

1st October 2025

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Freedom of Information Amendment Bill 2025

I am pleased to be able to make this submission in respect of the Senate Legal and Constitutional Affairs Committee Inquiry into the Freedom of Information Amendment Bill 2025 (the Bill). This submission is made in a personal capacity.

I have endeavoured to collate my submission in a way that responds to the individual schedules of the Bill. Unlike the Government's apparent presumption and narrow view of the validity of freedom of information requests, I can assure the Committee that no perspective I give here is vexatious or frivolous.

Schedule 2

The use of the words 'vexatious' and 'frivolous' betrays the Government's inherent disregard for ordinary citizens and their motivations, if they do not align with anything close to governmental objectives. Government vulnerability to genuinely vexatious requests comes from poorly resourced and managed information processes, as well as poor internal management and organisational principles.

The claim of time consumption in processing requests demonstrates the lack of proactive approach to transparency, and demonstrates that any provision for freedom of information is undertaken grudgingly by the government. When a minister praises freedom of information, it is with a self-congratulatory air that is not deserved given the insincerity with which it is expressed.

I have seen many cases of what ought to be simple and straightforward information requests reveal extensive and ponderous documentation, which illustrates the very poor and undisciplined internal communication processes.

This is best represented by reams and reams of email documentation, filled with simplistic conversational items that contribute to the progression of a task or project, but at a very slow speed. Conversations that should take only minutes are drawn out into hours, days and weeks, but extended email chains of limited, but relevant information. If government departments engaged in more face-to-face/online meetings to resolve matters, with recorded minutes and outcomes, then the over-reliance on email as a decision-making process would diminish.

The limitation on emails would allow for a much easier progression through an information request to focus on the relevant documents that exist in detailed, but suitably succinct records. It would also have the benefit of resolving some major productivity issues, which appear to be the flavour of the government at present.

Anonymity is a vital component of maintaining safety, both for those making the request and democracy. This is especially the case for whistleblowers, who might have direct knowledge of information critical to public consideration, but are at risk of directly or overtly seeking it themselves.

It is a common falsehood that anonymity diminishes the legitimacy of a concern. I work in the spheres of child protection and education; a concern for a child's safety being raised by an anonymous source is perfectly valid if the evidence supports it.

Freedom of information requests should operate under a similar principle. The identity of the person making the request is largely academic if the request has validity.

This demonstrates that the rationale of a request is very much in the eye of the beholder, and rights in general are not premised on the idea of being justifiable for practical purposes. This does imply a burden of duty on individuals as well, not to abuse their rights and to consider the functionality and imposition of their actions on others. The contest of rights of one person or group versus another is the essence of maintaining rights. This is the reason requests are not automated, but assessed on the merit of the substantive request, not the motives of the person making the request.

However, for the government to take a defined position of pre-determining, with little presented evidence, the existence of frivolous requests without assessment, is a dangerous presumption that has the effect of undermining everybody's rights in the process. That is not a characteristic we normally associate with democratic governance.

Schedule 3 & Schedule 4

Administrative burden on agencies responding to requests is the result of an automated emphasis on withholding information rather than embracing transparency. In practice, this does not mean any government agency or department should be expected to publish every part of decision-making in the creation of a policy, document or report, but it should be the case that the government assumes this type of information might be requested and should be made available.

One of the problematic issues about information requests is that we do not always know exactly what type of documentation exists. Ambiguity exists because of a general failure of government to account for this uncertainty. No one is expecting the government to laboriously detail every piece of documentation and make this automatically available (although this is because of practicality - it's not an unreasonable question to ask what is the worst thing that would happen if people had real time access to internal documents?). However, it equally should not be a

complex matter for the government to recognise which piece of internal documentation might be subject to a request.

To put another way, a useful exercise would be to consider what relevant documentation a person might reasonably expect to see if they had full access to all the documentation and communication in the production or process of any decision or development; Having this documentation readily available would be a huge time saving on any request.

This again emphasises that adequate organisational qualities and resources are needed, collating relevant documentation and storing it in easily accessible ways. The short-term burden of time would produce a long-term savings benefit, making the release of information simpler, and also satisfying questions from the public (or their elected representatives) about how a particular position was reached.

Make no mistake, administrative burden on freedom of information requests stems from poor, inefficient and impractical organisational and management processes within government. There are not many good reasons to restrict people of their rights, but Ministers doing so on the basis that they are rubbish at running their departments is plumbing a new low in bad reasoning.

Schedule 6

Re-introducing fees will not restrict frivolous requests. It will restrict requests from people on low incomes. Given that many people subject to negative outcomes of government decisions and policy are the most vulnerable, and low income is consistent characteristic of increased vulnerability, this represents a severe curtailment for many people that would have a genuine and justifiable reason for accessing information in their own right, in addition to the wider principle of exercising their rights.

Fee waivers for financial hardship place a burden on the applicant to demonstrate financial hardship, which is a further imposition of time and effort on a cohort of people that may not have as much time as some in government might think. Financial hardship is also subject to questionable definitions. This process makes it harder for people on low incomes, but changes nothing for those on higher incomes.

It is not an adequate argument to state that most other states and territories use fees; it is as unjustifiable for them as it is for the Commonwealth Government. This type of attitude reminds me of a poster displayed by a PR firm in the Simpsons cartoon series, which states '500 million smokers can't be wrong'.

Schedule 7

'Merely' labelling a cabinet document is not enough to make it a cabinet document. So instead the government seeks to amend the legislation to have a whole new way to curtail access to government documentation.

A rose by any other name is still a rose.

I won't comment on my thoughts about the cabinet system itself, but it is a well understood concept that Cabinet confidentiality protects collective responsibility and cabinet solidarity. Ministers want to stick their necks out in discussions, and it's not an entirely unreasonable expectation.

This is vastly different from the information and data Ministers rely upon in the course of their discussions. Indeed, it is even more different from the knowledge that a decision was discussed at all.

Ministerial briefs relate to their department views, collating pertinent information for the purposes of any decision. The changes to the legislation would significantly inhibit access to this documentation, denying a basic level of scrutiny about the issues being discussed and the basis for them.

It increases bad faith decision making by the government, and the risk of decisions made without an adequate evidence base. Furthermore, it denies citizens the right to make a determination about any Cabinet decision made or government function undertaken, if a significant proportion of information is denied.

Voters weigh up all kinds of factors at the ballot box, but do so on their own basis. The more that informed decision-making is curtailed by lack of transparency, the more a voter's hand is guided by the whims of the government.

This is MAGA-like in its intent; dangerous and undemocratic.

Conclusion

This Bill represents a fundamental assault on critical principles of freedom of information, citizen rights, and Australian democracy. It reflects a disturbing mindset in the heart of government, one that extends beyond merely institutional malaise and into party political philosophy.

It used to be the case that efforts to curtail individual (and community) freedoms were the unrealised dreams of the far-right. This Bill demonstrates the extent to which such philosophical corruption has now extended into the whims of centrist thinking and more specifically that of the Australian Labor Party.

This is not an overnight development; it appears to be the natural progression of a deliberate deterioration in democratic values within the mainstream political class. It demonstrates the extent to which political parties in governing positions are more willing to view individual rights as, at best, an inconvenience to their own methods of working.

Secrecy enables abuse.

Truth empowers justice.

This Bill will extend government secrecy and compromise the effectiveness of government, both principally and practically.

If anyone wants to be in government, they should accept the burden of responsibility that comes with that power. Indeed, if more governments embraced a natural inclination to transparency as a normalised process, rather than occupational hazard, that supports the public good, then the practical issues so often cited by Ministers would speedily be resolved.

Instead, we are left with a legislative equivalent of sowing transparency's land with salt, and poisoning the wells of freedom.

It enhances government secrecy, and the influence and control of the private sector, and by extension the abuse of power by a government against its citizenry.

The Bill should be rejected outright and abandoned.

Yours faithfully,

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