

# **Environmental Defenders Office Conference**

**6 & 7 April, 2009**

## **Alderman Elise Archer for the State Liberal Opposition**

### **The State Liberals' policy on FOI**

#### **Background – the current situation**

The State Government has a chequered history in regard to accountability. On the one hand, the State's *Freedom of Information Act 1991* (Act) is not that bad when compared with other States, and certainly less complex.

On the other hand, 10 years of State Labor has seen a culture of secrecy, special deals, lack of documentation to justify decisions and arrogance at the top of government, from the Premier's and Ministers' offices – and this has percolated into the State Service.

Two recent examples are the Police Commissioner debacle, and the aborted appointment of a magistrate. Other worrying trends include a cavalier approach to accuracy and timeliness in Parliament, and an inconsistent approach to Estimates – but some public sector officers are frank, open and willing to explain decisions. Others take the approach that their appearance before a parliamentary committee is an annoyance they barely tolerate, and they are neither frank nor open.

We have to stamp this out. Apart from the fact that it is improper when public money is being spent, ultimately it damages the efficiency of government and undermines public confidence in politicians.

#### **Our approach**

The Tasmanian Liberals, on the other hand, believe that Tasmania needs a major overhaul of current approach to government information, and the culture of providing it to the public. This includes the Freedom of Information regime and other laws and policies in the State's public sector.

Decisions and activities of governments spending your money must be –

- Transparent;
- Accountable; and
- Accessible.

We commit to radical reform to make Open Government the law in Tasmania; to lift the veil of secrecy and the stench of scandal; and to give people back their government.

Our Open Government agenda is to fundamentally change the culture of government in Tasmania.

We are proposing adopting world's best practice freedom of information rights.

Information will be provided on time, or it's free.

For the first time ever, Tasmanians will have access to more detailed information about what is being discussed in State Cabinet.

We will instil a culture and practice where it is *expected* government agencies will take affirmative steps to make information public and to proactively inform the public of government activity.

There will be more support for the Ombudsman, more powers for the Auditor General *and* a Public Information Commissioner.

We will give government back to the Tasmanians it is supposed to serve.

In our first year, we will move decisively to change the culture of the Tasmanian public sector in several important areas.

We will introduce –

**A culture of openness**

**Limits on Cabinet secrecy**

**Information provided on time, or it's free**

**Better reporting of FOI compliance**

**“Push” rather than ‘Pull’ approach**

## **A new Open Government Act**

### **Monitoring transparency**

### **More support for the Ombudsman**

### **More powers for the Auditor-General**

### **A Public Information Commissioner**

### **Better training for FOI officers**

### **A Parliament that Works**

## **An Independent and Anti-Corruption Commission**

### **A culture of openness**

Everyone working in government has a duty to ensure that the work they do will withstand public scrutiny – and this applies equally to Ministers, heads of departments, statutory office-holders, appointees to government boards, all State Service employees and those who work for Government Business Enterprises.

Ministers and government agencies must have, as part of their everyday practice and culture, that all FOI requests are to be treated seriously and that if the request is not responded to within the 30 day timeframe, the Minister or the Head of Agency as the case must provide a statement explaining the reasons for non-compliance. We will bring in changes to the law to ensure this.

### **Limits on Cabinet Secrecy**

The State Opposition believes that there is no good reason why subject matters considered at Executive Council Meetings should not be publicly known after the fact.

The Privy Council in London (on which our Tasmanian Executive Council is based) has for some years now published on its web-site a list of matters considered at meetings. There is no reason by the Tasmanian Executive Council should remain so secret.

The same principle applies in regard to Cabinet agendas. It would not appear to compromise the principle of Cabinet confidentiality for the agenda of Cabinet meetings to be able to be requested under the Act, after the event, and for the agenda to be provided without disclosing the deliberations or the decision of Cabinet.

A new *Open Government Act* will ensure this.

### **On time, or it's free**

The Tasmanian Liberals believe that any charges for information should be waived if the timeframe set down in the Act is not met. We will bring in changes to the law, through the *Open Government Act*, to ensure this.

### **Better reporting of FOI compliance**

The Tasmanian Liberals believe that each year a report should be tabled in Parliament which includes the average response times for each Agency or Minister to FOI requests made over the previous year and, in cases where a request was refused, a summary of the reason for the refusal.

In addition, in government the Tasmanian Liberals will change the law to ensure that each government department and agency provides annual details of its compliance with Freedom of Information requests. Reports on compliance will divide requests into three categories – depending on the complexity of the information sought. The new *Open Government Act* will ensure this.

### **“Push” rather than “pull” - why wait until the information is requested?**

The Tasmanian Liberals believe that, as part of a culture of transparency, accountability and accessibility, all State and local government agencies should, as a matter of practice, make information in their possession publicly available unless there is a specific and good reason not to (e.g. personal privacy, commercial advantage, jeopardising fairness).

This is the notion of ‘pushing’ information out to the public, not waiting until the data has to be ‘pulled’ out of agencies.

### **A new *Open Government Act***

We will overhaul the current *Freedom of Information Act* and replace it with an *Open Government Act*.

The *Open Government Act* will contain the structure to support a Freedom of Information regime. But it will also include other measures which apply the Transparency, Accountability and Accessibility Test to Tasmania's public sector.

### **Monitoring transparency**

All annual reports will be required to include information on other measures public sector agencies have taken to be transparent, accountable and accessible.

The Tasmanian Government Gazette will be published on-line, and be available for subscription on-line. This will not only save paper, but let people know of government decisions, appointments, etc. more promptly.

Information should be 'pushed' out to the public, not 'pulled' from agencies by a Freedom of Information request.

### **More support for the Ombudsman**

External reviews by the State's Ombudsman of decisions not to provide information have become a significant part of the Ombudsman's workload. Flexibility needs to be introduced to allow longer than 30 days when the material involved is extensive.

The Tasmanian Liberals will appoint a Deputy Ombudsman – something we have been calling for since 2004. We do not believe that a stand-alone new statutory position of FOI Commissioner for Tasmania, which exists in some other larger jurisdictions, is a justifiable expense; the Tasmanian Liberals will appoint the Ombudsman as Public Information Commissioner. The Ombudsman must have sufficient resources to carry out his important statutory role in regard to freedom of information.

### **More powers for the Auditor General**

The Tasmanian Liberal believe that, as part of the important duties of the State's Auditor-General in ensuring taxpayers' money is spent efficiently and effectively, the Audit Office must be empowered to include in audits whether public sector agencies have taken adequate steps to make information publicly available.

## **Better training for FOI officers in the public service and local government**

The Tasmanian Liberals will ensure consistency between agencies in regard to how FOI requests are handled through seminars and other initiatives, with the active involvement of the Ombudsman, the Auditor-General, the State Service Commission and the Ethics and Anti-Corruption Commission.

The new Open Government approach will include a role for the Justice Department, as the co-coordinating agency, to provide support to other agencies – especially small agencies – to deal with ‘spikes’ in demand for information, or where the agency is small.

FOI Officers in the State’s public service and local government must be properly supported in both the culture and principles of Freedom of Information.

## **A Parliament that works**

The Tasmanian Liberals have pioneered ‘Right of Reply’ arrangements for persons mentioned adversely under parliamentary privilege.

We have been at the forefront of reforms to Question Time and we will persist in setting deadlines for ministers to answer questions on notice.

In government, we will ensure that the Parliament has the resources it needs to scrutinise the government of the day – whoever is in power.

We will halt the steady decline in Parliament sitting days after over 10 years of State Labor.

And ministers will be truthful to Parliament, or they will be sacked.

The Ministerial Code of Conduct will be enforced, it will not lie dusty on the shelf.

And Government Business Enterprises will be required to be as accountable as all other public sector agencies – after all, Tasmanians are their shareholders.

And ministers will be required to explain the merits of appointees to government boards and committees – ‘being a mate’ will no longer be sufficient!

## **Independent ethics and anti-corruption commission**

The Tasmanian Liberals will establish a properly resourced and independent Ethics and Anti-Corruption Commission.

This Commission will not be a toothless tiger with a flash office – it will have an independent power to investigate allegations of corruption in the public sector.

And it will report directly to Parliament – not to the government of the day.

The Commission will also have the responsibility to conduct a significant training programme to ensure that ethical conduct is foremost in the culture of the public sector.

The Solicitor-General said in his most recent annual report that State Servants need training and support in ethical conduct, and the Tasmanian Liberals will ensure they receive that training and support.

We will also strengthen whistleblower laws – no one should have any repercussions for exposing maladministration or waste of Tasmanian taxpayers' money.

Open Government must be underpinned by

- Transparency
- Accountability
- Accessibility

Tasmanians deserve no less.