

RESPONDENT SUBMISSIONS– 31st January 2025

COURT DETAILS

Jurisdiction	NSW Civil & Administrative Tribunal
Division	Administrative & Equal Opportunity
Registry	Level 10, 86 – 90 Goulburn Street Sydney NSW 2000
Case number	2024 - 00367444

PARTIES TO PROCEEDINGS

Applicants	Dept of Communities & Justice (Applicant 1) Port Stephens Council (Applicant 2) Goulburn Mulwaree Council (Applicant 3)
Respondents	Telina Webb (Respondent 1) Paul McEwan (Respondent 2) DraftCom Pty Ltd (Respondent 3)

FILING DETAILS

Filed for	Respondents
Filed in relation to	Respondents' Submissions
Legal Representative	Self-Represented / Agent for Respondents 2 & 3
Contact name and telephone	Telina Webb, 1300 679 364
Contact email	info@nswfreedomofinformation.net

- 1 These submissions are a public document.
- 2 The Respondents expect the Applicants to circulate this document. As such, Respondent 1 confirms her intention to make this document available to the public at Respondent 1's discretion.
- 3 Firstly, the Respondents wish to thank the Applicants in these proceedings for providing such concise documentation, as a significant portion of that negates future potential access applications on the part of particularly Respondent 1, applications which might return a decision of unreasonable use of resources or information not held in order to protect agency interests.
- 4 Secondly, it is important the Tribunal note at the outset the Applicants' collaborative Application for Orders under Section 110 of the GIPA Act 2009 is stamped filed at the Registry on Friday 04th October 2024.
- 5 It was absent of basic information, clearly rushed to get to the Tribunal as a matter of urgency; the supporting documentation and foundational information ordinarily enclosed to be provided later.
- 6 Indeed, by the date of the Directions Hearing and Application for Dismissal of 05th November 2024, the Applicants had still not made the necessary disclosures.
- 7 There can be no doubt the collaboration between the (3) three Applicants by that particular date was the direct result of the media release (9) business days prior: ***"Toxic State Government Behaviours Exposed! - Public's Ongoing Investigation into NSW Right to Information and Privacy Officer Behaviours and Activities Reveals Cartel Posse Mentality, Denigrating Legislated Rights and Undermining Beneficial Legislation, 23.09.2024, "*** <https://nswfreedomofinformation.net/media-releases/media-2024/>.
- 8 By the date of the Applicants' first-round submissions of 17th December 2024, a total of (52) fifty two business days since the filing date of 04th October 2024, the Applicants would disclose they had spent the gargantuan sum of public monies quantified as \$295,592.88 for (852) claimed hours of work. These figures also equate to a consistent use of (16) sixteen OGIPU staff members over the period.

- 9 **Part 1** – Introductions and background to NSW Freedom of Information.
- 10 **Part 2** - Respondents’ concerns Applicants collectively stalked and intimidated,
abusing positions to breach and invade the privacy of Respondents’ 1 and 2.
- 11 **Part 3** – NSW Right to Information & Privacy Practitioners Network, NIPPN.
- 12 **Part 4** – Respondents Acting to Pervert the Course of Justice.
- 13 **Part 5** – Miscellaneous Application for Dismissal of Proceedings.
- The Respondents seek this application run in parallel to these proceedings.
- 14 **Part 6** – Miscellaneous Application for Contempt of Tribunal.
- The Respondents seek this application run in parallel to these proceedings.
- 15 **Part 7** – Mandatory Disclosures.
- 16 **Part 8** - The Public’s Beneficial Enabling Legislation.
- 17 **Part 9** - Legislated Paramaters of the Application.
- 18 **Part 10** – History of Section 110 Applications.
- 19 **Part 11** – History of Term ‘concert’ as included in Section 110.
- 20 **Part 12** – Respondent Commentary on Applicant Submissions.
- a. **Legislative Paramaters for Orders under Section 110 of the GIPA Act.**
 - b. **Disqualification of Applicant 2**
 - c. **Disqualification of Applicant 2**
 - d. **Disqualification of Respondent 3**

- 21 **Part 1** – Introduction and background to NSW Freedom of Information:
- 22 Respondent 1 is a qualified criminologist.
- 23 Respondent 1 is also a registered lobbyist.
- 24 Respondent 1 has no formal legal training or qualifications.
- 25 As such, these submissions originating from Respondent 1 on behalf of each of the Respondents, may be formulated and set out in a manner legally unfamiliar to the Tribunal but relevant for an un-represented, non-legally trained, non-legal professional as party to the proceedings.
- 26 Whilst NSW government agencies including Applicant’s 1 and 2, are now documented to claim Respondent 1 is very experienced in legal matters, claiming Respondent 1 is fully conversant with the workings of the Tribunal and its associated legislation, it cannot be said Respondent 1’s skills and experience equate to the level of legal experience relied upon by NSW government agencies which is now evidenced to include principal solicitors, barristers, and law educators.
- 27 A criminologist is defined as a professional who studies patterns of crime in order to inform government or organisations to reduce and prevent it from occurring, which generally incorporates data and statistical information from past documented criminal offending.
- 28 Criminologists use theories such as Rational Choice Theory to explain patterns of offending behaviour including white collar deviance.
- 29 A lobbyist is defined as a person who takes part in an organised attempt to influence legislators. Lobbying is a form of advocacy which lawfully attempts to directly influence legislators or government officials such as regulatory agencies, the judiciary, or parliament.
- 30 Respondent 1’s criminological primary focus is white collar crime in the context of NSW government employees in the exercise of statutory obligations concerning the Government Information (Public Access) Act 2009, GIPA Act.
- 31 The purpose of identifying, documenting and reporting white collar crime in the context of NSW government employees and the GIPA Act 2009 is to gather the evidence to support legislative change on behalf of the NSW public.

32 In 2009 the Honorable Nathan Rees hailed in the new freedom of information legislation, the GIPA Act, when he spoke directly to the NSW Parliament stating:

“Our public sector must embrace openness and transparency and governments must forever relinquish their habitual instinct to control information.”

33 It is reasonable to assume Mr Rees’ use of the terminology ‘*must forever relinquish their habitual instinct to control information*’ was referring to existing entrenched departmental cultural attitudes and approaches to the public’s fundamental rights to access their government’s information and records, indicating it was necessary to the rule of law that old habits to control the flow of government information had been replaced by the new legislation.

34 The word “*must*” is not defined in the Interpretations Act 1987, leaving it open to its ordinary and simple meaning:

- Merriam-webster defines must:

To be commended or requested to, be obliged to, be compelled to do something.

- Cambridge defines must:

Necessity something happens or is done.

- Collins defines must:

Necessary for something to happen, particularly because of a rule of law.

- Britannica defines must:

Used to say that something is required or necessary, something required by a rule of law.

35 On 27th February 2015 George Brandis Attorney-General stated:

“In a democracy, it is not character assassination to call a public official to account, nor subject their performance to public scrutiny.”

36 The Applicants in these proceedings, by the content of the submissions and affidavits, appear to be mostly concerned with accountability and scrutiny of their conduct and actions in service of the public, seeking Orders under Section 110 for the purpose of silencing public commentary, avoiding being called to public account, and avoiding public scrutiny of their performance.

37 These do not qualify as issues of consideration under the GIPA Act 2009 Section 110 (1).

38 On 27th September 2021 Elizabeth Tydd NSW Information Commissioner stated:

“Citizens have the right to access government information.”

39 The Applicants’ Application seeks to obstruct and deny those rights by deliberately acting in troll-like manner to secure information detrimental to the Respondents to support assertions of personal factors and interpersonal relationships, actions and results which do not qualify as issues of consideration under the GIPA Act 2009 Section 110 (1).

40 In particular the Applicants intend to intervene in and control aspects of the Respondents’ relationship which is outside of the enabling legislation and in breach of fundamental human rights.

41 On 27th September 2021 Peter Hall Chief Commissioner of ICAC stated:

“Information is key to the investigation and prevention of corruption.”

42 Corrupt conduct in the context of government is defined as involving an abuse of (public) office. A public official can engage in corrupt conduct if they do something that constitutes, involves or is engaged in for the purpose of abusing their office as a public official. A public official abuses their office if they:

- *Engage in improper acts or omissions in their official capacity*
- *Know that those acts or omissions are improper*
- *Intend to gain a benefit for themselves or another person, or cause a detriment to another person,” National Anti-Corruption Commission Act 2022, 8(1)(c).*

43 Corrupt conduct is punishable as criminal offending. Indeed it is the responsibility of those solicitors involved in these proceedings to comply with their individual obligations to the court to report such offending.

44 Instead this Application sees the Applicants collectively justifying their offending behaviours in the exercise of their statutory functions under the GIPA Act 2009.

45 The Tribunal will realise it is the Respondents who have taken the responsibility to report the documented offending by numerous government employees.

46 This has understandably caused a great deal of anger on the part of government employees, leaving this Application for Section 110 Orders viewed as retaliatory.

47 Indeed, Respondent 1 has repeatedly reported unlawful conduct on the part of NSW government employees, with government solicitors ignoring their obligations as officers of the court. Regrettably, numerous members of the Tribunal have also ignored those same obligations.

48 On 27th September 2021 Mark Speakman NSW Attorney General stated:

“The public can use information to drive improvement.”

49 Supporting information which evidences systemic failures in, and abuse of, departmental responses to the public’s endeavouring to exercise their legally enforceable rights to access government information, is crucial to driving improvement in the context of the public’s beneficial legislation.

50 Indeed, the drastic retaliatory actions against un-represented members of the public on a ‘win at all costs’ basis, is the result of particularly Respondent 1’s decision to blow the whistle very loudly on the state-wide documented corruption of the Government Information (Public Access) Act 2009; the public’s beneficial legislation.

51 Such actions by the same departmental managers tasked with the responsibility of ensuring adequate training and oversight of corruption-reporting internal to the organisation, leave the public and particularly these Respondents with the clear message whistleblowers continue to be persecuted and criminalised for speaking out and reporting offences.

- 52 In the context of whistleblowing, ex-NSW Attorney General Mark Speakman claimed “*These nation-leading reforms demonstrate the NSW government’s ongoing commitment to exposing and stopping misconduct in all areas of public life.*”
- 53 Clearly this case evidences the abhorance and contempt NSW public servants hold for anyone blowing the whistle about any thing, and most particularly by those employed directly by the NSW Attorney-General.
- 54 Particularly, the NIPPN cartel and its reliance on Chatham House Rules is undoubtedly designed to protect wrongdoers in the exercise of the GIPA and PPIP Acts. This is Noble Cause Corruption in action as members act and are expected to act for the benefit of the group as first priority.
- 55 This closeted group of public servants could easily identify any member who rightfully reported misconduct and corrupt conduct.
- 56 As at the date of these submissions no individual employed in the NSW government sector has exercised any level of conscience and made the necessary reporting, with a long list of individuals profiting a great deal as a thank you for turning a blind eye.
- <https://www.governmentnews.com.au/nsw-passes-new-whistleblower-protection-laws/>
- 57 <https://www.parliament.nsw.gov.au/bill/files/3894/Second%20Print.pdf>
- 58 The Respondents rightfully rely on the above credible and relevant public statements by those in executive positions of public service.
- 59 Respondent 2 is a small business owner since 1996.
- 60 Respondent 2 has exercised his legally enforceable rights to access NSW government information on a small number of occasions.
- 61 Respondent 3 is a small business, which has not exercised any legislated rights of its own accord in the context of the GIPA Act 2009.

62 The transcript of the NCAT hearing of 20th February 2020 records an ex-judge of
the Industrial Relations Commission, sarcastically recommending the Respondent in
those proceedings being Respondent 1 in these proceedings “*Okay, well you can
write an article about that,*” in the context of the the identified problems with the
GIPA Act and the continuing unlawful and unconscionable conduct perpetrated by
the Applicant in those proceedings being Applicant 2 in these proceedings.

63 The same Tribunal member stated “*we are all inherently biased.*”

64 These simple statements gave Respondent 1 in these proceedings food for thought
from a senior individual in the NSW judiciary.

65 Shortly after publishing his NCAT decision a meagre (12) twelve business days
after that hearing, having that decision rightfully overturned on member bias, and
succeeding in having the remitted Application dismissed, Respondent 1 in these
proceedings did write an article and issue a media release in 2021 through a media
distribution service.

66 However, that media release remained live for one (1) week only.

67 Applicant 2 utilised the resources of public monies, in-house solicitors Stephanie
Posniak and Lisa Marshall, and external solicitor Carlo Zoppo to have the article
removed, under threat of instigation of defamation proceedings.

68 Applicant 2’s witness Tony Leslie Wickham was also understandably involved.

69 It was subsequently removed from the internet courtesy of Applicant 2 in these
proceedings, where evidence showed public monies for external legal services and
threats of defamation inclusive of false and misleading statements had been used to
full effect.

70 Regrettably, such conduct by NSW government employees in the context of access
to information which is evidenced and extensively documented to occur, continues
to be endured by the public on a regular and ongoing basis.

71 Incidentally and despite Applicant 2's protestations and threats within its legal representative's letter of 16th November 2021, these truths remain evidenced and have been provided to the NCAT on numerous occasions:

- Applicant 2's Tony Wickham did author and use a letter that contained false information
- Applicant 2's Tony Wickham did author false allegations about apprehended violence orders being in place against Respondents' 1 and 2
- Applicant 2's Tony Wickham did make false and unfounded allegations on Council's website in February 2013
- Applicant 2's Tony Wickham would also on 30th January 2020 provide false and misleading statements in a Sworn Affidavit to the Tribunal concerning his false allegations about Respondent's 1 and 2, disclosing his clear contempt for the public and complete indifference to the judiciary.

72 As now seems to be standard operating procedure for Applicant 2, it's business as usual to carefully manipulate government records, omit implicating information as required, and craft a narrative which meets Applicant 2's agenda at any point in time, which has occurred yet again in these proceedings leaving Applicant 2 with no credibility whatsoever concerning any truth.

73 ***Refer to Attachment 1***

74 It is the culmination of the NCAT's recommendation to "*write an article about that*" and Applicant 2's deliberate unconscionable action to have a valid media release removed from the internet courtesy of public monies and the now documented repeated unlawful conduct of Applicant 2, along with absence of quality training and information available to the public in the context of the GIPA Act 2009, which motivated Respondent 1 in these proceedings to launch the website NSW Freedom of Information, www.nswfreedomofinformation.net, appropriately during the NSW Information & Privacy Commissioners' (IPC) Right to Know Week 2021.

75 As is published on the Site, Respondent 1 provides information and support services to the public at no cost whatsoever.

76 Currently there is no relevant information or training available to the general public concerning the GIPA Act 2009.

77 Indeed, currently all training is provided exclusively to NSW government agencies, paid for by public monies.

78 Those GIPA Training providers include:

- The Office of the NSW Crown Solicitor
- Information Consultants
- Youngman Consultancy

79 The IPC also provides regular training and makes herself available to agency personnel as required.

80 There may be others however they are yet to identify themselves or the organisation to the public.

81 The IPC does not make herself available to the public, repeatedly denying meetings when requested.

82 All enquiries by the public for access to the same training provided to NSW government agencies has been denied.

83 All trainers are members of the NSW Right to Information & Privacy Practitioners Network, NIPPN, peddling their services directly to governmental key decision-makers and outside of legislated procurement protocols.

84 Indeed, the NSW Crown Solicitor's Kiri Sue Mattes (CSO) is on the record stating her training is used as a gateway to securing and providing legal services.

85 And yet, details of such training and the financial returns generated the result are absent from all CSO Annual Reports; the public is not able to access any information about this revenue outside of exercising rights under the GIPA Act 2009.

86 This misleading organisation's full title, the NSW Right to Information and Privacy Practitioners Network, gives the false impression members are somehow accredited health and well-being practitioners, which could not be further from the truth.

- 87 As at the date of these submissions no right to information or privacy officer in the state of NSW is accredited to do anything.
- 88 Respondent 1 has sought access to such GIPA training documents and manuals but was denied access by both Applicant 2 in these proceedings and the Tribunal.
- 89 As such, the general public has formed an ever-growing community of those interested in understanding the Access to Information process further to the legislation and basic information on the IPC's website.
- 90 This leaves the public's reality that NSW government agencies retain full advantage over each and every valid access applicant at all times and most particularly at the time of lodging an access application for the first time which constitutes unconscionable conduct.
- 91 This kind of advantage displayed as unconscionable conduct was articulated in ***CBA v Amadio (1983) HCA 14*** at 22:
- “22... if A having actual knowledge that B occupies a situation of special disadvantage in relation to an intended transaction, so that B cannot make a judgment as to what is in his own interests, takes unfair advantage of his (A's) superior bargaining power or position by entering into that transaction, his conduct in so doing is unconscionable. And if, instead of having actual knowledge of that situation, A is aware of the possibility that that situation may exist or is aware of facts that would raise that possibility in the mind of any reasonable person, the result will be the same.”*
- 92 This ever-growing community seeks to be heard, wanting to share and express their views, opinions and personal experiences for the benefit and assistance of the general public. This sharing of personal experiences can also be cathartic for those who have been inflicted with various forms of extreme pain, suffering, and immeasurable emotional and financial damage through no fault of their own but through the agency responses to valid access applications inclusive of the current review processes.

- 93 Respondent 1 is contactable through the published contact information on every Site page, through various contact forms throughout the Site, and also through a nominated 1300 phone number.
- 94 The 1300 phone number has been operational since mid-2023 due to the number of enquiries received.
- 95 The 1300 phone number is supported by an answering service which takes the calls and advises Respondent 1 of the nature of enquiries, forwarding those directly to Respondent 1 for reply and provision of information.
- 96 Respondent 1 has at all times acted in the capacity as full time volunteer of the free community service NSW Freedom of Information.
- 97 The free community service does not pay for internet search engine rankings which can ensure first page internet search engine results.
- 98 The free community service does not solicit for donations, sponsorship or membership.
- 99 However, through the consistent searches for GIPA information, NSW Freedom of Information continues to rank on the first page of search engines organically.
- 100 Examples of search criteria and results include:
- Access to Information NSW
 - NSW Freedom of Information
 - Freedom of Information NSW
- 101 In addition to contact originating from internet searches, agencies including NSW Police have referred the public to NSW Freedom of Information, which is considered a huge compliment.
- 102 *Refer to Attachment 2***
- 103 Respondent 2 is a member of the public and director of Respondent 3.

- 104 **Part 2** – Respondents’ serious concerns as to the Applicants’ collective stalking, acting to deliberately intimidate and harass the Respondents’, invading the Respondents’ privacy during these proceedings.
- 105 There is no legislative mechanism facilitating such actions by those fortunate to hold public positions of trust at the generosity and provision of the public purse.
- 106 Evidently the Applicants have no hesitation acting out in conduct they find offensive when actioned by the public they serve, leaving the public with the real sense of inequality and lack of access to the same degree of justice in contradiction to the foundations of the Rule of Law.
- 107 For the purposes of these proceedings, and indeed at all times prior to the commencement of these proceedings, at all times the Respondents 1 and 2 have indicated their nominated address for service of any and all documentation.
- 108 Those addresses include:
- PO Box 8030, Marks Point NSW 2280
- And / or
- info@nswfreedomofinformation.net
- Draftcom.pmc@gmail.com
- draftcom@bigpond.com
- 109 At no time did the Respondents 1 and 2 indicate or make reference to their private residential address.
- 110 However the Applicants did, in response to the Tribunal’s Timetable, take such actions and make specific enquiries to ascertain the residential address of Respondents 1 and 2.
- 111 Neither Respondents’ 1, 2 or 3 have at any time engaged in any activity or made any effort to ascertain the private residential address of any NSW government employee, respecting and adhering to any nominated address for service and delivery of documentation at all times inclusive of restriction of access to services directives.

- 112 Those actions and enquiries by the Applicants to ascertain the Respondents' private residential address became apparent at the time the Applicants served their collective documentation at the private residence of Respondents 1 and 2.
- 113 This action is considered to be nothing other than deliberate stalking, intimidation, and harassment of the Respondents who are not, and have never been, legally represented.
- 114 This action is representative of the willingness of the Applicants and their legal representative to abuse positions of trust for a collateral and abusive purpose.
- 115 This action was undertaken by numerous officers of the court, but most particularly the Applicants' legal representative Mr Justin Cahill assumes ultimate and full responsibility.
- 116 Mr Cahill is expectedly fully informed about his obligations under the NSW government's Model Litigant Policy, the Departmental Code of Conduct, the Government Sector Employee Act 2013, and most importantly concerning his obligations as an officer of the court.
- 117 Whilst this conduct by Mr Cahill may not form part of these proceedings before the Tribunal, such remains in the public interest arena and may see reporting for due accountability in accordance with current established policies, procedures and legislation.
- 118 In this regard, the Respondents rightfully rely on the following caselaw:
- ***Port Stephens Council v Webb (2021) NSWCATAD 180, paragraph 65:***
65 "She is also entitled to pursue legal remedies available to her....."
- 119 Such conduct by these Applicants and their legal representative(s) is also open for public discussion.

120 Additionally the Respondents rightfully rely on the published public presentation of Applicant 1's Director / Business Unit Manager, Open Government Information & Privacy Unit (OGIPU) Ms Jodie Cobbin, titled "***Tale of A Fixated Applicant***", specifically Page 10 where Ms Cobbin concedes the public's legislated rights to report government employee misconduct:

10 "He poses a strategic problem,he is exercising his legal right to request information and make a complaint" (emphasis added).

121 Ms Cobbin was speaking specifically about an Access Applicant in the context of the GIPA Act. She made the public presentation at NSW Parliament House before members of the NSW Right to Information & Privacy Practitioners Network, the NIPPN cartel.

122 NIPPN membership includes NSW government employees and a number of individuals from private enterprise.

123 It is understood Ms Cobbin utilised the personal information of valid access applicant(s) Mr Peter Zonneville and / or Mr Joseph Zidar, in line with the OGIPU's submission dated 25th July 2019 for the NCAT Statutory Review, which did not deidentify these unsuspecting members of the public.

124 Refer to Attachment 3

125 Ms Cobbin is understood to have preceeded the OGIPU's NCAT Statutory Review submission with the public presentation "***Tale of a Fixated Applicant***" on 27th March 2019 during the NIPPN meeting of that date.

126 Ms Cobbin's customised application of the GIPA Act 2009 has direct relevance to these proceedings when coupled with the OGIPU's published attitudes towards valid Access Applicants which has exposed the OGIPU's desire every Access Applicant be treated in accordance with Section 110 of the Act at first instance of administrative review with the Tribunal.

127 Likewise Ms Cobbin's disregard for the public's legislated right to protection and security of its personal information additionally discloses primitive, antiquated attitudes of autocracy towards the fundamental rights of valid Access Applicants.

- 128 These attitudes do not align in any way whatsoever with Mr Rees' parliamentary speech, nor the Object of the GIPA Act 2009, nor the Parliament's intentions.
- 129 These attitudes do however align with Police State mentality, where overzealous public servants work hard to create moral panics about members of the public endeavouring to exercise their legislated rights, in this instance the right to access NSW Government Information.
- 130 A moral panic has been repeatedly articulated as potentially resulting in a miscarriage of justice, where some kind of widespread feeling of fear that some evil person or thing threatens the values, interest, or well-being of a community or society demands a response.
- 131 A prime example of how a moral panic can easily be created and maintained was the infamous case of Lindy Chamberlain which resulted in one of the worst cases of miscarriage of justice in the history of Australia.
- 132 In the context of the GIPA Act 2009 and the public's legally enforceable right to access NSW government information there can be no doubt the state's right to information and privacy officers, with Applicant 1 at the head and representative of NSW Justice, have collectively fueled the notion that there are evil persons in the community threatening the values, interests, and well-being of the NIPPN cartel and its activities, and that harsh, quick, forceful actions must be taken to stem this ongoing claimed deviance.
- 133 The redacted version of "*Tale of a Fixated Applicant*" released to Respondent 1 does nothing to hide Ms Cobbin's intentions and reactive recommendations to each and every NIPPN member, effectively creating and maintaining the moral panic concerning the public's rights to access their beneficial legislation the GIPA Act 2009 including the public's personal information, giving NIPPN a face or faces to ensure the urgency to act is taken seriously.
- 134 ***Refer to Attachment 4***

- 135 **Part 3** - NSW Right to Information & Privacy Practitioners Network, NIPPN.
- 136 Since August 2021 Respondent 1 has been personally investigating the operation of this group. Originally noted as existing on the IPC's website, and following a concise paper trail, Respondent 1 initiated contact with NIPPN's then Chair Ms Nicole Gibbs-Steele Senior Privacy Officer at iCARE NSW and notably a former employee of the Office of the NSW Information & Privacy Commissioner.
- 137 Respondent 1 requested the provision of the NIPPN membership list and numerous minutes' under the GIPA Act 2009, on the basis the information was governmental in nature. The Chair stated unless Respondent 1 had an agency email address the information would not be released, with information on the nominated Site the only details available.
- 138 Since Respondent 1's initial enquiries about the NIPPN cartel the website has been removed from public view sending the organisation effectively underground while still operating covertly.
- 139 The case of *Webb v iCARE NSW (2023) NSWCATAD 316* saw the Tribunal decide in favour of the Applicant in those proceedings being Respondent 1 in these proceedings; where Schedule 4 (12) of the GIPA Act 2009 was considered at first mention, confirming the information pertaining to NIPPN was correctly identified as government.
- 140 Whilst Respondent 1 remains obstructed from full access to the membership list as at the date of this submission, in contravention of the GIPA Act 2009 Schedule 4, 4, 3(b), the redacted information since provided discloses there are members from all but every NSW government department as well as individuals from private enterprise and some from overseas.
- 141 Relevant to these proceedings the following NIPPN membership is confirmed:
- (8) eight staff originating from Applicant 1
 - (1) one staff originating from Applicant 2
 - It is reasonable to expect Applicant 3 has now joined the NIPPN cartel

142 It was on perusing that information and lodging several access applications
Respondent 1 uncovered the following:

143 NIPPN Terms of Reference:

144 The Terms of Reference of the NIPPN cartel relies on Chatham House Rules to
provide protection to members, in order to ensure they can speak freely about any
government business without fear of accountability.

145 This protection extends to freely sharing the public's personal information at will.

146 The Terms of Reference claim the purpose of the group is to provide a safe place for
government employees to discuss government business, noting NIPPN is not a
social club.

147 Chatham House Rules is founded on the premise of "*say what you want, share what
you choose, but don't disclose who said it, or where the information came from.*"

148 ***Refer to Attachment 5***

149 There is no mechanism in either the GIPA or PPIP Acts enabling such unlawful
conduct in the NSW government sector.

150 Compounding this situation of self-serving free speech in a public forum outside of
agency premises and out of sight of departmental managers, is the fact the group has
confirmed its membership of approximately (500) five hundred is inclusive of
individuals from private enterprise.

151 NIPPN members collaborate on departmental strategies and share government
information to be used against the public, among other activities.

152 This organisation "*decisioning outside of formal channels*" was referred to in the
2020 report concerning the functions and operations of iCARE, where the practices
of those at an executive level have infiltrated the NIPPN cartel as acceptable by
example [https://www.icare.nsw.gov.au/-/media/icare/unique-media/global-
header/news-and-stories/news/new-ceo-releases-governance-report/icare-
independent-gac-report.pdf](https://www.icare.nsw.gov.au/-/media/icare/unique-media/global-header/news-and-stories/news/new-ceo-releases-governance-report/icare-independent-gac-report.pdf).

- 153 The IPC, active members of NIPPN, provided documentary evidence in response to an access application lodged by Respondent 1 recording prior to the COVID pandemic, the IPC covered the catering and function costs for individual NIPPN meetings hosted at NSW Parliament House, under the banner of corporate expenses. All this paid for by the public purse where government employees gathered during business hours, to openly discuss government business in the context of the GIPA and PPIP Acts, and they have the audacity to claim imminuty under Chatham House Rules knowing the legislation prohibits such unlawful conduct.
- 154 Since COVID the IPC has generously provided meeting facilities including catering facilities in-house.
- 155 NIPPN Formulates Collective Response Strategies:
- 156 As far back as 16th November 2016 a NIPPN member suggested the group form a collective response strategy concerning Mr Nigel Gladstone an Investigative Reporter from the Sydney Morning Herald and operator of the website www.righttoknow.org.au because of the website and possibility documentation obtained through freedom of information legislation would be published.
- 157 The presentation took place in a public venue, Theatrette at Parliament House Sydney.
- 158 Mr Gladstone's full name and the website address were shared with the group.
- 159 This action, disclosing the normalising of a collective state-wide response strategy to valid access applicants is evidence of the access to information process being openly and completely corrupted by those in positions of the highest trust.
- 160 Access Applications should always be processed and determined on their own merit.
- 161 There can be no assurance Mr Gladstone's access applications after that date were treated impartially and on their own merit.
- 162 This collective response strategy and unlawful use of Mr Gladstone's personal information was made known to the whole of the population of NIPPN members inclusive of individuals from private enterprise.

- 163 Likewise, in March / April 2022 when Respondent 1 lodged a formal access application with iCARE NSW for the membership list and other NIPPN documentation, iCARE disclosed Respondent 1's personal information under cover of email to the NIPPN Consultative Committee despite clear written instructions consent to do so was withheld.
- 164 This breach of the PPIP Act 1998 was addressed in the case of *Webb v iCARE NSW (2023) NSWCATAD 230*.
- 165 Again, the concern was the possibility documentation released in response to a valid access application would be published, where NIPPN member and iCARE's Senior Privacy Officer determined it was acceptable to breach the public's privacy for the benefit of the organisation.
- 166 It is for reasons such as those outlined above Respondent 1 understands why it remains so difficult to access NSW government information, and that is entirely due to the fact NIPPN singled Respondent 1 out to the entire NIPPN group, as it did with Mr Gladstone, resulting in the continued corruption of the access to information process.
- 167 These actions do not align with either the GIPA or PPIP Acts.
- 168 *Refer to Attachment 6***
- 169 NIPPN Soliciting for Information on the False Premise of a Departmental Study:
- 170 On 12th June 2019, Justice NSW's Director / Business Unit Manager Open Government Information & Privacy Unit (OGIPU) Ms Jodie Cobbin, did solicit the whole of the state's right to information and privacy officer population through the NIPPN group mechanism, asking for information supposedly relating to problematic GIPA applicants.
- 171 The presentation took place in a public venue, Jubilee Room at Parliament House Sydney.
- 172 Ms Cobbin provided her departmental email address for the purpose Jodie.cobbin@justice.nsw.gov.au.
- 173 Ms Cobbin justified her solicitation by claiming the OGIPU was conducting a departmental study, which was false and misleading.

- 174 Having the benefit of hindsight, it is more likely Ms Cobbin was collecting the public's personal information for the compilation of dossiers.
- 175 Ms Cobbin is an ex-NSW Police Superintendent and accustomed to accessing the public's personal information without limitation, but it is clear the lines of delineation between previous police work and current departmental clerk appear to be of no consequence to her.
- 176 A subsequent GIPA application for information relating to the claimed study returned a determination of '*information not held.*' This is expected to be entirely due to the fact Ms Cobbin deliberately acted to unlawfully access the personal information of members of the public, which demanded agency obstruction from public access to those solicited documents in order to conceal her actions.
- 177 Release of the requested information would have resulted in embarrassment to the agency, Ms Cobbin herself, and all those who responded to her solicitation.
- 178 Ms Cobbin's request in an open public forum was made to the whole of the NIPPN membership inclusive of private enterprise under the false premise of Chatham House Rules.
- 179 Additionally, by seeking out secondary agency information and records for a claimed Dept of Communities & Justice study, Ms Cobbin exemplified the fact NIPPN Terms of Reference stating at *1. Role and Purpose* ".....*Practitioners are not considered to be representing the view of their respective agencies.....*" is completely false and misleading.
- 180 *Refer to Attachments 5 and 7***
- 181 NIPPN Acting to Access Information Absent of the GIPA Act 2009:
- 182 On 12th June 2019, Justice NSW's Director / Business Unit Manager Open Government Information & Privacy Unit (OGIPU) Ms Jodie Cobbin, did solicit the whole of the state's right to information and privacy officer population through the group mechanism, asking for information supposedly relating to problematic GIPA applicants.
- 183 The presentation took place in a public venue, Jubilee Room at Parliament House Sydney.

- 184 Ms Cobbin provided her departmental email address for the purpose
Jodie.cobbin@justice.nsw.gov.au.
- 185 Ms Cobbin is an ex-NSW Police Superintendent and accustomed to accessing the public's personal information without limitation, but it is clear the lines of delineation between previous police work and current departmental clerk appear to be of no consequence to her.
- 186 Ms Cobbin's request in an open public forum was made to the whole of the NIPPN membership inclusive of private enterprise under the false premise of Chatham House Rules.
- 187 Regrettably, these actions by Ms Cobbin show her amenability to bypass and disregard legislated access to information processes, effectively leaving no paper trail unless in the case of her solicitation of 12th June 2019 the Minutes of the Meeting utilised for the purpose are made public knowledge.
- 188 Ironically, if we are to accept Applicant 1's position that the claimed unmeritorious application requiring relief Ref No: 24-1566 is legitimate, as per Applicant 1's witness Jonathan Franklin's Affidavit of 12th December 2024, and that Ms Cobbin had requested the information from the NIPPN group legally under the GIPA Act 2009, Applicant 1 having lodged a formal access application with each of the (500) five hundred members bound by the legislation, would have found itself with (500) five hundred unmeritorious applications in one fowl swoop undoubtedly demanding relief.
- 189 By default, Ms Cobbin's actions have directly implicated every member of NIPPN.
- 190 These actions to deliberately intend to access NSW government information in breach of the legislation does not align with the object of the GIPA Act 2009, which is to ensure open, transparent and accountable government.
- 191 Applicant 2 in these proceedings provides evidence agencies are *QUOTE* "guided by the Government Information (Public Access) Act 2009 in terms of requests for information involving other agencies" *UNQUOTE*.
- 192 Refer to Attachments 7 and 28**

- 193 NIPPN Circulating Recommended Punitive Management Strategies:
- 194 On 27th March 2019, Justice NSW’s Director / Business Unit Manager Open Government & Privacy Unit (OGIPU) Ms Jodie Cobbin, did make a public presentation to the whole of the state’s population of right to information and privacy officers.
- 195 The presentation took place in a public venue, Jubilee Room at Parliament House Sydney.
- 196 That presentation is confirmed created in government time, utilising government equipment, government resources, a departmental Powerpoint template, and was signed off as Jodie Cobbin the author. Ms Cobbin also used a departmental USB device to remove the presentation from the workplace in order to make its content available in a public venue.
- 197 The presentation was titled “*Tale of a Fixated Applicant*”, in the context of the GIPA Act 2009.
- 198 Subsequent to Respondent 1’s formal access application and review in the NCAT forum concerning that presentation, the witness for Applicant 1 in these proceedings one departmental solicitor Jonathan Ian Franklin, did compile submissions dated 13th June 2023 repeatedly disclosing Ms Cobbin’s use of the public’s personal information sufficient in detail that, “..... *using the mosaic effect one could reasonably ascertain the identity and personal information contained within.....*”
- 199 This disclosure suggests each of the recipients of Ms Cobbin’s presentation was readily able to identify those members of the public pointed to in the presentation.
- 200 That is to say, the whole of the NIPPN membership which includes individuals from private enterprise, could identify the personal examples used by Ms Cobbin.
- 201 These actions do not align with either the GIPA or PPIP Acts.
- 202 ***Refer to Attachments 8 and 9***

- 203 Whilst the Respondent in those proceedings which is Applicant 1 in these proceedings, did not provide that personal information to the Applicant in those proceedings being Respondent 1 in these proceedings, there is no doubt whatsoever Ms Cobbin has made the personal information of members of the public publicly known through the NIPPN forum in breach of the legislation.
- 204 The OGIPU's timely submission on the NCAT Statutory Review just weeks later made clear to the world at large those targeted examples were Mr Peter Zonnevylle and Mr Joseph Zidar.
- 205 Ms Cobbin's presentation also unbelievably claimed an access applicant's individual writing style, such as using bold, underlining or highlighting, should be classified as bullying, threatening and intimidating behaviours that somehow demand formal control such as restriction of access to services.
- 206 Ms Cobbin also assured her audience seeking meetings and repeatedly asking for outstanding responses to departmental correspondence was unacceptable conduct on the part of an access applicant.
- 207 Ms Cobbin also recommended officers should consider involving NSW Police, seek Section 110 Orders, seek legal costs which are not legislated, and collaborate with other agencies as additional management strategies despite the serious implications such actions involved breaching the public's privacy, generally abusing the legislation and obstructing the public's legislated rights.
- 208 All of these recommendations are dependent upon breaching the access applicant's privacy, using personal information for a collateral purpose, abusing the position of public office, and corrupting the legislated access to information processes.
- 209 The recommendation to explore a Section 110 Order is also dependent upon access applications being determined as unmeritorious, a simple matter of denying information exists or an unreasonable use of agency resources without the need for evidence, which Respondent 1 has personally experienced.
- 210 At the conclusion of her presentation Ms Cobbin invited feedback and commentary from the whole of the state's right to information and privacy officers, nominating Applicant 1's generic email address infoandprivacy@justice.nsw.gov.au.

- 211 A subsequent GIPA application by Respondent 1 for information relating to the invited feedback and commentary on Jodie Cobbin’s presentation “*Tale of a Fixated Applicant*” returned a determination of ‘*information not held.*’
- 212 This is expected to be connected to the fact Ms Cobbin deliberately acted to unlawfully access and use the personal information of members of the public, which demanded agency obstruction from public access.
- 213 ***Refer to Attachment 8***
- 214 Release of the requested information would have resulted in embarrassment to the agency, Ms Cobbin herself, and all those who responded to her invitation following the presentation “*Tale of a Fixated Applicant*”.
- 215 Ms Cobbin’s request in an open public forum was made to the whole of the NIPPN membership inclusive of private enterprise under the false premise of Chatham House Rules.
- 216 These actions do not align with the object of the GIPA Act 2009, which is to ensure open, transparent and accountable government.
- 217 ***Refer to Attachment 4***
- 218 NIPPN Exemplifying Militant Action Against Access Applicants:
- 219 On 12th June 2019, Justice NSW’s Director / Business Unit Manager Open Government Information & Privacy Unit (OGIPU) Ms Jodie Cobbin, did solicit the whole of the state’s right to information and privacy officer population through the NIPPN group mechanism, asking for submissions for the NCAT Act 2013 Statutory Review.
- 220 It is important to note the focus of Jodie Cobbin’s role is to uphold the legislated rights of the public to access NSW government information as well as the legislated right of the public to ensure its personal information is fully protected.
- 221 The presentation took place in a public venue, Jubilee Room at Parliament House Sydney.
- 222 Resultantly, Applicant 1 lodged a submission concerning the NCAT Act 2013 Statutory Review, dated 25th July 2019, which was published in full.

- 223 All submissions pertaining to that Statutory Review were received by Applicant 1, with most of those partially redacted before publishing.
- 224 The content of Applicant 1's submission for that Review leaves no doubt it originated from the OGIPU, leaving its inclusion in the review compromised because it originated from the very department collating the report to Parliament.
- 225 The incriminating chronological history and background of the OGIPU's NCAT Act 2013 Statutory Review Report is:
- 27th March 2019 – Tale of a Fixated Applicant
 - 12th June 2019 – Solicitation for Study / Solicitation for NCAT Submissions
 - 25th July 2019 – Submission to Justice NSW for NCAT Statutory Review
- 226 ***Refer to Attachments 3, 4, 7 & 8***
- 227 The NCAT Statutory Review is not noted to have received any other submission from any other department within Justice NSW apart from the OGIPU; at least according to the published report to parliament dated November 2021.
- 228 The OGIPU Submission disgracefully sought the legislation be amended to facilitate global GIPA Act 2009 Section 110 parameters for each and every application for administrative review with the Tribunal, treating the public as offenders:
- “Proposals:***
Adopt a similar model to the United Kingdom's Administrative Court. In the United Kingdom's Administrative Court, a claimant must first obtain permission from the court to apply for review. The court will refuse an application seeking permission for judicial review unless it is satisfied there is an arguable ground for review with a realistic chance of success. The court may refuse to provide permission for a judicial review on several grounds including undue delay and a lack of substantive difference in the outcome. The Administrative Court, on receiving an application can make several decisions; it can grant permission, refuse it or grant it in part. The claim can be refused on the basis that it is “totally without merit” which means that the case is bound to fail but not necessarily vexatious. The Administrative Court's decision to refuse can be reconsidered at an oral hearing where the claimant must provide grounds for renewing the application for permission.

The standard time for an appeal of the decision in the Administrative Court is 30 minutes. Given this model the following is proposed:

I. Applicants be required to seek permission for an external review before NCAT by submitting written submissions and any evidence outlining the grounds for review.

Where an applicant seeks to summons a witness, this should also be addressed in the submissions including the valid grounds for the issuing of a summons. The issue of whether a summons can be issued should be determined by a tribunal member rather than a registrar.

II. The applicant's written submissions and relevant evidence are then determined by a Tribunal Member in order to determine whether there is an arguable ground for review with a realistic chance of success before permission for external review is granted.

III. Where the applicant is granted permission for external review, the relevant responding department is then notified and directed to provide submissions.

IV. The matter is then listed for hearing for determination by a tribunal member.

229 Clearly there was no consideration whatsoever for the Tribunal's resources, as is the case with these proceedings.

230 Should the legislators have approved such autocratic amendments into the public's beneficial enabling legislation, this would have resulted in access applicants enduring the Section 110 process at first interaction with the Tribunal.

231 ***Refer to Attachment 3***

232 Again, the submission evidences the OGIPU did not hesitate to breach the public's privacy using the public's personal information for a collateral purpose, where it blatantly used the public's information without any efforts to deidentify targeted individuals Mr Peter Zonneville and Mr Joseph Zidar who were used as examples., seeing their personal information referenced in the OGIPU Submission concerning the NCAT Statutory Review 2019.

233 This singular action by the OGIPU exemplifies how easy it is for a single government department to create a moral panic at the very idea the public should have the right to access NSW government information and avenues of review.

- 234 It reveals a cultural attitude of an entrenched need to control the public, treating them at first instance as offenders, where their rights of review are questioned at first instance.
- 235 And it reveals the OGIPU's level of resentment towards the public's endeavouring to access its beneficial legislation.
- 236 But of greater concern these now published attitudes and departmental endeavours emanate from the Director / Business Unit Manager OGIPU herself, and as such must be seen to permeate throughout her subordinate ranks.
- 237 It is crucial the Tribunal fully comprehend the intention of the Applicants' joint Application for Orders under Section 110 of the GIPA Act 2009, and from where the overpowering desire to secure such orders originates from.
- 238 It is intended to reach into private enterprise and community organisations including free community support services.
- 239 None of this is representative of a democratic government.
- 240 *NIPPN – Terms of Reference:*
- 241 The Terms of Reference of the group states members rely on Chatham House Rules as some kind of misguided cover of protection, in order to ensure they can speak freely about any government business whatsoever but most particularly the public's personal information.
- 242 This invoked prep-school mechanism used to facilitate the ultimate degree of self-professed free speech about departmental access to information and privacy details, has absolutely no legislative basis.
- 243 This protection extends to freely sharing the public's personal information without any concern for accountability.
- 244 The Terms of Reference claim the purpose of the group is to provide a safe place for government employees to discuss government business.
- 245 As such it is shocking to realise so many of our public servants have now professed to not feeling safe in their privileged, comfortable workplaces.

246 Chatham House Rules is founded on the premise of “*say what you want, share what you choose, but don’t disclose who said it, or where the information came from.*”

247 This does not align in any way with the GIPA Act 2009.

248 And most certainly does nothing to align with the PPIP Act 1998.

249 Compounding this situation of abuse of free speech in a public forum outside of agency premises and out of sight of departmental managers, is the fact the group has confirmed its membership is inclusive of private enterprise.

250 ***Refer to Attachment 10***

251 Rightfully, and subsequent to petitioning by Respondent 1 to the NSW Attorney General, Applicant 1 in these proceedings has completely debunked the prep-school Chatham House Rules making clear:

“The Chatham House Rule is not legally binding and therefore cannot override the requirements of NSW legislation in any circumstances.”

252 ***Refer to Attachment 11***

253 *NIPPN Members’ Conduct Exposed in the Exercise of the GIPA Act 2009:*

254 A summary of the unacceptable behaviours currently practiced by NIPPN cartel members, evidenced in documents provided under the GIPA Act 2009, includes but is not limited to:

a. Port Stephens Council

Applicant 2 in these proceedings has become the public face and antithesis of open, transparent, accountable government, with an indisputable history of obstructing the public’s legally enforceable rights to access government information, acting punitively, abusing process, using the GIPA protocols for collateral purposes, and using unquantifiable public funds totalling approximately \$600,000.00 if we are to accept the Sworn Affidavit of Tony Leslie Wickham dated 12th December 2024.

(Applicant 2 may be overtaken by Applicant 1 by the close of these proceedings.)

Applicant 2 in these proceedings is now documented to act in the following manner and tops the list for sustained abuse of position and power in public office and most particularly in the exercise of the GIPA Act 2009:

- Ignore the Object of the GIPA Act 2009
- Refuse to provide mandatory release disclosures
- Refuse to provide information informally when legislated
- Refuse to provide information formally when legislated
- Denying the existence of government information
- Influencing subordinate officers
- Imposing unwarranted fees and charges
- Fabricating public interests against disclosure
- Neglecting to make mandatory interest disclosures
- Neglecting to address and manage conflicts of interest
- Initiating unlawful agreements to fabricate public interests against disclosure
- Concocting personal factors of the application
- Recommending fabricating public interests against disclosure
- Making false and misleading statements to the Information Commissioner
- Providing false and misleading statements and submissions to the judiciary
- Providing false and misleading statements to third-party agencies
- Engaging in manifestly excessive advocacy against non-represented parties
- Successfully obtaining non-legislated costs orders
- Using public monies for personal use to have information deleted from the internet
- Using public monies for personal use to threaten defamation action
- Breaching the public's privacy
- Executive Officer colluding with secondary agency to ensure statements and submissions aligned to the detriment of unrepresented party in judicial proceedings
- Breaching Section 6.5

b. Goulburn-Mulwaree Shire Council

- Refusing to accept valid access application unless nominated form utilised
- Denying the existence of government information
- Neglecting to address and manage conflicts of interest
- Imposing unwarranted fees and charges
- Breaching the public's privacy
- Breaching Schedule 4, 4, 3, (b)
- Breaching Section 126

c. NSW Dept of Education

- Refusing to accept valid access application unless nominated form utilised
- Demanding provision of identification without due cause

d. Secretary, Dept of Communities & Justice

- Using pseudonyms to sign off on documentation
- Denying the existence of government information
- Repeatedly acting in troll-like manner to identify information for use against unrepresented access applicants
- Abusing the Work Health & Safety Act to deny access to information
- Neglecting to address and manage conflicts of interest
- Labelling access applicants as vexatious
- Recommending agencies unlawfully seek costs
- Threatening access applicants with legal costs
- Recommending agencies utilise NSW Police
- Recommending agencies utilise Section 110 proceedings
- Recommending agencies procrastinate applications by enforcing formal document delivery and communication processes
- Suggesting agencies interpret individual writing styles as bullying, harassing, threatening and intimidating in order to justify departmental restriction of services and formal punishments
- Soliciting secondary agencies for personal information of access applicants
- Falsely claiming departmental study for purpose of soliciting personal information from secondary agencies
- Using public's personal information for collateral purposes
- Breaching the public's privacy
- Issuing warning letters to unrepresented parties, threatening departmental restriction of access to services, in response to valid submissions in judicial administrative review
- Formally restricting access to services due to dislike of the format and content of valid access applications
- Endorsing the use of Chatham House Rules to facilitate the unlawful disclosure of government information
- Sharing government information in a public forum
- Using government resources to disseminate government information in a public forum
- Breaching Schedule 4, 4, 3, (b)
- Breaching Section 126
- Breaching Section 52
- Breaching Section 47

e. Office of the NSW Crown Solicitor

- Principal Officer colluding with secondary agency to ensure statements and submissions aligned to the detriment of unrepresented party in judicial proceedings
- Successfully seeking non-legislated costs orders
- Using GIPA Training programs as a gateway to securing legal contracts

f. iCARE NSW

- Continually obstructing access to government information on the false premise the information is personal in nature
- Procrastinating valid access applications
- Breaching the public's privacy
- Promoting the use of Chatham House Rules to facilitate the unlawful disclosure of government information
- Promoting the use of Chatham House Rules to facilitate the unlawful disclosure of personal information
- Breaching Schedule 4, 4, 3, (b)
- Breaching Section 126

255 **Part 4 – Acting to Pervert the Course of Justice**

256 During the hearing of 05th November 2024 Mr Cahill did deliberately, and with the assistance of Applicant 1's witness Jonathan Franklin disclosed to be assisting at that time, act and make statements to the Tribunal for the purpose of perverting the course of justice.

257 Mr Cahill informed the Tribunal, as recorded at the Transcript Paragraph 101:

258 *“101.....with respect of Acting in Concert, we've set a specific order of corporation and in doing so, um, we are within the bounds of Section 110, 1.”*

259 **Refer to Attachment 13**

260 Mr Cahill impresses upon the Tribunal the Applicants rely on the whole of Section 110 (1), which is applicable given that the subclauses (a) and (b) are joined by the word “and”.

261 Section 110 (1) does not use the word “or”, subclause (a) and (b) constitute the whole of Section 110 (1).

262 Mr Cahill was aware at all times the Applicants were not able to satisfy the Tribunal
as to the parameters of Section 110 (1).

263 The Applicants did not provide any submissions, only a letter authored by Ms
Cobbin concerning Respondent 3 on the issue of a corporation.

264 However, the purpose of the Application on the part of the Applicants was to secure
the Tribunal's decision for the orders as sought.

265 In doing so, that is in making the statement to the Tribunal "...we are within the
bounds of Section 110 (1)", Mr Cahill knew he was misleading the Tribunal for the
purposes of perverting the course of justice.

266 That justice was to be administered by the Tribunal.

267 This false representation to the Tribunal secured the dismissal of the Miscellaneous
Application for Dismissal of Proceedings on the part of Respondents 1, 2, and 3.

268 **Part 5** – Miscellaneous Application for Dismissal of Proceedings.

269 The Respondents seek the Dismissal Proceedings run in parallel to these
proceedings, and be heard at first instance and prior to the hearing of the
Application of these proceedings.

270 The initial Application for Dismissal by the Respondents was genuine and not
misconceived in any way.

271 However, the Applicants for Dismissal were hindered in their endeavours due to the
fact the Applicants for the Section 110 Orders did not disclose the details of the
claimed (8) eight unmeritorious access applications, nor did the Application for
Section 110 Orders articulate the unclusion of Respondent 3.

272 This left the Applicants for the Dismissal completely disadvantaged and effectively
trying to make a case with one hand behind their back and one eye blindfolded as set
out above regarding **CBA v Amadio**.

273 It was deliberately deceptive on the part of the Applicants' solicitor Mr Justin Cahill for the Section 110 Application to simply state:

“The respondents have made a combined total of eight access application to the applicants which ‘lack merit’ as defined by s.110(2) of the GIPA Act. The Tribunal, in exercising its discretion in s.110(1) of the GIPA Act to make a restraint order, should attribute significantly greater weight to protecting the applicants’ ability to discharge the objects on s.3(1) of the GIPA Act by providing access to government information promptly and at the lowest reasonable cost than to the minimal impact of an order under s.110(1) on the respondents’ rights of access.”

274 The Respondents had no idea what the Applicants were referring to particularly with reference to Respondent's 2 and 3.

275 The Application for Dismissal relied upon (2) factors as confirmed within the transcript of the hearing of 05th November 2024.

276 As a footnote, on 10th December 2024 Respondent 1 requested written reasons from the presiding member.

277 On 14th January 2025 those written reasons were received by Respondent 1.

278 Firstly, the member has not numbered her paragraphs and it would appear these written reasons were rushed. As a courtesy to the Tribunal Respondent 1 has done so.

279 Notably, the member erred when she stated at Paragraph notably numbered 7:

“7 I do not consider that there is an issue in the three agencies bringing this application and indeed the tribunal has dealt with in the past an application under s110 from more than one agency against an individual. That was the matter I think of Powell.....”

280 Nowhere in the transcript do the Respondents protest at the number of agencies joined as Applicants in the Application for Section 110 orders.

281 On the contrary, the Respondents protested at the number of Respondents and the fact caselaw existed making clear an agency cannot obtain a Section 110 order against any person claimed to be acting in concert.

282 In this regard the presiding member has grossly erred in her recollection of what occurred.

283 ***Refer to Attachment 13***

284 The Applicants for Dismissal of Proceedings repeatedly impressed upon the tribunal within submissions dated 14th October 2024 “*If however, there is any ambiguity in the legislation which causes the tribunal any difficulty of interpretation in order to meet the orders sought, each is a question of law for the NSW Supreme Court.*”

285 ***Refer to Attachment 12***

286 Those particular submissions were acknowledged and referred to by the Applicants’ representative Mr Cahill at Paragraph 107 of the transcript, specifically:

“.....And I note Ms Webb has drawn attention to similar issues four or five times in her written submissions in suggesting that the matter is more properly before the Supreme Court. But the, yes, that’s, that’s the, that is it in short, that it’s, it’s not a state, not an issue which, on which there is currently a clear statement of law.”

287 ***Refer to Attachment 13***

288 However, despite the presiding member’s obvious difficulty to properly interpret the legislation, disclosed by her at Paragraph 116 of the transcript, she did not duly refer any questions of law to the Supreme Court:

“All right. Um, just give me a couple of minutes and I’ll come back in and let you know what I think. Um, so I’ll just adjourn. I’ll only be a couple of minutes. So, thank you.”

289 ***Refer to Attachment 13***

290 Instead the presiding member consulted with an unknown person or persons during her short intermission of the proceedings, outside of the tribunal room petition wall, a person assumed disqualified as a judicial officer of the NSW Supreme Court.

291 Indeed, compounding the presiding member’s position of difficulty, was her absence to address the subject of jurisdiction upon her return to the hearing room, instead going straight into the formulating of the timetable of the hearing of the Applicants’ Section 110 Application, disclosed at Paragraph 118 of the transcript:

“Now, today was also listed, in case we needed it, for directions in relation to the substantive application, which is the application formally seeking orders under Section 110. So, if the parties are prepared to do so, I intend now to make directions to deal with the filing of evidence and submissions in relation to that, and to hopefully set a hearing date for the application. Are you ready to proceed with that, Mr Cahill?”

292 Refer to Attachment 13

293 In this regard, the presiding member erred by not answering the question and not making a decision in relation to the Application for Dismissal, just ignoring the existence of it and proceeding straight ahead with the Application for the Section 110 Orders.

294 The Application the subject of these proceedings has since that hearing of 05th November 2024 disclosed it is completely founded on the meaning, interpretation and application of the word concert, in the context of Respondents’ 1, 2, and 3 acting in concert for the specific purpose of endeavouring to gain access to NSW government information.

295 The Applicants in the Dismissal Proceedings repeatedly made solid reference to the Tribunal having no jurisdiction to determine such an Application, commencing with the relevant caselaw, Paragraphs 32, 34, and 36 of the transcript:

“It is Webb v Port Stephens Council, 2020.

N S W C A T A P, of course.

152”

296 However, the presiding member clearly took no notice which is a clear error in law.

297 Refer to Attachment 13

298 The Applicants in the Dismissal Proceedings referred extensively to the caselaw and authoritative IPC Fact Sheets on the topic of Section 110 Orders in the context of the term concert, Paragraphs 48, 56, 62, and 64 of the transcript of the hearing of 05th November 2024.

“48. So, in that decision that I've just mentioned, if I could please refer to, firstly, Paragraph 54.

56. But I'm only really referring to Paragraphs 62, 63 and 64

63. So, those three particular paragraphs talk about the Tribunal's powers to make a Section 110 order against a person. And those three paragraphs talk about the Tribunal not having the powers to issue a Section 110 order, one application, a Section 110 order, a Section 110 order against more than one person, particularly in the context of acting in concert. It actually says in there, down the bottom of Paragraph 64, while it may be desirable to make an in-concert order to prevent another person from making application with Ms. Webb, Section 110 does not give the Tribunal power to do so. In addition, the difficulties of identifying such an application by another person may make it impractical to enforce such an order. So, it says that there. That it might be desirable for these applicants to have an order concerning acting in concert, but it says Section 110 does not give the Tribunal the power to do so. A little bit further up in Paragraph 64, there is no defined criterion relating to applications not made by the person the subject of the order. So again, it's separating those two, a person subject of the order as opposed to someone acting in concert, but made by any other person in concert with the person the subject of the order. So, there's two completely different things there that I can see.

And Paragraph 63, the last sentence says there is no express power in Section 110 to prohibit a person from making an access application in concert with any other person.

Now that is actually, it encompasses the whole of the order that was made by Principal Member Marks because the application in that case asked for orders with those kinds of parameters.

64. That's correct. So, then when that appeal panel decision was made available and the matter was remitted, the applicant council resultantly didn't press the issue of acting in concert because they actually did realize that the Tribunal doesn't have jurisdiction to grant such an order. So, that's now, I feel that that's very relevant in this case because one of the applicants is the same agency. So, they already know. They've been here, they've tried this before, and they know that the Tribunal doesn't have the jurisdiction to do that. Now, if I could just say, with all due respect, just to, just to support that, if I could, the IPC fact sheet titled 'Restraint Orders Under the GIPA Act,' which is updated July 2023, but which was actually published before that, not long after this decision, actually also makes on the front page, can the restraint order be made against more than one person?

The IPC actually agrees with the terminology in that decision and we thought, I actually helped the IPC to work on that fact sheet, so I'm very familiar with that. So, that's really my case in a nutshell and I'm hoping it's that simple. That's all I have to say at the moment."

299 Refer to Attachments 13 & 14

300 Indeed, the GIPA Act 2009 only refers to the word concert a total of (3) three times:

301 Section 60 (1) (e), Section 60 (3), and Section 110 (3) (b).

60 Decision to refuse to deal with application

(1) An agency may refuse to deal with an access application (in whole or in part) for any of the following reasons (and for no other reason)—

(a) dealing with the application would require an unreasonable and substantial diversion of the agency's resources,

(b) the agency has already decided a previous application for the information concerned (or information that is substantially the same as that information) made by the applicant and there are no reasonable grounds for believing that the agency would make a different decision on the application,

(b1) the applicant has previously been provided with access to the information concerned under this Act or the [Freedom of Information Act 1989](#),

(c) the applicant has failed to pay an advance deposit that is payable in connection with the application,

Note—

See section 70.

(d) the information is or has been the subject of a subpoena or other order of a court for the production of documents and is available to the applicant as a result of having been produced in compliance with the subpoena or other order,

(e) the agency reasonably believes the applicant, or a person acting in concert with the applicant, is—

(i) a party to current proceedings before a court, and

(ii) able to apply to that court for the information.

(2) In deciding whether dealing with an application would require an unreasonable and substantial diversion of an agency's resources, the agency is not required to have regard to any extension by agreement between the applicant and the agency of the period within which the application is required to be decided.

(3) In deciding whether dealing with an application would require an unreasonable and substantial diversion of an agency's resources, the agency is entitled to consider 2 or more applications (including any previous application) as the one application if the agency determines that the applications are related and are made by the same applicant or by persons who are acting in concert in connection with those applications.

(3A) In deciding whether dealing with an application would require an unreasonable and substantial diversion of an agency's resources, the agency may, without limitation, take into account the following considerations—

(a) the estimated volume of information involved in the request,

(b) the agency's size and resources,

(c) the decision period under section 57.

(3B) Any consideration under subsection (3A) must, on balance, outweigh—

(a) the general public interest in favour of the disclosure of government information, and

(b) the demonstrable importance of the information to the applicant, including whether the information—

(i) is personal information that relates to the applicant, or

(ii) could assist the applicant in exercising any rights under any Act or law.

(4) Before refusing to deal with an access application because dealing with it would require an unreasonable and substantial diversion of an agency's resources, the agency must give the applicant a reasonable opportunity to amend the application. The period within which the application is required to be decided stops running while the applicant is being given an opportunity to amend the application.

(5) Notice of an agency's decision to refuse to deal with an access application must state the agency's reasons for the refusal.

(6) An applicant is not entitled to a refund of the application fee when the agency refuses to deal with the application.

- 302 As set out, Section 60 (1) (e) and 60 (3) pertain to an agency's decision to refuse to deal with an application, including in the context of a claimed act of concerting to gain access to NSW government information.
- 303 However, at no time has either Applicants' 1, 2, or 3 made any such refusal and most particularly in the context of Respondents 1, 2, or 3 acting in concert.
- 304 As such, this collective claim by the Applicants is considered desperate at best, but a concession no doubt that this is only a recent consideration specifically for the purposes of a collective Section 110 Application.
- 305 Applicant 1 has at all times responded to Respondent 1's access applications using the Respondent's Christian and surnames, and not by any other identification including any reference to Respondent 3.
- 306 Applicant 2 has at all times responded to Respondent 1 and 2's access applications using Respondent 1 and 2's Christian and surnames, and not by any other identification including any reference to Respondent 3.
- 307 Applicant 3 has at all times responded to Respondent 1's access applications using the Respondent's Christian and surnames, and not by any other identification including any reference to Respondent 3.
- 308 These are concessions on the part of each of the Applicants courtesy of their individual response documents.
- 309 Further and having reference to the GIPA Act 2009 Section 41 (d), each of the Applicants 2 and 3's nominated access application forms makes no reference whatsoever to the incorporation of any identifier concerning any company or business, making clear an access applicant is a person, a member of the public, and not an entity.

310 Applicant 1's access application seeks to obtain further information including company and / or organisation identifiers, however this does not align with the legislation.

311 Respondents 1 and 2 as a result continue to decline to utilise the nominated access to information forms as 1) the IPC has confirmed the use of an access application form is not prescribed under the Act, 2) content on those nominated forms is considered misleading, and 3) privacy statements are completely inadequate.

312 *Refer to Attachment 19*

313 The current access to information forms are based upon template documents provided by the IPC, and do mimic that of the IPC itself.

314 Nowhere on these form examples originating from the authoritative body for the subject matter legislation, the IPC, is there any reference to a company or entity.

315 As such the amending of the template by Applicant 1 is disqualified for seeking to obtain information that has no relevance or bearing to the GIPA Act 2009. This is a particularly important point as it is now clear Privacy Statements on Access Application forms are completely inadequate, often making a false representation of the way agencies intend to use gathered personal information, as is now evidenced to occur.

316 Under such circumstances, it is reasonable to assert the Applicants' claim against Respondent 3 is completely null and void.

317 *Refer to Attachment 20*

318 Additionally, the IPC has provided an example template which includes Item 6. Processing Charges. This section of the form incorporates reference to an agency's Log of Actions in processing an access application.

319 It is noted each of Applicant 1's Notice of Decision documents for the claimed unmeritorious applications has omitted this crucial component of the report for an access applicant, particularly as processing charges qualify as a reviewable decision under Section 80 of the GIPA Act 2009.

320 However, despite no processing charges being applied to any of the claimed
unmeritorious applications, there is no reference whatsoever of the time or actions
taken to process each of those, leaving the impression each of those were in fact not
afforded any due process other than being allocated a generic file number, sufficient
to explain why Applicant 1 is incapable of qualifying the claimed unmeritorious
applications are so.

321 *Refer to Attachment 21*

322 Section 110 pertains to an access applicant deemed to have acted in concert with a
third person for the purpose(s) of endeavouring to gain access to NSW government
information for the benefit of the access applicant.

323 At no time whatsoever has Respondent 3 exercised rights to access NSW
government information in its own right.

324 In the context of this Application for a Section 110 Order under the GIPA Act 2009,
the Applicants rely implicitly on Section 110 (1) (b), which states:

*(1) NCAT may order that a person is not permitted to make an access application
without first obtaining the approval of NCAT (a restraint order) if NCAT is
satisfied that-*

*(a) At least 3 access applications (to one or more agencies) in the previous
2 years have been made that lack merit, and*

*(b) The applications were made by the same person or by any other person
acting in concert with the person.*

325 Instead, the Applicants collectively and by the use of Mr Cahill who admits to being
assisted by Mr Franklin, did falsely represent the true and actual nature of the
Application the subject of these proceedings.

326 Firstly, Paragraph 101 of the transcript reads Mr Cahill stating:

*“.....with respect of Acting in Concert, we’ve set a specific order of
corporation and in doing so, um, we are within the bounds of Section 110, 1.”*

- 327 However, the Applicants for the Section 110 Application did not disclose the claimed unmeritorious applications, nor did they duly make reference to the Applicants' since disclosed heavy reliance on the Respondents' claimed acting in concert, which placed the Respondents at a disadvantage when making submissions towards their application for dismissal.
- 328 These actions at first instance and commencement of the Application for Section 110 Orders do not align with the government's Model Litigant Policy of which Mr Cahill and Mr Franklin, at minimum, are fully informed.
- 329 Having regard for Respondent 2's disclosure of ongoing suicide ideation the direct result of Applicant 2's actions and conduct and the cost and damage Applicant 2 has repeatedly inflicted upon Respondent 2, these actions to take deliberate advantage over Respondent 2 at minimum, can only be categorised as malicious intent for the purpose of causing maximum stress, uncertainty and anxiety to Respondent 2 at minimum (*Refer to Affidavit of Tony Leslie Wickham, Tab 36 of Exhibit TLW-1, pages 1531 to 1578*).
- 330 No action on the part of any of the Respondents is capable of matching Applicant 2's ongoing intention to cause maximum damage and harm to Respondent 2 at minimum.
- 331 The Tribunal is referred to Paragraph 10 of the transcript which confirms Applicant 1's witness is directly assisting the Applicants' representative Mr Cahill.
- 332 *Refer to Attachment 13***
- 333 Further, it was decidedly negligent of the presiding member Ransome not to properly interrogate the true and actual nature of the Application the subject of these proceedings, instead accepting Mr Cahill's protestations and misrepresentations at face value.
- 334 These occurrences make the most unsavoury of representations and examples of how the NSW Civil & Administrative Tribunal operates, what it accepts as a professional legal standard, and moreso the low standard of professional expectations it holds governmental solicitors to in the context of a Model Litigant.

335 There can be no doubt whatsoever the Applicants collectively acted to take full
336 advantage of the Respondents, which qualifies as unconscionable conduct as set out
337 in *CBA v Amadio* above.

338 **Part 6** – Miscellaneous Application for Contempt of Tribunal.

339 The Respondents seek the Contempt proceedings run in parallel to these
340 proceedings.

341 The Applicants in the Section 110 proceedings are evidenced to deliberately mislead
342 the Tribunal during oral submissions on 05th November 2024, for the purpose of
343 perverting the course of justice, acting in contempt in the face of the tribunal as a
344 result.

345 The particular dialogue evidencing the criminal conduct in the context of contempt
346 of the Tribunal by Mr Cahill at first instance, who directly and personally made
347 false representations to the Tribunal at Paragraph 101:

*“Yeah. Thank you. Thank you, Principal Member. Um, well, Principal Member, in
the hopes of keeping things short and simple as well, as you have already pointed
out, with respect of Acting in Concert, we've set a specific order of [inaudible
00:17:41] corporation and in doing so, um, we are within the bounds of Section
110, 1.”*

348 **Refer to Attachment 13**

349 As already discussed and evidenced above, the Applicants in the Dismissal
350 Proceedings clearly articulated the Tribunal’s lack of jurisdiction to deal with the
351 Section 110 Application in the format submitted and in the orders sought, yet the
352 Applicants’ representative Mr Cahill continued to impress upon the Tribunal that
353 “*we are within the bounds of Section 110, 1.*”

354 The Application for Orders under Section 110 deliberately omitted to make any
355 reference to the acting in concert component, and indeed the Respondents were left
356 to assume that component formed the basis of the Application and so compiled their
357 submissions and made verbal submissions on 05th November 2024 accordingly.

358 Mr Cahill repeatedly referred to Section 110 (1) during his oral submissions which
359 was taken at all times to include the whole Section, being parts (a) and (b). This is
360 supported by Mr Cahill’s statement at Paragraph 101 of the transcript “.....*we are
361 within the bounds of Section 110, 1.*”

344 **Part 7** – Legislated paramaters of the Application.

345 The Applicants’ representative stated at Paragraph 101 of the transcript “.....we are within the bounds of Section 110, 1.”

346 **Refer to Attachment 13**

347 Mr Cahaiill indicates he has no doubt the Applicants are within the bounds as set out.

348 The GIPA Act 2009 Section 110 (1) states:

110 Orders to restrain making of unmeritorious access applications

*(1) NCAT may order that a person is not permitted to make an access application without first obtaining the approval of NCAT (a **restraint order**) if NCAT is satisfied that—*

(a) at least 3 access applications (to one or more agencies) in the previous 2 years have been made that lack merit, and

(b) the applications were made by the same person or by any other person acting in concert with the person.

349 Firstly, NCAT is to be satisfied.

350 The word satisfied is not defined within the Interpretations Act 1987.

351 Neither is the word satisfied defined in the enabling legislation the GIPA Act 2009.

352 This leaves the word satisfied to be given its ordinary meaning such as within the dictionary:

- Merriam-webster defines satisfied:
Pleased or content with what has been experienced or received
- Cambridge defines satisfied:
To please someone by giving them what they want or need
- Collins defines satisfied:
Happy because one has got what one wanted or needed, or, convinced that something is true or has been done
- Britannica defines satisfied:
Having a happy or pleased feeling because of something that you did or something that happened to you

353 Taking the word satisfied then to have its ordinary and simple meaning, it would appear to the un-represented Respondents the Tribunal is to be happy and pleased that the parameters of Section 110 (1) have been met in full in order to warrant or qualify for the order(s) sought, and even at that point the legislation uses the term “*may*” not “*must*” indicating the orders ultimately remain discretionary to the Tribunal.

354 Such discretion is evidenced below at **Part 9 Unsuccessful Applications**.

355 *Applicant 1’s Evidence of Unmeritorious Applications:*

356 Applicant 1’s documents Reference No: GIPA 23 / 666 sought access to the following information:

“.....(confirmed) a copy of the case management data records on the IPC GIPA Tool for each of Respondent 1’s and / or NSW Freedom of Informations formal access applications concerning the NSW Dept of Justice.”

357 The access application was the direct result of information obtained from Applicant 2 and the IPC in relation to agencies’ encouraged use of the software customer reporting system promoted as the IPC GIPA Tool, a system owned by third party conglomerate Salesforce but subscribed to by the IPC at approximately \$50,000.00 per annum.

358 Having gained access through the enabling legislation the GIPA Act 2009, Respondent 1 was in receipt of the Manual for the IPC GIPA Tool, which disclosed numerous data fields for input of information including the personal information of access applicants.

359 Given the fact the personal information of access applicants does not form part of an agency’s statutory reporting functions relating to the GIPA Act 2009, and having confirmation that at least one agency, being Applicant 2, had uploaded the personal information of Respondent 1 into the commercially owned system, Respondent 1 maintained the right to access her personal information for the purposes of ascertaining how that personal information was being used and whether or not that breached privacy principles under the Personal Privacy and Information Protection Act 1998.

- 360 As such the Tribunal will agree this was a legitimate request for information.
- 361 It is noted that searches for the requested information were not actually undertaken by Applicant 1, but were undertaken by the IPC according to the Notice of Decision.
- 362 This disclosure by Applicant 1 made clear that earlier representations by the IPC agencies had exclusive access to their own individual IPC GIPA Tool case management files was in fact false and misleading.
- 363 Applicant 1 did not act in accordance with the GIPA Act 2009 Section 52 (3).
- 364 The Notice of Decision did not indicate the amount of time the access application took to process, either internal or external to the organisation.
- 365 This absence of recording of processing time eliminated any claim the access application was unmeritorious on the basis of using unreasonable resources such that required relief.
- 366 Applicant 1 notably did not transfer the access application to the IPC in accordance with Section 47 of the Act.
- 367 Indeed, despite the access application being transferred and including the expected communication trail between Applicant 1 and the IPC, the impression given by the Notice of Decision is that no time whatsoever was spent processing the application, which also resulted in negating of any processing charges.
- 368 Further, the Notice of Decision listed a pseudonym Jordan Creyson as decision-maker, a fictitious person, which was in breach of the GIPA Act 2009 Section 126.
- 369 In this regard Respondent 1 views the Notice of Decision for GIPA 26 / 666 as null and void.
- 370 Despite those flaws in the document qualifying it as a defective decision, Applicant 1 has not provided any evidence, either internal or external to Applicant 1, supporting the claim the information was not held by Applicant 1.

371 Compounding this absence of evidence, is the disclosure by Ms Cobbin and her staff members Sue Chew and Doreen Lin during Tribunal proceedings of 09th July 2024, which made known perhaps for the first time the software utilised by Applicant 1, OneTRIM, does not automatically search through the full text content of every document, *Webb v Secretary, Department of Communities & Justice (2024) NSWCATAD 251*, Paragraph 12 (3):

“12 Regarding OneTRIM:

(3) The OneTRIM system search function does not automatically search through the full text content of every document. The title assigned to the document on the system is the only element that is searchable on OneTRIM. There are therefore prescribed “naming conventions: for the documents by date and title; although not a formal ‘policy’, these conventions are adopted and followed by staff to ensure a degree of consistency when documents are uploaded to OneTRIM.”

372 In this regard Applicant 1 is unable to qualify the result of any claimed search in response to any valid access application, and most importantly lacks the capability to qualify an access application as unmeritorious on the basis information is not held.

373 The second of Applicant 1’s documents Reference No: GIPA 23 / 5209 sought access to the following information:

“A full and unredacted copy of any and all communications between Ms Cobbin and / or Justice NSW and iCARE, inclusive of emails, records of telephone conversations, etc, specifically in reference to her knowledge of the GIPA Application Ms Cobbin refers to in her Sworn Affidavit Paragraph 11 (NCAT Matter No: 2023 / 00125842.”

374 The access application was lodged by Respondent 1 on the sole basis of Ms Cobbin’s testimony and as such was considered to be credible and evidence-based.

- 375 The fact Applicant 1 had utilised the personal information of Respondent 1 confirmed held by a third party agency being iCARE NSW, coupled with the fact Respondent 1 had not provided that information to Applicant 1, the Tribunal will understand Respondent's 1 concern personal information had been unlawfully shared without the consent of Respondent 1.
- 376 Applicant 1 did not act in accordance with the GIPA Act 2009 Section 52 (3).
- 377 The Notice of Decision did not indicate the amount of time the access application took to process.
- 378 This absence of recording of processing time eliminated any claim the access application was unmeritorious on the basis of using unreasonable resources such that required relief.
- 379 Indeed, the impression given by the Notice of Decision is that no time whatsoever was spent processing the application, which also resulted in negating of any processing charges.
- 380 Further, the Notice of Decision listed a pseudonym Jordan as decision-maker, a fictitious person, which was in breach of the GIPA Act 2009 Section 126.
- 381 In this regard Respondent 1 views the Notice of Decision for GIPA 23 / 5209 as null and void.
- 382 Despite those flaws in the document qualifying it as a defective decision, Applicant 1 has not provided any evidence supporting the claim the information was not held by Applicant 1.
- 383 The decision was expectantly upheld on external review with the Tribunal due to the fact no evidence was provided by Applicant 1, other than Ms Cobbin's insistence of words to the effect "*the information was in her head, she doesn't recall how it got there, but likely she had a conversation with a third person that she did not record.*"
- 384 Such assertions of lack of administration procedures, in this instance the recording of conversations concerning formal administrative review, can only be considered a breach of the State Records Act 1998 by the Director of the OGIPU herself.

385 Compounding this absence of evidence, is the disclosure by Ms Cobbin and her staff members Sue Chew and Doreen Lin during Tribunal proceedings of 09th July 2024, which made known perhaps for the first time the software utilised by Applicant 1, OneTRIM, does not automatically search through the full text content of every document, *Webb v Secretary, Department of Communities & Justice (2024) NSWCATAD 251*, Paragraph 12 (3):

“12 Regarding OneTRIM:

(3) The OneTRIM system search function does not automatically search through the full text content of every document. The title assigned to the document on the system is the only element that is searchable on OneTRIM. There are therefore prescribed “naming conventions: for the documents by date and title; although not a formal ‘policy’, these conventions are adopted and followed by staff to ensure a degree of consistency when documents are uploaded to OneTRIM.”

386 In this regard Applicant 1 is unable to qualify the result of any claimed search in response to any valid access application, and most importantly lacks the capability to qualify an access application as unmeritorious on the basis information is not held.

387 *(The Tribunal is asked to note Applicant 1’s witness Jonathan Franklin has provided a convoluted representation of the third and fourth access applications, which Respondent 1 corrects below. With the quantity of resources at the ready disposal and access to Applicant 1 this shows complete carelessness in this matter, seeking the harshest of responses from the Tribunal in Applicant 1’s favour.)*

388 The third of Applicant 1’s documents Reference No: GIPA 24 / 1566 sought access to the following information:

“Reference to NSW Right to Information & Privacy Practitioners Network – Minutes 12th June 2019:

- *TRIM FILE – All generated records*
- *Item 4 – Presentation from Dept of Justice”*

- 389 Applicant 1's presentation of 12th June 2019 concerned solicitation of the whole of the states right to information and privacy officers, NIPPN, for information relevant to a claimed departmental study on the part of Applicant 1.
- 390 This action by the Director / Business Unit Manager OGIPU Ms Jodie Cobbin effectively breached the GIPA Act 2009, as the nature of the information sought was personal information of the public such that required third party consultation. This action was an abuse of position and a total abuse of process, expected to be covered up by all (500) five hundred fellow members of the NIPPN cartel under Chatham House Rules.
- 391 Given the publicly available record of the NIPPN Minutes of June 2019 at *Attachment 7* of these submissions, the Tribunal will agree Respondent 1 rightfully expected at least one (1) document be listed on the search return on the TRIM File.
- 392 Applicant 1 did not act in accordance with the GIPA Act 2009 Section 52 (3).
- 393 The Notice of Decision did not indicate the amount of time the access application took to process.
- 394 This absence of recording of processing time eliminated any claim the access application was unmeritorious on the basis of using unreasonable resources such that required relief.
- 395 Indeed, the impression given by the Notice of Decision is that no time whatsoever was spent processing the application, which also resulted in negating of any processing charges.
- 396 Further, the Notice of Decision listed a pseudonym Jordan as decision-maker, a fictitious person, which was in breach of the GIPA Act 2009 Section 126.
- 397 In this regard Respondent 1 views the Notice of Decision for GIPA 24 / 1566 as null and void.
- 398 Despite those flaws in the document qualifying it as a defective decision, Applicant 1 has not provided any evidence supporting the claim the information was not held by Applicant 1.

399 Compounding this absence of evidence, is the disclosure by Ms Cobbin and her staff members Sue Chew and Doreen Lin during Tribunal proceedings of 09th July 2024, which made known perhaps for the first time the software utilised by Applicant 1, OneTRIM, does not automatically search through the full text content of every document, *Webb v Secretary, Department of Communities & Justice (2024) NSWCATAD 251*, Paragraph 12 (3):

“12 Regarding OneTRIM:

(3) The OneTRIM system search function does not automatically search through the full text content of every document. The title assigned to the document on the system is the only element that is searchable on OneTRIM. There are therefore prescribed “naming conventions: for the documents by date and title; although not a formal ‘policy’, these conventions are adopted and followed by staff to ensure a degree of consistency when documents are uploaded to OneTRIM.”

400 In this regard Applicant 1 is unable to qualify the result of any claimed search in response to any valid access application, and most importantly lacks the capability to qualify an access application as unmeritorious on the basis information is not held.

401 The fourth of Applicant 1’s documents Reference GIPA 24 / 1568 sought access to the following information:

“Ref NSW Right to Information & Privacy Practitioner Network - Minutes 29th March 2019

- *TRIM FILE - All generated records*
- *Item 3 – Presentation from the Department of Justice*

402 Applicant 1’s presentation of March 2019 concerned the Director / Business Unit Manager Ms Jodie Cobbin’s public presentation *“Tale of a Fixated Applicant”* at *Attachment 4* of these submissions.

403 Given the publicly available record of the NIPPN Minutes of March 2019 at *Attachment 8* of these submissions, the Tribunal will agree Respondent 1 rightfully expected at least one (1) document be listed on the search return on the TRIM File.

404 Applicant 1 did not act in accordance with the GIPA Act 2009 Section 52 (3).

- 405 The Notice of Decision did not indicate the amount of time the access application took to process.
- 406 This absence of recording of processing time eliminated any claim the access application was unmeritorious on the basis of using unreasonable resources such that required relief.
- 407 Indeed, the impression given by the Notice of Decision is that no time whatsoever was spent processing the application, which also resulted in negating of any processing charges.
- 408 Further, the Notice of Decision listed a pseudonym Jordan as decision-maker, a fictitious person, which was in breach of the GIPA Act 2009 Section 126.
- 409 In this regard Respondent 1 views the Notice of Decision for GIPA 24 / 1566 as null and void.
- 410 Despite those flaws in the document qualifying it as a defective decision, Applicant 1 has not provided any evidence supporting the claim the information was not held by Applicant 1.
- 411 Compounding this absence of evidence, is the disclosure by Ms Cobbin and her staff members Sue Chew and Doreen Lin during Tribunal proceedings of 09th July 2024, which made known perhaps for the first time the software utilised by Applicant 1, OneTRIM, does not automatically search through the full text content of every document, *Webb v Secretary, Department of Communities & Justice (2024) NSWCATAD 251*, Paragraph 12 (3):
- “12 Regarding OneTRIM:*
- (3) The OneTRIM system search function does not automatically search through the full text content of every document. The title assigned to the document on the system is the only element that is searchable on OneTRIM. There are therefore prescribed “naming conventions: for the documents by date and title; although not a formal ‘policy’, these conventions are adopted and followed by staff to ensure a degree of consistency when documents are uploaded to OneTRIM.”*

412 In this regard Applicant 1 is unable to qualify the result of any claimed search in response to any valid access application, and most importantly lacks the capability to qualify an access application as unmeritorious on the basis information is not held.

413 Additionally, Applicant 1 has at all times correctly identified and not disputed the Access Applicant as Respondent 1 in these proceedings, and not Respondent 2 or 3.

414 *Applicant 2's Concession as to Correct Access Applicant Identifications:*

415 The following cases are evidence Applicant 2 did at no time prior to collaboration with Applicant's 1 and 3, contemplate Respondent 3 to qualify as an access applicant under the GIPA Act 2009:

- ***Webb v Port Stephens Council (2023) NSWCATAD 137***

Applicant 2 claimed it had incurred costs of approximately \$21,000.00.

Telina Webb is Respondent 1.

The Tribunal orders a lump sum payment of \$7,000.00.

The Costs Application pertained to the Applicant in the proceedings, FHH, Respondent 1 in these proceedings.

At that time Respondent 1 was not aware the enabling legislation the GIPA Act 2009 did not provide a mechanism for the claiming of costs.

Despite both Applicant 2 and Tribunal being fully informed the enabling legislation does not provide a mechanism for costs, the application was accepted receiving the Tribunal's full consideration.

Resultantly, in accordance with the Tribunal's orders Respondent 1 paid the amount of \$7,000.00 by the stipulated 28th day.

Applicant 2 in these proceedings fully expected the payment was made by Respondent 1 and not Respondent 2 or 3 in these proceedings.

In this regard, this documented filing of the costs application and acceptance of the orders specifically pertaining to Respondent 1 is viewed as Applicant 2's concession these matters have not at any time concerned or originated from either Respondent 2 of 3.

- ***McEwan v Port Stephens Council (No. 2) (2022) NSWCATAD 308***

Applicant 2 claimed it had incurred costs of approximately \$12,000.00.

Paul McEwan is Respondent 2.

The Tribunal issued orders of costs “*agreed or assessed*”, compounding the amount to exceed \$15,000.00.

Respondent 2 in these proceedings has at the date of these submissions partly paid this amount. The balance has been withheld due to the realisation the orders for costs were issued absent of the Tribunal’s jurisdiction to issue such upon proper consideration of the enabling legislation.

At that time Respondent 2 in these proceedings was not aware the enabling legislation the GIPA Act 2009 did not provide a mechanism for the claiming of costs.

Despite both Applicant 2 and Tribunal being fully informed the enabling legislation does not provide a mechanism for costs, the application was accepted receiving the Tribunal’s full consideration.

In this regard, this documented filing of the costs application and acceptance of the orders specifically pertaining to Respondent 2 in these proceedings is viewed as Applicant 2’s concession these matters have not at any time concerned or originated from Respondent 3.

- ***McEwan v Port Stephens Council (No. 2) (2023) NSWCATAP 386***

Applicant 2 lodged another costs application which was unsuccessful.

Paul McEwan is Respondent 2.

At that time Respondent 2 in these proceedings was not aware the enabling legislation the GIPA Act 2009 did not provide a mechanism for the claiming of costs.

Despite both Applicant 2 and Tribunal being fully informed the enabling legislation does not provide a mechanism for costs, the application was accepted receiving the Tribunal's full consideration.

In this regard, this documented filing of the costs application and acceptance of the orders specifically pertaining to Respondent 2 is viewed as Applicant 2's concession these matters have not at any time concerned or originated from Respondent 3.

- ***FHH v Port Stephens Council (No. 2) (2023) NSWCATAP 282***

Applicant 2 claimed it had incurred costs of approximately \$17,000.00.

FHH was joined by FHU in those proceedings, confirmed to be Telina Webb Respondent 1 and Paul McEwan Respondent 2 in these proceedings.

The Tribunal issued orders of costs "as agreed or assessed", compounding the amount to a final total of approximately \$28,000.00.

Objections were lodged with the Costs Assessor making clear the enabling legislation does not facilitate costs, but those objections were unsuccessful with the Costs Assessor stating he was bound by the parameters of the Legal Profession Uniform Law (NSW).

The Costs Assessor determined Applicant 2 had inflated the costs claimed by 30%.

Despite both Applicant 2 and Tribunal being fully informed the enabling legislation the PPIP Act 1998 does not provide a mechanism for costs, the application was accepted receiving the Tribunal's full consideration.

In this regard, this documented filing of the costs application and acceptance of the orders specifically pertaining to Respondent 2 is viewed as Applicant 2's concession these matters have not at any time concerned or originated from Respondent 3.

Indeed, the recent correspondence received from a Process Server does not make any reference whatsoever to Respondent 3, having received the relevant information directly from Applicant 2.

416 Applicant 2's Evidence of Unmeritorious Applications:

417 Applicant 2 is incapable of satisfying the Tribunal as it only documents 2 such
applications; that is Applicant 2 is incapable of satisfying Section 110 (1) (a), which
is intrinsically joined to Section 110 (1) (b) by the word "and".

418 Those documents are referenced at the Affidavit of Applicant 2's Tony Leslie
Wickham's dated 12th December 2024, Paragraphs 10 through 17.

419 The first of Applicant 2's documents Reference No: PSC 2023 - 00112 sought
access to the following information:

*"(a) Full disclosure and / or unredacted copy of the terms of engagement and /
employment of Amol Mane.*

*(b) Full disclosure and / or unredacted copy of the security approvals for access to
the IPC GIPA Tool by Amol Mane.*

*(c) Full disclosure and / or unredacted copy of the modifications to both the files by
Amol Mane, both noted to have occurred on 18th August 2017, both apparently
actioned at the same time of 7.36am."*

420 The access application Reference No: PSC 2023 – 00112 was the direct result of
Council's response to a separate access application which produced case
management records uploaded by Applicant 2 to the IPC's GIPA Tool.

421 The case management records displayed the details of one Amol Mane.

422 Respondent 1 to these proceedings was, further to consultations with the IPC, under
the impression each agency utilising the IPC GIPA Tool had exclusive access to the
uploaded case management files which clearly suggested Amol Mane was an
employee of Applicant 2.

423 In this regard, given the case management files included the personal information of
Respondent 1 in these proceedings, Respondent 1 sought to ascertain who Amol
Mane was, in what capacity he had access to Respondent 1's personal information,
and what modifications had been made by him.

424 The Tribunal would view such an access application under those circumstances as reasonable particularly that the information would be held by Applicant 2 in these proceedings.

425 It is reasonable to expect Respondent 1 would not have lodged the access application pertaining to Amol Mane if it was known the information was not held by Applicant 2.

426 The Notice of Decision recorded processing time totalling 2.25 hours, which is not considered an unreasonable use of agency resources such that requires relief.

427 Applicant 2 imposed fees totalling \$52.50 which were paid.

428 Amol Mane has since been confirmed by Applicant 1 in these proceedings to be an employee of Applicant 1.

429 *Refer to Attachment 16*

430 The second of Applicant 2's documents is Reference No: PSC 2023 – 04772 which sought access to the following information:

“(a) A copy of invoices and remittance notices to representative external legal service providers relating to the following matter – PSC 202-302302-001 / IPC 23-R000457.”

431 This valid access application sought clarity and disclosure of the degree of expenditure of public resources on legal services by Applicant 2, particularly given the documented expenditure pertaining to administrative reviews in the context of GIPA and PPIP.

432 This was a reasonable access application given Respondent 1 generally seeks access to agency documentation relating to legal services expenditure.

433 The Tribunal would view such an access application under those circumstances as reasonable particularly that the information was expected to be held by Applicant 2 in these proceedings.

434 The Notice of Decision recorded processing time totalling 2.25 hours, which is not considered an unreasonable use of agency resources such that requires relief.

435 Applicant 2 imposed fees totalling \$52.50 which were paid.

436 Additionally, Applicant 2 has at all times correctly identified and not disputed the
Access Applicant as Respondent 1 in these proceedings, and not Respondent 2 or 3.

437 *Applicant 3's Evidence of Unmeritorious Applications:*

438 Applicant 3 is likewise incapable of satisfying the Tribunal as it only documents 2
such applications; that is Applicant 3 is incapable of satisfying Section 110 (1) (a),
which is intrinsically joined to Section 110 (1) (b) by the word "and".

439 Those documents are referenced at the Affidavit of Applicant 3's Maria Timothy
dated 12th December 2024, Paragraphs 13 through 16.

440 The first of Applicant 3's documents is Reference No: GIPAA2223012 which
sought access to the following information directly relating to the case of ***Palerang
Council, Queanbeyan City Council & Goulburn Mulwaree Council v Powell
(2015) NSWCATAD 44***, specifically:

".....an unedited copy of the Minutes of the Meeting referred to at Paragraph 43."

441 The occurrence of the meeting was made known to both the public and Tribunal and
the collective of Applicants in those proceedings were notably all in attendance of it
for purposes including discussing the Respondent Mr Powell, combined with the
fact Applicant 3 did not deny the meeting took place at its premises which would
have resulted in a Transfer of Application under Section 45.

442 Both the meeting and listed attendees were never at any time denied, in fact it was
relied upon as part of the evidence and reference to Mr Powell towards securing a
Section 110 order against him; the agencies impressed upon the Tribunal they had
met for that purpose.

443 Additionally, Applicant 3 in these proceedings has maintained a Record Keeping
Management Plan, which makes specific reference to the recording of meetings
concerning legal matters.

444 The matter of Powell constituted a legal matter.

445 Applicant 3's Organisational Chart shows its witness in these proceedings Ms
Timothy to be subordinate to the author of the Record Keeping Management Plan,
and as such the public has the right to expect she does comply with it.

446 ***Refer to Attachment 22***

447 The Tribunal would view such an access application seeking access to records
referenced in legal proceedings reasonable under the particular circumstances.

448 The Notice of Decision recorded processing time totalling 3 hours, which is not
considered an unreasonable use of agency resources such that requires relief.

449 Applicant 3 chose not to impose the claimed additional processing costs of \$27.50.

450 The second of Applicant 3's documents is Reference No: GIPA2324025 which
sought clarity of the degree and disclosure of expenditure of public resources by
Applicant 3.

451 The Tribunal would view such an access application under those circumstances as
reasonable particularly that the information was expected to be held by Applicant 3
in these proceedings.

452 The Notice of Decision recorded processing time totalling 1 hour, which is not
considered an unreasonable use of agency resources such that requires relief.

453 Additionally, Applicant 3 has at all times correctly identified and not disputed the
Access Applicant as Respondent 1 in these proceedings, and not Respondent 2 or 3.

454 ***Part 7 – Mandatory Interest Disclosures***

455 In the context of the GIPA Act 2009, Applicant's 1 and 2 have neglected to make
mandatory interest disclosures pertaining to the NIPPN cartel.

456 Interest disclosures encompass pecuniary and non pecuniary.

457 Applicant 1's Director / Business Unit Manager Ms Jodie Cobbin neglected to make
her direct personal interests in each of the (4) four claimed unmeritorious access
applications known.

458 Applicant 2's witness in these proceedings has continually neglected to make his
direct personal interests in the access applications of Respondent's 1 and 2 the result
of his unlawful agreement with a member of the public to conceal and protect open
access information mandated for release on an agreed false claim of a public interest
against disclosure.

459 Applicant 2's witness issued a communication in April 2012 to the party to his unlawful agreement stating words to the effect "*Nothing's to get past me. Staff are already doing this, but just to make sure.*"

460 ***Refer to Attachment 31***

461 Likewise, Applicant 2's witness Tony Leslie Wickham continuously neglects to make disclosures including publishing select agency disclosures on Applicant 2's website.

462 And of course, the open access mandated for release documents, as with the disclosures, the objecting submissions to the DA No: 483 of 2011 have still not been published on Applicant 2's website, nor are these documents listed in accordance with the GIPA Act 2009 Section 6.5.

463 Concerning Respondents 1 and 2, Applicant 2's witness has remained in a continual position of conflict of interest since April 2012, when he inserted himself into the Development Application process outside of his authority to do so, and afforded favour and protection to a member of the public the party to the unlawful agreement. That agreement remains in place until it expires or a law enforcement agency intervenes.

464 Applicant 3's witness in these proceedings neglected to make her direct personal interests in the first listed claimed unmeritorious access application known. Yet Applicant 3's witness in these proceedings is documented searching for the requested information herself placing her in a position of conflict of interest.

465 ***Part 8 – The Public's Beneficial Enabling Legislation***

466 Beneficial legislation is conceptualised as an Act or piece of legislation which provides some kind of benefit to a person, and which may remedy a perceived injustice; sometimes referred to as a mischief.

467 The GIPA Act 2009 is beneficial legislation. It exists to provide a benefit to the public specifically protecting a legally enforceable right to access NSW government information.

468 Additionally the Parliament's intention in providing this free gift of beneficial legislation to the community is clearly set out at Section 3 (2) of the GIPA Act 2009:

3 Object of Act

(1) In order to maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective, the object of this Act is to open government information to the public by:

(a) authorising and encouraging the proactive public release of government information by agencies, and

(b) giving members of the public an enforceable right to access government information, and

(c) providing that access to government information is restricted only when there is an overriding public interest against disclosure.

(2) It is the intention of Parliament:

(a) that this Act be interpreted and applied so as to further the object of this Act, and

(b) that the discretions conferred by this Act be exercised, as far as possible, so as to facilitate and encourage, promptly and at the lowest reasonable cost, access to government information.

469 Currently the public has great difficulty seeing evidence NSW government agencies comply with the Object of the GIPA Act 2009; leaving the expectation and reality of the ongoing difficulties valid access applicants suffer in a number of ways when endeavouring to access their beneficial legislation.

470 The GIPA Act 2009 is neither penal or fiscal in its construction or its parliamentary intention.

471 Relevantly, the principle of a beneficial legislation was noted over (100) one hundred years ago:

“If legislation is beneficial in nature and its provisions are ambiguous or alternative interpretations of relevant provisions are suggested, the interpretation which gives force to the release sought as the object of the legislation or provisions, consistent with the subject matter and the fair meaning of the language of the provisions, is the one which will be adopted by the Courts,” Bull v Attorney-General (NSW) 1913 17 CLR 370.

472 The Applicants’ submissions clearly suggest alternative interpretation of the enabling legislation the GIPA Act 2009, interpretation which seeks the Tribunal ignore the Parliament’s intentions at Section 3.

473 The Social Security Guide – Guides to Social Policy Law 1.3.1 Beneficial Administration of the Act also describes what constitutes beneficial legislation:

“The characterisation of beneficial legislation arises from the fact that many provisions of the Act provides benefits to the people. The relevance of the characterisation is that it is a principle of statutory interpretation that if there is an ambiguity in a piece of legislation which is beneficial in character, then the ambiguity should be resolved in a way that is most favourable to the people the Act is intended to benefit.”

474 As already referenced, the Applicants’ representative in these proceedings Mr Cahill insists there is no clear statement of law concerning these proceedings and the orders sought, and if that is indeed the case, which the Respondents’ reject, then any *“ambiguity should be resolved in a way that is most favourable to the people the Act is intended to benefit”*.

475 There are of course common law decisions which also rightfully discuss the issue of beneficial legislation, including:

476 *IW v City of Perth (1997) 191 CLR 1*, 12 where Brennan CJ and McHugh J, 39 per Gummow J referred to a beneficial or remedial purpose of the legislation being *“fair, large and liberal”*, rather than *“literal or technical”*.

477 And yet time after time the public, especially those that are self-represented, endures literal and technical arguments from gifted, experienced and articulate government legal representatives with instructions to win, realising the lack of legal experience and knowledge completely insufficient despite asserting their fundamental rights as they understand those to be.

478 The Tribunal itself advertises self-represented parties “*can be their own best advocate*”, and yet it routinely allows literal or technical arguments by smooth-talking legally-articulate government legal representatives to make a case that is not generally available to those self-represented parties.

479 In this regard, those advertisements are not a true representation of what the public can expect as they plead their cases, particularly if an NCAT virgin.

480 NCAT itself acknowledges the term “*beneficial legislation*” and the existence of it in the context of both the GIPA and PPIP Acts:

- *Pittwater Council v Walker (2015) NSWCATAD 34*, at Paragraph 77
- *Office of Finance and Services v APV and APW [2014] NSWCATAP 88*, at Paragraphs 54, 57, 58, 59, and 60

481 In the context of the GIPA Act, there can be no question this piece of legislation is beneficial in nature, and it is not the intention of parliament those benefits be deprived or undermined.

482 However, for the avoidance of any doubt, the GIPA Act 2009 itself gives testimony to the fact it is beneficial legislation.

483 By its own definition and description, the GIPA Act is beneficial in nature, conceded in the NCAT’s own caselaw:

- *Pittwater Council v Walker (2015) NSWCATAD 34*, at Paragraph 77

484 Likewise the Parliament’s intention in providing this free gift of enabling legislation to the community is clearly set out at Section 4 of the NCAT Act 2013:

4 Definitions

Section 4 Definitions refers to enabling legislation specifically:

enabling legislation means legislation (other than this Act or any statutory rules made under this Act) that—

- (a) provides for applications or appeals to be made to the Tribunal with respect to a specified matter or class of matters, or
- (b) otherwise enables the Tribunal to exercise functions with respect to a specified matter or class of matters.

485 There can be no denying the definition states specifically “*other than this Act or any statutory rules made under this Act.*”

486 This understandably refers to the NCAT Act, Rules and Regulations.

487 So the enabling legislation excludes the NCAT Act itself, as it is termed “*other Act*” for the purpose of clarity.

488 This definition makes clear the GIPA Act is enabling legislation for the purpose of conferring jurisdictional powers on the tribunal by application of the NCAT Act 2013.

489 And yet, despite the Parliament’s free gift of beneficial enabling legislation to the public, which clearly does not facilitate the granting of costs wishes to any NSW government agency, no doubt the result of this precious piece of legislation NOT being penal or fiscal, NSW agencies continue to petition the Tribunal for unlawful costs with the Tribunal regularly awarding them.

490 The absence of any mechanism to award a costs wish is supported by the Tribunal’s own documentation which concedes it is precluded by law from doing so, available on the NCAT website, <https://ncat.nsw.gov.au/how-ncat-works/after-the-hearing/legal-costs.html>. Point 5 Guidelines – Costs makes very clear:

5. The Tribunal can order a person to pay someone else’s costs, even if there are no special circumstances, if a particular law gives the Tribunal a choice or discretion about who pays costs. Those particular laws are:

a) section 42(1)(b) of the Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011

b) section 46(1)(b) of the Regional Relocation Grants (Skills Incentive) Act 2011

c) section 44(1)(b) of the Small Business Grants (Employment Incentive) Act 2015

d) section 29(1)(b) of the First Home Owner Grant (New Homes) Act 2000

e) section 52(3) of the Health Records and Information Privacy Act 2002, but only if the

Tribunal dismisses the complaint because it is frivolous, vexatious misconceived or lacking in substance or the Tribunal is satisfied that the applicant does not wish to proceed with the complaint

f) section 108(2)(a) of the Government Information (Public Access) Act 2009 in particular circumstances relating to delayed decisions

g) the Dormant Funds Act 1942.

(emphasis added)

491 ***Refer to Attachment 17***

492 These issues and examples are used to exemplify the Tribunal’s lack of jurisdiction to act in certain circumstances when administering the public’s beneficial enabling legislation.

493 Such procedural documents as the “*NCAT Guideline on Costs*” are of no consequence to militant agencies, and most particularly to Applicant 1 who is now on the public record recommending seeking costs in a no-costs forum and outside the legislation. Let us be mindful the propagator of seeking costs in the context of the GIPA Act 2009 is the Director / Business Unit Manager OGIPU Ms Jodie Cobbin; a person expected to comprehend the legislation under her administration.

494 However, since Applicant 2’s receipt of the false propaganda originating from Applicant 1 via the public presentation “*Tale of a Fixated Applicant*” in March 2019, Applicant 2 has latched onto the recommendation to seek costs, and has been successful in doing so in the NCAT despite the absence of a legislated mechanism.

495 Those costs wishes were granted in favour of Applicant 2 against Respondent's 1 and 2. Initially Respondent's 1 and 2 trusted the Tribunal had made lawful decisions resulting in payments to satisfy those costs wishes.

496 However, in mid-2024 Respondent's 1 and 2 became aware their beneficial enabling legislation did not give the Tribunal the jurisdiction to consider or grant such applications for agency costs wishes.

497 Currently, Respondent's 1 and 2 are under threat of legal action by Applicant 2 for payment of those costs wishes despite the legislation making clear they are unlawful.

The current account of costs wishes granted in favour of Applicant 2 by the Tribunal concerning Respondent's 1 and 2 have been documented and presented to Parliament.

498 *Refer to Attachment 18*

499 It is accurate accounts such as these, evidencing the ready willingness and intention of militant agencies to deliberately undermine the public's beneficial enabling legislation, where agencies seek punitive actions in response to the public's endeavouring to exercise legal rights, that demands the Tribunal thoroughly scrutinise agency applications and the orders sought to ensure the Rule of Law is upheld and an unrepresented party to proceedings is afforded full and proper procedural fairness.

500 However, if there is any room left for any degree of doubt, the NSW Constitution makes clear "*The Parliament puts the People at the Centre of the System of Government,*" and not the other way around.

501 Justice must be seen to be done; a conceptual notion of it without action denies democracy and the fundamental right to access justice.

502 Applicant 1 itself acknowledges the public's right to access justice, evidenced when it granted the sum of \$250,000.00 to the University of NSW Sydney (UNSW), for the development of a website identified as www.tech4justice.org (but still not operational as at the date of these submissions); a service for the public of NSW to ensure greater access to justice.

503 However, the actions of Applicant 1 and its OGIP Unit against the Respondents
 does nothing to align with its endorsement and generous sponsorship of UNSW;
 incidently an active NIPPN member.

504 **Part 9** – Legislated parameters of the Application

505 The legislation does not state that the collective amount of applications claimed to
 be lacking in merit should be 3 or more; the legislation states “*to one or more*
agencies”, being 3 or more applications lacking merit to each agency referenced.

506 There is no provision in Section 110 (1) facilitating the piggy-backing or ratcheting
 onto any other agency for the purposes of securing supplementary or additional
 Section 110 orders; albeit Applicant 3 in these proceedings is documented doing so
 in the case of ***Palerang Council, Queanbeyan City Council, Goulburn Mulwaree***
Council v Powell (2015) NSWCATAD 44 which records at Paragraph 15:

“15.....*the Tribunal made a restraint order covering Goulburn Mulwaree Council,*
which had not processed any of the access applications made to it and therefore did
not meet the criteria for section 110(1) on its own.”

507 Clearly this was a gross error in law by the Tribunal and one which Applicant 3
 hopes to replicate in these current proceedings.

508 If that were the case, now knowing the NIPPN organisation operates as a cartel
 unlawfully sharing the public’s personal information, breaching the legislation and
 actively working to make accessing NSW government information more difficult,
 any (3) three agencies could easily collude, as recommended in “***Tale of a Fixated***
Applicant” courtesy of the Director / Business Unit Manager of the OGIPU Ms
 Jodie Cobbin ex-NSW Police Superintendent, collaborating and seeking a Section
 110 Order as a collective of Applicants and seeking costs as an additional vehicle to
 push the points of control and punishment home.

- 509 Further, should such manipulation of the public's beneficial legislation be allowed and supported by the Tribunal in accordance with this current application for Section 110 orders, this would also leave so-minded NSW government agencies fully able to lodge such applications against companies, community organisations including sporting and recreational clubs, which cannot be considered to be the Parliament's intention with its free gift to the NSW public.
- 510 The Tribunal should exercise extreme caution in such a situation where it could be seen agencies are working as a cartel collective for the purposes of securing orders likely to result in multiple agencies unlawfully sharing the public's personal information in the NIPPN arena, which is already documented to occur, for the purposes of colluding to undermine the object and intention of the public's beneficial legislation, for example where any (3) three agencies could each only have (1) one claimed unmeritorious application, and where they join forces to secure orders outside of the parameters of Section 110 (1).
- 511 In the current construction of the GIPA Act 2009's, claimed unmeritorious applications do not require qualification as support or verification for a Section 110 Application.
- 512 This leaves it so very easy for this kind of calculated collective behaviours by an identified cartel overflowing with public servants to become the public's reality.
- 513 The subject of agencies acting as a collective, in a cartel-like manner, is discussed above at **Part 3 - NSW Right to Information & Privacy Practitioners Network, NIPPN - Operation of a NSW Government Cartel: - The NSW Right to Information & Privacy Practitioners Network, NIPPN**
- 514 This precarious potential situation would also likely see agencies working together to secure orders against organisations they seek to silence such as Progress Associations, Community Groups, Service Organisations, Body Corporates, health care facilities, consumer rights groups, and areas of government which see an Access Applicant holding a respective position of office.

515 *“Hypothetical Scenario:*

Senator David Shoebridge is on the public record lodging access applications in NSW, lodged on parliamentary letterhead.

At times the Senator’s access applications have been lodged on departmental letterhead on his behalf. The Senator is known for calling government to account.

Most of those requests for information were successful either in full or in part.

However, over a period of the past (2) two years Senator Shoebridge’s office has received (3) three agency responses of claimed unmeritorious access applications.

Those (3) three agency responses were from individual separate agencies.

*As a result the (3) three agencies, being in receipt of Applicant 1’s presentation “**Tale of a Fixated Applicant**” in March 2019, collude at a NIPPN meeting under the officially debunked Chatham House Rules with intentions to lodge a Section 110 Application against him.*

Given the content and context of the Applicants’ current Application for Section 110 orders against the Respondents in these proceedings, and on the basis the Application was approved and is now caselaw, should the Tribunal expect to see the Senator, his staff and the government he serves listed as Respondents on a claim of acting in concert on the basis the Senator utilises departmental letterhead and his staff may have from time to time signed off on the access applications on his behalf.”

516 The Tribunal will understand the hypothetical scenario of Senator Shoebridge, his staff and the parliament equates to Respondents’ 1, 2, and 3.”

517 *“Real Life Scenario:*

Director / Business Unit Manager OGIPU Ms Jodie Cobbin seeks access to information from the whole of the membership of the NSW Right to Information & Privacy Practitioners Network, NIPPN, which numbers approximately 500.

Ms Cobbin is conducting a departmental study on the subject of difficult GIPA applicants and seeks to access information specifically for that study.

Such information requires a formal access application given it concerns the public's personal information requiring third party consultation.

Ms Cobbin divides the task between herself and a number of subordinates to comply with the legislation and lodge the 500 access applications directly to the members, utilising a document template owned by Applicant 1 which clearly identifies the department. This costs Applicant 1 the sum of \$15,000.00 in accordance with the legislated access application fees.

Each individual lodging the access applications including Ms Cobbin rightfully use their Christian and Surnames to identify as access applicants in accordance with the legislation.

Those members in receipt of the valid access applications determine 'information not held' making all the access applications unmeritorious.

*Unbeknown to Ms Cobbin and now in receipt of her earlier published document "**Tale of a Fixated Applicant**" (3) three months prior, the NIPPN cartel decides to take heed of Ms Cobbin's presentation in particular that part recommending agencies should collaborate and seek a remedial Section 110 Order, lodging an application with the Tribunal for such an order.*

NIPPN has colluded, is able to identify Ms Cobbin and a number of her staff, and is fully informed of her superiors such as NSW Attorney-General Michael Daley, Secretary Department of Communities & Justice Michael Tidball, and Executive Director, General Counsel, Legal, NSW Dept of Communities & Justice Lida Kaban.

Given the content and context of the Applicants' current Application for Section 110 orders against the Respondents in these proceedings, and on the basis the Application was approved and is now caselaw, should the Tribunal expect to see the whole of the Department of Communities & Justice listed as Respondents in accordance with Section 110(1) on the basis Ms Cobbin uses departmental letterhead templates and her staff have utilised those same template letterheads, acting in concert for the purpose of lodging the 500 access applications on her behalf, all of which have returned a decision of 'information not held'."

- 518 The Tribunal will understand the hypothetical scenario of Ms Jodie Cobbin, her staff and the cluster of the Attorney General equates to Respondents’ 1, 2, and 3.”
- 519 Indeed, if we are to accept that an agency is not required to satisfy Section 110 (1) (a) independently, it is then plausible (4) four separate agencies each with (1) one single claimed unmeritorious access application is sufficient to enliven a Section 110 order application, and given the evidence before the Tribunal agencies expect to be able to collaborate in order to meet the low threshold of claimed unmeritorious applications, and that company directors and / or the documented head of an organisation is the controlling will and mind of the organisation, it is reasonable to expect Ms Cobbin, the entire staff of Applicant 1, Michael Tidball, Lida Kaban, and indeed NSW Attorney-General Michael Daley, would see themselves subject to a Section 110 Order applicable state-wide with a likely imposition in perpetuity.
- 520 The Tribunal will also understand the real life scenario of Ms Cobbin, her staff and her superiors, which sees the NSW Attorney-General Michael Daley as “*the directing mind and will*” of Applicant 1, equates to Respondents 1 2, and 3.”
- 521 Such a hypothetical and real life scenarios cannot be considered fantastical when we transpose Senator Shoebridge, his staff and his Parliamentary office with Respondents’ 1, 2, and 3, unless this kind of pursuit is only directed towards unrepresented access applicants.
- 522 The exact same can be said when we transpose Applicant 1’s Ms Cobbin, her staff and superiors with Respondents’ 1, 2, and 3, unless this kind of pursuit is only directed towards unrepresented access applicants.
- 523 The theoretical comparison between the inference of Senator Shoebridge and the Respondents in these proceedings, and Applicant 1 and the Respondents in these proceedings is discussed in *ICAC v Karkowski (2012) NSWLC 6*, 33 and 39.

524 If however, there is any ambiguity in the legislation which causes the Tribunal any difficulty of interpretation in order to meet the orders sought, each is a question of law for the NSW Supreme Court, particularly as the Applicants’ representative stated on 05th November 2024 at **Attachment 13** Paragraph 107, “...*there are a lot of grey areas in Section 110 which require a clear statement of the law.....And I note Ms Webb has drawn attention to similar issues four or five times in her written submissions in suggesting that the matter is more properly before the Supreme Court. It’s not a state, not an issue which there is currently a clear statement of the law.*”

525 **Part 10** - History of 110 Applications

526 **a.1 Successful Applications**

527 First successful Section 110 Application, **Pittwater Council v Walker (2015) NSWCATAD 34.**

528 The Tribunal is asked to note the Respondents rely on the Court Security Act 2005, Section 9B (2) (b).

9B Prohibition on unauthorised distribution of court recording

- (1) *A person must not transmit or distribute a recording of sounds or images (or both) of court proceedings, including part of a recording, by any means. Maximum penalty—200 penalty units or imprisonment for 12 months, or both.*
- (2) *Subsection (1) does not apply unless the person knows or suspects, or ought reasonably to know or suspect, that none of the following apply—*
 - (a) *the transmission or distribution of the recording has been expressly approved by a judicial officer,*
 - (b) *the transmission or distribution of the recording is for the purpose of transcribing court proceedings for the court,*
 - (c) *the transmission or distribution of the recording occurred in any other circumstances prescribed by the regulations.*

529 This was the first of such applications brought to the Tribunal for adjudication and as such was clearly a test case. The Tribunal determined to show the full effect of Section 110 against the Respondent in that case, with a perpetual timeframe noting the GIPA Act 2009 is not penal, but the public’s beneficial legislation.

530 Whilst the Tribunal's decision makes reference to granting the Applicant Agency relief, it is the transcript of the hearing at *Paragraph 810*, following on from much open discussion about the agency's resources and case management expectations on the part of the Tribunal, which makes clear the Tribunal's concerns the implications of a Section 110 Order diverts the resources of the Tribunal by default.

531 ***Refer to Attachment 15***

532 The Respondent Mr Walker has since the imposition of his historic Section 110 order, by a Tribunal Member who contributed to the composition of the GIPA Act 2009 during his time as NSW Information & Privacy Commissioner, lodged some (14) fourteen successful GIPA Applications through the Tribunal over the ensuing decade.

533 Yet the Tribunal has not revoked Mr Walker's Section 110 Order.

534 Second successful Section 110 Application, ***Palerang Council, Queanbeyan City Council & Goulburn Mulwaree Council v Powell (2015) NSWCATAD 44.***

535 It is noted this Section 110 Application was reliant on the collaboration and collusion of several agencies who breached the Respondent's privacy, using his personal information for a collateral purpose other than what it was originally collected for, resulting in abuse of process.

536 This Section 110 order was completely successful given there is no evidence the Respondent Mr Powell did ever attempt to exercise his rights to access NSW government information through the Tribunal's Section 110 process.

537 Third successful Section 110 Application, ***CEU v University of Technology Sydney; University of Technology Sydney v CEU (2019) NSWCATAD 11.***

538 In addition to the Section 110 application in those proceedings, the Respondent in those proceedings suffered the imposition and public humiliation of a Guardian Ad Litem courtesy of the Tribunal and Applicant 1, effectively removing the Respondent's right to self-represent.

539 The Respondent in those proceedings objected to both the Section 110 application and the Guardian Ad Litem but was unsuccessful.

- 540 The Guardian Ad Litem made the decision to accept the Section 110 order without filing any submissions, claiming to have acted in the best interests of the Respondent.
- 541 The Section 110 order was issued with an implied perpetual timeframe.
- 542 Fourth successful Section 110 Application, ***Webb v Port Stephens Council; Webb v Port Stephens Council; Port Stephens Council v Webb (2020) NSWCATAD 81.***
- 543 The Respondent in those proceedings being Respondent 1 in these proceedings faced a publicly-funded legal team comprising Barrister Brenda Tronson, Solicitor Carlo Zoppo, Solicitor Matthew Harker, Applicant in-house solicitor Lisa Marshall, Applicant Governance Manager Tony Wickham, an un-named barrister in training
- 544 The Respondent in those proceedings being Respondent 1 in these proceedings was neither legally trained or represented.
- 545 The presiding member granted the orders sought inclusive of orders covering the issue of acting in concert.
- 546 The Tribunal did not have the jurisdiction to grant any order covering the issue of acting in concert, which resultantly saw the successful appeal of ***Webb v Port Stephens Council (2020) NSWCATAP 152.***
- 547 This decision was rightfully overturned when Respondent 1 successfully proved the presiding member had acted with bias in favour towards the Applicant in those proceedings, actually directing, suggesting and insisting on the provision of certain documentation for the purpose.
- 548 The appeal unnecessarily cost Respondent 1 the Appeal Application Fees of several hundred dollars. The distress to the Respondent from the Section 110 Application, the Appeal, and resultant Remittal cannot be overstated.
- 549 The fifth successful Section 110 application, ***Dept of Education v Zonneville (2020) NSWCATAD 96.***
- 550 That decision of ***Zonneville*** followed closely behind the decision of Francis Marks in ***Webb v Port Stephens Council; Webb v Port Stephens Council; Port Stephens Council v Webb (2020) NSWCATAD 81***, with the presiding member taking into account irrelevant factors including conduct of the Respondent.

- 551 As with all previous Section 110 Applications, each saw unrepresented Respondents and highly-resourced Applicants tapping into unlimited public monies for the purpose.
- 552 This fifth Section 110 application sought appeal which imposed such an unreasonable timetable for filing, the Respondent expectantly failed to meet the constraints leaving the order intact.
- 553 This fifth victim of a Section 110 order would see the Tribunal weild its strongest hand, making it applicable across the state in perpetuity.

a.2 Unsuccessful Applications

Port Stephens Council v Webb (2017) NSWCATAD 341

Failed to prove unreasonable use of resources requiring relief

Port Stephens Council v Webb (2021) NSWCATAD 180

Failed to prove unreasonable use of resources requiring relief

b. Section 110 Application Costs to NCAT

There are no records of the costs incurred by the Tribunal for its Section 110 cases including those overturned on appeal.

Indeed, Respondent 1 did lodge a valid access application with Applicant 1 for a copy of the costs and / or invoices submitted for one of the Section 110 cases, with the Notice of Decision claiming words to the effect “*members cannot be expected to rely on their memory,*” which was completely unsatisfactory.

Likewise, there is no indication as to the amount of time and resources Section 110 matters encompass in the Tribunal arena.

In this regard, there is no evidence of any value-adding to the expenditure and allocation of the public purse in the context of both successful and unsuccessful Section 110 Applications to the Tribunal.

These immeasurable costs are simply scooped up to blend into the overall expenditure of Applicant 1.

c. NCAT Application Costs - Section 110

Having reference to Applicant 1’s witness’ Affidavit of in-house solicitor Jonathan Franklin Paragraph 53, Applicant 1 claims without any evidence to have utilised the staggering amount of (852) eight hundred and fifty two hours to 13th December 2024 in “*preparing for Applicants’ current application*”.

Considering Applicant 1’s earlier documented submissions dated 05th September 2024 originating from Applicant 1’s Principal Solicitor one Michael McIntosh, Paragraph 39, the claimable rate per hour for Applicant 1’s legal resources including support staff is \$346.94.

This means Applicant 1 has disclosed it has provided publicly-funded legal services and support for a single Tribunal Application for the benefit of secondary agencies totalling the sum of \$295,592.88, noting at the date of 17th December 2024 the substantive hearing had not been heard, accommodation for the (3) three witnesses had not been confirmed, and no meal allowances, travel and likely some light entertainment over the hearing date evenings had not yet been booked.

Refer to Attachment 23

Additionally, as at the date of these submissions successful access applications on the part of Respondent 1 have provided evidence the following legal costs were incurred by NSW government agencies seeking orders under Section 110, <https://nswfreedomofinformation.net/injurious-clauses-of-the-legislation/section-110-costs/>:

Port Stephens Council	\$201,607.81
Northern Beaches Council (formerly Pittwater)	19,089.90
NSW Dept of Education	\$127,521.71
Palerang, Queanbeyan, Goulburn Mulwaree Councils	\$60,756.58
University of Technology Sydney	Withheld

At a staggering current cost to NSW government agencies, absent of one, totalling approximately \$704,592.88, a staggering amount just for the Section 110 Applications alone and not including potential GIPA Access Applications via the Section 110 process, there is no possible argument to be made this represents good value for the public purse and most importantly provides any relief for NSW agencies including the Tribunal.

The public expects any claimed relief to include financial.

The public purse should not under any circumstances be made responsible for those costs incurred in the pursuit of relief from statutory obligations.

In *Dept of Education v Zonneville (2020) NSWCATAD 96* Para 18, the member notes:

18 “None of these costly actions utilising public monies aligns with the object of the GIPA Act as expressed at s3(2) (b) is: “It is the intention of Parliament that the discretions conferred by this Act be exercised, as far as possible, so as to facilitate and encourage, promptly and at the lowest reasonable cost, access to government information.”

It is reasonable to expect this section of the public’s beneficial legislation encompasses all participants, not just those who are flush with cash.....

d. GIPA Applicant Costs to NCAT under Section 110

Currently GIPA Applicant costs range from a discounted rate of \$30.00 to the full Administrative Application Fee of \$124.00.

Likewise, currently GIPA Applicant administrative review costs have been documented at the full Appeal Panel fee of \$506.00.

In this regard, a GIPA Applicant in the context of a Section 110 order continues to be punished through the process due to the fact he / she suffers financial penalty far greater than the legislated GIPA application fees, all of which does nothing to align with the Parliament’s intentions under Section 3, (2):

“(2) It is the intention of Parliament:

(a) that this Act be interpreted and applied so as to further the object of this Act, and

(b) that the discretions conferred by this Act be exercised, as far as possible, so as to facilitate and encourage, promptly and at the lowest reasonable cost, access to government information,” (emphasis added).

e. GIPA Application Costs to Agencies under Section 110

Currently there is no information available as to the costs to agencies in dealing with Access Applications through the Tribunal under Section 110.

In this regard, there is no evidence of any value-adding to the expenditure and allocation of the public purse in the context of successful GIPA Applications under Section 110.

And there is no evidence the costs spent during the processing of an access application through the Section 110 process is any less than the originating process.

f. Example of Inefficiencies in the Section 110 Process

Taken at face value as a prime example of the inefficiencies directly associated to a Section 110 order including agencies’ inability to control costs, inability to control agency conduct, inability to resolve the real issues in dispute, and complete inability to ensure the quickest, cheapest, fastest use of the public’s administrative review processes, the recent published case of ***Zonneville v Dept of Justice (2024) NSWCATAD 357*** stands out evidencing every reason why a Section 110 order under current legislation is a complete failure.

This single GIPA Application of *Zonneville* endured some (4) four years in the Tribunal arena inclusive of (4) four hearings for the substantive matter, without resolution and currently entering into the Appeal phase of Review, seeing the Respondent in the proceedings utilising the resources of senior executive personnel including principal solicitors of the OGIPU (*no right to information or privacy officer is documented to represent the Respondent*); the same unit of government recommending mititant action to control Access Applicants state-wide.; the same unit of government claiming the current account defecits are due to the public’s exercising rights under beneficial legislation.

This single GIPA Application also endured numerous ancilliary / interlocutory applications as the unrepresented applicant repeatedly tried to exercise his rights to summons relevant witnesses, amend the scope of the application, and obtain approval to record proceedings due to ongoing failures of the Tribunal to produce hearing recordings of a high quality standard.

554 The public should never be expected to accommodate such abuse and procrastination of the legislation by agencies via an order that is prejudicial and does nothing to align with Applicant 1’s published statements:

“GIPA Act Statutory Review - Stakeholder Concerns:

7.13 To address these concerns, a number of stakeholders suggested that the GIPA Act’s review processes should be amended to reflect the following principles:

- *Review pathways should be straightforward and linear, with a clear escalation from one stage of the process to the next.*
- *Each stage of the review process should be completed in a timely fashion and a decision should be reached without delay.*
- *Review processes should promote access to justice for aggrieved persons.*
- *Applications for review should be resolved in the most efficient manner.*
- *The number of different review processes with respect to different aspects of the same access application should be minimised.*

<https://www.parliament.nsw.gov.au/tp/files/71582/GIPA%20Act%20and%20GII%20Act%20statutory%20review.pdf> “

555 Likewise, the home page for the *NCAT Act 2013 Statutory Review* advertises “*The Department of Justice is conducting a review to find out how well NCAT is working, and to look at reforms that could strengthen access to justice for people in NSW*”

<https://dcj.nsw.gov.au/about-us/engage-with-us/public-consultations/statutory-reviews/civil-and-administrative-tribunal-act-2013-statutory-review.html>”

556 These publications are in total contrast to the matter(s) of *Zonneville*.

557 **Part 11** – History of term ‘concert’ as included in Section 110

558 It is important to note the full context of the term ‘acting in concert’ has criminal offending connetations concerning joint criminal enterprise.

559 It is taken to be indicative of direct liability between two or more persons; it is not derivative.

560 Firstly, the word concert is not defined in the Interpretations Act 1987. Likewise the phrase ‘acting in concert’ is not defined in the Act.

561 Neither is the word concert defined in the GIPA Act 2009. And again, the phrase ‘acting in concert’ is not defined in the Act.

562 This leaves the Tribunal with the ordinary meaning of the word concert and its ensuing phrase acting in concert, given it is relied upon explicitly by the Applicants.

563 The dictionary defines the term concert as:

- Cambridge dictionary:

To arrange something by mutual agreement or coordination; acting jointly

- Merriam-Webster diction:

To act in harmony or conjunction; arrange, bargain, conclude, negotiate

- Collins dictionary:

Acting in a coordinated fashion with a common purpose

- Oxford dictionary:

Agreement or collusion of two or more parties in a plan, design, or enterprise; a union formed by such an agreement

564 The Applicants have totally failed to make out any case of acting in concert between Respondents' 1, 2, and 3.

565 The Vexatious Proceedings Act 2014 (VIC), Section 4 Meaning of Acting in Concert states:

*(1) Subject to subsection (2), in this Act, a person is **acting in concert** with another person if the first mentioned person is—*

- (a) acting on behalf of the other person; or*
- (b) acting for the predominant benefit of the other person; or*
- (c) acting on the instructions of the other person; or*
- (d) acting in collusion with the other person.*

(2) A person who makes an [interlocutory application](#) or commences and conducts a proceeding on behalf of a person is not acting in concert with that person if the first mentioned person is—

- (a) a legal practitioner acting for the person; or*
- (b) a litigation guardian of the person; or*
- (c) a professional advocate within the meaning of [section 62\(8\)](#) of the [Victorian Civil and Administrative Tribunal Act 1998](#) ; or*
- (d) any other person authorised or required by law to act on behalf of the person.*

566 The Criminal Code Act 1995 (Cth), Section 11.2 (1) cites:

(1) A person who aids, abets, counsels or procures the commission of an offence by another is taken to have committed that offence and is punishable accordingly.

567 In NSW, acting in concert is covered by current laws prohibiting consorting, specifically in relation to convicted offenders' associations.

568 None of these are applicable to Respondents 1, 2 or 3 as no offence has been committed.

- 569 Additionally, the allegations by the Applicants in these proceedings is that the Respondents have acted in concert supposedly for the purpose of gaining access to NSW government information.
- 570 Accessing NSW government information is a legislated right, it is not listed in the Crimes Act 1900!
- 571 All Applicants have completely failed to acknowledge no person, no agency including any NSW judiciary, has any power to interfere with or control the personal conversations of any individuals in particular when those conversations comprise of counsel.
- 572 All Applicants have completely failed to acknowledge no person, no agency including any NSW judiciary, has any power to interfere with or control the personal conversations of any individual in particular when those conversations are between a husband and wife.
- 573 Indeed, there is no possibility whatsoever the Tribunal would be able to enforce such control; neither are any of the Applicants able to monitor their targets unless they stoop to various forms of surveillance.
- 574 Whilst Applicant 1's Director / Business Unit Manager Ms Jodie Cobbin, in her former life as a NSW Police Superintendent might have had some ability to implement surveillance on an unsuspecting public, and now in her current role recommends involving NSW Police to somehow deal with valid access applicants directly, she is faced with the reality such control and interference against the public she serves is fundamentally a breach of human, civil and political rights:
- *United Nations Universal Declaration of Human Rights (1948) Article 19*
 - *International Covenant on Civil & Political Rights (1966) Article 19*
- 575 The Applicants in these proceedings are clearly desperate as the Section 110 (1) criteria for satisfying the Tribunal relies upon the claim of acting in concert.
- 576 In stark comparison however, it is abundantly clear the Applicants have indisputably acted in concert themselves in the contemplation and initiation of these proceedings.

- 577 Applicants 1 and 2 are members of the organisation known as NIPPN, a cartel evidenced to regularly act in concert on a state-wide scale, breaching the public's privacy by unlawfully sharing the public's information.
- 578 Applicant 1 has since been documented to act in concert with NIPPN, seeking access to the public's personal information on the false premise of a departmental study.
- 579 Further Applicant 1 is documented to act in concert with NIPPN, for the purposes of impeding the public's legally enforceable rights to access NSW government information.
- 580 Prior to the current published version of the GIPA Act 2009, notably 28th November 2018, the term concert did not form part of the Section 110 parameters.
- 581 Prior to the published 28th November 2018 version of the GIPA Act 2009, the term concert had only been referenced within Section 60 Decision to Refuse to Deal with Application.
- 582 However, a member of NIPPN for several decades, one Ms Megan Carter of Information Consultants who financially benefits from NIPPN cartel connections, having had some administrative experience overseas recommended to the Statutory Review of the GIPA Act 2009 in 2014, that the term concert should be expanded upon in the Section 110 component of the legislation to affect groups of access applicants.
- 583 This was based upon, of all things, reference to the Irish Freedom of Information Act. An excerpt from Megan Carter's submission on the subject of acting in concert reads at **7.3 – Groups of requesters acting in concert**, <https://dcj.nsw.gov.au/documents/about-us/engage-with-us/public-consultations/Review%20-%20Government%20Information%20Public%20Access%20Act%202009%20Submissions/Information%20Consultants%20Pty%20Ltd%20Submission%205%20September%202014.pdf>.

584 It is noted however Ms Carter did not provide any evidence of the claimed
 “...increase in the frequency of concerted requester behaviour.....”, in her
 submissions to Applicant 1, yet Applicant 1 embraced that commentary towards
 supporting the amendment to Section 110 because it aligned with its intention and
 purposes to hinder the public’s access to its beneficial legislation.

585 This does not align with the advertised and published statement by Applicant 1, an
 active member of NIPPN, “.....to look at reforms that could strengthen access to
 justice for people in NSW.’

586 However, and equally concerning, the NSW Information & Privacy Commissioner
 (IPC), with (11) eleven employees listed as active members of the NIPPN cartel,
 went further in its report to Parliament in July 2017 with Recommendation 14:

“Amend Section 110 of the GIPA Act to:

*Allow NCAT to make restraint orders covering others who may be ‘acting in
 concert’ with the primary applicant*

*Allow NCAT to accept that an application is lacking in merit where it has
 previously found that application to be lacking in merit*

Give NCAT greater flexibility in determining the terms of restraint orders

*Direct NCAT as to the kinds of factors that should be considered where an
 applicant subject to a restraint order seeks permission from NCAT to make a
 further application”*

[https://www.parliament.nsw.gov.au/tp/files/71582/GIPA%20Act%20and%20G
 IIC%20Act%20statutory%20review.pdf](https://www.parliament.nsw.gov.au/tp/files/71582/GIPA%20Act%20and%20G

 IIC%20Act%20statutory%20review.pdf)

587 This is not a good look for the Information Commissioner, an Access to Information
 Champion, who stated during Right to Know Week 2021 “*Citizens have the right to
 access government information*” when she actually seeks the amendment of the
 public’s beneficial legislation to diminish those rights.

588 The IPC Report to Parliament shows a footer identifier of NSW Department of
 Justice, that is Applicant 1.

589 With the established history of published, advertised, promoted, and encouraged
 militant culture exhibited by Applicant 1, the Tribunal should not be surprised to see
 the intentions of Applicant 1 in the context of the public's rights to access its
 beneficial legislation is to undermine those rights and strengthen the government's
 ability to prevent access to government information, obstructing the object of the
 GIPA Act 2009 in its entirety.

590 **Part 12** – Respondent Commentary on Applicant Submissions

591 The Applicants' collaborative Application for Orders under Section 110 of the
 GIPA Act 2009 is stamped filed at the Registry on Friday 04th October 2024.

592 It was absent of basic information, clearly rushed to get to the Tribunal as a matter
 of urgency; the supporting documentation and foundational information ordinarily
 enclosed would be provided later.

593 Indeed, by the date of the Directions Hearing and Application for Dismissal of 05th
 November 2024, the Applicants had still not made the necessary disclosures.

594 There can be no doubt the collaboration between the (3) three Applicants by that
 particular date was the direct result of the media release (9) business days prior:
***“Toxic State Government Behaviours Exposed! - Public's Ongoing Investigation
 into NSW Right to Information and Privacy Officer Behaviours and Activities
 Reveals Cartel Posse Mentality, Denigrating Legislated Rights and Undermining
 Beneficial Legislation, 23.09.2024, ” [https://nswfreedomofinformation.net/media-
 releases/media-2024/](https://nswfreedomofinformation.net/media-releases/media-2024/).***

595 By the date of first-round submissions 17th December 2024, a total of (52) fifty two
 business days since the filing date of 04th October 2024, the Applicants would
 disclose they had spent the gargantuan sum of public monies quantified as
 \$295,592.88 for (852) claimed hours of work. These figures also equate to the use
 of (16) sixteen OGIPU staff members.

596 The public rightfully views such outrageous expenditure as deliberate
 maladministration and arrogant waste, seeking a full explanation of how this was
 allowed to occur, and moreso who gave the approval.

- 597 The content of the media release of Monday 23rd September 2024 was factual and based on documentation originating from NSW government agencies.
- 598 NSW government agencies are repeatedly evidenced acting in troll-like manner to secure information and records in dossier-style, to use against the public at a chosen point in time; such is now evidenced by Applicant 1's Jodie Cobbin's fictitious departmental study of June 2019.
- 599 The media realease was unapologetically damning, exposing the decades-long rot existing in just one small part of the NSW government sector.
- 600 These Applicants could have viewed the media release as an opportunity to formulate a plan to root out corruption and restore some level of trust between the government and the people it serves.
- 601 Change would be difficult but not impossible; working with the public for the public's good, extinguishing old habits and entrenched attitudes of superiority and control of information in accordance with the Honorable Nathan Rees' speech over a decade ago.
- 602 How long should the public be expected to wait?
- 603 How much longer should agencies' unlawful tight grip on government information and manipulation of the legislation be tolerated?
- 604 Instead these Applicants chose harsh retaliation against those calling out corrupt conduct for what it is, as is now documented to be standard operating procedure.
- 605 These actions are readily classified as Noble Cause Corruption; anything is acceptable no matter how unlawful if for the greater good and survival of the organisation, in this instance the state-wide cartel the NSW Right to Information & Privacy Practitioners Network, the NIPPN cartel.
- 606 The NIPPN cartel has been fully exposed for what it is and how it behaves.
- 607 Clearly members of this group are very angry about media releases and articles as that listed above. Generally they use public resources in retaliation, now quantified in the millions.

608 Applicants 2 and 3 had previously commenced Defamation Proceedings against
Respondent 1 in these proceedings, but both chose to withdraw when pressed for
further particulars in accordance with the legislation.

609 This time they would join forces with the most powerful of the state's departments
and use their combined resources in an effort to silence public commentary
originating from Respondent 1 but inclusive of the general public of NSW.

610 The Tribunal's remitted decision of *Port Stephens Council v Webb (2021)*
NSWCATAD 180 provides a new and concise road map for a Section 110
application, by a Tribunal member who took the time to properly consider all the
factors.

611 However, to assist the Tribunal these submissions address those of the Applicants'
per paragraph, and reference the decisions of *Webb v Port Stephens Council (2021)*
NSWCATAP 152 and *Port Stephens Council v Webb (2021) NSWCATAD 180*
where relevant.

612 It is clear from the content of the submissions the Applicants expect the Tribunal to
consider the totality of the access applications lodged by the Respondents 1 and 2
since 2011.

613 However, these submissions and reliances are completely irrelevant as they do not
align with the statement of Mr Cahill of 05th November 2024, transcript Paragraph
101:

"101we are within the bounds of 110,1."

614 ***Refer to Attachment 13***

615 The bounds of Section 110 (1) concern the combination of claimed unmeritorious
access applications AND acting in concert.

616 Those claimed unmeritorious access applications must qualify under Section 110
being that they use an unreasonable amount of agency resources such that require
relief.

617 This is the purpose and intention of Section 110; that is to provide relief to an
agency in receipt of repeated and frequent claimed unmeritorious applications in the
form of formal restrictions and vetting via the Tribunal.

618 This is clearly a very strong desire particularly for Applicant 1's Director / Business Unit Manager OGIPU Ms Jodie Cobbin, now documented to initiate a moral panic at the very thought of members of the public endeavouring to exercise their legally enforceable rights to access their beneficial legislation; a moral panic which, in her eyes as an ex-NSW Police Superintendent accustomed to public control, she implemented with a 3-stage strategic process:

- 27th March 2019 – Introduced the moral panic
- 12th June 2019 – State-wide solicitation for dossiers for a fictitious study
- 25th July 2019 – Submission NCAT Review – obstruct Parliament's intention

619 ***Refer to Attachments 3, 4 & 8***

620 That moral panic has extended to these proceedings for Application for Section 110 Orders, which is clearly hoped to set a precedent enabling agencies to incorporate private enterprise and groups of individuals.

621 The Tribunal should make no mistake, the NIPPN cartel is watching this case.

622 Paragraph 1:

623 From the outset of the Applicants' submissions the Application fails as incompetent and completely, but deliberately, misconceived in the hope the Tribunal will be wooed particularly as the submissions are substantial.

624 The wording of the Applicants' Paragraph 1 seeks orders outside of the Tribunal's jurisdiction and outside of the GIPA Act 2009.

625 This issue was raised at first instance at the hearing of 05th November 2024, with proper reference to *Webb v Port Stephens Council (2020) NSWCATAP 152*, as recorded in the transcript (05th November 2024) Paragraphs 62, 64, and 66:

“62 So, those three particular paragraphs talk about the Tribunal's powers to make a Section 110 order against a person. And those three paragraphs talk about the Tribunal not having the powers to issue a Section 110 order, one application, a Section 110 order, a Section 110 order against more than one person, particularly in the context of acting in concert. It actually says in there, down the bottom of Paragraph 64, while it may be desirable to make an in-concert order to prevent another person from making application with Ms. Webb, Section 110 does not give the Tribunal power to do so. In addition, the difficulties of identifying such an application by another person may make it impractical to enforce such an order. So, it says that there. That it might be desirable for these applicants to have an order concerning acting in concert, but it says Section 110 does not give the Tribunal the power to do so. A little bit further up in Paragraph 64, there is no defined criterion relating to applications not made by the person the subject of the order. So again, it's separating those two, a person subject of the order as opposed to someone acting in concert, but made by any other person in concert with the person the subject of the order. So, there's two completely different things there that I can see. And Paragraph 63, the last sentence says there is no express power in Section 110 to prohibit a person from making an access application in concert with any other person. Now that is actually, it encompasses the whole of the order that was made by Principal Member Marks because the application in that case asked for orders with those kinds of parameters.”

“64 That's correct. So, then when that appeal panel decision was made available and the matter was remitted, the applicant council resultantly didn't press the issue of acting in concert because they actually did realize that the Tribunal doesn't have jurisdiction to grant such an order. So, that's now, I feel that that's very relevant in this case because one of the applicants is the same agency. So, they already know. They've been here, they've tried this before, and they know that the Tribunal doesn't have the jurisdiction to do that.

Now, if I could just say, with all due respect, just to, just to support that, if I could, the IPC fact sheet titled 'Restraint Orders Under the GIPA Act,' which is updated July 2023, but which was actually published before that, not long after this decision, actually also makes on the front page, can the restraint order be made against more than one person? The IPC actually agrees with the terminology in that decision and we thought, I actually helped the IPC to work on that fact sheet, so I'm very familiar with that. So, that's really my case in a nutshell and I'm hoping it's that simple. That's all I have to say at the moment.”

“66 They, neither singularly or jointly, or if they have 150 agencies listed on their application, they cannot, the Tribunal doesn't have the jurisdiction to issue the orders that they want.”

626 ***Refer to Attachment 13***

627 Additionally, no evidence has been put to the Tribunal from any agency apart from the three colluding Applicants 1, 2 and 3.

628 In this regard there is no evidence to support granting that part of the application for orders ‘*to any agency.*’

629 Likewise no evidence has been put to the Tribunal from any agency including the three colluding Applicants 1, 2, and 3 supporting an order in perpetuity.

630 The bulk of the evidence and documentation put to the Tribunal from the colluding Applicants 1, 2, and 3 concerns Respondent 1’s publications and reporting on the conduct of NSW government employees in the exercise of their functions in the context of the GIPA Act 2009, basically amounting to nothing other than gripes about public discussion.

631 Applicant’s 2 and 3 also have numerous gripes concerning Respondent 1’s publications and reporting on the conduct of NSW government employees in the exercise of statutory functions.

632 These are all real issues, real occurrences, based on information and documents originating from NSW government agencies, supported by evidence.

633 Such childish gripes have no bearing whatsoever on the parameters of Section 110 (1) of the GIPA Act 2009.

634 Respondent 1 relies upon the fundamental right to speak freely and share information in a medium of Respondent 1’s choosing:

- *United Nations Universal Declaration of Human Rights (1948) Article 19*
- *International Covenant on Civil & Political Rights (1966) Article 19*

635 However, as remained the right of Applicant 2 and 3 to seek a legal remedy concerning any aspect of that right to speak freely, both of those Applicants did initiate potential defamation proceedings, however both chose of their own volition to withdraw when pressed for further particulars in accordance with the legislation.

636 Both Applicant's 2 and 3 utilised public monies for the purpose of initiating those threats of potential defamation proceedings, which is unconscionable conduct of great magnitude and as such remains in the public interest.

637 As has been repeatedly documented in numerous published Tribunal Decisions, such extraneous issues are of no consequence to the Tribunal as they do not form part of the substantive issues of the case.

638 The Tribunal must be seen to be fair and equitable in its decision-making, however these Applicants appear to be seeking access to a form of justice that is consistently denied those parties who are unrepresented members of the public.

639 Paragraph 2:

640 As was addressed by the presiding member in *Port Stephens Council v Webb (2021) NSWCATAD 180*, those access applications prior to the date of that particular Section 110 application were fully and independently assessed by the presiding member equating to a meagre 2.3 hours a week, which failed to qualify as an unreasonable use of resources such that required relief.

641 Whilst the number of access applications totalling 225, and taking up 988 hours of agency time, sounds very impressive, the Applicants have failed to identify the time frame for those applications leaving a false impression of the history of those referenced applications.

642 Regardless of the quantity of applications, the Applicants have collectively failed to concisely explain the actual amount of time taken and over what period.

643 Further, in the case of *Pittwater v Walker (2015) NSWCATAD 34* at Paragraph 14, the presiding member refers to a Section 110 Application as an Application for Relief, establishing the nexis between claimed unmeritorious access applications and relief sought by the Applicant agency from such future access applications

“14 The application for relief was filed on 29 September 2014, and annexed a Schedule which listed 29 Access Applications between 3 June 2013 and 4 July 2014 (Schedule A). A further Schedule listed a sub set of 15 Access Applications between 3 July 2013 and 18 June 2014 (Schedule B). Schedule A contains all formal access application by Mr Walker under the GIPA Act in the nominated period, whereas Schedule B extracts from that total pool, those access applications that the Council consider lack merit in accordance with the provisions of section 110 of the GIPA Act, and which they rely on in their application for an order.”

644 This ‘relief’ is intrinsically tied to the amount of agency time taken up by the claimed unmeritorious access applications

645 In these proceedings, Applicant 1 has failed to qualify any time taken up by the claimed unmeritorious access applications, leaving a claim for relief completely incompetent.

646 Applicant 2’s combined Notice of Decision documents assert the total amount of agency time taken up by the claimed unmeritorious access applications is a meagre (5) five hours.

647 During the combined determination period for each of Applicant 2’s claimed unmeritorious access applications, on average these access applications took up a maximum of 2.5 hours per month or 16 minutes per week, which cannot qualify as necessitating any kind of relief.

648 Additionally, Applicant 2 is incapable of maintaining any credible claim of unmeritorious applications such that require relief, when consideration is had for several of its Determinations, specifically:

a) PSC 2024-01840 Applicant 2 determined the access application, from Respondent 1 in these proceedings, to pay an advance deposit of \$461.25 towards calculated processing charges of \$952.50, equating to 31.75 hours of agency time. Applicant 2 in these proceedings did not determine this was an unreasonable use of resources, instead enforcing the costs. Applicant 2 further neglected to properly consider the mandatory first (20) twenty hours of time as not chargeable given the requested information encompassed the access applicant’s personal information.

This single document supports the Respondents' assertion Applicant 2's joining as an Applicant in these proceedings is vexatious, with malicious intent to obstruct Respondent's 1 and 2's legislated rights to access government information.

- b) PSC 2017 – 03368 *Applicant 2 determined the access application, from Respondent 1 in these proceedings, to pay an advance deposit of \$206.25 towards calculated processing charges of \$412.50, equating to 14.75 hours (but logged 17.25 hours) of agency time. Applicant 2 in these proceedings did not determine this was an unreasonable use of resources, instead enforcing the costs.*

This single document supports the Respondents' assertions Applicant 2's joining as an Applicant in these proceedings is vexatious, with malicious intent to obstruct Respondent's 1 and 2's legislated rights to access government information.

- c) PSC 2018 – 02026 *Applicant 2 determined the access application, from Responent 1 in these proceedings, to pay an advance deposit of 367.50 towards calculated processing charges of \$735.00, equating to 24.25 hours of agency time. Applicant 2 in these proceedings did not determining this was an unreasonable use of resources, instead enforcing the costs.*

The file numbers Ref PSC 2017 – 03368, PSC 2024-0180, and PSC 2018 - 02026 evidence Applicant 2's concession of what it determines to be a reasonable use of agency resources, requiring no relief whatsoever.

It is reasonable to expect the same standard of what constitutes as a reasonable amount of agency time applies across all agencies.

649 Refer to Attachment 27

650 Applicant 3's combined Notice of Decision documents assert the total amount of agency time taken up by the claimed unmeritorious access applications is a meagre (4) four hours.

- 651 During the combined determination period for each of Applicant 3's claimed unmeritorious access applications, on average these access applications took up a maximum of 2 hours per month or 15 minutes per week, which cannot qualify as necessitating any kind of relief.
- 652 In any case, Applicant 1's witness Mr Jonathan Franklin did at his Sworn Affidavit as noted above at Paragraph 537 Item C, set a new governmental benchmark for what qualifies as a reasonable use of agency time and resources, by disclosing the Applicants had utilised the amount of (852) eight hundred and fifty two hours just in preparation of the first-round submissions for these proceedings.
- 653 Clearly, by now the public and the Tribunal must face the fact, despite Applicant 1's repeated claims the public are taking up an unreasonable amount of resources which is impacting the ability of the OGIPU to process and keep up with access applications, the truth is it is more likely the maladministration of the entire department, under the control of Director / Business Unit Manager Ms Jodie Cobbin, seeing resources wasted unnecessarily in retaliation against the public which is actually responsible for those impacts.
- 654 The case of *Port Stephens Council v Webb (2021) NSWCATAD 180* at Paragraph 70 provides a road map for calculating the actual time taken to process access applications in the context of whether or not an agency had qualified the relief sought via a Section 110 Order:
- "70 The effect of the Respondent's prior access applications is similarly not a factor which suggests that a restraint order should be made. During the busiest 34 month period of receipt of access applications from the Respondent, the Applicant spent 2.3 hours per week in dealing with the respondent's access applications. Thus, there is no basis from which to conclude that there has been any adverse effect more generally upon the ability of the general public to obtain prompt access to government information from the Applicant at the lowest reasonable costs."*
- 655 On the basis of the number of access applications lodged in total, indicated to be 255, 8 applications equates to a meagre 3.56% claimed to be unmeritorious.
- 656 As an alternative calculation to those 8 applications claimed to be unmeritorious, the Respondents have enjoyed a success rate of 96.44%.

657 This is a higher rate of success than that detailed in the above decision of *Port Stephens Council v Webb (2021) NSWCATAD 180* at 68, where the success rate at that point in time was confirmed to be 83.8%.

658 This leaves the Tribunal with no other option than to properly consider the claimed unmeritorious applications as not using an unreasonable amount of agency resources such that requires relief, even when taken from a collective overall perspective.

659 Paragraph 3:

660 Applicant 1 has momentarily failed to qualify the claimed unmeritorious access applications on the part of Respondent 1 for the following reasons:

- No evidence of time taken
- No competent claim of unreasonable use of resources
- No qualification for relief sought

661 Applicant 2 has been clearly disqualified as a valid Applicant in these proceedings relying on only (2) two claimed unmeritorious applications when Section 110 (1) states there must be at least (3) three.

662 Applicant 3 has likewise been clearly disqualified as a valid Applicant in these proceedings relying on only (2) two claimed unmeritorious applications when Section 110 (1) states there must be at least (3) three.

663 Respondent 2 has been clearly disqualified in these proceedings as he has not made any claimed unmeritorious applications with any of the Applicants.

664 Respondent 3 has been clearly disqualified in these proceedings as it has not made any claimed unmeritorious applications with any of the Applicants.

665 Paragraph 4:

666 At best, Applicant 1 remains the only agency remotely capable of claiming it meets the criteria of Section 110 (1) (a) to the satisfaction of the Tribunal, but it fails on both (a) and (b).

667 And on the remote and unlikely possibility Applicant 1 does meet the criteria of Section 110 (1) (a) to the satisfaction of the Tribunal, but it fails on both (a) and (b).

668 Paragraph 5:

669 Applicant 1 is seeking reliance on Section 110 (1) in the context of acting in concert. However, both sub-clauses of Section 110 (1) rely on the word “and”, for the purposes of satisfying the Tribunal.

670 Applicant 1 is unable to credibly claim Respondent 3 has lodged any access application, and most definitely no claimed unmeritorious application.

671 Leaving aside this initial qualifier, the subsection concerning acting in concert is not sustainable simply by Parliament’s inclusion of the word “and”.

672 Paragraph 6:

673 The collective Applicants have completely failed to make out any case ‘*the respondents’ access applications have had an adverse impact of their ability to comply with their obligations under the GIPA Act*’. There is no evidence put to the Tribunal that the effects claimed eventuated or that they potentially exist.

674 Paragraph 7:

675 Applicant 2 has failed to properly inform the submissions, as is now evidenced standard operating procedure for this agency and its witness. The witness has neglected to inform the submissions Respondents 1 and 2 first consulted with Port Stephens Council on (3) three separate occasions PRIOR to commencing work on the privacy screen, where all Council Duty Planners having perused the conceptual drawings made clear “*this is not something Council is interested in.*” However when the project was 80% Council changed its mind.

676 It is only when all the facts of any particular matter are on the table that the full picture is made clear. The chronology of these initial events with Port Stephens Council are well documented, have been published on the website www.nswfreedomofinformation.net, and indeed have been provided to the Tribunal earlier.

677 Paragraph 8:

678 The Respondents view Section 110 as conflicting with the Object of the Act.

679 The Object of the Act includes the Parliament’s intention for its free gift of
beneficial legislation to the public.

680 The Object of the Act provides no benefit to NSW government agencies, with
evidence outlined above testimony to the manner in which agencies treat the
public’s beneficial legislation with complete contempt and disrespect.

681 Paragraph 9:

682 The Respondents agree the Object of the GIPA Act 2009 is to open government
information to the public in order to maintain and advance a system of responsible
and representative democratic government that is open, accountable, fair and
effective. However the evidence as at the date of these submissions is that whilst
the object of the Act sets out those paramaters and the Parliament’s intentions, it is
the parallel intentions of NSW government agencies to completely undermine those.

683 The Applicants’ reliance on the *HCA* reference to accessing information “*at any
cost*” has no relevance whatsoever as:

- 1) Applicant 1 has not recorded any costs the result of claimed unmeritorious
applications on the part of Respondents 1, 2, or 3
- 2) Applicant 2 has conceded what it actually considers an acceptable use of
agency resources on the part of Respondent 1
- 3) Applicant 3 has conceded it has waived fees the result of claimed
unmeritorious applications on the part of Respondent 1
- 4) The “*at all costs*” is not applicable to the Respondents, but is completely
relevant to the Applicants who have disclosed public funds totalling
\$295,592.88 have been usurped to the date of filing 17th December 2024 for the
specific purpose of obstructing the object of the GIPA Act.

684 Paragraph 10:

685 Access applications from Respondents 1 or 2 have not prevented the Applicants
from providing access to government information promptly and at the lowest
reasonable cost to any person.

686 The Applicants have failed to meet the prequalifiers and / or deal with the threshold issue of Section 110 (1) (a) AND (b).

687 And most particularly the Applicants do not qualify to speak on behalf of the remainder of NSW government agencies, either for a specific term or in perpetuity.

688 The Respondents would suffer significant impact should the orders sought particularly from the perspective of Respondent 1 who is a qualified criminologist working to identify patterns of offending behaviours for the purpose of reporting to Parliament towards legislative change in the context of the GIPA Act 2009.

689 Paragraph 11:

690 Claimed adverse impacts can only be made in the context of unmeritorious access applications using unreasonable agency resources such that require relief.

691 The evidence shows that it is meritorious access applications which in fact take up the bulk of agencies' resources and not the other way around.

692 For example, Applicant 2's document Ref No: PSC 2024 – 01840 discussed above qualified as a valid access application at some claimed 31.75 hours processing time, with Applicant 2 processing, charging, and providing documentation in response to the request. There was no determination of using unreasonable resources.

693 In stark contradiction however, is Applicant 2's claimed unmeritorious application documented at 2.5hrs processing time, which apparently seeks relief.

694 Likewise, Applicant 3's combined claimed unmeritorious applications is 4hrs processing time.

695 Applicant 1 has not recorded any processing time whatsoever for the (4) four claimed unmeritorious applications requiring relief.

696 The assertions of the impact of the total claimed unmeritorious applications has no credibility whatsoever.

697 Indeed, whilst the reference to the Ombudsman's Report may seem a great supporting source for the Application in these proceedings, there are some points which must be made:

- The Ombudsman was initially placed as public advocate but has over time switched sides supporting government instead.
- The Ombudsman's report originates from a select collection of the public's records from the vaults of each of the states' Ombudsmen.
- The purpose of obtaining those records was for the specific purpose of commissioning the resultant report.
- As such, the organisation commissioned to undertake the 'study' and formulate the report, were fully informed of the intention and desired outcome.
- Those ombudsmen's staff selecting those records for provision to the third party commissioned, were made aware of the intention for those records and so made the file selection with complete bias.
- There is no evidence the records provided for the 'study' were deidentified of the public's information.
- The 'study' was paid for by public monies.
- The 'study' was specifically crafted to reflect poorly on the public, but neglected to address any departmental issues which may have formed the foundation of the conduct complained of.
- The 'study' was founded on a moral panic.
- The resultant report makes reference to several individuals connected to the NIPPN cartel, being Megan Carter, Phillip Youngman, and Peter Timmins. Each has a long history of association with NIPPN, a long history of solid loyalty, and are motivated for the benefit of the NIPPN cartel. The NIPPN cartel does not have the public's interests at heart.

698 The differences between those commissioned for the biased public-paid ‘study’ and Respondent 1 in these proceedings are:

- The ‘study’ formed an external view of the access to information process.
- Respondent 1 forms internal views of the access to information process.
- Respondent 1 receives no financial benefit from the work undertaken for the benefit of the public.

699 The ‘study’ has since been turned into a very successful business enterprise by ex-Deputy NSW Ombudsman Chris Wheeler, who is noted to be involved with the Society of Consumer Affairs Professionals, SOCAP, as a Board Member where Mr Wheeler has capitalised on and profited by his knowledge and sharing of Ombudsman Policy.

700 SOCAP employees are listed as members of the NIPPN cartel.

701 The NSW Ombudsman has been a key note speaker at SOCAP.

- https://cmsassets.ombo.nsw.gov.au/assets/Reports/Opening-up-government_Review-of-FOI-Act-1989.pdf
- <https://chriswheelerconsulting.com/about>
- <https://www.socap.org.au/learning-development/socap-professional-development/managing-unreasonable-complainant-conduct/>

702 It is embarrassing for the NSW public to realise the incestuous relationships between NSW government employees, ex-NSW government employees, and select private enterprise, all of which is to deliberately undermine the public’s beneficial legislation, deny the public’s legislated rights, and generate solid financial returns.

703 Paragraph 12:

704 The responsibility for external legal costs, documented to include the approvals and decision-making of Applicant 2’s witness, remains with Applicant 2 particularly as the witness has no guardian or oversight within the organisation; there is no one checking on the witness’ activities and expenditure.

705 It appears no person is able to interrogate the outrageous external legal services expenditure by Applicant 2; even Councilors are warned of a Code of Conduct Report for interfering in matters categorised by Applicant 2's Mr Wickham as Operational and out of Councilor parameters, when no such category exists.

706 Indeed, Applicant 2 has provided internal documentation via the GIPA Act 2009 evidencing the absence of Legal Costs Agreements, with a simple email request quoting “*about \$20,000.00*” approved in (10) ten minutes; and a secondary email asking for “*an increase of \$12,000.00,*” approved in just over (1) one hour. There is no evidence these approvals were subject to established financial approval protocols, including seeking such from the Elected Council.

707 ***Refer to Attachment 32***

708 As such, the Respondents take no responsibility whatsoever for Applicant 2's decisions, particularly as GIPA staff include solicitors well able to sit at the Tribunal bar table in order to rein in those outrageous costs.

709 The claim an order under Section 110 can be supported by assertions of misconduct on the part of an access applicant is not sustainable.

- ***Port Stephens Council v Webb (2017) NSWCATAD 341***, Paragraph 54:

“54....Although it is not necessary for an access applicant to engage in vexatious conduct to be the subject of a restraint order, the reasonableness of the number of access applications made, and their degree of success, are factors relevant to the exercise of discretion.”

- ***Pittwater Council v Walker (2015) NSWCATAD 34***, Paragraph 52:

“52 I note that these proceedings do not concern any behaviour other than the number and types of applications over a specific period. They do not require a consideration of an access applicants personal behaviour, character and other conduct (other than the making of applications)”

- ***Palerang Council, Queanbeyan City Council, Goulburn Mulwaree Council v Powell (2015) NSWCATAD 44***, Paragraph 17:

“17 e.The Information Commissioner notes that the Tribunal, under Section 110 is not required to make a declaration that the person making access application which are regarded as lacking in merit is a ‘vexatious applicant’”

- ***CEU v University of Technology Sydney; University of Technology Sydney v CEU (2019) NSWCATAD 11***, Paragraph 5 concerned the conduct of CEU when conducting proceedings. The resultant Section 110 Order was issued under agreement by the Tribunal’s allocated Guardian Ad Litem, who did not seek CEU’s approval. As such, the case of CEU did not concern her conduct in any other fashion.

- ***Dept of Education v Zonneville (2020) NSWCATAD 96***, Paragraph 19:

“19.....In limited cases, the objects of the Act may thereby be served by restraining conduct that misuses the right of access to government information through the making of unmeritorious access applications. It is therefore an appropriate exercise of the discretion to free Departments and Agencies of the burden, otherwise directly imposed upon them by the GIPA Act, of responding to each and every GIPA application made by an individual with a specific history of making frequent and unmeritorious applications.”

- ***Port Stephens Council v Webb (2021) NSWCATAD 180***, Paragraph 56:

“56.....The Tribunal considers that conduct outside of the making of access applications is generally of limited relevance to the exercise of the discretion.....”

710 Paragraphs 13 and 14:

711 As outlined above at Paragraph 12, conduct separate to that in the lodging of valid access applications disqualifies as conduct to be considered in the context of Section 110(1).

- 712 The valid access applications and review processes are legislated rights; they cannot be considered as using an unreasonable amount of agency resources such that requires relief.
- 713 Regardless, the deliberate and unconscionable act to blame the Respondents in these proceedings for the currently claimed backlog of access applications is completely discredited as the OGIPU has been making such claims since at least November 2023 when it disclosed a six-month wait on access application determinations.
- 714 ***Refer to Attachment 33***
- 715 The lack of proper management of the OGIPU is not the responsibility of the Respondents in these proceedings.
- 716 The amount of resources put into these proceedings by the OGIPU as at the date of 17th December 2024, indicated to be some (852) eight hundred and fifty two hours at the gargantuan cost to the public purse of \$295,592.88 is the factor impacting the OGIPU's ability to address its claimed backlog.
- 717 Regardless, with the Director / Business Unit Manager's Ms Jodie Cobbin's disclosure under oath on 09th July 2024 OneTRIM lacks the capabilities to perform quality searches for information given it cannot search document content, those funds would have been better allocated towards a more suitable software program better able to meet Applicant 1's statutory obligations to conduct quality searches for information.
- 718 Instead, the OGIPU now proven by it's own documentation, is not proactive to the public's expectations but reactive, which does not equate to effective rational best business practices and management of the public purse.
- 719 Until the lack of software capabilities is addressed the OGIPU's processing of valid access applications is a meaningless exercise and the claim of unmeritorious access applications such as '*information not held*' cannot be validated.
- 720 Paragraph 15:
- 721 Applicant 3's claim of expenditure has not been evidenced.

722 The external review sought the IPC’s position on how Applicant 3 calculated an advance deposit; it was clear the determining officer on that occasion lacked the fundamental knowledge of the legislation and in particular was not capable of undertaking simple accurate mathematical calculations.

723 Paragraph 16 and 17:

724 The Applicants’ claim Section 110 of the GIPA Act is the only avenue available to mitigate the effects of the Respondents’ claimed behaviour is not qualified under that Section.

725 The purpose of Section 110 is to give agencies relief from claimed unmeritorious access applications, not to address some kind of claimed behaviours.

726 As is evidenced with Applicants 2 and 3’s documentation, both of these agencies initiated defamation proceedings, however both withdrew. Such proceedings may be considered relevant when dealing with certain behaviours, however and again, both voluntarily withdrew when pressed for further particulars in accordance with the legislation.

727 They both now seek the Tribunal’s agreement that *QUOTE* “16. Section 110 of the GIPA Act is the only avenue the applicants can exercise to mitigate the effects of the respondents behaviour” *UNQUOTE*, which is false and misleading and seeking to use the parameters of Section 110 for a collateral purpose.

728 The Applicants have completely failed to properly identify any real impediment, leaving the Application an abuse of process.

729 Paragraph 18:

730 No reasonable person reading the Applicants’ submissions, having regard to the evidence and background documentation, could possibly take the assertions seriously, particularly upon consideration of the funds allocated to these proceedings thus far on a “win at any costs” basis.

731 Paragraph 19:

732 The Respondents agree a Section 110 Order would not remove rights to seek access to government information. However, the parameters of the Application seeking those orders includes the expectation the Tribunal will act outside of its jurisdiction, which is unconscionable on the part of the Applicants and most particularly Mr Cahill.

733 Mr Cahill is on the record stating there is no clear statement of law, seeking the Tribunal to create something new and outside of its jurisdiction instead of rightfully bringing that question to the Supreme Court if indeed the Tribunal has some difficulty with it.

734 Paragraph 20:

735 These are very concerning submissions, where the Applicants make clear they intend the Tribunal to consider the totality of the access applications including valid access applications in the contemplation of a Section 110 order which is outside of Section 110(1). In this regard the Tribunal is again referred to Mr Cahill's statements to the Tribunal on 05th November 2024, Paragraph 101:

"101we are within the bounds of 110,1."

736 Evidently those assertions to impress the validity of the Application to a Tribunal Member who was clearly uncertain about the legislative interpretation of Section 110 (1) have grown to encompass extraneous issues.

737 ***Refer to Attachment 13***

738 Paragraph 21:

739 The Tribunal is expected to make determinations on certainty and not supposition; the Tribunal's jurisdiction does not extend to fortune telling.

740 Regardless, there is no certainty the Respondents will lodge a further claimed unmeritorious application such that requires relief.

741 Paragraph 22:

742 The Respondents likewise rely on their evidence and supporting documentation to support their view the Application is misconceived, the Applicants have acted to deceive the Tribunal at first instance, the Applicants' motives have been completely exposed, and that it is the intention of these Applicants to undermine the public's rights to access their beneficial legislation.

743 Respondent 1 has now documented:

- OGIPU published strategy to exert control over access applicants; involving police, seeking 110 orders, seeking unlawful costs claims, colluding with agencies for the collective purpose
- OGIPU claimed study on difficult access applicants which was fictitious and a deliberate misrepresentation of real motives
- OGIPU submission to NCAT Statutory Review to tighten controls over beneficial legislation and obstruct access to government information
- OGIPU intending Tribunal to set precedent caselaw enabling agencies to seek collective Section 110 orders to control organisations, community groups, etc.
- The OGIPU is gradually turning up the water temperature in the hope the public and legislators realise the truth too late to stop it; that is the innocent frog in the pot of slowly heating water will unknowingly cook!

744 Paragraph 23:

745 The Tribunal is respectfully reminded the abuse of judicial process concerning agency confidential submissions to the Tribunal is well-documented, particularly on the part of Applicant 2's witness Mr Wickham who is completely willing to make allegations that remain untested in private, but which collapse miserably when tested in open session where they are easily proven false and misleading.

746 This was the case with both *McEwan v Port Stephens (2017) NSWCATAD 269* and *Webb v Port Stephens Council (2017) NSWCATAD 271*, where the Respondent in those proceedings being Applicant 2 in these proceedings did fabricate the evidence, providing false and misleading statements and submissions for the purpose.

747 Those false and misleading statements and submissions, implicating executive personnel and an officer of the court Lisa Helene Marshall, were the result of the unlawful agreement suggested, initiated and implemented by Applicant 2's witness in these proceedings Tony Leslie Wickham.

748 ***Refer to Attachment 31***

749 The Appeal Panel rightfully set those decisions aside, and on remittal the claim of a serious risk of harm by the Respondent in those proceedings resultantly and rightfully fell away.

750 This was also the case in ***McEwan v Port Stephens Council (2021) NSWCATAD 110***, where the Respondent in those proceedings being Applicant 2 in these proceedings, claimed third parties had concern for their wellbeing should the open access information mandated for release the subject of the proceedings be released to the Applicant in those proceedings being Respondent 2 in these proceedings.

751 The 2021 case concerned mandatory interest disclosures.

752 Having been discredited for previously relying on Section 14 Table 3(f) (2017), on a false claim suggested and initiated by Mr Wickham, the Respondent in those proceedings opted to change tact and rely on a 'concern for wellbeing' which was pressed in a confidential session.

753 However as the Tribunal rightfully concluded at Paragraph 160:

"160taking all of the above evidence at its highest, there is not a scintilla of evidence that the 'safety or well-being' of any person would or might be affected or impacted if the application accessed the disputed information....."

754 This was an unwinnable case for the Respondent in those proceedings being Applicant 2 in these proceedings. This case did not require review within the Tribunal. However, when an agency refuses to comply with the legislation and obstructs legitimate access to information the public has no choice other than to seek an administrative review.

755 This matter concerned open access information mandated for release.

- 756 Yet the Respondent in those proceedings being Applicant 2 in these proceedings spent approximately \$99,000.00 of public monies on an unwinnable case, a case which would confirm the exoneration of any claim the Applicant in those proceedings being Respondent 2 in these proceedings posed any risk.
- 757 In this regard, the Tribunal is asked to exercise caution when considering anything of a confidential nature.
- 758 These actions by the Applicants do not align with Mr Cahill’s assertions on 05th November 2024, transcript Paragraph 101, “*we are within the bounds of Section 110 (1)*.”
- 759 The Application for Section 110 orders does not make provision for public interests against disclosure such that require the lodging of confidential information or providing access to confidential sessions.
- 760 This is considered a blatant abuse of process.
- 761 ***Refer to Attachment 13***
- 762 Paragraphs 24 through 30:
- 763 The Tribunal is referred to these submissions above Part 1 – Introduction and Background to NSW Freedom of Information, Paragraphs 16 through 84.
- 764 Paragraphs 31 and 32:
- 765 The Applicants appear to be acting as though access applications other than those claimed unmeritorious qualify for consideration under Section 110, which is false and misleading.
- 766 The Respondents do understand the Applicants’ honing in on the total number of access applications, adding Applicant 2 for that specific purpose given the number of access applications referred to at the Applicants’ submissions paragraph 31.
- 767 The fact Applicant 1 is only able to refer to a total of (16) sixteen access applications, and Applicant 3 is only able to refer to a total of (7) seven, it is clear Applicants 1 and 3 needing something extra to give the Application for Orders more punch!

768 Regrettably the adding of Applicant 2 to these proceedings is an embarrassment given its track record of misrepresentations and obstructing the object of the GIPA Act 2009:

PSC Ref No: PSC 2019-00702 requested access to an unedited copy of a recording; a recording referenced in the midst of Tribunal proceedings on 20th April 2018.

Applicant 2's witness Mr Tony Wickham was present at those proceedings which saw Applicant 2 in these proceedings as Respondent in those proceedings.

Accompanying Mr Wickham was Head of Legal Services In-House Solicitor Lisa Helene Marshall.

The Respondent in those proceedings was represented by external legal services provider Mr Carlo Zoppo, well known to the Tribunal.

The recording was disclosed at the latter part of the hearing.

The proceedings had been broken into three parts: opening to morning tea; return from morning tea to lunch; return from lunch to closing.

During the morning tea break the Respondent in those proceedings being Applicant 2 in these proceedings, vacated the hearing room making it used by the Applicants in those proceedings being Respondents 1 and 2 in these proceedings.

It was during the utilising of the hearing room, Respondents 1 and 2 in these proceedings noticed Lisa Marshall had left her laptop on a seat of the hearing room adjacent to where Respondents 1 and 2 were sitting.

The laptop was clearly running, its lid partially ajar showing it was operating and the sound of the laptop could be heard.

This must be considered very peculiar behaviour.

The laptop was not interred with at any time during that time.

On return from the lunch break, no doubt giving time for the Respondents in those proceedings being Applicant 2 in these proceedings to listen to what had been recorded.

It was on that secondary return after the lunch break Carlo Zoppo held up his right hand which was holding a USB device, stating “I have a recording, I have a recording” intending the Tribunal to listen to it.

This comment by Carlo Zoppo is recorded in the Transcript, highlighted paragraph.

Yet, Applicant 2 in these proceedings and Carlo Zoppo collectively misrepresented their knowledge or Council’s possession of it.

769 Refer to Attachment 34

770 As such, those access applications referred to within these paragraphs, that is the valid access applications, should be disregarded by the Tribunal as completely irrelevant.

771 The threshold in these proceedings concerns claimed unmeritorious applications; not valid access applications.

772 The only relevance may be that Respondent 1’s success rate has increased from the date of the Tribunal’s decision 25th June 2021 ***Port Stephens Council v Webb (2021) NSWCATAD 180***, Paragraph 68, of 83.8% to the calculations provided by the Applicant in these proceedings as at 17th December 2024 to 96.44%.

773 Additionally, and conveniently omitted by the Applicants, Respondent 2 has a 100% success rate, including all finalised Tribunal proceedings.

774 A claimed unmeritorious access application rate of 3.56% cannot be considered so significant as to impede the ability of any of the Applicant agencies in any way in the delivery of statutory services under the GIPA Act such that relief must be had via a Section 110 Order.

775 Paragraph 33:

776 The GIPA Act 2009 makes no provision an access applicant must reside in a certain area to access certain agency information.

777 Paragraph 34:

778 The GIPA Act 2009 does not make any restriction on the types of information able to be requested of any agency, other than those exclusions listed.

779 Neither does the GIPA Act 2009 impose geographical restrictions on access applicants.

780 However, the Applicants appear to be saying access applications should be sterilised to prevent open, transparent and accountable government.

781 Paragraph 35:

782 There is no evidence the Respondents have at any time acted in any exploitative manner to intentionally disrupt any of the Applicants' functions or pursue an ongoing campaign of any kind.

783 Paragraph 36:

784 There is no evidence the applications were intentionally self-perpetuating. The Respondents exercised legislated review rights in accordance with their beneficial legislation.

785 However it is clear these Applicants do not want the public to realise or exercise their legislated review rights.

- ***Port Stephens Council v Webb (2021) NSWCATAD 180***, Paragraph 65;

“65 She is also entitled to pursue legal remedies available to her.....”

786 Paragraph 37:

787 The Applicants have failed to provide any evidence of any modus operandi and / or plan and / or strategy designed to deliberately frustrate any agency.

788 Any person with delegated authority to process access applications is expected to make quality decisions which negate review.

789 It is the lack of quality decisions which generate administrative reviews. Such decisions include inability to properly calculate advance deposits, lack of reading comprehension skills which see inapplicable decisions, commencing third party consultations by the due date creating an extension of time under false pretences, false claims and application of public interests against disclosure, affording favour to personal contacts, personal preference absent of impartiality, lack of comprehension of the legislation, inadequate document search capabilities, the implementation of collective response strategies, excessive charges, etc.

790 The Respondents have lodged access applications as subject-specific as possible on the realisation agencies often confuse the scope or partially determine access applications which then require review.

791 Additionally, it is the return responses which can give rise to secondary access applications for information previously not known to exist.

792 Nothing about these access applications discredits them, however it is clear the provision of agency documentation can often make agency personnel accountable for actions undertaken without the public's knowledge or consent.

793 The Respondents refer the Tribunal to commentary above, which makes clear those in positions of authority see accessing information critical to effect necessary legislative change, to call public servants to account, to effect necessary departmental change.

794 Paragraph 38:

795 The number of access applications is completely irrelevant to the considerations of Section 110, upon which the Applicants' Mr Cahill made clear "*.....we are within the bounds of 110,1*" on 05th November 2024.

796 Additionally, the GIPA Act 2009 makes no limitation on the number of access applications a person can lodge across any period of time.

797 Paragraph 39:

798 The claimed unmeritorious access applications relevant to these proceedings concern the departmental operations of each of the Applicants. It is not the fault or responsibility of Respondent's 1 or 2 that documents returned in response to valid access applications record questionable actions by agency personnel, as laid out above in these submissions.

799 There is no evidence whatsoever the Respondents have acted in a deliberate manner to cause any claimed unmeritorious access applications, and certainly none to a standard or quantity that require relief.

800 Paragraph 40:

801 These statements are true.

802 However, these Applicants would prefer the workings of government in the context
of the GIPA Act 2009 remain covert and inaccessible to the general public,
particularly through the operation of the NIPPN cartel and denying the public access
to GIPA Training.

803 Paragraph 41:

804 Again, the Application rests entirely on the Tribunal being satisfied, that is not
wanting or needing more, to justify the exercise of jurisdictional discretion.

805 That satisfaction comes directly from the Applicants meeting the requirements of
Section 110 (1), conceded by the Applicants' Mr Cahill on 05th November 2024
during the hearing, transcript paragraph 101:

“101 “.....we are within the bounds of Section 110, 1.”

806 There is no evidence whatsoever the Respondents' applications and claimed actions
have in any way undermined any ability on the part of the Applicants to comply
with their obligations under the GIPA Act.

807 There is no evidence whatsoever the Respondents' applications and claimed actions
have in any way absorbed an exorbitant and disproportionate amount of the
Applicants' finite, rate and taxpayer funded resources and have diverted those
resources from other functions and resourcing requirements.

808 In fact, as has already been established, Applicant 1 in particular whilst claiming
limited funding, resources, time, etc, is now evidenced to have incurred costs
totalling \$295,582.88 for the singular task of compiling first-round submissions in
these proceedings.

809 The allegation of doxing is unable to be maintained as Respondent 1 has only ever
shared public information in accordance with the GIPA Act 2009 Schedule 4, 4, 3,
(b).

810 Additionally, there is no reference whatsoever to any aspect of any government
employee's private life.

811 It is however the Applicants who have acted to deliberately ascertain the private
residential address of Respondents 1 and 2.

- 812 It is extremely plausible and highly likely that personal information will be circulated through the NIPPN cartel, as is evidenced to occur with the public's personal information.
- 813 No such actions of parallel measure can be maintained against the Respondents.
- 814 Likewise there is no evidence whatsoever of any impact on any officer in the context of health and safety in the workplace or in their personal lives.
- 815 Such claims are baseless and definitively unbelievable.
- 816 These officers are clearly extremely thin skinned; with the Director / Business Unit Manager Jodie Cobbin claiming to be offended by the public's individual writing styles, which is extraordinary.
- 817 Members of the public routinely suffer character assassination through the access to information and administrative review process, with agencies trashing good reputations, accusing the public of misconduct simply for daring to access their beneficial legislation, as is occurring within these proceedings.
- 818 The public suffers breaching of their personal privacy.
- 819 The public endures financial penalties under the guise of excessive access application processing fees and costs applications.
- 820 However, simply calling out misconduct and breaching of the legislation is an affront to public servants accustomed to being protected and insulated from public accountability.
- 821 Government employees are bound by Codes of Conduct, Codes of Ethics, policies and procedures, the GSE Act 2013, etc, etc, all of which they continuously ignore.
- 822 Each and every published article is founded on agency documentation.
- 823 There is no other source.

824 Paragraph 42:

825 The Applicants seek relief that is not forthcoming via the GIPA Act 2009 Section 110.

826 The only relief able to be sought via the GIPA Act 2009 Section 110 concerns the receipt of repeat and frequent unmeritorious applications utilising unreasonable resources such that requires relief.

827 In this regard, the Application must fail given Sections 110 (1) (a) AND (b) are inseparable.

828 Paragraph 43:

829 Acknowledged. However those affidavits substantially contain information that is superfluous and irrelevant to these proceedings; proceedings founded specifically upon Section 110 (1), as stated by the Applicants' representative Mr Cahill on 05th November 2024, Paragraph 101:

"101... we are within the bounds of 110,1."

830 *Refer to Attachment 13*

831 Paragraphs 44 through 55:

832 Acknowledged. Whilst it is clear the Applicants are salivating over the potential success of their Application for orders sought, and the ramifications of those orders on the Respondents, again this case rests entirely upon the Tribunal being satisfied the parameters of Section 110 (1) (a) AND (b) have been thoroughly met by the Applicants.

833 The references to the public's rights and agency obligations in processing access applications is nothing more than an exercise of copy and paste when we realise the collaboration of the Applicants was for the purpose of totally undermining those rights and elevating those obligations.

834 Paragraph 56:

835 The Respondents agree with the Tribunal's considering the making of a Section 110 order for "*making repeated or multiple access applications that are without merit*" and "*making frequent and unmeritorious applications.*"

836 The Applicants themselves will concede by their own evidence, the Respondents have not made repeated or multiple access applications that are without merit or that they have made frequent and unmeritorious applications such that requires relief.

837 Paragraphs 57 and 58:

838 Acknowledged.

839 Paragraphs 59 and 60:

840 The Applicants concede the Tribunal lacks the jurisdiction to make an order under Section 110 against any person who does not meet the criteria set out at Section 110 (1).

841 Yet the Applicants' real intention is that the Tribunal do just that, noting Respondents 2 and 3 have not at any time made any access application lacking merit as using an unreasonable amount of agency resources.

842 And most definitely Respondents 2 and 3 have not acted in any manner which requires the relief sought.

843 Paragraph 61.61:

844 Applicant 2 failed on those submissions in *Webb v Port Stephens Council (2020) NSWCATAP 152*.

845 Paragraph 61.62:

846 Applicant 2 concedes that a power cannot be implied merely because it is desirable or useful, yet Applicant 2 is repeatedly documented seeking costs despite the legislation absent the GIPA Act 2009 or PPIP Act 1998 implying the exercise of power pursuant to the particular piece of legislation.

847 This is a concession, particularly on the part of Applicant 2 in these proceedings, NSW government agencies do seek and expect the Tribunal to grant orders without the jurisdiction to do so simply because it IS desirable.

848 Paragraph 61.63:

849 The Applicants concede prior orders sought were unlawful, including orders relating to acting in concert and the seeking of costs in a no costs forum.

850 These must be considered entrenched patterns of behaviour which the public, particularly those un-represented, naturally expects the Tribunal will no longer accommodate.

851 Paragraph 61.64:

852 Acknowledged.

853 Paragraph 61.65:

854 The Applicants concede the Tribunal does not have any jurisdiction to make any ‘in concert’ order.

855 Paragraph 62 and 63:

856 The Applicants have failed to make out any case of claimed unmeritorious access applications such that require relief on the part of Respondent 2 or 3.

857 It is “simply desirable” to obtain orders against Respondents 2 and 3, which was articulated as a disqualifier in *Webb v Port Stephens Council (2020) NSWCATAP 152*, Paragraph 65:

“.....*The test of necessity “cannot be stretched to encompass what is merely desirable or useful”*: *BUSB v R[2011] NSWCCA 39; (2011) 80 NSWLR 170 at 176 [32].....*”

858 The Applicants have disclosed their intention and reliance on Section 110 (1) in its totality. Their application fails if acting in concert is eliminated. The Applicants submissions make clear *QUOTE* “.....*the applicants do not seek orders against the respondents only on the basis that they ‘acted in concert’ with each other’.....*” *UNQUOTE* (emphasis added).

859 The Applicants must satisfy the Tribunal, such that leaves the Tribunal not needing or wanting more, that the whole of Section 110 (1) has been met so as to sway the Tribunal to exercise its discretionary powers; the Tribunal is not compelled to do anything, but moreso it is to be so satisfied in order to give the Applicants what they seek.

860 However, the reliance on the Corporations Act is completely misconceived as these are not federal proceedings and the enabling legislation is not the Corporations Act. The Tribunal has no jurisdiction to make any determination concerning the Corporations Act.

861 Further, whilst it is desirable and may make for good legal reading on the subjects of international and federal law, such discussion has no worth for the current proceedings.

862 The Applicants' reliance on the case of *Tesco Supermarkets v Natras (1972) AC 153* concerns a matter of corporate due diligence and as such has no bearing on the Application for Orders sought.

863 The Applicants defer to the Corporations Act (Cth) for a definition of the word corporation as it pertains to a person. This is due to such definition absent in both the Interpretations Act and GIPA Act.

864 The Tribunal will agree such absence of definition is well-founded.

865 In the recent case of *Webb v iCARE (2024) NSWCATAD 371*, the NSW Crown Solicitor's one Ms Kiri Sue Mattes self-professed GIPA Act expert and legal educator to the state's population of right to information and privacy officers, convinced the Tribunal the unrepresented Applicant in those proceedings being Respondent 1 in these proceedings, had misquoted the example of extension of time in the case of *Turner v Commissioner of Police NSW Police Force (2014) NSWCATAP 4*.

866 Ms Mattes impressed upon the Tribunal in that case that the matter at hand, that of *Webb v iCARE*, concerned the GIPA Act 2009 whereas the extension of time issue concerned a firearms application, and as such was not relevant to the proceedings.

867 Given the Tribunal agreed with Kirri Mattes that the reliance of the extension of time example in the case of *Turner* was not applicable to a GIPA matter, and this Application is a GIPA matter, then the Respondents expect the Tribunal in this Application to discard any reference to the Corporations Act as equally irrelevant.

868 (Regrettably and which is a regular occurrence, the published decision in *Webb v iCARE* does not align with the Transcript of the hearing.)

869 In this regard, the Tribunal must be seen to be consistent in its decision-making.

870 There is no equity between parties if the Tribunal makes decisions that are not precedent dependable.

871 Paragraph 64:

872 The Respondents make no contest as to the use of the letterhead in question.

873 The access applicant was at all times Telina Webb being Respondent 1. All three Applicants have repeatedly conceded that fact by evidence of the manner in which they each individually responded to the access applications, and in their resultant determinations, some of which became Tribunal proceedings.

874 However the wording of Section 41 implies there is only one access applicant per request for information, supporting the fact both Respondent's 1 and 2 were the access applicants in their individual access applications.

875 The Applicants by their acceptance of Respondent 1 and 2's access applications and in providing formal responses including resultant Notice of Decisions, accepted there only ever legally existed Respondents 1 and 2 as access applicants.

876 The adding of Respondent 3 is now a matter of convenience for the purpose of achieving maximum reputational damage and an order which may be desirable but which is not legislated.

877 Neither Applicant 1, 2, or 3 made any disclosure a company may be considered a secondary person lodging an access application.

878 At no time whatsoever did either Applicant 1, 2, or 3 petition the Respondents to correct the applicant information.

879 Neither did Applicant 1, 2, or 3 indicate the access applications would be rejected / refused if the applicant information was not amended.

880 Likewise the access to information forms provided by the IPC including its generic version for external agency use makes no reference whatsoever to multiple applicants per access application. In this regard, the IPC being the legislative authority for the GIPA Act 2009, is taken to represent the legislation in its true context.

881 *Refer to Attachments 20***882 Paragraph 65:**

883 Respondent 3 has not at any time made any access applications in its own right.

884 Respondent 2 has lodged access applications in his own right. Those access applications, only lodged with Applicant 2, were at all times acknowledged and accepted as Respondent 2's applications, conceded by Applicant 2 with its acknowledgement and resultant issued decisions.

885 Additionally Applicant 2 concedes Respondent 2 was at all times Respondent 2, by its Costs Applications and seeking formal debt recovery.

886 *Refer to Attachment 35***887 Paragraph 66:**

888 The Tribunal does not have any powers either implied or express to make such orders as desired by the Applicants.

889 Paragraph 67:

890 There is no documented evidence any of the Respondents have acted in the manner claimed by the Applicants.

891 The Respondents have not acted in concert in any way whatsoever; these are desperate assertions by a collective of desperate Applicants in retaliation for, in particular, Respondent 1 exercising the right to share information in the chosen medium.

892 The GIPA Act 2009 does not prescribe any mechanism of control over information released to an access applicant.

893 Evidently it is the wish and desire of the collective Applicants to shut down and silence the sharing of information, which is not the Parliament's intention.

894 Paragraph 68:

895 Again, these are extremely desperate claims which have no substance and are completely embarrassing to the collective of Applicants.

896 Paragraph 69:

897 The Applicants are not able to satisfy the Tribunal to the standard required, because
Respondent 2 did not cause Respondent 1 to lodge any access applications.

898 Paragraph 70:

899 The Tribunal does not have the powers claimed by the Applicants.

900 Paragraph 71:

901 Acknowledged.

902 Paragraph 72:

903 Neither Respondent 2 or 3 directed Respondent 1 to lodge any access applications.

904 It is not sufficient to claim such actions to have occurred. The Applicants have not
provided any evidence either Respondent 2 or 3 made the directions claimed.

905 Paragraph 73:

906 The Respondents can only repeat the fact neither Respondent 2 of 3 directed
Respondent 1 to lodge any access applications.

907 It is not sufficient to claim such actions to have occurred. The Applicants have not
provided evidence either Respondent 2 or 3 made the directions claimed.

908 Paragraph 74 and 75:

909 The reference relied upon by the Applicants is completely inapplicable and
additional evidence of their collective desperation.

910 Paragraph 76 and 77:

911 Neither Respondent 2 or 3 have acted in the manner claimed. Respondent 1 at all
times lodged access applications independently.

912 The Applicants concede this fact by the receipt, acknowledgement, and formal
responses to Respondent 1's access applications.

913 The Applicants additionally concede this fact by the responses to external
administrative reviews including those within the Tribunal arena.

914 Paragraph 78:

- a) There is a history of access applications, however there is no evidence the Respondents acted in concert.
- b) There is no evidence to support the claimed unmeritorious access applications.
- c) Applicants 2 and 3 are disqualified as they individually do not meet the minimum (3) three claimed access applications, instead ratcheting onto the ‘successes’ of Applicant 1 easily described as decidedly hopeful, calculated, opportunistic and parasitic.

915 Paragraph 79:

916 The Tribunal is not precluded by law from assessing the claimed unmeritorious applications.

917 As has already been made out Applicants 2 and 3 are unable to credibly claim unmeritorious access applications such that require relief.

918 As has already been made out Applicant 1 has not provided any evidence whatsoever the claimed unmeritorious access applications were such that required relief.

919 Paragraph 80:

920 The Tribunal does have the jurisdiction to determine the application for orders.

921 However the Tribunal does not have the jurisdiction to issue the orders as sought.

922 Paragraph 81:

923 Acknowledged.

924 Paragraph 82:

925 Acknowledged.

926 Paragraph 83:

927 The Respondents can only repeat the fact neither Respondent 2 of 3 directed Respondent 1 to lodge any access applications.

928 It is not sufficient to claim such actions to have occurred. The Applicants have not provided evidence either Respondent 2 or 3 made the directions claimed to have occurred in trade and commerce.

929 Paragraph 84:

930 The Respondents agree the term acting in concert is not defined in the GIPA Act.

931 The Respondents reiterate their commentary above pertaining to the Applicants' submissions of paragraph 64.

932 Paragraph 85:

933 The Applicants have failed to identify any "common purpose" in the context of qualifying the orders sought.

934 Paragraph 86:

935 Correct.

936 Paragraph 87:

937 Correct. The access applications lodged by Respondents 1 and 2 were independent of each other, acknowledged by the acknowledgement, receipt and formal responses of Applicant 2.

938 Applicant 2 also acknowledged the identify of the access applicants concerning external review including within the Tribunal arena.

939 Paragraphs 88 and 89:

940 The Respondents are unable to provide a legitimate response to Paragraphs 88 and 89 which is prejudicial given they are unrepresented.

941 Paragraph 90:

942 The Respondents are unable to provide a legitimate response to Paragraph 90 which is prejudicial given they are unrepresented.

943 Paragraph 91:

944 The issue of use of templates has previously been addressed and the Respondents follow the examples of NSW agencies as a result.

945 The use of templates cannot qualify as any kind of wrongdoing which appears to be the Applicants' intention.

946 Paragraph 92:

- (a) Agreed. Using a variation of any email address cannot qualify as wrongdoing in any way which appears to be the Applicants' intention.
- (b) Agreed.
- (c) Agreed. Using templates cannot qualify as any kind of wrongdoing which appears to be the Applicants' intention.
- (d) The Respondents are not aware any of the Applicants or their staff are handwriting experts.
- (e) Respondents 1 and 2 had a common interest in the DA No: 483 of 2011. Likewise Respondents 1 and 2 have a common interest in the manner in which their personal information is processed and used, particularly when outside of the legislation and an abuse of process.
 - 1) The disclosure NSW government agencies undertake hand-writing examination as part of the access to information process is one of great public interest and an example of the pettiness and desperation to find 'anything' that will assist in the avoidance of performing statutory functions.

947 Paragraphs 93 and 94:

948 The Applicants desperation is indisputably clear and embarrassing. As stated above and reiterated once again at this point, the Applicants accepted the access applications were at all times those of Respondents 1 and 2.

949 Again, the Applicants accepted those applications, acknowledged those applications, processed those applications, took payment for those applications, and provided formal determinations for those applications.

950 There is not one document originating from any of the Applicants in relation to the identity of the access applicants Respondent 1 or 2 belonging to or originating from any other source. This includes any administrative review proceedings.

- 951 At no time whatsoever did any of these Applicants make any protestation to the Tribunal during those administrative reviews, that the name of the Applicant was any other name than the name pertaining to the access application and resultant agency documentation.
- 952 No application was made to the Tribunal for a name change.
- 953 Unlawful costs applications were made to the Tribunal listing either Respondent 1 or 2.
- 954 No unlawful costs applications were ever lodged concerning Respondent 3.
- 955 The Tribunal issued unlawful costs decisions concerning Respondent 1 and 2.
- 956 Applicant 2 now seeks unlawful claimed debts against Respondent 1 and 2.
- 957 No unlawful costs applications were ever made against Respondent 3.
- 958 No unlawful claimed debts were ever sought against Respondent 3.
- 959 This in itself is a clear concession on the parts of the Applicants; or at least Applicant 2.
- 960 It is negligent of the collective Applicants to make claims and assertions without evidence. The Applicants have not provided any evidence either Respondent 2 or 3 made the directions claimed.
- 961 *Refer to Attachment 35***
- 962 Paragraph 95:
- 963 The Tribunal has the jurisdiction to consider the Application for the orders sought.
- 964 The Tribunal does not have the jurisdiction to make the orders as sought.
- 965 Paragraph 96:
- 966 The Tribunal's discretion to act must be fully supported by the fact the Applicants have satisfied it for both parts of Section 110 (1), (a) AND (b).
- 967 Mr Cahill stated the Applicants were within the bounds of Section 110 (1); that is the factor to be fully satisfied before proceeding further to the position of whether or not to exercise any discretion.

968 Mr Cahill was apparently certain at the time of verbalising those assertions on 05th November 2024, *Attachment 13* Paragraph 101.

969 Paragraph 97:

970 The Applicants agree the object of the GIPA Act 2009 is paramount to any decision the Tribunal makes in an Application such as this.

971 Paragraph 98:

972 The Respondents agree the object of the Act should not be pursued at any cost; however it must also be true that it is not the purpose of Section 110 to secure the orders as sought at any cost, but which has occurred.

973 Applicant 2's witness Tony Leslie Wickham has repeatedly failed in spectacular fashion to secure a Section 110 order against Respondent 1. The costs to the public purse prior to Applicant 2's colluding in these proceedings for the same purpose have been documented to total approximately \$200,000.00.

974 Evidently colluding with Applicant's 1 and 3 is intended to finally achieve that dreamed of success.

975 The historical evidence over the past decade leads any person reading to take any assertions made by Applicant 2's witness Mr Wickham with the proverbial grain of salt as Mr Wickham is now proven to undermine the legislation, breach privacy, make false representations to the judiciary, author false and misleading documentation, the list goes on.

976 That historical evidence has been placed before the Tribunal many, many times.

977 As such any claim of anything at all by Applicant 2's witness, deposed or otherwise, has no credibility.

978 This historical evidence must be taken into account towards any consideration for Section 110 Orders as sought by the Applicants, as clearly they are intending the orders to benefit each Applicant directly as well as every agency across the whole of the state of NSW.

979 Paragraph 99:

980 The Section 110 orders as sought deny the Respondents access to government information promptly and at the lowest reasonable cost.

981 Likewise the Applicants and other intended beneficiaries have no reassurance whatsoever any one of them would be able to provide access to government information promptly and at the lowest reasonable cost under Section 110 constraints.

982 This crucial issue is discussed at length within the Closing Submissions.

983 Member Dinnen relied upon the decision of Marks in *Webb & Port Stephens Council*, however that decision was overturned.

984 However Member Dinnen was correct in referring to claimed unmeritorious applications such that require relief. Even at that stage the Tribunal acknowledged the threshold issue is one which is founded on providing an agency and / or agencies relief from repeated and frequent claimed unmeritorious access applications; Section 110 has nothing whatsoever to do with meritorious access applications.

985 Member Dinnen also referred to *Department of Education v Zoneville (2020) NSWCATAD 96* at paragraphs 18 and 19 twice, making specific reference to “repeated or multiple access applications that are without merit”, and making further reference to the relief of a claimed burden upon agencies in processing repeated and frequent unmeritorious access applications.

986 These Applicants are unable to establish any repeated or multiple access applications that are without merit and which require relief.

987 Paragraph 101:

988 The case of *Port Stephens Council v Webb (2021) NSWCATAD 180* provides a new roadmap on what the Tribunal should and should not consider as factors relating to its decision on whether or not to exercise its discretion.

989 Paragraph 102:

990 Agreed. The Tribunal is expected not to lose sight of the purpose and object of the Act, and if encountering any difficulties in properly interpreting the legislation, should defer to the intentions of the Parliament which freely-gifted the public's beneficial legislation the GIPA Act 2009; legislation enacted for the benefit of the public and not for the benefit of NSW government agencies.

991 Paragraph 103:

992 Member Montgomery is known to make errors of law in his decisions.

993 Paragraph 104:

994 The caselaw referenced has been superseded by *Port Stephens Council v Webb (2021) NSWCATAD 180*, which now provides a new concise roadmap for applications such as this one before the Tribunal.

995 Paragraphs 105 through 107:

996 The caselaw referenced has been superseded by *Port Stephens Council v Webb (2021) NSWCATAD 180*, which now provides a new concise roadmap for applications such as this one before the Tribunal.

997 The case of *Port Stephens Council v Webb (2021) NSWCATAD 180* is taken to constitute good quality intelligent caselaw as opposed to caselaw that embarks on an exercise of character assassination of unrepresented parties.

998 Paragraph 108:

999 Agreed.

1000 Paragraph 109:

1001 Agreed.

1002 The impact on the Respondents, the rights to access government information, providing access to information at the lowest reasonable cost, and the relief sought is discussed below within Closing Submissions.

1003 Paragraph 110:

1004 Agreed.

1005 Paragraph 111:

1006 The orders as sought would have an extremely significant impact on the Respondents, whilst at the same time not giving the Applicants the relief sought.

1007 The full picture of the impacts of the orders as sought are set out in Closing Submissions.

1008 Paragraph 112:

1009 The Applicants have not put on any evidence that the claimed unmeritorious access applications have had the effect claimed.

1010 Additionally, the assertions of Respondent 1 are founded on agency documentation and as such are incapable of dispute.

1011 There is no evidence the claimed unmeritorious access applications have had any adverse effect including absorbing an unreasonable and disproportionate amount of the Applicants' finite resources.

1012 There is no evidence the claimed unmeritorious access applications have had any impact on the health and wellbeing of any individual including the Applicants' employees.

1013 The Applicants have not put on any evidence of a risk management strategy; no risk matrix, no evidence of meetings with stakeholders, reports, nothing to validate the claim of any impact on the health and wellbeing of any individual including the Applicants' employees.

1014 A similar situation occurred between Respondents 1 and 2 and Applicant 2; whereby Applicant 2 had claimed validity to invoke its Managing Unreasonable Complainant Conduct. However when Respondent 1 lodged an access application seeking a copy of the Reports to support that invocation, in accordance with the Policy & Procedure, Applicant 2 determined "*information not held.*"

1015 In this regard the Tribunal is asked to thoroughly scrutinise the Applicants' claims of any implemented risk management strategy as personal experience indicates such claims can be untruthful of actual events.

- 1016 However, the Applicants have provided evidence of autocratic actions and ultimatums which are applied with full force absent of any review of decision.
- 1017 The Tribunal is reminded of the fact members of the NIPPN cartel do not feel safe, and have not felt safe for several decades.
- 1018 This is a public statement.
- 1019 The Respondents are not responsible for those insecurities.
- 1020 Simply claiming such has occurred is completely insufficient to sustain the claims made.
- 1021 It is interesting however that despite the feelings of imminent danger and lack of safety, these individuals remain in their lucrative roles.
- 1022 Paragraph 113:
- 1023 Agreed.
- 1024 Paragraph 114:
- 1025 The Applicants made concessions at their Paragraph 13.
- 1026 There is no evidence the orders as sought will provide the relief claimed.
- 1027 The impacts of the orders as sought are set out in Closing Submissions.
- 1028 Paragraph 115:
- 1029 The Applicants are pre-empting the granting of the orders as sought which is irrelevant to the consideration of the Section 110 Application.
- 1030 The Tribunal is again referred to the statemet of Mr Cahill at Paragraph 101 of ***Attachment 13:***
- “101.....we are within the bounds of 110,1”*
- 1031 This is the threshold to be overcome before proceeding to consider the process for access applications under a Section 110 order.
- 1032 The Applicants in their excited anticipation of a successful Section 110 Application are effectively placing the cart before the horse.

1033 Paragraph 116:

1034 This is an incorrect but convenient submission which denies the fact the Applicants must first satisfy the Tribunal they have met the parameters of Section 110 (1) in its entirety the result of the use of the word “and” between Section 110 (1)’s (a) and (b), particularly when it has claimed it is within those bounds.

1035 Paragraph 117:

1036 Agreed. The imposition of a Section 110 Order does not extinguish the public’s legislated rights to access its beneficial legislation.

1037 However the impacts of that imposition on the Applicants, the Respondents, and indeed the Tribunal, have perhaps for the first time been clearly set out in the Closing Submissions.

1038 As such it is crucial the Tribunal digest the full nature of those impacts.

1039 Paragraph 118:

1040 The Applicants concede the imposition of a Section 110 order actually overrides enforceable rights to access government information.

1041 Paragraph 119:

1042 The Tribunal does have the jurisdiction to exercise its discretion provided it has been suitably satisfied to do so.

1043 Paragraphs 120 through 127:

1044 The Respondents’ have previously replied to these submissions.

1045 It appears the Applicants are simply repeating what has already been claimed by them.

1046 Paragraph 128:

1047 The Applicants’ case appears to rest entirely on the threshold issue of acting in concert, as Section 110 (1) uses the word “and” to connect parts (a) and (b), for the purpose of catching all three Respondents in the same net.

1048 Again the Respondents state neither Respondent 2 or 3 caused the applications to be made by Respondent 1 which is the foundation of the Applicants’ case.

1049 Paragraph 129:

1050 The assertion the Appeal Panel misconstrued 110 (1) and resultantly erred was open to appeal to the NSW Supreme Court by Applicant 2 in these proceedings, against an unrepresented party.

1051 Instead Applicant 2 in these proceedings, being the Applicant in the proceedings of *Port Stephens Council v Webb (2021) NSWCATAD 180*, chose the Tribunal forum where it resultantly failed despite the use of an external solicitor and barrister against an unrepresented party.

1052 To now claim the Appeal Panel erred has no credibility whatsoever.

1053 The Respondent in those proceedings was Respondent 1 in these proceedings, notably not Respondent 2 or 3.

1054 Paragraph 130 through 134:

1055 As was envisaged and addressed through the above submissions, the Applicants have disclosed their amenability to orders encompassing unsuspecting targeted groups of individuals.

1056 The Tribunal is asked to see this disclosure for what it is, given the nature and intentions of the NIPPN cartel of which at least (2) of the Applicants are active members.

1057 Such plans and schemes to ambush and take advantage over the public endeavouring to access its beneficial legislation is easy when cloaked in Chatham House Rules.

1058 Paragraphs 135 through 138:

1059 The Applicants have neglected to admit Respondent 1's current access application success rate of 96.44%, leaving claimed unmeritorious applications totalling a meagre 3.56%.

1060 3.56% cannot qualify as a number of claimed unmeritorious applications such that require relief.

1061 This is an increased success rate to that noted by the Tribunal in 2021 of 83.8%.

- 1062 As was noted in the 2017 decision, the Respondent in those proceedings being Respondent 1 in these proceedings, specifically compiled access applications of individual topic and subject in order to avoid potential confusion of the scope, partially determined decisions, and procrastination of applications.
- 1063 Member Lucy (2017) accepted those submissions.
- 1064 Member Lucy (2017) was not aware of the unlawful agreement between the Respondent in those proceedings being Applicant 2 in these proceedings, an agreement suggested, initiated and implemented by Applicant 2's witness in these proceedings.
- 1065 Paragraphs 139 and 140:
- 1066 Regarding Applicant 2:
- 1067 One application of either category in any month cannot be considered to be of such a magnitude that requires the relief sought, no matter the strategic manner in which Applicant 2 presents the information.
- 1068 The GIPA Act makes no numerical limit on the number of access applications from an individual access applicant per agency.
- 1069 Likewise the GIPA Act makes no geographical restrictions upon access applicants.
- 1070 Paragraphs 141 through 144:
- 1071 Regarding Applicant 1:
- 1072 One point six applications of either category in any month cannot be considered to be of such a magnitude that requires the relief sought, no matter the strategic manner in which Applicant 1 presents the information.
- 1073 The GIPA Act makes no numerical limit on the number of access applications from an individual access applicant per agency.
- 1074 Likewise the GIPA Act makes no geographical restrictions upon access applicants.

1075 Paragraphs 145 through 149:

1076 Regarding Applicant 3:

1077 One application of either category in any three-month period cannot be considered to be of such a magnitude that requires the relief sought, no matter the strategic manner in which Applicant 3 presents the information.

1078 The GIPA Act makes no numerical limit on the number of access applications from an individual access applicant per agency.

1079 Likewise the GIPA Act makes no geographical restrictions upon access applicants.

1080 Paragraph 150:

1081 The Applicants appear to be saying it is somehow offensive to seek similar information from separate agencies; for example an agency's expenditure on legal proceedings.

1082 The fact remains if agencies were forthcoming, open and transparent at first instance about their use of public monies such requests would be negated.

1083 Presently the GIPA Act 2009 is the only mechanism available to the public for the purposes of ensuring open, transparent and accountable government.

1084 If however there is another mechanism the Respondents ask the Applicants to disclose such in order to negate using the GIPA Act 2009.

1085 Paragraph 151:

1086 As was evidenced by the Director / Business Unit Manager Ms Jodie Cobbin, the use of document templates is a general clerical practice.

1087 Likewise the Applicants in these proceedings use document templates.

1088 The use of such templates ensures minimum time and resources is spent for content construction, as well as ensuring consistency, with recipients confident documentation originates from the same source.

1089 The Applicants expect the Tribunal to frown upon members of the public following agency examples; unless it is clearly one law for agency personnel and another very different law for the public they serve.

1090 Indeed, the use of templates is considered a practical method to ensure the best use of time in the context of constructing document content.

1091 The Respondents intend to continue to use templates whenever available.

1092 Paragraph 152:

1093 Agency responses to the public’s access applications are an opportunity to show they are open, transparent and accountable.

1094 Misconduct in the exercise of statutory functions in the context of the GIPA Act 2009 is of the greatest public interest of which the public has a right to be fully informed.

1095 Paragraph 153:

1096 Respondent 1 exercised due process on the occasions referenced.

1097 However, when Applicant 2’s witness Mr Tony Leslie Wickham occupies the following conflicting positions in parallel the public realises there is little chance of accountability through the Code of Conduct or Complaint Handling processes:

- Executive Officer
- Governance Manager
- Senior Right to Information Officer
- Privacy Officer
- Code of Conduct Coordinator
- Complaints Handling Officer
- Joint Secondary Employment Custodian

1098 Regardless, the case of *Port Stephens Council v Webb (2021) NSWCATAD 180* makes clear at Paragraph 65:

“65She is also entitled to pursue legal remedies available to her.....”

1099 However as with the public’s legislated right to access government information, Applicant 2 resents any avenues of legal redress, reserving those rights for itself.

1100 Paragraphs 154 through 156:

1101 The public has the right to petition Parliament for legislated change.

1102 It is a forum that is open and transparent, where all interested parties are able to make submissions or appear in person and make their own case; a place where so-minded agency personnel are unable to control outcomes, influence decision-makers, or hide behind Chatham House Rules.

1103 Agencies are also fully aware the activities of Parliament are reported in the media.

1104 It is up to the Parliament whether or not it chooses to implement changes sought.

1105 Again, Respondent 1 relies on the case of *Port Stephens Council v Webb (2021) NSWCATAD 180* Paragraph 65:

“65.....She is also entitled to pursue legal remedies available to her.....”

1106 Paragraph 157:

1107 It is of absolutely no relevance whatsoever whether requested information is general or of personal interest to an access applicant.

1108 Additionally and of primary relevance, the GIPA Act 2009 does not make any prescription for an access applicant having to qualify an access application.

1109 The Respondents expect there are individuals currently residing in Korea involved in NCAT proceedings concerning the GIPA Act 2009, absent of a residential or locational qualifier or barrier.

1110 Paragraph 158:

1111 The Respondents refer to the above Paragraphs, *Part 1 – Introduction and Background to NSW Freedom of Information*.

1112 Paragraph 159:

1113 The Respondents’ rights to access their beneficial legislation is also a constitutional democratic Parliament-gifted right.

1114 This right is connected to the Respondents’ constitutional democratic right to petition Parliament to address legislative problems and those acting in breach of it to deny the public’s rightful access to its beneficial legislation.

- 1115** Paragraph 160:
- 1116** The Respondents have come to the realisation current Code of Conduct, Complaint, and Corrupt Conduct reporting mechanisms are completely ineffective due to the fact agency self-policing does not work.
- 1117** Given these issues concern the manner in which agency personnel administer respective legislation, the Applicants will agree the right avenue under these circumstances is the Parliament.
- 1118 The Parliament as the public's mechanism is not able to be manipulated by those using internal agency protocols to obstruct accountability.
- 1119** Paragraph 161:
- 1120 As stated above Respondent 1 is a qualified criminologist with a focus on white collar crime in the context of the GIPA Act 2009.
- 1121 Further, an independent open transparent inquiry such as that provided by Parliament is fully capable of scrutinising the evidence and actions in question.
- 1122** Paragraph 162:
- 1123 Regrettably it was the conduct of Applicant 2 during the 'processing' of the DA No: 483 of 2011, inclusive of the unlawful agreement between Applicant 2's Tony Leslie Wickham and a member of a Council Committee to conceal and protect open access information mandated for release, which is credited with the responsibility for opening up NSW government agencies in the exercise of statutory functions under the GIPA Act 2009, which is the foundation of the interest in white collar crime in government.
- 1124 Any grievance held by any other NSW government agency, or indeed the whole of the membership of the NIPPN cartel, should be directed to Mr Wickham.
- 1125 The Applicants or any other individual can deny this deplorable unconscionable abuse in public office by an individual who wears the title of Corporate Policeman, however the evidence of this singular action was provided by Mr Wickham's subordinate in June 2019.
- 1126 Further evidence of corruption is located at ***Attachment 1*** to these submissions.

- 1127 Very regrettably for Mr Wickham these and other corrupt conduct are now well documented and have been published on the website www.nswfreedomofinformation.net.
- 1128 Applicants 1 and 3 should be totally embarrassed to call Port Stephens Council as co-applicant in these proceedings, and worse to rely on it to support and validate the Application.
- 1129 Paragraph 163:
- 1130 Respondent 1 in particular has a claimed unmeritorious access application rate of a meagre 3.56% which does not qualify for the relief sought.
- 1131 Paragraphs 164 through 168:
- 1132 Respondent 1 was exercising access to legislated processes including administrative review processes.
- 1133 Indeed, as set out above in these submissions, Applicant 2 has sought unlawful financial punishment of Respondents 1 and 2 in an effort to impress upon them not to pursue those legislated rights or suffer the consequences.
- 1134 However, not satisfied with that financial punishment, Applicant 2 now attaches itself to these proceedings for the orders sought.
- 1135 What these proceedings have made clear is the Applicants' preference:
- Access applicants seek access to generic information only
 - No requests for administrative review
 - Accept agency determinations at first instance and without question
 - Do not seek review of processing charges
 - Limit access applications to maximum one per three month period per agency
- 1136 Paragraph 169:
- 1137 Member Dinnen's decision has been superceded by ***Port Stephens Council v Webb (2021) NSWCATAD 180***.

1138 Paragraph 170:

1139 The Applicants are unable to produce any evidence there has been any adverse conduct in the processing of the access applications on the part of the Respondents.

1140 The claim of impact on resources is not sustainable as all asserted fees were paid:

- Applicant 1 did not impose any processing fees
- Applicant 2 has been paid all demanded processing fees
- Applicant 3 did not impose all claimed processing fees

1141 In other words, it cannot be said the Respondents used an unreasonable amount of agency resources when each of the Applicants were paid for resources as demanded.

1142 Indeed, the Respondents only submit further correspondence towards an access application on receipt of a request for clarity or reduction of scope or advance deposits on the part of the Applicants.

1143 Respondent 1 however does admit to requesting a Notice of Decision from time to time if the date of determination has passed without notification of an extension of time.

1144 Respondent 1 also admits to asking for the provision of documents once the demanded processing fees have been paid.

1145 This cannot be considered an excessive impact on resources; it is the process as legislated.

1146 Again the Tribunal is asked to note Applicants 1 and 3 are evidenced to provide access to resources free of charge when suited.

1147 Paragraphs 171 through 181:

1148 Port Stephens Council:

1149 The overall percentage of time spent on the Respondents' access applications is directly dependent upon the number of access applications received.

1150 In other words, if 100% of the access applications received for a period originate from the Respondents, that is due to no other applications being received.

1151 It is easy to manipulate the figures when desired.

1152 The Tribunal is referred to the Applicants' submissions Paragraph 139 through 149 for the actual amounts of time each Applicant has recorded against the Respondents, time which does not qualify for the relief sought, particularly when considering Mr Cahill's statement of 05th November 2024;

"101.....we are within the bounds of Section 110,1....."

1153 Refer to Attachment 13

1154 Paragraphs 182 through 193:

1155 Justice NSW:

1156 The overall percentage of time spent on the Respondents' access applications is directly dependent upon the number of access applications received.

1157 In other words, if 100% of the access applications received for a period originate from the Respondents, that is due to no other applications being received.

1158 It is easy to manipulate the figures when desired.

1159 The Tribunal is referred to the Applicants' submissions Paragraph 139 through 149 for the actual amounts of time each Applicant has recorded against the Respondents, time which does not qualify for the relief sought.

1160 Additionally, Applicant 1 completely fails to qualify an unreasonable use of resources by the Respondents' access applications when we consider its expenditure for this case which currently seems to be limitless.

1161 Applicant 1 has disclosed, through the mosaic effect using the Affidavit of Applicant 1's Jonathan Franklin (Paragraph 53) and Application of Michael McIntosh at **Attachment 23**, costs to the filing date of 17th December 2024 total a staggering \$295,592.88, and the main event is yet to commence.

1162 Having regard to the claimed limited resources and the backlog of access applications it is clear Applicant 1 DOES have the resources to deal with these issues, it's just that on this occasion Applicant 1 chose to invest those resources into these proceedings apparently without hesitation or consideration of the final amount to the public purse.

1163 Additionally, the assertion Applicant 1 makes excluding it from using the Crown Solicitor is not believable when we consider the various cases concerning external review within the GIPA Act 2009:

- *Webb v iCARE (2023) NSWCATAD 63*
- *Webb v iCARE (2023) NSWCATAD 111*
- *iCARE v Webb (2023) NSWCATAP 192*
- *Webb v iCARE (2023) NSWCATAD 230*
- *Webb v iCARE (2024) NSWCATAD 371*

1164 Paragraphs 194 through 200:

1165 Goulburn Mulwaree Council:

1166 The percentage of time spent on the Respondents' access applications is directly dependent upon the number of access applications received.

1167 In other words, if 100% of the access applications received for a period originate from the Respondents, that is due to no other applications being received.

1168 It is easy to manipulate the figures when desired.

1169 The Tribunal is referred to the Applicants' submissions Paragraph 139 through 149 for the actual amounts of time each Applicant has recorded against the Respondents, time which does not qualify for the relief sought.

1170 Paragraph 201:

1171 Respondent 1 at all times prefers agencies process valid access applications with total integrity, openness and transparency.

1172 Regrettably this is not the case and as such there are occasions which demand a formal review.

1173 It is noted not all decisions are taken to review; some are able to be lived with without further process.

1174 Regardless, a GIPA Officer's full participation and management of an access application through every stage of the process negates legal costs.

1175 Agencies choose excessive legal representation as though a simple GIPA review, expected to be dealt with by an unrepresented party, is equivalent to the Supreme or High Court of Australia.

1176 Examples of overrepresentation include but are not limited to:

Webb v Port Stephens Council; Webb v Port Stephens Council; Port Stephens Council v Webb (2020) NSWCATAD 81

- 1 barrister, 2 external solicitors, 1 unidentified barrister, 1 in-house solicitor, 1 governance manager

Webb v Port Stephens Council (2020) NSWCATAP 152

- 1 barrister, 1 external solicitor

Port Stephens Council V Webb (2021) NSWCATAD 180

- 1 barrister, 1 external solicitor

McEwan v Port Stephens Council (2021) NSWCATAD 110

- 1 external solicitor, 2 barristers

1177 Paragraph 202:

1178 The actual time taken to process Respondent 1's access applications cannot be classified as disproportionate.

1179 One access application a month cannot be considered excessive.

1180 Likewise one access application every three months most certainly cannot qualify as excessive.

1181 Respondent 1 has not at any time threatened any person.

1182 Likewise it cannot be said Respondent 2 or 3 directed Respondent 1 to threaten any person.

1183 Indeed it is the Applicants who have threatened, bullied and intimidated Respondent 1. In particular Applicant 1 threatened Respondent 1 of a formal restriction of access to services simply because Applicant 1 did not like the content of the Respondent 1's submissions to the Tribunal.

- 1184 This was an abuse of power with no avenues of review.
- 1185 Regardless the Tribunal has no jurisdiction to consider the Work Health & Safety Act in these proceedings. The Respondents rely on the repeated submissions of access applicants in administrative review proceedings, making reference to and relying on the GSE Act 2013, which the Tribunal rejected as not relevant to the proceedings.
- 1186 Additionally problematic, the Applicants' reliance on Work Health & Safety legislation is generic and not specific, and is considered more appropriate and applicable for those with a custodial background, those with criminal charges, those in foster care and foster care chargers for example, as opposed to an access applicant.
- 1187 However what is clear is these Applicants intend access applicants to be classified as offenders, criminalising those who endeavour to access their beneficial legislation, as has occurred over several decades courtesy of Applicant 2 in these proceedings in relation to Respondents 1 and 2.
- 1188 The Respondents seek the Tribunal ensure equity and consistency in all its proceedings and determinations, no matter how large and powerful the agency at the bar table.
- 1189 Likewise Applicant 1 did formally restrict access to services by Respondent 1 simply because Applicant 1 did not like the content of a valid access application.
- 1190 This was an abuse of power with no avenue of review.
- 1191 Applicant 2 has accessed the Tribunal, successfully securing costs wishes despite the beneficial enabling legislation making no provision to do so. Clearly this was irrelevant and of no consequence to Applicant 2 as is standard operating procedure.
- 1192 This was an abuse of power.
- 1193 The Applicants' claim the Respondents' access applications hinders it from providing a safe system of work has no integrity whatsoever when we consider the NIPPN Terms of Reference which state its purpose is to provide a safe place for government employees.

- 1194 Clearly NSW government employees exercising statutory functions under the GIPA Act 2009 have not felt safe in their workplace(s) well before the Respondents commenced lodging access applications.
- 1195 Given NIPPN's operation for well over (2) two decades according to its founder and original Chair Phillip Youngman of Youngman Consultancy, incidently one who peddles GIPA Training to NIPPN members outside of legislated procurement protocols, it is clear government employees and indeed contractors have felt unsafe for a very long time.
- 1196 Refer to Attachment 5**
- 1197 Refer to Attachment 30**
- 1198 Paragraph 203:
- 1199 In *Port Stephens Council v Webb (2021) NSWCATAD 180*, paragraph 56, the Tribunal stated the conduct of an Applicant "*outside of the making of access applications*" is gerally of limited relevance to the exercise of the discretion of Section 110:
- "56 The applicant also relies upon the respondent's broader pattern of conduct, which conduct the applicant says is so inextricably intertwined with her access applications that it should be a central consideration in the exercise of the discretion. The Tribunal considers that conduct outside of the making of access applications is generally of limited relevance to the exercise of the discretion: see the 2017 Tribunal Decision at [43]-49] and Pittwater Council v Walker [2015] NSWCATAD 34 at [52]....."*
- 1200 Paragraph 204:
- 1201 Any grave risk to public confidence in NSW public institutions and government is the responsibility of those they employ. The Applicants' reality is the manner in which agency personnel are now documented to conduct government business, with the bulk of that evidenced to act in contravention of legislation and public expectations.
- 1202 This collective of Applicants ought to be nothing other than completely embarrassed by their own documentation.

- 1203 Paragraphs 205 and 206:
- 1204 Again Applicant 2's witness Mr Tony Leslie Wickham makes false representations of what occurred with the DA No: 483 of 2011, leaving the submissions founded on nothing but hearsay.
- 1205 Thankfully the public's beneficial enabling legislation provided the mechanism to uncover the rot and corruption occurring within the DA processes of Applicant 2, which saw Mr Wickham at the centre albeit outside of his delegated roles.
- 1206 Paragraph 207:
- 1207 The Tribunal and Applicants will agree the wheels of justice are indeed very slow.
- 1208 Corruption often continues successfully for decades before seeing real investigation and a lot longer for any degree of credible accountability; such as the case of Berejiklian.
- 1209 Indeed, it took (7) seven years that is until June 2019 for Applicant 2's documentation to be released disclosing the evidence of corruption and collusion which founded the unlawful agreement between Applicant 2's witness in these proceedings and a Council Committee Member; an agreement which used Section 14 Table 3(f) of the GIPA Act 2009 to conceal and protect open access information mandated for release.
- 1210 All this by Applicant 2's witness in these proceedings, Mr Wickham, an individual positioned as Corporate Policeman.
- 1211 Paragraph 208:
- 1212 Documents provided under the public's beneficial legislation evidence Applicant 2 DID deny access to legislated processes concerning the DA No: 483 of 2011.
- 1213 Paragraph 209:
- 1214 Applicant 3 commenced Defamation proceedings but shortly thereafter chose to withdraw.
- 1215 Applicant 1 has formally restricted access to services for Respondent 1.

- 1216 There can be no doubt the labelling of Respondent 1 as a fixated litigant is expected to permeate through the NIPPN cartel as has now occurred with Mr Zonneville and Mr Zidar courtesy of the Director / Business Unit Manager Jodie Cobbin of the OGIPU.
- 1217 Applicant 2 also commenced Defamation proceedings but shortly thereafter chose to withdraw.
- 1218 In this regard the Applicants have been well-able to seek and secure redress for any claimed actions on the part of Respondent 1.
- 1219 Regrettably the Applicants remain dissatisfied and now seek further punishment and retribution in the form of these proceedings costing the public \$295,592.88 as at the date of the Respondents' submissions.
- 1220 Paragraph 210:
- 1221 The public has the democratic right to bring matters before the Parliament, particularly upon the realisation department protocols and self-policing is a total failure.
- 1222 Applicant 1's witness Jonathan Franklin can confirm on 13th December 2024 the Tribunal's Judge Seiden disclosed she had read Respondent 1's document dated 08th August 2024.
- 1223 The Applicants are rightfully embarrassed by the content of the parliamentary submission which lays bare the systemic issues continually forced upon the public.
- 1224 Paragraph 211:
- 1225 Correct. Respondent 1 has made no secret of the parliamentary submission, publishing it on the website www.nswfreedomofinformation.net.
- 1226 Paragraph 212:
- 1227 The Respondents have not acted in any way that constitutes doxing.

1228 The Applicants collectively deny the GIPA Act 2009 Schedule 4, 4, 3 (b):

4 Personal information

*(1) In this Act, **personal information** means information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion.*

(2) Personal information includes such things as an individual's fingerprints, retina prints, body samples or genetic characteristics.

(3) Personal information does not include any of the following—

(a) information about an individual who has been dead for more than 30 years,

(b) information about an individual (comprising the individual's name and non-personal contact details, including the individual's position title, public functions and the agency in which the individual works) that reveals nothing more than the fact that the person was engaged in the exercise of public functions,

(c) information about an individual that is of a class, or is contained in a document of a class, prescribed by the regulations for the purposes of this subclause.

1229 The Applicants collectively deny the referred to images on the website www.nswfreedomofinformation.net consist of public information.

1230 The Tribunal is referred to the beginning of these submissions which make clear the Applicants have acted to ascertain the private residential address of the Respondents, deliberately acting to breach the Respondents' personal privacy.

1231 The Respondents have not at any time acted in like manner.

1232 Paragraph 213:

1233 Applicant 2 is incapable of providing any evidence of bombardment of any kind on the part of the Respondents.

1234 Paragraph 214:

1235 The Respondents have not acted in any way that obstructed any ability of Mr Wickham to do any thing at any time.

1236 Mr Wickham has himself personally evidenced his willingness to corrupt the legislated access to information processes by primarily suggesting and implementing a false claim of a risk of harm under the GIPA Act 2009 Section 14 3(f), which he has personally maintained and upheld since early 2012; through his own authored false and misleading correspondence to the IPC for the purpose of influencing decision-makers; through his own authored false and misleading statements to the Tribunal; and through his own perjury to the Tribunal; all of which is his agreement in action.

1237 As such any claim of any thing has no credibility whatsoever.

1238 *Refer to Attachments 1 and 31*

1239 However, and thankfully, once those false claims were finally tested in open session in front of a discerning Tribunal member, the claims have not to this date been replicated by Applicant 2; see the case of *McEwan v Port Stephens Council (2021) NSWCATAD 110*, Paragraph 160:

“160..... taking all of the above evidence at its highest, there is not a scintilla of evidence that the "safety or well-being" of any person would or might be affected or impacted if the applicant accessed the disputed information.....”

1240 Paragraph 215:

- (a) Correct. Applicant 2 has failed to secure a Section 110 order on (2) two prior occasions; (3) three if the Appeal Panel decision is rightfully added. According to documents released under GIPA, Applicant 2 has thus far expended approximately \$210,000.00 on this type of proceedings, without adding the costs for these current proceedings. It would be reasonable to expect, given Applicant 1’s continued claim of finite resources it will seek costs from Applicant 2 at some time.

Pertinent questions for the Tribunal is *“How many separate Applications for Section 110 Orders should an agency be permitted to lodge against the same person?”* and *“When is the repeated separate lodging of Applications for Section 110 Orders by the same agency against the same person considered to constitute harassment?”*

- (b) After Respondent 1 confirmed Applicant 2's communication concerned the Defamation Act, Applicant 2 refused to respond to a request for further particulars which terminated the proceedings.
- (c) Correct. This occurred during the time of DA No: 483 of 2011 when the Respondents were endeavouring to comprehend why they had been repeatedly denied legislated process including access to the FREE Council meeting for adjudication. At the time the Respondents were oblivious to the unlawful agreement.
- (d) Correct. Applicant 2 considers asking for information and seeking clarification on legislated issues to be misconduct.
- (e) The Respondents have no knowledge of any claimed implemented measures to assist in securing the personal safety of Applicant 2's personnel. Given the multiple documents evidencing misrepresentations on the part of Applicant 2's witness Tony Leslie Wickham, the Tribunal is expected to thoroughly interrogate these extraordinary claims along with the document setting that out.

1241 Paragraph 216:

- (a) Respondent 1's source of information is entirely departmental. The Respondents reiterate their submissions in relation to the accusation of doxing, particularly the fact these Applicants collectively acted to ascertain the private residential address of the Respondents to intimidate and harass them and to breach their personal privacy. The Applicants collectively continue to deny the GIPA Act 2009 Schedule 4, 4, 3, (b) which makes clear employment information in the context of NSW government information is not personal in nature; as such the claim of doxing fails. Likewise the images referenced constitute public information as addressed in ***FHH v Port Stephens Council (2023) NSWCATAD 101***, Paragraph 29:

“29.....personal information which was available in a publicly available publication ws deemed to be exempt from the definition of personal information.....”

- (b) The Applicants appear to retain exclusive rights to refer to enforcement policy and procedure in order to threaten the public into acting a certain way, yet protest when the public follows their example. Respondent 1 did make reference to the available reporting bodies and authorities as was publicly available information for the benefit and assistance of the public. As such Respondent 1 refers to the case of *Port Stephens Council v Webb (2021) NSWCATAD 180*, paragraph 65:

“65 She is also entitled to pursue legal remedies available to her.....”

1242 Paragraph 217:

1243 Respondent 1 has not abused any officer of the OGIPU;

- (a) Applicant 1 has implemented those restrictions, it is no longer a threat.
 (b) Applicant 1’s top secret control strategies are now public knowledge.

1244 Paragraph 218:

1245 The GIPA Act 2009 does not require an access applicant to reside in a particular local government area for the purpose of lodging access applications.

1246 Evidently Applicant 3 is hypersensitive to public criticism which appears to be a common theme across the NSW government sector and most particularly across Local Government. Applicant 3 has at all times been welcome to publish reply commentary to any article of its choosing.

1247 However, Applicant 3 chose instead to instigate Defamation proceedings, but shortly thereafter chose to withdraw the result of Respondent 1 rightfully seeking further and better particulars in accordance with the legislation.

1248 Paragraph 219:

- (a) Commentary has at all times been based upon documented agency responses to access applications. Applicant 3 denies the GIPA Act 2009 Schedule 4, 4, 3 (b). The collective of Applicants has acted to deliberately ascertain the private residential address of the Respondents. The Respondents have not acted in this way at any time.
 (b) False.

1249 Paragraph 220:

1250 The Respondents have not at any time abused any officer as claimed.

(a) Correct.

(b) False.

1251 Paragraph 221:

1252 The Respondents agree agency resources have some limitation.

1253 However, these proceedings have revealed agencies have access to resources unknown to the public which agencies allocate and use at will, particularly when seeking punitive action; resources better placed towards the serving of the whole of the public as opposed to punishing a select few.

1254 Paragraph 222:

1255 Applicant 1 continually claims a backlog of access applications is entirely due to Respondent 1's access applications.

1256 This claim cannot be qualified and is a blatant misrepresentation in order to influence the Tribunal.

1257 Likewise the obligations of Applicant 1 existed prior to the receipt of one single access application from the Respondents.

1258 To blame the Respondents for poor personnel management and inability to properly distribute resources remains on the shoulders of the Director / Business Unit Manager OGIPU Ms Jodie Cobbin.

1259 Indeed the claimed backlog has consistently existed since at least November 2023.

1260 *Refer to Attachment 33*

1261 Paragraph 223:

1262 There is no evidence whatsoever to support these assertions.

1263 This is a desperate claim by a collective of Applicants who are acting punitively, retaliating against the Respondents and most particularly Respondent 1's exercising legislated rights to access beneficial NSW government information.

1264 The Respondents again refer to paragraphs 4 through 8 above which supports the fact this Application is completely founded on retaliation, retribution and control.

1265 Paragraph 224:

1266 There is no evidence the orders sought will address any claimed OH&S issues.

1267 The purpose of a Section 110 order is to address repeated and frequent claimed unmeritorious access applications such that require relief.

1268 Paragraphs 225 to 227:

1269 Correct. The Work Health & Safety Act 2011 paragraph 20 also makes reference to the public:

20 Duty of persons conducting businesses or undertakings involving management or control of workplaces

- (1) *In this section, **person with management or control of a workplace** means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control, in whole or in part, of the workplace but does not include—*
- (a) *the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking, or*
- (b) *a prescribed person.*
- (2) *The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person (emphasis added).*

1270 Regrettably, the actions of the Applicants continually breach Section 20 (2) where repeatedly documented evidence attests to regular threats, bullying, intimidation and retaliatory actions on the part of each of the Applicants. Again any member of the public qualifies as “any person”.

1271 It would appear the Applicants have no issue acting in such manner.

1272 However when a member of the public calls those actions out for what they are they are confronted with the full force of the government, as has occurred in this matter.

1273 This is not an example of equality and denies the Rule of Law.

1274 Paragraph 228:

1275 The Respondents again refer to the case of *Port Stephens Council v Webb (2021) NSWCATAD 180*, paragraph 56:

“56.....The Tribunal considers that conduct outside of the making of access applications is generally of limited relevance to the exercise of the discretion: see the 2017 Tribunal Decision at [43]-49] and Pittwater Council v Walker [2015] NSWCATAD 34 at [52].....”

1276 The suggestion employees might make a compensation claim is not sustainable.

1277 NIPPN Terms of Reference make clear, NSW government employees in the access to information arena, do not feel safe in their workplaces, nor have they felt safe for several decades.

1278 This is not the responsibility of the Respondents.

1279 Additionally, Applicant 1 may very well find itself facing a compensation claim the result of non-disclosure of the claimed risk to OGIPU staff, particularly when considering the positions as advertised.

1280 A claim of misrepresentation and possible entrapment for painting a picture of employment that does not exist could be a very open and shut case.

1281 Refer to Attachment 10

1282 There is no certainty the orders sought will result in the cessation of claimed unmeritorious applications.

1283 The Respondents do not have access to agency records.

1284 It is not possible for the Respondents, nor any person outside of the Applicants’ organisations, to determine beforehand if information is not held in order to avoid making a claimed unmeritorious application.

1285 There is no evidence of a credible risk matrix formulation.

1286 If we were to use any risk matrix to validate restrictive and / protective category, it is more likely those connected to custodial orders seeking access to information, or those who have suffered in government care are most likely to pose a threat of any kind and not the Respondents.

1287 Paragraph 229:

1288 As these Applicants are suitably informed, complainant conduct has no bearing on access applications.

1289 It is this continual blurring of the lines that brands access applicants for the purpose of enlivening inapplicable policy and procedure.

1290 The referenced Ombudsman’s report includes bias ‘recommendations and commentary’ originating from several NIPPN members with vested interests of the final outcome.

1291 Regardless, exercising legislated rights to access government information is disqualified from being categorised as a complaint; as such the reference to the NSW Ombudsmas is completely irrelevant.

1292 Paragraph 230:

1293 The Respondents again refer to the case of ***Port Stephens Council v Webb (2021) NSWCATAD 180***, paragraph 56, where the Tribunal stated the conduct of an Applicant “*outside of the making of access applications*” is generally of limited relevance to the exercise of the discretion of Section 110:

“56 The applicant also relies upon the respondent’s broader pattern of conduct, which conduct the applicant says is so inextricably intertwined with her access applications that it should be a central consideration in the exercise of the discretion. The Tribunal considers that conduct outside of the making of access applications is generally of limited relevance to the exercise of the discretion: see the 2017 Tribunal Decision at [43]-49] and Pittwater Council v Walker [2015] NSWCATAD 34 at [52].....”

1294 Paragraph 231:

1295 Member Dinnen’s decision has been superceded by a more quality decision in ***Port Stephens v Webb (2021) NSWCATAD 180***.

1296 Paragraph 232:

1297 Agreed.

1298 Paragraph 233:

1299 The GIPA Act 2009 does not prescribe a limited right of access to government information.

1300 Paragraph 234:

1301 Agreed. However, the Application for Section 110 Orders in these proceedings is not capable of providing the relief sought.

1302 Again the Tribunal is reminded of Mr Cahills statement recording in the Transcript of 05th November 2024, Paragraph 101:

“101.....we are within the bounds of Section 110,1.....”

1303 Paragraph 235:

1304 The Tribunal must be satisfied, that is not left wanting or needing more, to grant the orders sought such that the Object of the Act remains intact.

1305 That Object includes information being provided at the lowest reasonable cost which cannot occur under these particular circumstances, see Closing Submissions.

1306 Paragraph 236:

1307 Under these particular circumstances, and the Applicants’ reliance and insistence on the inclusion of Respondent 3 in these proceedings, the impact on the Respondents disqualifies as minimal, refer to Closing Submissions.

1308 Paragraph 237:

1309 The Respondents reiterate the fact agencies, in particular Applicant 2 in these proceedings, do act corruptly in the exercise of statutory functions.

1310 Likewise, the operations of the NIPPN cartel including its group strategies to undermine legislation and form collective response strategies against the public has corrupted the access to information and privacy processes.

1311 These matters are of the highest public interest.

1312 The NIPPN cartel operates outside of agency premises, out of the sight and supervision of managers, on a claim they do not feel safe in the workplace.

1313 However, it is more likely the NIPPN cartel does not feel safe in the workplace due to the risk of discovery of unlawful conduct, conduct which is more easily actionable outside of the organisation.

1314 If the NIPPN cartel was conducting government business with 100% integrity Chatham House Rules would never have been included in the Terms of Reference.

1315 Paragraph 238:

1316 These current proceedings have taken \$295,892.88 of public monies just for the compiling of the Applicants first-round submissions.

1317 These are not Supreme or High Court proceedings!

1318 Delirious spending on such a scale is not the responsibility of the Respondents.

1319 There is no evidence to support a Section 110 order as sought by the Applicants will prevent the Applicants continuing to spend public monies in the same fashion.

1320 In this regard, the claim of using significant resources remains on the shoulders of the Director / Business Unit Manager OGIPU Ms Jodie Cobbin.

1321 Paragraph 239:

1322 Regarding Applicant 1:

- One point six applications of either category of access application in any month cannot be considered to be of such a magnitude that requires the relief sought.

1323 Regarding Applicant 2:

- One application of either category of access application in any month cannot be considered to be of such a magnitude that requires the relief sought.

1324 Regarding Applicant 3:

- One application of either category of access application in any three-month period cannot be considered to be of such a magnitude that requires the relief sought.

1325 Paragraph 240:

1326 Any person has a right of reply. That reply is expectantly published.

- 1327 Again, Applicant 2's representation of what occurred with the DA No: 483 of 2011 is false and misleading which is standard operating procedure for Applicant 2's witness Mr Tony Leslie Wickham.
- 1328 The responsibility of any reputational damage remains with the individuals who are documented to have acted in contravention of the legislation, policy and procedure.
- 1329 Agency employees remain in a state of indifference their actions impact the health and wellbeing of the public they serve. Such impacts are of no consequence to these individuals.
- 1330 Paragraph 241:
- 1331 One point six applications of either category of access application in any month cannot be considered to be of such magnitude that requires the relief sought.
- 1332 Applicant 1 did issue a letter claiming unreasonable use of resources, however, Applicant 1 issued its determination before the IPC had issued its External Review Report, unsurprisingly in breach of the legislation and denying the access applicant being Respondent 1 in these proceedings due process.
- 1333 This was effectively thumbing its nose at legislated administrative review processes.
- 1334 The external review with the IPC was sought on that occasion the direct result of the shadowy determining GIPA Officer completely misconstruing the straightforward and direct scope of the access application.
- 1335 The scope of that access application sought the provision of a TRIM file and did not seek any access to any records.
- 1336 However the delegated OGIPU Officer claimed the access application sought access to over 3,000 pages of information which was false and misleading.
- 1337 The Respondents take this opportunity to remind Applicant 1's witness he is an officer of the court, to which is his first obligation, and that direct misrepresentation to the Tribunal is considered a most serious matter.
- 1338 Paragraph 242:
- 1339 One application of either category of access application in any month cannot be considered to be of such a magnitude that requires the relief sought.

1340 Paragraphs 243 and 244:

1341 One application of either category of access application in any three-month period cannot be considered to be of such a magnitude that requires the relief sought.

1342 Conducting background covert enquiries about access applicants is outside of the GIPA Act 2009.

1343 Paragraph 245:

1344 Given the nature of the work undertaken by Respondent 1 as outlined above, the free community services provided as is now evidently needed, and the fact agencies are not forthcoming in the provision of government information, it is likely Respondent 1 may lodge future access applications.

1345 However, it is not the intention of any of the Respondents to lodge claimed unmeritorious access applications such that require relief.

1346 The public generally asks for information believed to exist, based on agency actions and expected adherence to protocols including legislated processes.

1347 Those actions include the proper recording of emails, phone calls, reports, policies and procedures, which constitute agency records.

1348 Paragraph 246:

1349 The Applicants evidence itself shows the Respondents do not have any history of making frequent and repeated claimed unmeritorious access applications.

1350 The orders as sought are not capable of providing the relief claimed.

1351 Paragraph 258:

1352 The Tribunal does not have the jurisdiction to grant the orders as stated.

Potential for Costs Application

1353 The Respondents expect this Applicant collective to seek costs should the Tribunal decide to grant the orders sought.

1354 Applicant 1 has disclosed, through the mosaic effect, costs to the date of 17th December 2024 total a staggering \$295,592.88, and the main event is yet to commence.

1355 The Tribunal is referred to the enabling legislation in this case the GIPA Act 2009 which does not provide any mechanism for a costs claim no matter what end of the bar table a party is sitting.

1356 Coupled with this is the NCAT Guideline on Costs which makes clear the Tribunal can only make such an order for costs if a particular law gives it the power to do so.

1357 Refer to Attachment 17

1358 The current President of the NCAT Ms Lea Armstrong is a former solicitor with the Office of the NSW Crown Solicitor.

1359 Documents provided to Respondent 1 in these proceedings evidence Ms Armstrong providing legal advice to Service NSW on the subject of imposing a fee for card payments.

1360 The Tribunal will be aware of a Service NSW departmental media release of October 2024 which discloses the Crown Solicitor, specifically Ms Armstrong, formally advising Service NSW repeatedly it could not impose such card payment fees as the legislation did not make provision for it.

1361 Refer to Attachment 25

1362 Ms Armstrong's legal advice is encompassed in two items of correspondence; 03rd February 2016 and 24th October 2016.

1363 Within her latter advice of 24th October 2016 Ms Armstrong states:

“1.1It is a long established principle of the common law that a public body or authority may not levy or otherwise impose a charge or fee on members of the public unless there is clear statutory authority for it to do so. Such a power must be expressly stated, or otherwise implied “as necessarily arising” from, the words of a statute.”

“2.6. In my advice to your agency dated 03rd February 2016,..... I advised that it is a long established principle of the common law that a public body or authority, including a branch of the executive government, may not levy or otherwise impose a charge or fee on members of the public unless there is statutory authority, express or arising by necessary implication, to do so.....”

“4.7.....That is, the implication must be strictly necessary as arising from the words of the statute. Further,”the circumstances would be remarkable indeed which would induce the court to believe that the legislature....not in express words, but merely by implication” empowered a person or body to levy charges or fees on the public.”

“5.3.....I do not think it can be said that the standard (statute) operates to confer on service nsw (ncat) a statutory power to levy a fee or charge on a customer (the public) so as to overcome the long established principle of the common law that a public body or authority may not levy or otherwise impose a charge or fee on members of the public unless there is a clear statutory power for it to do so.”

1364 Refer to Attachment 26

1365 Having regard for the enabling legislation in this case, the GIPA Act 2009, there is no statutory power for the Tribunal to entertain a costs application and most definitely no power for the Tribunal to grant an agency a costs wish.

1366 The Respondent's acknowledge the NCAT Act 2013 Section 60 gives the Tribunal powers to do so, but that is only in accordance with the enabling legislation, as stated in the NCAT Costs Guideline:"

"5. The Tribunal can order a person to pay someone else's costs, even if there are no special circumstances, if a particular law gives the Tribunal a choice or discretion about who pays costs. Those particular costs are:"

1367 Refer to Attachment 17

1368 The GIPA Act 2009 does not give the Tribunal a choice or discretion about who pays costs, apart from Section 108 Delayed Decisions which is exclusively claimable by an Access Applicant (*Section 108 (2) (a)*).

1369 On 31st October 2018 Ms Armstrong was appointed a Judge of the NSW Supreme Court and President of the NSW Civil & Administrative Tribunal.

1370 Given the timeline of her legal advice to Servcie NSW twice in 2016 and the taking up of her appointment as a NSW Judge, a space of two years, it is reasonable to expect Her Honour retained her knowledge of the application of the law in relation to non-legislated imposition of fees upon the NSW public.

1371 And yet there are numerous victims of the Tribunal and its sister-agencies where costs have been awarded without the jurisdiction to do so.

1372 Respondents' 1 and 2 are among those victims, repeatedly so at the hands of Applicant 2.

1373 These Respondents would say it is of no matter whether the amount awarded is \$1.00 or \$1,000,000.00, those costs are prohibited from any claim or award pursuant to the GIPA Act 2009 the public's beneficial legislation, the statute in question.

1374 Clearly there is much work for the Tribunal to do in order for it to be able to meet the needs of all its users, inclusive of the public of NSW.

1375 The Respondents seek the Tribunal's commentary on this issue of costs within its forthcoming decision, for the benefit of the Respondents and others endeavouring to understand their legislated rights in the context of the GIPA Act 2009.

1376 If however, there is any ambiguity in the legislation which causes the Tribunal any difficulty of interpretation in order to meet the orders sought, each is a question of law for the NSW Supreme Court.

1377 Likewise if there is any ambiguity in the legislation which causes the Tribunal any difficulty of interpretation in order to meet an application for costs, each is a question of law for the NSW Supreme Court.

1378 *Potential for Confidential Session in accordance with Section 49:*

(1) A hearing by the Tribunal is to be open to the public unless the Tribunal orders otherwise.

(2) The Tribunal may (of its own motion or on the application of a party) order that a hearing be conducted wholly or partly in private if it is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason.

1379 This section uses the word “public”.

1380 A party to proceedings is not a public person.

1381 A party to proceedings enjoys a unique position within the tribunal review process.

1382 First and foremost a party to proceedings is generally either an Applicant or

1383 Respondent.

1384 An Applicant in the sense that the individual has enlivened an application for review under GIPA.

1385 A Respondent in the sense that the agency has been advised of an application for review under GIPA naming them as the Respondent.

1386 However, the tribunal is repeatedly on the record ejecting the individual party to the proceedings, treating that individual as a member of the public when they are not.

1387 Regardless, a party to proceedings is able to participate in any confidential session afforded an agency-party under a confidentiality order.

- 1388 The Respondents object to the provision of a confidential session within these proceedings the result of providing exclusive confidential sessions to agency-parties has proven to be prejudicial and undermines the Tribunal processes, where unchallenged material put to the tribunal is not tested, but is given credibility by presiding members without any evidence of proof, particularly when those ejected are self-represented.
- 1389 This is moreso the case when there is no actual issue of public interests against disclosure of information such that would ordinarily be the case.
- 1390 Examples of such cases include, but are not limited to:
- *McEwan v Port Stephens Council (2017) NSWCATAD 269*
 - *Webb v Port Stephens Council (2017 NSWCATAD 271*
- 1391 These cases would eventually result in extreme trauma and criminalisation of the Applicants in those proceedings being Respondent 1 and 2 in these proceedings, where they were both left unquestioned about the confidential evidence put to the Tribunal, and where it would eventuate the Respondent Council in those proceedings being Applicant 2 in these proceedings was proven to provide false and misleading information to it for the purposes of influencing a Tribunal decision maker.
- 1392 Respondent 2 advises the Tribunal since reading his caselaw in March 2017, Respondent 2 has suffered ongoing suicide ideation which continues to be treated.
- 1393 It was due to the Tribunal’s neglect to test the so-called evidence in the presence of the falsely accused person that initially resulted in caselaw using terminology including “molestation of a person” and making reference to the Crimes, Domestic and Personal Violence Act 2007, all of which was totally inapplicable and unfounded.
- 1394 The Respondents in these proceedings having personally experienced the ramifications of a confidential session seeing a party ejected from proceedings, object to such in the strongest terms..

1395 The Respondents seek the Tribunal’s commentary on this issue within its forthcoming decision, for the benefit of the Respondents and others endeavouring to understand their legislated rights in the context of the GIPA Act 2009.

1396 If however, there is any ambiguity in the legislation which causes the Tribunal any difficulty of interpretation in order to meet the proper application of Section 49, each is a question of law for the NSW Supreme Court.

Closing:

1397 The Applicants are incapable of satisfying the Tribunal, by definition of the word satisfy, resulting in the application failing to meet the requirements of Section 110 (1).

1398 In fact the bulk of the Applicants submissions have no bearing on the Section 110 (1) threshold.

1399 The fact Mr Cahill stated at the Transcript of the hearing of 05th November 2024, Paragraph 101, “*We are within the bounds of 110.1,*” is the collective Applicants’ concession this is the foundation of the Application, and if this criteria is not met the Applicants completely fail.

1400 Refer to Attachment 13

1401 The substance of these proceedings is whether or not the Application for Orders sought will provide the relief claimed essential to the efficient functions and operations of Applicants’ 1, 2, and 3 in their performing statutory obligations under the GIPA Act 2009 to the greater NSW community as well as the Respondents in these proceedings.

1402 That relief is founded on the basis the Respondents in these proceedings have lodged a number of claimed unmeritorious applications which have taken up an unreasonable amount of agency time such that requires relief.

1403 Additionally, the Applicants intend to punish Respondent 2 and 3, because Respondent 1 chose not to utilise the Applicants’ nominated access to information forms.

- 1404 On 23rd December 2022 the IPC wrote to Respondent 1 advising “*the GIPA Act does not prescribe the use of a form for the purposes of Section 41 in satisfying the requirements for making a valid access application.*”
- 1405 On 13th February 2023 during NCAT proceedings, the Tribunal acknowledged and confirmed the IPC’s advice.
- 1406 Respondent 1 complied with the parameters of Section 41 of the Act by providing a name on various access applications.
- 1407 It now appears the Applicants are punishing Respondents 2 and 3 the result of Respondent 1 choosing not to utilise the Applicants’ nominated forms.
- 1408 The Applicants’ submissions refer to Respondent 2 a total of (82) eighty two times.
- 1409 The Applicants’ submissions refer to Respondent 3 a total of (59) fifty nine times.
- 1410 The Applicants’ submissions disclose Respondent 1 used the letterhead of DraftCom Pty Ltd t/as NSW Freedom of Information a total of (7) seven times regarding the claimed (8) eight unmeritorious access applications they hope supports a claim of relief.
- 1411 However, with the evidence provided by Applicant 1’s Mr Jonathan Franklin, this claim for relief cannot be sustained with any degree of integrity, particularly given Respondent 1’s success rate of 96.44%. A 3.56% failure rate when the Applicants provided historical behaviours and documentary evidence supporting the existence of the requested information cannot be the fault of Respondent 1 who acted in good faith.
- 1412 So what does that relief look like and how can the Applicants claim with any certainty a Section 110 Order in the terms sought “*would allow the Applicants to provide access to government information promptly and at the lowest reasonable cost, and with minimal impact on the respondents rights of access?*” (Applicants’ submissions at Paragraph 10).
- 1413 Firstly, the Orders as sought will not ensure the provision of requested information promptly.

- 1414 The recent case of *Zonneville v Dept Communities & Justice (2024) NSWCATAD 357* is evidence four-years in the NCAT arena for one single Access Application is no example of a Section 110 Order resulting in the prompt provision of information. Applicant 1 is party to those proceedings.
- 1415 Secondly, the Orders as sought will not ensure requested information is provided at the lowest reasonable cost.
- 1416 The Tribunal does not charge the prescribed GIPA Application Fee of \$30.00 in accordance with the GIPA Act 2009 Section 41 (1) (c).
- 1417 Indeed, the Tribunal is on the record imposing fees of \$124.00, qualifying that as a General Application under the NCAT Act 2013.
- 1418 ***Refer to Attachment 29***
- 1419 So immediately the Respondents are at a financial disadvantage with an Access Application fee 313.33% higher than prescribed under the enabling legislation the GIPA Act 2009.
- 1420 Secondly, should that Access Application be on the preferred, now controversial, letterhead of DraftCom Pty Ltd t/as NSW Freedom of Information, should either Respondents 1 or 2 then expect to be charged the Tribunal's corporation fee of \$258.00, as an Access Application under the GIPA Act 2009?
- 1421 This fee of \$258.00 is 760% greater than the prescribed fee of \$30.00 under the enabling legislation the GIPA Act 2009.
- 1422 Thirdly, the Applicants' intention is to ensure any endeavours by any of the Respondents should be made as difficult, procrastinated, and costly as possible, and in that regard the Respondents expect those intentions to consist of a GIPA Application Tribunal fee of \$382.00, being both the individual and corporation fee.
- 1423 This fee of \$382.00 is 1,173.33% greater than the prescribed fee of \$30.00 under the enabling legislation the GIPA Act 2009.

Administrative and Equal Opportunity Division and Occupational Division

Matter type	Standard fee	Corporation fee	Reduced fee
Administrative review application	\$124	\$248	\$31

1424 Of course, these costs need to make mention of the ongoing Tribunal fees, which is likely to see an Application for Appeal costing the staggering sum of \$1,518 for asking for information on letterhead of Respondent 3.

Other application fees

Matter type	Standard fee	Corporation fee	Reduced fee
Internal Appeal	\$506	\$1,012	\$127
Set aside application	\$125	\$250	\$31
Reinstatement application	Same as original application	Same as original application	Same as original application

1425 This newly anticipated fee structure, should the Applicants be successful in their collaborative Application for the orders sought, would change the GIPA Act 2009 from beneficial to penal legislation, which was not the Parliament's intention.

1426 Additionally there is no indication whatsoever, and no assurances of certainty can be made having regard to the case of *Zonneville v Dept of Communities & Justice (2024) NSWCATAD 357*, that any access application under the GIPA Act 2009 should expect any matter under a Section 110 Order will be treated any differently given the involvement of Applicant 1 in these proceedings the Respondent in those proceedings.

1427 The Applicants are unable to deny their claim at their Submissions, Paragraph 10, have no credibility whatsoever.

1428 The case of *Zonneville* cannot qualify as giving the Agency the relief intended; in fact the total opposite is true, the costs and time utilised in this single GIPA Access Application setting a new record for Ms Cobbin's OGIPU.

- 1429 The Tribunal is mandated to ensure judicial equity between the parties, particularly when one of those parties is un-represented.
- 1430 The Tribunal is constrained by the enabling legislation giving it jurisdiction.
- 1431 The Tribunal does not have executive powers; it has no powers to create, add to or amend legislation.
- 1432 The Tribunal only has powers to administer the enabling legislation under its jurisdiction.
- 1433 In this regard it can only consider that part of Section 110 which enlivens the application and gives the Tribunal jurisdictional powers.
- 1434 Mr Cahill has misled the Tribunal at first instance by stating at the transcript Pagaraph 101 “.....with respect of Acting in Concert, we’ve set a specific order of corporation and in doing so, um, we are within the bounds of Section 110, 1.”
- 1435 This is a false claim made in the face of the Tribunal constituting contempt under the NCAT Act 2013 Section 73.
- 1436 If however, there is any ambiguity in the legislation which causes the Tribunal any difficulty of interpretation of Section 73, each is a question of law for the NSW Supreme Court, particularly as the Applicants’ representative stated on 05th November 2024 at **Attachment 13** Paragraph 107, “...there are a lot of grey areas in Section 110 which require a clear statement of the law.....And I note Ms Webb has drawn attention to similar issues four or five times in her written submissions in suggesting that the matter is more properly before the Supreme Court. It’s not a state, not an issue which there is currently a clear statement of the law.”
- 1437 Applicant 2 has effectively been disqualified as a valid party to these proceedings.
- 1438 Likewise with Applicant 3, also equally disqualified as a valid party to these proceedings.
- 1439 These proceedings do not concern company records.
- 1440 These proceedings do not concern media publications discussing the manner in which NSW government employees respond to valid access applications.

- 1441 There is no mechanism within the GIPA Act 2009, particularly Section 110 (1), which validates the trolling for information to be used to support a Section 110 Application, nor against members of the public endeavouring to exercise their legally enforceable rights to access NSW government information, but which is evidenced to occur in these proceedings.
- 1442 These proceedings are not capable of silencing in particular Respondent 1, preventing Respondent 1 from continuing to provide the free community service NSW Freedom of Information.
- 1443 Neither can these proceedings halt the ongoing criminological work undertaken by Respondent 1, relying on the Object of the Act which is to ensure open, transparent and accountable government.
- 1444 And most certainly these proceedings cannot be used for a collateral purpose including stifling the public's rights and access to the Parliament's free gift of beneficial enabling legislation.
- 1445 It is clear by now NSW government agencies, by their collective denial to the public of membership to the NIPPN cartel and reluctance to consult with the primary stakeholder of NSW government information being the public, that Respondent 1's only mechanism to access government information is the GIPA Act 2009.
- 1446 These proceedings have evidenced parallel patterns of behaviour by each of the Applicants but most particular by the OGIPU, its Director Ms Cobbin, and its departmental staff. Those behaviours include acting in troll-like manner, using unlimited public resources to '*dig up dirt*' on unrepresented parties for the purpose of influencing judicial decision-makers; with these proceedings documented to incur a staggering amount of \$295,592.88 to the date of serving the Applicants' first-round submissions of 17th December 2024.
- 1447 This evidences the Applicants' willingness to secure these Section 110 Orders AT ANY COST (*capitals used at great risk of inciting retaliatory action by Ms Cobbin as is her established pattern of behaviour*), when consideration is had for the fact the substantive hearing is yet to occur, the 3 witnesses accommodation, meals, and travel are yet to be paid, and the final costs for legal representation and administrative support are yet to be added.

- 1448 This pattern of behaviour to access and waste the public purse for personal agenda extends to behaviours documented within the NIPPN cartel collective strategies to formulate group or cluster responses in order to control the flow of information to the public which is outside of the Act, actions recorded in agency documentation and NIPPN minutes of meetings.
- 1449 Again, in previous submissions originating from Applicant 1's witnesses including Jonathan Franklin and Sue Chew, Applicant 1 protested at the time taken for Administrative Reviews and Appeals in the context of the GIPA Act 2009, stating Applicant 1 had a backlog of access applications at times numbering in the hundreds, and that such review proceedings, and indeed original access applications, continually took precious resources from other valid access applicants compounding the claimed backlog.
- 1450 This claim of a backlog has now been completely discredited.
- 1451 Indeed, on 13th December 2024 in separate proceedings with Applicant 1, Applicant 1's representative Jonathan Franklin verbally and physically displayed his annoyance those particular proceedings were being heard by the Tribunal and that he / Applicant 1 had been put to the trouble of compiling evidence and submissions.
- 1452 This does not align with Applicant 1's actions and intentions for these current proceedings which have seen greater workloads and use of Applicant 1's public resources, a situation that would be exponentially compounded should the Application for Orders as sought in these proceedings be granted; resulting in the Respondent(s) regular, inevitable engaging with the Tribunal.
- 1453 There can be no disputing the granting of the Application as sought will see a greater workload directed towards Tribunal resources.
- 1454 These Applicants, but most particularly Applicant 1's Ms Jodie Cobbin has disclosed a pre-wiring to directing matters to court processes, likely the result of her past position as Police Prosecutor.

- 1455 Yet these proceedings have ironically seen no hesitation on the part of Applicant 1 to allocate those precious resources when desired, paid for by public monies, for the purpose of proceedings such as these without any evidence to support the foundational documents the unmeritorious applications were so and that the Respondents had actually concorted to gain access to NSW government information.
- 1456 There is no indication whatsoever the Orders sought will provide the relief claimed necessary for the OGIPU to properly use its existing resources; that would likely require a new Director.
- 1457 In fact, if we refer to the OGIPU's submission of 25th July 2019 where its hope is Parliament will enforce Section 110 constraints on every administrative review, the OGIPU has already pre-approved the use of additional resources and an unlimited budget as it continues to see in-house solicitors or the Crown Solicitor at the Tribunal bar table and no GIPA officer in sight concerning access applications.
- 1458 Of further crucial note is the fact that each of Applicant 1's claimed unmeritorious access applications all implicate the Director / Business Unit Manager OGIPU Ms Jodie Cobbin, specifically:
- a. The case management files associated with the IPC's GIPA Tool are the responsibility of Ms Jodie Cobbin
 - b. The unexplained access and use of Respondent 1's personal information held by a secondary agency, was referred to in evidenciary documentation pertaining to Ms Jodie Cobbin
 - c. The TRIM file concerning the public presentation to the NIPPN cartel of March 2019 titled "*Tale of a Fixated Applicant*" pertained to Ms Jodie Cobbin.
 - d. The TRIM file concerning the solicitation of the NIPPN cartel of June 2019 for the public's personal information pertained to Ms Jodie Cobbin.

- e. In this regard, the return Notice of Decision for each access application determined “*information not held*” is disqualified as Ms Jodie Cobbin has personally stated under oath the OneTRIM software program has no capabilities to search document content; unless a document is titled to align with the scope of an access application the system will not find it because it is not searching on content.

- 1459 This public revelation by Applicant 1’s Director / Business Unit Manager Ms Jodie Cobbin makes clear that documentation can actually be hidden in plain sight by placing documents into a container or folder under the use of a pseudonym file name.
- 1460 Such actions are not fantastical when we consider the OGIPU’s regular use of pseudonyms in official documentation and its abhorrence to disclose departmental records.
- 1461 And Applicant 1’s witness Mr Jonathan Franklin has disclosed in his Sworn Affidavit the OGIPU, a department claiming lack of resources and funding and a continual backlog of work, the department has somehow managed to access close to \$300,000.00 to launch perhaps the biggest case against unrepresented members of the public in the history of the NSW Civil & Administrative Tribunal.
- 1462 There can be no doubt whatsoever this extraordinary expenditure is for the purpose of protecting and concealing Jodie Cobbin’s unconscionable actions in the exercise of her statutory duties, actions she did not hide from the NIPPN cartel.
- 1463 Additionally, the approval to use pseudonyms in GIPA documentation and determinations originated from Ms Cobbin. The resulting documents were fraudulent by default of her approvals, making them false and misleading. Any Notice of Decision issued under pseudonym disqualified it is a valid agency decision, as it was in breach of the GIPA Act 2009 Section 126. It may also be that each and every person under the instruction of Ms Cobbin is implicated in multiple acts of fraud under the Crimes Act 1900.

1464 The fact Ms Cobbin is an ex-NSW Police Officer and has held the position of Police Prosecutor she is expected to be fully informed about the Crimes Act 1900, Section 253:

“253 Forgery – making false document

A person who makes a false document with the intention that the person or another will use it-

(a) To induce some person to accept it as genuine, and

(b) because of its being accepted as genuine-

(ii) To obtain any property belonging to another, or

*(iii) To obtain any financial advantage or cause any financial disadvantage,
or*

(iv) To influence the exercise of a public duty,

Is guilty of the offence of forgery.”

1465 Likewise, Applicant 2 has failed to provide any evidence to support the foundational documents the claimed unmeritorious applications were so, and no evidence of an unreasonable use of resources such as qualifying for the relief sought.

1466 Further Applicant 2 is disqualified as a valid applicant in these proceedings as it does not meet the criteria set out in Section 110 (1).

1467 Yet Applicant 2 was well-able to act in a troll-like manner to secure numerous extraneous information which was not relevant to the consideration of the substantive issues of the application.

1468 Applicant 2 was rightfully petitioned via valid access application for records of information pertaining to the public’s personal information.

1469 Applicant 2 was further rightfully petitioned via valid access application for clarity of the degree of legal expenditure it incurred through the administrative review process with the IPC.

- 1470 The exact same can be said of Applicant 3, failing also to provide any evidence to support the foundational documents the claimed unmeritorious applications were so, and no evidence of an unreasonable use of resources qualifying for the relief sought.
- 1471 Further Applicant 3 is disqualified as a valid applicant in these proceedings as it does not meet the criteria set out in Section 110 (1).
- 1472 Applicant 3 was rightfully petitioned via valid access application for the documentary evidence it had the meeting claimed, a meeting relied upon for the purposes of securing a Section 110 Order against Mr Powell.
- 1473 Applicant 3 was also rightfully petitioned via valid access application for clarity of the degree of legal expenditure it incurred through the administrative review process with the IPC.
- 1474 Yet Applicant 3 was well-able to act in a troll-like manner to secure numerous extraneous information which was not relevant to the consideration of the substantive issues of the application.
- 1475 Of all the boxes of evidence obtained through acting in troll-like manner and outside of the legislation for the purposes of ‘*digging up dirt*’ about the Respondents, the Applicants completely failed to secure any evidence the claimed unmeritorious applications were so: no simple print out of search returns; instead they put all their collective energy into superfluous records which have no relevance whatsoever to the application, hoping the Tribunal will be influenced by extraneous irrelevant factors and approve the application.
- 1476 Respondent 2 is disqualified as a respondent in these proceedings as:
- a. Respondent 2 has not made any claimed unmeritorious applications such that require relief.
- 1477 Respondent 3 is disqualified as a respondent in these proceedings as:
- a. Respondent 3 has not made any claimed unmeritorious applications such that require relief.
 - b. Respondent 3 has not at any time made any access applications in its own right.

- 1478 Since the inception of the NSW Civil & Tribunal Act 2013, and having regard for the GIPA Act 2009, there has not been a single instance where the Tribunal has been able to form an opinion that agency conduct in the exercise of the GIPA 2009 should be referred to the IPC; despite hundreds of petitions and reliance on Sections 111, 112, 116, 117, 118, 119, and 120.
- 1479 These Respondents say to the Tribunal with all due respect, at the bare minimum this case demands referral to the IPC under Section 111 Referral of systemic issues to the Information Commissioner.
- 1480 The Tribunal is no longer able to turn a blind eye to agency unconscionable conduct inclusive of state-wide colluding, state-wide acting in concert, acting to pervert the course of justice, and blatant maladministration of the public purse and resources in the exercise of statutory functions concerning the GIPA Act 2009.
- 1481 In fact, this case demands referral to the Parliament and ICAC for the numerous incidents of corruption in addition to the deliberate corrupting of the GIPA Act 2009.
- 1482 If however, there is any ambiguity in the legislation which causes the Tribunal any difficulty of interpretation of any section of the relevant legislation, each is a question of law for the NSW Supreme Court.

Signed on behalf of the Respondents

Date: 31st January 2025