

1 October 2025

Senator Jana Stewart
Chair
Legal and Constitutional Affairs Legislation Committee
Parliament of Australia

Dear Chair,

Submission on Freedom of Information Amendment Bill 2025

The Office of the Information Commissioner (**OIC**) welcomes the opportunity to make a submission in relation to the *Freedom of Information Amendment Bill 2025* (Cth) (**Bill**).¹

OIC supports reforms to strengthen Australia's public access to government information, noting there have been significant advances in the way information is created, accessed, managed and shared since the *Freedom of Information Act 1982* (Cth) (**FOI Act**) was passed in 1982 and revised in 2010. This has been driven by digital technologies changing the volume and nature of government information, coupled with the public's increased awareness of their democratic and legal right to be informed about government's operations and decision making.

The Bill intersects with a number of issues that were recognised by Dr David Solomon AM in his comprehensive review of Queensland's Freedom of Information laws in 2008. The report, 'The Right to Information: Reviewing Queensland's Freedom of Information Act'² (**Solomon report**) fundamentally transformed Queensland's approach to information access by recommending the establishment of a new Right to Information framework that promotes government openness and accountability through proactive and administrative release of information as a matter of course. Despite the review occurring before more recent digital transformations, the report may provide valuable insights on how to deal with the policy issues outlined in the Explanatory Memorandum for the Bill.³

OIC's submission focuses on certain aspects of the Bill relating to proactive disclosure, the public interest test, application fees, deemed refusals and applicant conduct.

About the Office of the Information Commissioner

OIC is an independent statutory body that reports to the Queensland Parliament. The Information Commissioner is an Officer of Parliament and has statutory functions and powers under the *Right to Information Act 2009* (Qld) (**RTI Act**) and *Information Privacy Act 2009* (Qld).

The RTI Act promotes government openness and accountability by advancing proactive and administrative release of information as a matter of course. The Act makes clear that information in the government's possession or under its control is a public resource and that formal

¹ [Freedom of Information Amendment Bill 2025 \(Cth\)](#)

² [The Right to Information: Reviewing Queensland's Freedom of Information Act](#)

³ [Explanatory Memorandum](#)

applications for government-held information should be made as a last resort, recognising that the public's right to information contributes to a stronger, representative, democratic government.

Proactive disclosure

The Bill proposes to amend the objects of the FOI Act to reflect how agencies should approach the Information Publication Scheme. Specifically, it proposes to change the requirement for agencies to 'publish the information' to 'proactively publish information'.⁴ OIC supports strengthened proactive release provisions in the FOI Act.

The Solomon report emphasised the importance of proactively releasing information, noting this approach aligns well in the digital age where the creation, storage and disclosure of information is substantially different to the paper-based system. The report provided that a 'push model' with formal requests as a last resort only, supported by a broader government information policy, would reduce the administrative burden on agencies in managing access requests, enabling prioritisation of those matters that are truly contested by competing public and personal interests.⁵ The report noted, 'Time has proven that it is too ambitious for freedom of information law of itself to deliver strategic change in government openness and accountability'.⁶

To address this, the Solomon report proposed:

- (a) publication schemes and proactive decision-making processes, which routinely release as much information as practicable, as enabled by ever-improving ICT features,
- (b) disclosure logs that provide online access to information to the public where it has been released to an individual under FOI, and
- (c) greater administrative release through the exercise of executive discretion in good faith and appropriate circumstances, such as patient health records and criminal histories.⁷

This suite of proposals, supported by a whole of government strategic information policy, was considered the most likely way to address inherent challenges in the freedom of information context, specifically to the 'extent to which there is a disjoint between ... records management practices, priorities and workforce skills, versus the requirements of legislation, standards, guidelines and expectations of good governance'.⁸

The proactive release approach adopted by the Queensland Parliament in the RTI Act provides agencies with greater control including increased ability to prospectively manage and reduce the need for agencies to process formal access requests. It also provides the public with timely access to information and avoids the need for community members to make unnecessary access applications. Importantly, public trust in government is built on a government's commitment to being open and accountable to the people it serves.

⁴ [Explanatory Memorandum](#), p 13, para 26; section 3(1)(a) of FOI Act.

⁵ Solomon report (p 17).

⁶ Solomon report (p.15).

⁷ Ibid, Recommendation 3 (p 34); p 19.

⁸ Solomon report (p.22-23).

Public interest test

The Bill proposes to amend the public interest test in section 11B of the FOI Act, as it relates to the 'deliberative processes' exemption in section 47C, by providing factors to be considered against giving access to information requested under the Act.⁹

The Solomon report highlighted the Australian Law Reform Commission's description of the public interest test as 'an amorphous concept' vulnerable to subjective application¹⁰ and proposed the following:

- (a) the essential features of the public interest relevant to FOI should be listed in the legislation,
- (b) a single public interest test should be applied, and
- (c) all exemptions in the present legislation that include a public interest test should no longer be exemptions. Instead, the harm each exemption was intended to protect against should be included in the public interest factors that have to be weighed.¹¹

These features were incorporated into the RTI Act by the Queensland Parliament. OIC considers this approach to the public interest test may provide valuable insights worthy of the Committee's consideration.

Application fees

The Bill will create a power in the FOI Act to enable an application fee to be prescribed in regulations for access requests, internal reviews and Australian Information Commissioner (AIC) reviews,¹² excluding requests for an individual's personal information.¹³

Imposing a fee for an AIC review would be an Australian first and could pose a financial barrier to individuals obtaining an independent review of a government agency's decision. OIC submits the Committee should carefully consider the imposition of an application fee for an AIC review.

Consideration should be given to the AIC having discretion to determine whether or not a review application has merit before accepting a review, rather than imposing a fee for all review applications made.

The RTI Act and regulations adopt a simplified fee structure for access applications to agencies but no fee for access requests involving personal information. This was as a result of the Solomon report's examination of various inquiries and reviews¹⁴ addressing the personal, public and aggregate benefits derived from an FOI scheme.¹⁵

OIC considers that the existing fee system in Queensland has been effective in avoiding the risks of anonymous applications raised in the Explanatory Memorandum. It is also important to note that data across all jurisdictions in Australia consistently shows the majority of requestors are individuals who seek access to their personal information.¹⁶

⁹ Explanatory Memorandum, p 9, para 23; p 75, para 398; section 11B of FOI Act.

¹⁰ [Open government: a review of the federal Freedom of Information Act 1982](#), para 8.13.

¹¹ Solomon report, p 2. See also Recommendation 39 (p 137) and Recommendation 46 (p 160).

¹² Section 54G of FOI Act.

¹³ Explanatory Memorandum, p 5, para 10.

¹⁴ Including the independent economic review of the UK FOI legislation.

¹⁵ Solomon report pp 190-191, Recommendations 61-71 (pp 198-200).

¹⁶ For example, in Queensland, see [Right to Information and Information Privacy Annual Report 2023-24](#) at p7.

Deemed refusals

The Bill proposes to clarify that an agency has a continuing obligation to consider and make a decision on a request after a deemed decision has been made under subsections 15AC(3) or 51DA(2).¹⁷

In terms of existing process, OAIC's FOI Guidelines provide that where an access refusal decision is deemed to have been made before a substantive decision is made, the agency or Minister continues to have an obligation to provide a statement of reasons on the FOI request. This obligation to provide a statement of reasons on the FOI request continues until any AIC review of the deemed decision is finalised.¹⁸

Whilst the proposed amendment is consistent with the FOI Act's intention to facilitate access to information, OIC submits consideration should be given as to whether this could lead to agency complacency in providing applicants with timely decisions and access to documents.

Applicant conduct

The Bill proposes to set out an agency or Minister's power to refuse to deal with certain requests. This will include grounds for refusal if, 'the request is, or is likely to have the effect of harassing or intimidating or otherwise causing harm (or a reasonable fear of harm) to another person'.¹⁹

The Explanatory Memorandum refers to requests received by agencies that have included harassing and intimidating behaviour, threats of violence and stalking of officers and their families. It notes that the impact of this behaviour on agency officers responsible for processing FOI requests can be significant.²⁰

In recent years, OIC has observed an increase in unreasonable conduct by applicants, which presents workplace health and safety risks. The inclusion of a power to enable agencies to refuse to deal with a request involving unreasonable, intimidating and aggressive behaviour is appropriate. OIC suggests consideration should be given as to whether the threshold for the exercise of this power is set appropriately high to avoid removal of rights, especially for persons whose conduct may be impacted by factors beyond their control such as mental health factors or disabilities.

Thank you for the opportunity to make a submission on the Bill. I trust the information provided will assist the Committee in its important work in ensuring the right balance is struck between protecting the community's fundamental right of access to information and promoting government efficiency. Should you require further information, please contact my Office at policy@oic.qld.gov.au or on 07 3234 7373.

Yours sincerely

Joanne Kummrow
Information Commissioner

¹⁷ Explanatory Memorandum, p 43, para 221; subsection 15AC(4) of Bill.

¹⁸ [OAIC FOI Guidelines](#), para 3.161.

¹⁹ New section 15AD(1)(b) of Bill.

²⁰ Explanatory Memorandum, p 23, para 96.