

24 May 2021

Ms Sonia Weidenbach
Senior Legislative and Policy Officer
Department of Justice
GPO Box 825
Hobart TAS 7001

Via email: Sonia.Weidenbach@justice.tas.gov.au

Dear Sonia

Draft Right to Information Regulations 2021

Thank you for the opportunity to provide feedback on the draft Right to Information Regulations 2021 ("the Regulations").

We consulted the Tasmanian local government sector and received responses from four councils, one each from the north and north-west regions and two from the south. We note that it was the same three urban councils who responded to last year's consultation on the remake of the Regulations, with an additional response from a southern regional council.

Common issues were raised around the need to ensure clarity and usability of the Regulations for all end users. As we have stated for other consultations, it is important that legislation and associated documents use accessible, plain English. This is particularly pertinent for this legislation given it is intended to support transparency of our public institutions and clarity about their decision-making.

Clarity of Information that the Public Authority must provide – Regulations 4 and 6

The new Regulation 4 has reduced the clarity around the information that is to be provided by the public authority and the minimum information requirements within an application and to support application-making. This has resulted in Regulations 4 and 6 appearing to be very similar and repeating some information (sub-regulation 4(b) and 6(b); 4(c) and 6(c)), even if this is for different purposes. Clarity could be improved with plain English and making it clear in the titles and body when the information is required to be provided in general, on an application form or accompanying an application form. It may be useful to draw on the experience from other Australian jurisdictions to ensure that the guidance across jurisdictions is clear, understandable and consistent.

Interaction between the Regulations and the *Right to Information Act 2009*

There appear to be a number of issues regarding the interaction between the *Right to Information Act 2009* (the Act) and the draft Right to Information Regulations 2021:

Draft Regulation	The Act	Issue
6(f)(i) The public authority must provide information specifying that the public authority, in accordance with section 13(6),(7) and (8) of the Act must provide reasonable assistance to make the application comply with the Act.	13(6) If a person wants to make an application to a public authority or has made an application to a public authority that does not comply with this section, the public authority must take reasonable steps to assist the person to make an application that complies with this section.	The regulation goes beyond what is set out in the Act, as highlighted. The Regulations should refer to the appropriate section of the Act, or reproduce directly, rather than summarise.
6(f)(ii) The public authority must provide information specifying that the public authority, in accordance with section 13(6),(7) and (8) of the Act, may request an applicant refine or redirect an application.	13(7) A public authority may negotiate with an applicant to refine or redirect his or her application for assessed disclosure of information.	The regulation goes beyond what is set out in the Act, as highlighted. The Regulations should refer to the appropriate section of the Act, or reproduce directly.

One council noted concern with sub-regulation 6(f)(iii) that this may create a separate process. It is not clear whether this is the intention or if it is to let applicants know of their power to request information from public authorities to make an application. Some clarification within the Regulations may clarify this issue:

Draft Regulation	The Act	Issue
6(f)(iii) The public authority must provide information specifying that the public authority, in accordance with section 13(6),(7) and (8) of the Act, if requested, must make available general details of information in the possession of the public authority.	13(8) If requested to do so by a person or if it is appropriate to do so to assist a person to make an application for assessed disclosure of information, a public authority must make available to that person general details of the information in the possession of the public authority.	This section creates a process separate to assessed disclosure. The proposed regulation may create a confusing process if included as a mandatory minimum information requirement to provide to an applicant about the assessment procedure for applications.

Plain English

As noted in the introduction to this submission, these Regulations must be accessible and understandable to the public. There are number of opportunities to simplify the wording in many places to support easier interpretation and use by community members. A number of suggested areas for improvement are listed in the table below:

Wording of Draft Regulations	Suggested/Example Wording
Regulation 4 “A public authority must publish the following information, in respect of an application for assessed disclosure of information under section 13 of the Act...”	“A public authority must publish the following information in respect to an application under section 13 of the Act”
Regulation 5 “Minimum information to be contained in application for assessed disclosure...” “For the purposes of section 13(3) of the Act, the following information is prescribed as the minimum information that must be contained in an application for assessed disclosure of information under that section...”	“Minimum information an applicant must provide...” “For the purposes of section 13(3) of the Act, an application must contain the following prescribed information...”
Regulation 6 “Minimum information to be provided to applicant by public authority...” “For the purposes of section 13(5) of the Act, the following information is prescribed as the minimum information that a public authority must provide to a person applying for assessed disclosure of information under that section about the public authority’s assessment procedure for such an application...”	“For the purpose of section 13 (5) of the Act the prescribed information a public authority must provide a person submitting an application...”

The comments received demonstrate local government’s strong commitment to transparency and good governance. Councils have a desire to make these Regulations as clear and usable as possible to ensure accessibility for their communities. Should you wish to speak to contributing councils about their experience with Right to Information we would be happy to put you in contact with them.

We appreciate you providing Tasmanian councils the opportunity to provide input into the remake of the Regulations and look forward to working with you for future legislative reviews.

Yours sincerely



Dion Lester
CHIEF EXECUTIVE OFFICER