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Committee Secretary
Senate Legal and Constitutional Affairs Committee
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SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE INQUIRY INTO THE FREEDOM OF INFORMATION AMENDMENT BILL 2025

Dear Committee Secretary,

I welcome the opportunity to provide comments on the Freedom of Information Amendment Bill 2025. I make this submission in an individual capacity, drawing on direct experience navigating the Freedom of Information (FOI) framework, with the aim of assisting the Committee's review of the Bill.

BACKGROUND

I have engaged extensively with the Freedom of Information system between 2023 and 2025, including requests, reviews and tribunal processes. Through that experience I have observed systemic issues with timeliness, practical refusal powers, redactions, and record management. While my submission is personal, it is structured in the style of a policy submission to ensure clarity and relevance to the Committee's terms of reference.

POSITION

I support elements of the Bill that modernise the FOI regime, including:

- Conversion of statutory timeframes to working days.
- Stronger remittal and settlement powers for the Information Commissioner.
- A clearer objects clause emphasising proactive publication.

I am concerned, however, that other provisions risk reducing accessibility and accountability, including:

- A fixed 40-hour processing cap.
- New powers to deem requests vexatious or frivolous.
- Expansion of Cabinet and deliberative exemptions.
- The introduction of application fees for access and review.

KEY COMMENTS

- Objects Clause (Schedule 1): Positive step, but cultural change requires a statutory duty on agency heads and performance reporting.
- Access Requests (Schedule 2): Identity verification and validity provisions must not be misused to reject targeted requests. Vexatious refusal powers should require Information Commissioner authorisation.
- Practical Refusals (Schedule 3): A fixed processing cap is inappropriate as a default refusal ground. It should be indicative only and subject to genuine consultation.
- Requests and Reviews (Schedule 4): Deemed refusals currently carry no consequence. Costs-at-fault and binding IC implementation notices would create accountability.
- Application Fees (Schedule 6): Fees risk chilling participation and should not apply to personal or public interest requests.
- Exemptions (Schedule 7): Cabinet and deliberative exemptions should not extend to factual material or statistics.
- Record Preservation: The Bill should impose a statutory duty to preserve potentially responsive records and metadata once a request is lodged.

RECOMMENDATIONS

1. Impose a statutory duty on principal officers to ensure lawful and timely FOI compliance.
2. Require annual public reporting on timeliness, refusal usage and review outcomes.
3. Limit identity verification pauses to one capped period and accept reasonable non-documentary evidence.
4. Require Information Commissioner pre-authorisation for vexatious refusal powers.
5. Treat the 40-hour cap as indicative only, displaced where staged processing or sampling is possible.
6. Introduce a costs-at-fault principle where applicants succeed after deemed refusal.
7. Empower the Information Commissioner to issue binding implementation notices with public compliance reporting.
8. Retain free access for personal and public interest matters, with automatic hardship waivers if fees proceed.
9. Narrow Cabinet and deliberative exemptions to exclude factual and statistical material.
10. Introduce a statutory duty to preserve relevant records and metadata upon receipt of an FOI request.

CONCLUSION

The Freedom of Information Amendment Bill 2025 is a timely opportunity to strengthen Australia's FOI framework. The reforms should improve efficiency, but not at the expense of accountability and accessibility. The recommendations above aim to ensure the Bill enhances transparency, fosters timely access and preserves public trust in government. I make this submission in my personal capacity.

I would welcome the opportunity to provide further information to the Committee if required.

Yours sincerely,

Jayden Spudvilas-Powell

Attachments available on request.