

## Briefing Note: Proposed Amendments under Freedom of Information Amendment Bill 2025

The Freedom of Information Amendment Bill 2025 (**FOI Amendment Bill**) introduced to Parliament on 3 September 2025 proposes to amend the *Freedom of Information Act 1982* (Cth) (**FOI Act**) and the *Australian Information Commissioner Act 2010* (Cth).

Overall, this Bill is a retrograde step, a move in the opposite direction of the policy needed to improve good governance and social and environmental outcomes in Australia. While there are some elements of the FOI Amendment Bill which have a sound policy basis (such as introducing a clear objective of proactive release of information), most of these initiatives are undermined by a failure to introduce safeguards and assurance mechanisms necessary to ensure they are not abused in the name of preventing access to information. This Bill risks decreasing transparency, entrenching secrecy and limiting community access to government-held information.

We have made the following recommendations to the Senate Legal and Constitutional Affairs Legislation Committee:

- **Recommendation 1:** The Committee recommend that the Bill be withdrawn.
- **Recommendation 2:** A fulsome and independent review be undertaken of the operation of the *FOI Act* to ensure that any reforms are well-considered and better facilitate the Act meeting its important democratic objectives.

### In summary, the FOI Amendment Bill will lead to:

- a **potentially significant reduction in the type and number of documents made available** to the public through increased exemptions with broad discretionary application, such as:
  - **introducing very broad criteria for refusing release of documents** based on whether it will prejudice the frank or timely discussion of matters or provision of advice, or prejudice the orderly and effective conduct of a government decision-making process. These criteria **could be used to prevent access to nearly any document**, and it would be very difficult to seek successful review of such subjective and vague criteria (Part 2 of Schedule 7);
  - **extending the exemption against the release of Cabinet documents** from the current ‘dominant purpose’ test to the more vague ‘substantial purpose’ test (Part 2 of Schedule 7). This is contrary to the recommendation of the Royal Commission into the Robodebt Scheme that the s 34 cabinet exemption should be repealed entirely;
  - **introducing the power to refuse to process requests** which may be considered to be frivolous, vexatious, harassing, intimidating or causing harm or a fear of harm, without any definition of these terms to objectively test their possible application (Part 4 of Schedule 2);
- a **reduction in accountability around decision-making** through broad powers allowing a refusal to deal with a request simply on its face, without full reasons being required for

the decision and without a fast review mechanism to ensure this power is not abused to prevent timely access to information (Part 4, Schedule 2 and Schedule 7, Part 1);

- an **increase in the potential for bias in FOI decisions** due to the ban on making applications anonymously or under a pseudonym (Part 5 of Schedule 2);
- the **introduction of a fee** for requests (including for review) which will prevent or **disincentivise people from making legitimate requests** to access information, contrary to the recommendations of the Hawke Review (Schedule 6);
- the **potential for inappropriate reliance on a discretionary 40 hour cap** to reduce access to information in response to legitimate requests in the public interest (Part 2 of Schedule 3);
- **the further extension of already long waiting times** for responses to requests for information by increasing the time for decisions to be made (Part 4 of Schedule 4).

While many of these proposed amendments are apparently intended to reduce the administrative burden felt by agencies in processing FOI requests, this is achieved through mechanisms which will limit community access to information. Reductions in administrative burden could instead be better facilitated by encouraging and enabling more proactive release of documents to prevent the need for formal FOI requests, and better resourcing such that requests can be processed in a more timely and efficient way.

**Access to information is essential for a functioning democracy, good governance and environmental protection, and must be supported and not hindered**

The FOI Act, which this Bill purports to amend, is designed to ensure open and accountable government by providing members of the public with a statutory and enforceable right of access to documents in the possession of government departments, agencies, and ministers.

Access to government held information by the public in a simple and timely way is a fundamental pillar of a functioning democracy, including ensuring transparency in government deliberations on matters of public governance. Public access to government information assists in reducing risks of corruption and providing for better quality decisions and policy making through the knowledge that the deliberations on these decisions will be publicly known. In this vein, the Royal Commission into the Robodebt Scheme found that what is needed is “greater transparency of Cabinet decision making”, not less and that the s 34 cabinet exemption should be repealed.

Public access to information is also critical to securing and maintaining a healthy environment. Without ready access to government information about the environment and decisions that may affect it, the work of those trying to protect the environment, such as EDO, EJA and our clients, is severely undermined. This is supported by the many principles of the United Nations Economic Commission of Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, known as the ‘Aarhus Convention’.

Currently the FOI Act is not effectively achieving its objects, principally by long decision-making time frames which often render requests useless, and excessive and inappropriate reliance on broad discretionary exemptions to prevent access to information. This Bill will not lead to improvements that address these real issues with the operation of the Act in achieving its objects. The overall effect of the Bill is to reduce access to government held information, meaning this Bill will be detrimental to good governance, public trust and democracy in Australia.