Senate Legal and Constitutional Affairs Committee

Freedom of Information Amendment Bill 2025

Founded in 2001, the Asylum Seeker Resource Centre (ASRC) is Australia's largest independent aid and advocacy organisation for people seeking asylum and refugees, supporting and empowering people at the most critical junctures of their journey. Our services include legal, casework, housing, medical, education, employment and emergency relief. Based on what we witness through our service delivery, we advocate for change with refugees to ensure their human rights are upheld.

The ASRC welcomes the opportunity from the Senate Legal and Constitutional Affairs Legislation Committee to provide a submission regarding the *Freedom of Information Bill 2025.*

The ASRC's legal team, the Human Rights Law Program, regularly makes Freedom of Information (FOI) requests as part of its day to day work representing people seeking asylum in their Administrative Review Tribunal matters and before the Federal Circuit and Family Court of Australia. These requests and associated receipt of information are critical to ensure that our clients are well-represented and able to pursue their legal rights to fair decisionmaking under the law.

The ASRC also makes occasional Freedom of Information requests as an organisation, to obtain information for our advocacy related to the operations of the Department of Home Affairs (the Department), for example to seek information about the treatment and human rights of people in immigration detention both onshore and offshore, to understand decision-making or to obtain transparency in relation to contracts that cost the Australian taxpayer billions of dollars.[1]

The importance of the FOI system to asserting the legal rights of the people we work with and to obtain transparency over secretive government contracts cannot be understated. While there are some elements of this Bill that appear to be aimed at improving efficiencies and modernising the Act, the Bill appears to be following the same pattern that we are seeing, in which this government drafts legislation that provides the Minister for Home Affairs with broad powers and discretion without the safeguards necessary to promote Government accountability.

Changes to objectives of the Act

At Schedule 1, Part 1, Division 1, Item 1, the Bill seeks to amend the objectives of the Act to limit the power of the FOI regime. The Bill seeks to amend the objectives of the Act as follows:

> *'The objects of this Act are to give [**, as far as possible,**] the Australian community access to information held by the Government of the Commonwealth'*

The proposed amendment weakens the purpose of the Act. It reframes the objective from guaranteeing public access to government information, to granting access only where it is convenient or acceptable to government departments. This is a fundamental shift - from a presumption of openness and accountability to the public to a presumption of control of information by Government.

[1] *Nauru deportation deal set to cost Australia $2.5 billion over 30 years*, ABC News, 3 September 2025, https://www.abc.net.au/news/2025-09-03/nauru-deportation-deal-set-to-cost-billions/105731938

This change to the objects of the Bill is not just symbolic. The objects provisions guide how every other part of the Act is interpreted and applied. If its language is narrowed, it risks changing how courts, tribunals and decision-makers approach exemptions, refusals and the discretion of decision makers- in effect, changing the balance of the Act to be more amenable to secrecy.

This change makes clear the purpose of this Bill - to temper the public's right to know, to hold power to account, and to expose government decision-making to transparency.

Changes to what is a 'document of an agency'

At Schedule 1, Part 2, Item 5 of the Bill, it proposes to change the definition of a 'document of an agency' at subsection 4(1). The insertion proposes to limit what could be considered a 'document of an agency' to documents that 'form[s] part of, or relate[s] to, the operations of the agency.'

This would have the effect of limiting what documents are available to the public under the FOI Act, and could be quite broadly interpreted.

In the experience of the ASRC, where these clauses already exist in the Act, the Department often seeks to use them very broadly to restrict access to documents. For example, our lawyers often use FOI to request information about decisions made about removal pathways (assessments of the ability of a person to be removed from the country) or risk assessments (which determine where a person is to be placed in the onshore immigration detention network. The Department regularly responds to these by using the existing provisions in s47E of the Act[2] to argue that the information would reveal information that would prejudice their operations.

These experiences suggest that the proposed provisions are likely to be used by the Department to further restrict disclosure. This would directly impede the ability of legal representatives to uphold the rights of the people we represent and would undermine our capacity to ensure their safety and fair treatment.

Introduction of a discretionary 40-hour processing cap

At Schedule 3, Part 2, Division 1, the Bill proposes to introduce a discretionary 'processing cap' regime, which is the proposed change that is likely to have the most significant impact on our clients' ability to obtain their immigration records.

In the experience of our legal program, the Department already regularly relies on the existing provisions in s24AA, which outline the reasons for a 'practical refusal', stating that a practical refusal reason exists if the work involved in processing the request 'would substantially and unreasonably divert the resources of the agency from its other operations'.[3] These new provisions would not replace the existing practical refusal reasons, but build on them - introducing a new discretionary 40 hour processing cap. A note drafted into the proposed legislation makes this clear.[4]

In our experience, what constitutes an unreasonable diversion of resources is applied very inconsistently, for example, we see instances of decision makers deeming 20 hours for processing the request to be too long, and others deeming 140 hours to be too long. It is likely that the introduction of the 40 hour processing cap will result in an increase in practical refusals.

[2] Freedom of Information Act 1982 (Cth), section 47E(d)
[3] Freedom of Information Act 1982 (Cth), section 24AA, subsection 1(a)(i)
[4] Freedom of Information Amendment Bill 2025, Schedule 3, Part 2, Division 1, Item 10, Note 2

Access to protection applicants' records is critical to our ability to provide legal assistance to our clients. As some have been in Australia for 12 years or more, there is often 12 years of decision making held by the Department. For people in immigration detention, there might be 8 years or more of detention records, outlining decisions made by Australian Border Force about a person's treatment, placement, risk assessments, incident reports or medical care. This constitutes at minimum hundreds, and sometimes thousands of pages of documents.

Access to our clients' records is important because difficulties with memory and concentration are well-documented impacts of a history of torture and trauma[5], which many of the people we work with have experienced by definition of having fled their country of origin for reasons of persecution. These symptoms are also a direct impact of long term immigration detention.[6] It therefore is often extremely difficult to take an accurate history of a person's applications and movements, and to have them recount their protection claims in detail over a decade later, which is necessary for people who have been subjected to the 'Fast Track' system or who have otherwise had a prolonged visa determination process.

We are deeply concerned that the proposed processing cap would have a profound and disproportionate impact on people seeking asylum and refugees - those least able to navigate a more restrictive FOI regime. In practice, it would entrench barriers to justice by preventing access to essential immigration and detention records that are often the only evidence available to reconstruct complex protection histories. For people whose memories are affected by years of trauma, persecution and prolonged detention, access to these records is vital to ensuring that their claims are understood and assessed fairly.

Implementation of application fees

Another area of significant concern is the introduction of application fees under Schedule 6 of the Bill. While the Explanatory Memorandum states that these fees will not apply to requests for an individual's own information, the power to set fees by regulation opens the door for future governments to impose charges that deter legitimate requests for information that Australians have a right to access. Such fees risk pricing out journalists, community legal centres, and advocacy organisations from accessing information that is essential to government accountability and informed public debate.

In our experience, Governments have gone to great lengths to subvert and hide information related to the treatment of people seeking asylum because of the political risks they perceive in the information becoming public. Nowhere has this been more clear than in the history of offshore detention in both the Republic of Nauru, and in Papua New Guinea. It is our firm belief that if this provision becomes law, current and future governments will use it to the best of their ability to prevent organisations like ours from accessing this kind of information through FOI.

Given the long history of well-documented human rights abuses[7] in Australia's offshore detention system, transparency has never been more important. Access to information has historically been and continues to be vital in uncovering what really happens in offshore detention facilities, to protect people from harm, and to allow human rights organisations like ours to hold governments to account for the abusive policies they are implementing. The introduction of new fees set by

[5] Kaplan, Ida 2018, *Experience of Torture and Trauma: Psychological and physical effects, management and psychological approaches,* Australian Refugee Health Practice Guide, p.5
[6] Ibid, p.06
[7] *Externalisation of Migration and the Impact on the Human Rights of Migrants,* Australian Human Rights Commission 24 June 2025, pp.4-7

regulation carries a huge risk that they could be misused to make it harder to expose human rights abuses and the huge waste of taxpayers money that has now been occurring for over a decade.

Conclusion

The Freedom of Information Amendment Bill 2025, while presented as a modernisation of the existing regime, would in practice make it harder for organisations like ours to access information that is critical to transparency and accountability, and to obtain information that is necessary to pursue the legal rights of our clients The proposed amendments shift the balance of the Act away from openness and toward secrecy, concentrating discretion in government agencies and creating new obstacles to scrutiny.

For people seeking asylum and refugees, the consequences would be especially severe. The 40-hour processing cap and potential imposition of application fees would further entrench the barriers already faced by those navigating complex, opaque and high-stakes immigration and protection processes. Many of the people we work with have survived torture and trauma, and as a result experience ongoing difficulties with memory, concentration and recall. Access to their migration records is therefore vital to ensuring that their histories are accurately understood by their lawyers to enable them to access fair decision-making in matters that will affect the course of their lives.

Australia's Freedom of Information system was founded on the principle that the public has a right to know what the government does in its name, and the right to access information that the government holds about them. While we acknowledge that the Act needs to be modernised to reflect advances in technology and the way information is shared today, this Bill does not achieve that. Instead, it would tip the balance toward government secrecy and make it harder for lawyers and human rights organisations to access the information needed to ensure that government decisions are lawful, fair and consistent with Australia's human rights obligations.