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Accountable governance requires effective FOI

Open and accountable governance relies on an effective Freedom of Information (FOI) regime, but underfunding and incorrect application of exemptions are negatively impacting operation of the administrative law system, the Law Council of Australia warned today.

Speaking at the Senate Legal and Constitutional Affairs References Committee's hearing on the operation of Freedom of Information laws, the Law Council expressed concern that the FOI regime is being undermined by significant challenges in accessing information.

"These challenges appear to be arising due to, for instance, bureaucratic and administrative delays, excessive document redaction, under-resourcing, and an overreliance on statutory exemptions. These systemic practices shield information from public scrutiny, restrict transparency of decisions made by Commonwealth agencies, and limit timely and informed public discourse on government policies," Law Council of Australia President, Mr Luke Murphy said.

"Freedom of access to government information is a fundamental aspect of the rule of law and fit-for-purpose legislation is required to ensure this right is respected in practice.

"Australia's FOI regime, underpinned by the *Freedom of Information Act 1982*, is critical to the effective operation of the administrative law system and, more broadly, to the integrity of Australia's democratic institutions.

"As noted in our submission to the Inquiry, of particular concern is that Commonwealth entities are increasingly – and at times, incorrectly – relying upon the exemptions under Part IV of the FOI Act to deny access to information.

"Yet the review process which provides for appeal of these decisions is under resourced, with reports an Information Commissioner (IC) review can take as long as five years.

"The Office of the Australian Information Commissioner must be properly resourced to finalise IC reviews in a timely way, and to assist agencies to build a culture of disclosure.

"We believe the FOI Act has a clear legislative objective, which is to give the Australian community access to information held by the Government of the Commonwealth by requiring agencies to publish the information and providing for a right of access to documents. We must ensure that the FOI regime is supported and encouraged to operate in such a way as to achieve that aim."

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