Document 1

From: s 22
Sent: Tuesday, 14 October 2025 11:51 AM
To: McIntyre, Melanie; s 22
Subject: FOI reforms - Opposition to oppose changes [SEC=OFFICIAL]

OFFICIAL

Hi Mel, s 22

The Opposition Leader, Sussan Ley, has published an op-ed in the *Canberra Times* regarding the FOI reforms and confirming the Opposition will 'stand firmly against these changes'.

I'll include this in Rachel's briefing pack.

Democracy behind clo

From a rise in Freedom of Information refusals to a habit of withholding docu
is continuing to resist scrutiny and is on the way to becoming one of the most

Sussan Ley

WHEN the Prime Minister took office, he promised Australians a new era of integrity, transparency, and accountability.

He pledged to "shine a light on politics" and restore trust in government, but instead has only delivered shadows.

This government has become one of the most secretive since Federation.

From a sharp rise in Freedom of Information refusals to an entrenched habit of withholding documents under tenuous Cabinet exemptions, the pattern is clear.

This is a government that resists scrutiny and treats transparency as an inconvenience rather than an obligation in an open democracy.

The Albanese government's proposed changes to the FOI Act, described in *The Canberra Times* as "a battle for free information", mark a troubling new chapter in that story.

Under these friendless reforms, Australians would be charged to access information about their own government, while anonymous applications would be banned, a move that would deter whistleblowers and those fearing reprisal.

Cabinet exemptions would be widened, and the government could dismiss requests it deems "frivolous or vexatious".

Processing times would be lengthened, and new limits on how long agencies can spend on a request would mean more refusals and fewer disclosures.

Even the definition of what counts as an "official document" would be narrowed, further restricting public access.

This is not an administrative refinement or merely updating old laws, as the Prime Minister claims. It is a retreat from transparinterest by enabling citizens, journalists, and Parliament itself to see how government decisions are made and to hold decision-makers to account.

These rights form the very foundation of our system of government.

Those principles are now under threat by a government seeking to solidify power and control.

Since assuming office, Labor has normalised the use of non-disclosure agreements for stakeholder consultations, issued a secret manual directing public servants on how to handle Senate Estimates, which was put to good use last week, and repeatedly flouted Senate orders for the production of documents.

It has ignored a parliamentary inquiry's recommendations to improve access to information, and reduced staffing numbers for those in Parliament whose job is to hold the government to account.

At the same time, according to the Centre for Public Integrity, fewer than one in four FOI requests are now fully granted, a dramatic decline from half just two years ago.

Transparency is not a burden on government. It is a duty of government.

The government argues that the FOI system is "not working for anyone". In truth, it is not working for them, but it's not meant to assist a secretive government.

The current laws have exposed advice warning against their rushed NDIS reforms. They have revealed doubts within departments about the effectiveness of Medicare bulk-billing incentives.

These disclosures are uncomfortable for Labor and its political narrative, but that is precisely the point.

Good government is not about avoiding

Regards
s 22

s 22 CPHR
Executive Officer to Commissioner, Dr Gordon de Brouwer

Australian Public Service Commission
t: 47F **m**: 47F
e: 47F

Document 6

From: s 22
Sent: Thursday, 16 October 2025 8:39 AM
To: Bacon, Rachel; McIntyre, Melanie
Cc: s 22
Subject: For info - Home Affairs FOI submission described as wary [SEC=OFFICIAL]
Attachments: Submission 58 - Department of Home Affairs Submission.pdf; Home Affairs wary on FOI reform.pdf

OFFICIAL

Hi Rachel, Mel

A submission from the Department of Home Affairs has now been published on the website of the Senate Inquiry into FOI reforms.

The media is characterising the submission as tepid endorsement for only the non-controversial aspects of the Bill.

The submission and relevant media is attached and will be added to your pack.

Home Affairs wary on FOI reform

NOAH YIM

The nation's powerful Home Affairs department has failed to endorse Labor's crackdown on Freedom of Information laws in its entirety, voicing support only for non-contentious parts of the reform in a submission to the Senate committee that may help kill Labor's assault on FOIs.

It is out of step with previous submissions to government bills by the Home Affairs Department, which usually chooses to explicitly support the bill's passage – "the passage of the amendments is necessary", it said of the Telecommunications Act amendments earlier this year, and "the department and ... portfolio agencies support the 2025 bill" it said of an intelligence community bill.

On the FOI legislation, the department – which received the most FOI applications of all government agencies – said it "strongly supports several proposed amendments" and did not mention some of the bill's more contentious elements, like the proposal to impose fees on non-personal FOI applications.

On the proposal to impose a processing time limit on FOI applications, the department said this was a "lower priority reform" and it would likely not use this for personal FOI requests.

"The department is supportive of modernising and reforming the FOI Act to better serve clients, promote transparency and protect sensitive information from being released," it said in its submission to the Senate inquiry on the bill.

Labor's FOI reforms have been criticised in multiple quarters: the Coalition, some unions, former senior public servants, experts, and some left-wing advocacy groups.

Home Affairs was far more measured in its commentary around the reform than the agency at second spot for FOI applications, Services Australia.

Services Australia "strongly supports the bill", it told the Senate committee. "In particular, the agency welcomes the amendments which provide greater clarity and protections against disclosing employee identify information. This will incre staff safety.

"The agency also suppo simplifying the extensions time process, which will impr processing efficiencies, and amendments addressing abu of process, which consume a proportionate amount of age resources and negatively imp the right of genuine applicant access information."

The Home Affairs Depa ment said it was supportive "several proposed amendmer – including non-disclosure identifying information ab staff members and powers to d with vexatious claims.

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Regards
s 22

s 22 CPHR
Executive Officer to Commissioner, Dr Gordon de Brouwer

Australian Public Service Commission
t: 47F **m:** 47F
e: 47F

Home Affairs wary on FOI reform
By NOAH YIM

The Australian
Thursday 16th October 2025
432 words
Page 2 | Section: THE NATION
169cm on the page

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NOAH YIM

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"The agency also supports simplifying the extensions of time process, which will improve processing efficiencies, and the amendments addressing abuses of process, which consume a disproportionate amount of agency resources and negatively impact the right of genuine applicants to access information."

The Home Affairs Department said it was supportive of "several proposed amendments" – including non-disclosure of identifying information about staff members and powers to deal with vexatious claims.

In a submission to the same Senate inquiry, former information commissioner John McMillan accused Labor of having been led too much by the bureaucrats.

He said the proposed changes were "distinctly one-sided and have not been adequately explained or justified", and that they "focus almost exclusively on taking up concerns expressed by agencies".

Australian Government
Department of Home Affairs

Department of Home Affairs submission to the Inquiry into the Freedom of Information Amendment Bill 2025

Legal and Constitutional Affairs Legislation Committee

15 October 2025

Table of Contents

Introduction

The Department of Home Affairs (the Department) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) regarding the *Freedom of Information Amendment Bill 2025.*

The purpose of the submission is to provide an overview of the Department's Freedom of Information (FOI) program and of the expected impact of the proposed reforms on that program.

Background to the Department's FOI program - a client service focus

The Department's FOI program is very large with over 19,296 requests received in financial year 2024–25 and over 2 million pages of documents assessed. This size is driven by the scale of the Department's operations and the volume of records it holds. There are over 470 systems in use in the Department with its official record keeping system holding almost a billion records.

The Department's FOI caseload consists of access requests for personal and non-personal documents, and requests to amend personal information. The caseload is global, with culturally diverse clients and includes cohorts of vulnerable clients who often have limited English language skills. There are also clients located overseas who have limited access to Government review frameworks for their dealings with agencies compared to those onshore.

Personal access requests usually relate to visa and citizenship processing documents, such as visa application assessments and/or detention files, assessment and processing notes, decision records, submitted application forms, audio files and CCTV footage. Amendment requests are mainly received from visa holders in Australia seeking to change, correct or update personal information held in departmental records and systems, including names and dates of birth. Access to documents and amendments are often sought to enable applicants to engage with government agencies and other institutions such as banks or insurance companies.

Non-personal access requests usually consist of policy and procedural documents, ministerial submissions and briefs, departmental reports, official correspondence, and operational statistics. These documents are sought by various members of the public including parliamentarians, journalists, migration agents, lawyers, academics and community interest groups.

The majority of the Department's FOI requests are personal access requests (approximately 95% of all requests). There has also been growth in personal access requests received year-on-year since financial year 2022–23.

As well as having a large client base, the Department has moved to almost wholly online processes for visa and citizenship applications, including the ability to provide documentary evidence online. Notable increases in personal access requests have occurred following increased digital offerings for visa and citizenship in the 3 years between financial years 2014–15 to 2016–17 and again in 2018–19 and 2019–20.

In financial year 2024–25, the Department's access and amendment program cost over $10.5 million, mainly in staffing costs. The Department's FOI section is made up of 112 APS staff at a range of levels, with the majority of requests considered by staff at the APS4 to APS6 levels.

The Department's FOI program is essential to promote transparency of government processes and to support clients to access or amend their own records. The Department is supportive of efforts to reduce administrative burdens and complicated processes that pose barriers to achieving those functions. It is also supportive of efforts to modernise the FOI framework and provide greater clarity around its operation to give FOI decision-makers the confidence required to make decisions about the release of information in a timely fashion.

Consideration of the Freedom of Information Amendment Bill 2025

The Department acknowledges that the reforms proposed in the Bill are aimed at modernising the Commonwealth's FOI framework and making it easier for members of the public to navigate this framework.

The Department strongly supports several proposed amendments and welcomes the proposed reforms to the *Freedom of Information Act 1982* (the FOI Act) to lessen the administrative burden of the current settings to allow for more efficient management of the FOI programs across government.

Further detail on the Department's position on the key reforms is provided below.

Evidence of identity as a validity requirement

The Bill proposes to require evidence of identity at the point of request for personal information (Schedule 2, Part 5 – Anonymous and pseudonymous requests, refers).

These reforms should result in efficiencies for the Department and better protect personal information from persons who should not have access to it, for example, an ex-partner in a domestic violence situation or in scenarios relating to child custody or where a foreign government is seeking to monitor its citizens.

Currently, requests can be validly made under the FOI Act for personal information by anyone. To protect the personal information from inappropriate release, the Department has a process by which it verifies an applicant's identity. This is a manual process involving FOI decision makers/case officers checking biodata (e.g. name, date of birth, contact details), or identity documents (e.g. passports) of applicants against existing departmental records. Where there are minors involved, departmental officers will also consider evidence of custody before releasing personal information. Where clients are represented by someone (e.g. a migration agent or legal practitioner) officers also consider evidence that the client has provided personal authority to access their personal information. Where the client has not provided relevant information about their identity this verification will occur after the case has been accepted.

The Bill codifies the current practice by requiring proof of identity where a request is for personal information of the applicant (or a person on whose behalf the request was made), or information concerning the business, commercial or financial affairs of the applicant (or a person on whose behalf the request was made). It authorises agencies and Ministers to collect the personal information of the applicant, and the personal information of a person on whose behalf the request was made, from the applicant. In situations where an applicant is seeking access on behalf of another person to a document containing personal information about the other person, the request must be accompanied by the proof of identity *and* authorisation to seek access to documents on behalf of another person, as well as the applicant's own identity.

As mentioned above, the Department holds a significant amount of personal information relating to its clients. As noted in the Department's submission to the 2023 Senate Legal and Constitutional Affairs References Committee *Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws*, this sensitive personal information is a valuable target for those seeking to use it for an improper purpose such as identity fraud or foreign interference. Imposing requirements for identity verification when lodging an FOI request was noted as a means to mitigate this risk.[1]

The proposed reforms will mean that a FOI request for personal information would not need to be progressed by the recipient department until the applicant's identity was established. In situations where applicants are unable to establish their identity or choose not to establish their identity, departmental case

[1] Department of Home Affairs' submission to the *Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws*, p. 12.

officers would not have invested time in progressing the request (including negotiating the scope, performing searches and/or assessing if third party consultation is required).

In relation to non-personal requests, the Department receives FOI requests for documents on topics such as cyber security and counter-terrorism. Whilst there are existing protections in the current FOI exemptions to prevent release of this type of national security material, the Department submits there is utility in having a discretionary ability to seek identity information as a strategy to mitigate risks related to the release of this sensitive information.

Extended statutory timeframes and streamlined extension of time options

The Bill proposes to extend the statutory timeframes for making FOI decisions and streamline the grant of extensions of time (Schedule 4, Part 2- Extension of time arrangements and Schedule 4, Part 4 – Working days and agency consultation, refers).

The Department's FOI caseload, particularly the requests for personal information, is increasingly complex and sensitive. Average pages assessed per request is approximately 175 pages, and a human decision-maker is required to carefully and manually consider sensitive personal information prior to release. Time is required to identify all of the relevant documents potentially in scope of a request and to then confirm whether in scope and releasable in the circumstances.

The 30 calendar day timeline for responding to requests currently provided for in the FOI Act has proved challenging. In 2024–25, the department received 19,296 FOI requests, and finalised 15,585, of which 34.9% were finalised within that statutory timeframe. The Department often negotiates with applicants for more time on their requests where needed.

The Bill proposes the statutory timeframe be amended to be 30 *working days* as opposed to calendar days, which would exclude weekends and public holidays from the timeframe, providing additional time to complete a request. While this extension of time will assist the Department for some of its caseload, extensions to this timeframe will likely still be required for complex and/or sensitive requests.

The Bill also proposes a more streamlined approach to agreeing extensions of time for responding to FOI requests. This should result in efficiencies for the Department's given the number of requests that require extensions. The Bill removes the 30-day cap on extensions to enable agencies or Ministers to extend the period for responding to a request to any period as agreed to by the applicant in writing. These agreements for extensions of time must be made before the initial decision period expires (or as extended for consultation). Provided that the time extended as agreed to make a decision has not expired, agencies or Ministers and applicants may agree to a further extension of time. The notification of the Information Commissioner of the agreed extension of time is no longer required.

The Bill also provides for agencies or Ministers to extend processing times to undertake consultation to determine whether a document is an exempt document under sections 33 to 38 of the FOI Act. The Department welcomes the recognition of the time required to consult appropriately with other agencies where requests relate to sensitive material.

Protection of staff member personal details and their safety

The Bill contains amendments to better protect staff member's personal details from being released as part of a response to an FOI request. The proposed amendment will ensure their privacy, safety and guard against security threats, including reducing the risk of details being released that make it easier for malicious actors to target public servants (Schedule 2, Part 2- Non-disclosure of certain identifying information refers).

The Department is aware of situations where members of the public have obtained staff details in a variety of ways (including through the FOI process) leading to staff being confronted at their workplace or their homes, receiving phone calls on work and personal devices, contacted on social media platforms, threatened with conduct complaints, threatened directly (or having family member's threatened) with physical harm. Measures in the Bill to not require the name of an officer or member of staff to be given to an applicant when

responding to an FOI request (except in certain circumstances) should assist to reduce or prevent these types of occurrences.

Management of vexatious applications

Schedule 2, Part 4 of the Bill contains amendments to provide agencies with the ability to decline to handle a repeat of a vexatious request or a request that is an abuse of process. The Bill also amends the existing powers of the Information Commissioner to expand the grounds under which the Commissioner can declare an applicant as vexatious.

The Department supports these measures. It regularly receives requests of a vexatious nature where the content of the request is nonsensical, intimidating or containing unsubstantiated claims (for example, referencing events that did not occur). Sometimes, applicants do not engage in FOI processes in good faith or abuse the process, posing difficulties for decision-makers in searching for and deciding on requests.

The Department also receives FOI requests from individuals who have been dissatisfied about decisions made by Commonwealth officials (such as refusal or cancellation of visa applications) and use the FOI process as another avenue to prosecute their concerns.

There have been instances of applicants using the FOI process in a vexatious or harassing way, which has resulted in Commonwealth agency staff:

- being subjected to abusive language or receiving abusive emails
- being threatened with ongoing harassment using administrative review and complaints processes
- being bullied into making a more favourable decision to avoid harassment by a fixated individual
- having their personal information published on websites and social media platforms, and
- being the subject of FOI requests seeking personal information about them, including performance agreements, employment history and Australian citizenship status.

The reforms relating to vexatious applications will enable agencies to devote agency time and resources to processing genuine requests and should improve the safety of decision-makers.

The Bill proposes that in respect of anonymous FOI applicants, agencies be allowed to seek identity information (Schedule 2, Part 5 – Anonymous and pseudonymous requests, refers). This would be particularly useful in situations where an applicant might be attempting to circumvent vexatious applicant declarations.

Allow agencies to specify method of submission of FOI requests

The Department supports the proposal to allow agencies to have more control over the method by which FOI requests are submitted (Schedule 2, Part 1 Form and submission of requests applications and complaints, refers). These reforms will allow the Department to make better use of automation and security functions for its very large caseload.

Pursuant to these amendments, the Department could specify that all FOI requests must be submitted via a departmentally designed online form which would provide guidance to applicants in submitting valid requests, and capture the details required for departmental officers to readily search large volume record holdings efficiently.

Currently, around 50% of FOI requests are submitted on the Department's online form that has some automated functionality. The other half of requests are submitted by email or post, requiring manual registration and acknowledgement by an officer. Funnelling more of the requests via an automated request channel would free up departmental resources to focus on considering and responding to the FOI requests rather than the effort of manually registering requests. Additionally, there is functionality that can be applied to online forms that would enable greater security of data and assist to manage risk.

Other reforms

The Department supports the amendments in the Bill:

- to more clearly outline the objects of the FOI Act to promote government transparency (Schedule 1, Part 1- Objects provision refers), while providing safeguards where needed. For example, to protect government operations and the privacy of members of the community. This reform should allow for more balanced arguments to be made when considering the public interest test when applying discretionary exemptions to documents/material.
- to clarify that agencies have an ongoing obligation to decide on FOI requests even if they fall overdue (Schedule 4, Part 3 – Deemed refusal process refers). This accords with the Department's current approach whereby departmental officers continue to process all FOI requests despite the statutory deadline having passed and the request having been 'deemed refused' pursuant to section 15AC of the FOI Act. This approach ensures applicants will get access to their documents in response to their FOI request and not need to seek an internal review or an Information Commissioner review.
- aimed at streamlining the work of the Office of the Australian Information Commissioner in reviewing FOI decisions. The Department is supportive of this approach as it should assist FOI applicants with prompt and considered review outcomes.

On the proposal to introduce a processing time limit for FOI requests (Schedule 3, Part 2 – Processing time limit), the Department considers this a lower priority reform for its FOI caseload and notes it is unlikely to use this for personal FOI requests. The Department takes a client centric approach and is committed to ensuring clients get access to their documents.

Summary

The Department thanks the Committee for the opportunity to make a submission to the inquiry into the Freedom of Information Amendment Bill 2025. The Department is supportive of modernising and reforming the FOI Act to better serve clients, promote transparency and protect sensitive information from being released.

Document 8

From: s 22
Sent: Friday, 17 October 2025 12:21 PM
To: Bacon, Rachel; McIntyre, Melanie
Cc: s 22
Subject: RE: Speeches / public statements on frank and honest advice [SEC=OFFICIAL]

OFFICIAL

In addition to the below:

In the Centralised Code of Conduct Inquiry Taskforce Final Report – published 13 Sept 2024

However, the public servant's role is to also provide frank and fearless advice to the Government to ensure that decision making is properly informed, including in respect of legal, operational or ethical risks, and the policy or program delivery is effective, efficient, legally sound and ethical, a task which can be challenging under pressure. Cabinet government is most effective when all relevant agencies, including central Agencies, contribute to the analysis that informs decision making. The same point is true within a multi-agency portfolio. A Minister is entitled to hear the views of all their relevant agencies (including service delivery and policy agencies) and will make better informed decisions if they do. It is a matter of public record that, in the case of the Robodebt Scheme, the (at times quite critical) views of Department of Social Services (DSS) were not adequately reflected in the briefing of Ministers at critical points.

Centralised Code of Conduct Inquiry Taskforce Final Report | Australian Public Service Commission

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From: s 22
Sent: Friday, 17 October 2025 12:03 PM
To: Bacon, Rachel <47F
Cc: s 22 47F s 22 47F
Subject: Speeches / public statements on frank and honest advice [SEC=OFFICIAL]

OFFICIAL

Hi Rachel

Public material the Commissioner has said on holding back on frank and fearless (frank and honest is what is actually in the PS Act) advice is below

Robodebt Code of Conduct statement
Note: there is no specific reference in his Robodebt Code of Conduct statement, however he does list four factors in the decidion not to name people which are related as:

1. Anonymity helps ensure proportionality in the application of sanctions. For example, people who have left the Australian Public Service for whom the likely sanction would not have been termination of their employment should not in turn lose their current employment as a result of being named.
2. It is important to allow the individuals involved to restore themselves and have some closure, even if for some that will never involve future employment and engagement with the Australian Public Service.
3. The critical objectives of deterring public servants from engaging in improper or inappropriate conduct and of maintaining standards of conduct and public confidence can be achieved without disclosure of personal details. The Royal Commission and the knowledge that public servants are held accountable for how they do

their job has shifted behaviour in the public sector, and the examples of breaches listed above provide a guide to public servants about the behaviour expected of them.

4. Naming of individuals in the Robodebt case may create expectations that public servants in other or future Code of Conduct inquiries will also be named, and this could undermine the effective operation of these (and other) investigations. There are several hundred investigations across the Australian Public Service each year, and fear of being named may undermine engagement, diminish the opportunity for restoration and increase litigiousness.

- **Speeches and public events:**

  - **February 2024 Mandarin speech:** De Brouwer delivered a speech at a Mandarin event titled "Rebuilding trust and integrity in the Australian Public Service," where he listed "avoiding frank and honest advice" as a failure mode that needs addressing.

    - The Robodebt Royal Commission, various reviews by integrity agencies, and code of conduct investigations point to five recurring problematic behaviours. These include:
    - avoiding frank and honest advice – sometimes out of concern about how Ministers, their advisers or a senior public servant will react, sometimes to ensure that the 'job just gets done', sometimes to get an outcome that the public servant themselves thinks is important;

  - **November 2023, Open Letter:** In November 2023, Commissioner de Brouwer and the Secretary of the Department of the Prime Minister and Cabinet co-signed a message to APS staff regarding the Integrity Taskforce:

    - The Secretaries Board is committed to promoting a pro-integrity culture where all staff feel confident to contribute ideas, provide frank and independent advice and report mistakes. In this spirit, Secretaries Board set up the APS Integrity Taskforce.

  - ***State of the Service Report (2023):*** This report includes a section on "Frank, honest and evidence-based advice." It states:

    - Leaders in the Australian Public Service have a responsibility to serve the Government, the Parliament and the Australian public. They do so by providing advice that is relevant and comprehensive, is not affected by fear of consequences, and does not withhold important facts or bad news

    - It references the Robodebt Royal Commission as a critical examination of this issue.

Let me know if you need anything else

s 22

Document 9

From: McIntyre, Melanie
Sent: Friday, 17 October 2025 10:45 AM
To: s 22 ; Bacon, Rachel
Cc: OfficeofDCBacon; s 22
Subject: RE: Media | Andrew Podger | What's constraining 'frank and fearless' advice? [SEC=OFFICIAL]
Attachments: LEX 1588 - Home insulation sources [SEC=OFFICIAL:Sensitive]; rrc-accessible-full-report.pdf

OFFICIAL

Hi s 22

s 22 did some great work identifying the HIP sources, please see attached.

For the Robodebt Royal Commission, I've attached the whole report (it's over 1000 pages so please don't print!) – references to written advice not being provided are at:

- Page 101
- Page 190
- Page 299

Kind regards
Mel

From: s 22 47F
Sent: Friday, 17 October 2025 8:39 AM
To: Bacon, Rachel 47F ; McIntyre, Melanie 47F
Cc: OfficeofDCBacon 47F ; s 22 47F
Subject: Media | Andrew Podger | What's constraining 'frank and fearless' advice? [SEC=OFFICIAL]

OFFICIAL

Hi Rachel, Mel

The Mandarin has today published an op-ed by Andrew Podger titled What's constraining 'frank and fearless' advice?

The piece critiques the Commission's written submission to the FOI inquiry arguing it's unsupported by evidence.

> *Despite the royal commission recommending a shift in the opposite direction on FOI than now proposed, the APSC submission cites the robodebt royal commission report in referring to the consequences of avoiding written advice.*

I've printed the article and added it to your pack.

s 22

s 22 CPHR
Executive Officer to Commissioner, Dr Gordon de Brouwer

Australian Public Service Commission

t:47F [redacted] **m:** 47F [redacted]
e: 47F [redacted]

Document 10

From: s 22
Sent: Thursday, 16 October 2025 6:52 PM
To: McIntyre, Melanie
Cc: s 22
Subject: LEX 1588 - Home insulation sources [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

HI Mel

Extracts from Shergold review, "Learning from failure" 2015 (which is then quoted in Thodey at p121)

> …..The Review will take account of the findings and recommendations of the Royal Commission into the Home Insulation Program, and the report of the Independent Audit of the NBN Public Policy Processes (the Scales Review).

1. Executive summary: 28 proposals for improvement

2. A PROVIDING ROBUST ADVICE

6. Good government is founded on policy good policy, and good One of the depends on good advice. (APS) core Australian Public Service's to support roles is to provide advice so that it can the government of the day and deliver its policy agendas servants priorities. Senior public advise not only on the design, but on the delivery and evaluation of major programs and projects. They recognise that they should be held accountable to their ministers for the quality of advice that they provide. The APS holds a position of unique access to ministerial decision-making. It enjoys positional authority. Nevertheless, it must deliver well-argued and persuasive advice if it is to maintain influence with government. Counsel must be responsive and timely. It needs to acknowledge political direction. It must be strategic, providing a wider context for particular decisions. It must be frank and fearless.

> **3. Ian Hanger AM QC**
> *4.*
> *5. "The APS ought to reinvigorate its willingness to provide, in writing, advice that is as frank and robust as the advice it is willing to give verbally. . . What the process has revealed is a quite inadequate system of document management and*

7. Good advice is factually accurate and backed by evidence. It presents proposals based upon considered interpretation of alternative viewpoints and often reflects multiple perspectives. On occasion the APS appropriately provides a range of options to government, but it must not be afraid of taking a position on what is regarded as the best path forward. Fortitude is required. Sir Humphrey Appleby, in his inimitable style, would counsel against action by describing a proposed ministerial decision as 'courageous.' In truth, it is Secretaries who must be willing to exhibit courage.

8. Openness and transparency are fundamental to good government. There is room to further improve public access to information that is held by government. There is a strong public interest case for citizens being able to know the basis of decisions that affect their access to services. There is

considerable value, too, in publishing as much publicly-collected data as possible and making it available to citizens to use and apply as they want through a 'Creative Commons' license. This is the basis on which this Review is released.

9. At the same time, it is imperative that governments be allowed a measure of confidentiality in the policy-making process. Without free and uninhibited exchange of views between ministers and senior public servants, good public policy is jeopardised. Policy debate depends upon mutual trust and respect between both sides. That depends on arguments taking place in private. Deliberations on matters of policy, whether oral or in writing, need to be kept in confidence.

10. Where there is a risk of advice being made public, sensitive topics are less likely to be the subject of full and frank written briefing. This increases the risk that decisions will be made on partial information, feebly presented. It means that there will be an incomplete record of the decision-making process. The *Freedom of Information Act 1999* should be amended to provide an explicit exemption from release for information that would compromise the ability of public servants to provide ministers with frank advice. Such changes would apply to only a very small proportion of government information.

11. Advice on significant matters must be written down. There will rarely be a single document. The development of policy (as any good public servant knows) is an iterative process of argument, counter-argument, negotiation and compromise. Records of deliberative discussions in all forms, including emails and texts, should be retained.

See below details of the Home insulation program and reference to advice not being in writing:

Page 8 and following

Lessons from the Past

Why do we need to learn from the failure of the HIP

The HIP was a major project, the design and delivery of which involved massive failures and led to tragedy. The large-scale program was beset by far-reaching errors. Mistakes were manifold: irreconcilable policy objectives, flawed program design, rushed implementation and inadequate monitoring. Mediocre record-keeping makes it difficult to tell the full story of which public servants provided what advice to ministers when, and to what effect. Responsibility for decision-making was diffuse and opaque. Accountability for consequences was unclear. Yet it is apparent that the advice provided by public servants to ministers was, in many instances, poorly given, poorly received and poorly communicated. Consultation across government, between jurisdictions and with industry bodies was all but absent. Citizens were not consulted on what they wanted and installers were not asked how it would be best to deliver those aspirations.

The development and delivery of the HIP was not just marked by a plethora of mistakes: the consequences were stark. Four young workers lost their lives, houses caught fire and long-standing businesses were destroyed.[ii] It is important that the lessons of the tragedy are learned. It is vital that when governments decide to instigate large new initiatives in the future, that the process of execution has been improved. I hope that ministers, advisers and public

administrators will be able to say that “we will never have another HIP: we have learned the lessons from what went wrong”.

The Royal Commission into the HIP was established on 12 December 2013. Mr Ian Hanger AM QC was appointed as the Royal Commissioner and delivered his report on 29 August 2014. There had already been a number of other reports into the HIP, notably by
Dr Allan Hawke AC in his 2010 *Review of the Administration of the Home Insulation Program* and by the Australian National Audit Office (ANAO) in its *Performance Audit Report No. 12 (2010—11)*. The program, and others explored in this review, provides a catalogue of lessons for governments here and around the world. They allow us to learn from failure.

The HIP was designed to stimulate the economy

In late 2008, Australia was facing a severe economic downturn. The Global Financial Crisis (GFC) threatened to end an era of prosperity. In response, the Australian Government deployed a range of measures to stimulate the economy.

On 3 February 2009, the Prime Minister, the Hon Kevin Rudd MP, announced a $42 billion Nation Building and Jobs Plan.[iii] Included in this plan was an Energy Efficient Homes Package, of which the Homeowners Insulation Program (later renamed the Home Insulation Program or HIP) was a major component. Around $2.7 billion was allocated for the installation of insulation into the ceilings of some 2.7 million existing Australian houses over a period of two and a half years.[iv] The HIP was extremely ambitious in its scale. Prior to the announcement there were only about 200 businesses installing insulation into just under 70,000 homes annually.[v] The HIP aimed to achieve a fifteen-fold increase in the number of installations carried out each year.[vi]

The objectives of the HIP were to create employment for thousands of low-skilled workers in the building industries, whilst delivering improvements to the energy efficiency of housing, and contributing to a reduction in Australia’s carbon emissions.[vii] These competing objectives made the execution of the HIP difficult. Hanger emphasised the tension between the economic stimulus objective of the policy, which required the need for expedited progress, and its environmental objectives, which in normal circumstances would have been far more carefully pursued.

The HIP was developed quickly and without the usual safeguards of the Cabinet process

Things went wrong from the very start. The pre-announcement design of the HIP was rushed, with two officials required to develop a policy proposal over the Australia Day long weekend in January 2009. They were given express instructions “ … not to contact industry and not to speak with colleagues”.[viii] This set the tone of achieving speed by stealth. Many government decisions on the HIP were not subjected to the usual procedural safeguards provided by Cabinet process. Indeed much of the initial program development was overseen only by a sub-set of four ministers which, extraordinarily, did not include the minister responsible for the delivery department, the Department of Environment, Heritage, Water and the Arts (DEWHA).[ix]

Implementation design was flawed and was done without consultation

The Prime Minister announced that the HIP would commence on 1 July 2009. That left just five months from its announcement to develop and begin to implement the program. In keeping with an ethos of supporting construction projects that were ‘shovel-ready’, the aim was to get public funds out of the door and pink batts into roofs as fast as possible. The start date was perceived as non-negotiable.[x] Political imperatives dominated.

According to many witnesses to the Royal Commission, this led to “crucial and material compromises to the proper design and implementation of the HIP”.[xi] Concessions were made in the name of expediency and had disastrous consequences: they included relaxing training requirements for workers, and assigning the skill competencies to supervisors rather than those performing the installation. This “unnecessarily exposed workers, particularly inexperienced ones, to an unacceptably high risk of injury or death”.[xii] These late changes to the delivery model were

imposed on DEWHA by the (now defunct) Office of the Coordinator General (OCG) in the Department of the Prime Minister and Cabinet (PM&C). Under political pressure, the OCG seems to have been driven by a 'can-do at any cost' mentality. The Royal Commission concluded that, "if given an extended timeframe [DEWHA] could have delivered the regional rollout program on which it was working".[xiii] However, no evidence was found that a formal written request for a time extension was ever sought by any public servant.[xiv]

It was not just that judgement was poor. Hanger found that DEWHA was ill-equipped to deliver such a large and complex program, even if it had not been rushed to deliver at scale from the outset.[xv] DEWHA's development and implementation of HIP coincided with a significant expansion of the department's responsibilities. It had little experience of delivering programs. It was unprepared for the task. Post-implementation reviews of the HIP identified problems with the department's governance structures, program design capability, corporate administration, risk management behaviours, audit and compliance mechanisms, and effective monitoring. [xvi] When the Hon Greg Combet AM became Minister for Climate Change and Energy Efficiency in September 2010, he found that the APS had been ill-equipped to run the HIP program: "As a consequence, given the lack of systems—administrative, IT and financial—running that from Canberra was easily penetrated by fraudsters."[xvii] Unsurprisingly, given the mood at the centre of government, DEWHA did not consult widely. There was insufficient consideration given as to how government intervention would impact a relatively small and largely unregulated industry. The Commonwealth abrogated responsibility for industry compliance and licencing activities to State and Territory governments but without listening to their frontline experience. Officials failed to talk to local government. Warnings from international experience were not heeded.[xviii] In-house expertise was not developed and external advisers were inadequately briefed on their responsibilities.[xix] Time was not made available to organise pilots to test the suitability of the program design.[xx]

Accountability was blurred and risk poorly understood

Confusion reigned. Roles within the Project Control Group (PCG) were not clearly articulated or understood. A deference to 'team-work' diffused responsibility for decision-making.[xxi] Critical decisions, such as lowering training and competency requirements, were taken by the PCG in a committee environment which discouraged members from being active participants in the deliberative process. The outcomes failed adequately to address risks to the safety of installers.[xxii] The perceived problems with the change to the delivery model by the OCG, which significantly increased implementation risks, were not communicated to senior officials and did not get updated in the risk register.[xxiii] Similarly, while safety concerns were raised early in the HIP's implementation by industry representatives, they were not added to the register, and did not inform the risk management strategy.[xxiv] Warnings appear to have been ignored. Even in the late stages of the HIP, when the Australian Government had received specific advice about the risk of injury to installers and had the information necessary to make a decision to ban unsafe products and procedures, it was far too slow to act.[xxv]

Of course, the responsibility of government for the proper design and implementation of the program in no way obviates the responsibility that businesses also had in implementing safe work practices for their staff. However, as program designers and contract managers, public servants should have made far more effort to manage a greater proportion of the risk of failure, particularly for project implementation and monitoring. Government, too, must take responsibility. All Cabinet ministers should have been involved in discussions of such a major project, including managing the risks. Ministerial advisers should have alerted their ministers to the changes. Senior public servants, too, should have exhibited greater fortitude in advising ministers and insisted on having their advice recorded, and (in the event that they could still not persuade government to agree to a more realistic timeframe), should have collaborated with State, Territory, local governments and industry associations to identify and mitigate the program's major risks.

As evidence accumulated on emerging problems, the HIP was formally suspended on 19 February 2010. Dr Allan Hawke AC was commissioned to undertake a review of the HIP. He recommended against its continuation. On this basis the Government formally terminated the program.

Kind regards,
s 22

s 22 **(she/her)**
Deputy General Counsel
General Counsel and Integrity Operations Branch

Australian Public Service Commission
t: 47F (preferred) **m**: 47F
w: www.apsc.gov.au

I work a compressed work week. I don't work on alternate Fridays (non-pay week). The APSC supports flexible working arrangements. If you receive an email from me outside of your regular business hours, I am sending it at a time that suits me. I am not expecting you to read or reply until your regular business hours.

[i] Hanger, I 2014, pp. 307, 317.
[ii] Hanger, I 2014, pp. 241-268.
[iii] Department of the Treasury 2009, '$42 Billion Nation Building and Jobs Plan', N.009 Joint Media Release with the Prime Minister, 3 February, <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/009>
[iv] Department of the Treasury 2009, 'Energy Efficient Homes—Ceiling Insulation in 2.7 Million Homes', N.014 Joint Media Release with The Prime Minister & Minister for the Environment, 3 February, <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/014.htm&pageID=003&min=wms&Year=&DocType.>
[v] Hanger, I 2014, p. 1.
[vi] Hanger, I 2014, p. 2.
[vii] Australian National Audit Office 2010 Home Insulation Program—Department of Environment, Water, Heritage and the Arts, Department of Climate Change and Energy Efficiency, Medicare Australia, *Audit Report No. 12 2010—11: Performance Audit*, p. 26., Commonwealth of Australia, Canberra. <http://www.anao.gov.au/~/media/Uploads/Documents/2010%2011_audit_report_no_12.pdf>
[viii] Hanger, I 2014, p. 83.
[ix] Hanger, I 2014, p. 306.
[x] Hanger, I 2014, pp. 25-28.
[xi] Hanger, I 2014, p. 3.
[xii] Hanger, I 2014, p. 2.
[xiii] Hanger, I 2014, p. 156.
[xiv] Hanger, I 2014, pp. 26-27.
[xv] Hanger, I 2014, p. 5.
[xvi] Hawke, A 2010, *Review of the administration of the Home Insulation Program,* Canberra; Senate Standing Committee on Environment, Communications and the Arts 2010, 'Committee report: Energy Efficient Homes Package: ceiling insulation', Canberra; and ANAO, *Audit Report No. 12 2010–11.*
[xvii] Kelly, P 2014, *Triumph or demise: the broken promise of a Labor generation,* Melbourne University Press, Melbourne, p. 227.
[xviii] Hanger, I 2014, p. 96.
[xix] Hanger, I 2014, p. 5.
[xx] Hanger, I 2014, p. 27.
[xxi] Hanger, I 2014, pp. 304-306.
[xxii] Hanger, I 2014, p. 116.
[xxiii] Hanger, I 2014, p. 137.
[xxiv] Hanger, I 2014, pp. 114-119.
[xxv] Hawke, I 2014, p. 43.

Australian Government
Australian Public Service Commission

Senate Inquiry Appearance – OCTOBER 2025

Freedom of Information Amendment Bill 2025

KEY MESSAGES

- The Commission is here because of its responsibility for the APS and its employees.
- The Commission holds a central, trusted position within the APS as a steward of integrity, capability and workforce management.
- The experience of the Commission is that vexatious and frivolous requests can risk serious harm to staff processing FOI requests and that withholding identifying information about employees can help reduce that risk.
- The Commission affirms the importance of transparency in effective public administration but observes that the operation of the deliberative processes exemption has unintended consequences with respect to actual transparency, integrity and record keeping in the public service.

QUESTIONS AND ANSWERS

What are the Commission's responsibilities for the APS and its employees?

Responsibility for the APS

- The Commission's functions includes workforce management and promoting high standards of accountability, effectiveness and performance across the APS.
- Public servants are entitled to respect and privacy in their workplace, a place that is free from risks of harm.
- When agencies have to deal with vexatious FOI requests it impacts their resources to deal with other FOI requests and causes a risk of psychological harm in the workplace, including stress, burnout and turnover of staff.

Responsibility for Commission employees

- Under work health and safety laws, the Commission has a duty to protect the psychological safety of staff and eliminate risks so far as reasonably practicable.
- SES staff are publicly identifiable and used to criticism, what I want is to ensure a safe working environment for my junior staff who are the ones on the front line of FOI processing.
- This is the same approach taken by call centres, requesting callers to not be rude to their staff.

What is the Commission's experience with vexatious and anonymous applications?

- Currently the FOI Act allows applicants to make anonymous or pseudonymous FOI applications
  - This enables applicants to hide their identity and make abusive or excessive applications
  - [*Examples are available – provided in separate document – Attachment A*]
- Agencies cannot refuse to process abusive applications on work health and safety grounds, even when there is abuse, belittling, foul language or stalking behaviours.
- Only a Vexatious Applicant Declaration made by the Information Commissioner prevents an applicant harassing or intimidating staff by placing limits on actions under the FOI Act by "a person".
- A VAD requires the agency to apply in relation to "a person". An agency cannot do that when they cannot prove that repeated anonymous applications have come from the same person.
- Even where the applicant's identity is known, the threshold for making a vexatious applicant declaration has been set very high by the IC.
- The proposals in the Bill relating to decisions on vexatious requests are proposed to be reviewable by the Information Commissioner (clause 44 – proposed 54KA)

Has the Commission received FOI requests from AI bots?

- The Commission does not collect data in relation to whether requests are from AI bots.

Does the Commission think there is a role / place for anonymous/ pseudonymous applications?

- The Commission does not collect data in relation to anonymous/ pseudonymous requests
- I am not able to provide opinion evidence

What is the Commission's position on the amendment to the deliberative processes exemption?

- Transparency and trust in government and the public service are crucial.
- But it is also crucial that the public service can bring forward the risks and benefits of a range of options at the formative stage of policy discussions, document the exploration of those options, and put honest and forthright advice in writing.

- When it comes to deliberative material, currently the FOI Act does not ensure transparency (because advice is not being written) and it undermines integrity and accountability (because advice is not being written).
- Over the last decade or more we have seen the consequences of governments not being given candid advice in plain language and in writing. Not only in Robodebt, but also in the Home Insulation program and the NBN, as recorded by Professor Shergold.
- These changes have been a long time coming.
- In 2015 Shergold concluded:
    - *The Commonwealth's FOI laws now present a significant barrier to frank written advice.*
    - *The public interest is certainly not served by having no public record how and why decisions were made. Nor is there much benefit gaining access to written advice that has purposefully been prepared to appear innocuous when released under FOI.*
    - *Advice that is honest and forthright is important. It ensures ministers make decisions with full knowledge of facts and with their eyes open to the risks.*
- The proposed amendments will ensure that genuine deliberative processes can occur as intended – by including as a public interest factor against disclosure, the facilitation of frank and free exchanges of opinion in developing robust policy advice.
- The amendments will strengthen stewardship and integrity, because genuine advice exploring options in an evidence based manner and setting out the risks of those options, will be written and recorded – to empower more informed decision making, and improve the quality of decision-making by government.

Why did the Commission mention 'protected information' in its submission?

- The Commission discussed protected information in its submission based on its own observation of the current operation of the FOI Act.
- Sections 72A and 72B of the Public Service Act concern 'protected information,' and relate to information obtained in connection with the APS Commissioner's and the Merit Protection Commissioner's performance of functions, duties or the exercise of powers – for example, information obtained during an inquiry into an alleged breach of the code of conduct using CMR functions.
- It is a criminal offence for a member of the Commission to disclose 'protected information' except in the limited discretionary circumstances set out in section 72A or 72B respectively.
- They are also not compellable to disclose information in proceedings.

- However, subject to the availability of other exemptions from disclosure in the FOI Act, this sensitive information is required to be disclosed under the FOI Act.

Was the Australian Public Service Commission involved in the drafting of the Bill?

- The Attorney Generals' Department consulted within government. The Commission participated in that consultation, along with other agencies.
- The Commission received a copy of the Bill prior to its introduction into Parliament.
- The Commissioner's conversation with the current Attorney General about the bill related to the impact of the operation of FOI legislation and law on public servants with respect to vexatious applicants and about the impact on deliberation.

Refer to pages 64 and 65 of Hansard – Supplementary Budget Estimates – Finance and Public Administration Legislation Committee – 8 October 2025

3rd party

Individual

Attachment A – examples

Behaviours:

- Sending repeated emails to Agency staff of an inappropriate and harassing nature, including communication which has contained sexually explicit allegations;
- Posting personal information, including photographs, of Agency staff and their children on a publicly available blog, in posts that appear to be designed to distress and 'dox' them;
- Seeking out family members of Agency staff on social media; and
- Threatening to, and actually attending, Agency events, and Agency offices;
- Partner of a staff member found threatening notes in their private residence letterbox. These notes identified that the writer was aware that there were children in the staff member's family
- A staff member received call from an FOI applicant who claimed that the staff member, and the processing of the FOI request, has caused the applicant to become suicidal. The applicant proceeded to ask the officer whether they 'wanted him to kill himself' repeatedly.
- Online stalking staff members and raising aspects of their private lives in future requests

Use of names

- After making an FOI request, and receiving the Agency's standard acknowledgement (containing the first name of the FOI Coordinator, and the team standard signature block, including a contact number) an FOI applicant used the signature block to send doctored emails to a large number of recipients including various Commonwealth and State agencies, and media outlets making it appear as though the Agency (and specifically the named FOI Coordinator) was endorsing the individuals' complaint, and instructing other entities to take action in response. The named staff member

received a number of calls from recipients of the doctored email, asking questions about the 'tasking' causing unnecessary stress and anxiety

- FOI team employees have received correspondence from the Applicant direct to their individual email account or addressed to them using their last names where they have never been provided in a manner designed to intimidate the FOI officer
- Searching for details of an Agency staff members' previous employment on the internet and through Australian Public Service gazette and then submitting an FOI request for documents relating to their job application
- Applicant has proceeded to submit further access requests and make privacy complaints that specifically name and target Agency employees who have been involved with matters. Specifically named and targeted Agency employees in approximately 70 access actions
- Stalking staff on social media platforms and undertaking extensive internet searching to find information decades old on the internet about staff members;
- Using metadata in documents to send emails direct to staff where they have not provided their last name
- Release of Agency staff member's name into the public, the staff member became the target of hate emails. This resulted in the staff member's personal information being published on websites, including a partially pixelated photo of the staff member, address and Google maps images of their home. As a result, security assessments of the home were undertaken, the staff member, partner and children were briefed by the Australian Federal Police and a security system with a back-to-base alarm was installed in their home. Further investigations were conducted in relation to the pixelated photo published on the website, revealing it was a photo of the staff member and children on a family holiday

Making anonymous/ pseudonymous requests

- Have lodged FOI requests using names of FOI officers or their family members (including deceased family members)

Threats

- *"I now have the name of one of your hateful practitioners and with this, Agency can no longer protect these individuals from accountability"*
- *"You on the other hand have a lot to lose, therefore I recommend that you start preparing";*
- *"The reality is, I can personally name every bloody individual without risk of defamation or any other undesirable consequence."*

Harassing statements:

- *"Just because your feelings are hurt doesn't absolve you of your legislated obligations. I could (not that I would do this, this is not a threat I would not do this, I'm just trying to explain the concept) come around and stab any one of you, and you would still have to action my claim as per the legislation. Being offended, or getting stabbed or anything like this is not a reason to fail to perform your duties."*

- *"What you are doing here is attempting to play silly games with me. Do you really want to start playing games with me? I would not advise it, but if you want to play games with me, I can do something like make the scope 1 week, and then put in 12 FOI requests all 1 single week each, and you are forced to treat each FOI separately as each covers a different date range. There is no limit to the number of FOI requests I can put in, so if you want to start playing games with me then continue down this path that you are heading and games we shall play. You will be constantly fulfilling FOI requests from me, for the rest of your life, if you want to start playing games with me"*

- *"your reasons are self-serving unsubstantiated assertions"*
- *"It is plain stupid of you..."*
- *"Your sheer disregard to these statutory provisions also warrants your sacking"*
- *"I will not be intimidated by a dud public servant..."*

- *"...you are another failed lawyer who could not practice the profession but took sanctuary at the Australian public service as an easy way out"*
- *"...a classic case of dud leading duds or the blind leading the blind"*

- *"Please pass on my very best regards to your Head Clinical Panel Gimp..."*
- *"I ask that the OAIC review this performance for what it is, and it is the work of a malicious twit employed by Agency FOI".*

Insults (profanity) Extreme profanity - un-necessary to quote

- *"If you don't like the way I am communicating with you, then go and bitch to the AFP"*

- *"I will not accept any further Bullshit from you bunch of dickheads",*

- *"...give me the fucking documents sought without any of the FOI Bullshit";*

- *"Thanks Shitforbrains"*

- *And yes I say some rude things to you and I have zero concerns about it, you deserve it 100% you are a c*** and I stand by what I am saying to you.* (profanity)

- *Fk my dog, you are so thick, I cannot believe it, I would get a better response sending emails addressed to a brick wall. What a dunce.* (profanity)

Document 13

Australian Government
Australian Public Service Commission

Freedom of Information Amendment Bill 2025

17 October 2025

THE SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

PUBLIC HEARING

Friday, 17 October 2025

2S1, Parliament House, Canberra

Inquiry into the Freedom of Information Amendment Bill 2025 [Provisions]

Time	Witness
11.00 am	***Panel:*** **Transparency International Australia** (*Submission 25*) **The Australia Institute** (*Submission 49*)
11.30 am	***Panel*** **Department of Home Affairs** (*Submission pending*) **Services Australia** (*Submission 33*)
12.15 pm	***Panel:*** **Australian Council of Social Services** (*Submission 11*) **Australian Conservation Foundation** (*Submission 29*) **Ms Emily Mitchell, private capacity** (*Submission 31*)
1.00 pm	***Lunch***
1.30 pm	***Panel:*** **Australian Public Service Commission** (*Submission 23*) **Community and Public Sector Union** (*Submission 9*)
2.15 pm	***Panel:*** **Australian Press Council** (*Submission 12*) **Media, Entertainment and Arts Alliance** (*Submission 34*) **Alliance for Journalists' Freedom and Dr Danielle Moon** (*Submission 47*)
3.00 pm	**Office of the Australian Information Commissioner** (*Submission 50*)
3.45 pm	**Attorney-General's Department** (*Submission 46*)
4.30 pm	**Centre for Public Integrity** (*Submission 2*)
5.00 pm	***Adjournment***

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Senate Standing Committee on Legal and Constitutional Affairs

Chair
Senator Jana Stewart

Member
Senator Dorinda Cox

Member
Senator Helen Polley

Deputy Chair
Senator Claire Chandler

Member
Senator Andrew McLachlan

Member
Senator David Shoebridge

Participating Senators

1. Penny Allman-Payne
2. Michelle Ananda-Rajah
3. Alex Antic
4. Wendy Askew
5. Ralph Babet
6. Leah Blyth
7. Andrew Bragg
8. Slade Brockman
9. Carol Brown
10. Ross Cadell
11. Matthew Canavan
12. Michaelia Cash
13. Raff Ciccone
14. Richard Colbeck
15. Jessica Collins
16. Lisa Darmanin
17. Josh Dolega
18. Richard Dowling
19. Jonathon Duniam
20. Mehreen Faruqi
21. Varun Ghosh
22. Karen Grogan
23. Pauline Hanson
24. Sarah Hanson-Young
25. Sarah Henderson
26. Steph Hodgins-May
27. Jane Hume
28. Maria Kovacic
29. Jacqui Lambie
30. Kerrynne Liddle
31. Susan McDonald
32. James McGrath
33. Bridget McKenzie
34. Nick McKim
35. Corinne Mulholland
36. Jacinta Nampijinpa Price
37. Deborah O'Neill
38. Matt O'Sullivan
39. James Paterson
40. Fatima Payman
41. Barbara Pocock
42. David Pocock
43. Malcolm Roberts
44. Anne Ruston
45. Paul Scarr
46. Dave Sharma
47. Tony Sheldon
48. Dean Smith
49. Marielle Smith
50. Jordon Steele-John
51. Glenn Sterle
52. Charlotte Walker
53. Larissa Waters
54. Peter Whish-Wilson
55. Ellie Whiteaker
56. Tyron Whitten

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Ms Talbot: The contract value was $176,000, including GST.

Senator PATERSON: So the AusTender contract notices that say Ms Briggs was paid $264,000—was there other work that she did?

Ms Talbot: I'd have to take that on notice. My understanding is that the review cost $176,000.

Senator PATERSON: This is not the main point, but I'm advised AusTender records it as $264,000. If there is a discrepancy, it would be helpful if you could explain that on notice. Why has it taken more than two years for the government to respond to this report?

Dr de Brouwer: We've already said that the government is considering the report.

Senator PATERSON: Very, very carefully! Of all the weighty matters of state you have to consider in your very important job, Minister, I don't understand why this one has taken so long.

Senator Wong: I think that's a comment.

Senator PATERSON: I was seeking an explanation, but you don't have to offer one if you don't want to. What involvement has the APSC had in the preparation of the government's FOI amendment bill?

Dr de Brouwer: I will ask Ms McIntyre to come up for that. The commission made a submission to the inquiry; that's been published. That's the core element there.

Senator PATERSON: That's your only involvement in this bill?

Ms McIntyre: The Attorney-General's Department undertook consultation within government. We participated in that consultation.

Senator PATERSON: Can you describe what that was, and the timelines?

Ms McIntyre: I'd have to take on notice the specifics. There were a number of interactions—meetings and the sharing of drafts of the bill, from memory.

Senator PATERSON: That sounds like a greater level of involvement than just making a submission; is that a fair characterisation?

Ms McIntyre: For the APSC?

Senator PATERSON: Yes.

Ms McIntyre: No greater than colleagues across the Commonwealth that were being engaged by AGD.

Senator PATERSON: I'm not seeking to make a judgment about that. Dr de Brouwer's initial response, which I won't hold him to if he wants to clarify it, was that the APSC made a submission. I'm seeking to understand exactly what the APSC's involvement was. When did the APSC first learn that the government was seeking to draft this bill or bring this bill forward?

Ms McIntyre: I'll have to take that on notice.

Senator PATERSON: You don't have any notes with you?

Ms McIntyre: On the exact date, no. I wouldn't want to give you incorrect information.

Senator PATERSON: I appreciate that. Did you see a copy of the bill before it was released publicly?

Ms McIntyre: Yes, I did.

Senator PATERSON: What about you, Dr de Brouwer?

Dr de Brouwer: Yes, I did.

Senator PATERSON: In what context did you see the copy of the bill?

Dr de Brouwer: In the context of consultation.

Senator PATERSON: A few minutes ago, you said to me that you made a submission, which was your involvement in this.

Dr de Brouwer: I didn't mean that as an exclusive way of cooperating. I'm very aware of the submission. I asked Ms McIntyre to speak to the other elements. I didn't mean that as the exclusive form of—

Senator PATERSON: For the avoidance of doubt: when I asked what the commission's involvement was in the preparation of this bill, I didn't just mean some parts of your involvement; I meant the totality of your involvement.

Senator Wong: He gave an answer and then referred to the other officer, who then outlined it to you, so we're all good, aren't we?

Senator PATERSON: Yes; I'm just seeking clarity on this. Commissioner, I'm interested in your personal involvement as well as the APSC's. You were involved in the consultation as well as making this submission?

Dr de Brouwer: I was aware of the consultation but I wasn't personally involved in the making of the submission.

Senator PATERSON: But you just said to me before you received a copy of the bill as part of the consultation.

Dr de Brouwer: Yes. That was so I was aware, including for making a submission.

Senator PATERSON: Sorry, I'm confused. You said you weren't part of the consultation but you'd received a copy of the bill as part of the consultation. Why did you receive a copy of the bill if you weren't part of the consultation?

Dr de Brouwer: I was included in the email exchange, and the bill was relevant for thinking around whether the commission would make a submission to the inquiry.

Senator PATERSON: Did you have any conversations with the Attorney-General about the bill?

Dr de Brouwer: I did.

Senator PATERSON: How many?

Dr de Brouwer: One.

Senator PATERSON: What was the nature of that conversation?

Dr de Brouwer: It was a briefing around the commission's experience for public servants around vexatious complaints and the operation of the delivery of principle, particularly reflecting on the comments in the Thodey review—which I was part of—as well as the Shergold review into the implementation of NBN and home insulation, on the impact of FOI changes, on the ability of public servants to give frank advice to government and to maintain records, and the integrity of public policy.

Senator PATERSON: Was that before or after your submission?

Dr de Brouwer: It was before the submission.

Senator PATERSON: Again, I'm confused. You weren't involved in the consultation, other than receiving an email with the bill, but you did have a conversation with the Attorney-General prior to receiving the bill and prior to making a submission. It sounds like you were involved in some consultation.

Dr de Brouwer: I didn't comment specifically on the elements of the bill. I spoke about the impact of the operation of FOI legislation and law on public servants with respect to vexatious applicants and about the impact on deliberation.

Senator PATERSON: Let my cast my net a bit wider so there's no ambiguity about what I'm asking. When I say 'consultation on the bill' I mean consultation on the FOI reform process generally.

Senator Wong: I think there might just be a nomenclature issue here. I don't know if Dr de Brouwer was meaning this, but we will often talk about consulting on a bill and that means getting a copy of the draft bill and responding to it. Obviously Dr de Brouwer has had a number of engagements or a number of touch points in relation to this reform that he's referenced.

Senator PATERSON: Sure, and that's why I'm trying to be fair. I'm trying to give him the opportunity here so there's no ambiguity about what I'm asking. Let's talk about the reform process more generally, not just the bill narrowly. What has been your involvement, Dr de Brouwer, in the broader FOI reform process that the government's been undertaking?

Dr de Brouwer: My own involvement has been on whether there is a need for dealing with vexatious complaints, or applicants, and the practical operation of the deliberative exemption.

Senator PATERSON: Those are the issues, but what about your engagements? We know you've had a conversation with the Attorney-General. What other conversations have you had about this?

Dr de Brouwer: I've also briefed the opposition, the Greens and the crossbench with Ms McIntyre. We did that through Minister Gallagher 's office. Again, that was on those matters that I raised. That was part of the broader consultation that the AGD was having with various members of parliament on the bill.

Senator PATERSON: I'm more interested in what happened prior to the production of the bill, but just stay with me on this one for a second. It's not an APSC bill. Is it normal for APSC to do parliamentary engagement on bills from other portfolios?

Dr de Brouwer: In this particular instance it goes to the actual operation of FOI legislation with respect to matters that go to the heart of the APSC's responsibilities. The APSC, by law, is required to focus on integrity, stewardship, workplace management and capability in the Public Service, and this was an issue around those various matters.

Senator PATERSON: Let's go again to my initial focus, which is your involvement in this reform process. Other than your conversation with the Attorney-General, what other conversations have you been party to in the formulation of this policy?

Dr de Brouwer: I mentioned those previously. I just answered that in relation to various members of parliament.

Senator PATERSON: I'm not interested in that; that happened after the bill had been produced. I'm interested in what happened prior to that, in the early stages of the development of this policy.

Dr de Brouwer: I'll take that on notice. I'm struggling to think of—I've mentioned to you that I've had a conversation with the Attorney-General and that I've talked about this with various colleagues over time. But if you want some specific elements, I would have to take that on notice.

Senator PATERSON: That would be helpful, if you could. How did the conversation with the Attorney-General come about?

Dr de Brouwer: I was asked to meet with the Attorney-General to discuss the concerns I had expressed, including through the Thodey review and through a speech I gave for the *Mandarin*, in 2024, about the unintended consequences of the operation of FOI on record keeping, integrity and transparency.

Senator PATERSON: Just for clarity, was that the current Attorney-General or the previous Attorney-General?

Dr de Brouwer: The current Attorney-General

Senator PATERSON: So that means it would have been this year and after the election.

Dr de Brouwer: Yes.

Senator PATERSON: So that was relatively recently. Thank you.

CHAIR: Senator Paterson, have you got much more on this topic? We do have another senator who wishes to ask a question.

Senator PATERSON: I am happy if you want to share the call. I can come back.

Senator Wong: What is the intention with the Department of Finance? Can we give them any indication of a 'not before' time? It seems that Senator Paterson is very keen on asking APSC questions. Finance is obviously quite a large department, and they are all waiting. If there is a 'not before' time, it would obviously be appreciated.

CHAIR: I have attempted to negotiate with the committee on what the agenda looks like. Unfortunately, there has been no resolution there, so, unfortunately, we are just rolling with senators at the table at the moment. Apologies to Finance.

Senator PATERSON: Perhaps, Chair, let me speak for myself, rather than—

CHAIR: I was speaking on behalf of the committee, of which you are a participating member but not a voting member.

Senator PATERSON: But since it's me who's asking questions—

CHAIR: We've had a number of conversations—

Senator PATERSON: My intention, speaking only for myself, is to get to Finance relatively quickly.

CHAIR: Which is what various members have been saying for some time. So I'm afraid I can't assist, other than to apologise for the delay and any inconvenience that it may cause. I know that Senator Whiteaker had a very swift question that she wanted to ask, and I believe it's just yourself, Senator Paterson, returning?

Senator PATERSON: Correct.

CHAIR: No other senators with further questions in this area? I think most people want to try and get to Finance.

Senator PATERSON: Yes, when we truncate 2½ of estimates into two days, it does make it more difficult to get through.

CHAIR: And two days in December, I believe, Senator Paterson. We'll go to Senator Whiteaker for her question.

Senator WHITEAKER: I have a question for AGC. Could you provide an update on the work of the AGC since it was set up two years ago? Just a brief summary.

Mr Nipe: I've been in my role for almost two years. AGC has been in operation for a little over two years. In that time, we've done 28 projects to the end of August and nine are completed and underway. We've displaced about $7 million in consulting spend. We started charging clients this past financial year, and so, in 2024-25, we had an ambition of $2.1 million in costs recovered, but we actually exceeded that and had $3.6 million. We've worked with 13 clients. We've worked with Health, DEWR, Home Affairs, DFAT, DAFF, Education, Services Australia, DSS and DITRDCSA. We've also worked with a couple of small agencies, such as the Mint and Geoscience Australia, as well as several agencies such as the APSC, NIAA, NZEA and Treasury. Our projects cover organisational performance, policy reform and strategy, and we also have a small body of work on 'buy better', which helps the Public Service in general approach consulting to get better public value.

Senator WHITEAKER: I think you might have mentioned this, but I think I just missed the amount. What's the total amount that you've saved in the process of doing this work?

Mr Nipe: We have a displaced spend of $7 million estimated in consulting, and we've begun cost recovery and recovered a majority of our costs in the last financial year, and that was a $3.6 million revenue.

Senator WHITEAKER: Beyond those financial savings, what are the other benefits to the APS of the work you and your team do?

Mr Nipe: There are probably three. One of them is that we're in the process of helping the Public Service think about the posture of the Public Service, because we are an in-house capability, and so there will be instances where they may previously have gone to market and instead will approach us. We also have a specialist network, which is a range of centres of excellence across the APS. There are about a dozen parties to that, and we'll occasionally refer people, where appropriate, to specialist network members—again, re-emphasising the ability for the Public Service to solve more of our own problems.

Another one is that we help build the capability the Public Service to approach market better. We've got a consultancy playbook. We'll occasionally do mastercraft sessions on how to buy better, and we'll work with various departments on specific projects if they want to get assistance for a deep dive on a particular thing they might be going to market for.

The third bit would be that a lot of the work that we do is building an APS capability somewhere else. We've helped set up policy and delivery units inside of DAFF or inside of Health and also, most recently, inside of DSS. Those projects, in addition to having an impact in the work that we actually do, then have a flow-on effect, so those teams are still up and running and reducing the reliance of those departments on consultants, as well.

Senator WHITEAKER: How many team members do you have?

Mr Nipe: We've got 33 staff at the moment, and we're in the middle of recruitment, so we'll be growing to 38 ASL this financial year.

47C

Senator WHITEAKER: Thank you.

CHAIR: Senator Paterson.

Senator PATERSON: Dr de Brouwer, I want to come back to your views about FOI impeding frank and fearless advice. As you well know, one of your predecessors, Mr Podger, has come to a very different conclusion on that. In fact, in colourful terms, he said that much nonsense has been spoken by senior public servants about the adverse impact of FOI on frank and fearless advice. Where do you and Mr Podger differ on that?

Dr de Brouwer: Probably the starting point is where there's a lot of commonality. It's a duty of public servants to give their advice—evidence based, professional, frank and honest advice—to ministers. That's their duty, and we work very strongly to support them in that. And when they don't do that there are either performance or disciplinary measures, including Code of Conduct breach processes that come into play. I would say that when it came to robodebt they certainly came into play.

Starting off in the duties of a public servant, I think there's a lot of shared ground, and most people would agree. I think where there are differences—and I'm going back to people like Peter Shergold, David Thodey, all the panel on that review, quite a few of the secretaries who were interviewed as part of that process and former ministers, in a range of governments—commissioners have observed that they saw that, despite that duty, there were unintended consequences to the changes to FOI that had happened in 2009. Built on that was also what was deliberative—the rules around deliberative—had also narrowed over time, so public servants had less certainty. They observed—again, Peter Shergold and others who were pretty serious, highly reputable former public servants—that they saw that coming down from less advice being put in writing, less frankness in writing, as a

result of people being concerned that, during processes where policy is being formed, that material would become public through an FOI. And in order to try to prevent that or not let things stop, people weren't putting things in writing that they should have been.

They also related it very directly to the observations around the home insulation royal commission and the robodebt royal commission. Of course, the home insulation royal commission and the robodebt royal commission were much more than problems around people being afraid or concerned about putting their frank advice in writing to government. They really came down to lack of character, lack of leadership, very poor decision-making—those elements—and that's well documented. But they would also say—again, very reputable former public servants—that this was a factor in people's minds. So, that is really where that conversation of whether the operation of FOI, particularly with the narrowing and the varying of a deliberative exemption, has made it harder for public servants to do their duty. That's what that call was—to facilitate and enable public servants to do their duty.

Senator PATERSON: Okay. They must have more confidence in documents being released than FOI users do, myself included. Another argument advanced in support of this bill is the issue of FOI bots that have been made—requests being made, either anonymously or otherwise. Mr Butler was asked about this on 2 September, and he said:

> We're frankly being inundated by anonymous requests as a government for freedom of information, and we don't know where those requests come from. Many of them we're sure are AI bot generated requests. They may be linked to foreign actors, foreign powers, criminal gangs.

Have you experienced that?

Dr de Brouwer: The commission's submission was largely around vexatious applicants and anonymous or pseudonymous applicants and the impact on deliberative material. We didn't go to this issue, but I will ask my colleague, who does a lot of work on FOI, to provide her observations from the commission's point of view.

Ms McIntyre: I can say that the APSC doesn't capture data on whether an FOI is AI generated. It's not marked, usually, when we receive an FOI request, as to how it's been put together.

Senator PATERSON: No. Nor would it say that it's from a foreign government or a criminal organisation, presumably.

Ms McIntyre: We can't report whether an applicant may be a foreign actor because part of the legislation does limit the questions that may be asked about an applicant's identity or the reasons for making a request.

Senator PATERSON: So how do you think Minister Butler was sure that they were bot-generated foreign criminals and governments?

Senator Wong: That's not a question for this officer.

Senator PATERSON: As we have heard, the APSC has been involved in a process of developing this bill, and this is one of the arguments in favour of the bill. If it can't be substantiated, I accept that, but when ministers of government are making these claims publicly, I think we should test them.

CHAIR: Senator Paterson, you would need to take that question to Minister Butler, not to this witness.

Senator PATERSON: Thank you, Chair, and I may well do so, but I just want to know, for my satisfaction, is the APSC aware of any evidence to support that claim?

Senator Wong: No; you can ask, as you have, the APSC about what they know, but asking them about what a minister who is not in their portfolio has said is not appropriate. What we do know about, and I think legal and cons might have reported on Home Affairs talking about this, is the growth in anonymous applicants seeking info about counterterrorism, cybersecurity, national security settings. Their submission to the committee inquiry, which I think was two years ago, said that the department had no recourse to consider the identity, location or intent of FOI applicants seeking this information. I think there are a number of categories that that could cover. It might be AI generated. It might be foreign actors. You might disagree with some of the policy prescriptions, but I think it's wrong to suggest that there is not the existence of anonymous requests and a very large increase in the number of requests.

Senator PATERSON: Sure. What proportion of requests to the APSC is anonymous?

Senator Wong: We'll take that on notice.

Senator PATERSON: It's not within the state of knowledge of officers at the table?

Senator Wong: I just took it on notice, Senator.

Senator PATERSON: Why do you need to take it on notice?

Senator Wong: Because I'm entitled to.

Senator PATERSON: So you're not even going to explain why now?

Senator Wong: I'm entitled to take it on notice.

Senator PATERSON: I don't think you would have accepted that when you were sitting on this side of the table.

Senator Wong: It's been quite a while since I've been on that side of the table, but obviously it made an impression on you—probably negative—as we keep going back to it.

Senator PATERSON: It was years of my life sitting with you here, so it did form an impression. That's all of my questions for APSC.

Senator Wong: Thank you.

CHAIR: Thank you, Senator Paterson. To the witnesses: thank you so much for sharing time with us this afternoon. Sorry that our times have blown out. I hope it hasn't inconvenienced you too much, but we appreciate your time and your contributions.

Australian Government
Australian Public Service Commission

Talking Points 47C [redacted]

Freedom of Information Amendment Bill 2025

1. *Deliberative Processes*

Key messages

- Transparency and trust in government and the public service are crucial.
- But it is also crucial that the public service can bring forward the risks and benefits of a range of options at the formative stage of policy discussions, document the exploration of those options, and put honest and forthright advice in writing.
- When it comes to deliberative material, currently the FOI Act does not ensure transparency (because advice is not being written) and it undermines integrity and accountability (because advice is not being written).
- Over the last decade or more we have seen the consequences of governments not being given candid advice in plain language and in writing. Not only in Robodebt, but also in the Home Insulation program and the NBN, as recorded by Professor Shergold.
- These changes have been a long time coming. In 2015 Shergold concluded:
    - *The Commonwealth's FOI laws now present a significant barrier to frank written advice.*
    - *The public interest is certainly not served by having no public record how and why decisions were made. Nor is there much benefit gaining access to written advice that has purposefully been prepared to appear innocuous when released under FOI.*
    - *Advice that is honest and forthright is important. It ensures ministers make decisions with full knowledge of facts and with their eyes open to the risks.*
- The proposed amendments will ensure that genuine deliberative processes can occur as intended – by including as a public interest factor against disclosure, the facilitation of frank and free exchanges of opinion in developing robust policy advice.
- These amendments are a balanced approach to the issue, they are not as strong as the conclusive certificates that were in place until 2009, but they allow consideration of the public interest in non disclosure, for example, whether giving access to the

deliberative material would prejudice the orderly and effective conduct of government decision making.

- The amendments will strengthen stewardship and integrity, because genuine advice exploring options in an evidence based manner and setting out the risks of those options, will be written and recorded – to empower more informed decision making, and improve the quality of decision-making by government.

Proposed amendments to deliberative processes exemption (Part 3 of Schedule 7)

- The amendments to the deliberative processes exemption, involve the inclusion of a non-exhaustive list of public interest factors against the disclosure of deliberative matter. This amendment clarifies a number of public interest considerations which would weigh against the disclosure of conditionally exempt material under section 47C.

- Item 14 After subsection 11B(3), appears in the Bill as follows:

  Insert:

  Factors against giving access

  (3A) If the document is conditionally exempt under section 47C (deliberative processes), factors that are against giving access to the document in the public interest include whether giving access to the document would, or could reasonably be expected to, have any of the following effects (whether in a particular case or generally):

  (a) prejudice the frank or timely discussion of matters or exchange of opinions between participants in deliberative processes of government for the purposes of consultation or deliberation in the course of, or for the purposes of, those processes;

  (b) prejudice the frank or timely provision of advice to or by an agency or Minister, or the consideration of that advice after it is provided;

  (c) prejudice the orderly and effective conduct of a government decision-making process.

Explanatory Memorandum

- Page 76, paragraph 402: *"The deliberative processes exemption recognises that governments need to be able to run internal operations effectively and have time to consider advice and options provided by the public service in the course of considering options or making a decision."*

- Page 75, paragraph 400: *"This item is intended to provide greater legislative clarity around relevant public interest considerations that weigh against disclosure of deliberative matter for the purposes of section 47C, so that decision makers are able*

to take into account all relevant factors, and attribute to those factors appropriate weight in the circumstances."

- Page 76, paragraph 403: *"The proposed amendments seek to ensure an appropriate balance in weighing the public interest in favour of access, such as Australians being informed of the processes of their government and its agencies on one hand, against the public interest against access, such as prejudice to the effective working of government and its agencies on the other."*
- Page 77, paragraph 409: *"New paragraphs 11B(3A)(a) and (b) refer to 'frank' discussion of matters, exchange of opinions and provision of advice. Adopting its ordinary meaning, the term 'frank' in this context refers to open, unreserved and candid expression. Whilst public servants are subject to obligations under the Public Service Act 1999 including upholding APS values of providing Government with advice that is frank, honest, timely and based on the best available evidence (subsection 10(5)), these amendments recognise that this does not necessarily mean that everything produce by the Public Service is to be released. For example, disclosure of information generated in the early formative stages of a policy development process, particularly information and exploratory ('blue skies;') thinking or discussions, may inhibit the free and frank exchange of opinions that is necessary for the development of robust policy advice."*
- Page 77, paragraph 410: "*New paragraph 11B(3A)(c) includes the factors of prejudice to the orderly and effective conduct of a government decision-making process. This factor is intended to require consideration of whether giving access to the deliberative material would prejudice the orderly and effective conduct of a government decision-making process. It is intended that this would include consideration of the relevant decision-making process, the stage the process is at and the impact of release of the deliberative material at the stage of decision-making. Examples of prejudice may be that disclosure would interfere with or distract decision-makers from the process in some way, or undermine the decision itself."*

History of the treatment of deliberative documents

- The 1982 Freedom of Information Act allowed for the issue of conclusive certificates across a range of exemptions, including deliberative process documents.
- Where the Minister or a principal officer of an agency was satisfied that a significant document should not be disclosed, he or she could sign certificate to establish conclusively that a document is exempt from release.
- The *Freedom of Information (Removal of conclusive Certificates and Other Measures) Act 2009*, repealed the power to issue conclusive certificates.

Previous Statements in 2024 Speech at the Mandarin's Rebuilding Trust and Integrity in the APS

- Transparency of government is essential.
- We need to discuss whether the way FOI law has been operating for the past decade and a half, when conclusive certificates were discontinued, is counterproductive to the Parliament's intent.
- When it comes to deliberative material, FOI does not ensure transparency (because advice is not being written) and it undermines integrity (because advice is not being written).

Independent Review of the Australian Public Service (2019) *Our Public Service Our Future* (Thodey Review)

- The review recognised that it is critical that deliberative material remain confidential, and be exempt from release under FOI legislation.
- Thodey asserted:

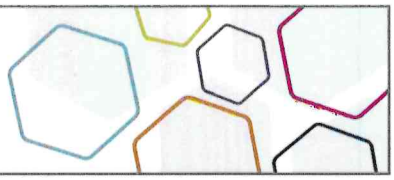
  "Genuine partnerships require openness. Administrative barriers to openness need to be assessed…To support the APS's central role in advising the Government freely and robustly, materials prepared to inform deliberative processes of governments should be exempted from release under FOI law."
- An exemption is essential to effective public administration in strengthening the APS's partnership with the Government.
- Recommendation 8 of the Review concluded, amongst other things, to exempt material prepared to inform deliberative processes of government from release under FOI.

Learning from Failure Report (2015) (Shergold Report)

- The Commonwealth's FOI laws now present a significant barrier to frank written advice.
- The public interest is certainly not served by having no public record how and why decisions were made. Nor is there much benefit gaining access to written advice that has purposefully been prepared to appear innocuous when released under FOI.
- Advice that is honest and forthright is important. It ensures ministers make decisions with full knowledge of facts and with their eyes open to the risks.

Statements by Peter Coledrake at Building a Better Public Service (2025)

- The purpose of transparency is to promote better politics and policy, and it needs to be considered in that context.
- Transparency needs to be balances against the need for frank and freewheeling conversations.
- "Do I think every preliminary paper that goes to the cabinet or minister should be public? No. Because you won't get frank and fearless advice."
- "But it is really in the public interest for there to be documentation of the decision."



2. *Cabinet exemption (Part 2 of Schedule 7)*

Briefly, the Cabinet exemption is being strengthened. The main changes are a change from the "dominant purpose" of the document being for submission to Cabinet to a "substantial purpose"

The new paragraph 34(1)(a) applies to documents prepared by a Minister, on a Minister's behalf or by an agency, where a **substantial** purpose for its preparation was submission for consideration by Cabinet.

It is also intended to capture documents that are commenced before it is determined that the document will go to Cabinet.

The EM states:

> *The drafting is intended to reflect, for example, that in some cases a ministerial office or a Minister's department may commence drafting a Cabinet document (such as a draft Cabinet submission or a New Policy Proposal) before it is confirmed that the document will be submitted to Cabinet for consideration, or even before the item has been formally proposed for Cabinet consideration. The amendments are intended to clearly capture these and similar documents, allowing agencies and Ministers to rely on section 34 to refuse access to documents that would disclose the detail of actual or proposed Cabinet considerations*

3. *Vexatious applicants*

Key messages

- Currently the FOI Act allows applicants to make anonymous or pseudonymous FOI applications
- This enables applicants to hide their identity and make abusive or excessive applications [examples are available – provided in separate documen]
- The FOI Act does not allow agencies to refuse to process abusive applications on work health and safety grounds, even when there is abuse, belittling, stalking, foul language or repetitive applications.
- The only means to prevent an applicant harassing or intimidating staff is through the agency obtaining a vexatious applicant declaration from the OAIC.
- The vexatious applicant provisions require the agency to make an application to the OAIC in relation to "a person" which an agency cannot do when they are unable to prove that repeated anonymous applications have come from the same person
- Even where the applicant's identity is known, the threshold for making a vexatious applicant declaration has been set very high by the OAIC.
- The inability to refuse any such application waste's agency time and the public's taxes, and causes stress and burnout and turnover of staff.

The proposed amendments (parts 2, 4 and 5 of Schedule 2)

- Require applicants to provide their full name, which removes the anonymity that can embolden inappropriate behaviours.
- Allows employee identifying information to be redacted in many circumstances (eg FOI staff)
- Provide agencies themselves with the ability to decline to handle a repeat or vexatious request or requests that are vexatious, frivolous, an abuse of process, or is or likely to have the effect of harassing or intimidating or otherwise causing harm (or a reasonable fear of harm) to another person and in this way protect their staff from being compelled to deal with the application.
- If an agency declined a vexatious request, the applicant may still make a new application or to amend their application so that it is not vexatious.

Attachment A

Section 47C, Freedom of Information Act 1982

47C Public interest conditional exemptions—deliberative processes

General rule

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

(a) an agency; or

(b) a Minister; or

(c) the Government of the Commonwealth.

Exceptions

(2) Deliberative matter does not include either of the following:

(a) operational information (see section 8A);

(b) purely factual material.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

(a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;

(b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;

(c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

Attachment B

Extract from OAIC – FOI agency resources – the deliberative processes exemption

3-Stage Decision Making Process

Applying the deliberative processes exemption

This conditional exemption is characterised by a 3-stage decision making process.

On receiving and reviewing the documents identified in response to an FOI request, the decision maker must demonstrate that they have satisfied the requirements of each stage if they make a decision to claim the deliberative processes exemption.

Stage 1: General application: Identification of deliberative matter

> *The decision maker must be satisfied that information within the scope of the request involves deliberative matter.*

This initial stage requires the decision maker to be satisfied that the information is deliberative matter by examining the content and nature of the information and by ensuring that the information does not fall within the exceptions set out in ss 47C(2) and (3)).

Stage 2: Identification of the relevant deliberative process

> *The decision maker must be satisfied, that the deliberative matter was obtained, prepared for, and recorded in the course of or for the purposes of the deliberative processes.*

This stage requires examination of the manner in which the information was obtained and the purpose for which it was prepared, and how it has been documented or recorded.

Stage 3: Consideration of relationship of deliberative process with agency, minister or government functions

> *The decision maker must be satisfied that the deliberative function was exercised by or intended to be exercised by an agency, a minister, or the government of the Commonwealth.*

This stage requires examination of the exercise or intended exercise of a deliberative function and the agency, minister or government of the Commonwealth exercising that deliberative processes.

SUPPLEMENTARY BUDGET ESTIMATES – Oct 2025

Freedom of Information

KEY MESSAGES

- The Commission is subject to the *Freedom of Information Act 1982* (**FOI Act**)
- The Commission processes FOI requests in accordance with the FOI Act.
- The data provided below is for the period 1 July 2024 to 30 June 2025.
- This aligns with the dates of the statistics submitted to the Office of the Australian Information Commissioner (**OAIC**) on a quarterly basis.

[PCU use only: Version XX]

FOI requests on Briggs report/departmental secretaries:

LEX #	Applicant	Topic	Date of request	Date of decision
1277	47F	Briggs report	5 November 2024	4 December 2024
1534, 1553		Briggs report	9 July 2025	8 August 2025
1535		Documents related to appointment of Secretary of DCCEEW	9 July 2025	22 September 2025
1543, 1544, 1547		Briggs report	21 July 2025	20 August 2025
1627*		Documents referring to Cabinet exemption in decision LEX 1581 (internal review of LEX 1543 re Briggs report)	19 September 2025	
1652*		Briggs report	30 September 2025	

*Matters yet to be finalised as at 2 October 2025

How is the Commission managing FOI requests relating to [*other 'hot topics'?*]

LEX #	Applicant	Topic	Date of request	Date of decision
1531	47F	Chairman's Lounge memberships	5 July 2025	4 August 2025
1552		Agendas and minutes of Integrity Agencies Group	27 July 2025	8 September 2025
1564*		QTBs provided to the Minister from 23-31 July 2025	4 August 2025	

* Matters yet to be finalised as at 2 October 2025

What is the Commission's response to the proposed FOI reforms?

The *Freedom of Information Amendment Bill 2025* was introduced to Parliament on
3 September 2025.

The Commission made a submission on 1 October 2025 to the Senate Legal and Constitutional Affairs Committee inquiry into the *Freedom of Information Amendment Bill 2025*, available: Submissions – Parliament of Australia

All questions on the Bill should be directed to the Attorney-General's Department, however the Commission notes the following in particular:

1. Vexatious applicants and applications
    - Currently, the FOI Act allows applicants to make anonymous or pseudonymous FOI requests. This enables applicants to hide their identity; make threats of violence; embolden them to exhibit harassing and intimidating behaviour towards staff; and avoid the application of the vexatious applicant provisions.
    - The Commission understands that anti-social behaviour on the part of FOI applicants creates a foreseeable risk to the psychological safety of agency staff, and enlivens a duty under work health and safety laws to protect the psychological safety of staff and eliminate risks so far as reasonably practicable.
2. Deliberative processes of government
    - Transparency is a central feature of open government in Australia and a core element of accountability to the Parliament and the Australian public.
    - There have been significant observations that the operation of the FOI framework since the reforms of *Freedom of Information Amendment (Reform) Act 2010* has had unintended negative consequences on actual transparency, integrity and record keeping.
    - There is a need to ensure that genuine deliberative processes, including frank expressions of analysis, assessment and recommendations, can occur and will be documented as intended,

promoting stewardship and integrity. If advice is not being fully written down, the objective of transparency is itself subverted.

- Encouraging integrity in advice and stewardship and record-keeping enables more informed decision making, and improves the quality of decision-making by government, and is ultimately in the public interest.

3. Protected information
    - The Commission notes that 'protected information' (as defined in section 72A and 72B of the PS Act), which is information obtained through the exercise of the respective Commissioners' review and inquiry functions, is subject to the FOI Act.
    - It is a criminal offence for a member of the Commission to disclose 'protected information' except in the limited circumstances set out in section 72A or 72B respectively. However, subject to the availability of other exemptions from disclosure in the FOI Act, this sensitive information is required to be disclosed under the FOI Act.

CLEARANCE SUMMARY

Melanie McIntyre General Counsel	General Counsel and Integrity Operations Branch	Clearance date 3 October	47F [redacted]
Consultation	Nil	Is content sensitive?[1]	No

[1] This field is included to assist initial triage for use of the information after Estimates e.g. internal communication, FOI request.

[PCU use only: Version XX]

Attachment A – examples

Behaviours:

- Sending repeated emails to Agency staff of an inappropriate and harassing nature, including communication which has contained sexually explicit allegations;
- Posting personal information, including photographs, of Agency staff and their children on a publicly available blog, in posts that appear to be designed to distress and 'dox' them;
- Seeking out family members of Agency staff on social media; and
- Threatening to, and actually attending, Agency events, and Agency offices;
- Partner of a staff member found threatening notes in their private residence letterbox. These notes identified that the writer was aware that there were children in the staff member's family
- A staff member received call from an FOI applicant who claimed that the staff member, and the processing of the FOI request, has caused the applicant to become suicidal. The applicant proceeded to ask the officer whether they 'wanted him to kill himself' repeatedly.
- Online stalking staff members and raising aspects of their private lives in future requests

Use of names

- After making an FOI request, and receiving the Agency's standard acknowledgement (containing the first name of the FOI Coordinator, and the team standard signature block, including a contact number) an FOI applicant used the signature block to send doctored emails to a large number of recipients including various Commonwealth and State agencies, and media outlets making it appear as though the Agency (and specifically the named FOI Coordinator) was endorsing the individuals' complaint, and instructing other entities to take action in response. The named staff member received a number of calls from recipients of the doctored email, asking questions about the 'tasking' causing unnecessary stress and anxiety

- FOI team employees have received correspondence from the Applicant direct to their individual email account or addressed to them using their last names where they have never been provided in a manner designed to intimidate the FOI officer
- Searching for details of an Agency staff members' previous employment on the internet and through Australian Public Service gazette and then submitting an FOI request for documents relating to their job application
- Applicant has proceeded to submit further access requests and make privacy complaints that specifically name and target Agency employees who have been involved with matters. Specifically named and targeted Agency employees in approximately 70 access actions
- Stalking staff on social media platforms and undertaking extensive internet searching to find information decades old on the internet about staff members;
- Using metadata in documents to send emails direct to staff where they have not provided their last name
- Release of Agency staff member's name into the public, the staff member became the target of hate emails. This resulted in the staff member's personal information being published on websites, including a partially pixelated photo of the staff member, address and Google maps images of their home. As a result, security assessments of the home were undertaken, the staff member, partner and children were briefed by the Australian Federal Police and a security system with a back-to-base alarm was installed in their home. Further investigations were conducted in relation to the pixelated photo published on the website, revealing it was a photo of the staff member and children on a family holiday

Making anonymous/ pseudonymous requests

- Have lodged FOI requests using names of FOI officers or their family members (including deceased family members)

Threats

- *"I now have the name of one of your hateful practitioners and with this, Agency can no longer protect these individuals from accountability"*
- *"You on the other hand have a lot to lose, therefore I recommend that you start preparing";*
- *"The reality is, I can personally name every bloody individual without risk of defamation or any other undesirable consequence."*

Harassing statements:

- *"Just because your feelings are hurt doesn't absolve you of your legislated obligations. I could (not that I would do this, this is not a threat I would not do this, I'm just trying to explain the concept) come around and stab any one of you, and you would still have to action my claim as per the legislation. Being offended, or getting stabbed or anything like this is not a reason to fail to perform your duties."*

- *"What you are doing here is attempting to play silly games with me. Do you really want to start playing games with me? I would not advise it, but if you want to play games with me, I can do something like make the scope 1 week, and then put in 12 FOI requests all 1 single week each, and you are forced to treat each FOI separately as each covers a different date range. There is no limit to the number of FOI requests I can put in, so if you want to start playing games with me then continue down this path that you are heading and games we shall play. You will be constantly fulfilling FOI requests from me, for the rest of your life, if you want to start playing games with me"*

- *"your reasons are self-serving unsubstantiated assertions"*
- *"It is plain stupid of you..."*
- *"Your sheer disregard to these statutory provisions also warrants your sacking"*
- *"I will not be intimidated by a dud public servant..."*

- *"...you are another failed lawyer who could not practice the profession but took sanctuary at the Australian public service as an easy way out"*
- *"...a classic case of dud leading duds or the blind leading the blind"*

- *"Please pass on my very best regards to your Head Clinical Panel Gimp..."*
- *"I ask that the OAIC review this performance for what it is, and it is the work of a malicious twit employed by Agency FOI".*

Insults (profanity)

- *"If you don't like the way I am communicating with you, then go and bitch to the AFP"*

- *"I will not accept any further Bullshit from you bunch of dickheads",*

- *"...give me the fucking documents sought without any of the FOI Bullshit";*

- *"Thanks Shitforbrains"*

- *And yes I say some rude things to you and I have zero concerns about it, you deserve it 100% you are a c*** and I stand by what I am saying to you.*

- *Fk my dog, you are so thick, I cannot believe it, I would get a better response sending emails addressed to a brick wall. What a dunce.*

Psychosocial Hazards for FOI Officers
Talking points

Context

- Since 2018, Australia's Work Health and Safety (WHS) legislation includes the management of psychosocial hazards at work.
- A **psychosocial hazard** is a hazard that arises from the design or management of work duties, work environment, or workplace interactions or behaviours that may cause psychological harm (Work Health Safety Act 2011).
- The Commonwealth Work Health and Safety (Managing psychosocial hazards at work) Code of Practice 2024 requires APS agencies to proactively demonstrate processes to identify and implement changes to eliminate or minimise psychosocial risks so far as is reasonable practicable.

What are the impacts on Frontline Staff who work in the FOI area:

- Psychological Distress: Elevated rates of anxiety, depression, and PTSD-like symptoms.
- Workforce Attrition: Experienced staff exiting from high-risk roles, reducing organisational capability and continuity.
- Service Degradation: Fear and burnout diminish service quality and increase error rates.
- Organisational Liability: Failure to manage psychosocial hazards exposes agencies to legal, ethical, and reputational risks under WHS legislation as well as increase claims and premiums. (Psychological injury accounts for 30% of cost of Comcare Claims and delay recovery and return to work).

What Organisations Can Do to Reduce It

Leadership and Culture

- Make psychological safety a leadership competency and accountability measure – e.g. SES Skills Lab.
- Psychological safety or speak up culture helps enable people to raise issues regarding staff safety and wellbeing.
- Model and publicly promote 'zero tolerance' for abuse and threats and encourage shared responsibility for staff wellbeing.
- Reframe violence as a systemic risk rather than an individual failing.

Support and Recovery

- Establish structured post-incident support pathways — debriefing, counselling, return-to-work planning.
- Normalise mental health support and embed it in routine supervision.
- Integrate staff awareness, and mental health capability to recognise early and seek support.
- Consider staff training in de-escalation strategies,
- Build manager capability to support staff, dealing with emotionally impactful events or objectionable material.
- Consider job design and consulting with staff ways to prevent this exposure to harm from escalating or occurring. E.g., screening of calls to prevent exposure to verbal abuse, rotate staff working with highly vexatious/litigious service users.
- Consider peer support, in addition to EAP, HR/Managerial Support.

Policy and Governance

- Integrate psychosocial risk management into WHS and HR frameworks.
- Ensure staff are clearly aware of the reporting processes and organisational policies
- Consider, applying the ADDRESS model to audit, design, and sustain safer systems.
- Build inter-agency learning networks to share practice, particularly across high-risk frontline services.

Psychosocial Hazards Identified:

The following are examples of psychosocial hazards:

- Exposure to Aggression and Threats: Regular verbal abuse, intimidation, are common and are often being normalised as "part of the job"
- Lack of Organisational Support: Poor incident reporting systems, minimal follow-up, and leadership indifference compound trauma for staff
- Vicarious and Cumulative Stress: Repeated exposure leads to secondary trauma and desensitisation. Leading on to more serious mental health conditions.
- Stigmatisation of Help-Seeking: Fear of being seen as "not coping in the job" discourages early psychological intervention

Freedom of Information Amendment Bill 2025	
Minister Name & Portfolio	The Hon Michelle Rowland MP Attorney-General
Content	This Bill would amend the *Freedom of Information Act 1982* (FOI Act) to improve the operation of the Freedom of Information (FOI) framework by (among other things) reducing system inefficiencies, providing clarity in the law, and addressing abuse of processes that inappropriately divert taxpayer resources and adversely impact on people's right to access information. The Bill will update the framework to reflect the modern context, promote more efficient use of Government resources directed to FOI processing and achieve a well-functioning system of information access balanced with an efficient and effective government.

Background and Further Details	**Background and statistics**
	• The *Freedom of Information Act 1982* has not been the subject of significant reform since 2010. Several reviews and inquiries have made recommendations in respect of reform of the system since this time.
	• Previous reviews and inquiries include: *The Review of the FOI Act and the Australian Information Commissioner Act 2010 (2013 Hawke); Learning from Failure* (2015 Shergold); *The Independent Review of the Australian Public Service* (2019 Thodey), and *The Senate Legal and Constitutional Affairs References Committee inquiry into the operation of Commonwealth Freedom of Information* (FOI) laws.
	• The Bill responds to key recommendations from these reviews and inquiries, in addition to including other reform measures.
	• The FOI processing costs to agencies has been steadily increasing overtime. In 2023-24, freedom of information processing was estimated to cost agencies $86.24 million – a 23% increase on the year prior, and significantly more than $36.32 million in 2010-11.
	• The government received over 34,000 requests FOI requests in 2023-24, and spent over 1 million hours dealing with FOI requests in 2023-24.
	• This is in part due to technology enabling large volumes of vague, anonymous, vexatious, abusive and frivolous requests – tying up resources, costing taxpayers money and delaying genuine requests. This includes:
	  ○ An organisation using an 'FOI request generator' on their website to create 1000 vexatious requests in a matter of weeks.
	  ○ An influx of 580 FOI requests from a single entity that diverted all resources in a public service team by 3.5 months.
	  ○ Individuals using abusive, aggressive and threatening language in their requests, including threats of a physical and sexual nature.
	
	Consultation
	• The Bill has been informed by past reviews and consultation with key Commonwealth agencies and the Office of the Australian Information Commissioner (OAIC).

	Measure-specific information • The proposed amendments would: • better empower public sector agencies to manage and deter vexatious and frivolous applications that abuse the FOI process • address gaps in the current law and strengthen transparency over how the documents of former Ministers are handled in the FOI context • clarify the operation of the Cabinet exemption, to ensure it operates to appropriately protect information central to the Cabinet process, while also ensuring that it cannot be applied when it shouldn't be – for example, just because a document has been labelled a Cabinet document • clarify and provide greater guidance around the public interest test as it relates to the deliberative processes exemption to clarify when it would be contrary to the public interest for deliberative material to be disclosed. o These factors will include prejudicing the frank or timely exchange of opinions between participants in deliberative processes of government, or the provision of advice to or by an agency or Minister, or prejudicing the orderly and effective conduct of a government decision-making process. • modernise the way agencies and the Office of the Australian Information Commissioner can receive applications for FOI requests, reviews and complaints. • ensure agencies and ministers are given sufficient time to make quality decisions the first time around and engage constructively with applicants to extend timeframes for complex requests. • provide transparency about who is making FOI requests by ensuring they cannot be made anonymously or under a pseudonym, and that a person must declare when making an FOI request on behalf of a third party • align timeframes for agency decisions with working days and consultation processes to ensure high quality first-instance decision-making • introduce a 40 hour processing time limit for FOI requests • address duplicative and inefficient processes • address ambiguities in the Act relating to FOI processing requirements. • introduce the ability to impose application fees for non-personal information requests (with waivers for financial hardship) to facilitate a system that better serves people who are genuinely seeking access to information. • provide greater clarity for decision-makers applying the deliberative processes exemption by providing greater statutory guidance in respect of the harms the exemption is designed to protect. • modernise the Act to clarify that information on agency or ministerial systems that concern personal and non-work-related matters of staff are not captured in the definition of a document of an agency.
Contact	Parliamentary Adviser – 47F [redacted] Policy Adviser – 47F [redacted]

MichaelWest Media
Independent Journalists

Fat Cats say what? Too much transparency caused Robodebt scandal

by Rex Patrick | Oct 5, 2025 |

In an extraordinary pitch for a public servant scrutiny void, senior public servants have blamed Robodebt on transparency. Former Senator **Rex Patrick** reports on a leadership failure.

In its submission to the Senate's inquiry into the Albanese Government's new FOI Bill, the Australian Public Service Commission (APSC) argued that too much transparency was the cause of scandals such as Robodebt and the Home Insulation debacle.

In a sea of submissions arguing against the Bill, the Commission was a lone ship steering towards Secrecy Island, seeking refuge from choppy transparency seas.

While Royal Commissioner Catherine Holmes' concluded that, "It is likely the Scheme would not have run in the same way, for the length of time that it did, or at all, if there had been proper stakeholder consultation and transparency in its design and implementation."

The APSC has come up with a different conclusion. Robodebt wasn't caused by failed leadership, it wasn't caused by officials quietly advancing their careers while turning a blind eye to bad stuff happening on their watch. Nor were malfeasance or misfeasance involved. Rather transparency is to blame!

> The Shergold and Thodey reports appeal for the FOI framework to support, rather than impede, public servants performing their duties. Under the Public Service Act, public servants have a duty to provide frank and honest, evidence based professional advice to their Ministers. The Commission and the APS take this duty seriously and it is an essential part of the training and performance management of public servants. The comments quoted above by major leaders in public administration in Australia highlight that the current exemptions for deliberative material have made it harder for public servants to do their duty, and the consequences of avoiding written advice about serious risks are evident in the Robodebt and Home Insulation Royal Commission reports.

APSC Senate Submission Extract (Source: Senate)

Pitching for oversight sanctuary

The APSC acknowledges that "Under the Public Service Act, public servants have a duty to provide frank and honest, evidence based professional advice to their Ministers". It then seeks to weasel out of that responsibility saying that transparency around advice has made it "harder for public servants to do their duty". The APSC argues for changes to the system to make life easier for our public servants as as they work behind the scenes to advise and influence ministers on how we are governed.

It's worth remembering that the 'hard done by' bureaucrats that actually shape, approve and submit advice to ministers are very senior and earn between $200k and $1m per annum.

Perhaps the Commissioner ought to read a recent Administrative Review Tribunal judgement by Senior Member Dr Nicholas Manetta, who said of disclosure of official's advice in response to an FOI:

"Those tasked with the management of the public service and liaising with the Minister's office can be expected, in my opinion, to ensure that the Minister remains properly informed, and informed in writing where it is appropriate to do so. This is a fundamental aspect of public administration. I do not accept the submission that acceding to the FOI request in this case could reasonably be expected to result in a dereliction in the performance of this core task …"

Dr Manetta did not propose opaqueness as a remedy to officials censoring their advice in the response to the FOI regime. In the face of public servants backing off on their advice he advised:

"… there appears to be a relatively straightforward way to address it; namely, by reinforcement of APS values within [an] agency (whether by formal direction or otherwise)."

Clearly, no such leadership is to be found at the APSC.

Fait acompli disclosure

Despite one of the objectives of the FOI Act being to allow citizens to participate in democracy, the APSC only wants transparency after decisions have been made.

> The weight given to different factors in assessing the public interest in relation to deliberative material has changed and narrowed over time. This makes it hard for a public servant to be confident that the material and recommendations they are working on will be exempt from release while the policy development process is still live. FOI requests are now routinely made about work that is underway or current. This inhibits public servants sharing material in writing with colleagues in other relevant agencies or their own agency, or with Ministers and their offices. Policy decisions by Governments are often complex, in that they involve trade-offs and the design of packages to support affected parties. Releasing material that is under active consideration by government under FOI can impede proper government consideration of policy and can lead to options being prematurely ruled out.

APSC Senate Submission Extract (Source: Senate)

Never mind that it is the public that pays public servants for the advice being generated and it is the public that are affected by the advice given. In the eyes of the APSC, it is the public who are the problem.

Perhaps the APSC will be invited to appear before the Senate committee to give evidence. Maybe, if they're honest with the senators about where they want things to end up, they'll make a pitch that the nomenclature of 'senior public servant' be changed to 'senior self servant'.

Democracy behind closed doors
By Sussan Ley

The Canberra Times
Monday 13th October 2025
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Page 18 | Section: OPINION
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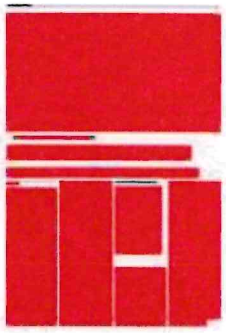


Democracy behind closed doors

From a rise in Freedom of Information refusals to a habit of withholding documents, the Albanese government is continuing to resist scrutiny and is on the way to becoming one of the most secretive since Federation.

Sussan Ley

WHEN the Prime Minister took office, he promised Australians a new era of integrity, transparency, and accountability.

He pledged to "shine a light on politics" and restore trust in government, but instead has only delivered shadows.

This government has become one of the most secretive since Federation.

From a sharp rise in Freedom of Information refusals to an entrenched habit of withholding documents under tenuous Cabinet exemptions, the pattern is clear.

This is a government that resists scrutiny and treats transparency as an inconvenience rather than an obligation in an open democracy.

The Albanese government's proposed changes to the FOI Act, described in *The Canberra Times* as "a battle for free information", mark a troubling new chapter in that story.

Under these friendless reforms, Australians would be charged to access information about their own government, while anonymous applications would be banned, a move that would deter whistleblowers and those fearing reprisal.

Cabinet exemptions would be widened, and the government could dismiss requests it deems "frivolous or vexatious".

Processing times would be lengthened, and new limits on how long agencies can spend on a request would mean more refusals and fewer disclosures.

Even the definition of what counts as an "official document" would be narrowed, further restricting public access.

This is not an administrative refinement or merely updating old laws, as the Prime Minister claims. It is a retreat from transparency. A truth tax on accountability.

Freedom of Information laws were never intended to make life comfortable for those in power.

They were designed to serve the public interest by enabling citizens, journalists, and Parliament itself to see how government decisions are made and to hold decision-makers to account.

These rights form the very foundation of our system of government.

Those principles are now under threat by a government seeking to solidify power and control.

Since assuming office, Labor has normalised the use of non-disclosure agreements for stakeholder consultations, issued a secret manual directing public servants on how to handle Senate Estimates, which was put to good use last week, and repeatedly flouted Senate orders for the production of documents.

It has ignored a parliamentary inquiry's recommendations to improve access to information, and reduced staffing numbers for those in Parliament whose job is to hold the government to account.

At the same time, according to the Centre for Public Integrity, fewer than one in four FOI requests are now fully granted, a dramatic decline from half just two years ago.

Transparency is not a burden on government. It is a duty of government.

The government argues that the FOI system is "not working for anyone". In truth, it is not working for them, but it's not meant to assist a secretive government.

The current laws have exposed advice warning against their rushed NDIS reforms. They have revealed doubts within departments about the effectiveness of Medicare bulk-billing incentives.

These disclosures are uncomfortable for Labor and its political narrative, but that is precisely the point.

Good government is not about avoiding discomfort; it is about being accountable for decisions made in the public's name.

What is particularly concerning about this bill is its attempt to redefine the very purpose of the FOI Act.

The longstanding presumption of public access, that information held by government belongs to the people, would be replaced by a new "balance" between transparency and "effective government".

That shift, as the Centre for Public Integrity has warned, represents a fundamental cultural change from openness to control.

The public service understands the importance of accountability. Its strength has always been its professionalism, its dedication to the public good, and its willingness to serve successive governments with integrity.

Public servants deserve laws that uphold those values, not ones that obscure their work behind ever higher walls of secrecy.

Labor's justification for these changes - claims of "foreign actors" and "bots" exploiting the FOI system is nothing more than a smokescreen.

When asked for evidence, the Attorney-General's Department could produce none.

These arguments are a convenient distraction from the real effect of the bill: fewer disclosures, higher costs, and less scrutiny.

This legislation is a test of leadership for the Prime Minister. He can deliver on his promise of openness and integrity, or he can entrench a culture of secrecy that undermines trust in government and corrodes democracy.

Secrecy is not a mark of strength. It is the refuge of weak and controlling governments.

Australians deserve better. They deserve a Prime Minister who is confident enough to be transparent, accountable enough to be questioned, and humble enough to remember that information belongs not to ministers or departments, but to the nation he serves.

The Opposition will stand firmly against these changes. We will defend the principles of openness and accountability that are essential to a healthy democracy.

Because in a democracy, information is not the property of the powerful; it belongs to the people.

THE SATURDAY PAPER

Inside Albanese's FOI reforms: 'He hates transparency'

Jason Koutsoukis

October 11, 2025

Labor's reforms to freedom of information laws are opposed by every public submission made to the Senate, with the government's record on secrecy worse than Scott Morrison's. By *Jason Koutsoukis*.

In principle, Anthony Albanese says he backs open government. In practice, as prime minister, he has grown increasingly hostile to it.

"He hates transparency," one Labor adviser tells *The Saturday Paper*. "Loathes it."

Freedom of information requests have always inspired a certain degree of fear and dislike in Canberra.

Warnings about how to avoid a paper trail that might later be accessed by an FOI request are part of the induction kit for new political staffers.

Even the acronym has its own crude nickname among those who walk on the ministerial wing's mid-blue carpet: "FOI. Fuck Off Idiot."

That longstanding aversion is now being written into law, with Attorney-General Michelle Rowland introducing the Freedom of Information Amendment Bill 2025 on September 3, a bill that seeks to tilt the system firmly away from disclosure.

If passed without amendment, the proposed law will impose a 40-hour processing cap on all FOI requests, allowing Commonwealth agencies to refuse broad or complex requests. It will empower them to reject applications they deem vexatious or harassing and ban anonymous requests by requiring applicants to identify themselves and, in some cases, provide proof of identity.

The bill would, for the first time at the federal level, allow fees to be charged for lodging requests and seeking reviews – adding a direct financial hurdle for those trying to obtain documents. It also seeks to widen cabinet and deliberative-process exemptions, which are often used to deny FOI requests, and allow for the routine redaction of public servants' names from released material.

Government insiders present these measures as a way to modernise and streamline an overloaded system, arguing that the FOI system is being used in ways that go far beyond its original purpose of exposing corruption or maladministration.

Other arguments being advanced in favour of the bill are that some applicants – including advocacy groups, political opponents and even commercial consultants – have turned FOI into a tactical weapon. It is argued that agencies are flooded with broad or repetitive requests, sometimes generated by automated tools, in order to tie up staff time or embarrass ministers rather than to illuminate genuine matters of public interest.

In this view, such "weaponisation" imposes heavy administrative and financial burdens on the public service, diverts staff from policy work and discourages frank written advice because of the risk that private deliberations will be released out of context.

Government insiders argue that FOI requests are now often used for fishing expeditions or to pry open internal political advice. They cite instances where disclosure without proper redaction could have harmed individuals unnecessarily. From this perspective, tightening the rules is presented as a practical response to misuse and as necessary to keep the system functioning.

In a 2015 review of the Rudd–Gillard government's scandal-plagued Home Insulation Program, former Department of the Prime Minister and Cabinet secretary Peter Shergold warned that the FOI system was discouraging ministers and officials from putting sensitive advice in writing. He noted a shift to oral briefings that weakened accountability by leaving few records of how decisions were made.

Shergold called for better record keeping but also limited protection for genuine deliberative exchanges, so officials could provide frank written counsel without fear of premature disclosure.

The Albanese government has invoked that argument to defend its FOI Amendment Bill. Rowland has cited it to justify expanding cabinet secrecy and adding new public-interest factors against disclosure.

Critics such as Andrew Podger, himself a former Commonwealth department head and Australian Public Service commissioner, say the government has stretched Shergold's case, using it to justify a much broader roll-back of access rights.

"The government is using its mega majority not to strengthen our FOI laws but to make it even harder for voters to know what their elected representatives are up to."

In a 2024 speech, current APS Commissioner Gordon de Brouwer made a similar point to Shergold's – that fear of disclosure deters officials from recording sensitive advice. He proposed temporary protection for deliberative material, with release after several years.

The government has drawn on this reasoning, although critics argue de Brouwer's narrow fix has been turned into a sweeping reduction of the public's right to know.

"FOI is a vital feature of democracy but, right now, the system is broken," Albanese told parliament on Thursday, in response to a question from independent MP Allegra Spender.

"The current framework was established in the 1980s and one of the things that's occurred is that some of those crossbenchers, I don't know if the member of Wentworth is one of them, have participated in a business model where a failed former senator has set up a model where they're actually paid to put in FOI requests, thereby costing taxpayers money twice the way through."

The former senator to whom Albanese was referring was South Australian Rex Patrick, a former staffer for Liberal senator David Johnston who later went to work for South Australian independent senator Nick Xenophon and filled a casual Senate vacancy created by Xenophon's resignation in 2017. Patrick served in the Senate as a member of the Nick Xenophon Team from 2017 to 2020, then as head of his own party from 2020 to 2022.

Patrick, whom Xenophon nicknamed "Inspector Rex" for his investigative skills and knowledge of freedom of information laws, tells *The Saturday Paper* that no crossbencher has ever paid him to do an FOI request, apart from one instance when Senator Jacqui Lambie reimbursed him for costs incurred.

"The prime minister is poorly briefed," Patrick says. "I have never charged a crossbench member to do an FOI request or submissions. From the prime minister's tone at question time, I think I've gotten under his skin. That's great, it tells me I'm doing my job well.

"If the prime minister wants to join other officials who feel the need to complain to me about my FOIs, the line is long, and he'll have to join it at the back."

According to Rowland, in her second reading speech, $86.2 million was spent processing freedom of information requests in 2023/24, a 23 per cent increase on the year prior, with federal public servants devoting more than a million work hours in 2023/24 to handling FOI applications.

This argument, and the others made by the government, have singularly failed to attract even a modicum of public support.

Of 48 submissions received by the Senate Legal and Constitutional Affairs Legislation Committee, which is conducting an inquiry into the bill and is expected to report by December 3, not a single public submission comes down in favour of the proposed amendment. The only support is in a handful of submissions from Commonwealth departments and agencies.

Addressing the media before the start of Question Time on Thursday, Spender and a large group of fellow crossbench MPs and senators called on the government to withdraw the bill entirely.

"We are here to reject the government's FOI bill, to say that they should kill the bill and really start again in terms of how they approach this," Spender said, "because FOI is about service to the public, transparency for the public, not to make the government's life easier."

Speaking to *The Saturday Paper*, Dr Sophie Scamps, the independent member for Mackellar, points to the contradiction between Albanese's promise as opposition leader to "reform freedom of information laws so they can't be flouted by the government" and his government's record on transparency, which she says is worse than that of his predecessor, Scott Morrison.

"Now the government is using its mega majority not to strengthen our FOI laws but to make it even harder for voters to know what their elected representatives are up to, which lobbyists they are meeting, whose bidding they are doing," Scamps says. "If the PM wants to defend democracy, as he recently declared, pushing greater secrecy over transparency is definitely not the way to do it."

A report published in July by the Centre for Public Integrity, found the culture of withholding information had intensified under the Albanese government.

According to that report, since Labor came to power in May 2022 the rate of full FOI disclosures has slumped to historic lows – from 59 per cent of requests in 2011/12 to just 25 per cent in 2023/24. FOI refusals have almost doubled – from 12 per cent to 23 per cent. For the first time on record, the study found, in 2022/23 more FOI requests were refused than granted in full, defying the *FOI Act*'s existing presumption in favour of access.

The report highlighted that these refusals often do not withstand scrutiny: in 2023/24, nearly half of refusals overturned at internal review were wrongly decided in the first instance. As for internal reviews, the report noted, they themselves are prone to institutional bias because they are conducted within the same agency that originally refused the request.

The Centre for Public Integrity report also pointed to a deliberate use of delay as a tool of secrecy. While first-instance processing times have improved thanks to extra resourcing, the bottleneck has simply shifted to the Office of the Australian Information Commissioner's review process, where the average time to finalise an appeal has stretched to 15-and-a-half months – often rendering the documents' contents irrelevant by the time they are released.

For integrity advocates, this pattern shows the problem is not an over-demanding FOI regime but a permissive culture of stonewalling – one that flourishes when ministers and senior officials face no penalties for wrongful refusals or delays. In their view, the government's new bill, with its tighter limits and broader exemptions, is less a solution than a formal endorsement of that culture.

"The Centre for Public Integrity is alarmed by the unprecedented and unjustified attack that this bill represents on transparency of information held by government," says the centre's executive director, Catherine Williams.

"From a process perspective, it represents a significant integrity failing, and from a substance perspective, it represents a significant winding back of Australia's right to access government information. We call on the government to withdraw the bill and establish an independent, comprehensive inquiry into the FOI system."

The Greens Senator David Shoebridge condemned the government's proposed reforms to FOI as "a vicious attack from the Albanese government on transparency, on good government and the public's right to know", adding that the government's justification was "a made-up political ruse".

According to Shoebridge, the real problem is not misuse of the system but the government's own obsession with secrecy.

"All the evidence we've heard is FOI being weaponised by the government against the public. We have farcical reports where people put requests in for FOI and every page is blacked out by bureaucrats," says Shoebridge, who also accuses Labor of betraying its promises on integrity and accountability, saying the FOI bill would further reduce public access to information.

"It is not actually the volume of requests," Shoebridge adds. "It's how the government is processing and managing those requests."

Instead of adding new restrictions, Shoebridge says, the Greens back calls from other crossbench MPs for a full review of the FOI system, "to increase access to information in a way that doesn't actually take more time for bureaucrats".

With the Greens, who hold the balance of power in the Senate, firmly opposed, the government can pass the bill only with Coalition support. The Coalition has yet to declare a formal position but is understood to be opposed in principle.

"The government has promised a security briefing, and I've said we'll wait until that security briefing has occurred," shadow attorney-general Julian Leeser told the media on Thursday.

"These matters are currently before a Senate committee. By my last count, the only people supporting this bill are within the Australian Public Service. Stakeholders across the board oppose it. But we should let things take their course ... We are going to wait at least until the security briefing before we make final decisions in discussions with the government."

At the end of his answer to Spender's question, Albanese delivered an unmistakable warning to the cross bench as well as the opposition.

"Engage constructively in this reform," Albanese said, "because this reform is necessary if government is going to be able to function in the future."

For a prime minister who once promised to restore trust in government, the words sounded less like an appeal than a threat.

Special Minister of State Don Farrell – one of Labor's most skilled political fixers – is likely already working the phones to cut a deal with the Coalition.

If that happens, it will confirm what this legislation already makes plain: when it comes to open government, Anthony Albanese's administration prefers control to scrutiny.

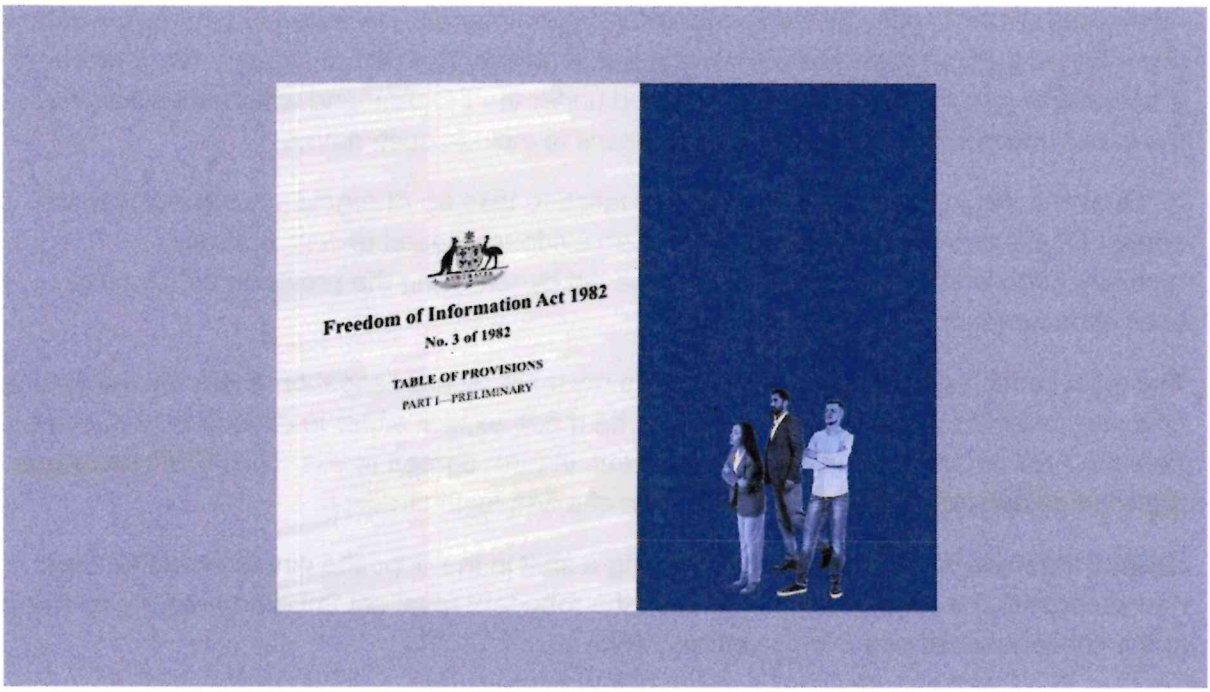
This article was first published in the print edition of The Saturday Paper on October 11, 2025 as "Inside Albanese's FOI reforms: 'He hates transparency'".

What's constraining 'frank and fearless' advice?

Is the FOI Act limiting frank advice, or are career and political pressures a bigger factor in APS decision-making?

Andrew Podger

Oct 17, 2025



A central argument for the government's proposed widening of exemptions under the FOI Act is the claim that the current provisions constrain the provision of 'frank and fearless advice' by the public service.

In its submission to the Senate's finance and public administration legislation committee's inquiry into the *FOI Amendment Bill 2025*, the APS Commission states that, 'There have been significant observations that the operation of the FOI framework since the (2010) reforms … has had unintended negative consequences on actual transparency, integrity and record keeping'.

The question is whether those 'significant observations' merely reflect a culture within the APS or are based on real evidence.

The APSC quotes the 2019 Thodey review, which in turn quotes Peter Shergold's 2015 report *Learning from Failure*. Neither contains firm evidence.

The submission from the Attorney-General's Department reveals that in 2024-25, 25% of requests were refused, using existing exemptions to prevent potential harms from disclosure. Six per cent of these exemptions related to the provision (section 47C) regarding deliberative processes and 1% to cabinet exemptions (section 34). That seems to suggest that the current exemptions are working. The AGD also presents some data on reviews of decisions by the Office of the Information Commissioner and the Administrative Appeals Tribunal — 89% of the latter affirmed decisions by agencies and ministers. No mention is made of any of the 11% varied or set aside being ones relating to exemptions agencies sought under sections 47C or 34.

Former information commissioner John McMillan, for example, supported the exemption of Incoming Government Briefs on public interest grounds, accepting concerns that release would set hares running when a new minister needed to receive frank advice on all the key issues in the portfolio and time to consider them.

When I was asked by the robodebt royal commission about record keeping, I referred to Shergold's recommendation to widen the FOI Act exemption of deliberative processes documents, but highlighted the lack of evidence to support his concerns (as I had previously highlighted to the Thodey Review). I therefore recommended 'an independent review of how, according to judgments by the courts, significant advice provided to support the deliberative processes of government is currently treated under the FOI Act, and whether it would be in the public interest to extend current exemptions to include such advice'.

In the event, the royal commission not only failed to take up Shergold's recommendation about FOI exemptions or my suggestion of an evidence-based review, but also recommended limiting exemptions under the act by removing the provision concerning cabinet documents.

The royal commission did, however, take up my main recommendation about recordkeeping: 'that requirements to create written records be made explicit either in directions or guidance from the APS commissioner'. The government, in turn, agreed to this. The APSC has since provided guidance, but sadly not in the form of a firm legal direction.

Despite the royal commission recommending a shift in the opposite direction on FOI than now proposed, the APSC submission cites the robodebt royal commission report in referring to the consequences of avoiding written advice.

The royal commission was certainly damning about record-keeping practices, but even more damning about careerism and cowardice amongst senior public servants.

47C [redacted]

The failure to provide frank and fearless advice was evident in documents that were never accessible under FOI. Where was the advice in the original cabinet submission, or in cabinet coordination comments? It took the royal commission to reveal these and other failures to provide advice on the legality of robodebt: earlier FOI and parliamentary committee requests had been rejected.

This evidence shows that factors other than FOI are contributing to failures to provide frank and fearless advice. One clearly accepted by the royal commission is the process for appointing (and terminating) departmental secretaries and the role and appointment process of the APS commissioner. It explicitly endorsed the relevant changes proposed by the Thodey report, but we have heard no more of that from the government for two years now.

Shergold claimed years ago that frank and fearless advice is a function of character, not tenure. I have always said it is about both, and that was clearly confirmed in the robodebt case. The FOI Act may be contributing as Shergold also claimed, but the evidence is far from clear. More likely is pressure from ministers and ministerial advisers exaggerating the political dangers, and a public service that is overly responsive to the government and failing to meet its obligations to serve the parliament and the Australian public.

By all means, review the FOI Act, but do so properly, with evidence and by engaging with users, not just senior public servants.

COMMUNITY AND PUBLIC SECTOR UNION

1 October 2025

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: legcon.sen@aph.gov.au

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47C

Dear Committee Secretary

Freedom of Information Amendment Bill 2025

As the primary union representing employees in the Australian Public Service (APS), the Community and Public Sector Union (CPSU) is committed to providing a strong voice for our members in key public policy and political debates.

The CPSU welcomes the opportunity to make a submission to this Senate inquiry into the *Freedom of Information Amendment Bill 2025*. The modernisation of the *Freedom of Information Act 1982* is long overdue and necessary to address a range of Work Health and Safety (WHS) risks faced by Freedom of Information (FOI) teams across the APS.

FOI laws are vital for transparency, accountability, and public trust in government. They are a cornerstone of open government, ensuring that decisions made by public institutions can be understood and scrutinised by citizens. The right of the public to access information held by government strengthens our democracy and promotes informed civic engagement.

While we note there are contentious elements in the Bill, the CPSU supports several positive changes proposed, including:

- Changing statutory timeframes from calendar days to working days.
- Simplying processes for requesting extensions of time.
- Introducing a process to deal with vexatious FOI requests without declaring individuals as vexatious applicants.
- Clarifying there is a legislative basis for redacting personal information about staff.

These reforms will help FOI teams manage workloads more safely and effectively, while maintaining access to personal information for genuine applicants. These changes should be passed with the more contentious parts of the Bill split out.

Workloads and Statutory Deadlines

FOI work is highly manual and resource intensive. In 2023-24, 72% of FOI requests were for personal information, with Home Affairs (38%) and Services Australia (15%) receiving the majority of FOI requests.[1] Processing such requests often involves:

- Reviewing every line of a file for third-party personal information
- Seeking consent and verifying identity from multiple individuals
- Manually redacting sensitive content

One of the causes of increased workloads in some agencies has been bulk FOI requests from agents on behalf of clients. These are often proforma "bucket list" requests, which significantly increase the volume of work and reduce compliance rates. Members from one agency noted they previously had a much better rate of compliance before the rise in these types of requests.

The current 30 day statutory deadline is widely regarded by FOI staff as unrealistic. One member described it as *"next to impossible to meet."* The deadline has remained unchanged since the Act's inception, predating the internet and modern digital systems, despite the increasing complexity and volume of FOI work. FOI teams rarely receive additional resources or staffing to manage these demands.

Members also highlighted that the regulator's focus on statutory compliance rates overlooks other important metrics, such as average case finalisation time and the adequacy of resourcing. These factors are critical to understanding the true performance of FOI operations.

The CPSU supports changing the deadline to working days and simplifying processes for requesting extensions of time. These changes will provide FOI teams with more realistic timeframes to complete highly manual and complex work. We also recommend considering a longer timeframe to better reflect the realities of FOI work.

That said, legislative reform alone will not be sufficient. FOI teams across the APS are under pressure due to under resourcing. The 2023 Senate inquiry into the operation of Commonwealth Freedom of Information laws stated, *"It is clear...that the government's FOI functions have suffered from underfunding across the APS."*[2] While the inquiry acknowledged that legislative reform would help, it also noted *"It will not deal with the chronic backlog of matters which need to be finalised so that the system is placed on an even keel."* [3]

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[1] Appendix E: Freedom of Information Statistics in Office of Information Commissioner, Annual Report 2023-24. https://www.transparency.gov.au/publications/attorney-general-s/office-of-the-australian-information-commissioner/office-of-the-australian-information-commissioner-annual-report-2023-24/part-5%3A-appendices/appendix-e%3A-freedom-of-information-statistics

[2] Senate Standing Committees on Legal and Constitutional Affairs, The operation of Commonwealth Freedom of Information (FOI) laws, December 2023. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/CommonwealthFOI2023/Report/Chapter_5_-_Committee_views_and_recommendations

[3] Senate Standing Committees on Legal and Constitutional Affairs, The operation of Commonwealth Freedom of Information (FOI) laws, December 2023. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/CommonwealthFOI2023/Report/Chapter_5_-_Committee_views_and_recommendations

The CPSU strongly supports additional resourcing to accompany any legislative changes. Without this, FOI teams will continue to face significant workloads, undermining both the effectiveness of the FOI system and the wellbeing of staff.

Vexatious requests

47C [redacted]

The current FOI system has a system of addressing vexatious FOI requests, however our members report that it has proved to be ineffective. Under existing legislation, only individuals, not specific requests, can be declared vexatious, and only through a complex process involving the Office of the Information Commissioner (OAIC). This process is rarely used due to its difficulty and lack of fit-for-purpose design.

FOI staff report that:

- Some applicants repeatedly lodge requests for the same information using slightly different wording.
- Requests are sometimes used to harass staff by seeking details about them.
- The system is vulnerable to misuse by individuals with grievances, including sovereign citizens.

The CPSU supports the Bill's proposal to allow specific requests to be declared vexatious, which will help protect staff and reduce unnecessary workload, whilst also maintaining access to information consistent with the purpose of the FOI scheme.

Redaction of personal information

FOI teams often redact staff names and other identifying details, especially in cases involving vexatious FOI requests. The CPSU supports the Bill's proposal to clarify that personal and non-work-related matters of staff and employee identifying information is not required to be disclosed, providing legal backing for current practice.

Anonymous requests

47C [redacted]

FOI teams are required to process and engage with all FOI requests, even those that are anonymous or missing key information. This differs from other areas of the public service, where triage and validation processes are standard.

Noting concerns about proposals to ban anonymous requests, strengthening applicant identity requirements specifically for any personal information requests and allowing FOI staff discretion to seek further details before processing would assist FOI teams and should be considered as part of a comprehensive review.

[redacted]

Comprehensive review

The Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010 (Hawke Review) recommended a comprehensive review of the Acts, including its interaction with the *Archives Act 1983*, *Privacy Act 1988*, and other relevant legislation.

Given the 2013 Hawke Review, which this Bill has drawn on, was conducted over a decade ago and other jurisdictions have made changes to their own equivalent Acts since, such as the Australian Capital Territory in 2018 and Queensland in 2024, a comprehensive review is overdue.

Recommendations

There are parts of the Bill that should be passed that will help FOI staff such as enabling more reasonable timeframes, strengthening the legal basis for the redaction of staff information and a better process to declare FOI requests as vexatious.

The CPSU recommends:

- More contentious reforms are split out of the Bill to allow some changes to proceed.
- The non-contentious parts of the Bill that address WHS risks and improve FOI processes are passed.
- Appropriate additional resourcing accompanies any legislative changes.
- A comprehensive review of the FOI Act is undertaken, as recommended by the 2013 Hawke Review, including its interaction with the *Archives Act 1983*, *Privacy Act 1988*, and other relevant legislation.

The CPSU is happy to provide further information regarding any of the matters raised in this submission and supplementary information on other relevant issues.

If you require further information, please contact Osmond Chiu, Senior Policy and Research Officer, via email at .

Sincerely,

Melissa Donnelly
National Secretary
CPSU-PSU Group

Australian Government

Services Australia

Senate Legal and Constitutional Affairs

Freedom of Information Amendment Bill 2025

Services Australia's Submission

OCTOBER 2025

Contents

Introduction

Services Australia (the Agency) welcomes the opportunity to provide this submission to the Senate Legal and Constitutional Affairs Legislation Committee into the *Freedom of Information (Amendment) Bill 2025* (the Bill).

Annually, the Agency manages over 5,000 requests for information under the *Freedom of Information Act 1982* (FOI Act). The Agency also provides access to information under administrative access arrangements. Along with simple, helpful and respectful, transparency is a core value of the Agency, and the Agency takes its obligation to provide access to information seriously.

The Agency is supportive of the Bill. In particular, the Agency welcomes the amendments which provide greater clarity and protections against disclosing employee identifying information. This will increase staff safety. The Agency also supports simplifying the extensions of time process, which will improve processing efficiencies, and the amendments addressing abuses of process, which consumes a disproportionate amount of Agency resources and negatively impact the right of genuine applicants to access information.

FOI processing within Services Australia

Over the course of their lives, most Australians will rely on a payment or service delivered by the Agency. As the government's primary service delivery agency, the Agency holds the personal information of millions of Australians. In 2023–24 the Agency provided services to 27.1 million Medicare customers, 8.5 million Centrelink customers, and 1.1 million Child Support customers.

In the 2024–25 financial year, the Agency received 5,135 FOI requests, representing 12% of the total FOI requests received across the Commonwealth. The Agency received the second highest volume of FOI requests of any Commonwealth entity in the last 5 financial years (2020–21 to 2024–25)[1]. Approximately 95% of FOI requests received by the Agency are requests to access personal information.

In the 2024–25 financial year the Agency completed 79% of requests within the statutory timeframes. The Commonwealth average was 73%[2].

Staff safety - identifying employee information

The Agency plays a key role in Australians' experience of Government. When Australians seek government payments and services, they often come to the Agency and are in complex and vulnerable circumstances.

Agency staff routinely engage with customers under heightened levels of personal pressures and stress. In the course of their duties Agency staff may be involved in making decisions that have a direct and considerable impact on the lives of customers. While the vast majority of interactions with customers are courteous and cordial, there have been instances where customers dissatisfied with decisions have harassed or threatened Agency staff. Such interactions present an ongoing risk to Agency staff safety and wellbeing.

The Agency has documented several instances of Agency staff, including FOI officers, experiencing harassment from customers. These instances include:

- publication of staff members' names on the 'Right to Know' website and the website's refusal to remove the name after requests to do so from the Agency
- unsolicited attention from customers resulting in abusive messages sent through social media
- threatening to publicly release staff members' details, including information about their children and their home addresses

[1] As per Australian Government freedom of information statistics | OAIC
[2] As per Australian Government freedom of information statistics | OAIC

- acts of physical aggression and violence including the use of weapons
- placing letters on the windscreens of staff members' vehicles
- stalking staff members, and
- customers behaving in an intimidating manner towards staff members with a view to obtaining their full name.

Generally, applicants consent to the Agency removing employee identifying information. However, the Agency has received FOI requests from applicants specifically seeking the release of Agency staff names and other personal details, and the applicants have declined consent for the removal of such information.

The FOI Act does not control or restrict any subsequent use or dissemination of the information disclosed through the FOI process. Accordingly, releasing staff names and other identifying information in FOI documents can result in an unreasonable invasion of staff members' privacy and staff being subject to harassment or abuse online or in person.

The Bill will enable the Agency to exempt employee identifying information providing the Agency with a greater ability to meet its obligations under the *Work Health and Safety Act 2011,* in particular subsection 19(1) which requires the Agency to ensure, so far as reasonably practicable, the health and safety of staff members. While strong public interest grounds for not disclosing this information already exists (eg privacy considerations),[3] this amendment will clarify that where it does not meaningfully increase scrutiny, discussion or comment on Government processes or activities employee identifying information is exempt from disclosure[4]. The Agency supports the exemption applying equally to current and previous staff including Australian Public Servants, contractors and consultants, as outlined in the Explanatory Memorandum to the Bill.

The Agency also supports carving out Senior Executive Staff names and contact details and the general contact details of an Agency or Minister from 'employee identifying information'. The Agency agrees that these details can be disclosed, because they are generally publicly available information.

Vexatious applications

FOI requests are sometimes used as a vehicle to perpetuate a targeted campaign of harassment against Agency employees. Further, at times FOI applicants may pursue requests under the FOI Act in a manner that is frivolous, vexatious, otherwise not made in good faith or is designed to disrupt Agency operations.

The Bill recognises the handling of these types of requests may have the effect of harassing, intimidating or otherwise causing harm, including psychosocial harm to FOI officers processing these types of requests, or persons whose personal information is the subject of the FOI request.

The Agency has received requests that included harassing and intimidating behaviour, threats of violence and stalking of officers and their families. The impact of this behaviour on FOI officers processing these requests can be prolonged and significant. The amendments in the Bill will enable the Agency to not process a request that is vexatious or frivolous[5]. There are also some protections for applicants, where the Agency does not deal with a request, the applicant may seek review by the Office of the Australian Information Commissioner (OAIC).

Further, the amendments will allow the Agency to treat two or more requests covering the same subject matter or the same documents to be combined into a single request. It is expected this will create efficiencies for the Agency and the OAIC[6].

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[3] *Singh and Secretary, Department of Home Affairs (Freedom of information)* [2025] ARTA 489: the Tribunal held that information regarding Departmental staff was conditionally exempt and that disclosure of the information would, on balance, be contrary to the public interest.
[4] *Singh and Commonwealth Ombudsman (Freedom of information)* [2024] AATA 969
[5] New section 15AD
[6] New subsection 15AD(6)

Responding to genuine applications

The Bill will in effect require a request to be made by a person. Under the Bill an applicant will be required to provide proof of identity at the time the request is made or within 14 days of identification being requested by the Agency. The failure to provide sufficient proof of identity will result in the request being taken to be withdrawn[7].

While it is difficult for the Agency to be certain that an application has come from a 'bot' (rather than a person), the Agency has seen an upward trend over the past few years of requests that appear to be from bots.

The Agency supports this reform as it will help the Agency to focus on responding to genuine requests for information.

Processing times

The Agency takes its obligations under the FOI Act seriously, including ensuring FOI requests are processed within the statutory processing period to prevent 'deemed refusal' decisions and preserve an FOI applicant's review rights. To achieve this, the Agency uses extensions of time (EOT) under the FOI Act.

Obtaining EOT impacts the Agency by diverting FOI processing officers to make additional contact with applicants and applying to OAIC for, or notifying the OAIC of, the extension.

Due to the broad range of payments and services delivered by the Agency, the Agency often receives FOI requests for a large volume of documents. The Agency has observed an increase in the size and complexity of requests over the past three financial years (2022–23, 2023–24, 2024–25), resulting in the Agency requesting an increasing number of EOT under the FOI Act.

Over this period the average EOT, as agreed by the FOI applicant[8], was 20 calendar days. The number of EOT granted by consent in 2022–23 was 1,731. This rose to 2,030 in 2024–25.

The Agency supports removing the EOT cap of 30 days. This will reduce multiple EOT relating to a single request, and increase government efficiency. Where the request is complex and time consuming, the applicant and the Agency will be able to agree to extend the processing period to a reasonable period. In this circumstance, there will be no need to request extensions from the OAIC. This will improve government efficiency and productivity.

Similarly, for FOI requests under internal review, the applicant and Agency may come to an agreement to extend the processing period. It is anticipated these changes will have beneficial outcomes for applicants, both at the original and internal review stage, by improving the decision timeliness. The changes will also provide the applicant greater transparency of when they can expect a decision on their request, better managing their expectations for the process. Through the reduction of the resources currently directed to tasks related to EOT, it is expected the Agency will deliver better outcomes via a redirection of resources to FOI processing.

Complementing the amendments to the EOT mechanism, the Bill alters the processing period through the addition of a new definition of *working day*[9]. This changes the processing timeframe from calendar days to business days. The Agency anticipates the number of EOT requests will reduce, especially where the FOI request is not overly complex or large. Again, this will help to increase the Agency's efficiency and productivity.

Conclusion

The Agency thanks the Attorney-General's Department and strongly supports the Bill.

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[7] New section 19

[8] EOT under section 15AA

[9] Subsection 4(1)

Australian Government
Department of Home Affairs

Department of Home Affairs submission to the Inquiry into the Freedom of Information Amendment Bill 2025

Legal and Constitutional Affairs Legislation Committee

15 October 2025

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Introduction

The Department of Home Affairs (the Department) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) regarding the *Freedom of Information Amendment Bill 2025.*

The purpose of the submission is to provide an overview of the Department's Freedom of Information (FOI) program and of the expected impact of the proposed reforms on that program.

Background to the Department's FOI program - a client service focus

The Department's FOI program is very large with over 19,296 requests received in financial year 2024–25 and over 2 million pages of documents assessed. This size is driven by the scale of the Department's operations and the volume of records it holds. There are over 470 systems in use in the Department with its official record keeping system holding almost a billion records.

The Department's FOI caseload consists of access requests for personal and non-personal documents, and requests to amend personal information. The caseload is global, with culturally diverse clients and includes cohorts of vulnerable clients who often have limited English language skills. There are also clients located overseas who have limited access to Government review frameworks for their dealings with agencies compared to those onshore.

Personal access requests usually relate to visa and citizenship processing documents, such as visa application assessments and/or detention files, assessment and processing notes, decision records, submitted application forms, audio files and CCTV footage. Amendment requests are mainly received from visa holders in Australia seeking to change, correct or update personal information held in departmental records and systems, including names and dates of birth. Access to documents and amendments are often sought to enable applicants to engage with government agencies and other institutions such as banks or insurance companies.

Non-personal access requests usually consist of policy and procedural documents, ministerial submissions and briefs, departmental reports, official correspondence, and operational statistics. These documents are sought by various members of the public including parliamentarians, journalists, migration agents, lawyers, academics and community interest groups.

The majority of the Department's FOI requests are personal access requests (approximately 95% of all requests). There has also been growth in personal access requests received year-on-year since financial year 2022–23.

As well as having a large client base, the Department has moved to almost wholly online processes for visa and citizenship applications, including the ability to provide documentary evidence online. Notable increases in personal access requests have occurred following increased digital offerings for visa and citizenship in the 3 years between financial years 2014–15 to 2016–17 and again in 2018–19 and 2019–20.

In financial year 2024–25, the Department's access and amendment program cost over $10.5 million, mainly in staffing costs. The Department's FOI section is made up of 112 APS staff at a range of levels, with the majority of requests considered by staff at the APS4 to APS6 levels.

The Department's FOI program is essential to promote transparency of government processes and to support clients to access or amend their own records. The Department is supportive of efforts to reduce administrative burdens and complicated processes that pose barriers to achieving those functions. It is also supportive of efforts to modernise the FOI framework and provide greater clarity around its operation to give FOI decision-makers the confidence required to make decisions about the release of information in a timely fashion.

Consideration of the Freedom of Information Amendment Bill 2025

The Department acknowledges that the reforms proposed in the Bill are aimed at modernising the Commonwealth's FOI framework and making it easier for members of the public to navigate this framework.

The Department strongly supports several proposed amendments and welcomes the proposed reforms to the *Freedom of Information Act 1982* (the FOI Act) to lessen the administrative burden of the current settings to allow for more efficient management of the FOI programs across government.

Further detail on the Department's position on the key reforms is provided below.

Evidence of identity as a validity requirement

The Bill proposes to require evidence of identity at the point of request for personal information (Schedule 2, Part 5 – Anonymous and pseudonymous requests, refers).

These reforms should result in efficiencies for the Department and better protect personal information from persons who should not have access to it, for example, an ex-partner in a domestic violence situation or in scenarios relating to child custody or where a foreign government is seeking to monitor its citizens.

Currently, requests can be validly made under the FOI Act for personal information by anyone. To protect the personal information from inappropriate release, the Department has a process by which it verifies an applicant's identity. This is a manual process involving FOI decision makers/case officers checking biodata (e.g. name, date of birth, contact details), or identity documents (e.g. passports) of applicants against existing departmental records. Where there are minors involved, departmental officers will also consider evidence of custody before releasing personal information. Where clients are represented by someone (e.g. a migration agent or legal practitioner) officers also consider evidence that the client has provided personal authority to access their personal information. Where the client has not provided relevant information about their identity this verification will occur after the case has been accepted.

The Bill codifies the current practice by requiring proof of identity where a request is for personal information of the applicant (or a person on whose behalf the request was made), or information concerning the business, commercial or financial affairs of the applicant (or a person on whose behalf the request was made). It authorises agencies and Ministers to collect the personal information of the applicant, and the personal information of a person on whose behalf the request was made, from the applicant. In situations where an applicant is seeking access on behalf of another person to a document containing personal information about the other person, the request must be accompanied by the proof of identity *and* authorisation to seek access to documents on behalf of another person, as well as the applicant's own identity.

As mentioned above, the Department holds a significant amount of personal information relating to its clients. As noted in the Department's submission to the 2023 Senate Legal and Constitutional Affairs References Committee *Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws*, this sensitive personal information is a valuable target for those seeking to use it for an improper purpose such as identity fraud or foreign interference. Imposing requirements for identity verification when lodging an FOI request was noted as a means to mitigate this risk.[1]

The proposed reforms will mean that a FOI request for personal information would not need to be progressed by the recipient department until the applicant's identity was established. In situations where applicants are unable to establish their identity or choose not to establish their identity, departmental case

[1] Department of Home Affairs' submission to the *Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws*, p. 12.

officers would not have invested time in progressing the request (including negotiating the scope, performing searches and/or assessing if third party consultation is required).

In relation to non-personal requests, the Department receives FOI requests for documents on topics such as cyber security and counter-terrorism. Whilst there are existing protections in the current FOI exemptions to prevent release of this type of national security material, the Department submits there is utility in having a discretionary ability to seek identity information as a strategy to mitigate risks related to the release of this sensitive information.

Extended statutory timeframes and streamlined extension of time options

The Bill proposes to extend the statutory timeframes for making FOI decisions and streamline the grant of extensions of time (Schedule 4, Part 2- Extension of time arrangements and Schedule 4, Part 4 – Working days and agency consultation, refers).

The Department's FOI caseload, particularly the requests for personal information, is increasingly complex and sensitive. Average pages assessed per request is approximately 175 pages, and a human decision-maker is required to carefully and manually consider sensitive personal information prior to release. Time is required to identify all of the relevant documents potentially in scope of a request and to then confirm whether in scope and releasable in the circumstances.

The 30 calendar day timeline for responding to requests currently provided for in the FOI Act has proved challenging. In 2024–25, the department received 19,296 FOI requests, and finalised 15,585, of which 34.9% were finalised within that statutory timeframe. The Department often negotiates with applicants for more time on their requests where needed.

The Bill proposes the statutory timeframe be amended to be 30 *working days* as opposed to calendar days, which would exclude weekends and public holidays from the timeframe, providing additional time to complete a request. While this extension of time will assist the Department for some of its caseload, extensions to this timeframe will likely still be required for complex and/or sensitive requests.

The Bill also proposes a more streamlined approach to agreeing extensions of time for responding to FOI requests. This should result in efficiencies for the Department's given the number of requests that require extensions. The Bill removes the 30-day cap on extensions to enable agencies or Ministers to extend the period for responding to a request to any period as agreed to by the applicant in writing. These agreements for extensions of time must be made before the initial decision period expires (or as extended for consultation). Provided that the time extended as agreed to make a decision has not expired, agencies or Ministers and applicants may agree to a further extension of time. The notification of the Information Commissioner of the agreed extension of time is no longer required.

The Bill also provides for agencies or Ministers to extend processing times to undertake consultation to determine whether a document is an exempt document under sections 33 to 38 of the FOI Act. The Department welcomes the recognition of the time required to consult appropriately with other agencies where requests relate to sensitive material.

Protection of staff member personal details and their safety

The Bill contains amendments to better protect staff member's personal details from being released as part of a response to an FOI request. The proposed amendment will ensure their privacy, safety and guard against security threats, including reducing the risk of details being released that make it easier for malicious actors to target public servants (Schedule 2, Part 2- Non-disclosure of certain identifying information refers).

The Department is aware of situations where members of the public have obtained staff details in a variety of ways (including through the FOI process) leading to staff being confronted at their workplace or their homes, receiving phone calls on work and personal devices, contacted on social media platforms, threatened with conduct complaints, threatened directly (or having family member's threatened) with physical harm. Measures in the Bill to not require the name of an officer or member of staff to be given to an applicant when

responding to an FOI request (except in certain circumstances) should assist to reduce or prevent these types of occurrences.

Management of vexatious applications

Schedule 2, Part 4 of the Bill contains amendments to provide agencies with the ability to decline to handle a repeat of a vexatious request or a request that is an abuse of process. The Bill also amends the existing powers of the Information Commissioner to expand the grounds under which the Commissioner can declare an applicant as vexatious.

The Department supports these measures. It regularly receives requests of a vexatious nature where the content of the request is nonsensical, intimidating or containing unsubstantiated claims (for example, referencing events that did not occur). Sometimes, applicants do not engage in FOI processes in good faith or abuse the process, posing difficulties for decision-makers in searching for and deciding on requests.

The Department also receives FOI requests from individuals who have been dissatisfied about decisions made by Commonwealth officials (such as refusal or cancellation of visa applications) and use the FOI process as another avenue to prosecute their concerns.

There have been instances of applicants using the FOI process in a vexatious or harassing way, which has resulted in Commonwealth agency staff:

- being subjected to abusive language or receiving abusive emails
- being threatened with ongoing harassment using administrative review and complaints processes
- being bullied into making a more favourable decision to avoid harassment by a fixated individual
- having their personal information published on websites and social media platforms, and
- being the subject of FOI requests seeking personal information about them, including performance agreements, employment history and Australian citizenship status.

The reforms relating to vexatious applications will enable agencies to devote agency time and resources to processing genuine requests and should improve the safety of decision-makers.

The Bill proposes that in respect of anonymous FOI applicants, agencies be allowed to seek identity information (Schedule 2, Part 5 – Anonymous and pseudonymous requests, refers). This would be particularly useful in situations where an applicant might be attempting to circumvent vexatious applicant declarations.

Allow agencies to specify method of submission of FOI requests

The Department supports the proposal to allow agencies to have more control over the method by which FOI requests are submitted (Schedule 2, Part 1 Form and submission of requests applications and complaints, refers). These reforms will allow the Department to make better use of automation and security functions for its very large caseload.

Pursuant to these amendments, the Department could specify that all FOI requests must be submitted via a departmentally designed online form which would provide guidance to applicants in submitting valid requests, and capture the details required for departmental officers to readily search large volume record holdings efficiently.

Currently, around 50% of FOI requests are submitted on the Department's online form that has some automated functionality. The other half of requests are submitted by email or post, requiring manual registration and acknowledgement by an officer. Funnelling more of the requests via an automated request channel would free up departmental resources to focus on considering and responding to the FOI requests rather than the effort of manually registering requests. Additionally, there is functionality that can be applied to online forms that would enable greater security of data and assist to manage risk.

Other reforms

The Department supports the amendments in the Bill:

- to more clearly outline the objects of the FOI Act to promote government transparency (Schedule 1, Part 1- Objects provision refers), while providing safeguards where needed. For example, to protect government operations and the privacy of members of the community. This reform should allow for more balanced arguments to be made when considering the public interest test when applying discretionary exemptions to documents/material.
- to clarify that agencies have an ongoing obligation to decide on FOI requests even if they fall overdue (Schedule 4, Part 3 – Deemed refusal process refers). This accords with the Department's current approach whereby departmental officers continue to process all FOI requests despite the statutory deadline having passed and the request having been 'deemed refused' pursuant to section 15AC of the FOI Act. This approach ensures applicants will get access to their documents in response to their FOI request and not need to seek an internal review or an Information Commissioner review.
- aimed at streamlining the work of the Office of the Australian Information Commissioner in reviewing FOI decisions. The Department is supportive of this approach as it should assist FOI applicants with prompt and considered review outcomes.

On the proposal to introduce a processing time limit for FOI requests (Schedule 3, Part 2 – Processing time limit), the Department considers this a lower priority reform for its FOI caseload and notes it is unlikely to use this for personal FOI requests. The Department takes a client centric approach and is committed to ensuring clients get access to their documents.

Summary

The Department thanks the Committee for the opportunity to make a submission to the inquiry into the Freedom of Information Amendment Bill 2025. The Department is supportive of modernising and reforming the FOI Act to better serve clients, promote transparency and protect sensitive information from being released.

Home Affairs wary on FOI reform
By NOAH YIM

The Australian
Thursday 16th October 2025
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Home Affairs wary on FOI reform

NOAH YIM

The nation's powerful Home Affairs department has failed to endorse Labor's crackdown on Freedom of Information laws in its entirety, voicing support only for non-contentious parts of the reform in a submission to the Senate committee that may help kill Labor's assault on FOIs.

It is out of step with previous submissions to government bills by the Home Affairs Department, which usually chooses to explicitly support the bill's passage – "the passage of the amendments is necessary", it said of the Telecommunications Act amendments earlier this year, and "the department and ... portfolio agencies support the 2025 bill" it said of an intelligence community bill.

On the FOI legislation, the department – which received the most FOI applications of all government agencies – said it "strongly supports several proposed amendments" and did not mention some of the bill's more contentious elements, like the proposal to impose fees on non-personal FOI applications.

On the proposal to impose a processing time limit on FOI applications, the department said this was a "lower priority reform" and it would likely not use this for personal FOI requests.

"The department is supportive of modernising and reforming the FOI Act to better serve clients, promote transparency and protect sensitive information from being released," it said in its submission to the Senate inquiry on the bill.

Labor's FOI reforms have been criticised in multiple quarters: the Coalition, some unions, former senior public servants, experts, and some left-wing advocacy groups.

Home Affairs was far more measured in its commentary around the reform than the agency at second spot for FOI applications, Services Australia.

Services Australia "strongly supports the bill", it told the Senate committee. "In particular, the agency welcomes the amendments which provide greater clarity and protections against disclosing employee identifying information. This will increase staff safety.

"The agency also supports simplifying the extensions of time process, which will improve processing efficiencies, and the amendments addressing abuses of process, which consume a disproportionate amount of agency resources and negatively impact the right of genuine applicants to access information."

The Home Affairs Department said it was supportive of "several proposed amendments" – including non-disclosure of identifying information about staff members and powers to deal with vexatious claims.

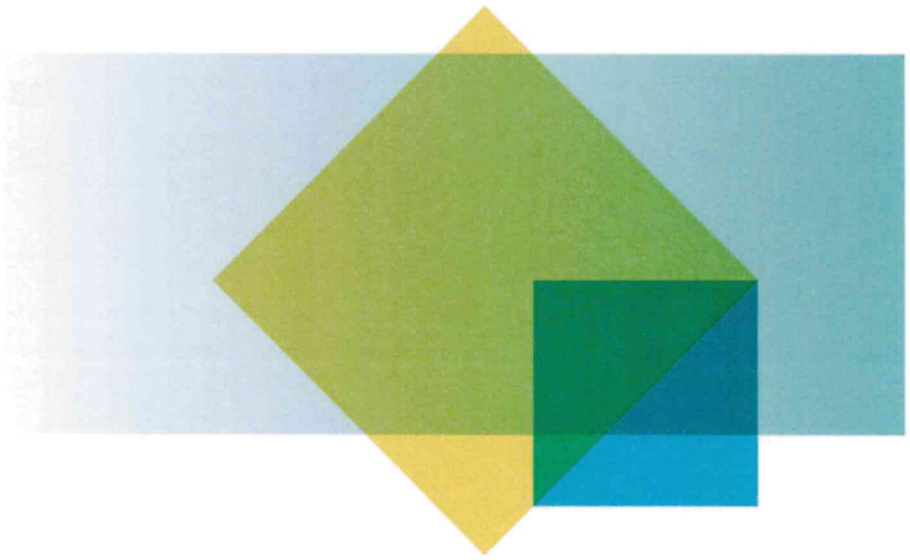
In a submission to the same Senate inquiry, former information commissioner John McMillan accused Labor of having been led too much by the bureaucrats.

He said the proposed changes were "distinctly one-sided and have not been adequately explained or justified", and that they "focus almost exclusively on taking up concerns expressed by agencies".

Australian Government
Office of the Australian Information Commissioner

Freedom of Information Amendment Bill 2025 Inquiry by the Senate Legal and Constitutional Affairs Legislation Committee

Submission from the Office of the Australian Information Commissioner



Elizabeth Tydd
Australian Information Commissioner
2 October 2025

Alice Linacre PSM
Freedom of Information Commissioner
2 October 2025

OAIC

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Introduction

1. The Office of the Australian Information Commissioner (OAIC) provides this submission to assist the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) in its inquiry into the *Freedom of Information Amendment Bill 2025*. The OAIC welcomes the Parliament's consideration of the proposed amendments as it provides the opportunity for a public debate on ways to improve and modernise the operation of the FOI scheme.

2. As an independent statutory agency, the OAIC regulates privacy and freedom of information (FOI) under the Commonwealth *Privacy Act 1988* (Privacy Act) and the *Freedom of Information Act 1982* (FOI Act) and has specific functions under the *Australian Information Commissioner Act 2010* (AIC Act) relating to the access to government information.[1] In addition to these three principal Acts, a further 37 pieces of primary and subordinate legislation confer regulatory and other responsibilities on the OAIC, or require other bodies to consult the OAIC on privacy matters.

3. The OAIC notes that the inquiry into this Bill is being undertaken alongside other reviews and legislative proposals which underscore the importance of integrity in information.[2] The OAIC's operational expertise and regulatory data has informed this submission, with the objective of contributing to the Committee's consideration of the proposed reforms and the improvement of the FOI framework. The submission provides the Committee with information:

    a. on the right to access information in Australia together with established national and international comparative measures,
    b. the role of FOI in securing access to information,
    c. the performance of agencies and the OAIC under that framework in recent years, and
    d. the potential operational impacts of the reforms on the OAIC and the Commonwealth FOI framework.

Part 1: The right to access information

4. Article 19 of the Universal Declaration of Human Rights provides the right to seek, receive and impart information and ideas through any media and regardless of frontiers.[3]

5. The right to access government information is enshrined in Australia's information access framework. The enactment of a statutory right to access government information in Australia reflects the critical importance of openness, accountability and transparency in the proper functioning of representative democratic government. These features are also essential to promoting trust in government.

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[1] The functions of the OAIC are set out in the AIC Act, see relevantly: section 7 (Definition of information commissioner functions), section 8 (Definition of freedom of information functions) and section 9 (Definition of privacy functions).

[2] See for example the Select Committee on Information Integrity on Climate Change and Energy inquiry into the prevalence and impacts of misinformation and disinformation relating to climate change and energy, and the Senate Standing Committee on Community Affairs Legislation Committee inquiry into the Australian Centre for Disease Control Bill and consequential amendments.

[3] UN General Assembly, Resolution 217A (III), *Universal Declaration of Human Rights* (10 December 1948) art.19

6. The objects of the FOI Act state clearly that the objective of providing the Australian community with a statutory right to access to information held by the Australian Government, is to promote Australia's representative democracy including through public participation and transparency in the processes and decisions of government.

7. The objects of the FOI Act also recognise that government-held information is a national resource and must be managed for public purposes. The FOI Act requires agencies to publish information and provide for a right of access to documents. The exercise of functions and powers under the FOI Act is intended, as far as possible, to facilitate and promote timely public access to information and at the lowest reasonable cost.

8. FOI is intended to enhance public participation in government processes, with a view to promoting better-informed decision-making, and support scrutiny, discussion, comment and review of government decisions and activities. FOI enables individuals to access documents to help them understand why and how decisions affecting them are made. Part II of the FOI Act establishes the Information Publication Scheme (IPS) which encourages agencies to release information to the public proactively. As a pillar of the information access framework, proactive release of information is intended to encourage ease of access together with greater openness and transparency in government and reflects the pro-disclosure goals of the FOI Act. A community that is better informed can participate more effectively in democratic processes. An effective and efficient FOI system that facilitates both proactive and reactive release of information is therefore fundamentally in the public interest.

9. Australia's FOI laws and framework, underpinned by the objects of the FOI Act, focus on proactive disclosure, and emphasise the public interest and independent regulation. These concepts have been considered in the development and enhancement of domestic, regional and international information access, transparency and accountability frameworks.

10. The effectiveness of the current state of Australia's FOI framework has been quantified by the Centre for Law and Democracy's Right to Information (RTI) rating which assesses the strength of national legal frameworks for accessing information held by public authorities; the Australian FOI Act has a ranking of 87 from a maximum of 150 points.

11. It is important to note that we are currently experiencing an unprecedented and ever-increasing growth in information and data generation, which also involves an increase in the dissemination of misinformation and disinformation. We are at a critical juncture where access to authoritative and accurate information is paramount to a democratic system of government and democratic values. Accurate data and information are essential not only to support the accelerated implementation of digital initiatives across government and build trust in the uptake of digital tools, but it is vital to combat misinformation and division.

12. The importance of access to information in journalism has been shown to support government accountability, civic engagement, promote productivity and assist in fighting against corruption.[4] Timely access to information also supports inclusion and a participative democracy. This highlights the role of access to information in protecting and promoting human rights and sustainable development goals.[5]

13. The balancing of the public interest in access to information and other interests including the interests of government and commercial entities is accommodated under the provisions of the FOI Act referable to decision-making. The proposed amendments to the objects of the FOI Act introduce further considerations to be applied by decision makers in interpreting the FOI Act. The impact of these amendments may have the effect of tempering the interpretation of the right to access information as a precursor to any decision-making required under the FOI Act. This proposed amendment may also introduce an unintended limitation on the realisation of the right to access information as a single source of truth in a contemporary context of declining trust.[6]

14. To support trust in government, leaders must actively champion behaviours that demonstrate their commitment to openness and accountability. Since 2017, Australian Information Access Commissioners and Ombudsmen have published annual metrics on the community's exercise of FOI access rights. This reporting provides insights into the performance of the Commonwealth FOI system, as well as FOI laws at the state and territory level. It also promotes community awareness of the FOI framework, including how FOI laws work and how the community accesses their legislated rights.

15. From 2021-22 to 2023-24, the Commonwealth received the second highest count of FOI applications among Australian jurisdictions. The Commonwealth also had the highest percentage of applications for Information Commissioner review of agency decisions. During this period, the Commonwealth had the highest percentage of requests where access was refused in full, and underperformed on timeliness when compared to other Australian jurisdictions. In relation to decisions made within the statutory timeframe, the Commonwealth had an average percentage of 72.7% compared to 86.5% for all other jurisdictions over the same period.

16. The increase in FOI applications made to Commonwealth agencies is elevated compared to other jurisdictions, for example NSW saw an increase of 11% in applications and Victoria saw a 9.5% increase in 2023-24. This is also reflected in the volume of applications for reviews increasing at a higher rate for the OAIC, compared to states and territories.[7]

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[4] UNESCO (2024), Journalism for development: the role of journalism promoting democracy and political accountability and sustainable development, (page 2).

[5] UNESCO (2024), Journalism for development: the role of journalism promoting democracy and political accountability and sustainable development, (page 2).

[6] UNESCO (2024), Journalism for development: the role of journalism promoting democracy and political accountability and sustainable development, (page 2).

[7] National Dashboard – Utilisation of Information Access Rights (OGP metrics all jurisdictions all years)

17. Australians have told us that access to government information improves transparency and accountability, and is important.[8] Generally, Australians hold positive views about government openness, with 70% believing they can easily access public information and 46% feeling as though they are able to participate in the Australian political landscape, noting that engagement is generally limited to voting.[9]

18. The functional operation of the FOI framework is a measure of the health of our democracy, which should be responsive to the digital environment and secure community expectations. On 2 October 2025 the OAIC released an Information Access – Community Study Report, measuring Australians' attitudes towards information access and the FOI system.

19. Key findings include that:
    - 96% of Australians, regardless of age, gender or location, feel their right to access government information is important (58% very important; 38% quite important). This is an increase of 5% from 2023 and an increase of 12% from 2019.
    - Nearly 1 in 4 Australians were unaware of their right to access information from specific government organisations. Awareness of the right to access personal information from the Federal Government has increased, but recognition for other organisations remains unchanged since 2019.
    - 40% of Australians tried to access information from Federal Government organisations in the past 3 years, with the biggest increase in requesting personal information from the Federal Government.
    - Most Australians (86%) agree the Government must publicly report on any technology used to inform decision-making (including AI and automated decision making), with 56% strongly agreeing.
    - Only 44% of Australians are confident the FOI Act will allow them access to information about how decisions are made by the Federal Government and agencies.

20. The UNESCO Report on Public Access to Information regarding Sustainable Development Goals (16.10), found 88% of respondents specified the need for a dedicated information access oversight institution,[10] demonstrating the importance of independent oversight and ensuring resources are in place to safeguard access to information rights.

21. In the Australian context, our Community Study Report 2025 found that 97% of national respondents view having an independent regulator report on an agency's performance in meeting the community's right to access information as important. This report emphasises the value placed by Australians in the FOI system, and underscores the important role held by the OAIC in upholding information access rights. The community attitudes and expectations reflected in these results are an important consideration in the context of broader reforms to the FOI system.

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[8] Information Access – Community Study Report 2025.

[9] OECD (2025), Drivers of Trust in Public Institutions in Australia, Building Trust in Public Institutions, OECD Publishing, Paris, (page 9).

[10] UNESCO's Report on Public Access to Information, p 11 (unesdoc.unesco.org/ark:/48223/pf0000393238/PDF/393238eng.pdf.multi)

Part 2: The operation of the FOI Act in securing access to information

Summary of key statistics

22. In 2024–25, Australian Government agencies and ministers received 43,456 FOI requests, which is the highest number on record. The majority of these requests involved an individual seeking access to their own personal records. The 2019–20 reporting year is the only other year in the past 7 years where the number of FOI requests exceeded 40,000 (**Appendix A**).

23. It is clear that there is pressure on the FOI system, as evidenced through the increased FOI requests received, including the 46% increase in FOI requests received by the Department of Home Affairs. There does not appear to be a single cause for this increase, with agencies describing different reasons. Some agencies attribute the increase to interest in their expanded regulatory scope and functions, interest from media and increased requests received from Australian Senators and Federal Members of Parliament relating to procurement.[11]

24. The Department of Home Affairs FOI workload, and the impact its FOI performance is having on the whole FOI system results in 2024-25, is significant. FOI requests made to the Department of Home Affairs comprised 40% of all FOI requests made in 2024-25 (**Appendix B**). The statistical results in our Annual Report for 2024-25 will provide two sets of figures – the first reflecting all agencies including the Department of Home Affairs; and the second excluding the Department of Home Affairs. This approach to reporting on the 2024-25 results intends to support improved understanding of trends and pressure points across the system, and overall FOI performance.[12]

25. In 2024-25, 74% of all FOI requests were requests seeking access to personal information; 26% of requests were for other government-held information. This result is consistent with data from the previous 2 years. When the Department of Home Affairs figures are excluded, the proportion of requests to all agencies seeking access to personal information decreases to 59%, and requests for other information increases to 41%. This demonstrates that the community is active in seeking information besides their personal information.

26. There have been increases across the whole FOI framework:
    - The total number of new entries added to agency disclosure logs in 2024–25 was 3,363, an increase from 2023–24 (2,481) and 2022–23 (2,493).
    - There was a 13% increase in internal review applications (915) in 2024–25. The number of internal review decisions (812) was 9% more than in 2023–24 (when 748 decisions were made).
    - There was a 26% increase in FOI complaints, a 41% increase in IC reviews.
    - There was a 46% increase in extension of time (EOT) notifications (with consent between the parties) in 2024-25 compared with 2023-24.

[11] Office of the Australian Information Commissioner Annual Report 2024-25.

[12] Office of the Australian Information Commissioner Annual Report 2024-25.

- The total reported costs attributable to FOI in 2024–25 were $97.99 million, a 14% increase on 2023–24 ($86.24 million). When Department of Home Affairs figures are excluded, the total reported costs attributable to FOI in 2024–25 were $76.74 million, a 9% increase on 2023–24 ($70.37 million).

27. The OAIC continues to receive a large volume of FOI complaints about agencies' compliance with timeliness. The OAIC received 339 complaints in 2024-25, a 26% increase compared to 2023-24, with the issue most commonly raised being timeliness, with agencies reporting that there has been an increase in the volume and complexity of FOI requests.

28. The Information Commissioner has completed investigations into 3 agencies in relation to timeliness issues to understand the underlying factors contributing to agencies' non-compliance with making decisions within the specified timeframes. Importantly the Information Commissioner has made recommendations to facilitate improved compliance.

The OAIC's FOI regulatory activities

29. The OAIC's FOI regulatory activities are predominantly focused on casework functions to address the aged cases, specifically IC reviews, which have increased substantially by 21% in 2024-25. Against this increase the OAIC finalised 41% more applications in 2024-25 compared to 2023-24 (which was also a period of notable increase in OAIC finalisation rates at 15%).

30. Notably, there has been a 19% increase in deemed access refusal applications since 2023-24. These increases have required consideration of processes and use of specific regulatory powers to facilitate timely resolution. In comparison, there was a slight decline of 0.4% in reviews received by NSW from 2022-23 to 2023-24 and figures remained stable in Victoria. In relation to FOI enquiries received by the OAIC, there was an 11% increase from 2023-24 to 2024-25.

31. In 2024–25, 248 IC review decisions were made under section 55K of the FOI Act, with 62% of decisions setting aside the decisions under review.

32. Other FOI functions of the OAIC include:
    - promoting awareness and understanding of the FOI Act and the objects of the Act
    - providing information, advice, assistance and training to any person or agency on matters relevant to the operation of the FOI Act
    - monitoring, investigating and reporting on compliance by agencies with the FOI Act
    - assessing and investigating complaints of agency actions relating to the handling of FOI matters under Part VIIB of the FOI Act
    - assessing and determining extension of time applications from agencies and Ministers in relation to decisions on FOI requests
    - overseeing the Information Publication Scheme (IPS)
    - compiling FOI data and assess trends,
    - reporting and recommending to the Minister proposals for legislative change to the FOI Act or administrative action necessary or desirable in relation to the FOI Act; and
    - any other function conferred on the Information Commissioner by the FOI Act or by another Act which is expressed to be an FOI function.

33. Against the backdrop of the FOI results summarised above, the OAIC has undertaken a range of activities to uplift agencies' FOI capabilities, including developing tools, updating guidance and providing education for FOI practitioners.

34. It is a current priority to uplift agency capability in the exercise of FOI functions and to make FOI compliance easier. The OAIC's efforts to do so are demonstrated, for example, by an FOI Practitioner Survey conducted in 2024–25 to better understand the needs of the people at the heart of the system.

35. An initiative the OAIC undertook in 2024–25 to make FOI compliance easier was the launch of an FOI self-assessment tool for agencies. This interactive Excel document, published on 27 February 2025, assists agencies to understand the effectiveness of their information access systems and the extent to which these comply with the FOI Act. Agencies can use the self-assessment tool to identify gaps or areas where attention is needed, as well as areas where they are doing well. The OAIC guidance supports the amelioration of weaknesses identified by agencies.

36. The OAIC's FOI processing period calculator is another tool for agencies, which assists FOI practitioners to calculate the period during which they are required to process access requests made under the FOI Act. The calculator takes into account the full variety of factors that may affect the default processing period set out in subsection 15(5)(b) of the FOI Act.

37. In 2024-25, the OAIC conducted a series of webinars for FOI practitioners that covered areas such complaints, extensions of time, vexatious applicants, FOI statistics, and IC review practice updates that provided detailed information on each topic and made clear what our focus areas are.

38. In 2025 the OAIC reviewed Part 3 of the FOI Guidelines relating to processing and decision-making under the FOI Act. The 2024 OAIC FOI practitioners' survey found that 82% of agencies reported the FOI Guidelines were the most used resource to assist them in performing their FOI functions.

39. To improve public access to data the OAIC launched a new statistics dashboard, publishing information about the operation of Australia's FOI system. The dashboard presents key FOI data reported to the OAIC by Australian Government agencies and Ministers, updated on a quarterly basis. It was created to help government, agencies, media and the public better understand the volume and type of FOI requests received and how well agencies are meeting their obligations under the FOI Act.

Part 3: Operational implications for the OAIC

40. The proposed package of FOI reforms involves at least 31 different sets of amendments. Should the reforms be enacted, there will be two systems of FOI law operating at the federal level until such time as all legacy cases are finalised.

41. A dual system will required government agencies, applicants, the OAIC and the Administrative Review Tribunal (ART) to simultaneously work under two different legal frameworks (and two

sets of guidelines issued under section 93A of the FOI Act) with different requirements relating to access, grounds for refusal and review and regulatory powers, depending on when a request or review application was made. This will have an operational burden and increases the cost of compliance and access for participants in the FOI Framework. That increased level of complexity may require consideration of mitigation strategies to facilitate the community's right to access information.

42. The information below sets out issues relating to the operation of the reforms for the Committee's consideration, in the context of year-on year increases in IC review applications, FOI complaints and extension of time applications.

Changes to the objects of the FOI Act

43. The objects of the FOI Act will be amended to expressly provide that the right to access to information is to be balanced against the protection of essential private interests and the proper and effective operation of government. The amendment seeks to limit the objects of the FOI Act by importing a test of "as far as possible". It is likely this amendment could lead to more refusal decisions, giving rise to an increase in IC reviews, particularly when read together with the proposed amendments to the public interest factors for conditional exemptions. This will, for the first time, insert statutory considerations weighing against disclosure into the objects of the FOI Act, which decision makers will need to consider when arriving at a decision on an access request, internal review and IC review.

44. The OAIC notes that the new proposed factors to consider are already embedded in the decision-making process, anticipated in considering disclosure under the FOI Act, as noted in the conditional exemptions under Part IV Division III, notably sections 47F (personal privacy exemption) and 47E (certain operations of agencies) and the public interest test factor under section 11B. The Guidelines issued under section 93A of the FOI Act also list factors against disclosure (see paragraph 6.233 of the FOI Guidelines).

Key concepts and definitions

45. The reforms introduce substantial changes to key concepts and definitions such as a document of an agency and an official document of a Minister. The proposed reforms seek to clarify the definition of a document of an agency by amending the definition to include 'and the document forms part of, or relates to, the operations of the agency'. This is a substantial change to the definition and will require significant amendment to the FOI Guidelines.

46. In relation to an official document of a Minister, the reforms introduce a new concept of "forwarding requests". Currently subsection 16(4) of the FOI Act reflects on forwarding documents with requests and a similar approach might be needed for the "forwarding" provisions if it is intended for agencies to process the request on behalf of the Minister rather than by reference to their own holdings.

47. The automatic forwarding provisions also remove the ability of an incoming Minister to consider the request on behalf of an outgoing Minister unless the outgoing Minister specifically facilitates this before leaving office. This approach appears to remove some of the flexibility that currently exists and there may be practical implications, for example if a request has been overlooked or is made close to the cessation of the outgoing Minister.

48. The proposed amendments also change references to 'calendar days' to 'working days'. This proposal will extend the timeframe for responding to a request from approximately 4 weeks to 6 weeks. The new timeframe may also inform the consideration of EOT applications to further extend the processing timeframes as set out in sections 15AB, 15AC, 65D and 51DA.

49. The reforms remove name disclosures of non-SES staff in the provision of access to documents, noting there are proposed circumstances where the employee identifying information can be disclosed such as where the employee is publicly known to be associated with the subject matter of the requested document(s). This proposal will require careful decision-making and will likely lead to IC review applications which will require consideration of section 22 and exemptions that may be relevant in considering the disclosure of such information. These changes will require agencies to have regard to changed guidelines, reporting requirements and internal processes.

Vexatious requests

50. Currently, the Information Commissioner has the power to declare a person a vexatious applicant if satisfied the grounds in section 89L of the FOI Act are met. Vexatious applicant declarations that have been issued (whether active or expired) are generally publicly available. To date, the OAIC has made 19 declarations out of 59 applications under section 89K based on factors such as abuse of process or manifestly unreasonable access actions. Further factors are outlined in Part 12 of the FOI Guidelines. As at 2 October 2025, the OAIC has 6 applications on hand from agencies under section 89K of the FOI Act seeking to have a person declared a vexatious applicant.

51. The reforms permit individual requests to be declared vexatious rather than a person being declared a vexatious applicant with abbreviated notice requirements and no internal review. The use of this power by agencies and Ministers may give rise to an increase in the number of IC review applications and legal challenges relating to this new ground of refusal as well as FOI complaints where applicants form the view that their requests are repeatedly refused under this power. Consistent with the above, there will be a need for agencies to have regard to the new guidelines and amend their internal processes to adjust to the new system of law.

Fees

52. Section 29 of the FOI Act provides that an agency or Minister may impose charges in respect of FOI requests, and sets out the process by which charges are assessed, notified and adjusted. Charges may only be imposed for requests relating to other (non-personal) information **(Appendix E)**.

53. The proposed reforms amend subsection 15(2) to provide that the request must be accompanied by the fee (if any) prescribed by the regulations, unless otherwise waived. If the fee is not paid, the request is invalid and does not have to be processed. These amendments will also apply to internal and IC reviews.

54. Although the Bill does create a regulation making power to set fees, there is no draft regulation currently proposed to impose specific fees. However the proposed reforms indicate that fees cannot be required where the request is for personal information of the individual or of another person on whose behalf the applicant is seeking access. These reforms may reduce the number of non-personal FOI requests made to agencies and Ministers, with a corresponding decline in IC review applications, although the OAIC notes there may be a significant increase in applications ahead of fees being introduced. The OAIC understands that

the decision to impose or waive a fee would not be subject to review, in contrast to the decisions made under section 29. Consideration may need to be given to the interaction between regulations relating to fees as well as existing charges regulations.

Anonymous requests

55. Under subsection 15(1) of the FOI Act, the current requirements for requesting access to a document of an agency or Minister are confined to: the request being in writing, stating it is an application for the purposes of the FOI Act, providing enough information for the document to be identified, and including appropriate details as to how notices under the FOI Act can be provided to the applicant.

56. Prohibiting anonymous requests imposes a new requirement on agencies to assure themselves of the identity of a person seeking access to personal information, or information concerning the business, commercial or financial affairs of the applicant. It also introduces a new requirement for agencies to assure that authorisation is in place for a third party acting on behalf of a person in relation to an access request for personal information.

57. The Explanatory Memorandum notes that limitations on privacy are balanced by existing information protection, identity proofing and broader privacy frameworks. An APP entity must only collect personal information which is reasonably necessary for one or more of the entity's functions or activities (APP 3). The OAIC understands the drafting to be sufficiently broad to allow agencies to use a variety of ID verification checking methods such as potential use of Digital ID in the future and note there may be potential complaints made under both the FOI and Privacy Acts where applicants form the view that the personal information requested by an agency or APP entity is not reasonably necessary.

58. However, the OAIC recognises that the identity of the individual is important in determining requests for personal information. Similarly, the systems to validate the authority of a representative are also important to the credibility of the FOI system and decision-making.

Non-disclosure of certain identifying information

59. It is currently required that the name and designation of the person giving the decision is included in a statement of reasons, during a consultation process, and in relation to charges notices.

60. The reforms remove names and certain identifying information of all staff in the statement of reasons under section 26, in the consultation process in relation to section 24AB and in the decision notice in relation to a charge under section 29. This may require consideration in identifying the relevant decision maker and any processes for managing conflicts of interest when seeking review of a decision through the decision maker, merits review through the Information Commissioner and/or ART and judicial review via the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

Transfer of requests

61. Although the transfer of requests is an established process, the proposed reforms include a new element in that for the purpose of transferring a request under subsection 16(1), agencies and Ministers will not be required to search for a document if it is apparent that the document would not be in possession of the agency. As an access refusal decision reviewable by the Information Commissioner, it will likely result in an increased number of IC review

applications and complaints about agency conduct, noting that Ministers are not subject to the complaints process.

Deemed refusal process

62. Currently, a 'deemed refusal' occurs if the time for making a decision on a request for access to a document has expired and an applicant has not been given a notice of decision. If this occurs, the principal officer of the agency or the minister is taken to have personally made a decision refusing to give access to the document on the last day of the 'initial decision' period.
63. The reforms require agencies and Ministers to continue to deal with requests in the same way as if the deemed refusal had not occurred.
64. The proposed approach may provide greater clarity for the OAIC and parties as to the decision under review because it specifies that an actual decision made outside the statutory timeframe is an IC reviewable decision.
65. The changes also deal with relevant flow-on effects for internal and IC review processes and this will require amendments to how decisions and timeliness obligations are reported.
66. In 2024-25, 79% of all IC review applications involved deemed access refusal decisions (1,691 IC review applications for review of deemed decisions out of a total of 2,136 IC review applications), an increase of 19% from 2023-24 (when 60% of all IC review applications involved deemed access refusal decisions). For IC review applications that named the Department of Home Affairs as the respondent, 97% were reviews of deemed access refusal decisions in 2024-25.

Extension of time

67. The current drafting of section 15AA requires agencies or Ministers to provide written notice of the extension of time agreed with the applicant to the Information Commissioner.
68. The reforms also allow agencies and Ministers to agree between themselves and the applicant to extend timeframes (beyond 30 days) or conclude an IC review, removing the need for OAIC engagement in the process. Although the OAIC will no longer be notified, the OAIC will need to seek proof of the agreement during the EOT process to ensure applications are correctly made.
69. We received 36% more notifications advising of an EOT (by consent) in 2024-25 compared to 2023–24, with 6,045 FOI requests being extended beyond the initial day processing timeframe, which are also subject to additional time based on consultations and other procedural steps.[13]
70. The OAIC also received 816 applications for a decision by the IC for extension of time during this financial year, compared to 986 in 2023–24.

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[13] An agency or minister may extend the time to make a decision by agreement with the applicant (s 15AA), or to undertake consultation with a third party (ss 15(6)–(8)). An agency or minister can also apply to the Information Commissioner for more time to process a request when the request is complex or voluminous (s 15AB), or when access has been deemed to have been refused (ss 15AC and 51DA) or deemed to have been affirmed on internal review (s 54D). These extension provisions acknowledge there are circumstances when it is appropriate for an agency or minister to take more than 30 days to process a request. When an agency or minister has obtained an extension of time to deal with an FOI request and finalises the request within the extended time, the request is recorded as having been made within the statutory time period.

Cabinet and deliberative processes exemptions

71. One of the tests to determine whether documents meet the Cabinet exemption under section 34 of the FOI Act is whether they were brought into existence for the dominant purposes of submission for consideration by Cabinet or briefing a Minister on such documents.

72. The reforms remove the 'dominant purpose' test in relation to Cabinet exemption requirements for documents and briefings and replace it with the 'substantial purpose' test. The expanded threshold may lead to legal challenges to clarify interpretation and application given it will enable decision-makers to refuse access to documents that are of significant interest to the public. The potential increased coverage of documents to which section 34 may apply may also result in more access refusals and lead to an increase number of IC review applications. The cabinet exemption was claimed by agencies and Ministers 245 times in 2024-25, 179 times in 2023-24 and 128 times in 2022-23 making up 1% of all exemptions applied for each year **(Appendix C)**.

73. In promoting access to information, section 11B of the FOI Act does not currently list any factors against access and the proposed reforms look to insert a number of public interest factors against access that apply to section 47C. Section 47C is a conditional exemption for documents if their disclosure would disclose deliberative matter prepared or recorded, or consultation or deliberation that has occurred in the course of or for the purposes of deliberative processes involved in the functions of agencies, Ministers, Government or the Commonwealth. The use of the deliberative processes exemption under section 47C of the FOI Act was used 1,140 times in the same period, making up 5% of the total exemptions applied **(Appendix D)**.

74. There were 2,134 applications for IC review in 2024-25 (a 21% increase from 1,766 in 2023–24). This is the highest number of IC review applications received by the OAIC in a year (the second-highest number was 1,954 in 2021-22). There was also a 41% increase in the number of IC reviews finalised by the OAIC in 2024-25 (2,470), compared with 2023-24 (when 1,748 were finalised). Since 2016–17, there have been year-on-year increases in the number of IC reviews finalised, and the number finalised by the OAIC in 2024-25 is the highest number on record **(Appendix F)**.

Processing cap

75. Currently, a practical refusal reason exists under subsection 24AA(1) when the work involved in processing the request substantially and unreasonably diverts an agency's resources from its other operations or interferes with the performance of the Minister's functions, or the request doesn't satisfy the identification of documents requirement.

76. A 40-hour processing cap will be prescribed for the purposes of refusing a request on the basis that a practical refusal reason requests.

77. Agencies will need to have regard to new guidelines for assessment of hours with an ongoing role for IC reviews in relation to these matters.

New grounds for refusing access

78. As a new element in the decision-making process, these reforms allow an agency or Minister to refuse to give access to a document, without identifying the document, if it is apparent that

it would be exempt. Agencies will need to have regard to clear guidelines when exercising this power, particularly in relation to conditional exemptions and material that is partially publicly available. It will be important to clearly outline how agencies will be able to make a decision without seeing all of the documents and weighing up the public interest test. As this will be an access refusal decision reviewable by the IC, it will likely result in an increased number of IC review applications and complaints.

79. This new ground may also be subject to legal challenges given the impact on administrative decision-making processes would usually require a review of the relevant documents to ground a decision to refuse access.[14]

Regulatory and procedural impacts of reforms on the OAIC

80. The proposed amendments will have significant resourcing and regulatory impacts for the OAIC as the regulator of the FOI system. Some of the impacts are explained below, noting this is not an exhaustive list:

- Implementation of the reforms will require significant changes to FOI case management operational procedures, guidance and templates, new FOI Guidelines and Practice Directions, ICT systems changes in the OAIC, and changes to smartforms and public facing information.
- During the transitional period, the OAIC will need to establish new case management processes and systems to implement the new jurisdiction, while simultaneously maintaining the current system of review and procedures under the current FOI Act.
- The proposed establishment of a fee regime for FOI requests and subsequent reviews will be prescribed in the Regulations. Noting that requests for access to personal information are proposed to be excluded from the fee regime and the expanded dual track for access to information requests both under the FOI Act and APP 12 of the Privacy Act, this may lead to the unintended consequence that the majority of FOI requests received will continue to be related to personal information, diminishing the objects of the FOI framework to promote and allow public access to government information. Further the legislative timeframes and other decision-making requirements together with regulatory powers extant under the FOI Act are not replicated under the Privacy Act in circumstances where a decision maker refuses access to information.
- The OAIC notes that the establishment and maintenance of a fee regime will include changes to lodgement procedures, creation of a payment portal, and development of other processes and delegations to collect, waive and refund fees, and as such, is likely to far outweigh any revenue collected from fees.
- The proposed removal of the requirement to notify the OAIC of EOT agreements under section 15AA may have unintended consequences as the system is currently automated and does not significantly impact the agency's caseload. This amendment will likely increase the number of complaints received regarding disputes in relation to the extension of time process and OAIC staff will be unable to access the appropriate information in a

[14] Administrative Review Council Best Practice Guide: Statements of Reasons

timely manner. As such, there will be an increased number of requests for information from the OAIC to relevant agencies to assist with the management of the complaints which leads to inefficiencies for all parties.

- The ability of agencies to declare individual requests to be vexatious is expected to have a substantial increase and impact on the OAIC's review case load. The increase will be facilitated by the abbreviated notice of decision required by subsections 15AD(2), (3) and (5) coupled with decision makers no longer being required to identify themselves. This will hamper the OAIC's ability to conduct a thorough review as there will be limited information regarding how or why the decision was made. Unintended consequences may arise from this proposal that diminish the vital and recognised role the OAIC plays in the Federal government integrity framework.

New remittal power

81. The new remittal power allows the Information Commissioner to remit a matter and make orders or directions in relation to the reconsideration of the matter during the course of the review with agreement from the agency or Minister. The OAIC understands that the policy intent is to contribute to the efficient handling of matters and to provide greater legal certainty for the OAIC. However, requiring consent from agencies and Ministers will have unintended consequences, significantly impacting usage of the provision as well as the timely and effective resolution of matters. Timeliness may also be adversely impacted by agency engagement in the absence of an identified decision maker and the proposed requirements for the agency and applicant to agree to a new date as to when a revised decision will be made. The injection of additional procedural steps may introduce new friction points within the FOI system.

82. The reforms also introduce subsection 55K(1A) that gives the IC power to remit a practical refusal decision back to the agency for reconsideration, which will provide certainty to the status of a decision. The OAIC notes that there may be the potential for confusion with the new remittal power in subsection 55G(A)(1), however the positioning of this new provision in section 55K confirms this is a 'decision' of the IC, compared with the remittal power applicable to all other reviews – which are not decisions under section 55K.

Discretion not to review or investigate

83. The reforms to section 54W will give the IC a discretionary power to not undertake an IC review where there is an ongoing internal review application of an access refusal or access grant decision, and the agency has not yet made a decision. Further, amendments to section 73 provide additional grounds on which the IC can decide not to investigate a complaint, and the ability to delegate the power to non-SES is likely to significantly improve the timeliness of complaint handling, provide more efficient use of the OAIC's resources and brings these powers into line with similar regulatory powers under the Privacy Act.

Removal of delegations

84. The reforms also amend further delegations powers available to the IC in the AIC Act , including the removal of the ability to delegate the power to issue notices under sections 55R and 79 of the FOI Act.

85. Against the starting point of extant compliance levels, the OAIC noted that by removing the delegations, the unintended consequences of this proposed amendment is that it will cause a delay in the processing of matters and may increase timeframes for completing IC reviews and complaints as it prevents SES and officer-level staff from performing these functions. The proposal also introduces inconsistencies with the current exercising of similar powers under the Privacy Act. A section 55R notice is issued to agencies to compulsorily obtain documents, and any non-compliance may attract a penalty if enforced. Compulsory notices, as issued by delegates, are routinely used across information access legislative frameworks in Australia, to obtain access to documents relevant to investigations.[15] The OAIC also notes that current delegations are exercised infrequently and judiciously – for example:

    - From 1 July 2025 to 23 September 2025 only 5 notices were issued under section 55R notices by a delegate. In 2024-25, 7 notices were issued under section 55R.
    - For the same period, the OAIC sent 29 forward notices, which included one notice relating to 16 matters awaiting overdue responses.
    - We received 100% compliance with each of these notices.

OAIC current structure and funding

86. Since February 2024, the Office of the Australian Commissioner (OAIC) has operated with a three-commissioner model. Current Commissioners are:

    - Elizabeth Tydd, the Australian Information Commissioner,
    - Alice Linacre PSM, the Freedom of Information Commissioner (commenced 29 September 2025) and
    - Carly Kind, the Privacy Commissioner.

87. On 2 December 2024, the new OAIC organisational structure formally commenced to support its regulatory objectives and ensure the OAIC is a harm-focused, proactive regulator. The new structure seeks to combine elements of privacy and FOI where practicable whilst retaining and highlighting regulated area expertise.

88. The OAIC is a small agency of approximately 170 FTE. It has improved case management efficiency in FOI IC reviews in recent years through a focus on ongoing process reforms, workforce restructuring and surge efforts. As a result, the agency is processing and finalising more cases in all jurisdictions. The agency finalised 41% more IC reviews in 2024-25 than the prior year, specifically, 722 more FOI IC reviews were finalised in 2024-25 compared with 2023-24, and 952 more than 2022-23. Positive performance results have also been realised in reducing the number of aged matters on hand. For example, in 2024-25, the OAIC finalised 805 IC reviews pertaining to matters more than 12 months old, including closing all matters

[15] See subsections 13 and 25 of the *Government Information (Information Commissioner) Act 2009 (NSW)* and subsections 103 and 145 a of the *Right to Information Act 2009* (QLD)

lodged in 2020. The agency continues to look for further opportunities to improve case management efficiency across all workstreams.

89. In the 2025-26 Portfolio Budget Statement for the OAIC, one of the major areas of focus is leading the promotion of open government and cultivating the FOI capabilities of Australian government agencies and Ministers to secure timely access to and proactive release of government-held information.

90. Department FOI funding for 2024-25 is approximately $4.2M and is ongoing. Requests for additional funding for FOI since 2018 have been unsuccessful other than in the 2021-22 Budget which provided for $4.0M over the forward estimates for the appointment of an FOI Commissioner, Senior Executive Service Band 1 and 2 support staff, $1.0M p.a. ongoing. Despite experiencing a growth in aged matters and a significant increase in applications, no further funding has been received or allocated. In the absence of further funding, the OAIC applied $1.2M from reserves to reduce the aged FOI matters in 2022-23 and 2023-24 and has introduced a structure and improved process designed to better support case management.

Part 4: Contemporary developments in information access frameworks

91. The OAIC also briefly notes contemporary developments in domestic and international frameworks for the Committee's consideration, with key themes relating to:

    a. proactive publication of cabinet papers
    b. the application of professional standards to practitioners
    c. regulatory reporting, and
    d. the adoption of technology to assist in streamlining the request process.

New Zealand: Proactive disclosure of cabinet documents

92. In New Zealand, Cabinet papers and minutes must be proactively released within 30 business days of final decisions being taken by Cabinet, unless there is good reason not to publish all or part of the material, or to delay the release. This policy applies to all papers lodged from 1 January 2019, subject to certain exclusions.

Queensland: Proactive disclosure amendments

93. In 2024, the Queensland *Right to Information Act 2009* (RTI Act) was amended to support the proactive publication of Cabinet documents through an administrative release scheme which responds to a key recommendation from the Coaldrake review of culture and accountability in the Queensland public sector.[16]

[16] See R*eview of Culture and accountability in the Queensland Public Sector*, Final report June 2022: (https://www.coaldrakereview.qld.gov.au/reports.aspx).

Victoria: Review of professional standards

94. In Victoria, practitioners are subject to Professional Standards, issued in December 2019 under section 6U of the *Freedom of Information Act 1982* (Vic). The purpose of the Standards is to ensure the Act is administered by agencies consistently with:
    - the Act's object – to extend as far as possible the right of the community to access information in the possession of an agency subject to the Act; and
    - Parliament's intention – that the provisions of the Act are interpreted so as to further its object and any discretions conferred by the Act are to be exercised as far as possible to facilitate and promote the prompt disclosure of information at the lowest reasonable cost.
95. The Standards are currently under review and expect to be issued in 2025-26.

New South Wales: Report to Parliament

96. In New South Wales the Information Commissioner provides regulatory reports to Parliament (section 38 of the *Government Information (Information Commissioner) Act 2009 No 53*).

Philippines: FOI ePortal

97. Access to information in the Philippines is enabled via an Executive Order[17] and allows for requests to be submitted and responded to in a portal[18] which publishes documents released in response to a request. Users are able to search over 251,000 requests covering 725 agencies or browse information by sector.

Conclusion

98. Improving access to government-held information in Australia is a multifaceted task with shifting needs across both the environment at large and for Australian government agencies that have a duty to manage information for public purposes. The OAIC appreciates the opportunity to contribute to consideration of FOI reform, the Committee's consideration of the proposed reforms and operation of the framework in upholding information access rights for Australians.

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[17] No. 2, Series of 2016.

[18] https://www.foi.gov.ph/

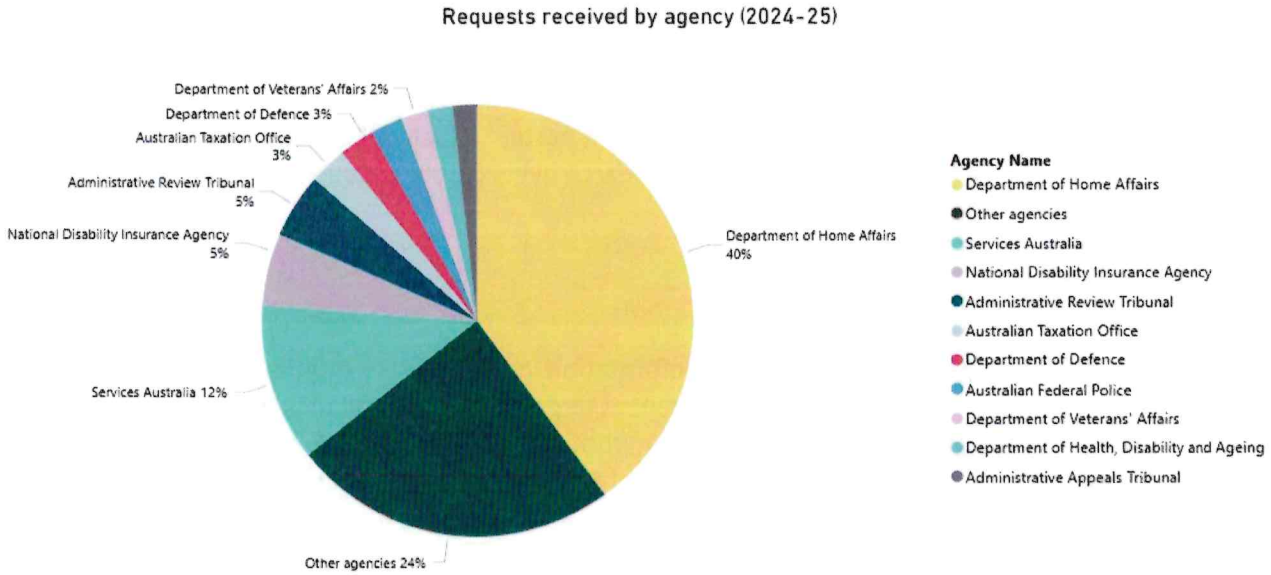
Appendix A

FOI requests to Commonwealth agencies received over the past 7 years

	2018–19	2019–20	2020–21	2021–22	2022–23	2023–24	2024-25
Number of FOI requests received	38,879	41,333	34,797	34,236	34,219	34,706	43,456
% change from previous financial year	+13	+6	–16	–2	<0.5	+1	25

Appendix B

Agencies by the number of FOI requests received



Top 20 agencies by the number of FOI decisions made in 2024–25

Agency	Granted in full	%	Granted in part	%	Refused	%	Total	Rank
Department of Home Affairs	2076	33	3021	49	1131	18	**6228**	1
Services Australia	389	10	2851	76	520	14	**3760**	2
Administrative Review Tribunal	660	37	1044	59	80	4	**1784**	3
National Disability Insurance Agency	376	29	601	46	333	25	**1310**	4
Australian Taxation Office	199	23	480	56	180	21	**859**	5
Department of Defence	23	3	415	53	352	45	**790**	6

Australian Federal Police	38	5	384	54	284	40	**706**	7
Australian Transaction Reports and Analysis Centre (AUSTRAC)	23	3	425	63	232	34	**680**	8
Administrative Appeals Tribunal	375	57	254	39	25	4	**654**	9
Department of Veterans' Affairs	57	9	472	73	117	18	**646**	10
Department of Health, Disability and Ageing	85	15	246	44	224	40	**555**	11
Office of the eSafety Commissioner	10	2	59	13	388	85	**457**	12
Department of Foreign Affairs and Trade	37	9	288	67	107	25	**432**	13
Department of Climate Change, Energy, the Environment and Water	65	21	174	55	77	24	**316**	14
Australian Securities and Investments Commission	27	10	112	41	136	49	**275**	15
Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts	53	20	146	55	68	25	**267**	16
Department of the Prime Minister and Cabinet	37	14	121	47	99	39	**257**	17
Attorney-General's Department	8	4	109	50	101	46	**218**	18
Department of the Treasury	31	16	80	41	82	42	**193**	19
Department of Social Services	26	15	69	39	81	46	**176**	20
Total top 20	**4,595**	**22**	**11,351**	**55**	**4,617**	**22**	**20,563**	
Others	798	17	2,207	47	1,641	35	4,648	
Total	**5,393**	**21**	**13,558**	**54**	**6,258**	**25**	**25,211**	

Appendix C

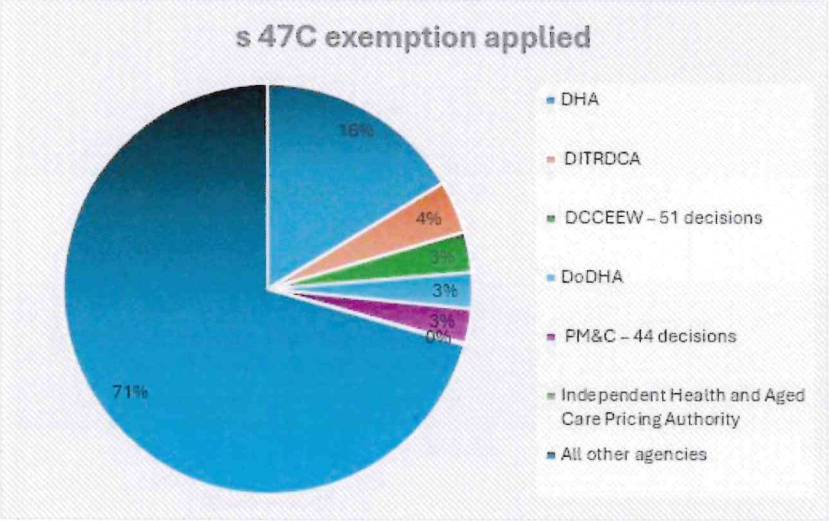
Use of exemptions in agency FOI decisions in 2024–25

FOI Act reference	Exemption	Personal	Other	Total	% of all exemptions applied
s 33	Documents affecting national security, defence or international relations	195	439	634	3
s 34	Cabinet documents	6	239	245	1
s 37	Documents affecting enforcement of law and protection of public safety	473	262	735	3
s 38	Documents to which secrecy provisions of enactments apply	882	136	1,018	5
s 42	Documents subject to legal professional privilege	174	404	578	3
s 45	Documents containing material obtained in confidence	35	216	251	1
s 46	Documents disclosure of which would be contempt of Parliament or contempt of court	10	25	35	0
s 47	Documents disclosing trade secrets or commercially valuable information	37	428	465	2
s 47A	Electoral rolls and related documents	8	1	9	0
s 47B	Commonwealth-state relations	116	137	253	1
s 47C	Deliberative processes	288	852	1,140	5
s 47D	Financial or property interests of the Commonwealth	113	89	202	1
s 47E	Certain operations of agencies	3,918	1,647	5,565	26
s 47F	**Personal privacy**	**6,919**	**2,013**	**8,932**	**42**
s 47G	Business	252	846	1,098	5
s 47H	Research	1	2	3	0

s 47J	The economy	0	5	5	0
Total		**13,427**	**7,741**	**21,168**	**100**

Appendix D

Use of deliberative process exemptions in agency FOI decisions



Appendix E

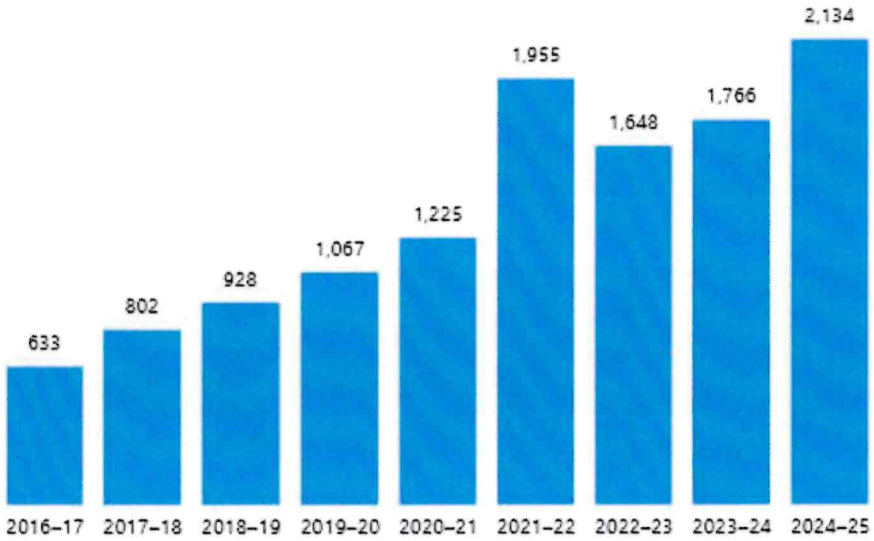
Top 20 agencies by charges collected in 2024–25

Agency	Rank	Requests received	Requests where charges notified	Total charges notified ($)	Total charges collected ($)	% of charges notified that were collected
Department of Climate Change, Energy, the Environment and Water	1	403	144	40,485	19,382	48
Department of Health, Disability and Ageing	2	811	105	29,812	13,440	45
Department of Agriculture, Fisheries and Forestry	3	120	34	11,215	5,860	52
Department of Industry, Science and Resources	4	259	57	20,580	3,793	18
National Indigenous Australians Agency	5	90	22	8,608	3,653	42
Australian Research Council	6	30	7	5,589	2,736	49
Australian Competition and Consumer Commission	7	146	43	9,580	2,728	28
Department of Education	8	161	18	5,796	2,540	44
Australian Communications and Media Authority	9	86	12	10,031	2,153	21
Defence Housing Australia	10	27	6	3,834	2,086	54
National Capital Authority	11	32	8	1,499	1,248	83
Australian Securities and Investments Commission	12	328	3	1,307	1,076	82

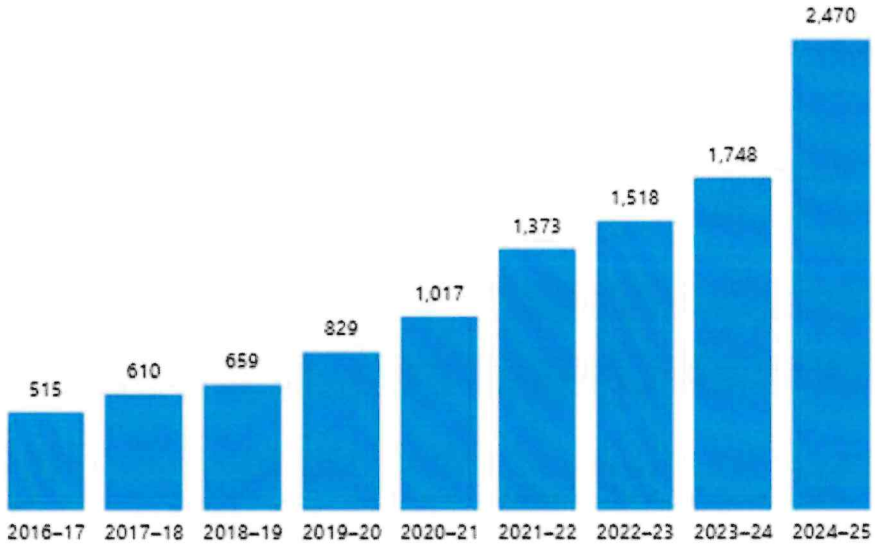
Department of the Treasury	13	231	22	9,131	854	9
Gene Technology Regulator	14	1	1	822	822	100
National Offshore Petroleum Safety & Environmental Management Auth.	15	36	6	1,653	714	43
Civil Aviation Safety Authority	16	179	8	2,243	564	25
Australian Trade and Investment Commission (Austrade)	17	37	13	1,920	398	21
Australian Broadcasting Corporation	18	147	3	1,855	345	19
Assistant Minister for Productivity, Competition, Charities and Treasury	19	7	1	288	288	100
Commonwealth Scientific and Industrial Research Organisation (CSIRO)	20	62	3	2,240	283	13
Total top 20	**21**	**3,193**	**516**	**168,488**	**64,963**	**39**
Others	22	40,263	24	19,096	218	1
Total		**43,456**	**540**	**187,584**	**65,181**	**35**

Appendix F

IC reviews received by OAIC from 2016–17 to 2024–25



IC reviews finalised by OAIC from 2016–17 to 2024–25[19][20]



[19] In 2021-22 the OAIC received additional funding for provided for $4.0M over the forward estimates for the appointment of an FOI Commissioner, Assistant Commissioner FOI and 2 support staff, $1.0M p.a. ongoing.

[20] Note in 2024-25 there was a significant increase in Department of Home Affairs deemed refusal matters requiring revised processes and use of regulatory powers to promote timely resolution.

ABC Submission on the Freedom of Information Amendment Bill 2025

October 2025

ABC

ABC submission on the Freedom of Information Amendment Bill 2025

October 2025

1. Introduction

The Australian Broadcasting Corporation (ABC) provides this submission in response to the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into the provisions of the *Freedom of Information Amendment Bill 2025* (Bill).

The ABC is a statutory corporation constituted by the *Australian Broadcasting Corporation Act 1983* (Cth) (ABC Act) and is subject to the *Freedom of Information Act 1982* (Cth) (FOI Act). In addition to receiving and processing FOI requests, ABC staff make FOI requests in the course of carrying out research for the preparation of news and information[1]. As such, the ABC is well placed to comment on the Bill from the perspective of both a responding agency and an end user of the FOI system.

The ABC recognises the importance of a well-functioning FOI system and the key role public access to documents plays in government and agency accountability. The media, through reporting based on documents accessed via FOI, is able to expose important information on government and political matters to a wider audience which has the benefit of increasing transparency and accountability of government decisions and activities.

However, it is broadly acknowledged that the current FOI system has not been operating effectively. Key challenges of the current system were well documented as part of the 2023 Senate inquiry into the operation of Commonwealth FOI laws.[2]

The ABC is supportive of measures that would, in practice, increase system efficiencies in processing FOI requests and reviews to the benefit of both end users and those processing the requests, by removing administrative burdens that clog the system and delay final outcomes. However, the ABC also cautions against accepting measures that would decrease transparency and access to government information. It is fundamental to a properly functioning democracy that the workings of our government are transparent and subject to scrutiny. All Australians have a right to know what decisions the government is making on their behalf and how such decisions are being made. FOI is a tool that journalists should be able to rely on to access information held by government agencies. Sometimes, documents obtained under FOI are the only way to gain confirmation or clarification about what happened in relation to important government decisions.

This submission offers the ABC's view on the following aspects of the Bill:

- Application fees;
- Anonymous requests;
- Cabinet document exemption;
- Refusal of vexatious or frivolous requests; and
- Document refusal on basis of request terms.

[1] ABC Act s8(1)(c) and s27.

[2] Senate Legal and Constitutional Affairs References Committee, Report on the Operation of Commonwealth Freedom of Information (FOI) Laws, December 2023 https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000101/toc_pdf/TheoperationofCommonwealthFreedomofInformation(FOI)laws.pdf

2. Application fees

Schedule 6 of the Bill proposes to enable application fees to be specified in the regulations, for FOI requests, internal reviews and Information Commissioner reviews, excluding requests for an individual's own personal information. The application fees would be subject to fee waivers for financial hardship, as prescribed by regulation.

The ABC supports appropriate measures to improve efficiency and reduce burden caused by non-genuine applicants. While the ABC agrees that it is reasonable to charge nominal application fees, at a minimum, it submits that the fee amount should be kept nominal so as to not have a "chilling effect" on the use of the FOI system for access to government information for public interest journalism.

In addition, the ABC would support an allowance under the FOI Act for application fees to be waived or reduced where a request for access to documents is made in the public interest, in a similar to how processing charges can be waived or reduced under the FOI Act.

With respect to reducing or waiving charges under the FOI Act currently, an agency or minister is required to consider whether access to the document in question is in the public interest[3]. This test is different from public interest considerations that may arise under other provisions of the FOI Act. While there is no presumption that the public interest test is satisfied by reason only that the applicant is a journalist, the fact the document is to be used by a journalist to prepare a story for publication that is likely to be of general public interest is a relevant consideration.

The ABC would support an amendment to the Bill which allows application fees to be waived or reduced where a request for access to documents is made in the public interest.

3. Anonymous requests

Part 5 of Schedule 2 of the Bill proposes to prohibit an FOI request from being made anonymously or under a pseudonym and require that a person declare when making an FOI request on behalf of a third party.

The ABC supports the right of those who wish to make FOI requests anonymously for legitimate reasons and is concerned that a ban on anonymous requests could deter whistleblowers and other vulnerable individuals from seeking access to important information.

Applicants may seek the privacy of an anonymous request for a variety of reasons, including for access to information for publication in the public interest. It is therefore the ABC's position that the removal of the ability to make FOI requests anonymously would be contrary to the aim of producing high-quality journalism in the public interest.

Further, the ABC believes the combination of other changes proposed by the Bill, such as the introduction of application fees and the ability to refuse vexatious or frivolous requests, are sufficient to address the stated key policy concerns of:

- reducing the abuses of process that consume a disproportionate amount of agency resources; and
- impact on the right of genuine applicants to access information.

On this basis, the ABC does not consider the removal of the ability to make anonymous requests to be necessary or proportionate.

[3] FOI Act s 29(5)(b)

4. Expansion of Cabinet documents exemption

Proposed changes to the Cabinet documents exemption are contained in the Bill at Schedule 7, Part 2. These changes would expand the scope of the exemption by:

- reducing the required level of connection to Cabinet a document must have before it can be exempt by:
    - broadening the circumstances from submitted to Cabinet or proposed by a Minister to be submitted to prepared by a Minister, on a Minister's behalf or by an agency; and
    - changing the test from "dominant purpose" to "substantial purpose". The explanatory memorandum (para 371) suggests that the proposed substantial purpose test could be satisfied if the Cabinet purpose is merely "of substance, real and not insignificant, trivial or nominal".
- providing that summaries, descriptions or references to the contents of an exempt Cabinet document are also exempt.
- replacing references to "reveal a Cabinet deliberation or decision" with "reveal a consideration of Cabinet" where "consider" is defined to cover a broader range of activities including discuss, deliberate, note and decide.

The ABC believes that the expansion of the Cabinet documents exemption gives government greater scope to classify documents as Cabinet documents for the purpose of refusing access to them. This measure is contrary to aims of increasing transparency and government accountability. The ABC therefore opposes the proposed changes.

The Cabinet documents exemption in section 34 of the FOI Act is an unconditional exemption category for documents and is not subject to any consideration of harm or a public interest test. The scope of the exemption should therefore be limited to apply to documents that are created for the dominant purpose of consideration by Cabinet. Documents that are not created for the dominant purpose of consideration by Cabinet may still fall under other exemptions but should be subject to the requirements of those other exemption categories before being possibly exempt.

5. Refusal of vexatious or frivolous requests

Part 4 of Schedule 2 of the Bill proposes to provide agencies with the ability to decline to handle a repeat or vexatious request or requests that are an abuse of process. The ABC is in support of measures that will limit the extent to which the FOI system can be abused and thereby improving the efficiency of FOI request processing to the benefit of both the end users and those processing requests.

The ABC's view is that the removal of genuinely vexatious or frivolous requests from the system will free up resources for the effective processing of genuine requests, including those from media industry content makers.

The ABC considers there would be benefit in the Information Commissioner publishing guidelines for agencies and Ministers to follow with respect to determining whether a request is vexatious or frivolous. This would ensure there is a consistent understanding and approach taken across government and reduce the potential for agencies and Ministers to inappropriately rely on this provision as a "catch all" for requests that are not in their interest to process.

6. Document refusal on basis of request terms

Schedule 7 of the Bill would insert a new section 23A that proposes to allow an agency or Minister to refuse access to a requested document without having searched for and identified the document in circumstances where, based on the terms of the request, the document would clearly be an exempt document under Part IV of the FOI Act.

The ABC does not support allowing document refusals on the basis of request terms where the exemption relied on is a conditional exemption. For a document refusal to made on the basis of a conditionally exemption, it is supposed that a decision maker would be able to, purely on the terms of the request:

- determine that a document answering the description of the request is conditionally exempt; and
- without seeing the document or being aware of its particular contents, be satisfied that granting access to the document would be contrary to the public interest.

The explanatory memorandum (at para 359) already admits that it would be a rare circumstance in which a refusal could be properly made on the basis of a conditional exemption. Where the stated policy intention is to improve the efficiency of FOI request processing, extending the provision to conditional exemptions seems unwarranted when the circumstances in which it could properly be employed are close to non-existent.

If the Parliament is minded to pass this measure for efficiency reasons with respect to some Part IV exemptions, the measure should equally apply with respect to documents exempt under s7 of the FOI Act including those specified in Part II of Schedule 2.

Submission to Senate Legal and Constitutional Affairs Legislation Committee

Inquiry into the Freedom of Information Amendment Bill 2025

Andrew Podger AO

Australian National University

Overview

The Committee should recommend that the Senate not pass the Freedom of Information Amendment Bill 2025, and suggest instead that the Government pursue the recommendation of the 2013 Hawke Review that a more comprehensive review of FOI laws be undertaken to address the complexity that has developed over time from piecemeal reforms, with a view to a complete rewrite in plain language that is readily accessible and easily understood.

In particular, the Committee should recommend that the proposed amendments concerning the conditional exemption of Cabinet documents (replacing 'the dominant purpose' to 'a substantial purpose') and the conditional exemption of deliberative documents (adding in a list of 'factors against giving access') should be rejected by the Senate.

Consideration

In the limited time available, I have not examined all aspects of the Bill in detail. My focus is on two substantial changes proposed in the Bill. There may be a case for some of the other changes to address the impact of technological changes and the problems caused by vexatious and unreasonable requests. Such changes, however, would be far better pursued as part of a more comprehensive review to simplify and update the legislation, preserving its fundamental purpose of transparency and accountability, and conducted in close consultation with external stakeholders.

Despite the reference to the 2013 report by Dr Allan Hawke AC on implementation of the 2010 amendments to the Act (developed by the Hon John Faulkner), key changes proposed in the Bill are in the opposite direction to that undertaken in 2010 and supported by Hawke in 2013.

The conditional exemptions of Cabinet documents and 'deliberative' documents set out in the 2010 legislation were explicitly intended to be narrowly defined. The changes now proposed would reverse that.

In the case of Cabinet documents, only those where 'the dominant purpose for its preparation was submission for consideration by the Cabinet' are currently exempt on public interest grounds. Diluting this to exempting documents where 'a substantial purpose' for its preparation was submission for consideration by the Cabinet would inevitably extend exemptions considerably. For example, reports such as that by Lynelle Briggs on appointments to Government boards might be withheld almost permanently simply because they were attached to a Cabinet submission (even though public access was implied when Briggs was first engaged to conduct her review).

In the case of 'deliberative' documents, the legislation as amended in 2010 sets out a list of 'Factors favouring access' and a list of 'Irrelevant factors' to ensure exemption on public interest grounds is narrowly defined. Adding in a list of 'Factors against giving access' as the Bill proposes would allow agencies to greatly extend exemptions, particularly as the proposed factors include such broad considerations as 'Prejudice the orderly and effective conduct of a government decision-making process'.

The Explanatory Memorandum suggests these provisions are required to preserve 'frank and fearless' advice by public servants, but no evidence is presented. Where are specific cases which reveal that release under the current provisions has caused agencies to reconsider whether and how to provide advice?

There is, on the other hand, considerable evidence of a culture to limit and delay release of information under the Act, and to constrain transparency in other ways such as in answers to Parliamentary questions.

Resolving this cultural problem will not be achieved by further limiting access to documents, but by better protection of public servants from punitive action when 'frank and fearless advice' is unwelcome, and by firmer legal requirements for keeping records. The former requires changes to departmental secretary appointment processes, preferably reversing the 1994 introduction of term 'contracts' allowing termination at any time for any reason, and reintroducing the previous provision requiring every reasonable step to find a new position when a secretary is displaced (including when their relationship with a minister is not working). Those earlier arrangements still provided every opportunity to ensure productive relations between ministers and secretaries.

A firmer legal requirement to keep records of major meetings and important advice could be in the form of a Direction from the APS Commissioner under the APS Value of 'accountability'. The Government agreed to a recommendation from the Robodebt Royal Commission for clearer rules on recordkeeping but, unfortunately, the action taken was merely to present guidance under the APS Value of 'stewardship'. A firm legal direction would strengthen public servants' capacity to resist political pressures to limit written records and to avoid transparency.

Moreover, faced with the possibility of advice being made public, any self-respecting public servant would surely want to be seen as 'frank and fearless' rather than weak or lacking professional independence and expertise.

Conclusion

The Bill should not be passed. Instead a very different approach should be pursued that genuinely supports 'frank and fearless advice' and at the same time enhances transparency. That just might start a change in the current public service culture that is shaped by political pressures from ministers and their advisers, to instead embrace greater transparency including by proactive release of information including for example policy research.

Some further details are set out in the attached article, an edited version of which was published in *The Mandarin* on 11 September 2025.

FOI Amendment Bill: Not What Faulkner or Allan Hawke Wanted

Andrew Podger

Australian National University

The Explanatory Memorandum for the Government's Freedom of Information Amendment Bill 2025 claims that it implements or responds to certain recommendations from previous reviews and inquiries, citing in particular the late Allan Hawke's 2013 review of the legislation. Maybe some of the proposed rats and mice changes relate to Hawkie's recommendations, but the bill overall goes in exactly the opposite direction to that he proposed which was aimed to build on the reforms John Faulkner introduced in 2009-10.

Faulkner's reforms included abolishing conclusive certificates to stop abuses by ministers, abolishing certain application fees, and creating the Office of the Australian Information Commissioner. The exemption of Cabinet documents was made stricter by limiting it to documents created 'for the dominant purpose' of being for Cabinet consideration and not allowing automatic exemption of attachments to submissions or purely factual information; moreover, exemption was conditional and could be over-ridden on public interest grounds.

Conditional exemption was introduced for documents containing 'deliberative' material to address concerns by some senior public servants, but the Explanatory Memorandum in 2009 emphasised that this exemption was to be interpreted narrowly, with 'Factors favouring access' set out in the legislation along with 'Irrelevant factors' that must not be used to restrict access.

Hawke endorsed these conditional exemptions noting that they represented very small percentages of FOI requests by 2013. He also encouraged Mark Dreyfus to go further towards transparency by having Australia join the Open Government Partnership (which Dreyfus did in early 2013).

In claiming that the Faulkner reforms had 'triggered a cultural change across the Australian Public Service', Hawke sadly exaggerated the situation though he also said, 'there is still some way to go'. To that end, he developed an FOI Better Practice Guide, and recommended a more comprehensive review of FOI laws to address the complexity that had developed over time from piecemeal reforms, with a view to a complete rewrite in plain language 'that is readily accessible and easily understood'.

Going backwards

The bill now before the Parliament goes in the opposite direction to that pursued by Faulkner and Hawke. It would seriously erode access in important respects, and make the legislation even more, not less, complicated and difficult to understand.

The conditional exemption of Cabinet documents would relate to those where 'a substantial purpose for its preparation was submission for consideration by the Cabinet', replacing the current 'dominant purpose' clause.

Instead of having only 'Factors favouring access' and 'Irrelevant factors' narrowing the conditional exemption of 'deliberative' documents, a new list of 'factors against giving access' would be added. The factors against giving access to a document in the public interest include 'whether giving access to the document would, or could reasonably be expected to, have any of the following effects ...:

a) Prejudice the frank or timely discussion of matters or exchange of opinions between participants in deliberative processes of government for the purposes of consultation or deliberation in the course of, or for the purposes of, those processes,
b) Prejudice the frank or timely provision of advice to or by an agency or Minister, or the consideration of that advice after it is provided;
c) Prejudice the orderly and effective conduct of a government decision-making process.'

This last provision really is the final straw. It could be used to refuse access to almost any document.

There has for years been nonsense spoken by senior public servants about the adverse impact of FOI on 'frank and fearless advice'. Faulkner's inclusion of conditional exemption of 'deliberative' material was meant to resolve any legitimate concerns in this respect, even though no data was ever presented to show that decisions by the courts to allow access to documents had adversely affected the provision of 'frank and fearless' or caused genuine dilemmas within the APS.

No evidence has now been given about any dulling effects the Faulkner legislation has had on advising. Indeed, transparency should make public servants more scrupulous to see that what they are saying is sound.

My own experience has been that little courage is needed when offering advice on policy issues; ministers are rarely upset by advice advocating policies they do not agree with. Such advice is soon set aside as work proceeds on options the Government feels more comfortable with.

Where courage is needed is on issues of legality and propriety: advice on grants consistent with selection criteria, performance information to be included in annual reports, answers to Parliamentary questions, giving access under FOI to personally embarrassing documents such as entertainment expenses receipts. Or as in the case of Robodebt, telling the minister something is illegal.

It is not FOI that inhibits frank and fearless advice; far more important is the fact that unwelcome advice can attract career penalties and welcome advice can attract career rewards. Look at Robodebt again.

The APS culture

The new Auditor-General, Caralee McLeish, spoke recently about the importance of transparency in the public sector, highlighting the costs associated with lack of transparency:

> "A lack of transparency means it's harder for people to understand government activity, to obtain information, to make important decisions and to participate in improving public life."
>
> "It weakens accountability in a system that does lack other accountability mechanisms" such as market competition.

She noted the very different culture she found in Australia compared to New Zealand, expressing surprise about the approach she saw here, for example, in the classification of documents and answers to Parliamentary questions. She urged Australian agencies to address longstanding issues on compliance and record-keeping.

The wide acceptance in NZ of the importance of transparency even extends to the release of Cabinet documents within weeks of consideration. That approach was recommended by the Robodebt Royal Commission and the Coaldrake Report in Queensland. Given our culture, however, such an approach here would lead to Cabinet documents being prepared primarily for such public consumption, not for

careful deliberation by the Cabinet of policy options and associated advantages, disadvantages and impacts. Accordingly, the Albanese Government's rejection of the Royal Commission's stance was justified.

But a shift in the APS culture towards that existing in NZ is way overdue. A proactive approach to publishing much more information would reduce a lot of the administrative burden of FOI requests.

Most importantly, a firmer direction from the APS Commissioner is needed requiring records to be kept. The Government agreed to the Royal Commission's recommendation that the APSC develop standards for documenting important decisions and discussions, but the APSC has only issued some guidance based on the new APS Value of 'stewardship'. What is needed is a legal direction under the Public Service Act relating to the APS Value of 'accountability' but, sadly, the Commissioner last year claimed that, because of the FOI Act, 'we can't tell everyone to change and put your advice in writing'. On the contrary, a firm legal direction would strengthen resistance to political pressures to limit written records and to avoid transparency.

And moves towards the NZ approach to secretary appointments involving a much stronger role for the public service commissioner and firm limits on political involvement, would ensure a more appropriate system of rewards and penalties for senior public servants.

What is not needed is an amendment to the FOI Act which would reinforce the current APS culture.

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Australian Government
Australian Public Service Commission

Senate Inquiry Appearance – OCTOBER 2025

Freedom of Information Amendment Bill 2025

KEY MESSAGES

- The Commission is here because of its responsibility for the APS and its employees.
- The Commission holds a central, trusted position within the APS as a steward of integrity, capability and workforce management.
- The experience of the Commission is that vexatious and frivolous requests can risk serious harm to staff processing FOI requests and that withholding identifying information about employees can help reduce that risk.
- The Commission affirms the importance of transparency in effective public administration but observes that the operation of the deliberative processes exemption has unintended consequences with respect to actual transparency, integrity and record keeping in the public service.

47C [redacted]

QUESTIONS AND ANSWERS

What are the Commission's responsibilities for the APS and its employees?

Responsibility for the APS

- The Commission's functions includes workforce management and promoting high standards of accountability, effectiveness and performance across the APS.
- Public servants are entitled to respect and privacy in their workplace, a place that is free from risks of harm.
- When agencies have to deal with vexatious FOI requests it impacts their resources to deal with other FOI requests and causes a risk of psychological harm in the workplace, including stress, burnout and turnover of staff.

47C [redacted]

Responsibility for Commission employees

- Under work health and safety laws, the Commission has a duty to protect the psychological safety of staff and eliminate risks so far as reasonably practicable.
- SES staff are publicly identifiable and used to criticism, what I want is to ensure a safe working environment for my junior staff who are the ones on the front line of FOI processing.
- This is the same approach taken by call centres, requesting callers to not be rude to their staff.

What is the Commission's experience with vexatious and anonymous applications?

- Currently the FOI Act allows applicants to make anonymous or pseudonymous FOI applications
  - This enables applicants to hide their identity and make abusive or excessive applications [*examples are available – provided in separate document* - 47C [redacted] 47C
- Agencies cannot refuse to process abusive applications on work health and safety grounds, even when there is abuse, belittling, foul language or stalking behaviours.
- Only a Vexatious Applicant Declaration made by the Information Commissioner prevents an applicant harassing or intimidating staff by placing limits on actions under the FOI Act by "a person".
- A VAD requires the agency to apply in relation to "a person". An agency cannot do that when they cannot prove that repeated anonymous applications have come from the same person.
- Even where the applicant's identity is known, the threshold for making a vexatious applicant declaration has been set very high by the IC.

47C [redacted]

Has the Commission received FOI requests from AI bots?

- The Commission does not collect data in relation to whether requests are from AI bots.

What is the Commission's position on the amendment to the deliberative processes exemption?

- Transparency and trust in government and the public service are crucial.
- But it is also crucial that the public service can bring forward the risks and benefits of a range of options at the formative stage of policy discussions, document the exploration of those options, and put honest and forthright advice in writing.

47C [redacted]

- When it comes to deliberative material, currently the FOI Act does not ensure transparency (because advice is not being written) and it undermines integrity and accountability (because advice is not being written).
- Over the last decade or more we have seen the consequences of governments not being given candid advice in plain language and in writing. Not only in Robodebt, but also in the Home Insulation program and the NBN, as recorded by Professor Shergold.

- These changes have been a long time coming.
- In 2015 Shergold concluded:
  - *The Commonwealth's FOI laws now present a significant barrier to frank written advice.*
  - *The public interest is certainly not served by having no public record how and why decisions were made. Nor is there much benefit gaining access to written advice that has purposefully been prepared to appear innocuous when released under FOI.*
  - *Advice that is honest and forthright is important. It ensures ministers make decisions with full knowledge of facts and with their eyes open to the risks.*
- The proposed amendments will ensure that genuine deliberative processes can occur as intended – by including as a public interest factor against disclosure, the facilitation of frank and free exchanges of opinion in developing robust policy advice.
- These amendments are a balanced approach to the issue, they are not as strong as the conclusive certificates that were in place until 2009, but they allow consideration of the public interest in non disclosure, for example, whether giving access to the deliberative material would prejudice the orderly and effective conduct of government decision making.
- The amendments will strengthen stewardship and integrity, because genuine advice exploring options in an evidence based manner and setting out the risks of those options, will be written and recorded – to empower more informed decision making, and improve the quality of decision-making by government.

47C [redacted]

Why did the Commission mention 'protected information' in its submission?

- The Commission discussed protected information in its submission based on its own observation of the current operation of the FOI Act.
- Sections 72A and 72B of the Public Service Act concern 'protected information,' and relate to information obtained in connection with the APS Commissioner's and the Merit Protection Commissioner's performance of functions, duties or the exercise of powers – for example, information obtained during an inquiry into an alleged breach of the code of conduct.
- It is a criminal offence for a member of the Commission to disclose 'protected information' except in the limited discretionary circumstances set out in section 72A or 72B respectively.
- They are also not compellable to disclose information in proceedings. However, subject to the availability of other exemptions from disclosure in the FOI Act, this sensitive information is required to be disclosed under the FOI Act.

47C [redacted]

Was the Australian Public Service Commission involved in the drafting of the Bill?

- The Attorney Generals' Department consulted within government. The Commission participated in that consultation, along with other agencies.
- The Commission received a copy of the Bill prior to its introduction into Parliament.
- The Commissioner's conversation with the current Attorney General about the bill related to the impact of the operation of FOI legislation and law on public servants with respect to vexatious applicants and about the impact on deliberation.

Refer to pages 64 and 65 of Hansard – Supplementary Budget Estimates – Finance and Public Administration Legislation Committee – 8 October 2025

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Psychosocial Hazards for FOI Officers
Talking points

Context

- Since 2018, Australia's Work Health and Safety (WHS) legislation includes the management of psychosocial hazards at work.
- A **psychosocial hazard** is a hazard that arises from the design or management of work duties, work environment, or workplace interactions or behaviours that may cause psychological harm (Work Health Safety Act 2011).
- The Commonwealth Work Health and Safety (Managing psychosocial hazards at work) Code of Practice 2024 requires APS agencies to proactively demonstrate processes to identify and implement changes to eliminate or minimise psychosocial risks so far as is reasonable practicable.

What are the impacts on Frontline Staff who work in the FOI area:

- Psychological Distress: Elevated rates of anxiety, depression, and PTSD-like symptoms.
- Workforce Attrition: Experienced staff exiting from high-risk roles, reducing organisational capability and continuity.
- Service Degradation: Fear and burnout diminish service quality and increase error rates.
- Organisational Liability: Failure to manage psychosocial hazards exposes agencies to legal, ethical, and reputational risks under WHS legislation as well as increase claims and premiums. (Psychological injury accounts for 30% of cost of Comcare Claims and delay recovery and return to work).

What Organisations Can Do to Reduce It

Leadership and Culture

- Make psychological safety a leadership competency and accountability measure – e.g. SES Skills Lab.
- Psychological safety or speak up culture helps enable people to raise issues regarding staff safety and wellbeing.
- Model and publicly promote 'zero tolerance' for abuse and threats and encourage shared responsibility for staff wellbeing.
- Reframe violence as a systemic risk rather than an individual failing.

Support and Recovery

- Establish structured post-incident support pathways — debriefing, counselling, return-to-work planning.
- Normalise mental health support and embed it in routine supervision.
- Integrate staff awareness, and mental health capability to recognise early and seek support.
- Consider staff training in de-escalation strategies,
- Build manager capability to support staff, dealing with emotionally impactful events or objectionable material.
- Consider job design and consulting with staff ways to prevent this exposure to harm from escalating or occurring. E.g., screening of calls to prevent exposure to verbal abuse, rotate staff working with highly vexatious/litigious service users.
- Consider peer support, in addition to EAP, HR/Managerial Support.

Policy and Governance

- Integrate psychosocial risk management into WHS and HR frameworks.
- Ensure staff are clearly aware of the reporting processes and organisational policies
- Consider, applying the ADDRESS model to audit, design, and sustain safer systems.
- Build inter-agency learning networks to share practice, particularly across high-risk frontline services.

Psychosocial Hazards Identified:

The following are examples of psychosocial hazards:

- Exposure to Aggression and Threats: Regular verbal abuse, intimidation, are common and are often being normalised as "part of the job"
- Lack of Organisational Support: Poor incident reporting systems, minimal follow-up, and leadership indifference compound trauma for staff
- Vicarious and Cumulative Stress: Repeated exposure leads to secondary trauma and desensitisation. Leading on to more serious mental health conditions.
- Stigmatisation of Help-Seeking: Fear of being seen as "not coping in the job" discourages early psychological intervention

Australian Government
Australian Public Service Commission

Submission to the Senate Legal and Constitutional Affairs Committee

Freedom of Information Amendment Bill 2025

The Australian Public Service Commission welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee in relation to its inquiry into the *Freedom of Information Amendment Bill 2025* (the Bill).

The Commission is a portfolio agency of the Department of the Prime Minister and Cabinet. The Commission holds a central, trusted position within the APS as a steward of integrity, capability and workforce management. The Commission's overarching statutory functions under the *Public Service Act 1999* include:

- to strengthen the professionalism of the APS and facilitate continuous improvement in workforce management in the APS;
- to uphold high standards of integrity and conduct in the APS; and
- to monitor, review and report on APS capabilities within and between Agencies to promote high standards of accountability, effectiveness and performance.

The experience of the Commission is that vexatious and frivolous requests can risk serious harm to staff processing requests made under the *Freedom of Information Act 1982* and that withholding identifying information about employees such as those who are processing applications can help reduce that risk.

The Commission affirms the importance of transparency in effective public administration but observes that the operation of the deliberative processes exemption has unintended consequences with respect to actual transparency, integrity and record keeping in the public service.

Vexatious applications and anonymous applicants

The Commission believes that there is a need to address vexatious applications and anonymous applicants and the lack of express support for the non-disclosure of non-SES staff information. This is grounded in the Commission's direct experience, as well as through liaison with other agencies in its role as guardian of public service standards. The Commission recognises that public servants, who are required to act with respect, are entitled to be treated with respect and, especially in relation to non-SES employees, to maintain their privacy.

Currently, the FOI Act allows applicants to make anonymous or pseudonymous FOI requests. This enables applicants to hide their identity; make threats of violence; embolden them to exhibit harassing and intimidating behaviour towards staff, and avoid the application of the

vexatious applicant provisions. The Commission understands that anti-social behaviour on the part of FOI applicants creates a foreseeable risk to the psychological safety of agency staff and enlivens a duty under work health and safety laws to protect the psychological safety of staff and eliminate risks so far as reasonably practicable. However, there is no current ability in the FOI framework for agencies to refuse to process applications on work health and safety grounds, even when there is abuse, belittling, threats of violence, stalking or foul language. Some relatively "mild" examples of inappropriate statements made by applicants to the Commission's FOI team while processing FOI requests, include:

> *"...a classic case of dud leading duds or the blind leading the blind;"*
>
> *"it is plain stupid of you..."*
>
> *"I will not be intimated by a dud public servant..."*

The only means presently available in the FOI framework to prevent an applicant from harassing or intimidating staff is through the agency obtaining a vexatious applicant declaration from the Office of the Australian Information Commissioner. The current vexatious applicant provisions require the agency to make an application in relation to "a person" which an agency is unable to do when they cannot prove that abusive or repeated anonymous applications have come from the same person.

Even when the person making vexatious FOI requests is identifiable, the person must be made aware of the agency's application to the OAIC to declare them vexatious at an early stage to comply with administrative law principles. This can worsen the person's behaviour and increase risks to staff before an application is made, or if, as commonly occurs, the OAIC does not make a declaration. The ability for an agency to declare an *application* vexatious would not prevent the applicant from making further FOI requests on terms that are not vexatious.

The current inability for agencies to refuse vexatious requests unreasonably interferes with the operations of an agency, impacts an agency's resources to deal with other FOI requests and causes a risk of psychological harm in the workplace, including stress, burnout and turnover of staff. This is not in the public interest and is difficult to manage in tandem with the duties of agencies and managers under work health and safety laws.

Deliberative Processes of Government

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Transparency is a central feature of open government in Australia and a core element of accountability to the Parliament and the Australian public.

There have been significant observations that the operation of the FOI framework since the reforms of *Freedom of Information Amendment (Reform) Act 2010* has had unintended negative consequences on actual transparency, integrity and record keeping.

The Independent Review of the APS, '*Our Public Service Our Future*', led by David Thodey AO, summarised the issue in 2019 as follows:

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> "Genuine partnerships [between the public service and Ministers] require openness. Administrative barriers to openness need to be assessed with privacy, FOI and record-keeping arrangements reviewed to support access to data, administration and decision-making. To support the APS's central role in advising the Government freely and robustly, materials prepared to inform deliberative processes of governments should be exempted from release under FOI laws..."[1]

The Review goes on to provide more detail, extending the observations made by Professor Peter Shergold AC, a former Secretary of the Department of the Prime Minister and Cabinet, in his report in 2015.[2] The Thodey Review said:

> "...it is timely to examine the suite of privacy, FOI and record-keeping rules and regulations to ensure they are fit for purpose for the digital age, now and into the future, with an emphasis on openness. As a general principle, it should be as simple, fast and cheap as possible for interested parties to access information held and generated by the APS.
>
> A small amount of the material prepared by the APS informs deliberative processes of government. The review believes it critical that this material remain confidential and be exempt from release under FOI legislation. This has been recommended before, and this review agrees that such an exemption is critically important to effective public administration in strengthening the APS's partnership with the Government. In his 2015 report *Learning from Failure*, Professor Peter Shergold AC observed that:
>
> > the Commonwealth FOI laws now present a significant barrier to frank written advice. The Commonwealth laws have had the unintended consequence of constraining the content, form and mode of advice presented to ministers … the consequences include a patchy record of decision-making and an increased likelihood of decisions being made based on incomplete or poorly argued information. This can ultimately only be detrimental to good governance and the public interest.
>
> Similarly, members of the review's reference group, including former ministers and senior public servants, highlighted their own experiences of FOI legislation inhibiting the provision of frank and fearless advice to government on deliberative matters, especially in writing.
>
> Ensuring that APS advice and opinion to support the deliberative processes of government policy formulation remain confidential will give public servants the

[1] *Our Public Service, Our Future. Independent Review of the Australian Public Service*, 2019, p 24.
[2] *Learning from Failure: Why large government policy initiatives have gone so badly wrong in the past and how the chances of success in the future can be improved*, 2015.

confidence to provide frank and fearless advice, and minister and the Cabinet the best advice to make fully informed decisions."[3]

There is a need to ensure that genuine deliberative processes, including frank expressions of analysis, assessment and recommendations, can occur and be documented as intended – promoting stewardship and integrity. If advice is not being fully written down, the objective of transparency is itself subverted.

Stewardship in the APS means that 'the APS builds its capability and institutional knowledge, and supports the public interest now and into the future, by understanding the long-term impacts of what it does.'[4]

The introduction of Stewardship as an APS Value in December 2024 recognises the importance of a public service that sustains its core knowledge and expertise to provide considered, well informed, and appropriately frank advice to government. Stewardship of the APS for the public good is served by a framework that enables open collaboration, honest assessment of benefits and risks, both in the short and long term; and access to learnings from experience. Where these processes are stifled, so too is the capacity of the APS to provide frank, honest and evidence-based advice – that, in turn, can have adverse effects both on the community and on public trust in public institutions.

The Shergold and Thodey reports appeal for the FOI framework to support, rather than impede, public servants performing their duties. Under the Public Service Act, public servants have a duty to provide frank and honest, evidence based professional advice to their Ministers. The Commission and the APS take this duty seriously and it is an essential part of the training and performance management of public servants. The comments quoted above by major leaders in public administration in Australia highlight that the current exemptions for deliberative material have made it harder for public servants to do their duty, and the consequences of avoiding written advice about serious risks are evident in the Robodebt and Home Insulation Royal Commission reports.

The weight given to different factors in assessing the public interest in relation to deliberative material has changed and narrowed over time. This makes it hard for a public servant to be confident that the material and recommendations they are working on will be exempt from release while the policy development process is still live. FOI requests are now routinely made about work that is underway or current. This inhibits public servants sharing material in writing with colleagues in other relevant agencies or their own agency, or with Ministers and their offices. Policy decisions by Governments are often complex, in that they involve trade-offs and the design of packages to support affected parties. Releasing material that is under active consideration by government under FOI can impede proper government consideration of policy and can lead to options being prematurely ruled out.

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[3] *Our Public Service, Our Future. Independent Review of the Australian Public Service*, 2019, p 121.
[4] Refer – subsection 10(6), Public Service Act.

Encouraging integrity in advice and stewardship and record-keeping enables more informed decision-making and improves the quality of decision-making by government and is ultimately in the public interest.

Protected information

The Commission notes that 'protected information' under section 72A and 72B of the Public Service Act is subject to the FOI Act.

Sections 72A and 72B of the Public Service Act concern 'protected information,' and relate to information obtained in connection with the APS Commissioner's and the Merit Protection Commissioner's performance of functions, duties or the exercise of powers – for example, information obtained during an inquiry into an alleged breach of the code of conduct.

It is a criminal offence for a member of the Commission to disclose 'protected information' except in the limited discretionary circumstances set out in section 72A or 72B respectively. They are also not compellable to disclose information in proceedings.[5] However, subject to the availability of other exemptions from disclosure in the FOI Act, this sensitive information is required to be disclosed under the FOI Act.

[5] Refer – subsection 72A(7); 72B(7) and (8), Public Service Act.