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Senate Legal and Constitutional Affairs Committee

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Submission to Freedom of Information Amendment Bill 2025 (Cth)

About Economic Justice Australia

Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice to people on their social security issues and rights. Our Member Centres across Australia have provided people with free and independent information, advice, education and representation in the area of social security for over 40 years.

EJA provides expert advice to government on social security reform to make it more effective and accessible. Our law and policy reform work:

- strengthens the effectiveness and integrity of our social security system
- educates the community
- improves people's lives by reducing poverty and inequality.

Our Member Centres make freedom of information (FOI) requests to advise and assist clients with social security issues, particularly debts.

Case Study: Laila

Our Member Centre was approached by Laila (name has been changed), a young single mother from a culturally and linguistically diverse background. Laila was a survivor of family and domestic violence. There had been a change of care of her children, which Laila said she had promptly advised Centrelink about, and then been informed of her new payment amount. Laila was shocked when she later received a family assistance debt.

Unable to untangle the circumstances leading to the debt by other means, our Member Centre made an FOI request with Laila's consent, which confirmed that Laila had promptly and accurately reported the care of her children. It also confirmed that Centrelink had made an

error which led to the overpayment. On the basis of that information, our Member Centre sought an internal review of the debt, and the entire debt was waived.

This submission is focused on any impact this Bill may have on Member Centres' ability to do this critical work. We set out below concerns raised by our Member Centres that we expect will be encountered if this Bill is passed.

Summary of recommendations

Recommendation 1: Delete Schedule 2 Part 5 Division 1 of the *Freedom of Information Amendment Bill 2025* (Cth) to ensure an individual's prompt access to their personal documents.

Recommendation 2: Delete Schedule 3, Part 2 of the *Freedom of Information Amendment Bill 2025* (Cth) to ensure that individuals are able to access personal information about themselves that is essential to resolve their legal issues.

Recommendation 3: Delete Schedule 6 clauses 48- 50, 54 and 63 of the *Freedom of Information Amendment Bill 2025* (Cth) to ensure that individuals are able to access personal information about themselves that is essential to resolve their legal issues.

Recommendation 4: Amend Schedule 6 clause 6 of the *Freedom of Information Amendment Bill 2025* (Cth) to introduce a new subsection 93C(6) to allow for the regulations to make a provision for the waiver or remission (in whole or part) for not-for-profit organisations of a fee that would otherwise be payable by an applicant making a request under section 15, or an application under section 54B or 54N.

Recommendation 5: Amend the *Freedom of Information Amendment Bill 2025* (Cth) to repeal section 34 of the *Freedom of Information Act 1982* (Cth) (FOI Act) to implement this recommendation of the Robodebt Royal Commission.

Anonymous and pseudonymous requests – Amendments (requirement for name and identity documents) (Schedule 2 Part 5)

1. The *Freedom of Information Amendment Bill 2025* (Cth) (the Bill) requires that an applicant seeking to access a document containing personal information must provide their full name and proof of their identity. An applicant seeking to access documents on behalf of another person is also required to provide their full name and proof of their identity as well as proof of authorisation.¹
2. If these identity documents are not provided, a notice may be issued to seek proof of this identity, and if it is not complied with then the request for information is taken to be withdrawn.² The Explanatory Memorandum at [125] provides that '[t]he agency or Minister is not obligated to seek proof of identity.'
3. There are no details currently available regarding what proof of identity will be required to be provided.

¹ Clauses 53 and 54 of the Bill amending subsection 15(2) of the FOI Act.

² Clause 56 of the Bill adding in a new section 19 to the FOI Act.

4. As set out in Explanatory Memorandum at paragraph [13], proof of identity (POI) requirements are designed to ensure that “personal or private information is only disclosed in appropriate circumstances such as to an individual who is seeking their own personal information, and to ensure the FOI system is not used to enable identity fraud and other fraudulent behaviour.” However, these requirements could delay or prevent vulnerable individuals being able to access their personal documents to review and potentially seek review of an administrative decision in a timely way.

Removal of ability to make anonymous request

5. EJA is concerned by the impact that the removal of anonymous requests could have on potential whistleblowers, and consequently on the integrity of the social security system. EJA notes the importance of whistleblowing in raising public awareness regarding concerns about the lawful operation of the Robodebt scheme. The mechanism allowing anonymity can also be useful where individuals wish to investigate an issue but have had previous negative experiences in their interactions with government, which has led to distrust of the system.

Proof of identity requirements for individuals requesting their personal documents

6. EJA’s research has found that POI requirements particularly impact First Nations people, victim-survivors of family and domestic violence, young people, migrants, refugees and individuals leaving institutions (for example, prisons and psychiatric facilities).³ Photo identification can be particularly difficult for individuals to produce due to the cost and lack of access to government services in regional, rural, remote and very remote Australia.
7. Services Australia has developed alternative identity processes for individuals who struggle to meet standard POI requirements; a positive step towards a more inclusive social security system. These provisions are widely used, with approximately 490,000 people currently accessing social security payments through Alternative Identity mechanisms.
8. EJA recommends that clauses 54 and 56 be deleted. If they are to be retained, it will be essential to add provisions which would allow individuals to access their personal information using alternative proof of identity. For example, section 18(3) “Application for access to government information” of the *Information Act* (NT) provides that before accepting an application for government information, a government agency must satisfy itself as to the identity of the applicant. We have been advised by a Member Centre that the Northern Territory Government has accepted a client’s Centrelink income statements as proof of identity and not insisted on photo identification.

³ Economic Justice Australia (2025). [Social Security for Women Outside Our Cities: Service Delivery Barriers \(Report 1\)](#) Chapter 3.

Proof of identity requirements on those requesting personal documents on behalf of someone else

9. EJA Member Centres often make FOI requests on behalf of clients with their written authority which is provided at the time of the request. While law societies may provide an access card for solicitors with practising certificates, Members Centre employees include paralegals, social and support workers, and financial counsellors who may not have access to a professional identity document. EJA remains concerned that our Member Centre staff would have to provide personal identity documents as part of this process to assist clients. EJA maintains that any requirement for our member centre lawyers or other staff to provide personal details about themselves to third parties in the course of their duties – including, for example, their residential address – is inappropriate and mis-calibrated.
10. EJA is also concerned about the administrative burden to our Member Centres, which have limited resources to support the significant volume of clients that contact them for support. While our recommendation is that clauses 54 and 56 be deleted, if these are to be retained, EJA would support a mechanism whereby workers are not required to continually provide POI. Alternatively, the regulations could specify that Alternative Identity mechanisms could be accepted, such as a standard letter from an employer organisation stating that the employee works in this organisation and is making this request in that capacity.

Recommendation 1: Delete Schedule 2 Part 5 Division 1 of the *Freedom of Information Amendment Bill 2025* (Cth) to ensure individual's prompt access to their personal documents.

Processing time limit (Schedule 3, Part 2)

11. EJA is concerned about the introduction of a processing cap, even though the regulations, if any, may prescribe a higher number of hours of work.
12. EJA disagrees with the assertion in the Explanatory Memorandum to this Bill, which states that the discretionary 40-hour processing cap for FOI request is an appropriate balance between an applicant's access right and the administrative burden on agencies in providing this access.⁴
13. The Final Report of the Royal Commission into the Robodebt Scheme highlighted the importance of FOI requests for individuals to ascertain how debts were calculated but also for others – such as journalists, academics and activists – to establish facts underpinning what was occurring.⁵
14. Our Member Centres have also found that FOI requests can be essential to working out the reason a client has a debt, as Centrelink debt letters do not provide explanation of the reasons for a debt – an issue EJA has brought to the attention of Services Australia.
15. It is not uncommon for debts to relate to payments made over many years, with the quantum of debts sometimes exceeding \$100,000, which could be impossible to repay and particularly for those relying on meagre rates of social security. Consequently, our Member

⁴ House of Representatives, Parliament of Australia. [Freedom of Information Amendment Bill 2025 - Explanatory Memorandum](#) (2025)[7].

⁵ Commonwealth of Australia, Report of the Royal Commission into the Robodebt Scheme (2023) p 398, 669. Noting, EJA gave evidence to the Robodebt Royal Commission about the experience of its members centre and their clients of this scheme.

Centres are required to make FOI requests which can constitute hundreds of pages of documents. EJA is unclear about whether such requests would exceed the proposed time limit. While we understand that the regulations may prescribe a higher number of hours of work, we are concerned that this provision may place a barrier on our Member Centres continuing this essential work.

16. We understand this recommendation comes out of the Office of the Information Commissioner's *Review of charges under the Freedom of Information Act 1982: Report to the Attorney-General* (2012). This report states that an agency must consult with the applicant before making a decision around the 40-hour ceiling on processing time. It further recommends "a clear standard for deciding when consultation should occur between an agency and an applicant about revising and narrowing the scope of a request that appears unmanageably large". The requirement to consult was also included in Dr Allan Hawke's *Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010 Report* (2013). However, this requirement has not been included in this Bill.
17. EJA supports the logic of the argument for consultation with the applicant before denying an FOI request.
18. We also note concern regarding the capacity to accurately gauge whether an FOI request will take more than 40 hours to process. With this context, we urge the Government to resource effective recruitment and thorough training and resourcing of FOI teams.

Case Study: Gertrude

Gertrude, who is from a culturally and linguistically diverse background, had a number of Centrelink debts over several years. While Gertrude had some contact with Centrelink, she did not understand why she had all these debts. With Gertrude's consent, our Member Centre contacted Centrelink but was not able to ascertain whether all these debts were owed and whether she was able to seek waiver of these debts. Our Member Centre put in an FOI request on Gertrude's behalf and received more than 1000 pages. The information in these documents was critical to understanding the reasons for the debt and seeking waiver of Gertrude's debt.

Recommendation 2: Delete Schedule 3, Part 2 of the *Freedom of Information Amendment Bill 2025* (Cth) to ensure that individuals are able to access personal information about themselves that is essential to resolve their legal issues.

Working days (Schedule 4, Part 4)

19. The Bill seeks to:
 - extend the period that the agency or Minister has to notify that the request was received from 14 days (two weeks) to 15 working days (three weeks).⁶
 - extend the period that the agency or Minister has to notify the applicant of its decision on the request from 30 working days (around four weeks) to 30 working days (six weeks).⁷ This time can be extended to 30 working days from 30 days.⁸

⁶ Clause 48 of the bill amending subsection 15(5)(a).

⁷ Clause 49 of the Bill amending subsection 15(5)(b).

⁸ Clause 50 of the Bill amending subsection 15(6)(a).

- provide that on application by an Agency or Minister, the Information Commissioner may extend the time by 30 working days, from 30 days for complex or voluminous requests.⁹
 - extend the time for a decision on internal review about access refusal or grant to be extended to 30 working days from 30 days.¹⁰
20. The effect of the Bill is that the time to process requests and further extensions of time by the Minister, Agency or Information Commissioner would extend from the current 30 days to 30 working days.¹¹
 21. EJA Member Centres often make FOI requests for clients to get information about their Centrelink debts. While there is no time limit to seek internal review of a Centrelink debt, individuals are often genuinely distressed and anxious about having this debt, which they are required to commence repaying, including while disputing the debt through administrative review. Ideally, certainty about the circumstances underpinning the alleged debt, and confirmation regarding whether there is a debt, can be undertaken as quickly as possible. This amendment delays this process.
 22. EJA Member Centres are reporting significant delays in FOI requests being processed. They are also reporting that individuals' personal documents are being heavily redacted (including the content of letters previously sent to the individual), which means that what is being produced becomes incomprehensible and unusable. Questions arise about whether this level of redaction is necessary.
 23. EJA understands that at times staff with limited experience have been moved into FOI teams to assist with processing, which may impact both processing times and the quality of decision-making.
 24. Rather than extending time periods for processing, EJA requests that the current timeframes be respected through adequate resourcing of FOI teams.
 25. The Explanatory Memorandum at [254] refers to this amendment "minimis[ing] the regulatory and administrative burden on agencies (and therefore, costs) without impacting the statutory right of access to government information". It is not clear how extending this timeframe will minimise costs.
EJA is aware there are mechanisms additional to FOI that allow a person access to documents held by government departments; mechanisms which EJA Member Centres continue to access. EJA recommends that Services Australia increase promotion of mechanisms to access documents through alternative means, such as administrative release and request via MyGov or the Centrelink online app.

Case Study: Mark

Mark, a single father of four children, contacted our Member Centre after he received a letter saying he had a Centrelink debt. Mark had been living in insecure housing, and after some challenges, two of his children went into the care of a family member. Mark was experiencing significant mental ill-health at this time but told our Member Centre that he thought he had let Services Australia know about the change of care. Services Australia

⁹ Clause 54 of the Bill amending subsection 15AB(2).

¹⁰ Clause 63 of the Bill amending subsection 54C(3).

¹¹ Clauses 49, 50 and 54 amending subsections 15(5)(b) and 15(6)(a).

had taken several months to process this update, but Mark told our Member Centre that he did not realise a mistake had been made, as he was getting more than one payment and he did not think he had got any letters in that time. Mark was very stressed about having this debt hanging over his head when he thought he'd "done the right thing". Repaying his debt was causing him severe financial hardship.

Our Member Centre submitted an FOI request to get a copy of Mark's file, which demonstrated that Mark had informed Services Australia on more than one occasion of his change in circumstances and that he did not get anything from Centrelink to alert him to this overpayment. Mark kept contacting the Member Centre to see what was happening with his matter and, while he agreed to an extension of time to process this FOI request, he felt anxious and stressed about having this debt. The Member Centre requested an internal review on Mark's behalf, arguing that Mark had informed Centrelink of his children leaving his care, that Mark had not known he was being overpaid, and highlighting Mark's challenging circumstances. The debt was waived. Mark's successful appeal relied on the documents obtained under FOI.

Recommendation 3: Delete Schedule 6 clauses 48- 50, 54 and 63 of the *Freedom of Information Amendment Bill 2025* (Cth) to ensure that individuals are able to access personal information about themselves that is essential to resolve their legal issues in a timely way.

Application fees (Schedule 6)

26. EJA appreciates that there will be no application fees for requests for personal information, and provision for exemption where there is financial hardship. However, we remain concerned about application fees more generally.
27. Parts of the Services Australia's Operational Blueprint are not publicly available but can be invaluable in advising and assisting clients. In order to provide support to clients, Member Centres have made FOI requests to access information contained in Operational Blueprints. This amendment poses a real risk that Member Centres would have to pay an application fee to access documents such as an Operational Blueprint, which would put pressure on already scarce Member Centre resources.

Recommendation 4: Amend Schedule 6 clause 6 of the *Freedom of Information Amendment Bill 2025* (Cth) to introduce a new subsection 93C(6) to allow for the regulations to make a provision for the waiver or remission (in whole or part) for not-for-profit organisations of a fee that would otherwise be payable by an applicant making a request under section 15 for an application under section 54B or 54N.

Expansion of the Cabinet exemption (Schedule 7, Part 2)

28. EJA was disappointed to see the widening of the Cabinet exemption (clauses 3 – 10 of the Bill amending section 34 of the FOI Act).
29. The Royal Commission into the Robodebt Scheme, in criticising section 34 of the FOI Act, recommended that it be repealed stating:

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. 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. ...

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.¹²

EJA questions why the Bill includes provisions contrary to this recommendation, and supports the recommendation of the Royal Commission into the Robodebt Scheme.

Recommendation 5: Amend the *Freedom of Information Amendment Bill 2025* (Cth) to repeal section 34 of the FOI Act to implement this recommendation of the Royal Commission into the Robodebt Scheme.

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¹² Commonwealth of Australia, Report of the Royal Commission into the Robodebt Scheme (2023) p 669 - 671.