The Senate

Legal and Constitutional Affairs Legislation Committee

Freedom of Information Amendment Bill 2025

December 2025

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Mervyn Piesse, Senior Research Officer
Max McKenzie, Administrative Officer

Suite S1.61
Parliament House
Canberra ACT 2600

Telephone: (02) 6277 3560

Email: legcon.sen@aph.gov.au

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Abbreviations

the 2010 Reforms	*Freedom of Information (Reform) Act 2010 and the AIC Act*
the 2012 Charges Review	FOI charging framework
the 2013 Hawke Review	Review of the Freedom of Information Act 1982 and the Australian Information Commissioner Act 2010
2023 Senate FOI Inquiry	The Legal and Constitutional Affairs References Committee inquired into the operation of the Commonwealth FOI laws
ABC	Australian Broadcasting Corporation
ACOSS	Australian Council of Social Service
AGD	Attorney-General's Department
AI	Artificial Intelligence
the AIC Act	*Australian Information Commissioner Act 2010*
ALA	Australian Lawyers Alliance
Alliance	Alliance for Journalists' Freedom
ANU LRSJ Research Hub	ANU Law Reform and Social Justice Research Hub
APC	Australian Press Council
APS	Australian Public Service
APSC	Australian Public Service Commission
the Bill	*Freedom of Information Amendment Bill 2025*
the committee	Legal and Constitutional Affairs Legislation Committee
CPI	Centre for Public Integrity
CPSU	Community and Public Sector Union
EM	Explanatory Memorandum
FOI	Freedom of Information
the FOI Act	*Freedom of Information Act 1982*
HCA	High Court of Australia
Home Affairs	Department of Home Affairs
HRLC	Human Rights Law Centre
Human Rights Committee	Parliamentary Joint Committee on Human Rights

IC	Information Commissioner
Law Council	Law Council of Australia
MEAA	Media, Entertainment and Arts Alliance
OAIC	Office of the Australian Information Commissioner
the PID Act	*Public Interest Disclosure Act 2013*
the Privacy Act	*Privacy Act 1988*
the Regulations	Freedom of Information (Charges) Regulations 2019
Scrutiny of Bills Committee	Senate Standing Committee for the Scrutiny of Bills
the Shergold Review	2015 review of Government processes
the Thodey Review	2019 review of the Australian Public Service
UK	United Kingdom

List of recommendations

Recommendation 1

2.142 The committee recommends that the Senate pass the Bill.

Chapter 1
Introduction

1.1 On 4 September 2025, the Senate referred the Freedom of Information Amendment Bill 2025 (the Bill) to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 3 December 2025.[1]

1.2 The Bill would primarily amend the *Freedom of Information Act 1982* (the FOI Act) and the *Australian Information Commissioner Act 2010* (the AIC Act).[2] According to the Explanatory Memorandum (EM) to the Bill, the proposed changes would improve the operation of the Freedom of Information (FOI) framework:

> The amendments will modernise the framework, reduce system inefficiencies, address abuses of process that can consume a disproportionate amount of agency resources and impact on the right of genuine applicants to access information, and clarify the operation of certain provisions and exemptions within the Act.[3]

Conduct of the inquiry and acknowledgement

1.3 In accordance with its usual practice, the committee advertised the inquiry on its website and called for submissions by 1 October 2025. The committee received 70 submissions, which are listed at Appendix 1.

1.4 The committee held a public hearing in Canberra on 17 October 2025. A list of the witnesses who appeared at the hearing is at Appendix 2.

1.5 The committee thanks those individuals and organisations who made submissions and who gave evidence at the public hearing to assist the inquiry.

Scope and structure of the report

1.6 This report comprises two chapters:

- Chapter 1 outlines the purpose and contextual information relating to the Bill, as well as identifying some of its key provisions; and
- Chapter 2 examines some of the key issues raised in relation to the Bill and sets out the committee's findings and recommendations.

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1 *Journals of the Senate*, No. 15, 4 September 2025, pp. 476-478.

2 Note: the Bill also proposes consequential amendments to the *Australian Information Commissioner Act 2010* and the *Public Interest Disclosure Act 2013*, to support the changes to the *Freedom of Information Act 1982* (FOI Act).

3 Explanatory Memorandum (EM) to the Freedom of Information Bill 2025 (Bill), p. 3. Also see: Hon Michelle Rowland MP, Attorney-General, *House Hansard*, 3 September 2025, p. 9.

Notes on references

1.7 In this report, references to the *Hansard* are to the proof (that is, uncorrected) transcript. Page numbers may vary between the proof and official transcript.

Background and purpose of the Bill

1.8 Australia's FOI framework enables the Australian community to access government information and is a key pillar of Australia's democracy and accountability system. In her second reading speech, the Attorney-General, the Hon Michelle Rowland MP, specifically identified the benefits of an effective FOI system:

> An effective freedom-of-information system is critical in fostering public trust in government decision-making through transparency and access to information. It enables citizens to understand more about why and how government decisions are made and, with that knowledge, participate more effectively in Australia's civic and democratic processes. The freedom-of-information framework also importantly provides for individuals to seek access to their personal information held by government.[4]

1.9 The Attorney-General argued, and it is clear from the evidence before the committee, that the FOI Act is no longer fit for purpose. With the development of email, smartphones, laptops, digital files and artificial intelligence, the rate and volume of electronic records now being generated and received every minute by public sector agencies was almost unimaginable at the time the FOI Act was enacted in 1982. According to the Office of the Australian Information Commissioner (OAIC), in 2024-25, these records were the subject of the highest number of FOI requests on record (43 456).[5] The OAIC's submission indicated that the total reported costs attributable to FOI in 2024-25 were $97.99 million, a 14 per cent increase on 2023–24 ($86.24 million) and that 'it is clear that there is pressure on the FOI system'.[6]

1.10 According to the Attorney-General, technology is partly responsible for the high number of FOI requests, as it enables:

> …large volumes of vexatious, abusive and frivolous requests…There is no reason to believe that this problem will not grow worse over time, particularly given the advancing capabilities of artificial intelligence.[7]

1.11 In addition, the Attorney-General identified other inefficiencies and challenges within the current FOI system—the growing financial cost, administrative impost, increasing diversion of resources, abuse of process—that the Bill aims to address:

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4 Hon Michelle Rowland MP, Attorney-General, *House Hansard*, 3 September 2025, p. 8.

5 Office of the Australian Information Commissioner (OAIC), *Submission 50*, p. 2.

6 OAIC, *Submission 50*, pp. 6-7.

7 Hon Michelle Rowland MP, Attorney-General, *House Hansard*, 3 September 2025, p. 8.

> This bill aims to strengthen the freedom of information framework to address identified shortcomings in its operation, while ensuring government continues to provide access to information consistent with the original policy intent of the Act. The purpose of this bill is to ensure the system is fit for purpose in 2025 and beyond—by upholding and promoting the core democratic principles that underpin freedom of information laws while, at the same time, addressing the issues that, in practice, undermine a more effective and balanced FOI framework.[8]

1.12 The Attorney-General informed the Parliament that the Bill would implement some recommendations from the report entitled 'Review of the *Freedom of Information Act 1982* and the *Australian Information Commissioner Act 2010*', tabled by Dr Allan Hawke AC on 2 August 2013 (the 2013 Hawke Review).[9]

1.13 The AGD's submission noted that the FOI Act was 'last subject to significant revision 15 years ago with the passage of the Freedom of Information (Reform) Act 2010 and the AIC Act (the 2010 Reforms)'. AGD noted:

> Since that time, several reviews and inquiries have identified the need for further amendment:
>
> Following the 2010 Reforms, the OAIC was asked to review the operation of the FOI charging framework (the 2012 Charges Review).
>
> Dr Allan Hawke's independent review of the FOI Act and the AIC Act in 2013 (the 2013 Hawke Review) made 40 recommendations to streamline procedures, reduce complexity and increase the effectiveness and efficiency across the FOI system.
>
> The 2015 review of Government processes (the Shergold Review) and the 2019 review of the Australian Public Service (the Thodey Review) explored the impact the FOI Act has had on the provision of frank and fearless advice across the Australian Public Service (APS).
>
> - The Shergold Review suggested the FOI Act should be rebalanced so that frank advice made by public servants to Government can remain confidential.
> - The Thodey Review expressed the view that it is critical that material prepared by the APS that informs deliberative processes remain confidential and recommended that 'Government commission a review of privacy, FOI and recordkeeping arrangements to ensure they are fit for the digital age by… exempting material prepared to inform deliberative processes of government from release under FOI' (recommendation 8).

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8 Hon Michelle Rowland MP, Attorney-General, *House Hansard*, 3 September 2025, p. 8.

9 Hon Michelle Rowland MP, Attorney-General, *House Hansard*, 3 September 2025, p. 9. Also see: Attorney-General's Department, 'Review of the *Freedom of Information Act 1982* and the *Australian Information Commissioner Act 2010*', Final Report, www.ag.gov.au/rights-and-protections/publications/review-freedom-information-act-1982-and-australian-information-commissioner-act-2010-report (accessed 17 September 2025).

> In 2023, the Legal and Constitutional Affairs References Committee inquired into the operation of the Commonwealth FOI laws (2023 Senate FOI Inquiry).[10]

1.14 The AGD stated that 'these reports and inquiries were considered in the development of the FOI Bill'. Further, 'the OAIC also identified a range of amendments that would improve the operational efficiency of IC reviews and FOI complaints processes, that have been incorporated in the FOI Bill'.[11]

Key proposals and provisions

1.15 The Bill comprises Schedules 1 – 9, which propose amendments to the FOI Act, the AIC Act and the *Public Interest Disclosure Act 2013* (the PID Act). The EM outlines the objectives of each schedule, however, this report focuses upon some of the key proposals and their associated provisions, as highlighted in evidence provided to the inquiry.

Schedule 1—Scope and objects

1.16 The Bill would amend section 3(2) of the FOI Act to clarify the Parliament's intention to balance two objects: first, promoting transparent government by providing access to information, and second, the countervailing public interest in protecting essential private interests and the proper functioning of government.[12]

Schedule 2—Access requests

1.17 Schedule 2 comprises six Parts, some of which are intended to ensure that the FOI system can appropriately manage vexatious and frivolous requests. Among other things, these provisions:

- provide that a FOI request cannot be made anonymously or under a pseudonym, and that a person must declare when making a FOI request on behalf of a third party;[13] and
- address inefficient use of resources and time for agencies in complying with the requirements for the transfer of an FOI request and whether searches must be undertaken.[14]

Schedule 3—Practical refusals

1.18 Schedule 3 would amend the practical refusal mechanisms in the FOI Act. Most notably, the Bill would insert proposed subsection 24AA(1A), which, together

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10 Attorney-General's Department (AGD), *Submission 46*, p, 6.

11 AGD, *Submission 46*, p, 6.

12 Item 3 in Division 1 of Part 1 of Schedule 1 of the Bill; EM, p. 13.

13 Division 1 of Part 5 of Schedule 2 of the Bill; EM, p. 4.

14 Division 1 of Part 6 of Schedule 2 of the Bill; EM, p. 4.

with proposed paragraph 24AA(1)(c), would introduce a discretionary 40-hour 'processing cap' (as defined) for FOI requests.[15]

Schedule 6—Application fees

1.19 The Bill would insert section 93C into the FOI Act to enable the Freedom of Information (Charges) Regulations 2019 to specify application fees to be charged for FOI requests, internal reviews and IC reviews, excluding requests for an individual's own personal information. The application fees would be subject to fee waivers or remissions (in whole or part) in prescribed circumstances of financial hardship.[16]

Schedule 7—Exemptions

1.20 Schedule 7 comprises three Parts, two of which seek to amend the operation of certain exemptions:

- Part 2 would amend the operation of the Cabinet exemption in section 34 of the FOI Act and redefine the term 'Cabinet information' in paragraph 8(b) of the PID Act;[17] and
- Part 3 would amend the public interest test in section 11B of the FOI Act, as it relates to the conditional exemption for deliberative processes in section 47C of the Act, and amend subsection 47C(1) of the Act to replace the term 'deliberative processes' with the new term 'deliberative processes of government' (as defined).[18]

1.21 The EM states:

> The amendments [in Part 3] clarify a number of public interest considerations which would weigh against the disclosure of conditionally exempt material under section 47C. 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 the one hand, against the public interest against access, such as prejudice to the effective working of government and its agencies on the other.[19]

Schedule 8 – Official Documents of a Minister

1.22 The amendments in Schedule 8 respond to the decision of the Full Court of the Federal Court of Australia in *Attorney-General (Cth) v Patrick* [2024] FCFAC 126 in respect of requests to ministers and the established convention that deliberative documents of a previous government are not provided to an

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15 Items 10-11 in Division 1 of Part 2 of Schedule 3 of the Bill. Also see: EM, p. 4.

16 Item 6 in Schedule 6 of the Bill; EM, p. 5.

17 Items 3-11 in Division 1 of Part 2 of Schedule 7 of the Bill.

18 Items 13-15 in Division 1 of Part 3 of Schedule 7 of the Bill.

19 EM, p. 75.

incoming government. The amendments make provision for the treatment of FOI requests and review proceedings in circumstances where a minister ceases to hold the relevant office.[20]

Examination by other parliamentary committees

1.23 When examining a bill or bills, the committee takes into account any relevant comments published by the Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee) and the Parliamentary Joint Committee on Human Rights (Human Rights Committee).

1.24 The Scrutiny of Bills Committee considered the Bill and has sought further information in relation to the following matters: undue trespass on personal rights and liberties, the adequacy of review rights, procedural fairness, the broad delegation of administrative power, the availability of merits review, and charges and fees in delegated legislation.[21]

1.25 At the time of writing, the Human Rights Committee has not considered the Bill. However, the Bill's Statement of Compatibility with Human Rights notes that the proposed legislation may engage the human rights protected in articles 14, 17 and 19 of the International Covenant on Civil and Political Rights. The statement concludes:

> This Bill is compatible with human rights. To the extent that the measures in this Bill may limit human rights, each of those limitations are necessary, reasonable and proportionate.[22]

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20 Part 1-2 of Schedule 8 of the Bill.

21 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 6 of 2025*, 29 October 2025, pp. 9-10 and 73-85.

22 EM, Statement of Compatibility with Human Rights, p. 11.

Chapter 2
Key issues

2.1 Participants in the inquiry welcomed the opportunity to comment on the Freedom of Information Amendment Bill 2025 (the Bill). Key issues raised in submissions and evidence include:

- reviews relating to the *Freedom of Information Act 1982* (FOI Act);
- objects of the FOI Act;
- anonymous and pseudonymous requests;
- the 40-hour processing cap for freedom of information (FOI) requests;
- the introduction of application fees;
- the exemption for Cabinet documents; and
- the conditional deliberative processes exemption.

Reviews relating to the FOI Act

2.2 A number of submitters expressed the preference to have a full and comprehensive review of the FOI Act.

2.3 The Environmental Defenders Office and Environmental Justice Australia submitted that:

> …a fulsome and independent review be undertaken of the operation of the Freedom of Information Act 1982 (Cth) to ensure that any reforms are well-considered and better facilitate the Act meeting its important democratic objectives.[1]

2.4 The Centre for Public Integrity (CPI) noted there are amendments in the Bill that they consider are directed at issues of cost, delay and abuse of process in a constructive way, including:

> - Those amendments that would facilitate communications with applicants via electronic means such as email (Schedule 2, Part 1 of the Amendment Bill).
> - Non-disclosure of certain employee identifying information (Schedule 2, Part 2 of the Amendment Bill), including in relation to the FOI decision-maker's name. We would note that where the FOI decision-maker's information is not disclosed, this must not foreclose the possibility of appropriate auditing, disciplinary and training responses where it is found that individuals are consistently making decisions that do not accord with the Act (see Recommendation 4 and the CPI's Blueprint for Reform in Schedule 1).
> - Provision of a power to refuse to deal with a request if the agency or Minister is satisfied that the request is vexatious or frivolous, is likely to

[1] Environmental Defenders Office and Environmental Justice Australia, *Submission 8,* p 6.

have the effect of harassing or intimidating or otherwise causing harm to another person or is otherwise an abuse of process, which is then subject to an IC review (Schedule 2 Part 4). This appropriately supplements the existing process of declaring an applicant vexatious or frivolous and contains the safeguard of IC review.

- Allowing for extension of time with agreement (Schedule 4, Part 2).
- Requiring agencies to continue to assess and make decisions where there is a deemed refusal request (because of the expiration of time limits) (Schedule 4, Part 3).
- The power to remit IC review applications to the decision-maker with directions for further consideration (Schedule 5, Part 1).
- Streamlining IC review, including by allowing an IC review to be completed by agreement (Schedule 5, Part 2), and allowing for third parties to be party to an IC review by application only (Schedule 5, Part 3).
- Schedule 8, which provides a process by which documents of an outgoing minister can still be accessed, in a way that remains true to the spirit of the Federal Court's decision in Patrick v Attorney-General (Cth) [2024] FCA 268, in that these documents are still accessible under the FOI regime.[2]

2.5 CPI also agreed that the FOI Act 'requires amendment, as it has not had significant attention paid to it since the last major reforms that were introduced in 2010'.[3] The Australia Institute agreed that the FOI system is broken.[4]

2.6 However, CPI's primary recommendation was 'for an independent and comprehensive review', noting that other reviews, such as the Hawke, Shergold and Thodey reviews, also recommended commissioning further reviews.[5]

Departmental response

2.7 The AGD noted that the 'government had considered previous reviews and inquiries that have been undertaken over the past 13 years and which have commented on the freedom of information system'. Ms Celeste Moran, First Assistant Secretary, Identity and Information Division at AGD, stated:

> There was the OAIC's Review of charges under the Freedom of Information Act 1982 that happened in 2012. In 2013 there was the Hawke review into the Freedom of Information Act and the Australian Information Commissioner Act. There was the 2023 Senate legal and constitutional affairs committee inquiry into the operation of the Commonwealth FOI system. There was the Shergold review, Learning from failure, in 2015. In 2019 there was the Independent review of the Australian Public Service, led

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2 Centre for Public Integrity (CPI), *Submission 2*, p. 13.

3 CPI, *Submission 2*, p. 2.

4 Ms Skye Predavec, Researcher, Australia Institute, *Committee Hansard*, 17 October 2025, p. 1.

5 CPI, *Submission 2*, p. 16.

> by Mr David Thodey. There was the final report of the Royal Commission into the Robodebt Scheme. Also in 2023, there was the Australian Public Service Integrity Taskforce report, which was also taken into account.[6]

2.8 Ms Dianne Orr, Assistant Secretary, Information Law Branch at AGD, added:

> …the bill implements a number of the recommendations from the Hawke review which concerned, among other things, how to make the system more effective. The bill implements eight recommendations from that review in full and four recommendations in part. As has been previously canvassed, the bill also amends the deliberative processes exemption. This draws on the 2015 Shergold review and the 2019 Thodey review, which both explored the impact that the FOI Act has on the provision of frank and fearless advice and raised the need for potential reform of a deliberative process exemption.[7]

Objects of the FOI Act

2.9 At present, the FOI Act sets out the objects of the Act in section 3, as follows:

> (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth, by:
>
> (a) requiring agencies to publish the information; and
>
> (b) providing for a right of access to documents.
>
> (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
>
> (a) increasing public participation in Government processes, with a view to promoting better-informed decision-making;
>
> (b) increasing scrutiny, discussion, comment and review of the Government's activities.

2.10 The Bill proposes to amend section 3 of the FOI Act, including by inserting new subsection 3(2) into the Act, which concludes with:

> while, at the same time, providing safeguards to ensure the protection of essential private interests and the proper and effective operation of government.[8]

2.11 According to the Explanatory Memorandum (EM) to the Bill, the new provision would clarify the Parliament's intention:

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6 Ms Celeste Moran, First Assistant Secretary, Identity and Information Division, AGD, *Committee Hansard*, 17 October 2025, p. 53.

7 Ms Dianne Orr, Assistant Secretary, Information Law Branch, AGD, Australia Institute, *Committee Hansard*, 17 October 2025, p. 53.

8 Freedom of Information Amendment Bill 2025 (Bill), item 3 in Division 1 of Part 1 of Schedule 1.

> The addition at the end of the subsection is intended to provide an explicit recognition of countervailing public interest in protection of private and business information as well as the proper administration of government.[9]

2.12 The Attorney-General's Department (AGD) noted that the objects clause informs interpretation of the FOI Act and submitted that proposed new subsection 3(2) would better balance the objects in subsection 3(1) of the Act:

> The FOI Act reflects that a balance must be struck between making information held by government available to the public so that there can be increased public participation leading to better informed decision-making and increased scrutiny and review of the government's activities, with preserving confidentiality in certain circumstances, as provided for in the form of exemptions to the general right of access to information (set out in Part IV of the FOI Act).
>
> The amendments in Part 1 of Schedule 1 of the FOI Bill would change the objects clause (section 3) in the FOI Act to ensure it reflects this balancing. The wording of the amendments draws from the objects provision of the FOI Act that existed prior to the 2010 Reforms.[10]

2.13 The Department of Home Affairs (Home Affairs) supported the proposed amendment to subsection 3(2), which, it argued, would:

> …more clearly outline the objects of the FOI Act to promote government transparency…while providing safeguards where needed. For example, to protect government operations and the privacy of members of the community.[11]

2.14 The Bill also proposes to amend the objects of the FOI Act to reflect how agencies should approach the Information Publication Scheme. The Bill proposes to change the requirement for agencies to 'publish the information' to 'proactively publish information'. In relation to these changes, the Queensland Office of the Information Commissioner stated that it 'supports strengthened proactive release provisions in the FOI Act'.[12]

2.15 The Environmental Defenders Office and Environmental Justice Australia noted they 'particularly support the inclusion of 'proactive' with respect to the release of information in the objects to encourage agencies to publish information without need for an FOI request' and that this measure has 'a sound policy basis'.[13]

2.16 Mr Jayden Spudvilas-Powell, who advised the committee that he has engaged extensively with the FOI process in his personal capacity, noted that the

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9 Explanatory Memorandum (EM) to the Bill, p. 13.

10 AGD, *Submission 46*, p. 7.

11 Department of Home Affairs (Home Affairs), *Submission 58*, p. 6.

12 Office of the Information Commission (QLD), *Submission 44*, p. 2.

13 Environmental Defenders Office and Environmental Justice Australia, *Submission 8*, p. 3.

proposed changes to the objects clause was a 'positive step' but that 'cultural change requires a statutory duty on agency heads and performance reporting'.[14]

2.17 Some stakeholders acknowledged the role of the objects clause in the interpretation of the FOI Act, however, they argued that proposed new subsection 3(2) would undermine the objectives of the Act, by, for example, failing to strike the appropriate balance between transparency and certain safeguards.

2.18 The Law Council of Australia (Law Council) recognised that safeguarding private and business information is a legitimate basis for refusal or redaction of documents in certain circumstances. However, the Law Council did not support the proposed provision on the ground that the new language could 'dilute the focus of public participation and scrutiny of government activities'.[15]

2.19 Further, the Law Council warned that the vagueness of the phrase 'proper and effective operation of government' could create uncertainty for decision-makers and applicants. In the absence of clear guidance, the Law Council argued there is a risk that this phrase could be interpreted in a manner that unduly restricts access to information, contrary to the underlying purpose of the FOI Act.[16]

2.20 The OAIC noted their role in undertaking a range of activities to uplift agencies' FOI capabilities, including developing tools, updating guidance and providing education for FOI practitioners.[17]

2.21 In response to a question on notice as to whether CPI had any evidence to back up its suggestion that the 2010 amendments to the objects clause have – in practice – led to a better FOI system and better government, CPI did not provide evidence but reiterated its concerns about the proposed changes.[18]

Anonymous and pseudonymous requests

2.22 Section 15 of the FOI Act sets out provisions regarding requests for access, including subsection 15(2) that deals with the requirements for making a request. The Bill would amend this subsection, by inserting new paragraphs 15(2)(ba) and 15(2)(bb):

> (ba) include the full name of the applicant; and
>
> (bb) if the applicant is making the request on behalf of another:
>
> (i) state that the request is being made on behalf of another person; and

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14 Mr Jayden Spudvilas-Powell, *Submission 38*, p. 2.

15 Law Council of Australia (Law Council), *Submission 53*, p. 12.

16 Law Council, *Submission 53*, p. 12.

17 OAIC, *Submission 50*, p. 8.

18 CPI, answers to questions on notice, 31 October 2025 (received 6 November 2025), p. 14.

(ii) include the full name of the other person;[19]

2.23 The EM explains that this amendment would prevent an FOI request being made anonymously or under a pseudonym, and require a person to declare when making a FOI request on behalf of a third party.[20] The EM states that this change would allow a number of other provisions of the FOI Act to operate more effectively and achieve multiple objectives, such as:

- ensuring vexatious applicant declarations are effective and unable to be circumvented via the use of a pseudonym;
- ensuring personal or private information is only disclosed in appropriate circumstances;
- ensuring agencies and Ministers can appropriately determine the national security or personal safety implications of granting access to documents or information; and
- protecting the safety and wellbeing of agency officers and employees by discouraging applicants from engaging in inappropriate or threatening behaviour when making a request.[21]

2.24 In her second reading speech, the Attorney-General, the Hon Michelle Rowland MP, articulated the necessity for the amendments, warning that anonymous FOI requests risk undermining the integrity of the FOI framework. Further, allowing such requests creates 'risk vectors that could be exploited by offshore actors seeking government-held information for potentially nefarious purposes'.[22]

2.25 Home Affairs confirmed that it receives numerous anonymous access requests relating to counter-terrorism, cybersecurity and national security matters. The department recognised existing protections in the FOI Act (exemptions that prevent the release of national security material) but contended:

> …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.[23]

2.26 The AGD explained that the proposed amendments to section 15 would assist in protecting individuals' privacy and ensure that personal information is only disclosed in appropriate circumstances.[24] The AGD also highlighted how the

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19 Bill, item 53 in Division 1 of Part 5 of Schedule 2. Note: submissions and evidence presented to the inquiry were based on the Bill as introduced in the House of Representatives. The Australian government subsequently proposed amendments to the Bill (see paragraph 2.29-2.30).

20 EM, p. 4.

21 EM, Statement of Compatibility with Human Rights, pp. 7-8.

22 Hon Michelle Rowland MP, Attorney-General, *House Hansard*, 3 September 2025, p. 8.

23 Home Affairs, *Submission 58*, p. 4.

24 AGD, *Submission 46*, p. 10.

amendments would help agencies to better manage vexatious and abusive applicants by requiring all applicants to identify themselves:

> While there is an ability under the FOI Act to have an applicant declared vexatious, this provision is of limited effectiveness in the context where requests can be made anonymously, which makes it difficult to prove one person is making the vexatious requests. Further, as the outcome of a vexatious applicant declaration impacts a person's ability to seek access to government-held information in an ongoing way (rather than in the context of an individual request), the threshold for establishing an applicant to be vexatious is very high and is resource intensive for an agency to pursue.[25]

2.27 Further, AGD stated that the measure would also:

> … protect the safety and wellbeing of agency officers by discouraging applicants from engaging in inappropriate or threatening behaviour when making a request; and enable agencies to know who they are dealing with, which may go some way to deterring inappropriate use of AI or by foreign actors.[26]

2.28 AGD also noted:

> …other Australian and international information access frameworks require provision of a name, including NSW, Tasmania, the Northern Territory and the United Kingdom.[27]

2.29 Home Affairs welcomed the proposed changes, indicating that the reform would allow it to better protect personal information from persons who should not have access to it, for example, an ex-partner in a domestic violence situation. Referring to its submission to the 2023 Senate Legal and Constitutional Affairs References Committee Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws, Home Affairs reiterated:

> 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.[28]

2.30 Further, Home Affairs anticipated that the amendments would result in greater efficiencies for the department overall.[29]

2.31 Services Australia explained that 'FOI requests are sometimes used as a vehicle to perpetuate a targeted campaign of harassment against Agency employees'. Further:

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25 AGD, *Submission 46*, p. 8.

26 AGD, *Submission 46*, p. 10.

27 Ms Celeste Moran, First Assistant Secretary, Identity and Information Division, AGD, *Committee Hansard*, 17 October 2025, p. 47.

28 Home Affairs, *Submission 58*, p. 3.

29 Home Affairs, *Submission 58*, p. 3.

> 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.[30]

2.32 The APSC observed that allowing applicants to make anonymous or pseudonymous FOI requests can embolden them to exhibit harmful behaviours to agency staff:

> Currently, the FOI Act allows applicants to make anonymous or pseudonymous FOI requests. This enables applicants to hide their identity; make threats of violence; emboldens them to exhibit harassing and intimidating behaviour towards staff, and avoid the application of the vexatious applicant provisions.[31]

2.33 The APSC further noted:

> …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.
>
> …
>
> 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.[32]

2.34 Recognising that everyone, including public servants are entitled to be treated with dignity and respect in their place of work, the APSC advised it supports the proposed changes to section 15 of the FOI Act:

> 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.[33]

2.35 The Community and Public Sector Union (CPSU) held a similar view, discussing the importance of the proposed reforms to assist FOI teams to 'manage

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30 Services Australia, *Submission 33*, p. 4.

31 Australian Public Service Commission (APSC), *Submission 23*, pp. 1-2.

32 APSC, *Submission 23*, p. 2.

33 APSC, *Submission 23*, p. 2.

workloads more safely and effectively'. While noting some of the concerns raised about banning anonymous and pseudonymous FOI applications, the CPSU submitted:

> …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.[34]

2.36 The CPSU also raised the issues faced by FOI teams in dealing with vexatious applications, noting that under the current legislation, only individuals (rather than requests) can be declared vexatious.[35] As explained in the EM to the Bill, requiring all applicants to identify themselves will support this process and ensure vexatious declarations cannot be circumvented via the use of a pseudonym or an anonymous request.[36]

2.37 While some submitters raised concerns regarding a lack of evidence of AI bots or foreign actors making FOI requests, the AGD noted that 'the operating environment had changed significantly since the Act was first enacted'. Ms Moran elaborated:

> It's basic things, from email to the use of the internet. There are things like web forms and autogenerators. What we're seeing in the system and have been advised of is that some agencies are receiving FOI requests developed with the assistance of artificial intelligence. We heard from the Office of the Australian Information Commissioner that they have released some guidance to agencies in relation to requests that are AI generated or might be coming from AI bots, if you like. What we understand is that these requests are often voluminous, they can be difficult to understand, and at times they require multiple attempts at consultation with the applicant to understand what the applicant is seeking. I think there is nothing prohibiting people using AI to assist them, but, at the moment, the practice that we have heard about is at times inhibiting the way applicants are making those requests, and it's quite challenging to understand the scope of what's being requested.
>
> The other thing is that the bill is trying to have one eye on the future. Right now there is some evidence of AI in the system, but of course AI is developing rapidly. I think what we have seen in international jurisdictions is clear examples, particularly in the US, where AI tools have been used to generate thousands of requests at once, including to election workers being inundated with FOI requests in the 2020 presidential election. In that situation, it prompted a change in the law in Washington state to allow a refusal on the basis that the request was believed to have been generated by

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34 Community and Public Sector Union (CPSU), *Submission 9*, p. 3.

35 CPSU, *Submission 9*, p. 3.

36 EM, p. 7.

> a bot. So there is international practice demonstrating the potential for AI in the system.[37]

2.38 Paragraph 3.22-3.23 of the OAIC's official FOI guidelines states:

> The rise in the use of Artificial Intelligence (AI) brings with it the potential for FOI requests to be made without human intervention.
>
> …
>
> To reduce the possibility of 'bot' generated FOI requests, agencies may consider publishing an online FOI request form that includes technology that can identify whether the user is a robot… However, as noted at [3.21] above, the FOI Act does not require any particular form to be completed to make a valid request, or for people to identify themselves. Agencies should be open to receiving FOI requests from people in ways other than by using an online form.[38]

2.39 The Australian Information Commissioner, Ms Elizabeth Tydd, emphasised:

> We are operating within the digital age and our adoption of technology is generating an unprecedented volume of information. This creates challenges for agencies in managing information, including the practical aspects of requests for information, for a community conversant with immediate access to information.[39]

2.40 Further, Ms Tydd stated:

> In our guidelines, we have tried to assist agencies with a very recent update in addressing what is potentially a new threat.[40]

2.41 The AGD said that it had consulted with the national intelligence community in the development of the Bill:

> We were provided some advice in relation to that, which, in broad terms—and I think the Department of Home Affairs provided some advice on this earlier today—is that it is not uncommon for foreign actors to seek to use legitimate government processes to gather information and put that together to paint a particular picture and use it against the national interests of Australia.[41]

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[37] Ms Celeste Moran, First Assistant Secretary, Identity and Information Division, AGD, *Committee Hansard*, 17 October 2025, pp. 53-54.

[38] Office of the Australian Information Commissioner, *FOI Guidelines*, October 2025, p. 8.

[39] Ms Elizabeth Tydd, Australian Information Commissioner, Office of the Australian Information Commissioner, *Committee Hansard*, 17 October 2025, pp. 39.

[40] Ms Elizabeth Tydd, Australian Information Commissioner, Office of the Australian Information Commissioner, Committee Hansard, 17 October 2025, p. 46.

[41] Ms Celeste Moran, First Assistant Secretary, Identity and Information Division, AGD, Committee Hansard, 17 October 2025, p. 48.

2.42 The AGD noted that the information provided was of a 'classified nature' and that there is no statutory requirement for agencies to record examples of FOI requests that may have been AI generated or from foreign actors.[42]

2.43 The OAIC's Annual Report for 2023-24 records that eSafety saw a 2,288 per cent increase in FOI requests in a single year and states:

> eSafety explains that 'many of these requests were made as part of an "end eSafety" campaign intended to divert the agency's resources from its other operations, a fact that was acknowledged on social media'. The majority of these requests were made using a website that was established following litigation involving eSafety. eSafety expects the number of requests to remain elevated into the 2024–25 financial year.[43]

2.44 While CPI called for a full and comprehensive review of FOI, they acknowledged that this 'should be informed by changes in technology and AI, not just because these developments pose threats to the operation of the system, but also in ways that can facilitate access to government'.[44]

2.45 The Australian Conservation Foundation also accepted that 'significant volumes of automatically generated requests could clog the system and prevent 'genuine' requests from being considered'.[45]

Impact on whistleblowers

2.46 While stakeholders acknowledged the impact that vexatious applicants can have on agency officials, some raised concerns about restricting anonymous or pseudonymous requests in certain circumstances.

2.47 Concerns were raised by a number of transparency and human rights organisations, who cautioned against the proposed amendments as they could impede a range of individuals from making FOI requests.[46] The Human Rights Law Centre, for example, argued that the proposed amendments could prevent 'whistleblowers, civil society organisations, lawyers and other key actors in the integrity landscape from accessing crucial government information'.[47]

2.48 The Australian Lawyers Alliance (ALA) suggested that political staffers from non-government parties may also wish to remain anonymous when making FOI

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42 Ms Celeste Moran, First Assistant Secretary, Identity and Information Division, AGD, *Committee Hansard*, 17 October 2025, p. 48.

43 Office of the Australian Information Commissioner, *Annual Report 2023–24*, p. 134.

44 CPI, answers to questions on notice, 31 October 2025 (received 6 November 2025), p. 23.

45 Australian Conservation Foundation, *Submission 29*, p. 13.

46 See: Transparency International Australia (TIA), *Submission 25*, p.3. and Centre for Public Integrity (CPI), *Submission 2*, p.

47 Human Rights Law Centre, *Submission 10*, p. 5.

requests. According to the ALA, this would be to ensure that their applications are treated without regard to party-political considerations.[48]

2.49 These concerns were shared by several media organisations, including the Media, Entertainment and Arts Alliance (MEAA) and Free TV Australia.[49] These organisations warned against the 'chilling effect' the proposed amendments might have on whistleblowers, who use anonymous FOI requests as a mechanism to reveal wrongdoing, misconduct, or maladministration.[50]

2.50 Similarly, the Alliance for Journalists' Freedom (Alliance) explained that 'people inside government who might want to expose wrongdoing will think twice if they have to identify themselves'. The Alliance opposed the proposed changes to section 15 of the Act, stating that 'even the perception that someone has sought sensitive information can have professional or personal consequences'.[51]

2.51 Expanding on these concerns, the Australian Broadcasting Corporation contended that the impact of the proposed changes would be 'contrary to the aim of producing high-quality journalism in the public interest'.[52]

2.52 The Australian Council of Social Service (ACOSS) argued that the Royal Commission into Robodebt revealed that Robodebt arose and continued 'in large part because of the poor culture within government and bureaucracies at the time', noting:

> Robodebt show[ed] the importance of maintaining anonymity for lodging FOI requests. It is highly unlikely that a whistleblower in government who has not had their concerns properly dealt with via formal internal channels would seek to release information through FOI if their name [were] to be attached to it. If the government does not want a repeat of Robodebt, then it must maintain anonymous FOIs to support exposure of maladministration.[53]

2.53 CPI noted that it had been involved in consultations on further proposed government reforms to clarify and strengthen protections for whistleblowers.[54]

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48 Australian Lawyers Alliance (ALA), *Submission 28*, p. 8.

49 Media, Entertainment and Arts Alliance (MEAA), *Submission 34*, p. 5; Free TV, *Submission 63*, p. 10.

50 *Freedom of Information Act 1982*, s. 24 AA.

51 Alliance for Journalists' Freedom and Dr Danielle Moon, answers to written questions on notice, 20 October 2025 (received 24 October 2025), p. 2.

52 Australian Broadcasting Corporation (ABC), *Submission 26*, p. 2.

53 Australian Council of Social Service, answers to questions on notice, 17 October 2025 (received 3 November 2025), p. 1.

54 CPI, answers to questions on notice, 31 October 2025 (received 6 November 2025), p. 24.

Departmental response

2.54 The AGD noted concerns that the Bill might impact individuals' ability to seek information under the FOI Act. In relation to whistleblowers, the department suggested that stronger protections in the *Public Interest Disclosure Act 2013* (the PID Act) might ease concerns about identification requirements in the FOI Act:

> The department acknowledges the need for strong protections for whistleblowers and is currently supporting the Attorney-General to undertake public consultation on draft reforms to the [PID Act].
>
> Under the PID Act, the threshold for a disclosure of information that would start an investigation process is intentionally low. This is so that public officials do not need to gather information or conduct their own investigations. Individual action outside of the PID Act processes may prejudice any future investigation under the PID Act or by another entity, including the National Anti-Corruption Commission or Australian Federal Police.[55]

2.55 In answers to questions on notice, the AGD reiterated the importance of the identification provisions proposed in the Bill:

- to ensure personal or private information is only disclosed in appropriate circumstances;
- to ensure vexatious applicant declarations are effective and unable to be circumvented via the use of a pseudonym;
- to protect the safety and wellbeing of agency officers, by discouraging inappropriate or threatening behaviours when making a request; and
- to enable agencies to know who with whom they are dealing, which may deter foreign actors or the inappropriate use of artificial intelligence.[56]

2.56 Following the public hearing on 17 October 2025, the Attorney-General introduced amendments to the Bill in the House of Representatives. These amendments included changes to proposed new paragraph 15(2)(bb) (**in bold**):

> (ba) include the full name of the applicant; and
>
> (bb) if the applicant is making the request on behalf of another person, **and the applicant is seeking to access a document containing personal information about the other person or information concerning the business, commercial or financial affairs of the other person**:
>
> (i) state that the request is being made on behalf of another person; and
> (ii) include the full name of the other person;[57]

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55 AGD, *Submission 46*, p. 11.

56 Attorney-General's Department, answers to questions on notice, 20 October 2025, (received 23 October 2025), pp. 1-2.

57 Bill, item 53 in Division 1 of Part 5 in Schedule 2.

2.57 In a supplementary EM, the government advised that this amendment is intended to 'moderate the circumstances under which identifying information must be provided by an applicant when making a request' and to reflect:

> …there may be situations where an applicant may wish or need to obtain non-personal information anonymously through another applicant – for example, a community group being able to put in a request on behalf of their constituent, an investigative journalist or whistleblowers. Retaining the requirement for the applicant to provide a name supports a number of policy purposes, including to ensure vexatious applicant declarations are effective and unable to be circumvented through use of a pseudonym.[58]

40-hour processing cap

2.58 Presently, section 24 of the FOI Act allows agencies and ministers to refuse an access request if a 'practical refusal reason' exists. Subsection 24AA(1) of the FOI Act provides that a practical refusal reason exists in relation to a document if either (or both) of the following applies:

> (a) the work involved in processing the request:
>
> (i) in the case of an agency—would substantially and unreasonably divert the resources of the agency from its other operations; or
>
> (ii) in the case of a Minister—would substantially and unreasonably interfere with the performance of the Minister's functions;
>
> (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).

2.59 The Bill would effectively change this provision to include an additional reason for a practical refusal: that the work involved in processing the request 'is likely to involve a total number of hours of work that exceeds the 'processing cap' applicable under subsection (1A)'.[59]

2.60 Proposed subsection 24AA(1A) would define the processing cap as:

> (a) 40 hours of work; or
>
> (b) if the regulations prescribe a higher number of hours of work that is applicable—the higher number of hours of work prescribed.

2.61 According to the EM, these amendments would provide an agency or minister with discretion to refuse to process a request if it would take more than the prescribed amount of time to process.[60] The EM explains that the cap of 40 hours was determined on the basis that it represents:

> …a reasonable period to allocate to processing an individual FOI request, constituting just over one week's ordinary hours of work for a full-time

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58 Supplementary EM, p. 4.

59 Bill, item 10 in Division 1 of Part 2 of Schedule 3 (proposed paragraph 24AA(1)(c)).

60 EM, p. 35.

employee under Australia's National Employment Standards as at the time of these amendments.[61]

2.62 The Attorney-General advised that these amendments would reflect 'an appropriate balance between an applicant's access rights and taxpayers' resources in providing such access.' Further, this change would implement a recommendation of the *Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010* by Dr Allan Hawke AC (the 2013 Hawke review).[62]

2.63 According to the AGD, the proposed amendments are needed due to the increasing time and effort being expended by agencies to process certain FOI requests. The AGD noted that some agencies have been required to process requests that have taken over 200 hours to action.[63]

2.64 The AGD further advised that in the 2024-25 financial year alone, agencies and Ministers received 43,456 FOI requests. This represents a 25 per cent increase in requests compared to what was made in 2023-24. It was also revealed that in 2023-2024, public servants spent more than one million hours processing FOI requests.[64]

Impact of a processing cap

2.65 While the majority of stakeholders acknowledged the need for greater efficiencies in the FOI scheme, some expressed concerns about how the processing cap would work in practice and its impact on applicants.

2.66 The Centre for Public Integrity (CPI) generally supported the introduction of a processing cap but raised concerns that, under the current proposal, the FOI Act would retain the subjective practical refusal provisions set out in subsection 24AA(1). For greater clarity, the CPI suggested that the subjective test in subsection 24AA(1) be removed in favour of the discretionary 40-hour processing cap.[65]

2.67 Likewise, the Justice and Equity Centre tentatively supported the introduction of the processing cap, but suggested the amendments initially be implemented for a trial period followed by a review. This would ensure that the changes are appropriate, before commencing on a longer-term basis in the Act.[66]

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61 EM, p. 36.

62 Hon Michelle Rowland MP, Attorney-General, *House Hansard*, 3 September 2025, pp. 9-10.

63 AGD, *Submission 46*, p. 11.

64 Hon Michelle Rowland MP, Attorney-General, *House Hansard*, 3 September 2025, p. 1.

65 CPI, *Submission 2*, p. 14.

66 Justice and Equity Centre, *Submission 4*, p. 9.

2.68 Some submitters objected to the processing cap entirely. For example, the Law Council pointed out that 'many critical FOI requests, such as substantive policy inquiries/reviews, may inherently require more than 40 hours to process'.[67] In this regard, the Law Council conveyed that legal practitioners have raised concerns about the unintended consequences that could flow from the processing cap, including:

> …for applicants seeking access to complex, voluminous, or historical records—particularly in matters involving systemic issues or significant public interest.[68]

2.69 A similar perspective was shared by Mr Paul Farrell, a barrister and former investigative journalist, who submitted that a processing cap would 'lock out' many legitimate FOI requests. Mr Farrell explained that, in his experience, a single internal government audit could amount to hundreds of pages of documents and under the proposed changes, could simply be refused.[69] The OpenAustralia Foundation opposed the cap on similar grounds, citing concerns that the cap could allow agencies to simply refuse to process complex requests, regardless of their legitimacy.[70]

2.70 Ms Emily Mitchell, an experienced investigative researcher, provided the committee with examples of complex investigations that she has previously worked on, aided by the FOI process, and that would have exceeded a 40-hour processing time:

> Many of my investigations would have exceeded 40 hours of processing time. These include investigations regarding:
>
> a. The hundreds of incidents in the immigration detention network reported to Comcare;
>
> b. The place of origin of 180 Indonesian minors identified in the Australian Human Rights Commission report; and
>
> c. The inadequate monitoring by [the Australian Maritime Safety Authority] of the Montara oil disaster.
>
> These investigations were important, in the public interest, and attracted significant media attention at the time.[71]

2.71 Drawing on her experience, Ms Mitchell emphasised that 'a deep investigation is sometimes required to truly examine or explore an issue and to truly develop

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67 Law Council, *Submission 53*, p. 20.

68 Law Council, *Submission 53*, p. 19.

69 Mr Paul Farrell, *Submission 17*, p. 5.

70 OpenAustralia Foundation, *Submission 6*, p. 8.

71 Ms Emily Mitchell, *Submission 31*, p. 6.

an evidence base'. Ms Mitchell warned that, if the changes proposed in the Bill had been in place, the investigations she worked on may not have occurred.[72]

2.72 Some submitters queried how a processing cap could be applied consistently across departments and agencies. The Law Council made the point that in practice, decisions to refuse a request based on the processing cap would be 'heavily influenced by the efficiency, resourcing, and technological capability of individual agencies.' The Law Council explained:

> Agencies with well-developed information management systems and experienced FOI teams may be better placed to process large or complex requests within the cap, whereas less-resourced agencies may be more likely to rely on the cap as a basis for practical refusal. This could result in inconsistent access outcomes across government, potentially undermining the objectives of the FOI Act.[73]

Departmental response

2.73 The AGD drew the committee's attention to the Office of the Australian Information Commissioner (OAIC) submission to the 2013 Hawke Review, which commented:

> [I]t is generally accepted that government agencies should not bear an unlimited obligation to provide access under the FOI Act to all non-exempt information.[74]

2.74 In response to the concerns about legitimate FOI requests being refused if they exceed the processing cap, the AGD emphasised that the cap would be discretionary: it would 'remain open to agencies or Ministers to respond to requests that would take more than 40 hours (or a greater amount as determined in regulations)'.[75]

2.75 The AGD further advised that the proposed changes would align Australia with 'like-minded jurisdictions' such as the United Kingdom (UK) and Scotland. The AGD explained that these jurisdictions allow entities to refuse a request if the cost of compliance would exceed a set limit, 'generally £600 across both jurisdictions – which equates to a 'processing cap' of up to 40 hours.'[76]

Access to personal information outside of the FOI process

2.76 In 2023, the Legal and Constitutional Affairs References Committee inquired into the operation of Commonwealth freedom of information laws and recommended that:

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72 Ms Emily Mitchell, personal capacity, *Committee Hansard*, 17 October 2025, p. 15.

73 Law Council, *Submission 53*, p. 20.

74 AGD, *Submission 46*, p. 11.

75 AGD, *Submission 46*, p. 12.

76 AGD, *Submission 46*, p. 12.

> …there be a whole of government campaign to encourage decision-making agencies to explore opportunities to create pathways to release personal information directly to the individuals to which the information pertains without requiring applicants to use the FOI regime.[77]

2.77 Several submitters agreed that the government should consider reforms to allow individuals to request personal information independent of the FOI system. ACOSS expressed the view that this would 'free up' FOI teams to deal with other legitimate access requests.[78] Legal experts, Dr Maria O'Sullivan and Dr Yee-Fui Ng, agreed:

> …personal information could be released directly to the people to which the information pertains, without requiring applicants to use the FOI regime. This would clearly take some resourcing pressure off public servants.[79]

2.78 A number of departments and agencies supported this approach, which they considered would ease some of the burden on the FOI system and enable it to work more effectively. According to the OAIC, in 2024-25, 74 per cent of all FOI requests were for personal information, consistent with data from the previous two years.[80] Home Affairs advised that, in its experience, these requests are '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.[81]

2.79 At the committee's hearing, Home Affairs indicated that it would support an approach where the *Privacy Act 1988* (the Privacy Act), rather than the FOI Act, was the primary means for people to obtain access to their personal information.[82]

Application fees

2.80 The Bill proposes to insert section 93C into the FOI Act to enable the Freedom of Information (Charges) Regulations 2019 (the Regulations) to specify fees to

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77 Legal and Constitutional Affairs References Committee, *The operation of Commonwealth Freedom of Information (FOI) laws*, December 2023, p. 101.

78 Australian Council of Social Service, *Submission 11*, p. 3.

79 Dr Maria O'Sullivan and Dr Yee-Fui Ng, *Submission 35*, p. 5.

80 See: Office of the Australian Information Commissioner (OAIC), *Submission 50*, p. 6.

81 Home Affairs, *Submission 58*, p. 4.

82 Ms Brooke Hartigan, Deputy Secretary, Legal Group, Department of Home Affairs, *Committee Hansard*, 17 October 2025, p. 13.

be charged for FOI requests, internal reviews and Information Commissioner (IC) reviews.[83]

2.81 The EM notes proposed subsection 93C(3) which prohibits applying a fee for documents containing an applicant's own personal information or that of someone on whose behalf the application is made:

> This amendment implements the Government's intent that a person should not have to pay an application fee to seek access to their own personal information. This is consistent with the operation of charges under section 29 of the Act and section 7 of the FOI Charges Regulations, which provides an exception to charges in respect of a request for, or the provision of, access to a document that contains personal information of the applicant. This is also consistent with the operation of [Australian Privacy Principle, APP] 12 of the Privacy Act, which requires an APP entity (as defined in the Privacy Act) to provide access to an individual to personal information held about that individual, if so requested.[84]

2.82 Additionally, proposed section 93C would provide for the waiver or remittance of fees where the applicant is experiencing prescribed circumstances of financial hardship:

> (4) Without limiting paragraph (2)(c), the regulations must make provision in relation to the waiver or remission (in whole or part), in prescribed circumstances of financial hardship, of a fee that would otherwise be payable by an applicant making a request under section 15, or an application under section 54B or 54N.

2.83 The Attorney-General explained these proposed amendments have been introduced with the intention to:

> …aid in deterring frivolous requests, and ensure agency resources are not unduly diverted from processing genuine requests, particularly requests for personal information which account for the vast majority of overall requests.[85]

2.84 Services Australia supported the expressed objective of the fee proposal, adding that, in its experience:

> …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'.[86]

2.85 In addition to deterring frivolous and vexatious requests, the OAIC anticipated that an application fee would, ultimately, reduce the number of non-personal FOI requests made to agencies and Ministers and result in a decline in IC review

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83 Bill, item 6 in Schedule 6.

84 EM, p. 65.

85 Hon Michelle Rowland MP, Attorney-General, *House Hansard*, 3 September 2025, p. 10.

86 Services Australia, *Submission 33,* p. 4.

applications.[87] The impact of this, according to the AGD, would 'go some way to addressing the significant and increasing cost to Government of processing FOI requests'.[88]

2.86 The Queensland Office of the Information Commissioner noted that the 'existing fee system in Queensland has been effective in avoiding the risks of anonymous applications'.[89]

Financial impact of application fees

2.87 While witnesses and submitters supported the proposal to prohibit the charging of fees for access to personal information, some objections were raised about the introduction of fees for other access requests and reviews.

2.88 The Australian Press Council (APC), for example, emphasised the importance of access to information as a 'fundamental democratic right and which should not be contingent on financial means'.[90] The APC advised that the introduction of fees would pose a 'significant barrier for freelance journalists, smaller outlets, academics, and civil society groups' seeking government information.[91] The APC warned this could create a 'two-tier system' where larger media organisations can pursue FOI applications and reviews, but community and independent journalists cannot.[92]

2.89 The ALA voiced a similar concern, submitting that the proposed fees would disproportionately impact certain applicants, including smaller media outlets, whistleblowers, academics and private individuals:

> We observe that hostile foreign governments, big business and other well-resourced applicants will have no problems in meeting the $50 fees contemplated (but not yet published) and therefore such a fee will have no deterrent effect on these applications. However, they will significantly impair the ability of small media outlets, whistleblowers, academics and private citizens to obtain the information to which they would otherwise be entitled. Although a fee set at around $50 can appear nominal, to a small media outlet, which may need to make tens or even hundreds of requests per year, these costs quickly become significant.[93]

2.90 Dr O'Sullivan and Dr Ng agreed that 'whilst a modest application fee of, say $30 to $50 may not represent a significant hurdle for larger news organisations…it

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87 OAIC, *Submission 50*, p. 10.

88 AGD, *Submission 46*, p. 14.

89 Office of the Information Commissioner (QLD), *Submission 44*, p. 3.

90 Australian Press Council (APC), *Submission 12,* p. 3.

91 APC, *Submission 12,* p. 3.

92 APC, *Submission 12,* p. 3.

93 ALA, *Submission 28*, p. 7.

would represent a significant hurdle for smaller organisations or those with lower budgets, as well as freelance reporters'. They gave the example of a reporter undertaking an investigative journalism piece who would likely need to make a significant number of FOI requests to explore an issue. For this applicant, 'even a small application fee will become a significant hurdle'.[94]

2.91 Professor Peter Greste, Executive Director of the Alliance, recognised the problems that vexatious FOI applications can cause but considered that the introduction of application fees would not resolve this issue. Rather, he suggested that 'there are much better ways of managing that through all sorts of digital processes that can filter out those kinds of vexatious applications'.[95]

2.92 Ms Skye Predavec, Researcher at the Australia Institute, described the Bill as 'a solution looking for a problem'. She stated that the FOI system is broken but indicated that the introduction of application fees is not a real solution to the problems identified in the system.[96]

2.93 The CPI acknowledged that, under the current proposal, fee waivers would be available to those people experiencing genuine financial hardship. However, the CPI cautioned that, in practice, such exemptions can be difficult to negotiate.[97]Expanding on this point, Mr Jack Davenport argued that applying for a fee waiver places 'yet another burden' on applicants seeking information under the FOI process.[98]

2.94 To address some concerns, several submitters proposed their own amendments to the measures in the Bill relating to fees, for example:

- the Australian Conservation Foundation suggested requiring a nominal application fee for initial FOI requests only;[99]
- Transparency International Australia suggested there should be an exemption for journalists, researchers and civil society groups, noting that the FOI process can be essential to their work and an important tool of accountability;[100] and

94 Dr Maria O'Sullivan and Dr Yee-Fui Ng, *Submission 35*, p. 7.

95 Professor Peter Greste, Executive Director, Alliance, *Committee Hansard*, 17 October 2025, p. 37.

96 Ms Skye Predavec, Researcher, Australia Institute, *Committee Hansard*, 17 October 2025, p. 1.

97 CPI, *Submission 2,* p 12.

98 Mr Jack Davenport, *Submission 14*, p. 3.

99 Australian Conservation Foundation (ACF), *Submission 4*, pp. 12-13.

100 The Australia Institute, *Submission 25*, p. 4.

- several other submitters urged the imposition of a nominal fee only to prevent automated requests and dissuade vexatious applicants from abusing the FOI process.[101]

Departmental response

2.95 In relation to concerns about proposed section 93C of the FOI Act, the AGD reiterated that personal information, which forms the majority of FOI requests, would not be subject to an application fee.[102] The department further clarified that, consistent with the objects of the FOI Act, the provision is 'not intended to deter applicants seeking access to government-held information' and is only intended to 'deter inappropriate, vexatious or repeat requests which are an abuse of process, and will go some way to addressing the significant and increasing cost to Government of processing FOI requests'.[103]

2.96 The AGD affirmed that all states and territories with the exception of the Australian Capital Territory have application fees for FOI requests, ranging from $30.00 to $57.65. The AGD noted that the fee would be set by the regulations and as 'a legislative instrument, the regulations would be subject to disallowance by Parliament'. AGD stated that the regulations 'setting the fees will be informed by further consultation, analysis and costings' and are intended to be 'broadly consistent' with application fees in other Australian jurisdictions.[104]

Provisions in delegated legislation

2.97 The Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee) has raised concerns about fee provisions being placed in delegated legislation. In particular, the Scrutiny of Bills Committee noted that the Bill does not cap the maximum fee amount or provide any guidance as to how the fee will be calculated.[105]

2.98 Dr O'Sullivan and Dr Ng voiced similar concerns and argued that the Regulations could specify an unrealistic amount (for example, $1000 per application).[106] The Law Council considered that the FOI Act should contain

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101 See, for example: ALA, *Submission 28*, p. 7; ACF, *Submission, 29*, p. 13; ABC, *Submission 26*, p. 2.

102 AGD, *Submission 46*, p. 2.

103 AGD, *Submission 46*, p. 14.

104 AGD, Submission 46, p. 14.

105 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 6 of 2025*, 29 October 2025, p. 84. Note: this committee considered that the EM also does not provide satisfactory guidance.

106 Dr Maria O'Sullivan and Dr Yee-Fui Ng, *Submission 35*, p. 7.

safeguards to ensure that 'fees remain modest, fair and reasonable across the board'.[107]

2.99 The AGD submitted that the Regulations would remain subject to parliamentary scrutiny and disallowance by the parliament.[108] It noted that fee provisions have been placed in the delegated legislation to allow for those arrangements to more easily be updated into the future.[109]

Exemption for Cabinet documents

2.100 Part IV of the FOI Act sets out exemptions from application of the Act, including in Division 2 where section 34 which prevents Cabinet documents from being released under FOI processes:

> (1) A document is an exempt document if:
>
> (a) both of the following are satisfied:
>
> (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;
>
> (ii) it was brought into existence for the **dominant purpose** of submission for consideration by the Cabinet; or
>
> (b) it is an official record of the Cabinet; or
>
> (c) it was brought into existence for the **dominant purpose** of briefing a Minister on a document to which paragraph (a) applies; or
>
> (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.
>
> (2) A document is an exempt document to the extent that it is a copy or part of, or contains an extract from, a document to which subsection (1) applies.
>
> (3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.

2.101 The Bill proposes to amend section 34 of the FOI Act, by repealing paragraphs 34(1)(a) and 34(1)(c) and inserting in their place:

> (a) both of the following are satisfied:
>
> (i) it has been prepared by a Minister, on a Minister's behalf or by an agency;
>
> (ii) a **substantial purpose** for its preparation was submission for consideration by the Cabinet;

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[107] Law Council, *Submission 53*, p. 25. Also see: Refugee and Immigration Legal Service, *Submission 5*, p. 2, which similarly argued that provisions in the primary legislation could safeguard the erosion of fee waivers and allow for greater parliamentary scrutiny.

[108] AGD, *Submission 46*, p. 14.

[109] EM, p. 65.

…

(c) a **substantial purpose** for its preparation was to brief a Minister in relation to issues to be considered by the Cabinet[.]

2.102 According to the EM, the proposed amendments would ensure that Cabinet confidentiality and the principle of collective ministerial responsibility is 'appropriately protected'.[110] To do this, proposed new subparagraph 34(1)(a)(ii) and paragraph 34(1)(c) would replace the 'dominant purpose' test with a 'substantial purpose' test, which would recognise:

> …documents may be created for multiple purposes and may disclose sensitive information about Cabinet matters even if they were not created for the 'dominant purpose' of Cabinet consideration, or briefing a Minister on a document to be submitted for Cabinet consideration.[111]

2.103 The EM states that replacing the dominant purpose test with the substantial purpose test would require that 'the Cabinet purpose must still be of substance, real and not insignificant, trivial or nominal, even if it is not the dominant purpose'. As such, the exemption would continue to apply to documents with a 'genuine Cabinet purpose'.[112]

The 'substantial purpose' test

2.104 Numerous submitters and witnesses queried the replacement of the 'dominant purpose' test in the Cabinet documents exemption. They argued that the proposed change would broaden the Cabinet exemption and shield a larger volume of documents from public scrutiny.

2.105 Mr Andrew Podger AO, former Australian Public Service Commissioner, argued that the proposal in the Bill would 'inevitably [and considerably] extend exemptions'. Further, the proposal is contrary to the 2010 reforms and the 2013 Hawke Review':

> …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.[113]

2.106 Similarly, the Law Council submitted that the 'substantial purpose' test is a 'lower requirement' than the 'dominant purpose' test. In its view, the proposed change would '[enlarge] the range of documents captured as exempted Cabinet documents', primarily by encompassing what are effectively preparatory documents linked to Cabinet deliberations.[114]

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110 EM, p. 70.

111 EM, p. 70.

112 EM, p. 70. Also see: AGD, *Submission 46*, p. 17.

113 Mr Andrew Podger AO, *Submission 40*, p. 1.

114 Law Council, *Submission 53*, p. 26.

2.107 The ALA agreed with this assessment and provided examples of documents that could be captured under a 'substantial purpose' test:

> …an agency brief on a potential policy, or even consultant reports commissioned for Cabinet - materials that are disclosed under current FOI once their dominant purpose is shown not to be of Cabinet consideration. This provision will have the effect of reducing access to substantial numbers of documents, narrowing the public scrutiny of government; it is therefore a disproportionate means of achieving its stated aim.[115]

2.108 The ANU Law Reform and Social Justice Research Hub (ANU LRSJ Research Hub) illustrated the argument, as shown in Figure 2.1.

Figure 2.1 Impact of proposed amendments to section 34 of the FOI Act

Element	Current s 34(1)(a) of *FOI Act*	Proposed Amendment	Material Effect of the Amendment
Who prepares the document	Must be prepared for **cabinet submission** (narrow).	Prepared by or on behalf of a Minister or agency (wide).	Expands scope of exemption to include working papers that might be linked to Cabinet.
Stage required	Document only needs to be **submitted** for Cabinet exemption to apply.	Document needs only be **prepared** for Cabinet exemption to be exempt.	More documents are now exempt from FOI requests. These includes drafts of advice and working papers.
Purpose test	**Dominant purpose** must be Cabinet submission to attract the exemption.	**Substantial purpose** is enough to attract the exemption.	Lower threshold. More documents will be exempt even if Cabinet exemption was incidental.

Source: ANU LRSJ Research Hub, Submission 20, p. 3.

2.109 Considering the impact of these changes, the ANU LRSJ Research Hub concluded that the proposed amendments to paragraphs 34(1)(a) and 34(1)(c) of the FOI Act are 'unnecessary, disproportionate, and contrary to the stated objects of the Act'.[116]

2.110 Some stakeholders supported the FOI related observations and recommendations from the Royal Commission into the Robodebt Scheme and noted that the Bill contains proposals that do not align with the findings and

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[115] ALA, *Submission 28*, p. 9. Also see: Ms Predavec, Australia Institute, *Committee Hansard*, 17 October 2025, p. 1.

[116] Australian National University Law Reform and Social Justice Research Hub (ANU LRSJ Research Hub), *Submission 20*, p. 4.

recommendations of Commissioner Catherine Holmes AC SC.[117] The Grata Fund added that Commissioner Holmes considered that section 34 of the FOI Act should be repealed entirely.[118]

2.111 Other submitters questioned whether replacing the 'dominant purpose' test with the 'substantial purpose' test might lead to legal uncertainty and challenge. The OAIC, for example, stated that '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'.[119] Professor John McMillan AO, a former Australian Information Commissioner, cautioned that the cost to government of dealing with FOI disputes would likely increase, particularly in the early years of the proposed changes.[120]

2.112 Dr O'Sullivan and Dr Ng voiced concerns about proposals in the Bill being rendered unconstitutionality based on Australia's implied freedom of political communication.[121] They endorsed comments made by constitutional law expert, Professor Luke Beck of Monash University, who warned:

> Any law that reduces the ability of people to engage in discussion on political or government matters has to be proportionate to legitimate purpose…And if it's not, then the legislation will be invalid.[122]

2.113 The AGD maintained that proposed changes to section 34 of the FOI Act reflect the practical operation of the Cabinet process, including that the development of Cabinet documents may involve:

> …agencies or ministerial offices preparing or commissioning documents for Cabinet consideration before a Minister has formally proposed that the related matter be considered in Cabinet.[123]

Security classification of documents

2.114 The FOI Bill would also make clear that the presence or absence of any security classification or other feature identifying a document as a Cabinet document is

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117 See: Law Council, *Submission 53*, p. 12 and ACOSS, *Submission 11*, p. 2.

118 Grata Fund, *Submission 7*, p. 7.

119 OAIC, *Submission 50*, p. 13. Note: the OAIC anticipated that an expanded exemption for Cabinet documents could result in a higher number of access refusals and IC review applications.

120 Professor John McMillan AO, *Submission 30*, p. 3.

121 Dr Maria O'Sullivan and Dr Yee-Fui Ng, *Submission 35*, p. 4.

122 Dr Maria O'Sullivan and Dr Yee-Fui Ng, *Submission 35*, p. 4. Also see: Statement of Compatibility with Human Rights, EM, Bill, p. 9, which states that the proposed amendments to section 34 of the FOI Act engage with the right to freedom of expression but are 'reasonable, proportionate and necessary to improve the overall operation and effectiveness of the FOI framework'.

123 AGD, *Submission 46*, p. 17.

not sufficient in itself to determine whether the document is exempt under subsections 34(1), (2) or (3).

2.115 The AGD noted:

> This responds to an observation of the Royal Commissioner in her report of the Royal Commission into the Robodebt Scheme, noting that the Government articulated in its response to the Commissioner's report its reasons for not agreeing to the repeal of section 34.[124]

Departmental response

2.116 The AGD submitted that all Australian jurisdictions provide an exemption for certain Cabinet records and decisions and highlighted that there is considerable variation on how these jurisdictions address 'the issue of the 'purpose' for which a document is created'.[125]

2.117 The AGD noted that the Cabinet exemption was applied in one per cent of decisions. Further:

> The FOI Bill amends the operation of the Cabinet exemption to strike an adequate balance between protecting information that is central to Cabinet confidentiality with the right to access information.[126]

Public interest conditional exemptions – deliberative processes

2.118 Part IV of the FOI Act also sets out public interest conditional exemptions (Division 3), one of which is an exemption for documents whose release would disclose 'deliberative matter'. Section 47C of the Act provides:

> (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 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.[127]

2.119 Section 11A of the FOI Act makes clear that access must generally be given to a conditionally exempt document unless it would be contrary to the public interest:

> (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances)

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124 AGD, *Submission 46*, p. 19.

125 AGD, *Submission 46*, p. 18.

126 AGD, *Submission 46*, p. 4.

127 Note: subsections 47C(2)-(3) provide exceptions to the general rule in subsection 47C(1).

> access to the document at that time would, on balance, be contrary to the public interest.

2.120 Section 11B sets out a list of factors for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5). This list contains factors favouring access and irrelevant factors.

2.121 The Bill would amend section 11B of the FOI Act to insert non-exhaustive factors against giving access, specifically in relation to the deliberative process exemption in section 47C of the Act:

> (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.[128]

2.122 The AGD stated that in 2023-24 the deliberative processes exemption was applied in six per cent of decisions.[129]

2.123 The EM sets out reasons underpinning the need for a strong deliberative processes exemption, as found in multiple reviews and reports:

> The 2013 Hawke Review noted that the absence of a clear indication of harm that the exception is designed to protect results in the exemption being subject to differing interpretations and difficult to apply. A number of other reviews also note the importance of a strong deliberative processes exemption for the effective operation of Government (Shergold Review 2015, Thodey Review 2019 and the APS Integrity Taskforce Report 2023). 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 the one hand, against the public interest against access, such as prejudice to the effective working of government and its agencies on the other.[130]

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128 Bill, item 14 in Division 1 of Part 3 of Schedule 7; proposed subsection 11B(3A).

129 AGD, *Submission 46*, p. 4.

130 EM, p. 75. Also see: AGD, *Submission 46*, p. 6.

2.124 The AGD expressly noted a finding from the Shergold review that 'the FOI Act should be rebalanced so that frank advice can be confidential'.[131] The APSC also noted that in the 2015 Learning from Failure report, Professor Peter Shergold AC observed:

> …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.[132]

2.125 The APSC agreed:

> …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.[133]

2.126 The APSC submitted that, at present, section 47C of the FOI Act makes it hard for public servants to do their duty and the consequences of avoiding written advice about serious risks have been illustrated 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.[134]

Public interest considerations

2.127 Some submitters queried the insertion of proposed subsection 11B(3A) into the FOI Act. The Law Council stated that the provisions could significantly expand

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131 AGD, *Submission 46*, p. 6. Also see: Professor Peter Shergold AC, *Learning from Failure,* 2015, pp. 21-22.

132 APSC, *Submission 23*, p. 3.

133 APSC, *Submission 23*, p. 4.

134 APSC, *Submission 23*, p. 4. Also see: Dr Rachel Bacon, Acting Commissioner, APSC, *Committee Hansard*, 17 October 2025, p. 29.

reliance upon the deliberative processes exemption, which, it argued, would be 'contrary to the original design of the relevant sections of the Act'.[135] Mr Podger shared this view:

> 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'.[136]

2.128 Other submitters raised concerns about the breadth and uncertainty in proposed paragraphs 11B(3A)(a)-(c). The ALA, for example, argued that phrases such as 'frank and timely' and 'orderly and effective' are 'too broad, vague and promote a culture of secrecy'. Its submission noted that there is no clear guidance on what threshold of prejudice is required, or a quantitative test for 'timely' or 'orderly'.[137]

2.129 ACOSS similarly argued that broad phrases such as 'prejudice to frank or timely advice to an agency or Minister' and 'prejudice the orderly and effective conduct of a government decision-making process' could be interpreted to 'stop the release of any number of government documents'.[138]

2.130 The Whistleblower Justice Fund and Transparency Warrior highlighted an existing duty in section 10 of the *Public Service Act 1999* that requires public servants, among other things, to provide the Government with advice that is frank, honest, timely and based on the best available evidence. They argued that 'there is no scope for officials to depart [from this duty]', however:

> …despite the law not permitting public servants to back off on their advice, the Government wants to deny the public access to information it should be entitled to see; advice being given to ministers that will, by its very nature, affect citizen's lives. In effect the proposed amendment would likely serve to screen from public scrutiny unprofessional, politically compromised, ill-considered or just plain shoddy advice and work by public servants who under the law should do better. Against the backdrop of the recent experience of the Robodebt scandal and other public administration disasters, this is not something the Parliament should countenance.[139]

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135 Law Council, *Submission 53*, p. 29.

136 Mr Andrew Podger AO, *Submission 40*, p. 1.

137 ALA, *Submission 28*, p. 12.

138 ACOSS, *Submission 11*, p. 2.

139 Whistleblower Justice Fund and Transparency Warrior, *Submission 69*, p. 17.

Departmental response

2.131 The AGD reiterated that the proposed provisions relating to Division 3 of Part IV of the FOI Act are intended to provide greater legislative clarity around the harm the deliberative processes exemption is designed to protect and to ensure an appropriate balance in weighing the public interest favour of access. The department's submission highlighted that this approach is consistent with comparable jurisdictions:

> …other Westminster jurisdictions, including the United Kingdom and New Zealand, recognise similar factors as those proposed to be inserted into the FOI Act as relevant considerations in assessing the public interest in disclosure.[140]

2.132 The AGD specifically rejected the argument put forward by the Whistleblower Justice Fund and Transparency Warrior:

> The fundamental obligations on APS officials to serve the Government, the Parliament and the Australian public does not necessarily mean that everything produced by the APS is appropriate for public release at a particular point in time. This includes obligations under the Public Service Act 1999, which contains the APS Values and APS Code of Conduct, which require public servants to provide Government with advice that is frank, timely and based on the best available evidence. Existing caselaw and regulatory guidance recognises the relevance of these types of considerations, although note they should be approached cautiously in accordance with sections 3 and 11B of the FOI Act following the 2010 Reforms.[141]

Official documents of a minister

2.133 The Justice and Equity Centre found these amendments to be 'overly complex' and 'difficult to follow'.[142] Similarly, the Grata Fund noted that 'the proposed amendments will be unworkable in practice, frustrate the objects of the Act, and create significant difficulties for both applicants and ministers'.[143]

2.134 Other submitters, such as the CPI, supported the measures relating to official documents of a minister, stating:

> Schedule 8, which provides a process by which documents of an outgoing minister can still be accessed, in a way that remains true to the spirit of the Federal Court's decision in Patrick v Attorney-General (Cth) [2024] FCA 268, in that these documents are still accessible under the FOI regime.[144]

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140 AGD, *Submission 46*, p. 16.

141 AGD, *Submission 46*, p. 16.

142 Justice and Equity Centre, *Submission 4*, p. 7.

143 Grata Fund, *Submission 7*, p. 14.

144 CPI, *Submission 2*, p. 13.

2.135 MEAA also stated that 'this is a positive reform', although it understood that this is already the law as a result of *Patrick v Attorney-General* (Cth) [2024] FCA 268 (the Patrick decision).[145]

Departmental response

2.136 The AGD noted that the Patrick decision:

> …has raised complex issues in respect of requests made to Ministers and the established convention that deliberative documents of a previous government are not provided to an incoming government.[146]

2.137 The AGD further explained that the amendments in Schedule 8 of the Bill would:

> …provide a mechanism to ensure that active FOI requests made to a Minister continue to be processed if that Minister leaves office. An outgoing Minister who forms a reasonable belief that they will cease to hold the relevant office may, at their own discretion, forward an FOI request to another Minister or to an agency. Where a Minister does not forward the request prior to leaving office, the request is taken to have been forwarded to the default agency.[147]

Committee view

2.138 The Freedom of Information Amendment Bill 2025 seeks to improve the operation of the FOI framework. The committee notes that there have been multiple calls for reform, including from the Legal and Constitutional Affairs References Committee, and commends the government for introducing the Bill and pre-emptively proposing amendments to certain provisions in the Bill as a result of this inquiry.

2.139 The committee recognises that the FOI system is under immense pressure and acknowledges that there are many views on how best to approach the inefficiencies and other issues that are plaguing the system. The committee also recognises that the emergence of new technologies and the changing operating environment mean that the FOI system is being challenged and is vulnerable to exploitation in ways that were difficult to conceive at the time the FOI Act was first enacted. The costs are growing substantially year on year – the cost to taxpayers of administering the FOI system, the cost to the public of public servants being routinely diverted from their core work to process FOI requests, and the cost to staff dedicated to working within the FOI system who face significant pressures as seen from the evidence received by the committee.

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145 MEAA, *Submission 34*, p. 8.

146 AGD, *Submission 46*, p. 19.

147 AGD, *Submission 46*, p. 19.

2.140 The committee accepts the AGD's evidence that the Bill will continue to promote accountable and effective government, while making changes to ensure the ongoing viability of the FOI system.

2.141 The committee notes, however, that it may be necessary for the government to consider further reform of the FOI system. The committee agrees, for example, that access to personal information might be more appropriately managed under privacy processes, which would also enhance the FOI system efficiencies proposed in the Bill. The committee urges the government to consider an alternative mechanism for individuals to access personal information as part of proposed reforms to the *Privacy Act 1988*, rather than as freedom of information requests under the FOI Act.

Recommendation 1

2.142 The committee recommends that the Senate pass the Bill.

Senator Jana Stewart
Chair

Dissenting Report from Coalition Senators

1.1 The Coalition thanks stakeholders for their submissions and expresses its concern over these unwarranted and undemocratic changes to Australia's freedom of information regime. The Coalition contends the motivations behind the changes are ill-informed, and the proposals are not designed to address the issues identified. Key issues include:

Reasoning behind the changes

1.2 The Bill proposes substantial changes to provisions relating to deliberative processes and cabinet documents due to 'modern technology' making it possible to create large volumes of vague, anonymous, or frivolous requests. This is despite the fact there was no actual evidence to the committee that AI or similar technology is being used to overwhelm Australia's FOI system. If the government seeks to claim automation and chatbots as an excuse to limit public access to information, then evidence must be presented to back up this claim.

1.3 The Bill introduces the ability for an agency or Minister to refuse an FOI request if it is vexatious or frivolous. The inclusion of this mechanism would sufficiently deal with the government's reasoning that frivolous and vexatious requests are inundating the system. All other amendments in this Bill would therefore be unjustified.

Changing the Object of the Act

1.4 The Bill seeks to alter the object of the Act from "increasing scrutiny, discussion, comment and review of the Government's activities" to add "while, at the same time, providing safeguards to ensure the protection of essential private interests and the proper and effective operation of the government". This rewording effectively negates the first part of the objective, for Freedom of Information is designed to safeguard the public right to access information, not the private right to protect government secrecy.

Introduction and expansion of fees

1.5 Media reports say the additional cost for the application fee will be between $30 and $58. If accurate this will make it increasingly difficult for people to make FOI requests. By imposing application fees and processing caps, Australians will have to pay for access to information that already belongs to them.

Information about government employees

1.6 The Bill will make it more difficult to receive identifying information about commonwealth employees. This needs amending, as there are many reasons why it would be in the public interest to know the details of commonwealth

employees including if they have been investigated for misconduct or are suspected of being appointed without merit.

Refusing requests based on predicted workload

1.7 The Bill would allow public servants to issue blanket refusals to act on requests that seek information which would take more than 40 hours to collate. This has no bearing on whether a request is in the public interest.

1.8 There is no indication of how the workload would be determined, or whether this could be audited for accuracy. Additionally, the agency should be required to justify their reasoning to ensure public confidence in the FOI process.

Updating timeframes

1.9 Timeframes will now be based on 'working days' rather than calendar days. This will give greater time for public servants to consider applications without any complimentary provisions that will increase efficiency.

Making anonymous requests

1.10 During the passage of the Bill in the House, the Government made a minor amendment to provide that a third party can make a request for information on behalf of another person, so long as it does not relate to personal or business information.

1.11 This amendment will not assist, for example, a small business owner with concerns about a government tender process to make an FOI request without alerting other individuals to their identity and intent. The amendment does not adequately deal with the importance of retaining the ability to make anonymous requests under the FOI Act. The Government has not suggested any further proposed amendments.

Changing access to cabinet documents and "deliberative" processes

1.12 The Bill seeks to change exempt cabinet documents from a "dominant purpose" to a "substantial purpose" (section 34). This may include anything that has been brought to cabinet's attention. Any document where Ministers, public servants or other officials record their thoughts about policy could be deemed "deliberative material" and be exempted from FOI including "blue sky thinking" that may relate to future policy deliberations (section 47C). This is a broadening of exemptions for cabinet documents that demonstrates this government's attraction to secrecy.

Concluding comments:

1.13 The government's proposed changes in this Bill do not find favour with the Coalition. They will undermine trust in the system, and weaken the ability to hold governments to account. Freedom of Information is not a privilege given by government. It is a right owed to every Australian citizen.

1.14 The Coalition believes in the Australian people's right to a fair and efficient freedom of information system, and will continue to advocate for transparency and accountability.

Senator Leah Blyth
Deputy Chair

Dissenting Report from the Australian Greens

1.1 The majority report is not what the Freedom of Information Amendment Bill 2025 (the bill) deserves. The evidence we heard in this inquiry was overwhelmingly against this bill. The recommendation to pass the bill is only printed here because the government controls this committee and has chosen to ignore the evidence.

1.2 Despite the near universal agreement that the freedom of information (FOI) system needs reform, not one person outside the government supports this bill. It's time for them to abandon it completely and go back to the drawing board.

1.3 The Australian Greens and the many NGOs, journalists, academics and community members who use FOI regularly are ready to work with them to get the next bill right.

A short history of what is wrong with the bill

1.4 The problems with this bill can be characterised in the following ways:

(a) It seeks to make the FOI system more expensive, more secretive and even slower.
(b) Its claimed evidence base simply does not exist.
(c) It doesn't fix what's wrong with FOI.

1.5 We will consider these briefly in turn below. The only conclusion can be that this bill should be abandoned and used as a case study in how hubris and an addiction to secrecy can harm the fundamental underpinnings of our democratic system.

It seeks to make the Freedom of Information system more expensive, more secretive and even slower

1.6 The bill bans anonymous requests. This would mean whistleblowers, journalists working on sensitive stories, advocates in small communities and domestic violence survivors seeking information about their cases would have their identity on record with the very departments they're scrutinizing.

1.7 It also seeks to introduce sweeping new powers to refuse to provide information. Agencies will be able to refuse requests they deem 'vexatious' or involving a 'substantial and unreasonable diversion of resources'. These are standards so vague they're practically an invitation to reject anything inconvenient. And here's the kicker: these refusals won't be reviewable by the Information Commissioner in the same way normal FOI decisions are.

1.8 The bill also seeks to allow refusal of FOI applications that would take above 40 hours to process. The 40 hours include the countless hours bureaucrats spend redacting documents, denying documents and justifying secrecy. It will reward

secretive departments who spend public resources finding reasons to deny claims. This means many matters would not be possible to pursue through the FOI process. This clause is of particular concern to journalists who regularly request information that would exceed this arbitrary time limit.

1.9 It also seeks to impose fees to access public information, despite the fact it is the public that owns this information. The bill allows regulations to impose charges for processing requests beyond the current very limited fee structure. This will likely price ordinary Australians out of accessing their own government's information.

1.10 It also seeks to hide more information by broadening exemptions including seeking to expand more documents under the Cabinet exemption despite the fact this directly goes against the recommendations of the Royal Commission into the Robodebt Scheme (Robodebt Royal Commission). To its shame, the government has said these changes are as a result of the Robodebt Royal Commission, in an exercise in double-speak that undermines trust.

1.11 The weight of expert evidence is clearly against this bill as drafted. The evidence says it is not possible to fix it by amendment and an entirely new bill, indeed an entirely new process, is required.

Its claimed evidence base simply does not exist

1.12 When the government presented these laws they made a wide range of claims about why they were necessary, including pressures from:

- use of AI
- bots making requests
- foreign interference

1.13 When we used FOI to obtain the evidence base for all of these claims, it became apparent these grounds were shaky at best. Perhaps ironically, these documents were requested by multiple people under FOI when this bill was first proposed and are available on the Attorney General's Disclosure log here: www.ag.gov.au/rights-and-protections/freedom-information/freedom-information-disclosure-log. There is a lesson in transparent governance here if the government cares to learn it.

1.14 For the use of AI and bots, we were pointed towards hundreds of requests received by the Office of the eSafety Commissioner. The problem is these requests were made by individuals using a webform which would in no way be impacted by the proposed changes, and which is a completely legitimate way to request information. It is also of course the case that, under the existing FOI laws, it is only human beings who can access information, so any bot requests would have to be denied already.

1.15 They then pointed towards the use of AI in preparing applications but it is clear from the evidence received supposedly supporting this that it's not actually AI

bots making requests but regular applicants using AI to help put their requests together. This would still be permitted under the bill, as of course it should be.

1.16 Finally, they provided two newspaper articles about situations in the US, including an example of 'election workers being inundated with FOI requests during the 2020 presidential election' prompting a change of the law in Washington state to allow refusal on the basis that a request is reasonably believed to have been 'generated by a bot'. Again, under Australia's existing FOI law, bots cannot make requests so this clearly cannot be a justification for this bill.

1.17 Regarding alleged foreign interference, the evidence received showed that the Attorney-General's Department was actually the one who reached out to intelligence agencies asking for them to raise any issues with FOI. This was not a pre-existing concern from the intelligence agencies. There were no examples provided of FOI being used by foreign actors to harm Australia.

1.18 I do not believe it's credible to suggest foreign adversaries are regularly resorting to FOI to undermine Australia's democracy or security. In fact, a robust FOI system is essential for our democracy and for holding governments to account, including in their actions to protect Australia's national security. Destroying our FOI system, as this Labor bill proposes, would be a victory for undemocratic and secretive forces, both onshore and offshore.

It doesn't fix what's wrong with FOI

1.19 If you've ever made an FOI request (as my office has many times), you know you are likely to not receive it within the 30-day statutory timeframe, you may not receive documents at all and if you do, they are likely to have heavy redactions. They will almost automatically notify you of an extension for time for consultation, or request extensions with the suggestion that if you don't agree you simply won't receive anything.

1.20 You'll know that to find out key information you will likely need to appeal to the Office of the Australian Information Commissioner (OAIC) which requires a reasonable level of legal understanding, time and argument. If this process is successful (which it often is in overturning the original decision), you will still often wait further for documents to be produced. The OAIC's own statistics show processing times blowing out and agencies missing statutory deadlines with impunity.

1.21 Many of the submissions to this inquiry canvassed the law reforms actually needed to fix FOI. None of these reforms are found in the bill. From our perspective, successful reform of FOI should include the following non-exhaustive changes:

- **Enforceable timeframes:** until there are actual consequences for responses being late it seems clear many departments will see the statutory timeframes as just nice to have, instead of critically important to meet.

- **Ministerial continuity:** there needs to be a clear and unambiguous legislative response to the argument by governments that FOI can't reach back into the documents of previous ministers.

- **A pro-disclosure culture:** much of what is requested in FOI should have been public in the first place, much of what is hidden in the first instance of FOI response ends up released after much additional time and frustration. Right now, the default in most agencies is an adversarial mindset where FOI applicants are seen as opponents to be defeated rather than citizens exercising their democratic rights.

  Creating a clear culture in the Australian Public Service in favour of disclosure must be an intentional project across departments, preferably spearheaded by an empowered and resourced FOI Commissioner and a Australian Public Service Commissioner that, instead of backing-in this toxic bill, takes on the culture of secrecy that produced it.

- **Resourcing of FOI in agencies and the OAIC:** it is clear in many agencies that there simply are not enough staff to manage the volume and complexity of requests from the public. While a pro-disclosure culture would reduce some of these pressures a clear-eyed examination of what resources are actually needed is important. It is not necessarily more resources, it is changing the focus of existing resources from refusing applications to poor-actively releasing information.

1.22 You shouldn't have to be a lawyer to access public information. It is in the interests of good governance to foster accountability for government decisions and for the community to know that public information is being held on their behalf, it's not the private secret property of the government.

Recommendation 1

1.23 That the government withdraw the Freedom of Information Amendment Bill 2025 and begin an urgent and thorough public consultation on effective, pro-disclosure, evidence-based reforms of the *Freedom of Information Act 1982*.

Senator David Shoebridge
Member

Dissenting Report from Senator David Pocock

Introduction

1.1 The Freedom of Information Amendment Bill 2025 ('the Bill') is not a modernisation of the *Freedom of Information Act 1982* ('the FOI Act'); it is a regression. It represents one of the most sweeping attempts to entrench government secrecy in more than a decade. If passed, it will undermine democratic accountability, diminish public participation, and invert the fundamental principle that government information belongs to the public.

1.2 The Bill expands Cabinet secrecy, weakens the pro-disclosure objects clause, neuters the public-interest test, bans anonymous freedom of information (FOI) requests used by whistleblowers and journalists, and imposes new financial barriers. It does so without evidence, without mandate, and in direct contradiction to Australia's recent integrity failures, most notably Robodebt.

1.3 Of the 70 submissions to this inquiry, the only outright support for the Bill comes from submissions from government departments and agencies. The overwhelming majority of the submissions and evidence pointed to significant issues with the Bill.

1.4 As Transparency International Australia warned, the Bill 'risks entrenching secrecy, slowing access, and raising new barriers for those seeking accountability'.[1] The Human Rights Law Centre (HRLC) is even more direct: these amendments 'will only add to Australia's growing government secrecy problem'.[2]

1.5 The FOI system is failing not because the public seeks too much transparency, but because the government has chosen secrecy over openness. At its core, the Bill blames the public for the failures of the state.

1.6 For these reasons, I recommend the Bill be discharged from the Notice Paper and replaced with a comprehensive, independent review, as recommended by the Centre for Public Integrity (CPI).[3]

The objects clause: A retreat from pro-disclosure

1.7 Section 3 of the FOI Act has long been the north star of Australian transparency. It affirms a pro-disclosure culture, recognising the public's right to know.

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1 Transparency International Australia, *Submission 25*, pp. 1–2.

2 Human Rights Law Centre, *Submission 10*, p. 8.

3 Centre for Public Integrity, *Submission 2*, p. 5.

1.8 The Bill replaces this principle with a vague 'balance' between disclosure and 'effective government'. In FOI practice, 'effective government' has routinely been used as a proxy for secrecy.

1.9 The CPI warns that this amendment is 'a radical shift…away from a pro-disclosure emphasis', enabling decision-makers to take a 'more restrictive' approach.[4] The government itself admits in the Explanatory Memorandum that the new objects clause will 'qualify' the right of access.[5]

1.10 The objects clause should not be amended from its current form.

Expansion of cabinet secrecy

1.11 The Bill abandons the long-standing 'dominant purpose' test and replaces it with a 'substantial purpose' threshold, radically expanding the scope of Cabinet secrecy.

1.12 This change allows a significantly broader remit of documents connected to Cabinet to be withheld, including departmental analysis or external consultants' advice.

1.13 The Australian Lawyers Alliance (ALA) warns the amendment will 'significantly widen the category of documents' that may be withheld and 'erod[e] public trust'.[6]

1.14 The Whistleblower Justice Fund and Transparency Warrior note the new test will 'greatly facilitate extension of Cabinet secrecy…far removed from actual Cabinet deliberations'.[7] Under the Bill, consultant-authored material could be hidden for 20 years.[8]

1.15 Robodebt demonstrated the dangers of broad claims of cabinet in confidence. The Royal Commission into the Robodebt Scheme ('Royal Commission') found Cabinet confidentiality was misused to shield unlawful conduct from scrutiny.[9] The closing observation of the Royal Commission, which is often referred to as the '57th Recommendation' of the Royal Commission, is for the repeal of section 34 of the FOI Act, narrowing the scope of cabinet confidentiality substantially.[10]

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4 Ibid, p. 6.

5 Ibid.

6 Australian Lawyers Alliance, *Submission 28*, p. 9.

7 Whistleblower Justice Fund & Transparency Warrior, *Submission 69*, p. 9.

8 Ibid, p. 10.

9 Human Rights Law Centre, *Submission 10*, p. 4.

10 Royal Commission into the Robodebt Scheme (Royal Commission), *Report, Royal Commission into the Robodebt Scheme*, 2023, p. 657, https://robodebt.royalcommission.gov.au/system/files/2023-09/rrc-accessible-full-report.PDF (accessed 3 December 2025).

1.16 There has been some conjecture around whether Robodebt provides an example of public servants failing to provide frank and fearless advice due to a preoccupation with being subject to FOI. But as journalist Rick Morton points out, 'the Robodebt Scheme made no…finding at any point in its final report linking FOI to the failure of senior public servants giving 'frank and fearless advice' to the government of the day'.[11] Commissioner Holmes herself highlighted that 'nothing I have seen in ministerial briefs or material put to Cabinet suggests any tendency to give full and frank advice that might be impaired by the possibility of disclosure'.[12]

1.17 I agree with Rick Morton when he says about Robodebt and these reforms: 'It is a sick joke to leverage the horror of that debt recovery scheme to remove the precious few protections, already so abused, available to the public, and for this reason alone the proposed FOI amendments should be treated with the contempt they deserve'.[13]

1.18 The Cabinet confidentiality exemption must not be expanded. In fact, it should be narrowed in accordance with the 57th Recommendation of the Royal Commission.[14]

Deliberative processes: A reversal of the public-interest test

1.19 The Bill codifies new 'factors against disclosure' for deliberative material, effectively reversing the presumption of openness. Factors such as 'prejudice to timely advice' and 'prejudice to orderly decision-making' are vague and easily invoked.[15]

1.20 The Law Council of Australia (Law Council) warns these standards are 'far too broad and ambiguous', especially the clause relating to 'orderly and effective conduct' of decision-making.[16]

1.21 The ALA argues these provisions promote a culture of secrecy by enabling agencies to resist disclosure based on an unsubstantiated 'chilling effect'.[17] They

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11 Rick Morton, ''Absurdist leaps of logic': Robodebt misused in FOI reforms'', *The Saturday Paper*, 25 October 2025, www.thesaturdaypaper.com.au/comment/topic/2025/10/25/absurdist-leaps-logic-robodebt-misused-foi-reforms (accessed 3 December 2025).

12 Royal Commission, *Report, Royal Commission into the Robodebt Scheme*, 2023, p. 656.

13 Rick Morton, *The Saturday Paper*, '"'Absurdist leaps of logic"': Robodebt misused in FOI reforms', 25 October 2025.

14 Royal Commission, *Report, Royal Commission into the Robodebt Scheme*, 2023, p. 657.

15 Centre for Public Integrity, *Submission 2*, p. 7.

16 Law Council of Australia, *Submission 53*, p. 29.

17 Australian Lawyers Alliance, *Submission 28*, p. 12.

also cite the High Court's clear position that embarrassment or misunderstanding are not valid reasons to suppress information.[18]

1.22 The CPI further notes that the amendments conflict with subsection 11B(4) of the FOI Act, which already prohibits refusal based on embarrassment, confusion, or seniority.[19]

Ban on anonymous FOI requests

1.23 The Bill outlaws anonymous and pseudonymous FOI requests in an unprecedented attack on whistleblowers, journalists, advocates, community lawyers, and politically vulnerable staff.

1.24 The HRLC warns this change will prevent whistleblowers and civil society from accessing crucial information, noting there is no evidence supporting government claims about misuse.[20]

1.25 The ALA highlights that whistleblowers and political staffers may require anonymity to avoid retaliation or political interference.[21] The HRLC adds that, after the Boyle judgment, narrowed whistleblower protections and anonymous FOI processes are now even more essential for safe evidence-gathering.[22]

1.26 Anonymous FOI requests must remain lawful. Without anonymity, wrongdoing will go undetected and unreported.

Application fees: A barrier to access

1.27 Application fees for FOI requests, internal reviews, and Information Commissioner reviews will disproportionately deter ordinary people, civil society, journalists, and researchers.

1.28 The Law Council notes that 'even modest fees may deter applicants experiencing disadvantage'.[23] The ALA points out that well-resourced foreign entities and corporations will still file FOI requests easily - while public-interest users will be priced out.[24] Transparency International Australia concludes fees

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18 Australian Lawyers Alliance, citing *Commonwealth v Fairfax* (1980) 147 CLR 39, 52, *Submission 28*, p. 12.

19 Centre for Public Integrity, *Submission 2*, p. 9.

20 Human Rights Law Centre, *Submission 10,* p. 5.

21 Australian Lawyers Alliance, *Submission 28*, pp. 7–8.

22 *Boyle v Commonwealth Director of Public Prosecutions* [2024] SASCA 73.

23 Human Rights Law Centre, *Submission 10*, pp. 6–7.

24 Law Council of Australia, *Submission 53*, p. 23.

would 'disincentivise engagement…and disadvantage the most vulnerable applicants'.[25]

1.29 No FOI application fees should be introduced. Resourcing problems should be solved through funding and proactive disclosure, not punitive charges.

Conclusion

1.30 Australia's FOI Act is a cornerstone of democratic accountability. This Bill does not strengthen it; it weakens it substantially.

1.31 A government confident in its decisions or seeking to build trust in democratic institutions does not expand secrecy, weaken pro-disclosure principles, ban anonymous requests, impose new financial barriers, or broaden exemptions that already impede transparency.

Recommendation 1

1.32 That the Freedom of Information Amendment Bill 2025 be discharged from the Notice Paper.

Recommendation 2

1.33 That the government commission a comprehensive and independent review of the *Freedom of Information Act 1982*, with broad terms of reference, consistent with Recommendation 2 of the Centre for Public Integrity.[26]

Thanks and post script

1.34 I would like to thank the committee secretariat for all of the work put into this inquiry, and to all of the submitters and those who gave evidence to the committee. The majority report will be a disappointment to many of you, but your submissions and evidence will be key in what I hope will ultimately be a discharge of this Bill from the Senate Notice Paper.

1.35 Finally, the government has raised significant objections in relation to what it regards as an unjustifiably high number of Questions on Notice and Orders for the Production of Documents. The 75 Questions on Notice submitted to the CPI, a charitable organisation composed of what journalist David Speers referred to as 'former eminent judges and corruption busters',[27] with initially just 30 hours to respond, mark the height of hypocrisy.

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25 Transparency International Australia, *Submission 25*, pp. 2–3.

26 Centre for Public Integrity, *Submission 2*, pp. 5-6.

27 David Speers, "Is Labor 'taking the piss' on integrity?" *Politics Now ABC Podcast*, 28 October 2025.

Senator David Pocock

Dissenting Report from Senator Jacqui Lambie

A Government Secrecy Bill

Recommendation

1.1 I will not bury the lead. This Bill is a disgraceful attack on 'open and accountable government' and should not be passed.

The 'No' Bill

1.2 This Bill should really be known as the 'no' Bill. It has the following characteristics:

- *No* consultation with citizens before tabling
- *No* proper debate in the House[1]
- *No* friends outside of Government
- *No* utility in improving citizens access to information.

FOI is important

1.3 Information is the currency of power in a democracy. Accessing raw information about what their government is actually doing helps citizens participate in democracy and scrutinise their government, that is the intent of Freedom of Information laws.

1.4 In the 1988 High Court case of Egan v Willis, Justices Gaudron, Gummow and Hayne stated:

> In Australia, s 75(v) of the Constitution and judicial review of administrative action under federal and State law, together with freedom of information legislation, supplement the operation of responsible government in this respect.[2]

1.5 As the Committee noted in its report, the Attorney General waxed lyrical on Government transparency in her second reading speech stating:

> An effective freedom-of-information system is critical in fostering public trust in government decision-making through transparency and access to information. It enables citizens to understand more about why and how government decisions are made and, with that knowledge, participate more effectively in Australia's civic and democratic processes.[3]

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1 On 6 November the Leader of Government Business in the House expressed satisfaction that Bill had been debated in the Federation for "two hours" and then suspended standing order such that the unresolved questions on the bill could be put immediately and the questions necessary to complete the remaining stages of the bill to be put immediately – i.e. a guillotine motion was moved.

2 *Egan v Willis* [1998] HCA 71.

3 Hon Michelle Rowland MP, Attorney-General, *House Hansard*, 3 September 2025, p. 8.

1.6 If the Attorney-General really believes that, one can only conclude that she did not read, or did not understand, the Bill she tabled.

1.7 You see I agree wholeheartedly with the sentiment in the Attorney-General's speech, the problem is this Bill delivers the opposite effect, reducing transparency and further restricting access to information.

The Bill is a Secrecy Bill

1.8 In the report of the Senate's inquiry into 'The operation of Commonwealth Freedom of Information (FOI) laws' conducted in 2023, the committee noted 'virtually all submitters and witnesses argued that Australia's FOI system is not functioning effectively.'[4]

1.9 I have looked hard to find some something in the Bill … anything … that makes the FOI regime better for citizens. I can't find it, the cupboard is bare. I will concede it does make the system better, much better, for those inside Government that don't want to share information, it will help stop those 'pesky' citizens having a say in the way they are governed, or directing criticism at the Government.

1.10 An element that we were unable to scrutinize in the time available, was of the number of FOI requests that were subsequently subjected to review by the Office of the Australian Information Commissioner, or by the Administrative Review Tribunal[5] that resulted in a decision being set aside and the correct application of the FOI Act being implemented. Had we been able to do so we might have better understood the effectiveness of FOI training within the APS and been able to identify other areas of potential efficiency.

1.11 The Bill does the following things:

- it introduces the idea, in the objectives of the Act, to include consideration of the "effective operation of Government" as a factor for considering whether information should be released – weakening the focussing on public interest.
- it expands the Cabinet exemption.
- it reduces access to advice being given to ministers.
- it seeks to roll back the appeal rights relating to access to ministerial documents after a change of minister, as was established in *Patrick v Attorney-General (Cth) [2024] FCA 268* and subsequently affirmed in the Full Federal Court in *Attorney-General (Cth) v Patrick [2024] FCFAC 126*.

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4 Legal and Constitutional Affairs References Committee, *The operation of Commonwealth Freedom of Information (FOI) laws*, December 2023, p. 33.

5 Or its predecessor organisation, the Administrative Appeals Tribunal.

- it allows decision makers to be faceless, which will reduce accountability and therefore weaken the incentive to make the best possible access decision.
- it introduces a mandatory charge for making an FOI request.
- it imposes an unreasonable limitation on the maximum processing time frame (40 hours) for FOI request – particularly in circumstances where the processing time of FOI's have increased as everyone in government that might have an interest in the topic is consulted before an access decision is made.
- it allows an official to refuse access to documents without searching for and looking at the requested documents – they can just have the 'vibe' that the documents would be exempt.

1.12 I note that the Bill examined by the Committee had provisions that denied anonymous requests for whistleblowers or persons/companies who fear consequences for making an FOI application through a third party, but that provision was modified by the Government in the House.

We want the old Anthony Albanese

1.13 On 27 December 2019, the then opposition leader, Anthony Albanese addressed the Chifley Research Centre Conference in Sydney, stating:

> We don't need a culture of secrecy. We need a culture of disclosure. … Reform freedom of information laws so they can't be flouted by government. The current delays, obstacles, costs and exemptions make it easier for the government to hide information from the public. That is just not right.

1.14 Where's that Anthony Albanese? We want him back, not the Anthony Albanese that signed off on this Bill.

Public Servant Abuse

1.15 We heard evidence that some applicants have threatened public servants processing FOI applications. Unfortunately, all attempts to quantify this were unsuccessful, as the departments or agencies we asked either didn't answer the question, couldn't answer the question or advised they'd never had staff raise the issue of being threatened.

1.16 If it is happening, it's not acceptable, threatening anyone is not on, in fact it's a crime, and we have laws in place to deal with this behaviour. In fact, since the FOI Amendment Bill was tabled in the Parliament, the Commonwealth Workplace Protection Orders Bill 2025 was passed and been assented to, adding another mechanism to deal with such behaviour. Is the APS using these existing laws? I don't know, and they seem either ill-prepared or incapable of telling me, but we should not further restrict our right to information as a way of dealing with some bad apples.

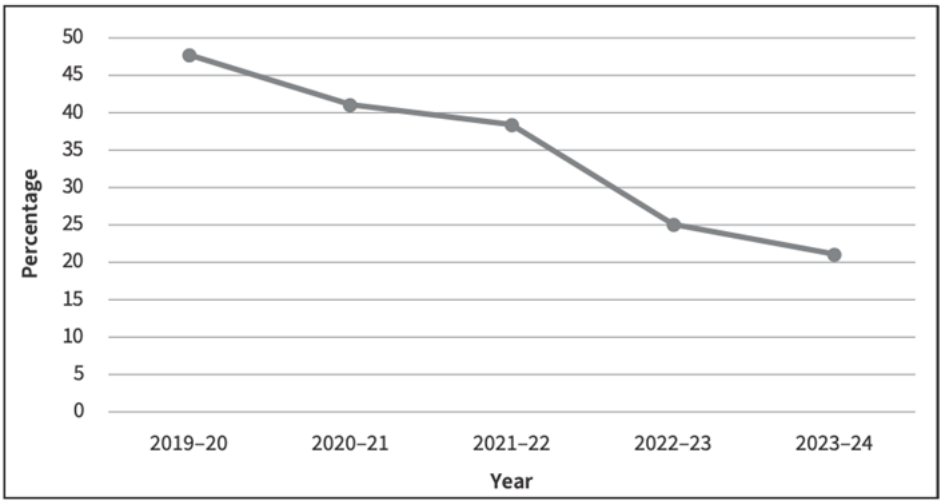
The Fixes we Need

1.17 So, if this Bill is not the FOI fix we need, what is?

1.18 We need the government to fix the 'culture of secrecy' that Opposition Leader Albanese referred to in 2019. We need to reassure public servants that they will not be persecuted for doing their job as per the law, in this case by granting access to documents in accordance with the existing FOI Act.

1.19 We need to look at the statistics from the Office of the Australian Information Commissioner that show it is Government that is the problem, not the community.[6]

Chart E.1: Percentage of requests granted in full – 2019–20 to 2023–24



1.20 What we do not need to do is make it harder and more costly for our people to participate in democracy. Which is what this Bill does. The Senate should not pass it.

1.21 In its current form the Bill has nothing worth saving, and as such, it should be discharged from the Notice Paper post-haste so as to ensure it does not consume any more of the Senate's time.

Recommendation 2

1.22 The Bill should not be passed.

Recommendation 3

1.23 The Bill should be discharged from the Notice Paper.

6 Office of the Australian Information Commissioner (OAIC), *Annual Report 2023-24*, p. 138.

Senator Jacqui Lambie

Appendix 1
Submissions and additional information

1 Australian Democracy Network
2 Centre for Public Integrity
3 Gilbert + Tobin Centre of Public Law
4 Justice and Equity Centre
5 Refugee and Immigration Legal Service (RAILS)
6 OpenAustralia Foundation
7 Grata Fund
8 Environmental Defenders Office and Environmental Justice Australia
9 Community and Public Sector Union
10 Human Rights Law Centre
11 Australian Council of Social Service
12 Australian Press Council
13 Economic Justice Australia
14 Mr Jack Davenport
15 Ms Lyndal Peattie
16 Unlisted Thoughts
17 Mr Paul Farrell
18 Ms Kate Chaney MP
19 Dr Reuben Kirkham
20 ANU Law Reform and Social Justice Research Hub
21 Local & Independent News Association (LINA)
22 Lock the Gate Alliance
23 Australian Public Service Commission
24 Queensland Council for Civil Liberties
25 Transparency International Australia
26 Australian Broadcasting Corporation
27 Professor Johan Lidberg
28 Australian Lawyers Alliance
29 Australian Conservation Foundation
30 Professor John McMillan AO
31 Ms Emily Mitchell
32 Centre for Law and Democracy
33 Services Australia
34 Media, Entertainment and Arts Alliance
35 Dr Maria O'Sullivan and Dr Yee-Fui Ng
36 Joe Mirian
37 Mr Peter Cowell
38 Mr Jayden Spudvilas-Powell
39 A/Prof Vanessa Teague

40 Andrew Podger AO
- Attachment 1

41 Mr Crispin Rovere

42 Australia New Zealand Lived Experience Advisory Council for Police-Related Deaths

43 Mr Michael Springer

44 Office of the Information Commissioner

45 Refugee Advice and Casework Service

46 Attorney-General's Department

47 Alliance for Journalists' Freedom and Dr Danielle Moon

48 Crikey

49 The Australia Institute
- Attachment 1
- Attachment 2
- Attachment 3

50 Office of the Australian Information Commissioner

51 Australian Marine Conservation Society

52 Asylum Seeker Resource Centre

53 Law Council of Australia

54 Name Withheld

55 Name Withheld

56 Name Withheld

57 Special Broadcasting Service

58 Department of Home Affairs

59 Professor Susannah Sherlock

60 Australia's Right to Know
- Attachment 1

61 Mr Ken Sussex

62 Mr Paul Byrnes

63 Free TV

64 Confidential

65 Robert McCrae

66 Free Speech Union of Australia
- *eSafety Commissioner response to Free Speech Union of Australia submission*

67 Electronic Frontiers Australia
- Attachment 1

68 Dr Cosmas Moisidis
- *OAIC response to Dr Cosmas Moisidis submission*

69 Whistleblower Justice Fund and Transparency Warrior
- *Snowy Hydro Limited response to Whistleblower Justice Fund and Transparency Warrior submission*

70 Mr Phill Norman

Additional Information

1 Letter of Clarification provided by Services Australia on 21 October 2025

2 Letter of Correction provided by the Department of Home Affairs on 30 October 2025

Answer to Question on Notice

1 Australian Press Council – answers to written questions on notice, 20 October 2025 (received 23 October 2025)

2 Community and Public Sector Union – answers to written questions on notice, 20 October 2025 (received 22 October 2025)

3 Australian Conservation Foundation – answers to written questions on notice, 20 October 2025 (received 22 October 2025)

4 Attorney-General's Department – answers to questions on notice (received 23 October 2025)

5 Alliance for Journalists' Freedom and Dr Danielle Moon – answers to written questions on notice, 20 October 2025 (received 24 October 2025)

6 Media, Entertainment and Arts Alliance – answers to written questions on notice, 20 October 2025 (received 24 October 2025)

7 The Australia Institute - answers to written questions on notice (received 24 October 2025)

8 OAIC - answers to questions on notice (received 28 October 2025)

9 Services Australia - answers to questions on notice (received 27 October 2025)

10 Department of Home Affairs - answers to questions on notice (received 28 October 2025)

11 Australian Council of Social Services – answers to questions on notice, 17 October 2025 (received 3 November 2025)

12 Emily Mitchell - answers to written questions on notice, 20 October 2025 (received 24 October 2025)

13 Centre for Public Integrity - answers to written questions on notice, 31 October 2025 (received 6 November 2025)

14 Australian Public Service Commission - answers to questions on notice (received 14 November 2025)

Tabled Documents

1 Document provided by Senator Dorinda Cox, at a public hearing on 17 October 2025, 'OAIC, 'Australian Government freedom of information statistics''

2 Document provided by Senator David Shoebridge, at a public hearing on 17 October 2025, 'Email from Celeste Moran, First Assistant Secretary, Integrity Frameworks Division, Attorney-General's Department to Shervin Rafzadeh & Another, dated 29 August 2025'

Appendix 2
Public hearing and witnesses

Friday 17 October 2025
Parliament House
Committee Room 2S1
Canberra

Transparency International Australia

- Ms Hansika Bhagani, Advocacy and Communications Manager

The Australia Institute

- Mr Bill Browne, Director, Democracy & Accountability Program
- Ms Skye Predavec, Researcher

Department of Home Affairs

- Mr Peter Anstee, First Assistant Secretary Counter Foreign Interference, Cyber and Technology
- Ms Brooke Hartigan, Deputy Secretary, Legal Group
- Ms Carmen Saunders, Assistant Secretary, Privacy, FOI and Records Management

Services Australia

- Ms Jodie Robinson, General Manager, Community Engagement and Servicing Redesign Project Division
- Mr Robert Higgins, General Manager, Payment Assurance Program and Appeals Division

Australian Council of Social Service

- Ms Charmaine Crowe, Program Director - Social Security

Australian Conservation Foundation

- Ms Annica Shoo, Lead Environment Investigator
- Mr Matthew Clare, Solicitor

Ms Emily Mitchell, Private capacity

Australian Public Service Commission

- Dr Rachel Bacon, Acting Australian Public Service Commissioner
- Ms Melanie McIntyre, General Counsel, General Counsel and Integrity Operations Branch

Community and Public Sector Union

- Ms Rebecca Fawcett, Deputy Secretary

- Mr Osmond Chiu, Senior Policy and Research Officer

Australian Press Council

- Ms Yvette Lamont, CEO and Executive Director

Media, Entertainment and Arts Alliance

- Mr Adam Portelli, Deputy Chief Executive
- Mr Ben Butler, MEAA Media Member, Journalist
- Mr Royce Kurmelovs, MEAA Media Member, Journalist

Alliance for Journalists' Freedom and Dr Danielle Moon

- Professor Peter Greste, Executive Director
- Dr Danielle Moon, Lecturer, Macquarie Law School

Office of the Australian Information Commissioner

- Ms Alice Linacre PSM, Freedom of Information Commissioner
- Ms Elizabeth Tydd, Australian Information Commissioner

Attorney-General's Department

- Ms Jane McClintock, Director, Information Law Branch, Identity and Information Division
- Ms Celeste Moran, First Assistant Secretary, Identity and Information Division
- Ms Dianne Orr, Assistant Secretary, Information Law Branch

Centre for Public Integrity

- Dr Catherine Williams, Executive Director
- Professor Gabrielle Appleby, Head of Research