

Submission to the Inquiry into the Freedom of Information Bill 2025

Legal and Constitutional Affairs Legislation Committee

1 October 2025

About ACOSS

The Australian Council of Social Service (ACOSS) is a national voice in support of people affected by poverty, disadvantage and inequality and the peak body for the community services and civil society sector.

ACOSS consists of a network of approximately 4000 organisations and individuals across Australia in metro, regional and remote areas.

Our vision is an end to poverty in all its forms; economies that are fair, sustainable and resilient; and communities that are just, peaceful and inclusive.

Summary

This brief submission puts forward key concerns we have with the Freedom of Information Amendment Bill 2025, which we think will reduce transparency in government and hinder access to information. As Robodebt showed so starkly, governments should be seeking to expand access to government information, not curtail it.

Extending Cabinet confidentiality does not increase transparency

The Robodebt Royal Commission recommended that Section 34 of the Commonwealth's Freedom of Information Act – which exempts cabinet documents from FOI – be repealed. Commissioner Catherine Holmes AC SC recommended its repeal because advocates seeking to get documents about Robodebt were often denied access because of Section 34.

Commissioner Homes stated:

“what has happened in the case of the [Robodebt] Scheme demonstrates the need for greater transparency of Cabinet decision-making. If the Executive Minute that was put to Mr Morrison and the NPP [New Policy Proposal] which was presented to Cabinet had been available for public scrutiny, it would have become apparent firstly, that there was advice that income averaging in the way it was proposed to be used could not occur

without legislative change, and secondly, that Cabinet was told nothing of those things.”¹

In other words, had the strict confidentiality that currently applies to cabinet documents under the FOI Act not been in place, Robodebt may have been stopped much sooner when it was revealed it had no legislative basis to operate.

In contrast, Schedule 7 of this Bill will make it even more difficult to access documents under FOI. It expands cabinet confidentiality to documents where the ‘substantial purpose’ of the document was for preparation for Cabinet rather than the current ‘dominant purpose’ test.

ACOSS opposes tightening of access to documents and urges the government to adopt recommendation 57 of the Robodebt Royal Commission. We support this recommendation’s proposal to amend the Cabinet Handbook to make clear ‘that confidentiality should only be maintained over any Cabinet documents or parts of Cabinet documents where it is reasonably justified for an identifiable public interest reason.’²

Recommendation 1:

Instead of tightening access to documents, the government proceed with recommendation 57 of the Robodebt Royal Commission and repeal Section 34 of the FOI Act.

ACOSS opposes weakening the public interest test

The Bill amends the public interest test in Section 11B of the FOI Act to introduce a list of reasons against release of deliberative material a decision maker should consider. These reasons would include that release of documents would prejudice frank or timely advice to an agency or Minister, or ‘prejudice the orderly and effective conduct of a government decision-making process’.³

These new considerations regarding deliberative material could stop the release of any number of government documents.

It is in the public’s interest that public servants provide frank and fearless advice to agencies and ministers. Publication of such advice should not deter a public servant from being frank and fearless in future. If anything, allowing access to such advice via FOI should serve to hold public servants to account.

As anyone who has attempted to access government information knows, it can be very difficult to do so through avenues outside of FOI (and indeed FOI is difficult enough). Parliamentary processes like estimates or inquiries often result in limited information being divulged, as Robodebt demonstrated.

¹ Robodebt Royal Commission Report (2023) https://robodebt.royalcommission.gov.au/system/files/2023-07/robodebt_report_volume_2.pdf p. 656

² Recommendation 57 Robodebt Royal Commission Report: <https://robodebt.royalcommission.gov.au/publications/report>

³ Explanatory memorandum

In this context, government should be seeking to expand transparency rather than curtail it. This Bill would further curtail access to information, rather than enhance transparency, if passed unamended.

Recommendation 2:

Do not amend Section 11B of the FOI Act as the Bill proposed. The proposed amendment would include a list of reasons against release of deliberative material which a decision maker would be required to consider before making a determination.

People should not need to lodge an FOI for personal records

The Bill proposes to exempt people seeking information about themselves or their own affairs from paying the proposed fee. While this is welcome, we propose that people should instead not need to lodge an FOI to access their own records or documents relating to their own circumstances. Such information should be made available to a person upon request. This would also free up FOI teams to deal with other requests.

Recommendation 3:

Agencies and government departments should not require people to lodge an FOI to access their own documents, or documents relating to their own circumstances (for example, information about how their social security debt was calculated).

Do not introduce a processing cap

ACOSS does not support the 40-hour processing cap in Schedule 3, which will no doubt limit access to government documents. Indeed, such a cap could lead to more FOI applications as people seek to break down a request into several smaller requests to comply with the 40-hour time limit.

Recommendation 4:

Do not impose a time limit for processing applications.

Continue to permit anonymous requests

There appears to be limited justification for banning anonymous FOI requests. Writing about this bill, Deakin University Associate Professor of Law, Maria O'Sullivan wrote that "there does not appear to be specific, concrete evidence that artificial intelligence (AI) bots are being used at scale to overwhelm the system."⁴ Professor Gabrielle Appleby, Head of Research for the Centre for Public Integrity

⁴ Professor Maria O'Sullivan (2025) 'Yes, freedom of information laws need updating, but not like the government is proposing' The Conversation <https://theconversation.com/yes-freedom-of-information-laws-need-updating-but-not-like-the-government-is-proposing-264474>

has argued that removing the ability to lodge an anonymous request may prevent people who fear reprisal from seeking information. Professor Appleby said that if the government is concerned about automated requests, the legislation should focus on AI-generated requests rather than banning anonymous requests.⁵

Given the importance of FOI in holding governments to account, ACOSS does not support the bill's proposal to make applicants identify themselves to lodge an FOI.

Recommendation 5:

Ensure that people can continue to lodge an FOI anonymously.

Contact

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⁵ Christopher Kelly (2025) 'FOI amendments add secrecy' Government News
<https://www.governmentnews.com.au/foi-amendments-add-layers-of-secrecy/>