Environmental Defenders Office

ENVIRONMENTAL JUSTICE AUSTRALIA

Submission on the Freedom of Information Amendment Bill 2025 to the Legal and Constitutional Affairs Legislation Committee

1 October 2025

About Environmental Defenders Office

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

- Successful environmental outcomes using the law. With over 40 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.
- Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.
- Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

www.edo.org.au

About Environmental Justice Australia

Environmental Justice Australia (**EJA**) is a national public interest legal centre. We use the law to empower communities, to protect and regenerate nature, to safeguard our climate and to achieve social and environmental justice. We are proudly non-profit, non-government, and funded by donations from the community. Our legal team combines technical expertise and a practical understanding of the legal system to protect communities and our environment.

www.envirojustice.org.au

Acknowledgement of Country

We acknowledge the Traditional Owners of the lands on which our teams live and where the EJA and EDO offices are located. We pay our respects to Elders past and present and recognise that this land always was and always will be Aboriginal and Torres Strait Islander land because sovereignty has never been ceded.

Submitted to:

Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
By: Consultation Hub

For further information on this submission, please contact:

Revel Pointon, Managing Lawyer,
Environmental Defenders Officer
T: 1800 626 239
E: revel.pointon@edo.org.au

Ally McAlpine, Senior Specialist Lawyer,
Environmental Justice Australia
T: 03 8341 3100
E: ally.mcalpine@envirojustice.org.au

Environmental Defenders Office (**EDO**) and Environmental Justice Australia (**EJA**) welcome the opportunity to comment on the Freedom of Information Amendment Bill 2025.

This Bill is not supported and the Committee should recommend that it not be passed. 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. We know from our work with clients that public access to information is critical to securing and maintaining a healthy environment and to enable people to engage in decisions and processes that affect the environment and their community.

The *Freedom of Information Act 1982* (Cth) (**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.[1] Currently the FOI Act is not effectively achieving its objects, being to increase 'scrutiny, discussion, comment and review of the Government's activities',[2] increase 'public participation in Government processes, with a view to promoting better-informed decision-making',[3] and to 'facilitate and promote public access to information, promptly and at the lowest reasonable cost'.[4] The operation of the Act is being let down 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 to address these real issues with the operation of the Act in achieving its objects.

While there are some elements of the Bill which have a sound policy basis,[5] most of these initiatives are undermined by a failure to introduce safeguards and assurance mechanisms necessary to ensure they are not used excessively and inappropriately by FOI decision-makers to prevent access to information. This Bill is a retrograde step in the opposite direction of the policy needed to improve good governance in Australia. Further, many of these amendments are contrary to the recommendations of the Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010 by Allan Hawke AC (**Hawke Review**).[6]

We make the following recommendations to the 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 *Freedom of Information Act 1982* (Cth) to ensure that any reforms are well-considered and better facilitate the Act meeting its important democratic objectives.

[1] Australian Law Reform Commission (ALRC) and Administrative Review Council (ARC), Open Government – A Review of the Federal Freedom of Information Act 1982 (Report 77, December 1995), available at: https://www.alrc.gov.au/wp-content/uploads/2019/08/ALRC77.pdf.
[2] *Freedom of Information Act 1982* (Cth (FOI Act), s3(2)(b).
[3] Ibid s3(2)(a).
[4] Ibid, s3(4).
[5] Particularly we support the inclusion of 'proactive' with respect to the release of information in the objects to encourage agencies to publish information without need for an FOI request.
[6] Hawke Review, available here: https://www.nbnco.com.au/content/dam/nbnco2/2019/documents/policies/Hawke%20Review%20into%20FOI%20Legislation.pdf.coredownload.pdf.

Key issues with the proposed Bill

In summary, this 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 of whether it will prejudice the frank or timely discussion of matters or provision of advice, or prejudice the orderly and effective conduct of government decision-making process. These could be used to prevent access to nearly any document, and it would be very difficult to seek successful review of such a subjective and vague criteria (Part 2 of Schedule 7);
    - extending the conditional 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 recommendations of the Royal Commission into the Robodebt Scheme that the s 34 cabinet exemption should be repealed entirely;[7]
    - 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 decision powers allowing a refusal to deal with a request, simply on the face of the request, 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 requests anonymously or under a pseudonym (Part 5 of Schedule 2);
- the introduction of a fee for requests (including applications for review) which will prevent or disincentivise people from making legitimate requests to access information, contrary to the recommendations of the Hawke Review[8] (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); and
- 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.

[7] See "Closing observations" in which Commissioner Homes AC SC recommends repeal of s 34 as there are already a "wide range of class and conditional exemptions…sufficient to protect the public interest in relation to Cabinet documents", Royal Commission into the Robodebt Scheme Report, 7 July 2023, 655-657.
[8] Hawke Review, Recommendation 21(b), page 74.

Access to information is essential for a functioning democracy, good governance and environmental protection

Access to information of government by the public in a simple and timely way is a fundamental pillar of a functioning democracy, through ensuring transparency in government deliberations on matters of public governance. Public access to government information assists in reducing risks of corruption in governance and providing for better quality decisions and policy making through the knowledge that the deliberations on these decisions will be publicly known.[9] 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 s 34 cabinet exemption should be repealed.[10]

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'.[11]

The fundamental importance of access to environmental information to upholding human rights has also been recognised by the United Nations Special Rapporteur to the Human Rights Council. Principle 7 of the Framework Principles on Human Rights and the Environment calls on States to provide "affordable, effective and timely access to [environmental] information to any person upon request".[12] This Framework Principal recognises that public access to environmental information is essential for the community to understand how environmental harm may undermine human rights, including the rights to life and health. Access to environmental information also supports the exercise of other human rights, including the rights to expression, association, participation and remedy.[13]

Many of the provisions of this Bill will jeopardise access to information in Australia, and therefore hinder the great benefit transparency in governance brings to human rights, environmental protection and the rule of law.

Recommendation 1: The Committee recommend that the Bill be withdrawn.

[9] United Nations Convention against Corruption, Articles 10 and 13, available here: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf; see also Article 19, *Using access to information to combat corruption: Guide on the Enforcement of Articles 10 and 13 of the UNCAC by Governments and Civil Society* (2022) available here: https://www.article19.org/wp-content/uploads/2022/12/UNCAC-Guide-FInal.pdf.

[10] Royal Commission into the Robodebt Scheme Report, 7 July 2023, 656-657.

[11] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June 1998, available at: https://unece.org/DAM/env/pp/documents/cep43e.pdf.

[12] Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Annex: Framework Principles on Human Rights and the Environment, Human Rights Council, 24 January 2018. Available at A/HRC/37/59 - E - A/HRC/37/59 -Desktop (undocs.org) See also EDO (2022) A Healthy Environment is a Human Right: Report on the Status of the Human Right to a Healthy Environment in Australia accessed at: https://www.edo.org.au/2022/08/26/new-report-a-healthy-environmentis-a-human-right/.

[13] Ibid, Principle 7, at [17].

Recommendation 2: A fulsome and independent review be undertaken of the operation of the *Freedom of Information Act 1982* (Cth) to ensure that any reforms are well-considered and better facilitate the Act meeting its important democratic objectives.

Thank you for the opportunity to make this submission.

Please do not hesitate to contact our offices should you have further enquiries.