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To the Senate Legal and Constitutional Affairs Committee

**Inquiry - Freedom of Information Amendment (Administrative Arrangements) Bill  
2014**

Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. It is concerned with the protection and promotion of civil liberties throughout Australia. As such, Liberty is actively involved in the development and revision of Australia's laws and systems of government. Further information on our activities may be found at [www.libertyvictoria.org.au](http://www.libertyvictoria.org.au).

For the following reasons, Liberty Victoria is opposed to this Bill:

1. The Bill seeks to repeal entirely the scheme for Freedom of Information (FOI) Review set in place in 2010. It is a return, therefore, to a system of external review that had been found wanting only four years ago. The 2010 administrative reforms sought to achieve a number of very important objectives, each of which were designed to facilitate the public's right of access to governmental information. In summary these objectives were the following:
  - a. To strengthen the publication requirements of the FOI Act so as to make access to non-exempt documentation easier by dispensing with the need for individuals to apply for it in accordance with the FOI Act's legal requirements.

- b. To make external review of departmental and agency decisions more expert and informed by creating the Office of Information Commissioner with terms reference confined to FOI and Privacy alone.
  - c. To reduce the cost to the public of applying for departmental and agency documentation by, among other things, reducing processing charges and excluding application fees for requests for personal information.
  - d. To provide for the systematic monitoring and reporting of the FOI regime by conferring powers on the Information Commissioner to undertake reviews of adverse FOI decisions; to audit departments' and agencies' systems for FOI implementation; to establish guidelines for the interpretation of the FOI Act's provisions; and to provide independent annual reports on the Act's implementation across government.
  - e. On the basis of this activity to make independent and impartial recommendations for the legislation's improvement, legislatively and administratively.
2. The present Bill repeals the administrative arrangements sought to achieve these worthwhile objectives. The Bill:
- a. Abolishes the office of the Australian Information Commissioner while leaving the Office of the Privacy Commissioner intact.
  - b. External review of decisions to refuse access to governmental information will be returned to the Administrative Appeals Tribunal (AAT).
  - c. The Commonwealth Ombudsman will once again become responsible for investigating complaints about the way in which departments and agencies handle FOI requests. That is, the Ombudsman will assume responsibility for determining whether FOI procedures have been implemented appropriately.
  - d. The Attorney-General will take responsibility for the monitoring and reporting functions presently residing with the Information Commissioner. These include, for example, the drafting of FOI guidelines for agencies, the collection of statistics disclosing trends in requests for access, refusals of access, applications for external review and other similar matters, and the presentation of annual reports.
3. The defects in the return to the old system are readily apparent. These are the principal ones:
- a. The abolition of the Office of Information Commissioner will increase the costs of external merits review. Instead of costs being minimized, applications for governmental information will now be required to pay the normal application costs for AAT review. The base application fee for such reviews is in the vicinity of \$800. The fee is high enough to deter most ordinary members of the public from pursuing external review. This is, plainly, a blow to open and transparent government.
  - b. The AAT is a generalist mechanism for the external merits review of governmental decisions. While Liberty has every confidence in the capacity

and impartiality of the AAT's membership, it is inevitable that the legal and administrative expertise that presently resides in the Office of the Information Commissioner will be lost as cases are referred to and heard by AAT members who, speaking generally, will be far less informed as to the law and practice of FOI in government than the Commissioner's office is. Again, 'freedom' of information will be compromised.

- c. The return of the complaints jurisdiction to the Office of the Ombudsman will also have the effect of diluting the specialist administrative expertise that the implementation of FOI legislation requires. One of the supposed benefits of the return to the old system is that it may reduce complexity and duplication. On the contrary, the coordinated administration of the substantive and procedural review of governmental decisions situated within the Information Commissioner's office is to be bisected and dismantled. Jurisdictional complexity will increase. Liberty notes also that the Office of the Ombudsman is heavily over-worked and very substantially under-funded. The additional responsibility of handling complaints will only exacerbate this situation.
  - d. Under the proposals, the Attorney-General will take over responsibility for monitoring FOI's implementation and reporting upon its legal and administrative adequacy. The problem with this is readily apparent. The Office of the Information Commissioner was established to ensure that these functions are undertaken independently and impartially by an Ombudsman type body free from the political influence of politicians; and decisions taken in the interest of the administrative convenience of departments and agencies. Such independence and impartiality is critical to the effective operation of open government legislation. It is now to be sacrificed to the very entities in whose interests the limitation of access to governmental information will, from time to time, be prevalent. FOI guidelines can be politicised. FOI statistics can be massaged. FOI reports can be rendered anodyne. These are consequences that ought not to be contemplated. Each will now be distinctly possible should the old regime return.
4. We note that the comprehensive review of the FOI Act, conducted very recently by Allan Hawke AO, concluded that the Office of the Information Commissioner had been a valuable addition to the manner in which the legislation was implemented. He concluded that:

*"The review considers that the establishment of the OAIC has been a very valuable and positive development in the oversight and promotion of the FOI Act."*

*"In essence the review found that the recent reforms were working well and have had a favourable impact in accordance with their intent".*

Given these findings by an individual who has occupied the highest positions in Commonwealth administration, it becomes even more perplexing as to why it is that the present Government has chosen to return to an old system, that was sorely in need of reform, that was reformed, and that has by common consent operated efficiently and effectively.

Regrettably, the only feasible rationale for this backward Bill is that it is designed to return the control of access to governmental information, and in particular

politically and administratively sensitive information, to those in whose interests secrecy lies.

Yours sincerely

Jane Dixon QC  
President  
Liberty Victoria