

# Australian Greens dissenting report

1.1 The Greens acknowledge the extensive work of the Committee in this inquiry, and thanks everyone who made a public submission, or gave evidence at a public hearing.

1.2 Peter Timmins, Interim Convener of the Australian Open Government Partnership Network, noted in his submission to the inquiry (in a private capacity) that there has been no comprehensive review of the *Freedom of Information Act 1982* (FOI Act) since the Australian Law Reform Commission and Administrative Review Council joint reference review in 1994, which tabled its report in ALRC Report 77, in January 1996.<sup>1</sup>

1.3 This is despite hopes that comprehensive review and reform would result from the Government's commitment to the National Action Plan for Open Government, adopted in December 2016, and again in its second National Action Plan for 2018-20.

1.4 Mr Timmins also further noted these failures to review and reform came:

...despite the fact that a comprehensive review, reform and a complete rewrite of the legislation in plain English, as recommended by Dr Alan Hawke in the 2012-2013 statutory review report, is long overdue and to be preferred to piecemeal changes. Dr Hawke said changes over the years had been "largely developed and inserted into the form and structure of the FOI Act as it was in 1982".<sup>2</sup>

1.5 Instead, amendments to the FOI Act have been ad-hoc over time, including a suite of reforms resulting from the Freedom of Information Amendment (Reform) Act 2010, legislated under Labor Governments, which included the establishment of the Office of the Australian Information Commissioner.

1.6 A subsequent Abbott Liberal Government announced the abolition of the OAIC in the 2014–15 Budget. However, the Freedom of Information Amendment (New Arrangements) Bill 2014 that would facilitate this abolition of the office failed to gain support of the Senate, and ultimately lapsed on prorogation on 17 April 2016. But regardless of the bill's failure, with reduced funding, operations were reduced, and the Canberra office was closed in December 2014.

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1 Mr Peter Timmins, *Submission 7*, p. 1.

2 Mr Peter Timmins, *Submission 7*, p. 1.

1.7 Since 2014, due to reductions in funding, the Accountability Roundtable noted in its submission to the inquiry that:

...the OAIC has been unable to discharge most of its significant statutory functions and responsibilities – including the operation of the proactive information disclosure system.<sup>3</sup>

### **Recommendation 1**

**1.8 That Freedom of Information funding is restored to at least 2013–14 Budget levels plus CPI, along with the additional resources needed to enable the OAIC to discharge its obligations under National Action Plans 1 and 2 (NAP1 and NAP2).**

1.9 As noted by the Accountability Roundtable, the Freedom of Information Legislation Amendment (Improving Access and Transparency) Bill 2018 makes recommendations for amendments to the *Archives Act 1983* (Archives Act) and FOI Act in five distinct areas:

- Overlaps in the functions undertaken by OAIC Commissioners;
- The qualifications required for appointment as Freedom of Information Commissioner;
- Fees and Charges;
- Delays in the completion of FOI reviews by the Information Commissioner;
- Matters having to do with the application of FOI fees and charges.<sup>4</sup>

1.10 Regarding overlaps in the functions undertaken by OAIC Commissioners, the bill would instil three separate Commissioners, as was the original intent of Parliament in 2010, which are:

1. Information Commissioner (lead commissioner)
2. Freedom of Information Commissioner
3. Privacy Commissioner

1.11 Transparency International Australia concluded in its submission to the inquiry that:

TIA is broadly supportive of the measures in the Bill to the extent that they aim to improve the effectiveness of Australia's FOI laws and ensure open government, transparency and accountability. This support is premised on

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3 Accountability Round Table, *Submission 2*, p. 2.

4 Accountability Round Table, *Submission 2*, p. 5.

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the expectation that the OAIC three independent statutory offices are adequately resourced to undertake their full mandate and respective range of powers.<sup>5</sup>

1.12 In its submission to the inquiry, the Law Institute of Victoria, while raising concerns about possible negative unintended consequences resulting from the bills limiting agencies' ability to rely on exemptions in the Information Commissioner review (IC review) process that were not relied on in the decision, concluded that it is:

...broadly supportive of measures which aim to improve the effectiveness of Australia's freedom of information (FOI) laws and ensure open government and transparency. The LIV supports the measures in the Bill that seek to ensure that there are three independent statutory officers with appropriate legal qualifications, and measures that seek to respond to delays in the IC review process.<sup>6</sup>

1.13 On the matter of appropriate legal qualifications, the Law Institute of Victoria submitted:

The LIV is concerned that the FOI Commissioner's role was vacant in recent years and the functions of the office were performed by the Information Commissioner, Mr Timothy Pilgrim, who does not hold the appropriate legal qualifications ... [and that it] supports the proposed measures which require the Information Commissioner and the Privacy Commissioner to have appropriate legal qualifications when reviewing FOI decisions.<sup>7</sup>

1.14 Regarding Fees and Charges, the bill provides a schedule, and provides that Senators and Members Parliament should be free from fees and charges unless the cost of meeting an FOI request exceeds \$1000. The Accountability Roundtable submitted:

In the interests of governmental openness and transparency, and strengthening the capacity of MPs to obtain access to material relevant to their parliamentary work, the ART supports such a recommendation.<sup>8</sup>

1.15 The Bill also grants an FOI applicant the right to switch a review into the AAT, without charge, in the event that the Information Commissioner takes, or indicates he or she will take, more than 120 days to make a decision.

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5 Transparency International Australia, *Submission 8*, p. 5.

6 Law Institute of Australia, *Submission 1*, p. 1.

7 Law Institute of Australia, *Submission 1*, p. 2.

8 Accountability Round Table, *Submission 2*, p. 6.

1.16 On this matter of delays in Information Commissioner reviews, the Law Institute of Victoria submitted it:

...supports measures which will contribute to addressing substantial delays in the IC [Information Commissioner] review process for FOI decisions.<sup>9</sup>

1.17 Echoing the conclusion of OpenAustralia Foundation, who submitted it 'broadly support[s] the intentions of these amendments, as laid out in the explanatory memorandum',<sup>10</sup> the Australian Greens share the views of this and other expert information stakeholders in broadly supporting this bill.

## **Recommendation 2**

**1.18 The Australian Greens recommend that the Senate pass this bill.**

**Senator Nick McKim**

**Senator for Tasmania**

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9 Law Institute of Australia, *Submission 1*, p. 2.

10 OpenAustralia Foundation, *Submission 9*, p. 1.