

10 October 2014

Senator the Hon George Brandis QC
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General,

The media organisations that are parties to this correspondence – AAP, ASTRA, Bauer Media, Commercial Radio Australia, Fairfax Media, Free TV, MEAA, News Corp Australia, The Newspaper Works and West Australian Newspapers (the Media Organisations) – write to you regarding the *Freedom of Information Amendment (New Arrangements) Bill 2014* (the Bill) which was introduced in the House of Representatives on 2 October 2014.

Tight timeframe for legislative passage risks FOI appeal mechanism

We note that the announcement to defund the Office of the Australian Information Commission (OAIC) was announced as part of the Federal Budget in May this year, and will be implemented as of 31 December 2014.

While we support the streamlining of processes regarding freedom of information (FOI) functions generally, we are concerned that the parliamentary sitting timetable leaves little time to pass this legislation. We are also concerned that if the Bill does not pass, and the OAIC becomes defunct, Australians may be without a functioning appeal mechanism regarding FOI decisions for the first time since inception of the *Freedom of Information Act 1982* (FOI Act).

Requirement for internal FOI review should be replaced by option to go direct to AAT appeal

A key issue arising from the Bill is the requirement that an applicant seek an internal review of a decision before a right of appeal to the Administrative Appeals tribunal (AAT) arises, except in the case of decisions made by the Minister or the head of an agency.

As detailed in a submission by AAP, ASTRA, Commercial Radio Australia, Fairfax Media, Free TV Australia, MEAA, News, Sky News and WAN to the previous Government's Hawke Review – a review of the operation of freedom of information laws (the FOI Act and the *Australian Information Act 2010*) – the lack of a direct right of appeal to the AAT effectively places the agency in the position of judge and jury, and is contrary to the processes of natural justice.

Data included in the OAIC Annual Report of 2012-2013 advises that 48 per cent of internal appeals result in agencies reaffirming the original decision. The experience of the Media Organisations and their journalists suggests that in the case of politically sensitive documents, an agency is far more likely to reaffirm its original decision upon internal review.

The Media Organisations believe that applicants should have a direct right of appeal to the AAT following a decision to refuse an FOI request by an agency.

For ease of reference, attached to this correspondence is the submission to the Hawke Review of freedom of information laws referenced above.

Government response to Hawke Review

We also note that the Government is yet to provide a response to the Hawke Report into Commonwealth FOI. While the Media Organisations do not support many recommendations from the Hawke Report, we strongly support the proposal for a comprehensive review of the FOI Act and its operations. We believe that such a review should be conducted by a broadly-based expert panel, including media representatives, and should be announced in early 2015.

We would welcome a meeting with you, your relevant adviser/s and officials at your convenience.

