

Transparency on Trial

The Government's FOI Claims
Fact-Checked

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Introduction

With the Government listing the Freedom of Information Amendment Bill 2025 for debate in the Federation Chamber, the Centre for Public Integrity offers a series of fact-checks to some of the claims that have been made by the Government in relation to parliamentary questions on the Bill in recent weeks.

. The findings are damning, with the Government's claims about the Robodebt Royal Commission, the extent of the changes to the Cabinet confidentiality exemption, inundation by AI generated bots linked to foreign actors or criminal gangs, and the seriousness of the national security concerns around FOI found to be false or misleading.

Claim 1:

The Robodebt Royal Commission did not find that Cabinet processes were the problem

Details of the claim:

Ms Spender (Wentworth): My question is for the Prime Minister. The royal commission into Robodebt found that cabinet secrecy enabled the appalling abuse of power to continue for years, yet your government's FOI bill would expand, not reduce, that secrecy. The crossbench and the Greens will not support it. Is the government really going to work with the parties responsible for Robodebt, to explicitly act against the royal commission's findings and increase secrecy in government?

Prime Minister Albanese: With respect to the member for Wentworth, the Robodebt royal commission did not find that cabinet processes were the problem. They found that ministers acted directly in contravention of the advice that they were given, and knowing—even though questions were being asked in this chamber. So let's not let those responsible for Robodebt off the hook by suggesting, bizarrely, that somehow reform of a system that is broken, the FOI system, has something to do with support for Robodebt.

(Question Time, 9 October 2025)

Fact-check:

The Robodebt Royal Commission made a number of findings in relation to the problems with the class-based Cabinet exemption. This was because, contrary to the Prime Minister's answer, the evidence uncovered during the Robodebt Royal Commission found that while the responsible Minister (Mr Morrison) failed to meet his responsibility to ensure that Cabinet was properly informed about the proposal and its legality, it was senior public servants who provided advice to Cabinet that did not contain reference to the concerns regarding income averaging and the need for legislative change.

In relation to the Cabinet exemption, Commissioner Holmes made the following observations:

It is time to ask whether the rationale of public interest immunity – the maintenance of Cabinet solidarity and collective responsibility – really justifies the withholding of information that routinely occurs under that mantle.

Claim 1 (cont)

Nothing I have seen in ministerial briefs or material put to Cabinet suggests any tendency to give full and frank advice that might be impaired by the possibility of disclosure, and the Cabinet minutes which are in evidence are sparing in detail, with a careful mode of expression revealing nothing of individual views.

...

What has happened in the case of the Scheme demonstrates the need for greater transparency of Cabinet decision making. If the Executive Minute that was put to Mr Morrison and the NPP which was presented to Cabinet had been available for public scrutiny, it would have become apparent firstly, that there was advice that income averaging in the way it was proposed to be used could not occur without legislative change, and secondly, that Cabinet was told nothing of those things. That raises the real question of whether the protection of Cabinet documents as a class from disclosure ought to be maintained or whether, when access is sought, disclosure should be given unless there is a specific public interest in maintaining its confidentiality.

...

As with all Government documents, there may be reasons why disclosure of Cabinet documents, or parts of those documents, would not be in the public interest. Obvious examples include documents, or parts of documents, that would prejudice national security, law enforcement or Australia's international relations if released. Whether non-disclosure for those, or other, reasons, is warranted by the public interest would of course depend on the individual circumstances of each case.

However, the Government should end the blanket approach to confidentiality of Cabinet documents. To give effect to this, section 34 of the FOI Act should be repealed. The wide range of class and conditional exemptions in the FOI Act is sufficient to protect the public interest in relation to Cabinet documents. The mere fact that a document is a Cabinet document should not, by itself, be regarded as justifying maintenance of its secrecy [emphasis added].

(Robodebt Royal Commission, pages 656-657)

Finding

It is false to say that the Robodebt Royal Commission did not find that cabinet processes were the problem. The Royal Commission made a number of excoriating observations about the problems of cabinet processes and recommended the repeal of the class-based exemption.

It is also false also to say that the problem revealed in the Royal Commission was that Ministers acted directly in contravention of the advice that they were given. The Royal Commission found that failure of advice lay with the senior public service, whose advice did not meet the standards of frank and fearless even when protected by Cabinet confidentiality.

Claim 2:

The FOI amendments merely 'clarify' the existing Cabinet exemption

Details of the claim:

Dr HAINES (Indi): My question is to the Attorney-General. Attorney, after Robodebt, the government said never again to the culture of secrecy that allowed it to happen in the first place. The Royal Commission into Robodebt recommended repealing section 34 of the FOI Act, yet the Freedom of Information Bill before the House would conceal even more information from the public. Attorney, why is the government expanding cabinet secrecy when the Royal Commission recommended the exact opposite?

Ms ROWLAND (Attorney-General): I thank the member for her question and the way in which she has engaged on this matter. ... But I will say in relation to the cabinet exemption of which the honourable member asks that these changes are designed to clarify existing exemptions. That is to make sure they are consistent with their original policy intent, so that they are applied where they should be applied and cannot be applied where they shouldn't be applied. The cabinet exemption has been amended to clarify its operation and ensure it appropriately protects information central to the cabinet process, which is consistent with its original intent. Speaking of Robodebt, to address a concern that was raised in the 2023 royal commission into Robodebt, the amendments would also make it absolutely clear that merely labelling something 'cabinet-in-confidence' does not make it so. That is a fundamental part of this legislation that is proposed.

(Question time, 9 October 2025)

Fact-check:

The FOI Amendment Bill amends the class-based exemption for Cabinet exemptions in a number of key ways, including by:

- extending it to documents that have been prepared by a Minister (or on a Minister's behalf or by an agency) for the *substantial* purpose of submission for consideration by Cabinet, whereas currently, documents must be prepared for the dominant purpose of submission for consideration by Cabinet;

Claim 2 (cont)

- extending it to briefing documents (which again only have to be for the substantial rather than dominant purpose of briefing a Minister in relation to issues to be considered by Cabinet);
- extending it not only to copies or parts or extracts, but also summaries or any reference to the contents of a document to which an exemption applies;
- introducing a definition of what 'consider' by the Cabinet means, which takes an expansive approach and includes 'discuss, deliberate, note or decide'; and
- indicating explicitly that the presence or absence in a document of any security marking or other feature identifying the document as a Cabinet Document does not of itself determine whether it is a Cabinet document.

The Attorney-General in her Second Reading Speech claimed that this last amendment, in particular, was addressing 'a concern raised in the 2023 Royal Commission into the Robodebt Scheme.'

There are two important points to be made in fact-checking the Attorney-General's claim that this amendment simply clarifies the operation of the provision.

The first is that the changes to the cabinet exemption are accepted by legal experts to be an expansion not merely a "clarification" of the exemption (we note here that the Government has itself provided no legal advice to justify its claim that the amendments clarify the exemption).

This is the view of the Centre for Public Integrity, as well as other legal experts, including the Law Council of Australia (which represents the legal profession at a national level, with members including the Law Societies and Bar Associations across Australia). The Law Council's submissions explains the combined legal effect of the proposed changes that we outline above in the following, strong terms:

[119] In both instances, a lower requirement of 'substantial' purpose is proposed, replacing the current 'dominant' purpose requirement. This will have the effect of enlarging the range of documents captured as exempted Cabinet documents. The EM contains a clear statement of intention to capture what are effectively preparatory documents linked to Cabinet deliberations as exempt documents. In our view, the proposed changes to the thresholds would be a significant dilution and cannot be supported.

Claim 2 (cont)

[120] Further, the proposed changes would extend protection from disclosure to a document to the extent it 'summarises, describes or refers to the contents of a document to which subsection 34(1) applies'. We note that 'refers to' is a broad, relational term which could mean that any reference to the contents of a Cabinet document, however small or indirect, could suffice to make it exempt from disclosure.

[121] The amendment to section 34 also introduces new provisions in proposed subsections 34(6)(a), 34(8) and 34(7). Proposed subsection 34(8) relates to a definition of the term 'consider', while proposed subsection 34(7) will confirm that the status of a Cabinet document does not depend on any formal marking as a Cabinet document. The definition of the term 'consider' includes 'discuss, deliberate, note and decide'. In our view, the fact that a matter is included in a Cabinet agenda for noting as opposed to deliberation and debate should not be a satisfactory basis for an exemption from disclosure. ...

[122] We suggest that the practical effect of these amendments will be to exclude more documents in the 'public interest' from disclosure under the FOI regime under the cloak of cabinet confidentiality. This is of particular concern given the Robodebt Royal Commission, in its closing observations, suggested that section 34 of the FOI Act be repealed. It was also the view of the Commissioner that an amendment to section 34 should 'make clear that confidentiality should only be maintained over any Cabinet documents or parts of Cabinet documents where it is reasonably justified for an identifiable public interest reason' [emphasis added].

The Law Council concludes this part of its submission:

The Law Council notes that the effect of the proposed amendments to section 34 the Bill will be to broaden what is captured by the cabinet documents exemption and further limit access to information. This contradicts the closing observations of the Royal Commission. The Law Council, therefore, considers these amendments should be rejected, other than the addition to subsection 34(7) [emphasis added].

Claim 2 (cont)

The second point to make is that it is extremely misleading to claim that the amendments are even in part implementing the Robodebt Royal Commission's recommendations.

While the Robodebt Royal Commission did recommend that the Cabinet Handbook be amended to clarify that the description of a document as a Cabinet document is no longer itself justification for maintaining the confidentiality of the document, this was only in the context of a recommendation to repeal the class-based exemption in section 34. To make this small change, but otherwise to act in direct contradiction to the substance of the recommendation, is misleading.

Finding

It is false to say that the changes to the Cabinet exemption simply clarify the operation of the existing exemption. Rather, the generally accepted legal view is that these amendments will substantially broaden the exemption in a number of highly concerning ways.

It is misleading to claim that the amendments will address the concerns raised in the Robodebt Royal Commission when the chief concern of the Royal Commission was to remove the class-based exemption in its entirety.

Claim 3:**The government has been inundated with FOI requests generated by AI bots that may be linked to foreign actors and criminal gangs****Details of the claim:**

The Attorney-General will be introducing legislation this week that outline our plans to update freedom of information laws. We are concerned that the current system really doesn't reflect modern technology. We're frankly being inundated by anonymous requests as a government for freedom of information, and we don't know where those requests come from. Many of them we're sure are AI bot generated requests. They may be linked to foreign actors, foreign powers, criminal gangs

**Doorstop interviewer with Minister Mark Butler (Minister for Health and Ageing, Minister for Disability and the National Disability Insurance Scheme)
2 September 2025**

Fact-check:

There is no evidence to substantiate these claims that the FOI system is currently being abused in this way. This has been shown on a number of occasions.

An investigative journalist's work revealed that the requests that were being referred to by Minister Butler were not, in fact, generated by an AI bot (see further Jeremy Nadel, *Government falsely blames AI for FOI surge* 8 September 2025, ICT News). Rather, they were submitted to the eSafety Commissioner through an online tool that was designed to assist applicants to compel the release of documents held by the eSafety Commissioner related to their name or social media handle. In many respects, this tool was similar to the Right to Know website. FOI documents reveal that when questions were raised within the eSafety Commissioner as to whether the flow of applications (one new FOI request every five minutes or so) 'may jam something and prevent work ... I suppose our mailboxes are built to sustain that quantum but I wanted to check and make sure nothing needed to be done, just in case'. The IT staff's response was: 'If it's one email every five minutes that isn't a concern at all from an IT perspective.' (See further reporting at <https://www.theguardian.com/australia-news/2025/oct/16/foi-changes-sparked-by-deluge-automated-requests>).

Claim 3 (cont)

In testimony before Estimates on 7 October 2025, witnesses from the Attorney-General's Department were not able to provide any evidence to support the claim of AI-generated bot applications linked to foreign or criminal gangs:

Senator CHANDLER: *What evidence is there to support the minister's claim that FOI requests are being generated by AI, by bots, by foreign, by criminal gangs? What sort of information would your department have on hand to be able to substantiate that claim in relation to your own FOI requests?*

Ms Jones: We've been made aware of circumstances for other departments and agencies whereby the sheer enormity of the volume of requests that are coming through, almost, if not simultaneously, in a very compressed timeframe, lends to a suggestion that they may be generated by a bot. I'll just get Mr Gifford to confirm. We don't think there has been an instance of that in the department, but, as we said, with some of these anonymous ones, it's very difficult to understand how they've been generated.

Mr Gifford: No, not to my knowledge; there has not been an instance we're aware of within the department's case load currently.

...

Senator CHANDLER: *I want to go back to the issue we were talking about with AI bots. Just so I'm very clear, is it your evidence here today that there is no evidence in your department that the FOI requests that you have received and are processing may have been linked to foreign actors, foreign powers or criminal gangs?*

Mr Gifford: I would expand my earlier answer to say that, actually, we have not provided analysis of requests that have been received as to whether they have or have not been the subject of creation by an AI bot. We take each request on its merits and process it in accordance with the current framework [emphasis added].

In response to an Order for the Production of Documents in the Senate for the evidence on which the Government is relying on to justify claims in relation to vexatious requests by AI or other non-human actors, and vexatious requests by criminal gangs, the Government tabled two, non-academic articles detailing instances of such occurrences in America. In relation to the Australian situation, a redacted memo contained the following statements as to how AI might be being used currently in Australia:

Claim 3 (cont)

- Technology is changing the way FOI requests are made. There are various examples of webforms and request generators being used to auto generate FOI requests, leading to high volume campaign style requests.
- Domestically, Australian government agencies have also provided examples of AI being used to not only generate requests, but to also draft written replies in response to communications from an agency. One agency's statistics suggested that of the FOI matters they had on hand almost 20% of personal matters and 50% of non-personal matters included AI-generated content.

In evidence before the Senate Legal and Constitutional Affairs Committee on 17 October 2025, witnesses from the Department of Home Affairs and Services Australia were clear that they too had no evidence of AI-generated applications, or applications from foreign powers or criminal gangs. Rather, they made clear that the concern was only that the system may be 'vulnerable' to such applications. For instance, they responded:

Senator COLLINS: What evidence do you have, then, that any FOI requests are created by bots?

Ms Hartigan (Home Affairs) We don't necessarily have evidence of it actually occurring in the department. What we're aware of is that the FOI system itself could be vulnerable to requests made by bots or generated by AI [emphasis added].

...

Senator COLLINS: Okay. How many FOI requests are currently on hand that are known to be linked to a hostile foreign power or criminal gang?

...

Mr Higgins (Services Australia): I'm unaware of that information, and I couldn't provide any detail on that.

Ms Hartigan : From the Home Affairs perspective, we're in a similar position. I think in our 2023 submission we indicated that we feel that the FOI framework itself could be at risk of or could be vulnerable to foreign interference [emphasis added].

Finding

Despite repeated questioning, the government has at no stage produced any evidence of an 'inundation' of anonymous requests generated by AI bots, linked to foreign actors, foreign powers, or criminal gangs. The highest that it has been stated is that the current FOI framework could be at risk of or vulnerable to such use.

Claim 4

National security concerns justify changes proposed in the FOI Amendment Bill

Details of the claim:

Ms Rowland (Attorney-General): The Albanese government will also not continue to tolerate a framework which allows offshore actors whose capabilities are enhanced with artificial intelligence to anonymously lodge FOI requests seeking information held by the Australian government. The idea that our laws could permit a foreign state to anonymously seek access to information about recent government decisions without us even knowing it is simply untenable. The government will refer its FOI legislation to the Senate Legal and Constitutional Affairs Committee for scrutiny and continue to engage with stakeholders and across the parliament on these reforms.

(Question Time, 3 September 2025)

Fact-check:

The Government has claimed that national security concerns justify the winding back of Australians' freedom of information rights. Yet in a further indictment of the poor process surrounding the FOI Amendment Bill, the Government has so far been unable to produce any evidence to justify its claims, and its attempts to explain it have revealed that it was the Attorney-General's Department to seek a briefing from intelligence services about the risk it claimed exists - rather than intelligence services seeking a legislative response to address a known national security risk. Based on what we currently know, it therefore appears that the important issue of national security has been fitted to the legislation after the fact, rather than providing a basis for legislative intervention.

Documents revealed via FOI establish that on 29 August 2025, Celeste Moran of the Attorney-General's Department wrote to a redacted name and AGD colleagues that she had 'engaged with ONI and ASIO who provided us with some relevant products': while she and a colleague had seen them all, other team members had been unable to because of their classification.

Claim 4 (cont)

Talking points included with this email ask the question 'Is it true that the FOI scheme could be being exploited by foreign adversaries?'. The response strongly suggests that it was AGD who sought advice from the National Intelligence Community (NIC) on the issue, rather than the NIC identifying a risk to national security posed by the FOI system and seeking to have it addressed by the reforms in the FOI Amendment Bill.

For instance, the talking points included with Ms Moran's 29 August email also note that, through consultation with the NIC, it was clear it 'it is not uncommon for foreign adversaries to identify legitimate avenues or processes (such as FOI) through which to obtain seemingly innocuous government information to paint an intelligence picture and use it in ways that are contrary to our national interest.' The way in which this statement is expressed does not suggest that there have been any examples in Australia of FOI actually being used to the detriment of Australia's national interest by foreign adversaries.

The proposed solution to the so-called problem is identified as not allowing anonymous requests, and the talking points claim this 'may go some way to deterring' [emphasis added] such activity. That is, it was not clear or certain that banning anonymous applications - a serious step that would deleteriously impact whistleblowers, public interest journalism, and marginalised groups - would be an effective way to respond to the claimed risk.

At the Senate Legal and Constitutional Affairs Committee public hearing on 17 October, Senator Shoebridge put to AGD officials that it appeared that security agencies did not come to them with concerns about foreign adversaries. The exchange, which is most revealing, puts beyond doubt that it was AGD to approach the NIC :

Senator SHOEBRIDGE: *What it appears to show is that the security agencies didn't come to you with this concern; you actively went out to the security agencies and sought that advice from them. Am I misreading that document?*

Ms Moran : We certainly did seek advice from the national intelligence community — that's correct.

Senator SHOEBRIDGE: *It wasn't as though you had national security agencies out there saying, 'Oh, my God; we have to deal with FOI otherwise Myanmar is going to tear down our government.' This was you reaching out to the agencies and asking, 'What do you think might be some national security implications for FOI?' Is that right?*

Claim 4 (cont)

Ms Moran : On a day-to-day basis, the work that we do doesn't formally intersect with the national security side of what government does, so I'm not privy to all of the discussions that happen in relation to that. But we did specifically seek their advice in relation to these amendments.

***Senator SHOEBRIDGE:** And they didn't come back and say, 'Wow, FOI is a problem; FOI is exposing us to foreign adversaries, 'did they?*

Ms Moran : What they did is provide us with some advice. I have said to you that some of that advice is of a classified nature. What they did is agree with us what they were comfortable with us saying in an open forum, and that's all I can continue to say.

***Senator SHOEBRIDGE:** What they say there in that document is, 'What we can say through consultation with the national intelligence community is that it's not uncommon for foreign adversaries to identify legitimate avenues or processes such as FOI through which to obtain seemingly innocuous information to paint an intelligence picture and use it in ways that are contrary to our national interests.' Is that a fair reflection of the advice?*

Ms Moran: That's right. Ms McClintock has just given me the document, so I have it in front of me. The third dot point says: 'Knowing who we are dealing with through the FOI system by not allowing anonymous requests may go some way to deterring this type of activity.' The points are trying to reflect that the consultation has happened, that there is some advice and that it may go some way towards deterring that type of activity [emphasis added].

Finding

There is no publicly available evidence that the FOI Act is currently being used by foreign actors or in a way such that the national security services have proactively raised concerns. Rather, the Attorney-General's Department requested advice from intelligence services about the risk of such an event.

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