



Tasmanian Council of Social Service

Submission to the
Review of the *Freedom of Information Act 1991*

February 2009

Authorised by
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The Tasmanian Council of Social Service (TasCOSS) welcomes the opportunity to make a submission to the Review of the *Freedom of Information Act 1991*. TasCOSS is the peak body for the community service industry in Tasmania. Its membership comprises individuals and organisations active in the provision of community services to low income, vulnerable and disadvantaged Tasmanians.

This submission concerns itself solely with that part of the review which considers extending the ambit of the Act to include access rights to particular areas of private sector service provision. The focus of the TasCOSS submission is on the question of whether community service organisations should be subject to Freedom of Information legislation.

TasCOSS supports the democratic principles of accountability and transparency in government decision making and policy formulation and protection of the public interest and right to information. In principle TasCOSS also supports consideration of an extension of the Act to include the private sector, including the community service sector, where there is likely to be clear demand for, and demonstrable public benefit flowing from, access to information. However, it is the view of TasCOSS that extending the ambit of the State *FOI Act* to include private organisations has systemic implications which will outweigh the benefit.

Our concerns

The major issue for the community services sector is that of the administrative burden which would be placed on relatively poorly-resourced organisations. There are several systemic considerations including record-keeping, (including the issue of scope of records covered), long-term records storage obligations, retrieval of information and training in all of these.

Specifically, in consultations with members, TasCOSS identified the main issues of concern to the sector:

- The administrative burden placed on relatively poorly-resourced organisations by FOI would be perhaps disproportionate to the increase in accountability. Some organisations function with less than one full-time employee.
- Organisations faced with decreasing budgets and higher reporting requirements are already experiencing an impact on their service delivery capacity.
- Micro policy and organisational decision-making would need to be considered, eg why a person was denied service on a particular day. Who in a small community organisation would be responsible for requests under an expanded *FOI Act*? Given that even government agencies, with their resources and under the scope of archives and records management legislation still have difficulties, especially when it comes to electronic records, how would small, poorly funded CSOs manage?
- Delivery of government contracted services is only part of the role of many CSOs and government grants generally provide only partial or seed funding for a program. It is

difficult to determine how far an organisation's FOI accountability would extend, especially where grants are concerned.

- Organisations would need to be prepared "just in case" an FOI request is made and even one such request could create a large problem in a small organisation.
- If community service organisations were to come under the ambit of the *FOI Act*, they would need to be adequately resourced to be in a position to comply. Government would need to significantly increase funding to and development of the sector.

What could be a way to proceed where greater accountability is called for?

TasCOSS agrees that accountability and the public right of access to information is of great importance. However, we suggest that the administrative burden and associated costs of extending the ambit of FOI legislation to the non-government sector would outweigh the benefits.

In his paper "Who needs FOI when market mechanisms will deliver accountability on demand? A critical evaluation of the relationship between FOI and Government Business Enterprises,"¹ Rick Snell suggests that public policy makers, academics and judges, faced with the inapplicability of the private/public law dichotomy, have a number of choices. These are:

- To fill accountability gaps (in the democratic sense) in the private sphere with public law mechanisms which is to advocate the extension of FOI into the private sector.
- To create private sector accountability mechanisms which result in the "accountability replacement" approach and the proliferation of industry ombudsman schemes for example.
- To rely upon an "alternative accountability" regime in which the robust application of contractual and other private law remedies in conjunction with statutory safeguards (fair trading legislation, citizen charters, clear definition of "entitlements" from utilities etc) will produce an accountability framework far better suited for the needs of a competitive marketplace and the efficient management of public assets.

Rather than extending the ambit of the Act, an "alternative accountability" regime as described above could be considered. With regard to the community services sector this "accountability regime" already exists to a large extent through service agreements with government agencies and attendant reporting onuses. In this climate of increased accountability with contracting government agencies requiring more detailed and outcome focused data including Quality and Safety Frameworks as part of their service agreements

¹ Paper presented at INFO Two, 2nd National Freedom of Information Conference, 7-8 March 1996, Gold Coast International Hotel http://www.law.utas.edu.au/foi/articles/gbe_foi.html

with community sector organisations, these reports and associated documents could form the basis of such a regime.

In other words, the public interest and demand for accountability could be served by ensuring that performance and evaluation reports provided by private organisations to government agencies are available under Tasmanian FOI law. It is acknowledged that there is uncertainty with regard to the availability of these reports under current FOI law in Tasmania, however we suggest that these issues could easily be addressed as a result of this review.

Under this model, FOI requests would be made to the responsible government agencies rather than the private organisations and thus private organisations would not be burdened by the resource implications of responding to FOI requests.

Further, if the “push model” of automatic publishing were preferred, these publications (provided material that was commercial-in-confidence could be excised) could be made automatically available on agency websites.

TasCOSS has previously advocated for an “accountability replacement” approach in relation to the community sector with calls for the creation of the role of a Community and Disability Services Commissioner in the Office of the Ombudsman. Consumers currently have recourse to the Ombudsman for grievances in relation to government services, but these powers do not extend to investigation of complaints in relation to services delivered by community service organisations. TasCOSS considers that a fundamental safeguard for consumers is recourse to a grievance investigation and resolution process in relation to services that have such a significant impact on the lives of many Tasmanians.

Please address any requirements for further information to Tom Muller - contact details on cover.