SECOND READING SPEECH

RIGHT TO INFORMATION AMENDMENT BILL 2011

Mr Speaker, the *Right to Information Act 2009* has now been in operation for just over 12 months. This Act has brought about fundamental change in the Tasmanian system for handling the release of information.

In the first twelve months of operation the number of applications for Assessed Disclosure received by public authorities dropped by 34% when compared to the number of applications received under the FOI Act in the same period in 2009/10.

Whilst it is hard to pinpoint the reasons the Department of Justice, which has seen a 58% drop in the number of applications over the same period, has provided me with some analysis of the possible reasons. The Department has identified the following factors:

- There has been an increase in the number of people calling or emailing before making an application. Often information is being able to be released without the need for an application (active disclosure).

- Information available through websites has increased. People are now finding the information themselves or being directed to it at an early stage.

- A large volume of applications are now being dealt with outside of the formal assessed disclosure process as they relate to personal information. These are dealt with

initially under the Personal Information Protection Act protocols.

- Some information, especially that related to Workplace Standards investigations is now released through Agency Disclosure Polices on an active or routine basis rather than using an application for assessed disclosure (this process is similar to the process used by the Department of Police and Emergency Management, which has also seen a marked reduction in applications for this type of information)

- A small number of applications have been deterred by the application fee, although I note this is not charged for Parliamentarians, those on pensions or low incomes or for those advancing a public interest or benefit application. Unlike the FOI Act, there are no fees charged for release of information under this legislation.

As with any fundamental legislative change there is a need for fine tuning as the legislation moves through its operational phase.

The introduction of this Bill addresses the issues raised by users of the legislation and requested by the Ombudsman and Solicitor General as they have gone about working with and advising on the Act.

Whilst some of the changes are designed to better reflect intended policy, the majority of amendments correct unintentional slips in the wording of the Act.

One example is replacing the word "document" with the word "information" to better reflect the intention for the Act to

apply to information more broadly and not just to paper based records.

The new system for disseminating information is very different to the FOI era.

The Act has defined information disclosure into four categories:

1. required disclosure, which is information already required to be released by law;
2. routine disclosure, which is information which a body decides to release on a routine basis;

3. active disclosure, being information which is freely released on request; and

4. assessed disclosure which is information which is released on application after it has been assessed against the legislation.

This feature is the legislative core of the major culture change that has been facilitated by the Right to Information Act 2009. The routine release of information without need for an application has reduced the need for assessed disclosure – effectively this is the key element of the "push" or "proactive disclosure" model.

The second key element of the Act is the extended role of the Ombudsman, including extension of his or her review functions.

This Bill both extends and refines the jurisdiction of the Ombudsman.

Under the Act decision makers are able to make discretionary decisions under both sections 10 and 12 which are not currently able to be reviewed.

This was not the intention and this Bill includes sections 10 and 12 decisions in the category of decisions which must be delivered with a statement of reasons.

This then makes them subject of both internal review within the agency and review by the Ombudsman, thus extending the Ombudsman's jurisdiction under the Act.

The Bill proposes that the process of review by the Ombudsman should be refined by amending:

- Section 45 so as to place a time limit of 20 working days on the period for application to the Ombudsman for review – there is currently no time limit.
- Section 46 so as to give certainty on the time period for lodgement of applications for review of a "deemed decision".
- Section 47 to extend the power of the Ombudsman to decline an application for review to include circumstances where one person has lodged an unreasonably large number of applications (I will return to the need for this change in a few moments).
- Section 47(5) is also amended as the current wording creates uncertainty as to the decision which may be made by the Ombudsman.
- Section 48 is amended to clarify the power of the Ombudsman in confirming or denying the existence of information.

Applications which unreasonably divert resources can already be declined under section 19 of the Act. However a simple way around that is to lodge multiple applications within a short time frame seeking the same total information but in smaller chunks so as to avoid the test created by the section.

The Bill seeks to amend section 19 to allow public bodies to assess these multiple applications as a whole instead of as stand-alone applications. As I outlined earlier, a similar amendment is being sought for section 47 to allow the Ombudsman to also assess the combined effect of a number of applications.

The Bill seeks to include the Parole Board in the list of excluded public bodies. The Parole Board operates as a special purpose tribunal and section 6(1)(c) of the Act excludes tribunals. It was assumed the Parole Board would fall within this exclusion.

However, because of the way the Parole Board is constituted by the Corrections Act 1997 makes it arguable that the Board has not been excluded as was intended. I should point out that the Parole Board publishes all its decision on a web page and does so in a way that protects the privacy and sensitivities of victims and witnesses; this amendment seeks to ensure that the Parole Board can continue these protections.

In introducing the Right to Information Bill in 2009 the then Attorney General outlined that the intention of Part 3 Division 2 of the Act was that the exemptions listed in that Division would only apply where a public body was also able to show that it was contrary to the public interest to disclose the information.

Again advice has been received that an arguable case may be put forward by a public body to say that the wording of section 33 does not have the intended effect and that they are free to use an exemption without also applying the public interest test.

The amendments to the heading of Part 3, Division 1 and section 33 are progressed on advice of the Office of the

Solicitor General to remove any doubt as to the need to apply the public interest test.

Under section 23 the Act includes a requirement for public bodies to report annually on the information they are publishing as routine disclosures, this effectively provides an additional list of routine disclosures.

Taken literally the wording of the section could require each public body needing to keep track of every change made to a web page, for instance, so they can report on having published a new version.

This would impose an unjustifiable administrative burden and bury the genuine routine disclosures in a meaningless list. To avoid this I propose to replace "detail" of routine disclosures with "an overview of" those disclosures.

Finally Parts 3 and 4 of the Bill deal with consequential amendments not picked up in 2009 as they relate to provisions in Acts which commenced after the passage of the Right to Information Bill 2009.

The *Right to Information Act 2009* is legislation for today and for the future, dedicated to improving democratic government in Tasmania by increasing the accountability of the executive to the people of Tasmania; by increasing the ability of the people of Tasmania to participate in their own government; and by acknowledging that information collected by public authorities is collected for and on behalf of the people of Tasmania.

This Bill seeks to refine the Act to ensure the intent of the Parliament is clear and to ensure that the Act operates in a way which is responsive to the needs of the community.

I commend the Bill to the House.