The Centre for Public Integrity

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Re: Inquiry into the Freedom of Information Amendment Bill 2025

Dear Secretary,

We welcome the opportunity to provide our feedback on the government's Freedom of Information Amendment Bill 2025 ('Amendment Bill').

Freedom of information is a foundational mechanism through which democracy functions. It provides transparency to promote good government decision-making, it provides the necessary information to inform the Australian people about what the government is doing in their name, and it can provide information that facilitates accountability through other avenues. Freedom of information is accessed by parliamentarians, journalists, academics and NGOs, as well as members of the Australian public. Government transparency is not a concern of the elite. In fact, it is the opposite; transparency is particularly important for people who otherwise do not have access to government, who are not 'in the room' or 'at the table' — whether that be directly or through lobbyists or other connections, or through the access that their financial contributions can buy them.

Australia's current FOI regime is the result of two transformative moments. It was first introduced as a landmark federal reform part of the 'new administrative law' reforms of the 1970s and 1980s under the Whitlam and Fraser Governments. In 2010, it was subject to a comprehensive review under the Rudd Government, led by Senator John Faulkner, to encourage a greater 'proactive disclosure' focus, reduce costs, and introduce the 'FOI champion' in the form of the Office of the Australian Information Commissioner. Since then, the FOI Act has been subject to numerous government, parliamentary and NGO-led reviews, and has been criticised for being out of date for a modern democracy.

This submission is organised as follows:

1. Part 1 sets out our concerns regarding the process behind the Bill and sets out our primary recommendation for an independent and comprehensive review (pages 2-6).

2. Part 2 sets out our concerns regarding the radical shift in FOI culture away from its pro-disclosure emphasis, seen in the amendment to the objects clause and the amendments to the cabinet and deliberative processes exemptions (pages 6-10).
3. Part 3 sets out our analysis of a number of specific provisions in the Bill that are aimed at addressing concerns relating to the burden of administering the FOI system (pages 11-15).

Appendix 1 contains the full list of our recommendations to the Committee (pages 16-17), and **Appendix 2** contains the CPI's Blueprint for FOI reforms (pages 18-19).

Part 1: The imperative for reform and the need for a comprehensive and independent review

In December 2023, the Senate Standing Committee on Legal and Constitutional Affairs described Australia's FOI system as 'broken' and unfit for purpose.[1] The Centre for Public Integrity agrees that the *Freedom of Information Act 1982* (Cth) ('FOI Act') requires amendment, as it has not had significant attention paid to it since the last major reforms that were introduced in 2010.

The Centre for Public Integrity has itself identified significant operational problems with the FOI Act in its July 2025 report, *Freedom of Information: Secrecy and Delay*. These relate to under-resourced departments and the OAIC, excessive delays in finalising FOI requests and reviews, and systemic circumvention of statutory disclosure (such as via legislative exceptions). The analysis in this report, taken from data in the OAIC's annual reports, revealed:

- Rate of outright refusals has nearly doubled, from 12% in 2011-12 to 23% in 2023-24, and
- Average processing time for OAIC reviews has ballooned from 6 months in 2016-17 to 15.5 months in 2023-24

Based on the empirical data and analysis undertaken in this report and its previous research, the CPI has put forward a *Blueprint for Reform*, which is set out in **Appendix 2.**

However, we hold grave concerns that the current Amendment Bill takes the Australian freedom of information regime in a more secretive direction, and in many instances, undermines the significant and important reforms that were introduced in 2010. This has been done without concern for proper legislative process,[2] and evidence-informed policy development.

Failure of process

We have significant concerns in relation to the *process* that has been undertaken in developing this Bill. The Explanatory Memorandum and the Second Reading Speech indicate that the Bill has been informed by a number of previous reviews, chief among them the statutorily required 2013 Review conducted by Allan Hawke. However, what the government has not revealed is that the main recommendation of that review, conducted more than 12 years ago in 2013, was that 'a comprehensive review of the FOI Act be

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1 *The Operation of Commonwealth Freedom of Information (FOI) Laws* (Report, December 2023) 89 [5.9]. See also at 33–4 [3.2]– [3.7].

2 See further Law Council of Australia, *Best Practice Legislative Development Checklist.*

undertaken'.[3] Now, 12 years later, with significant advancements in technology and other developments, surely the imperative for a review is even stronger.

The other reviews that the government has relied on have also recognised the need for a comprehensive review of the FOI legislation. The 2015 review conducted by Peter Shergold, *Learning from Failure: Why large government policy initiatives have gone so badly wrong in the past and how the chances of success in the future can be improved*, and the 2019 review conducted by David Thodey, *Our Public service Our Future: Independent Review of the Australian Public Service*, which the government relies upon in its amendments to the Cabinet exemptions and deliberative processes exemption, *both* recommended the commissioning of further reviews.[4]

By the government's own admissions, no such review has been undertaken to inform this Bill. There is also no indication that the Bill, containing important policy changes for Australia's democracy, has undertaken an impact analysis, including broader consultation, as is required by the Office of Impact Analysis.

Further, despite the Explanatory Memorandum noting the existence of the Senate Standing Committee on Legal and Constitutional Affairs' report, published in December 2023, that report is not referred to as informing any substantive part of the Bill. This is perhaps unsurprising given that the Government members dissented from this report. Notably, however, Government members in their dissenting report recommended that the Hawke Review's primary recommendation be considered, and that the Government consider a comprehensive and independent review of the FOI Act.

Absence of evidence

The Centre also holds grave concerns that many of the amendments have been introduced to address concerns without adequate *evidence*. Many of these amendments – such as the introduction of fees and removal of anonymous requests – risk significant adverse consequences. In response to an Order for the Production of Documents in the Senate for the evidence upon which the Government is relying to justify claims in relation to vexatious requests by AI or other non-human actors and vexatious requests by criminal gangs, the Government tabled two articles from America and a reference to similar concerns occurring in Australia, with no further evidence. Ironically, the government claimed it could not release other documents on the basis of Cabinet confidentiality.[5] Journalists have also independently questioned claims that the Government had a dramatic increase in 'AI bot-generated' applications.[6]

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3 Allan Hawke, *Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010* (Report, Commonwealth of Australia, 1 July 2013) 4 (Recommendation 1(a)).

4 Peter Shergold, *Learning from Failure: Why Large Government Policy Initiatives Have Gone So Badly Wrong in the Past and How the Chances of Success in the Future Can Be Improved* (Report, Australian Public Service Commission, 12 August 2015) 23: 'Placing restrictions on freedom of information is extraordinarily sensitive. For that reason, the Government should undertake a thorough assessment of options for removing barriers to frank advice in the FOI Act. This should take into account not only the detrimental impact of existing legislation but relevant experience in comparable jurisdictions'; Department of the Prime Minister and Cabinet (Cth), *Our Public Service, Our Future: Independent Review of the Australian Public Service* (Report, Commonwealth of Australia, 2019) 122 (Recommendation 8) 'Government to commission a review of privacy, FOI and record-keeping arrangements to ensure that they are fit for the digital age, by: (a) supporting greater transparency and disclosure, simpler administration and faster decisions, while protecting personal data and other information, and (b) exempting material prepared to inform deliberative processes of government from release under FOI.'

5 Letter The Hon Michelle Rowland to Senator Don Farrell re: Order for Production of Documents number 155, 12 September 2025

6 See further reporting by Jeremy Nadel, 'Government falsely blames AI for FOI surge' (8 September 2025) https://ia.acs.org.au/article/2025/government-falsely-blames-ai-for-foi-surge.html.

The Centre's primary recommendation to the Committee is that the Government establish a comprehensive and independent review of the Act. The review must be conducted by an independent expert, with broad terms of reference that require undertaking public consultations and all recommendations must be evidence based. The report of the review must be tabled in parliament together with the Government's response.

The review must be informed by *international best practice.* The international organisation Article 19 has developed best practice principles that should be reflected in FOI legislation.[7] These principles have been endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression in his report to the 2000 Session of the United Nations Commission on Human Rights,[8] and referred to by the Commission in its 2000 Resolution on freedom of expression, as well as by the Special Rapporteur's successor in 2013 in his report to the UN General Assembly in 2013.[9] These principles are:

- **Maximum disclosure:** Access to information held by public bodies is a fundamental right and should be presumed available to all individuals and organisations without requiring a specific interest or reason. Any refusal must be justified by the public body and demonstrated to meet clearly defined and limited exceptions.

- **Obligation to publish:** Public bodies must proactively and regularly publish information of significant public interest, limited only by reasonable constraints such as the availability of resources and capacity.

- **Promotion of open government:** Public bodies must promote transparency, accountability, and public participation to build trust and strengthen democracy. They should educate the public, train officials, protect whistleblowers, and report annually to Parliament on progress, challenges, and plans to improve access to information.

- **Limited scope of exceptions:** Public bodies may withhold information only under narrowly defined exceptions using a strict three-part test: it must serve a legitimate aim, disclosure must risk substantial harm, and the harm must outweigh the public interest. Such exceptions must be content-based, regularly reviewed, and generally limited to 15 years unless exceptional circumstances justify longer.

- **Processes to facilitate access:** Requests for information should be processed promptly and impartially, with an independent mechanism available to review refusals, except where requests are clearly frivolous or vexatious.

- **Limited Costs:** Access to public information should generally be provided free or at minimal cost, limited to actual reproduction and delivery expenses. Fees should be waived or greatly reduced for requests involving personal information, matters of public interest, or applicants with incomes below the national poverty line.

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7 Article 19, *The Public's Right to Know: Principles on Right to Information Legislation* (2016).

8 (E/CN.4/2000/63).

9 (A/68/362, 4 September 2013)

- **Open meetings:** Meetings of public bodies should be presumed open, with advance notice and materials provided to enable public participation. They may be closed only under set procedures for valid reasons, and decisions from unlawfully closed meetings should be reviewable and presumed void.

- **Disclosure takes precedence:** The right to information should override conflicting laws, which must be amended or repealed, and all legislation must align with this principle. Officials should not be penalised under secrecy laws and must be protected from sanctions when disclosing information in good faith.

- **Protection for whistleblowers:** Whistleblowers who report wrongdoing must be legally protected from legal, administrative, or employment-related consequences. Protection applies when they reasonably believed the information was true and revealed criminal acts, legal breaches, corruption, maladministration, miscarriages of justice, or threats to health, safety, or the environment.

Recommendation 1:

The Government withdraw the FOI Amendment Bill 2025.

Recommendation 2:

The Government commissions a comprehensive and independent review of the FOI Act with broad terms of reference.

The review must be undertaken by three or more persons appointed by the Attorney-General as the responsible Minister. The Attorney-General must be satisfied that each person appointed has relevant knowledge or experience in relation to freedom of information, government transparency, administrative law and the public service. The Attorney-General must not appoint a current member of the public service to conduct the review.

The review must have broad terms of reference, including considering all the past reviews and reports on the operation of the FOI report (not just cherry-picked recommendations), so that structural issues with the FOI regime are considered for reform. This would include:

- Office of the Australian Information Commissioner, Review of charges under the Freedom of Information Act 1982: Report to the Attorney-General (2012)
- Review of the Freedom of Information Act 1982 & Australian Information Commissioner Act 2010 (2013, Hawke)
- Learning from Failure Report (2015, Shergold)
- Our Public Service, Our Future: Independent Review of the Australian Public Service (2019, Thodey)
- Royal Commission into the Robodebt Scheme (2023, Holmes)
- 2023 Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws
- The Centre for Public Integrity, Freedom of Information: Secrecy and Delay (July 2025)
- The proposals in the Freedom of Information Amendment Bill 2025

The review must undertake wide consultations and, in particular, invite general public submissions to ensure the views of users informs the review, and that the recommendations of the review are evidence-based.

The review must be informed by international best practice.

The Attorney-General must appoint the persons to conduct the review before 1 March 2026, and the review and report must be completed and submitted to the Attorney-General within 12 months of that date. The Attorney-General must cause a copy of the report to be laid before both Houses of Parliament, and detail the Government's response to the recommendations in the Report.

Part 2

Radical shift in FOI culture away from a pro-disclosure emphasis

A. Change in emphasis on disclosure

The Centre for Public Integrity views with alarm the change Schedule 1, clause 3 of the Bill proposes to the FOI's purpose. Whereas section 3 of the Act currently emphasises pro-disclosure and the right of access and accountability (consistently with the internationally recognised right that is connected to the rule of law and democratic accountability), cl 3 proposes the introduction of a 'balance' with effective government. This change in emphasis correlates to other amendments proposed that will wind back of scope of rights in the FOI Act. Changing the 'pro-disclosure' objects of the legislation means that in interpreting the legislation, the government and courts can approach access decisions in a more restrictive manner. As the Government's Explanatory Memorandum itself states, 'This inclusion in the objects of the Act is intended to ensure that the Act is *interpreted* according to those terms, recognising that the Act both grants a right of access, *and qualifies that right*' (our emphasis).

Recommendation 3:

There should be no amendment to the objects of the FOI Act, particularly not amendments that would weaken the pro-disclosure and access statements in the provision.

B. Extension of exemptions to support the provision of timely, frank and fearless advice from the public service

The Amendment Bill extends two key provisions in the FOI Act (the absolute exemption for Cabinet documents and the qualified exemption for deliberative process documents) for the stated objects of supporting the provision of timely, frank and fearless advice.

The Bill extends these in the following ways:

- Cabinet Exemption (s 34) (amendment in Schedule 7, Part 2): This is an extension of the class-based exemption for Cabinet documents. It currently has no consideration of possible harm associated with disclosure or any associated public interest balancing test. Any extension of a class-based exemption should be treated with caution. The changes to this provision extend it to documents that have been prepared by a Minister (or on a Minister's behalf or by an agency) for a *substantial* purpose of submission for consideration by Cabinet (currently, documents must be prepared for the *dominant* purpose of submission for consideration by Cabinet.) There is also an extension in relation to briefing documents (which again only have to be for a substantial rather than dominant purpose of briefing a Minister in relation to issues to be considered by Cabinet), and the exemption now extends not only to

copies or parts or extracts, but also summaries or any reference to the contents of a document to which an exemption applies. There is also a newly introduced definition of what 'consider' by the Cabinet means, which takes an expansive approach and includes 'discuss, deliberate, note or decide'.

- Deliberative Process Exemption (s 47C) (amendment in Schedule 7, Part 3): This is a conditional public interest exemption, that is, it is an exemption applied to deliberative process documents but access must generally be granted *unless* it would be contrary to the public interest. There are a set of factors favouring access and irrelevant factors provided in s 11B. This amendment introduces a set of three factors *against* giving access to these conditionally exempt documents in the proposed s 11B(3A). These are '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 the exchange of opinions. Between participants in deliberative processes of government for the purpose 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.'

The Centre for Public Integrity is alarmed that the Amendment Bill takes the approach of *extending* rather than *narrowing* these two exemptions. This flies in the face of available evidence and recommended process, shows no consideration of alternative options and does little to *clarify* how the deliberative processes exemption will work.

Evidence and Recommended Process: The available evidence, including the data from the CPI's 2025 Secrecy and Delay Report and that obtained during the Robodebt Royal Commission, demonstrates that these exemptions are both subject to abuse (that is, they can be inappropriately claimed) and that greater secrecy is not likely to achieve the Government's stated objective of encouraging frank and fearless advice from the public service.

Duplicitously, the government *claims* it is relying on the Robodebt Royal Commission in its amendments to the Cabinet exemption (in relation to the introduction of a provision that indicates that the presence or absence in a document of any security marking or other feature identifying the document as a Cabinet Document does not of itself determine whether it is a Cabinet document), but the Robodebt Royal Commission did not propose this *tinkering* with the Cabinet exemption: it proposed its *complete repeal*.

The Robodebt Royal Commission demonstrates, through meticulous investigation of the evidence, that even where absolute FOI exemptions apply (such as in relation to Cabinet documents), there is still a tendency within the public service not to record unwanted advice, and to provide accommodating advice to Ministers. This is because of other structural and institutional issues that create a culture of sympathetic advice within the public service. As former Australian Public Service Commissioner and adviser to the Robodebt Royal Commission, Andrew Podger wrote:

> It is not FOI that inhibits frank and fearless advice; far more important is the fact that unwelcome advice can attract career penalties and welcome advice can attract career rewards. Look at Robodebt again.[10]

Instead of relying on the Robodebt Royal Commission for the expansion of the deliberative processes exemption, the Government claims to be relying on the 2015 Shergold Review and the 2019 Thodey Review to justify the extension of the deliberative process. Both reviews relied on anecdotes from public servants that their advice is 'chilled' by the possibility of disclosure under the FOI regime and recommended the widening of the deliberative process exemption. Importantly, neither review provided any evidence to demonstrate the so-called chilling effect, and both reviews recommended that a further inquiry be conducted. The 2013 Hawke review, which the government has relied on elsewhere in this Bill, took the alternative approach:

> Quite a few submissions raised the frank and fearless advice issue and the implication that the possibility of public disclosure limits the capacity of officials to provide comprehensive advice to ministers. This Review inclines to [the] view that officials should be happy to publicly defend any advice given to a minister, and if they are not happy to do so, then they should rethink the advice. This is consistent with the view expressed by Senator Faulkner in launching the reforms, that the tradition of frank and fearless advice is more robust, and that public servants would be able to work professionally within the new FOI framework as they do within other accountability mechanisms.[11]

Andrew Podger, himself a former Australian Public Service Commissioner, also questioned the opinions of other senior public servants on this point in the reports and offered the alternative view:

> No evidence has now been given about any dulling effects the [2010] legislation has had on advising. Indeed, transparency should make public servants more scrupulous in seeing what they are saying is sound.[12]

The legislation also sits at odds with the *Public Service Act 1999* (Cth), which places a legal obligation on public servants to be apolitical and provide the government with advice that is frank, honest, timely and based on the best available evidence (through the public service values in s 10 and the Code of Conduct in s 13).

Alternative Options: The Government has shown no inclination to engage with alternative options or even more inclusive structural options that would promote proper cultural reform within the public service in order to institutionally support frank and fearless advice. These include providing greater security of tenure to senior public servants, addressing careerism in the public service, and legally requiring record keeping. For instance, the Government has also not introduced the other reforms recommended by the Thodey Review to support a more robust and independent public service culture and encourage frank and fearless advice, in particular in relation to amendments to the appointment and removal of departmental secretaries.[13]

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10 Andrew Podger, 'FOI amendment bill not what John Faulkner, Allan Hawke wanted' *The Mandarin* (online, 11 September 2025) <https://www.themandarin.com.au/299152-foi-amendment-bill-not-what-john-faulkner-allan-hawke-wanted/>.

11 Allan Hawke, *Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010* (Report, Commonwealth of Australia, 1 July 2013) 48.

12 Andrew Podger, 'FOI amendment bill not what John Faulkner, Allan Hawke wanted' *The Mandarin* (online, 11 September 2025) <https://www.themandarin.com.au/299152-foi-amendment-bill-not-what-john-faulkner-allan-hawke-wanted/>.

13 Recommendations 39(a) and 39(c).

In choosing to expand the cabinet exemption, the Government has ignored a number of alternatives, including:

- From the Robodebt Royal Commission, the removal of the Cabinet exemption, to be accompanied by proper reforms legally requiring record keeping.[14]
- From the Centre for Public Integrity ,to limit the exemption of Cabinet documents to 30 days.[15]

Lack of clarification of deliberative processes exemption: The deliberative processes exemption has always been controversial. Public servants and governments claim it is necessary to ensure the frank discussion of proposals and robust debate of differing views, and that the release of such 'deliberative processes' would potentially chill these discussions.

Critics of the exemption claim that it is open to abuse, and that it is difficult to disentangle the 'public interest' from political and personal interest. In the past, courts have been scathing in the government's invocation of the exemption and indicated that arguments such as embarrassment to government officials or the public potentially misinterpreting or being confused by the document are not relevant.

There is some discussion in the earlier public service inquiries indicating However, none of them is clear as to how this might be done. While the 2015 Shergold report urges stronger FOI exemptions and an APS-wide record-keeping policy, it does not clearly define how the deliberative exemption should be amended – indeed it refers to a number of ways the provision could be clarified.[16] The 2019 Thodey review reinforces the need to protect deliberative material but similarly lacks clarity on how to effectuate the exemption, asserting that current FOI provisions discourage frank written advice and lead to incomplete records.[17] Its recommendation to exempt deliberative material from FOI requests provides little guidance on defining what qualifies as deliberative content or how to balance confidentiality with transparency.

Further, contrary to what the Government claims, the proposed amendments in the Bill do *not* clarify the issue. While they might, on their face, create clarity (in favour of non-disclosure) because of how broad the exemption is, they must also be read against the existing provisions in the Act which say in s 11B(4) that the following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:

> (a) Access to the document could result in embarrassment to the Commonwealth Government or cause a loss of confidence in the Commonwealth Government;
>
> (b) Access to the document could result in any person misinterpreting or misunderstanding the document;
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> (c) The author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
>
> (d) Access to the document could result in confusion or unnecessary debate.

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14 Recommendation 23.8.

15 CPI Blueprint for Reform, see Appendix 2.

16 Peter Shergold, *Learning from Failure: Why Large Government Policy Initiatives Have Gone So Badly Wrong in the Past and How the Chances of Success in the Future Can Be Improved* (Report, Australian Public Service Commission, 12 August 2015) iv; 5; 20-24

17 Department of the Prime Minister and Cabinet (Cth), *Our Public Service, Our Future: Independent Review of the Australian Public Service* (Report, Commonwealth of Australia, 2019) 24; 121-22

Exactly how matters might chill frank and fearless advice if it is not about embarrassment, public confusion or misunderstanding, or resulting in unnecessary debate (noting, not legitimate and necessary debate) is not clear. The lack of clarity around the scope of the exemption is *not* improved, and arguably *made worse* by the amendment.

No consideration of the abuse of the exemptions: No consideration is given in the Amendment Bill to the possible abuse of these exemptions, despite there being evidence that this is occurring in reviews of initial decisions by the Information Commissioner, the ART or the Court. The CPI has recommended a suite of reforms targeted at increasing the quality of government FOI decision-making, with consequences for failures. They include, relevantly (the full list of CPI recommended Blueprint for Reform is set out in Appendix 2):

- Disciplinary action must be available to be used against FOI officers who repeatedly make decisions determined by the Information Commissioner, AAT-replacement, or Court to be contrary to the FOI Act (with sanctions corresponding to officer seniority).
- Stronger disciplinary sanctions must be available to be used against FOI officers who repeatedly make decisions determined by the Information Commissioner, ART, or Court to be contrary to the FOI Act (with sanctions corresponding to officer seniority). Stronger disciplinary sanctions must be available where decisions known to be contrary to the requirements of the FOI Act are made. Comparable legislation in New South Wales criminalises the following conduct:
  - the making of a decision that an officer knows to be contrary to the Act's requirements;
  - directing an officer to make a decision that the offender knows is not required or permitted by the Act; and
  - influencing the making of a decision in order to produce a decision that the offender knows is not required or permitted by the Act (Division 2 of Part 6 of the *Government Information (Public Access) Act 2009* (NSW).
- FOI Officers must be senior staff (level 4 or higher).
- Department FOI Officers must be provided with ongoing training by the Information Commissioner. The training should emphasise the objects of the FOI Act, including increasing scrutiny, discussion and review of government activities; it should also teach staff to adopt a 'when in doubt, send it out' approach to FOI requests, and not to apply an overly legalistic approach to exemptions.
- The Information Commissioner must conduct annual audits of the FOI decisions made by government agencies. In the case of consistently poor decision-making by a department, an external team from the Information Commissioner should be brought in to take over that Department's FOI processing for a period.
- A joint cross-party parliamentary committee must be established in order to provide ongoing oversight and accountability of the integrity of departmental FOI decision-making processes.

Recommendation 4:

The amendments proposed to the Cabinet exemption and deliberative processes exemption should not proceed.

The recommended review (Recommendation 1) must be tasked with considering:

- ways to prevent the abuse of the cabinet exemption and deliberative processes exemption;
- the possible repeal or time-limiting of the cabinet exemption;

- ways to encourage quality of FOI decision-making, particularly in relation to claiming exemptions, that include training, auditing, disciplinary consequences, and committee oversight.

Part 3.
Addressing the costs and burdens of administering the FOI system

A number of the amendments in the Amendment Bill are directed at addressing the costs and burdens of administering the FOI system, which the government claims is now taking up huge amounts of resourcing and taxpayers' money. Costs, delays, backlogs, and abuse of process are all legitimate concerns with the current FOI system that have been identified by a number of reviews and reports, including the 2023 Senate Committee Report and the 2025 CPI Secrecy and Delay Report. However, we raise four points of concern in relation to the changes proposed in the Amendment Bill.

Four Points of Concern:

1. Not addressing structural reform: First, the Amendment Bill makes no attempt to address these concerns in a structural way, informed by the possibilities as well as dangers of technology. The focus of the Amendment Bill is on restricting applications (such as through the payment of a fee, removing anonymous applications, and requiring identification) and streamlining processes such as reviews. There is no attempt to undertake a comprehensive rethink about what is causing the costs, delays, and backlogs, and whether they are best addressed, for instance, through:

- the use of technology to turn to a more actively pro-disclosure government platform;
- properly resourcing and training FOI officers in departments and agencies to process FOI requests;
- setting up a fee structure system that encourages informal and constructive negotiation between the applicant and agency regarding the document source to limit the scope of the request;
- encouraging informal access requests rather than funnelling all requests through the FOI system to limit or to create a culture in which exemptions are treated as a last, not a first, resort;
- limiting unnecessary 'courtesy' consultation with other government departments and agencies; and
- the establishment of a joint cross-party parliamentary committee in order to provide ongoing oversight and accountability of the integrity and efficiency of departmental FOI decision-making processes.

2. No evidence to substantiate changes: Further, the Government has provided very little evidence to justify many of these reforms, and what evidence they have relied upon has been questioned. When asked to provide to the Parliament the evidence on which the Government is relying on to justify claims in relation to vexatious requests by AI or other non-human actors, and vexatious requests by criminal gangs, the government tabled two articles from America, and (ironically) claimed it could not release other documents on the basis of Cabinet confidentiality.[18]

The evidence that has been referred to in relation to the eSafety Commissioner, which the federal government claimed had a dramatic increase in 'AI bot-generated' applications, has

[18] Letter The Hon Michelle Rowland to Senator Don Farrell re: Order for Production of Documents number 155, 12 September 2025

been questioned,[19] as these applications have been traced back to an online tool to assist people to make FOI requests.

3. Damaging consequences: Some of the proposed amendments, such as the re-introduction of application fees and the removal of the ability to make an anonymous request, have potentially damaging consequences that are likely to discourage the use of FOI, particularly by vulnerable and marginalised groups. While there may be financial hardship exemptions for fees, these are often difficult to negotiate and will often not address the challenges felt by those in genuine financial hardship in making applications. These reforms reverse the 2010 amendments, which were intended to level the playing field for applicants, and, as former Freedom of Information Commissioner John McMillan said, make 'public requests for documents … a more routine and accepted part of the daily business of government agencies.'

In relation to anonymous complaints, there are often legitimate reasons for seeking anonymity for FOI requests. These might include where the applicant is a potential whistleblower, or has commercial relationships with the government that it is worried to protect, or there are fears of other recriminations (for instance, in small communities). Rather than introducing broadly applicable changes that will be overinclusive and have these damaging consequences, the government should consider targeted reforms where it has evidence of abuse of the application system. Where it is deemed necessary to introduce restrictions on applications, these must be accompanied by appropriate exemptions to ensure again no unintended damaging consequences, particularly for vulnerable and marginalised applicants.

4. Cherry-picked reforms: The proposed amendments have cherry-picked previous proposals and ignored other proposals that are directly relevant. For instance, the recommendation to abolish fees ignores entirely the 2012 Office of the Information Commissioner review into fees and charges, which recommended an alternative model of charging that would encourage agencies to move into formal processing mode early and incentivise discussions between the agency and the applicant about the scope of the request and alternative forms of access. Former Information Commissioner John McMillan has summarised that scheme as having the following elements:

- no charge to make an FOI request or for the first 5 hours of processing;
- a flat charge of $50 for the next 5 hours of processing (whether 6 or 9 hours);
- $30 per hour for processing after the first 10 hours;
- after consultation with the applicant, a 40-hour ceiling on an agency's obligation to process a request;
- a narrower public interest fee waiver test that would require that the release of the documents requested be of 'special benefit' to the public;
- an ability to defer formal processing for a defined period to enable an administrative access discussion with the applicant;
- and a fee reduction scale for delayed FOI processing that would have 25-50-75-100 per cent weekly fee reduction steps.

This proposal, McMillan noted in 2016, was 'still on the table', and would have a much more structural effect on the efficiency of applications and processing than simply imposing an application fee.[20]

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19 See further reporting by Jeremy Nadel, 'Government falsely blames AI for FOI surge' (8 September 2025) https://ia.acs.org.au/article/2025/government-falsely-blames-ai-for-foi-surge.html.

20 John McMillan, 'FOI in Australia: building on a turbulent past' on *AUSPUBLAW* (29 January 2016).

Analysis of provisions:

There is a small number of amendments in the Bill that the Centre for Public Integrity can see 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 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.

However, we hold concerns in relation to other seemingly harmless amendments in the Bill, including:

- The introduction of **application fees** (Schedule 6), which we understand will be set at a level commensurate with those in the States and Territories (likely between $30-50). Even with the possibility of a fee waiver for those in financial hardship, the introduction of fees at this level, we fear, will dissuade legitimate applications, particularly from individuals and groups whho have been historically excluded and marginalised from participating in government and democracy. As the Explanatory Memorandum itself admits, 'the existence of an application fee may unintentionally limit access to information for certain persons.' The Centre for Public Integrity submits that rather than introduce a general application fee, the legislation must develop more targeted and evidence-based responses to concerns regarding volume and legitimacy of applications and abusive applications, such as those recommended in the 2012 OAIC review into fees and charges.

- The removal of the ability to make **anonymous requests** (Schedule 2, Part 5), which we fear will dissuade legitimate applications from people who fear reprisals or retaliation, such as potential whistleblowers, commercial businesses that work with government, and vulnerable individuals in the community. The Centre for Public Integrity submits that rather than remove the ability to make anonymous requests, the legislation must develop more targeted and evidence-based responses to concerns regarding volume and legitimacy of applications and abusive applications.
- The ability to make a **practical refusal request** where the request is likely to involve a total number of hours of work that exceeds the **processing cap of 40 hours** (Schedule 3, part 2, clause 10, add to subsection 24AA). While the introduction of the 40 hour test on the one hand seems reasonable, the amendment retains the subjective provision in s 24AA that a practical refusal reason exists where the work involved in processing a request would in the case of an agency 'substantially and unreasonably divert the resources of the agency from its other operations' or in the case of a Minister 'would substantially and unreasonably interfere with the performance of the Minister's functions.' These broadly framed and subjective tests should be removed in favour of the newly introduced 40-hour test.

- The streamlining of the review of FOI decisions by **preventing concurrent internal agency** and IC review (Schedule 4, Part 1). While there may be a benefit in such streamlining, we have concerns with the provision as currently drafted: if the Information Commissioner decides not to conduct a review because there is an internal review of the access refusal decision or access grant decision on foot (introduced s 54W(ia), this may preclude an IC review in the future. We are also concerned with the amendments in Schedule 5, Part 4, that might allow for an IC investigation to cease where there is a concurrent review that is ongoing, if this precludes a future IC investigation where that concurrent review finishes.

- The **extension of time from days to working days** (schedule 4, part 4). This is a substantial extension of time: for instance, the initial review of an application is extended from 30 days in s 15(5) (approximately 4 weeks) to 30 working days (approximately 6 weeks). The Centre holds concerns about this increase unless it is accompanied by consequences for the government if these now extended time frames are not met.

- The introduction of a provision that would allow for the Minister to **extend the initial decision-making period to allow for the agency or Minister to consult with another agency or Minister** on whether the document that is the subject of the request is exempt (Schedule 4, Part 4, introduction of s 15(7A)). There is evidence that the government's inclination to consult within government is a significant reason for increases in delay and cost to the FOI system. Internal consultation should be limited to where it is absolutely necessary (such as in relation to national security or defence), and otherwise the exercise of discretion should lie with the FOI decision-maker.[21]

- The introduction of section 23A, which is an **anticipatory exemption** of 'refusing a request on its terms' (schedule 7, Part 1). Under this provision, a request to access a document can be denied without the decision-maker even looking at the document if it is apparent from the nature of the document that it would be exempt or that no

[21] See further Rex Patrick on X: https://x.com/mrrexpatrick/status/1967368051747344750?s=57

obligation would arise. Refusing requests on such bases brings with it significant dangers of over-inclusive refusal, and thus the denial of legitimate access requests.

Recommendation 5:

The recommended review (Recommendation 1) must be tasked with considering systemic ways to reduce delay, cost, inefficiencies and abuse of process within the FOI system, including through, for instance:

- the use of technology to turn to a more actively pro-disclosure government platform,
- properly resourcing and training FOI officers in departments and agencies to process FOI requests;
- setting up a fee structure system that encourages informal and constructive negotiation between the applicant and agency regarding the documents source to limit the scope of the request;
- encouraging informal access requests rather than funnelling all requests through the FOI system to limit or to create a culture in which exemptions are treated as a last, not a first, resort;
- limiting unnecessary 'courtesy' consultation with other government departments and agencies;
- the establishment of a joint cross-party parliamentary committee in order to provide ongoing oversight and accountability of the integrity and efficiency of departmental FOI decision-making processes.

The review's recommendations must consider unintended consequences that would run counter to the pro-disclosure objectives of the FOI Act.

We trust that this submission is of assistance to the Committee in its important deliberations about the Amendment Bill, and we are, of course, happy to provide any further assistance to the Committee.

Yours sincerely,

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Appendix 1
Recommendations to the Committee

Recommendation 1:

The Government withdraw the FOI Amendment Bill 2025.

Recommendation 2:

The Government commissions a comprehensive and independent review of the FOI Act with broad terms of reference.

The review must be undertaken by 3 or more persons appointed by the Attorney-General as the responsible Minister. The Attorney-General must be satisfied that each person appointed has relevant knowledge or experience in relation to freedom of information, government transparency, administrative law and the public service. The Attorney-General must not appoint a current member of the public service to conduct the review.

The review must have broad terms of reference, including considering all the past reviews and reports on the operation of the FOI report (not just cherry-picked reports or recommendations) so that structural issues with the FOI regime are considered for reform. This would include:

- Office of the Australian Information Commissioner, Review of charges under the Freedom of Information Act 1982: Report to the Attorney-General (2012)
- Review of the Freedom of Information Act 1982 & Australian Information Commissioner Act 2010 (2013, Hawke)
- Learning from Failure Report (2015, Shergold)
- Our Public Service, Our Future: Independent Review of the Australian Public Service (2019, Thodey)
- Royal Commission into the Robodebt Scheme (2023, Holmes)
- 2023 Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws
- The Centre for Public Integrity, Freedom of Information: Secrecy and Delay (July 2025)
- The proposals in the Freedom of Information Amendment Bill 2025

The review must undertake wide consultations and, in particular, invite general public submissions to ensure the views of users informs the review, and that all the recommendations of the review are evidence-based.

The review must be informed by international best practice.

The Attorney-General must appoint the persons to conduct the review before 1 March 2026, and the review and report must be completed and submitted to the Attorney-General within 12 months of that date. The Attorney-General must cause a copy of the report to be laid before both Houses of Parliament, and detail the government's response to the recommendations in the Report.

Recommendation 3:

There should be no amendment to the objects of the FOI Act, particularly not amendments that would weaken the pro-disclosure and access statements in the provision.

Recommendation 4:

The amendments proposed to the Cabinet exemption and deliberative processes exemption should not proceed.

The recommended review (Recommendation 1) must be tasked with considering:

- ways to prevent the abuse of the cabinet exemption and deliberative processes exemption;
- the possible repeal or time-limiting of the cabinet exemption;
- ways to encourage quality of FOI decision-making particularly in relation to claiming exemptions, that include training, auditing, disciplinary consequences, and committee oversight.

Recommendation 5:

The recommended review (Recommendation 1) must be tasked with considering systemic ways to reduce delay, cost, inefficiencies and abuse of process within the FOI system, including through, for instance:

- the use of technology to turn to a more actively pro-disclosure government platform,
- properly resourcing and training FOI officers in departments and agencies to process FOI requests;
- setting up a fee structure system that encourages informal and constructive negotiation between the applicant and agency regarding the documents source to limit the scope of the request;
- encouraging informal access requests rather than funnelling all requests through the FOI system to limit or to create a culture in which exemptions are treated as a last, not a first, resort;
- limiting unnecessary ‘courtesy’ consultation with other government departments and agencies;
- the establishment of a joint cross-party parliamentary committee in order to provide ongoing oversight and accountability of the integrity and efficiency of departmental FOI decision-making processes.

The review’s recommendations must consider unintended consequences that would run counter to the pro-disclosure objectives of the FOI Act.

Appendix 2
The Centre for Public Integrity 'Blueprint for Reform'

1. The FOI Act must make clear that the national cabinet is not captured by the cabinet exemption.

2. The FOI Act must be clarified to prevent a change of Minister or portfolio title from invalidating existing FOI applications.

3. Cabinet documents should only be exempt for 30 days (unless some other valid exemption applies).

4. Disciplinary action must be available to be used against FOI officers who repeatedly make decisions determined by the Information Commissioner, AAT-replacement or Court to be contrary to the FOI Act (with sanctions corresponding to officer seniority).

5. Stronger disciplinary sanctions must be available to be used against FOI officers who repeatedly make decisions determined by the Information Commissioner, AAT-replacement or Court to be contrary to the FOI Act (with sanctions corresponding to officer seniority). Stronger disciplinary sanctions must be available where decisions known to be contrary to the requirements of the FOI Act are made. Comparable legislation in New South Wales criminalises the following conduct:

    - the making of a decision that an officer knows to be contrary to the Act's requirements;
    - directing an officer to make a decision that the offender knows is not required or permitted by the Act; and
    - influencing the making of a decision in order to produce a decision that the offender knows is not required or permitted by the Act (Division 2 of Part 6 of the *Government Information (Public Access) Act 2009* (NSW).

6. The cost of FOI applications must be reduced, and there needs to be greater clarity and broader interpretation around the public interest fee waiver.

7. Prescribed consultations must be appropriately limited. The Department should inform the applicant of any obligation to consult within the first 10 days of the making of an application, and the obligation to consult should only extend the 30-day time limit by 14 days. Consultation should not be required or permitted where the relevant person/entity is party to a Commonwealth agreement and information relating to that agreement is sought (unless a narrowly-construed trade secrets exemption applies).

8. The Statement of Ministerial Standards, and any parliamentary code of conduct, should explicitly recognise the importance of transparency and require compliance with the FOI regime.

9. FOI Officers must be senior staff (level 4 or higher).

10. Department FOI Officers must be provided with ongoing training by the Information Commissioner. The training should emphasise the objects of the FOI Act, including to increase scrutiny, discussion and review of government activities; it should also teach

staff to adopt a ‘when in doubt, send it out’ approach to FOI requests, and not to apply an overly legalistic approach to exemptions.

11. The Information Commissioner must be empowered to set a ratio of FOI officers to FOI applications, and mandate minimum staff numbers within departments.

12. The Information Commissioner must conduct annual audits of the FOI decisions made by government agencies. In the case of consistently poor decision-making by a Department, an external team from the Information Commissioner should be brought in to take over that Department’s FOI processing for a period.

13. A joint cross-party parliamentary committee must be established in order to provide ongoing oversight and accountability of the integrity of departmental FOI decision-making processes.