



Bills Digest | 4 November 2025

Freedom of Information Amendment Bill 2025

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Key points

- The [Freedom of Information Amendment Bill 2025](#) aims to reduce system inefficiencies, provide clarity of the law and address perceived abuse of processes in the existing freedom of information (FOI) framework.
- The Bill implements several recommendations contained in the 2013 [Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010](#) (Hawke Review).
- Key amendments proposed by the Bill include:
 - application fees for certain requests and review applications
 - discretionary power to refuse to deal with, or continue to deal with, requests for access considered an abuse of process, including frivolous or vexatious requests
 - prohibition on anonymous and pseudonymous requests
 - a discretionary 40-hour processing cap as a practical refusal reason
 - provisions for managing requests and applications when a Minister ceases to hold the relevant office
 - prescribing factors that weigh against giving access under the deliberative processes exemption
 - expansion of the Cabinet exemption.
- While many stakeholders consider the FOI system to be ‘[broken](#)’ and in need of reform, there has been overwhelming criticism of the Bill over concerns that the proposed amendments could significantly [undermine transparency](#).
- The Bill has been referred to the Senate Legal and Constitutional Affairs Legislation Committee for [inquiry and report](#) by 3 December 2025.
- The Senate Standing Committee for the Scrutiny of Bills raised [concerns](#) in relation to the Bill, including adequacy of review rights, procedural fairness, broad delegation of administrative power, and charges and fees in delegated legislation.

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Date of introduction: 3 September 2025

House introduced in: House of Representatives

Portfolio: Attorney–General

Commencement: **Schedules 1** and **7** will commence at the same time, on the earlier of Proclamation or 12 months after Royal Assent. **Schedules 2–6** and **8** will commence at the same time, on the earlier of Proclamation or 12 months after Royal Assent.

Schedule 9 will commence on the day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the [Bill’s home page](#), or through the [Australian Parliament website](#).

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the [Federal Register of Legislation website](#).

All hyperlinks in this Bills Digest are correct as of November 2025.

Purpose of the Bill

The purpose of the [Freedom of Information Amendment Bill 2025](#) (the Bill) is to:

- amend the [Freedom of Information Act 1982](#) (FOI Act) with the aim of reducing system inefficiencies, providing clarity and addressing perceived abuse of processes and
- make consequential amendments to the [Australian Information Commissioner Act 2010](#) (AIC Act) and the [Public Interest Disclosure Act 2013](#) (PID Act).

Structure of the Bill

The Bill is comprised of 9 schedules:

- **Schedule 1** amends the general objects of the Act, and the definition of ‘document of an agency’ to exclude personal and non-work related matters.
- **Schedule 2** updates the requirements for requests, applications and complaints; provides for non-disclosure of certain identifying information; clarifies valid requests and practical refusal reasons; enables refusal of vexatious applications; prevents anonymous and pseudonymous requests; and clarifies requirements for transfer of requests.
- **Schedule 3** deals with access refusal decisions involving practical refusal reasons as well as a discretionary processing time limit.
- **Schedule 4** seeks to prevent concurrent internal and Information Commissioner (IC) reviews, streamline extension of time arrangements, ensure requests continue to be processed even after the statutory timeframe has elapsed, and change processing timeframes from calendar days to working days.
- **Schedule 5** amends the IC review and complaints process, including providing a new power for the IC to remit matters to decision-makers for further consideration in accordance with directions.
- **Schedule 6** allows the regulations to prescribe application fees for certain requests and review applications.
- **Schedule 7** provides for refusing a request on its terms, and clarifies the application of the Act to Cabinet documents and the deliberative processes exemption.
- **Schedule 8** deals with processing requests, applications and reviews when a Minister to whom a request has been made ceases to hold the relevant office.
- **Schedule 9** deals with other amendments, including authorising transitional rules.

Background

Since the commencement of the FOI Act on 1 December 1982, the rate and volume of electronic records generated by public sector agencies have grown exponentially. So also have the cost and time for processing FOI requests.

In [2023–24](#), for instance, a total of 34,706 FOI requests were received. Of these, 33% (11,024) were withdrawn and 65% (21,347) were decided. Of those decided, 21% (4,465) were granted in full, 55% (11,659) were granted in part and 24% (5,223) were refused. In her [second reading speech](#), Attorney-General Michelle Rowland advised that public servants spent more than 1 million hours processing these FOI requests at a cost of \$86.2 million (p. 8). The Attorney-General attributes this in part to changes in technology ‘enabling large volumes of vexatious, abusive and frivolous requests’ (p. 8).

Preceding these developments, there have been several reports and reviews that have resulted in legislative amendments and adjustments to the FOI regime, including:

- Senate Standing Committee on Legal and Constitutional Affairs, [Report on the operation and administration of the freedom of information legislation](#), (1987)
- Australian Law Reform Commission and the Administrative Review Council, [Open government: A review of the federal Freedom of Information Act 1982](#), (ALRC 77), (1995)
- Commonwealth Ombudsman, [‘Needs to Know’: own motion investigation into the administration of the Freedom of Information Act 1982 in Commonwealth agencies](#), (1999)
- Australian National Audit Office, [Administration of freedom of information requests](#), (2004)
- Commonwealth Ombudsman, [Scrutinising government: Administration of the Freedom of Information Act 1982 in Australian Government agencies](#), (2006)
- Allan Hawke, [Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010](#), (2013) (the Hawke Review)
- Senate Legal and Constitutional Affairs References Committee, [Report on the operation of Commonwealth Freedom of Information \(FOI\) laws](#), (2023).

In 2009, the Rudd Government amended the FOI laws in what has been [described](#) as ‘the biggest overhaul of FOI since the laws were introduced’. The reform package, aimed at [promoting a pro-disclosure attitude](#) (p. 12,971), was implemented through the [Freedom of Information \(Removal of Conclusive Certificates and Other Measures\) Act 2009](#), the [AIC Act](#), the [Freedom of Information Amendment \(Reform\) Act 2010](#) and the [Freedom of Information \(Fees and Charges\) Regulations 2010 \(No. 1\)](#) (no longer in force).

The [Freedom of Information Amendment \(Reform\) Act 2010](#) required proactive publication of information by agencies and abolished all application fees, which were considered [restrictive to the public’s access to information](#) (p. 12,973).

In 2012, Dr Allan Hawke was requested to review and report on the operations of the FOI Act (pursuant to [section 93B](#)) and the AIC Act (pursuant to [section 33](#)). Following consultation with stakeholders, the [Hawke Review](#) found that the 2009 and 2010 reforms had been operating as intended and had been generally well-received (p. 3). The Review made 40 recommendations to streamline FOI procedures, reduce complexity and increase capacity to manage FOI workload, including:

- clarifying the exemption for Cabinet documents by including definitions of ‘consideration’ and ‘draft of a document’ (Recommendation 12)
- introducing a 40-hour processing time ceiling for FOI requests (Recommendation 24)
- introducing application fees for IC review of decisions on access to non–personal information (Recommendation 27)
- repealing [paragraph 24AA\(1\)\(b\)](#) of the FOI Act to make it clear that the practical refusal mechanism can only be used after an applicant has provided information to identify the documents sought (Recommendation 30)
- specifying time periods in the FOI Act in working days (Recommendation 31)
- amending the FOI Act to permit agencies to decline to handle a repeat or vexatious request or requests that are an abuse of process (Recommendation 32)
- amending the FOI Act so that an FOI request cannot be made anonymously or under a pseudonym (Recommendation 33(a)).

The Government at the time did not formally respond to the Hawke Review.

In addition, the 2023 report of the [Royal Commission into the Robodebt Scheme](#) (the Robodebt report) proposed, in its closing observations, that ‘the Government should end the blanket approach to confidentiality of Cabinet documents’ and repeal [section 34](#) (Cabinet exemption) of the FOI Act (p. 657). The Government rejected this proposal in its [response to the report](#) as it believed that ‘Cabinet must have the benefit of frank and fearless advice from Ministers and senior public servants’ (p. 8).

On 25 September 2024, the full Federal Court handed down its decision in [Attorney–General \(Cth\) v Patrick](#) (2024) 305 FCR 1. The respondent in that case, former Senator Rex Patrick, had made an FOI request which was refused by the Attorney-General’s Office. The respondent subsequently lodged an application for review of the refusal decision with the IC. By the time the IC review decision was handed down in February 2023 there had been several changes to the person occupying the office of the Attorney-General, including as a result of a change of government. This raised the question of the relevant time for determining whether a document is ‘an official document of a Minister’.

The Court affirmed the decision of the primary judge that the relevant point in time for determining whether a document is ‘an official document of a Minister’ is at the time that an FOI request is made (and only at that time) (para [1]).

Following the decision, the [Office of the Australian Information Commissioner](#) updated [Part 2](#) of the [FOI Guidelines](#) to provide guidance on how outgoing and incoming ministers can meet their responsibilities under the FOI Act.

The updated *Guidelines* also reference the Federal Court’s earlier observation in [Patrick v Attorney-General \(Cth\)](#) [2024] FCA 268 that a document cannot be both an ‘official document of a minister’ and a ‘document of an agency’ (para [18]). This observation was later applied in the IC review decision of [Geoffrey Shafran and Minister for Veterans’ Affairs and Defence Personnel \(Freedom of information\)](#) [2025] AICmr 46, where the FOI Commissioner found that the document at issue was not an official document of a Minister on the day of the FOI request (paras [23]–[25]).

Policy position of non-government parties/independents

The Coalition and Greens are [reported](#) to have denounced the Bill as an attack on transparency and vowed to oppose the Bill.

Crossbench MPs and Senators have also [expressed](#) their intention to move amendments to the Bill.

Coalition

Members of the Coalition, including [Opposition Leader Sussan Ley](#), [Dr Anne Webster](#) and [Scott Buchholz](#) have described the Bill as ‘the biggest attack on freedom of information in 15 years’. Ms Ley has also [stated](#) that the Opposition will ‘stand firmly’ against the proposed changes in defence of ‘the principles of openness and accountability that are essential to a healthy democracy’.

Prior to the Bill’s introduction, then Shadow Attorney-General Julian Leeser [stated](#) that he would ‘work with the government if there are sensible reforms in the national interest’. However, he flagged that the proposed amendments appeared ‘designed to further restrict access to information and to charge Australians for accessing the documents that will hold the government to account’. He also [reportedly](#) ‘criticised the proposal to roll back scrutiny and normalise the use of fees as part of a disturbing pattern from the government’.

In a [radio interview](#) with the ABC RN Breakfast following the Bill’s introduction, Mr Leeser added that the proposed amendments were aimed at reducing transparency.

The Greens

The Greens have criticised the proposed amendments, [stating](#) that the changes represent the biggest restrictions to FOI in recent memory and ‘will make it significantly harder for Australians to access government documents’. The Greens spokesperson for Justice, Senator David Shoebridge, said ‘The changes propose a fundamental shift away from the principle that government information belongs to the public and should be freely accessible’.

Independents

Allegra Spender, Senator David Pocock and Dr Monique Ryan have jointly raised concerns about the Bill. In their [joint statement](#):

- Ms Spender urged the government to adopt measures such as publishing ministerial diaries and disclosing sponsored parliamentary ‘orange pass’ holders as demonstration of its commitment towards transparency.
- Senator Pocock noted that, rather than fixing the transparency problem of the government, the proposed changes ‘will make it more expensive and more difficult for Australians to find out what their government is doing’.

- Dr Ryan views the proposed changes as an indication that the government is going backwards on transparency rather than forward.

More crossbench MPs and Senators have [warned](#) that ‘the proposed changes will reward secrecy and further erode trust in government’. In separate statements:

- Dr Helen Haines, Dr Sophie Scamps and Senator Jacqui Lambie expressed concern that the Bill makes it harder for the public to access information whilst making it easier for the Government to hide it.
- Senator Pocock, Kate Chaney, Allegra Spender and Zali Steggall called for more transparency and accountability.
- Senator Pocock, Dr Monique Ryan and Nicolette Boele also raised concerns that the proposed changes risk undermining democracy and freedom of information.

Dr Haines and Senator Lambie have circulated amendments, which are discussed in the [Key issues and provisions](#) section below. Kate Chaney has also circulated an [amendment to the motion for second reading](#) urging the House to decline to give the Bill a second reading and instead call for an independent review of the FOI Act.

Stakeholder comments

While many stakeholders consider that the FOI system is ‘[broken](#)’ and in need of reform, there has been overwhelming criticism of the Bill over concerns that the proposed amendments could significantly [undermine transparency](#):

- the [Centre for Public Integrity](#) has described the Bill, and particularly the reintroduction of fees, as a ‘retrograde step’ that winds back important developments in the Australian public’s right to know
- investigative journalist [Nick McKenzie](#) believes that ‘Some of the proposed changes will make the system arguably worse for investigative journalism and the public’ as the ‘changes risk tilting the system further away from public accountability and towards political convenience’
- Senior Lecturer and researcher in Global Studies Dr Binoy Kampmark is [concerned](#) that the proposed amendments are overwhelmingly focused on perceived government efficiency instead of accountability of the public sector.
- Former Australian Public Service Commissioner Andrew Podger [believes](#) the Bill ‘goes in the opposite direction to that pursued by [former Senator John Faulkner] and Hawke’ and ‘would seriously erode access in important respects and make the legislation even more, not less, complicated and difficult to understand’.
- former Senator and now FOI specialist [Rex Patrick](#) describes the Bill as the ‘biggest ever assault on government transparency’, as it strips away citizens’ rights to access important information.
- [OpenAustralia Foundation](#) strongly opposes the proposed amendments, which it considers ‘will make it harder for the public to access government information’.

Several witnesses at the Senate Legal and Constitutional Affairs Legislation Committee's [public hearing](#) on the Bill raised similar concerns about the Bill restricting access to information, with representatives from Transparency International Australia, the Australian Conservation Foundation, the Australian Council of Social Service, the Media, Entertainment and Arts Alliance, the Australian Press Council, the Alliance for Journalists' Freedom and the Centre for Public Integrity stating that they did not believe the Bill should be passed in its current form (pp. 3, 17, 30, 31, 34 and 56).

Key issues and provisions

References to provisions are to provisions in the FOI Act unless otherwise indicated.

Introduction of application fees

As part of measures to [deter frivolous and vexatious requests](#) (p. 10), **Schedule 6** proposes the re-introduction of application fees. **Proposed section 93C (item 6, Schedule 6)** would allow the regulations to make provision for, or in relation to, the payment of application fees for:

- requests for access (under [section 15](#))
- internal review applications (under [section 54B](#))
- IC review applications (under [section 54N](#)) (implements Recommendation 27 of the [Hawke Review](#)).

These fees differ from, and are in addition to, the [processing charges](#) payable under [section 29](#) and prescribed by the [Freedom of Information \(Charges\) Regulations 2019](#) (FOI Charges Regulation) in respect of a request for access, or the provision of access, to a document (**proposed subsection 29(12) (item 3, Schedule 6)**).

While payment of charges are subject to the discretion of the relevant agency or Minister ([regulation 8](#), FOI Charges Regulation), the payment of application fees (if prescribed) would be mandatory, subject to any exemptions or waivers (**proposed paragraph 15(2)(f), subsection 54B(1A) and paragraph 54N(1)(c) (items 2, 4 and 5, Schedule 6)**). Fees cannot be charged for requests for access to documents containing personal information (**proposed subsection 93C(3)**) and the regulations must allow for the waiver or remission of a fee in prescribed circumstances of financial hardship (**proposed subsection 93C(4)**).

Item 1, Schedule 6 makes consequential amendments to the definition of 'freedom of information matters' in [paragraph 31\(1\)\(d\)](#) of the AIC Act to include details of fees collected from dealing with requests and other applications in the IC's annual report.

In her [second reading speech](#), the Attorney-General explained that all other Australian jurisdictions (except the ACT) charge initial application fees for FOI requests (p. 10). Fees are reported to [range from \\$30–58](#). The Attorney-General also noted that 'FOI requests for personal information comprised 72 per cent of overall FOI request in 2023–24' (p. 10). As noted above, these would be exempt from the new fees and are also exempt from the processing charges ([subregulation 7\(1\)](#), FOI Charges Regulation).

Although some stakeholders have welcomed the proposed fees as a [control mechanism for some applicants](#), a spokesperson of the Australian Lawyers Alliance has [described](#) the proposed fees as undemocratic, noting that it will create difficulties for those who cannot afford the fees to access information.

News outlets have been especially critical of its potential impact on journalism; for example, [Crikey](#) reports that the charges ‘would likely kill off dozens of public interest stories uncovered through FOI requests’ as journalists would be forced ‘to gamble on a small number of FOI requests at the expense of other lines of inquiry’.

[The Australia Institute](#) (TAI) argues that the proposal to ‘limit FOI requests by charging fees instead of fixing the broken system misdiagnoses the problem’. In particular, TAI notes that:

[c]ontrary to the government’s claims about ‘FOI generators’ and ‘thousands of requests’, public servants 20 years ago dealt with many more FOI requests than under the Albanese government.

Dr Haines has proposed [an amendment](#) seeking to omit Schedule 6 from the Bill.

Frivolous and vexatious applications

The amendments in **Part 4, Schedule 2** implement Recommendation 32 of the [Hawke Review](#) by vesting agencies and Ministers with discretionary power to refuse to deal with, or continue to deal with, requests for access (including non-compliant requests) in one or more of the following circumstances set out in **proposed subsection 15AD(1) (item 41, Schedule 2)**:

- the request is vexatious or frivolous
- the request is, or is likely have the effect of, harassing or intimidating or otherwise causing harm (or a reasonable fear of harm) to another person
- the request is otherwise an abuse of process.

According to the [Explanatory Memorandum](#) (EM), the terms ‘frivolous’, ‘vexatious’, ‘harassing’ and ‘intimidating’ are intended to take their ordinary meaning, while ‘an abuse of process’ may include requests received as part of campaign to disrupt agency, Ministerial or government operations (p. 24, paras [102]–[104]).

A refusal under this provision is an IC reviewable decision (**paragraph 54K(aa) and section 54KA (items 43–44, Schedule 2)**). Written notice of the refusal must be given to the applicant as soon as practicable, stating the reasons for the decision and procedure for making an IC review application under [Part VII \(proposed subsections 15AD\(2\)–\(3\)\)](#). This is unless the request for access was not made in writing, did not state that it was an FOI request and did not contain the applicant’s correspondence details (**proposed subsection 15AD(4)**).

Where a refusal decision has been made:

- the relevant agency and Minister are not obliged to assist the applicant with making the request compliant under [subsection 15\(2\) \(proposed subsection 15\(3A\) \(item 39, Schedule 2\)\)](#)
- the timeframes for dealing with requests stipulated under [subsection 15\(5\)](#) do not apply (**proposed subsection 15(5AA) (item 40, Schedule 2)**).

Anonymous applications and proof of identity

With concerns about the prospect of the FOI framework being '[exploited by offshore actors seeking government-held information for potentially nefarious purposes](#)' (p. 8), the Bill implements Recommendation 33(a) of the [Hawke Review](#) by introducing additional requirements that must be complied with to make a valid request for access (**proposed subsection 15(2AA) (item 28, Schedule 2)**).

Specifically, **proposed paragraph 15(2)(ba) (item 53, Schedule 2)** requires applicants to include their full name. If the request is made on behalf of another person, the applicant must also include the full name of the other person and a statement that the request is being made on behalf of that person (**proposed paragraph 15(2)(bb) (item 53, Schedule 2)**).

In addition, proof of identity is required under **proposed paragraphs 15(2)(d)–(e) (item 54, Schedule 2)** if the request is for access to documents containing personal information or information concerning the business, commercial or financial affairs of the applicant or person on whose behalf a request is made. The proof of identity must be provided in a form and manner specified by the relevant agency or Minister.

Proposed section 19 (item 56, Schedule 2) provides that the agency or Minister dealing with a request may also, by written notice, request proof of identity in specified circumstances, including where they are not satisfied with the identity of the applicant or person on whose behalf a request is made.

Under **proposed subsection 15(2AB) (item 55, Schedule 2)**, providing false or misleading information in relation to the applicant's full name or, where the application is being made on behalf of another person, a statement that a request is being made on behalf of another person and that person's full name, would not constitute an offence under [section 137.1](#) of the [Criminal Code Act 1995](#). However, providing false or misleading information in relation to proof of identity under proposed section 19 would likely constitute an offence under section 137.1 of the Criminal Code.

In a [doorstop interview](#) prior to the Bill's introduction, the Minister for Health and Ageing, Mark Butler claimed that the government was being inundated with anonymous FOI requests, many of which were suspected of being generated by artificial intelligence (AI) bots. This claim was immediately [rejected](#) by the Coalition and the Greens, with the Attorney-General subsequently [clarifying](#) that eSafety had 'received nearly 600 FOI requests, in a short period of time, from an automated generator' (p. 52).

The Free Speech Union (FSU) revealed that it had launched the [automated generator](#) in 2024 'to assist applicants to compel the release of documents held by eSafety related to their name or social media handle'. The FSU characterised the tool as a 'web form' that 'automate[d] administrative tasks involved with managing FOIs'.

Associate Professor Maria O'Sullivan [opines](#) that there does not appear to be any evidence that AI bots are being used at scale to overwhelm the system nor that pseudonymous requests have caused integrity problems in the system. At the Senate Legal and Constitutional Affairs Legislation Committee's [public hearing](#) on the Bill, the Department of Home Affairs stated that there was no evidence to suggest that it had received FOI requests generated by AI bots (pp. 7–8).

The [Centre for Public Integrity](#) has expressed concerns that these provisions will impact ‘vulnerable individuals, particularly potential whistleblowers and others who fear retaliation for legitimate reasons’.

Practical refusal reasons and processing cap

[Section 24](#) allows an agency or a Minister to refuse access to a document if a practical refusal reason exists. The circumstances in which a practical refusal reason exist are currently specified in [subsection 24AA\(1\)](#) as follows:

...a **practical refusal reason** exists in relation to a request for a document if either (or both) of the following applies:

(a) the work involved in processing the request:

- (i) in the case of an agency—would substantially and unreasonably divert the resources of the agency from its other operations; or
- (ii) in the case of a Minister—would substantially and unreasonably interfere with the performance of the Minister’s functions;

(b) the request does not satisfy the requirement in [paragraph 15\(2\)\(b\)](#) (identification of documents).

Recommendation 30 of the [Hawke Review](#) recommended repealing paragraph 24AA(1)(b) ‘to make it clear that the practical refusal mechanism can only be used after an applicant has provided information to identify the documents sought’ (p. 9). **Item 36, Schedule 2** implements this recommendation, by repealing and remaking subsection 24AA(1) to remove paragraph (b) and make adjustments to paragraph (a). The amendment recognises that changes made by other provisions of Schedule 2 (such as **item 28**) which clarify that to be valid, a request must comply with the requirements of [subsection 15\(2\)](#)—including providing sufficient information to allow a requested document to be identified—mean that paragraph 24AA(1)(b) is no longer required. This aims to clarify when a request may be refused under section 24.

Proposed paragraph 24AA(1)(c) and subsection 24AA(1A) (items 10 and 11, Schedule 3) implement Recommendation 24 of the [Hawke Review](#) by introducing a discretionary 40-hour processing cap as a practical refusal reason. Thus, access to a document may be refused if the total number of hours of work involved in processing the request is likely to exceed the processing cap. This does not include any time involved in assisting to make a request compliant.

According to the [EM](#),

[t]he default minimum cap of 40 hours has been determined on the basis that it represents a reasonable period to allocate to processing an individual FOI request, constituting just over one week’s ordinary hours of work for a full-time employee under Australia’s National Employment Standards ... (p. 36, para [181])

Proposed subsection 24AA(4) and paragraphs 94(1)(c)-(d) (items 13 and 14, Schedule 3) provide that the regulations may prescribe a higher processing cap, as well as matters to which an agency or Minister must have regard in determining if the processing cap is likely to be exceeded.

The minimum processing cap has been [criticised](#) as allowing public servants to issue blanket refusals to act on requests that would take more than 40 hours to collate when 40 hours ‘amounts to one day of work for a small team of public servants’.

A practical refusal decision is an [IC reviewable decision](#) as it is an access refusal decision (**item 2, Schedule 3**). After undertaking review of such decisions, **proposed subsection 55K(1A) (item 6, Schedule 3)**, provides that the Information Commissioner can either:

- set aside the decision that a practical refusal reason exists
- substitute a decision that a practical refusal reason does not exist
- remit the request to the agency or Minister for reconsideration in accordance with any orders or directions.

Proposed section 55MB (item 7, Schedule 3) provides that requests remitted to an agency or a Minister for reconsideration cannot subsequently be refused on the grounds that a practical refusal reason exists.

When a Minister ceases to hold the relevant office

Further to the decision in [Attorney-General \(Cth\) v Patrick](#), **Schedule 8** introduces provisions for managing requests and applications when a Minister ceases to hold the relevant office.

Requests and applications when a Minister ceases to hold the relevant office

Proposed sections 6D and 6E (item 1, Schedule 8) provide that a Minister ceases to hold the relevant office for a request for access to a document or an application for amendment or annotation of personal information if:

- at a time after the request or application is made, the Minister ceases to be the responsible Minister for an agency or to administer the Department of State (this is referred to as the **relevant time**) and
- the Minister has not transferred the request (under [section 16](#)) or the application (under [section 51C](#)) before the relevant time.

In addition to transferring a request, **proposed section 16B (item 2, Schedule 8)** allows an outgoing Minister to forward an ‘active request’ (defined in **item 4, Schedule 8**) to another Minister or Agency if the outgoing Minister reasonably believes that they will cease to hold the relevant office for that request. If this is not done, the request is considered forwarded by the Minister to the default agency at the time the outgoing Minister ceases to hold the relevant office.

Proposed section 51CA (item 3, Schedule 8) provides that an application to a Minister for the amendment or annotation of personal records under [section 48](#) will lapse if the Minister ceases to hold the relevant office for the application before notice of a decision on the application is given to the applicant. The [EM](#) clarifies that in such situations, the applicant may make a new application to an agency or another Minister (p. 81, para [435]).

Similarly, **proposed section 89LA (item 21, Schedule 8)** provides that an application by the Minister for a vexatious applicant declaration under [paragraph 89K\(2\)\(a\)](#) will lapse if the Minister ceases to be a Minister before a decision is made.

Information Commissioner review

Current [sections 54L](#) and [54M](#) provide that an application for IC review may be made in respect of specified access refusal decisions and access grant decisions, respectively.

Proposed subsections 54L(2A) and 54M(2A) (items 12–13, Schedule 8) provide that, where the outgoing Minister has made an access refusal decision or an access grant decision, the applicant cannot make an application for IC review in respect of that decision **after** the Minister has ceased to hold the relevant office. The applicant would, however, be able to make an application for IC review of the outgoing Minister’s decision **before** that Minister ceases to hold the relevant office.

Proposed section 54WA (item 14, Schedule 8) provides that the Information Commissioner must decide not to undertake or continue to undertake an IC review in relation to a [section 48](#) application where the Minister ceases to hold the relevant office in relation to the application. Consequently, any pending IC review application would lapse when the outgoing Minister ceases to hold the relevant office. In this situation, the applicant would be able to make a new application to an agency or another Minister.

Tribunal review

Proposed amendments to [section 57A](#) (items 18 and 19, Schedule 8) provide that an application cannot be made to the Administrative Review Tribunal for review of a decision of the IC if the Minister to whom the original request or application was made ceases to hold office after making the IC reviewable decision.

Under **proposed section 61B (item 20, Schedule 8)**, the Tribunal must dismiss an application for review of an IC review decision if it relates to an application made to a Minister under [section 48](#) and the Minister ceases to hold the relevant office for the application. Consequently, the IC review decision would stand, and the applicant would have no further recourse on the matter, other than making a new application to an agency or another Minister.

Exemptions—public interest and Cabinet documents

Documents may be categorised as exempt or conditionally exempt under [Part IV](#). An agency or Minister is not required to give access to exempt documents ([subsection 11A\(4\)](#)); however, access must be given to [conditionally exempt documents](#) unless it would be contrary to the public interest ([subsection 11A\(5\)](#)).

Public interest conditional exemptions—deliberative processes

[Section 47C](#) provides a conditional exemption in relation to deliberative matter obtained, prepared or recorded in the course of, or for the purposes of deliberative processes involved in the functions of an agency, a Minister or the Commonwealth Government. As set out in the [EM](#):

the exemption recognises that governments need to be able to run internal operations effectively and have time to consider advice and options provided by the Public Service in the course of considering options or making a decision (p. 76).

In ascertaining whether access to a conditionally exempt document under section 47C would be contrary to public interest, **proposed subsection 11B(3A) (item 14, Schedule 7)** introduces factors that would weigh against giving access. These include whether giving access to the document would, or could reasonably be expected to be prejudicial to the:

- frank or timely discussion of matters or exchange of opinions between participants in deliberative processes of government
- frank or timely provision of advice to or by an agency or Minister, or the consideration of that advice after it is provided
- orderly and effective conduct of a government decision-making process.

The [EM](#) explains that this amendment seeks to ensure an appropriate balance in weighing the public interest in favour of access against the public interest against access (p. 76, para [403]). The words ‘prejudice’ and ‘frank’ are used in their ordinary sense and could potentially apply to information generated in the early and formative stages of a policy development process (p. 76, para [406]; p. 77, para [409]).

The [EM](#) further states that the reference to ‘a government decision-making process’ is not limited to a specific decision in a specific instance, and may include a consideration of the impact of release of information on future, similar decisions in the same context (p. 77, para [411]).

Media reporting has [suggested](#) that:

... any document in which ministers, public servants or other officials record their thoughts about policy could be deemed “deliberative material” and also exempted, even “blue-sky thinking” that might relate to some future policy deliberation.

Mr Podger has [criticised](#) this amendment, noting that the last dot point set out above could be used to ‘refuse access to almost any document’. Mr Podger argues that factors other than FOI inhibit frank and fearless advice and that there is no evidence that the introduction of the conditional exemption for ‘deliberative material’ has had any dulling effect on advising.

Senator Lambie has proposed [an amendment](#) opposing the proposed changes to deliberative processes exemption.

Cabinet documents exemption

Part 2, Schedule 7 amends the Cabinet document exemption to include:

- documents prepared by a Minister or an agency on a Minister’s behalf for a **substantial purpose** of submission for consideration by the Cabinet
- documents prepared for a **substantial purpose** of briefing a Minister in relation to issues to be considered by the Cabinet
- documents to the extent that they:
 - summarise, describe or refer to the contents of an exempt Cabinet document
 - contain information that could reveal Cabinet consideration unless the information has been officially disclosed.

Many stakeholders have criticised the proposed amendments, including Associate Professor O'Sullivan who [suggests](#) that changing 'dominant purpose' in [section 34](#) to 'substantial purpose' would allow more cabinet documents to be exempt from FOI's transparency regime.

[Media reporting](#) considers the proposed change is 'intended to halt large numbers of applications in their tracks'. The reporting adds that:

... classes of documents currently available will no longer be available, including documents prepared because a matter *might* go to Cabinet, and documents prepared not for Cabinet but merely to brief ministers on "Cabinet considerations" — which includes anything that might be mentioned in Cabinet, not the items on the actual Cabinet agenda.

Consultants' reports and other attachments to Cabinet submissions will now be exempted too.

According to [another report](#), 'Details of the government's actions and the advice of public servants could be more easily hidden' under the proposed changes. Similarly, a separate [report](#) suggests that:

[t]he existing exemption for documents related to cabinet decisions would be expanded and may include anything that has been brought to cabinet's attention or might inform something that is shown to cabinet in future.

According to the [EM](#), the changes are intended to 'more clearly and accurately reflect how the Cabinet process works in practice', as Cabinet documents are sometimes drafted before they are formally proposed for Cabinet consideration (p. 70, para [370]). The changes would allow agencies and Ministers to 'refuse access to documents that would disclose the detail of actual or proposed Cabinet considerations' (p. 70, para [370]).

Regarding the 'substantial purpose' test, the [EM](#) states that the change is 'in recognition that documents may be created for multiple purposes and may disclose sensitive information about Cabinet matters even if they were not created for the 'dominant purpose' of Cabinet consideration' (p. 70, para [371]).

Cabinet consideration is defined in **proposed subsection 34(8) (item 10, Schedule 7)** as including discussions, deliberations, notes and decisions. **Item 11, Schedule 7** makes consequential amendments to the definition of 'Cabinet information' in [section 8](#) of the PID Act.

This Government states that the amendment is consistent with Recommendation 12 of the [Hawke Review](#) and is '[intended to capture](#) the full range of matters and forms of business that may be considered, and actions that could be taken as part of consideration, in Cabinet' (p. 74, para [392]).

Proposed subsection 34(7) (item 10, Schedule 7) further provides that the presence or absence of any feature identifying the document as a Cabinet document is not conclusive as to its exempt status. The [EM](#) clarifies that this is 'to avoid creating any unintended implications about the significance of the absence of a marker or feature when assessing whether section 34 applies to a document' (p. 73, para [390]).

While the Attorney-General [states](#) (p. 11) that this amendment is intended to address a concern raised in the [Robodebt report](#), the report proposed repealing [section 34](#) entirely (p. 657).

[Dr Haines](#) and [Senator Lambie](#) have circulated amendments opposing the proposed changes to exemptions for Cabinet documents.

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