



Our Ref: LS5744 ~ 16/0732

Graeme Bowman

By email to: [foi+request-2175-cf0b01ad@righttoknow.org.au](mailto:foi+request-2175-cf0b01ad@righttoknow.org.au)

Dear Mr Bowman

## RE YOUR FOI REQUEST NO. LS5744

I refer to your email of **28 August 2016 11:37pm**, in which you request under the Freedom of Information Act 1982 (the 'FOI Act'), access to documents relating to cost estimates for the plebiscite.

2 I have three purposes in writing to you. First, to acknowledge receipt of your FOI Request. Second, to advise you that the AEC is aware of 4 documents that fall within the scope of your FOI Request. Third, I am notifying you about a practical refusal reason that applies to the remainder of your FOI Request.

3 I have interpreted your FOI Request to seek:

All documents pertaining to estimates the commission has made for the cost of running the proposed plebiscite on same sex marriage.

## ACKNOWLEDGMENT OF THE FOI REQUEST

4 We received your request on **28 August 2016** and the 30 day statutory period for processing your request commenced from the day after that date. A decision is due on or before **27 September 2016** (subject to paragraph 6).

5 Your request has been combined with an identically worded request that we received from another member to the Right To Know Organisation on **28 August 2016**.

6 The period of 30 days will be extended to facilitate the consultation with you about the practical refusal decision (see below) and also may be extended if we need to consult third parties, impose a charge or for other reasons. We will advise you if this happens.

7 You will be notified of any charges in relation to your request as soon as possible, before we process any requested documents or impose a final charge.

- 8 Please note that information released under the FOI Act may later be published online on our disclosure log at [http://www.aec.gov.au/About\\_AEC/foi/foi.htm](http://www.aec.gov.au/About_AEC/foi/foi.htm), subject to certain exceptions. (For example, personal information will not be published where this would be unreasonable.)

## **INTERIM DECISION AND REASONS FOR DECISION**

### ***Summary***

- 9 The AEC is aware of 4 documents that fall within the scope of your FOI Request (**at Attachment A**). The AEC became aware of these documents because they were the subject of another FOI Request.
- 10 The schedule of retrieved documents (**at Attachment A**) provides a description of each document which the AEC is aware that falls within the scope of your request and the access decision for each of those documents.
- 11 I, Paul Pirani, Chief Legal Officer of the AEC, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.
- 12 With regard to the documents listed in (**at Attachment A**), I have made an interim decision to refuse access to all four documents. More information, including my reasons for my decision, is set out below.
- 13 With regard to the remainder of your FOI Request, a practical refusal reason applies to that remainder. See paragraphs 46 - 57 which explain what this is and consults with you about how the request may proceed or otherwise be finalised.

### ***Interim Decision and Reasons for Decision***

#### **Interim Decision**

- 14 With regard to the documents identified (**at Attachment A**), I have decided to refuse access to:
- (a) Documents Nos 1, 3 and 4 which are outside the scope of documents that may be requested in an FOI Request; and
  - (b) Document No. 2 which is conditionally exempt under section 47C of the FOI Act and providing access to Document No. 2 would be contrary to the public interest.

#### **Material taken into account**

- 15 I have taken the following material into account in making my decision:
- (a) the content of the documents that fall within the scope of your request;
  - (b) the FOI Act (specifically sections 3, 3A, 4, 8A, 11, 11A, 11B and 47C);

- (c) the guidelines ('[FOI Guidelines](#)') issued by the Australian Information Commissioner under section 93A of the FOI Act, specifically paragraphs 6.3 – 6.3, 6.56 - 6.77 and 13.84 – 13.101;
- (d) [Public Governance, Performance and Accountability Act 2013](#) (the 'PGPA Act'), specifically sections 8, 26 and 52; and
- (e) the decision in [Harris v Australian Broadcasting Corporation and Ors \[1983\] FCA 242; \(1983\) 78 FLR 236](#) ('Harris' Case');

16 The **Attachment A** indicates each document to which access is refused and my short reasons for that decision. I expand on those reasons below.

## Reasons

### *Documents out of scope of FOI Requests*

17 Subsection 4(1) defines, among other things, what is a 'document' for the purposes of the FOI Act. The definition of 'document' is as follows.

#### 4 Interpretation

(1) In this Act, unless the contrary intention appears:

**document** includes:

- (a) any of, or any part of any of, the following things:
  - (i) any paper or other material on which there is writing;
  - (ii) a map, plan, drawing or photograph;
  - (iii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
  - (iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;
  - (v) any article on which information has been stored or recorded, either mechanically or electronically;
  - (vi) any other record of information; or
- (b) any copy, reproduction or duplicate of such a thing; or
- (c) any part of such a copy, reproduction or duplicate;

but does not include:

- (d) material maintained for reference purposes that is otherwise publicly available; or
- (e) Cabinet notebooks.

- 18 Material published on the internet is for the purposes of paragraph (d) of the definition of 'document' in subsection 4(1) of the FOI Act material maintained for reference purposes that is otherwise publicly available.
- 19 I found that there is no contrary intention in Part III of the FOI Act (which provides for making FOI Requests) that would apply to the definition of 'document' provided by paragraph (d) of subsection 4(1) of the FOI Act.
- 20 I also found that Document Nos. 1, 3 and 4 are published on the Internet at the address indicated in respect of each document in the fourth column (**at Attachment A**).
- 21 Accordingly, each of Document Nos. 1, 3 and 4 is out of scope of the class of document that may be requested under Part III of the FOI Act as a consequence of the operation of the carve out from the definition of 'document' provided by paragraph (d) of subsection 4(1) of the FOI Act.
- 22 I therefore decided to refuse giving access to Document Nos. 1, 3 and 4.

***Public interest conditional exemptions—deliberative processes***

- 23 I found that Document No. 2 is in the nature of an opinion forecasting various cost inputs likely to be incurred in conducting a plebiscite, prepared in the course of, or for the purposes of, the deliberative processes involved in the functions, namely the preparation of Document No. 3.
- 24 I found that section 47C of the FOI Act applies to Document No. 2.
- 25 Section 47C of the FOI Act provides:

**47C Public interest conditional exemptions—deliberative processes**

*General rule*

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
- (a) an agency; or
  - (b) a Minister; or
  - (c) the Government of the Commonwealth; or
  - (d) the Government of Norfolk Island.

*Exceptions*

- (2) Deliberative matter does not include either of the following:
- (a) operational information (see section 8A);

- (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:
  - (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
  - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
  - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

**(a) Operational information**

26 Section 8A of the FOI Act provides:

**8A Information to be published—what is *operational information*?**

- (1) An agency's *operational information* is information held by the agency to assist the agency to perform or exercise the agency's functions or powers in making decisions or recommendations affecting members of the public (or any particular person or entity, or class of persons or entities).

Example: The agency's rules, guidelines, practices and precedents relating to those decisions and recommendations.

- (2) An agency's *operational information* does not include information that is available to members of the public otherwise than by being published by (or on behalf of) the agency.

27 The opinions expressed in Document No. 2 are ad hoc estimates of the costs of conducting a plebiscite and offer no ongoing assistance to the AEC in exercising its functions or powers. The impact of decisions made on the basis of Document No. 2 do not directly affect members of the public. The effect on members of the public flows from the conduct of the plebiscite and not the cost of conducting it.

28 Accordingly, I found that the provisions in paragraph 47C(2)(a) of the FOI Act, does not apply to Document No. 2.

**(b) Purely factual material**

29 An opinion is not a fact: see *Harris' Case*. It is for this reason that paragraph 47C(3)(a) of the FOI Act expressly includes 'reports expressing the opinions of such experts on scientific or technical matters'.

30 I found that the provisions in paragraph 47C(2)(b) of the FOI Act does not apply to Document No. 2.

**(c) Non-application of subsection 47C(3)**

31 It is self-evident that none of the provisions in subsection 47C(3) of the FOI Act apply to Document No. 2.

**Balancing competing public interests**

32 For the purposes of subsection 11A(5) of the FOI Act, I considered whether access to a conditionally exempt document would, on balance, be contrary to the public interest under that subsection.

33 In addressing this question, I took into account the considerations required by subsection 11B of the FOI Act and excluded those considerations forbidden by that section.

34 Section 11B of the FOI Act provides.

**11B Public interest exemptions—factors**

*Scope*

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

*Factors favouring access*

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
  - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
  - (b) inform debate on a matter of public importance;
  - (c) promote effective oversight of public expenditure;
  - (d) allow a person to access his or her own personal information.

*Irrelevant factors*

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
  - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;

- (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
- (b) access to the document could result in any person misinterpreting or misunderstanding the document;
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
- (d) access to the document could result in confusion or unnecessary debate.

*Guidelines*

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

***Factors favouring access***

- 35 I took into account that the opinion about the forecast costing of a plebiscite was published in Document No. 3.
- 36 I found that the disclosure of the costing forecast in Document No. 2 achieves the objects of the FOI Act expressed in sections 3 and 3A for the purposes of paragraph 11B(3)(a) of the FOI Act. Accordingly, I gave little weight to this factor when striking a balance as to where the public interest lay in giving access to Document No. 2.
- 37 I also found that the manner in which the opinion was arrived at is not of itself a matter that would usefully inform public debate about the cost of the plebiscite for the purposes of paragraph 11B(3)(b) of the FOI Act. The cost of the plebiscite will only be ascertained once the plebiscite is conducted and the expenses associated with it have crystallised. Accordingly, I gave little weight to this factor when striking a balance as to where the public interest lay in giving access to Document No. 2.
- 38 I found that the breakdown of the various opinions about particular likely expenses incurred in conducting a plebiscite would provide no useful basis for oversight of the public expenditure incurred in relation to the plebiscite for the purposes of paragraph 11B(3)(c) of the FOI Act. I explain this point in paragraphs 41 and 42 of this letter.
- 39 Additionally, I found that the considerations required by paragraph 11B(3)(d) of the FOI Act are not triggered by the subject matter of the FOI Request.
- 40 I was unable to identify any other consideration that I should take into account that favours giving access to Document No. 2.

### ***Factors against access***

- 41 A factor against giving access to Document No. 2 is that the public has no discernible interest in knowing how the forecast of probable costs was arrived at by the AEC.
- 42 The public's interest lies in knowing how a commitment for the purposes of the PGPA Act is made. The forecast of probable costs of conducting relates to a step before a commitment is made in respect of expenditure that is incurred by the actual conduct of the plebiscite.
- 43 The time for making a commitment in relation to the conduct of a plebiscite will not arise until after passage of Commonwealth legislation authorising the plebiscite. No such legislation has as yet been enacted.

### ***Conclusion***

- 44 It follows that the public interest factors against access outweigh the public interest factors favouring access to Document No. 2. Accordingly, I decided to refuse to give access to Document No. 2.
- 45 I hope the interim decision satisfies your request. If so, then there is no need for you to respond to the practical refusal consultation that follows.

### **PRACTICAL REFUSAL REASON CONSULTATION**

- 46 I am writing to tell you that I believe that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of this agency from its other operations due to its size of the documents requested and the broad scope of the FOI Request. This is called a 'practical refusal reason' (section 24AA).
- 47 On this basis, I intend to refuse access to the documents you requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as set out under section 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out below.

#### **Why I intend to refuse your request**

- 48 As regards to the remainder of your FOI Request, I decided that a practical refusal reason exists because the resources that would have to be used for:
- (a) identifying, locating or collating the correspondence within the filing system of the AEC; and
  - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document(s) (including resources that would have to be used



for examining the document(s) or consulting with any person or body in relation to the request)

- (c) making a copy or an edited copy, of the document(s)
- (d) notifying any interim or final decision on the request,

would substantially and unreasonably divert the resources of the AEC from its other operations. This is a practical refusal reason for the purposes of subparagraph 24AA(a)(i) of the FOI Act.

49 The reason for this is that you have requested “**all documents**” pertaining to the cost of running the proposed plebiscite. This requires the AEC to review all documents generated by AEC staff.

50 The AEC is organised as follows:

- (a) A National Office
- (b) 7 State and Territory Offices’
- (c) Divisional Offices servicing 150 Divisions represented by a Member of the House of Representatives; and
- (d) the National Electoral Education Centre.

51 I am of the view that the magnitude of the work required to identify relevant documents does not justify my directing any retrieval of documents at this stage. I do not find the criterion chosen by you to identify the documents that you seek to be helpful in allowing to me to conduct an effective and efficient inquiry about the whereabouts of the documents without causing a great deal of disruption to the core business functions of the AEC.

#### **Request consultation process**

52 You now have an opportunity to revise your request to enable it to proceed.

53 Revising your request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the documents you wish to access. For example, by providing more specific information about exactly what documents you are interested in, our agency will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.

54 Before the end of the consultation period, you must do one of the following, in writing:

- (a) withdraw your request
- (b) make a revised request

- (c) tell us that you do not wish to revise your request.
- 55 The consultation period runs for 14 days and starts on the day after you receive this notice.
- 56 During this period, you are welcome to seek assistance from the contact person I have listed below to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it. (Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request.)
- 57 If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

## **YOUR REVIEW RIGHTS**

- 58 If you are dissatisfied with my interim decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

### **Internal review**

- 59 Under section 54 of the FOI Act, you may apply in writing to the AEC for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.
- 60 Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

### **Information Commissioner review**

- 61 Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online: <https://forms.business.gov.au/aba/oaic/foi-review/>  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
Post: GPO Box 52189, Sydney NSW 2001  
In person: Level 3, 175 Pitt Street, Sydney NSW

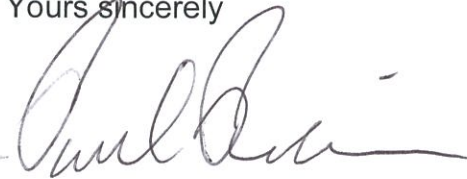
- 62 More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to [www.oaic.gov.au/freedom-of-information/foi-reviews](http://www.oaic.gov.au/freedom-of-information/foi-reviews).
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## Contact by the AEC

63 We will contact you using the email you provided. Please advise if you would prefer us to use an alternative means of contact. If you have any questions, please contact the following officer:

Name:	Owen Jones, Senior Lawyer
Telephone:	02 6271 4528
Fax:	02 2693 7657
Email:	<a href="mailto:owen.jones@aec.gov.au">owen.jones@aec.gov.au</a>

Yours sincerely



Paul Pirani

Chief Legal Officer

14 September 2016

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**LS5744 FOI REQUEST BY GRAEME BOWMAN**

*Request for all documents pertaining to estimates the commission has made for the cost of running the proposed plebiscite on same sex marriage.*

**SCHEDULE OF RETRIEVED DOCUMENTS**

Document No.	Description	Date	Recommendation/decision
1	<p style="text-align: center;"><b>Correspondence including meeting minutes, memos and briefings</b></p> <p>Budget related paper No. 1.7 Portfolio Budget Statements 2013-14 Finance and Deregulation Portfolio</p>	[undated]	

1.1 Document No. 1 is published for reference by the public at <http://www.finance.gov.au/publications/portfolio-budget-statements/13-14/docs/finance-portfolio-pbs-combined.pdf>.

1.2 A definition of 'document' is provided by subsection 4(1) of the FOI Act unless a contrary intention appears.

1.3 There is no contrary intention in Part III of the FOI Act (which provides for making FOI Requests) that would apply to the definition of 'document' provided by subsection 4(1) of the FOI Act.

1.4 Paragraph (d) of the definition of 'document' in subsection 4(1) of the FOI Act operates to carve out from that which may be requested as a document under Part III of the FOI Act material maintained for reference purposes that is otherwise publicly available.

1.5 It follows that Document No. 1 is out of scope of the class of document that may be requested under Part III of the FOI Act as a consequence of the operation of the carve out from the definition of 'document' provided by paragraph (d) of subsection 4(1) of the FOI Act.

1.6 I therefore **found** that Document No. 1 is out of scope of the class of document that may be requested under Part III of the FOI Act; and

1.7 Accordingly, I have **decided to refuse access** to Document No. 1.

## Spreadsheet calculation of estimated costs

[undated]

2.1 Document No. 2 is in the nature of an opinion about various cost inputs, prepared in the course of, or for the purposes of, the deliberative processes involved in the functions, namely the preparation of Document No. 2.

**DELIBERATIVE MATTER**

2.2 Having regard to paragraphs 6.56 - 6.76 and 13.84 – 13.101 of the FOI Guidelines it is open to you to find that:

- (a) section 47C of the FOI Act applies to Document No. 2; and
  - (b) Document No. 2 contains no operational information purely factual material to which subsection 47C(2) of the FOI Act may apply; and
  - (c) Document No. 2 does not contain purely factual ,
- with the effect that the entirety of Document No. 2 is deliberative matter that is conditionally exempt.

**BALANCING PUBLIC INTEREST**

2.3 Section 11B of the FOI Act requires me to balance factors favouring access against factors indicating that access to the Document No. 2 would, on balance, be contrary to the public interest having excluded from your consideration any irrelevant factor listed in subsection 11B(4) of the FOI Act for the purpose of deciding whether or not to give access to Document No. 2 under subsection 11A(5) of the FOI Act.

2.4 I did do this by taking into account the guidance in the FOI Guidelines, particularly paragraphs 6.3 – 6.33 and 6.77.

2.5 It is open to me to take into account that the opinion about the forecast costing of a plebiscite was published in Document No. 2.

2.6	It is open to me to find that the disclosure of the costing forecast in Document No. 2 achieves the objects of the FOI Act expressed in sections 3 and 3A for the purposes of paragraph 11B(3)(a) of the FOI Act.
2.7	The manner in which the opinion was arrived at is not of itself a matter that would usefully inform public debate about the cost of the plebiscite for the purposes of paragraph 11B(3)(b) of the FOI Act. The cost of the plebiscite will only be ascertained once the plebiscite is conducted and the expenses associated with it have crystallised.
2.8	The breakdown of the various opinions about particular likely expenses incurred in conducting a plebiscite would provide no useful basis for oversight of the public expenditure incurred in relation to the plebiscite for the purposes of paragraph 11B(3)(c) of the FOI Act.
2.9	The considerations required by paragraph 11B(3)(d) of the FOI Act are not triggered by the subject matter of the FOI Request.
2.10	I am unable to identify any other consideration that I should take into account that favours giving access to Document No. 2.
2.11	A factor against giving access to Document No. 2 is that the public has no discernible interest in knowing how the forecast of probable costs was arrived at by the AEC.
2.12	The public's interest lies in knowing how the money was actually spent.
2.13	I therefore <b>found</b> that:
	(a) Document No. 2 is in the nature of an opinion about various cost inputs, prepared in the course of, or for the purposes of, the deliberative processes involved in the functions, namely the preparation of Document No. 2;
	(b) the disclosure of the costing forecast in Document No. 2 achieves the objects of the FOI Act expressed in sections 3 and 3A for the purposes of paragraph 11B(3)(a) of the FOI Act;

	<p>(c) The breakdown of the various opinions about particular likely expenses incurred in conducting a plebiscite would provide no useful basis for oversight of the public expenditure incurred in relation to the plebiscite for the purposes of paragraph 11B(3)(c) of the FOI Act;</p> <p>(d) The considerations required by paragraph 11B(3)(d) of the FOI Act are not triggered by the subject matter of the FOI Request;</p> <p>(e) There are no other consideration that I should take into account that favours giving access to Document No. 2;</p> <p>(f) A factor against giving access to Document No. 2 is that the public debate around the issues relating to the proposed plebiscite should not be distracted by a side issue, namely why it costs so much to conduct the plebiscite; and</p> <p>(g) The factor identified in paragraph 2.13(f) against giving access to Document No. 2 outweighs the factors favouring access identified in paragraphs 2.13(b) to (e).</p> <p>2.14 Accordingly, I have <b>decided to refuse access</b> to Document No. 2.</p>
<p><b>3</b></p>	<p>Submission to the inquiry into the matter of a popular vote, in the form of a plebiscite or referendum, on the matter of marriage in Australia</p> <p>3</p>
	<p>?/09/2015</p> <p>3.1 Document No. 3 is published for reference by the public at <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Marriage_Plebiscite/Submissions">http://www.aph.gov.au/Parliamentary Business/Committees/Senate/Legal and Constitutional Affairs/Marriage Plebiscite/Submissions</a></p> <p>3.2 A definition of 'document' is provided by f subsection 4(1) of the FOI Act unless a contrary intention appears.</p>



	<p>3.3 There is no contrary intention in Part III of the FOI Act (which provides for making FOI Requests) that would apply to the definition of 'document' subsection 4(1) of the FOI Act.</p> <p>(a) Paragraph (d) of the definition of 'document' in subsection 4(1) of the FOI Act operates to carve out from that which may be requested as a document under Part III of the FOI Act material maintained for reference purposes that is otherwise publicly available</p> <p>3.4 It follows that Document No. 3 is out of scope of the class of document that may be requested under Part III of the FOI Act as a consequence of the operation of the carve out from the definition of 'document' provided by paragraph (d) of subsection 4(1) of the FOI Act.</p> <p>3.5 I therefore <b>found</b> that Document No. 3 is out of scope of the class of document that may be requested under Part III of the FOI Act; and</p> <p>3.6 Accordingly, I have <b>decided to refuse access</b> to Document No. 3.</p>
<p><b>4</b></p>	<p>Letter from Tom Rogers, Australian Electoral Commissioner to Sophie Dunstone, Committee Secretary, Senate Legal and Constitutional Affairs Committee re <i>Australian Electoral Commission's (AEC) response to Questions taken on Notice at the 10 September 2015 Senate inquiry into the matter of a popular vote, in the form of a plebiscite or referendum, on the matter of marriage in Australia</i></p> <p>14/09/2015</p>

- 4.1 Document No. 4 is published for reference by the public at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Marriage\\_Plebiscite/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Marriage_Plebiscite/Submissions)
- 4.2 A definition of 'document' is provided subsection 4(1) of the FOI Act unless a contrary intention appears.
- 4.3 There is no contrary intention in Part III of the FOI Act (which provides for making FOI Requests) that would apply to the definition of 'document' provided by subsection 4(1) of the FOI Act.
- 4.4 Paragraph (d) of the definition of 'document' in subsection 4(1) of the FOI Act operates to carve out from that which may be requested as a document under Part III of the FOI Act material maintained for reference purposes that is otherwise publicly available
- 4.5 It follows that Document No. 4 is out of scope of the class of document that may be requested under Part III of the FOI Act as a consequence of the operation of the carve out from the definition of 'document' provided by paragraph (d) of subsection 4(1) of the FOI Act.
- 4.6 I therefore **found** that Document No. 4 is out of scope of the class of document that may be requested under Part III of the FOI Act.
- 4.7 Accordingly, I have **decided to refuse access** to Document No. 4.