



WelfareRightsUnit  
INCORPORATED

**SUBMISSION TO FREEDOM OF  
INFORMATION (FOI) REFORM  
AND EXPOSURE DRAFT OF  
THE '*FREEDOM OF  
INFORMATION AMENDMENT  
(REFORM) BILL 2009*' AND  
THE '*INFORMATION  
COMMISSIONER BILL 2009*'**

Welfare Rights Unit Inc. Victoria, May 2009

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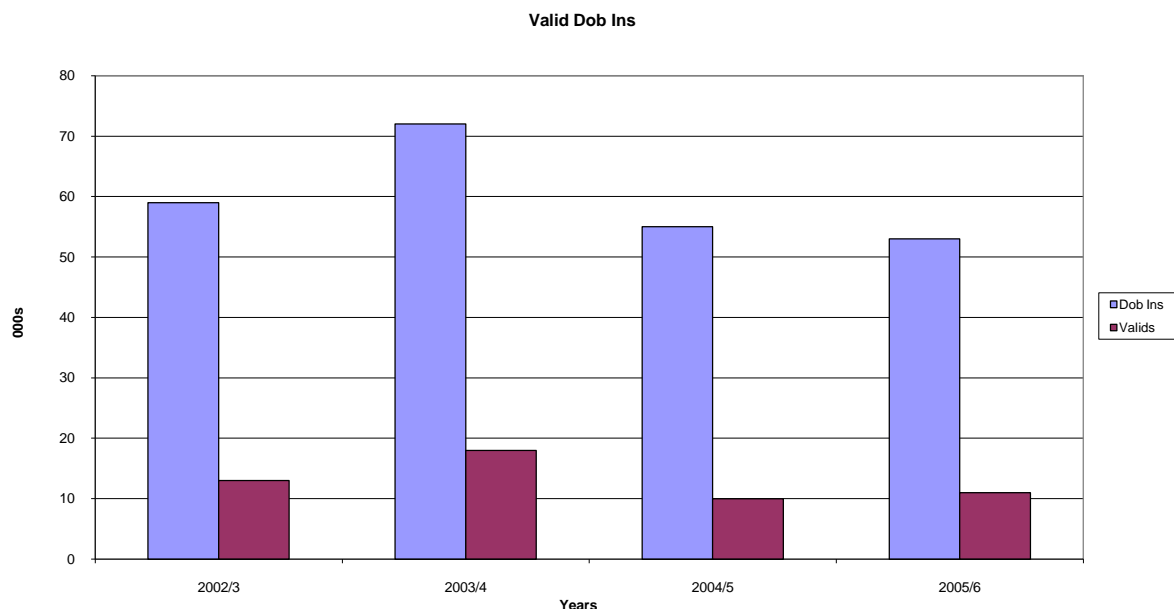
**Submission to FOI Reform and Exposure Draft of the *Freedom of Information Amendment (Reform) Bill 2009* and the *Information Commissioner Bill 2009***

***Proposal One: The Welfare Rights Unit calls for the protection afforded to confidential sources of information under section 37(1)(b) of the FOI Act be amended to remove that protection where first, the confidential source of information had no reasonable belief that the information was true, or secondly, the confidential source of information is acting maliciously or vexatiously in providing the information.***

The current FOI provisions protect the identity of people who make public denunciations in two ways. First, where the information is provided anonymously section 37(1)(b) makes it clear that information which will disclose or enable people to ascertain the identity of that person, will be exempt from the Act.

We at the Welfare Rights Unit reject the operation of this section in its current form and would propose it is amended to no longer protect people who make false allegations for example in our area, social security fraud. Provisions such as these encourage people to make false or unaccountable public denunciations (generally out of malice) as they know that the information cannot be traced back to them.

This results in a huge waste of Centrelink resources. For example, of the reports made to Centrelink less than one third, at their highest level annually and closer to one fifth generally, have any basis upon which Centrelink can act upon. Below is a graph which displays the amount of public denunciations received by Centrelink per year from 2002-2003 until 2005-2006 and the number of those where action was taken as a result.<sup>i</sup>



This graph shows that there is a real problem of widespread inaccuracy in 'dob-ins', a practice which should be stamped out. This ensures Centrelink resources are effectively allocated to pursuing only appropriate cases of social security fraud.

Further, often these investigations can have dire consequences for the people being investigated. These include not only humiliation and fear but also suspension or loss of payment which in turn affects the person's ability to provide for their and their dependants basic needs.

This, personal impact coupled with the waste of Centrelink resources strongly warrants the removal of protection for confidential sources of information who provide false information or provide that information maliciously or vexatiously. If the person's identity could be revealed through a FOI request the Welfare Rights Unit believe that this would strongly discourage people from providing the information unless the reasonably believe it to be true.

In pursuit of this the Welfare Rights Unit suggests that section 37(1)(b) remains in the Act as a general rule, however that through amendments, it should become subject to two exceptions. The legislation should specify that confidential sources of information are not protected under section 37(1)(b) if;

- (a) The information proves to be incorrect and the confidential source of information has no reasonable belief that information they provided was correct; or
- (b) Where the confidential source of information is acting maliciously or vexatiously in providing the information.

Adding to this, we would also like to see a legislative definition of 'reasonable belief' in this context which would require that the facts provided by the confidential source of information accord with the substantive law on the issue to which the information relates.

In order to assist the decision maker in an agency to determine this, we would also require during any initial interview with a confidential source of information, the relevant staff member at an agency must inform them of the substantive law on the issue and question them accordingly. Records of such questioning should also be kept. Further, the interviewer should provide a warning to the person that if information is being provided maliciously or vexatiously or, a decision maker finds that there is no reasonable belief in the mind a decision maker that the information is true, their details may be released.

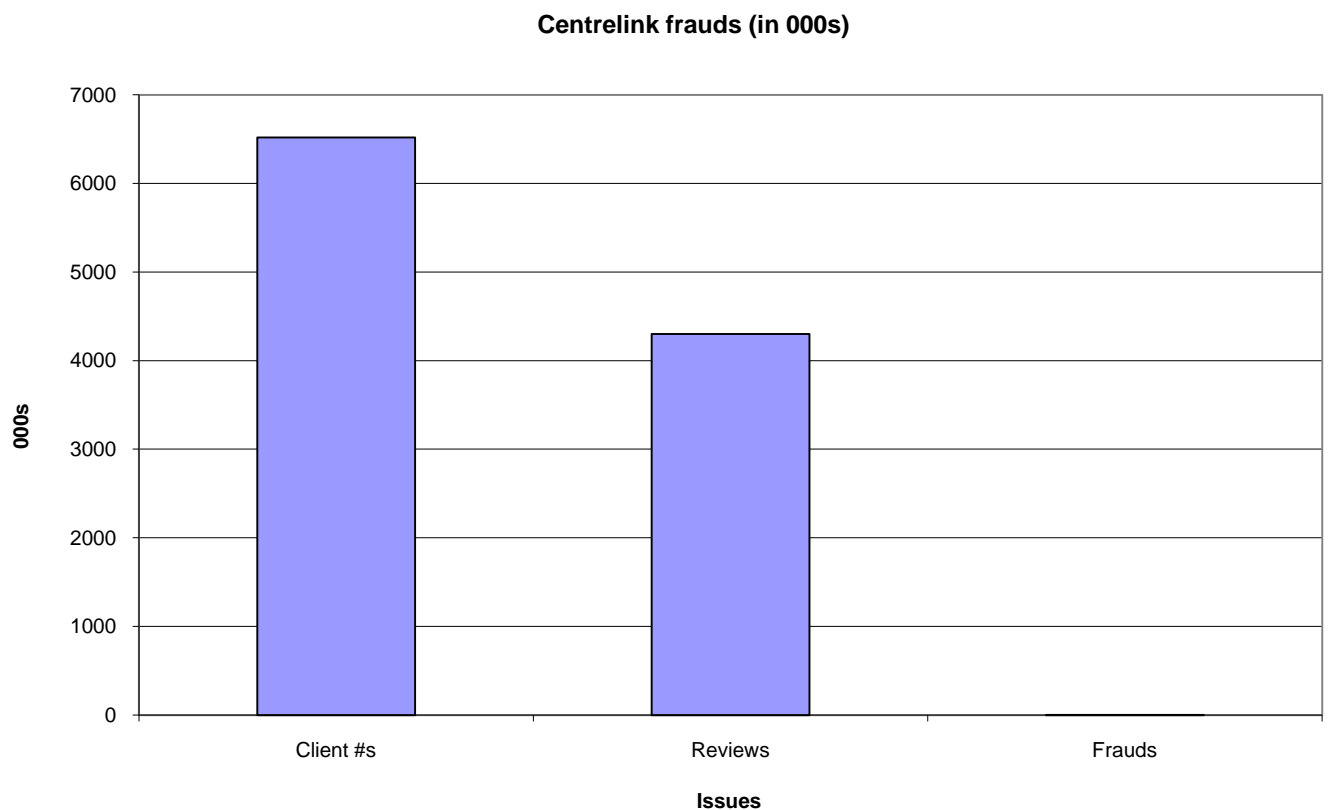
***Proposal Two: The Welfare Rights Unit commends the changes to the privacy provisions contained in section 41 which makes them subject to the public interest as per section 11A and 11B of the Exposure Draft. However we call for legislative amendment to the definition of public interest to prevent people who make incorrect, malicious or vexatious declarations concerning other people, from having their identity protected under these provisions.***

The second provisions Centrelink use in justifying the non-release of a so called 'dobber's' identity following an FOI request is section 41, the personal privacy conditions. Under Centrelink guidelines information does not need to be given anonymously meaning a person who makes a public denouncement can provide their name or other personal details. Where this happens Centrelink can refuse to provide the name of the person by using either section 37(1)(b). Alternatively a section 41 is also used as justification for not releasing the information.

Under the proposed reforms section 41 would become a conditional provision meaning it could only operate on the condition that non-disclosure is in the public interest (section 11A and 11B of the exposure draft).

At the Welfare Rights Unit we would like to see a legislative definition of public interest be included in the Act which would make it, as a matter of law, outside the public interest to protect the identity of people who provide incorrect information to an agency with no reasonable belief that the information was correct, or those who provide that information maliciously or vexatiously.

Although the Unit recognises that social security fraud is a problem within society, it is not so widespread as to justify the protection of these people in order to ensure that 'dob-ins' are not discouraged and perpetrators of social security fraud are caught. The graph below displays the nature of the size of the problem of social security fraud given the number of Centrelink clients, the number of reviews undertaken by Centrelink and the number of fraud convictions for the years 2006-2007.<sup>ii</sup>



The number of frauds is so small, sitting only at three thousand and eighty-three convictions that no graph would show the number.

This illustrates quite clearly that social security fraud is not widespread and therefore it is not in the public interest to protect the identities of people who 'dob' others in for social security fraud.

Therefore, we believe that the legislative definition of public interest applied in section 11A and 11B should recognise this personal impact and inefficient use of resources, and make them considerations which would override any other public interest considerations in circumstances such as these.

***Proposal Three: The Welfare Rights Unit has concerns about the timeliness of reviews for FOI requests and suggests that the process proposed under part VI and VII of the Freedom of Information Amendment Reform Bill 2009 is amended to remove a requirement for internal review by the relevant agency.***

The four stage process of review proposed by part VI and part VII of the exposure draft of the *Freedom of Information Amendment Reform Bill 2009* raises concerns for the Welfare Rights Unit about the effectiveness and timeliness of FOI review.

Considering that often the release of documents and information to people on social security is crucial to decisions concerning their only source of income, we would highly recommend a more streamlined and faster review process of FOI decisions.

We would suggest that following a refusal by the relevant agency to provide information, a person who makes a FOI request should be able to automatically seek review by the Information Commissioner. This would remove the requirement for people to seek internal review by an agency prior to being able to access other levels of appeal.

Under our proposed system it would be much faster for clients to access information. Also it would involve a more effective use of Centrelink resources (especially Authorised Review Officers) who are needed to make pressing decisions on social security law and should not be burdened with decisions concerning freedom of information.

Further, considering the government is taking the commendable step of setting up an effective and independent body with expertise in freedom of information in the Information Commissioner the Welfare Rights Unit believes it would be a much more effective use of resources for FOI decisions to be left to them.

***Proposal Four: The Welfare Rights Unit applauds the government in its initiative to hand the overseeing of complaints investigations to the more specialised Information Commissioner***

The Welfare Rights Unit agrees with the government proposal that complaints investigations concerning FOI requests are handled by the Information Commissioner rather than the Commonwealth Ombudsman. A specialised body to deal with FOI requests is needed.

However a review of the effectiveness of this system should be conducted following a period of time in order to ensure that no delay stems from these changes and that individual complaints are being dealt with.

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<sup>i</sup> 'Centrelink Annual Report (2002-2003, 2003-2004, 2004-2005, 2005-2006)', Centrelink Website, *Centrelink*, <http://www.centrelink.gov.au/internet/internet.nsf/publications/a.htm> (as at 15th May 2009)

<sup>ii</sup> 'Fraud Statistics', Centrelink Website, *Centrelink* [http://www.centrelink.gov.au/internet.nsf/about\\_us/fraud\\_stats.htm](http://www.centrelink.gov.au/internet.nsf/about_us/fraud_stats.htm) (15th May 2009)