Environmental Defenders Office

Submission to Independent review into Tasmania's RTI system.

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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.