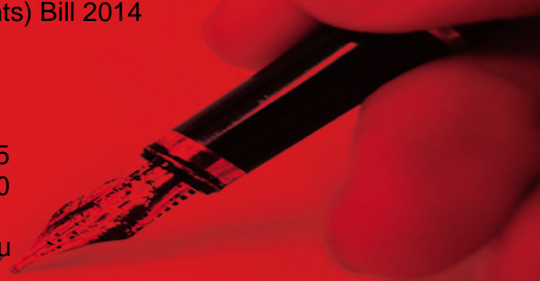




NSW Council for Civil Liberties Inc.

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6 November 2014

Ms Sophie Dunstone
Committee Secretary
Legal & Constitutional Affairs Committee
By email: legcon.sen@aph.gov.au

Dear Ms Dunstone,

Inquiry into the Freedom of Information (New Arrangements) Bill 2014

We refer to your letter dated 31 October 2014.

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts; attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

We make the following submissions about this review and the proposed Bill:

1. **Reporting time** – the letter to our organisation was received on 31 October 2014 and the reporting date is 6 November 2014. The Council therefore has only four business days to consider a 50-page Bill. This is an absurd situation. The reporting time frame was organised by the Senate Standing Committee on the Selection of Bills. We wish to convey the utmost indignation to that Committee for such a decision. This is not a consultation at all. We have said it before, but we state it again, this process does not reflect Australia's democratic values. The fundamentals of democracy lie in the entitlement of people to a real say in decisions that affect them and the values by which they will live. A real say requires access to the information and arguments--real arguments--supporting a proposal, and time for serious consideration and debate.
2. **The Bill** – under that protest, we make the following comments about the Bill, which we have not had time to consider in plenary or in any great detail:
 - a. **Abolition of Office of the Information Commissioner** – NSWCCL disagrees with this decision, which has been taken in haste, and after the Hawke report indicated that the Office was making important progress, albeit with some teething problems, at least partly related to a lack of funding.

- b. **Removal of merits review of access-to-information decisions** – NSWCCCL is not opposed in principle to the removal of merits review to the AAT, however, we strongly object to the costs which applicants will now face in making a review appeal that such a decision entails (about \$816, up from \$0). The fact that appeals increased dramatically, from about 150 appeals in FY2009 to more than 500 in FY2012 indicates that cost was a barrier to individuals seeking information from the government. To re-introduce prohibitive application fees is a step back away from government transparency and accountability. We consider that the application fee for an information review at the AAT should be free, when a decision is to be made on the papers.
- c. **Privacy Commissioner** – NSWCCCL is also not opposed in principle to the separation of privacy from access to government information. It is our experience, however, that often similar tests and cases are utilised in decision-making in both areas and therefore some efficiencies may be lost in such a move.
- d. **Continued role of OAIC** – if merits review and privacy are removed from the OAIC, the OAIC will be freed up to concentrate on the institutional/structural initiatives that will increase the public's access to information. These have involved engaging with departments in order to encourage greater transparency and advise on how that can be achieved. We consider this to be an important role. NSWCCCL also considers that the AAT should have the power to request submissions from the OAIC in respect of cases, much as the NSW Civil & Administrative Tribunal can request submissions from the NSW Information Commissioner in this State. We consider that applicants and the AAT will benefit from such a capability.

The Australian public has a right to know, which is enshrined in international treaties to which Australia is a signatory. The Bill represents a real threat to that right, and it should be opposed.

NSWCCCL may be available to attend a public hearing if there is one. Please let us know.

Yours faithfully,

(sent electronically)

Jackson Rogers
Committee Member
NSW Council for Civil Liberties

cc Committee Secretary, Senate Standing Committee on the Selection of Bills, by email: ca.table.sen@aph.gov.au