

DRAFT SECOND READING SPEECH

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Right to Information Amendment (Applications for Review) Bill

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Madam Speaker, I move that the Bill now be read a second time.

This Bill seeks to address a gap in the current rights of applicants and external parties to apply to the Ombudsman for a review of certain decisions in relation to applications for assessed disclosure under the *Right to Information Act 2009*.

A recent decision of the Supreme Court in Tasmania has clarified that a decision made by a Minister or a Minister's delegate under the Act in respect of whether or not to release information in the possession of the Minister, is not currently reviewable by the Ombudsman.

Following the Supreme Court decision in *Gun Control Australia Inc v Hodgman & Archer* on 8 February 2019, it is now understood that a decision in respect of an application to a Minister for assessed disclosure does not give rise to the same right of external review to the Ombudsman as a decision in respect of whether to release information where the application was made to a public authority.

The Government remains committed to improving the openness, accountability and transparency of the operations of Government in Tasmania. That is why we have acted quickly to address this matter.

Section 43 of the RTI Act provides a right of internal review for an applicant who has applied to a public authority for information under section 13 of the Act, in relation to assessed disclosure, where a decision has been made by a delegated officer as to whether or not to provide the information under the Act.

This section also provides a right of internal review to external parties who have been consulted under section 36(3) or 37(3) as to whether the information is exempt information under the Act, where a decision has been made by a delegated officer to release the information.

Specifically, section 43 provides a right of internal review to external parties where the delegated officer has made a decision to provide information relating to the personal affairs of a person referred to in section 36, or information that is likely to expose the external party to competitive disadvantage under section 37.

Part 4 of the RTI Act also provides a right to external review by the Ombudsman of such decisions, either following an internal review where the original decision was made by a delegated officer, or where the decision was made by a Minister or the principal officer of the public authority in the first instance and no right of internal review is available under the Act.

An applicant for assessed disclosure may also seek a review by the Ombudsman under section 45 in relation to certain other administrative matters relating to decisions of a Minister or a public authority, whether the decision was made by a Minister, the principal officer of a public authority, or a delegated officer.

This includes for example, a decision that the information requested is not in the possession of the Minister or public authority, or where following a decision being made by a Minister or public authority, the applicant believes, on reasonable grounds, that there is an insufficiency in the searching for the information by the Minister or public authority.

The Bill maintains these existing review rights for applicants.

This Bill makes a number of changes to ensure that a right of external review by the Ombudsman is available for applicants for a decision on whether information will be released under assessed disclosure, regardless of whether the application is made to a Minister or to a public authority, and of whether the original decision is made by a Minister, a principal officer of a public authority or a delegated officer.

The proposed amendments also provide that an external party who is consulted under section 36 or section 37 in relation to whether the information is exempt information under the Act will have a right to external review by the Ombudsman in relation to the circumstances I have just described, where a decision is made to release the information to the applicant.

As I mentioned earlier, Part 4 of the RTI Act provides that an external party may apply for external review by the Ombudsman of a decision of a public authority to provide information relating to the personal affairs of that external party under section 36, or a decision to provide information that is likely to expose the external party to competitive disadvantage under section 37.

It appears this right to review by the Ombudsman for external parties may be limited to circumstances where the application was made to a public authority and the original decision was made by a delegated officer. Section 44 provides that the external party must have first applied for internal review and either been informed of the results of the review or 15 working days must have elapsed since the application was made, before the external party can apply to the Ombudsman for a review.

The Bill inserts a new section 45(2A) to provide that a person who is an external party may apply to the Ombudsman for a review of a decision in relation to an application to a public authority where the decision was made by a Minister or principal officer and therefore an application for external review cannot be made, and also where a decision is made in relation to an application to a Minister.

Madam Speaker, the Government remains committed to furthering transparency in Government in Tasmania.

These changes will further the objectives of the RTI Act by ensuring that both applicants and external parties have a review to the Ombudsman in relation to decisions on whether or not information should be provided under the Act, regardless of whether the application for that information is made to a Minister or a public authority.

I commend the Bill to the House.