on that at a certain point because it was found there were discussions in the minister's office about RTI requests. We have to be careful we are always mindful of sticking to that as closely as possible.

There has been the investment I mentioned and acknowledged in my contribution of the \$500 000 over two years: \$250 000 a year. To be honest, it is not that much for extra staffing when you think about the staffing needed. Again, I pointed to the fact it is not just staffing at the junior level of assessing these external reviews. It is also the ticking off, the senior level person who has to tick off. It will be interesting to have it confirmed by the Government - obviously not in this debate but perhaps for follow-up later - whether the staffing in place and planned to be put in place is actually going to cover both those things so we still can deal with the backlog rather than have it stuck, waiting for final tick off, an issue the EDO report pointed to.

I note the mention of the uplift project, which is underway, but no real detail provided. When I go looking for detail in the public domain about that project there is next to nothing there. As a matter of transparency, how about putting some information about what that looks like into the public domain where we can see what and when it is going to be happening, who is involved, and where are the opportunities to participate?

The Government's contribution picked up on some apparent issues on data in the EDO report. I presume everything in the report the Government did not mention is therefore agreed to by the Government as a problem. To pick up on the couple of points, the Government did say that only a small number of RTI requests end up going to external review from the Ombudsman. What the report makes very clear is that in excess of 90 per cent of those in one particular year were either overturned in full or in part; therefore, there had been a mistake in the original determinations. There is a very high percentage of those being externally reviewed that are found to be faulty in the first instance, which does not point to an effective process.

Yes, those going to an external review are a smaller percentage of the RTI requests. We cannot take that to mean that every other single RTI request which did not go to external review was done properly or appropriately or in a timely fashion.

I thank the member for Elwick for providing some examples of how time frames get bumped out. There are all kinds of ways that problems exist and delays exist in this process which we would not even end up having come to light through data that is currently available.

It would be pretty important as a part of a review for there to be a full audit process for a period of time, a snapshot audit, of all RTI requests that were done to see how well they complied with the act, not just assume that the ones that go to external review are the only problematic ones.

I can attest that my personal experience is very similar to that described by the member for Elwick in his examples where there is an initial long delay in getting an acceptance letter. So right there, it is 20 days that are in the act, and completely misleading in terms of when you are going to get a response. You might not get an acceptance letter until longer than 20 working days after you have put in the request and the clock starts on the acceptance letter. You have to constantly follow up because there is not proactive communication about needing more time or a request for more time, or about the necessity to check with third parties.

I have experienced every single one of those examples provided by the member for Elwick. My office has to follow up and ask, what is going on? Is this going to be delivered? Then the request comes through, 'Oh, we have to check with third parties. You will need another 10 days', or whatever it might be and still you do not hear back so you have to follow up. There are constant delays.

The only option you have in that as someone pursuing a request, as the member for Elwick described, is you can take it to external review. As soon as it has not met the act you could send it for external review. What do we know about that process right now? It is mired in a backlog, you are waiting two years to get it. You might get a priority consideration or you might not. Generally, people persist to try to get an outcome from the department in the first instance, certainly my office does.

Mr Willie - You can also get a directive sometimes from the Ombudsman for the release of information and that is ignored.

Ms WEBB - Indeed. There are all kinds of ways that there is problematic application of this act occurring, delays are occurring, that there is likely to be a misapplication of the act occurring that never come to light through our external review process or in data and stats related purely to external review matters. It is only through a full, comprehensive review of the act and its operation - I fully agree with the member for Elwick's call where he quite clearly said, and it is my call as well, that it is not just the act we are reviewing. It is the way that it is implemented, the way it is funded and the way it is playing out. The outcomes it is delivering.

All of those things need to be part of that comprehensive review. It is not clear to me that is what the Government is doing even though what we have seen in the commission of inquiry is the selfsame call to review the operations of that act and to review the act itself. I did not hear the Government confirm that is exactly what is happening. I have heard that there is the uplift project. I heard that there is additional investment for staffing to help with a backlog - all well and good but that is not a full and comprehensive review. It is certainly not an independent review which is what we would look for here to be a best-case scenario because that really is fully transparent as a process.

It is astonishing that the Government in its contribution would suggest that an independent review would not provide any additional value over and above what they are already undertaking because what they are undertaking has not been fully articulated as a comprehensive review of the system. It is astonishing that in the face of a decade, at least, of calls raised about issues in this system, about complaints raised about this system, about experts saying the system is not working, to suggest that an independent review would not provide additional value is just outright ridiculous.

There is nothing to be feared by a government that embraces transparency from engaging an independent review of this act as a fundamental piece of architecture in our democracy and its integrity. I encourage members to support this motion. It is straightforward and simple. It says that we know there are things wrong here. We know we need to have a proper look at it, to figure out what is wrong and what we could best do to fix it. It encourages the Government to take steps through an independent review to see that that occurs for the health of democracy in our state. I encourage members to support the motion as a very positive way forward for us.

Motion agreed to.