AUSTRALIAN DEMOCRACY NETWORK

29 September, 2025

Committee Secretary
Submission to the Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
Parliament House

Dear Committee Members,

Australian Democracy Network is grateful for the opportunity to make a submission to the Senate Standing Committee on Legal and Constitutional Affairs regarding the Freedom of Information Amendment Bill 2025.

Submission to the Senate Standing Committee on Legal and Constitutional Affairs

Australian Democracy Network (ADN) brings people and organisations together to campaign for the changes that make our democracy more fair, clean, transparent, accountable, accessible, and participatory. Together, we work towards a healthy Australian democracy which puts people and planet first.

Our work is premised on the understanding that democracy is not a spectator sport but a system powered by people. The free flow of government information is the lifeblood of this system, enabling an informed public to scrutinise power and participate meaningfully in political life.

In 2019, Prime Minister Anthony Albanese spoke to this very issue, noting that "democracy requires more than just the right constitutional and legislative arrangements, in order to work effectively... The starting point is inclusion."[1] We agree wholeheartedly. A truly effective Freedom of Information (FOI) system is a foundational mechanism for that inclusion, empowering citizens and fostering public trust.

However, a close analysis of the Freedom of Information Amendment Bill 2025 (the Bill) suggests that its provisions are not designed to fix the system's underlying dysfunctions.

[1] Anthony Albanese, "Address to the Chifley Research Centre Conference," December 7, 2019, anthonyalbanese.com.au/media-centre/speech-address-to-the-chifley-research-centre-conference-sydney-saturday-7-december-2019

Instead, they appear to be a strategic suite of measures to rationalise administrative efficiency and bolster government secrecy, at the expense of citizen accountability rights. This submission will focus primarily on the dilution of foundational access rights and the expansion of exemptions found in the Bill, while also addressing new procedural and financial barriers that illustrate how access is being systematically constrained.

Fundamental Shift in Objects and Scope

Schedule 1 of the Bill introduces changes that fundamentally alter the core principle of access in the *Freedom of Information Act 1982* (the Act), explicitly elevating administrative convenience and government interests as countervailing factors against transparency. This represents a significant shift from the Act's original intent.

- **Qualifying the Right to Access:** The amendment to insert ", as far as possible," after "to give" in subsection 3(1) of the Act is intended to explicitly recognise competing interests.
    - From ADN's perspective, this language significantly weakens the legal presumption in favour of disclosure by adding an ambiguous qualifier to the fundamental right of access. This change creates a legal loophole that can be exploited by government agencies to prioritise secrecy over transparency.

Expansion of Exemptions and Secrecy Provisions (Schedule 7)

Schedule 7 of the Bill makes significant changes to the Cabinet and Deliberative Processes exemptions, explicitly reinforcing government secrecy around how policy decisions are being made and who is advising the process.

A. Broadening the Cabinet Exemption (Part 2 of Schedule 7)

The changes to section 34 significantly broaden the scope of documents protected from disclosure:

- **Shift to "Substantial Purpose" Test:** The Bill replaces the stricter "dominant purpose" test with a "substantial purpose" test for preparatory documents and ministerial briefings related to Cabinet. The Explanatory Memorandum acknowledges that this change is intended to capture a wider range of documents created for "multiple purposes".
    - ADN argues that replacing "dominant" with "substantial" significantly lowers the threshold for exemption, capturing a larger volume of documents from public scrutiny that would not have previously been considered exempt.
    - The move to further restrict access to preparatory documents is out of step with the recent recommendation of the Robodebt Royal Commission to repeal the Cabinet exemption entirely[2] and a shift towards proactive release of Cabinet documents in

[2] https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/Research/FlagPost/2023/July/Robodebt-RC-legislative-recommendations

other jurisdictions. Queensland, for example, has recently adopted proactive disclosure of Cabinet submissions and their attachments, agendas and decisions papers.[3]

- **Expanded Coverage of Protected Content:** The Bill expands the scope of subsection 34(2) to exempt documents that "summarise, describe or refer to the contents" of a primary Cabinet document, not just those that contain a copy or extract.
    - This is a significant change that prevents the release of documents that discuss or implement Cabinet decisions, which could previously be released if they did not contain direct copies or extracts.

- **Broadening Definition of "Consideration":** The new subsection 34(8) explicitly defines "consider" to include "discuss, deliberate, note and decide".
    - This broad definition ensures documents are exempt even if they are only informational, further reinforcing secrecy around the flow of information to Ministers, regardless of whether a formal decision or deliberation occurred.

- **Limitation on Official Disclosure:** The amendment to subsection 34(3) ensures that merely disclosing the existence of a Cabinet consideration is not enough to compromise the confidentiality of its substance.
    - This is a provision that retains secrecy over the content of policy debates even when the government has acknowledged that a matter was discussed by Cabinet, thereby restricting the public's ability to participate in an informed debate.

B. Strengthening the Deliberative Processes Exemption (Part 3 of Schedule 7) New factors are introduced to the conditional exemption rules to weigh against disclosure of deliberative process documents. These include prejudicing the "frank or timely discussion of matters or exchange of opinions" or the "orderly and effective conduct of a government decision-making process".

ADN argues that these additions significantly tilt the public interest test towards secrecy by giving undue weight to administrative convenience and a perceived "chilling effect" on internal advice and discussion.

C. Power to Refuse Request on its Terms (Part 1 of Schedule 7) New section 23A allows a minister to refuse a request without even searching for the document if it is "apparent from the nature of the document as described in the request that it is, or would be, an exempt document".

ADN argues that this provision encourages speculative refusals and bypasses the requirement for due diligence (searching for and identifying documents). This allows the agency to prioritise efficiency over an applicant's right to have a request thoroughly processed, potentially discouraging the applicant from refining their request.

[3] https://www.oic.qld.gov.au/about/news/ipola

Increased Procedural and Financial Barriers to Access

Additional amendments introduce administrative hurdles that limit the viability of using the FOI system for complex or high-volume accountability requests, effectively punishing the public for a broken system.

- **Mandatory Application Fees:** Schedule 6 creates a regulation-making power to prescribe application fees for FOI requests, internal reviews, and Information Commissioner (IC) reviews. This will create a financial barrier for under-resourced journalists and civil society groups and community members seeking government accountability. It will also create a barrier for members of the community seeking information on government decisions.

- **Ending Anonymous Requests:** The Bill removes the ability for applicants to remain anonymous or use a pseudonym, requiring all applicants to provide their full name. While the government claims this is necessary to counter "foreign actors" and "automated requests," ADN agrees with others who argue that this provision poses a direct threat to the safety of whistleblowers and vulnerable individuals who rely on anonymity to avoid retaliation.[4] Transparency International Australia has explicitly warned that this change risks "causing harm to vulnerable people and whistleblowers," and the loss of anonymity creates a chilling effect that will discourage the use of the FOI system for legitimate scrutiny.

- **Discretionary Processing Cap:** Schedule 3 introduces a practical refusal reason if the work involved exceeds a 40-hour processing cap. This arbitrary limit, which equates to just over one week of full-time work, will prevent citizens, journalists, and researchers from pursuing complex accountability matters or systemic issues that inherently require substantial document review and retrieval. A preferable alternative would be to allow for extra processing charges to be imposed above a certain processing time, drawing on practice in other States.

Federal vs. State FOI Regimes

The proposed reforms would make the federal FOI regime weaker than a number of state and territory FOI regimes, creating a transparency gap that is detrimental to public trust and democratic integrity.

- **Lax Cabinet Exemptions:** The Bill proposes to weaken the test for Cabinet exemptions by changing it from a "dominant purpose" test to a "substantial purpose" test. The existing federal Act has a stricter "dominant purpose" test for these documents. By contrast, the NSW government's FOI legislation, for example, also uses a strict "dominant purpose" test, and South Australia's legislation is even more restrictive, requiring documents to be "specifically

[4] Transparency International Australia, Plan to fix FOI system step in right direction though risks greater secrecy, 3 September 2025, https://transparency.org.au/plan-to-fix-foi-system-step-in-right-direction-though-risks-greater-secrecy/

prepared" for Cabinet to be exempt. The federal government's proposal to lower this standard would ensure that more documents are shielded from public view at the federal level than at the state level.

- **Expansion of Secrecy:** While the Bill's proposal to exempt documents that "summarise, describe or refer to the contents" of a Cabinet document is not unique, both South Australia and NSW have similar provisions, when viewed in the context of the federal Bill's other provisions,this amendment becomes part of a broader package of measures that cumulatively create a less transparent system.

The result is a two-tiered system of government transparency in Australia. At a time when public trust in government and institutions is at a record low, the federal government's amendments risk further erosion in trust in the democratic process.

Recommendations

The Freedom of Information Amendment Bill 2025 is a significant and strategic step backward for government transparency in Australia. The bill's provisions would systematically undermine the very principles of open government that the original FOI Act was designed to uphold. The government's narrative, centred on threats from AI and foreign actors, serves to justify a series of measures that will disproportionately affect domestic public-interest advocates, journalists, and whistleblowers. The introduction of application fees, the removal of anonymity, and the expansion of refusal grounds collectively create a system that is more expensive, more difficult, and more dangerous for citizens to use. This legislative change is not an isolated event but is consistent with a broader pattern of policies that work to shrink civic space and entrench a culture of secrecy and unaccountability.

In light of this analysis, the following recommendations are proposed to the Senate Standing Committee for Legal and Constitutional Affairs:

1. **Reject Restrictive Provisions:** The Committee should recommend the removal of the regressive provisions of the bill as listed in this submission. These measures create unnecessary barriers to access and a chilling effect on legitimate scrutiny.

2. **Reinforce the Presumption of Openness:** The changes to the FOI Act's object clause should be rejected, and the original intent of the Act, to promote public participation and scrutiny, should be re-affirmed. Any reforms should reinforce, not undermine, the principle of maximum disclosure.

3. **Address Administrative Failures, Not Applicants:** The root cause of the system's inefficiency lies with government agencies, not applicants. Reform efforts should focus on providing adequate resourcing to the OAIC, enforcing mandatory timeframes, and penalising agencies

that deliberately delay or obfuscate the release of information.

4. **Pursue a Holistic Approach to Transparency:** This bill highlights the need for a more comprehensive approach to democratic reform. True transparency cannot be achieved through piecemeal legislation. Future efforts should include the passage of a federal Human Rights Act to legally give access to information, legislate government accountability and protect civic freedoms.

Ultimately, transparency is a foundational requirement for a healthy and resilient democracy. The proposed bill, by seeking to normalise government secrecy, is a step in the wrong direction.

The path forward lies not in making it harder for the public to scrutinise the government but in holding the government to a higher standard of accountability and openness.