

## Information Provision August 2013

### Purpose and Scope

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This document defines the EPA's Policy for providing information to internal and external stakeholders.

### Policy

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The EPA seeks to operate openly and transparently, and endeavours to make as much useful information available as may legally be released without unreasonably disclosing the personal information of individuals, information obtained in confidence, or commercially sensitive information including trade secrets.

### Principles and Application

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In applying this Policy, the EPA is guided by the following principles:

- Honesty, integrity and professionalism in all communications;
- Equitable treatment of all sections of the Tasmanian community;
- The right for all stakeholders to know about issues that affect them, or that are of legitimate public interest; and
- Continuous improvement in the EPA's information management systems.

Through regular reporting and statements, the EPA will provide timely and accurate information on key activities, directions and decisions of the EPA.

The EPA also recognises that certain information is prohibited from disclosure by law, including: commercial-in-confidence information and trade secrets; personal information; and information relating to certain Parliamentary, legal and other administrative bodies. The key legislation governing these are the:

- *Environmental Management and Pollution Control Act 1994*;
- *Right to Information Act 2009* and its predecessor, the *Freedom of Information Act 1991*; and
- *Personal Information Protection Act 2004*.

The EPA also recognises its related obligations under the *Public Interest Disclosures Act 2002*.

### Performance Monitoring

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The EPA will continue to monitor and review its performance in applying this Policy.

### Implementation

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The implementation of this Policy will be most effectively achieved if it is incorporated into the day to day operations of the EPA. This will be done within the Tasmanian legislative and policy context.

## ***Environmental Management and Pollution Control Act 1994***

The *Environmental Management and Pollution Control Act 1994* (EMPCA) establishes the functions and powers of the EPA Board and Director, and includes a number of provisions relevant to information disclosure.

Division 2 of EMPCA specifies the right to access certain information. Under s.22, the Board must keep a register of environmental management and enforcement instruments, including details of environmental agreements, environmental audits, emergency authorizations, financial assurance, environmental improvement programmes and environment protection notices. The Act specifies that, upon payment of a fee, any person is entitled to search the register.

S.23 specifies that the Board or a council must consult with a relevant individual if information intended for inclusion on the register is likely to contain trade secrets. If it appears to the Board or council that a potential trade secret may be made available to the public, and the release of that information would be likely to cause financial loss to any person, the Board or council must consult with that person before including the information on any register kept under EMPCA. There are rights of appeal to the Resource Management and Planning Appeal Tribunal.

A person must not disclose any information relating to a trade secret used in any undertaking or equipment that has been obtained by the person in the administration of EMPCA unless the disclosure is made with the consent of the person carrying on the undertaking or operating the equipment, or for the purpose of any legal proceedings under EMPCA. The penalty of doing so is a fine not exceeding 5,000 penalty units or imprisonment for a term not exceeding 2 years, or both.

EMPCA also contains provisions for disclosing information when undertaking Environmental Impact Assessments. Under s.74(7), the authority responsible for assessing a proposed environmentally relevant activity must publicly disclose all information relating to the environmental impact of the proposal, except where there is a legitimate commercial, national security or environmental reason for confidentiality.

## ***Right to Information Act 2009***

The *Right to Information Act 2009* (RTI Act) provides for the release of information held by public authorities, and has replaced the *Freedom of Information Act 1991* (FOI Act). The new system under the RTI Act has defined information disclosure into four categories: 'required disclosure'; 'routine disclosure'; 'active disclosure'; and 'assessed disclosure'.

'Required disclosure' is information required to be released by law. 'Routine disclosure' is information which a body decides to release on a routine basis. These two methods are not reliant on a request for information to be made, as information would automatically be publicly accessible under these methods. All public authorities are encouraged to publish information on websites in this way, and this is anticipated to facilitate a shift in the culture of information disclosure.

'Active disclosure' refers to information being publicly available upon request. This allows for information to be released which isn't of sufficient interest to be published regularly. Information disclosed under this method would not require scrutiny to ensure it is not exempt.

'Assessed disclosure' is the method for the release of information that was previously done under the FOI Act. It refers to the situation in which an application for disclosure of information is received, and assessment is required to determine whether it is exempt information, as in Part 3 of the Act. In the Second Reading Speech, the Minister stated that this formal process should rarely be necessary, due to the application of the three alternative methods for disclosing information.

### **Personal Information Protection Act 2004**

The *Personal Information Protection Act 2004* (PIP Act) regulates the collection, maintenance, use and disclosure of personal information by public sector bodies such as the EPA.

Under s.5 of Schedule 1 of the Act, a personal information custodian must clearly set out in a document its policies on its management of personal information. The EPA has adopted the personal information protection policy of the Department of Primary Industries, Parks, Water and Environment, which is published on the Department's website.

#### **Disclaimer**

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