



Response to Independent Review of Tasmania's Right to Information Framework

The Right to Information (RTI) scheme in Tasmania is crucial to strengthening transparency and accountability in public administration. Ombudsman Tasmania is the oversight body for the RTI scheme and is committed to ensuring it operates effectively and is supportive of positive change to improve the system.

Accordingly, the release of *Getting Back on Track*, the Independent Review of Tasmania's RTI Framework undertaken by Professor Tim McCormack, Adjunct Associate Professor Rick Snell and Ms Taya Keletaar-Jones, is welcomed as an opportunity to engage with reform of Tasmania's RTI system. I acknowledge the effort put into the Independent Review, the engagement with stakeholders across the sector and the system improvement focus evident throughout the process.

While I do not support all of the observations and recommendations in the Independent Review, the majority are well reasoned and will lead to genuine improvement of the RTI scheme if implemented. Many of the findings and recommendations in the Independent Review align with work already underway at Ombudsman Tasmania, including priorities outlined in annual reports and legislative reforms proposed to the Tasmanian Government over many years.

As outlined in my more detailed response to each relevant recommendation below, the limitation on actioning many of these matters has often been due to resourcing constraints and competing priorities. Ombudsman Tasmania has deliberately focused on clearing the backlog of external review applications, in the awareness that this has led to delays in updating vital guidance materials and reduced the scope of training able to be provided to RTI delegates. As this office has expressed repeatedly over the years, the negative impact of the backlog and reduced guidance for delegates is significant and I sincerely apologise to those impacted.

However, I also acknowledge and applaud the sustained efforts and hard work of my RTI team. They have consistently laboured to achieve significant progress on eliminating the backlog of external reviews and to provide excellent *ad hoc* guidance to delegates and applicants when a broadscale training program or updates to formal

guidance materials were not feasible. I also acknowledge that many public authorities are under-resourced in relation to their RTI functions and that many challenges across the sector are caused by similar hard choices regarding how to operate most effectively when ideal fulfillment of functions is not possible due to resource constraints. More consistent and ongoing funding to my office and across the sector would ameliorate many of the issues highlighted in the Independent Review. Investment in RTI would yield corresponding gains in improved transparency and accountability which is so vital for an effective democratic system.

I provide the following detailed response to each of the 19 recommendations which specifically relate to my office and look forward to working with the RTI sector to implement reforms that strengthen openness, integrity and confidence in administrative decision-making.



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OMBUDSMAN

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RESPONSE TO RECOMMENDATIONS

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.*

My Response: Disclosure logs are not mandated by the *Right to Information Act 2009* (Tas) (the RTI Act), and as such, public authorities cannot be compelled to maintain disclosure logs on their websites. Should the RTI Act be amended to mandate disclosure logs, I would be willing to issue a guideline on best practice for their establishment and maintenance.

In the absence of such an amendment, I am also willing to consider a more limited guideline to advise on best practice regarding the maintenance of disclosure logs to assist public authorities who already have disclosure logs on their websites.

Recommendation 16: *More resources, training (including in person), support & staff development for RTI delegates.*

My Response: I support this recommendation.

Recommendation 18: *The development of further training packages, especially with a focus on RTI Act and PIP Act for local government*

My Response: I support this recommendation.

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.*

My Response: I do not support this recommendation. My primary concern is preserving the independence of my office, given its role as the external review body. It is not appropriate for staff from my office to provide explicit advice to public authorities on matters that may subsequently come before me on external review.

Further, it is not clear to me how this specialised unit of experienced delegates will be drawn. Most, if not all, public authorities have a team of 'core' RTI delegates and do not have resources to spare. If public authorities were to lose experienced delegates, the ability of public authorities to respond to assessed disclosure applications would likely be impacted.

Recommendation 24: *Develop and publish whole-of-government guidance (led by the appropriate authority- for example: the Office of the Ombudsman; DPAC, Office of the State Archivist, to clarify how public authorities should interpret and apply the RTI Act when it intersects with other legislative frameworks. In particular, there should be guidance on interactions with the PIP Act, PID Act as well as sector-specific legislation including the Local Government Act 1993 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.*

My Response: I support this recommendation. Such guidance would be appropriate to include in an updated manual, or in new guidelines.

Recommendation 25.1: *Develop and deliver consistent, practical training and guidance on the interaction between the RTI Act and PIP Act for all public authorities.*

My Response: I support this recommendation. Though if guidance on this point was delivered by my office, it would likely be included in existing training delivered to delegates, rather than constitute its own separate piece of training.

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).*

My Response: I support this recommendation and could include training on this point to delegates. This guidance would also be appropriate to include in a guideline or updated manual issued by my office.

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'.*

My Response: I support this recommendation. This guideline is already under review, and I intend to publish an updated edition by the end of this financial year. The content of this updated guideline will be directed at addressing the ways s20 of the RTI Act is often misapplied by public authorities, and its content will be informed by the experiences of my team who have insights into how s20 has been misapplied previously by public authorities.

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.*

My Response: I support this recommendation. As I have noted previously in many public fora, my office has been unable to exercise all of its functions to the required standard since the commencement of the RTI Act in 2010 because of limited resources. This resulted in a large backlog of external reviews, and a failure of my office to adequately exercise its other functions. Recent improvements have been possible due to some temporary increased funding to address the backlog and internal reallocation of resources within my office. Sustainable and ongoing funding would ensure the backlog could be cleared (and would not return), guidance materials could be updated (and be kept up to date), and education and training could be consistently provided.

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).

My Response: I support this recommendation in part. Due to the success of the office in significantly reducing the backlog of external reviews, we have been able to begin updating guidelines on our website, and we intend to begin updating the manual in 2026. I do not support strict quarterly updates of the manual given resourcing constraints already impacting my office, however I do support more regularly updating of the manual as required. More regular updating of my manual can be achieved should further funding for my office be made available and should the backlog of external reviews continue to decrease.

Recommendation 35: *A regular release and updating of the Ombudsman's Guidelines.*

My Response: As noted, I support the regular release and updating of training material as required.

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.*

My Response: I support this recommendation.

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.*

My Response: I do not support this recommendation, as I am concerned about its impact on the resources of my office. My office has previously provided such data on request and is willing to continue to do so. I also note that I provide detailed statistics that indicate the performance of my office for each financial year in my annual report.

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

My Response: I do not support this recommendation. I do not have the power under the RTI Act to conduct such audits. I would be reliant upon the own motion investigative powers contained in s13 of the *Ombudsman Act 1978 (Tas)*. Further, the parameters of the requested audits are not well defined in the recommendation and I am concerned about my capacity to conduct such audits given resourcing constraints.

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).

My Response: The Department of Justice facilitates a quarterly right to information practitioners meeting. These meetings provide a forum for delegates, predominantly from within the State service, to request guidance on the operation of the RTI Act from representatives from my office, including my Principal Officer - Right to Information and Senior Investigation Officer, who regularly attend these meetings.

The recommendation that attendance be publicised seems to be aimed at encouraging attendance at these meetings by naming those that do not attend. There may be valid reasons for Principal Officers or delegates not to attend these meetings from time to time, and as such, I do not support the publication of attendance.

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.*

My Response: I support this recommendation in part. I support including more information about the performance of the office on my website, including quarterly statistics illustrating:

- the number of enquiries and external reviews that have been received and closed off during that period;
- the total number of external reviews open; and
- and the average number of days open external reviews have been open for.

A live dashboard is onerous to maintain and as I noted in my response to recommendation 38, I do not support the yearly audit of 3-5 public authorities proposed by the Review.

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

My Response: I support this recommendation. This additional funding would allow my office to update the guidelines and manual, and maintain their currency as required. It would also allow us to deliver training more frequently than we are currently able and allow us to perform out external review and investigative functions to an adequate standard.

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.*

My Response: Though I recognise the benefits of an Information Commissioner office in theory, I also recognise that the cost in creating it would be considerable. I also note that my office, in its current structure, is able to respond to complaints under the Act, *Personal Information Protection Act 2004 (Tas)*, and *Public Interest Disclosures Act 2002 (Tas)* effectively.

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

My Response: I support each of the proposed legislative amendments that I put forward during of the Independent Review, though I do not support some proposed amendments from other stakeholders, namely:

Removal of internal reviews

I do not support this proposed amendment. The internal review, when conducted properly, can facilitate the early resolution of assessed disclosure applications, without the need for external review. If internal reviews were removed, the volume of external reviews would increase and this would exacerbate the resourcing challenges already facing my office. This may lead to increased levels of outstanding external review which would lead to delays in the finalisation of reviews and would further impact my office's ability to exercise its educational and investigative functions.

Presumption should be reversed in favour of non-disclosure of names, position descriptions and email addresses of RTI delegates.

It is unclear to me whether this proposed amendment was intended to be limited to the personal information of delegates issuing decisions on assessed disclosure applications or was intended to apply to the personal information of delegates and public servants contained in information responding to an assessed disclosure application. In any event I provide the following comments.

If delegates issuing decisions on assessed disclosure applications were not be required to provide their name on the decisions they issue, then s22(2)(b) of the RTI

Act would need to be amended to remove the requirement that the name and designation of the decision maker be contained within the decision.

If the Review proposes that the presumption should be that the personal information of delegates and public servants contained in information responding to an assessed disclosure application should not be released, then I do not support it. There is no legislative basis supporting such a presumption. Indeed, the object of the Act as set out at s3(4)(b) provides: *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*. This proposal would contradict s3(4)(b).

The RTI Act be amended to provide a review period of 30 days to replace or qualify the current provision that an external review be resolved 'as soon as practicable' in section 47(6).

I do not support this proposed amendment. Because I am required to afford public authorities a right to respond to adverse preliminary decisions, and because it is commonplace for my office to have to go back to public authorities about issues that arise during an external review, external reviews often take longer than 30 days to be resolved. If this amendment were adopted, it is likely the quality of my external review decisions would deteriorate, parties to external review would not be afforded adequate procedural fairness, and decisions would not be made within the statutory timeframe.