

**SBS SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION
COMMITTEE INQUIRY INTO THE FREEDOM OF INFORMATION AMENDMENT BILL 2025
October 2025**

KEY POINTS

- SBS welcomes the opportunity to provide comment on the *Freedom of Information Amendment Bill 2025*.
- As a provider of public interest journalism, SBS recognises the critical importance of the freedom of information (FOI) framework in promoting open government, ensuring journalists and the public can access information that supports accountability in agency decisions and actions, and fostering an informed citizenry. Further, as an agency subject to the FOI framework, SBS recognises the importance of a clear and balanced regulatory framework that supports agencies in efficiently managing and responding to FOI requests.
- Noting the need for clear guidance, SBS in principle supports the proposed amendments that will enable agencies to:
 - a. exclude entirely personal correspondence that has no connection to the operation of the agency;
 - b. redact the identifying information of non-Senior Executive Service employees where that information is irrelevant to a request;
 - c. decline vexatious applications;
 - d. transfer requests without conducting document searches when it is apparent that the documents requested would not be in its possession;
 - e. provide for extensions of time to deal with requests with an applicant's agreement; and
 - f. refuse requests that are for access to documents that are clearly exempt, without having to first conduct a search for documents.
- SBS supports amendments to require proof of identity where the application relates to access to personal information, subject to guidance, and supports applications relating to personal information being free of charge. However, there is value in preserving the ability for other FOI requests to be made anonymously or as an entity.
- SBS questions whether a processing cap for requests would be an effective means of balancing the objectives of the FOI framework, and recommends further consideration be given to ensuring appropriate timeframes for responding to large-scale requests.
- SBS does not support the proposed amendments to broaden the documents exempt under the Cabinet exemption.
- It will be crucial that there is clear guidance provided to agencies and Minister to ensure that any new provisions are interpreted narrowly and appropriately and maximise access to documents to support the objective of open government.
- Noting the potential impact on the public's ability to access documents, SBS recommends that if the bill is passed, a review takes place after a defined period to ensure that any chilling effects on access to information are identified, considered and if necessary, rectified.

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- The Explanatory Memorandum (EM) notes that where proposed amendments would grant an agency more scope to refuse a request, such decisions are reviewable by the OAIC. For this measure to provide a meaningful protection, SBS notes the OAIC must be properly resourced so that IC reviews can be timely and effective.

I. ABOUT SBS

SBS is Australia's public media organisation dedicated to the delivery of services for all Australians, with a special remit to serve multicultural, multilingual and First Nations audiences. Through its news, information and entertainment services, SBS reflects and connects with diverse communities across Australia, fostering social cohesion and promoting civic, social, and economic participation. Recognised as one of the nation's most trusted news organisations, SBS plays a unique role in delivering impartial and independent news in more than 60 languages, ensuring all communities have access to reliable information.

As a statutory authority and public interest media organisation, SBS is subject to the *Freedom of Information Act 1982 (Cth)* (FOI Act), which ensures accountability and transparency in its own operations. SBS also utilises Freedom of Information legislation in its capacity as an independent journalistic institution, supporting its vital role in informing and engaging the Australian public through impartial and accurate news coverage and current affairs programs.

II. GENERAL COMMENTS

SBS notes that the majority of the amendments in the Bill focus on improving an agency's ability to more effectively process freedom of information (FOI) requests. SBS in principle supports improvements to the handling of FOI requests and enabling FOI teams, which can be leanly resourced in smaller entities, to handle FOI requests efficiently.

However, the cumulative effect of some amendments could impact timely access to documents including for journalists – these include for example the proposed amendments to cap FOI processing time at 40 hours, and broadening exemptions under certain provisions. Noting the balance of interests that are being considered here, SBS recommends if the bill is passed, a review of how the new provisions are being implemented and used by FOI entities takes place so that any chilling effects on access to information can be considered and if necessary, rectified.

Further to the above, the EM notes that where proposed amendments would grant an agency more scope to exempt material, such decisions are reviewable by the OAIC. For this measure to provide a meaningful protection, SBS notes the OAIC must be properly resourced so that IC reviews can be timely and effective.

III. SCHEDULE 1 – SCOPE AND OBJECTS

Part 1 – Objects provision

SBS acknowledges the stated purpose of amendments to the objects of the Act to balance objectives to promote transparency in government through providing access to information, supporting proper functioning of government, and protecting essential private interests.

As a provider of public interest journalism, SBS recognises the critical importance of the FOI framework in promoting open government, ensuring journalists and the public can access information that supports accountability in agency decisions and actions, and fostering an informed citizenry. Further, as an agency subject to the FOI framework, SBS recognises the importance of a clear regulatory framework that

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supports agencies in efficiently managing and responding to FOI requests, and appropriately exempting material for a range of reasons, including matters such as privacy or commercial sensitivity.

As detailed below, SBS considers that proposed amendments to the FOI Act would support the more efficient handling of FOI requests, provided there is clear guidance to ensure provisions are interpreted narrowly and to strike an appropriate balance between the objectives of enabling open government and supporting efficiency in the handling of FOI requests.

Part 2 – Definition of document of an agency

The amendments update ss 4(1)(a) relating to the definition of a 'document of an agency' to include that "the document is in the possession of the agency, whether created in the agency or received in the agency, and the document forms part of, or relates to, the operations of the agency." The Explanatory Memorandum (EM) outlines that "this amendment is intended to exclude entirely personal correspondence that has no connection to the operations of an agency from the operation of the Act (for example, reasonable email communication with family)."

SBS supports this change, noting that it is likely to be of low impact for journalists provided that there is clear guidance around what does or does not "relate to" or "form part of" the operations of the agency. Clear guidelines are required to ensure that this provision is correctly used and not deployed to reject legitimate access requests, on the basis that information is, for example, not considered substantive in forming the operations of the agency.

IV. SCHEDULE 2 – ACCESS REQUESTS

Part 2 – Non-disclosure of certain identifying information

SBS is supportive of amendments to enable agencies to redact the identifying information of non-Senior Executive service employees of agencies that can be reasonably regarded as irrelevant to a request. This is a positive change to protect the privacy of non-senior staff and mitigate risks that identifying information could be misused. It is noted that if an applicant is seeking identifying information of staff, amendments provide that applicants can submit requests specifying that they want that information included. SBS notes that under proposed s22(1B(b)) there are circumstances where access to employee identifying information can be refused even if it is specifically requested. Guidance should be provided to FOI entities on the ambit of this exemption, so that it is not used to routinely oppose any request to seek employee identifying information.

Part 4 – Vexatious applications and applicants etc.

SBS in principle supports amendments to allow agencies to dismiss FOI requests that are vexatious, frivolous, likely to have the effect of harassing, intimidating or causing harm to another person, or which are otherwise an abuse of process, provided that sufficient guidance is issued on the factors that will determine when a request meets these thresholds. Guidance is required to ensure that agencies share a common understanding of these thresholds, to ensure legitimate requests are processed and that agencies are empowered to use the provision effectively.

For example, legitimate scrutiny by journalists could involve multiple requests on related topics. Such queries should not be seen as "vexatious" unless there is some additional element (e.g., harassing or abusive language). In addition, an agency should be given sufficient guidance to confidently dismiss such requests, especially where there is a risk of harm or other detrimental impacts. Effective guidance will therefore be critical for both applicants and agencies.

SBS acknowledges that a decision to refuse to deal with these types of requests would be an IC reviewable decision, providing an avenue for applicants to dispute the decision. Further, the EM

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highlights that "if an applicant is provided with a decision to refuse to deal with a request, this does not prevent the applicant from making further requests."¹

Part 5 – Anonymous and pseudonymous requests

SBS supports amendments to require an applicant (or person acting on behalf of an applicant) to provide proof of identity where they request the release of an applicant's personal information. This reflects best practice guidance from the FOI Guidelines, supports privacy protection, and reduces the risk of personal information being inappropriately released and put at risk of misuse. SBS also supports requests for personal information being free of charge if the applicant is requesting their own information.

There is value in preserving the ability for FOI requests to be made anonymously or as an entity, where those requests do not relate to personal information. This reflects the principles of the public's right to know and supports broader participation by the public.

With regard to item 53, SBS recommends clear guidance is provided on the expectations for entities with regards to verifying an applicant's identity if they receive a request that does not relate to the disclosure of personal information.

SBS otherwise acknowledges the serious issue of foreign interference and considers that existing exemptions in the FOI framework operate to exempt from disclosure documents that affect Australia's national security, defence or international relations.

Part 6 – Requirements for transfer of request

SBS supports the amendment to enable an agency to transfer a request it receives to another agency or Minister when the subject-matter of the request is more closely connected with the functions of another agency, and without the requirement to conduct an initial search. This amendment will enable greater efficiency, helping to reduce the time for requests to be made to the agency or Minister best placed to respond to them.

V. SCHEDULE 3 – PRACTICAL REFUSALS

Part 2 – Processing time limit

The amendments would introduce a default minimum processing cap of 40 hours for requests.

SBS supports the objective of enabling greater efficiency of agency resources in handling and responding to FOI requests; however, SBS questions whether a processing cap is an effective means of balancing this objective with the objective to promote access to Government documents. It is unclear whether, on balance, the processing cap would optimise access to documents through legitimate FOI requests. Further consideration may be given to balancing these objectives by ensuring FOI requests are relevant to agencies and that they contain the information critical to processing them, that agencies are afforded appropriate timeframes to respond to large-scale requests, and existing provisions under the Act which enable agencies to charge a nominal hourly rate for processing requests which require resourcing beyond a minimum number of hours.

SBS notes that the Explanatory Memorandum outlines that an agency or Minister may still determine that a practical refusal reason exists because the request would "substantially and unreasonably divert the resources of an agency", and that this could occur in instances "where a request seeks documents of a specialist nature or that the agency or Minister considers the request can be administered only by a

¹ EM, page 24.

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Minister or senior officer with significant competing demands on their time, or the agency is a smaller agency with limited resources.”² It is not clear how these two provisions would interact and whether, for example, an agency can determine that a request would substantially and unreasonably divert the resources of an agency if the estimated time for processing the request is under 40 hours.

VI. SCHEDULE 4 – REQUESTS AND REVIEW PROCESSES

Part 2 – Extension of time arrangements

Amendments remove the 30-day limit on extending decision-making timeframes with the applicant's agreement. SBS supports this change to enable large and complex FOI requests to be progressed where this would require additional time beyond current limits.

VII. SCHEDULE 5 – INFORMATION COMMISSIONER REVIEWS AND COMPLAINTS

SBS makes no comments on this Schedule.

VIII. SCHEDULE 6 – APPLICATION FEES

SBS notes its support for FOI requests relating to personal information to remain free of charge.

SBS produces public interest journalism and is an agency subject to the FOI framework. As a result, SBS reserves comment on nominal application fees for other FOI requests. However, it is noted that the introduction of an application fee would have an impact particularly on small media outlets, independent journalists, and private citizens.

IX. SCHEDULE 7 – EXEMPTIONS

Part 1 – Refusing a request on its terms

SBS strongly supports changes to the Act to enable FOI entities to refuse requests that are for access to documents that are clearly exempt, without having to first conduct a search for documents. As an example, SBS's program material is exempt. If SBS receives an FOI request for all promotional clips of a program, it is clear this material will be program material. Under the current legislation, SBS would still be required to conduct a search to determine how many such clips are held in SBS systems, and extract that material for the FOI team, before SBS could issue a decision that the material is exempt. This is an inefficient use of agency resources.

SBS notes it will be important to provide clear guidance to agencies to ensure that a narrow interpretation is applied to assessments that documents are exempt based on “the nature of the document as described” in a request. Clear guidance can help prevent agencies applying s23A too broadly. SBS acknowledges that decisions to refuse access would be reviewable by the Information Commissioner.

Part 2 – Cabinet documents

SBS opposes amendments under s 35 which seek to expand the range of documents exempt under this part. The exemption should be clearly and narrowly defined, and closely linked to the Cabinet process itself, in order to balance the objectives of the Act to promote transparency and accountability in government.

² EM, pp.35-36

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SBS supports the amendment under Item 10, s 34(7) which clarifies that a document will not be determined to be exempt solely based on whether or not the document contains a security marketing or other feature identifying the document as a Cabinet document. This supports exemptions being appropriately applied based on the information actually contained in the document.

X. SCHEDULE 8 – OFFICIAL DOCUMENTS OF A MINISTER

Part 1 – Main amendments

Amendments under Schedule 8, Part 1, address the scenario where a Minister leaves office, outlining how pending or new FOIs are to be managed for records of the departed Minister.

SBS notes there is some complexity to these amendments and that the proposed operation should be clarified. In general, SBS notes that if a document of a Minister was accessible under FOI whilst they were in office, the document needs to continue to exist as a record which is available for FOI requests after they leave office. The Act should make it clear that documents should be transferred to the relevant or 'default' department, and that a department would then administer any FOI requests relating to those documents, and all entities should assist applicants in locating the right entity for their requests for documents of the departed Minister.

SBS also recommends that if there is a possibility that an Applicant could lose the right to bring an IC review against a decision relating to a Minister (if the Minister leaves office before the IC review is requested) applicants should be notified of this possibility and encouraged to make early IC review requests.

XI. SCHEUDLE 9 – OTHER AMENDMENTS

SBS makes no comments on this Schedule.

I. CONCLUSION

SBS appreciates the opportunity to provide comment on the *Freedom of Information Amendment Bill 2025*.

As a provider of public interest journalism and an agency subject to the FOI framework, SBS recognises the critical importance of ensuring the FOI Act enables and promotes open government and supports agency efficiency in responding to FOI requests.

As detailed in this submission, SBS considers that several proposed amendments would support agency efficiency and handling of FOI requests, including amendments to: exclude personal correspondence with no connection to the operation of the agency; redact identifying information of non-Senior Executive Service employees where this information is irrelevant to a request; enable agencies to decline vexatious applications; allow agencies to transfer requests without conducting a document search where it is apparent the documents would not be in its possession; enable extensions of time to deal with requests with an applicant's agreement; and enable agencies to refuse requests for access to documents that are clearly exempt without having to conduct a search for documents.

SBS further supports amendments to require proof of identity for request relating to personal information, subject to guidance. However, there is value in preserving the ability for other FOI requests to be made anonymously or as an entity. SBS queries whether a processing cap for requests is the most effective means of balancing the objectives of the FOI framework and recommends this is considered

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further. SBS is also opposed to proposed amendments to broaden the documents exempt under the Cabinet exemption

Guidance will be required to ensure that both agencies and applicants have a clear understanding of how new provisions would be applied, and to ensure a narrow interpretation of new provisions to maximise access to documents and support the objective of open government.