



## Review of the operation of the Freedom of Information Act 1982 and the Australian Information Commissioner Act 2010

Submission by Australian Greens democracy spokesperson Senator Lee Rhiannon  
7 December 2012

### Introduction

On 29 October 2012 the Federal Attorney-General Nicola Roxon requested that Dr Allan Hawke AC review and report on the operation of the Freedom of Information Act 1982 (FOI Act) and the Australian Information Commissioner Act 2010 (IC Act) and the extent to which those Acts and related laws continue to provide an effective framework for access to government information.

The Greens believe that open and transparent government is a prerequisite to an effective democracy. Information is central to knowing how our elected representatives are exercising their power and to hold our representatives to account.

The Greens, and in particular former Australian Greens leader Senator Bob Brown, have been long term advocates of freedom of information reform. Greens Senator Scott Ludlam has run a spirited campaign to include intelligence agencies within the scope of FOI legislation. He also successfully amended the National Broadband Network legislation to allow freedom of information requests to be made of the company running the network<sup>1</sup>.

Ideally government agencies should be making more information publicly available as a matter of course. There is widespread community support for broad FOI laws that ensure accountability and transparency of government.

On taking office in September 2010 the Prime Minister Julia Gillard stated:

“(W)e will be held more accountable than ever before, and more than any government in modern memory. We will be held to higher standards of transparency and reform, and it’s in that spirit that I approach the task of forming a government.”<sup>2</sup>

The Greens commend this notion and support reform of the FOI Act and the Australian Information Commission Act to encourage higher standards of transparency and accountability.

1 <http://scott-ludlam.greensmps.org.au/content/media-releases/freedom-information-laws-will-apply-nbn-greens>  
2 <http://www.theage.com.au/federal-election/transcript-of-julia-gillards-announcement-20100907-14zhs.html>

As Australian Information Commissioner Professor John McMillan recently commented:

“Access to information issues now have greater prominence in government. There is a marked increase in FOI requests for policy-related material, an upswing in applicants challenging access refusals through the OAIC’s independent complaint and review processes, and more media reporting based on documents obtained by FOI requests. A clear message for agencies is that information disclosure issues are important not only when access requests are received, but when documents and records are created and programs that will attract public interest are being developed. Disclosure by design is becoming a necessary practice.”<sup>3</sup>

While the Australian Greens welcomed reforms to FOI legislation in 2010, we noted a number of unsatisfactory elements and called for a further review to be held within two years<sup>4</sup>. This review gives us the opportunity to further develop Australia’s FOI laws to maximise public access to information.

## Summary of Recommendations

**Recommendation 1:** That the Attorney-General widely advertise a further call for public submissions on any draft bill amending FOI legislation that arises as a result of this review.

**Recommendation 2:** That the Gillard government agree to the case put for additional funding by the Australian Information Commissioner so his office can properly meet the objectives of the federal FOI legislation.

**Recommendation 3:** That additional resources are targeted to ensure that the Office of the Australian Information Commissioner is able to complete its FOI merits review functions in a timely manner.

**Recommendation 4:** That the Gillard government more actively promote culture change within government agencies to proactively publish information about their activities. Consideration should be given to making it mandatory for agencies to publish information on their agencies that is currently optional, including information about agency priorities, finances, lists including agency contracts, grants and appointments, and links to data sets, submissions to other bodies, and policies.

**Recommendation 5:** That amendments be made to provide a 24 hour ‘grace’ period between when information is provided to an applicant and published in a disclosure log.

**Recommendation 6:** That consideration is given to amending the FOI Act to limit an agency’s right to take a decision of the Information Commissioner to the AAT for further review to cases where there has been an error of law.

**Recommendation 7:** That no amendments be made to the FOI Act to exclude the Departments of the House of Representatives, the Senate and Parliamentary Services from the operation of the FOI Act.

**Recommendation 8:** That websites of all parliamentary departments should include up to date, easily searchable records of expenditure by MPs.

<sup>3</sup> Message re OAIC Annual Report [http://www.oaic.gov.au/publications/reports/annual-report\\_11-12/message\\_aic.html](http://www.oaic.gov.au/publications/reports/annual-report_11-12/message_aic.html)

<sup>4</sup> Senator Scott Ludlam, Australian Information Commissioner Bill 2010 and Freedom of Information Amendment Bill 2010, Second Reading speech <http://tiny.cc/kettow>

**Recommendation 9:** That the current exemption granted to intelligence agencies from FOI legislation be repealed.

**Recommendation 10:** That wherever possible information should be provided free of charge in an online public forum and this should be the principle that guides any government response to the OAIC review of fees and charges. In particular the recommendation to set a 40 hour cap on the processing of requests should be rejected.

**Recommendation 11:** That the review, in assessing whether it is necessary to minimise the regulatory and administrative burden, including costs, of the FOI regime on government agencies prioritises the important objectives of the FOI Act. These include promoting Australia's representative democracy by increasing public participation in Government processes and increasing scrutiny, discussion, comment and review of the Government's activities.

## **Inadequate consultation process for the review**

The consultation process for this review has been poor. The terms of reference for the review are limited. The review appears to be sharply focused on evaluating the 2010 reforms, and does not invite a comprehensive review of the operation of the FOI Act 1982. Little attempt has been made to inform the public of the possibility of making a submission. The review was not widely advertised, a discussion paper was not released as a vehicle for stimulating debate and no public hearings were organised. The Greens expect this will be reflected in the number of submissions received. Considering the priority the Prime Minister has given to transparency and accountability this is disappointing.

**Recommendation 1: That the Attorney-General widely advertise a further call for public submissions on any draft bill amending FOI legislation that arises as a result of this review.**

## **Addressing the review's terms of reference**

- (a) The impact of reforms to freedom of information laws in 2009 and 2010, including the new structures and processes for review of decisions and investigations of complaints under the FOI Act, on the*
- (b) The effectiveness of the office of the Australian Information Commissioner*

The Greens support the work of the Office of the Australian Information Commissioner (OAIC). The OAIC plays an important role overseeing the operation of FOI legislation and provides an essential independent review mechanism for FOI applicants. In addition, the Office provides valuable advice on information management policy and practice to the Australian government and related agencies.

### **Funding**

The Greens believe it is crucial that the OAIC is adequately resourced to continue its work in its three specified areas: freedom of information, privacy and government information policy.

In the recent OAIC Annual Report, Australian Information Commissioner Professor McMillan reported an increased workload across most of the agency's activities.

However this has not been accompanied by any increase in staffing levels.

In 2011–12 there was a 3% increase in telephone enquiries to the office, a 47% increase in written enquiries, and an 11% increase in privacy complaints. In the new freedom of information (FOI) roles the office receives on a monthly average 11 complaints and 38 applications for Information Commissioner review (IC review). External relations became more active, involving 63 speeches and presentations by OAIC Commissioners and staff, 17 training sessions and a 28% increase in media enquiries. Specialist projects that were resource intensive in 2011–12 included a review of FOI charges, participation in Privacy Act reform projects, and a survey of publication practices in 245 government agencies.<sup>5</sup>

Through this reporting period the OAIC operating costs were \$13.153 million.<sup>6</sup> While this is a substantial figure it is important to recognise that the OAIC has taken on many roles previously undertaken by other agencies (such as the Administrative Appeals Tribunal, the Department of the Prime Minister and Cabinet and the Commonwealth Ombudsman).

The OAIC estimates that 35% resources (around \$4.6 million) are directed to its FOI functions.<sup>7</sup>

Professor McMillan recently affirmed in response to questioning by the Australian Greens Senator Lee Rhiannon in the October 2012 Senate Estimates that, in his view, the OAIC does not have adequate resources to discharge all of its functions.<sup>8</sup> He noted particular difficulties in completing FOI case reviews and stated that “under the current model ... with the current funding and the current workload, it is not possible to meet the objectives that the office has set for itself.”<sup>9</sup>

Professor McMillan noted that he has raised funding concerns with the Secretary of Finance.

Without an increase in funding the OAIC is unable to properly administer the legislation which is the subject of this review.

**Recommendation 2: That the Gillard government agree to the case put for additional funding by the Australian Information Commissioner so his office can properly meet the objectives of the federal FOI legislation.**

### **Timely responses**

A key OAIC objective is to ensure timely responses to FOI requests and reviews and there have been some commendable achievements in this area. For example, there has been an increase in the proportion of FOI requests that are processed by agencies and ministers in the applicable statutory time period (generally 30 days, however that period can be extended) from 84.2% in the 2010-11 reporting period to 88.5% in the 2011-12 reporting period.<sup>10</sup>

The OAIC was less successful in meeting the target timeframe set to complete Information Commissioner (IC) freedom of information reviews.

The OAIC target was to finalise 80% of IC reviews within 6 months (a program ‘deliverable’). Only 32.8% of IC reviews were completed in 6 months in the last reporting year.<sup>11</sup> These targets have been criticised for lacking ambition so it is of concern that even these modest targets are not being met.

<sup>5</sup> Office of Australian Information Commissioner Annual Report 2011-2012, p ix.

<sup>6</sup> Ibid, Appendix 1.

<sup>7</sup> Ibid, p 144.

<sup>8</sup> Legal and Constitutional Affairs Legislation Committee, Senate Estimates, 16 October 2012, <http://tiny.cc/6ettow>

<sup>9</sup> Ibid

<sup>10</sup> Office of Australian Information Commissioner Annual Report 2011-2012, p 124.

<sup>11</sup> Ibid, p 15.

**Recommendation 3: That additional resources are targeted to ensure that the Office of the Australian Information Commissioner is able to complete its FOI merits review functions in a timely manner.**

### **Information Publication Scheme**

The Information Publication Scheme (IPS) provisions of the FOI Act resulted from the 2009/10 review and commenced operation on 1 May 2011. The IPS requires agencies subject to the Act publish a broad range of information on their websites.

A key aim of government should be to ensure the public can access government-held information freely and easily, without having to resort to a time consuming and often frustrating FOI process. The web provides an excellent vehicle to facilitate this.

The Greens believe that implementation of the IPS was an important step towards greater accessibility of government-held information, however it does not go far enough. While the OAIC is charged with overseeing the IPS and investigating agency compliance, it does not have power to enforce compliance.

Some agencies, according to questioning of the OAIC in Senate Estimates, have published only details of information and not the documents online. Secondly, there is an identified problem under the IPS of information that was one published being taken down.<sup>12</sup>

The Greens hope that the results of the OAIC's Desktop Review Program of agency websites as they relate to the IPS are considered as part of this review. It remains baffling why it is only optional not mandatory under s 8 (2) for some information held by agencies to be published, such as information about their priorities, contracts and policies. Such information is required to be made public by publication schemes in the UK, Queensland and Tasmania.

The OpenAustralia Foundation recently launched the [www.righttoknow.org.au](http://www.righttoknow.org.au) project, a website that makes the process of lodging an FOI request easier and allows the public to track requests to a possible 361 federal authorities. It is disappointing that such a site was established not by government but by a community organisation and that the government failed to support the Greens' recent Senate motion urging the government to use the site, provide feedback, and support the Foundation in its aim of encouraging effective citizen access to government information.<sup>13</sup>

**Recommendation 4: That the Gillard government more actively promote culture change within government agencies to proactively publish information about their activities. Consideration should be given to making it mandatory for agencies to publish information on their agencies that is currently optional, including information about agency priorities, finances, lists including agency contracts, grants and appointments, and links to data sets, submissions to other bodies, and policies.**

### **Disclosure logs**

The 2010 reforms included the welcome provision that agencies which provide information under FOI publish that information on a website within 10 working days after release to the applicant. A problem that has arisen from this arrangement is that documents applied for by a journalist can be released publicly on

<sup>12</sup> <http://greensmps.org.au/content/estimates/estimates-national-information-commissioner>

<sup>13</sup> <http://lee-rhiannon.greensmps.org.au/content/media-releases/greens-back-new-foi-right-know-site-sharing-results-world>

the same day as they are released to that journalist. This creates a real possibility that a journalist's 'scoop' can be undermined by other media outlets having access to the same information and reporting on the same issue. It has been convincingly argued that this provision frustrates journalists seeking information under FOI and has the effect of dampening the impetus to do so, therefore reducing proper scrutiny of government.

The Queensland Right to Information Act 2009 provides a good model in establishing a 24 hour grace period before FOI documents are released to the public. The Act provides that 'nothing about a document' may be put on the agency's website until at least 24 hours after the applicant accesses the document. The Ministerial Guidelines provide that information must be published on an agency's disclosure log 'as soon as possible after the 24 hour period expires (on the next working day) and no later than five business days after access'.<sup>14</sup>

The QLD Right to Information Report by Dr David Solomon AM made this recommendation "to respect the requester's first outlay of time, effort and expense in seeking the information".<sup>15</sup>

Publication on a website 24 hours after information is released to an applicant, including journalists, strikes a reasonable balance between making the information public while providing journalists who made the application with a small but appropriate window to publish stories without the threat of being gazumped by another media outlet.

**Recommendation 5: That amendments be made to provide a 24 hour 'grace' period between when information is provided to an applicant and published in a disclosure log.**

***(c) The effectiveness of the new two-tier system of merits review of decisions to refuse access to documents and related matters***

### **The right of review**

While the right of review is an important process for both government agencies that are the subjects of FOI requests and the individuals and organisations making the FOI applications, it is important to ensure that the review process is not used unnecessarily as a delaying tactic.

The current FOI Act gives the Information Commissioner the power to review an agency decision. An application for a review can be made by the applicant or the agency responsible for the information in question.

There is currently no cost to apply for an IC review.

If either the FOI applicant or the relevant agency would like to contest a decision made by an IC review, they can apply for a further review by the Administrative Appeals Tribunal. There is a substantial application fee that aims to minimise the number of unnecessary reviews. However there is a risk that the review process could be used to delay the giving of information, as the review process can be lengthy and arduous.

**Recommendation 6: That consideration is given to amending the FOI Act to limit an agency's right to take a decision of the Information Commissioner to the AAT for further review to cases where there has been an error of law.**

<sup>14</sup> <http://oic.qld.gov.au/information-and-resources/guidelines/guidelines-rti/disclosure-logs#footnote2>

<sup>15</sup> [http://www.rti.qld.gov.au/\\_\\_data/assets/pdf\\_file/0019/107632/solomon-report.pdf](http://www.rti.qld.gov.au/__data/assets/pdf_file/0019/107632/solomon-report.pdf)

***(d) The reformulation of the exemptions in the FOI Act, including the application of the new public interest test, taking into account:***

***(i) The requirement to ensure the legitimate protection of sensitive government documents including Cabinet documents***

***(ii) The necessity for the government to continue to obtain frank and fearless advice from agencies and from third parties who deal with government***

***(e) The appropriateness of the range of agencies covered, either in part or in whole, by the FOI Act***

### **All agencies should be covered by FOI as a matter of principle**

The Greens believe that all blanket exemptions that place certain government departments and agencies beyond the reach of FOI laws should be removed. The workings of parliamentary departments and Australia's intelligence agencies should not be exempt from public scrutiny.

The current FOI legislation already ensures protection of sensitive information by providing wide ranging exemptions for documents that are held by agencies subject to the Act. Exemptions are made for documents: that affect national security, defence or international relations; that affect enforcement of law and protection of public safety; to which secrecy provisions of enactments apply; that are subject to legal professional privilege; that contain material obtained in confidence; disclose trade secrets or commercially valuable information. The Act also provides a number of other exemptions in addition to these.

If blanket exemptions were removed, agencies coming under FOI laws would have recourse to these existing exemptions, which would adequately protect sensitive information.

The Australian Information Commissioner Professor John McMillan recently indicated in Senate Estimates, under questioning by Senator Rhiannon, that it would be reasonable to consider a system that exempted sensitive material from FOI laws, rather than giving a blanket exclusion of particular departments:

*“(T)he FOI Act applies to government business enterprises but not to all of their records. The act also applies to the office of the Governor-General and to courts and tribunals but not to all of their records. There are many precedents for a partial application of the act in which certain categories of documents and certain activities are carved out from the operation.”<sup>16</sup>*

In his submission to the 2009/10 review of FOI laws, Australian lawyer Peter Timmins noted:

*“The effect of blanket exclusions is to remove from potential public scrutiny, and the accountability framework, information concerning the conduct of public functions and the use of public money without any balancing of the interests involved.”<sup>17</sup>*

### **Parliamentary departments**

The Greens welcomed the finding in May 2012 by the Information Commissioner, that parliament is subject to FOI laws. We do not support any amendment to legislation that would remove the Departments of the House of Representatives, the Senate and Parliamentary Services from the scope of the FOI Act.

16 Legal and Constitutional Affairs Legislation Committee, Senate Estimates, 16 October 2012, <http://tiny.cc/8phtow>  
17 [http://www.dpmc.gov.au/consultation/foi\\_reform/pdfs/PDFs20.pdf](http://www.dpmc.gov.au/consultation/foi_reform/pdfs/PDFs20.pdf)

Australian Greens democracy spokesperson Senator Lee Rhiannon recently commented:

“Public money is what keeps the House of Representative and the Senate functioning and the public have a right to know how that money is spent. Parliament should not be beyond the reach of FOI. Greater disclosure of the workings of parliament and the work of MPs is critical to a healthy democracy.”<sup>18</sup>

The exclusion of parliamentary departments from FOI obligations has long been criticised in Australia. The Australian Law Reform Commission recommended bringing the parliamentary departments under the scope of FOI in its 1996 review of the Act.<sup>19</sup> During that review the then Clerk of the Senate Mr Harry Evans also argued for the extension of the FOI Act to parliamentary departments, noting exemptions already protect genuinely sensitive documents.<sup>20</sup>

The respected US Carter Center advocates all three government branches be subject to FOI law. A 2011 international FOI law survey marked Australia down to 39 out of 89 countries, partly because of this omission.

There are compelling reasons why parliamentary departments should be subject to the same degree of transparency and accountability as other government agencies. Hundreds of millions of dollars of public money are spent by parliamentary departments and information on how that money is being spent should be available for public scrutiny.

This view is shared by Secretary of the Department of Parliamentary Services, Carol Mills who recently stated in Senate Estimates:

“(O)ur department should be transparent. I believe that, where we utilise taxpayers’ money, that should be the case ... We will work to culturally support the concept of FOI wherever it is reasonable and possible for us to do that. I strongly support the notion that for government departments, particularly in the type of work that my department does, with the vast majority of that information it is beneficial for the community to be aware of it.”<sup>21</sup>

Clerk of the Senate, Dr Rosemary Laing reported that her department had always cooperated with the spirit of the FOI Act and recognised that administrative documents of her department should be subject to FOI obligations:

“Those students of old annual reports will see from time to time where we did get requests, purportedly under the FOI Act, that we did outline how we responded to them. Yes, I have no argument with the idea that the FOI Act should apply to administrative documents of the department.”<sup>22</sup>

In its 1995 review of the FOI Act, the ALRC noted that the Department of the Senate had “always acted as though it were subject to the FOI Act, releasing documents unless they would have fallen within an exemption”.

“Encouraged by these findings, the ALRC Review was convinced that “there is no justification for the parliamentary departments to be excluded from the Act”.<sup>23</sup>

18 <http://greens.org.au/content/greens-call-roxon-back-plans-limit-foi-parliament>

19 Australian Law Reform Commission Open Government - A Review of the Federal Freedom of Information Act 1982 (ALRC Report 77) Recommendation 73 <http://www.alrc.gov.au/report-77>.

20 <http://www.austlii.edu.au/au/other/alrc/publications/reports/77/11.html#fn26>

21 Finance and Public Administration Legislation Committee, Senate Estimates, 15 October 2012, <http://tiny.cc/9xstow>.

22 Ibid.

23 Australian Law Reform Commission Open Government - A Review of the Federal Freedom of Information Act 1982 (ALRC Report 77) <http://www.alrc.gov.au/report-77>

While the review noted that some departments were concerned that they would be exposed to lengthy and costly legal challenges because of the nature of the information they held, it was not persuaded by those arguments. It determined that being subject to the Act will not cause any greater inconvenience for them than is caused to other agencies subject to the Act. <sup>24</sup>

Within Australia, the Tasmanian Right to Information Act In 2009 brought Tasmanian parliamentary departments under the State's FOI laws, limiting their scope to administrative matters.

A number of other jurisdictions include parliamentary departments in their FOI regimes, including England, Scotland, India, Ireland, South Africa and Mexico.

Recommendation 7: That no amendments be made to the FOI Act to exclude the Departments of the House of Representatives, the Senate and Parliamentary Services from the operation of the FOI Act.

### **MPs' entitlements**

The Greens believe that it is essential that there is public access to information about parliamentarian's entitlements. This is a fundamental component of a transparent democracy.

A more accountable government will be achieved by releasing more information on the workings of parliament and the activities of MPs.

The Greens oppose any moves to remove the parliamentary departments from the scope of the FOI Act. However, if blanket exemptions are granted the Greens propose that information about MPs entitlements remains public.

The Greens believe that this information should be freely available in an online searchable database. This kind of system is already used by the Scottish Parliament with success.

Many entitlements are administered by the Department of Finance and Deregulation, an agency that has been and continues to be subject to the FOI Act. While that Department does publish some information online, it does not release all information in this form and there is often a long delay before online publication.

Other entitlements are administered by the parliamentary departments - the Department of the House of Representatives, Department of the Senate, and the Department of Parliament Services. This includes salaries, various allowances, office costs, travel costs, hospitality costs, IT equipment and administration. Information relating to these entitlements must remain readily available to the public.

**Recommendation 8: That websites of all parliamentary departments should include up to date, easily searchable records of expenditure by MPs.**

### **Intelligence agencies**

The Greens believe that the current blanket exclusion of Australia's intelligence agencies from FOI should be lifted. This proposal was put by Australian Green Senator Scott Ludlam during the 2009-10 review of

<sup>24</sup> Ibid

the FOI Act. Senator Ludlam moved an amendment to the 2010 Bill to remove the exemptions applying to intelligence agencies.<sup>25</sup> The amendment was opposed by both major parties and intelligence agencies continue to operate outside the scope of FOI laws.

The CIA in the United States and MI5 or MI6 in Britain are each subject to freedom of information laws in their respective jurisdictions. The Greens believe that there will be no threat to national security issues if Australian intelligence agencies are brought under the powers of the FOI Act.

The Greens do not believe that simply because a document originated in a security agency it automatically has implications for national security and should therefore receive automatic and full exemption from the Act.

If intelligence agencies were brought under the scope of the Act they would be able to apply for exemption for documents relating to national secrecy, operational security and so on. However it is important that these agencies are not operating under a shroud of invisibility that removes all public accountability.

**Recommendation 9: That the current exemption granted to intelligence agencies from FOI legislation be repealed.**

***(f) The role of fees and charges on FOI, taking into account the recommendations of the Information Commissioner's review of the current charging regime***

Access to information held by the government should be a right, not a service restricted to those with deep pockets. It is essential that the fees and charges relating to FOI applications and reviews are not prohibitive for reasonable information requests. Cost can be a substantial barrier to access to information, so fees and charges need to be set at a reasonable level to ensure maximum access.

The Greens believe that, wherever possible, information should be provided free of charge in an online public forum.

Information that is of public interest should be offered by agencies and parliamentary departments and FOI legislation should make online reporting of key information mandatory. We welcome the Information Commissioner's recommendation of an 'administrative access' scheme, to encourage government agencies to hand over documents to the public free of charge, but we are concerned that the Information Commissioner's review should not be used a springboard to increase charges that will deter the public from pursuing FOI requests.

As already noted, the Information Commissioner is facing funding pressures and future threatened budget cuts. A range of government departments are calling for large fee increases.<sup>26</sup>

The government should be encouraged to concentrate less on fees and more on developing creative ways of reducing FOI costs to the public and applicants. For example by proactively publishing more information on department websites and reducing review costs by being less defensive in making determinations (see Recommendation 4 above).

In Tasmania, there is a flat application fee of \$35, which may be waived due to financial circumstance or if the information is of a public interest, and there are no other fees or charges.

<sup>25</sup> Ibid.

<sup>26</sup> In submissions to the review of FOI charges, the Department of Finance and Deregulation called for application fees to be reinstated at cost of \$20-\$30 and the Department of Resources, Energy and Trade called for fees to be increased to \$50.

The Greens support the consideration of charges being based on the amount of information provided rather than the time taken to process a request. Charging by the amount of information provided has been recommended by the Australian Law Reform Commission, an independent review panel into Queensland's FOI system and by the Public Interest Advocacy Centre.

This would make charges more transparent and stop individuals wearing large costs where departments take too long to find documents because of poor record management systems.

### **Application fees**

One outcome of the 2010 review of the FOI Act was the abolition of application fees for FOI requests. The Greens believe that it is important that FOI applications remain free of charge.

The current scheme also allows applicants to request a review of an FOI decision by the Information Commissioner free of charge. The Greens recommend that this continues.

If an applicant wants a review of the IC decision by the AAT, a substantial application fee applies (\$777). While an application fee may be necessary at this level of review, to prevent unreasonable or baseless applications, the Greens are concerned that this may be a substantial barrier for some individuals or organisations that have valid grounds for seeking further review.

### **Fees for refused requests**

The ALRC 1995 Review of the FOI Act recommended that "agencies should only be able to impose charges in respect of documents that are released."<sup>27</sup> The current system allows the OAIC to impose charges in cases where an information request has been refused. The Greens support a scheme that does not impose fees unless information is delivered.

### **OAIC review of charges**

The OAIC's Review of charges under the Freedom of Information Act 1982 includes a number of recommendations that could deter FOI requests or reviews of FOI decisions. These include:

- Recommendation 1: encourages applicants to initially seek documents directly from the relevant agency through the administrative access scheme, or else face a \$50 application fee
- Recommendation 4: sets a 40 hour cap on processing requests
- Recommendation 7: requires applicants to seek an internal review of a decision with the relevant agency if possible, or pay a \$100 fee.

The Greens are concerned that the implementation of recommendations 1 and 7 will require applicants to either pay substantial charges, or undertake a process that could substantially lengthen the time it takes to have their application fulfilled.

Implementation of recommendation 4 would limit the scope of FOI applications that are requesting complex information.

27 Australian Law Reform Commission Open Government - A Review of the Federal Freedom of Information Act 1982 (ALRC Report 77) Recommendation 88, <http://www.alrc.gov.au/report-77>

**Recommendation 10:** That wherever possible information should be provided free of charge in an online public forum and this should be the principle that guides any government response to the OAIC review of fees and charges. In particular the recommendation to set a 40 hour cap on the processing of requests should be rejected.

***(g) The desirability of minimising the regulatory and administrative burden, including costs, on government agencies.***

It is apparent that there are financial and administrative burdens imposed on government agencies and departments as a result of the FOI scheme. However providing access to information to Australians is a vital part of a functioning democracy. Government agencies are funded by taxpayers and the way they fulfil their role should be subject to public scrutiny.

**Recommendation 11:** That the review, in assessing whether it is necessary to minimise the regulatory and administrative burden, including costs, of the FOI regime on government agencies prioritises the important objectives of the FOI Act. These include promoting Australia's representative democracy by increasing public participation in Government processes and increasing scrutiny, discussion, comment and review of the Government's activities.