



Submission to the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the operation of Commonwealth Freedom of Information (FOI) laws

June 2023

The Australian Press Council welcomes the opportunity to provide a submission to the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the operation of Commonwealth Freedom of Information (FOI) laws.

The Australian Press Council

The objects of the Press Council are to promote freedom of speech through responsible and independent print and digital media, and adherence to high journalistic and editorial standards.

The Press Council is the principal body with responsibility for setting and promoting high professional standards for publisher members and for considering, dealing with and responding to complaints about Australian newspapers, magazines and associated and stand-alone digital outlets. It seeks to meet its objectives by:

- a) encouraging and supporting initiatives by the print and digital media to address the causes for readers' complaints and concerns;
- b) keeping under review and, where appropriate, challenging political, legislative, commercial or other developments which may adversely affect the dissemination of information of public interest and may consequently threaten the public's right to know;
- c) making representations to Governments, public inquiries and other forums as appropriate on matters concerning freedom of speech and access to information;
- d) undertaking research and consultation on developments in public policy affecting freedom of speech, and promoting public awareness of such issues; and
- e) promoting an understanding of the objects and activities of the association especially among editors, journalists and journalism schools.

The Press Council currently covers approximately 450 print and online mastheads. Constituent bodies include most of the major newspapers and magazine publishers in Australia. The Press Council's role is not to represent the media, and constituent members of the Press Council may wish to make their own submissions to the inquiry.

The Press Council considers complaints about print and online publications. Where appropriate, it seeks to achieve agreed remedies, issues letters of advice to publishers and publishes formal adjudications regarding certain complaints.

This inquiry

As stated above, making representations on access to information is a key function of the Press Council.

It is critical that the Commonwealth Freedom of Information Laws are applied in a way that promote the express objects of the legislation and Parliament's intention in those express objects. Those intentions include:

- To promote Australia's representative democracy by contributing towards the following:
 - increasing public participation in Government processes, with a view to promoting better-informed decision-making; and
 - increasing scrutiny, discussion, comment and review of the Government's activities.

- Increasing recognition that information held by the Government is to be managed for public purposes and is a national resource.
- That functions and powers given by the legislation are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

The Press Council's Charter for a Free Press in Australia sets out a number of principles relating to freedom of the press, including the principle that "Laws, regulations and practices which in any way restrict or inhibit the right of the press freely to gather and distribute news, views and information are unacceptable unless it can be shown that the public interest is better served by such laws, regulations or practices than the public interest in the public's right to know."

The operation of a free and open press is an important foundation to Australia's democracy. A free press ensures the public is properly informed on matters of public interest. This is an important element of public interest journalism holding Governments and decision makers to account for their decisions and actions.

The Press Council acknowledges that there are instances the public or national interest may best be served by maintaining confidentiality around certain issues, decisions or processes. However, its starting position is that a compelling case must exist before the media is constrained from accessing information or material relevant to its work.

The existence of an effective Freedom of Information regime is entirely consistent with the above points as timely access to Government information and decisions is an important right in a properly functioning democracy. The Press Council is concerned that current arrangements do not support timely access to information, and that journalists seeking to write articles in the public interest continue to encounter difficulties in accessing information.

Issues of concern include:

- journalists encountering barriers to accessing information including systemic delays in processing, failures of agencies to assist with applications and poor decision-making;
- Government resistance to legitimate Freedom of Information requests;
- inadequate and slow review processes;
- the use of exemptions to limit or deny applications unnecessarily;
- the cost of applications; and
- processing times.

These issues have been raised with previous Governments over a number of years but little appears to have been done to address them.

Recommendations

The Press Council makes the following recommendations:

1. The Australian Government should properly resource Government Departments and Agencies to manage and respond to FOI requests.
2. There should be increased transparency around the performance of the FOI regime, including auditing and reporting the performance of Departments and Agencies (individually and in aggregate) and around escalation processes should there be a lack of performance.
3. More fundamentally, the existing FOI regime should be subject to a comprehensive independent review. The review should be:

- (a) conducted by a broad-based independent panel and include representatives of the media industry;
 - (b) charged with ensuring that the FOI regime is fit for purpose and meets the needs of contemporary Australian society, including the news media sector;
 - (c) required to consider:
 - (i) the level and adequacy of resourcing provided by the Government to Departments and Agencies;
 - (ii) appropriate time frames for the consideration of FOI requests and reviews (and the appropriateness of implementing statutory time frames); and
 - (iii) other steps that need to be taken to ensure the express objects of the legislation are being met.
4. Steps should also be taken to create a culture that is supportive of a proactive approach to information release (including adequate resources and training of relevant staff and key personnel involved in administering FOI requests).