



Submission by
Free TV Australia

***Freedom of Information
Amendment Bill 2025***

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Table of contents

1. EXECUTIVE SUMMARY	3
2. ABOUT FREE TV	4
3. OBJECTS OF THE ACT	5
4. REFUSING A REQUEST ON ITS TERMS	6
5. CABINET DOCUMENTS EXEMPTION	7
6. DELIBERATIVE PROCESSES EXEMPTION	8
7. PROCESSING TIME LIMIT	9
8. APPLICATION PROCESS AMENDMENTS	10
8.1 VEXATIOUS AND FRIVOLOUS REQUESTS	10
8.2 IDENTITY REQUIREMENTS	10
8.3 EXTENSION PROVISIONS	10
8.4 DEFINITION OF DOCUMENT OF AN AGENCY	11
9. REVIEW PROCESS AMENDMENTS	12
10. FEES	13
11. CONCLUSION	14

1. Executive Summary

- Free TV Australia is the peak industry body for Australia’s commercial television broadcasters. A strong commercial broadcasting industry delivers important public policy outcomes for all Australians.
- Free TV considers that the *Freedom of Information Amendment Bill 2025* will ultimately have the effect of restricting journalists’ access to, and making it easier for government to withhold, information. This is fundamentally inconsistent with the democratic principles that underpin FOI legislation.
- The proposed amendments to the Objects of the Act elevate ‘efficient operation of Government’ to the same level of importance as transparency. This amendment creates a framework where considerations of administrative convenience could routinely outweigh the public interest in disclosure.
- The range of proposed amendments further reflects this change in the value placed on public interest. This includes:
 - Amendments to consideration of ‘clearly exempt’ documents
 - Significant extension of the Cabinet documents exemption
 - Broadening of the deliberative processes exemption
 - Addition of a processing cap of 40 hours, following which agencies can refuse to process a request
 - New regulations to enable an application fee to be specified in the regulations
- Other amendments, including those to review processes and application processes, generally seem to support efficiency in administration of the Act, and while they need to be carefully considered, are not opposed.
- Free TV recommends that the proposed amendments to the Act be further considered and, where they proceed despite opposition, include stronger safeguards, clearer limitations, and explicit protections for journalists and public interest FOI applicants.

2. About Free TV

Free TV Australia is the peak industry body for Australia’s commercial television broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial free TV television makes to Australia’s culture and economy. We proudly represent all of Australia’s commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.



Our members are dedicated to supporting and advancing the important contribution commercial free TV makes to Australia’s culture and economy. Free TV members provide vital local services to all Australians, available in almost 100 per cent of homes—whether they be delivered over the air to an aerial, or via free broadcast video on demand (**BVOD**) services delivered via the internet.

Free TV brings Australians together, supporting Australian culture and democracy. The commercial television industry creates these benefits by delivering content across a wide range of genres, including news and current affairs, sport, entertainment, lifestyle and Australian drama. At no cost to the public, our members provide a wide array of channels across a range of genres, as well as rich online and mobile offerings.

Commercial television networks:

- Reach 19.3 million Australians every week, including 11.4 million who watch trusted news every week, and 9.5 million who watch live and free sport each week
- Provide 25,285 hours of Australian content a year
- Spend more than \$1.625 billion on Australian content every year, dedicating over 88% of their content expenditure to local programming
- Spend more than \$400 million a year on trusted news, including on 390 local news bulletins every week across the country (plus updates and community service announcements)

A report released in September 2022 by Deloitte Access Economics, *‘Everybody Gets It: Revaluing the economic and social benefits of commercial television in Australia’*, highlighted that in 2021, the commercial TV industry supported over 16,000 full-time equivalent jobs and contributed a total of \$2.5 billion into the local economy. Further, advertising on commercial TV contributed \$161 billion in brand value.

A strong commercial broadcasting industry delivers important public policy outcomes for all Australians and is key to a healthy local production ecosystem. This in turn sustains Australian storytelling and local voices and is critical to maintaining and developing our national identity.

3. Objects of the Act

The Government proposes to amend the Objects of the *Freedom of Information Act 1982* (the **Act**) to balance ‘competing public interests in terms of promoting transparent government through providing access to information, whilst providing safeguards to ensure the protection of essential private interests and the proper and effective operation of government’¹. The Explanatory Memorandum states that this recognises that the Act both grants a right of access and qualifies that right².

This amendment represents a fundamental philosophical shift in how Freedom of Information (**FoI**) legislation operates. The current objects of the Act establish a clear presumption in favour of disclosure, recognising that government information belongs to the public and should be accessible unless there are compelling reasons for withholding it.

The proposed reframing to emphasise ‘balance’ dilutes this presumption. By elevating ‘efficient operation of Government’ to the same level as transparency, the amendment creates a framework where considerations of administrative convenience could routinely outweigh the public interest in disclosure.

This is particularly concerning for journalists and media organisations which rely on FoI as a critical tool for investigative reporting and holding government accountable. The amendments may provide decision-makers with additional grounds to justify non-disclosure, simply by asserting that release would interfere with government operations.

Free TV opposes this amendment. If the Government proceeds with amending the Objects provision, we submit that:

1. The dominant object must remain transparency through disclosure;
2. any balancing exercise must explicitly favour disclosure unless substantial harm can be demonstrated;
3. ‘Effective operation of Government’ should not be interpreted as protecting government from scrutiny or criticism; and
4. the Objects provision should explicitly state that inconvenience or political embarrassment are not legitimate grounds for refusing access.

¹ Explanatory Memorandum, p3

² Explanatory Memorandum, p13

4. Refusing a request on its terms

The amendment would allow an agency or Minister to refuse access to requested documents without having identified the documents—that is, without undertaking searches. This would apply where documents would ‘clearly be exempt’³ under Part IV of the Act, and where granting access would be contrary to the public interest. The refusal could only occur where the obligation to provide an edited copy would not arise, or where the applicant has indicated they would not accept an edited copy.

This provision is exceptionally broad and creates significant potential for misuse. It essentially permits decision-makers to refuse FOI requests based on assumptions about what documents might exist and what exemptions might apply, without ever examining the actual documents.

The requirement that documents ‘clearly be exempt’ provides limited protection. Many exemptions under the FOI Act involve complex public interest balancing tests that can only be properly applied after examining specific documents. Allowing refusal without document identification invites decision-makers to:

- Overestimate the breadth of exemptions;
- fail to identify documents that may only be partially exempt;
- avoid the obligation to consider edited copies with exempt material redacted; and
- bypass proper consideration of the public interest test.

The provision also creates perverse incentives for agencies to characterise FOI requests broadly in order to trigger this ground for refusal, rather than undertaking proper searches and assessment.

Free TV opposes this amendment. The fundamental principle that decisions about access should be based on actual documents, not assumptions about documents, must be maintained. If the Government believes this provision is necessary to manage genuinely burdensome requests, we submit that:

1. The provision should only apply in the most exceptional circumstances;
2. clear guidance must be provided about what constitutes ‘clearly exempt’;
3. the applicant must be given a genuine opportunity to narrow or refine their request; and
4. robust review mechanisms must be available, including independent verification that documents would indeed be clearly exempt.

³ Explanatory Memorandum, p67

5. Cabinet documents exemption

The amendment expands the existing Cabinet exemption to ensure it ‘appropriately protects Cabinet confidentiality and the principle of collective ministerial responsibility.’⁴ Key changes include:

- Applying to documents prepared by a Minister, on a Minister's behalf, or by an agency where a ‘substantial purpose’ was submission to Cabinet
- Covering documents drafted before confirmation that they will go to Cabinet
- Extending to expert advice or reports commissioned where a substantial purpose is Cabinet submission
- Including correspondence between Ministers about Cabinet items
- Replacing the ‘dominant purpose’ test with a ‘substantial purpose’ test

Whilst we acknowledge the legitimate need to protect Cabinet confidentiality to enable frank discussion and collective decision-making, this amendment extends the exemption far beyond what is necessary to achieve that objective.

The shift from ‘dominant purpose’ to ‘substantial purpose’ dramatically expands the scope of captured documents. Under a substantial purpose test, a document created for multiple purposes—including purposes entirely unrelated to Cabinet—could be wholly exempt if one of several purposes was potential Cabinet submission. This captures:

- Early-stage policy development documents that may never go to Cabinet
- Background research and factual material commissioned by departments
- Expert reports that might inform Cabinet but also serve other functions
- Correspondence relating to Cabinet

The provision regarding documents created before confirmation of Cabinet submission is particularly problematic. It means routine policy development work could be exempt on the mere possibility it might eventually inform a Cabinet submission, even if no such submission materialises.

The inclusion of correspondence between Ministers about Cabinet items also extends beyond protecting the Cabinet room itself to a much broader swathe of ministerial communications.

Free TV opposes this amendment in its current form. Should the Government be minded to amend the Act in relation to Cabinet documents, we submit that:

1. the "dominant purpose" test should be retained to ensure only documents genuinely created for Cabinet are captured;
2. the exemption should only apply once a decision has been made to submit a matter to Cabinet;
3. factual and background material, even if ultimately included in Cabinet submissions, should not be automatically exempt;
4. correspondence should only be exempt if it directly relates to Cabinet deliberations, not merely because it mentions Cabinet items; and
5. a time limit should apply—documents should not remain permanently exempt after Cabinet has considered a matter and made a decision.

⁴ Explanatory Memorandum, p70

6. Deliberative processes exemption

The amendment modifies the public interest test as it relates to the existing deliberative processes exemption. The stated purpose is to ensure that ‘decision makers are able to take into account all relevant factors, and attribute to those factors appropriate weight in the circumstances’⁵.

The Explanatory Memorandum states that ‘[t]his item will add factors against giving access to a document which is conditionally exempt’⁶. Any amendment that makes it easier to apply this exemption or that tilts the public interest balance towards withholding information is problematic.

The concept of ‘effective working of government’⁷ is inherently vague and can be interpreted extremely broadly. Without clear limitations, decision-makers may characterise any disclosure of internal processes or advice as potentially prejudicing ‘effective working’.

The concern is that this amendment will:

- Give excessive weight to generic claims about needing ‘safe space’ for deliberation
- Allow decision-makers to refuse access to policy advice without demonstrating specific harm
- Reduce transparency around how government decisions are actually made
- Protect government from scrutiny of the quality and rigour of its decision-making processes

The public has a legitimate interest in understanding what advice government receives, what options are considered, and what analysis underpins decisions. Whilst protecting the ability of public servants to provide frank advice is important, this must be balanced against the democratic imperative of government accountability.

Free TV has concerns with the current drafting of this amendment. Any amendment to the deliberative process exemption must:

1. Maintain a strong presumption in favour of disclosure
2. Require decision-makers to demonstrate specific, substantial harm to government operations, not merely assert theoretical concerns
3. Acknowledge that factual material, research, and expert advice should rarely, if ever, be exempt on deliberative process grounds
4. Include clear guidance that political embarrassment or criticism of government policy are not legitimate bases for claiming the exemption

⁵ Explanatory Memorandum, p75

⁶ Explanatory Memorandum, p75

⁷ Explanatory Memorandum, p75

7. Processing time limit

A new provision would allow agencies to refuse to process a request where it would take more than a prescribed amount of time—a minimum cap of 40 hours, though regulations may prescribe a higher threshold. Existing practical refusal grounds (substantial and unreasonable diversion of resources, or substantial interference with ministerial functions) would be retained.

Introducing a fixed time threshold for practical refusal is problematic for several reasons:

- It creates a perverse incentive for agencies to maintain inefficient FOI processes. Rather than investing in systems and resources to process requests efficiently, agencies may simply allow processes to remain cumbersome to justify refusing requests under the time threshold.
- Forty hours is not a particularly high threshold, especially for requests involving complex subject matter or multiple locations where documents might be held. Important investigations by journalists often require access to substantial volumes of documents, and a 40-hour threshold could effectively prevent legitimate scrutiny of government activities.
- The provision shifts responsibility away from agencies to be properly resourced to handle FOI requests, which are a core democratic accountability mechanism, not an optional extra.
- There is insufficient detail about how the 40 hours would be calculated, creating potential for agencies to inflate time estimates to trigger the threshold.

Free TV opposes the introduction of processing time limit. We submit that:

1. Agencies should be appropriately resourced to handle FOI requests as part of their core functions.
2. If requests are genuinely burdensome, existing provisions regarding substantial and unreasonable diversion of resources are adequate.
3. Administrative convenience should not trump the public interest in government transparency.
4. Any time threshold would be arbitrary and would enable agencies to manipulate processes to avoid disclosure.

If the Government proceeds with a time threshold, we submit that:

1. The threshold should be significantly higher than 40 hours.
2. Clear guidelines must govern how processing time is calculated.
3. Agencies must be required to demonstrate efforts to process requests efficiently.
4. Time spent on unnecessary processes (such as excessive consultation) should not count towards the threshold.
5. Applicants must always be given genuine opportunities to narrow requests before refusal.

8. Application process amendments

Several amendments relate to the application process:

- New powers to refuse repeat, vexatious, or frivolous requests
- Prohibition on anonymous applications or pseudonymous applications
- Authority to require proof of identity for requests for personal information or business/commercial information
- Simplified transfer process between agencies/Ministers
- Removal of 30-day cap on extensions (with written applicant agreement)
- Shift from calendar days to working days throughout the Act

Most of these amendments appear reasonable on their face and would likely improve administrative efficiency. However, several require careful consideration to ensure they are not misused.

8.1 Vexatious and frivolous requests

The power to refuse vexatious or frivolous requests is appropriate, but the definitions must be carefully bounded. The Explanatory Materials indicate a vexatious request may include ‘racist or offensive language’⁸, which is reasonable. However, ‘vexatious’ must not be interpreted to include persistent requests by journalists pursuing legitimate public interest investigations.

A ‘frivolous’ request is defined as one without ‘serious purpose or value’⁹. This is concerning because decision-makers may characterise requests as frivolous simply because they disagree with the applicant’s purpose. Clear guidance is needed that:

- Journalists pursuing stories are engaged in serious purposes by definition.
- The value of requests should be assessed from the perspective of public interest, not government convenience.
- Repeat requests should only be refused where they are genuinely duplicative or an abuse of process, not because they are persistent.

8.2 Identity requirements

Prohibiting anonymous applications and allowing agencies to require proof of identity for certain requests could have chilling effects. Whilst we recognise the need to verify identity for personal information requests, the broader authority to require identification raises concerns about:

- Deterring whistleblowers or sources from making FOI requests
- Enabling government to identify and potentially target journalists’ sources
- Creating unnecessary barriers to access for legitimate requesters with privacy concerns

8.3 Extension provisions

Removing the 30-day cap on extensions is concerning. Whilst the extension would require applicant agreement, the power imbalance between agencies and applicants means consent may not always be

⁸ Explanatory Memorandum, p24

⁹ Explanatory Memorandum, p24

truly voluntary. There is a risk that agencies will pressure applicants to agree to lengthy extensions, or that applicants will feel compelled to agree rather than risk outright refusal.

We have no objection in principle to provisions addressing genuinely vexatious or abusive requests, simplifying transfers, or using working days. However:

1. Clear statutory guidance must define 'vexatious' and 'frivolous' to prevent misuse.
2. Journalists and others pursuing public interest investigations should be protected.
3. Anonymous applications should be permitted where there are legitimate privacy or safety concerns.
4. Identity verification should be limited to circumstances where genuinely necessary.
5. Extensions should be subject to statutory maximums even with applicant consent.
6. Agencies should be required to justify requests for extensions beyond existing timeframes.

8.4 Definition of document of an agency

The amendment to Subsection 4(1) of the definition of 'document of an agency' would exclude personal correspondence that has no connection to the operations of an agency. The stated purpose is to reduce risks of abuse, harassment, doxxing, and targeting of public servants.

We recognise the legitimate concerns about harassment and targeting of public servants. Public servants should be able to perform their duties without fear of inappropriate targeting or abuse.

However, the boundary between "personal correspondence" and correspondence related to agency operations must be carefully defined. There is a risk that agencies will characterise communications as "personal" to avoid disclosure, even where they relate to how the agency functions or how decisions are made.

We do not oppose provisions that protect genuinely personal information unrelated to agency operations. However:

1. Clear definitions must distinguish personal matters from agency operations
2. Correspondence about agency matters should not be excludable merely because it includes some personal elements
3. The public interest in disclosure should be considered before information is withheld
4. This provision should not be used to protect senior officials or Ministers from accountability for their decisions or conduct

Similarly, the provisions for non-disclosure of certain identifying information, including the proposed introduction of new subsection 22(1A), is not opposed.

9. Review Process Amendments

Several changes would modify the review process:

- Only applicants and respondents (not affected third parties) would be automatic parties to Information Commissioner (IC) reviews
- Prevention of concurrent internal agency and IC reviews
- New power for the Information Commissioner to remit reviews with directions
- Additional grounds for the Information Commissioner to decline investigation
- Agreements between applicants and agencies/Ministers would resolve IC reviews

These amendments appear largely focused on improving the efficiency of the review process. Making reviews more streamlined and reducing unnecessary complexity is beneficial, provided it does not compromise procedural fairness or the quality of review outcomes.

Third party participation: Limiting automatic party status for third parties is reasonable, as their involvement can significantly complicate and delay reviews. However, there must be provision for third parties to be included where their interests are genuinely affected.

Concurrent reviews: Preventing concurrent internal and IC reviews makes sense from an efficiency perspective and should avoid duplication.

Remittal power: Empowering the IC to remit matters with directions is positive, as it enables decision-makers to correct errors without the need for full IC determinations.

Additional grounds to decline investigation: This requires careful assessment to ensure the IC continues to address all legitimate complaints.

Settlement agreements: Enabling agreements to resolve reviews is appropriate and reflects standard dispute resolution principles. Settlement agreements must be genuinely voluntary and not the result of unequal bargaining power.

10. Fees

Regulations could specify application fees for FOI requests, internal reviews, and IC reviews. Fees would not apply to requests for personal information and would be subject to financial hardship waivers.

Introducing application fees creates a direct financial barrier to accessing government information. The exemption for personal information requests and hardship waivers provides some protection, but does not address the fundamental concern that government information should be accessible without financial barriers.

We oppose the introduction of application fees. We submit that:

1. FOI is a democratic right that should not be subject to user-pays principles
2. The cost of administering FOI should be regarded as a core government function funded through general revenue
3. Any reduction in FOI requests resulting from fees would harm transparency and accountability

If the Government proceeds with fees despite our opposition:

1. Fees should be nominal and set at levels that do not deter legitimate requests
2. Broad categories of requests should be fee-exempt, including those from journalists, researchers, and civil society organisations
3. Financial hardship waivers should be readily accessible and not subject to onerous proof requirements
4. Fees should not apply where disclosure is clearly in the public interest

11. Conclusion

Beyond assessing individual amendments, it is critical to consider their cumulative effect on the FOI regime. Taken together, these amendments would:

- Expand exemptions (Cabinet, deliberative process)
- Create new grounds for refusal (clearly exempt, time thresholds)
- Introduce financial barriers (fees)
- Modify the philosophical foundation (Objects clause)
- Strengthen agency discretion to refuse requests

The overall direction is clearly towards restricting access and making it easier for government to withhold information. This is fundamentally inconsistent with the democratic principles that underpin FOI legislation.

Even amendments that appear reasonable in isolation contribute to a broader shift away from transparency. The Bill's rhetoric about "balance" and "effective operation of government" suggests a view that FOI is primarily a burden to be managed, rather than a cornerstone of democratic accountability.

Whilst some of the proposed amendments would modernise administrative processes, the substantive changes to exemptions and grounds for refusal represent a significant erosion of transparency and accountability. Of particular concern are:

- The reframing of the Objects clause to emphasise balance over disclosure
- The provision for refusing requests without identifying documents
- The expansion of the Cabinet exemption through the 'substantial purpose' test
- The strengthening of the deliberative process exemption
- The introduction of time-based practical refusal grounds
- The potential for application fees

Free TV recommends that these amendments be further considered and, where they proceed despite opposition, including stronger safeguards, clearer limitations, and explicit protections for journalists and public interest FOI applicants.