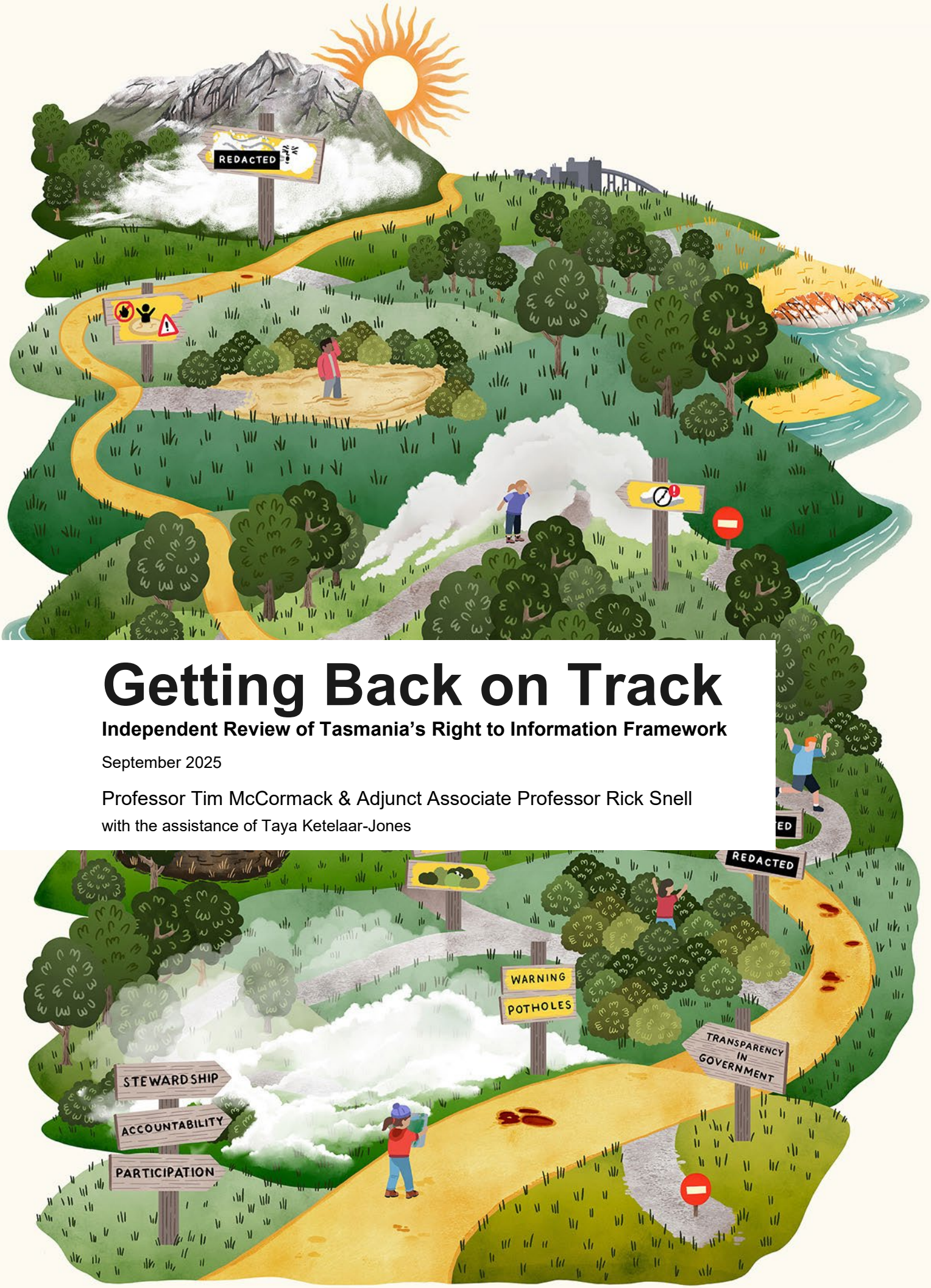

Getting Back on Track

Independent Review of Tasmania's Right to Information Framework

September 2025

Professor Tim McCormack & Adjunct Associate Professor Rick Snell

with the assistance of Taya Ketelaar-Jones

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We both live on *muwinina* Country and most of our work for this Review was undertaken here. We acknowledge the *muwinina* as the traditional owners and custodians of this Country on the western shore of *timtimuli-minanya* and we express our deep and abiding gratitude to them for their care for this magnificent place. We lament the tragic reality that invasion and dispossession was so overwhelming that we know of no descendants of *muwinina*. That massive loss does not, and cannot, terminate the ongoing connection of the *muwinina* to this place – this place is imbued with the Spirits of their old people and we offer our gratitude for their ongoing oversight.

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We thank all of those who took time to write thoughtful and reflective submissions and also to all of those who met with us, took our Review seriously and shared openly and honestly with us about their experiences and views on what improvements could be made to increase the efficacy of the Right to Information ('RTI') framework in Tasmania. We had the privilege of meeting with many RTI delegates around Tasmania who, despite all the pressures they are subjected to, believe passionately in the importance of transparency in government. They are true champions of transparency and should feel proud of their professionalism and hard work.

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In expressing our gratitude for all those who have contributed to our work, we of course accept full responsibility for all that this Report contains, including any shortcomings or inaccuracies.

Tim McCormack and Rick Snell

September 2025

Executive Summary

The fundamental predicate of an effective Right to Information ('RTI') framework is to facilitate transparency in government. It is an easy thing for political leaders, especially early in a new term of government, to articulate a commitment to transparency: we all know it is beneficial, and we all want to be seen to be committing ourselves to it. However, transparency in government does not result from rhetoric devoid of substance and nor is it an end in itself. The ultimate objective is the quality of our democracy and an effective RTI framework helps strengthen three key inextricable threads that are core to the path to that goal: increased accountability of the government to the people; increased participation of the people in their governance; and increased commitment to the concept of government as custodians of public information on behalf of the people. Tasmania's *Right to Information Act 2009* (Tas) ('*RTI Act*') was intended to enhance the quality of our democratic system of governance and section 3 of the Act, entitled 'Objects of the Act', clearly articulates all three inextricable threads. Our Review was initiated out of a sense that the RTI framework, including the implementation of the Act itself, is not as effective as it could, or should, be.

In framing our approach to the Review, we were guided by our Terms of Reference, which required us to consider 'findings and recommendations from previous reports and reviews' and also to 'undertake a transparent and broad consultation process, engaging with all interested and relevant parties, including the general public, the Tasmanian State Service, Parliamentarians and others'. In line with this, we considered carefully the findings and recommendations of past reports and reviews, and we also consulted broadly. Our consultations involved a general call for written submissions as well as meetings across the State. We met with over 75 individuals and organisations from across the RTI landscape – including applicants and users of the system, as well as agencies and authorities subject to the *RTI Act* and responsible for administering it. This included half of Tasmania's local councils, all government departments, many government business enterprises, and State-owned companies. The overwhelming majority of those meetings occurred face-to-face, with a small number conducted virtually. The consultations generally were an hour in length and involved questions, explanations and engaged discussion. These confidential conversations were not recorded, but summary notes were taken. The expectation was that all those in attendance were free to use the information and ideas, albeit without attribution. As Reviewers, we indicated our key concerns and ideas and the direction we were heading in terms of our final Report.

The findings of past reports and review processes, together with the gleanings from our own consultations and observations raised in written submissions, revealed a striking consistency of concerns. While opinions vary, the prevailing view is not that Tasmania's *RTI Act* is broken beyond repair and in need of wholesale rewriting and restructure. Instead, it has become increasingly clear that the current frustrations with a lack of transparency in government stem less from legislative design, and more from cultural and administrative shortcomings. Our title for this Report – 'Getting Back on Track' – reflects this general sense that, despite the extant obstacles to adequacy, effectiveness and implementation of the *RTI Act*, the structural foundation is sound: a track to get back onto, so to speak. What is needed now is the resolve to restore and strengthen transparency by addressing the underlying issues that have taken the system off course.

A central and recurring concern is the persistence of a culture of non-disclosure and obfuscation. One example that arose during the most recent election campaign was illuminating. A journalist at the Australian Broadcasting Corporation ('ABC') was inadvertently provided with an unredacted version of a document requested under the *RTI Act.* The RTI delegate processing the request had intended only to release a redacted version but mistakenly sent the full document. Upon discovering the mistake, the delegate sought to recall the mistakenly sent email and subsequently sent the intended redacted version. The ABC, now holding both the redacted and the unredacted documents, including the delegate's reasons for the redactions which are routinely included with redacted documents, published both documents. The ABC journalist publicly questioned the grounds for the application of legislative exemptions to full public disclosure and asked the Premier for his response. The Premier expressed satisfaction that the full, unredacted version of the paper had been made public. That endorsement of transparency was welcome, but clearly begs the question: why is there is such a gap between the Premier's espoused commitment to transparency in government and RTI delegate decision-making not to release information in its entire, unredacted form? And why is there such a widespread view that access to information on major, and often controversial, 'big-ticket' items like the proposed new stadium, the new berth for the Spirits of Tasmania, the new Marinus Link, adequate berthing and refuelling facilities for the *Nuyina,* and salmon farming, all so tightly held and controlled?

We recognise that shifting entrenched cultural values and practices takes time and concerted effort. We call for clear and unequivocal commitments from Tasmania's political and bureaucratic leaders to drive the cultural change necessary to move towards greater transparency in government. We are encouraged by important initiatives already underway. Chief among those is the RTI Uplift Project under the

auspices of the Project's Steering Committee and the Department of Premier and Cabinet ('DPAC'). The development of all-of-government model 'RTI – Information Disclosure Policy' and 'RTI – Information Disclosure Procedures', the production of RTI training videos, and the inclusion of RTI key performance indicators for secretaries of government departments, are all positive initiatives and we look forward to the beneficial effects that flow from them. We recommend that the RTI Uplift Project continue apace under the stewardship of the Steering Committee, and/or an equivalent Director-level cross-agency committee, and that consideration be given to broadening committee membership to include representation from local government and the public.

The anticipated roll out of comprehensive, online, RTI delegate training modules is a welcome, but long overdue, initiative. We recommend that these modules continue to be developed and expanded to include material tailored to RTI delegates in local government. We also recommend that the Ombudsman supplement these online training initiatives by expanding the availability of face-to-face training and issue-specific forums across the range of public authorities, including at the local government level.

More is clearly needed – particularly in response to reticence to disclose information, which appears to reflect a default position favouring non-disclosure. Concerns were expressed, from inside and outside of government, that RTI delegates and others are pressured to manage the disclosure of information in the perceived best interests of both the government of the day and of their departments. The management of the news agenda and deference to the view(s) of the Senior Executive Service ('SES') become additional, and sometimes determinative, factors in whether, and when, to release information.

We have made a number of recommendations specifically to address the stressors on RTI delegates. The considerable pressures affecting RTI delegates were revealed in the survey and Discussion Paper by the RTI Uplift Project, and were echoed throughout our consultations. Common themes included: the impact of media scrutiny; operating under a complex legislative framework with limited training; navigating inconsistencies in procedures and processes; and the strain of being caught between the competing expectations and demands of applicants and internal management.

On the identification of obstacles to adequate and more effective implementation, we offer a series of recommendations which, if implemented, we believe can substantially improve the efficacy of the RTI framework. Our Terms of Reference directed us to 'deliver reform options' across both 'administrative and legislative'

domains. This framing helped shape our thinking and approach to this Report. Accordingly, we have generally grouped our recommendations into administrative changes (which can be implemented more readily) and reforms needing legislative and/or structural change (that will require a longer timeframe).

These administrative changes, a number of them already in the early stages of initiation and implementation, have the potential to meaningfully change and improve information management across government. Consistent implementation resulting in a cultural shift will require an attitudinal reorientation which views citizens as partners in governance who are legally entitled to all government information on a timely basis unless there are clear and compelling reasons to restrict that information.

We recommend the automatic release of Cabinet documents after 10 years as an important contribution to a significant transformation in Tasmania's information culture. We have also recommended that Tasmania join the growing number of Westminster systems that now routinely release cabinet policy information 30 days after a Cabinet decision. These changes would send an unambiguous message that transparency in government information practice is the new default, not the exception, and act as a circuit-breaker to the prevailing culture.

The design of the *RTI Act*, often referred to as reflecting a 'push model' of access to information, was clearly intended to facilitate a default position in favour of disclosure. Section 12(2) of the Act lists four categories of disclosure: 'required', 'routine', 'active' and 'assessed' disclosure. Only the final category of 'assessed' disclosure is subject to the formal process of an RTI application, and the legislation explicitly states that 'assessed disclosure is the method of disclosure of last resort'.[1] This is because, where information is proactively released through required, routine, and active disclosures, there should be little need for individuals to resort to formal applications. In effect, most information should already be accessible, minimising the role of assessed disclosure and ensuring that formal processes are reserved only for information that genuinely cannot be made available through other means – a true last resort.

We encountered multiple, encouraging examples of the proactive approach to routine and active disclosure that the Act was designed to promote – at the local government level, in larger public authorities, and in some government departments. Perhaps unsurprisingly, these exemplary authorities testify to the fact that a proactive approach has resulted in fewer formal RTI applications for assessed disclosure – to the mutual benefit of the authorities and applicants alike. We applaud

[1] *Right to Information Act 2009* (Tas), s 12(3).

those examples and wish they were symptomatic of the entire framework in operation rather than trailblazers ahead of the main group.

We would welcome more widespread adoption of a proactive approach to routine and active disclosure on the part of government departments. We recommend that all government departments establish and maintain Disclosure Logs enabling members of the public to readily search for information previously released as assessed disclosures. This is a statutory requirement for Commonwealth authorities and, while some Tasmanian authorities already maintain such logs with varying degrees of consistency and completeness, the *RTI Act* imposes no obligation to do so.

One consistently recurring source of frustration and disappointment we encountered throughout this Review has been the lack of active engagement and leadership shown by the Office of the Ombudsman in the operation of the RTI framework. Over the last 14 years, the Office has not fulfilled the role envisaged by the framers of the *RTI Act*. The lack of adequate resourcing, and the consequent staffing issues, that were the key contributors to that restricted performance, are well documented. However, the insights from this Review's consultation process reveal just how fundamental the ramifications of the restricted role played by the Ombudsman really are. We have advocated for a more proactive and outward facing approach to the role, for more resources and a broader focus beyond just clearing the backlog of external reviews (as important as that singular task is). The long-awaited appointment of a new Ombudsman, which occurred during the final stages of our Review, is a welcome development and a timely opportunity for a different approach to the role which is so critical to the overall efficacy of the framework.

A number of written submissions, and several of our consultations, involved discussion of the question of an avenue of appeal from Ombudsman external review determinations to the Tasmanian Civil and Administrative Tribunal ('TASCAT'). We have included that recommendation, and are encouraged in relation to it by the positive and constructive conversations we had with the Ombudsman and with TASCAT.

An increasingly common problem in Tasmania – mirroring trends in many other jurisdictions – is the lodging of multiple problematic requests for information. We encountered several concerning examples of this growing phenomenon and its hugely deleterious impact upon RTI delegates – particularly at the local government level. Many impacted delegates feel isolated, in difficult (unchartered for them) territory and unsupported in managing a small number of applicants who generate an overwhelming volume of applications. We undertook an extensive comparative

survey of approaches to this problem in multiple jurisdictions, and it is clear that there are no simple solutions to such complex challenges. Nonetheless, the issue in Tasmania is ripe for the new Ombudsman to offer leadership and guidance in how best to approach these challenging and increasingly frequent situations.

On the legislative and structural front, we make a number of recommendations calling for amendments to the *RTI Act.* We also provide a comprehensive list of possible amendments that others have identified earlier – or in response to consultations with us – and indicate our own responses to those proposed amendments. Many of the possible amendments are relatively minor and, if considered separately, may hardly warrant the enactment of amending legislation. However, when taken cumulatively, they make a compelling case for a comprehensive legislative amendment package.

Our Terms of Reference required us to consider the *RTI Act* and its 'intersection with other relevant legislation'. Through this process, a major structural flaw became increasingly apparent. In discussions with some government departments, particularly the Department of Health, the Department for Education, Children and Young People, and the Department of Police, Fire and Emergency Management, it became clear that an area of increasing concern in the RTI process is the rapid growth in volume of applications for access to personal information. This issue has previously been identified by the Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings ('COI'), which highlighted significant issues with the intersection of the *RTI Act* and the *Personal Information Protection Act 2004* (Tas) ('*PIP Act*').[2] The Commission recommended significant legislative amendment, and the government has committed to implementing that recommendation. We consider that the formal RTI application process is ill-suited for handling requests to access personal information and we recommend the creation of a bespoke information management system – one that protects privacy while facilitating access for individuals to their own information.

Another of our recommendations is for the establishment of a specialised unit, consisting of seconded experienced RTI delegates, including from local government. The Unit could respond to surges of RTI applications, especially for smaller public authorities and local councils. Beyond that operational role, we see value in this group serving as a forum whereby more experienced officers could share experiences and ideas, and also contribute to the development of whole-of-government training and policy development, and provide law reform input. The Unit

[2] Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings (COI), *Who was looking after me? Prioritising the safety of Tasmanian children – Full Report*, *('Full Report'),* August 2023, Volume 7: Chapter 17, 187.

would undoubtedly provide a valuable potential recruitment pool to support the establishment of a new Information Commission – a proposal we outline in detail in this Report.

Ultimately, we believe that the management and oversight of information in Tasmania would be best served by the establishment of a new institution – the Tasmanian Information Commission. A new Commissioner would assume all the functions currently held by the Ombudsman in relation to the RTI Framework, along with oversight of the interface and interaction between RTI and personal information protection. The Information Commission would be well-placed to manage a new bespoke personal information management system, and to oversee and facilitate a whole-of-government approach to management and sharing of data and information more generally. Establishing such a body without adequate resourcing – particularly in information technology (IT) capability – would be futile. But with rapidly evolving technologies reshaping how information is created, stored, accessed, and secured, the need for a central authority with clear leadership and management responsibilities will only become more pressing.

We also endorse and adopt the recommendation that 'the *RTI Act* be amended to require regular independent reviews of its operation and implementation',[3] and consider that an initial review should occur three years from the completion of this Review, followed by further reviews at five-yearly intervals.

[3] Environmental Defenders Office (EDO), *Transparent Failure: Lutruwita/Tasmania's ineffective right to information system and how to fix it*, *('Transparent Failure')*, 2023, 7, Recommendation 12.

Background to the Review

1. Introduction

On 18 December 2024, the Premier of Tasmania, The Honourable Jeremy Rockliff MP, appointed us to conduct an Independent Review into Tasmania's Right to Information ('RTI') framework and to deliver a Report by 30 June 2025. By the end of May it was clear to us that we would be unable to complete our Report by 30 June – in large part because we had not been able to complete all our consultations by the end of May as we had originally anticipated. We were still conducting consultations, including with some key public authorities, in early June. On 2 June we wrote to the Department of Premier and Cabinet ('DPAC') and requested an extension for the finalisation of our Report.

The original commitment to establish and conduct the Review was included in the agreement of 10 April 2024 between the (then) three members of the Jacqui Lambie Network and the Liberal Party, enabling the Premier to form minority government. Clause 6.2 of the agreement, entitled 'RTI Process to be Reviewed and Strengthened', stated that:

The RTI legislation (including public interest disclosure laws) and resourcing of the Tasmanian Ombudsman will be reviewed with an eye to increasing transparency and accountability of public administration across the State.[4]

Our Terms of Reference for undertaking the Review were broad in scope and required us to:[5]

- Examine and report on the adequacy, effectiveness and implementation of the *Right to Information Act 2009* (Tas) ('*RTI Act*') including findings and recommendations from previous reports and reviews, any administrative and/or cultural challenges to meeting legislative objectives, intersection with other relevant legislation, performance and efficacy of the Ombudsman's role pursuant to the RTI legislation, and any other barriers to the effective operation of the Tasmanian RTI framework.

[4] The complete Agreement can be accessed through a link included in the Premier's Press Release of 10 April 2024 entitled 'Rockliff Reaches Agreement with Jacqui Lambie Network': https://www.premier.tas.gov.au/latest-news/2024/april/rockliff-reaches-agreement-with-jacqui-lambie-network.

[5] The full Terms of Reference are included in Appendix 1 to this Report.

- Undertake a transparent and broad consultation process, engaging with all interested and relevant parties, including the general public, the Tasmanian State Service, Parliamentarians and others.
- Identify and recommend reforms that encapsulate interjurisdictional best practice in terms of 'right to information' or 'freedom of information' models.
- Deliver reform options (administrative and legislative) including recommended phases for implementation.

2. What is the Right to Information all about?

In considering our Terms of Reference and our approach to the conduct of our Review, we took pause to reflect on what the 'right' to information is really all about. It seems to us that section 3 of Tasmania's *RTI Act* neatly encapsulates the rationale for an RTI framework, and, rather than articulate our own alternative rationale, we reproduce the legislative provision in full:

> **3. Object of Act**
>
> (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.
>
> (2) This object is to be pursued by giving members of the public the right to obtain information held by public authorities and Ministers.
>
> (3) This object is also to be pursued by giving members of the public the right to obtain information about the operations of Government.
>
> (4) It is the intention of Parliament –
>
> (a) that this Act be interpreted so as to further the object set out in subsection (1) ; and
>
> (b) that discretions conferred by this Act be exercised so as to facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information.

The fundamental premise of section 3 of the Act is that the establishment and implementation of an effective RTI framework will improve democratic government in Tasmania. We completely agree with that underlying premise. Section 3(1) lists three key ways in which that improvement in democratic government in Tasmania will be achieved: (1) increasing executive accountability; (2) increasing public participation in governance; and (3) acknowledging custodianship of information for, and on behalf of, the people of Tasmania. Again, we also agree that these three means for

achieving the underlying goal are fundamental and we will briefly discuss each of them in turn.

2.1. Increasing executive accountability

Increased accountability of government through the disclosure of information is probably the most readily recognised objective of an effective RTI framework. As mentioned above, the basis for the Premier's establishment of this Independent Review was couched in terms of increasing accountability. Clause 6.2 of the agreement with the (then) Jacqui Lambie Network called for the Review 'with an eye to increasing transparency and accountability of public administration across the State'. Professor Peter Coaldrake, who undertook an Independent Review of the 'Culture and Accountability of the Queensland Public Sector' in 2022, offered this explanation for his choice of title for the Report:[6]

> The title 'Let the Sunshine In' for this Final Report is deliberate. It responds to widespread disaffection with the performance of governments and rising expectation that our politicians and their officials be more accountable and transparent in their dealings, and behave with integrity.

It is clear that there is an increasing expectation in Tasmania that our politicians and their officials be more accountable and transparent in their dealings and that they behave with integrity. The request for this Review is indicative of those rising expectations and, to the Premier's credit, his readiness to establish the Review and to appoint us to conduct it reflects his own sensitivities to the importance of increasing accountability and transparency in government, as well as changes in balance of power within Parliament and shifting priorities.

2.2. Increasing public participation in governance

If you asked people what public participation in governance means for them, a majority might struggle to identify any concrete example beyond the civic duty of voting in an election or referendum. A minority would understand that public participation in governance is far more multi-faceted than casting a vote at the ballot box, but how many of those would make the connection between an effective RTI framework and increased public participation in governance? The Queensland

[6] Professor Peter Coaldrake AO, *Let the Sunshine In: A Review of Culture and Accountability in the Queensland Public Sector* (Final Report), ('*Let the Sunshine In*'), June 2022, 7. Report is accessible at: https://www.coaldrakereview.qld.gov.au/assets/custom/docs/coaldrake-review-final-report-28-june-2022.pdf.

Information Commissioner, speaking of the importance of an effective RTI framework to mark International Access to Information Day ('IAI Day'), stated that:[7]

> Democracies are strengthened when the community can regularly provide input into, and help shape, government decision-making in an impactful way. This is known as mainstreaming public participation in government. Mainstreaming access to information and participation in the public sector go hand-in-hand. When the community can access government-held information in a timely and efficient manner, it helps individuals and the wider community to stay informed, reduces misinformation and it empowers people to make decisions about matters affecting them. IAI Day is a timely reminder for public sector agencies to review how they proactively release information to the community. This helps create a public sector culture of mainstreaming access to information, builds greater trust between the community and government, and encourages public participation.

The Queensland Information Commissioner is spot on here, and this statement is entirely consistent with section 3(1)(b) of Tasmania's *RTI Act*. The mainstreaming of access to information, including an effective RTI framework, increases the ability of the people of Tasmania to participate in their own governance. Public administration and governance are not structures and processes for their own sake. They are supposed to exist for the benefit of the public, and increasing public participation in governance structures and processes can only improve the health of a democracy.

2.3. Acknowledging custodianship of information for and on behalf of the people of Tasmania

It is important that the Parliament of Tasmania explicitly recognised in section 3(1)(c) of the *RTI Act* that 'information collected by public authorities is collected for and on behalf of the people of Tasmania and is the property of the State'. The concept that government departments and agencies are custodians of public information collected for, and on behalf of, the people of Tasmania is a clear and important policy choice that moves away from the traditional, colonial, notion that all public information is the property of the Crown. Sir Kenneth Keith, one of the architects of New Zealand's then pioneering Freedom of Information ('FOI') law in the late 1970s, writes of the clear policy choice the New Zealand committee faced:[8]

> Frank Corner, a graduate in history, the Secretary for Foreign Affairs, elegantly formulated the question the committee was to decide. He contrasted Westminster and Washington, in both of which he had served in the early days of the Department of External Affairs. He told us that in Westminster, all government paper was the Queen's and was publicly available only if her ministers so decided. In Washington, by contrast, all government paper was the people's and

[7] Office of the Information Commissioner Queensland, 'International Access to Information Day 2024', 28 September 2024: https://www.oic.qld.gov.au/training-and-events/international-access-to-information-day.
[8] Kenneth Keith, *Without Fear or Favour: A Life in the Law*, Te Herenga Waka University Press, 2024, 16.

> was withheld only if there was a good reason. What choice would we make? The committee rapidly adopted the openness answer, giving precedence to the principle of availability. That principle appears early in the Official Information Act 1982, and is supported by a statement of purpose, a rarity in statutes at that time. The purpose included increasing progressively the availability of official information to the people to enable their more effective participation in the making and administration of laws and policies and to promote the accountability of ministers and officials and thereby to enhance respect for the law and to promote good government.

Of course, the existence of a cultural and policy directive in legislation does not guarantee implementation in practice. In the Tasmanian system of government inherited from past colonial history, the Crown and all it represents, including 'Crown Land' and the proprietorial rights vested in it, are ubiquitous. Cultural tendencies and default positions have a habit of lingering, and conscious decisions need to be taken to depart from past practices. The legislative position is unambiguous in its explicit redirection and we applaud it. The challenge is to identify the cultural and administrative obstacles to more effective achievement of the express legislative intent.

3. Our approach

In the initial phase of our Review, we considered relevant past reviews and their recommendations. Our Terms of Reference explicitly directed us to undertake that consideration as follows: '[e]xamine and report on the adequacy, effectiveness and implementation of the *RTI Act* including findings and recommendations from previous reports and reviews'. That explicit directive was obvious to us: why would we start from scratch when our work has been preceded by a number of earlier reviews? We explain in more detail a summary of our reflections on previous reports and review processes in Chapter 1 of this Report. For now, it suffices to explain that those earlier reports and reviews extensively influenced our thinking and enabled us to frame a series of questions we could ask those with whom we consulted about the 'adequacy, effectiveness and implementation' of Tasmania's RTI framework.

None of the earlier reports and reviews suggested that Tasmania's RTI framework is fundamentally broken and in need of wholesale rewriting and restructure. We were keen to test that hypothesis as we moved into the next phase of our Review, which involved broad consultations. We can now report confidently that our hypothesis has been substantiated. Our choice of title for this Report – 'Getting Back on Track' – reflects the overall view that, while there are certainly some obstacles to effective interpretation and implementation of the RTI framework, there is a basic architecture to the framework that provides a basis for more effective implementation. It is true that the intersection between the *RTI Act* and the *Personal Information Protection*

Act 2004 (Tas) (*'PIP Act'*) is structurally flawed and in urgent need of legislative overhaul, but it is not our view that the *RTI Act* should be repealed and replaced with a fundamentally different legislative framework. On the identification of obstacles to adequate and more effective implementation, we offer a series of recommendations which, if implemented, we believe can substantially improve the efficacy of the framework.

It was always made clear to us that the credibility of our Review was contingent upon us undertaking broad public consultation to ensure we heard from a diverse range of perspectives and experiences about Tasmania's RTI framework. Our Terms of Reference explicitly required us to '[u]ndertake a transparent and broad consultation process, engaging with all interested and relevant parties, including the general public, the Tasmanian State Service, Parliamentarians and others.' We needed no convincing about the importance of hearing from as many individuals, organisations, departments and agencies as possible to avoid both the risk of this Review constituting nothing more than a re-run of past reviews and also the risk that we would offer our own views on how the framework ought to operate, untested in interactions with key participants in the process. We are happy to report that we found our meetings informative, insightful, enlightening and engaging and we believe they have helped us clarify in our own minds the necessary changes to get us back on track with an effective RTI framework in Tasmania.

Early on in our Review process we put out a call for written submissions and we are pleased with the responses. We indicated when we issued the call that we intended to make submissions public after receiving them unless a person or organisation requested confidentiality. We also indicated that publication of the submission would not constitute endorsement of any of the views articulated in them and that publication would be consistent with DPAC guidelines for the publication of material, including the redaction of personal information and refusal to publish offensive material. We are delighted to have received a total of 14 written submissions and all of them have been made available through the DPAC website. We have also received a number of confidential approaches from individuals who have requested that their approaches not be made public.

In addition to receiving written submissions, we also wrote to government entities subject to the RTI legislative framework inviting them to meet with us in person or virtually. Wherever possible, we met in person, and we travelled to the West Coast, the North West Coast, the North and to the South East of the State to facilitate those face-to-face meetings. Our request to meet was sent to:

- all government departments (we met with all nine government departments – in all cases except one (in that case we met with a Deputy Secretary) with the Secretary and usually also with senior members of their departmental team);
- government agencies, government business enterprises and State-owned companies (we met with 15 of them including a very good cross-section of large Statewide service providers, statutory regulators and smaller localised or narrowly-focussed entities);
- all local government authorities (we met with approximately half of the 29 local government authorities in Tasmania including excellent geographic representation in the West, North West, North, North East, Central Tasmania and the South but also with a strong representation of larger metropolitan councils as well as with smaller rural councils;
- major political parties and all individual members of both the House of Assembly and the Legislative Council of the Tasmanian Parliament (we had 10 meetings including with each of the major political parties but also with a number of independent members from both Houses of Parliament);
- two former premiers who oversaw the introduction of the *RTI Act;*
- civil society (particularly service-provider organisations and those using the RTI framework);
- journalists and other individuals who regularly use the RTI framework;
- the Ombudsman, the Integrity Commission and other regulatory bodies.

We were pleased with the outcome of our consultations – with the positive responses to our invitations to meet and with the openness of those with whom we met.[9] We listened to a broad range of perspectives and views and believe we provided an opportunity for those we met to be open and honest with us about their experiences in relation to the existing RTI framework and to articulate their views about how the existing framework could be strengthened and/or improved.

[9] A list of those with whom we met is included as Appendix 2 to this Report.

Summary of recommendations

As outlined in the Executive Summary, we have grouped our recommendations into two categories: administrative changes, which may be implemented more readily, and reforms requiring legislative and/or structural change, which will take longer to deliver.

Outlined below is a summary of our recommendations, arranged under headings corresponding to the chapters in which they appear.

Amendments to specific sections of the *Right to Information Act 2009* (Tas) have been advanced by others in a variety of fora. We consider those proposals, and set out the Review's position on each, in Chapter 9. They are not repeated in the summary below – which is confined to recommendations developed directly in response to this Review other than by reference to a generic recommendation (listed as Recommendation 43 below) that any reform agenda should include comprehensive amendments to the *RTI Act* consistent with the consideration of the proposed amendments addressed in Chapter 9.

Where we have made recommendations in relation to the RTI Uplift Project and/or Steering Committee those recommendations should also be applied to any equivalent Director-level cross-agency committee with a membership that includes local government and citizen membership.

Disclosures

Short term/administrative

Recommendation 1: The Ombudsman should issue a Guideline for the establishment and maintenance of Disclosure Logs that incorporates the Best Practice Guidelines from the Australian Information Commissioner and other Australian jurisdictions.

Recommendation 2: The Tasmanian Government should continue to expand the numbers and types of routine disclosures made available via the Government Information Gateway.

Recommendation 3: Public authorities should regularly update and check the currency of information being published in Disclosure Logs.

Recommendation 4: The proposed 'Right to Information – Information Disclosure Policy' require the recording of searches and the provision of those searches (with any necessary redactions) to applicants.

Recommendation 5: Right to Information webpages and Disclosure Logs should be consistent between all Tasmanian public authorities, with a particular emphasis on consistency between government departments. A single portal, with searchable text administered by a single agency would be of significant benefit.

Recommendation 6: Tasmania should adopt the design elements suggested by the Australian Information Commissioner for information published in Disclosure Logs. More specifically, implementing an icon on department webpages that links to Disclosure Logs, ensuring that all documents are searchable, and including more context for each application for assessed disclosure.

Recommendation 7: Public authorities should consistently explain why information has been redacted (for example, what exemptions have been claimed) in their Disclosure logs.

Recommendation 8: If an exemption has a public interest test, public authorities should outline the key public interest factors supporting non release of that information in their Disclosure Logs.

Recommendation 9: Public authorities Disclosure Logs should include an explanation (in plain English) what exemptions exist under the *Right to Information Act 2009* (Tas).

Longer term/legislative

Recommendation 10: The *Right to Information Act 2009* (Tas) to be amended to add a section along the lines of section 11C of the *Freedom of Information Act 1982* (Cth).

Culture

Short term/administrative

Recommendation 11: Clear and public endorsement supporting the objectives of the *Right to Information Act 2009* (Tas) and the mainstreaming of transparency by the Premier and the Secretary of the Department of Premier and Cabinet (endorsed by the Secretaries Board).

Recommendation 12: The Right to Information Key Performance Indicators in Performance Development Plans for Heads of Agency be extended to all Senior Executive Service staff.

Recommendation 13: RTI initiatives including *Right to Information Act 2009* (Tas) and *Personal Information Protection Act 2004* (Tas) performance measures for

Heads of Agencies and Senior Executive Service staff should be updated on agency websites every three months.

Recommendation 14: Programmed release of Cabinet Information after 10 years subject to relevant exemptions under the *Right to Information Act 2009* (Tas).

Recommendation 15: Adoption of a policy requiring all cabinet submissions, agendas and decision papers (and appendices) to be proactively released and published online within 30 business days of a final decision being taken by Cabinet, subject only to a number of reasonable exceptions which should be outlined in the policy.

Recommendation 16: More resources, training (including in person), support and staff development for Right to Information delegates.

Recommendation 17: The adoption and roll out of the training packages currently being prepared by the Right to Information Uplift Project Steering Committee.

Recommendation 18: The development of further training packages, especially with a focus on *Right to Information Act 2009* (Tas) and *Personal Information Protection Act 2004* (Tas) for local government.

Recommendation 19: The Terms of Reference for the Right to Information Uplift Project Steering Committee should be updated to include taking into account the findings of this Review.

Recommendation 20: There should be local government and citizen representation on the Right to Information Uplift Project Steering Committee.

Recommendation 21: The Right to Information Uplift Project Steering Committee should publish its minutes within a week of its meetings.

Recommendation 22: The Right to Information Uplift Project should conduct applicant and RTI delegate surveys 12 months after the release of this Report to ascertain what changes, if any, have occurred in *Right to Information Act 2009* (Tas) and *Personal Information Protection Act 2004* (Tas) practice both within the Tasmanian State Service and at the local government level.

Recommendation 23: A specialised unit of seconded experienced RTI delegates be established to help address surges in workloads, assist with the development of training and assist in various cross-government initiatives in information sharing and management. Our preference would be for this unit to be under the direction of the Ombudsman but alternatively, the Unit could be incorporated into the RTI Uplift Project reporting to the RTI Uplift Project Steering Committee or reporting directly to a committee of the Secretaries Board.

Intersection with other legislative frameworks

Short term/administrative

Recommendation 24: Develop and publish whole-of-government guidance (led by the appropriate authority – for example: the Office of the Ombudsman; Department of Premier and Cabinet; State Archivist) to clarify how public authorities should interpret and apply the *Right to Information Act 2009* (Tas) when it intersects with other legislative frameworks. In particular, there should be guidance on intersections with the *Personal Information Protection Act 2004* (Tas) and the *Public Interest Disclosures Act 2002* (Tas), as well as sector-specific legislation including the *Local Government Act 1993* (Tas) and other relevant Acts. Guidance should address common areas of uncertainty, set out principles for resolving conflicts, and provide examples to ensure consistent and transparent practice across the public sector.

Recommendation 25: Strengthen capability and resourcing – specifically in relation to the intersection between the *Right to Information Act 2009* (Tas) and *Personal Information Protection Act 2004* (Tas) – to meet demand:

> **Recommendation 25.1:** Develop and deliver consistent, practical training and guidance on the interaction between the *Right to Information Act 2009* (Tas) and *Personal Information Protection Act 2004* (Tas) for all public authorities.
>
> **Recommendation 25.2:** Provide targeted funding to agencies with high volumes of personal information requests (for example, Department of Health, Department for Education, Children and Young People, and Department of Police, Fire and Emergency Management) to support timely processing and improve compliance with statutory obligations.

Recommendation 26: Improve the public experience of accessing personal information:

> **Recommendation 26.1:** Ensure all public authorities provide clear, consistent, and accessible public information on how to request personal information, including plain-language guidance, downloadable forms, contact details, and an explanation of rights under the *Personal Information Protection Act 2004* (Tas).
>
> **Recommendation 26.2:** Require all agencies – particularly those dealing with sensitive matters or victim-survivors – to embed trauma-informed approaches in how they manage personal information requests. This includes respectful communication, appropriate support, and minimising re-traumatisation.

Longer term/legislative

Recommendation 27: Undertake a review specifically targeted at identifying and resolving areas of inconsistency or overlap across the various legislative and regulatory frameworks relevant to the operation and oversight of the Tasmanian public sector. This includes, but is not limited to: *Right to Information Act 2009* (Tas); *Personal Information Protection Act 2004* (Tas); *Public Interest Disclosures Act 2002* (Tas); *Health Complaints Act 1995* (Tas); *Archives Act 1983* (Tas); *Ombudsman Act 1978* (Tas); *Integrity Commission Act 2009* (Tas); *State Service Act 2000* (Tas); *Parliamentary Privilege Act 1858* (Tas); *Parliamentary (Disclosure of Interests) Act 1996* (Tas); *Local Government Act 1993* (Tas); *Government Business Enterprises Act 1995* (Tas). This review should provide options to remedy any inconsistencies (including ensuring consistent definitions across different Acts), clarify the hierarchy of obligations where statutes intersect, and ensure that any sector-specific Acts align coherently with broader legislative frameworks.

Recommendation 28: Establish a new, dedicated and comprehensive framework for individuals seeking access to their own personal information held by public authorities. Access should be mandatory (not discretionary) and subject to limited appropriate exceptions. Any new process must be person-centred and trauma-informed. It should include clear provisions for redaction, third-party privacy, enforceable timeframes, and robust review rights. The *Personal Information Protection Act 2004* (Tas) is the logical location for such a framework. However, this would require substantial reform of the Act, particularly in light of the recommendations for reforming the *Personal Information Protection Act 2004* (Tas) made by the Tasmania Law Reform Institute in its recent Review of Privacy Laws in Tasmania. Critically, any new access pathway must be designed to complement, not

compete with, the *Right to Information Act 2009* (Tas), to ensure clarity and avoid duplication.

The new information access scheme should be administered and overseen by the proposed new Information Commissioner (see Recommendation 42).

Recommendation 29: Unless and until Recommendation 28 is adopted and implemented, clarify the interaction between the *Right to Information Act 2009* (Tas) and the *Personal Information Protection Act 2004* (Tas) to ensure personal information requests are handled under the *Personal Information Protection Act 2004* (Tas):

> **Recommendation 29.1:** Amend clause 6(1) of the *Personal Information Protection Act 2004* (Tas) to replace the current two-stage process with a single, clear, and enforceable right of access to personal information. Access should be mandatory (not discretionary), subject only to limited and clearly defined exceptions.
>
> **Recommendation 29.2:** Embed key procedural protections in the *Personal Information Protection Act 2004* (Tas), including statutory timeframes, internal and external review rights, and the obligation to provide reasons for decisions – mirroring safeguards in the *Right to Information Act 2009* (Tas).
>
> **Recommendation 29.3:** Require all public authorities to report annually on the volume, timeliness, and outcomes, of personal information requests. This data should be collected centrally and published to ensure transparency and accountability, similar to existing *Right to Information Act 2009* (Tas) reporting obligations.

Vexatious and problematic use of RTI

Short term/administrative

Recommendation 30: The Ombudsman to issue an extended and updated Guideline No.2 ‘Guideline in Relation to Refusal of an Application for Assessed Disclosure under the *Right to Information Act 2009* (Tas), section 20’.

Longer term/legislative

Recommendation 31: Section 20 renamed to ‘section 20 Problematic Use of *Right to Information Act 2009* (Tas).’

Recommendation 32: Section 20 amended to insert new subsection ‘(c) ‘is an application which, in the opinion of the public authority or Minister, is unreasonable or constitutes a misuse use of this Act.’

Ombudsman

Short term/administrative

Recommendation 33: An increase in resources to equip the Ombudsman to carry out all their functions under the *Right to Information Act 2009* (Tas) including training, standard setting, quality control, public promotion of transparency in Government in addition to performing external reviews.

Recommendation 34: Immediate updating and quarterly ongoing updates including digitised annotations to the Ombudsman's 'Right to Information Manual' indicating how recent review decisions and Guidelines impact approaches to the interpretation and application of the *Right to Information Act 2009* (Tas).

Recommendation 35: A commitment by the Ombudsman to regular release and updating of Guidelines.

Recommendation 36: Delivery of regular training to all users in conjunction with the online training modules under development by the Right to Information Uplift Project.

Recommendation 37: Provide a deidentified list of all reviews on hand, listing public authorities, date received, and stage of the determination process reached by each review.

Recommendation 38: Undertake a yearly audit on 3-5 agencies on processes for handling Right to Information requests.

Recommendation 39: Facilitate quarterly fora/workshops for public authorities and Ministers subject to the *Right to Information Act 2009* (Tas) – and their principal and delegated officers – where best practice and recent decisions are analysed. Attendance to be publicised (including level of most senior officer from each public authority).

Recommendation 40: The Ombudsman to produce a quarterly online update of their RTI performance. There should be a live dashboard on the Ombudsman's website showing the number of reviews on hand and the date received of the 10 longest reviews on hand. The dashboard should also include the dates of training delivered in the last three months and details of planned training in the next three months. The dashboard should also include findings, and responses by agencies, of recent audits of agency RTI practices.

Financial

Recommendation 41: The Government to provide the Ombudsman an extra $500,000 yearly for the next three years.

Information Commissioner

Longer term/legislative

Recommendation 42: The creation of an Information Commissioner to oversee information management in the Tasmanian State Service including *Right to Information Act 2009* (Tas), *Personal Information Protection Act 2004* (Tas), *Public Interest Disclosures Act 2002* (Tas), archives, records management, data protection, and information sharing within government and between government and citizens. The new office would complement and work with the State Archivist and Chief Information Officer.

Legislative amendments

Longer term/legislative

Recommendation 43: Comprehensive amendments to the *Right to Information Act 2009* (Tas) consistent with the consideration of the proposed amendments addressed in Chapter 9.

Chapter 1: Findings and recommendations arising from previous reports and review processes

1. Introduction

Our Terms of Reference required us to consider 'any findings and recommendations arising from previous reports and review processes.' In doing so, we considered a range of publications, some focused specifically on the operation of the *Right to Information Act 2009* (Tas) ('*RTI Act*'), and others with a broader remit that nonetheless addressed issues directly relevant to the effectiveness of Tasmania's Right to Information ('RTI') framework. We sought to identify common or recurring themes, criticisms, systemic challenges, and recommendations for reform, drawing on the following publications:

- Dr Ian Watt, *Independent Review of the Tasmanian State Service,* Final Report (July 2021)
- Environmental Defenders Office, *Transparent Failure: Lutruwita/Tasmania's ineffective right to information system and how to fix it* (2023).
- Department of Premier and Cabinet, *Right to Information Uplift Project – Discussion Paper*, Version 4.1 (2023).
- Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings, *Who was looking after me? Prioritising the safety of Tasmanian children – Full Report* (August 2023).
- Integrity Commission Tasmania, Research Paper – Improper exercise of powers and performance of functions: *Misconduct Risks in Tasmania's Right to Information Regime* (22 May 2024).
- Integrity Commission Tasmania, *Investigation Gatehouse: An investigation into the management of a right to information request in the Department of Health*, Report No 1 of 2024 (22 May 2024).
- Tasmania Law Reform Institute (TLRI), *Review of Privacy Laws in Tasmania*, Final Report, No 33 (May 2024).
- Annual Reports of the Tasmanian Ombudsman 2010-2024.

Together, the reports highlight longstanding and widespread concerns about the effective operation of Tasmania's RTI framework raised repeatedly – and from

multiple sources – over the past five years. The findings of these past reviews and reports clearly reflect the relevant data available to the authors of those reports at the time they were undertaken. Our intention in this section of the Report is to faithfully reflect the observations and the recommendations of others before us and not to fact-check observations in those past reviews and reports against historic data. We certainly draw on more recent data for the observations and recommendations we make in other sections of this Report.

As part of our analysis of previous reviews and reports, we also considered the 2009 paper 'Strengthening Trust in Government – Everyone's Right to Know', which reported on the findings of an independent review of the *Freedom of Information Act 1991* (Tas) (*'FOI Act'*) – the predecessor to the *RTI Act*. That review led directly to the development and introduction of the *RTI Act* as a modernised approach to promoting transparency and public access to government-held information. We sought to assess whether the problems identified in the review of the *FOI Act* – such as excessive use of exemptions, delays, inconsistent decision-making across agencies, and a lack of proactive disclosure – had been addressed through the introduction of the *RTI Act* and whether the shift to a pro-disclosure framework had been meaningfully implemented in practice.

We found that many of the same issues identified under the former freedom of information ('FOI') framework persist under the current RTI regime. Across the reports we considered, the concerns are strikingly consistent: the overuse and misapplication of exemption provisions; significant delays in both original decision-making and external review; inconsistent interpretation and implementation of the Act across agencies; and a lack of meaningful progress in embedding proactive disclosure as a routine practice. Although the *RTI Act* was introduced as a substantial reform intended to promote openness and accessibility, many of the same structural and cultural issues continue to undermine its effectiveness. This suggests that legislative reform alone has not been sufficient; meaningful progress depends on improvements in administrative practice, oversight, and a sustained cultural shift toward transparency.

We also considered the findings and recommendations from reports and review processes in other jurisdictions. In particular, we drew on the following reviews and reports:

- Chief Ombudsman Dame Beverley Wakem DNZM, CBE, *Not a game of hide and seek: Report on an investigation into the practices adopted by central government agencies for the purpose of compliance with the Official Information Act 1982* (New Zealand, December 2015).
- Professor Peter Coaldrake AO, *Let the Sunshine In: A Review of Culture and Accountability in the Queensland Public Sector,* Final Report (June 2022).
- Monash University, *The culture of implementing Freedom of Information in Australia* (2024).
- Parliament of Victoria, Integrity and Oversight Committee, *The operation of the Freedom of Information Act 1982 (Vic)* (September 2024).

We sought to identify whether the challenges observed in Tasmania are unique, or reflect broader national trends. While each jurisdiction has its own legislative and administrative context, we found that many of the issues raised in Tasmania – particularly those relating to timeliness, over-reliance on exemptions, and lack of proactive disclosure – are echoed elsewhere. This suggests that the problems facing Tasmania are not isolated, but reflect common pressures and systemic tensions within RTI regimes across Australia. However, Tasmania's circumstances are shaped by certain distinctive factors, including the small size of its public sector, limited oversight resources, and structural gaps in governance and accountability. These specific challenges amplify the impact of the issues identified and require tailored responses.

2. Common themes identified in previous reports and review processes

We sought to identify common themes emerging from previous reports and review processes. We discuss each of these themes in turn below.

2.1. Culture

A recurring theme across previous reports and review processes is the critical influence that organisational culture can have on the effectiveness of the RTI framework. While the *RTI Act* provides the legislative framework for promoting openness and proactive disclosure, legislation alone is not enough to guarantee transparency in practice. The extent to which information is released depends heavily on the attitudes, behaviours and internal norms of public authorities, as well as the resources made available to manage information. It is widely reported that there is a pervasive culture within public authorities that favours non-disclosure. Despite the

intention of the Act to 'facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information',[10] many public authorities default to reactive, defensive approaches – only releasing information when compelled to. This is explicitly acknowledged in the RTI Uplift Project Discussion Paper:[11]

> The purpose of the *RTI Act* is to proactively disclose information as much as possible, and use assessed disclosure only as a method of last resort. However, in practice, assessed disclosure is used as the default method.

Taken together, the reports suggest that cultural attitudes toward information disclosure exist along a continuum, influenced by factors such as resourcing, risk aversion, and leadership. At the lower end of this continuum is inadvertent or low-level opacity, such as failing to prioritise active disclosure or neglecting the routine release of information. At the opposite end is active resistance, secrecy, and obstruction – where information is deliberately withheld, exemptions are misused, and processes are manipulated to avoid disclosure.

Previous reviews and reports have identified examples of culture at both ends of this transparency spectrum. The RTI Uplift Project Discussion Paper, for example, identifies that '[b]ecause routine disclosure is not required under legislation, it will inevitably be made a lower priority than work which does have mandatory deadlines.'[12] Meanwhile the Tasmanian Ombudsman has observed that 'a closed and at times obstructive approach is taken [by public authorities] when responding to requests for assessed disclosure'[13] and the Environmental Defenders Office ('EDO') goes further, arguing that there is a perceived 'growing "culture of secrecy" where public authorities are actively preventing proper scrutiny of public administrative decision-making.'[14]

There is, however, a substantial middle ground in this transparency continuum, which is characterised by 'an excessively risk-averse culture in the State Service.'[15] When information disclosure is seen as inherently 'risky' (even if the precise nature or impact of the risk remains undefined), the rational default position is one of non-disclosure. Of course, this default to non-disclosure may be the product of an entrenched commitment to secrecy and a deliberate intention to withhold information, but there are other – less nefarious – reasons as well. Systemic issues such as under-resourcing, inadequate oversight, and a lack of training, coupled with an

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[10] *Right to Information Act 2009* (Tas), s 3(4)(b).
[11] Department of Premier and Cabinet (DPAC), *Right to Information Uplift Project – Discussion Paper*, Version 4.1 *('RTI Uplift Project – Discussion Paper')* (Government of Tasmania, 2023), Hobart, 12.
[12] Ibid., 29.
[13] Ombudsman Tasmania, *Annual Report 2021–22* (3 November 2022), 30: www.ombudsman.tas.gov.au/publications/annual-reports, quoted in Integrity Commission Tasmania, Research Paper – Improper exercise of powers and performance of functions: *Misconduct Risks in Tasmania's Right to Information Regime,* 22 May 2024, 8-9.
[14] EDO, *Transparent Failure*, 8.
[15] COI, *Full Report*, Volume 7: Chapter 17, 187.

increase in the volume and complexity of requests, all contribute to an environment in which caution trumps transparency.

Taken together, the findings from previous reports and review processes confirm that culture is not merely a peripheral issue – it is central to the success or failure of the RTI framework. Reflecting this view, the Commission of Inquiry ('COI') expressed 'concern' that 'the administrative culture may, at times, frustrate the intended pro-disclosure intent of the RTI framework in Tasmania and limit the release of government information.'[16] Irrespective of whether non-disclosure stems from deliberate resistance or more benign causes, the end result is the same: a system that too often defaults to secrecy. Unless cultural attitudes shift decisively toward openness and disclosure, supported by clear leadership and consistent practice, the *RTI Act*'s objectives will remain aspirational rather than operational.

2.2. Delay

Timely access to information is a cornerstone of any functional RTI system. Yet previous reports and reviews have consistently identified delays as a major weakness in Tasmania's current framework. These delays occur at multiple stages of the process – from initial decision-making by public authorities to the handling of internal and external reviews. Such delays not only frustrate applicants but fundamentally undermine the purpose of the *RTI Act*: to provide timely access to government-held information enabling scrutiny, participation, and accountability.

At the agency level there is 'a general lack of appreciation for the significance and statutory timeframes of RTI [and] [s]earching officers consistently fail to meet deadlines for providing information.'[17] The COI found that the RTI process in Tasmania is marked by significant delays at the agency level, and that 'responses to requests for information [are] delayed and subject to multiple extensions.'[18] It also found that this trend was worsening, noting by way of example, that 'the average number of days taken by the Department of Health to respond to a right to information application had increased significantly: from 23 days in 2019/20 to 59 days in 2021/22.'[19]

The issue of delay is not confined to individual agencies but reflects a broader, systemic problem affecting the RTI framework as a whole, with the COI finding that 'more than a quarter of decisions on requests for information in Tasmania did not meet the statutory timeframe.'[20] It was also noted that, while delays are an issue in other jurisdictions, 'they are particularly pronounced in Tasmania. Record requests in

[16] Ibid., 186.
[17] DPAC, *RTI Uplift Project – Discussion Paper*, 31.
[18] COI, *Full Report,* Volume 7: Chapter 17, 189.
[19] Ibid.
[20] Ibid.

Tasmania have taken as long as two years, and generally can take up to 18 months.'[21]

The problem of delay is even more acute at the external review stage. The EDO report found that '[i]t 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.'[22] The EDO also found that, between 2016/17 and 2020/21, the average time taken for the Ombudsman to conclude an external review had increased every year.[23] The COI noted that, while the Ombudsman had implemented measures designed to address the backlog – such as allocating more resources, updating the priority policy, and fast-tracking certain reviews – these measures appeared to have little to no real impact.[24] Concerningly, the COI also found that:[25]

> Despite these efforts, it appears the backlog is worsening. In February 2023, it was reported in the media that the backlog of active external right to information review requests had increased from 101 at 30 June 2022 to 129 at 7 February 2023.

Persistent delays diminish the value of disclosure, erode public trust, and discourage engagement with the RTI system. Without systemic improvements to resourcing, process efficiency, and accountability mechanisms, the right to information risks becoming a theoretical entitlement rather than a practical reality.

Delays, both at the agency and external review levels, significantly erode the effectiveness of Tasmania's RTI system. Concerns about delay have been consistently raised across multiple reports and reviews over the past decade. Together, they paint a clear picture of a system struggling under cumulative pressure. When access to information is delayed by months or even years, the value of that information diminishes – sometimes entirely. This undermines the core purpose of the *RTI Act* and erodes public trust in the system's ability to deliver meaningful transparency. The persistence and escalation of these delays point to structural weaknesses that go beyond isolated inefficiencies. Without meaningful intervention, the RTI system risks failing in its fundamental purpose: to ensure timely, accountable, and transparent governance.

2.3. Inconsistency, overuse and misapplication of exemptions

Previous reviews and reports have repeatedly raised concerns about how public authorities interpret and apply exemptions in the *RTI Act*. Exemptions serve a legitimate purpose within the RTI framework: they 'exist to protect aspects of the public interest that, in very limited circumstances, may be better served through non-

[21] Ibid.
[22] EDO, *Transparent Failure*, 8.
[23] Ibid., 27.
[24] COI, *Full Report*, Volume 7: Chapter 17, 193.
[25] Ibid.

disclosure.'[26] Some information, such as Cabinet material or law enforcement data, may be exempt from disclosure outright,[27] while other categories – like personal or commercial information – require decision-makers to weigh public interest factors in determining whether non-disclosure is justified.[28]

Critically, however, exemptions must be applied in line with the objects and purpose of the *RTI Act*. That is, '[w]hen deciding whether to release requested information, an RTI decision-maker should have a default position that the information must be released unless there is good reason not to do so.'[29] As a result, even in circumstances where the criteria for an exemption are made out, decision-makers 'should not refuse an application for information simply because the right to refuse exists'.[30] Rather, they are expected, although not legally obligated, to consider whether the information should nonetheless be disclosed.[31]

Our analysis of previous reviews and reports indicates a recurrent perception that there is no consistency in the application of exemption provisions between different public authorities, and that public authorities 'often rely inappropriately on exemption provisions when assessing whether to release information to the public.'[32] This 'inappropriate' use of exemptions manifests in two ways: first, by applying an exemption correctly in principle but more broadly than necessary, withholding more information than is appropriate in the circumstances; and second, by incorrectly applying exemptions to information that does not fall within the class or type of information to which the exemption applies.

Across the reports and reviews considered, there is evidence of an 'extraordinarily high level of errors by public authorities' in applying exemptions,[33] and that 'Exemption Decisions which require the application of public interest criteria are applied especially poorly'.[34] For example:

- …of those RTI applications that proceeded to external review between 1 July 2017 and 30 June 2022, on average, public authorities *incorrectly applied exemptions more than three quarters (79%) of the time;*[35] and

[26] Integrity Commission Tasmania, Research Paper – Improper exercise of powers and performance of functions: *Misconduct Risks in Tasmania's Right to Information Regime,* (*'Misconduct Risks'),* 22 May 2024, 8.
[27] *Right to Information Act 2009* (Tas), pt 3, div 1 – exemptions not subject to public interest test.
[28] Ibid., pt 3, div 2 – exemptions subject to public interest test.
[29] Integrity Commission Tasmania, *Misconduct Risks*, 8.
[30] Ombudsman Tasmania, Right to Information Act 2009 *Tasmania: Ombudsman's Manual* (1 July 2010) 24, quoted in Integrity Commission Tasmania, *Misconduct Risks*, 8.
[31] Ibid.
[32] Integrity Commission Tasmania, *Misconduct Risks*, 8.
[33] EDO, *Transparent Failure*, 21.
[34] Ibid., 26.
[35] EDO, *Transparent Failure*, 23.

- In 2022–23 alone, 86% of first-instance decisions to refuse the release of information that were reviewed by the Tasmanian Ombudsman were varied or set aside by the Ombudsman, indicating a high error rate in the application of exemption and refusal provisions.[36]

While the misapplication and overuse of exemptions is 'common across all Australian jurisdictions, available evidence suggests that it is particularly acute in Tasmania.'[37] For example, the COI found that in 2018/19 'the rate at which Tasmanian public authorities refused access to *any* information in response to RTI requests was 7.5 times the rate of Australia's most open jurisdictions (Victoria and the Northern Territory).'[38] The COI conducted a comparative analysis of information access schemes across Australia and found that for the period 2020/21 Tasmania had:[39]

- the lowest percentage of all decisions made on formal applications nationally where access was granted in full or in part (75 per cent), compared to the next lowest percentages from Queensland (82 per cent) and the Commonwealth (82 per cent);
- the highest percentage of decisions where access was refused in full (25 per cent), compared to the next highest percentages from Queensland (18 per cent) and the Commonwealth (18 per cent);
- the highest percentage of applications reviewed by the Information Commissioner or Ombudsman (6.1 per cent) compared to the next lowest percentages from the Northern Territory (3.9 per cent) and Queensland (3.7 per cent).

The COI also noted that the disproportionately higher rates of non-disclosure in Tasmania compared to other states were consistent across previous years.[40]

Issues with inconsistency, overuse, and misapplication of exemption provisions are identified across numerous reports. However, there is no consensus on what is causing these issues. The COI suggests that legislative differences between jurisdictions, as well as differences in the way this data is captured and reported in Tasmania, may be contributing to the disproportionately high use of exemptions in Tasmania.[41] However, the COI goes on to note that '[u]ltimately, the impact of these legislative differences on decision making in practice is unclear' and that other factors are likely influencing exemption application practices.[42] Other reviews and reports cite a range of reasons for the overuse and misapplication of exemptions, including inadequate training, unclear guidance, limited access to advice, and resource constraints that reduce the capacity for careful decision-making.

Some reports go further, suggesting that in certain instances, exemptions are not merely misapplied but are deliberately and strategically used to restrict access, avoid

[36] Integrity Commission Tasmania, *Misconduct Risks*, 22.
[37] Ibid.
[38] COI, *Full Report,* Volume 7: Chapter 17, 185.
[39] Ibid.
[40] Ibid.
[41] Ibid., 186.
[42] Ibid.

scrutiny and suppress information that may be politically damaging or reputationally harmful.[43] The EDO, for example, comments that:[44]

> 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.

Our analysis of previous reviews and reports suggests that a variety of factors – ranging from inadvertent or benign causes to deliberate and strategic obstruction – all contribute to overuse and, occasionally, to misapplication of exemptions in Tasmania. While there are undoubtedly some instances of public authorities inappropriately applying exemptions in a deliberate effort to withhold information or avoid scrutiny, this cannot be said to be the 'norm', nor does this account for the scale and persistence of the problem.

In our view, the various factors cited by previous reports and reviews as influencing public authorities' use of exemptions are more appropriately characterised as symptoms of the deeper systemic issue of culture. As previously discussed, attitudes toward disclosure can be understood as existing on a 'transparency continuum', and public authorities' use – or perhaps more accurately on at least some occasions, misuse – of exemption provisions is ultimately a reflection of the prevailing administrative culture of the Tasmanian public sector. This is a culture that – whether driven by an over-abundance of caution, a misunderstanding of the public's ownership of the information, a desire to counter potential media misreporting, or an aversion to scrutiny – defaults to non-disclosure rather than openness. As the Integrity Commission has noted, '[r]egardless of whether it is done wilfully or otherwise, the consistent misapplication of exemption provisions could amount to misconduct',[45] and ultimately subverts the fundamental objectives of the RTI scheme, sometimes turning what should be a tool for transparency into a shield for secrecy.

2.4. Inadequate resourcing, training, and guidance/oversight

Previous reviews and reports have consistently identified several key systemic issues that undermine the effective operation of the RTI framework: inadequate resourcing, insufficient training for RTI delegates, and a lack of clear, consistent, and timely oversight and guidance from the Ombudsman.

The sources we considered all cited resourcing shortfalls – both at the public authority level as well as within the Office of the Ombudsman – as having a significant adverse impact on the effective operation of the *RTI Act*. It is consistently

[43] See, for example, Integrity Commission Tasmania, *Investigation Gatehouse: An investigation into the management of a right to information request in the Department of Health*, Report No 1 of 2024, ('*Investigation Gatehouse'*) (22 May 2024).
[44] EDO, *Transparent Failure*, 4.
[45] Integrity Commission Tasmania, *Misconduct Risks*, 9.

reported that public authorities struggle to manage their RTI responsibilities and obligations alongside other core functions. In many cases, RTI functions are performed by staff who have a range of other non-RTI duties, which can result in RTI work being deprioritised and delayed. RTI delegates face significant pressures in managing competing priorities and 'most current delegates see under resourcing as the primary issue affecting the performance of RTI.'[46] This is compounded by the significant increase in the volume and complexity of RTI requests received by public authorities. The RTI Uplift Project found that '[t]he number of delegates who regularly perform RTI assessments has not increased over the last three years despite the fact that the number of applications received over that time has increased by 191 per cent.'[47] The COI also highlighted the impact of resourcing shortfalls on public authorities' RTI performance:[48]

> The evidence before us suggests that, for most government departments and agencies our Commission of Inquiry examined, current resourcing levels and procedures to process right to information applications are not adequate to meet statutory timeframes, particularly in the face of increasing demand. Nor do they ensure full disclosure of all relevant documents as required by the legislative scheme.

Resourcing constraints affect more than just the timeliness and quality of assessed disclosure decisions – they also limit public authorities' capacity to proactively identify and publish information through routine disclosure: '[b]ecause routine disclosure is not required under legislation, it will inevitably be made a lower priority than work which does have mandatory deadlines.'[49] Inadequate resourcing undermines the ability of public authorities to process applications in a timely and legally compliant manner and contributes to a broader culture where transparency is treated as a secondary obligation rather than a central function of public administration.

The impact of resourcing constraints is even more acute at the Office of the Ombudsman. The COI (along with numerous others) has noted that, in addition to its responsibilities under the *RTI Act*, the Ombudsman also performs a wide range of statutory functions under other legislation, creating significant challenges in managing competing priorities with limited resources. The EDO found that 'adjusted for inflation, the total revenue of the Office has remained roughly the same between 2012/13 and 2021/22.'[50]

Resourcing limitations are reported as adversely impacting the Ombudsman's ability to carry out all aspects of its RTI role, including conducting external reviews, and supporting agencies' best-practice decision-making through issuing guidelines and providing training. As previously noted, concerns about the significant backlog in

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[46] DPAC, *RTI Uplift Project – Discussion Paper*, 28.
[47] Ibid.
[48] COI, *Full Report*, 191.
[49] DPAC, *RTI Uplift Project – Discussion Paper*, 28.
[50] EDO, *Transparent Failure*, 4. See Figure 11 in Chapter 2 for an updated overview of the Ombudsman's RTI funding.

external reviews – with it taking an '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'[51] – have been repeatedly raised by numerous sources over the past decade. Such delays undermine the utility of the external review function, not only by significantly reducing the value and relevance of any eventual disclosure, but also by limiting its potential value as a learning mechanism for public authorities.

As noted by the RTI Uplift Project, 'agency approaches to RTI assessments are constantly evolving through incorporating Ombudsman feedback',[52] however lengthy review timeframes often mean that feedback arrives too late to inform current practice. As a result, incorrect interpretations of the Act – particularly in relation to exemptions and the public interest test – may go uncorrected for extended periods, allowing flawed practices to become entrenched and repeated before any guidance or precedent can be applied to improve future decision-making.

In addition to conducting external reviews under the *RTI Act*, the Ombudsman is also responsible for issuing guidance, providing sector-wide training, and promoting consistent application of the Act. It has been repeatedly stated that these functions have been severely constrained by inadequate resourcing of the Office. As a result, the Ombudsman has limited capacity to proactively support public authorities in interpreting and applying the *RTI Act*.

The Integrity Commission noted that '[f]or several years, the Tasmanian Ombudsman has highlighted that capacity constraints have prevented the office from delivering training to public authorities.'[53] Consequently, 'there is limited formal training available for Right to Information delegates', and this is 'delivered at random and infrequent intervals'.[54] Compounding this, is the fact that 'the primary supporting materials, the *Right to Information Manual* and Guidelines, while useful, have not been added to, or updated, for over a decade.'[55]

In the absence of adequate external training opportunities and up-to-date Guidelines and resources, public authorities are left to develop their own resources and deliver RTI training internally, often with limited capacity and varying levels of expertise. As a result, as reported by the RTI Uplift Project:[56]

> Typically, new RTI delegates are provided training from current RTI delegates. This training is not standardised and is highly dependent on the particularities of each agency's RTI approach and indeed the skills of the teaching officer.

This has contributed to uncertainty among RTI delegates, inconsistency in decision-making across public authorities, and a general lack of confidence in applying

[51] Ibid., 8.
[52] DPAC, *RTI Uplift Project – Discussion Paper*, 42.
[53] Integrity Commission Tasmania, *Misconduct Risks,* 10.
[54] DPAC, *RTI Uplift Project – Discussion Paper*, 33.
[55] Integrity Commission Tasmania, *Misconduct Risks*, 10.
[56] DPAC, *RTI Uplift Project – Discussion Paper*, 33.

complex provisions – particularly exemptions and the public interest test. Without a well-resourced and active oversight body, consistent interpretation of the *RTI Act* across the public sector is difficult to maintain, and accountability mechanisms lose effectiveness. The Integrity Commission emphasised the impact of resourcing stating that:[57]

> If the quality of decision-making under the *RTI Act* is to improve, including the sparing and judicious use of exemptions, the Ombudsman must be sustainably resourced to develop and deliver ongoing training and associated materials to public authorities.

Taken together, the findings of previous reviews in Tasmania's RTI framework point to a system under strain. The cumulative effect of limited funding, inadequate support, and inconsistent training has created conditions in which the RTI framework cannot operate as intended. Without sufficient resources, RTI responsibilities are routinely deprioritised, and without strong central oversight, agencies lack the guidance needed to apply the Act consistently and confidently. This not only results in delays and errors, but also contributes to a broader culture of risk aversion and opacity. As repeatedly emphasised across the reviews, improving the effectiveness of the RTI system will require more than legislative reform – it will require a sustained commitment to resourcing, capability building, and cultural change.

3. Previous recommendations for reform

Across the reports, a range of reforms have been proposed to address systemic issues. Below is a non-exhaustive summary of some of the key recommendations arising from previous reports and review processes. We have broadly grouped these recommendations into four categories: legislative clarity; oversight, reviews and appeals; resourcing and capacity building; cultural and structural reform.

3.1. Legislative clarity

(1) Introduce an explicit presumption in favour of disclosure in the *RTI Act* (EDO Recommendation 2; COI Recommendation 17.8(2)(a)).

(2) Include a clear requirement that routine and active disclosure are the preferred method of information release (EDO Recommendation 1).

(3) Embed a public interest test directly into specific exemption provisions of the *RTI Act* (COI Recommendation 17.8(2)(b)).

(4) Introduce a 'reasonableness' test when assessing whether to withhold third-party personal information (COI Recommendation 17.8(2)(e)).

(5) Review existing exemption provisions and clarify commonly misunderstood or misapplied provisions (EDO Recommendation 3).

[57] Integrity Commission Tasmania, *Misconduct Risks*, 10.

(6) Review and reform the interface between the *RTI Act* and the *Personal Information Protection Act 2004* (Tas) to simplify access to personal information and avoid duplication (COI Recommendation 17.8(1) and (2)(c)).

3.2. Oversight, review and appeals

(1) Introduce a provision to prohibit internal review by an officer involved in the original decision (Integrity Commission (Misconduct Risks) Recommendation 5).

(2) Amend reporting obligations in the *RTI Act* to include names of Ministers and principal officers, and titles of decision-makers, as well as statistics on their decisions and review outcomes (Integrity Commission (Misconduct Risks) Recommendation 2).

(3) Remove the requirement for the Ombudsman to provide a 'preliminary decision' to public authorities and Ministers for comment before finalising an adverse decision (EDO Recommendation 5).

(4) Strengthen the Ombudsman's decision-making powers and streamline external review processes, including enforceability (COI Recommendation 17.8(2)(f)).

(5) Require the Ombudsman to publish all decisions on external review (EDO Recommendation 9).

(6) Include independent audit mechanisms to assess information management and disclosure practices (EDO Recommendation 7).

(7) Transfer or extend jurisdiction for external review of RTI decisions to the Tasmanian Civil and Administrative Tribunal as an alternative and/or consecutive to review by the Ombudsman (COI Recommendation 17.8(2)(f); EDO Recommendation 6).

(8) Introduce a statutory requirement for regular independent reviews of the *RTI Act* and its implementation (EDO Recommendation 12).

3.3. Resourcing and capacity building

(1) Allocate additional funding to:

(a) Ensure RTI applications are processed within statutory timeframes (COI Recommendation 17.8(4)(a)).

(b) Speed up external review times and reduce the backlog of external reviews (COI Recommendation 17.8(4)(b); EDO Recommendations 10 and 11).

(2) Resource the Ombudsman to deliver ongoing training, guidance, and model decision templates (Integrity Commission (Misconduct Risks) Recommendation 1; EDO Recommendation 8).

3.4. Cultural and structural reform

(1) Identify and mitigate obstacles to ensuring that people's rights to obtain information are observed in practice and that this access is as simple, efficient, transparent and trauma-informed as possible (COI Recommendation 17.8(1)).

(2) Consider centralising the management of access to information processes in a specialist unit supported by departmental liaison officers (COI Recommendation 17.8(3)).

(3) The Ombudsman issue a guideline on undue influence and communication between RTI decision-makers and senior officials (Integrity Commission (Misconduct Risks) Recommendation 4).

(4) Include RTI-related performance indicators in the performance agreements of principal officers (Integrity Commission (Misconduct Risks) Recommendation 3).

4. Conclusion

The body of evidence from previous reports and review processes paints a clear and consistent picture: Tasmania's RTI framework is not functioning as it should. Despite the original intent of the *RTI Act* to usher in a modern, pro-disclosure regime, systemic problems persist – many of them unchanged since the days of the *FOI Act*. Across all sources, the same issues recur: a risk-averse and opaque administrative culture; extensive delays; widespread misuse of exemptions; inconsistent practices across agencies; and inadequate resourcing and oversight. These are not isolated problems. They are interconnected, compounding, and deeply entrenched.

The recommendations for reform outlined in previous reviews are broad-ranging but united by a common recognition: legislative change alone will not be enough. Fixing the RTI system in Tasmania will require sustained investment, stronger oversight, better training and support, and most importantly, a cultural shift – one that sees transparency not as a burden or risk, but as a fundamental obligation of public service. The repeated nature of these findings and the limited progress to date underline the urgency for action. Without meaningful reform, the 'right' to information in Tasmania will remain more theoretical than real.

Chapter 2: Recent performance

1. Introduction

The findings and recommendations identified in the previous chapter 'Findings and recommendations arising from previous reports and review processes' capture the key statistics and performance of the Tasmanian Right to Information ('RTI') framework up until around 2022/23. An analysis of more updated performance statistics reveals some important changes but confirms overall a system that is still performing well below expectations.[58] Perhaps that conclusion is unsurprising given a significant contributor to poor performance – culture – has yet to be addressed in the system. Whilst the RTI Uplift Project has identified key systemic problems, improvements since commencement in 2023 have been slow to materialise. The most significant change reflected in updated performance is the gradual reduction in the backlog within the Ombudsman's Office. That reduction is a direct result of significant increase in financial resourcing.

Around June 2023 the RTI Uplift Project commenced the development of two online training modules:

- a 30-60 min General Induction RTI Module for all staff of public authorities;
- a 3-4 hour Training Module for RTI delegates.

This project went into hiatus due to recruitment difficulties and the expectation that the COI Report would cover much of the ground the RTI Uplift Project was planning to address. The University of Tasmania ('UTAS') Faculty of Law was contracted in August 2024 to develop the modules.

Working closely with RTI delegates via the RTI Uplift Project Steering Committee and Project team, the modules have now reached their final stages and expectations are they will be available before the end of 2025. The modules have been designed to address the key problems identified in the RTI Uplift Project Discussion Paper including inconsistency, the need for both more general and specific training and updating of resources.

The Reviewers were given access to the modules to evaluate their likely effectiveness. Both modules are well designed, easy to use and will provide significant support especially for new RTI delegates. In particular, the Training Module for RTI Delegates has a much-needed section on the welfare and support for RTI delegates – a major concern raised in the RTI Uplift Project Discussion Paper.

[58] The statistics and tables in Table 1-3 are drawn from information supplied by the Ombudsman and from the Department of Justice Annual Right to Information Report 2023-24. The Annual Report was tabled in Parliament on 10 April 2025 but has yet to be added to the Department's web page (3 August 2025).

It is unclear whether the training modules are only for internal use or whether they will be made available to applicants to better understand the steps and requirements Tasmanian State Service staff and especially RTI delegates need to undertake and satisfy.

At the same time as commissioning the development of the training modules the RTI Uplift Project Steering Committee started work on developing a model 'RTI – Information Disclosure Policy' and 'RTI – Information Disclosure Procedures'. Whilst the production of these two documents has involved a lengthy process, they are both due to be operational before the end of 2025.

2. Key statistics

Statistics on the number of RTI applications for assessed disclosure received, determined, granted (in full or in part), and refused can provide valuable insights into the performance of public authorities in relation to the handling of RTI requests. Data on the number of applications to which exemptions were applied, timeframes for determining applications, as well as the number of internal and external reviews conducted are also useful performance indicators. However, changes in types of information being requested, and changes in information management, can limit the usefulness of understanding and comparing the efficacy of the RTI system over time. One example is the experience of the Department for Education, Children and Young People ('DECYP'), particularly since the Commission of Inquiry Report was handed down. DECYP is now dealing with a very high volume of applications for personal information involving the eventual release of lengthy records (often thousands of pages of information) with appropriate redactions. The end result is an understandably substantial increase in the number, and length, of delays with a majority of RTI applications not being determined within the legislated timeframe.

Table 1: Key statistics – RTI performance

Total Number	**2021/22**	**2022/23**	**2023/24**
Applications received	1957	2165	2301
Applications determined	1615	2050	2151
Applications where information granted in full	672 (42%)	586 (28.6%)	603 (28%)
Applications where information granted in part	566 (35%)	990 (48%)	1213 (56%)
Applications refused	105	112	143
Applications for which exemptions were used	692	1167	1318
Applications that took less than 20 working days to be determined	1021 (63%)	1252 (61%)	1414 (65.7%)
Applications that took more than 20 working days to be determined	594 (36.7%)	798 (38.9%)	737 (34%)
Internal reviews determined	49	73	71
External (Ombudsman) reviews received	47	66	69
External (Ombudsman) reviews determined	19	22	39

Total Number	2021/22	2022/23	2023/24
External (Ombudsman) reviews closed	46	79	97

Table 1 provides a snapshot of the activity under the Act for the past three financial years for all Government Departments, Ministers, Councils and other Public Authorities.

3. Delays

Since 2021/22, delays in initial determinations exceeding the statutory time limits have eased slightly but 34 per cent of applications still take longer than 20 working days (see Table 2). About 13.6 per cent of applications are extended beyond 20 days with agreement from applicants. Feedback from discussions (and from written submissions) indicate that many applicants reluctantly accept the extensions in the hope of a final decision in their favour.

The available statistics do not reveal the average time taken to determine applications within the 20-day deadline. The *Right to Information Act 2009* (Tas) (‘*RTI Act’*) requires applications for assessed disclosure to be determined as soon as practicable and not later than 20 working days.[59] The handling of many requests seem to only be finalised no later than 20 days rather than determinations on the applications occurring as soon as possible. The timelines in the DPAC’s model ‘RTI – Information Disclosure Policy’ and ‘RTI – Information Disclosure Procedures’ suggest that most applications will take 15-20 days to be decided.

Table 2: Time taken to determine applications – summary for 20 working days or less in 2023/24

Type of entity	Total applications determined	Determined within 20 working days
Government Department	1747	1130
Council	184	141
Other public authority	193	135
Minister	27	8
All entities	**2151**	**1414**

Table 2 provides a summary of the time taken by entities to make determinations on applications.

[59] *Right to Information Act 2009* (Tas), s 15.

Table 3: Time taken to determine applications – summary for more than 20 working days in 2023/24

Type of entity	Section 15(4)(a)	Section 15(4)(b)	Section 15(5)
Government Department	238	4	39
Council	16	0	18
Other public authority	33	0	13
Minister	6	0	11
All entities	**293**	**4**	**81**

Table 3 indicates the numbers of applications requiring an extension to the statutory 20-day period for determination and the basis on which the time period has been extended: section 15(4)(a) by agreement with the applicant; section 15(4)(b) where the applicant does not agree but the application is complex and voluminous; section 15(5) where the public authority needs to consult with a third party.

4. Use of exemptions

It is difficult to monitor and follow the use of exemptions over time, especially as the major interventions such as the Commission of Inquiry alter the number, type and content of applications. In recent years there has been a sharp increase in applicants using the RTI framework to access personal records such that the application of the exemption in section 36 (personal information of a person) has risen significantly in the Department of Health, Department for Education, Children and Young People, and the Department of Police, Fire and Emergency Management.

It is also difficult to assess whether, and how often, public authorities and Ministers are making errors in interpreting and applying the *RTI Act.* Data on the outcome of external reviews of RTI decisions by the Ombudsman can provide helpful insights in this respect, though it does have some limitations. Importantly, external review decisions represent only a very small subset of all RTI applications made and determined by public authorities – approximately 2% of initial decisions – meaning the available sample size is limited from the outset.

Further, more than half of external review applications are closed without a formal determination – this includes closure due to the application being invalid or withdrawn; the applicant being uncontactable; the matter being resolved between the parties (often with the assistance of the Ombudsman). These cases provide no insight into the correctness of the original decision. It is also noted that where the Ombudsman forms a preliminary view that a review has little prospect of success, it is common practice for applicants to be advised accordingly and invited to withdraw. As a result, some instances in which exemptions have likely been correctly applied are neither finalised nor reported.

Of those external review applications that proceed to a formal determination, there are three possible outcomes: the original decision is affirmed, varied, or set aside. If the original decision is affirmed by the Ombudsman on external review, this indicates that the decision-maker correctly interpreted and applied the *RTI Act* in their original decision. Conversely, if the Ombudsman varied or set aside the original decision, this can – though it does not always – indicate that the original decision was affected by error in some way.

It is noted that the RTI applications that proceed to external review are likely to be those which are more complex or contentious and may not be representative of the wider pool of applications. Further, decisions involving the application of Division 2 of Part 3 of the *RTI Act* (exemptions subject to the public interest test) will often turn on the balancing of different public interest factors and it is entirely possible that different decision-makers may reasonably reach different conclusions while still applying the Act correctly. It is also true that even if the majority of an original public authority decision is upheld and the determination for additional disclosure only relatively minor, the external review decision is, nevertheless, still considered a variance on the original determination. Another factor to consider in looking at RTI statistical performance is the variations, and difficulties in capturing the changes, caused by the Ombudsman adopting a different approach to interpretation over time. This is exacerbated by the fact that any change in interpretation is being retrospectively applied to decisions that had been made up to 2+ years prior and under the previous interpretation applied by the Ombudsman.

All said, however, a pattern of decisions being varied or set aside (even within a small sample size) indicates that there are significant and recurring challenges associated with interpreting and applying the *RTI Act*. This data can provide a useful measure (subject to the limitations noted above) of whether public authorities and other entities subject to the *RTI Act* are correctly interpreting and applying the Act, including exemption use.

In terms of monitoring and improving the system, significant delays are caused by reliance on annual reporting. Often the information contained in an annual report can be several months out of date. For example, the 2023/24 Annual RTI Report was only tabled in Parliament on 10 April 2025 and the 2023/24 Ombudsman Annual Report was tabled in October 2024. In many jurisdictions, and at local government level, public authorities use quarterly, monthly, or in some instances ‘running’ or dashboard reporting, which ensures public access to the information more frequently and without inordinate delay. One example of effective ‘running’ reporting is the Integrity Commission, which maintains a ‘Triannual Report’ webpage.[60]

[60] Tasmanian Integrity Commission, ‘Triannual Reports’ (webpage): https://www.integrity.tas.gov.au/publications/publications/triannual-reports.

Figures 1-5 below, together with Table 4, provide insights into exemption use practices and trends.[61]

Figure 1: Percentage of RTI applications granted in full

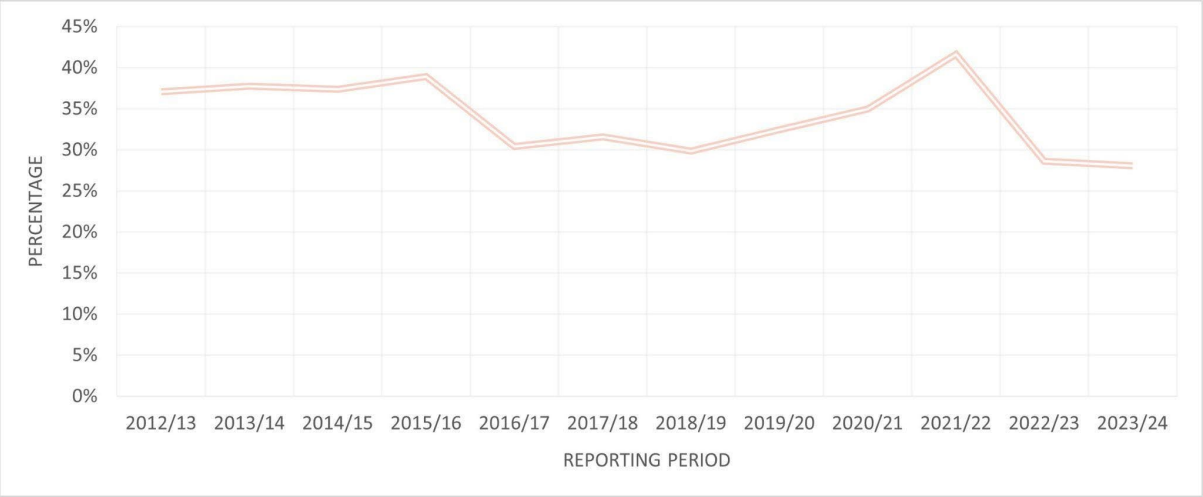

Figure 1 shows the percentage of RTI applications granted in full. There has been a downward trend in the number of applications granted in full since 2021, which indicates that there is likely a corresponding increase in exemption use.

Figure 2: Proportion of decisions that were set aside or varied on external review

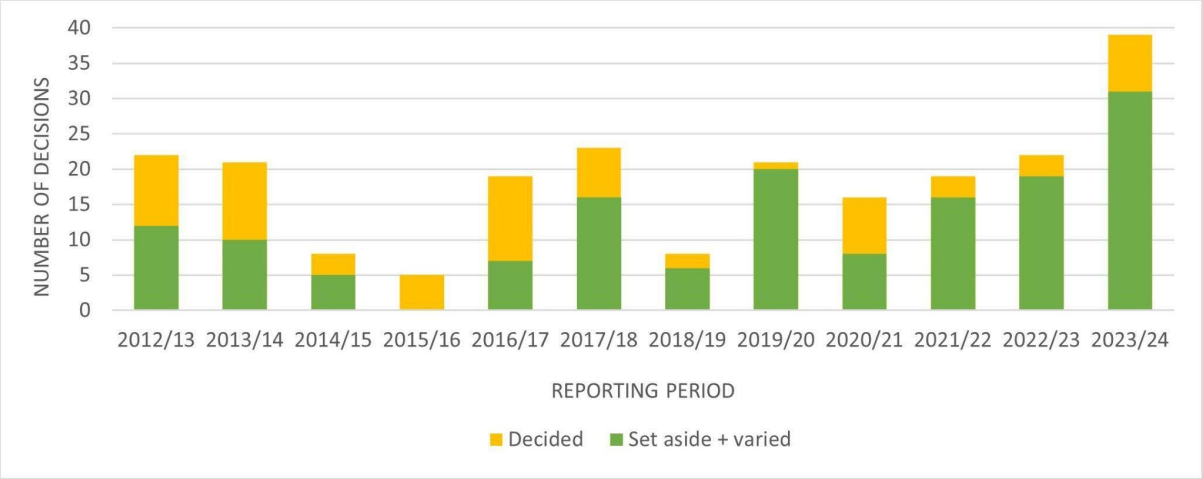

Figure 2 shows the proportion of externally reviewed decisions that were set aside or varied by the Ombudsman on external review. The data covers published Ombudsman's decisions in relation to all external review powers and includes, inter alia, reviews of decisions relating to adequacy of searches, application of exemptions, deferral of information, form of access to information, refusals, and third-

[61] We would like to express our gratitude to the Environmental Defenders Office (EDO) for providing us with the data sets used in their 2023 report *Transparent Failure: Lutruwita/Tasmania's ineffective right to information system and how to fix it*. We have updated these data sets with available data from recent reporting years to generate the Figures in this part (Figure 1-5), as well as the Figures in part 6 External reviews (Figures 6-12 excluding figure 7, which was provided to us directly by the Ombudsman). Ombudsman Tasmania has also provided us with data used to generate Figures 6 and 12, and we extend our gratitude and thanks to the Office.

party reviews. The height of each column shows the total number of external reviews determined, while the height of the green portion in each column indicates the proportion of these which resulted in the Ombudsman setting aside or varying the original decision. As shown, from 2017/18 onwards there has consistently been a high proportion of decisions set aside or varied, indicating that (within the small sample size represented) there are ongoing challenges in correctly applying the RTI Act and a substantial proportion of (externally reviewed) initial decisions are likely affected by error.

Table 4: Proportion of decisions that were set aside or varied on external review (shown as a percentage)

Reporting period	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24
% set aside or varied	37%	70%	75%	95%	50%	84%	86%	79%

Table 4 shows the data from Figure 2 (proportion of externally reviewed decisions that were set aside or varied by the Ombudsman on external review) represented as a percentage. As shown, the percentage of decisions set aside or varied has generally been well above 50 per cent since 2017/18.

Figure 3: Percentage of exemption, refusal, and deferral decisions set aside or varied on external review

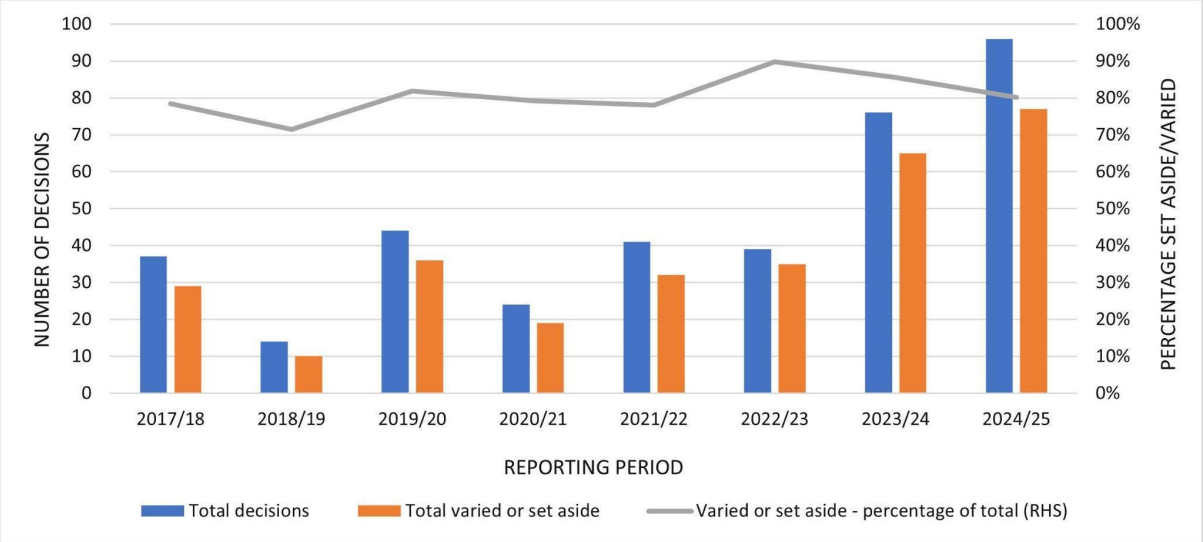

Figure 3 shows a more detailed breakdown of external review data, specifically on the application (or misapplication) of exemptions, as well as matters in which access is deferred or refused. As most external review decisions involve the assessment of multiple exemption claims, we analysed published Ombudsman's decisions to extract and disaggregate data on each individual exemption provision claimed (or each instance of deferral or refusal), contained within the decision record. Each exemption,

deferral, or refusal contained in a decision record is entered as an individual data point, enabling an analysis of how frequently these provisions are found to have been incorrectly applied.

The blue columns represent the total number of exemption, deferral, and refusal provisions assessed by the Ombudsman in each reporting year, while the orange columns indicate how many of these were ultimately varied or set aside. The grey line reflects the total percentage varied or set aside. The data reveals a consistently high rate of externally reviewed decisions being varied/set aside – typically between 70 and 90 per cent – suggesting there may be a high rate of incorrect application.

Figure 4: Percentage of exemption, refusal, and deferral decisions set aside or varied (by group) each reporting period

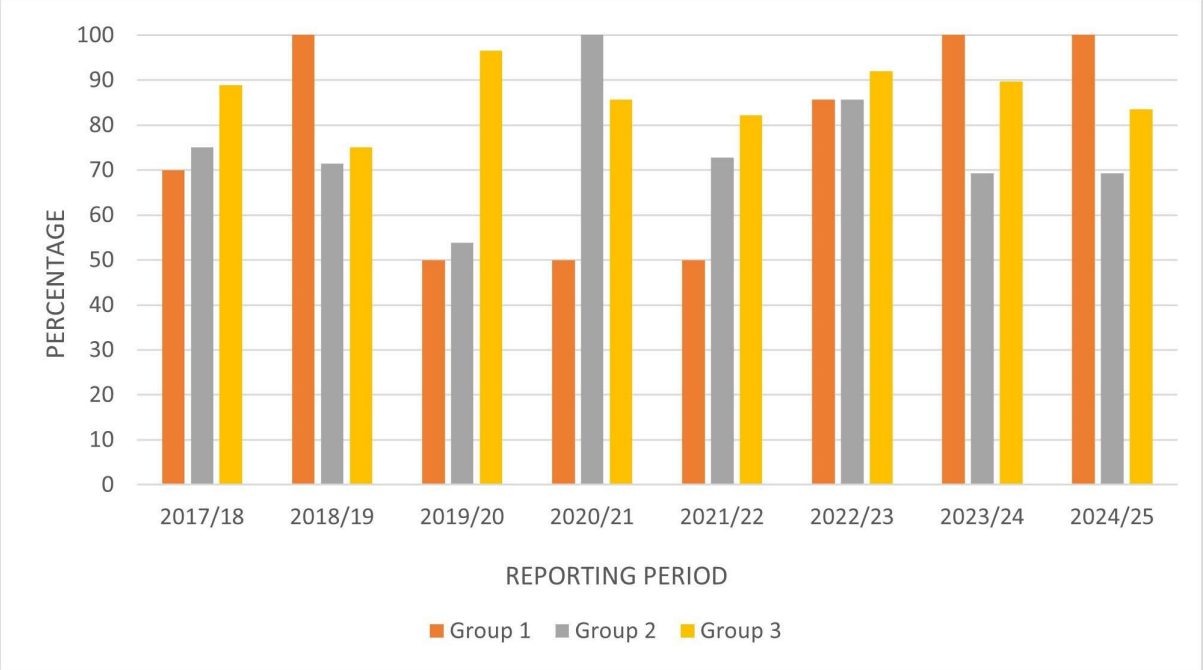

Figure 4 shows the percentage of exemption, refusal, and deferral provisions applied and subsequently varied or set aside on external review, grouped into three categories reflecting the structure of the RTI Act:

Group 1: Provisions in Division 2 of Part 2 of the RTI Act. This division contains the provisions that enable a public authority to refuse an application for assessed disclosure that is vexatious or a repeat application (section 20) or would substantially and unreasonably divert the resources of the authority (section 19). This division also contains a provision which permits a public authority to defer providing information if the information will be released within 12 months by other means (section 17).

Group 2: Provisions in Division 1 of Part 3 of the RTI Act. This division contains the absolute exemptions provisions (those that are not subject to the public interest test). There are eight exemptions in this division (sections 25 to 32), which include exemptions for executive council information, Cabinet information, Ministerial

briefings, information prejudicial to law enforcement, information subject to legal professional privilege, and information relating to closed Council meetings.

Group 3: Provisions in Division 2 of Part 3 of the RTI Act. This division contains the exemption provisions that are subject to the public interest test. These 10 exemption provisions (sections 33 to 42) include exemptions for internal deliberative information, information relating to the business affairs of a public authority or third party, or information obtained in confidence.

Figure 4 shows that provisions in Group 3 – exemptions subject to the public interest test – are more frequently varied or set aside on review than those in other categories, suggesting persistent challenges in correctly applying the public interest test. The proportion of varied or set aside provisions increased across all three groups in the most recent two reporting periods (2023/24 and 2024/25), which may suggest a broader decline in the quality of decision-making.[62]

Figure 5: Aggregated percentage of exemption, refusal, and deferral decisions set aside or varied (by group)

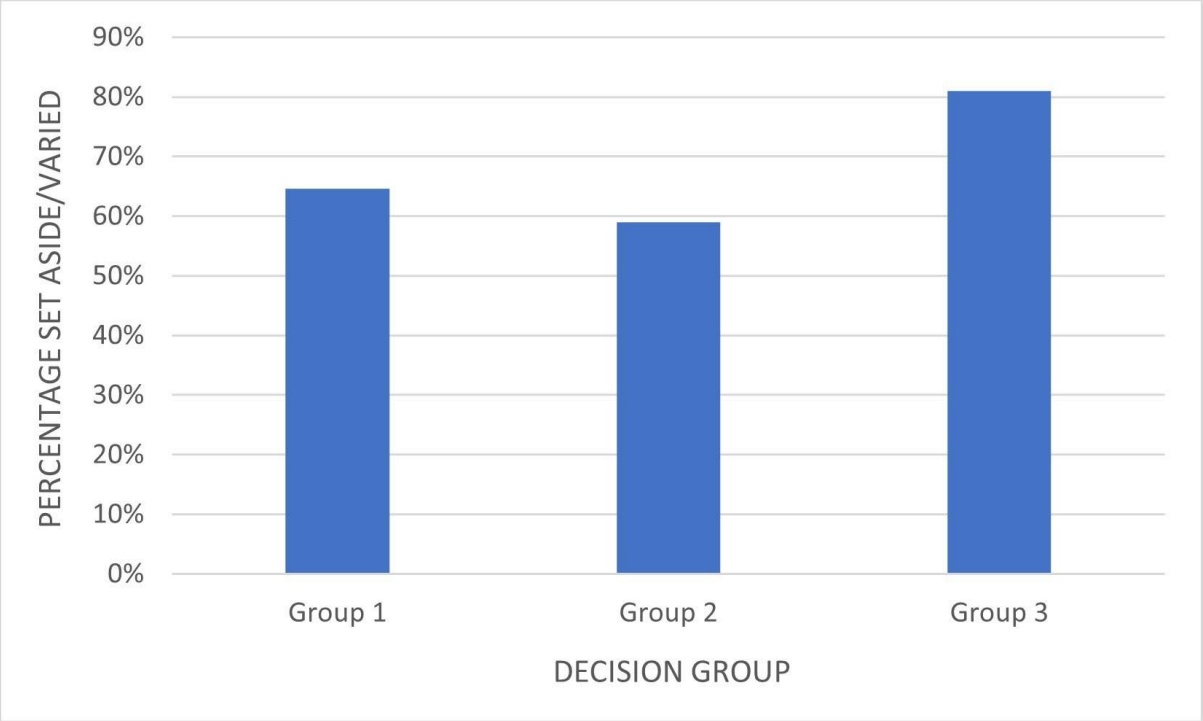

Figure 5 shows the percentage of exemption, refusal, and deferral provisions applied and subsequently varied or set aside on external review, grouped and aggregated across all reporting periods (2017/18 through to 2024/25). Figure 5 uses the same grouping used in Figure 4 and explained above.

[62] It is noted that there may also be other contributing factors to this trend, including for example an increase in applicants seeking information that is subject to exemptions in Division 2 of the Act or a change in the Ombudsman's approach to interpreting the Act.

The data reveals that Group 3 provisions – those exemptions requiring application of the public interest test – have the highest rate of being varied or set aside at just over 80 per cent. These results reinforce the findings from Figure 4, indicating that decisions involving public interest test exemptions are particularly challenging for RTI decision-makers, and suggests a higher error rate than other decision types.

5. Internal reviews

A notable feature of the Tasmanian RTI framework is the very low number of requests for internal review. In consultations and submissions some applicants reported being deterred by the initial lack of success with their application, the firmness of application of exemptions, and the expectation that the same result will be repeated on internal review. Although 34 per cent of internal reviews by government departments led to the release of extra information, not a single determination was reversed in full in 2023/24.[63] The internal review process can be complex and difficult for applicants to engage with, particularly where public authorities request that applicants frame their arguments around more legalistic and technical issues. The *RTI Act* allows an applicant to simply state they want the original decision reviewed and there is no requirement to mount more legalistic or technical arguments. However, the practical reality of requesting that a decision be reviewed will logically require counterarguments on the part of applicants explaining why they disagree with the original decision.

Table 5: Internal reviews – applications received and determinations in 2023/24

Type of entity	Applications received	Applications determined	Determinations upheld in full	Determinations upheld in part	Determinations reversed in full	Resolved by other means
Government Department	41	39	21	14	0	4
Council	19	19	13	4	1	2
Other public authority	13	13	7	4	1	1
Minister	0	0	0	0	0	0
All entities	73	71	41	22	2	7

Table 5 shows the number, and outcome, of internal reviews conducted by public authorities for the year 2023/24. Of the 71 applications for internal review determined during this period, more than half (58 per cent) resulted in a finding that the original decision was upheld in full. Thirty-one per cent of determinations were upheld in part. In contrast, just 2.8 per cent of internal review decisions resulted in a finding that the original determination was reversed in full.

[63] It is noted that a lack of reversal of a determination in full does not necessarily of itself indicate or demonstrate a flaw in internal review systems.

6. External reviews

One of the most significant changes to the operation of the RTI framework over the past two years has been the partial clearing of the staggering backlog of external reviews before the Ombudsman. From 2019 to 2022, the average number of days that an external review remained open in the Ombudsman Office was an unfathomable 1,000+ days. The average now has fallen to below 600 days. This is a significant improvement.[64] However, requiring both the applicant and the public authority to wait some 18 months to learn the outcome of a determination is testament to a system in a state of significant disrepair. That 18-month delay is exacerbated by the fact that the Ombudsman routinely allows public authorities extra time to disclose required information. Section 47(1)(p) allows the Ombudsman a maximum period of 20 days to direct compliance with an external review decision.

Figure 6: Average number of days that an external review is open

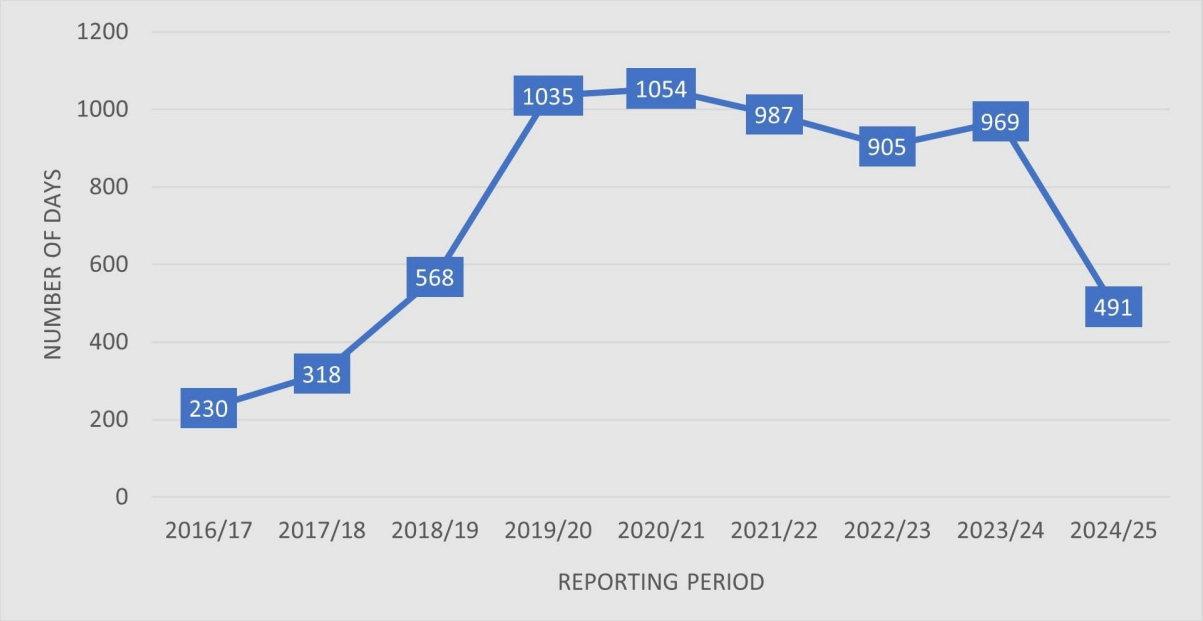

Figure 6 shows the average number of days taken to finalise an application for external review across each reporting period. As shown, there is a sharp increase in average review duration from 2016/17 to 2020/21, peaking at over 1,050 days, followed by a gradual decline and a substantial drop in 2024/25.[65]

[64] This figure is calculated only on external reviews which were finalised by formal decision. This is not reflective of all external reviews, as the RTI Act requires the Ombudsman to undertake early resolution and promote settlement (s47(1)). Accordingly, the majority of external review are closed without a formal decision.

[65] It is noted that the way in which the Office of the Ombudsman reports on external review timeframes in its Annual Report has changed over time. To produce Figure 6 we used: data provided by the EDO for the reporting periods 2016/17 to 2021/22; and data provided by the Office of the Ombudsman for the reporting periods 2022/23 to 2024/25.

Figure 7: Average number of days that an external review is open (2024/25)

Figure 7 shows the average number of days that external review applications to the Ombudsman were open in 2024/25.[66] It is noted that Figure 7 captures all matters being considered by the Ombudsman during the relevant month, not just those resolved during that month. As a result, the average duration shown is likely to be shorter, and does not reflect total time taken to resolve an external review. Despite this, the downward trend suggests improved timeliness in the resolution of applications for external review and we commend the Ombudsman on this positive indication of reduced delays and more efficient case management.

[66] Figure 7 was provided to us by the Office of the Ombudsman.

Figure 8: Number of external review applications filed with the Ombudsman

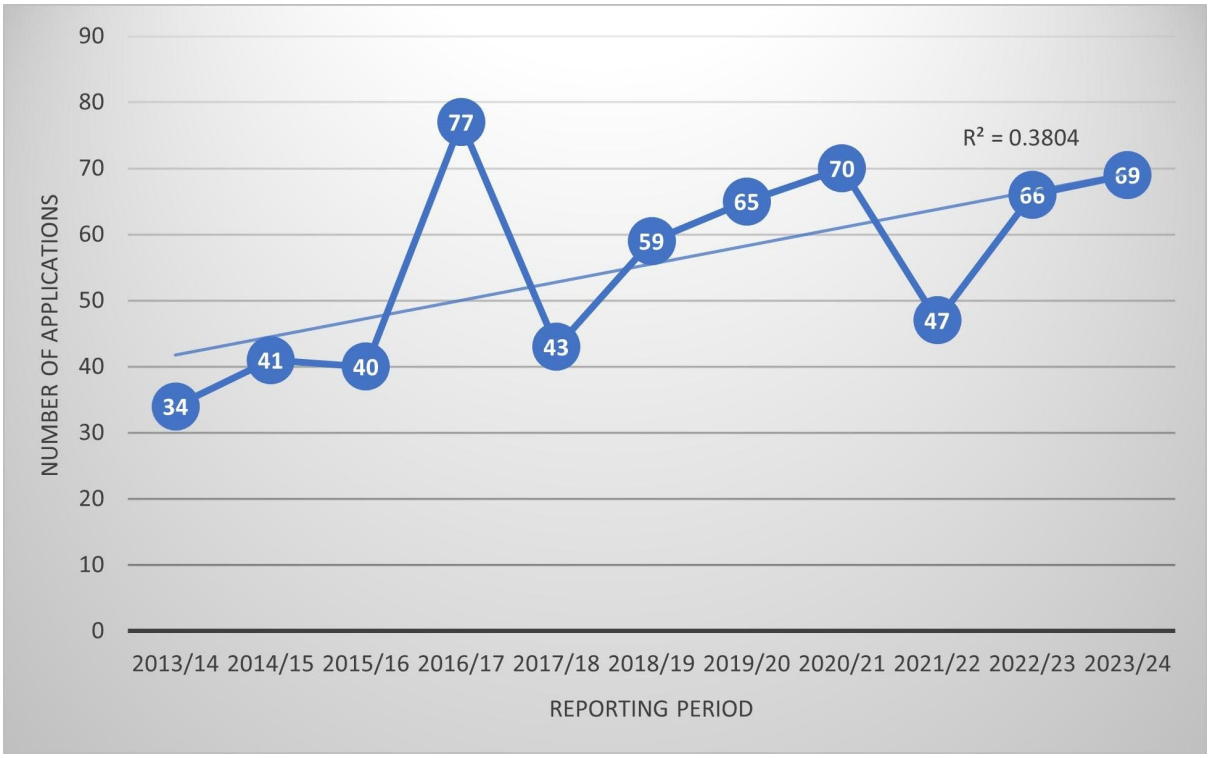

Figure 8 shows the number of external review applications filed with the Ombudsman each reporting period. Since 2013/14 there has been a roughly linear increasing trend in the number of external review applications filed.

Figure 9: Number of external reviews concluded by the Ombudsman

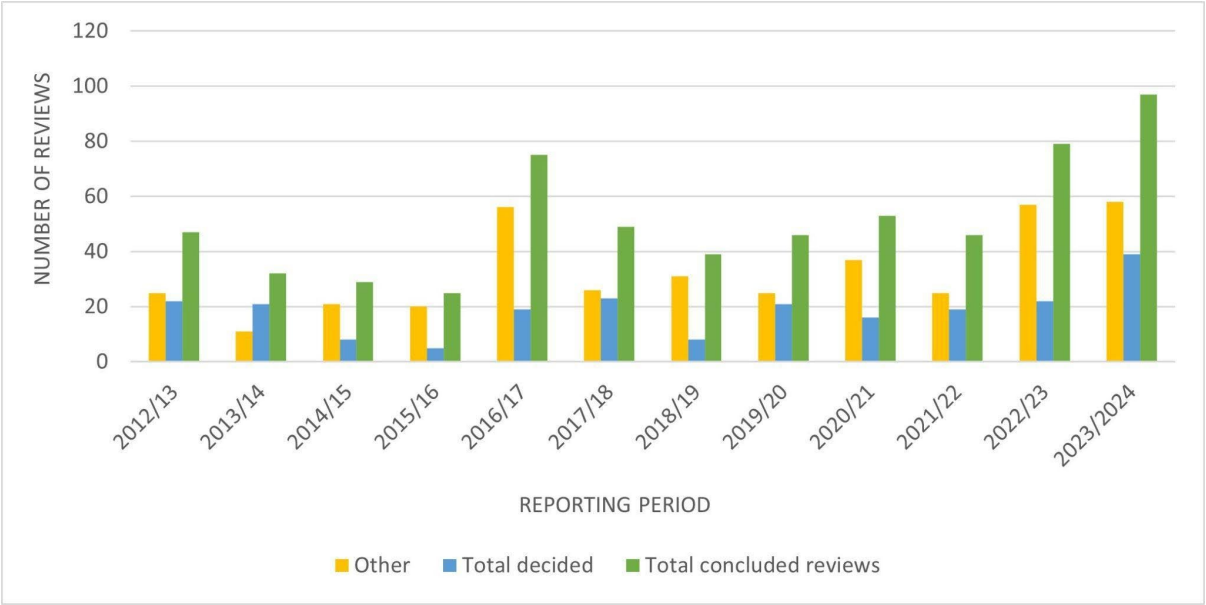

Figure 9 shows the number of external reviews concluded by the Ombudsman each reporting period. The green column indicates the total number of reviews ‘concluded’, which includes reviews in which a formal decision is issued (shown in the blue column). The total number of concluded reviews also includes ‘other’ reviews (shown in the yellow column), which consists of matters that did not proceed to a final decision (for example, where the review application was withdrawn or a negotiated

outcome has been reached). While the number of reviews concluded each reporting period has remained relatively stable, there has been a gradually increasing trend since 2021/22.

Figure 10: Review applications filed and finalised, and cumulative change in external review backlog

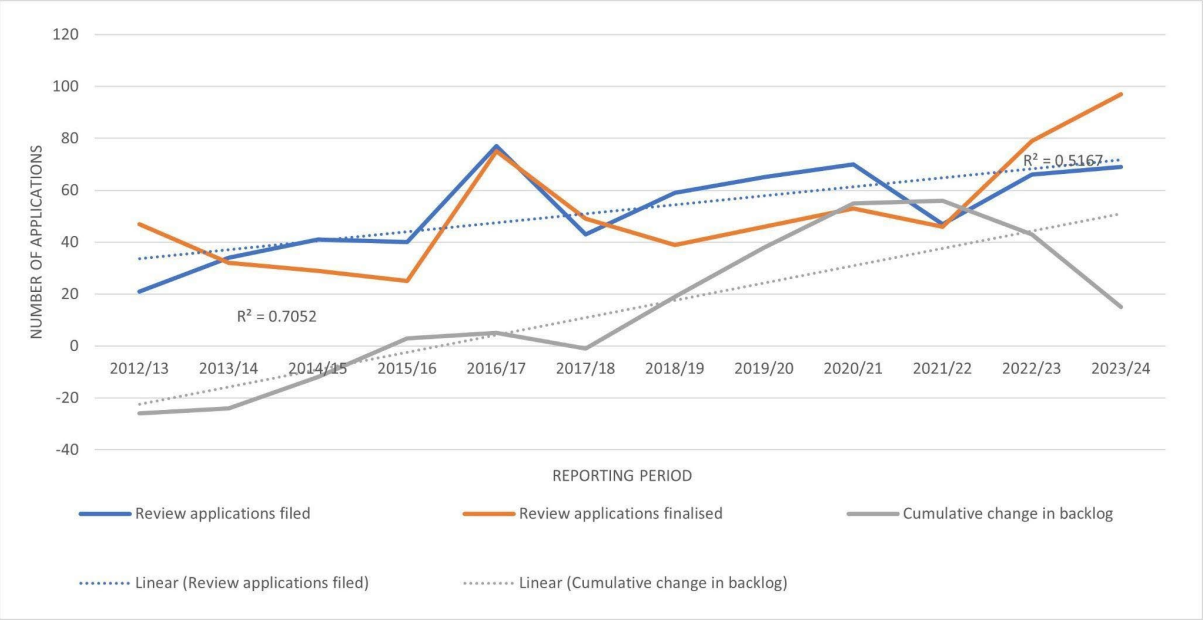

Figure 10 tracks three related metrics over time: the number of external review applications filed each year (blue line), the number finalised by the Ombudsman (orange line), and the cumulative change in the external review backlog (grey line). From 2012/13 to around 2021/22, the number of reviews finalised consistently lagged behind the number filed, which led to a steady increase in the backlog of unresolved matters. The grey line shows this cumulative backlog growing each year and peaking in 2021/22. There has been a marked change in these trends in the last two reporting periods. In both 2022/23 and 2023/24, the number of review applications finalised exceeded the number filed. This has resulted in a significant reversal in the backlog trend – as shown by the sharp downturn in the grey line – indicating that the Ombudsman's Office has made substantial progress in reducing the accumulated caseload.

Figure 11: Ombudsman Office total revenue (inflation adjusted) between 2012/13 and 2023/24

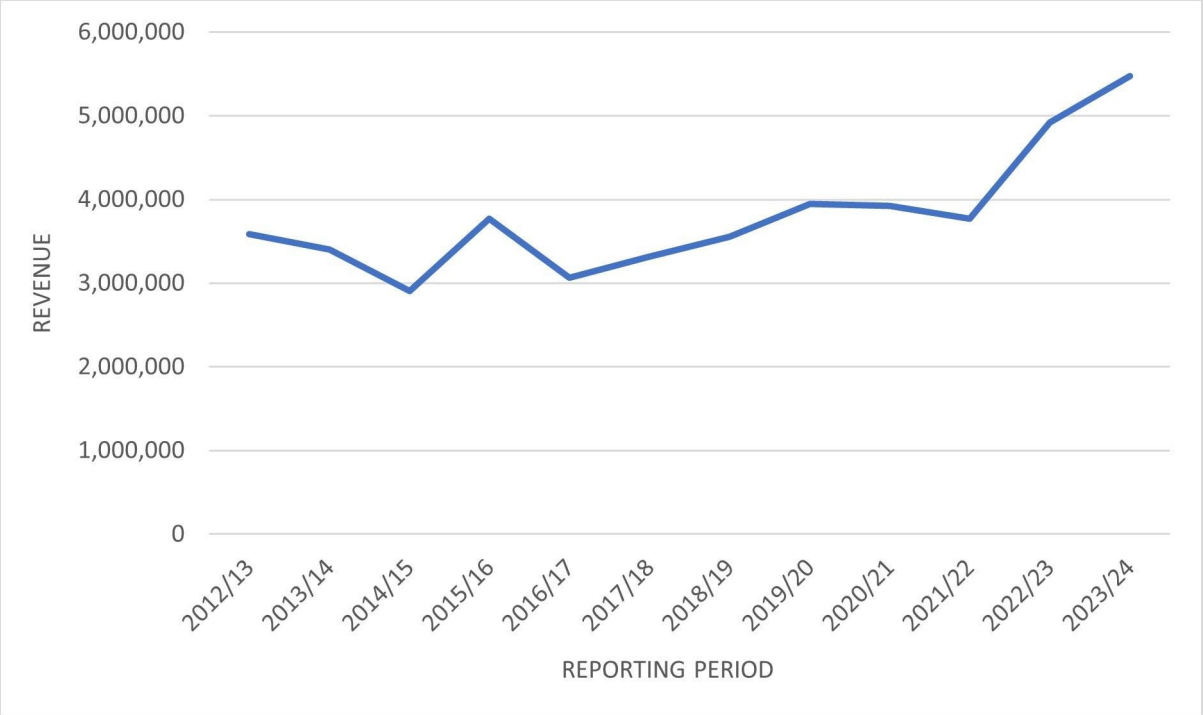

Figure 11 shows the total revenue (inflation adjusted) of the Office of the Ombudsman between 2012/13 and 2023/24. The total revenue remained fairly consistent between 2012/13 and 2021/22, with a relatively significant increase in 2022/23 and 2023/24.[67]

[67] The Office of the Ombudsman advised that the increased funding relates to the establishment of the Tasmanian National Preventive Mechanism (which is a separate function unrelated to RTI but which is reported jointly in budget papers) and that funding for Ombudsman functions has not materially altered.

Figure 12: FTE employees in the RTI jurisdiction and the number of finalised RTI reviews

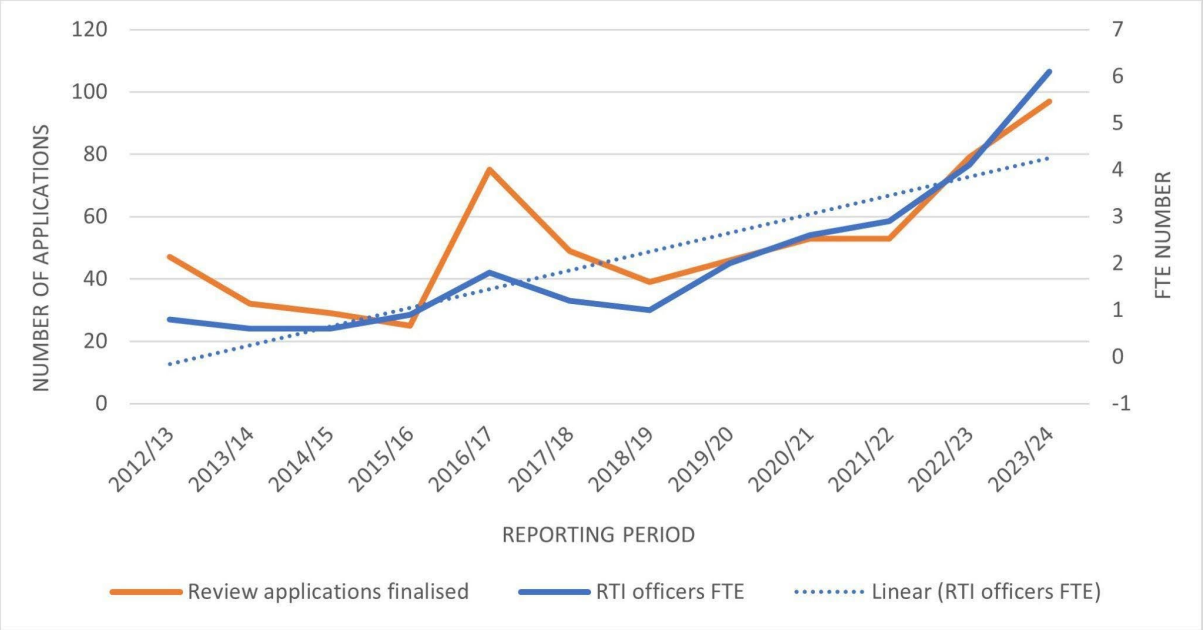

Figure 12 shows the number of full-time equivalent ('FTE') positions of employees in the RTI jurisdiction of the Office of the Ombudsman, plotted against the number of finalised RTI reviews.[68] There is a clear correlation between the increasing number of FTE employees and the increasing number of finalised reviews.

7. Comparison with other jurisdictions

Performance under the Tasmanian RTI framework, based on the most recent comparative figures for 2022/23,[69] shows an improvement in a number of areas, but still sees Tasmania fall in the bottom third of performance indicators in several key areas for the nine Australian jurisdictions.[70] Given the differences between jurisdictions' legislation and reporting requirements – comparisons should be approached cautiously.[71] This is particularly so if a jurisdiction has more successfully

[68] Data on full-time equivalent (FTE) positions was supplied directly by the Office of the Ombudsman and may differ from figures published in its Annual Report (which generally report on the number of recurrently-funded FTE positions). The Office of the Ombudsman advised that in recent years additional fixed-term staff have been engaged on temporary contracts to support the recurrently funded RTI team. These contract roles were funded using savings from unfilled positions and other savings in other parts of the Office.
[69] At the time of writing, the most recent comparative figures available were 2022/23, however a new national dashboard (2023/24) was released in the late stages of this Review (available at: https://www.ipc.nsw.gov.au/sites/default/files/2025-09/OGP_metrics_all_jurisdictions_all_years_June_2025.pdf).
[70] Information and Privacy Commission (New South Wales), 'Dashboard and metrics on the public's use of FOI laws': https://www.ipc.nsw.gov.au/sites/default/files/2024-06/OGP_metrics_all_jurisdictions_all_years_June_2024.pdf (Last accessed 6 August 2025).
[71] Figures 13-18 are copied from the Information and Privacy Commission (New South Wales), 'Dashboard and metrics on the public's use of FOI': laws'https://www.ipc.nsw.gov.au/sites/default/files/2024-06/OGP_metrics_all_jurisdictions_all_years_June_2024.pdf (Last accessed 6 August 2025).

adopted a ‘push’ model of RTI/freedom of information and thus releasing more information without the need for assessed disclosures.

Figure 13: Count of formal applications/decisions by type of applicant

Figure 13 shows the number of formal applications or decisions by type of applicant across Australian jurisdictions. Data on the type of applicant is not collected in Tasmania and is therefore listed as ‘unknown’.

Figure 14: Formal applications received per capita

Figure 14 shows RTI application rates relative to population. Tasmania falls in the middle of this spread, receiving more applications per capita than New South Wales (‘NSW’), the Australian Capital Territory (‘ACT’), Queensland, and the Commonwealth, but fewer applications than Victoria, South Australia (‘SA’), Western Australia (‘WA’), and the Northern Territory (‘NT’).

Figure 15: Percentage of all decisions made on formal applications/pages where access was granted in full or in part

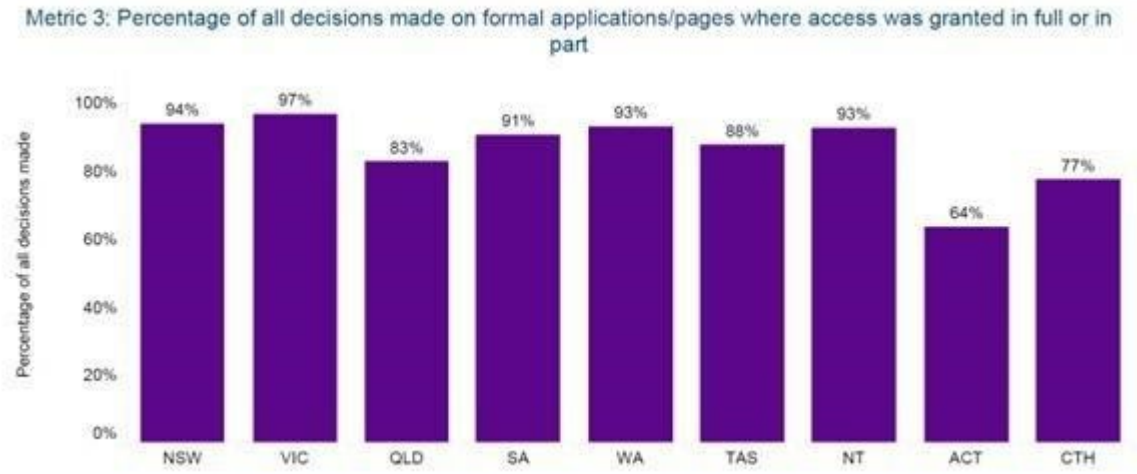

Figure 15 shows the percentage of all decisions made on formal RTI applications (or, in other jurisdictions, pages of documents) where access was granted in full or in part. Tasmania falls in the bottom two-thirds of jurisdictions, ahead of Queensland, the ACT, and the Commonwealth, but behind all other jurisdictions.

Figure 16: Percentage of all decisions made on formal applications/pages where access was refused in full

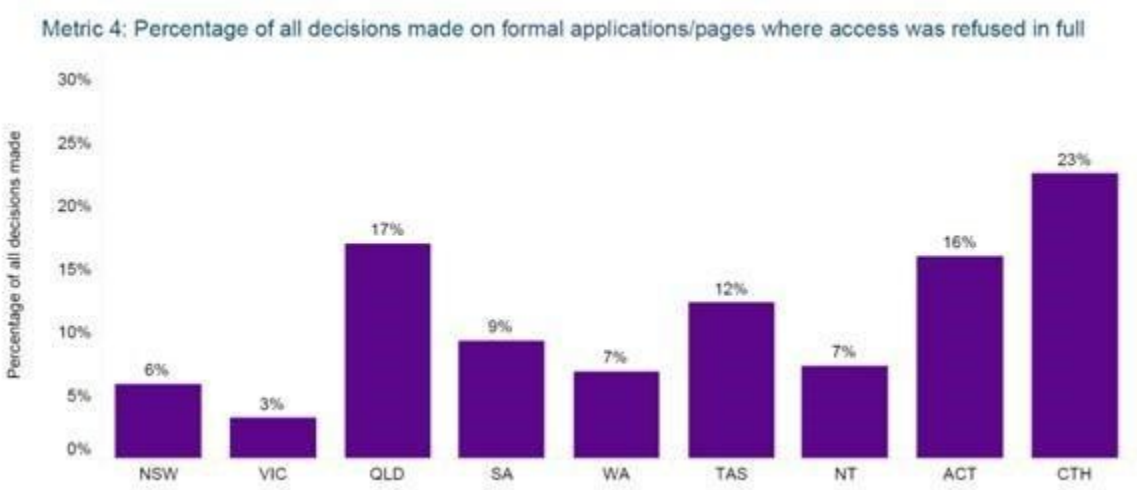

Figure 16 shows the percentage of all decisions made on formal RTI applications (or, in other jurisdictions, pages of documents) where access was refused in full. Similar to the trends in Figure 15, Queensland, the ACT, and the Commonwealth are the only other jurisdictions in which access is refused in full at a higher rate than Tasmania.

Figure 17: Percentage of all decisions made within the statutory time frame

Figure 17 shows the percentage of all decisions made within the statutory timeframe. Tasmania falls roughly in the middle of the spread.

Figure 18: Percentage of applications received which are reviewed by the jurisdiction Information Commissioner/Ombudsman

Figure 18 shows the percentage of applications received which are reviewed by the jurisdictions' Information Commissioner or Ombudsman. Again, Tasmania falls in the middle of the spread, with a higher percentage of external reviews than NSW, Victoria, WA, and the NT, but less than Queensland, SA, the ACT, and the Commonwealth.

Chapter 3: Disclosure of information

1. Overview – types of disclosures

The *Tasmanian Right to Information Act 2009* (Tas) ('*RTI Act*') was intended to increase governmental disclosure of information to the Tasmanian people. The original Tasmanian legislation – the *Freedom of Information Act 1991* (Tas) ('*FOI Act*') – was undoubtedly a significant development at the time. However, as Phoebe Winter explains:[72]

> [T]he effectiveness of the *FOI Act* … was soon questioned, as the system operated practically as a reactive 'pull model' of FOI rather than one encouraging proactive information release by authorities. According to Snell, these initial deficiencies may have been driven by an overreliance on the legislation's perceived ability to enhance transparency and insufficient consideration of actual design elements required to achieve this.

The title of the legislation was changed along with the substantive and procedural mechanisms of the framework in order to more effectively encourage a 'push model' in which government departments and agencies release as much information as possible. The then Attorney-General, Lara Giddings, in her second reading speech to introduce the draft Bill into the House of Representatives, explained that encouraging increased release of information was 'the legislative core of the major culture change we hope will be facilitated by this Bill'.[73]

The provisions of the *RTI Act* reflect this emphasis. The explicit acknowledgement in section 3(1)(c) that 'information collected by public authorities is collected for and on behalf of the people of Tasmania' reinforces custodianship of information rather than ownership by government agencies. Parliament explicitly expressed its intention in section 3(4)(a) that the legislation be interpreted 'so as to further the object' of the legislation in section 3(1) and in section 3(4)(b) that 'discretions conferred by this Act be exercised so as to facilitate and promote … the provision of the maximum amount of official information'. In addition, section 12 is entitled 'Information to be provided apart from Act' and section 12(1) states that '[t]his Act does not prevent and is not intended to discourage a public authority or a Minister from publishing or providing information (including exempt information), otherwise than as required by this Act.'

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[72] Phoebe Winter, 'Afraid of the Limelight: Tasmania's Right to Information System Perpetuating Secrecy and Inhibiting Accountability', unpublished honours thesis, Faculty of Law, University of Tasmania (2024), 5 citing Rick Snell, 'Freedom of Information: The Experience of States – An Epiphany?' (2001) 29 *Federal Law Review* 343, 344-5.

[73] Parliament of Tasmania, *Parliamentary Debates*, House of Assembly, 15 October 2009, (Lara Giddings), '*RTI Bill Second Reading Speech*', 2. Speech accessible at: https://www.parliament.tas.gov.au/__data/assets/pdf_file/0024/45816/68_of_2009-srs.pdf.

The provision goes on to list four categories: required disclosure; routine disclosure; active disclosure; and assessed disclosure. The first three of those categories are not subject to the Right to Information ('RTI') framework because all those three categories involve the disclosure of government information before there is, or needs to be, a formal application for assessed disclosure. The formal process of applying for assessed disclosure is the 'last resort' in circumstances where the relevant public authority will not disclose the information unless there is a formal application and the authority is required under the legislation to make the disclosure. In this sense, the legislation could perhaps have been more accurately titled the 'Transparency of Government Act 2009' or something similar. However, we understand the comments of Lara Giddings, the then Attorney-General, about the intended cultural shift the government of the day hoped the legislation would help drive, and we will discuss all four categories of disclosure referred to in the Act. We heard from a range of stakeholders about examples of the various categories of disclosure and we will discuss each of them in turn.

1.1. Required disclosure

Section 5 of the *RTI Act* includes definitions of terms referred to in the legislation and provides that 'required disclosure means a disclosure of information by a public authority where the information is required to be published by this or any other Act, or where disclosure is otherwise required by law or enforceable under an agreement.' We have no doubt that disclosure required pursuant to various legislative enactments or regulations occurs consistently as it should. None of the individuals or organisations we spoke to, and none of the written submissions we received, raised examples of issues with required disclosure of information or concerns that required information was not being disclosed. Consequently, we do not consider it necessary to focus on this particular category of disclosure.

1.2. Routine disclosure

According to section 5 of the Act, 'routine disclosure means a disclosure of information by a public authority which the public authority decides may be of interest to the public, but which is not a required disclosure, an assessed disclosure or an active disclosure'. Routine disclosure involves the release of information which has not yet been requested from a public authority and which is not required to be released by legislation or by some legally binding agreement but which would help the general community understand how it is being governed, how resources are being spent, and increase its active participation in government.

This type of proactive release of information was precisely what the legislative reform of the *RTI Act* in 2009 was intended to encourage. Lara Giddings in her second reading speech in Parliament claimed that: '[t]he release of this information will result

in less need for assessed disclosure – effectively this is the key element of the 'push' or 'proactive disclosure' model.'[74] We wanted to hear from agencies about their approach to routine disclosure and, particularly, to learn whether RTI officers found that proactive routine disclosure does in fact result in less need for assessed disclosure. We were pleasantly surprised by much of what we learned.

The Government's 'Transparency Agenda', initiated in 2014, has made an increasing amount of information available.[75] This information can be accessed via the Government Information Gateway.[76] The type, quality and accessibility of the available information varies widely from a simple set of figures updated quarterly in PDF format (most public authorities' quarterly Telecommunications Expenses) to dashboards updated monthly (Homes Tasmania) to a number of searchable databases (Department of Natural Resources and the Environment ('NRE')). There is wide discrepancy in the quality and amount of information that can be accessed: ranging from a minimalist approach like the Department of Premier and Cabinet ('DPAC') to more extensive sites like that of the Department of Health. There is also mixed coverage in terms of how up-to-date the information is. DPAC's website publishes details of Tasmanian Government Card Expenses for Chiefs of Staff but, since 2022, these entries seem to be non-existent.[77] DPAC has explained that the reduction in expenditure is due to a change in policy and approach whereby Chiefs of Staff are no longer issued new cards. The change in policy is not linked to the disclosed information.

At one council we were told precisely what Lara Giddings predicted would be the case: proactive disclosure of information ratepayers are interested in knowing results in significantly fewer requests for assessed disclosure, helping avoid unnecessary time, effort and expense, and also helping to build trust between ratepayers and the Council. This particular Council had tracked requests for information and realised that ratepayers wanted to know about the number of dog bites of humans in the Council's public off-leash areas. The information was previously available in the Council's Annual Report but now the Council releases the information quarterly (and that work feeds into the preparation of the Annual Report) and interested ratepayers no longer need to request it. A number of Councils also told us that they now disclose all information previously only available annually through the Council's Annual Report on a quarterly basis. The gathering of the information quarterly feeds straight into the Annual Report and so involves no extra work on the part of the Council, but the

[74] Ibid.
[75] DPAC, *RTI Uplift Project – Discussion Paper*, 6.
[76] Department of Premier and Cabinet, 'Government Information Gateway': https://www.dpac.tas.gov.au/government_information_gateway (Last accessed 24 July 2025).
[77] Department of Premier and Cabinet, 'Right to Information – Routine Disclosure: Tasmanian Government Card Expenses': https://www.dpac.tas.gov.au/rti/MPS_routine_disclosure_log/documents/Attachment-2-MPS-Tasmanian-Government-Card-expenses-April-2024.pdf (Last accessed 24 July 2025).

regular disclosure of the information takes much of the pressure out of the scramble to gather all the information for the Annual Report and satisfies interested ratepayers who can access information of interest far more regularly.

Of the major government departments, we were particularly impressed by the approach of the Department of Health. The proactive disclosure of information of interest to the general public including, for example, the daily disclosure of information such as ambulance ramping rates, numbers admitted to emergency departments ('EDs') in Tasmanian hospitals and the average amount of time in ED before discharge, all done in a simple and accessible dashboard of performance, is an exemplary model of transparency and accountability. Perhaps unsurprisingly, the RTI Team in the Department of Health all agree that the current approach to routine or proactive disclosure has resulted in many fewer applications for assessed disclosure. The resultant freeing up of precious human resources is thoroughly welcomed by the Department of Health RTI officers and senior departmental staff.

This is a pleasing and significant change in culture and approach by the Department of Health in contrast to the approach highlighted by the Integrity Commission's 'Investigation Gatehouse'. The current approach demonstrates the difference that can be achieved when a 'push model' approach is adopted. However, frequent users of government information overall find the track record of larger agencies lagging behind Federal counterparts:[78]

> Reforms made more than a decade ago intended to encourage routine disclosure have not worked as intended. Some departments have managed to produce a flow of information but in total it remains small, fragmented, difficult to access and often incoherent. Accessing repositories of Tasmanian Government data online is sometimes easier done through commonwealth digital repositories. There is no single access point, index or repository of disclosures.

Indeed, the legacy of the problems highlighted by the Tasmanian Integrity Commission in the Department of Health still linger in the submissions and discussions we had with applicants. It highlights the negative impact that delays, or minimal activity, in the non-review areas of the Ombudsman's RTI functions can have when agencies and delegates drift away from their obligations under the *RTI Act*.

1.3. Active disclosure

Section 5 of the *RTI Act* states that 'active disclosure means a disclosure of information by a public authority or a Minister in response to a request from a person made otherwise than' by a request for assessed disclosure. The concept is quite straightforward and should be seen as a 'gateway' to routine disclosure. If a person asks for certain information and the requested entity can lawfully release that

[78] David Killick, *Submission to the Independent Review of Tasmania's Right to Information Framework* (30 April 2025), 4.

information, it should not require the requester to go through a formal RTI application – instead, it should simply provide the requested information. Once requested, that information should be considered for routine release. Again, our conversations about active disclosure were rich with encouraging examples.

One local government authority told us, for example, that they had developed a 'Request for Information' form that ratepayers could simply fill out. The form does not constitute a formal RTI application. Instead, the Council involved is basically saying to its ratepayers 'if there is some information Council holds that you want, fill out this form so that you tell us what the requested information is and we will provide it to you if we can.' The RTI team of the Council involved told us they have formed the view that nine out of 10 times it is possible to provide the ratepayer with the information they seek thus obviating any need for a formal RTI application.

Again, that sort of commitment to transparency builds the trust of the ratepayers with Council, helps minimise any sense that Council is hiding information, and makes the job of the RTI officer so much less demanding by obviating the need for the assessment and processing of a formal application for assessed disclosure. It is perhaps unsurprising that an attitude like that results in only a negligible number of formal RTI applications for that particular Council.

1.4. Assessed disclosure

This is the option of last resort.

Government departments, local government authorities and other public authorities are all engaged in the process of assessed disclosure and we do not intend to discuss that general process here. There are certainly aspects of the process that we raise and discuss in other parts of our Report. One issue that we do want to raise here in relation to assessed disclosure is that of so-called 'Disclosure Logs' – the process of logging information provided under assessed disclosure in response to specific RTI applications and making that information publicly available (to everyone and not only to the specific applicant). We discuss Disclosure Logs in more detail below under the heading 'Disclosure Logs'.

One other issue associated with assessed disclosures is the release of a public authority's record of its search processes undertaken when responding to an application for assessed disclosure. We recommend that search records be a part of the information released to applicants for assessed disclosure. The Ombudsman has issued 'Guideline 4/2010' in relation to searching and locating information as at January 2013 including a recommended 'Searching Template' and an instruction that 'a written record should be retained of all searches carried out in relation to the application for assessed disclosure.' The training module for RTI delegates being prepared for the RTI Uplift Project Steering Committee has a very good and extensive lesson on how to undertake the search process including the necessity to

record the searching. The proposed model 'RTI – Information Disclosure Procedures' (May 2025 Version 1.0) covers searches at 7-6 and Appendix E. However, neither part actually specifies that search records need to be recorded unless requested by the Ombudsman and/or sought by the applicant. This approach is reflected in the email response from the Chair of the RTI Uplift Project Steering Committee, on the 2 July 2025, when we raised the suggestion of providing applicants with a search record:

> We would be reluctant to jeopardise RTI delegates' ability to engage effectively with officers within their agency without there being a clear need for change. We haven't seen any evidence to suggest that there is a systemic issue with insufficient searches or that the Ombudsman receives many requests relating to this. Perhaps it might be more effective if we made information available on the website of how searches are undertaken to ensure that all information is relatively captured to provide applicants with assurance without placing onerous administrative demands on searching staff. We welcome feedback from you on whether you have heard applicants raising issues with insufficient searches. If that is the case, we would be happy to tailor a solution to the problem identified.

We understand this position, however in our view, transparency and building trust can only be enhanced by demonstration of the *bona fides* of the process. Given the Ombudsman's Guideline and the recognition in the delegate training module of the importance of recording the search process, we suggest amending the proposed 'RTI – Information Disclosure Procedures' to categorically require the recording of searches and the provision of those search records (with any necessary redactions) to applicants. We consider that providing the search record may result in a reduction in the detailed, and often complicated, attempt by applicants to capture all potential information and that it would increase trust by outlining the thoroughness of what has been searched for, including messaging services etc.

2. Disclosure Logs

Disclosure Logs provide an important mechanism for increasing transparency and open access to government information. The Logs address a major issue confronting RTI/FOI schemes: namely, effective distribution of disclosed information. Agencies have few incentives to publicly release information extracted under RTI and, outside of a handful of applicants (journalists, members of parliament, bloggers etc), most RTI applicants have few efficient means of finding and supplying the released information to other people potentially interested in it.

2.1. The need for change

Disclosure logs are not explicitly required under the Tasmanian *RTI Act*. The establishment and maintenance of disclosure logs was a key suggestion of the Tasmanian Government's 2014 Transparency Agenda, modelling section 11C of the

Freedom of Information Act 1982 (Cth).[79] Tasmanian logs, unlike the Commonwealth disclosure logs, have no set requirements and therefore have been applied inconsistently (if at all) by Tasmanian Government departments and other public authorities. The Tasmanian Department of Health has set a useful benchmark in terms of presentation, accessibility, and features that improve transparency based on best practice at the Commonwealth level.

Government agencies, regardless of size, should publish disclosure logs. Due to the generally low number of requests, the volume of requests for personal and neighbourhood information and the proactive approach of most local government authorities, we recommend that there be no compulsory requirement for disclosure logs for local government. However, any Guidelines for Disclosure Logs by the Ombudsman should have a section for best practice for any local governments opting to publish disclosure logs.

[79] DPAC, *RTI Uplift Project – Discussion Paper*, 6.

Table 6: Tasmanian Government Department RTI Disclosure Log audit – May 2025

Department	Premier and Cabinet	Natural Resources and Environment	Health	Education, Children and Young People	Justice	Police, Fire and Emergency Management	Treasury and Finance	State Growth
Disclosure Log	✓	✓	✓	✓	✓	✓	✓	✓
Link to Ombudsman resources	✓	✓	✗	✓	✓	✓	✓	✓
How to find government information	✗	✓	✗	✗	✓	✓	✓	✓
How to make RTI application	✓	✓	✓	✓	✓	✓	✓	✓
What happens after application received	✓	✓	✗	✓	✓	✓	✓	✓
Link to RTI Act and RTI Regulations 2021	✗	✓	✓	✓	✓	✓	✓	✓
Agency's disclosure policy	✓	✓	✓	✓	✓	✓	✓	✓
Different types of disclosures	✓	✓	✓	✓	✓	✓	✓	✓
Why the RTI process exists	✓	✗	✓	✓	✓	✓	✓	✓
What if an applicant is not satisfied with a decision	✓	✗	✗	✓	✓	✓	✓	✓
Overview of exemptions in RTI Act	✗	✗	✓	✗	✗	✗	✗	✓
Searchability of documents	✗	✓	✓	✓	✓	✓	✓	✓

Table 6 only includes Tasmanian Government Departments and not other public authorities. Our focus on government departments is not intended to create the impression that we do not consider it desirable for other public authorities to also maintain Disclosure Logs. We know, for example, that the EPA maintains a Disclosure

Log,[80] and we applaud that practice. We certainly encourage all public authorities to establish and to maintain a Disclosure Log.

2.2. Inconsistency

There are inconsistencies between (and within) Tasmanian agencies, in relation to whether context is given about applications for assessed disclosure. For example:

- The Department of Police, Fire and Emergency Management ('DPFEM'), provides a brief synopsis in the Disclosure Log table of the information released. In the attached PDFs containing the assessed disclosure, DPFEM occasionally provides the request summary at the top of the document.
- In the most recent disclosures from the Department of Health, the Department has provided in its Disclosure Log table, a link to a new webpage for each application. The information provided on this separate page has included the information requested, a link to the PDF document, the time taken for each decision, whether the application fee was waived, who the decision to release information was made by, and a 'contact us' button for persons having problems using the document with their accessibility tools. However, the application of this format for each disclosure is inconsistent, with some disclosures being merely linked as PDFs or webpages.
- DPAC and the Department of State Growth ('DSG') do not typically provide context to each assessed disclosure, apart from a brief description, in their respective RTI Disclosure Log webpage. Again, the amount of context given varies between applications.
- The Department for Education, Children and Young People ('DECYP') provides very little context overall. In its Disclosure Log table, it provides a 'summary of request' that is usually a sentence long. For example, 'Hiring Freeze' or 'School Associations.' This is not necessarily accessible for an ordinary member of the public. This also applies to the Disclosure Log of NRE.
- It is unclear with many logs whether information has been released as an active disclosure, after an assessed disclosure, after internal review or finally after review by the Ombudsman.

[80] Environment Protection Authority (EPA), 'RTI Disclosure Log': https://epa.tas.gov.au/about-the-epa/right-to-information/rti-disclosure-log

This reform was strongly supported by Bob Burton in his submission:[81]

> While most agencies publish released documents on their disclosure log, none that I have seen publish the wording of the actual request. Releasing the records but not the terms of the request is like publishing the answer but not the question. On several occasions, I have reviewed documents released to others and wondered whether other records were missed due to the wording of the original request or perhaps the specification of a narrow time window. Sometimes, it is possible to guess who filed the request; other times not.
>
> Disclosing the wording of a request would allow a better understanding of the documents released and potentially minimise the chance of duplicative requests.

Bob Burton has also suggested that applicants have the option to have their name released. There is an interesting discrepancy between the Ombudsman generally releasing the names of applicants after external review unless there is a good reason not to: [82]

> Disclosure logs currently don't disclose the name of the applicant. As a default setting, it is reasonable that applicants can remain anonymous if they so choose. However, many applicants would be happy to consent to the disclosure of their name if given the option.
>
> From a journalism perspective, an essential part of the story is the to and fro of the arguments over redactions and other information in correspondence with the agency. For example, the applicant's arguments in internal appeals against parts of an initial decision and the agency's responses are important elements in explaining what was and wasn't disclosed. (See for example here). It is also preferable to acknowledge who the applicant was.

Adam Holmes also noted various inconsistencies in the way Disclosure Logs are managed:[83]

> Lack of consistency in publishing on departmental disclosure logs (eg often my decisions are published on logs simultaneously with me receiving them rather than on delay, other times they are not published at all. The EPA recently removed one of my decisions from the log).

2.3. Is there sufficient information about what exemptions have been claimed?

Most departments redact information that is out of scope and/or exempt in black or grey and provide red text providing the relevant section of the *RTI Act* that applies to that information. However, the practice is inconsistent. For example, some agencies provide 'out of scope' or 'OOS' over redacted information or redact information completely without any reference to what exemption is claimed or why the information is out of scope. Often, there is no indication of why exemptions are claimed (e.g. whether the information contains personal information, whether it contains an opinion prepared by a Minister, or a record of consultations). Exemptions like section 27 'Internal briefing information of a Minister' (not subject to a public

[81] Bob Burton, *Submission to the Independent Review of Tasmania's Right to Information Framework* (undated), 2.
[82] Ibid.
[83] Adam Holmes, *Submission to the Independent Review of Tasmania's Right to Information Framework* (undated), 1.

interest test) require certain conditions to be met for the information to be exempt and no indication is given why these conditions were met.

In addition to this, unless agencies provide a clear link to the *RTI Act* and an explanation about the different types of exemptions that can be claimed under the *RTI Act*, members of the public will not necessarily understand what the words 'section 27' mean, over the top of redacted text. Furthermore, most Disclosure Logs do not provide what public interest factors were considered and what factors supported not releasing the information. There will be cases where information is redacted by agreement with the applicant and explained fully in the decision letter. Disclosure Logs should note that this has occurred without prejudicing confidential communications with the applicant.

2.4. Are documents accessible?

While most public authorities have released information that is searchable, DPAC has been inconsistent with this. Most PDF documents in DPAC's Disclosure Log appear to be scanned copies that cannot be searched. In contrast some Commonwealth agencies allow all the Disclosure Logs to be searchable online.

3. Commonwealth agencies

Commonwealth agencies are required by section 11C of the *Freedom of Information Act 1982* (Cth) to publish information that has been released in response to every FOI request, subject to certain exceptions.

3.1. Requirements for Commonwealth FOI Disclosure Logs

The Office of the Information Commissioner ('OIC') has set out the requirements for Commonwealth Disclosure Logs including:[84]

- An introduction to their Disclosure Log which plainly and clearly explains its purpose and the agency's obligations under section 11C of the *FOI Act*, as well as exceptions to publication.
- Listing information that has been released in response to FOI requests for documents held by the agency or minister. This can be done in three ways: (1) making information available for downloading from the agency's and/or the minister's website; (2) linking to another website where information can be

[84] The information in Section 3.1 'Requirements for Commonwealth Disclosure Logs' and Section 3.2 'Design elements of Commonwealth FOI Disclosure Logs' is drawn and summarised from the very extensive Office of the Australian Information Commissioner Part 14: Disclosure log Freedom of Information guidance for government agencies, https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines/part-14-disclosure-log (Last accessed 27 August 2025).

downloaded; or (3) giving details of how information can be obtained (section 11C(3)).

- Publishing information within 10 working days of giving FOI applicants access to documents (section 11C(6)).

3.2. Design elements of Commonwealth FOI Disclosure Logs

The Information Commissioner does not prescribe the form of a Disclosure Log but urges a 'common approach' so that Disclosure Logs have a consistent appearance across government and can be easily understood. The log/table should list information available for public access, the information, and a search facility applying both to the Disclosure Log and any attached information.

The Information Commissioner suggests agencies should publish:

(1) the terms of the FOI request that prompted release of information (in summary form); or

(2) whether the FOI applicant was given access to all documents requested, and if not, the exemption or basis on which partial access was granted; or

(3) whether all the information provided to the FOI applicant has been made publicly available under section 11C and if not, the nature of the information that has not been made available.

Agencies and ministers are encouraged to ensure that the Disclosure Log and attached documents are easily discoverable, understandable and machine readable. The Information Commissioner has recommended several features to be integrated into the design and ongoing administration of Disclosure Logs:

- Using a 'FOI Disclosure Log' icon to link to the Disclosure Log from a prominent webpage (e.g. the agency's homepage or an 'Access to information webpage);
- Clearly and briefly explaining the purpose of the Disclosure Log (e.g. to provide access to 'publicly available information, released in response to an FOI request');
- Enabling information on the Disclosure Log to be searchable in HTML/PDF format and avoiding publishing scanned documents. This allows the public to search documents by reference to particular words, categories or subject matter;
- Using appropriate online channels to publicise its existence and content (e.g. social media);
- Using electronic (rather than manual) redaction methods.

Table 7: Commonwealth authority FOI Disclosure Log audit

Public Authority	Attorney-General's Dept	Dept of Health and Aged Care	Treasury	Australian Federal Police	Dept of Education	Dept of Environment	Cth Director of Public Prosecutions
Link to Commonwealth Ombudsman/ Office of the Australian Information Commissioner	✓	✓	✓	✓	✓	✓	✓
Advice on how to find government information	✗	✗	✗	✓	✓	✓	✗
Instructions for making an FOI application	✓	✓	✓	✓	✓	✓	✓
Overview of process that will occur once application is received	✓	✓	✓	✓	✓	✗	✓
Link to *Freedom of Information Act 1982* (Cth)	✓	✓	✓	✓	✓	✓	✓
Information about why FOI process exists	✗	✓	✓	✓	✓	✓	✓
Advice on what can be done if applicant is not satisfied with a decision	✓	✓	✓	✓	✓	✗	✓
Searchability of documents	✓	✓	✓	✓	✓	✓	✓
Disclosure Log linked on homepage	✓	✗	✗	✗	✗	✗	✗

4. Disclosure Logs in other Australia States and Territories

Table 8: Disclosure Logs in other Australian States and Territories

Jurisdiction	Victoria	New South Wales	Queensland	Northern Territory	Western Australia	South Australia	Australian Capital Territory
Disclosure Logs required	✗	✓	✓	✗	✗	✓	✓
Provision of State/Territory Act	N/A	Section 25 of the *Government information (Public Access) Act 2009* (NSW)	Sections 78 and 78B of the *Right to Information Act 2009* (Qld)	N/A	N/A	Premier and Cabinet Circular PC045 – Disclosure logs for non-personal information released through Freedom of Information.	Section 28 of *Freedom of Information Act 2016* (ACT).
Further information provided to public authorities by State/Territory Ombudsman/ Information Commissioner	N/A	Information and Privacy Commission New South Wales: Good Practice for Disclosure Logs (August 2020).	N/A	N/A	N/A	State Records of South Australia: Disclosure Logs for Non-Personal Information released through FOI (December 2022)	N/A

5. Recommendations

Listed below are our recommendations in relation to types of disclosures and Disclosure Logs.

5.1. Short term/administrative

Recommendation 1: The Ombudsman should issue a Guideline for the establishment and maintenance of Disclosure Logs that incorporates the Best Practice Guidelines from the Australian Information Commissioner and other Australian jurisdictions.

Recommendation 2: The Tasmanian Government should continue to expand the numbers and types of routine disclosures made available via the Government Information Gateway.

Recommendation 3: Public authorities should regularly update and check the currency of information being published in Disclosure Logs.

Recommendation 4: The proposed 'Right to Information – Information Disclosure Policy' require the recording of searches and the provision of those searches (with any necessary redactions) to applicants.

Recommendation 5: Right to Information webpages and Disclosure Logs should be consistent between all Tasmanian public authorities, with a particular emphasis on consistency between government departments. A single portal, with searchable text administered by a single agency would be of significant benefit.

Recommendation 6: Tasmania should adopt the design elements suggested by the Australian Information Commissioner for information published in Disclosure Logs. More specifically, implementing an icon on department webpages that links to Disclosure Logs, ensuring that all documents are searchable, and including more context for each application for assessed disclosure.

Recommendation 7: Public authorities should consistently explain why information has been redacted (for example, what exemptions have been claimed) in their Disclosure logs.

Recommendation 8: If an exemption has a public interest test, public authorities should outline the key public interest factors supporting non release of that information in their Disclosure Logs.

Recommendation 9: Public authorities Disclosure Logs should include an explanation (in plain English) what exemptions exist under the *Right to Information Act 2009* (Tas).

5.2. Longer term/legislative

Recommendation 10: The *Right to Information Act 2009* (Tas) to be amended to add a section along the lines of section 11C of the *Freedom of Information Act 1982* (Cth).

Chapter 4: Culture and RTI in Tasmania

1. Introduction

Over the last 34 years, the administrative culture in Tasmania has persisted with a default position of non-disclosure of government information. The *Right to Information Act 2009* (Tas) ('*RTI Act*') – and its predecessor, the *Freedom of Information Act 1991* (Tas) ('*FOI Act*') – have made some inroads, and the Government's 'Transparency Agenda' has also opened up some of the processes for disclosure of government information. Overall, and despite the efforts of many Right to Information ('RTI') delegates and others, there is often the need for a sustained and constant effort to fight for disclosure. The majority of the submissions we have received focus on the struggles at the more problematic end of the transparency continuum. We acknowledge there is a range of experiences and that many pathways to accessing information are not problematic. Indeed, in some public authorities, particularly local government and smaller government entities, the process of receiving and responding to requests for information seems to work smoothly, with a few exceptions, and we have attempted to capture some of the more positive and constructive examples we have encountered in Chapter 4 of this Report 'Disclosure of information'.

Nevertheless, obstacles remain and, in the discussion below, we consider a range of options to help create a paradigm shift in administrative practice and oversight, and to promote a sustained cultural shift toward transparency in government. Some suggestions are more symbolic, but nevertheless critical. We recognise a number of constructive initiatives that commenced before our Review and others that have been initiated since. We welcome those initiatives and they need to continue, but with a greater sense of urgency and in alignment with a more extensive approach to shifting culture. Yet the persistence of an old culture, at odds with the express intent of the legislation, has to be acknowledged and confronted.

2. Leadership and culture

As previously explained in Chapter 1 ‘Findings and recommendations arising from previous reports and review processes’, leadership and culture have consistently been identified as the key catalysts for change along the transparency continuum. Yet, despite that chorus of consistent recognition of the importance of leadership and culture, few, if any, of those past reviews have offered a comprehensive roadmap to create the cultural change needed to challenge, offset, and even replace, a contrasting culture of risk aversion and opacity.

Some legislative changes will be helpful, but they will be insufficient, in and of themselves, to address the interconnected, compounding, and deeply entrenched problems that persist. In his submission, David Killick argued that ‘[k]eeping bad news – or any news – from reaching the public isn’t some sort of aberration. It is the defining characteristic of this state’s political culture.’[85] Conversely, a number of departments expressed their perception that the media is prone to misreporting, which is a contributing factor to the reluctance to disclose information. We need to break the cycle and demand higher standards from all parties.

During this Review we have encountered varied, and important, responses to some of the problems that have been identified. In particular, the establishment of the RTI Uplift Project under the auspices of the Department of Premier and Cabinet (‘DPAC’) has been a welcome initiative, especially in the areas of: the development and provision of training; consistency in government agency decision-making; bringing to light the problems confronting RTI delegates; and acknowledging many of the problems within Tasmania’s RTI framework.

However, initiatives such as the RTI Uplift Project have lacked urgency and a systemic focus. The progress has been limited, *ad hoc* and seemingly unambitious. Despite 30-plus years of having a legislative mandate and duty to develop a pro-disclosure regime, the prevailing culture is still not one of openness. Political and bureaucratic leadership have failed to deliver a more open system of democratic government. This is a critique of the operating culture as opposed to individuals within that system. We are convinced that if senior politicians and bureaucrats were driving an attitudinal shift, the operations of initiatives such as the RTI Uplift Project would be significantly more dynamic and ambitious.

The need for leadership and cultural improvement is at the heart of addressing the entrenched problems of Tasmania’s administrative culture: a culture that has prevented the state from continuing a journey to reap the benefits of increased transparency. On the eve of adoption of the *FOI Act*, Tasmania was at the forefront of open government in Australia. We then had a modern pro-disclosure Act, a

[85] David Killick, *Submission to the Independent Review of Tasmania’s Right to Information Framework* (30 April 2025), 2.

dedicated training unit, an Ombudsman who had been promised extra resourcing, the inclusion of local government and a two-year lead-in time for the Tasmanian public service to develop a new culture of transparency and openness. That initial promise has failed to materialise. A constant and lamentable feature over the past three and a half decades has been a culture and leadership clinging to old norms, which persist despite major initiatives to shift the culture, including initiatives such as the enactment of the *RTI Act* and the government's Transparency Agenda. Despite consistently low rankings (relative to other Australian States and Territories) on most transparency indicators, there seems to be a prevailing attitude that a few incremental tweaks are all that is needed. Even projects that are intended to deal with increasing transparency rarely include a citizen-centric element or even a role for citizen participation. David Killick argued that:[86]

> Addressing the endemic secrecy that infects Tasmanian political culture is no small task but that difficulty must not prevent an attempt. The notion that most of the work of government is somehow a confidential affair and none of the business of citizens should not be allowed to fester. Transparency should be a core aspiration of government, rather than an afterthought.

Secretaries and heads of agencies are fundamental to the tone and culture for the rest of the Tasmanian State Service ('TSS'). The tone needs to be unambiguous and driven by a commitment to an information-positive environment. We believe that, if the Premier and other senior ministers expressed their commitment to genuine transparency in government and did so consistently, senior bureaucrats would respond to that political lead and potentially be more proactive in their own expression of the importance of greater transparency in government. This expressed commitment will require constant vigilance and must involve more than lip service pledges at the start of taking office.[87]

[86] Ibid., 2-3.
[87] Described as a verbal pledge and rite of passage by David Killick, *Submission to the Independent Review of Tasmania's Right to Information Framework* (30 April 2025), 2.

2.1. An opportunity

There is significant change underway in the TSS generated by the 2021 report of Dr Ian Watt following his Independent Review of the Tasmanian State Service ('the Watt Report'). The Watt Report outlined 77 recommendations across a 'Roadmap to Reform' with five domains:[88]

- principles and values;
- leadership;
- capability;
- workforce;
- service delivery.

A key element of both the Watt Report and the 2023 Report of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings ('COI') was the observation of the difficulties and challenges of information sharing within the TSS. The five domains identified by Watt are all adversely impacted by the barriers to information sharing. The problems of information sharing are compounded by the problems identified in the RTI system.

The Watt Report makes no mention of the *RTI Act* or the desirability of open government: a stark contrast to the 2022 Queensland 'Review of culture and accountability in the Queensland public sector' conduct by Professor Peter Coaldrake AO ('the Coaldrake Report') .[89] In part, that glaring omission from the Watt Report might be explained by those being consulted not flagging transparency as important. Yet the guiding principles and the recommendations in the Report are entirely consistent with the integration of a more effective RTI framework into the reform of the TSS. More importantly, Watt's observations on leadership, the necessity to reach out to other sectors/partners and for the TSS leadership to embrace an attitude of stewardship all align with, and reinforce, an open government leadership culture and the mainstreaming of transparency. The potential to align the administration of, and commitment to, a more effective RTI framework as complementary to, or even enhancing, the reforms to the TSS is enormous. As Watt observed, the issue is:[90]

> …not whether the TSS will need to change over the next decade or so, but rather what the change will be, how it will be managed, and how change can be navigated in the best interests of the Tasmanian community, the Tasmanian Government and the institution itself.

[88] Dr Ian Watt, *Independent Review of the Tasmanian State Service,* Final Report (July 2021).
[89] Professor Peter Coaldrake AO, *Let the Sunshine In.*
[90] Dr Ian Watt, *Independent Review of the Tasmanian State Service,* Final Report (July 2021), 7.

The flow of information between government agencies and between the agencies and the community will be fundamental to successful navigation of the necessary changes:[91]

> The TSS is held back by its current design. It is too siloed and too rigid in structure. It has limited capability in many areas and it finds it difficult to share capability across the service. Like most public services, it is often too risk averse and has compounded process and red tape to attempt to manage risk.

Mainstreaming transparency has a key role in producing a more effective design, culture and operation of the TSS. The persistence of a culture where many agencies, especially with certain topics and/or users default to reactive, defensive approaches and refuse to release information unless compelled can only undermine the intent of the Watt reforms.

2.2. If in doubt say no

There are two competing sets of attitudes towards transparency within the TSS. The first is driven by, and adheres to, the *RTI Act*. This attitude recognises the rapidly changing information environment and the benefits to be gained from information sharing. The other set of attitudes linger in a 19th century conception of information management: government information is confidential unless there is an authorised decision to release it. This set of attitudes represents an 'old school' interpretation of the Westminster system: public information belongs to the Crown and will only be released when the Crown decides to allow its release. The Tasmanian Integrity Commission's report 'Investigation Gatehouse – An investigation into a right to information request in the Department of Health' exposed a stark example of this over-zealous resort to non-disclosure.[92] There should be a review by the Ombudsman to determine whether the circumstances in the Health Department identified in the Integrity Commission's investigation were a one-off or whether poor practices continue in that department and/or elsewhere. The persistence of this protective and proprietorial attitude to public information was identified in the RTI Uplift Project Discussion Paper:[93]

> Several responses to the surveys indicated that RTI performance in agencies was being affected by some resistance to releasing information outside of the assessed disclosure process. In addition to cultural forces impacting the occurrence of active disclosure, the amount of information routinely disclosed has not greatly increased over the last two years and it seems as though identifying information for routine disclosure is not a priority for Senior Executive Service staff.

[91] Ibid., 7-8.
[92] Integrity Commission Tasmania, *Investigation Gatehouse.*
[93] DPAC, *RTI Uplift Project – Discussion Paper*, 35.

A similar attitude was also evident in the 2024 report 'The culture of implementing Freedom of Information in Australia' by Monash University ('the Monash Report'):[94]

> The legislation needs updating, but there also needs to be a major cultural shift especially in the middle management and executive who at times can try to interfere and hinder the release of documents if they don't fully understand the requirements of the *FOI Act*. This can place FOI coordinators in a difficult position when trying to act in accordance with the legislation while not disobeying a directive from management. [WA]

A number of the submissions we received were highly critical of the dominance of this culture of secrecy:[95]

> Tasmanian government institutions have turned the practice of keeping secrets into an even higher art. (Perhaps a classic of the genre is the handling of the Right to Information Uplift Project – Discussion Paper).

The tension and conflict noted in the RTI Uplift Project Discussion Paper was apparent in many of our discussions when the interactions between RTI delegates and Information Custodians or Senior Executive Service ('SES') managers were touched upon. The persistence of a non-disclosure culture does not necessarily result from direct and deliberate interference in the processing of RTI applications by Ministers or Ministerial staff. Rather it is reflected in the sensitivity of the TSS to possible reactions to the release of information and attempts to second-guess the reactions to release of information that may trigger media and Parliamentary scrutiny. Our discussions with people who have exited the process confirmed the sense that lower echelons of the TSS have become more attuned, and/or more sensitive, to the perceived needs and reactions of those above them, or fearful of doing 'the wrong thing'. The prevalence of speculative risk-aversion was captured in the 2024 Monash Report:[96]

> In a perfect world Freedom of Information Officers would be promoting and providing access to sensitive documents and information where possible, even where there is risk to the agency and its image. Unfortunately these roles, particularly for larger agencies, act more as Public Relations Officers, addressing concerns of higher-ups and subject matter experts while attempting to follow the obligations of the Act (nothing more in terms of promoting access). [WA]

We heard anecdotal evidence of a series of contradictory trends and influences at play within the RTI system. For example, there is significant cultural variation between government departments: some are highly transparent, others obstructive and delay-focused. Instead of a clear set of directions that continually reinforce the intent expressed so emphatically in section 3 of the *RTI Act,* most decisions seem to occur on a case-by-case basis rather than within a policy program increasing transparency. Therefore, the outcomes of RTI applications become more problematic

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[94] *The culture of implementing Freedom of Information in Australia* (Monash University, 2024), 29.
[95] David Killick*, Submission to the Independent Review of Tasmania's Right to Information Framework* (30 April 2025), 1.
[96] *The culture of implementing Freedom of Information in Australia* (Monash University, 2024), 23.

and varied. Some public authorities and their RTI delegates are perceived as being more open while others seem to revert to cultural resistance to transparency, especially in regard to requests for information from applicants like journalists or Members of Parliament. Requests for current 'hot topic' information often seem to fall into a trust-destroying game of 'hide and seek': a game where time delays, claims for broad exemptions, minimalist application of the public interest test and the slow processing of applications for external review by the Ombudsman all come into play. A number of the submissions to the Review tell individual stories of repeated experiences of this game playing.

Over time, there has been a slow and subtle shift in managing information for reputation and damage control. This shift seems to be influenced by various factors including: heightened sensitivity to expressed (and unexpressed) pressure from senior levels of the SES and Ministerial Offices; negative and critical media reporting, amplified through critical social media sometimes with malicious intent; a feeling that claims for transparency have a large rhetorical element to them; and that caution seems to be the wiser option for decisions about releasing information. Storytelling is a powerful communication device. Very few, if any, stories are told about the wonderful RTI delegate who has released some slightly sensitive information in the public interest. It only takes a rumour of a RTI delegate being carpeted for such a release to dramatically slow transparency efforts at best and grind them to a halt at worst.

This ongoing tension and the perpetuation of a protective attitude towards information disclosure drifts into several key areas of decisions about the release of information. First and foremost is the tendency to make assessed disclosure the primary lens for examining requests for information. As the *RTI Act* itself notes, assessed disclosure should be 'the method of disclosure of last resort.[97] The issue with 'playing safe' with disclosure is that it endorses an attitude that the information is not releasable until it is demonstrated to be 'ok'. Consequently, a *prima facie* claim for non-disclosure is often in play prior to a final decision. The prevalence of this default position evidenced by blanket claims for exemption, minimal consideration of the public interest etc., contributes to the criticisms of RTI processing and the demand for culture change.

The Western Australia Information Commissioner noted that defaulting to the *RTI Act* and assessed disclosure, rather than initially working on ways to make the information available is all too commonplace:[98]

> This may require thinking outside the FOI box. One of the most effective things agencies can do to achieve the objects of the Act is to disclose information outside the FOI process unless

[97] *Right to Information Act 2009* (Tas), s 12(3).
[98] Office of the Information Commissioner (Western Australia), 'Agency FOI Responsibilities: Office of the Information Commissioner' (1 July 2025): https://www.wa.gov.au/organisation/office-of-the-information-commissioner/agency-foi-responsibilities-office-of-the-information-commissioner.

> there is a good reason not to do so. This can be done by proactively publishing information, or by providing requested information without the need for a formal FOI application.

In our discussions we found that councils and smaller agencies seemed to be the most proactive in dealing with requests for information without resorting to the RTI framework unless absolutely necessary. For example, this approach was encapsulated by an RTI delegate from a small regional council talking about how they usually invite the applicant to pop in for a chat or for the officer to go and pay the applicant a visit and 'kick the dirt around' together to establish precisely what information the applicant wants and whether that information could be made available without a formal RTI request. As we explain in Chapter 3 'Disclosure of information', another regional council has prepared a 'Request for Information' form and officers explained to us that the use of that form has resulted in obviating the need for formal RTI applications in a significant proportion of cases. That, to us, is a wonderful example of the effective utilisation of routine and active disclosure substantially reducing the resources of the local council otherwise allocated to the processing of formal RTI requests. These examples should not be the exception, given the *RTI Act* itself requires just such an approach.[99]

Yet larger public authorities – particularly government departments – seem to struggle with fully embracing the opportunities for routine and active disclosure. As noted by David Killick:[100]

> Reforms made more than a decade ago intended to encourage routine disclosure have not worked as intended. Some departments have managed to produce a flow of information but in total it remains small, fragmented, difficult to access and often incoherent. Accessing repositories of Tasmanian Government data online is sometimes easier done through commonwealth digital repositories. There is no single access point, index or repository of disclosures.

Secondly, the perpetuation of a protective attitude towards information disclosure relegates the processing of RTI requests to a lower priority in the general management of work within agencies. The RTI Uplift Project Discussion Paper observed:[101]

> It is likely that this is because RTI is not considered a priority and represents a competing priority. A cultural shift needs to occur from the top down for RTI to be considered a priority. While principal officers are generally acutely aware of the priority that RTI presents for the community, it is likely that this is not filtering down to managers, and accordingly not being reflected in their expectations for staff.

The persistence of this protective attitude is reflected in many of the critiques in the past reviews we have considered and in most of the submissions we received.

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[99] *Right to Information Act 2009* (Tas), ss 13(7)-(8).
[100] David Killick, *Submission to the Independent Review of Tasmania's Right to Information Framework* (30 April 2025), 4.
[101] DPAC, *RTI Uplift Project – Discussion Paper*, 31.

A potential threat to transparency from this prevailing attitude is deference to the views of superior officers, whether perceived or actual. Guidance, like the flowcharts in the proposed all-of-Government model 'RTI – Information Disclosures Procedures', must avoid the perception that decisions sent to the Head of Agency or Minister's Office for notice require approval. It should be explicitly the case that RTI delegates are not required to wait for feedback other than from their direct supervisors before the release of assessed disclosure information and at no time should those delegates be pressured to change their decision.

Thirdly, the persistence of a protective attitude towards information disclosure prevents the consideration of alternative and more effective ways of managing information. An extreme, but feasible pathway for a small, modern 21st century state is the Norwegian approach.[102] Anyone can directly search the digital records via an online portal of all Norwegian agencies. Primary access decisions are made at the initial creation of digital documents: i.e. what information ought to be initially protected and what information can be immediately viewed online? This removes the initial access decision-making away from being influenced by the factors and circumstances at the time of the request. It also eases the burden on RTI delegates and the Ombudsman in trying to determine, several years after a document was created why some, or all, of the information cannot be disclosed.

A number of times during our consultations the point was made by public authorities that identifying information for routine and active disclosure is difficult, time consuming and tends to be a low priority consideration. Adopting a Norwegian approach would transfer that focus, resource and time-effort onto clearly identifying the sensitive and important information that should be protected and/or have a restricted access regime. Everything else should be created, composed and circulated on the basis that it can be seen by everyone.

3. The mainstreaming of transparency

Several elements of the approach to RTI by the Tasmanian public sector must be adjusted to realign the underlying culture to one that facilitates the mainstreaming of transparency.

3.1. A clear and public endorsement

A clear and emphatic leadership statement of commitment to mainstreaming transparency and acknowledging the steps to return to the path set out by the *RTI Act* by the Premier and the Secretary of the Department of Premier and Government (endorsed by the Secretaries Board) is needed. A symbolic statement would help

[102] Open Government Partnership, 'Electronic Public Records (OEP) – (Offentlig Elektronisk Postjournal) (NO0039)': https://www.opengovpartnership.org/members/norway/commitments/NO0039/.

ensure that all the settings of Tasmania's governmental information system, from the very top, are applied to maximise transparency. There are, of course, times and places involving an absolute need for confidentiality, secrecy and withholding of information. We elect and appoint people to statutory offices of trust and, even when we personally disagree on a judgment call for non-disclosure, we defer to that call. But there is a price to be paid for every transaction of secrecy: a price where public decision making about key projects, details about day-to-day delivery of services and debate about the merits of the next 'big thing' demand far greater transparency.

A public statement such as this, acknowledging a changed world view on the management of government information would, in conjunction with section 3 of the *RTI Act*, serve as the starting point for all levels of the Tasmanian public sector in dealing with access to government information. It seems to us that expectations as to the approach to governing and being governed are changing, and that the objective of mainstreaming transparency must happen differently if we are to strengthen our democratic system of government.

Various Premiers have resisted issuing this type of 'light on the hill' call, claiming instead that they do not want to interfere in the decision-making of delegates. The senior echelons of the TSS, with a few exceptions, have rarely taken a public position on the important value of transparency. We accept that senior public servants do not routinely comment publicly on issues of government policy, but in our view, in an area like RTI, it would be helpful for a clear public position in support of the RTI framework to be taken by secretaries of departments. Leadership on transparency has been left to individual officers: often dedicated RTI delegates who have limited influence, power and independence to operate against a prevailing culture. In the silence of senior political and bureaucratic leaders, pressure – direct and perceived – from within the ranks of the SES to not release information will inevitably exert undue influence on delegates.

Both the *RTI Act* and the *Personal Information Protection Act 2004* (Tas) ('*PIP Act*') have been treated as isolated, once-off, legislative initiatives that do not need continual input or oversight. Both legislative enactments have been allowed to drift without leadership or coordinated responses to problematic issues that have arisen since 2010. The Ombudsman's limited capacity, diffused focus and reactive leadership have compounded this drift. The issues identified by previous reviews, the RTI Uplift Project and submissions to this Review have been well known but left largely unaddressed until recently.

3.2. Building on some positive changes

During this Review we have observed important developments: some of them pre-dating our work. We welcome these changes but strongly urge further changes accompanied by a sense of urgency.

The Secretary of DPAC, and, in that capacity also the Head of the State Service, appears briefly in the first of two RTI training videos being prepared by the University of Tasmania ('UTAS'). The Secretary makes a strong call to the public service to advance the goals of accountability, participation and transparency. A preview of the second online training module has an opening and affirmative statement by the Secretary of the Department of Justice. We applaud that inclusion in the training packages because, although a relatively small step, we consider it a highly significant statement of commitment from the very top of the TSS.

Another welcome step is finalisation of draft versions of the proposed all-of-government model 'RTI – Information Disclosure Policy' and model 'RTI – Information Disclosure Procedures' endorsed by the Secretary of DPAC and the Secretaries Board. Both of these documents are designed to make the system more consistent and applicant-centric as well as to reinforce the pro-disclosure approach to applying the *RTI Act*.

The two documents have been in the development stage for the past year so their expected release in late 2025 is welcomed. But the long development span prior to their release highlights our concerns about urgency. The issues of consistency and difficulties with routine disclosures were an issue for the RTI Uplift Project from its commencement in 2023. There was no project manager in the role between July 2023 – September 2024 contributing to the delay.

A third important step is the modification, during the course of this Review, of the Head of Agencies Performance Development Plans by the following addition:[103]

Priority	**Actions for milestones**	**Measures of Success**
Transparency / Right to Information	Ensure that decisions for assessed disclosure are released within statutory timeframes, supported by: Compliance with statutory timeframes for acceptance of applications; Ensuring search information is delivered to the RTI delegate within agreed timeframes; Releasing decisions within statutory timeframes.	Percentage of decisions released within statutory timeframes.
	Seek to increase the information released routinely as active disclosure. Ensure steps are taken to address findings from Ombudsman reviews.	Number of active disclosures published.

[103] RTI Uplift Project Briefing for Independent RTI Reviewers, Department of Premier and Cabinet, email 12 February 2025, Attachment 7.

The mainstreaming of transparency requires these endorsements to be explicit and public. It could be argued these measures are limited, but they do represent a first welcome step. We recommend that updates on performance for these and other RTI initiatives are displayed on agency websites every three months.

The proposed changes in the performance management system and open commitment to transparency are welcome but also long overdue. A focus on mainstreaming transparency should be embedded in the thoughts, actions and responsibilities of the Tasmanian SES. It is necessary for RTI-related key performance indicators for Heads of Agency to flow into those for members of the SES. The SES has responsibility to ensure the budgeting, commitment and capacity of staff, especially RTI delegates and Information Custodians, are sufficient to ensure that a 'push model' of RTI is not merely aspirational but manifests in reality. The *RTI Act* imposes a duty and a legal obligation on the TSS and on local government to manage the flow of information for accountability, participation and stewardship purposes. Compliance with this obligation requires the SES and local government senior management to effectively manage the necessary processes.

3.3. Yet more steps are required

The default settings of the TSS seem to be a prevailing reticence to disclose information, and openness apparently requires continual conscious effort. Three examples are indicative of the persistence of an outdated approach to sharing government information. In each case non-transparent options were the starting point.

The Secretaries Board and the RTI Uplift Project are both important initiatives and yet both have commenced in the shadows rather than operating as models of openness. In a system that mainstreamed transparency we would expect their origins and operations to be far more open than appears to have been the case.

The Secretaries Board is at the apex of strategic leadership within the TSS and yet it is difficult to find any detailed information about even the existence of the Board. The Tasmanian State Service 2021/22 Annual Report states:[104]

> Implementation of the recommendations of the [Watt] Review is being led from the most senior levels of the TSS, through the Secretaries Board, chaired by the Secretary of the Department of Premier and Cabinet.
>
> Three standing subcommittees have been established to support the Secretaries Board, which will focus on the following issues:
>
> - Policy and Intergovernmental;
> - Corporate and Workforce; and
> - Data and Digital.

[104] Tasmanian State Service, *Annual Report 2021-22,* 11.

> The Secretaries Board will report to Cabinet twice a year to inform the Government on the progression of the recommendations.

The Watt Review missed a strategic opportunity to make a recommendation about a specific level of transparency for the Secretaries Board, despite the fact that it is the peak body for the Heads of Agencies and is responsible for implementing the recommendations from the Watt Review:[105]

> The form and constitution of heads of agency meetings should be a matter for the Secretary of DPAC and agency heads, and the Review does not seek to give preference to any model. Heads of agency forums elsewhere range from an informal gathering (with no terms of reference) to a statutory forum (as in the Australian Public Service and Queensland). Tasmania's current arrangements are very much to the former, with no terms of reference or reporting requirements.

In the DPAC 2023-2024 Annual Report there are only three very brief mentions of the Secretaries Board and associated committees.[106]

The contrast between the Tasmanian Secretaries Board and its Federal counterpart is stark. The Commonwealth Secretaries Board has a legislative base, a defined set of functions, a regular and public meeting schedule and '[t]he Secretaries Board is committed to modelling transparency with regard to communicating its priorities and decisions by publishing a communique within a few days of each meeting.'[107] The communique is sparse but does allow a glimpse into the activity and strategic thoughts of the upper echelon of the Commonwealth Public Service. We readily understand the importance of confidentiality in the discussions of the Heads of Government Agencies. However, in our view the Tasmanian Secretaries Board should, at least, emulate its federal counterpart by announcing that its meetings and publishing a brief statement on the matters under consideration at each of its meetings.

Another instructive example is the RTI Uplift Project. The efforts and the program of the RTI Uplift Project have been welcomed but the Project came into operation in a very opaque way. There is a certain irony in the fact that a project designed to 'uplift' transparency only slowly revealed its purpose, plans and progress on its initiatives. The Terms of Reference and the minutes of each meeting have been made public, but these minutes are generally released 1-2 months after each meeting. The early stages of the initiation and operation of the RTI Uplift Project were hardly a lesson in 'walking the walk' in improving transparency.

The RTI Uplift Project has identified a number of immediate, short term and limited responses to the problems in Tasmania's RTI system. Ongoing improvements are

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[105] Dr Ian Watt, *Independent Review of the Tasmanian State Service,* Final Report (July 2021), Recommendation 10 at 76-77.
[106] Department of Premier and Cabinet, *Annual Report*, 2023-24, 20, 26, 54.
[107] Department of the Prime Minister and Cabinet, 'Secretaries Board': https://www.pmc.gov.au/about-us/accountability-and-reporting/corporate-reporting/secretaries-board (Last accessed 24 June 2025).

needed on all levels: cultural, administrative and legislative. Continuous organisational learning and improvement are required. Yet this requires key mechanisms like the RTI Uplift Project to operate in full sunlight and at a pace that recognises the urgency for the uplift. Many of the issues were identified in 2023 but are only now coming towards completion/delivery.

The RTI Uplift Project Steering Committee has stated that:[108]

> The RTI Uplift Project will result in improved and consistent processes for the handling of right to information requests across the TSS through:
>
> - the establishment of new, standardised RTI procedures.
> - stakeholders feeling considered and ready to engage in the RTI process.
> - an uplift to the capability of the Tasmanian State Service to deliver timely and transparent responses to requests for information under RTI legislation.
> - the identification of more opportunities for the regular and proactive release of information to reduce the community's need to access RTI processes.

These are laudable and much needed initiatives. Yet the replacement of a closed government mentality is neither simple nor automatic. We received an extremely helpful briefing on the RTI Uplift Project in February 2025 but we waited three months before a partial disclosure of this briefing was released on the RTI Uplift Project Steering Committee web page despite the absence of any apparent need for confidentiality.

There does not appear to have been any major case for secrecy for the existence or the operation of either the Secretaries Board or the RTI Uplift Project. We are confident that there was no deliberate intent to commence and continue operations of either initiative 'in the shadows'. Yet transparency did not seem to be the default option in either case. Both of these initiatives could have been simple and unproblematic embodiments of open government as a different default position.

These examples could be dismissed as merely of interest to a small number of obsessed students of public policy. Yet as David Killick observed there is a wider benefit in making RTI function in a way that mainstreams transparency:[109]

> It is important to remember that the efficient operation of our RTI system is not just the obsessive preoccupation of a few wonks, nor is it for their benefit alone. In addition to motivated citizens, activists, journalists and politicians, there is another, equally important constituency that is served by the RTI system and that is the Tasmanian public as a whole, most of whom will never directly engage with a Right to Information request in their lives. Nevertheless, they too benefit. (These principles are enunciated right up the top of the Act.) Timely and well-informed scrutiny of government decision-making is critical to improving outcomes in a small jurisdiction where other oversight mechanisms are often small, under-

[108] RTI Uplift Project, 'Outline and History': https://www.dpac.tas.gov.au/rti/right-to-information-uplift-project/RTI-Uplift-Project-history-for-publishing.PDF (Last accessed 27 August 2025).
[109] David Killick, *Submission to the Independent Review of Tasmania's Right to Information Framework* (30 April 2025), 1-2.

> resourced, weak by design or otherwise ineffective. It is increasingly so in a changing and fragmenting media environment.

In the last stages of our Review, the Department of Justice accidentally released an unredacted version of a document revealing prison staff concerns about managing youth detainees to an ABC journalist.[110] This case study, mentioned in the Executive Summary, raises intriguing questions about the operation of Tasmania's RTI framework: in particular, why the Premier's stated satisfaction with public release of the unredacted document does not translate into greater levels of full and unqualified disclosure?

After mistakenly sending the unredacted document, the RTI delegate sent a follow-up message with the correct version of the document – heavily redacted on the bases of 'internal deliberative information' and 'personal information', which are exemptions under the *RTI Act*, as well as content deemed 'out of scope'. In the wake of the release, and the retrospective attempt to claim extensive redactions, the journalist published both versions of the document but also asked Premier Jeremy Rockliff his views of the situation. The Premier expressed personal comfort with the initial more transparent but accidental release – even though it occurred during an election campaign. As reported by Adam Holmes, Mr Rockliff stated '[i]t was released, and that's a good thing. It highlighted the fact that we need to improve. We are improving.'[111]

Adam Holmes commented on both the incident itself as well as on Premier Rockliff's response, stating:[112]

> It showed how the release of this type of information – even if by 'accident' – is not something that governments should necessarily fear.
>
> The default setting of Tasmania, like most other Australian jurisdictions, is that government information is kept hidden, with the onus on journalists and the public to prove why it should be released.
>
> But Mr Rockliff's comment gives strength to the argument that this onus should be flipped – that information should be public by default, with the government having to justify why it should be hidden.

The Premier's response was laudable, but it highlighted a gulf between the public proclamations of the value of, and the commitment to, government transparency and the actual day-to-day reality for RTI delegates. While accepting that some redactions will always be necessary, we wonder what it would take to reach a position where release of largely unredacted information was the norm rather than a mistake?

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[110] Madeleine Rojahn, 'Accidentally released document offers insight into Tasmania's Right to Information laws', *ABC* (online, 10 July 2025): https://www.abc.net.au/news/2025-07-10/unredacted-watch-house-document-insight-into-tasmanian-rti-laws/105464632 (Last visited 21 July 2025).
[111] Adam Holmes, 'Premier Jeremy Rockliff says it's a 'good thing' that watch house document became public. Should it happen more often?', *ABC* (online, 11 July 2025): https://www.abc.net.au/news/2025-07-11/tas-analysis-right-to-information/105515112 (Last visited 21 July 2025).
[112] Ibid.

When the actual content of the document was compared to the retrospective claims for secrecy, it was clear how unnecessarily broadly the various exemptions and reasons for secrecy were applied. The attempt to redact swathes of the document constituted a clear case of erring on the side of excessive caution rather than attempting to keep the level of non-disclosure to a minimum. The default position was secrecy, albeit derailed by an accidental release.

This case study reinforces our call for the Premier, the Secretary of DPAC, and the Ombudsman to signal the future direction of a commitment to transparency. Is the objective to mainstream transparency and convert these types of accidental releases into normal practice? Or do we cling to the security blanket of secrecy and accept that RTI applications for assessed disclosure are really just a game of hide and seek?

4. An opportunity to make up ground in the openness journey

Changing the approach to public release of Cabinet information would be a profound catalyst for energising a positive pro-disclosure information environment and would demonstrate elected Government 'leading by example'. Transparency does not require the release of all information – and must allow the necessary protection of some sensitive information – however, over-protection of any class of information simply feeds the temptation to err on the side of non-disclosure.

The Tasmanian approach to Cabinet information has resulted in a deference to excessive claims for secrecy and/or erring on the side of a cautious approach to interpretation. This approach has resulted in a missed opportunity to allow greater transparency into the system. Section 26(2) of the *RTI Act* allows the release of Cabinet information after 10 years and section 26(5) gives the Premier the discretion to release Cabinet information at any time.

The 2023 DPAC 'Production of Cabinet Documents Report to Parliament' is a comprehensive survey of this topic but takes a conservative approach. The Report noted:[113]

> Tasmania, along with several other jurisdictions, currently does not have an active release scheme for Cabinet documents. However, New Zealand and the Australian Capital Territory (ACT) have both had schemes in operation for a number of years. Queensland is in the process of developing a new scheme, based on the New Zealand model, noting that Queensland currently has active disclosures online at https://cabinet.qld.gov.au/monthly.aspx.

The Report notes that despite the RTI provision that allows release after 10 years, DPAC – under the *Archives Act 1983* (Tas) ('*Archives Act'*) – has mandated that Cabinet documents are not released until after 25 years, and this is done only in

[113] DPAC 2023, *Production of Cabinet Documents Report to Parliament*, 5.

response to a specific request. Consideration should also be given to a more proactive release of other types of Cabinet information including, for example, declarations of interest by Cabinet members and a list of attendees at Cabinet meetings.

Cabinet records are managed by the Cabinet Office in DPAC. The Cabinet Office ensures that one complete set of Cabinet records and Cabinet Office working papers are retained for transfer to the State Archives. The convention has been for transfer to the State Archives to occur after a state election if there has been a change of government. The last transfer occurred following the election of the Hodgman government in 2014. It comprised the Cabinet records of the previous Labor Government dating from the commencement of the Bacon Administration (1998) until the end of the Giddings Administration (2014).

Public access to Cabinet records held by the State Archives is restricted until the records are 25 years old via the access provisions of section 15 of the *Archives Act*. Successive Tasmanian Governments have adopted the convention that Cabinet documents are confidential to the Government which created them. Requests for access within the 25-year period are dealt with in the following ways:

- Requests for access to Cabinet records less than 25 years old are directed to the Secretary of DPAC.
- Access to archived Cabinet papers is not granted without the approval of the person who was Premier at the time that the record was created.
- If the person who was Premier at the time has died or is not legally capable then the approval would be sought from the current leader of the appropriate political party which formed the government at the time.
- If access is approved and records are held by the State Archives, the Secretary of DPAC will advise the State Archivist in writing.

Tasmania should adopt an active release scheme under section 26 of the *RTI Act* and DPAC should immediately change its requirement under the *Archives Act* to align the *RTI* and *Archives Acts* to release Cabinet information after 10 years subject to necessary exemptions. There should be a programmed release of information, as with the Commonwealth, at the start of each year. For example, on 1 January 2026 Cabinet information from 2016 should be released. A major project to retrospectively make pre-2016 Cabinet information public should be undertaken by DPAC and Archives.

4.1. Narrowing the zone of Cabinet protection

A significant step towards transparency would be the adoption of the Coaldrake Report, that the Premier and DPAC:[114]

> …develop a policy requiring all cabinet submissions, agendas and decision papers (and appendices) to be proactively released and published online within 30 business days of a final decision being taken by Cabinet, subject only to a number of reasonable exceptions which should be outlined in the policy.

This proposal focuses on the level and type of access post a final decision by Cabinet as opposed to accessing information prior to a Cabinet decision. Reforms of this type in Westminster systems have been implemented in New Zealand, ACT, Queensland and Wales.

Transparency would ensure that the TSS upholds its own standards found in the Tasmanian Cabinet Handbook:[115]

> 1.1.5 Information considered by Cabinet is to be of the highest standard. To ensure informed decision-making can occur, the advice submitted to Cabinet should be analytically rigorous, strategic in context, and practical and relevant to the needs of Ministers. Consultation with relevant departments and stakeholders is an essential element of ensuring Cabinet are fully informed when making decisions for government.

These are the standards that should be expected of Cabinet. Yet currently this judgment cannot be tested for at least 10 years, and more likely 25 years. Those outside the TSS, and even those within the TSS who had, or ought to have had, input into the development of policies and programs, should be able to evaluate whether these standards have been met.

The above recommendation would be a fundamental change to the operations of government in Tasmania. Currently Cabinet documents include 'all documents prepared for the purposes of Cabinet deliberations, whether or not they form part of the final submission to Cabinet and includes Cabinet official records.'[116]

The proposed recommendation would narrow this definition to information that would reveal the actual deliberations of Cabinet. Commitment to transparency in government would align the direction of government information flow with the objectives in the *RTI Act*. Importantly, it would also ensure the requirements for Tasmanian government in the 21st century set out in the Watt Report are met:[117]

> The TSS needs to have the tools to systematically review, improve and reshape capabilities and ensure they are aligned with challenges and priorities. This includes the regular review of the capability of state agencies, and an increased focus on the systematic review and

[114] Professor Peter Coaldrake AO, *Let the Sunshine In*, 63.
[115] Tasmanian Cabinet Handbook, April 2024, 8.
[116] Ibid., 9.
[117] Dr Ian Watt, *Independent Review of the Tasmanian State Service*, Final Report (July 2021), 9.

evaluation of programs across government. This framework should be underpinned by a robust capability to share, link and analyse data.

The TSS is too small to have all the answers and all the capabilities. It must continue to work with other sectors and other organisations to access the best capabilities wherever they may be. The TSS needs to build or renew 'idea' based partnerships with the University of Tasmania, other levels of government, industry and the non-government sector to drive better outcomes for the State.

Theoretically the quality of data and TSS policy thinking that flows into the zone of secrecy surrounding Cabinet is timely, accurate and comprehensive and meets the standards set out in the Cabinet Handbook. Neither government nor the TSS can expect the non-government sector to participate, evaluate and advocate in their governance without access to timely, reliable and high-quality information. The expectation is that Cabinet has received the highest quality information upon which to base their deliberations. A more open approach to information flowing into the Cabinet process would significantly increase trust in the decisions of government or reveal at early stages inadequacies in the processes and information that led to the Cabinet decision. The problem with the all-inclusive approach to what constitutes 'Cabinet information' is the broad scope of information that is dragged into a zone of secrecy just in case it might reveal Cabinet information.

The Queensland Government made legislative changes via the *Information Privacy and Other Legislation Amendment Act 2023* (Qld), which commenced on 1 March 2024. The Act amended the *Right to Information Act 2009* (Qld) to support the proactive release of Cabinet documents. These amendments serve to:[118]

- Provide clarity for applicants and decision makers concerning the exempt status of information in Cabinet submissions and Cabinet decisions, and other Cabinet related documents, in view of the official publishing of information by decision of Cabinet under the proactive release scheme;
- Provide protection from civil liability for Ministers disclosing information under a publication scheme or other administrative scheme in good faith;
- Ensure that the public interest immunity in proceedings and processes is not altered by the publication of information by Cabinet, or decisions by Cabinet to officially publish Cabinet information.

The Tasmanian Premier already has the power to proactively release Cabinet information and the *RTI Act* makes Cabinet information available after 10 years without the need for amendments like those in Queensland. However given this would be a significant change in practice for Tasmania this type of amendment might make the transition to greater transparency more certain.

[118] Queensland Government, 'The Queensland Cabinet and Ministerial Directory': https://cabinet.qld.gov.au/cabinet.aspx (Last accessed 16 August 2025).

4.2. Stressors on the RTI delegate role

In our discussions with a wide range of RTI delegates and their managers, one theme was clear: being an RTI delegate is largely a thankless task and one that is highly corrosive. We met some wonderful, highly dedicated officers but many of them show signs of burn out, stress and weariness from the role. At one of our meetings, a former RTI delegate who has now 'escaped' from the role expressed their passionate relief to be free of the stresses they experienced. This stressful reality is captured in the RTI Uplift Project Discussion Paper:[119]

> Constant public criticism that delegates are lazy, incompetent, or corrupt is very demoralising when those delegates are doing their best to make good decisions in line with the Act. It is also apt to deter people from wanting to be delegates. Applicants with a specific political agenda, where we know that it will not matter what response is provided, it will not affect what those applicants say publicly, up to misrepresenting the decision and/or information, or even lying. It is disheartening to hear criticism about 'lack of transparency' when for those of us who have worked in this space since before the current government know that nothing has changed in terms of how assessed disclosure is handled, including how information is assessed.

All RTI jurisdictions need the dedication, drive and acceptance of the open government mission by RTI delegates. As time goes by these traits can be corroded both internally (unsupportive and/or interfering management, budget restrictions, lack of training, capacity to cope with surges in applications leading to a siege mentality, difficulty of taking leave especially if agency only has a single RTI delegate) and externally (headlines about secrecy, front page graphics of redactions, combative approaches of applicants and unwarranted motives being attributed to delegates).

The corrosion is not helped by limited availability of training (both initial and advanced to cope with difficult areas), limited opportunity for collaboration between RTI officers, outdated resources and policies, lack of control over search processes, high turnover of staff and, in many areas, responsibilities under the *RTI* and 'PIP *Acts* being only a small part of duties. The potential difficulties of dealing with Information Custodians that outrank the RTI delegate add to the frustration and or stress of the role. It would be unrealistic not to expect much of this negativity to flow onto the handling of RTI and PIP applications.

The RTI Uplift Project Discussion Paper observed that the limited available training is generally more technical and not designed to offer emotional and other support:[120]

> The content of these sessions is usually centred around providing an overview of the *RTI Act* and its operation and they do not provide much guidance to RTI delegates on how to perform their duties.
>
> There is no formal or consistent training provided to delegates. All agencies report that training is provided on the job by a more experienced RTI delegate. This creates a high risk where

[119] DPAC, *RTI Uplift Project – Discussion Paper*, 31-32.
[120] Ibid., 33.

> staff turnover may result in no suitably experienced delegates able to provide training or guidance.
>
> There is no consistent policy on how many delegated RTI officers an agency should have based on the average amount of RTI applications received by that agency. There is also no consistent approach to where delegated RTI officers should sit within an agency, and whether they should perform RTI functions fulltime or as one part of their duties. Without a consistent approach to how people are identified as delegated officers, the risk of delegates making inconsistent decisions due to skill gaps is increased.

Significant effort should be devoted to the support needs of RTI delegates in addition to initial and further technical training. The stresses and pressures of the role should be acknowledged. Extra support should be available during times of peak demand. Given the multifaceted and varied demands of the role, RTI delegates should have the opportunity for extra staff development in addition to that available to other officers at their level.

The 2024 Monash Report captured the consequences of not providing support:[121]

> These above issues - or due to reaching the age of retirement - mean seasoned FOI practitioners leave the industry. Along with them goes the intricate, nuanced knowledge base of the FOI industry and any agency or industry specifics they have accumulated. This knowledge rarely gets replaced when hiring or onboarding new FOI staff.
>
> On top of this, newly hired and onboarded FOI staff may receive a culture shock of sorts when it is revealed to them just how much prior knowledge they are required to learn, or already possess - both in a sector capacity, as well as the specifics of whichever agency has hired them. They are thrown in the proverbial 'deep end' and expected to swim a marathon. As such, interviewees commented on the high turnover rate of FOI staff.

The second of the proposed online training modules for delegates has an excellent section devoted to providing wellbeing support and resources for delegates.

Whilst not all applicants are 'angels of virtue', many frequent users, who could be expected to be strong allies of RTI delegates, seem to become more adversarial and/or lose trust in the neutrality of RTI delegates over time. The persistence of a closed approach to information tends to cloud external awareness of issues like the impact of high-volume workloads, inadequate staffing and training and the reluctant compliance of Information Custodians. Therefore, vocal and potential advocates for better support and additional resources for RTI delegates remain silent or indeed resentful from their engagement with the RTI process. Furthermore, there is rarely a voice from inside the TSS and/or from the Ombudsman willing to recognise the imperfections of the system and to engage in discussions that share and address the problems. The RTI Uplift Project Discussion Paper in 2024 suggested that the intention was to actively respond to negative perceptions but that proposed process does not yet seem to have advanced:[122]

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[121] *The culture of implementing Freedom of Information in Australia* (Monash University, 2024), 59.
[122] DPAC, *RTI Uplift Project – Discussion Paper*, 44.

> The project will use external stakeholder engagement as a means to promote the successful work of RTI delegates, inform of the challenges RTI delegates face, and challenge simplistic readings of annual statistics.

The failure to engage with external stakeholders, especially applicants, is not only a lost opportunity to gain supporters for better resourcing, but also increases the possibility of fuelling the negative attitudes towards RTI delegates. Many applicants feel overwhelmed but also that the system operates against their inexperience and knowledge:[123]

> There is currently no system for training and support for applicants, especially in navigating the appeals process. Applicants who applied for records either as individuals or for small community organisations find the legal language in initial decisions claiming exemptions rather intimidating. Rather than pursuing an appeal, they often give up and are left feeling the odds are stacked against them. I think they probably would have gained additional information if they had access to advice on how they could craft an appeal. While access to the Ombudsman's decisions is useful, there remains a significant power imbalance between an individual applicant and an agency. First-time applicants, in particular, find the appeals process somewhat overwhelming.

4.3. Becoming more citizen centric and collaborative

We urge the Tasmanian Government and the TSS to develop a collaborative partnership with citizens, civil society and the business community. The 'Open Government Partnership' provides many examples and types of these collaborative partnerships from 74 countries and 150 local governments.[124] At the moment, the efforts towards open government or mainstreaming transparency in Tasmania are government-centric and the rest of the community is allocated bystander roles or spend their efforts engaged in the largely adversarial processes of assessed disclosure under the *RTI Act*.

A significant first step would be to invite representation from outside the TSS, including local government and citizen representation, onto the RTI Uplift Project Steering Committee. A search of the Open Government Partnership website provides a wide range of similar initiatives and collaborations to improve transparency, integrity and collaboration between citizens and governments. [125]

The *RTI Act* was designed to help achieve a new version of Tasmania's Westminster system that would not only help make our government and public service more accountable but would also allow citizens the opportunity to participate in their governance on an informed basis.

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[123] Bob Burton, *Submission to the Independent Review of Tasmania's Right to Information Framework* (7 May 2025), 4.
[124] Open Government Partnership, 'About Open Government Partnership': https://www.opengovpartnership.org/about/.
[125] Open Government Partnership, 'Open Gov Challenge Tracker': https://www.opengovpartnership.org (Last accessed 7 August 2025).

The RTI Uplift Project and Steering Committee need to continue but in a fully transparent way. The Steering Committee should report to the Secretaries Board via the Secretary of DPAC. We also recommend:

- The Terms of Reference for the RTI Uplift Project Steering Committee should be updated to include taking into account the findings of this Review.
- There should be local government representation on the RTI Uplift Project Steering Committee.
- The RTI Uplift Project should conduct applicant and RTI delegate surveys 12 months after the release of this Report to ascertain what changes, if any, have occurred in RTI and PIP practice both within the TSS and at the local government level.
- Include citizen representation on the RTI Uplift Project Steering Committee.

RTI delegates are key intermediaries in the RTI process who, if extended the independence and autonomy their legislative role calls for, could collectively establish and maintain a pro-disclosure culture. Unfortunately, they have not been able to fully deliver on this mission:[126]

> A pro-disclosure culture is trailing behind the legislation and the government's 'transparency agenda'. There is a residual culture that instinctively reverts to non-disclosure despite no apparent risk - e.g., a default position of non-disclosure that the Act is trying to overcome.

During our consultations, the idea of establishing an independent, specialised RTI unit was raised. Adam Holmes, for example, argued that:[127]

> An independent body could be established to handle RTI requests. This would address the 'lack of incentive' for departments to efficiently release information, and also allow RTI officers to build on expertise in release of information, rather than denial of information. This could include a central RTI disclosure log system for all departments, authorities, councils, GBEs – and improved public knowledge of how to access this information.

There was support for the concept of an independent, specialised RTI Unit, even within government departments. However, there are a number of stumbling blocks and complex questions including: where would the Unit be located?; how would it be staffed and resourced?; if internal reviews are maintained, who would conduct reviews of the Unit's RTI decisions?

A cadre of well trained, experienced and motivated RTI delegates, seconded to the Office of the Ombudsman, with a focus on achieving the three key objectives of the *RTI Act* and able to better navigate legislative intersections would, in our view, be a game changer. The secondment could be for a period of 12-24 months. The seconded officers would be able to assist with: the development of new and updated

[126] DPAC, *RTI Uplift Project – Discussion Paper*, 29.
[127] Adam Holmes, *Submission to the Independent Review of Tasmania's Right to Information Framework* (undated).

Guidelines and regular training; act as peer mentors for agencies and for local government authorities; and be able to carry out routine audits:[128]

> of a representative sample of requests that are refused in whole or in part and where no review has been sought by the applicant. The review should examine the appropriateness of refusal or redaction and inform better practice.

The Unit of RTI specialists would not be involved normally in the processing of RTI requests but would be available to assist agencies hit by short term surges or unexpected absences of staff. The Unit's key mission would be to rebuild trust, internally and externally, in the system. Secondee subject matter experts would provide both timely insights into: where the system is faltering; inconsistencies of practice and processing; and assist with immediate responses to those issues. A vital role of this Unit would be to act as an early warning system of practices and incidents that could undermine the system. This would include the development of practices that were the subject of the Integrity Commission's 'Investigation Gatehouse' or interference either directly, or as the result of perceived pressure, not to release information. The Unit could be used to distil lessons, both positive and negative, from experiences like the recent release of youth detention information to the ABC.

The Unit, given its composition of experienced and senior RTI delegates could be a useful mechanism to prevent and/or offset any direct and indirect pressure from senior officers and Ministerial staff. Frequent users of the *RTI Act* are concerned that the system is vulnerable to excessive and inappropriate influence from SES staff and/or Ministerial offices. For instance, David Killick observed:[129]

> I have found on more than one occasion that there is a keen awareness of the source and nature of requests within the ranks of ministerial offices, something I did not experience when working interstate, nor do I regard as appropriate.

Adam Holmes raised a similar concern:[130]

> Potential external influence on the independence of the RTI process (eg, the example of a minister being aware of an impending RTI release, and then releasing information pre-emptively) (media advisor contacting me prior to release of RTI) (department media advisor saying I am 'fishing' for information after RTI submitted).

In the Monash Report, several survey responses touched on these issues of Ministerial, or senior bureaucratic level, interference/pressure:[131]

> The 5-day noting period rule for Ministers' Offices needs to be reviewed. Ministers' Offices seem to have a significant influence on what information is being released. [VIC]
>
> The roles of the FOI Officers is restricted by agency and ministerial pressures [SA].

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[128] David Killick, *Submission to the Independent Review of Tasmania's Right to Information Framework* (30 April 2025), 7.
[129] Ibid., 3-4.
[130] Adam Holmes, *Submission to the Independent Review of Tasmania's Right to Information Framework* (undated), 2.
[131] *The Culture of implementing Freedom of Information in Australia* (Monash University, 2024), 21-25.

> While I don't believe that my role is ensuring that damaging information is not released - in practice, that is what is expected of me by my agency [VIC].
>
> I do not want to be an Accredited Officer any more as a career. There is no consequence for a minister interfering with the release process [SA].

The RTI Uplift Project's survey of RTI delegates in 2023 revealed several concerns about a lack of Ministerial staff understanding of their obligations, the requirements of the *RTI Act,* and the importance of the independence of RTI delegates.[132] Operational ignorance falls far short of deliberate interference, but even indifference to the legal requirements of the *RTI Act* undermines the development, and implementation, of a pro-disclosure culture. Whilst corridor conversations, an aggressive phone call or one-on-one verbal dressing downs leave little documentary evidence, the possibility of any such encounters reaching the ears of the Ombudsman and/or the Secretary of DPAC via dedicated RTI officers serving in an independent Unit, could well operate as a useful deterrent.

Seconded RTI officers would have the benefit of working full time on information issues with other dedicated officers, the opportunity to tackle difficult RTI issues with support and the ability to have input into, and influence, positive changes to a whole-of-process of information sharing. A collegial experience of that kind would not only help to energise RTI delegates in their departmental roles but would also allow them to return to their home departments with extensive experience and awareness of the information management and sharing practices of public authorities across the whole of government including local government authorities.

The mechanics of setting up and running a specialised Unit should be left to the Ombudsman and the Secretary of DPAC, on behalf of the Secretaries Board. Whilst by necessity and ease the Unit would largely be a TSS operation, nothing would, nor should, prevent the secondment of council RTI delegates or the Unit from providing assistance to a council under staffing pressure. If officers were to be seconded from councils, we would recommend central funding to cover a replacement.

There would also be the capacity for the Unit to provide advice to applicants, assistance in making requests or to raise basic community awareness. The Unit would also be a useful source of recruits and expertise if the recommendation (made later in this Report) for the creation of a new Office of an Information Commissioner/Commission is adopted. However, when we floated this idea with the new Ombudsman, concern was expressed as to how the focus on review functions could be kept distinct from the more educative, supportive and operationally engaged unit. Furthermore, the Ombudsman noted that education and guidance were already functions of his office and suggested increased resourcing for those functions would be likely to better achieve the end of supporting delegates than the proposed

[132] DPAC, *RTI Uplift Project – Discussion Paper*, 65-66.

seconded team. We believe that the separation is possible and even desirable. In addition, we consider that the proposed Unit would augment the Ombudsman's existing responsibilities and assist in making up lost ground. Alternatively, the Unit could be incorporated into the RTI Uplift Project reporting to the RTI Uplift Project Steering Committee or reporting directly to a committee of the Secretaries Board.

5. Conclusion

There is no reason for Tasmania to continue battling a culture that defaults to non-disclosure and ignores the legal requirement to provide access to information either via required, routine, active or assessed disclosure.

Our public service claims, and is expected in a Westminster system, to be frank and fearless in imparting impartial advice to the government of the day. In a post-RTI Westminster system that duty of frank and fearless advice becomes a primary duty to all citizens: not just to the government of the day. Two Parliaments (in 1991 with the adoption of the *FOI Act* and in 2009 with the adoption of the *RTI Act*) have expressly said no more traditional Westminster secrecy. All successive Parliaments have followed that call.

For Tasmania to tackle all our problems, to realise all our potential and to protect all our cultural and environmental treasures, we must have informed decision making and we must have informed consent where we all have access to high quality and timely information: information created, held and shared in trust for the people of Tasmania. There may be situations in which that information will need to be kept confidential, restricted, or have access to it delayed, but any restrictions on access must be in the interests of all Tasmanians and not solely in the interests of the government of the day.

The *FOI Act* should have flicked the switch to open government. The rejuvenated and reorientated 'push model' *RTI Act* should have blasted the last holdout remnants of paternalistic information management. It is a sad state of affairs that a respected journalist, Emily Baker, in response to the question 'What is the toughest thing you have had to stare down as a journalist in order to bring a news story to the public?' had to say 'a culture of secrecy and trying to push the public's right to know.'[133] Or as David Killick put it, 'transparency should be a core aspiration of government, rather than an afterthought.'[134]

None of the suggestions we have made in this section of the Report are individual cure-alls, but collectively they could advance this State further on our journey to open government. We need to make up lost ground and to demonstrate that we can, and

[133] 'In the Public Interest: Frank and Fearless' with Kym Goodes, podcast episode, 10 June 2021.
[134] David Killick, *Submission to the Independent Review of Tasmania's Right to Information Framework* (30 April 2025), 2.

will, do mainstreaming of transparency better than every other jurisdiction in Australia.

6. Recommendations

Listed below are our recommendations in relation to culture and RTI in Tasmania.

6.1. Short term/administrative

Recommendation 11: Clear and public endorsement supporting the objectives of the *Right to Information Act 2009* (Tas) and the mainstreaming of transparency by the Premier and the Secretary of the Department of Premier and Cabinet (endorsed by the Secretaries Board).

Recommendation 12: The Right to Information Key Performance Indicators in Performance Development Plans for Heads of Agency be extended to all Senior Executive Service staff.

Recommendation 13: RTI initiatives including *Right to Information Act 2009* (Tas) and *Personal Information Protection Act 2004* (Tas) performance measures for Heads of Agencies and Senior Executive Service staff should be updated on agency websites every three months.

Recommendation 14: Programmed release of Cabinet Information after 10 years subject to relevant exemptions under the *Right to Information Act 2009* (Tas).

Recommendation 15: Adoption of a policy requiring all cabinet submissions, agendas and decision papers (and appendices) to be proactively released and published online within 30 business days of a final decision being taken by Cabinet, subject only to a number of reasonable exceptions which should be outlined in the policy.

Recommendation 16: More resources, training (including in person), support and staff development for Right to Information delegates.

Recommendation 17: The adoption and roll out of the training packages currently being prepared by the Right to Information Uplift Project Steering Committee.

Recommendation 18: The development of further training packages, especially with a focus on *Right to Information Act 2009* (Tas) and *Personal Information Protection Act 2004* (Tas) for local government.

Recommendation 19: The Terms of Reference for the Right to Information Uplift Project Steering Committee should be updated to include taking into account the findings of this Review.

Recommendation 20: There should be local government and citizen representation on the Right to Information Uplift Project Steering Committee.

Recommendation 21: The Right to Information Uplift Project Steering Committee should publish its minutes within a week of its meetings.

Recommendation 22: The Right to Information Uplift Project should conduct applicant and RTI delegate surveys 12 months after the release of this Report to ascertain what changes, if any, have occurred in *Right to Information Act 2009* (Tas) and *Personal Information Protection Act 2004* (Tas) practice both within the Tasmanian State Service and at the local government level.

Recommendation 23: A specialised unit of seconded experienced RTI delegates be established to help address surges in workloads, assist with the development of training and assist in various cross-government initiatives in information sharing and management. Our preference would be for this unit to be under the direction of the Ombudsman but alternatively, the Unit could be incorporated into the RTI Uplift Project reporting to the RTI Uplift Project Steering Committee or reporting directly to a committee of the Secretaries Board.

Chapter 5: Intersection with other legislative frameworks

Our Terms of Reference required us to consider 'the intersection with any other relevant legislative frameworks (including, but not limited to, the *Public Interest Disclosures Act 2002* (Tas) ('*PID Act'*) and the *Personal Information Protection Act 2004* (Tas) ('*PIP Act*')'.

1. The legislative landscape in Tasmania

Tasmanian public authorities are governed by a wide array of legislative instruments that define their powers, responsibilities, and obligations across various domains of public administration. This legislative landscape presents a complex environment in which public authorities are expected to uphold multiple, and at times competing, statutory obligations. Table 8 below provides a non-exhaustive summary of the key instruments that are generally applicable to public authorities in Tasmania.

Table 9: Non-exhaustive summary of key legislative instruments applying to public authorities

Core governance and administration	
State Service Act 2000 (Tas)	Governs the administration and management of the State Service, including employment and conduct of public sector employees.
Local Government Act 1993 (Tas)	Provides the framework for the establishment and operation of Tasmanian councils, outlining their powers, functions, and responsibilities.
Government Business Enterprises Act 1995 (Tas)	Regulates the operation of government business enterprises, including their relationship with government and financial return obligations.
Financial Management Act 2016 (Tas)	Establishes principles for sound financial management and accountability in the public sector.
Public Sector Superannuation Reform Act 2016 (Tas)	Reforms the superannuation arrangements for public sector employees.
Information management and privacy	
Right to Information Act 2009 (Tas)	Establishes the public's right to access government-held information, promoting transparency and accountability.
Personal Information Protection Act 2004 (Tas)	Sets out principles for the collection, use, and disclosure of personal information by public authorities.
Archives Act 1983 (Tas)	Provides for the preservation and management of public records.
Accountability and oversight	
Ombudsman Act 1978 (Tas)	Establishes the Office of the Ombudsman to investigate complaints about administrative actions of public authorities.

Integrity Commission Act 2009 (Tas)	Establishes the Integrity Commission to prevent and address misconduct within the public sector.
Health Complaints Act 1995 (Tas)	Establishes the Office of the Health Complaints Commissioner and provides for the making, investigation, conciliation, and reference of complaints against health services.
Public Interest Disclosures Act 2002 (Tas)	Provides a mechanism for the disclosure and investigation of improper conduct by public officers and public bodies and protects persons making disclosures.
Audit Act 2008 (Tas)	Defines the functions and powers of the Auditor-General, ensuring independent oversight of public sector financial management and performance.
Parliamentary Privilege Act 1858 (Tas)	Defines the power and privileges of the Houses of Parliament.
Parliamentary (Disclosure of Interests) Act 1996 (Tas)	Provides for the disclosure of interests of Members of the House of Assembly and the Legislative Council.

In addition to the general laws identified in Table 9 there is a suite of sector-specific Acts which regulate particular areas of public administration, such as health, education, child safety, and the environment. Some public authorities are established through specific enabling legislation that defines their functions, powers, and governance structures. For these statutory authorities, the relevant enabling legislation will often impose specific obligations that go beyond those found in general public sector legislation, including sector-specific compliance, oversight requirements, or procedural duties tailored to the authority's mandate. In some cases, it may also impose additional or more stringent requirements for handling personal information, while others may limit access or create specific exemptions. This adds another layer of complexity to the broader legislative framework, particularly where these provisions interact with, or in some cases override, general laws such as the *Right to Information Act 2009* (Tas) ('*RTI Act*'). Further complexity arises from the influence of Commonwealth legislation, for example the *Privacy Act 1988* (Cth), which overlaps in its application to some Tasmanian entities.[135]

The cumulative effect of the legislative landscape in Tasmania is a multi-layered regulatory environment in which the principle of openness under the *RTI Act* must be balanced against other legal duties to protect confidentiality, manage risk, and uphold procedural fairness. Our consultations with public authorities and other entities subject to the *RTI Act* highlighted that the navigation of these intersecting obligations often poses significant challenges. There were consistent reports of uncertainty about how to prioritise, or to reconcile, overlapping statutory requirements, particularly where enabling legislation contains restrictions or procedures that diverge from whole-of-government standards. Many of the issues raised in consultations

[135] Tasmania Law Reform Institute (TLRI), *Review of Privacy Laws in Tasmania*, (Final Report No 33, May 2024), 21.

were specific to the sector, or operational context, of individual public authorities and other entities.

Local government authorities, for example, reported confusion – both within their own Councils and amongst their ratepayers – about the interaction between the *RTI Act* and the *Local Government Act 1993* (Tas). In particular, concerns were raised about managing the different information channels associated with public question time and council meetings – both open and closed. In other consultations, conflicts between the *Archives Act 1983* (Tas) and the *RTI Act*, particularly around inconsistent definitions of the term 'records,' were noted. The challenges of balancing RTI obligations with staff wellbeing under workplace health and safety laws, and handling RTI requests involving State Service employment investigations where no formal findings have been made, were also raised. Although our Terms of Reference identified the *PID Act* as within scope, it was not raised in any consultations or public written submissions. Issues with the *PID Act* including on its intersection with the *RTI Act* were certainly raised with us by one individual who stressed their concerns confidentially by email on multiple occasions. We are aware that there are significant issues with the *PID Act* that warrant separate attention and reform. However, as those matters were not canvassed with public authorities and other entities subject to the *RTI Act* through this process, we do not address them in detail here.

By far the most widespread and consistently raised issue was the interaction between the *RTI Act* and the *PIP Act*. In consultation with DECYP, for example, we learned that personal information requests involving third party personal information have increased significantly in recent years. DECYP attributes this increase to the combined effects of the removal of the limitation period for civil claims relating to child sexual abuse or serious physical abuse, and the heightened public awareness generated by the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse. No one, including DECYP, argues that the Commission of Inquiry and the removal of the time limitation period are anything other than desirable and necessary measures – but there are flow-on consequences for the volume and complexity of RTI applications handled by the Department.

Issues with the interaction between the *RTI Act* and the *PIP Act* were highlighted by nearly every individual/entity consulted and, given its significance and cross-sector relevance, forms the core focus of the discussion in this section.

2. Personal Information Protection Act 2004 (Tas)

The challenges created by the intersection between the *RTI Act* and the *PIP Act* are legally complex and present significant operational difficulties for public authorities. As the RTI Uplift Project Discussion Paper observed:[136]

[136] DPAC, *RTI Uplift Project – Discussion Paper*, 24.

> The *RTI Act* and the *PIP Act* are intended to act in tandem and should be considered so by relevant officers to ensure information in government possession and the access of it by the public is managed effectively with respect to both Act's objects. However, […] it is not always clear how to meet the requirements of both Acts and deliver the best outcomes to applicants.

We examined some of the practical, legal, and procedural challenges that arise from this intersection, particularly where individuals seek access to their own personal information.

2.1. Overview of the *Personal Information Protection Act 2004* (Tas)

The *PIP Act* regulates the ways in which certain entities in Tasmania collect, maintain, use, and disclose an individual's personal information. 'Personal information' is defined in section 3 as 'any information or opinion in any recorded format about an individual whose identity is apparent or is reasonably ascertainable from the information or opinion, and who is alive or has not been dead for more than 25 years.'[137] This definition is identical to the definition of 'personal information' in the *RTI Act*.[138] The *PIP Act* also distinguishes between specific types of information including 'basic personal information', 'employee information', 'health information', 'law enforcement information', 'sensitive information', and 'public information'.[139]

The *PIP Act* applies to entities referred to as 'Personal Information Custodians' ('PICs'), defined in section 3 as: a public authority, any body, organisation or person who has entered into a personal information contract relating to personal information, or a prescribed body.[140] The term 'public authority' has 'the same meaning as in the *RTI Act*',[141] and therefore includes:[142]

(a) an Agency, within the meaning of the *State Service Act 2000* (Tas)

(b) the Police Service

(c) a council

(d) a statutory authority

(e) a body, whether corporate or unincorporate, that is established by or under an Act for a public purpose

(f) a body whose members, or a majority of whose members, are appointed by the Governor or a Minister of the Crown

[137] *Personal Information Protection Act 2004* (Tas), s 3 – definition of 'personal information'.
[138] *Right to Information Act 2009* (Tas), s 5.
[139] *Personal Information Protection Act 2004* (Tas), s 3.
[140] Ibid. – definition of 'personal information'.
[141] Ibid. – definition of 'public authority'.
[142] *Right to Information Act 2009* (Tas), s 5 – definition of 'public authority'.

(g) a Government Business Enterprise within the meaning of the *Government Business Enterprises Act 1995* (Tas)

(h) a council-owned company

(i) a State-owned company

As is the case under the *RTI Act*, certain entities are wholly or partially exempt from the operation of the *PIP Act*. This includes courts and tribunals in the exercise of judicial or quasi-judicial functions or powers, the Director of Public Prosecutions and their employees, and the Solicitor-General and their employees.[143]

PICs must comply with the Personal Information Protection Principles ('PIPPs') set out in Schedule 1 of the Act.[144] There are 10 PIPPs: collection, use and disclosure, data quality, data security, openness, access and correction, unique identifiers, anonymity, disclosure of information outside Tasmania, and sensitive information.[145] The 10 PIPPs regulate the ways in which PICs handle personal information, including the type of information that can be collected, used and disclosed, and the purpose for its collection, use or disclosure.[146] The PIPPs also enable an individual to request access to their personal information held by a PIC, and amendment of their personal information that is incorrect, incomplete, out of date or misleading.[147] An individual may make a complaint to the Ombudsman about an alleged contravention by a PIC of a PIPP that applies to the person.[148] The Ombudsman will assess and determine how to deal with the complaint, which may including referring the matter to another entity for investigation or other action,[149] or conducting an investigation into the complaint under the *Ombudsman Act 1978* (Tas).[150]

Section 4 of the *PIP Act* provides that if a provision of the *PIP Act* is inconsistent with a provision in any other Act, the other provision prevails and the *PIP Act* has no effect to the extent of the inconsistency.

2.2. Accessing personal information under the *PIP Act*

Schedule 1, clause 6(1), of the *PIP Act* provides that a PIC may provide a person with access to their personal information upon receipt of a written request for that information. Unlike an application for assessed disclosure made under the *RTI Act*, there is no fee payable in respect of a request for access to personal information under the *PIP Act*. Clause 6(1) reads as follows:

[143] *Personal Information Protection Act 2004* (Tas), s 7.
[144] Ibid., ss 16 and 17.
[145] Ibid., schedule 1.
[146] Ibid.
[147] Ibid.
[148] Ibid.
[149] Ibid., s 20.
[150] Ibid., s 21.

(1) If a personal information custodian holds personal information about an individual, the personal information custodian –

(a) may provide that individual with access to his or her personal information on receipt of a written request from the individual for access to his or her personal information; or

(b) if the personal information custodian –

(i) notifies the individual of a decision to refuse a request under paragraph (a); or

(ii) does not respond to a request under paragraph (a) within 20 working days –

the personal information custodian, on receipt of a further written request from the individual for access to his or her personal information, must provide the individual with access to his or her personal information as if –

(iii) the written request were an application for assessed disclosure of information under section 13 of the Right to Information Act 2009; and

(iv) the personal information custodian were subject to that Act; and

(v) a reference in that Act to a public authority or a Minister were a reference to a personal information custodian.

In theory, the *PIP Act* provides a more efficient, informal, and cost-free, avenue for individuals seeking access to their personal information held by public authorities. In practice, however, the two-stage process established by clause 6(1) has the effect of frustrating access by introducing delay, ambiguity, and inconsistency in how requests are handled across agencies. In the first stage, the PIC *may* grant access to personal information upon receiving a written request. If the request is denied or not responded to within 20 working days, and a subsequent request is made, the second stage is triggered: the individual *must* be provided access to their information 'as if' the request were made under section 13 of the *RTI Act*. The two-stage process for accessing personal information under the *PIP Act* presents several interpretive and practical challenges.

2.3. Interaction with the *RTI Act* – interpretive challenges

Clause 6(1) of the *PIP Act* has been widely criticised for its lack of clarity and the interpretive difficulties it creates.[151] The use of the permissive term 'may' in the first stage is 'concerning because it creates a discretion in the personal information custodian, now as an administrative decision maker under an enactment, about whether to exercise a discretion in favour of granting access.'[152] This wide discretion, with no statutory guidance on how it should be exercised, invites inconsistent interpretation and application across agencies, and leaves applicants uncertain about their rights and the basis on which access may be granted or refused. Equivalent

[151] See, for example, DPAC, *RTI Uplift Project – Discussion Paper*; COI, *Full Report*, Volume 7: Chapter 17; TLRI, *Review of Privacy Laws in Tasmania*.
[152] Submission of Alex Kendell & Phillips Taglieri, cited in TLRI, *Review of Privacy Laws in Tasmania*.

legislation in most other jurisdictions makes it mandatory to provide an individual with access to their personal information, subject to specific exceptions.[153]

The second stage, triggered by a refusal or failure to respond to a request, creates further ambiguity. The requirement to provide the applicant with access to their personal information 'as if' it were an application for assessed disclosure under section 13 of the *RTI Act* is problematic. As the Ombudsman explained: '[t]he use of the phrase 'as if' [in PIPP 6(1)(b)] creates difficulty because it is not a deeming provision; it does not render a request under this provision an application under the *RTI Act'*.[154] That is, rather than *converting* the request into an application for assessed disclosure, the provision requires decision-makers to apply the same rules to the request as would be applicable if the request was made under the *RTI Act*: it does not import the other provisions of the *RTI Act*. In effect, this creates a parallel process that mimics aspects of the RTI framework but lacks its procedural safeguards such as statutory timeframes and review rights, leaving applicants with 'no ability to seek external review of a failure to provide access or redress in respect of delay'.[155] There is also a lack of clarity around whether other provisions in the *RTI Act,* such as the offence in section 50 for failing to disclose information, apply to decisions made under section 6(1)(b) of the *PIP Act* when determined 'as if' under the *RTI Act*. This ambiguity leaves decision-makers uncertain about their legal exposure and may create additional inconsistency in the handling of personal information requests. Overall, there is significant uncertainty within public authorities, where officers are often unclear about how to navigate their obligations under each Act or how to manage requests that fall within the overlap between them.

2.4. Interaction with the *RTI Act* – practical challenges

The interaction between the *PIP Act* and the *RTI Act* presents not only interpretive issues, but also significant practical challenges for public authorities managing requests for access to personal information. Issues relating to the interaction between the two Acts, particularly in the context of requests for personal information, were raised by almost every public authority we consulted. There is great variation in the approach to handling such requests – not only between the different types of public authorities covered by the *PIP* and *RTI Act*s, but also across different government agencies.

At the state level, we observed inconsistent processes between the different government departments, and that, consistent with the findings of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in

[153] See, for example, *Privacy and Personal Information Protection Act 1998* (NSW), s 14; *Privacy and Data Protection Act 2014* (Vic), sch 1, Principle 6.1; *Information Privacy Act* (Qld), s 40.
[154] Submission of the Tasmanian Ombudsman, cited in TLRI, *Review of Privacy Laws in Tasmania*, 106.
[155] Ibid.

Institutional Settings ('COI') (and reported by the Tasmania Law Reform Institute ('TLRI'), agencies generally 'have dedicated teams to handle *RTI Act* requests but do not have centralised registers or designated staff appointed to deal with [*PIP Act*] requests'.[156] These inconsistencies are evident not only in the internal procedures adopted by agencies but also in the external information provided to the public, which varies widely in clarity, accessibility, and completeness. Some agencies, such as the Department of Health and Department for Education Children and Young People ('DECYP'), have developed structured processes and dedicated forms for handling *PIP Act* requests. Others provide little to no public guidance on how to submit a *PIP Act* request. In many cases, agency websites do not explicitly inform individuals that they have a right to access their personal information under the *PIP Act*. As a result of the lack of clear and accessible public guidance, prospective applicants may be 'misled' into lodging formal RTI requests – incurring unnecessary fees and delays – despite being entitled to access their personal information at no cost under the *PIP Act*.[157]

One contributing factor appears to be a marked lack of training on the *PIP Act*, with several agencies reporting that RTI delegates have limited familiarity with the PIP framework and do not receive any training specifically on the Act. This reflects a broader lack of appreciation for compliance with *PIP Act* obligations, as well as an absence of standardised procedures or whole-of-government guidance on how the two Acts should be applied in practice. In this context, delegates are likely to default to the more familiar RTI process, as it provides clearer statutory guidance and established procedures compared to the less understood and inconsistently applied PIP framework.

Another possible reason for the tendency to default to the *RTI Act* over the *PIP Act* is that many requests for personal information involve third-party personal information, information relating to law enforcement matters, and other sensitive information that cannot be addressed solely through the *PIP Act*. This challenge has become more pronounced with the significant increase in personal information requests following the COI. Unlike the *RTI Act*, the *PIP Act* contains no provisions allowing for partial access, redaction, or separation of third-party information, forcing agencies to process these requests under the *RTI Act* instead. This is a poor fit. The RTI framework is designed to serve the public interest through transparency, not to facilitate personal records access, and its procedural requirements – including the factors that must be balanced in applying the public interest test – are often inappropriate for these types of requests. The practical consequence is a system that is legally convoluted, burdensome for both applicants and agencies, and at times traumatising for individuals seeking information about their own lives. Nonetheless,

[156] TLRI, *Review of Privacy Laws in Tasmania*, 109 – referring to COI, *Full Report*, Volume 7: Chapter 17, 190.
[157] DPAC, *RTI Uplift Project – Discussion Paper*, 25.

RTI has become the default mechanism, not because it is suitable, but because no alternative exists.

These challenges are especially acute in agencies that process a high volume of requests for access to personal information. There are four government departments, in particular, that reported receiving a significant number of personal information requests: the Department of Health, DOJ, DECYP, and the Department of Police, Fire and Emergency Management ('DPFEM'). These agencies report that the vast majority of applications for assessed disclosure processed under the *RTI Act* are requests for personal information.[158] It is difficult to ascertain the scale of the issues associated with accessing personal information because, unlike the *RTI Act*, the *PIP Act* does not impose statutory reporting obligations on agencies regarding the number of personal information requests received or how they are handled. This lack of mandated reporting obscures the visibility of systemic challenges and makes it harder to assess whether agencies are meeting their obligations or whether individuals are being diverted unnecessarily into the RTI process. While some agencies, such as the Department of Health and DECYP, voluntarily report on *PIP Act* requests in their Annual Reports, this is the exception rather than the norm, and no consistent or coordinated data is collected across the public sector.

The data that is available – such as figures reported by the Department of Health and DECYP – suggests that the volume of personal information requests is substantial, highlighting the significant operational impact these requests have on agencies and the importance of addressing systemic inconsistencies in how they are managed. The Department of Health reported that in 2023/24 there were 62,056 disclosures of personal information under the *PIP Act*, and 531 applications for assessed disclosure – the majority of which were requests for personal information – under the *RTI Act*.[159] There was a 38 per cent increase in RTI requests in 2023/24.[160] For the same period, DECYP reported that it processed 433 applications for release of personal information under the *PIP Act* and received 281 requests for assessed disclosure under the *RTI Act*.[161] These figures represent a 40.5 per cent increase in requests under the *RTI Act* and a 16.39 per cent increase in applications under the *PIP Act*.[162]

These figures confirm not only the sheer volume of personal information requests managed by large agencies such as Health and DECYP, but also the escalating demand over time. The increase in requests for access to personal information has stretched an already resource-constrained system. Agencies have reported increasing delays and difficulties meeting statutory RTI timeframes. For example, the

[158] Reported anecdotally during in-person consultations with the Department of Health, Department of Justice, DECYP, and DPFEM.
[159] Department of Health, *Annual Report 2023-24*, 147.
[160] Ibid.
[161] Department for Education, Children and Young People, *Annual Report 2023-24*, 87.
[162] Ibid.

Department of Health reported that of the total 556 applications for assessed disclosure under the *RTI Act* determined that year, 152 applications took more than 20 working days for the date of acceptance to be decided.[163] Even more concerningly, DECYP reported that for the same period, just 29 RTI requests – out of a total of 241 – were determined within 20 working days of being accepted.[164]

This growing pressure on high-volume agencies highlights broader structural issues in the system – issues that manifest differently but no less significantly in smaller public authorities. In these cases, the challenge is not necessarily the volume of requests but the lack of familiarity, clear procedures, and internal expertise to confidently navigate the interaction between the PIP and RTI frameworks. Smaller public authorities, or those that receive only a handful of personal information requests each year and have little exposure to complex access requests, may struggle to fully appreciate their obligations under both Acts or to distinguish when a request should be managed under the *PIP Act* rather than the *RTI Act*. Without regular engagement or specialised support, smaller authorities are more likely to misclassify requests, rely on *ad hoc* processes, or default to the *RTI Act* simply because it is better known or more procedurally defined.

The cumulative effect across Tasmanian public authorities – both large and small – is a fragmented, inefficient system that fails to deliver timely and appropriate access to personal information. Recognising these challenges, recent reviews and inquiries have made a number of recommendations for reform.

2.5. Recommendations from previous reviews and reports

There have been several recent reviews and inquiries that – while not focused exclusively on the issue – have considered the interaction between the *RTI Act* and the *PIP Act*. The COI made a number of recommendations in relation to victim-survivors' access to information under the *PIP Act* and *RTI Act*. In particular, Recommendation 17.8 of the COI's Final Report outlined a series of recommended reforms, directed at improving access to personal information held by public authorities. Recommendation 17.8 is extracted in full below.

> Recommendation 17.8
>
> (1) 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 victim-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.

[163] Department of Health, *Annual Report 2023-24*, 149.
[164] Department for Education, Children and Young People, *Annual Report 2023-24*, 89.

(2) 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 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.

(3) 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.

(4) 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 to the Tasmanian State Service in relation to victim-survivor access to information (Recommendation 19.2).

The TLRI also made a number of recommendations relating to the interaction between the *RTI Act* and the *PIP Act* in its Final Report of a Review of Privacy Laws in Tasmania.

The TLRI made the following recommendations relevant to the interaction between the *RTI Act* and the *PIP Act*:[165]

[165] TLRI, *Review of Privacy Laws in Tasmania*, xvii-xviii.

Recommendation 37: There should be a review of all Tasmanian legislation that requires retention of personal information to ensure it appropriately balances policy objectives and privacy and cyber-security risks.

Recommendation 38: PIPP 6 should be amended to require a personal information custodian to:

- provide individuals with access to their personal information upon request;
- provide access to personal information in the manner requested by the individual, as long as this is reasonable and practicable, without charge;
- give written notice of the reasons for a refusal to give access and the mechanisms available to complain about the refusal (which are discussed further in Part 8 of this Report); and
- adopt a presumption in favour of disclosure.

Recommendation 39: PIPP 6 should be amended to simplify the process for requesting access to personal information. These amendments should clarify the interaction of the PIPA and the *RTI Act*.

Recommendation 40: PIPP 6 should be amended to confer an individual right to explanation about personal information, including a right to explanation of the source of personal information collected indirectly, and a right to an explanation or summary of what a personal information custodian has done with the personal information.

Recommendation 43: Personal information custodians should be required to provide 'reasonable assistance' to individuals in exercising a right, take 'reasonable steps' to respond to an exercise of a right, and respond within a prescribed timeframe, unless a longer period is justified.

Recommendation 56: There should be a close examination of the relationship between the provisions of the PIPA and other Tasmanian legislation with a view to obtaining greater harmonisation and consistency between them. In this review, there is a need to ensure privacy protection is maximised to the extent that is possible in balance with other policy interests.

Recommendation 57: The Tasmanian Government should undertake a review of provisions that present legislative barriers to the sharing of information within government and with relevant non-government organisations in the interests of protecting the safety and wellbeing of children and young people, people in family violence situations, abuse of elder persons and people with disabilities.

The TLRI endorsed the COI's recommendation to centralise access to information processes within a specialised unit, supported by liaison officers across government agencies.[166] The TLRI also supported providing dedicated funding to departments, agencies, and the Ombudsman to improve compliance with statutory timeframes, expedite external reviews, and deliver trauma-informed training to support victim-survivors seeking access to information. The TLRI noted that 'these recommendations could benefit all persons whose information privacy is protected by the [*PIP Act*].'[167]

[166] Ibid., 110.
[167] Ibid.

We broadly endorse the recommendations of both the Commission of Inquiry and the TLRI. Before turning to our specific recommendations for reform, we first consider two case studies that emerged from consultations and submissions that explore how the *RTI Act* interacts with other information access schemes.

3. Other legislative frameworks for information access

In addition to concerns raised about the interaction between the *RTI Act* and the *PIP Act*, consultations and submissions also identified other areas where the *RTI Act* intersects with separate information access schemes. In this section, we examine two such schemes – one that appears to function relatively well, and another that has proven more problematic. The primary purpose of this analysis is to inform our assessment of the *RTI/PIP Act* interface by considering whether the difficulties identified earlier are unique to those Acts, or whether similar issues might arise wherever multiple access frameworks coexist – or where particular types of information, such as sensitive or technical data, are involved. Understanding these dynamics helps clarify whether reform efforts should be targeted at the *RTI/PIP Act* intersection specifically, or at broader structural issues within Tasmania's access to information framework.

3.1. *Vehicle and Traffic Act 1999* (Tas) and *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2021* (Tas)

One example of a legislative access scheme that appears to operate effectively alongside the *PIP Act* and *RTI Act* is the framework governing driver licensing and vehicle registration in Tasmania. This case study, initially identified through consultations with the Department of State Growth and explored further in discussions with the Registrar of Motor Vehicles ('RMV'), demonstrates how a clear statutory basis for collecting and disclosing personal information – supported by well-defined processes – can minimise confusion and reduce reliance on broader access to information laws. Despite the volume and sensitivity of the personal information involved, the *Vehicle and Traffic Act 1999* ('*VT Act*') and associated Regulations enable the RMV to manage access requests efficiently without generating the kinds of interpretive and procedural issues seen in other contexts.

The *VT Act* and its subordinate Regulations, including the *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2021* ('*VT Regulations*'), establish the legislative framework for the licensing of drivers and registration of vehicles in Tasmania. These instruments empower the RMV to collect, manage, and disclose personal information for the purposes of administering the licensing and registration systems. This includes names, addresses, licence details, vehicle ownership information, and other identifying data. The RMV holds an extensive data set of

personal information, with information relating to over 600,000 Tasmanian licence holders and more than 800,000 vehicles. As such, the *VT Act* and *VT Regulations* are critical in regulating how this personal information is handled, accessed, and protected, as well how this bespoke system interacts with both the *PIP Act* and the *RTI Act* in determining when and how this information may be disclosed or withheld.

The *VT Regulations* provide that personal information (as well as commercially sensitive information) is 'protected information' which may only be released in limited circumstances.[168] Regulation 160(2) provides that the Registrar may only release 'protected information' if one or more of the following applies:

(a) if and as the Registrar considers appropriate in the public interest for the purposes of the administration of an Act of this State, another State or a Territory, or the Commonwealth;

(b) if and as authorised by the person to whom the information relates;

(c) if and as required by a court or other body or person authorised to take evidence;

(d) if and as required for the purposes of NEVDIS;

(e) if and as required for the purposes of identity matching services.

The RMV reported that, in their experience, the legislative access scheme under the *VT Act* operates smoothly and with minimal conflict with the *PIP Act* or the *RTI Act*. Staff described having clear, well-established procedures for responding to information requests under the bespoke legislative scheme. The grounds for disclosing personal information under the *VT Regulations* are unambiguous, and decision-makers have confidence in applying them. Requests for information are processed efficiently, often with rapid turnaround, and without needing to engage the broader frameworks of the *PIP* or *RTI Act*s.

Importantly, there is little uncertainty about when the *VT Act* governs access. Where a request clearly falls within the scope of that Act, the *PIP Act* is expressly overridden, providing clarity and avoiding interpretive conflict. It is only requests for information that falls outside the defined categories in the *VT Act* which necessitate processing under the *RTI Act*. Staff noted that such cases are relatively infrequent and do not typically pose significant legal or procedural challenges.

This example illustrates how a clearly defined, well-administered access regime can coexist with general access laws like the *PIP* and *RTI Act*s, without generating the kinds of confusion, delay, or inconsistency experienced in other sectors. However, it should be noted that our findings are based on consultation with the administering agency only; we did not speak with members of the public or other users of the system, who may have a different perspective on the accessibility or fairness of the process.

[168] *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2021,* regulation 160.

3.2. *Environmental Management and Pollution Control Act 1994* (Tas)

The Review also identified an example of an alternative legislative access scheme that does not appear to be operating as intended: section 23AA of the *Environmental Management and Pollution Control Act 1994* (Tas) ('*EMPC Act*'). This issue was raised in consultations and written submissions from the Environmental Defenders Office ('EDO'), the Environment Protection Authority ('EPA'), and the Department of Natural Resources and Environment ('NRE'). Section 23AA – which came into force in December 2022 – is intended to 'improve transparency and allow public scrutiny of important information about the environmental effects of industries operating in Tasmania's environment, further supporting public confidence in Tasmania's environmental regulatory system.' However, despite this objective, the provision has generated confusion and uncertainty about its relationship with the *RTI Act*, its legal effect, and how it should be applied in practice. This highlights how bespoke access mechanisms – when poorly defined or implemented – can create ambiguity, increase the administrative burden on both agencies and applicants, and ultimately undermine public access rights.

Section 23AA of the *EMPC Act* provides the Director of the EPA with the discretion to publish, provide or make available environmental monitoring information. Environmental monitoring information is information that:[169]

- results from, or relates to, monitoring of the environmental effects of an activity;
- is required to be collected under an environmental licence, environment protection notice, permit, environmental protection policy or under environmental standards; and
- is provided under the Act, or another prescribed Act to the Board or the Director otherwise than in accordance with a requirement imposed on a person under sections 43 or 92 of the Act.

Section 23AA is supported by the 'Environmental Monitoring Information Disclosure Policy', which sets out, *inter alia*, 'the policy approach to the exercise of the discretion by the Director, Environment Protection Authority (EPA) to release environmental monitoring information pursuant to section 23AA of the [*EMPC Act*].'[170] The policy outlines the general procedures for releasing environmental monitoring information under section 23AA, including via:

- public release via publication on a website;

[169] *Environmental Management Pollution Control Act 1994* (Tas), s 23AA.
[170] Environment Protection Authority (EPA), *Environmental Monitoring Information Disclosure Policy* (August 2024 Version 10), 1.

- direct provision to a person or body upon request; and
- making available to a person or body for viewing either via a website, in person at EPA offices or via secure email link.

The policy also addresses the circumstances in which information is excluded from release under section 23AA.

Section 23AA was intended to complement the *RTI Act* by allowing the EPA to proactively release environmental monitoring information without requiring a formal RTI application. The intention behind the provision – to enhance transparency and reduce the need for formal, time-consuming RTI applications – is sound in principle. However, the EDO has raised serious concerns about the operation of section 23AA in practice, as well as its interaction with the *RTI Act*. In its written submission the EDO argued that the introduction of section 23AA of the *EMPC Act* has made 'no appreciable impact' on the amount of information released by the EPA, principally because the 'discretion provided under [section] 23AA is not being exercised.'[171] In one example, the EDO described seeking access to environmental monitoring information via the section 23AA process. However, the EDO describes this process as resulting in 'a waste of time, a delay of 28 days until a notice of refusal was provided.'[172] The EDO subsequently made a formal RTI application for information originally requested (but not provided) under the section 23AA process[173] – effectively duplicating effort and undermining the intended efficiency of the discretionary disclosure pathway. This resulted in unnecessary delays and rendered the section 23AA pathway effectively redundant. Rather than facilitating greater transparency, the submission of the EDO suggests that the provision has, in practice, added procedural complexity without delivering improved access to information.

We also consider that the effectiveness of section 23AA in promoting timely and meaningful access to environmental information may be hindered by the absence of procedural safeguards under the *EMPC Act*. Unlike the *RTI Act*, section 23AA does not impose a timeframe for response, require written reasons for refusal, or provide any avenue for external review. This is likely to disincentivise individuals and organisations from using the discretionary pathway – particularly where the information sought is time-sensitive or contentious – and reduces confidence in the process.

It is important to note that, in examining the issues raised in the EDO's submission, the Review is not endorsing its claims. We consider the concerns raised relevant to understanding how section 23AA may be operating in practice but make no findings as to their accuracy. We also emphasise that, in its consultation with the Review, the

[171] Environmental Defenders Office (EDO), *Submission to the Independent Review of Tasmania's Right to Information Framework* (14 March 2025), 12.
[172] Ibid., 6.
[173] Ibid., 6.

EPA strongly rejected the claims made by the EDO. The agency maintains that it is 'committed to the transparent provision of information as it relates to its activities and the information it holds,'[174] and emphasised ongoing efforts to improve public access to information under both the *EMPC Act* and the *RTI Act*. Positively, of the 28 applications for assessed disclosure under section 13 of the *RTI Act* that were determined by the EPA in 2023/24, 24 were provided in full.[175] The EPA further advised that as of 30 May 2025, 22 applications had been determined – of these '10 were released in full, 5 released in part, and 2 were actively disclosed in full without the need for an assessed disclosure process.'[176]

We also observed a number of positive indicators that the introduction of section 23AA has improved transparency in relation to environmental monitoring information. The EPA's website includes a dedicated 'Release of Environmental Monitoring Information' page, which clearly explains the process for the release of information under section 23AA. The page includes a searchable 'Environmental Monitoring Information Portal', which enables individuals to search for, and access documents associated with environmental monitoring.[177] Unfortunately, however, at the time of writing, it appears that technical issues with the website are preventing access to any documents returned through the portal's search function. The information uploaded to the portal is limited to information that post-dates 1 January 2022. It also does not include information that relates to potential contaminated land sites. In both cases, applicants can request access to the information by completing the webform 'Request Form for Environmental Monitoring Information'.[178] Additionally, the EPA maintains an 'Environmental Monitoring Information Disclosure Log',[179] which lists documents that have been released in response to information requests under section 23AA. At the time of writing the Disclosure Log contained 18 entries – the most recent being a release of a survey document on 16 April 2025, and the earliest being a bundle of emission reports released on 16 May 2023.

We acknowledge the challenges faced by the EPA in administering its information access responsibilities. In particular, the EPA expressed that 'the nature of the information applied for under the Act, both in quantum and complexity, has increased' and highlighted the challenges of balancing transparency with the concerns of regulated entities about the release of commercially sensitive

[174] EPA, *Submission to the Independent Review of Tasmania's Right to Information Framework* (30 May 2025), 1.
[175] Department of Justice, 'Right to Information Annual Report on the administration of the *Right to Information Act 2009* for the period 1 July 2023 – 30 June 2024', Table 14, 27.
[176] EPA, *Submission to the Independent Review of Tasmania's Right to Information Framework* (30 May 2025), 2.
[177] EPA, 'Release of Environmental Monitoring Information': https://epa.tas.gov.au/about-the-epa/release-of-environmental-monitoring-information/search-for-environmental-monitoring-information (last visited 8 July 2025).
[178] Ibid.
[179] Ibid.

information.[180] These challenges were also raised by NRE during our consultation. These competing pressures, we suggest, are not unique to any one particular agency but rather they reflect the broader difficulty of designing information access pathways that are both operationally workable and trusted by users.

Taken together, our observations of section 23AA and its interaction with the *RTI Act* underscore both the promise and the pitfalls of bespoke access regimes. While section 23AA was introduced in an effort to promote transparency, its implementation reveals how good intentions alone are not enough. A variety of factors, such as imprecise drafting, a lack of robust procedural safeguards, and poor integration with existing legal frameworks, can all act as barriers to the successful operation of alternative access schemes. More than just an inefficiency, this further complicates an already fragmented information landscape, creating confusion and delays, duplicating effort, and ultimately undermining public confidence. In the worst cases, such schemes may not only fail to facilitate access but actively undermine the intended purpose of both the *RTI Act* and the scheme itself. Without accountability mechanisms, they are also vulnerable to being misapplied, intentionally or inadvertently, to delay or obstruct access to information. The case of section 23AA is a cautionary example: to truly support transparency, legislative access schemes must be not only principled in purpose but also coherent in design, properly integrated, and supported by a reliable framework that ensures clarity for, and instils confidence in, public authorities and members of the public alike.

4. Findings

The evidence gathered from consultations and written submissions reveals that – consistent with the findings from previous reports and reviews – Tasmania's current information access framework is hampered by the complex legislative landscape in which it operates and is in dire need of reform. Across the public sector, public authorities are expected to operate within a dense and sometimes contradictory web of legislative obligations. In addition to the *RTI* and *PIP Act*s, authorities must also interpret and apply provisions in enabling legislation, oversight laws, information-sharing schemes, and sector-specific statutory frameworks. In this context, the *RTI Act* does not stand alone – it must be navigated in a legal environment where multiple statutes intersect, overlap, or override each other. The complexity of the legislative landscape undermines consistent decision-making. Public authorities are operating in a legal quagmire in which even experienced RTI officers struggle to reconcile duties under competing legislative schemes. This makes it extremely difficult for both applicants and public authorities to confidently determine which law applies or takes precedence, what rights are triggered, and how to resolve conflicts

[180] EPA, *Submission to the Independent Review of Tasmania's Right to Information Framework* (30 May 2025), 1.

between legal duties. For smaller public authorities, this can create procedural paralysis. For larger ones, it leads to system overload. For the public, it often results in confusion, delay, and sometimes in access being denied altogether.

While overlap and inconsistency create challenges across a range of legislative frameworks, the problems are most acute in the interaction between the *RTI Act* and *PIP Act*. We found that:

(a) **The dual access pathway under the *PIP Act* and *RTI Act* is not working.** The two-stage mechanism set out in clause 6(1) of the *PIP Act* introduces ambiguity around rights, duties, and timeframes. Applicants face delays and uncertainty, while public authorities struggle to determine the correct legislative basis for processing requests. The result is inconsistent practices and procedural inefficiency.

(b) **The *PIP Act* is underused and poorly understood.** Many public authorities default to processing requests for access to personal information under the *RTI Act* – even when personal information could (and should) be provided under the *PIP Act* – largely because it is better known and more clearly structured. The lack of training, guidance, and visibility around *PIP Act* obligations contributes to this tendency.

(c) **The *RTI Act* is not fit-for-purpose for accessing personal information.** In the absence of appropriate mechanisms in the *PIP Act* for managing third-party personal information, law enforcement information, or other sensitive information, including through exemptions or redactions, these requests are instead being diverted into the RTI process. This legislative shoehorning increases pressure on an already strained RTI system and pulls it away from its intended focus on transparency and public accountability. It causes unreasonable delays and, particularly in the context of requests relating to historical institutional abuse, can cause unnecessary and unwarranted distress for applicants.

(d) **Large agencies are struggling to keep up with volume.** Departments like the Department of Health and DECYP are processing hundreds, and in some cases thousands, of requests annually. The increasing demand, combined with an access framework that is poorly suited to managing personal information, has led to a widespread failure to meet statutory timeframes and increasing administrative strain.

(e) **Smaller agencies lack the resources and expertise to navigate complex access issues.** In these contexts, limited exposure to personal information requests has resulted in *ad hoc* or, at times, potentially incorrect application of the law, further undermining the consistency of access across the public sector.

(f) **Alternative legislative information access schemes can improve transparency, but just as easily undermine it.** Where bespoke information access schemes are clear and well-administered, they can operate alongside the *RTI* and *PIP Act*s with minimal conflict and provide an efficient pathway for the release of specific types of information, including personal information. Where they rely on broad discretion or lack procedural safeguards, however, they can result in inefficiency, confusion, inconsistent decision-making, delay, reduced public trust, and ultimately undermine the very transparency they are meant to promote.

Taken together, these findings highlight the urgent need for reform, both to the architecture of the law and the culture and systems that support its operation.

5. Recommendations

A modern access system must be legally clear, operationally efficient, and consistent with the broader aims of openness, accountability, and fairness across the Tasmanian public sector. While issues were identified across a range of legislative intersections, the most significant and consistently raised concern was the interaction between the *RTI Act* and the *PIP Act*. Accordingly, our recommendations primarily focus on this area. This focus does not discount the relevance of other legislative conflicts (and we have made one recommendation to address these conflicts), but reflects the volume, severity, and cross-sector impact of issues arising at the RTI-PIP interface. Our recommendations aim to restore coherence, reduce fragmentation, and ensure that individuals are able to exercise their right to access information – particularly personal information – without unnecessary legal or administrative barriers. They are also directed at supporting public authorities to more effectively navigate complex statutory environments and meet their obligations with clarity and confidence.

To address the problems identified in this section of our Report, we recommend a dual approach to reform. The current system is not just under strain – it is structurally flawed and fixing it will require bold, whole-of-system changes. In the interim, there are immediate and practical steps that can be taken to improve day-to-day function and reduce the burden on both applicants and agencies.

Listed below are our recommendations in relation to the intersection between the *RTI Act* and the *PIP Act*.

5.1. Short term/administrative

Recommendation 24: Develop and publish whole-of-government guidance (led by the appropriate authority – for example: the Office of the Ombudsman; Department of Premier and Cabinet; State Archivist) to clarify how public authorities should interpret and apply the *Right to Information Act 2009* (Tas) when it intersects with other

legislative frameworks. In particular, there should be guidance on intersections with the *Personal Information Protection Act 2004* (Tas) and the *Public Interest Disclosures Act 2002* (Tas), as well as sector-specific legislation including the *Local Government Act 1993* (Tas) and other relevant Acts. Guidance should address common areas of uncertainty, set out principles for resolving conflicts, and provide examples to ensure consistent and transparent practice across the public sector.

Recommendation 25: Strengthen capability and resourcing – specifically in relation to the intersection between the *Right to Information Act 2009* (Tas) and *Personal Information Protection Act 2004* (Tas) – to meet demand:

> **Recommendation 25.1:** Develop and deliver consistent, practical training and guidance on the interaction between the *Right to Information Act 2009* (Tas) and *Personal Information Protection Act 2004* (Tas) for all public authorities.
>
> **Recommendation 25.2:** Provide targeted funding to agencies with high volumes of personal information requests (for example, Department of Health, Department for Education, Children and Young People, and Department of Police, Fire and Emergency Management) to support timely processing and improve compliance with statutory obligations.

Recommendation 26: Improve the public experience of accessing personal information:

> **Recommendation 26.1:** Ensure all public authorities provide clear, consistent, and accessible public information on how to request personal information, including plain-language guidance, downloadable forms, contact details, and an explanation of rights under the *Personal Information Protection Act 2004* (Tas).
>
> **Recommendation 26.2:** Require all agencies – particularly those dealing with sensitive matters or victim-survivors – to embed trauma-informed approaches in how they manage personal information requests. This includes respectful communication, appropriate support, and minimising re-traumatisation.

5.2. Longer term/legislative

Recommendation 27: Undertake a review specifically targeted at identifying and resolving areas of inconsistency or overlap across the various legislative and regulatory frameworks relevant to the operation and oversight of the Tasmanian public sector. This includes, but is not limited to: *Right to Information Act 2009* (Tas); *Personal Information Protection Act 2004* (Tas); *Public Interest Disclosures Act 2002* (Tas); *Health Complaints Act 1995* (Tas); *Archives Act 1983* (Tas); *Ombudsman Act 1978* (Tas); *Integrity Commission Act 2009* (Tas); *State Service Act 2000* (Tas); *Parliamentary Privilege Act 1858* (Tas); *Parliamentary (Disclosure of Interests) Act 1996* (Tas); *Local Government Act 1993* (Tas); *Government Business Enterprises*

Act 1995 (Tas). This review should provide options to remedy any inconsistencies (including ensuring consistent definitions across different Acts), clarify the hierarchy of obligations where statutes intersect, and ensure that any sector-specific Acts align coherently with broader legislative frameworks.

Recommendation 28: Establish a new, dedicated and comprehensive framework for individuals seeking access to their own personal information held by public authorities. Access should be mandatory (not discretionary) and subject to limited appropriate exceptions. Any new process must be person-centred and trauma-informed. It should include clear provisions for redaction, third-party privacy, enforceable timeframes, and robust review rights. The *Personal Information Protection Act 2004* (Tas) is the logical location for such a framework. However, this would require substantial reform of the Act, particularly in light of the recommendations for reforming the *Personal Information Protection Act 2004* (Tas) made by the Tasmania Law Reform Institute in its recent Review of Privacy Laws in Tasmania. Critically, any new access pathway must be designed to complement, not compete with, the *Right to Information Act 2009* (Tas), to ensure clarity and avoid duplication.

The new information access scheme should be administered and overseen by the proposed new Information Commissioner (see Recommendation 42).

Recommendation 29: Unless and until Recommendation 28 is adopted and implemented, clarify the interaction between the *Right to Information Act 2009* (Tas) and the *Personal Information Protection Act 2004* (Tas) to ensure personal information requests are handled under the *Personal Information Protection Act 2004* (Tas):

> **Recommendation 29.1:** Amend clause 6(1) of the *Personal Information Protection Act 2004* (Tas) to replace the current two-stage process with a single, clear, and enforceable right of access to personal information. Access should be mandatory (not discretionary), subject only to limited and clearly defined exceptions.
>
> **Recommendation 29.2:** Embed key procedural protections in the *Personal Information Protection Act 2004* (Tas), including statutory timeframes, internal and external review rights, and the obligation to provide reasons for decisions – mirroring safeguards in the *Right to Information Act 2009* (Tas).
>
> **Recommendation 29.3:** Require all public authorities to report annually on the volume, timeliness, and outcomes, of personal information requests. This data should be collected centrally and published to ensure transparency and accountability, similar to existing *Right to Information Act 2009* (Tas) reporting obligations.

Chapter 6: Vexatious and problematic use of RTI

1. The problem

The lodging of problematic requests for information has been an increasing area of concern in many jurisdictions with no consistent approach in how best to process such requests. Legislation such as the *Right to Information Act 2009* (Tas) *('RTI Act')* respond to, and are shaped, by their surrounding information environment. In this third decade of the 21st century, the Tasmanian information environment is considerably different from when the *Freedom of Information Act 1991* (Tas) ('*FOI Act*') was drafted; has experienced several generations of change since the *RTI Act* was enacted in 2009; and has even changed dramatically since the beta testing of Chat GPT-3 in 2020. Increasing weaponisation of information, associated with the ease in quickly generating a multitude of applications, raises concerns about the capacity of the RTI framework. These concerns are even more pressing given that the trigger for the application of section 20(b) of the *RTI Act* (refusal of vexatious applications) focuses exclusively on the particular individual application, and not at the surrounding context in which a specific application is made.

During our consultations, the issue of vexatious applicants and the operation of section 20(b), whereby a public authority can refuse a vexatious application, was raised by many public authorities, large and small. The general themes were a small but growing number of applications and/or applicants that could be seen as problematic, a lack of clear guidance from the Ombudsman and/or a test that severely limited the application of section 20(b) and the impact upon staff in terms of workload and/or wellbeing of staff (requests for personal health and leave details or possible distribution of information on social media).

The key concern is the lack of mechanisms under the *RTI Act* to manage vexatious applicants or patterns of unreasonable conduct. Most public authorities conceded that it was a difficult balance between a vexatious application versus applicant and that an unreasonable person might nonetheless make a reasonable request, and *vice versa*. The Right to Information ('RTI') Manual 2010 provides little guidance, but that has been expanded in relation to a small number of considerations set out in Guideline No.2/2010. As will be seen in the survey of other jurisdictions below, most jurisdictions have acknowledged that the problem of vexatious applicants is one that needs more detailed guidance.

Some larger public authorities raised concerns about particular applicants, but the real problem is clearly a more pressing and impactful feature of RTI management at the local government level. The implications for local councils are compounded by

small numbers of staff, resource restrictions, general lack of support for local government RTI delegates, and the feeling of being caught between pressure from a persistent applicant and other staff whose personal details or work performance are the subject of RTI requests. It was confronting for us as Reviewers to listen to RTI delegates, especially at local government level, relate the impact that a small number of applicants/requests have had on their professional and personal lives. Anecdotally, it was relayed to us that at a Mayors' meeting in 2018 there were only approximately three councils that raised the issue of vexatious applicants. At a more recent meeting of Mayors, the opposite was true: only around three councils did *not* rate vexatious applicants as a troublesome issue.

In the early era of 'Open Government' minimal thought was given to managing the activity of applicants. A plethora of terms and phrases have been used to describe 'problematic' users of review systems including 'troublesome', 'serial', 'frequent flyers', 'frivolous', 'vexatious' and 'unreasonable'. In the area of judicial review, the term 'vexatious litigant' is a fairly comprehensive, well known and restrictive label. No term satisfactorily encompasses the full range of problematic users for mechanisms like RTI. Not all problematic users should be controlled or limited: for example, an award winning journalist who lodges hundreds ofRTI requests a year or an obsessive complainer who eventually exposes malpractice within local government.

However, the issue of problematic users within Australia, and internationally, has been attracting more frequent attention and, consequently, increasing responses from review bodies. Furthermore, the high volume (or percentage) of work for complaint-handling institutions dealing with a small number of problematic users poses some important challenges to the default assumption in administrative law literature, and theory, that all complainants are equal and/or deserve equality of treatment or unlimited access to administrative justice. The matter of problematic users raises important questions about administrative justice that are fundamentally at the heart of Australia's administrative review system. To what extent can the imposition of a democratically enforceable right to information be limited or restricted for the purpose of ensuring equal access for all applicants and potential applicants? To what extent should the fiscal struggles or restraints imposed upon government institutions (especially small agencies or local governments) permit the discretionary limiting of access to the information in their custody? Until recent years, these questions were hardly raised, and the automatic response on the rare occasion when they were raised would be that each case should be treated equally on its merits and budgetary restraints should be applied equally to all applicants. This viewpoint is clearly reflected both in section 20(b) of the *RTI Act* as well as in the Ombudsman's RTI Manual 2010.

The underlying assumption in administrative justice of individualism, and the 'first in - first served' approach of administrative law, is challenging in the context of

problematic users, particularly for complaint-handling bodies. Most jurisdictions in Australia have statutory provisions, policies or guidelines differentiating between certain categories of applicants. However, issues arise in determining how to apply, and when to apply, these rules to problematic users. There are a number of factors affecting the application of the rules including: the variability in types of complaints; the sporadic nature of problematic complainants; and the changeability of a particular complainant's motives and personality.

Attempts to use detailed, prescriptive and complex legislative provisions to manage a constantly changing problem or to grant unfettered discretion to target certain 'known' individuals are too cumbersome and/or undermine fairness and the very rights embedded in the *RTI Act*. A more flexible and multifaceted approach is required, and we desperately need a more active approach by the Ombudsman. Many RTI delegates we consulted in our Review, especially at the local government level, feel isolated, in difficult territory and unsupported, when dealing with a small number of individuals. In some cases, line managers gravely concerned about the psycho-social wellbeing of their RTI staff have intervened to refuse RTI requests at the risk of subsequent adverse determinations by the Ombudsman. Often RTI delegates are waiting a considerable time for a final Ombudsman determination to endorse or reject their chosen approach (or the approach of their senior management) to particular applicants. Those problematic applicants in the meantime are making multiple further requests and/or criticising RTI delegates for delays in processing their requests: delays that often trigger further requests. The Ombudsman's 2010 Guidelines and RTI Manual are brief and outdated and, on this particular issue, are inconsistent with each other. In addition, training is scarce, and accessing timely advice from the Ombudsman's Office has proved difficult for many public authorities.

A complaint from many we consulted was that they found it difficult to pursue the option of section 20(b). The Ombudsman has in several cases reiterated that the primary approach is to treat the application as vexatious rather than to consider the actions or the motives of the applicant vexatious. There appears to be only one case on the Ombudsman website which offers any detailed guidance in addition to Guideline No.2. That decision is *Stephen Crothers and Department of Healt*h (2024). The Ombudsman, over several pages (paras 13-37), sets out the detailed considerations needed to be taken into account before determining that an RTI application is vexatious. In that particular case, many of the problems identified in the Integrity Commission's 'Investigation Gatehouse' were present, including breaches of procedural fairness, the tone used by the RTI delegate, the failure to give adequate weight to the public interest and the legal right to request information.

More extensive RTI Guidelines would assist, and the NSW 'Managing Unreasonable Conduct by a Complainant Manual' (2021) could usefully be more closely incorporated in that guidance. In many cases the RTI issue is only one aspect of a

multifaceted set of problems with a particular individual that reaches the threshold of amounting to unreasonable conduct, of which the RTI request may be the least problematic element. Interestingly the Tasmanian Ombudsman is acknowledged as one of the partners in the joint project that led to the NSW Manual, yet there are only a couple of references to aspects of the Manual in the general area of the Tasmanian Ombudsman's portfolio and none specifically in dealing with applicants under the *RTI Act*. Following our visit to one regional Council the RTI delegate ensured that Council subsequently adopted a policy based on the NSW Manual.

2. A problem with no simple solution

The jurisdictional summaries and table below illustrate the complexity and variance in approaches in trying to deal with all the issues raised by problematic users of RTI frameworks. These issues stretch from trying not to infringe an applicant's rights to the unacceptable emotional toll on RTI delegates subject to malicious personal attacks. Managers are obliged to protect their staff from harm arising from such extreme behaviour and, in a number of our consultations, we were joined by the managers of RTI delegates who were clearly concerned about the impact on their staff.

Whatever approach is adopted there must be a high threshold for declaring a request frivolous, vexatious, or problematic. Requesters should not be unfairly denied the opportunity to make genuine requests, or be solely judged on previous encounters. It is not enough that a request be annoying and inconvenient: there needs to be a higher threshold for rejection of that request. However, applicants also need to avoid misusing the right bestowed upon them and there must be exemptions from disclosure for those who refuse to relent in their persistent misuse. Sensitive judgment calls are required and, by definition, those judgment calls will never be simple. But a more flexible and clearer approach is urgently needed.

At the end of this section is a proposed expanded Ombudsman's Guideline. The discussion and table below indicate that there are a number of pathways/methods the Ombudsman could decide to follow. Importantly, as the information environment changes, the Ombudsman needs to adopt the relevant Guideline proactively rather than relying on an unchanged Guideline for the past decade. Artificial Intelligence has enhanced the capacity for individuals to issue numerous applications worded and timed to place maximum pressure on RTI delegates (whether by volume, or carefully scheduled to impact processing times to attract external criticism of the RTI delegate's performance) whilst ensuring that each request does not technically trigger the exemption in section 20(b).

3. Comparison with other jurisdictions

We examined ‘vexatious user’ provisions in equivalent legislation in other Australian jurisdictions to get a better understanding of how the issue is managed elsewhere.

Table 10: Overview of vexatious users provisions across jurisdictions (May 2025)

Jurisdiction	Is there a vexatious use provision?	How is it activated?	Can it be externally reviewed?
Commonwealth	*Freedom of Information Act 1982* (Cth) Yes.	The Information Commissioner may, by written instrument, declare someone to be a ‘vexatious applicant’. They may do so either on their own initiative or on the application of an agency or Minister (s 89K).	The Administrative Review Tribunal can review s 89K decisions
Victoria	*Freedom of Information Act 1982* (Vic) No.	The Information Commissioner does not have the power to declare an applicant vexatious, however s 49(g) enables the Information Commissioner to determine not to accept an application for review or dismiss a review at any stage if the application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.	No special provision. The Information Commissioner must set out the reasons for the decision (s 49G(4))
New South Wales	*Government Information (Public Access) Act 2009* (NSW) Possibly.	NSW Civil and Administrative Tribunal (‘NCAT’) may impose a ‘restraint order’ on a person who makes 3 applications within 2 years that ‘lack merit.’ The applicant must then apply to NCAT for approval before making any other requests (s 110). NCAT may refuse to review or deal further with a review of a decision of an agency if it is satisfied that the application is frivolous, vexatious, misconceived, or lacking in substance (s 109).	No special provision for review in either case.
Queensland	*Right to Information Act 2009* (Qld) Yes.	The Information Commissioner may declare a person to be a vexatious applicant if satisfied that the applicant has repeatedly engaged in access actions, and that the course of conduct was an abuse of process, or the present request would involve an abuse of process or be manifestly unreasonable (s 114(2)). The person may then be barred from making any applications	There is no special provision for review; a person subject to a vexatious applicant declaration can apply to Queensland Civil and Administrative Tribunal for review. The affected person must have the opportunity to make submissions before a

Jurisdiction	Is there a vexatious use provision?	How is it activated?	Can it be externally reviewed?
		without written approval from the Information Commissioner (s 114(5)).	declaration is made (s 114(3).
South Australia	*Freedom of Information Act 1991* (SA) Yes.	Agencies may refuse to deal with applications if such applications would substantially and unreasonably divert the agency's resources (s 18(1)), or if the application is part of a pattern of conduct that amounts to an abuse of the right of access, or is made for a purpose other than to obtain access to information (s 18(2a)).	No special provision. Under s 18(8) such a finding is a determination subject to the ordinary processes of review. Written reasons must be given (s 18(5)-(6)).
Western Australia	*Freedom of Information Act 1992* (WA) No.	The Information Commissioner does not have the power to declare an applicant vexatious, however, the Information Commissioner may decide not to deal with a complaint if it is frivolous, vexatious, misconceived or lacking in substance (s 67).	The Information Commissioner must give reasons in writing (s 67(2)). Under s 85(4) there is no appeal in relation to a decision of the Commissioner as to whether or not to deal with a complaint, which covers s 67 decisions.
Tasmania	*Right to Information Act 2009* (Tas) Yes.	The public authority or Minster can refuse an application if, in their opinion, it is 'vexatious' or 'remains lacking in definition after negotiation entered into under s 13(7)' (s 20).	No special provision. Written reasons for the decision must be provided (s 22).
Australian Capital Territory	*Freedom of Information Act 2016* (ACT) Yes.	A respondent may refuse to deal with an access application if the application is frivolous or vexatious (s 43(1)(b)).	No special provision.
Northern Territory	*Information Act 2002* (NT) Yes.	On the application of a public sector organisation, the Information Commissioner may declare that a person is vexatious if over a period of time, the person has repeatedly applied for government information, and whose applications were unnecessary, improper, made to harass, obstruct or otherwise interfere with the operations of the organisation (s 42). That person is then only able to make an application to the public sector with the written permission of the Commissioner (s 42(3)).	Under s 154, no one is entitled to review a decision of the Information Commissioner under the Act.
New Zealand	*Official Information Act 1982* (NZ)	An official information request made in accordance with s 12 may be	No special provision.

Jurisdiction	Is there a vexatious use provision?	How is it activated?	Can it be externally reviewed?
	Yes.	refused if the request is frivolous, or vexatious or if the information requested is trivial (s 18(h)).	
Canada	*Access to Information Act 1985* (Canada) Yes.	The head of a government institution may seek the Information Commissioner's written approval to decline to act on an access request if, in the head of the institution's opinion, the request is vexatious, made in bad faith, or an abuse of the right to make a request for access to records (s 6.1(1))	No special provision.
United Kingdom	*Freedom of Information Act 2000* (UK) Yes.	Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious (s 14(1)). Where a public authority has previously complied with a request for information, it is not obliged to comply with subsequent, identical, or substantially similar requests, unless a reasonable interval has elapsed between compliance with the previous request and making the new one (s 14(2)).	There is no special provision. The general process starts with an internal review (s 17(7)). If a requester is not satisfied following their review outcome, they can appeal to the Information Commissioner (s 50). There is no obligation to carry out a public interest test or explain why a request is vexatious.

3.1. Tasmania

The right to information pursuant to the *RTI Act* (section 7) is a right to be provided with information in accordance with the Act, not an absolute right. The public authority or Minister may refuse an application if it is 'vexatious' or 'remains lacking in definition after negotiation entered into under section 13(7)' (section 20(b)).

The existence of vexatiousness depends on the opinion of the decision maker. The Ombudsman has stated that:[181]

> Note in this respect that it is the application that must be vexatious, not the applicant. This provision is not similar to a "vexatious litigant" provision – it is not the conduct of the applicant which is at issue, or their intentions, but the nature of the application. Importantly also, the issue of vexatiousness depends on the opinion of the decision maker, but this must be an opinion which is reasonably held, and is based on the character of the application alone.

[181] Ombudsman Tasmania, *Right to Information Act 2009 Tasmania: Ombudsman's Manual* (Manual, July 2010) 29.

The Ombudsman has defined 'vexatious' in line with the Macquarie Dictionary definition which means 'instituted without sufficient grounds, and serving only to cause annoyance'.[182]

Prima facie, the position of the Ombudsman in the RTI Manual 2010 is unambiguous: the determination to reject an application for information on the basis of vexatiousness must be made exclusively by reference to the application itself. However, in the same year as the publication of the Manual, the Ombudsman also published Guideline No. 2/2010 'In Relation to Refusal of an Application for Assessed Disclosure Under the *Right to Information Act 2009*, s 20'. In considering whether an application is vexatious within the terms of section 20(b), the following circumstances can be considered:

(a) The objects of the Act as stated in section 3; and

(b) Whether the application might be refused under another more specific provision, for instance section 19 and other elements of section 20 in which case the more specific provision should be applied.

Depending on the circumstances, the factors for consideration may also include:[183]

(a) the wording of the application and whether it is intemperate, obscure, unreasonably long, unreasonably complex, or otherwise inappropriate;

(b) the stated or apparent purpose of the applicant in making the application and whether that purpose Is consistent with the objects of the Act; and

(c) whether the making of the application is part of a pattern or course of conduct by the applicant.

The Ombudsman concluded in 2010 that, in light of the objects of the Act, an opinion that an application is vexatious should not be lightly reached.[184] That is an entirely understandable conclusion, but the reality remains that for the past 15 years RTI decision-makers (and their managers), confronted with individuals making multiple requests for information, have had to operate on the basis of an apparent inconsistency between the Manual and Guideline No 2.

3.2. Commonwealth

Section 89K of the *Freedom of Information Act 1982* (Cth) provides that the Information Commissioner may declare a person to be a vexatious applicant, following repeated FOI access actions involving an abuse of process, or in a limited

[182] Ombudsman Tasmania, *Right to Information Act 2009* Guideline No.2, 'Guideline in Relation to Refusal of an Application for Assessed Disclosure *under the Right to Information Act 2009*, s 20' (2010), 3.
[183] Ibid (emphasis added).
[184] Ibid.

range of other circumstances specified by section 89L. An 'abuse of process' includes (but is not limited to):[185]

- harassing or intimidating an individual or agency staff
- unreasonably interfering with the agency's operations
- using the *FOI Act* to circumvent access restrictions imposed by a court.

The Information Commissioner does not make vexatious applicant declarations lightly. An agency or minister who applies for a vexatious applicant declaration must prove that the declaration should be made. The individual concerned will have the opportunity to make written or oral submissions in response to an application to declare them a vexatious applicant.

3.3. Victoria

Section 49G(1) of the *Freedom of Information Act 1982* (Vic) allows the Information Commissioner to determine not to accept an application for review or dismiss a review at any stage if the application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith. However, the Information Commissioner does not have a general power to declare an applicant or application vexatious. The 2023 Victorian parliamentary inquiry received a number of submissions seeking reform and undertook a detailed comparison with NSW and Queensland.[186] The Inquiry made a recommendation for the Information Commissioner to have the power to declare an applicant vexatious.

3.4. New South Wales

New South Wales also does not have a specific/explicit vexatious applicant provision. Instead, under section 110 of the *Government Information (Public Access) Act 2009* (NSW), the NSW Civil and Administrative Tribunal ('NCAT') can impose a restraint order on a person if it is satisfied that at least three applications (to one or more agencies) have been made in the last two years, and that these applications 'lack merit.'

Section 110(2) provides that an application lacks merit where:

- The agency decided the application by refusing to deal with the application in its entirety.
- The agency decided the application by deciding that none of the information applied for is held by the agency.

[185] Office of the Australian Information Commissioner, 'Vexatious applicant declarations': https://www.oaic.gov.au/freedom-of-information/information-commissioner-decisions-and-reports/vexatious-applicant-declarations.
[186] Parliament of Victoria, Integrity and Oversight Committee, *The operation of the Freedom of Information Act 1982 (Vic)* (September 2024), 187-191.

- The applicant's entitlement to access lapsed without that access being provided (e.g. from failure by the applicant to pay any processing fee).

A person who is subject to a restraint order cannot then apply to NCAT for approval for the making of an FOI application without first serving notice of the application for approval on the agency concerned and on the Information Commissioner. In deciding whether to approve the making of an application by a person the subject of a restraint order, NCAT can consider whether the proposed application is frivolous, vexatious, misconceived or lacking in substance. It can also consider whether the applicant has engaged in conduct designed to harass, cause delay or detriment, or to achieve another wrongful purpose.

In *Pittwater Council v Walker,*[187] Deputy President Hennessey held that the fact that an application is 'frivolous, vexatious or misconceived' could not of itself activate section 110. Rather, the main consideration when dealing with repeat FOI applicants is whether the number of applications made to an agency about the same or similar issues has an unreasonable impact on agency resources. This is a practical test that does not require an assessment of the applicant's intention or motive.

3.5. Queensland

Under section 114 of the *Right to Information Act* (Qld) ('*RTI Act* (Qld)'), the Information Commissioner can declare a person to be a vexatious applicant. To be declared a vexatious applicant, the Information Commissioner must be satisfied that a person has repeatedly engaged in access actions, including one or more of the following:[188]

- A repeated engagement that involves an abuse of process for an access action. In deciding whether a person has repeatedly engaged in an abuse of process, an agency can consider whether the requests were the same or substantially the same as previous applications, and whether the applicant had a reasonable basis for seeking access.
- A particular access action in which the person engages involves, or would involve abuse of process.
- A particular access action in which the person engages that would be manifestly unreasonable.

The *RTI Act* (Qld) includes in section 114(8) specific examples of applicant actions that are an abuse of access, including:[189]

[187] [2015] NSWCATAD 44, [64]-[65].
[188] Office of the Information Commissioner (Queensland), 'Vexatious applicant declarations': https://www.oic.qld.gov.au/guidelines/for-government/access-and-amendment/vexatious-applications/vexatious-applicant-declarations.
[189] Ibid.

- Harassing or intimidating an individual or employee in relation to the access action.
- Unreasonably interfering with the operations of the agency in relation to the access action.
- Seeking to use the Act for the purpose of circumventing restrictions on access to a document.
- Common law grounds also include duplicate proceedings already pending or determined, the making of unsubstantiated or defamatory allegations in applications, and wastage of public resources and funds.

3.6. Western Australia

Section 67 of the *Freedom of Information Act 1992* (WA) allows the Information Commissioner to decide not to deal with a complaint if it is frivolous, vexatious, misconceived or lacking in substance. However, the Information Commissioner does not have a general power to declare an applicant or application vexatious.

Because agencies cannot refuse FOI applications for being vexatious, the Western Australian Ombudsman practice manual called 'Managing Unreasonable Complainant Behaviour,' is used to assist staff of government agencies in their interactions with complainants in both the Ombudsman general jurisdiction and the WA Information Commissioner's FOI jurisdiction.

The WA Ombudsman suggests that if the term 'vexatious' is used by complaint handlers, this can seemingly judge and label the person and negatively influence how they are perceived within a complaint handling system rather than their specific conduct. Rather, the term used in the guide is 'unreasonable complainant conduct'.[190] This highlights the problem for small jurisdictions like Tasmania where it is easy for individuals to become labelled vexatious with little reference to the merits of their particular RTI request.

3.7. Australian Capital Territory

The *Freedom of Information Act 2016* (ACT) ('*FOI Act* (ACT)'), section 43, provides circumstances in which an agency or Minister may refuse to deal with an access application. This includes where 'the application is frivolous or vexatious', or 'involves an abuse of process' which includes harassment or intimidation of a person, and an unreasonable request for personal information about a person.'[191]

In section 43(1)(b), an example of what constitutes a 'vexatious application' is: 'an application made only to annoy or unreasonably interfere with the respondent's

[190] Ombudsman Western Australia, *Managing Unreasonable Complainant Conduct: Practice Manual* (Manual, June 2009) 15.
[191] *Freedom of Information Act 2016* (ACT), s 43(1)(b).

operations, or for an improper purpose'. This is further defined by the Ombudsman guidelines, where frivolous is defined as having 'little or no weight, worth or importance… or is characterised by a lack of seriousness or sense.' Vexatious means 'instituted without sufficient grounds, and serving only to cause annoyance'.[192] Importantly, the Australian Capital Territory ('ACT') legislation allows for rejection of an application on a range of grounds which include an abuse of process involving 'harassment or intimidation of a person, and an unreasonable request for personal information about a person'.

In the ACT, the vexatious application provision seeks to ensure that the capacity of agencies and Ministers to discharge their normal functions is not undermined by processing unnecessary access applications. Agencies and Ministers are, however, encouraged to use this power only when absolutely required and when the applicant is engaging in unreasonable client behaviour. Agencies and Ministers should consider the following in determining whether an access application is frivolous or vexatious:[193]

- The number of access applications made by the applicant (though this does not automatically make an application frivolous or vexatious).
- The overall number of access applications received by the agency or Minister in the relevant period.
- The subject matter and nature of the applications made by the applicant.
- The applicant's dealings with the agency or Minister.
- Whether the applicant has previously received some or all the information requested, whether under the *FOI Act* (ACT) or otherwise.
- The purposes of the access applications and whether the application is made for a purpose other than the seeking of access to information.

Before refusing to deal with a frivolous or vexatious application, the *FOI Act* (ACT) also requires agencies and Ministers to formally consult with the applicant under section 46.[194]

3.8. New Zealand

Under section 18(h) of the *Official Information Act 1982* (NZ), a request can be refused if it is frivolous, or vexatious or the information is trivial.

To be frivolous or vexatious, it must be plain and obvious to a reasonable person that the request amounts to an abuse of the right to access information. Recognising that

[192] ACT Ombudsman, *Freedom of Information Guidelines*: *Dealing with Applications* (Report, February 2020), 43: https://www.ombudsman.act.gov.au/__data/assets/pdf_file/0027/296037/3.-Ombudsman-Guidelines-Dealing-with-access-applications.pdf.
[193] Ibid.
[194] Ibid., 27.

each request must be considered on its own merits, it is the request not the requester that must be vexatious.[195]

Again, there is a high threshold for declaring a request frivolous or vexatious – requesters should not be unfairly denied the opportunity to make genuine requests. It is not enough that a request is annoying or inconvenient.

In reaching this determination, agencies must consider the nature of the request in light of the surrounding circumstances. Some relevant factors to consider include:[196]

- The burden of the request – a request is more likely to be considered vexatious or frivolous if it would impose an excessive or unreasonable burden on the agency, by virtue of the complexity, volume of information requested, the time and resources required to process it, and the impact on the other operations of the agency. This factor alone will not make a request frivolous or vexatious.
- The purpose or value of the request – a request is more likely to be considered frivolous or vexatious if it lacks serious purpose or value. This factor on its own will not make a request frivolous or vexatious, as there is an inherent value in the release of official information. Agencies also must be cautious about making conclusions that a request lacks purpose or value simply because it is not immediately self-evident to the agency.
- The intention behind the request – if a requester does not genuinely need or want the information but has stated that their intention is to cause disruption, irritation, or distress to an agency, the request will likely be considered frivolous or vexatious.
- The effect of the request on staff – a request is more likely to be frivolous or vexatious if it causes unreasonable harassment or distress to staff (e.g. where the applicant is seeking personal information about staff or if it includes derogatory or defamatory remarks about staff). In this circumstance, the harassment or distress to staff must be unreasonable.
- The language or tone of the request – where a requester's application is offensive, aggressive, offensive or abusive (e.g. threats made against staff or racist language) this will likely be considered vexatious or frivolous. Before declaring such application vexatious, agencies should provide the requester with an opportunity to withdraw their remarks and reframe their request.
- The history and context of the request – while it is the request, not the requester, that must be frivolous or vexatious, agencies can consider the history and context of the request, including previous requests for information. A requester can pursue a grievance or dispute with an agency. However, if the history of the request suggests that the requester has made multiple similar requests, the agency can consider the complexity and frequency of correspondence, whether the request has caused distress to staff, the steps taken by the agency to resolve the dispute, the time and resources that have been required to address the dispute, and the impact that this request has had on the agency's other operations;
- Repeat requests – a repeat request for information that has been sought previously could be regarded as frivolous or vexatious in certain circumstances.

[195] Ombudsman, *Frivolous, vexatious and trivial: A guide to section 18(h) of the OIA and section 17(h) of the LGOIMA* (Report, August 2019) 5.
[196] Ibid.

- Trivial information – in deciding whether the request is trivial, agencies should consider the nature of the information and what is known about the purpose of the request.

3.9. United Kingdom

Under section 14(1) of the *Freedom of Information Act 2000* (UK), a public authority is not obliged to provide a substantive response to a request if the request is vexatious.

The Act does not define what makes a vexatious request, though the United Kingdom Upper Tribunal has held that vexatious could be defined as the 'manifestly unjustified, inappropriate, or improper use of a formal procedure'.[197] If a request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress, then there is a strong chance that the application can be considered vexatious.

The UK Information Commissioner suggests that each case should be considered on its own facts, and public authorities should think carefully about applying section 14.[198] However, section 14(1) should not be treated as a method of last resort, or something to be applied in exceptional circumstances: in some cases it will be easy to recognise that a request is vexatious. The UK FOI Code of Practice provides that 'public authorities should note that the public interest in obtaining the material does not act as a 'trump card,' overriding the vexatious elements of the request'.[199] Again, it is not a finding that a particular individual is vexatious and that any other request made by them can be refused – it is about the request itself.[200]

The UK Information Commissioner provides an extensive and in-depth set of considerations that illustrate both the complexity of the process but the extensive nature of the factors that could be used to treat a request as vexatious.[201] Typical indicators of a vexatious request can include:[202]

- Abusive or aggressive language that goes beyond the level of criticism that a public authority should reasonably expect to receive;

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[197] *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013), cited in Information Commissioner's Office, *Dealing with vexatious requests (section 14 Freedom of Information Act) (*Report) 19.
[198]Information Commissioner's Office, *Dealing with vexatious requests (section 14 Freedom of Information Act)* https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/ (Last date accessed 27 August 2025).
[199] *Freedom of Information Code of Practice* (UK Cabinet Office) 4 July 2018, 25.
[200] UK Office for Nuclear Regulation*, Dealing with Vexatious Freedom of Information (FOI) Requests* (Manual, February 2021) 4.
[201] Information Commissioner's Office (UK), *Dealing with vexatious requests (section 14 Freedom of Information Act)* https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/ (Last accessed 27 August 2025).
[202] UK Office for Nuclear Regulation*, Dealing with Vexatious Freedom of Information (FOI) Requests* (Manual, February 2021) 4.

- Where the effort required to meet the request is so grossly oppressive in terms of the strain on time and resources that the authority cannot reasonably be expected to comply (no matter how legitimate the subject matter, or valid the intentions of the requester);
- Targeting correspondence towards a particular employee or office holder against whom they have some personal enmity;
- Attempting to re-open an issue that has been comprehensively addressed by the public authority;
- Making unsubstantiated accusation against the public authority or employees;
- Frequent and overlapping requests;
- Where the requester has stated that it is their intention to cause annoyance or disruption to the public authority;
- If the request lacks any clear focus, or seems to be designed for the purpose of 'fishing' for information without any idea of what might be revealed;
- The matter being pursued is trivial, and the authority would have to expend a disproportionate number of resources to meet the request;
- Where the requester has no obvious intent to obtain information;
- Frivolous requests where the subject matter is inane or extremely trivial, and the request lacks any serious purpose.

3.10. Canada

Under section 6.1(1) of the *Access to Information Act 1985* (Canada), the head of a government institution may seek the Information Commissioner's written approval to decline an access request if, in their opinion, the request is vexatious, made in bad faith or constitutes an abuse of the right to make a request.[203]

According to guidelines issued by the Information Commissioner, the term 'vexatious' carries the same meaning as it does in everyday usage.[204] In the context of access to information law, vexatious access requests are those that are made to embarrass, harass, or cause annoyance and trouble. They must be more than merely an inconvenience to the institution. To determine whether a request is vexatious, the Commissioner can consider the history of the request, and the number, scope and pattern of previous requests.[205]

A request made in bad faith involves a conscious wrongdoing, that is, when it is made primarily for an improper or dishonest motive, or with an intention to mislead or deceive (not to obtain information).

An abuse of the right to make a request occurs when an access request exceeds the limits of the legitimate exercise of that right. The Commissioner will focus on the

[203] Information Commissioner of Canada, 'Investigations: Commissioner's approval to decline to act on an access request': https://www.oic-ci.gc.ca/en/information-commissioners-guidance/commissioners-approval-decline-act-access-request.
[204] Ibid.
[205] Ibid.

scope, nature and cumulative effect of the request. This includes whether the request is overly broad, whether it was made for a purpose other than obtaining documents, and whether acting on the request would overburden the institution.[206]

The institution bears the burden of establishing this. Subsection 6.1(1) specifies that it is the access request, not the requester that must be vexatious.

4. Suggested Ombudsman Guideline

An expanded guideline for the Tasmanian Ombudsman that would provide agencies with improved guidance to handle potential problematic use of RTI by applicants (e.g. weaponising RTI in disputes with local government, lodging numerous requests, or a series of minimal requests to avoid volume restrictions) would be a welcome contribution. Below is a draft of an initial Guideline that could be modified and then issued by the Ombudsman.

4.1. Guideline on vexatious and problematic use of the *RTI Act*

It is the application, not the applicant that must be vexatious under section 20 of the *Right to Information Act 2009* (Tas) (‘*RTI Act’*). However, public authorities may consider the history and context of the application, including previous applications for assessed disclosure, in deciding whether an application is vexatious. Public authorities should also consider their own conduct in deciding to apply this provision.

Vexatious requests will often arise in the context of longstanding grievances or disputes. When an application is made in the context of a dispute, a public authority may refuse an application where the applicant’s approach is determined to be ‘excessive’ or ‘disproportionate.’

An application is more likely to be vexatious if it occurs against a background of long and complex correspondence/applications that have taken significant time and resources to address, and have had a significant impact on the staff, and an agency’s other operations. However not all vexatious applications will necessarily be part of a dispute.

Factors that indicate vexatiousness (and/or an excessive or disproportionate approach) include (but are not limited to):

- The complexity and frequency of the requester’s correspondence with the public authority (including the number of previous related applications).
- The stated or apparent intention of the applicant. Is the applicant using the RTI framework to genuinely seek information consistent with the objects of the Act, or is their apparent primary aim to disrupt the public authority, or are they seeking to exploit the RTI process in disputes with local government etc?.

[206] Ibid.

- The conduct of the applicant in pursuit of their grievance or dispute (e.g. whether they have targeted specific staff, caused distress to specific staff, or raised safety concerns).
- The time and resources that have been required to address the dispute and the consequential impact on the public authority's other operations.
- Steps taken by the public authority to resolve the dispute (e.g. whether it has been conclusively resolved already, whether the public authority has contributed to the protracted nature of the applicant's requests, whether the applicant's numerous requests are justified by reference to the conduct of the public authority).

The set of indicators below, adopted from the Office for Nuclear Regulation (UK) policy on dealing with vexatious FOI requests,[207] adds more detail to the above factors. These indicators should assist public authorities and applicants to more easily navigate the use of section 20 of the *RTI Act*. In particular, the public interest factors in schedule 1 of the *RTI Act* should be balanced against the factors set out below:

- Abusive or aggressive language – the tone or language of the requester's correspondence goes beyond the level of criticism that a public authority or its employees should reasonably expect to receive.
- Burden on the authority – the effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester.
- Personal grudges – for whatever reason, the requester is targeting their correspondence towards a particular employee or office holder against whom they have some personal enmity.
- Unreasonable persistence – the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.
- Unfounded accusations – the requester makes completely unsubstantiated accusations against the public authority or specific employees.
- Intransigence – the requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the authority.

[207] Office for Nuclear Regulation, *ONR Policy: Dealing with vexatious Freedom of Information (FOI) requests*, (February 2021) available at: https://www.onr.org.uk/media/i3pjuiyz/dealing-with-vexatious-foi-requests.pdf (Last accessed 9 June 2025).

- Frequent or overlapping requests – the requester submits frequent correspondence about the same issue, or sends in new requests before the public authority has had an opportunity to address their earlier enquiries.
- Deliberate intention to cause annoyance – the requester has explicitly stated that it is their intention to cause disruption to the public authority, or is a member of a campaign group whose stated aim is to disrupt the authority.
- Scattergun approach – the request appears to be part of a completely random approach, lacks any clear focus, or seems to have been solely designed for the purpose of 'fishing' for information without any idea of what might be revealed.
- Disproportionate effort – the matter being pursued by the requester is relatively trivial and the authority would have to expend a disproportionate amount of resources to meet their request.
- No obvious intent to obtain information – the requester is abusing their rights of access to information by using the legislation as a means to vent their anger at a particular decision, or to harass and annoy the authority, for example, by requesting information which the authority knows the requester to possess already.
- Futile requests – the issue at hand individually affects the requester and has already been conclusively resolved by the authority, or subjected to some form of independent investigation.
- Frivolous requests – the subject matter is inane or extremely trivial and the request appears to lack any serious purpose. The request is made for the sole purpose of amusement.

5. Recommendations

Listed below are our recommendations in relation to vexatious and problematic use of the *RTI Act*.

5.1. Short term/administrative

Recommendation 30: The Ombudsman to issue an extended and updated Guideline No.2 'Guideline in Relation to Refusal of an Application for Assessed Disclosure under the *Right to Information Act 2009* (Tas), section 20'.

5.2. Longer term/legislative

Recommendation 31: Section 20 renamed to ‘section 20 Problematic Use of *Right to Information Act 2009* (Tas).’

Recommendation 32: Section 20 amended to insert new subsection (c) ‘is an application which, in the opinion of the public authority or Minister, is unreasonable or constitutes a misuse use of this Act.’

Chapter 7: Ombudsman

1. The critical leadership role of the Ombudsman

It is impossible to overstate how critically important the role and the performance of the Ombudsman and their Office is to Tasmania's Right to Information ('RTI') framework and to the achievement of the three-fold objectives articulated in section 3 of the *Right to Information Act 2009* (Tas) ('*RTI Act'*). The Ombudsman's central role manifests through:

- Monitoring of the culture and practice of required, routine, active and assessed disclosure.
- Standard setting in the issuance of Guidelines and determinations of assessed disclosure decisions.
- Compliance with the requirements of the *RTI Act* and the obligations on RTI delegates.
- Determining requests for assessed disclosure when applicants are dissatisfied with an original RTI decision and/or an internal review of that decision.
- Providing training on interpretation and application of the *RTI Act* to RTI delegates.
- Providing guidance on the interpretation and application of the *RTI Act* to RTI delegates and citizens.

There has been significant improvement in the efficacy of the Ombudsman in the last 12-18 months (substantially reducing the backlog of external reviews, declining number of days to complete external reviews, setting clear requirements for the public interest test, regular issuance of standard setting newsletters and a recorded training session). These improvements have come after extensive criticism of a long period of excessive delays in reviews, limited provision of training (face to face and online), failure to issue more recent and updated Guidelines and leaving citizens and RTI delegates to try and navigate the *RTI Act* with an outdated RTI Manual (never updated following the issuance of the original Manual in 2010).[208] However, some of the same criticisms persist despite the increasing efficiencies of the Office. While it is generally understood and accepted that the Office of the Ombudsman prioritises its determinative review role, there is nevertheless a yearning for an increased supportive/guidance-providing/advisory/training role which many RTI delegates and officers indicated they would find both affirming and beneficial.

[208] See online copy of the Manual at: https://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0011/455168/100920_RtI_Manual_-_Full.pdf'.

A fully funded and resourced Ombudsman's Office (or alternative structural mechanism such as an Information Commissioner) providing leadership in the interpretation and application of the *RTI Act* is essential. With the appointment of Dr Grant Davies as the new Ombudsman in late July 2025, expectations are high that there will be a change in direction that will rejuvenate the essential elements of Tasmania's RTI framework. With the combination of leadership from the next Premier, the Secretary of the Department of Premier and Cabinet ('DPAC') and the appointment of a new Ombudsman, Tasmania can lead Australia in demonstrating how mainstreaming transparency can help transform democracy, integrity and governance. Sometimes a catalyst is needed for change. The new Ombudsman can be that catalyst for both cultural and operational change.

2. The burden of multiple (competing) roles

Under both the *Freedom of Information Act 1999* (Tas) *('FOI Act')* and the *RTI Act* the Ombudsman has performed a multitude of critical roles. These were summed up by Phoebe Winter in a recent University of Tasmania Honours Thesis:[209]

> The Ombudsman's functions for RTI include providing manuals and guidelines, RTI training, general monitoring of implementation of the *RTI Act* and reporting on operation of the Act.[210] The Ombudsman also externally reviews and can set aside, vary or affirm internal agency review decisions for assessed disclosure applications.

The original design for the Freedom of Information ('FOI') framework in Tasmania did not include a review role for the Ombudsman. Appeals were to be left to the Supreme Court of Tasmania. The option to use the Ombudsman as the central player in the journey to transparency was last minute, driven by lack of alternatives and bureaucratic resistance to any unknown non-Westminster oversight mechanism. The introduction of the Tasmanian Ombudsman in the 1970s was also resisted and delayed for similar reasons.

Several key themes have dominated each era of the Ombudsman's involvement in the evolution of the commitment to open government, and one recurring theme has consistently been the issue of adequate resourcing. For example, 30 years ago when writing of the then newly established role for the Office of the Ombudsman, Sheridan and Snell made the observation that:[211]

> Furthermore, the pivotal role of this office in determining access to government held information is then subject to the constraints of staffing, resources and the mindset of the particular reviewer.

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[209] Phoebe Winter, 'Afraid of the Limelight: Tasmania's Right to Information System Perpetuating Secrecy and Inhibiting Accountability', unpublished honours thesis, Faculty of Law, University of Tasmania (2024), 5.
[210] *Right to Information Act 2009* (Tas), ss 49, 53(3).
[211] Helen Sheridan and Rick Snell, 'Freedom of Information and the Tasmanian Ombudsman', (1993-1996) 16(1) *University of Tasmania Law Review*, 107-159, 107.

The mindset and approach adopted by each Ombudsman, since that last minute inclusion in 1991, has been critical but they have continually struggled with tight resources, and generally adopted a reactive and relatively passive role. It has been left to each Ombudsman to decide their approach to the balance between various functions set out in the earlier *FOI Act* and in the current *RTI Act*. A number of incumbents have tried to balance, despite resource limitations, a full range of activities including public education, training and shared thinking about how to achieve greater levels of transparency in government.

One obvious challenge is that in Tasmania, the incumbent individual has responsibility for a number of roles, including as:

- Ombudsman;
- Health Complaints Commissioner;
- Energy Ombudsman;
- Coordinator of the Official Visitors Program;
- Tasmanian Custodial Inspector; and
- Tasmania's National Preventive Mechanism (NPM).

The justification for this plethora of roles is that a small jurisdiction cannot afford the separate establishment of a distinct office for each key function – despite the fact that in recent years a number of new statutory offices have been established in Tasmania. A key problem is that the varied competing, and often very different, demands on the Ombudsman have the tendency to dilute the focus and energies of the Office. An even allocation of time and focus between each key role would mean that the Ombudsman had less than one day per working week to generally spend on *the RTI Act* and the *Personal Information Protection Act 2004* (Tas) ('*PIP Act*').

Former High Court Justice Michael Kirby has long promoted the view that FOI is the type of legislation that requires 'White Knights', both political and bureaucratic, to help the reform towards its final destination.[212] In Tasmania each successive Ombudsman has struggled with the RTI leadership role especially whilst performing all other statutory functions. Now is the time for an institution willing, and properly resourced, to lead the way to the mainstreaming of transparency in government. There are consequences that flow onto the rest of the system, in the role(s) the Ombudsman decides to prioritise.

[212] Justice Michael Kirby, 'Freedom of Information: The Seven Deadly Sins,' presented to JUSTICE, the British Section of the International Commission of Jurists, Fortieth Anniversary Lecture Series, London Wednesday 17 December 1997, 20.

3. Review of assessed disclosure decisions backlog

A recurrent challenge for all incumbents is the extensive backlog in external reviews. The delays in dealing with external reviews reached unprecedented levels in recent years – at one stage blowing out to a staggering approximately 1000 days. There has been no detailed explanation offered as to how or why the Ombudsman's Office drifted so far off course over the last decade in dealing with external reviews – apart from a general observation of chronic staffing and financial resources problems.

The Environmental Defenders Office ('EDO'), in their 2023 Report on Tasmania's RTI Framework, undertook a detailed analysis of the causes of the backlog by utilising a series of RTI requests to the Ombudsman.[213] The EDO concluded that there was a significant delay between the submission of a draft decision on disclosure by Ombudsman's Office staff for final approval and the finalisation of the request (often 2-3 years).[214] This bottleneck limited the effectiveness of extra resources and staff allocated to the Ombudsman in this period, as the stockpile of drafts awaiting final approval simply grew larger rather than resulting in quicker release. The current position has improved but the time delays remain unacceptable, and the reality of those delays continues to restrict the efficient achievement of other important functions.

The Ombudsman in recent years has focused primarily on addressing the backlog of external reviews and this has led to a decision to limit his activities in training, support and other key areas vital to the functioning of Tasmania's RTI system. The Ombudsman has recognised the ramifications flowing from this focus on external reviews but has postponed much needed action in other areas until the review backlog has been removed. The Ombudsman's Annual Reports over several years have included various statements acknowledging the impact of the backlog on the RTI system and delivery of training by Ombudsman Tasmania to delegates. For example, the 2023/24 Annual Report includes the following statements:[215]

> I am conscious of the detrimental effect of delays in finalising external reviews for applicants and on the whole access to information scheme in Tasmania. I will continue to work to redress this issue and to achieve sustainable staffing levels to ensure it does not recur.
>
> Skill levels and knowledge of the RTI scheme are variable among delegates and relevant training programs are unavailable for many new delegates or those requiring further training.
>
> [D]ue to my limited staffing resources and my necessary focus on clearing the backlog of review decisions, my office has not been able to offer sufficient training or revitalise guidance materials to the extent needed by RTI decision-makers.

And the Ombudsman's Annual Report 2022/23 includes the following:[216]

[213] EDO, *Transparent Failure*, 27-35.
[214] Ibid., 35.
[215] Ombudsman Tasmania, *Annual Report 2023–24* (14 October 2024), 47-48.
[216] Ombudsman Tasmania, *Annual Report 2022–23* (31 October 2023), 43-44.

> There remains a backlog of external reviews, however, and my highest priority is still to eliminate that backlog. I deeply regret the continued negative impact that the delay in finalising external reviews has on applicants and access to information in Tasmania. (page 43)
>
> [T]here is a continuing need for more training of RTI decision makers and updates to my practice manual and guidelines (page 44)
>
> [T]here are major gaps, particularly for new decision-makers and those outside the State Service, in being able to access sufficient training and guidance which has a direct link to issues occurring in the quality of RTI practice and level of errors present in RTI decisions (page 44)

The focus on external reviews and delaying and/or limiting efforts in other areas for so many years has had a serious and negative impact upon Tasmania's RTI scheme. The broader context of the influence of the Ombudsman on the RTI system as a whole was recognised from the inception of the *RTI Act*:[217]

> The issue of timeframe is not just one of resources within the Ombudsman office to deal with FoI, but also one of a need to finetune processes in agencies and in the legislation to ensure that reviews can be dealt with in a more timely and effective manner.

On the eve of the *RTI Act* in 2009, the Ombudsman expressed reservations about the Office's ability to carry out the expected functions under the *RTI Act* without more resources, a restriction compounded by the simultaneous requirement to carry out his other statutory functions:[218]

> Whilst it is presently manageable for the Ombudsman to carry out review functions under the Act, and some limited educational activity, it is unrealistic to expect the Ombudsman to take responsibility for carrying out the full range of functions…. at the same time as fulfilling all of the office's other functions as both Ombudsman and Health Complaints Commissioner.

4. Losing sight of the destination

Instead of balancing the extra resources and staffing allocated by the government over the last 10 years, attention and resources were focussed on reducing the review backlog, with other RTI functions of the Ombudsman's Office seemingly downgraded in priority. Consequently, RTI delegates and citizens have been left with a static and outdated RTI Manual (2010). The frustration of citizens, journalists, and Members of Parliament in attempting to utilise the *RTI Act* for the first time is understandable. As noted in the RTI Uplift Project Discussion Paper, inconsistency between agencies has been a major barrier to achieving transparency in government. Those inconsistencies include: how requests for information are processed; whether receipt of requests is acknowledged; how and when decisions are made to accept requests or waive applications fees; how redactions are made and on what bases; and what information is provided if exemptions are claimed. All of these inconsistencies and other factors interfere with the effective processing of RTI requests. The impact of

[217] Department of Justice, *Strengthening Trust in Government…Everyone's Right to Know: Review of the Freedom of Information Act 1991* Directions Paper, 2009, 55.
[218] Ibid., 54.

inconsistencies, the restricted level of training, and no program of articulating what conduct constitutes best practice and then ensuring that model is met, were all repeatedly identified in most of the submissions we have received from regular users of the legislation.

DPAC's proposed model 'RTI – Information Disclosure Policy' and 'RTI – Information Disclosure Procedures' will go some way to reducing existing inconsistencies. The absence of a uniform government departmental policy in the first decade of the *RTI Act* is surprising and represents a clear lack of leadership on implementation of the RTI framework – both from the Ombudsman and from the Senior Executive Service ('SES'). The protracted process since 2023 to finalise the preparation of, and to subsequently implement, the new policy highlights the low priority given to more effective implementation of the RTI framework. We understand the project was hampered by difficulties in hiring a suitably qualified person to act in the project manager role for several months. Nevertheless, the recruitment difficulties should have attracted a higher degree of prioritisation.

Despite the relatively slow pace of change, the RTI Uplift Project has made significant adjustments and improvements to the practices of major government agencies: a contribution that the Ombudsman seemingly placed on the backburner. The eventual release by the RTI Uplift Project of a Discussion Paper was a helpful update on the Tasmanian State Service ('TSS') perspective on the current state of play in the transparency in government journey. Yet the initiation of the project, the awareness of its general operation (including after the release of the Discussion Paper), and the project outputs, have been relatively non-transparent.

RTI delegates, especially at local government level and in smaller agencies, Members of Parliament, journalists and first-time users have, for the past decade, been relying on an outdated map to the *RTI Act*. Unfortunately, despite: the information environment of Tasmania rapidly changing; the need for new thinking to address changes in the increasingly digitised world of government; the Watt Review lamenting the fragmented and siloed nature of the TSS information regime; and the Commission of Inquiry ('COI') identifying the urgency of the need to navigate the interface between the *RTI Act* and the *PIP Act*; all of us have been bereft of updated guidance.

It is impossible for us to overstate the negativity and profound lack of direction confronted by nearly all users of the *RTI Act* because of the almost exclusive focus of the Ombudsman on the review backlog. The Ombudsman's decision to prioritise the catch-up on external reviews has left most participants in the system struggling. One example from our Review paints a confronting picture. A young RTI delegate in a small regional council with less than six months on the job was struggling with a demanding problematic applicant whose activity was impacting on both staff and elected officials. The inexperienced RTI delegate had been provided with no training,

an outdated manual, and just a few dot points in the 2010 Guidelines. The Council was too small to have a team of RTI officers and so this delegate found themselves isolated and largely left to their own devices in an incredibly demanding and complex scenario: hardly a pathway to mainstreaming transparency in government.

There is a clear expectation that the Ombudsman will provide leadership and active oversight. There is no doubt that resourcing impacts upon how various roles are performed, but it is still critical to try and maintain activity across all areas including training and listening to RTI delegates and the community. There have been both immediate and longer-term consequences from the decision of the Ombudsman to focus on the backlog of external reviews.

First, the unexplained drift into the territory of some RTI review determinations languishing for over four years has opened the RTI system to potential gaming from those inside the government and has sent a clear message to all parties that RTI is relatively unimportant. Upon receipt of difficult RTI applications from journalists, politicians, or other high-profile users, the temptation on government departments to stonewall and leave it to the applicant to make the difficult choice to commence a review process that could be futile and, at the very least, will take a few hundred days, is extremely strong. Even with shorter backlogs of several months it would still be a tempting option to rely on delays in the system for those wanting to defer release of information.

Secondly, the drop-off in the provision of training by the Ombudsman's Office has undermined the capacity and support for at least one generation of new RTI delegates and has meant that the awareness of the RTI framework at the SES level is at best, low key, and attempting to understand the Act is not considered a major priority.

One example demonstrates the difference a small expenditure of time and effort taken from the process of clearing the review determinations backlog and directed to training can make. In September 2024, the Ombudsman's Office conducted a two-hour training session (in person and online) that was recorded and is now available to RTI delegates on request to the Ombudsman. By all accounts the session was well structured, informative and generated many questions. The session also allowed the Ombudsman to set out clear steps for RTI delegates to follow when interpreting and applying the *RTI Act*. We understand the longing that was expressed in many of our consultations for more regular training sessions of the same kind as that delivered in September 2024.

Third, the lack of a consistently updated RTI Manual and the failure to issue more timely Guidelines has introduced widespread uncertainty and lack of clarity into the RTI process. The need for a regularly refreshed RTI Manual was realised from the

beginning: '[t]here is a general consensus that a manual or the like is essential and that it is only of value if it is kept current and reflects current trends.'[219]

Indeed, the original Manual and Guidelines in 2010 were developed and gifted to the Ombudsman's Office by the 2009 Review Team:[220]

> It is within the scope of the review of the *FOI Act* project to develop the first version of the Guidelines, in consultation with the Ombudsman, for use in the implementation of the Right to Information Act.

The failure to produce, since 2010, even a once-off update of the Manual and updated Guidelines is perplexing and constitutes a serious omission.

Fourth, the decision – motivated as it was by limited resources – to focus on external reviews to the almost total exclusion of other RTI responsibilities was unfortunate. It has led over time to the relationship between the Ombudsman and RTI delegates changing. The Office has gone from balancing the output of reviews with supporting delegates with advice, training and importantly easy communication channels to a generally singular focus on completing external reviews. The Ombudsman notes that advice has continued to be regularly provided on an ad hoc basis, a limited training program has continued, and the Ombudsman Tasmania RTI team responds to email and telephone enquiries from public authorities promptly. In addition, their monthly newsletter provides practice tips and encourages questions and advice requests from delegates.

The focus on legalistic reviews was an understandable response to the inadequate and often thin justification for claimed exemptions and very basic application of the public interest test by agencies. But the cut back on resource allocation to other roles led to diminishing levels of communication with RTI delegates in all areas (especially smaller and more remote councils). Many RTI delegates we consulted felt that the balance seems to have shifted so that support and training have declined significantly, replaced by a focus on reactive, critical oversight.

This critical oversight – coupled with adequate training and support – is to be expected in a robust, well-functioning RTI system, whose primary purpose is operating as a 'push model' of transparency. However, a system that leaves RTI delegates – particularly junior or inexperienced delegates – struggling, and feeling vulnerable and unsupported, needs to be more responsive. In our discussions there was a desire for a more supportive, education-oriented relationship, and one that reverted back to an earlier period where both reviews and proactive training (often based on issues arising from external reviews) was in place.

Fifth, the focus on the external review role also seems to have made it more difficult for the Ombudsman and staff to operate with a clear delineation between advisory

[219] Ibid.
[220] Ibid., 55.

and oversight roles. A difficulty that has been approached with caution by Ombudsman and staff. Some delegates report appreciation for the availability and responsiveness of staff to requests for advice and guidance. However, a larger number seemed to have found the process of seeking help to be less than helpful especially where there is difficulty in avoiding giving advice on specific issues (involving potential review cases) and general guidance. We believe that delineation is both feasible and desirable but there seems to be little appetite for it within the Office of the Ombudsman.

RTI systems are not designed to drift without direction, or refreshed directions, as times and challenges change. The initiative of the RTI Uplift Project to commission the development of two online training modules by the UTAS Law Faculty is both long overdue and welcomed. The Ombudsman has made the decision to wait, until the modules are finalised, before any consideration about supplementing the modules with additional training:[221]

> Planning has not occurred for a tailored program of supplementary training, however this will be considered once the training package is more finalised and potential gaps identified. As has been the case for a number of years, however, the ability to conduct an extensive training schedule is restricted by resource constraints and competing priorities (clearing the backlog, updating materials etc).

The lack of follow up and planning for supplementary training is a major concern. Resource constraints and competing priorities should not preclude filling the training gap as quickly as possible – particularly given anecdotal evidence presented to us around the State about the longing for effective training. The preparation of online training modules has been on the agenda since 2023, and planning for their roll-out and for supplementary training by the Ombudsman could have been well advanced by now. However, in response to a failed bid for extra funding in 2023/24 to employ a dedicated training officer the Ombudsman opted to prioritise updating the RTI manual and guidelines.

5. Guidelines and advice

Section 49 of the *RTI Act* is clear: the Ombudsman has a duty to issue and maintain Guidelines and advice. The text of section 49 is as follows:

> 49. Guidelines and advice
>
> (1) The Ombudsman is to issue and maintain guidelines relating to –
>
> (a) the process of disclosing information under all four types of information disclosure referred to in section 12 ; and
>
> (b) the factors to be considered when determining to refuse an application under section 20 ; and

[221] Email to the Reviewers from the Principal Officer, Ombudsman Office on behalf of Richard Connock Ombudsman (11 June 2025).

(c) any other matters he or she considers necessary.

(2) The Ombudsman may, of his or her own motion or on the request of a Minister or principal officer, provide oral or written advice to a public authority or Minister on the operation of this Act.

(3) The Ombudsman is to issue and maintain a manual related to the operation of this Act.

(4) The Ombudsman is to make the guidelines and manual issued under this section available to the public.

(5) The Ombudsman may publish a decision that he or she makes in respect of a review and the statement of reasons related to that decision.

Publishing a Manual and Guidelines in 2010 and two more Guidelines in 2012 and 2013 and no further updated Manual or additional Guidelines in the 12 years since then falls a long way short of 'maintaining'. An exception is the issuing of a Priority Policy (current version dated 22 August 2024), in part to off-set the impact of the back log of reviews. The Ombudsman has repeatedly claimed that the lack of resources is a serious constraint on the ability of the Office to issue and update key guidance documents and advice:[222]

> There are plans to commence updating the Ombudsman's RTI Manual by the end of 2025-start of 2026, but it is not expected that this will be completed until later in 2026 due to resourcing constraints. … An update to current Guidelines and potential release of additional Guidelines is planned for later in 2025.

The maintenance of a manual is a statutory requirement that includes the need for regular updating. We understand that there may be some hesitancy to expend time and resources on producing an updated manual, especially if that revised manual could need further revision if any of the various recommendations of this Review are adopted. In our view that investment is long overdue and potential modifications relatively easy to implement.

Guidelines issued under section 49 have the enormous potential to assist in all four types of disclosure under section 12, assist agencies in processing certain types of requests, deal with a sudden problem such as a large volume of requests to a small agency, or a persistent set of problems like the interface between the *RTI Act* and *PIP Act*. The Ombudsman has used Guidelines rarely and as if they are to remain fixed. In our view, Guidelines are meant to be regularly refreshed, used to apply to new circumstances, and are rules that are meant to support and advise rather than as determinative statements.

A recent decision of the Ombudsman – *Heidi Sandwell and City of Hobart* (June 2025) – sets out the potential and usefulness of ongoing development of Guidelines:

> [58] I take the opportunity, consistent with my powers to provide guidance on the operation of the Act, to clarify the difference between the two provisions and to highlight

[222] Ibid.

> that they are not interchangeable. Each provision has discrete and distinct work to do which is apparent when applying the ordinary principles of statutory interpretation.
>
> [61] In relying on either limb of s10(1), a public authority therefore must be able to clearly establish all of the pre-conditions, in order to refuse an application before assessing it. Compliance with the explicit intention in s3 of the Act, that the maximum amount of official information be released, means that this refusal provision should only be invoked when genuinely necessary. [2] It is very much the exception that a public authority would hold information in a format from which it could not be easily extracted and assessed under the Act.
>
> [62] I further note that, although not a reviewable decision under the Act, concerns about such an administrative decision could come before me under the Ombudsman Act 1978 as a complaint.

These comments are a very useful indication of the Ombudsman's interpretation of how agencies should approach two sections of the Act (sections 10 and 12). Yet for an RTI delegate, let alone a citizen, they would need to search a complex and technical decision record (among several issued that month) to discover this informal guidance. It would be feasible for a new Guideline, extracted from this decision, to be published relatively quickly.

The Ombudsman has been issuing a regular RTI 'Delegate Newsletter' via email alerting subscribers (not available on the Ombudsman's website) to recent review decisions and regularly including practice notes such as explaining the requirements and best practice in redacting information. While this Delegate Newsletter provides a helpful alert function, RTI delegates are, nevertheless, required to read each review decision, keep track of any interpretative or procedural requirements discussed in the decisions, and try to remember which issue of the Newsletter contained an update on a particular aspect. This 'old school' method of providing information (you need to be aware of the existence of the Newsletter to request inclusion on the subscriber list), then individually updating the RTI Manual with your own interpretation of the Ombudsman's analysis, and then recording the practice notes, is exceedingly inefficient and unnecessarily restrictive.

An example of inefficiencies is included on DPAC's Disclosure Log. In September 2024, the Department released the outcome of a request (it is unclear from the Log entry whether this was an active release or an assessed disclosure) for '[c]orrespondence sent to persons responsible for management of right to information requests containing advice or directions on exemptions under the Right to Information Act 2009.'[223] The released information includes a lengthy email chain between RTI delegates, and later in the discussion a staff member from the Ombudsman's Office. The exchange is an attempt to try and pin down exactly what the Ombudsman had said about effective redaction processes. Considerable time

[223] DPAC, 'Right to Information – Information released under assessed disclosures (DPAC)', Disclosure dated 4/09/2024: https://www.dpac.tas.gov.au/__data/assets/pdf_file/0029/376418/RTI-advice.pdf.

and effort could have been avoided if the Ombudsman maintained an updated and searchable RTI Manual that would include guidance on best practices in the redaction of material.

6. Reorientating those heading off track

In 2024 the Integrity Commission reported the findings of its 'Investigation Gatehouse' – an investigation into an allegation that the Department of Health had improperly withheld information the subject of an RTI application dating back to 2017.[224] The problems and the approaches identified by the Integrity Commission in the handling of RTI requests in the Department of Health are, fortunately, not common. However, those problems were easily identifiable at an early stage and preventable. There are some steps that can be taken to minimise the likelihood of RTI delegates and/or agencies losing their way in the interpretation and application of the *RTI Act*.

First, regular fora in which the Ombudsman can hear the experiences of applicants and RTI delegates would be extremely helpful in identifying obstacles to transparency in government. Many of the problems highlighted by the Integrity Commission would have surfaced in such dialogues. Such issues could have included: frustration with processing times, the 'take a number and wait until I get to you' response to questions about delays; novel and convoluted interpretations (i.e. the use of the copyright argument as a basis for exempting information from disclosure, identified in Investigation Gatehouse but also raised in another review by a journalist); and the insistence that well known journalists supply verification that they are indeed journalists.

Second, spot audits by the Ombudsman of an agency's processing of RTI requests could help identify and publicly laud best practice but also expose weaknesses and flaws in agency processes. DPAC commissioned an external audit in February 2025 that reported in March 2025 and the audit report was shared with us.[225] We consider that initiative exemplary and wish the Ombudsman's Office was engaged in that sort of proactive review of the RTI processes of government agencies, obviating the need for DPAC or other departments to engage external consultants. The report identified areas that were working well and potential shortcomings and problems. Even with budget limitations it should be possible to undertake a limited number of spot audits each year. The possibility of a spot audit by the Ombudsman's Office, let alone the conduct of an actual audit, would incentivise government agencies to ensure their processes were back on track and functioning effectively. The issues with the use of

[224] For a copy of the Integrity Commission's Report of the Investigation and its findings see: https://www.integrity.tas.gov.au/__data/assets/pdf_file/0012/759945/report-1-of-2024.pdf.
[225] Department of Premier and Cabinet IA Project: Right to Information (RTI) March 2025 Final Report – WLF Accounting & Advisory.

RTI panels in the Department of Health identified by the Integrity Commission should have been picked up much earlier by the Ombudsman.

Third, regular updating of the RTI Manual and Guidelines with recommended best practices would go a long way to delivering the sort of timely and authoritative guidance that many agencies desire.

Fourth, the Ombudsman is part of a national and international network of Ombudsmen and Information Commissioners that has great potential to share best practices and expertise. Whilst the Tasmanian Ombudsman's website has links to yearly communiques and statements from this network it is difficult to trace a regular flow of ideas, expertise and best practice actively disseminated by the Office. A more proactive approach to dissemination of this type of input would provide a welcome contribution of new ideas and best practice for external jurisdictions.[226]

Fifth, the Ombudsman has been notably silent, at least in the public domain, in response to reports such as the Integrity Commission's 'Misconduct Risks' Report and 'Gatehouse Investigation' Report, the EDO 'Transparent Failure' Report, among others. Mostly it is left to publicity around his Annual Reports. Even critiques in the media are generally not responded to and do not lead to 'own motion' audits. There is a significant opportunity for the Ombudsman's Office to exercise public leadership in response to initiatives such as these and we would very much like to see that role exercised more consistently. Numerous users of the *RTI Act* and *PIP Act* look to the Ombudsman for guidance including Members of Parliament, the SES, journalists, RTI delegates and others. There is a need, and an expectation, for an ongoing dialogue guided by the Ombudsman as to the best path to follow in mainstreaming transparency even though we appreciate that Ombudsmen and Information Commissioners have different approaches and concerns with engaging in public commentary.

There are constant challenges to the effective implementation of the RTI framework including: developments in administrative practice and culture; the relationship between various levels of the TSS and both Parliamentary and Executive Government; changes generated by the COI in the volume and complexity of request, particularly associated with accessing files relating to children in custody and care; or the challenges presented by increasing use of messaging systems like WhatsApp and Signal. In relation to the latter issue, for example, during our Review, a media story circulated about the alleged increasing incidence of the use of encrypted messaging platforms such as WhatsApp and Signal, including by public servants, and questions about whether information shared on such platforms was

[226] The Ombudsman was part of an hour panel session to celebrate 30 Years of RTI in Tasmania on 28 September 2023. We were unable to find any publicly available papers from this session. The Ombudsman was one of five panellists on a lunch time session held by the Community Legal Centres of Tasmania on 17 September 2017 https://www.clctas.org.au/2017/09/clc-forum-right-know/ (Last accessed 10 August 2025).

also disclosable under the RTI framework. It seems to us that the Tasmanian Government since 2014 has pursued a transparency agenda in an *ad hoc* and sporadic manner. In relation to that transparency agenda, it is difficult to ascertain how the Ombudsman has publicly promoted the pursuit of that agenda; encouraged greater uptake of that agenda; and monitored the delivery of key outcomes in pursuit of that agenda.

The passive and static acceptance of the *status quo* is undoubtedly the direct response of an Office that has been restricted by limited resources and overwhelmed by a backlog of external reviews. Nevertheless, a system like RTI, and the difficulties of aligning the *RTI Act* and the *PIP Act*, demand more proactive and positive leadership.

7. Outfitting the Ombudsman to lead the next part of the journey

We sought an ideal budget estimate from the Ombudsman's Office to clear their RTI external review backlog and to effectively perform all their duties and functions in terms of both the *RTI Act* and the *PIP Act*. Set out below is the response from the Ombudsman and details of how this extra resourcing would be applied.

The public should expect a quarterly online update of the Ombudsman's RTI performance in return for a significant uplift in funding. There should be a live dashboard on the Ombudsman's website showing the number of reviews on hand and the date received of the 10 longest reviews on hand. The dashboard should also include the dates of training delivered in the last three months and details of planned training in the next three months. The dashboard should also include findings, and responses by agencies, of recent audits of agency RTI practices.

7.1. Current situation

Recurrent funding for three full-time solely RTI focused positions:

- Principal Officer – Right to Information (Band 8);
- Senior Investigation and Review Officer (Band 6);
- Intake and Assessment Officer (Band 4).

Non-recurrent funding of $100,000 in 2024-25 financial year and $200,000 per financial year thereafter until 30 June 2028.

Non-recurrent funding (combined with savings from unallocated funding in other functions of the Office) has enabled the employment of the following additional staff on a fixed-term basis:

- Investigation and Review Officer (Band 5) x 3.

7.2. Ideal situation

Sufficient budget allocation to allow the ongoing employment of:

- Principal Officer – Right to Information (Band 8);
- Senior Investigation and Review Officer (Band 6);
- Senior Education and Training Officer (Band 6);
- Investigation and Review Officer (Band 5) x 3;
- Intake and Assessment Officer (Band 4).

Additional funding needed would be (approximately):

- 2025-26 – $500,000 ($500,000 for 3 x Band 5 positions, $200,000 for Band 6 position LESS $200,000 non-recurrent funding).
- 2026-27 – $500,000 ($500,000 for 3 x Band 5 positions, $200,000 for Band 6 position LESS $200,000 non-recurrent funding).
- 2027-28 – $500,000 ($500,000 for 3 x Band 5 positions, $200,000 for Band 6 position LESS $200,000 non-recurrent funding).
- 2028-29 (and thereafter) – $700,000 ($500,000 for 3 x Band 5 positions, $200,000 for Band 6 position.

This ideal budget situation would ensure that:

- the historical backlog of external review applications could be fully cleared and would not recur;
- a dedicated officer would be able to coordinate and run a training program for officers of public authorities and the general public;
- The RTI Manual, Guidelines and other guidance materials could be updated and regularly revisited;
- outreach and awareness raising regarding the RTI scheme could occur; and
- investigations under the *Ombudsman Act 1978* (Tas) into issues of concern regarding RTI could occur without significantly impacting the ability of the RTI team to undertake its other work.

8. Recommendations

Listed below are our recommendations in relation to the Office of the Ombudsman.

8.1. Short term/administrative

Recommendation 33: An increase in resources to equip the Ombudsman to carry out all their functions under the *Right to Information Act 2009* (Tas) including training, standard setting, quality control, public promotion of transparency in government in addition to performing external reviews.

Recommendation 34: Immediate updating and quarterly ongoing updates including digitised annotations to the Ombudsman's 'Right to Information Manual' indicating how recent review decisions and Guidelines impact approaches to the interpretation and application of the *Right to Information Act 2009* (Tas).

Recommendation 35: A commitment by the Ombudsman to regular release and updating of Guidelines.

Recommendation 36: Delivery of regular training to all users in conjunction with the online training modules under development by the Right to Information Uplift Project.

Recommendation 37: Provide a deidentified list of all reviews on hand, listing public authorities, date received, and stage of the determination process reached by each review.

Recommendation 38: Undertake a yearly audit on 3-5 agencies on processes for handling Right to Information requests.

Recommendation 39: Facilitate quarterly fora/workshops for public authorities and Ministers subject to the *Right to Information Act 2009* (Tas) – and their principal and delegated officers – where best practice and recent decisions are analysed. Attendance to be publicised (including level of most senior officer from each public authority).

Recommendation 40: The Ombudsman to produce a quarterly online update of their RTI performance. There should be a live dashboard on the Ombudsman's website showing the number of reviews on hand and the date received of the 10 longest reviews on hand. The dashboard should also include the dates of training delivered in the last three months and details of planned training in the next three months. The dashboard should also include findings, and responses by agencies, of recent audits of agency RTI practices.

8.2. Financial

Recommendation 41: The Government to provide the Ombudsman an extra $500,000 yearly for the next three years (see above (under heading 'Outfitting the Ombudsman to lead the next part of the journey') for more detailed budgetary requirements).

Chapter 8: Information Commissioner

1. The need for an Information Commissioner

At the two critical junctures in the history of greater commitment in Tasmania to transparency in government – the drafting of the *Freedom of Information Act* (‘*FOI Act*’) in 1991 and of the *Right to Information Act* (‘*RTI Act*’) in 2009 – little consideration was given to the suitability and capacity of the Ombudsman to perform the various functions assigned to the office. The primary consideration on both occasions was the attraction of cost-saving through the utilisation of an existing office. Furthermore, the various information management roles allocated to the Ombudsman since 1991 (Freedom of Information (‘FOI’), Personal Information Protection (‘PIP’), Right to Information (‘RTI’) and aspects of other legislation) have largely been welded onto the existing framework (alongside the Ombudsman’s multiple other statutory roles) rather than by serious consideration of how best to meet the information management needs of government and Tasmanian democracy in the 21st century. This propensity for ‘tacking on’ information management roles was identified in the 2009 Parliamentary Directions Paper:[227]

> As a small jurisdiction Tasmania has a tradition of combining roles/jurisdictions across a number of justice areas. The review team recommends that the Ombudsman continue to be the review body for the Right to Information Act and that the new Act specifically provide for the Ombudsman to:
>
> - Publish decisions of note as a guide to interpretation of the Act;
> - Prepare and maintain practice guidelines on the application of the legislation;
> - Have greater flexibility and increased powers in determining reviews; and
> - Conciliate applications for review with agreed outcomes having the force of a decision of the Ombudsman.

The lack of appetite to establish a new statutory body rather than tacking on additional responsibilities to an established body with staff, resources and capacity is understandable – particularly if the additional responsibilities are limited to administration of the *RTI Act* and the *Personal Information Protection Act 2004* (Tas) (*‘PIP Act’*). However, as noted in the previous chapter of this Report dealing with the Ombudsman, the passage of time and the accumulation of functions throws doubt on the level of focus and expertise the Ombudsman can bring to their currently limited information management role let alone an extension into the areas of archives,

[227] Department of Justice, *Strengthening Trust in Government…Everyone’s Right to Know: Review of the Freedom of Information Act 1991* Directions Paper, 2009, 2.

records management, digital policy and security and the demands for enhanced information sharing within government and with the community.

The decision to continue with the Ombudsman model has resulted in an information system that is uncoordinated, subject to differing legislative and policy approaches, and that lacks the capacity to react quickly to changes in the information environment. Ombudsmen over the last 34 years, under constant resourcing and staffing pressures, have understandably prioritised the key task of handling RTI external reviews. However, that primary focus has severely limited systemic oversight, regular training, timely issuance of guidelines and the development and updating of policies in a rapidly changing information environment.

Challenges to more effective management of information in Tasmania are not restricted to the operation of the Ombudsman's Office. The Commission of Inquiry ('COI') was scathing of the siloed nature of information held by government departments and the notorious obstacles to sharing of information across those departments. Of course, the primary focus of the COI was on the safety of Tasmania's children, but the observations of the Commission have broader application.

Currently, disparate elements within the Tasmanian information system are allocated and/or pick up specific information tasks and projects with little coordination, appropriate resourcing, or clear delegated decision-making or authority. Generally, many of these tasks fall within the remit of Information Commissioners in other jurisdictions.

An Information Commissioner would address the need in Tasmania for high-level responsibility and oversight to guide interpretation and use of the *PIP Act* and *RTI Act,* as well as filling a need for providing guidance and education for State Servants whose roles impact upon – and are impacted by – the operation of these Acts.

Furthermore, the creation of an office of Information Commissioner would provide an authoritative voice to advocate for sustained investment in whole-of-government digital systems and information management capability, to enable the Tasmanian State Service ('TSS') to have the tools and information needed to reach its full potential and address the risks of digital obsolescence and cybersecurity.

The obstacles to sharing of information between government agencies and the need to remove those obstacles has been recognised within government and there is a project to remove obstacles to sharing of information currently being managed within the Department of Premier and Cabinet ('DPAC'). The Administrative Data Exchange Protocol for Tasmania ('ADEPT')[228] program in relation to data sharing is a welcome

[228] Department of Premier and Cabinet, Administrative Data Exchange Protocol for Tasmania (ADEPT): https://www.dpac.tas.gov.au/divisions/digital_strategy_and_services/policies/digital_data_privacy/adept#introduction (Last visited 14 July 2025).

initiative and based on a set of clear and well justified principles. Yet there is little to assure that all legislative, regulatory and policy making requirements have been met and how this project will be evaluated, its authorisation and how improvements can be made. The objective of the project is to encourage Tasmanian agencies 'to share information within, between and beyond the government in ways that benefit the community'.[229]

Yet despite this mission the pathways for community participation and involvement are largely absent and ADEPT remains agency-centric. In our view, that project could be significantly scaled up with the establishment of a new statutory office with broad, over-arching, whole-of-government responsibilities for information sharing and information management.

The sheer scale and complexity of available information and how to facilitate its sharing requires both a macro, 'bird's-eye' strategic view, as well as an operational, 'on the ground' capacity to intervene with Guidelines, access decisions and deal with difficult issues. One pressing problem is that most legislative schemes such as the *RTI Act*, the *PIP Act* and the *Archives Act 1983* (Tas) *('Archives Act')* etc. all predate most major technological changes in information flow, storage, protection needs and the opportunities and problems of digital governance. In addition, the rethink needed from the outcomes of investigations like the COI compounds the insidious problems that need to be tackled. The move to 'joined up' government illustrates the capacity for day-to-day solutions outpacing the capacity and response time of legislative solutions. In our view, an Information Commissioner, with a mission to increase participation, accountability and stewardship, would assist in the alignment of legislative language, powers, deployment of discretion, and the inclusion of a citizen focus to the development of information sharing initiatives. The pursuit of better administrative arrangements, clearer legal obligations, ongoing professional development (training awareness) and technology capability to support the government's ambitions and the community's needs require the input of an over-arching institution.

In relation specifically to the *RTI Act*, we see the Office of the Information Commissioner fulfilling two key roles. The first is the determinative function to externally review assessed disclosure decisions by RTI delegates. That function, currently performed by the Ombudsman, is fundamental to the RTI framework and an important bulwark against government secrecy. Tasmanians want to be confident in an effective independent oversight process when applications for assessed disclosure are rejected by the public authority in question.

The second role is the one not currently being performed as effectively as we believe it could be: providing leadership, guidance and training to the State Service in

[229] Ibid.

understanding the place of RTI and the importance of the independence of RTI delegates; providing guidance and advice in how to interpret and apply the *RTI Act* (and its relationship with the *PIP Act* and other relevant legislative frameworks) and in the issuance of updated Manuals and regular Guidelines on recurrent issues for determination.

The Ombudsman has been reluctant to be too proactive in engaging with RTI delegates given that their decisions may well be the subject of external review. It is important of course that the two functions are kept separate and distinct. Our expectation would be that in a properly resourced Information Commission, some decision-makers would be designated external reviewers of RTI delegates' assessed disclosure decisions, but that other officers would be designated for the other role of the Office: to provide guidance and support to RTI delegates to help them undertake their responsibilities more effectively and efficiently.

The Information Commissioner could also provide leadership and oversight of information management, policies and practices more broadly – not only in relation to the *RTI Act*. The key would be to balance access to information whilst protecting personal information and ensuring ready access to it by the individuals to whom the information relates. The Information Commissioner would be a one stop shop that would coordinate the way the public sector collects, uses, shares and discloses information, and would provide both an overview of government-wide information initiatives and the leadership to foster access, supply and distribution of information via specific mechanisms like RTI. The Information Commissioner would provide a live and adaptive ability to respond to changing needs within legislation, and build better understanding and practices and trust in the system, whilst ensuring a citizen-centric focus is facilitated. The new office would provide an authoritative voice to advocate for appropriate and sustained investment in government information and communication technology to provide the TSS with the tools needed for information management in the 21st century. The Information Commissioner could:

- Build trust in the State Service use of information by:
    - providing advice to senior executive and subject matter experts across the Service and the State;
    - developing and administering rules under the relevant legislative frameworks that respond to the needs of government and of the community;
    - developing the ability to respond to shortfall in practice on critical issues;
    - providing oversight of decision-making processes; and
    - providing determinations on issues requiring interpretation.

- Facilitate continual improvement in use of information by:
    - encouraging senior executive leadership on relevant matters;
    - exercising authority of internal state service governance on all information matters;
    - fostering information-management capability at decision making, operational and strategic levels;
    - developing and promoting good information custodianship and promoting the role of ethics in decision making; and
    - promoting the role of evidence-based policy and operational design.
- Build capability by:
    - fostering non-government relationships to conduct research and to support insights;
    - fostering broader Tasmanian community participation in information sharing and use; and
    - identifying practical initiatives to make more effective use of information and capability.

The functions would also involve overseeing records and archives functions within the public sector. As TasCOSS noted in their submission:[230]

> The need for a comprehensive and searchable electronic records management system extends beyond contemporary records to include historical records of public authorities. As such, the task to update the records management system is two-fold: to ideally digitise or at least catalogue and centralise the storage of decades of paper-based historical records, and to also ensure all new records are stored in digital, searchable and shareable formats. In order to achieve this significant task, the Tasmanian Government needs to provide resources and training to public authorities and records offices, as well as to community sector organisations which deliver government-funded services to Tasmanians, such as out-of-home care, disability services and housing support.

Any such upgrade in records management must be coordinated and in alignment with both the *RTI Act* and the *PIP Act*.

A recent Ombudsman decision in *Graham Murray and City of Hobart* (June 2025) highlights the limited, fragmented, and uncoordinated approach to records management, the role and approach of the Ombudsman, and the restricted guidance on these issues:

> [69] It is likely that this external review would not have been necessary, had Council kept proper records of its actions under the Act and in relation to Mr Murray. Documents were not saved correctly, could not be located and much of Council's submissions constituted educated

[230] TasCOSS, *Submission to the Independent Review of Tasmania's Right to Information Framework* (March 2025), 9.

> guesses regarding what had occurred due to record keeping issues. This is highly unsatisfactory. Tasmanians have a legislated right to access government held information. This right is frustrated when public authorities fail to demonstrate proper record keeping practices. Council is also reminded that a failure to ensure proper record keeping may constitute a breach of its obligations under the *Archives Act 1983* (Tas). I am concerned by Council's poor record keeping processes in this instance and will be monitoring its record keeping practices in the future to try to ensure that obligations under the Act are met.

This guidance raises a number of issues or questions, both RTI-specific and in general. First, as we noted in Chapter 7 'Ombudsman', the guidance is deep in a long, complex decision and could be read as specific to a single council. Second, how will the Ombudsman undertake the monitoring and how is this issue being addressed and/or monitored in other councils and government agencies?

An Information Commissioner could more effectively coordinate information flow between different elements of information management in Tasmania. In the example from the decision above, this would involve the State Archivist, the Government Chief Information Office, local government and record managers and information custodians, rather than a single, *ad hoc* and limited decision by the Ombudsman.

The information environment in the 21st century requires a flexible and responsive approach to rapid changes in technological advancements and a capacity to scan the horizon for emerging trends and challenges.[231] In all areas – RTI, Personal Information, Archives, records management, data protection and information sharing, there is a need for guidance and leadership and an institution capable of working with agencies to improve their systems on a whole of government basis. Paul Chadwick, the first Victorian Privacy Commissioner summarised what he considered to be the key role as follows:[232]

> The right information
> at the right time
> to the right people
> in the right way
> for the right reason.

No single Tasmanian institution ensures this outcome across the whole information environment. More importantly, with the Ombudsman constrained by limited resources and a focus on the external review function, there has been no other institution ensuring that information management across whole-of-government is aligned with the RTI objectives of accountability, participation, and stewardship. The Information Commissioner could hold the authority for decision-making in instances where there is dispute across government agencies in response to cross-agency and external requests for the sharing of government data and information.

[231] Dr Ian Watt, *Independent Review of the Tasmanian State Service*, Final Report (July 2021), 44.
[232] Email from Paul Chadwick, 2 July 2025.

If Tasmania wants to achieve the Watt Report proposal to build or renew 'idea' partnerships, informed collaboration between the TSS and those external to the TSS will be vital. The delays, fragmented information delivery and often adversarial contest with agencies by those seeking information on government policies and plans will need to be tackled.[233] The timely sharing of high-quality information is the starting point of 'idea' based partnerships. To date, the focus appears to be on internal sharing and sharing with citizens an afterthought at best, or limited to specific partners like UTAS. An Information Commissioner, with a wide-ranging information management mandate, will be an essential and central element in a whole-of-government approach to information management and sharing.

There has been a steady shift away from the Ombudsman model – both within Australia and internationally – to a dedicated Information Commissioner model with a broad functional remit. Over the last two to three decades the functions and roles of Information Commissioners have expanded from simply an RTI-centric role to other areas like privacy, information management, archives and digital policy.[234] Our consultations encountered broad support for an appropriately funded multifunctional Information Commissioner. This idea was supported by the Ombudsman, State Archivist (with the caveat that there be no encroachment on the scope and responsibilities of the State Archivist and Government Information Officer) and Treasury. The outgoing Ombudsman was willing to consider an alternative model but thought Tasmania was well served by the current arrangements:[235]

> However, in a small jurisdiction, the duplication of resources in having a standalone office can reduce the benefits achieved. The current legislative arrangement of the Ombudsman also being the de facto Information Commissioner in Tasmania achieves efficiencies in administrative and executive salary costs, as the functions of Ombudsman and Information Commissioner are highly analogous and well-aligned. The current model is functional, with issues arising more from resourcing constraints than structural problems.
>
> It is ultimately a decision for the Tasmanian government, and the Ombudsman would be supportive of the creation of a standalone Information Commissioner (if adequately funded) or the retention of the current system.

There is a variety of possible examples to build upon within Australia including Queensland, Western Australia, Northern Territory, New South Wales, Australian Capital Territory, Commonwealth and Victoria. These bodies have evolved from a simple enforcement and/or deliberative body with a focus on FOI/RTI to taking on a raft of information regulatory and policy roles with both determinative and educative functions.

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[233] Dr Ian Watt, *Independent Review of the Tasmanian State Service*, Final Report (July 2021), 46.
[234] The following article focussed on the RTI function: Sarah Holsen & Martial Pasquier, 'Insight on Oversight: The Role of Information Commissioners in the Implementation of Access to Information Policies', *Journal of Information Policy* 2 (2012) 214-241.
[235] Email from Principal Officer Right to Information, Tasmanian Ombudsman (11 June 2025).

The Tasmanian Information Commissioner should be:

- appointed by a majority of members of both Houses of Parliament on the recommendation of a selection panel that includes at least two other Australian Information Commissioners;
- appointed for a single seven-year term;
- dismissed only by Parliament, and on limited grounds such as incapacity or misbehaviour; and
- able to make binding decisions that can be appealed to the Tasmanian Civil and Administrative Tribunal.

The Information Commissioner would have the following functions in relation to information laws and policies:

- review of decisions under relevant legislation
- complaints
- promotion
- policy input
- training
- compliance
- law reform

Tasmania needs an institution designed, resourced and with a clear mission to ensure effective, responsive and collaborative information management in the 21st century. The *RTI Act* is fundamentally predicated on enabling increased citizen participation in government decision-making, both in the policy-making process and to ensure accountability after the adoption of policies and programs.

2. Recommendations

Listed below are our recommendations in relation to establishing an Office of an Information Commissioner.

2.1. Longer term/legislative

Recommendation 42: The creation of an Information Commissioner to oversee information management in the Tasmanian State Service including *Right to Information Act 2009* (Tas), *Personal Information Protection Act 2004* (Tas), *Public Interest Disclosure Act 2002* (Tas), archives, records management, data protection, and information sharing within government and between government and citizens. The new office would complement and work with the State Archivist and Chief Information Officer.

Chapter 9: Legislative amendments

As we explained in Chapter 1 of this Report, several previous reports and reviews included proposed amendments to the *Right to Information Act 2009* (Tas) (*'RTI Act'*). Most prominent amongst those are the recommendations of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings ('COI').[236] The Tasmanian Government's Response to the Report of the Commission of Inquiry explicitly accepts all the recommendations of the Commission including those related to the management of government information.[237] Given that commitment, we commence this section of our Report with the COI's Recommendation 17.8 entitled 'Access to Information and Records'. We do not need to comment on the Commission's recommendations other than to state here that we agree with all bar one of them and are grateful for the government's express commitment to implement them.

We received suggestions and recommendations for amendments to the *RTI Act* (and related legislative enactments) from several sources throughout our Review – in consultations with various individuals, organisations and government entities as well as from some of the written submissions we received. We have tried to be comprehensive in our coverage of all of those suggestions for amendment and to indicate our own views in response to the various suggestions. Many of the suggestions, if considered individually, would lack sufficient substance to warrant amendment of the *RTI Act* on their own. Cumulatively, however, it is clear to us that amendments that address these issues are both warranted and desirable. Given the government's commitment to amend the *RTI Act* to implement the amendments recommended by the COI, it is opportune to make additional legislative amendments at the same time.

We benefited extensively from consultations with the Department of Justice and consideration of the Department's draft analysis to date of potential right to information ('RTI') reform areas and we thank the Secretary for supporting this process. The Department's material was prepared by its Strategic Legislation and Policy Team and we met with the Team to discuss the various proposals. The Department's material included a list of possible amendments to the *RTI Act* compiled over several years from various sources including discussions with other departments, the Parliament of Tasmania House of Assembly Standing Committee

[236] See: Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings: https://www.commissionofinquiry.tas.gov.au/home.
[237] *Keeping Children Safe and Rebuilding Trust*, Government Response to the Report of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings: https://assets.keepingchildrensafe.tas.gov.au/media/documents/Keeping-children-safe-and-rebuilding-trust_final-WEB.pdf.

on Community Development ('Standing Committee') Report No. 1 of 2013 on the *Right to Information Amendment Bill 2011,* the Ombudsman's 's correspondence with the Attorney-General, and 'other reforms/comments put forward by the Ombudsman's office. The Department is also considering implementation approaches for the legislative reforms recommended by the COI.

The Department kindly shared the list of possible reforms to the *RTI Act* to assist us in our Review, but on the basis that the list does not reflect a formal policy position either of the Department of Justice, the Attorney-General or any other Tasmanian Government agency. With the Department's approval, we reproduce that list of possible reforms to the *RTI Act* with our own commentary below to indicate whether or not we agree with the possible amendment.[238] The Department distinguishes between three categories of possible reforms: those that enjoy broad support (for example, by both the Standing Committee and the Ombudsman); those minor possible reforms recommended by the Ombudsman; and those more substantive possible reforms proposed by the Ombudsman and/or by departmental officers. The list routinely refers to the source of the recommended amendment but we have not consulted with any of the entities mentioned – including the Standing Committee or the Ombudsman – to confirm that that entity still shares the view attributed to them. We understand and accept that decision-makers within public agencies change their minds about previous positions held by their agency and that any of these entities are entitled to hold a different position in 2025 than expressed earlier. From our perspective, we are interested in identifying possible improvements to the legislation and to indicate those we consider desirable and any we do not. It will be for a future Tasmanian Government to decide whether or not to legislate any or all of the amendments we endorse.

We commence with the COI recommendation, followed by a list of possible amendments identified by the Department of Justice, before moving on to list some other possible amendments raised by others.

Our approach throughout is to explain the proposed amendment and to indicate whether or not we agree with the proposal.

[238] We have used material directly from other sources to explain each suggested amendment. Accordingly, the explanations retain the wording of the original sources, which may be inconsistent with that use in our responses.

1. Commission of Inquiry

The full text of Recommendation 17.8 of the COI is set out below.[239]

Access to information and records

Recommendation 17.8

(1) 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 victim-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.

(2) 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 *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.

(3) 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.

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

[239] COI, *Full Report*, Recommendation 17.8, Volume 1, 166.

(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 to the Tasmanian State Service in relation to victim-survivor access to information (Recommendation 19.2)

We endorse Recommendation 17.8 of the COI, excluding 17.8(2)(b): '(b) embed the public interest test in specific exemptions in the *Right to Information Act 2009*, tailored to those exemptions.'

In our view Schedule 1 of the RTI Act outlining the various public interest factors that need to be considered and weighed by decisionmakers has worked effectively. The reason why Schedule 1 was included in the *RTI Act* was precisely because the previous approach of embedding public interest tests tied to specific exemptions was complicated, limited the public interest factors that could be considered and created inconsistencies.

2. Department of Justice

2.1. Possible amendments to the *RTI Act* with broad support

a) Expand decisions that may be externally reviewed – section 44 and section 22

- Section 44 of the Act provides for the Ombudsman to externally review decisions to which ss 43(1), (2) or (3) apply. Section 43(1) applies to decisions on internal review where notice of the decision has been given to an applicant pursuant to s 22.
- The circumstances that require notice to be given under s 22 are limited and this in turn limits the scope of the Ombudsman's external review jurisdiction. Reasons are to be given pursuant to s 22 where the applicant is not entitled to the information because the public authority or Minister decides it is exempt information, that provision of the information should be deferred (s 17) or that provision of the information should be refused on the basis of resources being unreasonably diverted (s 19) or a repeat or vexatious applicant (s 20).
- The Standing Committee recommended s 22 be amended to include decisions made under s 10(1) and s 12(3)(c).
- The Ombudsman submitted that 'it would be preferable for all decisions made pursuant to the Act to be reviewable under the Act, and not left to the general Ombudsman jurisdiction'. The Ombudsman's 2021 correspondence specifically referred to decisions made under s 10(1), s 12(3)(c), s 14 and s 16(2) of the Act.

- Amending s 22 to include other decisions made under the Act would address a gap in the current legislative scheme whereby applicants currently have no right for a review of certain decisions made under the *RTI Act*. The additional decisions proposed are set out below.

Electronic information that is difficult to produce – section 10(1)

- Under s 10(1) a Minister or public authority may refuse to disclose electronic information that cannot be produced using normal computer hardware and software and technical expertise of the public authority, and where producing it would substantially and unreasonably divert resources from usual operations.

Information otherwise available or that will become available – section 12(3)(c)

- Under s 12(3)(c) a Minister or the principal officer of a public authority may refuse to disclose information that is otherwise available or will become available as a required or routine disclosure within a period not exceeding 12 months.

Transfer of applications – section 14

- Section 14 provides for the transfer of an application where the subject matter of the information is more closely connected with the functions of another public authority or Minister.
- Transferring an application to another government department or authority is not generally considered a reviewable decision in other jurisdictions except for NSW, where it is explicitly provided for under s 80(b) of the *Government Information (Public Access) Act 2009* (NSW).
- Including s 14 could support the Government's Transparency Agenda by providing review for the decision to transfer applications. Alternatively, as review rights are attached to an application once a decision has been made by the appropriate agency, a review right in relation to the transfer of an application is unnecessary.

Charges for information – section 16(2)

- Section 16 provides that all applications for assessed disclosure of information must be accompanied by an application fee of 25 fee units. The application fee may be waived under sub-s (2) if the applicant is impecunious, is a Member of Parliament acting in connection with his or her official duty, is a journalist acting in connection with their professional duties or is able to show that they intend to use the information for a purpose that is of general public interest or benefit.

- RTI/freedom of information ('FOI') legislation in the majority of other Australian jurisdictions provides for review of a decision made in relation to a charge or fee, including a decision not to waive or reduce an application fee.
- The COI recommended that the review of the *RTI Act* should consider reforms to provide an automatic fee waiver for RTI applications relating to child sexual abuse made under the *RTI Act* by victim-survivors or a person acting on their behalf (Recommendation 17.8.2.g.).

Our response to these possible amendments

We consider each of these possible amendments both sensible and desirable and we agree with the analysis of the Department of Justice in response to them. We believe that these proposed amendments, to broaden the scope of RTI decisions subject to potential external review, would help achieve the objectives of the *RTI Act* articulated in section 3 and we endorse them accordingly.

b) Resources unreasonably diverted – section 19

- Section 19 provides that the public authority or Minister may refuse to provide the requested information if satisfied that the work involved would substantially and unreasonably divert resources from other work, or would interfere substantially and unreasonably with the performance by that Minister of their other functions, having regard to the matters specified in sch 3.
- The Standing Committee recommended that s 19 should be amended to provide that an application or a number of applications from the same person may be considered as a group when a public authority or Minister is assessing whether the work involved in providing the information requested would substantially and unreasonably divert resources.
- The Ombudsman has also recommended this amendment, noting that the aim would be to prevent one applicant from splitting their request for a substantial amount of information into a number of smaller applications, each potentially manageable on their own, to circumvent the provisions of section 19.
- Clause 1(g) in schedule 3 to the Act currently provides that the extent to which the applicant has made other applications in respect of the same or similar information must be considered in assessing whether resources would substantially and unreasonably be diverted. However, that clause is based on 'the extent to which the present application might have been adequately met by those previous applications'; this suggests that only previously determined applications may be considered, not concurrent applications.
- Queensland's legislation provides that an agency or Minister may group two or more applications made by the same person when determining whether the work involved would substantially and unreasonably divert resources.

Commonwealth legislation provides that two or more requests can be treated as a single request for this purpose if they relate to the same document/s or the subject matter is substantially the same. The Victorian Supreme Court of Appeal has held that a government department was entitled to group 321 connected requests for the purposes of determining whether or not the processing of them would be oppressive.

- Legislative attempts to curtail a large number of applications from one person may be perceived as fettering the right to access information, however this should be balanced by the unreasonable impact on resources, noting that such decisions are reviewable by the Ombudsman.

Our response to this possible amendment

We agree that this possible amendment to section 19 of the *RTI Act* is desirable for the reasons identified by the Department of Justice. We heard anecdotal evidence of several situations around Tasmania of multiple RTI applications from the same person cumulatively involving such a voluminous amount of information as to impose a substantial burden on the public authority the subject of the deluge of applications. In one extreme case, we heard from a local government authority that the Council had received an extraordinarily high number of requests from the same applicant in the first four months of 2025, with most of those applications involving similar or related information.

We understand the comment of the Department that 'legislative attempts to curtail a large number of applications from one person may be perceived as fettering the right to access information' but we also agree that it is important to balance that concern by recognising 'the unreasonable impact on resources' that result from multiple applications for related information from one single applicant, also 'noting that such decisions are reviewable by the Ombudsman'. We recommend that this proposed amendment be implemented and that the Ombudsman follow it up with the issuance of a Guideline in relation to it.

c) Clarifying operation of public interest test – section 33

- Section 33 provides the public interest test: that information is exempt information if the principal officer of the public authority or Minister considers, after taking into account all relevant matters, that it is contrary to the public interest to disclose the information.
- It is arguable that section 33 of the Act can be interpreted as a stand-alone provision, allowing an authority or Minister to claim exemption for any information that it or they consider against the public interest to release, and not just information falling within the terms of the exemptions specified in sections 34 through to 42. This was not the intention of section 33, and the Standing Committee and the Ombudsman recommended an amendment to clarify its operation.

Our response to this possible amendment

We agree that this possible amendment to section 33 of the *RTI Act* is desirable for the reasons identified by the Department of Justice. We agree that the intended scope of the public interest test for withholding information was only meant to apply to the exemptions in sections 34-42 of the *RTI Act* and not to be used as a stand-alone basis for exempting information from disclosure whenever the requested entity chooses not to release information. Explicit wording to confirm the limited extent of application of the public interest test will be a welcome amendment to the legislation.

d) Consultation on personal information – section 36

- Section 36 provides consultation requirements if the disclosure would involve the personal information of a person other than the person making the application.
- The intention of the section is to provide for consultation with the person to whom the information relates, however, the current reference to information provided ‘by’ a third party could be narrowly interpreted so as to mean that consultation occurs only with the information provider. The Standing Committee and the Ombudsman both recommended amending s 36 to clarify that it is the person to whom the information relates who must be consulted.

Our response to this possible amendment

We agree that this possible amendment to section 36 of the *RTI Act* is desirable for the reasons identified by the Department of Justice. In our experience, most of the authorities we met with understood that section 36 required them to consult with the third party whose information would be disclosed. However, the fact that the *RTI Act* does not explicitly provide for that is an oversight that ought to be rectified and it is understandable that both the Standing Committee and the Ombudsman called for the same amendment.

The COI also recommended an amendment to the *RTI Act* to introduce a reasonableness test as part of the assessment whether to withhold third-party personal information.[240] The Commission was concerned about the potential negative impact of third-party consultation – for example, when the applicant is seeking their personal file which may include a reference to an alleged abuser. We understand the COI's concerns. The inclusion of a reasonableness test would ensure that a third party's objections to disclosure of their personal information would not be determinative depending upon the circumstances.

e) Notification requirement – section 15

- Section 15 provides the time within which applications for assessed disclosure of information are to be decided, including that a public authority or Minister must take all reasonable steps to 'enable an applicant to be notified' of a decision.
- The Standing Committee and Ombudsman recommended simplifying this wording to 'notify the applicant' to clarify the time within which applications for assessed disclosure of information are deemed to be made.

Our response to this possible amendment

We agree that the current wording of section 15(1) of the *RTI Act* is unnecessarily complicated:

> A public authority or Minister must take all reasonable steps to enable an applicant to be notified of a decision on an application for an assessed disclosure of information as soon as practicable but in any case not later than 20 working days after the acceptance of the application.

Accordingly, we agree with the proposed simplification to the wording of this provision.

However, we are also of the view that the legislation should be more explicit in requiring acknowledgment of the receipt of an RTI application for assessed disclosure. Several agencies explained to us that they do routinely notify applicants as soon as the initial determination is made that the request is indeed to be an assessed disclosure. Other agencies told us that they do not routinely follow that practice. We know of one agency that took the decision to change their approach and to now routinely acknowledge receipt of requests following their discussions with us.

We welcome that change of approach and would prefer to see the legislation impose an explicit obligation on agencies to notify applicants of receipt of requests for assessed disclosure. That common courtesy would help build trust in the bona fides of agencies in their approach to their disclosure obligations.

[240] Ibid., Recommendation 17.8(2)(e).

Given advances in digital tracking technology, we would appreciate the introduction of an electronic tracking system that enabled an applicant to receive automated updates on the stage of their requests for assessed disclosure and, having been assigned an application number, to be able to trace the progress of their request through the application and assessment process. Australia Post does this very well and the introduction of a similar system for the RTI framework would be a positive development towards transparency in government. We understand of course that any such development would need to apply to the whole-of-government and would require project funding to facilitate both its development and its implementation.

f) When notice has been provided – section 46

- Section 46(1) provides that a decision refusing to grant the application is taken to have been made if the period for making the decision has elapsed and notice of a decision has not been received by the applicant. This is relevant for the purpose of enabling an application to be made to the Ombudsman for a review of the decision.
- The reference to 'to be taken to have been made, on the last day of the relevant period' introduces some uncertainty around whether an applicant must wait for an unspecified time after the period allowed for decision-making in order to allow time for a notice to be received. The Standing Committee and Ombudsman supported amending this provision to provide certainty to applicants. It would be preferable to explicitly provide that the decision to refuse is taken to have been made on the last day of the period allowed, if a notice has not been received on or before that day.

Our response to this possible amendment

We agree with the proposal to amend section 46(1) to provide certainty to applicants.

g) Public authorities publication requirement – section 23

- Section 23 sets out responsibilities of the principal officer of a public authority. They include, at sub-s (c), providing details on information published as required disclosures or routine disclosures by the public authority.
- The current drafting of s 23(1)(c) may require public authorities to outline each disclosure, making annual reports unnecessarily lengthy. The Standing Committee and the Ombudsman supported reform to provide that an overview of the information published must be provided, rather than 'details'.

Our response to this possible amendment

We agree that it is not necessary for public authorities to provide the details of each required and routine disclosure that has already been made and that amendment of section 23(1)(c) to only require an overview or summary of those disclosures is desirable.

We also believe that public authorities ought not only provide an overview of required and routine disclosures but also provide useful directions as to where interested parties can find the details of those disclosures. In our view, it is not sufficient to simply advise interested people that this disclosed material is 'available on our website' without providing some basic directions as to the specific part of the website where the disclosed information is already publicly available. We accept, however, that it may not be necessary to include that additional obligation in the legislation.

2.2. Department of Justice minor and/or uncontentious reforms to the *RTI Act* recommended by the Ombudsman

a) Harmonise timeframes – section 43

- Section 43 sets out the timeframes for applying for and completing an internal review of a decision (to be conducted by a public authority's principal officer or their delegate) while section 44 provides for applications to be made for external review by the Ombudsman. The intent of the legislation is to provide for external review where the applicant or an external party is dissatisfied with the outcome of an internal review or has not been notified of that outcome within a reasonable timeframe.
- The timeframe for completing an internal review is unclear, as section 43(5) only requires the review and fresh decision to be made 'as soon as practicable'. It would be preferable to also require an internal review to be completed within a specified number of days after receiving an application.
- There is also inconsistency in the timeframes for applying for internal and external reviews under sections 43 and 44 respectively. An applicant can apply for an internal review of a decision within 20 days after notice of the decision is given, while an applicant is able to seek external review either after being notified of the outcome of internal review or if 15 days have elapsed since they applied for internal review.
- The current misalignment of time periods in sections 43 and 44 means that an application could potentially be made for external review by the Ombudsman despite the fact that the public authority is diligently and efficiently progressing the internal review within a reasonable period. The *Right to Information Bill 2009* proposed that the time period for internal review was 20 days. This was

amended to 15 days by a government amendment, in response to contributions from the Greens.

- The Ombudsman has recommended that the timeframes in sections 43 and 44 be clarified and harmonised.

Our response to this possible amendment

We agree that the harmonisation of timeframes for applications for assessed disclosure, internal review and external review is desirable. The UTAS Law Faculty Team also raised this possible amendment with us,[241] and we understand the desire for consistency of timeframes.

b) Ombudsman decisions which neither confirms nor denies existence of exempt information – section 48

- Section 48(4)(b) provides that the Ombudsman may not confirm or deny the existence of exempt information in any decision or statement of reasons. This could be interpreted as preventing the Ombudsman from ever confirming the existence of exempt information.
- The Ombudsman has recommended that the provision be amended to provide that the Ombudsman can issue a statement of reasons in terms which neither confirm nor deny the existence of exempt information which, on a ground specified in Division 1 of Part 3, would be exempt information, limiting the provision to those exemptions. This would better align with wording in section 22, which was the intent of the original provision. Section 22 provides that the decision can be in terms which neither confirm nor deny the existence of any information which on a ground specified in Division 1 of Part 3 would be exempt information. The Standing Committee found that the amendment increases the rights of applicants by giving greater discretion to the Ombudsman to confirm or deny the existence of information.

Our response to this possible amendment

We agree with the Ombudsman's proposed amendment to section 48(4)(b) to better align the wording of that provision with section 22. We agree with the Standing Committee that this proposed amendment would increase the rights of applicants by extending discretion to the Ombudsman in relation to information not exempted within the limited provisions of Division 1 of Part 3 of the Act.

[241] UTAS Law Faculty, *Submission to the Independent Review of Tasmania's Right to Information Framework* (26 June 2025), 4.

c) Typographical errors – various provisions

- The Ombudsman has recommended that three typographical errors be amended as follows:
    - Amend section 37(5)(d): 'if during those 20 workings days the person applies…'
    - Amend section 45(2): 'If a person has applied for information in accordance with section 13 ..'
    - Amend Schedule 1(1)(d): 'whether the disclosure would provide the contextual information to aid in the understanding of government decisions.'

Our response to this possible amendment

We agree that typographical errors in the legislation should be rectified through amendment.

d) Definition of 'working days' – section 5

- The term 'working days' appears throughout the *RTI Act* in relation to the relevant period of time for certain actions under the Act. However, the term 'working days' is not defined in the Act or the *Acts Interpretation Act 1931* (Tas). To reduce ambiguity, the Ombudsman has recommended that a definition of 'working days' be inserted, which would also clarify that the three days between December 25 and January 1, when public authorities are routinely closed, would not be considered as working days.

Our response to this possible amendment

We understand the Ombudsman's observations here and agree that an amendment which inserts a definition of 'working days' which explicitly excludes public holidays and also the days between Christmas Day and New Year's Day when public authorities are routinely closed is desirable.

e) Duplicated information where certain persons or bodies excluded - section 6

- Section 6 provides that the Act does not apply to information in possession of certain excluded persons and public authorities, unless the information relates to the administration of the relevant authority.
- There are circumstances where information may be in the possession of a public authority that is subject to the *RTI Act* and also in the possession of an excluded public authority. The Ombudsman has advised that this issue has previously arisen in external reviews.
- The Ombudsman has recommended that a new subsection be inserted to clarify that the public authority that is not excluded under the Act must perform

its duties with respect to the information in its possession, including in circumstances where the information is, or may also be, in the possession of an excluded person or public authority.

- Further consideration of the policy behind the Ombudsman's recommendation may be needed, due to potential difficulties with unintended consequences. For example, if the Department of Health produces an autopsy report for the Coroner which is exempt if you apply to the Coroner, but not exempt if you apply to Health.

Our response to this possible amendment

We understand the recommendation of the Ombudsman but we agree with the Department of Justice's call for further consideration of the policy behind the Ombudsman's recommendation, given the unintended negative consequences that may arise from the proposed amendment. We agree that the scenario raised by the Department of Justice in relation to an autopsy report produced by the Department of Health for the Coroner raises some significant sensitivities given that the Coroner is exempt from the *RTI Act* but the Department of Health is not. There are also other scenarios of this type. We heard examples along these lines from the Office of the Independent Regulator which was established to ensure the protection of Tasmania's children in the aftermath of the COI. The Office of the Independent Regulator is exempt from the *RTI Act* but the government agencies it collects child safety information from are not usually exempt.

In our view, the amendment proposed by the Ombudsman needs careful consideration before any such legislative change is made.

f) Consistency of legal test for information relating to business affairs of third party – section 37

- The tests for business affairs in sub-ss 37(1) and 37(2) use different terminology ('competitive disadvantage' and 'substantial harm to the third party's competitive position').
- The current drafting has caused confusion for delegates as to the appropriate test to apply, and the Ombudsman has recommended that the terminology be harmonised to clarify the operation of the provision.

Our response to this possible amendment

We understand the need for consistency of the tests in sections 37(1) and 37(2) as to the deleterious impact on the business interests of a third party. We heard many anecdotal accounts of the challenges of applying the test(s) to information involving third party businesses. We agree that there should be a single test in the legislation and so we support this proposed amendment.

g) Consequential amendment to refer to in-force RTI legislation

- Subparagraph 7(8)(b) of the *Police Powers (Controlled Operations) Act 2006* (Tas) references the now repealed *Freedom of Information Act 1991* (Tas) ('*FOI Act*'). It is recommended that this reference be replaced so that it refers to the in-force legislation, and ensure that the *RTI Act* does not apply to investigations, operations, activities and records under the *Police Powers (Controlled Operations) Act 2006* (Tas), as intended.

Our response to this possible amendment

We agree that consequential amendments should be made including to the *Police Powers (Controlled Operations) Act 2006* (Tas) to clarify that the current RTI legislation does not apply to the special operations and activities provided for under that legislation.

2.3. Substantive reforms proposed by Ombudsman or developed by the Department of Justice after discussions with other Departments

a) Review of Ombudsman decisions

- Tasmania does not have a legislated option for further tribunal or court review of Ombudsman/Information Commissioner decisions of RTI or FOI applications. The Ombudsman has recommended that provision be made for Ombudsman decisions to be reviewable.
- The Tasmanian Civil and Administrative Tribunal ('TASCAT') appears the appropriate body to undertake such review.
- Any extension of TASCAT jurisdiction will require adequate resourcing. The Ombudsman has submitted that while the volume of review requests is difficult to establish, it is unlikely to be higher than 25% of formal decisions and likely much lower, equating to approximately 14 requests per annum.
- Debate on Tribunal review of Ombudsman decisions may lead to renewed calls to remove internal review. In 2019 and 2021 Labor tabled Bills seeking to remove internal review. Labor has argued that internal review processes rarely result in substantive changes to a decision: 'It can be said the only practical effect of internal review is to delay the time it takes for a review to be submitted to the Ombudsman for external review.'
- Internal review does resolve some reviews and provides for timely decisions. Without internal review, the Ombudsman may become overloaded with applications for review. Officers from the Ombudsman's office have noted that when undertaken well, internal reviews are beneficial, and they would be hesitant to support removing internal review at this stage. Victoria and the

Australian Capital Territory are the only jurisdictions that do not provide for internal review of decisions.

- The COI recommended that the review of the *RTI Act* should consider reforms to strengthen and streamline internal and external review processes in the *RTI Act* and *Personal Information Protection Act 2004* (Tas) ('*PIP Act*'), with a focus on options to enforce decisions of the Ombudsman and to apply for review by the TASCAT (Recommendation 17.8(2)(f)).

Our response to this possible amendment

A number of submissions pushed for alternatives to external review by the Ombudsman. The justification has generally stemmed from concerns about the long delays in Ombudsman decisions and/or the lack of resources to carry out all the required information management functions of the Ombudsman's Office.

David Killick captures these resource concerns:[242]

> Consideration should be given to whether the Ombudsman's office is the appropriate agency to continue have oversight of appeals within the RTI system. I say this not because of any failing on the part of the Ombudsman's office but rather that the office is already carrying a lot of responsibility and is perpetually under-resourced.

In 2023, the Environmental Defenders Office ('EDO') suggested, after a forensic review of the delays within the Ombudsman Office, that two alternatives be considered:[243]

> Recommendation 6: The *RTI Act* be amended 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.

The EDO refined this suggestion, in their submission to this Review, by removing the Ombudsman from the review process in favour of direct appeals to TASCAT. The EDO provided a detailed set of suggested procedures for TASCAT to adopt.[244] This submission addressed the resource problem but more importantly was designed to forestall the potential exploitation by agencies of the large backlogs in the Ombudsman's Office over the last decade:[245]

> The Ombudsman is not resourced sufficiently to perform the external review task in anything like a timely fashion and agencies know this. By the time a review is conducted, the information is old news and likely to be irrelevant. We suggest that this provides no encouragement for careful consideration by an agency of an application because the agency is effectively beyond review. Information is most important when it is fresh.

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[242] David Killick, *Submission to the Independent Review of Tasmania's Right to Information Framework* (30 April 2025), 8.
[243] EDO, *Transparent Failure*, 39. This was supported by the TasCOSS. *Submission to the Independent Review of Tasmania's Right to Information Framework* (March 2025), 12.
[244] EDO, *Submission to the Independent Review of Tasmania's Right to Information Framework*, (14 March 2025), 14-16.
[245] Ibid., 15.

The COI recommended the government:[246]

> … 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.

TASCAT, during our consultations, considered that the reform proposed by the COI was feasible with adequate resourcing. The major concern was the potential volume of RTI appeals. Effectively replacing the external review role of the Ombudsman by creating a direct path from an RTI agency decision to TASCAT would be undesirable. Keeping the external review function with the Ombudsman and allowing an appeal to TASCAT against the Ombudsman's decision would be preferable from TASCAT's perspective. This more limited right of appeal would restrict the potential caseload flowing onto TASCAT and also allow the Ombudsman (or potential Information Commissioner) to draw on the insights gained from appeal decisions. The intelligence and understanding gained from both external review decisions and appeal decisions would greatly assist in the development and refinement of Guidelines, training and the potential identification and focus for agency audits.

b) Internal review

There is significant disparity in the views on the efficacy and utility of internal reviews. A number of submissions from frequent users of RTI strongly pushed for the removal of internal review. The Integrity Commission report 'Misconduct risks in Tasmania's right to information regime' outlines a number of measures needed to avoid or mitigate potential misconduct in RTI processes.[247] The potential for misconduct and/or conflicts of interest outlined by the Integrity Commission Report (and exemplified in its 'Investigation Gatehouse' Report into RTI practices in the Department of Health)[248] are sufficiently serious to warrant removal of the internal review process.

During our consultations, the suggestion of removing internal review was supported by many local government and small government agency delegates. However, there was strong support for retaining internal reviews from larger departments who perceived internal review as a very useful quality control provision on departmental determination processes: an opportunity to reconsider the initial decision and as an offset to the issues caused by newer delegates coming to terms with the requirements of the *RTI Act*. Robert Hogan also acknowledges that removal of internal review could pose:[249]

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[246] COI, *Full Report*, Recommendation 17.8, Volume 1, 167.
[247] Integrity Commission Tasmania, *Misconduct Risks,* 14-16.
[248] Integrity Commission Tasmania, *Investigation Gatehouse*.
[249] Robert Hogan, *Submission to the Independent Review of Tasmania's Right to Information Framework* (April 2025), 6.

> a danger that the external review system could be swamped, and care may need to be taken to ensure the Ombudsman has the discretion and confidence to reject frivolous applications or 'fishing expeditions'.

In smaller government agencies and local government authorities, internal review is problematic because of the lack of alternative reviewers to the original decision-makers. This problem is exacerbated where the original decision is signed off by the Principal Officer and there is no-one else able to undertake an internal review. In those circumstances, internal review is simply not an option. To deal with this issue, some smaller government agencies delegate RTI decision-making, including internal reviews, to a larger connected agency. Brand Tasmania, for example, devolves RTI decision-making to the Department of Premier and Cabinet ('DPAC') and the Tasmanian Dairy Industry Authority devolves the process to the Department of Natural Resources and the Environment ('NRE').

Frequent users of the RTI assessed disclosure process are concerned that internal reviews rarely result in any, or only minor, change to the original decision. In addition, these users often experience agencies overrunning their 14-day time limit so simply adding further delay on the basis of an expectation that any external review will not be delivered for at least two, and possibly more, years.

The RTI Uplift Project Discussion Paper suggests that the relatively low number of internal review requests indicates a high level of application satisfaction with the original decision. Yet many applicants, aware of the statistics on the unlikelihood of any substantial changes to the original decision and also cognisant of the forceful claims for exemption and dismissive treatment of their arguments for release of information simply abandon their efforts at this initial stage.[250]

Robert Hogan echoes these frustrations:[251]

> Based on my experience, the internal review process has generally acted only to confirm the original decision and merely adds delay and effort before the external review process can be accessed.
>
> I would strongly support a proposal that the internal review process should be removed from the *RTI Act* and that resources should instead be re-allocated to the Ombudsman's office to provide for an increased number of external reviews.

The submission of the EDO expresses similar reactions to using the internal review process:[252]

> It is a triumph of hope over experience to expect a review, by the same agency as made the first decision, to change the original decision. …The requirement to go cap in

[250] Tasmanian Greens, *Submission to the Independent Review of Tasmania's Right to Information Framework,* (30 April 2025), 3.
[251] Robert Hogan, *Submission to the Independent Review of Tasmania's Right to Information Framework* (April 2025), 6.
[252] EDO, *Submission to the Independent Review of Tasmania's Right to Information Framework* (14 March 2025), 12.

hand to the same agency door a second time simply adds more paperwork and delays the time until an application can be made for external review.

More information about how the internal review system is operating in larger agencies is needed. We suggest that the Ombudsman carries out a detailed examination into the internal review system, within the next 12-18 months, to assess whether the Tasmanian Integrity Commission critiques are warranted and to decide whether a rigorous, fresh re-examination of the agency's original decision on internal review is warranted.

Smaller agencies and local governments can avoid the necessity of undertaking internal review by having the Principal Officer undertake the decision to refuse an internal review and allow an applicant to go straight to the Ombudsman for an external review.

c) Align review rights for requests under the *Personal Information Protection Act 2004* (Tas) and *RTI Act*

- The *PIP Act* allows a person to apply for and have access to personal information held by a personal information custodian. Unlike the *RTI Act*, no fees are attached to applications under the *PIP Act*.
- Clause 6(1) of sch 1 to the *PIP Act* requires certain requests for personal information to be treated as if the request were an application for assessed disclosure under s 13 of the *RTI Act*.
- The *PIP Act* provision requires the personal information guardian to determine the matter in the same manner and having regard to the same principles as an application under s 13 of the *RTI Act*, but does not import other provisions of the *RTI Act* (such as the timeframe for processing an application, review rights and reporting obligations).
- The Ombudsman's office has advised that this raises practical issues and has recommended amending the *PIP Act* to contain a deeming provision (to remove any inconsistency and doubt), and to require that the application fee under the *RTI Act* be waived if an individual is requesting access to their personal information in accordance with the *PIP Act*.
- Section 16 of the *RTI Act* provides that all applications for assessed disclosure must be accompanied by an application fee of 25 units. A number of jurisdictions have specific provisions regarding fees for accessing personal information; ACT and WA do not require fees, in NSW the agency cannot impose any processing charge for the first 20 hours of processing and in the NT if a fee is charged it is not to be excessive. Under Queensland's Information Privacy Act applicants can choose to pay the application fee payable under the *RTI Act* and have the application dealt with under the *RTI Act*.

- The COI recommended that the review of the *RTI Act* should consider reforms to streamline the interface between the *RTI Act* and *PIP Act* to overcome what has, by default, become a two-step process to obtain personal information (Recommendation 17.8.2.c.).

Our response to this possible amendment

We agree that there are significant problems in the intersection of the *RTI Act* and the *PIP Act* and have written extensively about this issue – and made specific recommendations – in Chapter 5 of this Report entitled 'Intersection with other legislative frameworks'.

d) Discretion for Ombudsman to undertake application for review where out of time

- The Ombudsman is unable to review applications for external review outside the prescribed time period in the Act (within 20 working days). The Ombudsman has recommended the Act be amended to provide the Ombudsman with discretion to allow applications for external review to be made within 40 working days of the relevant decision or notice, provided there is a reasonable excuse for the delay beyond the prescribed period. Providing the decision maker with discretion to accept an application made after the statutory timeframe is a common approach among jurisdictions.

Our response to this possible amendment

We agree with providing the Ombudsman with this discretion.

e) Reconsideration of decisions by public authorities

- The Act is currently silent on whether a public authority or Minister can make a fresh decision of its own initiative after an applicant has made an application for external review but before a decision has been made on that review.
- The Ombudsman currently encourages public authorities to reconsider matters that are the subject of external review and has recommended that the Act be amended to explicitly provide for this. The Ombudsman has submitted that this will benefit all parties involved on the basis that timeframes associated with external review are lengthy, and public authorities may be more willing to reconsider decisions during this time if there is a legislative basis. Victoria and New South Wales have similar provisions.

Our response to this possible amendment

We agree that the *RTI Act* should be amended to allow public authorities to reconsider matters that are the subject of external review. Presumably, public authorities could institute a policy position to the same effect without the legislation explicitly providing for the unilateral withdrawal of requests for external review on the basis that the relevant public authority is now happy to make the requested information available to the applicant. We imagine that a general policy approach of that kind may well result in a substantial decrease in the Ombudsman's current backlog of external reviews. Even if such an outcome could be achieved as a result of a whole-of-government effort to help clear the Ombudsman's backlog, we also agree with, and support the proposal that, the *RTI Act* be amended to explicitly and formally facilitate such an approach.

f) Review by more senior officer

- The Ombudsman considers that best practice would require an internal review to be conducted by a delegated officer of greater seniority than the original decision maker. There may also be issues of perceived bias with the existing framework; for example, in circumstances where an internal review is undertaken by a delegate whose supervisor was the original decision maker, there may be a perception that the delegate would be less likely to challenge that decision due to their seniority.
- Queensland, NSW and Western Australia have provisions that require an internal review to be undertaken by an officer senior to the original decision maker. However, ensuring a more senior officer is available may be more challenging where the public authority has limited human resources.
- To provide greater flexibility, an amendment could provide that internal review be conducted by a delegated officer of equal or greater seniority compared to the original decision maker. The majority of internal reviews are currently undertaken by a more senior officer than the original decision maker and it is not anticipated that this reform will result in administrative challenges for public authorities.

Our response to this possible amendment

We agree that internal reviews should be undertaken by a delegated officer of equal or greater seniority compared to the original decision maker but please also see the section above calling for consideration of the removal of internal reviews for local government authorities and other small government authorities.

g) Where information includes the personal or business information of a third party – section 13

- The Ombudsman has recommended that amendment be made to clarify the procedure for deciding an application for information, where part of that information includes the personal or business information of a third party.
- Identified issues include:
    - The person who made the application for the information under s 13 is not a party to the review proceedings.
    - The Act is silent on the effect of the external party review proceedings to the original s 13 application.
    - It is unclear whether the balance of information that is not subject to the external party review proceedings can be released to the s 13 applicant before the external party review proceedings are finalised.
- The Department of Justice material noted that review rights of third parties be clarified.

Our response to this possible amendment

We understand that uncertainties exist around the process for assessing disclosure of information which includes personal and business-related information of third parties, and that there are also uncertainties around the rights of third parties to seek external review of assessed disclosure decisions. We are not surprised that the Department of Justice has raised the importance of clarification on the review rights of third parties. We heard multiple accounts of the challenges of assessing information for disclosure where third party personal and/or business information is involved. We agree that the *RTI Act* should be amended to clarify the process for assessing personal and/or business information of third parties and also to clarify the rights of review by third parties who are not party to the original section 13 request for assessed disclosure.

h) Exclusion of Voluntary Assisted Dying Commission – section 6

- The Department of Justice notes the suggestion that the Voluntary Assisted Dying Commission (the Commission) be listed as an excluded body in s 6 of the Act. This would mean that the Act does not apply to information in possession of the Commission unless it relates to the administration of the Commission.
- This would bring the Commission into line with comparable offices such as the Commissioner for Children and Young People and the Health Complaints Commissioner. The Commission holds a similar level of sensitive information and undertakes comparable functions.

- The information collected by the Commission will largely be personal information, including sensitive health information. Personal information is exempt information, subject to the public interest test. It appears much information held by the Commission would fall into this category of exempt information. On this basis, the public benefit of the Commission being subject to the *RTI Act* may be low, as much information held would be covered by s 36 (noting it would still be subject to the public interest test).
- Decisions made by the Commission are reviewable under the *End-of-Life Choices (Voluntary Assisted Dying) Act 2021* (Tas), and the personal information provided to the Commission by a medical practitioner would also be available through a person's medical record and the *PIP Act*.
- It does not appear that similar Commissions in other jurisdictions are exempt from RTI/FOI, noting that this is an emerging area.

Our response to this possible amendment

We agree that the Voluntary Assisted Dying Commission should be listed as an excluded body in section 6 of the *RTI Act* for the reasons explained in the Department of Justice material.

i) 'Reasonable grounds' test when determining whether work would divert resources – section 19

- Section 19(1) requires that a public authority or Minister may refuse a request if satisfied that the work involved in providing the information would substantially and unreasonably divert the resources of the public authority from its other work or would interfere substantially and unreasonably with the performance by that Minister of the Minister's other functions.
- The Ombudsman has recommended that a 'reasonable grounds' test be added to the provision, advising that decision makers are not always objectively considering the matters set out in sch 3 (matters relevant to assessment of refusing applications), and not always having a robust case for refusing an application on this ground.
- Other jurisdictions do not require the assessment of substantially and unreasonably diverting resources to be undertaken on 'reasonable grounds'. However, a minor amendment may assist decision makers in applying the required test and adequately considering the matters required in sch 3.

Our response to this possible amendment

We agree that a minor amendment to the *RTI Act* clarifying the required test for determining the circumstances in which a request for assessed disclosure would impose a substantial and unreasonable diversion of the resources of the public authority or a substantial and unreasonable interference in the performance of the

Minister's other responsibilities may assist decision makers. We heard some concerning stories of both the massive scale of complexity and the sheer volume of similar requests for assessed disclosure that imposed huge burdens on public authorities. In our view, this is precisely the sort of issue that would benefit from guidance and training from the Ombudsman. We wish that leadership in the space of appropriate tests for decision-makers to apply was a more common feature of the Tasmanian RTI framework.

j) Obligation to assist applicants – section 19(2)

- Section 19(2) provides that a public authority or Minister must not refuse to provide information because resources would be unreasonably diverted, without first giving the applicant a reasonable opportunity to consult the public authority or Minister with a view to the applicant being helped to make an application in a form that would remove the ground for refusal.
- The Ombudsman has advised that the provision causes practical issues as it does not clearly articulate the level of consultation required; and that basic consultation is not always occurring. To address this issue the Ombudsman has recommended that section 19(2) be amended to clarify what should occur for the requirement to be satisfied. It is not intended that this will alter the existing consultation requirements.

Our response to this possible amendment

We agree that an amendment to section 19(2) could help clarify the level of required consultations to limit the scope of the request. However, again we consider that this is precisely the sort of issue that would benefit from guidance and training from the Ombudsman. A more proactive approach to articulating the level of consultations expected and required by the *RTI Act* may well remove, or at least substantially diminish, the existing uncertainty and inconsistency in approaches.

k) Children and young people

- The Act does not define the terms 'parent', 'child' or 'young person' and is silent in relation to applications for information that affect children and young people. It is unclear how public authorities and Ministers are to consider applications for information made by a child or young person, applications made by the parent of a child that includes a request for the personal information of that child, and where applications made by any person where disclosure would involve the disclosure of personal information of a child.
- The Ombudsman recommends that consideration be given to amending the Act to address these issues. The comparable legislation in Queensland, Western Australia and the Northern Territory contains provisions relating to requests by and for children and young people.

Our response to this possible amendment

We agree that amendments to the *RTI Act* to address the current silence in relation to children and young people and applications for information that affect them would be desirable.

l) Personal information of a person under orders or with reduced capacity – section 13

- The Act is silent in relation to applications for information under section 13 that affect persons subject to orders such as guardianship orders, or where capacity may be in question. Specific provisions may not be necessary in circumstances where a person has formal authorisation to act on another person's behalf. An application made by a person appointed under an order can be determined as though the application was made by the person for whom the appointed person is authorised to act. A public authority or Minister can be satisfied that the appointed person has the authority to make the application by being provided with a copy of the relevant order. Similarly, if an application for information is made under section 13 and that information includes the personal or business information of the person who has provided authority to another person under an order, the authorised person can be consulted in accordance with sections 36 and 37.
- The Ombudsman does not consider that amending the Act to include explicit provisions addressing applications affecting persons under orders is essential, but doing so may clarify the relevant processes in relation to applications in these circumstances for both applicants and decision makers. In some circumstances there may be no legal orders or formal authorisation for a person to act on behalf of another person (other than a child), for example, the parent of an adult person with a disability.
- The Act does not provide for an application for information under section 13 made by the parent of an adult person with a disability, that includes a request for the personal information of that adult person with a disability, to be determined as though the applicant is the person whose personal information is the subject of the request. A literal interpretation of the Act would result in the personal information of the adult person with a disability being *prima facie* exempt under section 36 as it constitutes an application for the personal information of a person other than the person making the application. This triggers the notice and consultation requirements in section 36(2) and (3). It is unclear how these provisions would operate in this situation. It is implicit that the person would not have the capacity to engage in the consultation process under section 36 – if the person had that capacity, then there would have been no need for the parent of that person to make the application for information

under section 13 on behalf of the person. This situation would not arise if the application were determined as though the applicant was the person whose personal information is the subject of the request, however, there is currently no legislative basis for determining an application in this way.

- The Ombudsman recommends that the Act be amended to provide processes for applications affecting persons subject to orders or where capacity is in question. It is recommended that any such amendment should consider issues of consent and include appropriate safeguards in relation to evidence of authorisation.
- Under the *Right to Information Act 2009* (Qld) an 'agent' in relation to an application means 'a person who makes the application for another person' (Schedule 5). Section 190 provides that in relation to an application or other matter under the Act a person's agent is able to do, in accordance with the terms of the person's authorisation as agent, anything that the person could do. The Schedule 5 definition of agent is broad and does not refer to formal authorisation or orders, however the use of the phrase 'in accordance with the terms of the person's authorisation as an agent' implies that legal orders or formal authorisation are required for such an application.
- The *Information Act 2002* (NT) contains more expansive provisions than the Queensland Act. Section 11(3) enables an application or a complaint to be made on behalf of a person who has a disability by a person authorised by the person with the disability to do so, or a person who has a sufficient interest in the application or complaint. 'Disability' is defined in section 4 as a disability that: is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of those impairments; and is permanent or likely to be permanent; and results in a substantially reduced capacity for communication, learning or mobility and the need for continuing support services; and may or may not be of a chronic episodic nature. The people identified in section 11(3) as being able to make an application or complaint on behalf of a person with a disability are also the people who are to be consulted in accordance with section 30(1) where information that would interfere with the person's privacy may be disclosed to another person.
- The Ombudsman does not have a specific recommendation as to the precise form or wording of the provision at this stage and further consideration, including by reference to other Australian jurisdictions, is needed to determine how best to achieve the intended purpose of the amendment.

Our response to this possible amendment

We understand the issues raised by the Ombudsman and are grateful for careful explanation of the issues and the uncertainties surrounding the current lack of legislative clarity. We agree that an amendment to clarify the authority of guardians and/or parents to request the release of personal information of those under orders or with reduced capacity is desirable. We also agree that careful consideration be given to the wording of any amendment. We note that, if the Tasmanian Government accepts our recommendation for the establishment of a bespoke legislative arrangement for management of access to personal information, this proposed amendment should be included in that bespoke arrangement.

m) Identification requirements for next-of-kin applicants – section 5(6) and regulation 5(h) of the *Right to Information Regulations 2021*

- Section 5(6) of the *RTI Act* states that: 'A reference to the personal affairs of a person includes the personal affairs of a deceased person, and rights given by this Act in respect of the personal affairs of a person are, where the person is a deceased person, taken to be rights that may be exercised in respect of those personal affairs by the next-of-kin of that person.'
- Regulation 5(h) of the *Right to Information Regulations 2021* states that: 'if the application includes a request for personal information of the applicant, proof of identity of the applicant.' Accordingly, persons seeking their own personal information are required to provide identity documents to prove their identity. However, there is currently no such requirement for next of kin to prove their identity when seeking release of personal information of the deceased person.
- It is appropriate that consistent identification requirements apply to those accessing personal information to ensure it is not released inappropriately. This has arisen as an issue on a recent external review, with the next of kin/applicant asserting that there is no legal requirement for them to show identity documents. An amendment requiring proof of identity of next of kin would clarify identification requirements for public authorities and for applicants.
- The proposal is to amend Regulation 5(h) of the *Right to Information Regulations 2021* to now state that*:* 'If the application includes a request for personal information of the applicant *or a deceased person under section 5(6) of the Act*, proof of identity of the applicant.'

Our response to this possible amendment

We agree with the Ombudsman's proposed amendment and understand the need for clarity for both public authorities and for next of kin applicants. We note again that, if the Tasmanian Government accepts our recommendation for the establishment of a bespoke legislative arrangement for management of access to personal information, this proposed amendment should be included in that bespoke arrangement.

n) Personal information of employees of public authorities – section 36

- Section 36(1) provides that information is exempt information if its disclosure under this Act would involve the disclosure of the personal information of a person other than the person making an application under section 13. Personal information is defined in section 5 as 'any information or opinion in any recorded format about an individual whose identity is apparent or is reasonably ascertainable from the information or opinion; and who is alive, or has not been dead for more than 25 years.' The assessment under section 36 is subject to the public interest test in section 33. Consequently, information that is *prima facie* exempt under section 36 may still be released if it is not contrary to the public interest, by reference to the matters to be considered in Schedule 1.
- The Ombudsman considers that it is not in the public interest within the meaning of section 33 for the personal information of employees of public authorities which relates only to the performance of their regular duties (i.e., name, position information, work contact details) to be exempt from release under section 36. Information of this nature will only be considered exempt when there are specific and unusual circumstances that justify this. The Ombudsman has maintained this position consistently in decisions on external review.
- This position is also consistent with other Australian jurisdictions. In fact, the Australian Information Commission has stated that:[253]

  > It is not unreasonable to release personal information such as names, work email addresses, positions or titles, work contact details and decisions or opinions because this information appears in documents because of the person's usual duties or responsibilities. It would be unreasonable to release personal details such as dates and places of birth and personal mobile telephone numbers.

- It remains a relatively common practice for Tasmanian public authorities to redact or refuse to disclose staff details and information by applying section 36. This practice continues despite the re-stated position of the Ombudsman and the largely settled practice across Australia.

[253] *Hunt and Australian Federal Police* 10 [2013] AICmr 66 (23 August 2013), at [72][74].

- The proposed amendment to section 36 is to include a new subsection (1A) which would read as follows: ‘Personal information in this section excludes the name, position title, work-related contact details, public functions, employing agency or authority, and signature of an employee of a public authority in relation to the performance of their regular duties unless specific circumstances exist to justify the information being exempt from disclosure under this section.’

Our response to this possible amendment

For the reasons we explained in Chapter 4 of this Report on ‘Culture’ (and also below in response to the Integrity Commission’s proposed amendment on personal information of RTI delegates), we do not agree with this recommendation. The role of RTI delegates is stressful enough as it is with pressure on them from applicants as well as from higher echelons of their departments and/or from ministerial offices. In our view, RTI delegates, almost invariably employed at relatively junior levels of State Service, ought not to have their names and titles disclosed. That message was conveyed to us by managers concerned about the psycho-social wellbeing of their RTI delegates in multiple public authorities. We also believe that other relatively junior officers in public authorities ought not to have their personal information disclosed. Senior decision-makers and managers are in a completely different position and many we spoke to have no hesitation in accepting the proposition that their level of responsibility involves disclosure of details including names, position descriptions and work email addresses.

We accept that the Ombudsman’s proposal is not absolute: it represents a presumption of disclosure unless there are ‘specific and unusual circumstances’ that justify exemption. However, in our view the presumption should be reversed in favour of non-disclosure of names, position descriptions and email addresses of RTI delegates.

3. Possible amendments raised by others and not included in the Department of Justice list

a) Clarity of legislative intent

The COI, the EDO, TasCOSS and the UTAS Law Faculty Team all recommended an amendment to the *RTI Act* to introduce an explicit presumption in favour of the disclosure of government information.[254] The UTAS Law Faculty submission explains that:[255]

> Unlike some other jurisdictions (NSW, Qld and the ACT), the *RTI Act* does not currently articulate an explicit presumption of disclosure, though this presumption is implied through ss 3 and 7, when read in light of the subject matter, scope and purpose of the Act. Noting that existing criticisms have often focused on an apparent bias against disclosure in the *RTI Act*'s implementation, an explicit presumption of disclosure would help to emphasise the pro-disclosure nature of the Act and support implementation of the *RTI Act*'s objects in s 3.

While that specific recommendation is included above in the COI recommendations, the EDO also recommended that the *RTI Act* be amended to include a clear requirement that routine and active disclosure are the preferred method of information release.[256]

In our view, both of those recommendations are entirely consistent with the stated Object of the Act in section 3. Although neither of the proposed amendments would add to existing legislative obligations, we agree that both amendments would help confirm the intent of the legislation and so we endorse both of them.

b) Oversight, review and appeals

There are a number of proposed amendments to the *RTI Act* which are intended to enhance the efficacy of the RTI framework. Those proposals include:

- A requirement to conduct regular independent reviews of the *RTI Act* and its implementation.[257]

Our Review is an example of the type of independent assessment of the efficacy of the RTI framework in Tasmania that the EDO would like to see occur more regularly. As we have consulted around the State, it seems to us there is certainly a desire to see change and improvement in the implementation of the RTI framework. We agree with the proposal that there should be more regular independent reviews. Given the combination of our recommendations, the appointment of a new Ombudsman, the

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[254] COI, *Full Report*, Recommendation 17.8(2)(a); EDO, *Submission to the Independent Review of Tasmania's Right to Information Framework* (14 March 2025), Recommendation 2; TasCOSS *Submission to the Independent Review of Tasmania's Right to Information Framework* (March 2025), Recommendation 1; UTAS Law Faculty, *Submission to the Independent Review of Tasmania's Right to Information Framework* (26 June 2025), 1.
[255] UTAS Law Faculty, *Submission to the Independent Review of Tasmania's Right to Information Framework* (26 June 2025), 1.
[256] EDO, *Transparent Failure*, Recommendation 1, 7.
[257] Ibid., Recommendation 12.

election of a new government, and the rollout of products from the RTI Uplift Project including the development of training packages, we believe it would be helpful for another independent review to be conducted in three years' time, and thereafter at five yearly intervals. We accept that there does not need to be an amendment to the *RTI Act* for future Tasmanian Governments to decide that an independent review of the efficacy of the RTI framework would be both timely and desirable. Our own Review is an example of precisely that initiative. However, it is also true that our Review was initiated on the basis of an agreement to support a minority government, which emphasises the precarity of propitious timing. An amendment to the *RTI Act* which introduced a statutory requirement for regular independent reviews of the Tasmanian RTI framework to be conducted would certainly increase the likelihood that those reviews occur. We certainly hope that the observations and the recommendations we are making in this Report are taken seriously and implemented by the Tasmanian Government. If that happens, the conduct of the Review will have been worthwhile.

- Transfer or extend jurisdiction for external review of RTI decisions to the TASCAT.[258]

We have noted the COI recommendation in relation to appeals against decisions of the Ombudsman to TASCAT in our replication of Recommendation 17.8 above. Please also see above where we discuss the possibility of an appeal against Ombudsman decisions to TASCAT.

- Amend the *RTI Act* to provide a review period of 30 days to replace or qualify the current provision that an external review be resolved 'as soon as practicable' in section 47(6).[259]

The intention of this proposed amendment is to impose a time limit on the Ombudsman's external reviews – to introduce similar legislative accountability to that imposed on RTI delegates in public authorities. We understand the rationale for this proposed amendment, particularly given the inordinate delays to the Ombudsman's external review decisions and the prodigious backlog resulting from those delays. Our hope is that the new Ombudsman will take a different approach to determinations on external reviews thus obviating the need for legislation to specify the maximum timeframe allowed. If that does not happen, a future review of Tasmania's RTI framework should reconsider this proposal to determine whether or not to recommend legislative amendment to impose a statutory timeframe in which the Ombudsman's determinations must be made. We would note that the previous *FOI Act* had imposed a 60-day time limit on the Ombudsman.

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[258] COI, *Full Report*, Recommendation 17.8(2)(f), 167; EDO, *Transparent Failure*, Recommendation 6, 7; EDO, *Submission to the Independent Review of Tasmania's Right to Information Framework* (14 March 2025), Recommendation 4, 3.
[259] EDO, *Transparent Failure*, Recommendation 4, 7.

- Remove the requirement in section 48(1)(a) for the Ombudsman to provide a 'preliminary decision' to Ministers and to public authorities for comment before finalising an adverse decision.[260]

This proposed amendment is intended to remove an opportunity for the exercise of undue influence over the Ombudsman and arises out of a sense of frustration with a culture of secrecy in respect of government information. We sense that frustration and agree that if a culture of openness and transparency prevailed in Tasmania, a legislative provision such as section 48(1)(a) would be unnecessary. We have no problem with the Ombudsman providing 48 hours notice of an impending adverse external review decision (as is currently the case in respect of assessed disclosure decisions by RTI delegates providing notice to the Minister's Office of impending release of a determination) to a public authority and/or a Minister, but endorse the recommendation for repeal of section 48(1)(a).

Hydro Tasmania also raised an issue in relation to section 48(1)(a). In their submission Hydro Tasmania observed that the section does not oblige the Ombudsman to also extend an opportunity for comment to a third party prior to the release of an adverse external review. Hydro Tasmania recommends an amendment to section 48(1)(a) 'to also require the Ombudsman to make draft decisions that are adverse to third parties available to the third party and seek their input prior to finalisation of the decision.' For the reasons we explain above, we do not endorse this proposed amendment.

- Require the Ombudsman to publish all decisions on external review.[261]

The *RTI Act* does not oblige the Ombudsman to publish decisions on external reviews but nor does it prevent the Ombudsman from doing so. Since the enactment of the *RTI Act* successive Ombudsmen have taken a sporadic and inconsistent approach to the publication of external review decisions. Sometimes decisions are published and sometimes they are not and reasons for either approach have never been offered.

We understand that some external review decisions involving applications for access to personal information may have been considered too sensitive for publication. Ombudsman Tasmania has advised that all decisions since March 2020 have been published (or an explanation as to the non-publication provided in one instance) online, and that a project is underway to update the Ombudsman Tasmania website to rectify previous inconsistencies in publication of decisions.

If a future government accepts our recommendation to establish a bespoke system for the management of, and provision of access to, personal information, the need for the Ombudsman (or Information Commissioner) to exercise discretion about the

[260] Ibid., Recommendation 5.
[261] Ibid., Recommendation 9.

publication of external review decisions will be less compelling. If that scenario eventuates, we would endorse the proposed amendment and recommend the inclusion of a provision in the *RTI Act* requiring the Ombudsman to publish external review decisions.

- Clarify reporting obligations in the *RTI Act* to include names/titles of decision-makers and statistics on their decisions and review outcomes.[262]

We understand the Integrity Commission's recommendation which would increase accountability for RTI delegate decision-making, but for the reasons we explained in Chapter 4 of this Report on 'Culture', we do not agree with this recommendation. In our view, the role of RTI delegates is stressful enough as it is with pressure on them from applicants as well as from higher echelons of their departments and/or from ministerial offices. In our view, RTI delegates, almost invariably employed at relatively junior levels of State Service, ought not to have their names and titles disclosed – let alone the statistics on their decisions and review outcomes subject to public scrutiny. RTI delegates generally do not have control over staffing, workload, level of co-operation in gathering information for potential disclosure, volume of information and priorities of the workloads of those approached to identify and gather information for potential disclosure. All of these realities indicate to us that the names and identities of RTI decision-makers ought not be disclosed.

- Include independent audit mechanisms to assess information management and disclosure practices.[263]

The EDO calls for the conduct of: '[a] comprehensive audit of the management and release of government information … with a focus on incorporating "technology-assisted" compilation and review of information'. We agree that a comprehensive audit would be worthwhile and we have discussed, in Chapter 7of this Report dealing with the Ombudsman, our view of the exemplary nature of DPAC's initiative to commission an external audit of its processes for the management and release of departmental information. In our discussion on the DPAC initiative, we observed that a more proactive approach by the Ombudsman could result in government departments more regularly undertaking exercises similar to that of DPAC. In such an environment, we do not consider that an amendment to the *RTI Act* would be necessary for regular independent audit processes and mechanisms to be a feature of the Tasmanian RTI framework. If the recommendation for an Information Commissioner is accepted the roles and functions we recommend would lead to the government wide review of information management.

[262] Integrity Commission Tasmania, *Misconduct risks,* Recommendation 2, 3.
[263] EDO, *Transparent Failure*, Recommendation 7.

c) Interpretation – section 5

- Amend section 5 of the *RTI Act* to include definitions of: 'being helped' (referred to in section 19(2)); 'competitive disadvantage' (referred to in sections 37(1)(b) and 38(a)(ii)); 'general details' (referred to in section 19(2)); and 'public interest' (referred to in multiple sections of the Act).[264]

None of the terms 'being helped', 'competitive disadvantage' or 'general details' are defined in section 5 of the *RTI Act* (entitled 'Interpretation'). We understand the desire for clarity on those terms and endorse the proposed amendment accordingly.

The term 'public interest' is not defined in section 5 but schedule 1 provides an extensive list of factors to be weighed in any assessment whether disclosure of information would be contrary to the public interest. The suggestion from Hydro Tasmania is that 'public interest' be defined in section 5 to avoid the need to consult schedule 1. We do not agree with this proposal. Schedule 1 provides a detailed list of factors to be included in an assessment and any abbreviation of that extensive list for the purposes of including a workable definition in section 5 of the *RTI Act* could adversely impact upon the level of detail currently provided. Conversely, if the content of schedule 1 were cut and pasted into section 5, that section would probably be unwieldy as a consequence.

The submission from the Tasmanian Greens suggests doing away with schedule 1 and adding specific public interest tests for each exemption. In our response to the COI's recommendation on this point we have indicated why we do not support this suggestion.

d) Protection in respect of criminal offences under other Acts – section 52

- Amend section 52 of the *RTI Act* to clarify whether the protection of the provision extends to criminal offences in jurisdictions other than Tasmania including at the Commonwealth level.[265]

Hydro Tasmania has observed that while section 52 of the *RTI Act* 'provides protection from criminal offences when information was required or permitted to be disclosed pursuant to the Act', it is unclear whether this protection extends to criminal offences in jurisdictions other than Tasmania, including at the Commonwealth level. Hydro Tasmania recommends that the Act be amended to provide clarification if at all possible.

We understand the desire for clarification in the legislation about the scope of the protection provided in section 52. If it is at all possible to provide that clarification, we certainly agree that amendment to that effect is desirable and we endorse the proposal accordingly.

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[264] Hydro Tasmania, *Submission to the Independent Review of Tasmania's Right to Information Framework*, 2.
[265] Ibid., 3.

e) *Right to Information Regulations 2021* (Tas) – Proof of applicant's identity

- The *RTI Regulations* be amended to expand acceptable identity documents, including prison certified identity documents.

According to the UTAS Law Faculty Team:[266]

> For an application for assessed disclosure to be valid under s 13 of the *RTI Act*, it must contain the minimum information prescribed in the Right to Information Regulations 2021. Regulation 5 provides that where a person applies to access their own personal information through an RTI request, they must provide proof of their identity. The list of proof of identity documents in r 3 is exhaustive and currently presents barriers to certain individuals accessing the RTI system. For example, r 3 does not include certified prison IDs, and yet often this is the only accessible form of identification that prisoners have access to without having to request their official documents through prison administration. In this situation, the prisoner's application does not meet the minimum requirements of an RTI request, and the application can be refused. In practice, we understand that some agencies accept prison certified ID as sufficient proof of identity in an effort to apply the *RTI Act* in good faith. Some other agencies apply a 'workaround' to this gap and process the request as an application under the Personal Information Protection Act 2004 (Tas) ('*PIP Act*'). However, this restricts the information the applicant can receive to information of the applicant themselves, meaning that the prisoner would still have to make a separate RTI request if they are also seeking other information.

Ombudsman Tasmania recommended:

> … that the Right to Information Regulations 2021 (Tas) be amended to define 'proof of identity document' more flexibly. The assessment of identification and satisfaction with proving identity is for the relevant public authority or Minister. The Ombudsman recommends subsection (e) be added to the definition in Regulation 3, as follows:
>
> *…or*
>
> *(e) government issued photographic or proof of identity documents that satisfy the public authority or Minister of the person's identity.*

There are many reasons that a person may be unable to provide proof of identity documents within the current meaning of the Regulation and the prescriptive definition of proof of identity document may operate as a barrier to making an application for information, for example people who are incarcerated, live with disability, or are under 18 years of age. Amending the accepted documents to a more expansive definition would align with the s3(1) objects of the Act.

We endorse this proposed amendment for the reasons explained by Ombudsman Tasmania and the UTAS Law Faculty Team.

[266] UTAS Law Faculty, *Submission to the Independent Review of Tasmania's Right to Information Framework* (26 June 2025), 1-2.

Conclusion

A summary of the current state of the Tasmanian Right to Information ('RTI') framework includes several observations:

- There is a prevailing culture of government decision-making that is risk averse and drifts back towards a closed approach to the disclosure of information, particularly whenever scrutiny is politically sensitive.
- There has been a demonstrable failure to treat RTI as a fundamental, and ongoing, public policy program.
- The Ombudsman has not played a sufficiently active role in providing timely oversight, monitoring/review, and leadership to ensure both compliance in practice and compliance in law.
- The *RTI Act* continues to fall short of achieving its intended objectives in the following areas:
    - enabling Tasmanians to participate effectively in the making and administration of law and policy;
    - allowing Tasmanians to collaborate with government and co-create, co-design and co- evaluate outcomes and policy;
    - enhancing Tasmanians' understanding of major long-term issues and involving them in the policy formulation process.

As proud Tasmanians, it is difficult for us to live with the harsh reality that our small state is in the bottom ranks of most performance criteria for mainstreaming transparency in government in Australia. In the 'information age', a small state at the edge of the global economy cannot afford to isolate the majority of its population with restrictive, reluctant and begrudging trickles of information. In particular, we cannot afford to expose the best and brightest of our younger generations to a working environment where swathes of redacted text is considered more in the public interest than testing their ideas in a supportive, yet challenging, public policy environment.

These extracts from the Coaldrake Review capture perfectly our observations of the Tasmanian public sector and why it needs to embrace the three key drivers of the RTI Act:[267]

> Key to achieving lasting positive change in any organisation, and certainly in government, is culture. And culture is shaped by leaders at all levels – the Premier of the day, ministers, MPs, Directors-General and senior executives. Their tone will be a precondition for success, whether that 'tone' be in the form of modelling behaviour, policy ambition and encouraging a contest of ideas, supporting the community in times of crisis, or the manner in which authority is exercised and the voice of the public heard.
>
> This Review aspires to influence a cultural shift which encourages openness from the top, starting with Cabinet processes and a resulting shared focus on identifying and dealing with

[267] Professor Peter Coaldrake AO, *Let the Sunshine In*, 1, 2, 9.

> the challenges Queensland faces. Investing in good people and supporting them with an integrity system that enables a fair workplace committed to quality outcomes will help to rebuild the nobility of public service. Our best young people, indeed the best young people from around the world, should aspire to be part of Queensland's public sector, serving the needs of the community, and a government committed to identifying and enacting a long-term strategy for the State.
>
> These considerations are at the heart of the challenge for government in the 21st century – to satisfy the individual's expectations to have their needs met and rights respected while maintaining an umbrella of service for the community.
>
> A culture dedicated to service and accountability, and of course to performance, is essential to meet this challenge. And it is equally evident that many people in our public sector embrace that noble tradition in their daily activity. At the same time, representations made to this Review indicate the fraying of this culture on a number of levels. There is a view, repeatedly confirmed, that public service advice is too often shaped to suit what are assumed to be the preconceptions of the people receiving it, that the price for frank and fearless advice can be too high, sometimes devastatingly so, and the rewards too low. All this encourages a reluctance to depart from what is perceived to be the 'official line'. The examples given are not isolated, nor are they confined to singular pockets of the government.

Our Review observed a public service dealing with a poorly maintained RTI framework labouring under the weight of an old, outdated and dysfunctional Westminster conception of information with little sense of urgency to change.

However, despite the lamentable neglect there have also been several significant recalibrations of what is needed for effective public service in this part of the 21st century. Like a group of hikers who have aligned their maps and compasses and seen their destination(s), some positive steps seem to be accelerating in the right direction. Model policies on government disclosures and processes are to hand. Leading 21st century online training, designed in conjunction with users, has been developed and is about to be rolled out. A start has been made on adding RTI key performance indicators to the leadership of the Tasmanian State Service. An Information Gateway and Disclosure Logs – not mandated by legislation – have been operational for a decade (albeit with a lack of consistency, ambition and lacking an objective of being informative as possible).

Yet this is the point where previous efforts in 1991 and 2009 went off course:

- First, the failure to accept and pledge allegiance to a post FOI/RTI conception of Westminster where frank and fearless advice is a duty owed to government and citizens alike.
- Second, the paying of lip service to transparency rather than political and bureaucratic leadership.
- Third, the absence of an engaged oversight body dedicated to the achievement of the objects set out in section 3 of the RTI Act.
- Fourth, seeking refuge in secrecy when the going looks like it might get a little tougher.

- Fifth, allowing debates about key infrastructure, policy programs, budgetary problems and intergenerational challenges to take place without timely, relevant and high-quality information to inform and transform the thinking and aspirations of Tasmanians.
- Sixth, treating the best and brightest of our young professional public servants as if they are timid followers rather than emerging leaders.
- Seventh, failing to support, equip and encourage RTI delegates to undertake the journey required by section 3 of the RTI Act.

We have attempted to articulate a list of recommendations that we believe would help get the Tasmanian RTI Framework back on track and we sincerely hope that the current, and future, Tasmanian governments will commit to these recommendations and take the necessary administrative and legislative actions to implement them.

Appendix 1

4. Terms of Reference

SCOPE

An independent review of the Tasmania's RTI framework will examine and report on the adequacy, effectiveness and implementation of the Right to Information Act 2009, including but not limited to:

1) any findings and recommendations arising from previous reports and review processes;
2) any administrative and/or cultural challenges experienced in meeting the objects of the Act;
3) the intersection with any other relevant legislative frameworks (including, but not limited to, the Public Interest Disclosures Act 2002 and the Personal Information Protection Act 2004);
4) the performance, resourcing and efficacy of the Office of Ombudsman in undertaking its functions and duties under the Right to Information Act 2009; and
5) any other identified barriers to, or constraints on, the effective capacity of the RTI framework in Tasmania.

Further, the Independent Reviewers will:

- Undertake a transparent and broad consultation process, engaging with all interested and relevant parties, including the general public, the Tasmanian State Service, Parliamentarians and others;
- Identify and recommend reforms that encapsulate interjurisdictional best practice in terms of 'right to information' or 'freedom of information' models; and
- Deliver reform options (administrative and legislative) including recommended phases for implementation.

COOPERATION WITH THE INDEPENDENT REVIEW

The review shall have all reasonable cooperation of all Tasmanian Government Agencies and public authorities, in accessing all material relevant to these Terms of Reference (in accordance with all statutory requirements and limitations).

DURATION AND REPORTING

A Final Review Report is to be provided to the Premier, the Hon Jeremy Rockliff MP, and the Independent Members for Bass and Braddon, Rebekah Pentland MP and Miriam Beswick MP, by 30 June 2025. The Report will be made publicly available within 14 days of formal receipt and the Government will provide its response within three months of the completion of the Review.

Appendix 2

5. Consultations and meetings: list of stakeholders

The following is a list of individuals, organisations, public authorities, and other entities with whom we held consultations and meetings.[268]

- Department for Education, Children and Young People
- Department of Health
- Department of Justice
- Department of Police Fire and Emergency Management
- Department of Premier and Cabinet
- Department of Natural Resources and Environment
- Department of State Growth
- Department of Treasury and Finance
- Brighton Council
- Central Coast Council
- Devonport City Council
- George Town Council
- Glenorchy City Council
- Huon Valley Council
- Kingborough Council
- Launceston City Council
- Northern Midlands Council
- Southern Midlands Council
- Waratah-Wynyard Council
- West Tamar Council
- West Coast Council
- Guy Barnett
- Miriam Beswick
- Michael Ferguson
- Craig Garland
- Environment Protection Authority
- Homes Tasmania
- Integrity Commission
- Macquarie Point Development Corporation
- Marine and Safety Tasmania
- Office of the Independent Regulator
- TasTAFE
- Tas Water
- Tas Racing
- TT-Line Company
- Aurora Energy Pty Ltd
- Metro Tasmania Pty Ltd
- Tasmanian Railway Pty Ltd
- Local Government Association of Tasmania
- University of Tasmania
- James Johnson (Environmental Defenders Office)
- Rhys Edwards
- 26Ten
- Ombudsman
- Nicholas Gruen
- UTAS Law Faculty RTI training team
- Implementation Monitor
- Kym Goodes
- Ombudsman (outgoing)
- Ombudsman (incoming)

[268] This list is not exhaustive: some of those we consulted/met with did so on the condition of anonymity and are therefore not included in this list.

- Ella Haddad
- Kristie Johnston
- Michelle O'Byrne
- Rebekah Pentland
- Dean Winter
- Ruth Forrest
- Cassy O’Connor
- Meg Webb
- David Bartlett
- Lara Giddings
- Mike Cain
- Tom Baxter
- David Killick
- Michael Easton
- Right to Information Working Group
- Registrar of Motor Vehicles
- State Archivist
- Saul Eslake
- Nick Clark
- TASCAT
- Office of the Independent Regulator
- Wes Young
- Luke Martin
- Robert Hogan
- Andrew Ecclestone
- Robyn Lewis

Appendix 3

Written submissions

Submission	Name	Organisation
Submission 1	Adam Holmes	
Submission 2	Bob Burton	
Submission 3	Cassy O'Connor	Tasmanian Greens
Submission 4	David Killick	
Submission 5	James Johnson	Environmental Defenders Office
Submission 6	Catherine Murdoch	Environmental Protection Authority
Submission 7		Hydro Tasmania
Submission 8	Robert Hogan	
Submission 9	Adrienne Piccone	Tasmania Council of Social Service (TasCOSS)
Submission 10	Angie Somann-Crawford	TasPorts
Submission 11	Susannah Windsor	University of Tasmania
Submission 12	Phoebe Winter	
Submission 13		UTAS Faculty of Law RTI Training Project Team

Hi Rick and Tim,

I am a journalist based in Tasmania.

My approach to RTI is non-adversarial. I act in good faith with public servants processing my request, noting their own workload pressures and other external pressures in an under-resourced and under-valued aspect of Tasmania's public service.

I believe there are some things that work well with Tasmania's right to information system, and many things that do not work well.

Positives:

- The 'free' access to information for journalists, without limits on number of applications
- Access to departmental disclosure logs
- The responsiveness and effectiveness of the Ombudsman in assisting in delayed departmental responses (eg prior to external review stage)

Negatives:

- Inconsistencies in department approaches to RTI, particularly regarding timeframes for response, interpretation of the Act regarding redactions, explanations for redactions in decision letters
- Department of State Growth, in particular, is very poor in its handling of RTI requests
- Long delays in external reviews with Ombudsman, effectively making external review process redundant, which may be exploited by department responses
- Misuse of s17 (eg lack of evidence of decision to release within 12 months, information still not released after 12 months)
- Potential external influence on independence of RTI process (eg example of minister being aware of an impending RTI release, and then releasing information pre-emptively) (media advisor contacting me prior to release of RTI) (department media advisor saying I am 'fishing' for information after RTI submitted)
- Ambiguity of s22 (4), should be clarified
- Misuse of s35 (particularly (1) (a), as 'positive' opinions of officers are often released, while opinions that could be 'negative' or 'sceptical' are always redacted)
- Lack of consistency of s36 (eg identity of public servants are occasionally redacted, but in other cases, journalists regularly have their personal phone numbers and email addresses released)
- Lack of disclosure logs for GBEs, most regulatory authorities (why does the EPA have a log, but not Taswater?), local councils (while it may be resource intensive for smaller councils, larger councils should have this requirement)
- Lack of consistency in publishing on departmental disclosure logs (eg often my decisions are published on logs simultaneously with me receiving them rather than on delay, other times they are not published at all. The EPA recently removed one of my decisions from the log)
- The 'document dump' style of releasing information by most departments with excessive duplication, requiring significant collating and ordering

Better departments:

I believe some departments have made genuine attempts at improving responses. In particular, I find the Justice Department has managed very complex and labour intensive RTIs while keeping me updated and requesting extensions as appropriate. The Department of Premier and Cabinet has improved in the detail of its decision letters, clearly articulating its reasons for the application of redactions and in greater detail. Both Justice and DPAC will usually provide document schedules, which greatly assist in the collating of information. The Department of Natural Resources and Environment also avoids missing deadlines, while seeking extensions as appropriate. I find these departments helpful to deal with.

State Growth:

As one of Tasmania's largest departments – effectively a 'catch all' for a range of government functions, some of which involve the largest provision of government funds and grants – I find the Department of State Growth's approach to RTI consistently frustrating.

This department has misused s17 to avoid releasing information, without demonstrating where a decision was made that information would be released within 12 months, and then not releasing information for well over 12 months regardless. In one instance, the information was released by the minister several days before the RTI was released to me.

State Growth never adheres to timeframes for the release of information. I now request acknowledgement from this department in order to 'start the clock' for a response, however the "as soon as practicable but in any case not later than 20 working days" timeframe is merely seen as a suggestion, rather than a requirement.

Suggestions:

While RTI is a way for me to find stories, I also consider it a way of providing a broader public service, by making information accessible to the public.

I am not an expert in RTI law, nor public administration, nor have I had time recently to assess previous RTI system reviews, but these are a few points I have pondered regarding Tasmania's system:

- An independent body could be established to handle RTI requests. This would address the 'lack of incentive' for departments to efficiently release information, and also allow RTI officers to build on expertise in release of information, rather than denial of information
- This could include a central RTI disclosure log system for all departments, authorities, councils, GBEs – and improved public knowledge of how to access this information
- A way of prompting departments to adhere to timeframes, without the need to trigger external review from the Ombudsman
- Clear legislated requirements as to how information is released (eg all must involve schedule of documents, must be chronological where possible)

Thank you,

Adam

Bob Burton
[redacted]
Mobile: [redacted]
Email: [redacted]

Independent RTI Framework Review

Email: tasrti.review@gmail.com

Background

This submission is made in a personal capacity. I am happy for this to be treated as a public submission.

I have filed perhaps 1-200 Freedom of Information (FOI) /Right to Information (RTI) requests over the last 35 years, including applications in Tasmania, Victoria, New South Wales, Queensland, the Commonwealth of Australia and New Zealand. This includes extensive experience with Tasmania's earlier Freedom of Information Act.

In the last five years, I have filed more than 20 RTI requests in Tasmania, spanning state government agencies, the Premier's office, Government Business Enterprises and several local governments. These were filed as part of my work for *Tasmanian Inquirer*.

The comments below are reflections on my experience with Tasmanian RTI requests that have spanned from applications that were processed smoothly through to internal appeals, appeals to the Ombudsman and routine disclosure.

The importance of a signal from the Premier: The best document disclosure experience I have had with the Tasmanian government was back in about 2009 under the old Freedom of Information Act: within one to two weeks, I had all the documents relevant to my request with reasonable but minimal redactions.

While the old FOI Act was weaker, the difference between then and now was the surrounding political culture. At the time, Premier David Bartlett headed a government that, in the wake of the controversy over the Gunns pulp mill, committed to a suite of measures to "strengthen trust in democracy and political processes in Tasmania". The measure included the establishment of the lobbyist register and a review of the FOI Act.

Since 2014, high-level support for improved transparency has waned. I can't recollect a clear statement by any Premier in the last decade clearly communicating an expectation that ministers and agencies improve their RTI disclosure practices. A signal from the top is crucial in shaping the performance of agencies.

Some other specific points:

Digital vs hard copy provision of released records: In response to a request to TasNetworks, several hundred pages of documents were released but, to my surprise, were couriered to me in hard copy form rather than as a digital file. While some people may prefer printouts, it should be at the discretion of the applicant.

All agencies should be required to have a disclosure log: Most agencies have a disclosure log for RTI documents so that other members of the public can access previously released records. In the case of the TasNetworks documents, I discovered that the agency doesn't appear to have a Disclosure Log. (It is not linked to the RTI section on its Policies page or Publications page or turn up on a search for "Disclosure Log"). Are there other agencies/government business enterprises in a similar position? Shouldn't it be mandatory for agencies to have a disclosure log?

The wording of the RTI request should also be published on the disclosure log: While most agencies publish released documents on their disclosure log, none that I have seen publish the wording of the actual request. Releasing the records but not the terms of the request is like publishing the answer but not the question. On several occasions, I have reviewed documents released to others and wondered whether other records were missed due to the wording of the original request or perhaps the specification of a narrow time window. Sometimes, it is possible to guess who filed the request; other times not.

Disclosing the wording of a request would allow a better understanding of the documents released and potentially minimise the chance of duplicative requests.

Applicants should have the option of acknowledgement on disclosure logs: Disclosure logs currently don't disclose the name of the applicant. As a default setting, it is reasonable that applicants can remain anonymous if they so choose. However, many applicants would be happy to consent to the disclosure of their name if given the option.

From a journalism perspective, an essential part of the story is the to and fro of the arguments over redactions and other information in correspondence with the agency. For example, the applicant's arguments in internal appeals against parts of an initial decision and the agency's responses are important elements in explaining what was and wasn't disclosed. (See for example here). It is also preferable to acknowledge who the applicant was.

It is worth noting that the decisions of the Ombudsman on appeals often name the applicant. The decisions of the Ombudsman also include extracts of the arguments of the respective parties over exemptions.

Set a minimum frequency for the routine disclosure of data: There is currently no minimum Tasmanian government standard on the frequency for data released as routine disclosure under the RTI Act. There should be.

Several years ago, I submitted a successful RTI request to the Department of Natural Resources and Environment requesting data on the use of various devices against seals at fish farms broken down by the name of the company and by month. (See story here.) I also requested the routine disclosure of the data on a monthly basis. NRE Tas initially agreed to disclose the data on a quarterly basis and then unilaterally changed the frequency to six months.

It would be helpful if there is a benchmark for routine disclosure of simple data. For example, the Department of Treasury and Finance routinely discloses data on a monthly basis on gambling-related issues, and the Department of Premier and Cabinet discloses ministerial appointments diaries for each quarter. In my opinion, the disclosure of data monthly is more consistent with the spirit and aim of the RTI Act.

Even where an agency agrees to disclose data on a routine basis, it may not do so in a timely manner. For example, on at least one occasion, I had to prompt NRE Tas about the lack of the latest seal deterrent data. The schedule for the publication of the ministerial diaries is also rather haphazard. These instances suggest that internal systems to ensure the timely disclosure of routine information are not robust.

Is routine disclosure in response to an RTI request a temporary or a permanent commitment? Back in 2009, I applied under the Freedom of Information Act for the ministerial appointments diary of the then Premier, David Bartlett. This disclosure remained the standard practice of Premier Lara Giddings, but Premier Will Hodgman abandoned it after the 2014 election. Is routine disclosure after a FOI/RTI request a binding or non-binding commitment?

Shouldn't routinely disclosed data meet RTI standards as a minimum? Following a 2023 Legislative Council motion, the disclosure of ministerial appointments diaries was recommenced and extended to include all ministers. However, a recent Right to Information request revealed that the Department of Premier and Cabinet (DPAC) released more information than included in the routinely disclosed diaries. Surely, the routinely disclosed information should be consistent with RTI standards.

It is also worth noting that far more detail was disclosed by DPAC in response to my 2008 Freedom of Information request than disclosed following the recent Right to Information request. (I can supply a copy of the original hard copy records if required.)

Extend the period before publication of documents on the disclosure log: The current practice is that agencies publish documents on their disclosure log 48 hours after release to the applicant. In my view, 48 hours is unreasonably short.

The application and appeals process can extend from a month through to several years and involve a significant investment of time by an applicant. Documents released in response to some RTIs can extend to hundreds of pages of complex material that require time to read, sort and analyse. Journalism based on RTI documents requires seeking out people with specific expertise and community members. The current 48-hour exclusivity window also assumes that the applicants have no other commitments at the time documents are released.

I would suggest extending the exclusivity period to 20 working days, matching the time offered to third parties to consider the potential release of documents affecting them. Some applicants might prefer the 48-hour disclosure window. In this case, it should be the right of the applicant to opt-in for a shorter release period. Extending the timeframe offers a level of guarantee to applicants for their effort but only makes a modest change in the total timeframe of an average RTI request.

Isn't it time to make all RTI applications free? Applications are currently free for MPs, journalists and others who can make out a claim of either public interest or hardship. I'm not aware if there is any data on how many applicants a year pay the current $46.75 fee. However, I suspect the amount of revenue is relatively negligible.

Increased training for decision-makers: The Ombudsman's last annual report notes the limited funding and time available for training programs for RTI decision-makers. Better-trained decision-makers offer the potential to reduce the need for internal appeals and reduce costs incurred in external appeals to the Ombudsman's office. On several occasions, I have had to explain basic

procedural steps to decision-makers, such as marking up document redactions with claimed exemptions rather than just claiming a blanket exemption for an entire document. In other instances, decision-making officers were seemingly unaware of well-established precedents by Ombudsman rulings, such as disclosing the names of agency officials in documents.

Should there be training and support available for applicants? There is currently no system for training and support for applicants, especially in navigating the appeals process. Applicants who applied for records either as individuals or for small community organisations find the legal language in initial decisions claiming exemptions rather intimidating. Rather than pursuing an appeal, they often give up and are left feeling the odds are stacked against them. I think they probably would have gained additional information if they had access to advice on how they could craft an appeal. While access to the Ombudsman's decisions is useful, there remains a significant power imbalance between an individual applicant and an agency. First-time applicants, in particular, find the appeals process somewhat overwhelming.

The lack of an evidentiary basis for claims of 'commercial in confidence': There seems to be a trend towards government agencies invoking 'commercial in confidence' as a blanket 'get out of jail free' card without having to disclose information.

For example, when I requested a copy of a tender brief TasNetworks supplied to potential bidders, my request was rejected "due to commercial-in-confidence and privacy considerations". (See here. I obtained the brief via a subsequent RTI request, but that really should not have been necessary.)

In another example, the Tasmanian EPA has published reports submitted by salmon companies monitoring antibiotic residues in public waterways. (See here, here and here.) These reports, which the relevant company commissioned, included the details of the quantity of antibiotics used and the number of cages treated. Several of these reports revealed antibiotic residues in wild fish, some at high levels and others at a significant distance away from the salmon farms. Not surprisingly, the issue gained a substantial amount of public attention. In the recreational fishing community, there was concern about the lack of real-time disclosure of when antibiotics were in use.

Early last year, I inquired with the EPA's media office whether antibiotics had been used since the release of the previous monitoring report and, if so, the type of antibiotic, the name of the lease, the amount of the drug used and how many pens treated. They provided the information without requiring an RTI request.

I subsequently requested the EPA routinely disclose information on when antibiotics were in use and when a residue monitoring report was published. They refused.

This year, when a significant disease outbreak occurred in the D'entrecasteaux Channel, Huon Aquaculture voluntarily disclosed it was using an antibiotic at one of its leases. The EPA refused to state how much antibiotic was used or how many cages would be treated, claiming it was commercial in confidence. How information that was once openly disclosed by all three salmon companies and published by the EPA suddenly became a commercial secret remains unclear.

In the case of TasNetworks, an initial decision to refuse a simple request required an RTI to gain a copy of material that was clearly not commercial in confidence. In the case of the EPA, the refusal of

the agency to disclose the amount of antibiotic used is likely to lead to an RTI to access information that was previously public released.

In the absence of clear guidance on what really is 'commercial in confidence', it seems clear the claim is used to block the disclosure of basic information. The initial failure of media officers to disclose information has flow-on impacts on the RTI workload of an agency. If RTI aims to ensure agencies pro-actively disclose information, any training programs need to extend beyond agency RTI decision-makers to also include media officers.

Appeals bottleneck at the Ombudsman's office: I appreciate that, according to Ombudsman Tasmania's last annual report, the average time to process appeals is declining. While increased resourcing should cut the backlog further, it is important to acknowledge that part of the problem is poor processing of applications at the very start of the process. (See above and here.) In one instance, a relatively simple RTI application of mine ran from December 2020 until a decision by the Ombudsman in May 2024.

In another case, the Ombudsman flagged the possibility I could access a fast-track option to ensure timely processing of an appeal. I didn't take the offer up. While I am sure MPs and journalists can plausibly argue in favour of the quick resolution of appeals, the fast-track option obviously affects other applicants left on the slow track. Who is the fast-track option offered to? How many take it up? What impact does this have on other applicants?

I think others will probably cover this issue, but I also note that the guidance documents on the Ombudsman's website are now getting rather dated.

Thanks for the opportunity to comment.

Yours sincerely,

Bob Burton

Cassy O'Connor MLC

Member for Hobart

Tasmanian Greens spokesperson for Justice

Wednesday, 30 April 2025

Independent RTI Framework Review
GPO Box 123
Hobart Tas 7001
Via: tasrti.review@gmail.com

Dear Reviewers,

Thank you for the opportunity to make a submission to the Independent Review of Tasmania's Right to Information (RTI) Framework. As the Tasmanian Greens' spokesperson on Justice, Democracy and Integrity, I make this submission on behalf of all our State MPs.

We appreciate the time the Review team has dedicated to the important task of reforming Lutruwita/Tasmania's *Right to Information Act 2009*.

We sincerely hope there is a similar commitment within government to reform, with the aim of ensuring the Act is consistently applied by public authorities in line with the Object of the Act.

3. Object of Act

(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.

(2) This object is to be pursued by giving members of the public the right to obtain information held by public authorities and Ministers.

(3) This object is also to be pursued by giving members of the public the right to obtain information about the operations of Government.

(4) It is the intention of Parliament –

(a) that this Act be interpreted so as to further the object set out in subsection (1) ; and

(b) that discretions conferred by this Act be exercised so as to facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information.

While no government has a perfect record of compliance with the spirit and provisions of the Act, the experience of the Greens in Parliament since the election of the Liberal Government in 2010, is that there has been a deliberate and systematic deterioration in application of the Act in a manner that does not serve the above Objects.

We believe many stakeholders who submit to the Review will also note the reflex of agencies and ministerial offices, particularly, to delay assessments, and deny information without lawful basis – actions which have in many cases, if reviewed by the Ombudsman, been found to be in breach of the Act.

While not all experiences with the RTI process are problematic, many are. Our experience has been that the more the subject of the RTI is politically difficult for government, the higher the risk of obfuscation and unlawful denial of public information.

The primary issues with the current application of the *Right to Information Act 2009* (the Act) are cultural. That is, there are elements within the State Service, likely under pressure from Cabinet and political advisers, that serve to obstruct the release of information for the political benefit of the current government.

To quote from the 2021-22 Ombudsman annual report:

"The express object of the RTI Act is clear in relation to its pro-disclosure focus… 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."

The Integrity Commission's *Investigation Gatehouse* provides a valuable insight into the RTI process in Tasmania. We won't rehash the details of this case, as it is public and available to read, suffice to say the report was scathing of the pattern of deliberate, unlawful conduct in this case.

This is an instructive case as it is not representative of rare, or the most egregious conduct. It is representative of a common process for an RTI request on a matter that is, or may be of, political sensitivity to government and/or its agencies.

RTI Uplift Project

The Right to Information Uplift Project Discussion Paper was updated in July of 2024, two months after the publication of Investigation Gatehouse.

While the discussion paper briefly noted the investigation and the reports, it did not otherwise discuss the details in the report. Nor did it discuss the matter of Quality Assurance Panels, an issue identified in the Integrity Commission investigation. Nor do any of the meeting minutes of the Steering Committee discuss these matters. It is almost as if the Integrity Commission's damning investigation simply did not happen.

Other elements of this discussion paper are blithely one-sided. Section 9.5 on 'public perception':

"objective measures suggest that RTI delegates across the TSS are working to release as much information as possible to the community, as quickly as possible, despite an ever-increasing workload. However, public discussion around RTI never seems to acknowledge this."

The report makes this claim by assessing the proportion of decisions for which reviews were requested for decisions (2%). The report, however, neglects to mention a few key details. Of the 28 requests for internal review 16 were upheld in full, 10 were upheld in part, and 0 were reversed.

Yet, of appeals that made it to the Ombudsman, 95% had identified errors in the Department's response to applications. The Ombudsman also noted in that year, *"Too often, sadly… a closed, and at times obstructive, approach is taken when responding to requests for assessed disclosure which come before my office."*

In the previous year, the Ombudsman also noted the Tasmanian Government's refusal of access to any information was 7.5 times higher than the leading jurisdictions in Australia.

Given an internal review process in that year had a 0% rate of reversing decisions, and Ombudsman backlogs can mean a review can take years, members of the public blocked in their attempts to obtain public information would likely be dissuaded from embarking on that process.

While the Greens make regular use of RTI information requests in the course of our work, most applicants are members of the public. Everyday Tasmanians are unlikely to be intimately familiar with the Act, their rights for review, and on what grounds they can appeal a delegate's decision.

The data being proudly touted in the RTI Uplift discussion paper reflects the fact that most applications are not of political concern to government, and do not always attract the same sort of obfuscation, and disregard for the Act, as the applications made by journalists, NGOs, and non-government MPs.

Unlawful Intervention in the Decision-Making of Delegated Officers

Investigation Gatehouse of the Integrity Commission found the Department of Health had established a Right to Information Panel, based on a similar panel in DPAC.

The investigation recommended disbanding the panel *"due to the associated serious misconduct risks and its capacity to subvert compliance with the Right to Information Act 2009 (Tas) in terms of time frames and decision-making."*

We are also aware that, since 2019 at least, NRE (then DPIPWE) had a 'quality assurance panel'. Despite the Ombudsman instructing the Department that this was not permitted

under the Act, we are aware of a 'quality assurance process' delaying decisions continuing as recently as 2023.

These panels operate by reviewing lawful decisions made by a Principal Officer or Delegated Officer. These officers are the decision-makers, and it is not lawful for their decisions to be reviewed prior to being allowed to make them.

Not only does this delay decisions well past legislated timeframes – sometimes for weeks and months – but our view is that, far from being a 'quality assurance' process, it is a political risk assessment process.

We have also experienced delays in decision making from 'ministerial noting', which at times has gone so far as delegated officers telling us their decision is being delayed until they hear back from the Ministers office.

In contrast, during the Labor Green government between 2010-14, both Greens' ministers gave clear, early instruction to our portfolio agencies that we expected full compliance with the RTI Act. Greens ministers rightly adopted a hands-off approach to RTI requests.

Petty Obfuscation

Over the years, we have encountered examples of what can only be described as deliberate, petty obfuscation intended to extend the date for which the clock commences.

There have been attempts to delay email responses accepting an application with the effect of extending assessment times. This is not provided for under the Act, as section 15(3)(a) sets out an application is taken to be accepted on receipt.

There have also been attempts to use a full 10 days to 'consider' whether to enter into negotiations, allegedly under section 15(2). This also isn't allowed by the Act, as the 10 days is a maximum time for negotiations to conclude, not an allotted time for an officer to consider when to enter negotiations. Further to this – if negotiations don't take place, it doesn't extend the total timeframe.

We receive a response to an RTI which in no way satisfied the request. This could be a case of under-resourcing within agencies, but it happens with such consistency, it is reasonable to suggest this is but another delaying tactic.

The most egregious example of pettiness has been delaying accepting an application pending a decision on whether the applicant was a Member of Parliament before accepting the fee waiver. The Ombudsman had to intervene to stop this practice.

Public Interest Test

The 2019-20 Ombudsman annual report noted:

"Agency decisions are still often couched in broad terms. While the exemption sought to be relied on might be cited, the necessary elements of that exemption as it relates to the information at hand are frequently not addressed; there is no analysis made of the considerations relevant to the particular exemption. This typically presents in the form of a comprehensive explanation of what the subject section means, followed by a conclusion that the information sought is exempt, with little or no explanation as to how the exemption applies to the information.

Where relevant, the public interest test is consistently misapplied, if it is referred to at all. It is often the case that only those factors that support a claim for exemption are considered, when a more balanced and considered approach is required."

Our experience is this generally remains true today.

It should be noted this is not the case for all RTI officers. Some provide a comprehensive statement of reasons. Others are operating under significant resourcing restraints. Others, we suspect, are otherwise directed or pressured into issuing refusals that have no basis under the Act and are therefore restricted in their ability to make a compelling statement of reasons.

The most recent Ombudsman annual report (2023-24) noted, *"poor communication by public authorities with applicants and the failure to provide appropriately detailed reasons in decisions remains a common issue"* and *"80% of my decisions varied or set aside the public authority's findings, continuing to reflect a very high percentage of errors in decision-making."*

While we believe the public interest test, when applied accurately, has merit, it is too often misapplied. The test isn't tailored to the individual exemptions to which it applies, is inherently somewhat subjective, and can be complicated for lay persons to accurately apply when appealing a decision.

The Greens suggest the reviewers consider putting forward a narrower, clearer, and more directly relevant set of matters to be considered for individual exemptions.

Matters under the Act, relevant to determining whether internal deliberative information should be released, may differ from those relevant to information likely to affect cultural, heritage and natural resources of the State.

Likewise, some categories of potentially exempt information may be more appropriate to have a stronger presumption in favour of release (internal deliberative, for example), and some may be more appropriate to have more of a presumption against release (like personal information of a person).

We suggest the inclusion of individualised criteria would provide the benefit of being able to address the specifics of a potentially exempt criteria.

For example, it may be beneficial to distinguish how information relating to business affairs of a third party is treated based on how that information was obtained.

Financial information obtained under regulatory compliance obligations, for example, may be appropriate to treat differently than information provided for the purposes of being granted a lease over public land, or a tender for high-risk services like child safety.

While this kind of distinction can and should be appropriately assessed under the public interest test, the more things are clearly spelled out, the less likely it will be for the Act to be misapplied.

Resourcing

Resourcing constraints are often reported to us as reasons for delays in RTI decisions being issued within legislated timeframes.

This resourcing problem is also evident in the Ombudsman's office, which has been beset by backlogs through no fault of the office itself.

Active Disclosure

The Act emphasises that assessed disclosure is to be the method of last resort. Despite this, assessed disclosure is the default approach to the provision of information. Active disclosure is rarely utilised.

To give an example, the information disclosure policy of NRET says in respect of active disclosures:

"Active Disclosure

3.7 Active Disclosure is a disclosure of information by the Department in response to a request from a person. For example, if information is more than 10 years' old and is not sensitive or confidential, an active disclosure may occur.

3.8 It is the responsibility of Divisions, as information custodians, to make decisions on active disclosure.

3.9 Complex requests for information may need to be dealt with in writing with management clearance for disclosure. It depends on the nature of the information requested. For example, information about third parties; confidential information and internal communications may need clearance. If in doubt, the person should be directed to submit an assessed disclosure (RTI) request."

This provides extremely limited guidance and is not consistent with an RTI being a method of last resort.

The Act should be amended, or the Ombudsman should issue guidelines, that are far more detailed in respect of when active disclosure should take place.

RTI request contact information

Finding the contact details to make RTI requests can be difficult. In fact, the Government Business Enterprise (GBE), TT Line doesn't provide a public email address for RTI requests.

The contact information should be readily accessible and available at the departmental level as well as having a centralised list for all government departments and GBEs.

Independent Assessment

The Greens are of the view that the most significant problems with the right to information framework in Tasmania are cultural. Specifically, there are those actively promoting a culture of obfuscating the process to prevent the release of information that is politically sensitive to the Tasmanian Government.

The Act, as written, is not being applied. Any amendment to the Act should, therefore, be approached in the understanding that there will be active attempts to not comply with them when convenient.

With this in mind, the only options we see for improved compliance involve either a form of sanctions for non-compliance, or independent assessment.

The Greens do not see a realistic path for sanctions. We believe sanctioning individual RTI officers would not be just – many are facing explicit or implicit pressure from senior management or ministers' offices.

Any process that would require proving a person ultimately responsible for obfuscation would also be problematic, as this may be difficult to prove.

On this basis our preferred option would be for independent assessment. In our mind the only appropriate body for this would be a properly funded Ombudsman, working to a reformed Right to Information Act.

In closing, we point to other specific examples of a culture of secrecy and non-compliance with the Act leading to significant Ombudsman's decisions.

The most recent, egregious example was the result of journalist Camille Bianchi's determination to find the truth, and the Ombudsman's decision foundational to the establishment of the Commission of Inquiry into Child Sexual Abuse in Institutional Settings.

https://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0006/638412/O2006-133-Bianchi-and-DoH-Final-Decision.pdf

https://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0009/557865/O1901-126-Decision-Final-Signed.PDF

https://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0007/658402/R2202-021-Final-Decision-OConnor-and-NRET.pdf

While we have made few specific recommendations to the Review, we again point Reviewers to the substantial body of work and evidence-based recommendations made by the Environmental Defenders' Office (Tas), in its report, '*Transparent Failure – Lutruwita/Tasmania's ineffective right to information system and how to fix it.*'

We trust our observations – made over many frustrating years working to obtain information in the public interest – will be helpful to your work. We very much look forward to your final report and commit to being an ongoing, constructive participant in progressing RTI reform.

Yours sincerely,

Cassy O'Connor MLC
Tasmanian Greens' Member for Hobart
Spokesperson for Justice, Democracy and Integrity

[redacted]

Independent Review of Tasmania's Right to Information framework, including office of the Ombudsman.

Submission by David Killick, political editor, The Mercury.
Level 1, 2 Salamanca Square, Hobart.
[redacted]

Preamble: I am grateful for the opportunity to contribute to this review of Tasmania's RTI system. This submission is my reflection on the strengths and weaknesses of the RTI system as a professional journalist and does not necessarily coincide with the views of my newspaper or its parent company, although I hope there would be significant common ground. The opinions expressed in this submission (and any errors of fact) are mine alone. In the spirit of transparency, I am happy for my submission to be made public without redaction.

About me: I am a print and online journalist of 30+ years experience. I started my career at the Sydney Morning Herald and worked in reporting and leadership roles during 13 years at Australian Associated Press in Sydney and Melbourne. For the past 17 years, I have worked at the Hobart Mercury, mainly reporting on politics.

Introduction: Governments in Australia have become increasingly and obsessively secretive during my career. While extracting even basic information from the federal government is a task that would test the patience of the most determined inquisitor, Tasmanian government institutions have turned the practice of keeping secrets into an even higher art. (Perhaps a classic of the genre is the handling of the Right to Information Uplift Project – Discussion Paper, see attachment 12. "RTI report kept secret: Tips to fix transparency redacted" which marred that tilt at reform). As detailed in the attached Mercury reports, many of the fundamental problems have been long known and repeatedly identified. They have not been matched with a zeal for reform.

It should be no surprise that journalists and media organisations are strongly in favour of maximum transparency. The strength of our democratic institutions is enhanced by public confidence that institutions behave in a way that is open and honest with those they serve. But Public confidence does not float easily in a sea of black ink redactions I see in embedded in responses to RTI requests in Tasmania. It is my strong impression from letters to the editor and comments on online stories that The Mercury's audience is vitally engaged with the issue of transparency. It is my hope that our readers in particular could be considered well-informed on the issue.

It is important to remember that the efficient operation of our RTI system is not just the obsessive preoccupation of a few wonks, nor is it for their benefit alone. In addition to motivated citizens, activists, journalists and politicians, there is another, equally important constituency that is served by the RTI system and that is the Tasmanian public as a whole, most of whom will never directly engage with a Right to Information request in their lives. Nevertheless, they too benefit. (These principles are enunciated right up the top of the Act.)

Timely and well-informed scrutiny of government decision-making is critical to improving outcomes in a small jurisdiction where other oversight mechanisms are often small, under-resourced, weak by design or otherwise ineffective. It is increasingly so in a changing and fragmenting media environment.

A verbal public commitment to transparency and to improving the RTI system seems to have become a rite of passage for incoming Tasmanian premiers. (For example, see attachment 4. "Gutwein promise to ease 'secrecy'"). To date, it has been unmatched by discernible change in the operation of the RTI system. Reforms have been promised and funding allocated, and yet in my experience, even the most mundane secrets continue to be guarded with ferocious jealousy by the gatekeepers of the Tasmanian bureaucracy. The process of review and appeal is grindingly slow. I wrote about this with poorly suppressed anger in 2020. (See attachment 5: No more secrets: culture of cover-up a cancer on Tasmania's democracy").

"Keeping bad news — or any news — from reaching the public isn't some sort of aberration. It is the defining characteristic of this state's political culture."

Although I am aware that that intemperate front-page article had at least a transient impression at the highest levels of government, my assessment of the situation has not changed much over the ensuing five years, particularly having noted the response to the Commission of Inquiry. The status quo is rather addictive.

I have included in the attachments section below a selection of my new reports about the operation of the Act since around 2019. There is a somewhat depressing consistency. And yet for me the most extraordinary feature of the system of current disclosure if that even in many of the most well-informed requests is that so much of what is so vigorously defended is eventually revealed to be utterly mundane.

It is my strong impression from the public comments of successive premiers that they regard Right to Information system as being at the forefront of the state's transparency mechanisms. (I suspect they do not need use it much to obtain information they need.) On the contrary, resorting to our RTI laws should be regarded as the last backstop of disclosure, where less expensive, formal, time-consuming, protracted and difficult mechanisms - such as a Google search, or asking nicely or a properly executed system of routine disclosure - have failed to deliver the desired results. It is possible I gained that impression from the Act itself where it notes that "assessed disclosure is the method of disclosure of last resort".

Addressing the endemic secrecy that infects Tasmanian political culture is no small task but that difficulty must not prevent an attempt. The notion that most of the work of government is somehow a confidential affair and none of the business of citizens should not be allowed to fester. Transparency should be a core aspiration of government, rather than an afterthought.

There is ample statistical information available to the review to support the contention that the RTI system is not working as it should. It is particularly evident in the high rate of errors in

assessment identified in external reviews. (Such errors are almost universally against disclosure.) I will not restate the findings of the regular reports of the Ombudsman and Department of Justice on this topic to who understand it better than I do.

I want to take the opportunity to particularly commend the work of the Office of the Ombudsman, whose leadership and staff have worked so diligently to ensure the Tasmanian public have access to the information to which they are entitled. Their commitment and work over many years should not go unrecognised.

My experience with Freedom of Information and Right to Information: There are several categories of those who use FOI and RTI to access information. In Tasmania, my impression is that the vast majority of applications by number are people seeking to access information held by the government about them or that affects their personal interests.

I cannot speak to the ordinary user's experience of the RTI system beyond making the observation that current practices are slow, expensive, time consuming, over-bureaucratic and deliver unsatisfactory and inconsistent results. I have had contact with some of these users, who sometimes appeal for help from the media as a last resort. I note in particular difficulties bereaved families have experienced in obtaining information from the Coroners Court that seems to be more readily obtainable in other jurisdictions. (The persistent and increasing problems of accessing what should be readily available information from the state's court system are sadly beyond the terms of this review.)

Tasmania's RTI system is daunting for a determined and experienced user. It must be particularly difficult for first-time users, for those with poor literacy skills and those from non-English speaking backgrounds, those with digital literacy or access issues and others. I hope that the review is able to capture their feedback.

The other constituency of which I have the most experience is what might be called the professional information seeker. As part of my work, I keep a close watch on the disclosure of information released under the Act on the public websites of government agencies, which gives me a taste of the information sought and experience of other applicants. My main exposure to the RTI system comes as an applicant but also from sifting through the disclosed results of other applications. I have made a small number of applications over the last decade. I find the process difficult and uncertain and I have little faith that the information I seek is necessarily complete or will be provided in a timely fashion. I have found on more than one occasion that there is a keen awareness of the source and nature of requests within the ranks ministerial offices, something I did not experience when working interstate, nor do I regard as appropriate.

I have also written extensively about the RTI system and have spoken to and interviewed users and experts are part of that work.

Observations: In my opinion, there are several areas where the current Act and its operating are failing:

1. Reforms made more than a decade ago intended to encourage routine disclosure have not worked as intended. Some departments have managed to produce a flow of information but in total it remains small, fragmented, difficult to access and often incoherent. Accessing repositories of Tasmanian Government data online is sometimes easier done through commonwealth digital repositories. There is no single access point, index or repository of disclosures.
2. The nature of online resources means that information routinely disclosed in digital form may only be available for a short period of time. For example, several departments maintain digital dashboards which disclose performance over the past 12 months. As updates are produced, older material disappears. Another example is the practice of publishing RTI disclosures online. Some agencies appear to remove information after a short time, while others maintain the disclosures for long.
3. The ponderous production of annual reports, tabled en-masse in state parliament at the government's leisure, remains the most reliable and accessible source of routinely disclosed information. Some agencies defer even simple requests because the information will be forthcoming in annual reports which might be months away.
4. Public agencies subject to the Act are under-resourced for the performance of their responsibilities under the Act. I note this was one of the significant findings of the RTI Uplift project.
5. The processing of RTI applications is interminably slow.
6. It has been detailed elsewhere that those who assess RTI requests receive insufficient and inconsistent training and that the approach taken by individuals in different agencies varies widely. I note this too, was eloquently detailed in the survey responses and was one of the prominent findings of the Right to Information Uplift Project – Discussion Paper
7. It is my impression that exemptions under the Act are inappropriately overused, with the result that information that should have been disclosed being withheld. I believe this impression is reinforced by what we know about appeal outcomes, where a significant proportion of appeals result in variations to the original decision.
8. It is my impression that the Ombudsman's office is not properly resourced for the role it plays in overseeing the Act. This is particularly evident by the persistent long wait times for the resolution of appeals. The Ombudsman in Tasmania has a diverse and range of oversight responsibilities.
9. I believe that there are too many exemptions under the current act and its interpretation provides too many excuses for non-disclosure. I have observed in the results of many requests that there an over-reliance on exemptions under the Act to redact large amounts of information with scant justification beyond a citation of the section relied upon. I note several recent redactions on the grounds that material was "irrelevant" for example. It

seems to me that this exemption may be being used to withhold otherwise innocuous information without additional appropriate justification.

10. I believe that the interpretation of exemptions relating to personal information are also inappropriately overused. I would make the observation that it is apparent from many disclosures that information such as the email addresses of government officials, official titles and such are routinely redacted. I am unsure of the basis for the notion that this is private information.
11. It is my opinion that the exemptions under s37 the Act regarding "information relating to business affairs of third party" and "information relating to business affairs of public authority" are overused. The interactions of business with government agencies should attract protection only where disclosure would cause demonstrable detriment to a business' commercial interest. The expectation of disclosure should be inherent in government dealings with business and exceptions clearly justified.
12. Similarly, the "prejudice relations" exemptions under s41 seem to sit at odds with the fact that prejudicing relations between different levels of government is something that different levels of government indulge in frequently on a range of topics with relish and without seeming consequence.
13. The current system of RTI is a reflection of a time when information help by government was based far more on print-based information and in static and enduring formats. I have not yet seen an example where a RTI request resulted in the disclosure of relevant text messages for example. I am aware that the use of platforms such as WhatsApp and Signal and other ephemeral messaging services is becoming more commonplace. Despite this, I have yet to see a WhatsApp message disclosed as part of a request. I am unaware of multimedia material, such as video and audio being disclosed or if examples of such disclosure exist regardless of the application of section 18(1)(d) of the Act.
14. While the review and appeal process often results in variations to decisions, I suspect that there is not adequate review of the appropriateness of decisions which are not granted in full or in part where an appeal is not made by the applicant.
15. As a result of the above, faith among the public and the media in the integrity of Tasmania's RTI system is low. It is regrettable that this has an impact on the morale of staff as noted in the Right to Information Uplift Project – Discussion Paper.

Suggestions: consistent with the comments above, I commend to the review the following suggestions:

Accessibility:

1. That consideration be given to removing or significantly reducing the cost of making requests under Tasmanian RTI legislation for all users.
2. Application procedures should be simplified and standardised between agencies, preferably through the use of a single online portal or form.
3. That consideration be given to ways to make RTI more accessible to those with literacy, online access and other difficulties.

Policy and practice:

1. That Tasmania should aspire to be Australia's best jurisdiction with regard to information accessibility, with the most fit-for-purpose, efficient and transparent system in the nation.
2. Greater emphasis should be placed on the need for transparency in public sector employee inductions and training.
3. In instances where government agencies engage with third parties, clear expectations in favour of disclosure should be embedded into agreements and as far as possible the impact of issues such as copyright, commercial-in-confidence and legal professional privilege are dispensed with or minimised with a view to facilitating disclosure.
4. Efforts should be made by public sector leadership to create a culture of transparency, including emphasis and education about the importance of the state's RTI regime.
5. Concerted efforts should be made to increase the volume and speed of routine disclosure by government agencies.
6. Regular and consistent training should be provided to those who process applications under the Act, regardless of which agency they work for.
7. That appropriate resources are made available to permanently reduce the long waiting time for external reviews of decisions.
8. That routine reviews should be implemented of a representative sample of requests that are refused in whole or in part and where no review has been sought by the applicant. The review should examine the appropriateness of refusal or redaction and inform better practice.
9. That a review be conducted of the routine disclosure of RTI requests on agency websites to ensure that it is comprehensive.
10. That disclosed material be kept available for as long as practical, with whole of government guidelines.
11. That consideration be given to a single location or source for such disclosures across government, such as an email distribution list, central log, portal or RSS feed.

12. That to improve accessibility, that whenever possible information that is disclosed is produced in a format that is searchable and that the use of scanned or non-searchable PDF reproductions be avoided.
13. That best practice in disclosure - both routine and requested – be recognised and celebrated.

Regulation and legislation:

1. Greater emphasis should be placed on producing a single, regularly updated and accessible set of principles and detailled handbook to ensure the consistent processing RTI requests.
2. Exemptions to disclosure under that Act should be reduced in number and more rigorously defined so that disclosure is more emphatically the default expectation.
3. Consideration should be given to the adequacy of the current legislation to deal with new forms of government information including instant messaging and of ways to better provide the broad disclosure of information held or embedded in video and audio formats.
4. The exemption in section 41 of the Act relating to "Information likely to affect State economy", particularly s41(2) is too broad and open to abuse and should be redrafted or removed.
5. Several items in the current schedule 1 of the Act are either too broad or too subjective and should be redrafted or removed, particularly items (b) whether the disclosure would contribute to or hinder debate on a matter of public interest; (k) whether the disclosure would promote or harm the economic development of the State; and (m) whether the disclosure would promote or harm the interests of an individual or group of individuals.
6. Consideration should be given to whether the Ombudsman's office is the appropriate agency to continue have oversight of appeals within the RTI system. I say this not because of any failing on the part of the Ombudsman's office but rather that the office is already carrying a lot of responsibility and is perpetually under-resourced. I am aware that some jurisdictions have stand-alone independent agencies. It may be that a small well-funded and independent body is appropriate to aggressively drive best practise, conduct monitoring and reporting, inspire cultural change and develop policy in the related matters of information transparency, privacy, archiving/document retention and open data initiatives for Tasmania.
7. Wherever ultimate responsibility for oversight of the Act, efforts should be made to monitor emerging trends and best practice in other jurisdictions so that Tasmania does not fall behind in future.
8. Another review into the operation of the Act should be scheduled within a reasonable timeframe.

My thanks to those who requested and who are conducting this review. I hope my contribution is helpful.

David Killick
30 April 2025.

Attachments: A note on attachments: The articles below are Mercury news stories or opinion pieces which were accessed from News Corp's digital asset management system in April 2024.

The date notes here may refer to the original digital publication and may vary from the date of print publication. There may be some minor variations between the retrieved version and the version published on different platforms reflecting normal editorial practice. The attachments are intended to give the reader an overview of the nature of the paper's news coverage over time.

List of attachments:

1. Tassie 'worst' in nation for transparency 16/1/2019

2. YOUR RIGHT TO KNOW: state censorship rebuke. 19/12/2019.

3. Kept in state of secrecy: Tassie rated worst for releasing information. 18/11/2020.

4. Gutwein promise to ease 'secrecy' 18/11/2020

5. NO MORE SECRETS, Culture of cover-up a cancer on Tasmania's democracy. 20/11/2020.

6. Shh… secret state rules: vast majority of appeals for info upheld. 14/11/2022.

7. Time lag as RTI requests multiply: Ministers slow to respond. 02/04/2023.

8. State's poor secrecy record: RTI system rife with refusals: report 14/07/2023

9. RTI panel lashed over conduct: Integrity Commission calls for disbanding: 22/5/2024.

10: Cross our hearts, we'll do better: 23/05/2024.

11. RTI jump but little to show: slow response times. 27/5/2024.

12. RTI report kept secret: Tips to fix transparency redacted. 25/06/2024.

Attachment 1: **Tassie 'worst' in nation for transparency** 16/1/2019

DAVID KILLICK, Political Editor

TASMANIA is the worst state in the nation for information transparency, Greens leader Cassy O'Connor says.

Ombudsman Richard Connock this week revealed his office was struggling under a backlog of 50 appeals against Government refusals to release information — with an average delay of 318 days.

The Tasmanian Ombudsman's office has just one staff member to deal with a growing number of Right to Information Act appeals.

Ms O'Connor said the Tasmanian Liberal Government loved keeping the public in the dark.

"During their time in government, the Liberals have been allergic to truth and transparency, engineering a frustrating, often fruitless system so starved of resources that it can take years to get public information which should be readily available," she said.

"The objectives of the Right to Information Act 2009 make clear the intention of Parliament was that discretions available in the Act should be used to provide the maximum amount of information. This is the direct opposite of what happens under the Hodgman Government."

A Government spokesperson rejected Ms O'Connor's comments.

"The Government has a very strong record of enhancing transparency through the routine disclosure of information across all Government departments," he said.

"This includes the first regular disclosure of ministerial spending, and online disclosure of Parliamentarians' register of interests.

"We have every confidence in the Ombudsman's office to undertake their duties.

"While the office operates independently of Government, we will continue to consult with the Ombudsman's office when it comes to Budget submissions and matters of resourcing.

Ms O'Connor said the Greens would again move to strengthen the RTI Act this year, and she challenged Labor and the Liberals to support the move towards greater transparency.

Attachment 2: **YOUR RIGHT TO KNOW: state censorship rebuke.** 19/12/2019.

DAVID KILLICK Political Editor

The Ombudsman's office has rapped State Government departments over the knuckles for editing and obscuring deletions from documents released under Right to Information laws.

The Greens have complained that a response to an RTI request they made was returned as a single edited "highlights" file.

Party leader Cassy O'Connor said the Right to Information Act entitled applicants to receive the original material — and the Ombudsman's office agreed.

"If an applicant requests documents relating to certain matters, and a public authority has documents within the scope requested, then s18(4) would seem to require providing a copy of relevant documents rather than merely text extracted from the documents," it said in response to a complaint.

The Greens have also won their battle to stop government departments censoring RTI-released documents with white blocks, which makes it difficult to tell where information has been removed.

"For a short period of time, the Department (of Primary Industries, Parks, Water and Environment) was trialling different colours for redactions," the department said in a response to the Ombudsman's inquiries. "It was quickly realised which was not a suitable colour, and the department has been using grey redactions since."

The Ombudsman said no government entity should redact documents with white.

"White could appear as if information never existed there in the first place … thereby avoiding proper scrutiny," it said in a directive to departments. "It is vital that it is made clear and obvious to the applicant exactly where information has been redacted due to an exemption and the ground for that exemption."

Ms O'Connor said the public service should serve the public, not keep politicians' secrets for them

"These respective policies, smacked down by the Ombudsman, confirm government agencies have been politicised and driven into maximum secrecy by the Liberals," she said.

"The intent of the Right to Information Act is to provide information where possible — not withhold or hide it in the interests of politics.

"It is scandalous that State Growth and DPIPWE have decided to actively hide information. They are public agencies responsible for public services and assets."

Attorney-General Elise Archer defended the government's record on RTI and said decisions were made at arm's length from ministers.

"Our government has made processes more open and transparent in relation to government dealings," she said.

Attachment 3: **Kept in state of secrecy: Tassie rated worst for releasing information.** 18/11/2020.

DAVID KILLICK: Words: 400

TASMANIA is Australia's most secretive state, with the nation's worst performance at releasing information to the public, the Ombudsman says in his annual report.

Government agencies commonly disregard the intent of Right to Information laws, often release nothing at all in response to requests, miss deadlines and fail to provide adequate reasons for their decisions.

Ombudsman Richard Connock said agencies "don't seem to give sufficient weight to the fact that the Act creates a legally enforceable right to obtain information".

Mr Connock said the test of whether the release of information is in the public interest is also "frequently misapplied".

"Tasmania's public authorities refused access to any information in 30 per cent of their 2018-19 decisions," he noted.

"This rate of refusal was nearly twice that of the next-highest jurisdiction (Queensland at 16 per cent) and 750 per cent that of Australian's most open jurisdictions (Victoria and the Northern Territory, both at 4 per cent).

"Tasmania's percentage of refusals in full has been increasing each year since 2016-17 when it was 15 per cent."

Mr Connock also noted that Tasmanian government authorities were also poor at determining RTI requests within the legally required time frames. He said 27 per cent of requests failed to meet deadlines, the second-worst in the nation.

Greens leader Cassy O'Connor said the government should be ashamed of Tasmania being the secretive state.

"Under the Liberals, secrecy is rife – and encouraged in government agencies. It's the culture now," she said.

"We know Premier Gutwein hasn't been the biggest fan of transparency and scrutiny, but we urge him to rethink.

"Government is there to serve the public good, and should be accountable to them, always."

Premier Peter Gutwein said it was nothing to do with him, but rather public servants in government departments.

"The decisions are made at arm's length of government under the RTI Act," he said.

"We have designated RTI officers, who apply the law, that's what they do.

“In terms of how we compare with any other jurisdictions, I think that’s a moot point — our RTI officers are applying the law.”

Mr Gutwein would not reflect on the failure of 30 per cent of requests to receive any information in response.

“I’m not certain what they’re asking for. RTI officers at arm’s length from government apply the law.”

Attachment 4: **Gutwein promise to ease 'secrecy'** 18/11/2020

DAVID KILLICK. Words: 328

PREMIER Peter Gutwein says he will meet with Ombudsman Richard Connock to find ways to improve government transparency.

The Ombudsman's annual report revealed the state has the worst performance of any Australian state when it comes to responding to Right to Information requests.

The report revealed that 30 per cent of RTI requests receive no information at all, by far the worst performance in the nation, and almost all appeals against decisions to withhold information were successful.

Labor leader Rebecca White said the result was a sign of the government's addiction to secrecy.

"It is a damning reflection of the contempt that you hold for people's right to know," she said. "Why are you so afraid of transparency? What are you trying to hide?"

Premier Peter Gutwein said the government had made a concerted effort to improve transparency — drawing heckles from opposition members.

Speaker Sue Hickey instructed members to "giggle internally".

"I took the time last night to read the report and to have a good look at it," Mr Gutwein said.

"I have to admit, the report does bear further discussion and inspection and this morning I have called Richard Connock and asked for a meeting and asked for a discussion about his perspective and about what can be done to improve transparency.

"We need to understand it, we need to ensure we have a good understanding of what's occurring.

"I'll begin that discussion with Mr Connock in the coming days."

Greens leader Cassy O'Connor said the government had a well-deserved reputation for secrecy.

"You can't deny these numbers. Apart from organising a last-minute meeting with the Ombudsman to provide some political cover, what are you going to do about it?" she said.

Independent MP Madeleine Ogilvie said transparency was fundamental to democracy. "Government should always be for the people and open to the people," she said.

Attachment 5: NO MORE SECRETS, Culture of cover-up a cancer on Tasmania's democracy. 20/11/2020

DAVID KILLICK Political Editor. Words: 610

OPINION

CLAIMS of sexual abuse and a cover-up at Ashley Youth Detention Centre and Tasmania's appalling record on handling Right to Information requests seem to have little in common.

They are the same thing: Tasmania's culture of secrecy is a cancer on our democracy.

Abuse claims in education, at the Launceston General Hospital and at the Ashley centre have been known in government circles but kept under wraps for months or years. What else aren't we being told?

Keeping bad news — or any news — from reaching the public isn't some sort of aberration. It is the defining characteristic of this state's political culture.

It infects almost every public institution. It is endemic in the health and education departments, and reflected in the unchecked nepotism of the state's prison system.

It is the leitmotiv of the police service and the courts. DPIPWE could give masterclasses to ASIO at keeping things secret.

It is an obsession that extends to the institutions supposed to protect us: to our milquetoast Integrity Commission and the hasty, opaque inquiries set up to hose down scandals. It runs through our councils and the planning system.

It's reflected in the secret deals in favour of developers and fish farmers, the unfathomable issuing of essential workers' permits for plasterers and carpenters, the parks deals for developers, the million-dollar grants and the favours for donors.

It is a culture that leaves newcomers gobsmacked at its blatancy and audacity.

It is the province of arse-covering public sector jobsworths and self-serving politicians and the army of spin doctors who help them stave off the eternally stretched inquisitors of the press. It is a relic of our convict past, this fear of speaking out. It is a straight line from 'Don't upset the overseer' to 'Don't trouble the Minister'.

The Tasmanian state motto is 'fit in or f… off".

It is the untroubled embrace of mediocrity, the easy life on the public paycheck. This is no state for whistleblowers. Governance is conducted on a need-to-know basis.

So deeply entrenched, so unremarkable, is Tasmania's aversion to openness that the Commissioner for Children felt it appropriate to tamp down public discussion of the Ashley

rape claims. She says talking about children being raped or abused could harm children. Is that really the problem here?

It all sounds familiar. What other institutions hosed down abuse claims for years, held sham redress processes, dissembled and lied?

When asked in parliament on Thursday about potential abuse of netball players by pedophile nurse and coach James Griffin, Sports Minister Jane Howlett said she couldn't talk about an ongoing police investigation. There is none, Griffin is dead.

It was appallingly, blatantly and obviously untrue. She corrected the record when called out.

Premier Peter Gutwein appeared surprised when he found out Tasmania is the worst state in Australia for releasing public information. This is the same Premier who is hiding a report on electoral donation reform, it's the premier who dodges and deflects at press conferences, who turns the questions back on the inquirer, it's the bloke who is just following the advice of bureaucrats.

It is patronising and entitled and paternalistic. The fish rots from the head, but the whole fish is rotten. Transparency is deeds, not words, Premier.

Where is the anger, where is the outrage?

Why are we protecting pedophiles and abusers from the daylight?

How many child sex abuse scandals and cover-ups will it take for someone in this government to spot the pattern? We know it is more than three.

Is it five? Is it 10?

Attachment 6: **Shh… secret state rules: vast majority of appeals for info upheld.** 14/11/2022.

David Killick. Words: 441

TASMANIA'S bid to shake its reputation as the "secret state" has faltered as public authorities continue to misinterpret Right to Information laws to conceal information that should be made public.

The Tasmanian Ombudsman says the vast majority of appeals against decisions to withhold information are overturned, but appellants are waiting an average of 18 months for their cases to be reviewed amid a massive backlog.

It comes despite repeated commitments from the state government for greater transparency, particularly relating to right to information requests.

Ombudsman Richard's Connock's office is responsible for external reviews of decisions made under the Act.

"Of the 19 external review decisions completed in the 2021-22 reporting year, only three affirmed the decisions of the relevant public authority," he said in his annual report.

"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," he noted in his report.

"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.

"The express object of the RTI Act is clear in relation to its pro-disclosure focus, seeking to increase government accountability and acknowledg-ing that the public has a right to the 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."

The report noted that there are 100 further appeals awaiting a 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 receive no information at all, the worst performance in the nation.

The number of overall complaints lodged with the Ombudsman rose by 27 per cent from 2020-21 to 2021-22 to reach 907 for the financial year. The bulk of the complaints were about state government departments.

Of the 887 complaints dealt with during the periods, 44.5 per cent were declined, referred of out of jurisdiction; 5.5 per cent were discontinued, 39 per cent were found to have no defective administration and 11 per cent were either partly or fully substantiated.

Attachment 7: **Time lag as RTI requests multiply: Ministers slow to respond. 02/04/2023.**

David Killick. Words: 406

Tasmanians' growing hunger for information from public authorities is being met by a slowdown from departments and ministers – and the granting of fewer requests, a new report shows.

The Department of Justice report into the administration of the Right to Information Act last financial year was tabled in state parliament on Thursday.

It showed the number of requests being dealt with is up nearly 90 per cent since 2019/20, from 1037 to 1957.

But the proportion granted either in full or in part has fallen from 66 per cent to 63 per cent.

And the proportion of requests taking longer than 20 working days to determine grew from 21 per cent to 30 per cent.

State government ministers were the slowest to respond, with just 51 per cent of applications determined within the legally required 20 working days.

Government departments determined 59 per cent of requests within 20 working days, while councils managed 82 per cent and other public authorities 83 per cent.

And incorrect decisions continue to be made.

Ombudsman Richard Connock noted in his annual report that only three out of 19 reviews conducted by his office last financial year resulted in the original decision being upheld. The average wait time for a review is 587 days.

Greens leader Cassy O'Connor said the figures betrayed a government at odds with its spoken commitment to transparency.

"When Jeremy Rockliff became Premier he promised to lead a government of integrity and transparency, but the new RTI figures make a mockery of his claim," she said.

"The Premier and his ministers are leading from the front, with the slowest response times for RTI requests.

"RTI requests have been delayed for weeks and months with the most feeble excuses, and government officials try to exploit or invent loopholes regularly."

Mr Rockliff said the government had provided more resources to the Office of the Ombudsman to handle RTI appeals.

Last year's state budget also allocated $500,000 over two years to improve and speed up RTI capability and practice in the State Service.

“Well, of course we have put more resources into the Ombudsman process,” Mr Rockliff said on Saturday.

“There’s been – as I understand it – more staff shortages, which are being alleviated now with recruitment of more personnel, as my understanding.

“But the RTI process is at an arm’s length from ministers, as it should be.”

Attachment 8: **State's poor secrecy record: RTI system rife with refusals: report**
14/07/2023

David Killick. Words: 417

Tasmania's right to information system is failing to meet its central goal of delivering affordable, effective and timely details to citizens, a new report has found.

The Environmental Defenders' Office report lutruwita/Tasmania's Ineffective Right to Information System and How to Fix It has found that despite government pledges of increased transparency, things are actually getting worse.

It notes the state has the highest rate of refusals in the nation, an error rate of 70 per cent for initial assessments, unacceptably slow times for reviews of decisions, a growing backlog of appeals and low accountability for mistakes.

"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," the report said.

"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."

It echoes observations by leading RTI expert Rick Snell that the Tasmanian Ombudsman's office is a bottleneck for appeals and says there is a need for more funding and resources.

It recommends a review of the RTI Act and amendments to make speedy and complete disclosure of government information the default rather than the exception.

Report author and EDO Tasmania managing lawyer Claire Bookless said it was time to change government culture from one of secrecy to one of openness.

"Our investigation has found the Tasmanian government is the most secretive in Australia, and this has serious implications when it comes to the realm of environmental law," she said.

"Successive governments in Tasmania have denied or delayed access to information that citizens need to participate in environmental decision-making, which is an essential part of any healthy democracy.

"The tendency towards secrecy occurs particularly when the information may be embarrassing for the government or the industries it is supposed to regulate.

“Secrecy undermines public confidence in decision-making and contravenes standards articulated in the United Nations Framework Principles on Human Rights and the Environment.

Attachment 9: **RTI panel lashed over conduct: Integrity Commission calls for disbanding**: 22/5/2024.

David Killick. Words: 535

The Integrity Commission has recommended disciplinary action be taken against a Department of Health employee who refused a Right to Information request by falsely claiming the material could not be released for copyright reasons.

The Commission also recommended Health disband its Right to Information panel due to "serious misconduct risks and its capacity to subvert compliance with the Right to Information Act".

The report of Investigation Gatehouse was tabled in state parliament on Wednesday.

An opposition MP requested a copy of the acoustic design report for the Royal Hobart Hospital helipad in July 2021.

The Department of Health employee responsible for assessing the request asked the company who produced the report whether it was covered by the provisions of the Copyright Act and therefore should not be released.

The company responded: "There is nothing in the report that is unique … that we would want to protect our competitors from viewing.

"The report was not prepared for use beyond the project and/or public viewing, however, there is no contractual obligation for the department to keep the report confidential."

However, the employee refused the release of the information.

"The owner asserts copyright in the material. In my view the disclosure of the material prepared by the owner would be a breach of copyright," they wrote.

The Department of Health deputy secretary who signed off on the decision also backed it being withheld but told the Integrity Commission he hadn't seen the response from the company.

"I'm a bit distressed that I didn't see it because it completely changes the decision in my view, it makes my decision invalid."

An internal review by the Department of Health – conducted by the same employee – upheld their earlier decision to withhold the document.

The Integrity Commission found this was a conflict of interest. The employee told the Integrity Commission "just because someone is a member of parliament or a journalist that's trying to generate a story doesn't mean it's in the public interest".

The Integrity Commission noted the same employee had demanded a well-known ABC journalist, who sent an email from her ABC email account with an ABC signature block – prove she was a journalist.

That was something their manager conceded was "probably a little bit too strict".

The same employee decided that acclaimed journalist Camille Bianchi was not a journalist for the purposes of the RTI Act, the report noted.

The Integrity Commission recommended the secretary of the Department of Health "undertake a formal disciplinary process into the conduct of the employee based on the findings of fact about the employee's conduct, as set out in the investigator's report".

"For unknown reasons, the employee misconstrued the contents of the email in their draft statement of reasons when they referred to copyright over the report as a reason to not release information under the RTI Act," it said.

"The email from the company clearly stated that copyright rested with the Crown and there was nothing unique or confidential in the report. Further, the employee did not seek advice from Crown law, despite being aware that copyright rested with the Crown."

Neither the employee or the Department of Health deputy secretary were named in the report.

Attachment 10: Cross our hearts, we'll do better: 23/05/2024

David Killick. Words: 372

The health department has pledged to do better after a scathing Integrity Commission report into the handling of right to information (RTI) requests.

In a report released on Wednesday, the Integrity Commission called for a staff member in the department to be disciplined for wrongfully withholding information after falsely claiming it was covered by copyright.

Department of Health Associate Secretary Shane Gregory said an investigation had begun into whether the employee's actions were a breach of the State Service Act.

"The department is taking the findings of the Integrity Commission investigation into RTI procedures very seriously, accepting all recommendations and committing to improve processes," he said.

"I want to reassure all Tasmanians that having been made aware of these findings, the Department of Health has acted swiftly, accepting all recommendations, and taking action."

Hobart lawyer Roland Browne lodged the original complaint with the Integrity Commission in 2021. He said the long delay in resolving it was unfortunate.

"This is a disgraceful episode, emblematic of a government culture that has no respect for the importance of a functioning and effective freedom of information system," he said.

"This culture undermines democracy. Most significantly, there's been no investigation into whether, and if so, how, the government fostered this state of affairs.

"The government cannot claim ignorance because this culture originates from the very top of the tree."

Greens MLC Cassy O'Connor said the findings were not surprise.

She said the Greens had been calling out RTI panels, which have politicised RTI decisions and subverted lawful processes. But she said they had been met with denial from the Premier and his ministers.

"The Premier – who was also health minister at the time the RTI request lodged by the Greens was being improperly handled – can no longer bury this head in the sand and deny the significant cultural issues that persist in the RTI process," Ms O'Connor said.

Independent MP Kristie Johnston said it was undesirable that it took 2½ years to uncover the "dodgy" handling of RTI requests by the Department of Health.

Attachment 11: **RTI jump but little to show: slow response times** 27/5/2024
David Killick. Words: 367

Tasmanians are seeking more information from government through Right to Information requests – and getting less information more slowly, official statistics show.

The Department of Justice report into the administration of the Right to Information Act across the whole of government, tabled in state parliament, shows Tasmanians made 2165 RTI applications in 2022-23, up 10.6 per cent on the previous year, and 55 per cent on the year before that.

But of the 2050 applications determined, just 28.5 per cent were granted in full, down from 41.5 per cent the year before – with another 48 per cent being granted in part.

Five per cent were refused completely: mostly because the information was either available for purchase or was already available through other means.

Response times appear to have slowed with 61 per cent of applications being determined within the legally required 20 working days, down from 73 per cent in 2020-21.

The Ombudsman continues to find errors in the way applications are assessed. Of the 22 external reviews conducted by the Ombudsman, 17 per cent were varied and 25 per cent set aside altogether.

The Integrity Commission handed down a scathing report into the Department of Heath's handling of RTI requests last week: recommending disciplinary action against a staff member who falsely claimed exemption from disclosure for information that should have been released.

The Department of Justice figures showed internal reviews by the Department of Health upheld in full 15 of 16 decisions it made during 2022-23.

Greens leader Rosalie Woodruff has expressed concerns about the use of RTI panels within other government departments "to run cover for ministers".

Premier Jeremy Rockliff said the Department of Health was taking the Integrity Commission report extremely seriously but did not say whether other departments were using a similar approach.

"Regarding the report on the Department of Health, it has already disbanded its RTI panel," he said.

"It has developed new RTI policy and procedures."

Mr Rockliff's department was one of the slowest respondents to RTI requests in 2022-23, with 14 of 24 applications received taking more than 20 working days to determine.

“This points yet again to another failure the Integrity Commission to do its job in a transparent, timely manner.”

Attachment 12: **RTI report kept secret: Tips to fix transparency redacted** 25/06/2024:

David Killick. Words: 586

Suggestions for improving the transparency of Tasmania's Right to Information laws have been redacted from a government discussion paper released under Right to Information laws.

The Right to Information Uplift Project discussion paper was part of a $500,000 government push to improve transparency in the 2022-23 budget.

It is part of the response to the recommendations of the Commission of Inquiry.

The paper was completed in August last year but wasn't released to the public until a lengthy and dogged fight by the state's leading RTI expert, who described the process as "a farce". "Proactive disclosure is not being used as the primary method for releasing information, as required by law," the report notes. Large sections of the report eventually released have been blacked out.

"The successful performance of RTI is impacted by some officers who maintain an attitude against disclosing information," it says in one of the unredacted sections.

Five complete pages and sections of others were withheld under section 35 of the RTI Act, which relates to "internal deliberative information".

"Some information sources promote negative publicity about the performance of the Tasmanian State Service's right to information service," the report says, adding that this negatively affected the morale of RTI officers. University of Tasmania Associate Professor Rick Snell is the state's leading expert on RTI laws.

He said he had to put in an RTI request just to find out who was on the committee and waited weeks for a response.

Eventually he discovered a reference to the report, which also took an RTI request and another long wait to obtain.

"There's a reason I don't have much hair – this is it," he said. "Every step of the way they had the opportunity to show best practice, do the right thing, do it quickly and simply. Just withholding the information is stupid," he said.

"They just had every opportunity to deliver, and they failed every single opportunity.

"It's simply a farce. It's like a script out of Utopia."

Member for Nelson Meg Webb asked questions of the government about the issue in parliament last week.

“It’s impossible to escape the irony of having to resort to RTIs and multiple questions in parliament just to obtain a clear status update on the RTI Uplift Project, which was intended to improve government transparency and boost public confidence in our RTI laws,” she said.

“Each time I ask a question in parliament, the response raises further questions.

“Why hasn’t the Project Steering Committee met since the 3rd of August last year, and when will it meet again?

“Will the apparently unspent $400,000 of the project’s allocation still go into improving the RTI system, or will it be clawed back into the government coffers, and why isn’t the community receiving frank and regular updates?”

A response from the government acknowledged that the Commission of Inquiry had called for greater transparency and the government has responded in the budget.

“This funding recognised the government’s existing commitment to improving access to information through its transparency agenda,” the response said.

“Departments and public authorities remain committed to improving RTI processes, including recruiting additional staff, streamlining processes, waiving fees for victim-survivor applicants and their representatives, and ensuring applicants receive appropriate clinical support if the information released may be traumatising,” it said.

The RTI Uplift Project is expected to meet again in the coming weeks.

Environmental Defenders Office

Submission to Independent review into Tasmania's RTI system.

14 March 2025
Updated 10 July 2025

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

www.edo.org.au

Submitted to:

Professors Rick Snell and Tim McCormack

By email: [redacted]

For further information on this submission, please contact:

James Johnson
Special Counsel

E: [redacted]

Revel Pointon
Managing Lawyer

E: [redacted]

Acknowledgement of Country

The EDO recognises First Nations Peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonization.

Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the 2025 independent review into Tasmania's right to information (**RTI**) system. This submission follows from and updates the 2023 EDO report into Tasmania's RTI system. It describes our most recent experiences over the last 12 months and makes recommendations for change.

Summary of Recommendations

1) Section 23AA of the *Environmental Management and Pollution Control Act 1994* (Tas) (**EMPC Act**) should be amended to require the publication of monitoring information within 7 days of its receipt by the EPA.

2) Regulations under the EMPC Act should be passed to require the EPA to maintain an email list, open for subscription by any member of the public, for notification of the publication of monitoring information.

3) Internal review should be abolished. It is a waste of time and resources for both parties. One considered decision should be made by an officer with appropriate training and experience.

4) Rather than review by the Ombudsman, there should be the right of appeal to TASCAT. A review could be provided in a similar way as an application for review to the Ombudsman, without appearances and with a decision made "on the papers".

5) Provisions reflecting those in section 105 of the *Government Information (Public Access) Act 2009* (NSW) should also be enacted, such that:

    a) In any review, the burden of establishing that the decision is justified lies on the agency, except as provided below.

    b) If the review is of a decision to provide access to government information in response to an access application, the burden of establishing that there is an overriding public interest against disclosure of information lies on the applicant for review.

6) TASCAT should have the power to refer any matter to the Integrity Commission that TASCAT considers is indicative of a systemic issue in relation to the determination of access applications by a particular agency or by agencies generally.

Introduction

The EDO welcomes the opportunity to make a submission to the current review of the operation of the *Right to Information Act 2009* (**RTI Act**) in Tasmania.

We set out below some brief background to matters of public interest relating to salmon farming in Tasmania which raise the issue of the importance of timely access to environmental monitoring information.

We then set out in detail our experience in attempting to obtain a particular document which falls within the definition of "monitoring information" from the EPA on behalf of clients of the EDO. We consider that disclosure of the document ought to have been routine, without the need for assessed disclosure. We still do not have the document we have been seeking for eight months, which was submitted for the EPA's approval, despite the fact that an amended version of the plan approved by the EPA has been released publicly by the EPA.

In our opinion the EPA's responses in dealing with the application demonstrate a failure at all levels of the organisation to understand the meaning or effect of the RTI Act and the organisation's responsibilities under that Act.

At the conclusion of this submission, we set out our recommendations for improving compliance with Tasmania's law and policy objectives, particularly with respect to access to monitoring information held by the EPA.

Background

Salmon farming, in particular in Macquarie Harbour, is a matter of significant public interest in Australia. Between the Prime Minister's visits and promises and the deaths of over a million fish recently, there is barely a day when it is not front page news. We act for clients with a particular interest in the matter by reason of the detrimental impacts of the industry on the Maugean skate, a fish found nowhere else in the world.

The interest in the presence of antibiotics in fish is an example of that significant public interest. A good example of the delays and obfuscation in complying with RTI obligations was detailed by the Tasmanian Inquirer recently, and the following material is drawn from that publication[1].

After the use of antibiotics, the EPA requires salmon companies to test for residues in sediments near the treated cages and a short distance from the lease boundary. It also requires tests on wild fish caught in and beyond the lease area. All samples with oxytetracycline (**OTC**) equal to or greater than 100 micrograms per kilogram (µg/kg) must be reported. The maximum residue standard in food for human consumption is 200µg/kg.

Two monitoring reports published by the Environment Protection Authority (**EPA**) in January 2024 show Tassal used 368.5 kilograms of antibiotics to control disease outbreaks at the two salmon

[1] https://tasmanianinquirer.com.au/news/tasmanian-epa-rejects-request-for-real-time-disclosure-of-antibiotics-at-fish-farms/ 27 May 2024.

farms last year. The report on one lease revealed a sample of three blue mackerel caught near the salmon pens had OTC residues of 960µg/kg, almost five times the permitted level under the Australia New Zealand Food Standard Code. All the fish had feed pellets in their gut contents. A sample of three Australian salmon caught on the same day as the mackerel found OTC residues of 180µg/kg, just under the 200µg/kg threshold. A sample of three flathead caught at a site about 2.5 kilometres from the salmon cages 64 days after the last use of medicated feed revealed OTC residue of 20µg/kg. Australia's maximum residue standard for OTC is high compared to other countries. Europe has a maximum residue limit of 100µg/kg.

The residues were detected in March 2023 but the public only found out in January 2024. There was no public notification given when the antibiotics were used or when the monitoring reports were released.

Subsequently the EPA has refused to process an RTI request to disclose details of antibiotic use at the time of use and suggested it would "best be directed to the Department of Natural Resources and Environment Tasmania for discussion …".

More recently,[2] the Tasmanian EPA has refused to disclose the amount of antibiotic that was used or the number of salmon cages treated in a disease outbreak at a fish farm in the D'Entrecasteaux Channel in February 2025. The decision, which EPA director Wes Ford said was due to the information being "commercial in confidence", was made despite the regulator having previously revealed details of salmon farm antibiotic use. He said there was "a level of commercial confidentiality around that" because "clearly, their competitors might be highly interested in the rate of antibiotic use"… "[s]o in the immediate term, when it's being used, that information remains commercial in confidence."

RTI application for Macquarie Harbour monitoring related information

Our own recent experience with EPA Tasmania of attempting to exercise rights to information given by Parliament, ostensibly enforceable by criminal prosecution, confirms that the EPA's reluctance to release information is reflected at all levels of the organisation's hierarchy.

This section examines in detail the administration by the EPA of an application for a single document which was submitted jointly by the three salmon companies operating in Tasmania as a requirement of their environmental licences. It describes the extent to which the EPA has denied access, relying on legal arguments which have no basis in fact or law to refuse to produce the document. By reason of the delay, by now the document is likely to be only of historical interest, but access is still refused. In the meantime a further version of the document has been approved by the EPA and released publicly, undermining any suggestion of commercial sensitivity in the information.

On 30 November 2023 the EPA renewed Environmental Licences for each of the companies operating marine farms in Macquarie Harbour. Each licence contained the following conditions:

[2] https://tasmanianinquirer.com.au/news/tasmanian-epa-maintains-secrecy-over-antibiotic-use-at-salmon-farms/ 17 February 2025

DO2 1. By 24 April 2024, or a date otherwise advised by the Director in writing, the licence holder must submit a Dissolved Oxygen Mitigation Plan for the activity.

DO3 1.By 24 April 2024, or a date otherwise advised by the Director in writing, the licence holder must submit a Water Quality Monitoring Plan for the activity.

Our clients wished to inspect the plans submitted to the EPA in response to these conditions (**"the April 2024 Information"),** particularly since no plans had been approved three months into the licences. Each section below details attempts to obtain these documents.

24 July 2024 - Section 23AA Application

On 24 July 2024 we made an application on behalf of our clients seeking inter alia the April 2024 Information. We made the application under the informal disclosure process established by the EPA under s.23AA of the *Environmental Management and Pollution Control Act 1994* (Tas) (**EMPC Act**) on behalf of our clients.

Section 23AA relevantly provides that the Director may publish or make relevant information available for viewing by members of the public in the manner and form that the Director thinks fit. This applies whether or not the person that provided the information agrees to the information being dealt with in accordance with that subsection.

"Relevant information" means in essence information that results from, or relates to, monitoring of the environmental effects of an activity; and is required, under an environmental licence, notice, permit, policy or under environmental standards, to be collected; and is provided under the Act. The April 2024 Information was "relevant information". Access was refused.

The EPA website urges people to seek informal access to documents, which we had done. This resulted in a waste of time, a delay of 28 days until a notice of refusal was provided. This is a significant disincentive to using the informal process. There is no requirement to give reasons for a decision under informal access and no appeal or right of review of that decision. We would never advise a client to use that process again.

Further, as a practical matter, we note that having used the EPA's process, completing the application form online and hitting send, an applicant is left with no record of the application which has been made to evidence the application and refer to it at a later date.

27 August 2024 - RTI Application

On 27 August 2024, EDO made an RTI application to the EPA that sought the April 2024 Information.

Failure to address the information requested

The delegated officer of the EPA replied on 23 September 2024, asserting that:

> *A draft of the Dissolved Oxygen Mitigation Plan & Water Quality Monitoring Plan – Macquarie Harbour was submitted to the EPA on 24 April 2024. The finalised version of that document will be publicly released within the next two months, and I confirm that the decision to do so*

was taken before receipt of your application. As such, provision of that document has been deferred in accordance with section 17(1)(a) of the Act.

Section 17(1)(a) provides:

(1)A public authority or a Minister may defer providing information if –

(a) a decision has been made before receipt of the application for assessed disclosure of information that the information will be disclosed as a required disclosure or routine disclosure of information within a period of time specified by the public authority or Minister but not exceeding 12 months from the date of the application.

Firstly, "information" is defined in s.5 of the RTI Act to mean –

(a) anything by which words, figures, letters or symbols are recorded and includes a map, plan, graph, drawing, painting, recording and photograph; and

(b) anything in which information is embodied so as to be capable of being reproduced;

Whatever document is finally approved it will not be the 24 April 2024 information. The information we sought was contained in the document which the EPA's correspondence admits was provided to the EPA on 24 April 2024. They then refer to a different document, being some "finalised version" of the April 2024 Information. It is patently obvious they are different documents. One can only seek access to the other document referred to after it comes into existence.

A policy is not a decision

Secondly, no decision was made prior to the date of our client's RTI application to release the document they seek.

2 October 2024 - **Application for Review**

We sought internal review of this decision on 2 October 2024. The decision in response to that application ("**the Review Decision**") is dated 28 October 2024.

Failure to address the information requested

Firstly, the Review Decision determined that the document we sought in our application and which was provided to the EPA on 24 April 2024 was a version of another document which the EPA is still negotiating and which it will release in due course. The EPA again asserted that:

a) the two documents are "two versions of the same plan"; and
b) the EPA had already determined to release the "final document" and so the EPA could defer production of the document under s.17(1)(a) of the RTI Act.

Once again, the document referred to as having been the subject of a purported decision to release was not even in existence when we made the RTI application. They are different documents, different "information" which is not otherwise available to our clients.

The Review Decision also referred to the decision of the Ombudsman in case O1409-140 and stated that the reasoning in that decision supported her reasoning on this point. That is plainly wrong. The decision in case O1409-140 relevantly records as follows:

> "*30. Section 17 allows for the provision of information to be deferred in certain circumstances…. According to Forestry Tasmania's statement, it did not intend to release the financial cost information in the IGB in its current form, rather it intended to release a very similar albeit purely factual (and audited) version in its stewardship report*.
>
> *31. As the information was not intended to be released in the way it existed in the IGB, s.17 does not apply."*

The decision in case O1409-140 does not support the Review Decision but is completely contrary to the argument in the Review Decision. It is authority for the proposition that section 17 doesn't apply if information is to be released in a different form.

A policy is not a decision

Secondly, the attempt to rely on the Environmental Monitoring Information Disclosure Policy (**"the Policy")** as evidence of a decision within the meaning of s.17(1)(a) of the RTI Act to release the document we sought is mistaken. The logic adopted by the EPA is as follows:

a) The EPA adopted the Policy to regularly release monitoring data under s.23AA of the EMPC Act in August 2023;
b) In the past, the EPA has been making available finalised management plans "similar to the plan in question";
c) Therefore, I am satisfied that the EPA made a decision, prior to the making of the RTI application, that the Plan once finalised, would be released as a routine disclosure.

The flaws in the reasoning suggest that no real attempt has been made to comply with the obligations under the Act.

The Policy is a document which describes a general approach for the making of decisions under section 23AA of the EMPC Act. The EPA's website makes this explicit when it states:

> *"To provide guidance on how the Director, EPA intends to exercise the discretion to release environmental monitoring information the EPA Environmental Monitoring Information Disclosure Policy (PDF 213Kb) (the Policy) has been prepared."*

The Policy is not itself a decision for the purposes of section 17(1)(a) of the Act, and it does not mandate that a decision to release information be made in a particular way in any particular case. The Director always retains the discretion granted by section 23AA of the EMPC Act to release or not a document. To treat the Policy as binding on the Director to release any document within the scope of the Policy would be to impermissibly restrain the exercise of the Director's discretion under the EMPC Act.

Accordingly, it was simply not open to the EPA to rely on the existence of the Policy and or the provisions of section17(1)(a) of the RTI Act to refuse to provide the April 2024 information to our clients.

3 October 2024 – New RTI for documents evidencing the making of the alleged decision to release the April 2024 Information

On 3 October 2024 we made an RTI application seeking:

> *Documents recording the decision, made before 27 August 2024, to publicly release the final form of a Dissolved Oxygen Mitigation Plan & Water Quality Monitoring Plan – Macquarie Harbour within two months of 23 September 2024, as described in the letter from the EPA to the EDO dated 23 September 2024*

The EPA responded by email on 11 October 2024. It stated:

> *I note that no attempt was made to request this information. Assessed disclosure, according to section 12(3) of Act, is supposed to be a method of disclosure of last resort*.

Given our experience, no rational person would engage with an application for informal disclosure to the EPA. It is a waste of time with no avenue of appeal.

The email advised:

> *Under the Environmental Monitoring Information Disclosure Policy the EPA makes available information, including environmental management plans such as the proposed Dissolved Oxygen Mitigation Plan & Water Quality Monitoring Plan – Macquarie Harbour, once they are finalised and accepted by the EPA as meeting the requirements of the conditions in the relevant environmental licence, permit etc. This Policy has been in place since 2023, and as Mr Ford's email indicates, the Plan in question was always going to be subject to release under that Policy. As such, the decision to do so occurred considerably before 27 August 2024.*

Firstly, as set out above, the Environmental Monitoring Information Disclosure Policy is a document which describes a policy approach for the making of decisions under s.23AA of the EMPC Act. The Policy is not itself a decision and it does not mandate that a decision be made in a particular way in any particular case.

Secondly, the Policy does not specify any period of time within which the information which we sought would be provided.

Thirdly, nowhere does the Policy talk of making documents available "once they are finalised and accepted by the EPA as meeting the requirements of the conditions in the relevant environmental licence, permit etc".

Fourthly, the documents, once they have been finalised, will not be the documents which our clients sought access to. They will be different documents.

Accordingly, it was wrong to attempt to rely on the existence of the Policy and or the provisions of s.17(1)(a) of the RTI Act to refuse to provide the documents to our clients.

Further, the refusal was in direct breach of the EPA's own Policy described above. The Policy provides, in the section headed "Information to be Released":

Information of the following types will be routinely released or released upon request includes but is not limited to: …

> *Environmental Management Plans required to be submitted to the Director by …licence condition*.

We had requested release of Environmental Management Plans required to be submitted to the Director by licence condition. Despite the clear words of the Policy, the EPA refused and continues to refuse to provide these documents.

The exchange of emails which the EPA provided as evidence of the making of a prior decision is **enclosed**. It is not evidence of any decision made prior to 27 August 2024.

Even then, the period of time "specified" on 18 September 2024 was "within in four weeks", or by 16 October 2024.

It is patently clear that no such decision was made prior to 27 August 2024 to release the documents we sought within any specified period, let alone a period within two months from 23 September 2024.

22 November 2024 - Application for External Review to the Ombudsman

We made an application to the Ombudsman for external review of the decision on 22 November 2024.

On 12 December 2024 the Ombudsman wrote to the Chief Executive Officer of the EPA advising of our application for external review of the internal review decision made on 28 October, and to ascertain if an early resolution to the external review application was possible. Specifically, the Ombudsman sought an indication as to whether the EPA would reassess and make a fresh decision on the application for the Draft Plan.

On 19 December 2024 the EPA emailed our office and advised:

> *I am emailing to inform you that that EPA CEO Wes Ford has decided to make a fresh decision in relation to the document at issue in the above-referenced matter.*
>
> *The process of consulting the salmon companies under s.37(2) of the Act commenced on 17 December 2024.*

On 6 February 2025, after our third application for the April 2024 information and following contact from the Ombudsman, the EPA released a fresh decision on the Draft Plan. The EPA decided that the Draft Plan, in its entirety is exempt pursuant to section 37(1)(b). We **attach** a copy of his letter. In short, he determined that the information requested, if disclosed*,*

> *would divulge information acquired by EPA which relates to the business affairs of a third party, being Petuna Pty Ltd, Tassal Group Limited and Huon Aquaculture Company Pty Ltd (the Parties) as the Draft Plan was submitted jointly by these corporate entities. This information would be likely to expose a third party to a competitive disadvantage;* and
>
> *may prejudice the ability to obtain similar information in the future* and
>
> *is contrary to the public interest to disclose the information.*

The “approved” version of this plan dated 25 January 2025 detailing actual operations of the three salmon companies has been released publicly, yet the EPA maintains that a draft version of that same plan would divulge information sufficiently harmful to prevent its release in the public interest.

Our clients disagree fundamentally with the determination on where the public interest lies in relation to an alleged unspecified “competitive disadvantage”. If the EPA’s communication means, as it appears to,, that consumers might buy an overseas salmon product because they learn of the poor environmental performance of an Australian company, that is not an impact which is contrary to the public interest; quite the opposite. Further it is wrong to suggest that the EPA might be prejudiced in future. A licensee, if required to produce a plan as a condition of a licence, cannot refuse to do so because the plan might be released under RTI. This is particularly the case when all three salmon companies farming and competing in the Australian market are co-operating to lodge a joint plan.

In making this decision, the EPA appears to have ignored s.23AA of the EMPC Act and its associated policy in deciding to consult with the salmon companies under s.37 of the RTI Act instead of simply releasing the document as monitoring information.

Conclusion

The EPA continues to implement the RTI Act in a way which is contrary to the objects of the RTI Act. We set out the Objects in full because they are of fundamental importance for the making of decisions on access to information:

> *(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.*
>
> *(2) This object is to be pursued by giving members of the public the right to obtain information held by public authorities and Ministers.*
>
> *(3) This object is also to be pursued by giving members of the public the right to obtain information about the operations of Government.*
>
> *(4) It is the intention of Parliament –*
>
> > *(a) that this Act be interpreted so as to further the object set out in subsection (1);*
> >
> > *and*
> >
> > *(b) that discretions conferred by this Act be exercised so as to facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information.*

Providing a power in s.23AA to release environmental monitoring information has made no appreciable impact on the historical practice of refusing to release environmental monitoring information. The discretion provided under s.23AA is not being exercised. Applicants are driven back to seeking disclosure under the RTI Act, with the EPA going to great lengths to deny disclosure and delay the release of information to a time when it is of little more than historical interest. Excessive emphasis is placed on remote hypothetical commercial impacts on environmental licence holders in weighing the public interest, rather than implementing the intention of Parliament.

If Tasmania is to improve public access to environmental monitoring information, improve transparency and allow public scrutiny of important information about the environmental effects of industries operating in Tasmania's environment, then further legislative change is required.

Monitoring information may disclose matters such as breaches of the law, the use of antibiotics in salmon, live fish being put in bins with dead fish to suffocate. Release of information like this may influence consumer choices. The public has the right to information like that so that they can make informed choices. They are matters of significant public interest.

It is wrong to characterise this as "*exposing a third party to a competitive disadvantage".* Rather, refusing to release such information is a perversion of the public interest in the context of the objects of the RTI Act and confers an unfair competitive advantage on the respective licensee by shielding them from legitimate public scrutiny of their actions. Rather than driving improvement in standards and performance, such an approach encourages the industry as a whole to reduce such standards and performance because while hidden, there are no consequences or scrutiny.

Recommendations

Amendments to RTI laws have recently been suggested by the Integrity Commission which are procedural and rely on a "name and shame" approach[3]. We have little faith that this approach will be sufficient. We recommend the following amendments be instituted.

1. Mandatory disclosure of relevant information by amendment of section 23AA

The introduction of Section 23AA of the EMPC Act has had little real impact on the release of information by the EPA. As was the case before its introduction, the EPA retains full discretion as to whether or not to publish information. If there is any whiff of significant public interest in the subject matter, for example it concerns salmon farm licencing, then the discretion is likely to be exercised not to produce information, even if it falls within s.23AA and the EPA's own policy.

Further, there is no requirement under s.23AA to publish environmental monitoring data within any particular timeframe or to give notice that information has been published by the EPA.

We suggest that section 23AA of the EMPC Act should be amended to require the publication of monitoring information within 7 days of its receipt by the EPA. This would remove the discretion to withhold information which is defeating the purpose of s.23AA and remove the "closed and at times

[3] Improper exercise of powers and performance of functions Research Paper 22 May 2024 – Misconduct risks in Tasmania's right to information regime; at p.10

obstructive approach" which the Integrity Commission has observed in the determination of assessed disclosure.[4]

2. Notification of publication of monitoring information

Regulations under the EMPC Act should be passed to require the EPA to maintain an email list, open for subscription by any member of the public, for notification of the publication of monitoring information. Such notification could be set up to be provided automatically at no cost to a mail list of interested members of the public.

3. Remove In-house review

It is a triumph of hope over experience to expect a review, by the same agency as made the first decision, to change the original decision.

Further, as the Ombudsman observed, in the most recent Annual Report:

> *The issue of limited training opportunities for RTI decision makers, particularly new delegates, remains ongoing. Unfortunately, the rollout of training for delegates planned by the Right to Information Uplift Project run by the Department of Premier and Cabinet has not occurred in the 2023-24 financial year.*

The requirement to go cap in hand to the same agency door a second time simply adds more paperwork and delays the time until an application can be made for external review.

4. Implement a right of appeal to TASCAT

Rather than review by the Ombudsman, there should be the right of appeal to TASCAT[5].

Our clients have been fortunate in that the Ombudsman has granted a request for expedition of the external review of our particular case, for public interest reasons, in the case detailed above. However, in the ordinary course the Ombudsman has limited capacity and historically it has taken more than a year for reviews to be conducted. The most recent Annual Report for 2023-24 observed:

> *Delays and backlogs remain the significant issue in the right to information scheme and in external review requests and enquiries to my office. Under resourcing of Right to Information (RTI) and skills gaps (often due to lack of access to training) in delegates working at public authorities are having a major negative impact on the RTI scheme. … Tasmanians want, and deserve, an accountable and open government and a seeming lack of motivation to improve the RTI system is hindering that being achieved.*
>
> *The historical backlog of external review applications awaiting finalisation remains an issue and I acknowledge and again express my regret in relation to this. It remains a barrier to timely review and detrimentally impacts the RTI scheme. …*

[4] See note 1 at pages 8-9

[5] See for example the provisions of Part 5 Division 4 of Government Information (Public Access) Act 2009 (NSW).

The Ombudsman is not resourced sufficiently to perform the external review task in anything like a timely fashion and agencies know this. By the time a review is conducted, the information is old news and likely to be irrelevant. We suggest that this provides no encouragement for careful consideration by an agency of an application because the agency is effectively beyond review. Information is most important when it is fresh.

There would be no need for a face-to-face hearing before TASCAT. A determination could be made by TASCAT on the papers. This would ensure a timely, independent review of RTI decisions and be likely to lead to an improvement in the original RTI decisions being made, because the decision will be in fact reviewable within a reasonable period. An appropriate mechanism could set out a simple process for determining the external review, affording rights to interested parties to participate, with something like the following as a standard timetable::

a) An Application for Review is to be filed and served within 28 days of the decision to be reviewed;
b) Service of the Application is to be effected on:
    (i) the agency, and
    (ii) in the case of an Application by an RTI Applicant, any person consulted under s.37 of the RTI Act, and
    (iii) in the case of an Application by a person consulted under s.37 of the RTI Act, the RTI Applicant and any other person consulted under s.37 of the RTI Act.
c) The agency is to file a copy of the information the subject of the review within 14 days of service on it of the Application for Review
d) Applicant's written submissions, limited to ten pages, together with a bundle of any relevant documents necessary for the review, to be filed and served on all other parties within 28 days of the commencement of the appeal;
e) Any respondent's written submissions, limited to ten pages, together with a bundle of any additional relevant documents necessary for the review, to be filed and served on all other parties within 28 days of receipt of the Applicant's submissions;
f) Applicant's written submissions in reply, limited to five pages, to be filed and served on all other parties within 14 days of receipt of any Respondent's submissions.

A further reason for removing the process of external review by the Ombudsman which is currently in place is that it gives the agency whose decision is under review an opportunity to make another decision on a completely different basis and commence the RTI process again from the beginning. In the case set out in detail in this submission, the EPA was given the opportunity to consider the application on a different basis, with a further 40 business days (two months) permitted for a new decision where 5 months had already been spent in pursuing the document. There is the capacity for an endless cycle of refusals. There should not be the opportunity for an agency to start the merry-go-round of delays again and make a decision to refuse access on a different basis.

5. Burden of Proof

Provisions reflecting the following provisions from section 105 of the *Government Information (Public Access) Act 2009* (NSW) should also be enacted:

(1) In any review under this Division concerning a decision made under this Act by an agency, the burden of establishing that the decision is justified lies on the agency, except as otherwise provided by this section.

(2) If the review is of a decision to provide access to government information in response to an access application, the burden of establishing that there is an overriding public interest against disclosure of information lies on the applicant for review.

6. TASCAT should have the power to refer matters to the Integrity Commission

Further, TASCAT should have the power to refer any matter to the Integrity Commission that TASCAT considers is indicative of a systemic issue in relation to the determination of access applications by a particular agency or by agencies generally.

Thank you for the opportunity to make this submission.
Please do not hesitate to contact our office should you have further enquiries.

Environment Protection Authority

GPO Box 1550 HOBART TAS 7001 Australia

Enquiries: Fionna Bourne
Phone: +[redacted]
[redacted]
Web: www.epa.tas.gov.au
Our Ref: File Reference and DocONE/myDAS

ENVIRONMENT PROTECTION AUTHORITY

30 May 2025

Prof Tim McCormack and Assoc Prof Rick Snell
Independent Reviewers

Email: tasrti.review@gmail.com

Dear Prof McCormack and Assoc Prof Snell,

REVIEW OF TASMANIA'S RIGHT TO INFORMATION FRAMEWORK - INVITATION TO PARTICIPATE IN CONSULTATIONS

I refer to your letter of 27 March 2025 advising of the independent review into Tasmania's Right to Information system, to report on the adequacy, effectiveness, and implementation of the *Right to Information Act 2009* and enclosing the terms of reference of the review. The Environment Protection Authority (EPA) welcomes the independent review of the right to information system currently operating within Tasmania.

The EPA is an independent statutory authority committed to being transparent about its operations by the provision of environmental data and information obtained in the EPA's role of protecting and enhancing Tasmania's environment, in line with the object of the *Right to Information Act 2009* (the Act) to improve democratic government in Tasmania.

In recent years, the EPA has seen a steady number of applications for information under the Act, as illustrated by the following financial year figures:

- 2024/25 (to date): 22
- 2023/24 30
- 2022/23 21
- 2021/22 17

Of the 30 applications received in the 2023/24 financial year, in 24 cases the information was released in full and one was released in part. Similarly in the 2024/25 year to date of the 22 applications 10 were released in full, 5 released in part, and 2 were actively disclosed in full without the need for an assessed disclosure process.

While these numbers have been relatively steady across the years, the nature of the information applied for under the Act, both in quantum and complexity, has increased. As a result the EPA, in responding to these applications for information, is constantly having to balance the need for transparency of information held by government authorities with the operation of the exemptions under the Act.

For instance, many of the facilities that the EPA regulates operate within a commercially sensitive and/or competitive market, and produce lengthy and highly technical documents, all or part of which they may argue should not be released to the public.

The EPA values the role of the Ombudsman in carrying out the external review functions contained in the Act. The Ombudsman's decisions provide a mechanism for consistency across agencies in the application of the exemptions outlined in the Act, together with performing the final arbiter function in the balancing of competing interests.

It is also important to note that outside the assessed disclosure process of the Act, there is an increasing amount of routine disclosure and information publicly available on the EPA website; including the EPA Annual Report, EPA Board Minutes, the publication of environmental and contaminated land notices (on the EPA Regulated Premises layer on LISTMap), and the large quantity of information comprising current and completed EPA Board assessments.

In addition, the EPA manages a database of information released under the new environmental monitoring information provision under the *Environmental Management and Pollution Control Act 1994*. Section 23AA came into effect in December 2022. This amendment was made in order to provide the EPA Director with the discretion to publish, provide or make available 'relevant information.'

'Relevant information' is defined as information that: –

- results from, or relates to, monitoring of the environmental effects of an activity, including but not limited to any of the following:
    - the results of any type of test or measurement of any emissions, discharge, or deposition of a substance;
    - reports as to the condition of the environment at the place where the activity occurs or that is in the proximity of that place;
    - any interpretation, or analysis, of such results or reports;
    - any photographs, visual recordings, audio recordings or audio-visual recordings.

To support the application of section 23AA, the EPA has published an *Environmental Monitoring Information Disclosure Policy*, and developed a web based search portal, which allows the public to search for information by operator, activity, or type of report. See the EPA Release of Environmental Monitoring Information webpage. Information is being progressively added to this search portal.

The EPA is committed to the transparent provision of information as it relates to its activities and the information it holds. Thank you for the opportunity to provide comment for this review.

Yours sincerely,

Catherine Murdoch

CHIEF EXECUTIVE OFFICER
ENVIRONMENT PROTECTION AUTHORITY

Hydro Tasmania Submission to the independent review of Tasmania's Right to Information (RTI) Framework

Right to Information Act 2009 **(Tas) (the Act)**		
Section		**Feedback**
s 5	Interpretation	'Public Interest' is not defined in the Act. We suggest *public interest* be defined to reduce the reference to **Schedule 1** of the Act.
		'Competitive disadvantage' referred to in **sections 37(1)(b)** and **38(a)(ii)** is not defined. We suggest *competitive disadvantage* be defined for clarity.
		'General details' referred to in **section 13(8)** is not defined. We suggest a definition of *general details* would assist public authorities with this requirement.
		'Being helped' referred to in **section 19(2)** is not defined. We suggest the Act be amended to define or clarify the intended meaning of *being helped,* and suggest that such a definition should not be overly burdensome on public authorities.
s 15 (1)	Time within which applications for assessed disclosure of information are to be decided	Often multiple applications are received from an applicant at the same time, and the 20 working days to process applications in such instances is insufficient. Section 19 – *Requests may be refused if resources unreasonably diverted* – would be unlikely to apply in instances where multiple applications have been received at once. We suggest the Act be amended to consider multiple applications from the same applicant received simultaneously, and either provide a longer timeframe for multiple applications to be processed, or allow public authorities to consider the multiple applications received from the one applicant as a single application.

s 22 (2) (d)	Reasons to be given if decision involves consideration of the public interest test	Stating the public interest considerations for the application of exemptions is often complex and onerous. We suggest the Act be amended to require public interest considerations only if requested by the applicant, and an additional 5 working days be provided to the Public Authority to respond to such a request.
s 48 (1)	Decisions of Ombudsman – adverse decisions to third parties	Section 48 (1) requires the Ombudsman to make a draft decision in respect of a review available to a public authority and seek their input prior to finalising the decision. However, if the Ombudsman intends to make a decision that is adverse to a third party, the Ombudsman is not required by the Act to make a draft of the decision available to the third party and seek their input prior to finalisation. We suggest the Act be amended to also require the Ombudsman to make draft decisions that are adverse to third parties available to the third party and seek their input prior to finalisation of the decision.
s 52	Protection in respect of criminal offences under other Acts	This section provides protection from criminal offences when information was required or permitted to be disclosed pursuant to the Act. It is unclear whether this protection would extend to criminal offences in jurisdictions other than Tasmania or at a Commonwealth level. We suggest the Act be amended to make this clear where possible.

Submission to the Independent Review of Tasmania's Right to Information Framework

Robert Hogan – April 2025

Introduction

In March 2022, I began examining the University of Tasmania's (UTAS') plans to relocate its southern campus from Sandy Bay to the Hobart CBD and the Tasmanian Government's knowledge of, and involvement, in these plans.

Very little information on this matter was available in the public domain and I have had to make extensive use of the Right to Information (RTI) system. This has involved:

- 29 RTI applications (including two refreshed applications) to the Premier, Ministers, government agencies, UTAS (17 applications including the two refreshed applications) and the Hobart City Council.
- 31 primary decisions to date, counting three refusals, two decisions on one application, four remade decisions and two partial decisions where further decisions are expected.
- 13 internal review applications and decisions.
- 12 external review applications to the Ombudsman, in four of which (all against UTAS) I sought and was granted priority consideration. 10 of these external review applications sought review of internal review decisions; one was because the respondent was 'out of time' to provide a decision and one was because the principal Officer had been the primary decision maker.[1]
- Five out of five external review decisions in my favour, including the four priority cases against UTAS.[2] Of the remaining seven cases, I have discontinued three; one was handled under the *Ombudsman Act 1978* and three remain on foot.

Summary details of all applications and decisions are provided at Attachment A.

Thes statistics presented here should not be seen as indicating that I have been satisfied with the majority of primary decisions. I have had to prioritise to make best use of my time and I have also not wanted to place demands on the Ombudsman's office that might jeopardise the expedited processing of priority cases.[3] It has also been the case that I have not sought reviews due to processing delays reducing the currency of certain issues and/or new – more important - issues emerging or becoming apparent in relation to UTAS' plans.

[1] For brevity, I have sometimes referred to the institutions to which I have made RTI applications or their RTI processing officers as 'respondents'. I have on occasion referred to the applicant as the 'complainant'.
[2] The four cases involving UTAS are dealt with more fully in the section on the Ombudsman below in my submission. The fifth case involved the Department for Education, Children and Young People: https://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0010/791137/R2210-004-Final-decision-Hogan-and-DECYP_5B309.pdf
[3] As internal review of UTAS' decisions invariably confirmed the primary decision, my decision on seeking internal review at UTAS largely became one of whether I wished to ultimately refer the matter to the Ombudsman.

In fact, very few primary decisions have been fully responsive to the terms of my requests, and almost no internal review decisions have been fully responsive the terms of my requests – the one possible exception being an internal review decision by the Department of Treasury and Finance.

I have met with constant processing delays, unwarranted refusal of applications, excessive and unjustified use of exemptions, poor/confusing arrangement of released documents, and – most concerning of all (as this might be used deliberately and is hard to detect) – a failure to identify all relevant documents. On the occasions where the respondent has failed to identify relevant documents, this has generally emerged only after I have chronologically arranged documents myself and then closely reviewed them, making it difficult to meet the internal review deadline.

Far too frequently, the attitude I have met in respect of my applications appears to have been "What can we get away with providing?" rather than "What is the most we can provide to respond to the request?". Such an attitude can only be put down to organisational culture and/or lack of training.

The attitude is frustrating on an issue which is of vital public importance in Tasmania, particularly as the *Right to Information Act 2009* is strongly aimed at transparency and accountability and, as the set fee works to applicants' favour (unlike the fee structure for Commonwealth FOI applications).

In the following I will comment on some of the particular issues I have encountered and make suggestions (in bolded text) for amendment to the RTI Act/process where I can. I will avoid going into too much detail, but I can substantiate all my comments and would be happy to elaborate and/or provide the Independent Review with full documentation if desirable.

Organisational culture

Department of Premier and Cabinet (DPAC)

As the Secretary of DPAC is the Head of the Service, DPAC should set the lead in being responsive to RTI applications and in ensuring that the Service is as responsive as possible.

Instead, DPAC has performed poorly on both applications that I have submitted to it:

- On 4 May 2022, I submitted my first RTI application to DPAC. I received a decision on 31 August 2022. In part because there were clear gaps in documentation, I submitted an internal review application on 27 September 2022, to which I received an unsatisfactory response on 6 March 2023 – 10 months after my initial application. I sought external review, but discontinued my application in April 2024, due to competing priorities.
- On 4 December 2024, I submitted a second RTI application to DPAC. My application was not handled in the requisite period, but after considerable communication and discussion of issues, I was informed that I would receive a decision on 28 February 2025. As I had not received a decision by 2 April 2025, I sought external review from the Ombudsman under s46(1) of the RTI Act. I have been advised by the Ombudsman's office that it has directed DPAC to provide a decision by 5 May 2025 – which would be six months after the date of my initial application. I am unsure of the reasons for DPAC's delays/failure to provide a decision, but note that my application related to the late rezoning/sale amendment to the *University of Tasmania (Protection of Land) Bill 2024*, which I take to be politically sensitive.

UTAS

I will start with some key points:

- In the first two months of my RTI dealings with UTAS, UTAS (1) totally inappropriately, unilaterally reworded the scope of my first two RTI applications and (2) refused three of my first four applications without – as I rightly believed at the time - justification in the RTI Act (there is overlap in these two categories, as one of the applications UTAS refused was one where it had unilaterally reworded the scope and, indeed, already made a decision: see Attachment A). These 'errors' by UTAS were the foundation of my first two external review applications to the Ombudsman: see section on **The Ombudsman** below). In retrospect, it is hard to see these 'errors' as anything other than lack of knowledge of the RTI Act and/or an attempt by UTAS to see what it could get away with.

- The Ombudsman has decided in my favour in four of four cases against UTAS. Taken together with the Humphries and Moyle cases, this amounts to six adverse decisions against UTAS since 2022.[4]

- In each of my four cases, UTAS' internal review decision maker confirmed the decision of the primary decision maker – in three of these cases UTAS' internal reviewer was UTAS' General Counsel.

- In the period 20 March 2022 to 26 January 2023, I submitted nine RTI applications to UTAS and received a total of 48 pages of documents from UTAS. This is in comparison to the approximately 3,620 pages I received after UTAS came under clear pressure and scrutiny by the Ombudsman's office (this was after I had commenced submitting external review applications, but before any of these applications reached decision).

- As is evident in the Ombudsman's decisions in my favour, UTAS fought hard against my RTI applications to keep key documents out of the public domain that should have been there as a matter of course. These included:

    - UTAS' 2016 STEM Business Case, which was submitted to Infrastructure Australia;

    - The *Southern Future Business Case*, which was the basis of the UTAS Council's decision on 5 April 2019 to relocate its southern campus from Sandy Bay to the CBD, and therefore of vital interest to the community; and

    - UTAS Council Minutes. (UTAS had ceased to publish Council Minutes (or even summaries of Council Minutes) in the early 2010)s.

In my statement to the Legislative Council Select Committee Inquiry into the Provisions of the *University of Tasmania Act 1992* on 2 March 2023, I said:

> "Since March 2022 I have been exploring through a series of right to information (RTI) applications and other research what, if any, substantive evidence there is to support UTAS' three main arguments for its relocation, namely: to ensure its financial viability; to improve student access; and to reinvigorate the city. At the same time, I have sought to explore the decision-making processes of the UTAS council; UTAS' relationship with the state government; and the extent to which state agencies have analysed UTAS' arguments for a CBD move.

[4] Humphries decision at: https://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0006/651894/R2202-032-Humphries-and-UTAS-Final-Decision.pdf
Moyle decision at: https://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0008/787616/R2202-063-Final-decision-Moyle-and-UTAS.pdf

> I have spent the last year pulling away a veil of secrecy that should not be there. The proposed CBD move is the prism through which I have seen the terms of reference for this inquiry; but many of the issues I have identified have equal if not more applicability to the other various serious concerns staff, students and members of the public have raised about UTAS, including issues of online learning and mental health. That matters have reached the current point represents a failure of accountability, a failure of transparency, a failure of government and a failure by the parliament."

After two more years of dealing with UTAS, and experience now totalling 17 applications, I remain firm in my view, with one qualification.

Latterly, due - I believe - to pressure from the Ombudsman (or his office) and the prospect of further external reviews, UTAS has 'performed' better, or appears to have to performed better in respect of some of my RTI applications. Moreover in 2023 it recommenced publishing UTAS Council Minutes as part of a transparency project.

However, this point in turn requires qualification. When it comes to more critical issues/documents, UTAS reverts to previous practice on RTI applications, as I have recently found in seeking to explore UTAS' involvement in the last-minute rezoning/sale amendment to the *University of Tasmania (Protection of Land) Bill 2024* and UTAS' STEM plans.

In this regard, while I note that UTAS has published its STEM Business Case submitted to the Commonwealth Government on 26 March 2025 and some related documents, it has not published the appendices to the Business Case, which are critical to understanding and assessment of that document. At this stage, UTAS is totally resistant to providing any part of these appendices under RTI. This is despite the relevant guidance provided on such matters by Ombudsman's decisions.[5]

While not a matter directly for the Independent Review, but relevant to the issue of UTAS' culture, I also note that there are significant delays in UTAS' publication of UTAS Council Minutes and that these Minutes are becoming less and less informative over time (from the resumption of publication in 2023, they were already less informative than Council Minutes for the period 1 January 2015 to April 2022 that I obtained through the involvement of the Ombudsman and his office). Either critical matters are not being discussed in the UTAS Council (which should be of major concern to the Council), these matters are the subject of UTAS Council decisions/communications between meetings that are not being published, a second set of minutes is being kept or some combination of these.

The simple fact is that for UTAS transparency remains a selective exercise.

I will have more specific comments (and some suggestions) to make relevant to UTAS' approach to RTI below.

[5] Particularly these two cases decided in my favour (with my brief working titles):
STEM Business Case and *Southern Future Business Case*:
https://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0009/715770/R2210-003-Hogan-UTAS-STEM-Precinct-RTI-Final-Decision.pdf;
Deloitte research: https://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0006/731193/R2305-015-Robert-Hogan-and-the-University-of-Tasmania.pdf

The Ombudsman and the Ombudsman's office

Over the last three years I have had extensive dealings with the Ombudsman and the Ombudsman's office

I have found the staff obliging and helpful and committed to doing their jobs well, and I am highly appreciative of the good results their efforts have produced.

However, processing of my review applications has been adversely affected by staff shortages and by turnover in staff. One of my review requests took over wo years from the date of external review application to reach a decision, notwithstanding that it was accorded priority consideration. I understand that recent efforts have been aimed at addressing these problems and an increase in staffing levels – if the internal review step is removed from the RTI Act (see section below) – may further help.

In my dealings with the Ombudsman's office, it has frequently taken a view that mediating between the applicant and the respondent, or encouraging the respondent to be more forthcoming, is preferable to proceeding straight to a full review and an Ombudsman's decision. I understand the merits of this approach and the fact that the RTI section must maintain cordial and productive relations with agencies/institutions, while RTI applicants come and go. The results can be very good and much more immediate than a simple review/decision process would produce, and I have already noted above how in one period the Office's efforts yielded some 3,620 pages of documents compared to the 48 pages initially provided by UTAS.

That said, **I believe that Ombudsman's decisions should detail and forcefully 'call out' poor performance, particularly where such performance is repeated, as this should act as a driver of necessary cultural change.**

- I note here that I consider the Ombudsman's decision in the case of 'Deloitte's research' to represent 'best practice' in my (limited experience) in terms of the speed of the review process, the amount of context and detail included, and the level and acuteness of criticism directed at the respondent. It was informative to the general reader, and it should have sent a clear message to even the most unreceptive organisation.[6] I would be happy to elaborate on the reasons for this view.

[6] The four Ombudsman's decisions in my favour, with timelines, were as follows:
Evidence for three refusals: https://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0010/770869/R2208-030-Final-decision-Hogan-and-UTAS-with-header.pdf ; application for external review submitted 21 July 2022; Ombudsman's decision 16 July 2024
UTAS Council Minutes: https://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0010/710479/R2208-020-Final-Decision-Hogan-and-UTAS.pdf ; application for external review submitted 12 August 2022; Ombudsman's decision 2 June 2023
STEM Business Case and *Southern Future Business Case*:
https://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0009/715770/R2210-003-Hogan-UTAS-STEM-Precinct-RTI-Final-Decision.pdf; application for external review submitted 8 December 2022; Ombudsman's decision 30 June 2023
Deloitte research: https://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0006/731193/R2305-015-Robert-Hogan-and-the-University-of-Tasmania.pdf ; application for external review submitted 29 May 2023; Ombudsman's decision 23 October 2023

I also believe that the Ombudsman should 'call out' repeated failings by organisations, as repeated failings are sure indicators of cultural and systemic issues. In this regard, I find it it is disappointing that the Ombudsman has not singled UTAS' poor performance out for consideration/comment in his annual reports, or elsewhere as far as I know. With one decision against UTAS in 2021-22, two in 2022-23, two in 2023-24, and one early in 2024-25, comment appears overdue. I accept that such public comment may not be the Ombudsman's standard practice and that some results may be achieved by working behind the scenes but – as I have indicated – public criticism should act to drive cultural change.

As a final point under this heading, I appreciate the rationale behind the Ombudsman's practice of providing respondents, but not the complainant, with a draft of a decision adverse to the respondent. However, I suggest that there should be some opportunity for complainants to view the draft decision as a matter of course, perhaps after respondents have submitted comments, as in some instances there may be (material) errors or issues in the decision warranting comment.

Internal review

Based on my experience, the internal review process has generally acted only to confirm the original decision and merely adds delay and effort before the external review process can be accessed.

I would strongly support a proposal that the internal review process should be removed from the RTI Act and that resources should instead be re-allocated to the Ombudsman's office to provide for an increased number of external reviews.

I suggest that the Ombudsman's powers should also be increased to allow on-site visits to the premises of the primary decision maker and full access to electronic records and meta-data. I would be happy to expand on my reasons for this suggestion.

There is of course a danger that the external review system could be swamped, and care may need to be taken to ensure the Ombudsman has the discretion and confidence to reject frivolous applications or 'fishing expeditions'.

A better resourced Ombudsman with increased powers should, again, act a powerful driver of cultural change in Tasmania's RTI system.

Refusal of RTI applications under s12(3)(c)(ii) of the RTI Act

On 3 May 2022 UTAS refused three of my then four RTI applications under s12(3)(c)(ii) of the RTI Act (through one short email).

This sub-section of the RTI states:

> "(c) the principal officer of a public authority or a Minister may refuse an application made in accordance with section 13 if the information that is the subject of the application –
>
> …
>
> (ii) will become available, in accordance with a decision that was made before receipt of the application, as a required disclosure or routine disclosure within a period of time specified by the public authority or Minister but not exceeding 12 months from the date of the application."

As there is no right of review under this section of the Act, I submitted an RTI application seeking evidence of UTAS' decision. After I received totally unsatisfactory (and, I believe, evasive) initial and

internal review decisions by UTAS, I applied for external review by the Ombudsman[7]. However, notwithstanding grant of priority consideration, because of complexities surrounding this matter. I had to wait over two years for the Ombudsman's decision. Even then, given limits on the Ombudsman's powers, I had to make refreshed applications on two of the matters on which I had applied and seek the intervention of the Ombudsman's office with UTAS on the third. The result was that I waited 30-31 months from submission of my original applications to receipt of the information I originally sought.

I suggest that any agency refusing an application under s12(3)(c)(ii), should be required to provide records showing that it had previously made a decision to release material <u>fully</u> responsive to the terms of the application. The refusal itself should be appealable. Alternatively, s12 of the RTI Act may warrant more fundamental consideration, as it has the potential to be (mis) used to delay, or even fully obstruct, provision of material that should be in the public domain.

I have particular concerns about UTAS' 'three refusals decision' and would be happy to elaborate.

<u>What is information/a record?</u>

I have frequently requested "all records" relating to the subject of my RTI applications, as I have wished to see primary documents rather than have someone provide a (subjective) summation of information.

Because it quickly became apparent that not all RTI processing officers understood "records" to include emails, I started specifying "records" to include emails.

Recently I was surprised when an experienced RTI processing officer told me that they had not understood my request for "all records" to include relevant briefs prepared for Ministers for questions in Parliament.

It has also recently been pointed out to me that WhatsApp and Text messages could fall within the ambit of "all records" where they relate to public business/official duties, including for Ministers. I have not dealt with an RTI processing officer who seemed aware of this.

I suggest clear and detailed instruction be provided on what constitutes a record to all RTI processing areas and – as appropriate – to line areas and Ministers. Consideration might also be given to prohibiting public officials from using automatic (periodic) delete functions in communications apps.

This might mean more public business is done informally/off the record in Tasmania than currently, but if the RTI system is otherwise functioning well participants run the risk of such dealings becoming obvious (for example, a Minister issuing a direction that is otherwise inexplicable).

<u>Accountability</u>

In a number of instances, when I have been dealing with RTI processing officers, it has been apparent that these officers have not been adequately supported by line areas that should be identifying and supplying relevant information/records in a timely fashion. **If it is not already the case, I suggest that senior executives in line areas should have to sign off on searches and information provided to RTI processing officers. Again, if not already the case, perhaps sign-off should also be required where exemptions are made.**

[7] See Footnote 6.

As it is currently required that RTI applicants go through the RTI processing area in the relevant Department to submit RTI applications to Ministers, Ministers or their offices should also have to provide sign-off.

I note that the relevant Department for a particular Minister can sometimes be difficult to determine, especially when Ministers are undertaking special tasks, and that a better system might provide for applications to be made directly to Ministers, who might then engage the relevant Department. This might also help ensure that Ministers are engaged in the process.

Delays and timelines

I have faced regular delays in the processing of my RTI applications by respondents, as can be seen in Attachment A. Common problems have included:

- Delays in acceptance of applications. I note that after my first application, I sought to ensure my applications were processed as expeditiously as possible by paying the application fee before I submitted my application, even though I frequently believed fee waiver was warranted. However, early fee payment seems not to have been overly effective. (I note that the Hobart City Council's RTI system did not provide for up front payment of a fee when I last dealt with it; this may be the case with other institutions).
- Delays in consultation.
- Delays in response by RTI processing officers during scope negotiations.
- Frequent requests to negotiate scope outside of the legislated period.
- Frequent requests to renegotiate scope after acceptance, generally accompanied by claims that processing would otherwise lead to very significant delays (and sometimes suggestions that my application would otherwise be refused under s19 of the RTI Act – 'unreasonable diversion of resources').
- Very frequent requests (including repeated requests) for agreement to processing extensions due to shortages of staff, health issues and/or the volume of records to be assessed. Less commonly – but still frequently - I have been advised of processing extensions, rather than asked for agreement.

With two early exceptions (where UTAS then unilaterally reworded the scope of my application anyway), I have, from memory, agreed to all requests. In part this has been because it is not possible to foresee the extent of a delays until their end is reached and/or because I have not wished to use the main alternative available (of seeking review by the Ombudsman for decisions 'out of time').

On occasions, my applications have (ultimately) involved identification of a large number of documents for assessment and in that circumstance it has seemed only reasonable to renegotiate scope (even after acceptance by respondents), and/or agree that documents can be considered in stages and/or agree to extensions.

My view overall, however, is that it is easy for respondents to make excuses for delays. The scope of applications should generally be able to be negotiated within the legislated timeframe.

Respondents would benefit from well ordered files, early involvement of line areas in identifying records and a culture favouring release of records rather than withholding of records (exempting records is time consuming).

Ordering of released records

An issue I have faced a number of times is the release of records in poor order and/or with inadequate cross referencing to schedules of documents.

On several occasions I have reordered records chronologically, revealing major gaps.

I suggest that respondents generally order records for release chronologically and ensure full cross-referencing with document schedules. This should also help processing officers to identify, and address, gaps themselves.

Use of exemption

I have frequently encountered what seems, and what has proved to be when the Ombudsman or his office have been involved in UTAS cases, excessive use of exemptions under the RTI Act.

This has chiefly involved exemption of complete records (often poorly described in document schedules) and redaction (exemption) of large and complete sections of text in records, including their headings.

Again, I suggest that the principle to release as much rather than as little as possible needs to be reinforced. I also suggest that the obligation of respondents to (1) ensure that the subject of exempted documents or redacted sections of documents is clear and (2) release purely factual material should be reinforced. There should be little reason for complete exemption of records.

Miscellaneous

Based on my experience (often frustrating), I make the following suggestions:

- **Processes and charging mechanisms should be standardised as much as possible across institutions covered by the RTI Act.**
- **Institutions should be required to publish all documents they release under RTI, not relating to individual cases, in their disclosure logs unless there is very good reason not to, and to keep those logs up to date.**
- **Coordination between institutions – particularly Government agencies - should be strengthened, when RTI applications cross boundaries, and occur as early as possible. Poor coordination (including different decision dates), in one instance, meant that I did not have an opportunity to seek review relating to what was, on close inspection, glaring gaps in documentation. However, this coordination should be discussed with the applicant, particularly when it is determined to involve an institution to which the applicant did not make an application.** I am happy to elaborate on my reason for this last point.
- **While I am sure much is already being done in this area, RTI processing officers would benefit from clear guidance and solid training.**

Conclusion

I am grateful for the opportunity to provide my views on the RTI system in Tasmania. As I have indicated throughout this submission, I would be happy to elaborate on any of my points and provide additional material if desirable.

Attachment A: RTI applications and progress as at 28 April 2025

Short title of application (**appl**)/remade decision *	Department/ institution to which appl submitted	Date of appl	Decision received#	Internal review request	Decision received	External review request	Decision	Comments +
1 Overseas Trips	UTAS 1	21//3/22	(1) 14/4/22 (2) 3/5/22 appl refused	2/6/22	Refused 27/6/22	21/7/22		1. Internal review on decision of 14/4/22 refused as 'out of time'. 2. Ombudsman's office considered as complaint under *Ombudsman Act 1978* together with appl 2 and 5, and in conjunction with processing of appl 7.
1a Refreshed appl re Overseas Trips	UTAS 2	6/9/24	8/11/24					Refreshed appl made on advice from Ombudsman's office. See comment 2 on appl 1.
2 Council Minutes	UTAS 3	24/3/22	27/5/22	27/6/22	18/7/22	11/8/22	2/6/23	Priority granted. UTAS reworded appl and provided only 22 pages of Minutes (see below). UTAS reissued the original 22 pages with some redactions removed 19/6/22.
2a UTAS remade decision re Council Minutes			16/1/23	14/2/23	17/3/22	18/4/23		Remade decision followed intervention by the Ombudsman's office. UTAS released 513 pages of Minutes on 16/1/23. Ext review related to redactions. Discontinued 22/4/24.
3 Consultation	UTAS 4	12/4/22	3/5/22 appl refused					See comment 2 on appl 1,
3a Refreshed appl re Consultation	UTAS 5	6/9/24	21/10/24 28/11/24					Refreshed appl made on advice from Ombudsman's office. See comment 2 on appl 1.

Attachment A: RTI applications and progress as at 28 April 2025

Short title of application (**appl**)/remade decision *	Department/ institution to which appl submitted	Date of appl	Decision received#	Internal review request	Decision received	External review request	Decision	Comments +
4 Consultation and city marketing report	HCC 1	14/4/22	6/5/22					Unresponsive on city marketing report. Ombudsman's office intervened informally.
4a HCC remade decision re marketing report			16/9/22			14/10/22		Ext review sought under s45 of RTI Act as decision made by principal officer. Discontinued 9/4/24
5 Urbis report	UTAS 6	20/4/22	3/5/22 appl refused					See comment 2 on appl 1.
6 DPAC – engagement in UTAS matters	DPAC 1	4/5/22	25/8/22 rec 29/8/22	27/9/22	6/3/23	3/4/23		Discontinued 23/4/24
6b shared by DPAC	Education 1		4/7/22	31/7/22	13/9/22	11/10/22	25/11/24	DPAC provided my request to the Departments of Education and State Growth as it had relevance to them.
6c shared by DPAC	State Growth 2		29/7/22					"
7 Evidence for three refusals (appl 1,3 and 5)	UTAS 7	5/5/22	16/5/22	14/6/22	27/6/22	21/7/22	16/7/24	Priority granted.

Attachment A: RTI applications and progress as at 28 April 2025

Short title of application (**appl**)/remade decision *	Department/ institution to which appl submitted	Date of appl	Decision received#	Internal review request	Decision received	External review request	Decision	Comments +
7a UTAS remade decision re Evidence for three refusals								Unsatisfactory - rolled into external review process.
8 VC selection	UTAS 8	11/8/22	17/10/22	14/11/22	13/12/22			Review decision unresponsive but decided not to seek external review.
9 STEM and Southern Future Business Cases	UTAS 9	16/8/22	20/9/22	18/10/22	10/11/22	8/12/22	30/6/23	Priority granted. Under persuasion from the Ombudsman's office, UTAS published STEM Business Case and redacted version of Southern Future Business Case on 16 January 202, although contrary to UTAS' claims that this was complete it was heavily redacted and missing key appendices.
10 Yes campaign	UTAS 10	27/10/22	25/11/22					
11 UTAS borrowings	Treasury 1	22/11/22	15/3/23	14/4/23	11/8/23			Int review seemed a reasonably full response, although some exemptions could have been challenged.
12 Deloitte research	UTAS 11	26/1/23	17/3/23	17/4/23	15/5/23	29/5/23	23/10/23	Priority granted.

Attachment A: RTI applications and progress as at 28 April 2025

Short title of application (**appl**)/remade decision *	Department/ institution to which appl submitted	Date of appl	Decision received#	Internal review request	Decision received	External review request	Decision	Comments +
12a UTAS remade decision re Deloitte research			19/12/23					Additional papers covered by terms of original request provided.
13 TAO re UTAS	TAO 1	20/4/23						TAO replied 4/5/23 - not covered by RTI Act
14 UTAS borrowings 2	Treasury 2	18/8/23	10/11/23	10/12/23	13/2/24			My review appl was deemed 'out of time', but request to still consider accepted.
15 Conflict of interest/Green Bond	UTAS 12	23/8/23	27/11/23					Unsatisfactory but not pursued
16 Moody's rating	UTAS 13	18/10/23	6/11/23					
17 Sandy Bay population growth	HCC 2	21/11/23	28/5/23					Unsatisfactory but not pursued
18 'Gap' Council Minutes	UTAS 14	25/1/24	26/2/24	26/3/24	29/4/24	23/5/24		On foot.

Attachment A: RTI applications and progress as at 28 April 2025

Short title of application (**appl**)/remade decision *	Department/ institution to which appl submitted	Date of appl	Decision received#	Internal review request	Decision received	External review request	Decision	Comments +
19 Green Bond	UTAS 15	29/7/24	5/11/24					Additional request for references to me dropped following negotiation
20 UTAS - Govt/ALP communications, STEM	UTAS 16	23/9/24	6/12/24	7/1/25	7/2/25	5/3/25		On foot.
21 Premier re UTAS Bill 2024 and STEM	DPAC 2	4/12/24						Appl discontinued on advice from DPAC that it would not provide anything more than the DPAC response (appl 22). I now doubt this.
22 DPAC re UTAS Bill 2024 and STEM	DPAC 3	4/12/24				2/4/25		Appl only accepted on 5/2/25. DPAC undertook to provide response by 28/2/25. External review sought under s46(1) of RTI Act
23 Min Palmer re UTAS Bill 2024 and STEM	Education 2	4/12/24	14/1/25					Some direct follow up with Minister Palmer regarding use of WhatsApp etc
24 Education re UTAS Bill 2024 and STEM	Education 3	4/12/24	Part 1 - 21/2/25					Decision only related to first batch of documents. Awaiting second decision.
25 Min Ogilvie re UTAS Bill 2024 and STEM	State Growth 2	4/12/24	Part - 23/3/25					Partial decision only; still awaiting final response.

Attachment A: RTI applications and progress as at 28 April 2025

Short title of application (**appl**)/remade decision *	Department/ institution to which appl submitted	Date of appl	Decision received#	Internal review request	Decision received	External review request	Decision	Comments +
26 Treasury re UTAS Bill	Treasury 3	4/12/24	3/2/25					
27 ALP/Lib communications; STEM; UTAS Bill	UTAS 17	20/12/24	4/4/25					I will seek internal review.

* Fuller description, or copies of, applications available upon request.

Date decision received is the date it was emailed to me; not the date it was signed (frequently several days earlier).

+ Comments have been kept to a minimum. Fuller detail on issues encountered available upon request. I also note that there is extensive detail on a number of my RTI dealings available in my blog posts at: https://theutaspapers.com/

Tasmanian Council of Social Service Inc.

Independent Review of Tasmania's Right to Information Including the Office of The Ombudsman

MARCH 2025

TasCOSS

INTEGRITY
COMPASSION
INFLUENCE

About TasCOSS

TasCOSS' vision is for one Tasmania, free of poverty and inequality where everyone has the same opportunity. Our mission is two-fold: to act as the peak body for the community services industry in Tasmania; and to challenge and change the systems, attitudes and behaviours that create poverty, inequality and exclusion.

Our membership includes individuals and organisations active in the provision of community services to Tasmanians on low incomes or living in vulnerable circumstances. TasCOSS represents the interests of our members and their service users to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

Please direct any enquiries about this submission to:

Adrienne Piccone
Chief Executive Officer
Phone Number: [redacted]
Email Address: [redacted]

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Introduction

TasCOSS is pleased to provide comment on the Right to Information (RTI) system in Tasmania, including ideas about making the system work as envisaged. While TasCOSS does not have direct experience of the RTI system, based on what we know, we have significant concerns about its operation, which points to an overarching lack of government transparency and accountability in this state.

As the peak body for community services in Tasmania, we are aware of concerns raised by community organisations about difficulties experienced by those who are trying to access information through the RTI process.

Our comments below are further to earlier comments and recommendations made by TasCOSS, including in a joint letter to the Premier, Jeremy Rockliff MP calling for urgent action to fix Tasmania's RTI system.

The right to information is both an international human right and a cornerstone of Australian democratic government. An RTI system underpins a healthy democracy in two ways:

(1) it acts as a deterrent against corruption and maladministration within the political and administrative systems, as those involved are aware of the high likelihood of being exposed; and
(2) by empowering the public with independent access to information, it enables greater participation in the political process. This creates a mutually beneficial scenario where transparency and openness, exemplified by freedom of information, serve as tools to build trust between the political sphere and the public, fostering a healthier democratic environment.[1]

Article 3 of the Tasmanian *Right to Information Act 2009 (Tas)* (the RTI Act) states that its object 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.[2]

[1] Romano M.-A. Lidberg, J., Paterson, M, Bradshaw, E. & Davidson, S. (2024). The culture of implementing Freedom of Information in Australia, Office of the Victorian Information Commissioner, Ombudsman SA, Office of the Information Commissioner WA, Monash University, Melbourne, p.10.
[2] *Right to Information Act 2009 (Tas)*

Given the current state of Tasmania's RTI system, TasCOSS believes that the object of the RTI Act is not being fulfilled and is therefore unable to effectively build trust between government and the community. As noted in the Ombudsman's *Annual Report 2023-24*: "Tasmanians want, and deserve, an accountable and open government and a seeming lack of motivation to improve the RTI system is hindering that being achieved".[3] This conclusion calls into question the efficacy of the Tasmanian Government's 'Transparency Agenda' which has been in place for over a decade.

[3] Ombudsman Tasmania (2024). Ombudsman Tasmania Annual Report 2023–24, Hobart, p.18.

Issues Evident in Tasmania's Right to Information System

Multiple Issues

In its Final Report, the Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings (the Commission of Inquiry) highlighted six issues with the RTI system in Tasmania, which combine to undermine its democratic intent:

- an administrative culture that limits the release of government information
- legislative and procedural complexity, particularly where the Right to Information Act and the Personal Information Protection Act overlap, hampering access to personal information
- lengthy delays in responding to applications
- inadequate and unenforceable review processes when the release of information is delayed, refused or extensively redacted
- under-resourced and decentralised assessment processes contributing to delays and inconsistent outcomes
- inconsistent approaches to fees and waivers for right to information requests.[4]

Below, we describe some of these issues in more detail and provide recommendations to make the RTI system in Tasmania more effective and thus supportive of a healthy democracy.

Reluctance to Disclose Information

An overarching issue with RTI processes in Tasmania is a general reluctance across the Tasmanian Government to disclose information, which has been observed by multiple organisations applying to access information, as well as by the Ombudsman and the Government itself.

The Tasmanian Department of Premier and Cabinet observed in 2023 that, "proactive disclosure is not being used as the primary method for releasing information, limiting a public authority's ability to advance the object of the *Right to Information Act 2009*".[5] The Commission of Inquiry Final Report, released in August 2023, also observed that victim-survivors of child sexual abuse and their lawyers, as well as journalists, experienced the process

[4] Commission of Inquiry (2023). Full Report, Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings, Chapter 17, Volume 7, p.182.
[5] DPAC (2023). Right to Information Uplift Project – Discussion Paper, Version 4.1, Department of Premier and Cabinet (DPAC), Government of Tasmania, Hobart, p.2.

of accessing information held by public authorities in Tasmania as "frustratingly slow, complex, and obstructive".[6]

In a recent report about the RTI system in Tasmania, the Environmental Defenders Office (EDO) noted that "applications under the RTI Act for environmental information not otherwise publicly available are routinely refused in whole or in part."[7] The EDO noted that this reluctance has significant implications for upholding the right to information in Tasmania: "…public authorities are failing to give effect to the objects of the RTI obligations by providing access to information".[8]

Similarly, the Tasmanian Ombudsman Richard Connock has observed that the Tasmanian culture of a reluctance to disclose information is inconsistent with the intent of RTI Act: "the express object of the Act is clear in relation to its pro-disclosure focus… Too often, sadly, adherence to this object is not evident in practice and a closed, and at times obstructive, approach is taken...". [9] Specifically, the Ombudsman noted in their most recent Annual Report that, "complaints about delays in people accessing their own information from the Department for Education, Children and Young People and the Department of Health continue in their frequency…".[10]

TasCOSS believes the culture of reluctance observed by the Tasmanian Ombudsman and others in relation to RTI is further demonstration of the need for significant cultural change within Tasmanian institutions, to promote accountability and transparency of government processes and decision-making.

We also believe developing and promoting a culture of transparency (with a presumption in favour of disclosure where possible) may also address issues of delay and capacity to respond to RTI applications and reviews of decisions (discussed further below).

[6] Commission of Inquiry (2023). Full Report, Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings, Hobart, p.181.
[7] Environmental Defenders Office (2023). Transparent failure: Lutruwita/Tasmania's ineffective right to information system and how to fix it, Hobart, p.9.
[8] Environmental Defenders Office (2023). Transparent failure: Lutruwita/Tasmania's ineffective right to information system and how to fix it, Hobart, p.4.
[9] Ombudsman Tasmania (2022). Ombudsman Tasmania Annual Report 2021-22, Ombudsman Tasmania, Hobart, p.30.
[10] Ombudsman Tasmania (2024). Ombudsman Tasmania Annual Report 2023–24, Ombudsman Tasmania, Hobart, p.18.

Inadequate Resourcing of RTI Functions Leading to Excessive Delays

Considering the delays and backlogs in the system, it is apparent that RTI functions in Tasmania are inadequately funded and resourced, both within public authorities and the Ombudsman's Office, which is responsible for external review of decisions on RTI applications. Firstly, the Ombudsman has drawn attention to inadequate staffing resources for RTI functions in government departments, leading to lengthy delays and backlogs for responding to RTI applications in the first instance.[11] Similarly, the Department of Premier and Cabinet has identified that "inadequate right to information delegate staffing despite significant increases in applications made" is one of the main issues facing the RTI system in Tasmania.[12] The number of applications has increased over several years; taking just one two-year period as an example, the number of RTI applications increased from 1,389 applications in 2020-21 to 2,165 applications in 2022-23.[13]

Secondly, the external review function provided by the Tasmanian Ombudsman is also under resourced. While additional funding for 2021-2024 has allowed the Ombudsman's Office to make progress in addressing a significant backlog of challenges to RTI decisions and thus reduce the length of wait times by 49% during 2023-24, there are ongoing resourcing issues with this function. In the Ombudsman's *Annual Report 2023-24* it was noted that, "the historical backlog of external review applications awaiting finalisation remains an issue and I acknowledge and again express my regret in relation to this. It remains a barrier to timely review and detrimentally impacts the RTI scheme."[14]

This has significant implications for the full functioning of democracy in Tasmania because people's democratic right to information held by government authorities is, in effect, not readily obtainable or useful, either because it has been heavily redacted or because it is released so much longer after it has been requested that it is no longer relevant. It also has a significant impact on Tasmanians who are trying to access their own information, for example to apply for redress (as well as the community organisations – such as community legal centres – who are supporting them). Clearly, there is an ongoing need to adequately resource public authorities and the Tasmanian Ombudsman's Office to fulfill their obligations under the RTI Act in a timely fashion.

[11] Ombudsman Tasmania (2024). Ombudsman Tasmania Annual Report 2023–24, Ombudsman Tasmania, Hobart.
[12] DPAC (2023). Right to Information Uplift Project – Discussion Paper, Version 4.1, Department of Premier and Cabinet (DPAC), Government of Tasmania, Hobart, p.2.
[13] DOJ (2024). Right to Information Annual Report on the administration of the Right to Information Act 2009 for the period 1 July 2022 – 30 June 2023, Department of Justice, Government of Tasmania, Hobart.
[14] Ombudsman Tasmania (2024). Ombudsman Tasmania Annual Report 2023–24, Hobart, p.18.

Issues with Record Management

The Final Report of the Commission of Inquiry emphasised the critical importance of robust records management systems for ensuring RTI processes work as intended: "for an access to information scheme to support the principles of open and transparent government, good records of government activities need to be created in the first place, and subsequently managed, retained and disposed of in a systematic way."[15]

Unfortunately, the current state of records in public authorities in Tasmania poses a particular barrier to the effective release of information. During the Inquiry, the Commissioners heard evidence of Tasmanian Government records being "kept across multiple systems in various locations in a mix of digital and hard copy formats, which impedes identifying and accessing relevant documents".[16] By way of example, records requested by the Commissioners relating to out-of-home care and youth justice could not be readily provided by the then Department of Communities because many records were handwritten on paper, inadequately catalogued or stored in mislabelled boxes across multiple locations.[17]

The need for a comprehensive and searchable electronic records management system extends beyond contemporary records to include historical records of public authorities. As such, the task to update the records management system is two-fold: to ideally digitise or at least catalogue and centralise the storage of decades of paper-based historical records, and to also ensure all new records are stored in digital, searchable and shareable formats. In order to achieve this significant task, the Tasmanian Government needs to provide resources and training to public authorities and records offices, as well as to community sector organisations which deliver government-funded services to Tasmanians, such as out-of-home care, disability services and housing support.

[15] Commission of Inquiry (2023). Full Report, Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings, Chapter 17, Volume 7, p.176.
[16] Commission of Inquiry (2023). Full Report, Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings, Chapter 17, Volume 7, p.176.
[17] Commission of Inquiry (2023). Full Report, Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings, Chapter 17, Volume 7.

Resources and Capacity for Responding to RTI Applications

Another significant issue facing the RTI system in Tasmania is a general lack of training and upskilling for three groups of staff in the government sphere, including:

- RTI delegates in public authorities;
- public servants who make records and assist RTI delegates with locating and understanding information requested by RTI applications; and
- people working in the community services industry who deliver Tasmanian Government-funded services and thus generate records which may fall under the jurisdiction of the RTI Act.

The Ombudsman has repeatedly raised concerns about the very high rate of mistakes made by RTI delegates in applying the RTI Act in their responses to applications, especially in relation to information exempted from release. In 2023-24, 80% of those decisions were overturned, either in full or part, by the Ombudsman's Office.[18] If those decisions had been correct in the first instance, applicants would likely have benefited from receiving more of their requested information and also from receiving the information sooner.

In its latest Annual Report, the Ombudsman noted that, although the Right to Information Uplift Project run by the Department of Premier and Cabinet is apparently underway, the planned rollout of training across public authorities had not yet occurred, such that "the issue of limited training opportunities for RTI decision makers, particularly new delegates, remains ongoing."[19] In recent years, the Ombudsman has tried to fill some of these training gaps in the public authorities but has understandably prioritised addressing the backlog of external review requests.

[18] Ombudsman Tasmania (2024). Ombudsman Tasmania Annual Report 2023–24, Hobart.
[19] Ombudsman Tasmania (2024). Ombudsman Tasmania Annual Report 2023–24, Hobart, p.18

Conclusion

Evidently, the Tasmanian RTI system is not working as envisaged and has been effectively hamstrung in its efforts to operationalise Tasmanians' right to information, given that fact that Tasmanians are more likely to have their RTI applications refused than citizens anywhere else in the country.[20]

The frequent inability of Tasmanians to access information held by public authorities in a fulsome and timely manner, including information about their own experiences in institutional settings, denies individuals the opportunity to hold the Tasmanian Government to account for its failures. More broadly, the current state of the RTI system also poses risks to the health of Tasmania's democracy because it too often allows the Tasmanian Government to avoid transparency about its policies and practices, as well as facing accountability for its impact on the Tasmanian community.

In light of this, TasCOSS reiterates below three of our earlier recommendations, and proposes another three recommendations, to make the Tasmanian RTI system more effective as a tool of democracy.

[20] Environmental Defenders Office (2023). Transparent failure: Lutruwita/Tasmania's ineffective right to information system and how to fix it, Hobart.

Recommendations

Previous Recommendations

TasCOSS draws your attention to the recommendations made in our joint letter to the Premier in August 2023. We note, of course, that the first of our recommendations is now being progressed in the form of the independent review you are undertaking. However, our other three recommendations are yet to be delivered in full by the Tasmanian Government and include:

Recommendation one

Reforming the RTI Act to ensure there is a clear presumption in favour of the public disclosure of information, deadlines on external review of RTI decisions by the Tasmanian Ombudsman's office, options to appeal RTI decisions to the Tasmanian Civil and Administrative Tribunal, and regular independent review of the operation and implementation of the Act.

Recommendation two

Providing ongoing RTI Act training to public authorities by a suitably qualified independent body with a particular focus on the RTI Act's exemptions and the correct application of the public interest test.

Recommendation three

Providing additional resources to the RTI jurisdiction of the Tasmanian Ombudsman's Office to arrest and reverse the growing backlog of external review applications.

Additional Recommendations

Further to these recommendations, and in light of the findings and recommendations of the Commission of Inquiry into the Government's Response to Child Sexual Abuse in Institutional Settings, TasCOSS also calls for reforms to be made to the RTI system by:

Recommendation four

Implementing in full, by 2026, Recommendation 17.8 of the Commission of Inquiry, with a particular focus on ensuring the RTI process in Tasmania is effective, responsive and trauma informed.

Recommendation five

Ensuring public authorities are sufficiently resourced to ensure RTI processes are completed in an accurate and timely fashion, including by adequately staffing RTI functions and providing ongoing training to delegates and other officers delivered by a qualified independent body.

Recommendation six

Ensuring terminology in the RTI Act and RTI processes for public authorities and relevant community sector organisations are fit-for-purpose in view of the Tasmanian Government's ongoing transition to electronic systems for managing contemporary and historical public records.

2 May 2025

Professor Tim McCormack
Associate Professor Rick Snell
Independent Reviewers

By email: tasrti.review@gmail.com

Dear Professor McCormack and Associate Professor Snell

Review of Tasmania's Right to Information Framework | Consultation Response

Thank you for your letter of 3 March 2025 inviting TasPorts to provide its perspective on Right to Information (RTI) processes and challenges as part of your review of Tasmania's RTI Framework.

Introduction to TasPorts RTI processes

TasPorts' Chief Executive Officer is the principal officer for the purposes of the *Right to Information Act 2009* (the Act) and has appointed TasPorts' General Counsel as the delegated officer, to undertake all their functions under the Act.

As a public authority, TasPorts has robust governance arrangements in place to manage RTI matters. The delegation from CEO to General Counsel ensures TasPorts manages its RTI process through a legal and governance lens which safeguards compliance with its obligations under the Act. The centralised approach has also brought consistency and governance rigour to the to the management of requests for assessed disclosure.

TasPorts reports the number of formal applications for assessed disclosure in its Annual Report. The number of assessed disclosure requests is consistently low noting in FY2024 it was notably higher (reflecting the quantity of high-interest public issues being managed at the time).

- Eight in FY2024
- One in FY2023
- One in FY 2022
- None in FY2021

TasPorts is not required to publish RTI responses but if a matter is sufficiently in the interest of the public it will do so (such was the case with the Non-Standard Vessel Assessment conducted for the transit of the *Nuyina* under the Tasman Bridge: RSV Nuyina Statement).

Given that TasPorts has only processed 10 formal applications for assessed disclosure over the last four years (none of which have escalated to review through the Office of Ombudsman) the State-owned Company is limited in the value it can add to these Terms of Reference. Notwithstanding, it offers the following for your information.

Terms of Reference

An independent review of the Tasmania's RTI framework will examine and report on the adequacy, effectiveness and implementation of the Right to Information Act 2009, including but not limited to the following.

Any findings and recommendations arising from previous reports and review processes.

TasPorts acknowledges the Ombudsman's recent investigation into the handling of personal information when responding to requests for information under the *Right to Information Act 2009* by Tasmanian public authorities.

We noted that while TasPorts was not the specific focus of this investigation, we nonetheless provided information on the policies and quality assurance procedures in place to ensure that original decisions, internal review decisions, and external review decisions under the Act are implemented correctly, so that information identified as exempt from disclosure is not inadvertently released.

TasPorts' *Right to Information Policy* is attached along with a *Right to Information Summary*. Both documents are available in TasPorts policy and procedures library DocUControl. A copy of TasPorts' *Right to Information Act Application for Assessed Disclosure Form* is also attached.

Further, TasPorts publishes RTI information on its external website here Governance with the information also attached to this correspondence: *TasPorts RTI Website Information.*

Any administrative and/or cultural challenges experienced in meeting the objects of the Act.

TasPorts has not experienced any such challenges in meeting the objects of the Act.

The intersection with any other relevant legislative frameworks (including, but not limited to, the Public Interest Disclosures Act 2002, and the Personal Information Protection Act 2004).

TasPorts has not had need to test the intersection of the Act with any other relevant legislative frameworks and in instances where other legislative instruments may intersect, the application of these other instruments has not negatively impacted the discharge of TasPorts obligations under the Act.

It is noteworthy that TasPorts conducts governance and human resource staff roadshows across each of its major port locations every two years. The purpose of the activity is to provide an important overview of good governance practices, which support a healthy, transparent and accountable culture. The forums provide for direct engagement with our people on the practical implications of the policy and procedures within TasPorts' governance framework. This includes the role of legislation such as the *Right to Information Act 2009*, the *Public Interest Disclosures Act 2002* and the *Personal Information Protection Act 2004*. Attendance at these sessions is mandatory enduring TasPorts' people mandatory training to ensure understanding of and compliance with the Act and other relevant legislation.

The performance, resourcing and efficacy of the Office of Ombudsman in undertaking its functions and duties under the Right to Information Act 2009.

We note from the Ombudsman Tasmania's Annual Report 2023-24 that it has successfully recruited new positions including Manager Official Visitors and Director, Office of the Tasmanian Preventative Mechanism, and work underway to appoint a new Principal Officer – Health Complaints. In spite of this, delays and backlogs remain a significant issue in the right to information scheme and in external review requests and enquiries to the office.

Further, the Annual Report states:

- "Right to Information (RTI) and skills gaps (often due to lack of access to training) in delegates working at public authorities are having a major negative impact on the RTI scheme."

TasPorts notes that to ensure uniform compliance with the legislation, RTI is administered as a legal and governance function by the General Counsel as the delegated officer, with the following objectives:

- Adopt procedures which ensure a consistent approach throughout TasPorts to all issues involving RTI.
- Achieve efficient handling of and responses to RTI applications by centralisation.
- All applications to be recorded for reporting purposes.
- Provide corporate consultation, guidance and direction regarding rights and obligations under the Act.

Any other identified barriers to, or constraints on, the effective capacity of the RTI framework in Tasmania.

TasPorts is confident it has robust governance arrangements in place to manage RTI matters, and has not identified any barriers to, or constraints on, the effective capacity of the RTI framework in Tasmania within which it operates.

In closing, thank you for the opportunity to engage with you on this important matter. We are happy to elaborate further if required by [redacted]

Sincerely

Angie Somann-Crawford
General Counsel and Company Secretary
Delegated Officer pursuant to the Right to Information Act

Attachments:

1. *TasPorts Right to Information Policy*
2. *TasPorts Right to Information Summary*
3. *TasPorts Right to Information Act Application for Assessed Disclosure Form*
4. *TasPorts Right to Information website summary*

RIGHT TO INFORMATION ACT 2009 (TAS)
APPLICATION FOR ASSESSED DISCLOSURE

Full Name:			Title:	
Postal Address:				
Daytime contact information (telephone):	Business:	Home:	Mobile:	
Email:				
Public Authority or Minister applied to:				
General subject matter of information applied for (one sentence summary of information requested):				
Description of efforts made prior to this application (if any) to obtain from publicly available sources the information sought:				
Application fee included (please tick):				
OR, application for waiver:				
Member of Parliament:		Impecunious applicant:		General public interest of benefit:
Journalist:				
If applying for waiver, please provide any information to support the request for a fee waiver:				
If application for Applicant's personal information, proof of identify provided (please tick):				
Details of the information sought (including all relevant dates and time periods that may relate to the information being sought (if known):				
(If there is insufficient room in this space please attach further details.)				
Applicants Signature:		Date:		

INFORMATION ABOUT ASSESSED DISCLOSURE UNDER THE RIGHT TO INFORMATION ACT 2009 (TAS)

The Right to Information Act 2009 (Tasmania) ("**the Act**") provides a right for the public to obtain information in the possession of the government and public authorities. TasPorts is a public authority under the Act.

OBJECT OF THE ACT

Section 3 of the Act includes this statement of the objects of the Act:

(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.

(2) This object is to be pursued by giving members of the public the right to obtain information held by public authorities and Ministers.

(3) This object is also to be pursued by giving members of the public the right to obtain information about the operations of Government.

(4) It is the intention of Parliament –

(a) that this Act be interpreted so as to further the object set out in subsection (1); and

(b) that discretions conferred by this Act be exercised so as to facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information.

APPLICATIONS FOR ASSESSED DISCLOSURE

Applications are to be addressed to:

Right to Information Officer
Tasmanian Ports Corporation Pty. Ltd
90 Willis Street
Launceston, Tasmania 7250

Or email: rti@tasports.com.au

- Applications are to be made in writing and include the information required by Regulation 5 of the *Right to Information Regulations 2021*.

- If the application includes a request for personal information of the applicant, proof of identity of the applicant is required. Proof of identity means:

(a) a certified copy, or an extract, of a birth certificate for the applicant that shows the name of the applicant; or

(b) a certified copy of a certificate, declaration, notice or other instrument in respect of the applicant's status as an Australian citizen or British subject, or otherwise in respect of the applicant's nationality, issued under –

(i) the *Australian Citizenship Act* 2007 (Cth); or

(ii) the *Australian Citizenship Act* 1948 (Cth); or

(c) a passport, issued to the applicant in any country or territory, that shows the name of the applicant; or

(d) a drivers licence, issued to the applicant in Australia, that shows the name of the applicant.

APPLICATION FEE

Applications are to be accompanied by the application fee. This fee is 25 fee units, which is $46.75 as at 1 July 2024 and is indexed annually.

The fee can be paid by bank cheque or personal cheque made payable to "Tasmanian Ports Corporation", or by electronic funds transfer using the following details:

Account name:	Tasmanian Ports Corporation
BSB:	067-000
Account number:	0000 0360
Reference:	RTI [*your surname*]

REQUEST FOR WAIVER OF APPLICATION FEE

An applicant can apply for the application fee to be waived where:

- the applicant is a Member of Parliament in the pursuit of their official duty;
- the applicant is impecunious;
- the applicant is a journalist acting in connection with their professional duties; and
- the information sought is intended to be used for a purpose that is of general public interest or benefit.

Applicants are encouraged to specify in their application whether they are seeking a waiver of the fee, and the basis upon which that request is made. Any decision on whether to waive the fee is at the discretion of TasPorts. An application for assessed disclosure cannot be accepted unless the application fee has been paid, or waived.

RESPONSIBILITIES OF THE PUBLIC AUTHORITY

- Applicants are to be notified of the decision relating to an application for assessed disclosure within 20 working days of the application being accepted by the public authority.
- Before the application is accepted, the public authority has a maximum of 10 working days to negotiate with the applicant to further define the application.
- If a need to consult with a third party arises, a further 20 working days will be allowed in addition to the original 20 days.
- If these time limits are not conformed with, the application will be deemed to be refused and the applicant may apply to the Ombudsman for a review of that decision. Information on how to apply for a review by the Ombudsman can be found on the Ombudsman Website.

FURTHER INFORMATION

Further information relating to the RTI process and how TasPorts may assist can be found on under the Governance section on our website: https://www.tasports.com.au/corporate

Other general information on the Act can be found through the following links:

- Right to Information Act
- Right to Information Act 2009 Manual and Guidelines
- Ombudsman Tasmania

Date Adopted: 16 April 2012
Current Date: November 2023
Due for Review: November 2025
Division: Legal and Governance
COD/19/47

Right to Information Policy

1. PURPOSE

The purpose of this document is to outline the effect of the *Right to Information Act 2009* (**the Act**) on TasPorts and to formulate policy to be applied in administering the requirements of the Act.

2. SCOPE

This policy applies to all Information (as defined below) held by TasPorts, and all TasPorts employees.

3. DEFINITIONS

TasPorts: Tasmanian Ports Corporation Pty Ltd

Information: Defined under the Act as meaning:

a) anything by which words, figures, letters or symbols are recorded and includes a map, plan, graph, drawing, painting, recording or photograph; and

b) anything in which information is embodied so as to be capable of being reproduced.

4. POLICY DETAIL

The Act commenced on 1 July 2010 and provides for greater access to information held by government bodies by:

- Authorising and encouraging greater routine disclosure of information held by public authorities without the need for requests or applications;
- Authorising and encouraging greater active disclosure of information held by public authorities in response to informal requests without the need for applications;
- Giving members of the public an enforceable right to information held by public authorities; and
- Providing that access to information held by government bodies is restricted in only limited circumstances which are defined in the Act.

The provisions of the Act have wide implications for TasPorts in the way it conducts its business and manages its Information.

As a "public authority" within the meaning of the Act TasPorts has an obligation to provide to members of the public information contained in TasPorts' records, apart from "exempt information" (see Part 3 of the Act).

To ensure uniform compliance with the legislation, Right to Information (**RTI**) is to be administered as a Legal & Governance function with the following objectives:

- Adopt procedures which ensure a consistent approach throughout TasPorts to all issues involving RTI.
- Achieve efficient handling of and responses to RTI applications by centralisation.
- All applications to be recorded for reporting purposes.
- Provide corporate consultation, guidance and direction regarding rights and obligations under the Act.

The Chief Executive Officer is the principal officer for the purposes of the Act. Section 21 of the Act provides for the appointment of delegated officers as decision makers for the purpose of releasing or refusing information, or undertaking reviews of decisions. Such appointments are to be made by a formal instrument. Delegations will be reviewed as required by the Act and otherwise as the need arises.

Where a decision is made not to release certain information the applicant may request the principal officer of the public authority to review the decision. Applicants also have a right to seek a review by the Ombudsman.

Major aspects of the Act:

- The Act's objective is to give the public access to public authority records, with public authorities being encouraged to make information routinely available, and for applications for information being intended to be used as a "last resort".
- There are four different kinds of disclosure referred to in the Act:
    - Required disclosure – where disclosure is required by law or under an agreement;
    - Routine disclosure – where the public authority decides information may be of interest to the public, but which does not fall into one of the other categories of disclosure;
    - Active disclosure – where information is disclosed in response to a request from a person made otherwise than as an assessed disclosure; and
    - Assessed disclosure – where a person seeks information under section 13 of the Act. This is meant to be the "last resort" – i.e. if a public authority could provide the information without a formal application, it should.
- Public authorities must provide information unless it is exempt.
- The Act requires applicants to be specific in their requests but at the same time obliges public authorities to assist in this exercise.
- Time limits apply for dealing with applications – 20 working days for assessed disclosures, except in specified circumstances.
- Applicants must pay an application fee for assessed disclosures, except in specified circumstances.
- Requests for assessed disclosure must be in writing and contain certain details as prescribed by regulation but may also be made using a standardised request form.
- Public authorities may give a general refusal where there would be a substantial and unreasonable disruption to normal work, or where an application is a repeat of another application or vexatious.
- There are various categories of "exempt information", many with an overriding additional provision that refusal to disclose must also be in the "public interest" or that the "public interest" factor may override other factors. It is in this area the major areas of dispute are likely to arise.
- Where disclosure would affect personal information or other third party interests notice provisions apply for interested parties to be notified prior to any disclosures.
- Procedures are prescribed for dealing with applications for the notification of decisions and for appeals from those decisions.

Key information, together with a copy of the application form, is published on TasPorts' external website, as required by the Act.

5. SPECIFIC TYPES OF DISCLOSURE

5.1. Required Disclosure

Examples of required disclosure would include Annual Reports and Financial Statements. Required disclosures may be made through a number of different means including the external website or through other documentation that may be accessible to the public.

5.2. Routine Disclosures

Examples of routine disclosure can be found on TasPorts' external website, including towage rates and conditions, Domain Slip rates etc. Information published on the website must be approved by the Head of Corporate Affairs.

Generally routine disclosure involves the disclosure of information which may be of general public interest or benefit and which is not regarded as contentious, commercially sensitive or confidential. Care should be taken to ensure that information which is made available as a routine disclosure is accurate and up to date.

5.3. Active Disclosures

In general terms, an active disclosure may be made where the information sought is not of general public benefit or interest, but is also not contentious, inaccurate, commercially sensitive or confidential (including any information which is or may contain personal information). The information may already be in the public domain.

Examples of where an active disclosure may be made include responses to requests for information from the media where public statements have already been agreed within TasPorts.

If the information sought is or might reasonably be regarded as contentious, inaccurate, commercially sensitive or confidential, the request should be referred to either the General Counsel or a member of the Legal team.

5.4. Assessed Disclosures

Assessed disclosure involves a formal request for information under section 13 of the Act. This may or may not be in the form which Tasports makes available on its external website. Assessed disclosures must normally be accompanied by payment of a fee (some exceptions apply).

Assessed disclosures must be dealt with in accordance with the Act, a flowchart of the process is set out at Annexure A.

6. KEY STAKEHOLDER RESPONSIBILITIES

The Chief Executive Officer is the principal officer for the purposes of the Act, but may appoint delegated officers to undertake any or all of their functions under the Act.

TasPorts' General Counsel have been appointed as a delegated officer in accordance with the Act.

7. FORMS

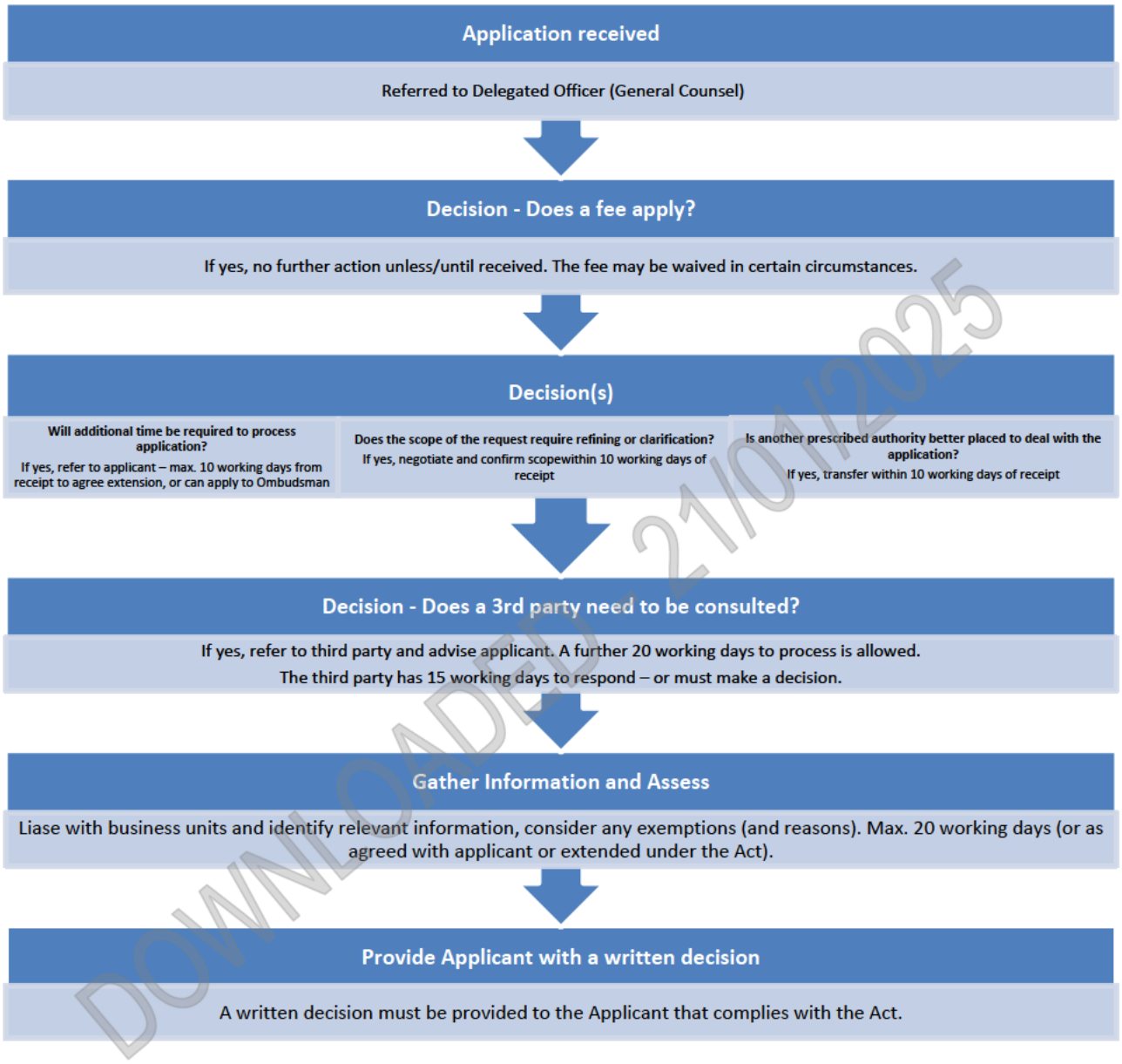
Application Form is available on Tasports' external website. This form is not compulsory, but is encouraged. A flowchart showing the process for assessed disclosures is at Annexure A..

8. RELATED DOCUMENTS

- *Right to Information Act 2009* (Tas);
- *Right to Information Regulations 2021* (Tas);
- TasPorts Media Policy.

ANNEXURE A

FLOWCHART FOR ASSESSED DISCLOSURE



RIGHT TO INFORMATION

This document is designed to give you a basic understanding of the *Right to Information Act 2009* (Tas) and TasPorts' obligations under that Act.

It is not intended to replace TasPorts' Right to Information Policy - you should refer to that document if you have further questions.

What is Right to Information about?

The Act seeks to increase the transparency and public accountability of relevant Tasmanian authorities through the disclosure of information held by those authorities.

What is "information"?

Information is not limited to documents – it may include recordings, maps, graphs, paintings, photographs etc.

Does it apply to TasPorts?

Yes, it applies to ***public authorities*** which include:

- Government departments;
- Councils;
- Statutory authorities;
- Government - owned and council - owned businesses.

What does TasPorts have to do?

The Act strongly encourages TasPorts to:

- comply with its obligations to disclose information under any law or other requirement; and
- make information available "routinely" (e.g. where there is general public interest) and "actively" (i.e. in response to a query or request, but where a formal request is not warranted) –

The Act also requires TasPorts to disclose information held by it that is not regarded as "exempt" whenever formally requested in accordance with the Act. These are called ***assessed disclosures***.

Assessed disclosure is meant to be the 'method of last resort'.

How is an application for assessed disclosure made?

An application must be made in accordance with section 13 of the Act:

- in writing;
- identifying the applicant and providing address and contact details;
- identifying (even in only general terms) the information sought; and
- stating what has already been done to try and obtain the information.

In addition, unless specific circumstances apply, the applicant must pay a fee.

How does TasPorts deal with application for assessed disclosure?

Applications must be dealt with by an authorised person - in the first instance, this is General Counsel – not more than 20 working days after receipt, unless an extension of time is agreed or granted.

In processing the application, various decisions must be made:

- Does TasPorts hold information relevant to the application? If not, should the application be transferred to another authority?
- What information does TasPorts hold that is relevant?
- Is any of this information ***exempt*** under the Act?

Exempt information is not required to be disclosed, although an authority may elect to do so.

The Act sets out a number of grounds on which information may be exempt. Some grounds are subject to a ***public interest test***. If disclosure of the information is in the public interest (after considering a range of matters specified under the Act), it is not exempt.

The applicant must be notified of the decision and provided with any information that is required to be disclosed under the Act. This can be done through the provision of copies of the information, or by allowing the applicant to view or otherwise access the information.

What then?

An applicant may seek a review of the decision either by TasPorts or the Ombudsman, as set out in the Act. The original decision may be upheld or overturned.

TasPorts must provide annual statistical information to the Ombudsman and include this information in its Annual Report.

What do I need to do?

- Think about how you create, maintain and manage information in the course of your role;
- Follow TasPorts information management processes;
- Assist the General Counsel in identifying any relevant information; and
- If someone asks you for information about TasPorts' business, and that information may be sensitive or you are not sure you should give it to them, ask your manager or General Counsel.

If you have any further questions about TasPorts' policy or Right to Information generally, please contact Angie Somann-Crawford, General Counsel & Company Secretary on 6222 6022

8 May 2025

Professor McCormack & Associate Professor Snell
Tasmanian RTI Review

By email: tasrti.review@gmail.com

Dear Professor McCormack and Associate Professor Snell,

Review of Tasmania's Right to Information Framework

Thank you for your invitation to contribute to this important review of Tasmania's Right to Information (RTI) Framework, which examines the adequacy, effectiveness, and implementation of the Right to Information Act 2009 (RTI Act). The Vice Chancellor has requested that I respond to your invitation on his behalf.

Thank you also for your time to meet with me and Karina Groenewoud, Director Governance and Compliance, on 25 March 2025 to discuss this review, and the University's experience with the RTI Framework, engagement with the Tasmanian Ombudsman, and the University's approach to transparency in decision-making. I am pleased to make the following submission subsequent to that discussion.

Background

University structure and governance

Compared to the other public authorities subject to the RTI Act, the University is uniquely structured, governed and funded.

The University of Tasmania is a statutory corporation continued under the University of Tasmania Act 1992 (UTAS Act) with three primary functions:

- The creation of knowledge – research
- The dissemination of knowledge – teaching and learning
- Activities which promote the social, cultural, and economic welfare of the community and to make available for those purposes the resources of the University.

While established by an instrument of the Tasmanian Parliament, the University is independent of the government of the day with three important exceptions:

- Two members of Council are appointed by the Minister (for Education).
- The University must seek the approval of the Treasurer to borrow money.
- The University must provide its annual report to the Governor and then to the Minister who is required to table the report in both houses of the Tasmanian Parliament.

The UTAS Act provides the University with the powers it needs to perform its functions, independent of intervention by the Tasmanian Government, but importantly, subject to the requirements of its founding legislation together with some 270 other state and national legislative and regulatory obligations.

The University operates in a highly competitive sector, competing for research grant funding and student enrolment revenue. A large proportion of revenue comes from the Australian Government, with major non-government sources including domestic student contributions from

full fee-paying students, international student fees, industry research grant contributions, and investment revenue. The University is not underwritten by any level of government.

The University's journey with Right to Information legislation

The University was not included in the original RTI Act (2010). The object of the original Act, which remains the same today, is "…to improve democratic government in Tasmania by:

- increasing the accountability of the executive to the People of Tasmania
- increasing the ability of the people of Tasmania to participate in their governance
- 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."

The objective is to be pursued by giving the public the right to obtain information held by public authorities and ministers and to obtain information about the operations of Government. The object is directed to public entities that are part of or owned/controlled by the state, with the exception of local governments, however their differences are managed and accounted for.

In 2012, the University was added to the scope of the act by simple amendment to the definition of a public authority. No other amendments were made to accommodate the difference of the University from other public authorities. This difference is important in the application of the public interest test, particularly where related to intellectual property and business affairs. Should the University's competitive position be damaged and financial position eroded, its ability to serve the state through broad offerings across regional campuses would be diminished. There is no doubt this would have a negative impact on the economic prosperity of the state, research and not to mention on access to higher education. As the RTI Act does not reflect this difference, the external review decisions of the regulator have not considered it in relation to the application of the public interest test or otherwise.

The University of today is very much aligned with the principles of transparency in administration of public authorities and those that receive public funding; principles which underpin the object of the RTI Act as it relates to the University. In 2024 the University amended its Communications and Brand Policy to more clearly articulate expectations for transparency and accountability in operations and decision-making and build greater trust and understanding with internal and external communities. This is essential for us to be able to deliver on our mission to be a university for Tasmania and which makes a distinctive contribution from Tasmania to the world.

Our Communication and Transparency Procedure, introduced in 2024, articulates the expectations, accountabilities and responsibilities for consultation, communication of decisions and the publication of University information more broadly. The procedure introduced the requirement for publishing a range of information as routine and active disclosures including:

- The minutes of meetings of the University Council
- Meeting summaries of the university's academic governance body, Academic Senate
- A log of assessed disclosures made under the RTI Act and, where in the public interest, some or all of the disclosed information (applicant deidentified)
- Public submissions made by the University to external organisations.

University response to specific Terms of Reference

Term of reference 2: Any administrative and/or cultural challenges experienced in meeting the objects of the Act.

University RTI applications and process

Compared with Tasmanian Government Agencies, the University receives a relatively small number of applications each year. Table 1 shows the number of applications per year since 2020 and how many of those progressed to assessed disclosure.

Table 1: Right to Information Applications received and assessed by the University

Year	No. applications	No. Assessed disclosures
2020	9	8
2021	13	8
2022	16	11
2023	10	6
2024	20	14

Applications range from requests for personal information from past students and staff about themselves, requests from journalists for information related to topical issues, requests from elected representatives on behalf of themselves or their constituents, and requests from members of the public for reports or information about actions, decisions or university governance. Wherever possible, and consistent with our policy and procedure, information is released by way of active disclosure. Where, however, an application includes a request for information that is exempt from disclosure under the RTI Act, it is dealt with by way of the assessed disclosure provisions.

The Vice Chancellor is the Principal Officer under the RTI Act and has delegated the powers to assess and decide the disclosure of information under the Act to a number of RTI Officers, including all of the University's in house lawyers. The General Counsel/Executive Director Legal and Risk is the 'legal compliance owner' for the RTI Act and accountable for ensuring the University's compliance. The Director Governance and Compliance is responsible for the effective administration of applications and providing guidance and training to RTI Officers.

This model has been adopted to service the relatively small number of applications across a busy team. Given the volume, it is not feasible to employ a specialist Right to Information Officer and the in-house lawyers are best placed to act as RTI officers. The challenges this provides is that when a large application is received, it has a significant impact on operations of the team who are otherwise engaged in day to day as well as high risk legal work. This has created challenging resource constraints and at times diverts resourcing away from high risk legal work. It is conservatively estimated that a recent application with a very broad scope (after negotiation) took around 275 hours of staff time equating to approximately 15 per cent of one FTE annual salary. This estimate includes searching, document conversion, collating and cataloguing, the assessment and decision.

Cost and Resourcing

There is a significant cost to maintaining the resources, systems and expertise in a small team with many other workstreams. Every application is different, and decisions about the release of

information and the application of the RTI Act's exemptions after application of the public interest test, are far from straightforward.

Whilst the University only processes a relatively small number of applications each year, an individual application with a large scope can pose a significant administrative and resource burden. This is compounded by the difficulties in assessing whether the scope of an application constitutes an unreasonable diversion of resources, and the short timeframe in which to do that. The extent of an application may only become apparent well after the application has been accepted and progressed. This is partly the reflection of an Act that was established at a time when information was, in the main, stored and disseminated in consistent and accessible ways and did not contemplate the exponential growth in volume of written information that is generated and shared electronically today as organisations go about their business, nor the variety of forms, systems, platforms and technologies over which this information is generated and stored.

The University is improving its systems and processes for managing applications including how we quantify the cost of processing applications to aid in assessing whether an application will result in the unreasonable diversion of resources.

Engaging with the Ombudsman

Timely advice from the Ombudsman has not been readily available and by necessity, can only be general in nature. The resources provided by the Ombudsman to support decision-making are limited and some are outdated. The lack of guidance and clarity in the application of exemptions and the judgment needed in the application of the public interest test make consistency in decision-making challenging. This is evidenced by the decisions of Ombudsman external reviews in which even the most experienced of RTI officers in the public service often have decisions amended by the Ombudsman on external review. For a junior RTI Officer grappling with the Act for the first time, it is often a daunting task, knowing that the reputation of their organisation may be impacted by their decision, and support and guidance from the Ombudsman's office would be incredibly beneficial.

In relation to specific provisions in the RTI Act, some improvements would also support better administration of applications, especially in resource-constrained environments:

1. clarity and guidance in relation to what constitutes a vexatious application
2. clarity regarding what amounts to an unreasonable diversion of resources that reduces the resource requirement for the assessment of the scope itself
3. provision of more flexibility in statutory timeframes to accommodate more complex applications.

More recently, to aid in improving administration and consistent with our approach to transparency, the University has taken a more collaborative approach to applications with the applicant themselves. RTI Officers often engage with an applicant from the outset to support a better understanding of the request to facilitate active disclosure where possible, to clarify and negotiate the scope where necessary and to enable conversations about timeframes as the application progresses. This approach has been beneficial to the process and assisted somewhat in managing the workload associated with applications along with their other duties.

Term of reference 3: The intersection with any other relevant legislative frameworks (including, but not limited to, the Public Interest Disclosures Act 2002 and the Personal Information Protection Act 2004)

Our RTI Officers, who are in the main University lawyers, understand the obligations of related legislation in the assessment of RTI applications and ensure they are appropriately managed.

It is worth noting that by virtue of being an RTI Officer, and their contact details becoming publicly available, some staff have become vulnerable to harassment by applicants. The University has, on more than one occasion, had to place a redirect on calls from applicants to our Safe and Fair Communities Unit due to inappropriate behaviour. Mobile phone numbers, especially of junior officers, are rarely released because of this.

Term of reference 4: The performance, resourcing and efficacy of the Office of Ombudsman in undertaking its functions and duties under the RTI Act

The RTI Act does require the Ombudsman to provide some support to decision makers through the provision of guidelines for disclosure of information and a manual related to the operation of the RTI Act, however support for developing capability of public authorities and their RTI Officers it is not an underlying objective of the Act.

The current model may work better for large, State Government agencies with an extensive history of assessing RTI applications and networks across agencies, however, it has not served the University well. As a unique type of public authority, even peer to peer learning is difficult to access. The University's RTI team has benefitted from connecting with individual RTI officers from other agencies, but these arrangements are dependent on relationships between individuals rather than being systemically embedded. The resources provided on the Ombudsman's website are minimal, aged and not particularly user friendly. The limited training session that our officers were able to join, however, was incredibly beneficial and we would welcome and encourage more direct training opportunities.

The Ombudsman Office's resourcing challenges are well known. We suggest that a model that seeks to build capability in the system would improve the quality of decision making, improve the applicant experience and reduce the number of external reviews as well as the number of revised decisions from external reviews. We consider this would benefit public authorities and the Ombudsman, and ultimately better support the object of the RTI Act.

A capability building model could include:

- An updated, user-friendly Manual and guidelines.
- Online training modules for RTI Officer and interpretation of the RTI Act.
- A user friendly database of best practice examples/decisions in relation to the various exemptions and the application of the public interest test.
- An RTI hotline.

Term of Reference 5: Any other identified barriers to, or constraints on, the effective capacity of the RTI framework in Tasmania.

In your letter you note the recommendation of the Environmental Defender's Report 2023 that "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 adverse to them and invite their input.". The University would object to removal of this provision. To do so, in the absence of any avenue of repeal or review of the Ombudsman's decision would remove procedural fairness, particularly given the application of exemptions and the public interest relies on an individual's judgement and perception.

Transparency and accountability are essential to a healthy democracy and the RTI Act is one mechanism for underpinning that principle. The RTI Act as it is currently drafted is, however, a blunt instrument. All of the obligations to comply lie with public authorities and there is no expectation, guidance or obligation on applicants in how they use the Act, or how they represent or use the information disclosed to them in a way that is consistent with the intent of the Act. As a result, the Act is easily and often weaponised by applicants who are able to take information out of context and use it for their own and sometimes adversarial purposes, something that could have a negative impact on transparency as it is conceivable that it could drive unintended behaviours.

Of significant concern to the University is the lack of recourse for public authorities where individuals repeatedly submit extensive requests for information. As noted above, provisions regarding unreasonable diversion of resources and vexatious applications lack clarity and tend to focus on individual rather than cumulative applications. The consideration of provisions to enable a public authority to at least challenge repeat applicants, would be welcomed, for example, provisions that enable the Ombudsman, at the request of a public authority, to engage with an applicant to understand their information requirements and how they can be met, and ultimately require the Ombudsman to determine whether the overall volume of requests is reasonable.

Thank you again for the opportunity to comment on this matter. Please contact me by email at [redacted] or by phone on [redacted] if you would like to discuss any aspect of this submission or the University's experience of the RTI Act.

Yours faithfully

Susannah Windsor
Acting General Counsel and Executive Director Audit & Risk

20 June 2025

Independent Review of Tasmania's Right to Information Framework
Department of Premier and Cabinet
GPO Box 123
HOBART TAS 7001

By email: **tasrti.review@gmail.com**

Dear Professors McCormack and Snell,

Submission to the Independent Review of Tasmania's Right to Information Framework

Thank you for the opportunity to make a submission in relation to the Independent Review of Tasmania's Right to Information Framework. I write as a recent law graduate of the University of Tasmania (UTAS), who undertook my First Class Honours thesis on Tasmania's *Right to Information Act 2009* (Tas) and framework in 2024. I also write with experience as a member of the UTAS Law School's Right to Information Training project team. The views expressed are my own.

This submission details reflections and recommendations drawn from my research for my Honours thesis, and my work with the Law School's Right to Information project team. For the reasons I outline in my submission, Tasmania's Right to Information Framework needs considered administrative and legislative change, if it is to be a system capable of achieving its intended accountability objectives and improving democratic governance in Tasmania.

I would be happy to discuss my submission further, if necessary.

Yours sincerely,

Phoebe Winter
Honours Student and Law Graduate, University of Tasmania Law School 2024

SUBMISSION TO THE INDEPENDENT REVIEW OF TASMANIA'S RIGHT TO INFORMATION FRAMEWORK

EXECUTIVE SUMMARY

Right to Information (RTI) systems are integral to effective government, as they facilitate the public's access to government information.[1] The original intent of the RTI legislation in Tasmania was to 'strengthen trust in democracy and political processes'.[2]

The *Right to Information Act 2009* (Tas)('*RTI Act*')[3] and RTI framework was implemented to improve accountability in all levels of government by supporting a proactive 'push model' of information disclosure.[4] As part of the efforts to promote greater openness the *RTI Act* was intended to reflect a presumption of disclosure, facilitating a pro-disclosure approach to information access.[5] This can be seen in s 7 of the Act, which provides there is a legally enforceable right to be provided with information *unless* that information is 'exempt information' in accordance with the *Act*[6] and is further supported by s 3(4)(b) of the *Act* which provides that any exercise of discretion under the *RTI Act* should advocate for providing the maximum amount of information.[7] However, the current implementation of Tasmania's *RTI Act* and system has been operating with a 'closed, obstructive approach',[8] threatening accountability and transparency in Tasmanian government and the health of Tasmania's democracy.

My submission is that Tasmania's current RTI regime and *RTI Act* is not meeting its original objectives, and needs reform, as it does not possess necessary 'markers' for an effective information disclosure system capable of promoting government accountability.

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[1] Joseph Stiglitz, 'Transparency in Government', in *The Right to Tell: The Role of the Mass Media in Economic Development* (WBI Development Studies, World Bank, 2002) 27, 28-9.
[2] Tasmania, *Parliamentary Debates*, House of Assembly, 15 October 2009, 70 (Lara Giddings) ('*RTI Bill Second Reading Speech*').
[3] *Right to Information Act 2009* (Tas) ('*RTI Act*').
[4] *RTI Bill Second Reading Speech* (n 2) 70.
[5] Ibid 72.
[6] *RTI Act* (n 3) s 7.
[7] Ibid s 3(4)(b).
[8] Integrity Commission Tasmania, *Misconduct Risks in Tasmania's Right to Information Regime* (Report, 22 May 2024) 10 ('*ICT Report*').

Accountability literature suggests there are some essential markers including 1) a proactive political and agency culture to RTI,[9] 2) appropriate and adequately resourced oversight bodies,[10] and 3) a clear and facilitative public interest test (PIT) capable of promoting the pro-disclosure objectives of RTI legislation.[11]

My key submissions are;

1. Currently, Tasmania has a notable RTI culture issue, and disclosure avoidant practices which are undermining the accountability objectives of the RTI system;
2. The Ombudsman, as the current oversight body for RTI in Tasmania, is currently unable to promote the objectives of the RTI system because it is inadequately resourced and retains a problematic external review jurisdiction; and
3. The *RTI Act's* public interest test (PIT) is currently insufficient and requires reform as it is susceptible to being misapplied in favour of non-disclosure, reducing disclosure, increasing external reviews and undermining citizens capacity to scrutinise information.

To address these issues, and recentre the *RTI Act* and system toward promoting and achieving its intended accountability and transparency objectives, the following reforms are suggested:

1. Strong, targeted RTI training for new RTI delegates which reinforces the objects of the *RTI Act* and stresses the use of assessed disclosure as a last resort;
2. RTI training should also include detailed guidance on the use of exemption provisions in the *RTI Act*, to improve delegate understanding and limit overuse of exemption provisions to avoid disclosure.[12]

[9] Daniel Stewart, 'Assessing Access to Information in Australia: The Impact of Freedom of Information Laws on the Scrutiny and Operation of the Commonwealth Government' in John Wanna, Evert A Lindquist and Penelope Marshall (eds), *New Accountabilities, New Challenges* (ANU Press, 2015) 79, 80, citing Alasdair Roberts, 'Structural Pluralism and The Right to Information' (2001) 51 *University of Toronto Law Journal* 243, 244.
[10] Rick Snell, 'Failing the Information Game' [2007] (10 January/March) *Public Administration Today* 5, 8.
[11] Danielle Moon and Carolyn Adams, 'Too Much of a Good Thing? Balancing Transparency and Government Effectiveness in FOI Public Interest Decision Making' (2015) 82 *Australian Institute of Administrative Law Forum* 28, 30-7.
[12] Environmental Defenders Office, *Transparent Failure: Lutruwita/Tasmania's Ineffective Right to Information System and How to Fix It* (Report, July 5 2023) 39 ('*EDO Report*'); Note that the University of Tasmania has been engaged by the Department of Premier and Cabinet to deliver such new delegate training in the State Service.

3. Ongoing professional development training to ensure RTI decision-making reflects guidance from the Ombudsman and external review decisions; [13]
4. As suggested by the EDO, amending s 3(2) of the *RTI Act* to emphasise the focus on the Act's objects being pursued through public authorities prioritising routine and active disclosure;[14]
5. As also suggested by the EDO, amending s 7 of the *RTI Act* to include a rebuttable presumption that all information sought via assessed disclosure is disclosable;[15]
6. Amending the *RTI Act* to move the external review jurisdiction for RTI decisions from the Ombudsman to the Tasmanian Civil and Administrative Tribunal ('TASCAT').
7. Alternatively, amending the *RTI Act* to include TASCAT as an alternative body for external review or having additional review by TASCAT following review by the Ombudsman;
8. If external review remains with the Ombudsman, removing the requirement for the Ombudsman to consult with public authorities on adverse preliminary decisions or legislate a time frame for response from public authorities; and
9. The *RTI Act* should be amended so its public interest test (PIT) reflects the structure in Queensland's *Right to Information Act 2009* (Qld).[16] This would include;
    a. Legislative amendment to separate the sch 1 mandatory factors into factors weighing in favour of disclosure and factors weighing against disclosure; and
    b. If the amendment to sch 1 factors was implemented, inserting a pro-disclosure bias for the PIT.

AREAS OF CONCERN & RECOMMENDED REFORMS

1) Tasmania's current RTI system lacks a pro-disclosure political and agency culture toward RTI which is undermining the pro-disclosure and accountability objectives of the *RTI Act* and system.

There is no doubt that RTI delegates are working tirelessly to release information efficiently and comprehensively. This can be seen, for example, in the fact that of 1685

[13] Department of Premier and Cabinet Tasmania, 'Right to Information Uplift Project' (Discussion Paper, No 23/18552, Department of Premier and Cabinet Tasmania, 2023) 41 ('RTI Uplift Project Discussion Paper').
[14] *EDO Report* (n 12) 37.
[15] Ibid.
[16] *Right to Information Act 2009* (Qld) – see s 44(4) and sch 4 pts 2-3.

total applications determined by government departments in the 2022/23 financial year, only 51 had internal review requests and only 40 were then referred for external review, meaning only a small proportion of applicants were dissatisfied with their outcome (2.4%).[17] Negative public perceptions of the legislation and its efficacy also no doubt impacts the ability for delegates to effectively and efficiently administer the *RTI Act*, especially where such perceptions may affect recruitment of experienced RTI delegates.[18]

However, despite the concerted efforts of RTI delegates, a common theme raised during the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (COI) was obstructive departmental attitudes toward information disclosure, highlighting a sector-wide culture issue. [19] The Commission itself recognised the 'absence of a pro-release culture'.[20]

Concerningly, there is a notable reactive, rather than proactive implementation of RTI across Tasmania. Assessed disclosure - where an application is made under s 13 of the *RTI Act* and assessed by an authority- was intended to be, and is legislated as a last resort [21], while required and routine disclosure (not requiring application) were intended to improve accessibility of government information to the Tasmanian public. [22] Yet, in practice, assessed disclosure is being inappropriately used as the default method, reinforcing a clear reluctance by entities toward information disclosure. [23]

This reluctance is reinforced by the heavily criticised overreliance on exemption provisions under the *RTI Act.*[24] Such overreliance suggests that despite the prima facie right to information in the *RTI Act* (in s 7), in practice, authorities have replaced this with the assumption they are entitled to rely on exemptions, sustaining a propensity for non-disclosure. [25] There have also been recent illustrative examples of problematic approaches

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[17] Department of Justice Tasmania, *Right to Information Annual Report 2022-23* (Report, February 2024) 5,7, 15, 33.
[18] 'RTI Uplift Project Discussion Paper' (n 13) 32.
[19] *Commission of Inquiry Into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings* (Final Report, August 2023) vol 7, ch 17, 184-5 ('*COI Report*'); Integrity Commission Tasmania, *Investigation Gatehouse: An Investigation into the Management of a Right to Information Request in the Department of Health* (Report No 1 of 2024, 22 May 2024) 20 ('*ICT Investigation Gatehouse*').
[20] *COI Report* (n 19) vol 7, ch 17, 186.
[21] *RTI Bill Second Reading Speech* (n 2) 71; *RTI Act* (n 3) s 12(3).
[22] *RTI Bill Second Reading Speech* (n 2) 70.
[23] 'RTI Uplift Project Discussion Paper' (n 13) 12.
[24] *ICT Report* (n 8) 8.
[25] Rick Snell, 'The Kiwi Paradox: A Comparison of Freedom of Information in Australia and New Zealand' (2000) 28 *Federal Law Review* 575, 591.

to RTI, such as delegates overly leveraging technicalities to avoid disclosure contrary to the spirit of the *RTI Act*.[26] The resultant tendency toward non-disclosure not only systematically inhibits citizens from being able to access information and meaningfully scrutinise and assess government actions and decisions, but in doing so, increases the information asymmetry between government and the people of Tasmania. Tasmania's current political and agency environment is not conducive to effective and efficient information disclosure and reform is required to better enable the RTI system to achieve its accountability objectives and improve democratic government in Tasmania.

The current limited formal training for RTI that is available to existing and incoming RTI delegates/decision-makers is directly linked to high rates of error in assessed disclosure, potentially only reinforcing tendencies toward obstructive disclosure practices.[27] The lack of robust formal training also causes reliance on internal, non-standardised 'passing of knowledge' processes, potentially reinforcing knowledge gaps and perpetuating any disclosure reluctant behaviour.[28]

Strong targeted training for existing and new RTI delegates is therefore very important in assisting to re-orient RTI culture and improve information release. Training which explicitly stresses the use of assessed disclosure as a last resort, and which provides detailed guidance on the use of exemption provisions, may beneficially improve delegate understandings of how to correctly apply the *RTI Act* and limit overuse of exemption provisions to avoid disclosure.[29] Ongoing professional development training will also be important to make sure decision-making reflects updated guidance from the Ombudsman and any review decisions.[30]

Legislative amendment may also be of assistance. As the EDO highlighted, the current construction of the *RTI Act's* objects clause immediately hinders the *Act's* capacity to promote accountability and thereby achieve its objects.[31] The current wording suggests reliance on individuals requesting, rather than authorities pre-emptively publishing

[26] *ICT Investigation Gatehouse* (n 19) 20-2 – this example concerned a Department of Health RTI delegate, where it was found that the delegate's personal attitudes to the RTI applicant journalist led the delegate to overly leverage technicalities in the *RTI Act* to avoid disclosure.
[27] Ombudsman Tasmania, *Annual Report 2022-23* (Report, 31 October 2023) 18, 44 ('*Ombudsman Annual Report 2022-23*').
[28] 'RTI Uplift Project Discussion Paper' (n 13) 43.
[29] *EDO Report* (n 12) 39.
[30] 'RTI Uplift Project Discussion Paper' (n 13) 41.
[31] *EDO Report* (n 12) 36.

information, perpetuating a reactive not proactive system of disclosure. [32] Also, unlike some other jurisdictions,[33] the *RTI Act* does not currently possess an explicit presumption of disclosure. Although a presumption is implied through the *Act's* objects (s 3) and the right to information in s 7, the lack of an explicit presumption creates further risks for decisions to be made under the *RTI Act* that do not align with its pro-disclosure objects.[34] Given the current tendency/bias toward non-disclosure in the *RTI Act's* implementation, the *RTI Act* would benefit from an explicit presumption of disclosure.

Reform Recommendations

To improve the current RTI culture and re-orient it toward pro-disclosure and proactive information release, the following reforms are recommended;

1. *Strong, targeted RTI training for new RTI delegates which reinforces the objects of the RTI Act and stresses the use of assessed disclosure as a last resort;*
2. *RTI training should also include detailed guidance on the use of exemption provisions in the RTI Act, to improve delegate understanding and limit overuse of exemption provisions to avoid disclosure;*
3. *Ongoing professional development training to ensure RTI decision-making reflects guidance from the Ombudsman and external review decisions, and so RTI delegates remain up to date with how to effectively apply the RTI Act and training is standardised across agencies. Tasmania could consider adopting a similar approach to Victoria by offering monthly webinars on understanding and application of the legislation,[35] or offer online e-learning modules like Queensland and Victoria have.*[36]
4. *As suggested by the EDO, amending s 3(2) of the RTI Act to emphasise the focus on the Act's objects being pursued through public authorities prioritising routine and active disclosure;[37] and*

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[32] Ibid.
[33] See *Government Information (Public Access) Act 2009* (NSW) s 5 ('*NSW GIPA Act*'); *Qld RTI Act* (n 12) s 44(4); *Freedom of Information Act 2016* (ACT) s 9 ('*ACT FOI Act*').
[34] *COI Report* (n 19) vol 7, ch 17, 186.
[35] Office of the Victorian Information Commissioner, 'Training', *Events and Education* (Web Page, n.d.) <https://ovic.vic.gov.au/events-and-education/#training>.
[36] Office of the Victorian Information Commission, *Annual Report 2022-23* (Report, September 2023) 105-6 ('*OVIC Annual Report 2022-23*') 28-9; Office of the Information Commissioner Queensland, *Annual Report 2023-24* (Report, 12 September 2024) 24-5 ('*OICQ Annual Report 2023-24*').
[37] *EDO Report* (n 12) 37.

5. *As also suggested by the EDO, amending s 7 of the RTI Act to include a rebuttable presumption that all information sought via assessed disclosure is disclosable.*[38] *The exact wording and form the presumption takes is important, and there are options, but some examples could be;*
    a. *The EDO's suggestion of having* '*all information sought via assessed disclosure is disclosable' and this can only be rebutted where the decision maker is satisfied the information is a category of exempt information <u>and</u> it would be contrary to the public interest to disclose*;[39] *or*
    b. *Like in NSW legislation, the presumption could be expressed more broadly as something like 'there is a presumption in favour of disclosure of government information unless there is an overriding public interest against disclosure'.*[40]

2) The current oversight body for RTI, the Tasmanian Ombudsman, is unable to promote the objectives of the RTI system because it is inadequately resourced and retains a problematic external review jurisdiction;

Oversight of the *RTI Act* is currently discharged by the Ombudsman. On introduction of the *RTI Act*, some members of Parliament directly criticised use of the Ombudsman as the oversight body, arguing a separately resourced Information Commissioner would more effectively oversee and proactively promote RTI in Tasmania.[41] However, given Tasmania is a smaller jurisdiction than those who presently have Information Commissioners, use of the Ombudsman appears appropriate. It ensures more cost effective and streamlined services, rather than creating a comparatively small and separate statutory office.[42]

Although retention of the Ombudsman as the oversight body may be justified, it is currently insufficient to promote the objects of the *RTI Act* because it is inadequately resourced and retains a problematic external review jurisdiction. Previous recurrent

[38] Ibid.
[39] See *EDO Report* (n 12) at 37.
[40] See '*NSW GIPA Act*' (n 33) s 5.
[41] *RTI Bill Second Reading Speech* (n 2) 118 (Tim Morris).
[42] Ibid 71.

underfunding,[43] minimal full-time staff, and problematic applications of the *RTI Act*, have resulted in a significant backlog of external review decisions for the Ombudsman.[44]

There are sustained efforts towards addressing the external review backlog, and improving access to information for individuals exercising their rights under the *RTI Act*. This can be seen by the fact that in 2023, the Ombudsman reported a substantial reduction in historical backlogs, with the highest ever number of external review applications closed within the financial year (79).[45]

However, despite these positive outcomes and concerted efforts by dedicated RTI staff, a significant backlog of external review decisions, taking an average of one to two years to be finalised, remains.[46] This means a significant proportion of government information and decision-making remains out of the public eye, preventing individuals from being able to hold their representatives accountable and enforce their right to information. [47] The lengthy timeframes also risk exploitation by public authorities to prolong the unavailability of information such that it is irrelevant or no longer useful by the time it is eventually released.[48]

These issues are largely the result of the Ombudsman's external review jurisdiction which requires significant resources of the office. Due to the external review function, which is subject to underfunding, the Ombudsman is by necessity disproportionality investing resourcing into addressing the backlog.[49] Consequently, resources are diverted away from other important RTI functions of the Ombudsman, including the educative and agency focused role of providing training and updating and publishing guidelines and directions to assist RTI decision-makers.[50] Indeed, the Ombudsman's Manual has not been updated since 2010,[51] and no guidelines have been published since 2013, despite the legislated

[43] See, eg, Ombudsman Tasmania, *Annual Report 2016-17* (Report, 22 November 2017) 4; Ombudsman Tasmania, *Annual Report 2017-18* (Report, 26 November 2018) 3.
[44] *Ombudsman Annual Report 2022-23* (n 27) 43.
[45] Ibid.
[46] *Ombudsman Annual Report 2022-23* (n 27) 43; *EDO Report* (n 12) 27-8.
[47] *EDO Report* (n 12) 27.
[48] Stephen Easton, 'FOI laws: Fixing the chilling effect on frank advice' *The Mandarin* (Web Page, 18 June 2015) <https://www.themandarin.com.au/40043-abbott-takes-secrecy-new-heights-public-servants-care/>.
[49] *Ombudsman Annual Report 2022-23* (n 27) 44.
[50] Ibid.
[51] Ombudsman Tasmania, *Right to Information Act: Ombudsman's Manual* (Manual, July 2010) 37 ('*Ombudsman Manual*').

requirement for the Ombudsman to issue and *maintain* a manual and guidelines for operation of the *RTI Act*.[52]

The limited capacity to allocate resources to the educative function is resulting in insufficient guidance for decision-makers and directly sustaining misapplications of the *RTI Act*, evidenced by the fact the Ombudsman set aside or varied 86% of public authority decisions in 2022/23 alone.[53] Those misapplications are then notably fostering inappropriate overreliance on exemption provisions, [54] sustaining information withholding and exacerbating the inability of Tasmania's RTI system to promote its accountability objectives. In reality, the Ombudsman's current structure enables treating 'symptoms' but not the 'causes' of RTI issues in Tasmania, limiting the Ombudsman's vital function in improving implementation of the *RTI Act* for transparency and accountability in Tasmanian government.

A further problematic aspect of the external review function is that the Ombudsman must consult and seek comment from public authorities on any adverse preliminary review decision, before providing a final decision.[55] Although this was designed to provide authorities with a final chance to justify non-disclosure,[56] practically it just adds an additional step to an already lengthy review process. There is also no legislated timeframe for a response which risks further delay in finalising review decisions and prolongs unavailability of information.[57]

Clearly, the current resourcing an external review jurisdiction of the Ombudsman are significantly hindering its effective oversight and educative capacity, perpetuating limited information access in Tasmania.

Reform Recommendations

Reform to the external review jurisdiction for RTI decisions is therefore necessary to rectify these deficiencies and improve the Ombudsman's function in facilitating the

[52] This requirement is contained in s 49 of the *RTI Act* (n 3).
[53] *Ombudsman Annual Report 2022-23* (n 27) 44.
[54] *EDO Report* (n 12) 37.
[55] *RTI Act* (n 3) s 48(1)(a).
[56] *RTI Bill Second Reading Speech* (n 2) 140.
[57] *EDO Report* (n 12) 38.

accountability objectives of Tasmania's RTI system. The following reforms are recommended;

6. *Amending the RTI Act to move the external review jurisdiction for RTI decisions from the Ombudsman to the Tasmanian Civil and Administrative Tribunal ('TASCAT');*
    a. *This could be achieved by appropriate amendments to the Tasmanian Civil and Administrative Tribunal Act 2020 (Tas) creating a new RTI review stream within the General Division, with a concurrent amendment to pt 4 of the RTI Act to confer the external review jurisdiction on TASCAT*
    b. *This would reduce the Ombudsman's disproportionate focus on external reviews, enabling redirection of resourcing into RTI training and revitalising RTI materials. This would hopefully then assist in authorities being better equipped to correctly apply and implement the RTI Act to reduce the occurrence of errors in applications which are currently sustaining obstructive disclosure approaches in Tasmania.*
    c. *As a quasi-judicial administrative Tribunal, TASCAT also has the strength of independence from government, which is desirable for external merits review of RTI decisions whose respondents are government authorities and Ministers.*
    d. *It is acknowledged that TASCAT already has an expansive jurisdiction, and at least for the near future, Tribunal members hearing reviews may not be experienced in RTI issues.*[58] *However, creation of a designated RTI stream could ameliorate the impact of any experience deficit as overtime, experience would develop (if appropriately resourced).*
7. *Alternatively, amending the RTI Act to include TASCAT as an alternative body for external review or having additional review by TASCAT following review by the Ombudsman;*
    a. *The risk with this is that alternative bodies could create inconsistency in review decisions (less desirable) and an additional layer of review would not address the current resourcing issues of the Ombudsman.*

[58] John MacMillan, 'Designing an Effective FOI Oversight Body: Ombudsman or Independent Commissioner?' (Conference Paper, International Conference of Information Commissioners, 28 November 2007) 6.

Nevertheless, either option would bring Tasmania in line with other Australian jurisdictions.[59]

8. *If external review remains with the Ombudsman, then removing the current requirement to consult on adverse preliminary decisions with public authorities OR at least prescribing a response time-frame in the RTI Act*;[60]
    a. *This would remove additional potential for delays in making information available to applicants, and reduce the risk of public authorities delaying review responses to render information irrelevant or no longer useful if eventually released.*

3) The *RTI Act's* public interest test (PIT) is currently insufficient, susceptible to being misapplied in favour of non-disclosure and increasing the unavailability of information to the Tasmanian public.

A clearly articulated PIT, which appropriately balances openness and refusal, and which includes factors in favour of and against disclosure, with clearly articulated steps for application, is important for effective information disclosure legislation. Well constructed PITs, which constrain the operation of exemption provisions promote accountability by ensuring information is only withheld where there is a clearly justifiable and prevailing public interest.[61] Effective PITs force decision-makers to weigh up competing interests, and justify refusal on concrete grounds, incentivising clear and robust decision-making under information disclosure legislation.

Effective PITs need to provide both factors in favour of and against disclosure, to ensure decision-makers undertaking PIT determinations have sufficient boundaries to balance transparency against the necessity of withholding government information and are able to attribute appropriate weight to relevant factors in a given assessment. [62] PITs which do not provide both, or which overly emphasise factors favouring disclosure can actually operate to overexpose governmental activity, and inadvertently disincentivise information

[59] See, eg, *Freedom of Information Act 1982* (Vic) ss 49A, 50; *NSW GIPA Act* (n 33) ss 89, 100; *Freedom of Information Act 1991* (SA) ss 39, 40(1).
[60] See, eg, *EDO Report* (n 12) 38.
[61] Moira Paterson and Maeve McDonagh, 'Freedom of Information and the Public Interest: The Commonwealth Experience' (2017) 17(2) *Oxford University Commonwealth Law Journals* 189, 210.
[62] Moon and Adams (n 11) 37.

release as decision-makers become fearful of intense scrutiny and respond by engaging in disclosure avoidant behaviours (e.g. by communicating orally).[63]

Additionally, an effective and functional PIT should explicitly articulate the steps to be taken as part of a PIT assessment.[64] Explicitly incorporating clearly defined procedural steps, either in the legislation or guiding materials, clarifies application of the PIT. This could facilitate more accurate applications of the test, and embed a proactive disclosure approach, minimising the opportunity for any ambiguity in the PIT to be applied conveniently to preference non-disclosure.

The *RTI Act's* PIT does possess some positive characteristics, including a non-exhaustive list of factors in sch 1 of the *Act*, which does include factors weighing against disclosure as well as those supporting disclosure. [65] This therefore provides decision makers with capacity to draw conclusions on the relevance and weight of factors, providing equal opportunity to consider a case both in favour of and against disclosure and mitigating against any 'in-built imbalance' to over preference the public interest in disclosure and the potential to incentivise disclosure avoidant behaviour.[66] The Ombudsman's manual does also provide basic step-by-step guidance for applying the PIT under the *RTI Act*. [67]

However, despite these positive attributes, the PIT under the *RTI Act* is still problematic. While it does include some public interest factors which weigh against disclosure, unlike, for example, Queensland's RTI legislation, these are not specifically delineated. [68] Instead, all relevant mandatory factors are simply listed in sch 1(a)-(y) of the *RTI Act* and individual decision-makers are responsible for correctly construing whether they weigh in favour or against disclosure when making PIT assessments. [69] The Ombudsman's manual also contains limited guidance on the positive and negative focus that should be applied

[63] Ibid; Note that the Commonwealth *Freedom of Information Act 1982* (Cth) has been directly criticised for this. Moon and Adams contend that because the Commonwealth Act includes a legislated list of public interest factors supporting disclosure, but omits any list of factors supporting non-disclosure, it unduly weights the scale in favour of disclosure in all circumstances which actually, potentially, inadvertently incentivises disclosure avoidance.
[64] Information and Privacy Commission New South Wales, 'Key Features of Right to Information Legislation' (Research Paper, Information and Privacy Commission New South Wales, 15 April 2019) 7.
[65] *Ombudsman Manual* (n 51) 37.
[66] Moon and Adams (n 11) 35.
[67] *Ombudsman Manual* (n 51) 38-9.
[68] See *Qld RTI Act* (n 16) sch 4 pts 2-3.
[69] *RTI Act* (n 3) sch 1(a)-(y).

for each of the mandatory factors, with only one or two examples detailed in each case.[70] The practical effect of this lack of clarity is that the discretion in applying the PIT remains too wide, and there is potential for factors to be misconstrued and for decision-makers to inappropriately apply more factors in favour of non-disclosure.[71] For example, paragraph 1(g) of sch 1 requires consideration of whether the disclosure *would enhance* scrutiny of government administrative processes and is intended to apply as an affirmative consideration, in favour of disclosure.[72] However, there have been examples where decision-makers have incorrectly construed and applied this factor in the negative (i.e. disclosure would not enhance scrutiny), inappropriately using the lack of enhancement of scrutiny to justify non-disclosure. [73]

The impact of this current deficiency, and the potential for misconstruction and misapplication of the PIT is highlighted by statistics that indicate over 54% of review decisions on PIT exemptions set aside or varied were misapplying the PIT.[74] The fact 86% of review decisions in 2022/23 were varied or set aside by the Ombudsman, to allow some form of information access, also suggests erroneous application of PIT factors in favour of non-disclosure, limiting information access. [75] The potential for misconstruction and subsequent misapplication of the PIT also increases the probability external review will be required, which only extends the time requested information is unavailable, again potentially rendering it useless or irrelevant if eventually released.

Therefore, the current risk for decision-makers to misconstrue public interest factors allows for opportunity for inappropriate or convenient application in favour of non-disclosure.

Reform Recommendations

The PIT under the RTI Act requires revision to address the current inadequacies and its susceptibility to misconstruction and misapplication, in order to ensure it is capable of assisting the RTI Act and broader RTI system to promote its accountability and transparency objects. The following reforms are recommended;

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[70] *Ombudsman Manual* (n 51) 37.
[71] See, eg, *Gun Control Australia Inc v Hodgman and Archer* [2019] TASSC 3, [31] ('*Gun Control*').
[72] Ibid.
[73] See, eg, *Gun Control* (n 71) [29]-[31].
[74] *EDO Report* (n 12) 26.
[75] *Ombudsman Annual Report 2022-23* (n 27) 44.

9. *The RTI Act should be amended so its public interest test (PIT) reflects the structure in Queensland's Right to Information Act 2009 (Qld).*[76]
10. *This would include, legislative amendment to separate the sch 1 mandatory factors into factors weighing in favour of disclosure and factors weighing against disclosure, and updating the Ombudsman manual to specifically outline the factors and their category;*
    a. *Separating the sch 1 factors into identifiable categories could provide more clarity for decision makers and, at least to some extent, minimise the opportunity for them to inappropriately construe some of the mandatory factors and apply them to support a case for non-disclosure.*
    b. *Decision makers under the RTI Act must still consider all relevant public interest matters in a given case, not just those listed in sch 1,*[77] *so there is still room for varied applications of the PIT based on the circumstances of a given request. This amendment would just assist in providing clarity for decision makers so they do not inappropriately construe factors to support a case for non-disclosure where they are not intended to support that.*
11. *If the amendment to the sch 1 factor was implemented, then also inserting a pro-disclosure bias for the PIT (as is the case in the Qld legislation);*
    a. *Insertion of a pro-disclosure bias would beneficially limit default to non-disclosure, but must be inserted in conjunction with the sch 1 amendment to ensure the PIT does not overly balance the discretion in favour of disclosure in all circumstances and risk disclosure avoidance.*

CONCLUSION

Despite its initial aspirations, Tasmania's RTI Act and system do not currently possess the necessary markers of a system capable of achieving its original objectives. The problematic RTI culture, deficiencies in the Ombudsman's structure and resourcing as the oversight body, and lack of clarity in the construction of the PIT have only perpetuated problematic implementations of the *RTI Act* and a propensity for non-disclosure. This has physically

[76] *Qld RTI Act* (n 16) - see s 44(4) and sch 4 pts 2-3.
[77] *RTI Act* (n 3) s 33(1)-(2).

limited the information available to scrutinise decision-making and undertake the intended accountability checks to improve democratic governance in Tasmania.

The suggested reforms detailed above, may help address the current deficiencies. These include improved training for RTI, legislative amendments to foster a pro-active, pro-disclosure culture, changes to the external review jurisdictions for RTI decisions and amendment to the *RTI Act's* PIT to reduce misapplications. Such reforms would hopefully assist to re-align Tasmania's RTI system with one capable of promoting accountability and transparency and improving democratic government in Tasmania.

26 June 2025

To: Independent Review of Tasmania's Right to Information Framework

By email: tasrti.review@gmail.com

Dear Professors McCormack and Snell,

Tasmania's current right to information framework

Thank you for the opportunity to make a submission in relation to the Independent Review of Tasmania's Right to Information Framework. We make this submission as members of the Law School's Right to Information Training project team, under which the University of Tasmania has been engaged by the Department of Premier and Cabinet to develop online training on the *Right to Information Act 2009* (Tas) ('RTI Act') for all State Service staff ('RTI Training Project').

This submission details several reflections and recommendations drawn from our work on the RTI Training Project, but due to the constraints of time these do not represent a comprehensive list of recommendations on the Tasmanian RTI framework more broadly. The views expressed are our own.

Presumption of disclosure

Unlike some other jurisdictions (NSW, Qld and the ACT), the RTI Act does not currently articulate an explicit presumption of disclosure, though this presumption is implied through ss 3 and 7, when read in light of the subject matter, scope and purpose of the Act. Noting that existing criticisms have often focused on an apparent bias *against* disclosure in the RTI Act's implementation, an explicit presumption of disclosure would help to emphasise the pro-disclosure nature of the Act and support implementation of the RTI Act's objects in s 3.

- ***Recommendation: Section 7 of the RTI Act be amended to explicitly include a presumption in favour of disclosure of any information requested under s 13 of the Act.***

Proof of applicant's identity

For an application for assessed disclosure to be valid under s 13 of the RTI Act, it must contain the minimum information prescribed in the *Right to Information Regulations* 2021. Regulation 5 provides that where a person applies to access their own personal information through an RTI request, they must provide proof of their identity. The list of proof of identity documents in r 3 is exhaustive and currently presents barriers to certain individuals accessing the RTI system. For example, r 3 does not include certified prison IDs, and yet often this is the only accessible form of identification that prisoners have access to without having to request their official documents through prison administration. In this situation, the prisoner's application does not meet the minimum requirements of an RTI request, and the application can be refused.

In practice, we understand that some agencies accept prison certified ID as sufficient proof of identity in an effort to apply the RTI Act in good faith. Some other agencies apply a 'workaround' to this gap and process the request as an application under the *Personal Information Protection Act 2004* (Tas) ('PIP Act'). However, this restricts the information the applicant can receive to information of the applicant themselves, meaning that the prisoner would still have to make a separate RTI request if they are also seeking other information.

- ***Recommendation: The RTI Regulations be amended to include prison certified identity documents.***

S 18(5) restriction of medical and psychiatric records

Under s 18(5) of the RTI Act, a request for access to a person's own medical or psychiatric records can be denied where 'it appears to the principal officer of the public authority or to that Minister that the provision of the information to that person might be prejudicial to the physical or mental health or wellbeing of that person'. In such circumstances, the principal officer or Minister 'may direct that the information must not be provided to the person who made the request but must instead be provided to a medical practitioner nominated by that person'. There is an equivalent provision in s 3B of the PIP Act.

This provision requires that the RTI decision-maker exercise a discretion as to whether the provision of information of a medical or psychiatric nature should be provided to the person whose information is requested. The discretion is expressed as a low threshold: 'if it appears'... that the provision of the information... *'might* be prejudicial to the physical or mental health or wellbeing of that person'. The broad nature of the discretion given to principal officers and Ministers under s 18(5) has the potential to result in a lack of consistency, fairness and certainty in the provision's implementation. While the provision is well-intentioned, it is also paternalistic and raises significant questions around the right of individuals to access their own information and to make informed decisions about their health.

- ***Recommendation: That the Ombudsman provide new guidance on how s 18(5) of the RTI Act and s 3B of the PIP Act should be applied in practice.***

Vexatious applicants: s 20(b)

Section 20(b) of the Act allows for an RTI request to be refused where 'the application is considered vexatious by the public authority or Minister'. The capacity for a decision-maker to refuse an RTI request in such circumstances has significant practical importance, and requires a delicate balancing of factors: on the one hand is the pro-disclosure nature of the RTI Act and its emphasis on the *application* and not the applicant's motivations for making the request; on the other hand, public authorities' resources for managing RTI requests are limited and should not be unduly used in response to applications that are not aligned with the objects of the RTI Act.

At present, there is some inconsistency between the Ombudsman's Manual and Guidelines on this issue. For example, the Manual states that 'This provision is not similar to a "vexatious litigant" provision - it is not the conduct of the applicant which is at issue, or their intentions, but the nature of the application.' The 2010 'Guideline in relation to refusal of an application for assessed disclosure under the Right to Information Act 2009' states that 'The notion of a "vexatious application" seems to be similar to that of vexatious proceedings, in litigation' (page 3).

We recommend that the Ombudsman provide further guidance on this ground of refusal in s 20(b), drawing on equivalent guidance from other jurisdictions where appropriate. This guidance should also recognise that the evolving nature of the information environment for government and the public requires that RTI decision-makers have some flexibility in how they respond to vexatious applications while still conforming to the objects of the Act.

- ***Recommendation: That the Ombudsman provide new guidance on identifying and managing vexatious applications under s 20(b) of the RTI Act.***

Section 36 Personal information

Interaction between the RTI Act and PIP Act

Given the complexity around the disclosure of personal information under s 36 of the RTI Act, and the corresponding problems this creates with the overlap between that Act and the PIP Act, we strongly support the full implementation of Recommendation 17.8 of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings 2023.

- ***Recommendation: That Recommendation 17.8 of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings 2023 be fully implemented as a matter of priority.***

The disclosure of State Service employees' personal information

There have been several Ombudsman review decisions that overturned primary decisions to exempt personal information of State Service employees acting in their professional capacity. The Ombudsman has made it clear that 'personal information' of current and former State Service employees that relates to their general employment duties (name, position, signature and work contact details) is not exempt from disclosure under s 36 unless there are specific and unusual circumstances. Despite this, we understand there to be ongoing uncertainty around the 'specific and unusual circumstances' that will warrant exemption of this information.

- ***Recommendation: That the Ombudsman provide new guidance on what constitutes 'specific and unusual circumstances' for the purposes of exempting State Service employees' personal information under s 36 of the RTI Act.***

Impartiality of person conducting Internal Review (s 43)

Section 43(4)(b) permits a principal officer of a public authority to delegate their power to conduct an internal review of an RTI decision. The only statutory requirement is that the reviewer be someone 'other than the delegated officer who made the decision'. Best practice would require that the reviewer should be someone of equal or greater seniority than the original decision maker, to avoid any actual or perceived influence over the reviewer's decision.

- ***Recommendation: That either s 43(4) be amended to state that wherever possible the reviewer should be someone of equal or greater seniority than the original decision maker, or that this be provided for in a new guideline from the Ombudsman.***

Timeframes under the RTI Act

References to timeframes under the Act are often confusing and ambiguous, and at times different wording is used in similar provisions. Two examples of ambiguity are noted below:

- In s 43(1), the phrase 'notice is given to' appears. The Ombudsman's Manual provides in section 9.2.3 that this phrase should be read as 'notice is received by' to bring in accordance with other timeline references in and following s 43.
- The timeframes for undertaking internal reviews are particularly opaque and can only be identified by carefully reading s 43 together with s 44-45.

➢ ***Recommendation: That all timeframes in the RTI Act be reviewed and amended to ensure clarity and certainty regarding the point at which the relevant timeframe expires, and to explicitly list timeframe for review in the RTI Act.***

Other recommendations

In the interests of improving the efficiency and effectiveness of the RTI system in Tasmania by ensuring it is appropriately resourced in terms of funding and guidance materials, we also make the following recommendations:

➢ ***That the RTI Act be amended to give external review jurisdiction to the Tasmanian Civil and Administrative Tribunal instead of the Tasmanian Ombudsman.***
➢ ***In the alternative, that the Ombudsman's resources be increased to enable the office to:***
  - ***reduce the size of its external review backlog;***
  - ***support the timely finalisation of external review decisions; and***
  - ***publish an updated RTI Manual and new guidelines under the RTI Act.***

If you would like to discuss any of the matters raised in this submission, please feel free to contact Dr Cleo Hansen-Lohrey at [redacted].

Yours sincerely,

Dr Cleo Hansen-Lohrey, Ashley Burke, Jessica Pursell, Dr Rebecca Bradfield, Phoebe Winter and Bianca Jones

About the signatories

Dr Cleo Hansen-Lohrey is a lecturer in law at the University of Tasmania and teaches and researches in administrative law. Dr Rebecca Bradfield is a Principal Research Fellow with the Tasmanian Law Reform Institute. Cleo and Rebecca co-lead the RTI Training Project. Ashley Burke, Jessica Pursell, Phoebe Winter and Bianca Jones are current or former law students at the University of Tasmania and are research assistants on the RTI Training Project.