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Legal and Constitutional Affairs Legislation Committee
Parliament of Australia
via online portal

Dear Committee,

Freedom of Information Amendment Bill 2025

The Refugee and Immigration Legal Service (RAILS) welcomes the opportunity to provide a submission to the inquiry on the Freedom of Information Amendment Bill 2025 (**the Bill**).

For over 45 years, RAILS has been Queensland's only specialist community legal centre providing immigration advice, legal assistance and legal education. We represent refugees and other vulnerable migrants before the Department of Home Affairs, the Administrative Review Tribunal (the Tribunal), and the courts. Our submission addresses the proposed amendments in light of our experience of using the *Freedom of Information Act 1982* (**the Act**) to obtain information in relation to systemic issues in the immigration law and policy space, as well as assisting clients to access their own information from the Department of Home Affairs and the Tribunal.

Processing Cap

Part 2 of Schedule 3 introduces an additional factor that may give rise to a 'practical refusal decision'. Currently, s 24AA(1) of the Act provides that 'a practical refusal reason exists if complying with a request would 'substantially and unreasonably divert the resources' of an agency. The Bill introduces the new s 24AA(1)(c) which states that 'in any case' a practical refusal reason will exist if responding to a request would require 40 hours of work. In the context of large government departments, this would allow for requests to be refused even if the diversion of resources they require is not substantial or unreasonable.

We are concerned that this amendment particularly reduces the accountability and transparency of large government agencies such as Home Affairs, since they are more likely to rely on the cap to justify refusal when the resources required to grant the request would not be determined to be unreasonable in their context. We note that the Explanatory Memorandum does not provide any evidence or justification for why 40 hours has been selected as the time limit, beyond stating that it amounts to a week of a full time employee's time. In our view, the Act's current requirement that FOI decision-makers form a considered judgment about the time needed, in the context of the relevant agency's size and resources is preferable to the proposed amendment and should be retained.

Fees

Schedule 6 amends the Act to allow fees to be charged for requests, internal reviews and IC reviews.

RAILS acknowledges that fees may be considered appropriate in some circumstances, and we note that the proposed s 93C, which allows for regulations to prescribe fees, also includes a power to make provision for fee exemptions. However, given the imbalance that exists between government agencies and certain individuals who are affected by government decisions, we believe that a fee exemption should be included in the Act for registered charities that serve or represent disadvantaged community members. Placing such a provision in the Act, rather than relying on it permissibly being prescribed in Regulations, guards against its erosion and allows for greater Parliamentary scrutiny of any attempts to remove it.

Deliberative Processes Exemption

Part 3 of Schedule 7 provides an additional list of considerations that weigh against the disclosure of conditionally exempt material under s 47C of the Act:

... 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 exchange of opinions between participants in deliberative processes of government for the purposes 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.

We note that s 11B(3) of the Act already includes a range of factors that weigh in favour of providing access, and s 11B(4) sets out a range of factors that are irrelevant considerations.

The Explanatory Memorandum states that the amendment is intended to balance the competing public interests of being informed about government processes on the one hand, and the effective working of government on the other. It asserts that disclosure of draft policy proposals may have the effect of inhibiting robust critique within and between agencies, and lead to a reluctance of public servants to engage in full and frank consultation and deliberation, and this would have negative consequences for the quality of policies that are developed.

In our view, this rationale ignores the already overly wide application of the deliberative processes exemption. In RAILS' experience, s 47C is already very heavily relied on as a reason to refuse releasing documents that shed light on the processes and practices of agencies. Its use extends well beyond the policy formulation context contemplated by the Explanatory Memorandum and includes, for example, resources relied on by officials in making decisions about individuals' rights and obligations. RAILS is very concerned that the proposed amendments provide additional justifications for the use of this exemption, with insufficient boundaries around the types of exchanges that may be considered 'deliberative process'.

Conclusion

The proposed processing cap, application fees and amendments to the deliberative processes exemption will reduce the transparency and accountability of government agencies, including those that have significant power to alter the life trajectories of disadvantaged people, and the exemptions provide insufficient safeguards to balance this. They should be removed from the Bill.

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