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Thursday 26th June 2025

Pages Total: (101) One Hundred & One

Dear Minister Dib, Minister Daley, Members of the Law & Justice Parliamentary Committee, Members of the Legislation Review Committee, and interested third parties

RE: Submission for Urgent Request for Parliamentary Inquiry into the maladministration, systemic abuse, failures and corruption of the Government Information (Public Access) Act 2009, GIPA

- **Submission for drafting of new legislation:**
 - **Regulation of GIPA Training – Government Employees**
 - **Regulation of GIPA Training – Public Access**
 - **Regulation of GIPA Officers**

This document is further to my earlier Request for Urgent Parliamentary Inquiry into the NCAT and NCAT Act 2013, dated 08th August 2024.

As such, a portion of the information herein may replicate and / or reiterate commentary within that earlier document, as necessary for the Ministers and Parliamentary Members to fully grasp the seriousness and urgency of the public's current situation concerning the Government Information (Public Access) Act 2009, GIPA Act.

I again disclose I am a registered lobbyist. I am also a qualified criminologist.



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May I firstly refer you to the *Constitution Act 1902 No. 32, Part 2, Section 5 – General Legislative Powers:*

The Legislature shall, subject to the provisions of the Commonwealth of Australia Constitution Act, have power to make laws for the peace, welfare, and good government of New South Wales in all cases whatsoever – Provided that all Bills for appropriating any part of the public revenue, or for imposing any new rate, tax or impost, shall originate in the Legislative Assembly.

In particular I draw your attention to the opening sentence of that Section 5, asking that you keep it in mind whilst considering this submission:

“.....for the peace, welfare, and good government of New South Wales in all cases whatsoever”.

I respectfully rely on the Constitution Act 1902 in this instance as it has complete relevance to the issues and petitioning I bring before you today.

I am writing to both Administrative Ministers and both Parliamentary Committees for the purpose of seeking an urgent Parliamentary Inquiry into the current maladministration and systemic abuse of the Government Information (Public Access) Act 2009 (GIPA).

I also provide this document to interested parties on behalf of my husband Paul McEwan and myself, and on behalf of the public of NSW, concerning the current maladministration and systemic abuse of the Government Information (Public Access) Act 2009 (GIPA), which is supported by a documented history of current behaviours and attitudes exhibited by the state's delegated Right to Information and Privacy Officers.

The joint failures of the legislation and its ability to be abused, have resulted in the deep hurt and trauma of your trusting public.

The NSW Parliament gifted this piece of legislation to the public as beneficial legislation. It was not gifted to the government.



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For the purpose of this request for urgent parliamentary inquiry into the GIPA Act 2009, I rely on Section 3 Object of Act:

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.*

Evidence provided to me personally under GIPA itself, documents the decades-long trampling of the Object of the GIPA Act by government employees.

This kind of conduct can only be categorised as abuse and misuse of the legislation for collateral purposes.

Regrettably, such abuse and misuse is only able to be actioned by willing government employees who have no conscience when it comes to how they behave in response to valid access applications.



In this regard, the failures of the legislation are entirely dependent upon willing government-employed actors.

In its current form this piece of legislation, intended to be implemented to modernise the previous antiquated freedom of information and administrative legislation, does not enable and enforce the public's rights to access NSW government information, and as such is failing miserably resulting in deep hurt and trauma to many of the public who are not legally trained, not legally qualified, and not legally represented.

In its current form this piece of legislation, also intended to bring public servant employees to account for wrongdoing in the exercise of mandatory functions, enables misconduct and unlawful conduct, with the judiciary unwilling to make discretionary reports or even remotely criticise such conduct when evidenced to occur.

These problems are compounded by the absence of regulated training and regulation of the State's Right to Information and Privacy Officers. I say both categories of officer as many individuals occupy both roles in parallel.

Evidence and public outcry are testimony to the damage the legislation causes, particularly when it is flanked by secondary legislation in support of such damage.

Such damage is sometimes irreparable and mostly impacts members of the public who are not legally represented or legally trained, where agency personnel readily tap into unbridled access to large legal teams and unlimited public funding resources, and resultantly in most cases leaving agency personnel completely free from accountability for their flawed, defective and often unlawful government administrative decisions and pursuits.



At first instance, and with all the propaganda emanating from NSW government agencies including the Office of the NSW Information & Privacy Commissioner (IPC), the access to information process appears to be straightforward, legal rights are promoted to be enforceable, and the process is promoted to be fully navigable by those without legal practitioner assistance including within the nominated judiciary for review the NSW Civil & Administrative Tribunal (NCAT).

However, feedback and commentary from numerous members of the public trying to exercise their rights under GIPA in particular, of their own accord, is evidence none of this is actually true.

The process is unnecessarily protracted and obstructed by ever-willing agency personnel who give the impression the public is somehow seeking access to something out of the ordinary and secretive. Clearly the government's attitude to its statutory obligations to open agency files is one of anger and resentment.

It is as though agency personnel see the public asking for something personal, something agency personnel individually own as opposed to the State and the people the State serves.

Many, many administrative reviews are completely avoidable and costs imposed on the public are often unwarranted and in contradiction to the very wording of the legislation, policy and procedure. Yes, those self-representing who do not have access to legal services do find themselves, having lost their David and Goliath battle, paying huge agency legal costs which are not legislated. It is as though the public is being systematically and consistently dissuaded from exercising its fundamental legal rights, often resulting in financial punishment for endeavouring to do so.

Taking an administrative review through the NCAT is for some the most traumatic experience they will suffer, with reputations of good character irreparably damaged and huge unlawful costs awarded to agencies as they punish the public for seeking access to information and trying to avail themselves of legislated review rights.



The latter of course in contradiction to published information originating from NCAT stating each party bears its own costs, with invitations to self-represent giving the completely false impression both ends of the bar table will be equally balanced.

Complaining through established mechanisms with the IPC, NCAT and agencies directly are mostly deflected and discarded, with a concerned public being labelled as harassing, vexatious, querulous and fixated by agency personnel who are trained in a collective methodology of responses which shockingly originate from the NSW Ombudsman's Office (report commissioned in 2006).

There is also documentary evidence of NSW government agencies working collectively in a cartel posse-like manner, breaching the public's privacy, unlawfully seeking out and sharing personal information and the public's records, with educational strategies on just how to deal with what is now commonly referred to as Fixated (GIPA) Applicants.

What is likely most shocking about that regular breach of privacy and ignoring statutory provisions for accessing the public's personal information in particular, is the fact the identified cartel of Right to Information and Privacy Officers includes individuals from private enterprise.

In this regard the Ministers and Members are directed to the Hansard Report of 17th September 1998, recording the second reading by the Honourable J W Shaw (Attorney General, Minister for Industrial Relations, and Minister for Fair Trading) [4:46pm], for the Personal Privacy and Information Protection Act 1998, at Page 7598 stating the object of the introduced Bill is *QUOTE* "to promote the protection of the privacy of individuals; to specify information protection principles that relate to the collection, use and disclosure of personal information held by public sector agencies; to require public sector agencies to comply with these principles; to provide for the making of privacy codes of practice for the purpose of protecting the privacy of individuals; to provide the making of complaints about privacy-related matters, and for review of conduct that involves the contravention of the information protection principles or privacy codes of practices;



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and to establish an office of Privacy Commissioner and to confer on the Privacy Commissioner functions relating to privacy and the protection of personal information.The purpose of the legislation is notto protect the Government from accountability for its actions.....” UNQUOTE.

And further from Page 7600 QUOTE “In New South Wales the need to provide for safeguards in relation to the release of personal information held by government agencies was highlighted in particular by ICAC’s 1992 report entitled “Report into the Unauthorised Release of Government Information.” That inquiry revealed a massive illicit trade in information involving government departments, the police, lawyers, financial institutions and private investigators. As well as drawing attention to the corrupt conduct involved in this trade, the ICAC report was very critical of the lack of any co-ordinated and consistent government policy dealing with the storage and release of information” UNQUOTE.

And further at Page 7600 QUOTE “This bill is directed to the State public sector. It will constrain public sector agencies in the use of data, and it will provide enforceable rights for citizens to obtain compensation where those rights are breached, by approaching the Administrative Decisions Tribunal and seeking enforcement of those rights. This bill will achieve an effective and reasonable balance in the circumstances. This is a positive step forward in the development of privacy rights of the citizens of New South Wales. I commend the bill to the House,” UNQUOTE.

Now over (30) thirty years after the ICAC report and that wonderful speech, the business of horse-trading the public’s information is still thriving with no end in sight, with the current state-wide operation of the GIPA Act 2009 testimony to the retention of old bad habits of superiority and arrogance.

As such, this petition seeks your urgent and warranted assistance to remedy the current access to information climate. That climate incorporates the subject legislation.

You are the Ministers responsible for this Act, and you are Members of the relevant committees, and it is up to you do what the public expects.



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As at May 2025 my personal request to Her Honour Lea Armstrong President of the NCAT for membership within NCAT's Administrative & Equal Opportunity Divisional Consultative Group has been refused which confirms Her Honour has no interest in the public's participation in determining aspects of NCAT business. And yet the NCAT Act 2013 Section 3, c, mandates the Tribunal "*to ensure that the Tribunal is accessible and responsive to the needs of all of its users,...*". Clearly the public is the primary user of, and major stakeholder in, the Tribunal.

The Tribunal's refusing to make provision for inclusion to the public in the context of consultation is replicated by the Office of the Information & Privacy Commissioner (IPC) which actually blocks public debate and commentary on social media platforms as it prefers the methodology of silencing the public altogether, effectively suggesting it '*talk to the hand*'.

As such, it is clear there is nowhere else to go as the public has no separate mechanism whatsoever to address matters concerning the operation of its beneficial legislation.

It is for these reasons and the supporting information below, the public seeks an urgent parliamentary inquiry into the Government Information (Public Access) Act 2009, and seeks your support to create new complimentary beneficial legislation to address the regulation and training of delegated officers.

Like the NCAT and its reporting on the operation of the NCAT Act 2013, the reports from the IPC on how the GIPA Act operates and whether or not it is meeting its objectives does not provide the full and proper picture; it is an agency perspective without any public commentary whatsoever which makes it purposely biased.

Additionally, such reports are written on Dept of Communities & Justice letterhead, which sees a biased collective viewpoint based on specifically selected submissions some of which are granted anonymity.



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This in itself requires addressing as the legislative review process is also expected to be open and fully transparent in order to ensure those processes have not been corrupted in any way.

It was the Labour Party who brought the GIPA Act into existence. The public has endured over a decade of manipulation and abuse of it, it now expects the Labour government to step in and make the overdue changes to ensure such actions cease.

As the whole of Australia has witnessed during the fairly recent and ongoing health and safety crisis / pandemic, creating and implementing necessary legislation for the benefit of government and the whole community is not difficult, nor does it take excessive amounts of time for those trained, qualified, resourced, and nominated to do so.

The whole nation has recently witnessed the speed with which the law makers can create entirely new legislation, almost seemingly overnight in some cases, enforcing it with equal speed and diligence, sending the clear message to every member of the public that the law must be treated seriously and with respect, for the good of the entire community, and that no person is immune from or above the law.

The GIPA Act should be no different.

The operation of the GIPA Act 2009 must be seen as a community tool to access government information, as was the Parliament's intention, and not as a weapon for an agency to misuse and abuse at great financial costs and personal damage to that same community, in efforts to obstruct legitimate access to government information.

The GIPA Act 2009 was the NSW Parliament's free gift to the people of NSW.



As such I implore the Ministers and Members to initiate an urgent Parliamentary Inquiry into this most critical piece of legislation, the GIPA Act, to ensure current agency actions cease and the public's rights are reinstated, as we work together to make the greatest efforts to stop the people of NSW from being hurt and damaged by this legislation.

In its present state the GIPA Act 2009 is able to be easily manipulated by agencies resulting in the public suffering serious damage and penalty through no fault of their own, punishing members of the public for asking for NSW government information. This was not the Parliament's intention for the public's freely-gifted legislation.

In its present state, and with the records now showing how easily an agency can misuse, abuse and manipulate this fundamental piece of legislation to take advantage of the unsuspecting public and secure an agency's pre-determined agenda, the public cannot be expected to have any confidence in it, and most definitely the public cannot be expected to have any confidence in the current chain of agency accountability as a result.

At this point in time, from every perspective, it is regrettable to be able to produce substantial documentary evidence the GIPA Act completely fails the public but fully serves government agencies, which was not at any time the Parliament's intention.

It is also regrettable to see that agency accountability is non-existent, with current complaint and reporting processes unnecessarily complicated, unclear and hidden from scrutiny, and where investigative bodies do nothing to deter misconduct if not unlawful conduct.

Investigative bodies however do not hesitate to brand members of the public with damaging labels readable through caselaw, particularly if they regularly seek access to government information. Such branding is likened to a public flogging, where the community is able to witness the punishment of those determined to be deserving of it, with published caselaw that indeed brings the intended shame to unrepresented parties to proceedings.

Unlike the public floggings of old however which may be forgotten over time, scathing caselaw that attacks good personal character is in the public eye perpetually and is readily regurgitated by agency personnel over and over again to reiterate to judicial decision-makers the need to maintain government control by creating an access-to-information moral panic.

The public's reality is the current legislation actually enables an agency to turn on the public with an action of forceable restraint and other sanctions which must be viewed as archaic and barbaric at minimum, but easily qualifying as autocratic and dictatorial on the same spectrum.

The agency accountability mechanisms are completely lacking in transparency of process and appear to be only accessible to the judiciary and Agency personnel. It is on the hope that the judiciary actually takes the time and interest to identify systemic issues and report them in the proper fashion that the public relies. To date there is no evidence any judiciary has either identified systemic issues or reported them, in relation to NSW government agency exercise of the GIPA Act in particular.

Systemic issues can be defined as problems due to issues inherent in the overall system, rather than due to a specific, individual, isolated factor. Crimes are referred to as systemic issues within the community.

Again, this leaves problems with the legislation for the public to navigate through, identify, and then attempt to formulate a report that speaks the same language as the legislators in order to affect desperately needed changes to legislation and those who administer it.

This total imbalance requires urgent, accurate and relevant attention and rectification, and it is envisaged this submission will speak the same language as both Ministers, Members and interested third parties for the purpose.

On 27th September 2021 at the introduction of the NSW Information & Privacy Commissioners' Right to Know Week, the following statements were recorded:

- Commissioner Tydd stated "*Citizens have the right to access government information.*"
- Chief Commissioner Hall of the ICAC stated at the same event "*Information is key to the investigation and prevention of corruption.*"
- Former NSW Attorney-General Speakman stated "*The public can use information to drive improvement.*"

Indeed, former Attorney General George Brandis stated (2015) "*In a democracy, it is not character assassination to call a public official to account, nor to subject their performance to scrutiny.*"

And yet a Principal Member of the NCAT and a Sydney Barrister are on the record (2020) jointly agreeing that accessing and using government information for research and / or the making of complaints about and / or reporting agency misconduct is an abuse of process.

Clearly Mr Brandis would disagree with this attitude towards government accountability and the complete lack of interest and open avoidance of the NCAT to address misconduct brought to its attention during the access to information process.

Whilst the statements of those qualified to do so during Right to Know Week September 2021 present as extremely encouraging and give a great impression of how the access to information process and legislation work, the truth of what actually occurs could not be more different.

Things need to change and the public cannot be expected to wait for such change indefinitely or for that to occur organically.



The Ministers and Members are asked to initiate an urgent Parliamentary Inquiry into the GIPA Act 2009. That inquiry is expected to include the public, ensuring the public has access to it and is able to make submissions and give verbal or written sworn evidence for the Inquiry's consideration.

On 23rd September 2024 the office of the newly appointed NSW Information Commissioner Ms Rachel McCallum issued a media release concerning Right to Know Week 2024, which made reference to public participation, mainstreaming access to information, adding a claim the GIPA Act in NSW is a world-leading example of how to mainstream transparency in the public sector.

The public's recollections of GIPA experiences could not be further removed from this claim.

Unless the Parliament actually hears from, and sees the faces of, those victims of the legislation, it cannot be expected to fully comprehend the current crisis. And it is a crisis!

Statistical reporting from the IPC does very little to disclose what is occurring, likewise with the NCAT.

Below, this submission sets out the following sections to assist the Ministers and Members towards initiating an urgent parliamentary inquiry, and for your serious consideration for amendment, and the drafting of new legislation that is expected to work in parallel to the GIPA Act 2009:

- Introduction
- Background of Lobbyist
- The Honourable Nathan Rees
- What is beneficial legislation?
- What is enabling legislation?
- GIPA Act 2009 Section 3 Object of Act
- GIPA Act 2009 Report to Parliament 2017
 - Conduct of Review
- Unlawful awarding of costs
- The public's expectations:
 - The Rule of Law
 - Ethics, Integrity and honesty
 - Comprehension of Statutory Regimes
 - Acting in the Public Interest
 - Acting with Bias
 - Unconscionable Conduct – Ratification
- The Office of the NSW Information & Privacy Commissioner
- Operation of a NSW Governmental Cartel - The NSW Right to Information & Privacy Practitioners Network
- Crime Analogy and Prevention Perspective
- Academic Comment:
 - White Collar Crime as Organisational Deviance
 - Executive Staff Rotation as an Anti-Corruption Policy
- Moving forward – Drafting New and Additional Legislation



Introduction

I respectfully point out to the Ministers and Members I am not a lawyer, nor am I legally trained. I am however a qualified criminologist with a strong interest in white collar crime and identifying patterns of offending behaviours. Prior to this current work I maintained a background in executive administration.

However, I have extensively perused the submissions for review of the GIPA Act 2009 in 2014, and I note that the majority of those submissions are relatively informal, are not supported by academic research, nor caselaw.

I ask that the Ministers and Members accept my submission Request an Urgent Parliamentary Inquiry, Amend the Legislation, and create complimentary supporting legislation, on the same face value.

This request for an urgent Parliamentary Inquiry, amendment to the legislation, and drafting of new legislation, does not seek any administrative review of any decision.

This request for an urgent Parliamentary Inquiry, amendment to the legislation, and drafting of new legislation, does not seek any investigation into any matter of occurrence with any NSW agency, albeit the Ministers and Members may refer such occurrences for investigation at their discretion.

Any reference to any past request for NSW government-held information, administrative review, or action taken by any agency staff member in the exercise of duties concerning the GIPA Act 2009 and inclusive of other supporting legislation, is made for the convenience of the Ministers and Members and for their respective information in consideration of this request for Parliamentary Inquiry, amendment to the legislation, and drafting of legislation.

Any document referred to herein is able to be provided to the Ministers and the Law and Justice committee for that Parliamentary Inquiry on request and has not been attached today strictly due to the volume of such documents.



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Likewise, this submission for amendment of the GIPA Act 2009 does not seek any investigation into any matter of occurrence with any NSW agency, albeit the Ministers and Members may refer such occurrences for investigation at their discretion.

Additionally and further, this submission for the drafting of legislation to regulate all NSW GIPA Trainers and those trained delegated Right to Information Officers, does not seek any investigation into any matter of occurrence with any NSW agency, albeit the Ministers and Members may refer such occurrences for investigation at their discretion.

I rely on the *Charter for Public Participation – a guide to assist agencies and promote citizen engagement*, dated June 2018 from the Office of the NSW Information & Privacy Commission.

I also rely on the Dept of Communities & Justice letter dated 24th February 2021, Ref IM21 / 805 – EAP21 / 371, which makes clear that a member of the public can write to Ministers with requests concerning legislation at any time.

I also rely on the NCAT Decision of ***Port Stephens Council v Webb 92021) NSWCATAD 180***, Paragraph 60:

“.....The respondent is entitled to make such complaints and to commence such proceedings provided she acts within the laws and rules applicable to such complaints and proceedings.”

I also rely on the published information on the NSW Parliament’s website which makes clear the public can approach the Parliament, and that it is the Parliament’s responsibility to represent and serve the public.

In this regard, I believe I am acting within the laws and rules applicable to the subject matter which seeks an urgent Parliamentary Inquiry into the GIPA Act 2009, amendment to legislation, and drafting of new legislation. I am not aware of any other process for doing so.

If a reference to any charter or document is inappropriate or inapplicable I ask the Ministers and Members for their mutual understanding as I am not legally qualified nor legally trained, with the Ministers and Members drawing such to my immediate attention and affording me the opportunity to expand upon, explain, or amend anything of that nature.

Background

I have extensive personal experience with the GIPA Act 2009 and as such this request for an urgent Parliamentary Inquiry is based predominantly on first-hand experience, experiences which have exposed numerous failings within the legislation.

Further to those personal experiences I've had the opportunity to participate in numerous conversations with past and current GIPA Applicants. It is clear from those conversations a common denominator between GIPA Applicants, moreso those enduring the administrative review process, is symptoms of Post Traumatic Stress Disorder (PTSD).

The Mayo Clinic describes PTSD as a mental health condition caused by an extremely stressful or terrifying event – either being part of it or witnessing it. Symptoms may include flashbacks, nightmares, severe anxiety and uncontrollable thoughts about the event. Those suffering PTSD have difficulties adjusting and coping.

The failings of the legislation have deeply hurt and damaged members of the public and are continuing to hurt and damage members of the public, people from all walks of life who approach their government agencies, mostly in the request for information process, honestly and openly, and who find that the legislation appears to be formulated for the benefit of government and not the people the government serves.

Both my husband and I, and numerous members of the public, have been extremely, irreparably, and repeatedly hurt and damaged by the GIPA Act 2009, including during the judicial review processes.



I can personally attest to my husband's ongoing PTSD the result of ongoing actions by one particular NSW government agency, commencing with the fabricated claim he presented a serious risk to public safety. That fabricated claim has since been immortalised in caselaw with my husband identified as the person posing that risk, regardless of the fact his name was eventually and rightfully cleared after (4) four long years within NCAT to do so.

Since commencing my own access to information journey, I have discovered a plethora of organisations comprising varying groups of government personnel, who all work together for the good of government in relation to the management and processing of government information.

These groups also have ready access to training and information seminars, have access to high profile industry advisers, and have direct access to the IPC, Justice NSW, the NSW Ombudsman, the NSW Crown Solicitor, and NCAT, as well as tier-1 law firms.

All of this is publicly funded.

To this date there has been nothing of this nature, no group, no organisation, no direct access to any NSW Commissioner or government department offering training and information seminars, set up for the benefit and assistance of the public in the context of GIPA.

That is until NSW Freedom of Information was formed in October 2021.

As you may well-know by the time you receive this request for Urgent Parliamentary Inquiry, NSW Freedom of Information is a free community service established to assist the public in accessing government information, to give the public a voice about their freedom of information experiences, and for the most part other than writing letters to Ministers that gain no traction whatsoever, provide a discussion forum concerning the performance of NSW government agencies in the exercise of record management and responding to requests for information.



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The ever-growing media on the Site is fact and evidence based.

Clearly there is a need for such a platform.

Additionally, the public has the right to discuss and share issues of concern within our government.

Too many members of the public have experienced repeated and continued abuse and misuse of the legislation by your agencies, with a great deal of those leaving the experience with their good reputations damaged and suffering extreme distress and anxiety likened to PTSD the result.

Indeed, this is precisely what has happened to my husband Paul McEwan and myself, primarily due to one particular NSW Local Council, but which has since been replicated by secondary agencies. Such actions leave no doubt agencies are working together as a collective in at least the context of access to NSW government information.

None of this is acceptable to your public. The public has the right to expect more, and the public now demands more in the form of action by both Ministers and Members to right this ongoing unacceptable situation.

In this regard, this request for Urgent Parliamentary Inquiry necessitates informing you of what is occurring with your agencies.

In the beginning of a freedom of information journey a member of the public generally anticipates the application of a singular piece of legislation, that is of course the GIPA Act 2009.

It often thereafter comes as somewhat of a surprise to find that other Acts can also be a factor for determination on how an agency decides to respond to a request for information.



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Agencies are also known to throw policies and procedures into the mix.

If a member of the public is thereafter not happy with an agency determination on a request for information, and an external review is sought, it then becomes apparent that other pieces of legislation come into “play”, leaving a member of the public who is not legally trained, qualified, and is not in the position to access a legal practitioner, floundering on what to do and where to go, and more-so questioning the implications of the legislation and the legal arguments on any outcome.

Should a member of the public eventually find themselves at the bar table of the NCAT, that is an entirely new set of circumstances as ordinary people realise they may be facing adversaries such as barristers, Special Counsels and even the NSW Crown Solicitor’s Office itself, in any case not the original delegated determining officer.

Nothing about this can be considered informal or straightforward, and I for one can attest as you may also be able to Ministers and Members, although the NCAT is not a court per se, it acts like one, it forms judicial orders like one, and it has enforcement powers equivalent to our courts.

In this regard, I believe it is crucial you fully digest the true experiences of your public, and the documented actions of your agencies, as you agree this request for Urgent Parliamentary Inquiry is totally justified and long overdue.

The NSW public is the largest stakeholder of government information, and the representative government is expected to ensure that the legislation meets the needs of the people it serves and represents foremost at all times.

In closing, as mentioned above I am a qualified criminologist. Thankfully exploring criminology has provided the tools which have highlighted the necessity for amendment to the legislation in order to act as a practical and effective crime prevention strategy to those agency personnel who see themselves as judge, jury, executioner, and immune to the law.



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A Parliamentary Inquiry is just the beginning of an exercise to determine what is occurring and thereafter what needs to occur to ensure the public is protected from future harm.

The Honourable Nathan Rees

In 2009 the Honourable Nathan Rees hailed in the newly formed GIPA Act and is quoted stating in his speech to Parliament *“Our public sector must embrace openness and transparency and governments must relinquish their habitual instinct to control information.”*

Very regrettably it is numerous examples that will show the Ministers and Members the antiquated cultural attitude to control government information remains firmly entrenched and is in fact thriving more than it ever has.

If there is but one NSW government agency that has not evolved with the legislation, embracing that legislation for the benefit of the people, then it is one agency too many that we all must work towards ensuring acts in the manner the public and legislators expect.

“If the laws in place cause suffering, hurt or anxiety to but one single member of our community that have not transgressed those laws, then such laws need to be urgently changed because it is one single member of our community too many that has suffered,” anonymous.

The regularly highlighted case of **Project Blue Sky v Australian Broadcasting Authority (1998) 194 CLR 355** broaches the subject of mandatory obligations of an agency, a case repeatedly relied upon by agencies working to discredit the public, and yet we see too many agencies directly bypassing processes, and in some cases ratifying the legislation to suit their own purposes and agenda, turning away from Project Blue Sky when it suits. This is completely unacceptable and needs to be stopped.



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If one single agency is bypassing due process, manipulating and ratifying legislation, misusing and abusing positions of power for the benefit of the agency and to the detriment of the public it serves, the legislation must be corrected to ensure such actions are prevented from recurring, particularly when some such actions may be construed as criminal.

The public rightfully expects every NSW government agency to act with the highest of integrity, honesty, impartiality, and in the interests of the public in every aspect of their functions at all times. These values are often published in mission and value statements, mandated by Codes of Conduct, and yet we find too often such statements and affirmations are nothing more than lip service and cannot be relied upon by the public.

It was Mr Rees' intention to open up government to the public, to make government accountable to the public it serves, and to ensure the rights of the public to access government information were maintained; and all this at the lowest reasonable cost.

None of this is happening.

What is Beneficial Legislation?

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

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

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



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.

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.”

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

- ***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”.

The NSW Civil and Administrative Tribunal 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*

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 in any way.

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

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*

What is enabling legislation?

Enabling legislation is defined at the NCAT Act 2013 *Section 4 – Definitions*:

- **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.



Enabling legislation in the context of this request for Urgent Parliamentary Inquiry is the Government Information (Public Access) Act 2009, GIPA Act.

It is the GIPA Act 2009 which enlivens an Application for Administrative Review of an Access Application Determination from a NSW government agency, by the Tribunal.

Enabling legislation is referred to at the NCAT Act 2013 *Section 29 – General Jurisdiction*:

- (1) The Tribunal has **general jurisdiction** over a matter if—
 - (a) legislation (other than this Act or the procedural rules) enables the Tribunal to make decisions or exercise other functions, whether on application or of its own motion, of a kind specified by the legislation in respect of that matter, and
 - (b) the matter does not otherwise fall within the administrative review jurisdiction, appeal jurisdiction or enforcement jurisdiction of the Tribunal.

Note.

The general jurisdiction of the Tribunal includes (but is not limited to) functions conferred on the Tribunal by enabling legislation to review or otherwise re-examine decisions of persons or bodies other than in connection with the exercise of the Tribunal's administrative review jurisdiction.

- (2) The Tribunal also has the following jurisdiction in proceedings for the exercise of its general jurisdiction—
 - (a) the jurisdiction to make ancillary and interlocutory decisions of the Tribunal in the proceedings,
 - (b) the jurisdiction to exercise such other functions as are conferred or imposed on the Tribunal by or under this Act or enabling legislation in connection with the conduct or resolution of such proceedings.
- (3) A **general decision** of the Tribunal is a decision of the Tribunal determining a matter over which it has general jurisdiction.
- (4) A **general application** is an application made to the Tribunal for a general decision.



(5) Nothing in this section permits general jurisdiction to be conferred on the Tribunal by a statutory rule unless the conferral of jurisdiction by such means is expressly authorised by another Act.

Enabling legislation is also referred to at the NCAT Act 2013 Section 30 Administrative review jurisdiction:

(1) The [Administrative Decisions Review Act 1997](#) provides for the circumstances in which the Tribunal has **administrative review jurisdiction** over a decision of an administrator.

Note.

See section 9 of the [Administrative Decisions Review Act 1997](#).

(2) The Tribunal also has the following jurisdiction in proceedings for the exercise of its administrative review jurisdiction—

(a) the jurisdiction to make ancillary and interlocutory decisions of the Tribunal in the proceedings,

(b) the jurisdiction to exercise such other functions as are conferred or imposed on the Tribunal by or under this Act, the [Administrative Decisions Review Act 1997](#) or enabling legislation in connection with the conduct or resolution of such proceedings.

(3) An **administratively reviewable decision** is a decision of an administrator over which the Tribunal has administrative review jurisdiction.

Note.

See section 7 of the [Administrative Decisions Review Act 1997](#).

(4) An **administrator**, in relation to an administratively reviewable decision, is the person or body that makes (or is taken to have made) the decision under enabling legislation.

Note. See section 8 of the [Administrative Decisions Review Act 1997](#).

(5) An **administrative review decision** of the Tribunal is a decision of the Tribunal determining a matter over which it has administrative review jurisdiction.

(6) An **administrative review application** is an application made to the Tribunal for an administrative review decision.

Note.

Chapter 3 (Process for administrative reviews under this Act) of the [Administrative Decisions Review Act 1997](#) also makes provision for the role of administrators when making administratively reviewable decisions and the role of the Tribunal when conducting an administrative review of such decisions.

Enabling legislation was also referred to by Mark Robinson SC when he presented a paper on NCAT to the NSW Bar Association in May 2019. Mr Robinson makes reference to the term enabling legislation (17) seventeen times qualifying its relevance to enlivening the NCAT's jurisdiction. Mr Robinson is also the co-author of the publication *NCAT Practice & Procedure*.

<https://www.robinson.com.au/wp-content/uploads/2019/06/2019-MAR-Paper-Introduction-to-NCAT-at-NSW-Bar-Assn-Sydney-17-May-2019.pdf>

Mr Robinson insists the enabling legislation prevails over the NCAT Act 2013, however there is no evidence of the NCAT or any NSW government agency supporting the fact the GIPA Act 2009 is the superior legislation in the particular circumstance.

GIPA Act 2009 Section 3 Object of Act

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*



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- (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.*

Quite clearly the object of the Act is failing to open government information to the public.

This is evidenced by the numerous caselaw decisions emanating from NCAT which generally uphold agency decisions to restrict access to information.

Policy documents are not properly classified as open access mandated for release.

Public interests against disclosure are readily falsified by agencies.

The Tribunal does not properly facilitate an applicant's rights to interrogate an agency decision or the delegated decision maker. Indeed in most cases agencies act to protect and insulate decision makers, replacing them at the bar table with tier-1 solicitors. On many instances legitimate summonses for decision makers are viciously fought to ensure that protection.

Agency decision makers should be mandated to defend their GIPA decisions directly within the Tribunal arena, saving huge legal costs funded by the public, and ensuring only those qualified to make decisions at first instance do so.

The Tribunal does not make government accountable; to date there has not been a single referral to the IPC under the GIPA Act 2009 despite hundreds of evidenced requests to do so.

The Tribunal facilitates confidential sessions where covert submissions are not tested in open session.

The Tribunal ignores legislative parameters of what constitutes personal information in the context of government employees.

Delegated Right to Information Officers are protected from accountability by large legal teams.

Enforceable rights are not properly upheld.

The Tribunal facilitates the criminalising of the public through their endeavours to access their beneficial legislation.

Agencies do not proactively release information.

Neither the Tribunal or NSW government agencies uphold the intentions of the Parliament.

When convenient the object of the act is pushed to one side.

There is no exercise, as far as possible, that facilitates and encourages access to government information. The public is dissuaded from exercising its legal rights by threat and actions to seek costs, the labelling of access applicants as vexatious (and other derogatory labels which make their way into caselaw).

Information is not made available promptly.

Information is not generally made available at the lowest reasonable cost; for numerous members of the public who try to access their beneficial legislation and seek access to government information, they face huge costs documented in the thousands of dollars.

Open access documents are not duly released.

Fighting to access beneficial legislation has left many, many people severely traumatised and completely disillusioned by the administrative review and justice processes.

There are numerous cases evidencing Tribunal Members' bias against the public is equal to the bias and poor quality decisions by agency personnel.

Whilst this is not the public's reality in every single case, it is a general systemic attitude and outcome.



GIPA Act 2009 Report to Parliament 2017

Given it is some (8) nine years since a review of the Act has taken place, and over a decade since the Act was opened up for submissions, this request for Urgent Parliamentary Inquiry is timely.

Unlawful awarding of Costs:

To date NSW government agencies have relied on the NCAT Act 2013 Section 60 Costs to lodge and press applications for legal costs in GIPA (and PPIP) proceedings.

As already discussed, it is the GIPA Act 2009 that is the enabling legislation.

The GIPA Act as such prevails over the NCAT Act 2013.

However, as is now evidenced, NSW government agencies and indeed the NCAT itself combine resources to consider, award, and enforce what has been relabelled as agency costs wishes.

As also discussed above, it is the Object of the subject enabling legislation / Act, which enlivens the NCAT's jurisdiction.

Without the enabling legislation there is no NCAT matter; plain and simple.

Yet we see time and again caselaw which evidences NCAT acting outside of its jurisdiction and awarding costs wishes, in fact ignoring basic legal principles including quality statutory interpretation and the upholding of the Rule of Law.

If this was not sufficiently offensive to the public, there are instances within NCAT such that an ex-judge of the Industrial Relations Commission positioned as a Principal Member of the Tribunal actually invited a costs application from a Local Council against an unrepresented party to proceedings. Those proceedings consisted of an Application under the GIPA Act 2009 Section 110 for Restraining Order which was eventually granted (but which was overturned on appeal for bias), topping off the harrowing experience with an invitation for a costs wish.

It is examples such as this that must be stopped from reoccurring.



I am among many members of the public who have suffered and continue to suffer the result of agencies seeking costs wishes and the NCAT granting them.

My husband has also been financially victimised by such unlawful orders.

Initially I did pay the first order of costs, but purely on the basis I believed the NCAT had made a decision that was founded in law; that NCAT is suitably equipped to interpret the statute accurately; and that seeking a costs wish was a legitimate action.

Of course I have since learned none of this is relevant and cannot justify the granting of any costs wish in the context of GIPA (and PPIP) in the NCAT forum.

Indeed, the NCAT Guideline – Costs concedes NCAT’s powers to award costs are confined to a particular law providing NCAT with discretionary powers to do so, Point 5:

https://ncat.nsw.gov.au/documents/guidelines/aeod_guideline_costs.pdf.

There is no mechanism within the GIPA Act 2009, in its capacity as enabling legislation, which facilitates the awarding of legal costs against an applicant; applicants are generally members of the public who seek to access their beneficial legislation.

The only mechanism within the GIPA Act 2009 which provides for costs of any kind is Section 108, 2(a) which gives the Tribunal jurisdiction to compensate an access applicant. As such there is no mechanism for the awarding of a costs wish for either party within GIPA.

It is not only reasonable to expect, but natural to assume, that those exercising statutory functions under the GIPA Act and those exercising jurisdictional powers in accordance with the enabling legislation to do so, are fully informed about the constraints preventing the awarding of legal costs.

Presently, self-represented parties have faced unlawful legal fees reaching as high as \$30,000.00, with one agency threatening bankruptcy proceedings in the Federal Circuit Court should the unlawfully awarded cost wish amounts not be paid.

When we consider the published messages on the NCAT website “*you can be your own best advocate*” with no mention whatsoever of facing large teams accruing huge costs, this can only be considered entrapment of a trusting public by those who know the law.

The Ministers and Members are also drawn to the media release by the Dept of Customer Service (October 2024), which discloses the Crown Solicitor, but specifically Ms Lea Armstrong, formally advising Service NSW repeatedly it could not impose the charged card payment fees as the legislation did not make provision for it.

Ms Armstrong’s legal advice on the issue, obtained under formal access application, is encompassed in two items of correspondence; 03rd February 2016 and 24th October 2016.

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 (legal costs) 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 (legal costs) on a customer (the public) so as to overcome the long established principle of the common law that a public body or authority (ncat) may not levy or otherwise impose a charge

or fee (legal costs) on members of the public unless there is a clear statutory power for it to do so.”

Ms Armstrong was appointed a Judge and President of the NCAT in 2018.

I have written to Her Honour about the issue of costs in a petition concerning the NCAT and the NCAT Act 2013, however she refuses to make any comment nor grant me a meeting to discuss this issue of public importance and the proper performance of her subordinates.

Perhaps Her Honour has not been provided a copy of the IPC’s *Charter for Public Participation*.....

In addition to Her Honours letters of February and October 2024 which make clear to Service NSW agencies do not have powers to initiate actions outside of the legislation, is her recent decision in the case of *Shapkin v Council of the Law Society of NSW (2025) NSWCATOD 66*, where she states at Paragraphs 40 to 42:

40. NCAT’s first duty is to satisfy itself that it has jurisdiction in relation to an application.

*41. NCAT is a tribunal with limited jurisdiction. Its jurisdiction and functions are derived from the NCAT Act, enabling legislation and legislative instruments beyond its enabling legislation, as well as regulations and statutory rules. NCAT cannot exercise jurisdiction beyond that set out in statute, other than its anterior jurisdiction to decide whether proceedings brought before it are within its limited jurisdiction (see e.g. *Citta Hobart Pty Ltd v Cawthorn (2022) 276 CLR 216; [2022] HCA 16 at [62]–[63]*).*

42. NCAT has “such jurisdiction and functions as may be conferred or imposed on it by or under [the NCAT Act] or any other legislation”: NCAT Act, s 28(1). Relevantly, NCAT has “administrative review jurisdiction” in the circumstances set out in s 30 of the NCAT Act. Section 30(1) states that the ADR Act provides for the circumstances in which NCAT has administrative review jurisdiction over a decision of an administrator. Under s 9(1) of the ADR Act, NCAT has “administrative review jurisdiction” over a decision (or class of decisions) of an administrator if enabling legislation provides that applications may be made to NCAT for an administrative review of the relevant decision (or class of decision).

Such administrative review jurisdiction does not extend to the issue of costs applications in either GIPA or PPIP.

These are the President of NCAT's own words; her decision; her interpretation of the legislation as a Supreme Court Judge.

The enabling legislation in this case, the GIPA Act 2009, does not provide any statutory power for the Tribunal to entertain a costs application from any NSW government agency and most definitely no power for the Tribunal to grant an agency its punitive unlawful costs wish.

The Tribunal, indeed the Registry, should be throwing out such applications at first instance and not soaking up public monies or resources remotely entertaining these clutches for punishment.

Interestingly, there is no reference whatsoever to the awarding of a costs wish in the context of the GIPA Act 2009 in any NCAT Report to Parliament, which places those reports as a false and / or incomplete representation of the Tribunal's actions.

Any information pertaining to the granting of a costs wish has disappeared into the bureaucratic abyss.

The Public's Expectations:

The Rule of Law

- No one is above the law.
- All people should be ruled by just laws subject to the following rules:
 1. The law is known and is accessible
 2. Presumption of innocence
 3. Open, independent and impartial judiciary
 4. No retrospective laws should be made
 5. Laws are made in an open and transparent way by the people
 6. Government agencies to behave as model litigants
 7. Fair and prompt trials
 8. Separation of powers between Legislature, Executive, Judiciary
 9. People can only be punished in accordance with the law
 10. The law and its administration is subject to open and free criticism

The documented agency conduct outlined below supports the argument that the subject legislation in its current state, and particularly due to the way the legislation is used by NSW government agencies against the public, is totally broken by being easily corrupted and as such is in urgent need of repair.

There can be no doubt the Honourable Mr Rees did not intend to, and certainly did not act to, gift the public with any piece of broken legislation.

Indeed, the opposite can only be said.

The GIPA Act 2009 has been broken and corrupted by NSW government employees.

It is only in its current state because of the actions of NSW government agencies, and not due to any actions on the part of the general public.



The Rule of Law states '*No one is above the law*' and '*all people should be ruled by just laws*'.

This is completely incorrect as the caselaw emanating from the NSW Civil & Administrative Tribunal (NCAT) repeatedly makes clear that it does not deal with agency misconduct in the exercise of its jurisdiction concerning the GIPA Act 2009.

So no, at this point in time it is not true that no one is above the law or that the offence provisions of the GIPA Act have ever or will ever be actioned.

This is despite the fact that desperately pleading members of the public place copious amounts of documentary evidence before the NCAT evidencing agency misconduct in the exercise of the GIPA Act, when the public rightfully refers to and relies upon specific clauses of the legislation, but with the NCAT turning a blind eye to fellow government employees.

In comparison however, is the willingness and ability of so-minded agency personnel to compile dossiers of material about a member of the public endeavouring to exercise legally enforceable rights to access NSW government information, which the NCAT eagerly gobbles down and often responds to with harsh criticisms and commentary within published decisions that criminalises and demoralises the public's endeavours.

Agencies continue to develop strategies to control the flow of government information, criminalising the public for exercising those same rights. This does nothing to reassure the public '*no one is above the law*' or that '*all people should be ruled by just laws*'.

Once a member of the public has been labelled and criminalised by a so-minded NSW government agency, documentation is weaponised and used to ensure future endeavours remain unsuccessful.

Report after report has been made to a number of regulatory bodies concerning the indisputable corrupt conduct of Port Stephens Council, as an example, in the context of the GIPA Act and to this date no person has been held accountable. These are serious crimes accurately reported and yet these individuals remain free to continue such unacceptable behaviours; they are in fact flourishing.

In this regard, the public's realisation at this point in time is that some people are most definitely above the law, and the law is not equally and fairly applied as it claims to be, in the context of the GIPA Act 2009 and the administration of it in the NCAT forum.

1. The law is known and is accessible

In the context of administrative law, the law is not known and accessible to the public. Examples of the closed-door mentality of agency personnel who obstruct the public's requests to access training in the legislation will be documented below.

As at the date of this document the public are completely excluded from being educated about the law, unless they choose to become legal professionals.

2. Presumption of innocence

In the context of administrative law, there is no fundamental presumption of innocence.

Examples of how NSW government agencies have weaponised the legislation and criminalise a petitioning public are contained within this document below.

3. Open, independent and impartial judiciary

In the context of administrative law, there is no open, independent and impartial judiciary.



Unrepresented parties to proceedings find themselves excluded when confidential sessions are generously and unquestioningly afforded NSW agencies.

Evidence is often untested but taken into consideration by the judiciary.

Agency personnel are not held to account for misconduct in the exercise of their statutory functions.

The public are victimised, criminalised, and traumatised for endeavouring to exercise their legally enforceable rights to access NSW government information.

NSW government employees have direct access to the NCAT.

4. No retrospective laws should be made

In the context of administrative law, NSW government agencies are documented to ratify the legislation.

5. Laws are made in an open and transparent way by the people

In the context of administrative law, members of the public petition for legislative change with often no result; it is often impossible to get a meeting with a relevant Minister or Member to discuss legislative concerns.

In comparison agency personnel are documented to work together as a collective to achieve their legislative agenda which is mostly effective.

NSW government agencies in comparison are documented to have direct access to regulatory bodies and NCAT judicial members.



6. Government agencies to behave as model litigants

In the context of administrative law, NSW government agency personnel do not behave as model litigants!

Government employees are documented:

- Making false and misleading Sworn Affidavits.
- Making false statements and submissions.
- Falsifying evidence against the public.
- Acting in troll-like manner searching the internet to identify information to be used against the public.
- Enforcing policy and procedure as though it were law.
- Using pseudonyms to sign off on legal documents.
- Breaching the public's privacy.
- Colluding with third party agencies.
- Bypassing legislated access to information protocols between agencies
- Using public monies for personal use and personal agenda.
- Using public monies to increase costs.
- Engaging in manifestly excessive advocacy against unrepresented parties.
- Successfully seeking costs orders in contravention of enabling legislation.

7. Fair and prompt trials

In the context of administrative law, the judicial processes are neither fair or prompt, often stacked in favour of agencies and against the public.

The rules of evidence are not applicable to the NSW Civil & Administrative Tribunal, which is completely unfair.

Administrative reviews are known to take years to determine, showing the current rate of performance is extremely lacking.

8. Separation of powers between Legislature, Executive, Judiciary

In the context of administrative law, where NSW government agency personnel have direct access to the judiciary and the legislature, there is no separation of any kind.

NCAT itself awards costs in a no-costs forum, in contravention of enabling legislation, effectively exercising executive powers.

Agency personnel are well-placed to undermine the whole legal and legislature process.

At this time there is no protection mechanism against the direct access to the judiciary and the legislature by NSW government agencies.

9. People can only be punished in accordance with the law

In the context of administrative law, this is not true.

Too many cases now document how agencies continually look for and identify ready loopholes in the legislation for the purpose of taking advantage of the public and inflicting punishment on them.

At present agencies are documented to form strategies and mechanisms specifically designed to punish the public and take advantage of the law, with such actions regularly occurring outside of the organisation and in public spaces away from managers.

10. The law and its administration is subject to open and free criticism

In the context of administrative law, this is not the public's reality.

Agency personnel actively engage in troll-like manner searching the internet for information they can use against the public, most particularly any information that appears to criticise the law and the administration of it.

Too many cases now document how numerous agency personnel have acted in such fashion to use the public's legitimate criticism against it, seeking non-publication and non-disclosure clauses to ensure public debate is obstructed.

Agency personnel work very hard to silence criticism.

Agency personnel actively punish the public for such criticism.

Agency personnel seek out and use the public's criticisms as justification to obstruct access to information.

Agency personnel seek out and use the public's criticisms as justification to obstruct access to NCAT products and services.

The public also rightfully expects those exercising statutory functions are fully informed of what is required of them.

Ethics, Integrity & Honesty

The public has the right to expect all NSW agency personnel will act with the highest ethics, integrity and with total honesty.

Regrettably the evidence shows the exact opposite.

- **ICAC v Karkowski**

33 *“His conduct strikes at the very heart of public confidence in proper and transparent process. It creates or reinforces the public perspective that the operations and decision-making exercises of Councils and thus government in general many not be conducted in an entirely honest and professional manner.*

39 *“Substitute “officer of local government” for police officer and view such conduct from the perspective of Sections 439-440 and the Code of Conduct set out in Schedule 6A of the Local Government Act 1993 and the community will readily understand that they are entitled to expect the highest standards of those employed on their behalf.”*

Comprehension of Statutory Regimes

The public has the right to expect all NSW agency personnel are fully equipped for the tasks they are employed to undertake on behalf of the public they serve.

- **Council of the Law Society of NSW v DXW [2019] NSWCATOD 101**

56 *“They are not to be regarded as unsophisticated members of the community with limited literacy skills and a limited understanding of the statutory regimes in which they are operating..... ”*



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Acting in Good Faith

The public has the right to expect all NSW agency personnel will at all times act in good faith.

- **Thompson v Randwick Municipal Council (1950) 81 CLR 87**

A public authority exercising statutory powers “must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first.”

Acting in the Public Interest

The public has the right to expect all NSW agency personnel will act in the public interest at first instance.

- **Director of Public Prosecutions v Smith (1991) 1 VR 63**

“Public interest’ embraces standards acknowledged to be ‘for the good order of society and for the well- being of its members”

- **Comalco Aluminium (Bell Bay) Ltd v O'Connor and Ors (1995) 131 ALR 657**

“The purpose of a reference in legislation to ‘the public interest’ is ‘to ensure that private interests are not the only matters taken into account; to make clear that the interests of the whole community are matters for the [decision-maker’s] consideration”



- **Director of Public Prosecutions v Smith.**

“The relevant interest is therefore the interest of the public, as distinct from the interest of an individual or individuals”

- **Sinclair v Mining Warden at Maryborough [1975] HCA 17; (1975) 132 CLR 473, at p. 480, per Barwick CJ**

“The public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals”

Acting with Bias

The public has the right to expect all NSW agency personnel will bring and maintain an impartial mind to the task they are employed to undertake on behalf of the public they serve.

However case after GIPA case evidences agency personnel driven by personal agenda and bias, with administrative determinations containing personal denigrating commentary about valid access applicants most of whom they’ve never met. This bias extends into the formal review arena NCAT in administering the GIPA Act 2009:

- **Webb v Port Stephens Council (2020) NSWCATAP 152:**

58”In our view, the impugned conduct in this case (positively inviting the Council to institute proceedings against Ms Webb) could logically give rise to an apprehension that the Presiding Member might not decide the case impartially. In the words of the test in Ebner, that conduct might lead a fair-minded lay observer to reasonably apprehend that the decision-maker might not bring an impartial mind to the resolution of the issues in dispute.



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The Presiding Member gave the impression that he was favouring, or even assisting, one party. The Presiding Member was not merely expressing a tentative view about an issue arising in the proceedings....”

- **The Queen v Watson (92) (1976) 136 CLR:**

262 – 263 "his (i.e. Lord Hewart's) statement of principle, which was recently reaffirmed in this Court in Stollery v. Greyhound Racing Control Board ((93) (1972) 128 CLR at 518-519.) does go to the heart of the matter. It is of fundamental importance that the public should have confidence in the administration of justice.

If fair-minded people reasonably apprehend or suspect that the tribunal has prejudged the case, they cannot have confidence in the decision. To repeat the words of Lord Denning M.R. which have already been cited, 'Justice must be rooted in confidence: and confidence is destroyed when rightminded people go away thinking: "The judge was biased.'"

- **In Webb & Hay v The Queen 1994 181 CLR 41, at 3:**

When it is alleged that a judge has been or might be actuated by bias, this Court has held that the proper test is whether fair-minded people might reasonably apprehend or suspect that the judge has prejudged or might prejudice the case ((3) Reg. v. Commonwealth Conciliation and Arbitration Commission; Ex parte Angliss Group (1969) 122 CLR 546 at 553-554; Reg. v. Watson; Ex parte Armstrong (1976) 136 CLR 248 at 261-262, 264, 267; Re Judge Leckie; Ex parte Felman (1977) 52 ALJR 155 at 158; 18 ALR 93 at 97-98; Re Shaw; Ex parte Shaw (1980) 55 ALJR 12 at 14, 16; 32 ALR 47 at 50-51, 54; Livesey v. New South Wales Bar Association (1983) 151 CLR 288 at 293-294, 300; Re J.R.L.; Ex parte C.J.L. (1986) 161 CLR 342 at 349, 351, 359, 368 and 371; Vakauta v. Kelly (1989) 167 CLR 568 at 575, 584; Grassby v. The Queen (1989) 168 CLR 1 at 20.).



The Court has applied the same test to a Commissioner of the Australian Industrial Relations Commission ((4) *Re Media, Entertainment and Arts Alliance; Ex parte Hoyts Corporation Pty. Ltd.* (1994) 68 ALJR 179 at 182; 119 ALR 206 at 210.) and to a member of the Australian Broadcasting Tribunal ((5) *Laws v. Australian Broadcasting Tribunal* (1990) 170 CLR 70 at 87, 92, 102.). The Court has specifically rejected the real likelihood of bias test ((6) *Watson* (1976) 136 CLR at 261-262.).

The principle behind the reasonable apprehension or suspicion test is that it is of "fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done" ((7) *R. v. Sussex Justices; Ex parte McCarthy* (1924) 1 KB 256 at 259 per Lord Hewart CJ; *Re J.R.L.; Ex parte C.J.L.* (1986) 161 CLR at 351-352.).

Although the role of the juror is not the same as that of the judge, a commissioner or a member of a quasi-judicial tribunal, we do not think that the difference between the role of the juror and the role of those persons warrants any different test for alleged bias.

- **In *Ebner v The Official Trustee in Bankruptcy* 2000 HCA 63, at 6 & 7:**

Where, in the absence of any suggestion of actual bias, a question arises as to the independence or impartiality of a judge (or other judicial officer or juror), as here, the governing principle is that, subject to qualifications relating to waiver (which is not presently relevant) or necessity (which may be relevant to the second appeal), a judge is disqualified if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide¹³. That principle gives effect to the requirement that justice should both be done and be seen to be done¹⁴, a requirement which reflects the fundamental importance of the principle that the tribunal be independent and impartial. It is convenient to refer to it as the apprehension of bias principle.

The apprehension of bias principle may be thought to find its justification in the importance of the basic principle, that the tribunal be independent and impartial.

So important is the principle that even the appearance of departure from it is prohibited lest the integrity of the judicial system be undermined. There are, however, some other aspects of the apprehension of bias principle which should be recognised.

Deciding whether a judicial officer (or juror) might not bring an impartial mind to the resolution of a question that has not been determined requires no prediction about how the judge or juror will in fact approach the matter. The question is one of possibility (real and not remote), not probability. Similarly, if the matter has already been decided, the test is one which requires no conclusion about what factors actually influenced the outcome. No attempt need be made to inquire into the actual thought processes of the judge or juror.

- **In Minister for Immigration & Multicultural Affairs v Jia Legeng (2001) 205 CLR 507, at 312:**

First the Full Court defined bias. They said that a "closed mind" would constitute bias, if that mind were not open to persuasion otherwise: or that there has been a prejudgment of an aspect of the case. Their Honours then cited several passages in the judgments of Spender J and R D Nicholson J in Jia 165.

- **In Australian Lifestyle Corporation Pty Ltd v Wingecarribee Shire Council No. 2 2008 NSWLEC 132, at 9:**

The test is the same whatever the circumstances relied upon for the application, namely: Would a fair-minded lay observer, acquainted with the relevant facts, reasonably apprehend that it was possible that I would not bring an independent mind to the determination of this appeal?

- **In Antoun v The Queen 2006 HCA 2**, there is repetition of extensive dialogue between His Honour and a legal representative, which makes clear His Honour was of the view submissions would not succeed, before His Honour had actually heard them.

Unconscionable Conduct – Ratification

The public has the right to expect all NSW agency personnel will not act in any manner that can be construed as ratifying the legislation.

- **Commercial Bank of Australia v Amadio (1983) 151 CLR 447; (1983) HCA 14**

The High Court made numerous comments about its views concerning unconscionable conduct, particularly:

(1) *”unconscionable conduct” is usually taken to refer to the class of case in which a party makes unconscientious use of his superior position or bargaining power to the detriment of a party who suffers from some special disability or is placed in some special situation of disadvantage.....*

(12) *the jurisdiction of courts of equity to relieve against unconscionable dealing is long established as extending generally to circumstances in which (i) a party to a transaction was under a special disability in dealing with the other party with the consequence that there was an absence of any reasonable degree of equality between them and (ii) that disability was sufficiently evident to the stronger party to make it prima facie unfair or “unconscientious” that he procure, or accept, the weaker party’s assent to the impugned transaction in the circumstances in which he procured or accepted it. Where such circumstances are shown to have existed, an onus is cast upon the stronger party to show that the transaction was fair, just and reasonable.....*

(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.

The Office of the NSW Information & Privacy Commissioner

These Commissioners apparently work very hard to ensure the legislation continues to evolve to meet the needs of the people of NSW, however there is little to show this work is benefiting the public, but a great deal to show that it works for the benefit of the government.

The fact the IPC promotes its Charter for Public Participation but acts to shut down public debate is a total contradiction and embarrassment, leaving the Charter completely meaningless.

Both Commissioners are on the record making regular presentations to public-precluded organisations and groups, where covert and exclusive petitions and discussions are had with the Commissioners for the benefit of government alone.

Misconduct after misconduct is reported to these Commissioners with little or no action taken despite the plethora of evidence presented.

This needs immediate attention and is able to be scrutinised through an Urgent Parliamentary Inquiry where the Parliament is able to press the Commissioners as to why nothing is done.



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Operation of a NSW Governmental Cartel:

– The NSW Right to Information & Privacy Practitioners Network, NIPPN

Since August 2021 I have personally been investigating the operation of this group.

Originally noted as existing on the IPC's website, and following some breadcrumbs, I initiated contact with its then-Chair Ms Nicole Gibbs-Steele who was until recently Senior Privacy Officer at iCARE NSW.

I requested membership to the group but was refused on the basis I did not hold an agency email address.

I subsequently requested the provision of the membership list and other NIPPN information which I viewed as government information.

The GIPA Act 2009 Schedule 4, 4, 3(b) makes clear the requested information was not categorised as personal and as such was public information:

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.

Since those initial requests for information about NIPPN, the website has been deactivated and the group has gone completely underground and out of the public's reach indicative it has a great deal to hide.

Whilst I remain obstructed from full access to the membership list, in contravention of the GIPA Act 2009 Schedule 4, 4, 3(b), the redacted information provided discloses there are members from all but every NSW government department as well as individuals from private enterprise. Those individuals from private enterprise do not have access to an agency email address.

It was on perusing that information and lodging several access applications that I would discover the following:

Terms of Reference:

The Terms of Reference of the group states it relies on Chatham House Rules to provide protection to members, in order to ensure they can speak freely about any government business.

This protection is expected to extend to freely sharing the public's personal information which occurs on a regular basis.

The Terms of Reference claim the purpose of the group is to provide a safe place for government employees to discuss government business.

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.”

This does not align with the GIPA Act 2009.

Neither does it align with the PPIP Act 1998.

Compounding this situation 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 individuals from private enterprise.

This exclusive access by individuals in private enterprise effectively sees the breaching of the public’s privacy by sharing personal information, and the bypassing of legislated procurement processes where products and services are peddled directly to decision-makers without impediment.

Previously the group met at Parliament House, paid for with public monies, but since relocated to an office of the Minister for Customer Service and the IPC, which completely excludes public participation.

Formulating Collective Response Strategies:

At the NIPPN meeting of 16th November 2016 a member suggested the group form a collective response strategy to 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 would be published.

The presentation took place in a public venue, Theatre at Parliament House Sydney.



Mr Gladstone's full name and the website were shared with the group.

This action, disclosing the normalising of a collective state-wide response strategy is evidence of the access to information process being openly and completely corrupted.

There can be no assurance Mr Gladstone's access applications after that date were treated impartially by any NSW government agency, and on their own merit.

This collective strategy and unlawful use of Mr Gladstone's personal information was made known to the whole of the population of NIPPN members inclusive of private enterprise.

Likewise, in March / April 2022 when I lodged a formal access application with iCARE NSW for the membership list and other NIPPN documentation, iCARE disclosed my personal information under cover of email to the NIPPN Consultative Committee despite my clear written instructions I did not give consent to do so.

Again, the concern was the possibility documentation would be published.

I now know why it remains so difficult to access NSW government information, and that is entirely due to the fact NIPPN singled me out to the group, as it did do to Mr Gladstone, resulting in the deliberate and blatant corruption of the access to information process, prejudicing my access applications from that point in time.

Circulating Recommended Punitive Management Strategies

On 27th March 2019, Justice NSW's Director Open Government Information & Privacy Unit Ms Jodie Cobbin, did make a public presentation to the whole of the state's population of right to information and privacy officers.

The presentation took place in a public venue, Jubilee Room at Parliament House Sydney.



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That presentation is confirmed to have been made utilising government equipment, government resources, a departmental template, and was signed off as Jodie Cobbin the author.

The presentation was titled “*Tale of a Fixated Applicant*”, in the context of the GIPA Act 2009.

Subsequent to my formal access application and review in the NCAT forum, Ms Cobbin made a Sworn Affidavit disclosing she had used the public’s personal information without consent for the presentation, using the public’s personal information for a purpose other than for what it was collected for.

Whilst she did not provide that personal information to me in response to my access application, Ms Cobbin made the personal information publicly known through the NIPPN forum.

Ms Cobbin also claimed an access applicant’s individual writing style, such as using bold, underlining or using highlighting text accents, should be classified as bullying, threatening and intimidating behaviours that demanded formal control such as restriction of access to services.

Ms Cobbin also assured her audience seeking meetings and repeatedly asking for outstanding responses to correspondence was unacceptable conduct on the part of the public.

Ms Cobbin also recommended officers should consider involving NSW Police, seeking Section 110 Orders, seeking legal costs which are not legislated, and collaborating with other agencies as additional management strategies.

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, corrupting the access to information processes and ratifying the legislation.

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 takes up too much agency resources without the need for evidence.

Soliciting for Information on the False Premise of a Departmental Study:

The GIPA Act 2009 Section 122 Act binds the Crown states:

122 This Act binds the State and, in so far as the legislative power of the Parliament of New South Wales permits, the other States, the Territories and the Commonwealth.

However, on 12th June 2019, Justice NSW's Director Open Government Information & Privacy Unit 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.

This global solicitation was an act to bypass access to information mandates, noting the GIPA Act 2009 Section 122 Act binds the Crown:

"122 This Act binds the State and, in so far as the legislative power of the Parliament of New South Wales permits, the other States, the Territories and the Commonwealth."

Ms Cobbin personally and directly ignored her statutory obligations under the GIPA Act 2009 which must be considered a serious offence.

The presentation took place in a public venue, Jubilee Room at Parliament House Sydney.

Ms Cobbin is an ex-NSW Police Superintendent and accustomed to accessing the public's personal information without limit, but it is clear the lines of delineation between police work and departmental clerk appear to be of no consequence to her.

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.

Release of the requested information would have resulted in embarrassment to the agency, Ms Cobbin herself, and all those who responded to her solicitation.

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.

By soliciting the whole of the state's population of right to information and privacy officers directly, Jodie Cobbin as the Director of the OGIPU acted in breach of the GIPA Act when she did not lodge formal access applications to secondary agencies for the public's personal information. It is reasonable to assume Ms Cobbin fully expected returns on her solicitation, seeing secondary agencies also in breach of the GIPA Act and PPIP Act 1998 be default.

The collective action by Jodie Cobbin to breach the GIPA Act 2009 is numbered in the hundreds.

Likewise the responses to Jodie Cobbin's solicitation is numbered in the hundreds.

This singular action makes clear those in positions of trust, responsibility, under statutory obligation to comply with the public's beneficial legislation are not doing so, and are in fact thumbing their noses at the public and the Parliament.

Dept of Communities & Justice – Submission to Parliament to Undermine Review Processes:

There are a number of employees in this department, Justice NSW, who are active members of the NIPPN group.

Ms Jodie Cobbin, mentioned above, is a member of NIPPN.

On 25th July 2019, following on from her (2) two presentations to NIPPN, Ms Cobbin / her section the Open Government Information & Privacy Unit (OGIPU) filed a submission towards the statutory review of the NCAT Act 2013. That submission is public knowledge.

In those submissions the author made no attempt to deidentify a number of GIPA Applicants, whose identity is readily available through the mosaic effect and through simple searches on the internet.

The recommendations by the OGIPU were that GIPA Applicants approaching the NCAT for administrative review of access application decisions should be treated within the same parameters as those outlined within the GIPA Act 2009 Section 110 constraints; that being those seeking external review with the NCAT must first make a case and obtain approval to do so before such review can commence.

This leaves access applicants having to make (2) two cases and where agencies have the opportunity to thwart the administrative review process, particularly when representation is not made by original determining officers but by tier-1 in-house solicitors and external legal firms.

This is archaic, coercive controlling behaviours designed to frustrate GIPA applications and undermine the Parliament's intentions and should NOT be endorsed by the Ministers or Members.

The public rightfully expects Ministers and Members to be able to decipher the intentions of so-minded agency personnel, particularly those in the position of influence as Ms Cobbin is, and who have access to the methodologies and support mechanisms which easily enable desirable legislated change that defies the public's rights to interrogate its government.

Anything else is not upholding the principles of democracy.

The OGIPU's submission to expand the reach of the GIPA Act 2009 Section 110 into the NCAT at first instance on seeking external review MUST be completely rejected!

Crime Analogy & Prevention Perspective

During my many years of personal experience in the access to information arena, I have lodged hundreds of Formal requests for NSW government information predominantly with Port Stephens Council.

I have also lodged hundreds of Informal requests for information predominantly with Port Stephens Council.

I have also endured some (30) thirty NCAT matters without any legal representation.

Exercising my rights under GIPA has enabled the legislated process for accessing NSW government information to be very effectively pressure tested.

As such I have had many misfortunes to witness and have secured evidence of unacceptable conduct in the performance of agency GIPA duties, mostly attributable to Port Stephens Council's Tony Leslie Wickham who is Council's Senior Right to Information Officer.

Tony Leslie Wickham has by his own continued actions become the representative antithesis of open, transparent, accountable, and responsible government.

Mr Wickham is listed as an active member of NIPPAN.

This person also occupies other roles within the organisation in parallel to his role as Senior Right to Information Officer, and has done so for a number of years, placing him with significant power and influence, making him impervious to either governmental or public challenge.

Those roles include:

- Governance Manager
- Executive Officer
- Right to Information Officer
- Privacy Officer
- Complaints Handling Officer
- Code of Conduct Coordinator
- Code of Conduct Trainer
- Joint Custodian of Secondary Employment
- Head of Legal Services

Every enquiry, request, complaint, Code of Conduct report, all land on Mr Wickham's desk.

As such he is able to control any given narrative, supporting that narrative with carefully selected documents he sources from Council files.

He is also the person responsible for the preparation of Council Meeting documentation, where he can approve or reject requests by the public to speak at meetings.

He is known to give public presentations to Local Council interest groups on topics including the GIPA Act.

Any reasonable person would agree that any request for information held by Port Stephens Council would relate to some function or interest this public servant has.

So whatever this individual does in the context of routine duties associated with Port Stephens Council, whatever arrangements he makes with any third party or Council employee or Councilor, and the manner in which he / his department responds to requests for information, there is no person checking on his activities or his conduct the result of his collective executive positions.



In some instances this person has not kept accurate records of his interactions with certain individuals leaving Council in breach of the State Records Act 1998, of which he would be fully aware.

Requests for mandated Interest Disclosures also reveal this individual does not comply with the legislation, leaving the public wondering what organisations he is connected to and where he spends public monies on external professional functions, events, and training / development courses.

A Parliamentary Inquiry is necessary to expose the abusable failings within the legislation which facilitate questionable, if not unlawful, conduct by those who have far too much power and no accountability.

As mentioned above, if only one person is harmed or able to be harmed by any current NSW legislation then the legislation demands urgent amendment.

In the case of my husband and I, the false and misleading statements repeatedly made by Tony Leslie Wickham for the specific purpose of undermining legislated rights, has resulted in atrocious damning case law at first instance, which took over four years to overturn, and where terminologies such as ‘molestation of a person’ and reference to the Crimes, Domestic and Personal Violence Act 2007 will forever be connected to my husband, an innocent victim of an unlawful agreement resulting in Mr Wickham’s perjury.

In particular in the case of my husband and I, this agency and the individual has abused the GIPA Act 2009 Section 14 Table 3(f) over (270) two hundred and seventy times that we are aware of, when the officer knew the claim of a serious risk of harm under that Clause was initiated and implemented by him personally, and where he expended a substantial amount of public monies maintaining the false claim to this date.

Section 14 Table 3(f) provides the ultimate public interest consideration against disclosure:

3 Individual rights, judicial processes and natural justice

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects—

- (a) reveal an individual's personal information,*
- (b) contravene an information protection principle under the [Privacy and Personal Information Protection Act 1998](#) or a Health Privacy Principle under the [Health Records and Information Privacy Act 2002](#),*
- (c) prejudice any court proceedings by revealing matter prepared for the purposes of or in relation to current or future proceedings,*
- (d) prejudice the fair trial of any person, the impartial adjudication of any case or a person's right to procedural fairness,*
- (e) reveal false or unsubstantiated allegations about a person that are defamatory,*
- (f) expose a person to a risk of harm or of serious harassment or serious intimidation,*
- (g) in the case of the disclosure of personal information about a child—the disclosure of information that it would not be in the best interests of the child to have disclosed.*

As mentioned above, it would take four (4) long years to clear my husband's name of the false claim where in 2021 the NCAT published its decision ***McEwan v Port Stephens Council (2021) NSWCATAD 110***, paragraph 160:

"160 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....."

This resounding decision was made the result of open session interrogation which had not been afforded to that point; but where earlier confidential sessions with a vexatious agenda-driven senior government executive facilitated the untested false and misleading accusations.

In the case of my husband and I alone, extensive evidence has been released by the agency Port Stephens Council itself showing the following actions have occurred during the access to information process:

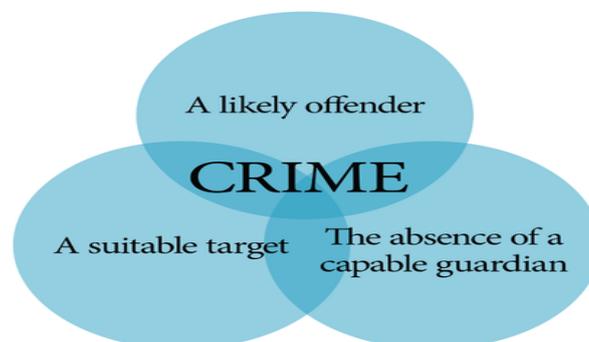
- Initiated an unlawful agreement to conceal and protect open access information mandated for release
- Implemented an unlawful agreement to conceal and protect open access information mandated for release
- Acted to give favour to a person the party to the unlawful agreement because he had a Council relationship with the person
- Made false and misleading statements to an Investigating Officer of the Office of the NSW Information & Privacy Commissioner in order to conceal and protect open access information mandated for release the subject of the unlawful agreement
- Repeatedly provided the false and misleading statements to secondary NSW government agencies
- Provided the false and misleading statements to the NSW judiciary as part of defences in administrative reviews for the continued concealment and protection of open access information mandated for release the subject of the unlawful agreement
- Provided a Sworn Affidavit to the NSW judiciary which contained false and misleading statements
- Ratified the GIPA Act 2009 by the making of the unlawful agreement
- Expended substantial amounts of public monies in the defence of administrative reviews for the continued concealment and protection of open access information mandated for release the subject of the unlawful agreement, costing the public in excess of \$125,000.00.
- Obstructed mandated interest disclosures at a cost of approximately \$99,000.00.
- Neglected to make mandatory interest disclosures public



- Repeatedly breached privacy obligations
- Repeatedly persecuted me personally, with numerous failed GIPA Act 2009 Section 110 Applications, costing the public in excess of \$201,000.00.
- Pursued my husband and his company in an attempt to secure a Section 110 Application, joining with Dept of Communities & Justice (DCJ), costing DCJ in excess of \$300,000.00 to the Hearing date. This matter is pending a decision as at the date of this document.
- Used public monies for personal use to have a factual media release removed from the internet.
- Used public monies for personal use to threaten an unsustainable action of defamation.

He is able to act out these behaviours at great cost to the public he serves simply because he has no guardian within the organisation whatsoever, and which sees the Crime Triangle referred to at www.crimeprevention.nsw.gov.au as completely relevant under the circumstances.

ROUTINE ACTIVITY THEORY



Physical convergence in time and space

This individual sought out and identified a suitable target, by his documented patterns of behaviour is confirmed likely to re-offend, and lacks a capable guardian one who is willing and capable of challenging his decisions and actions.

This absence of guardianship and oversight extends to the majority of the state's right to information and privacy officers as the roles are generally fully autonomous.

And by now it is common knowledge self-policing does not work.

Academic Comment

White Collar Crime as Organisational Deviance

There has been substantial academic debate and research on the subject of organisational deviance, which the ICAC has been referring to and relying on for the basis of policy change for many years, so this request for Parliamentary Inquiry presents nothing revolutionary or controversial.

As far back as 1998 the ICAC has been reviewing various literature pertaining to corruption and misconduct, determining there were inextinguishable risk factors able to (1) enable or optimise corruption and misconduct and (2) aid in the perpetration of the corruption and misconduct (ICAC, 1998).

Additionally, the Australian Institute of Criminology is a credible government resource for this topic.

Punch (1996) gave a concise summary of the context of corruption and misconduct:

“The only responsibility of business is to make a profit – illegally if necessary, and the business of business is crime.”

Punch went on to note that corruption and misconduct can generally materialise by:

1. Informal rewards
2. Work avoidance or the manipulation of the work situation
3. Staff deviance against the organisation
4. Staff deviance for the organisation
5. Organisational deviance for the organisation
6. Managerial deviance against the organisation

Any of these must be considered unacceptable.

Punch went on to say that the first four categories outlined could be classified as occupational deviances, noting that extensive comment had already been made in the literature, citing Ditton and Henry.

Punch however focused primarily on the last two categories of organisational deviance, which was either for or against the organisation, identifying circumstances where *“an organisational climate is created, and where a collective deviance is an acceptable answer to the perceived organisational dilemmas, and where the organisation culture, resources and facilities are intrinsic to the development of that deviance.”*

Where deviance is an acceptable answer to perceived dilemmas, and the individual(s) are able to justify misconduct or corruption, at least in their own mind, the category of *“noble cause corruption”* can be easily applied.

Noble Cause Corruption has been readily defined as being *“an elegant term for securing conviction on evidence that has been improved by police. It is a euphemism for perjury.”*

Of course, it is not only in official evidence originating from police that such actions can and do occur.

And we now have the evidence Port Stephens Council’s Tony Leslie Wickham perjured himself during NCAT proceedings in 2017 when he made false and misleading statements to the judiciary the direct result of his unlawful agreement to conceal and protect open access information which was mandated for release.

He would thereafter file a Sworn Affidavit in 2020 which also contained false and misleading statements.

Additionally, he would later in March 2025 perjure himself by deliberately omitting documentation from NCAT proceedings in an effort to create his own narrative of events and circumstances.

And why not if there is no accountability?!

The current NSW access to information process is a breeding ground for misconduct and corruption under the guise of a noble cause of greater good for a guarded and unethical organisation.



Such actions are generally undertaken by individuals who enjoy a high status within the community and the organisation in question as they often have the keys to the kingdom.

Compounding the problem, however, the Office of the NSW Information & Privacy Commissioner has confirmed Right to Information Officers are not required to be formally qualified and that training in this field of government is not regulated; albeit they are charged with making decisions concerning administrative law.

A Parliamentary Inquiry would investigate this absence of qualification and accreditation and confirm the need for clear regulation in order to ensure full and proper accountability.

Punch continued in his analysis of misconduct and corruption stating that *“influential people utilise their power or resources for ends which some other people define as illicit, and then, not infrequently, employ that power or those resources to protect themselves from the consequences of social control”*, going on to say that business by its nature is criminogenic, adding that in the context of white collar crime *“it is essential to grasp that the organisation is the weapon, the means, the setting, the rationalisation, the offender and the victim”*.

And let us not forget it is the organisation, and the benevolence of the public purse, that is funding the whole exercise, from action to defence, in the case of NSW government agencies.

Finally, Punch makes clear *“deviation from the rules within a business organisation requires agreement among managers to deviate or transgress, the selection of the suitable methods of implementing those decisions, the choice of strategies of defence and concealment, and the inducement for certain people to fill specific roles.”*

It is with this understanding of what constitutes white collar crime, in the context of NSW government agency personnel who are positioned to act out misconduct and corruption in the daily exercise of their public duties towards access to information obligations, that will make clear the current legislation demands a Parliamentary Inquiry towards ensuring those being damaged by it, that is the public, are rightly and justly protected.

Following Punch, further discussion on the topic was had by Clarke (2005) who highlighted red flags to pathological behaviours by managers and staff members within organisations identified as manipulative, unethical, shallow, parasitic, as well as staff bullying and a desire for power and control.

These are extremely strong terms by qualified professionals and as such ought to be taken very seriously.

They are easily applied to Port Stephens Council and a number of other NSW government agencies.

Indeed, corruption and misconduct would not be considered actions undertaken by those displaying qualities such as integrity, transparency, and respect for others.

Transparency International (2012) considered that corruption is *“the abuse of entrusted power for private gain. It hurts everyone who depends on the integrity of people in a position of authority.”*

Samford et al (2006) postulated that corruption can undermine *“the fairness, stability, and efficiency of a society and its ability to deliver sustainable development to its members”* and can be symptomatic of deeper distortions within a society and / or organisation.

This is the case within NSW government agencies, a great number of which seek guidance and information from each other in the NIPPN forum concerning the manner in which legislation is enacted, and where those with personal agendas and the willingness to act outside of strictly set out parameters and the public's expectations have a ready influence over their intently naive listeners.

Compounding the situation of course, through all the comment on what conditions breed misconduct and corruption, is the fact that some agencies such as Local Government organisations, have unitary and discretionary powers, powers which might appear to some to be able to be easily and acceptably ratified to suit any given situation.

Again, it with this in mind, that is from the perspective of preventing corrupt conduct by those who abuse and misuse their powers and positions, that a Parliamentary Inquiry is requested with urgency.

Staff Rotation as an Anti-Corruption Policy

Jellal (2012) discussed in detail the proposition that staff rotation is an effective mechanism to prevent corruption in large organisations, such as NSW government agencies. He states that *"corruption is usually part of a long-term connection between (the) two parties..."*

In the case of the Port Stephens Council's Senior Right to Information Officer's unlawful agreement with a member of the public to protect and conceal open access information mandated for release, the two parties knew each other referring to each other in their communications by their Christian names and with reference to personal hobbies.

Jellal goes on to say *"An incentive system which promotes rotation mechanisms of supervisory (executive) personnel is likely to prevent corrupt behaviour at the individual level."*

This has relevance, as it is not my position that every staff member of Port Stephens Council has acted questionably, in fact I am extremely confident it is the Officer's personal choice, which may have affected and infected subordinate staff, that has been all too easily highlighted.

Executive positions within NSW government agencies already have substantial financial incentives at first instance, indeed many executive level personnel have many built-in benefits inclusive of vehicle and fuel allowances, varying types of “special” leave, hefty clothing allowances, and most have personal office space inclusive of individualised electronic equipment including mobile phones.

As such the public already contributes a substantial amount of the monies used to cover these governmental executive ‘perks’.

Earlier we discussed how the Crime Triangle has relevance to the consideration of corrupt conduct occurring at the executive level by so-minded individuals.

We also discussed the varying roles of the Port Stephens Council employee who has contributed too many examples of unacceptable if not unlawful conduct which has repeatedly and continuously damaged members of the public, and made a deliberate mockery of the current complaint handling and judicial review processes associated with GIPA.

Jellal’s research supports the position that the introduction of staff rotation leads to a significant reduction in the level of corruption, where he makes specific reference to supervisors and principals.

In the case of Port Stephens Council, where long term relationships supported unlawful, detrimental actions, such relationships would be far less likely to occur if staff rotation were to be introduced.

This is not to say that staff are simply rotated around the organisation internally and / or periodically.

It is to say that staff are to be rotated to different locations entirely.

Ministers and Members, a reasonable time frame could be set for government executives responsible for access to information legislation, for example three or four years. No hardship, in particular financial hardship, could be claimed as relocation costs could be incorporated into salary packages for those choosing to be employed in those positions.

In the case of Port Stephens Council which is estimated to have wasted in the vicinity of \$600,000.00 (Sworn Affidavit of Tony Wickham of December 2024) continuing to honour its evidenced unlawful agreement against two (2) only members of the public, inclusive of ongoing failed applications to obstruct and frustrate the public's exercising its (supposed) legally enforceable right to access NSW government information, where monies are continually spent by one individual prepared to access public funds for personal use, staff rotation is an extremely viable proposition if only to ensure solid anti-corruption strategies are securely implemented in order to reduce the damage to the public at first instance and contain unnecessary public-money spending.

And we must remember, the unlawful agreement between Tony Wickham and his agreement partner remains in place until it has expired or a law enforcement agency intervenes and terminates the agreement. In this regard a Parliamentary Inquiry would terminate the agreement.

At this point in time, and after so much that has occurred, there is every indication the conduct will be ongoing, as there is no indication whatsoever this individual has the capacity or desire to stop.

Moving Forward:

- Drafting new and additional legislation

The Ministers, Members and interested parties are directed to the website www.nswfreedomofinformation.net, to the numerous media articles which document agency misconduct and unlawful conduct, and in particular the investigation into the NSW Right to Information & Privacy Practitioners Network, since acronymed NIPPAN.

In particular the Ministers, Members and interested parties are directed to the article titled *“Toxic State Government Behaviours Exposed!”* where an overdue exposé of what the public currently endures has been articulated, <https://nswfreedomofinformation.net/media-release-23-september-2024/>.

That exposé cost me greatly both emotionally and financially, as the only process available for accessing government information is the GIPA Act 2009. As such I have endured procrastinated access applications, long-winded and costly administrative reviews inclusive of appeals, denigrating caselaw decisions, and have suffered the trauma associated with these processes none of which is without some degree of severe stress and uncertainty.

I did this because the current investigation processes outside of the GIPA Act 2009 are closed to informants and complainants, leaving no reassurance whatsoever investigations and outcomes are credible or that any investigation has actually occurred.

In December 2024 an in-house solicitor employed by the Dept of Communities & Justice (Justice NSW), Open Government Information & Privacy Unit, stated in a Sworn Affidavit that Justice NSW had expended approximately \$300,000.00 compiling documentation for an Application for Restraint Orders under the GIPA Act 2009 Section 110.

The applicants were Justice NSW, Port Stephens Council and Goulburn Mulwaree Council.

It is my intention to publish the Affidavits and Submissions of those applicants as a matter of public interest, which will see extensive public commentary and invitation of public debate.



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That application was aimed at myself, my husband Paul McEwan, and his company DraftCom Pty Ltd; noting my husband and his company were disqualified as Respondents having not made any access applications, and more importantly not making any access application which lacked merit.

Clearly NSW government agencies are desperate to impede my ability to exercise my rights under the GIPA Act 2009 and access my beneficial legislation.

Of course Section 110 does not facilitate any agency being able to scoop up numbers of individuals in a Section 110 net. However this is the latest mindset of agency personnel in the operation of the GIPA Act 2009.

This is a very dangerous evolving of the agency GIPA mindset intent on obstructing access to the public's beneficial legislation, one which has implications capable of restricting groups of people within a particular parliamentary office or media corporation.

The joint matter concerning my husband, his company and myself, was heard in March 2025 with the decision pending. If that application is successful I will be appealing as a gross error in law. As usual I will self-represent.

In my personal experience very few agencies have been proactive and willing to release information informally, particularly when it is very clear such provision seriously implicates trusted executive colleagues.

The result of my investigations and collating of agency documentation is the indisputable fact there is more wrong with the GIPA Act 2009 and agency performance concerning response strategies, than there is right, based on individual agency's mindset to do so.

At present right to information and privacy officers are not regulated.

Neither is the training regulated.



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Neither is the training, which is currently provided exclusively to the NSW government, made available to the NSW public.

New legislation needs to make provision for that, given the irony this training concerns opening up government to the people.

As an example, concerning the evidence agencies are successfully seeking costs; the Crown Solicitor exclusively provides GIPA training to the state. The Crown Solicitor has successfully sought costs in the context of the GIPA Act 2009, which does not enable such actions. An access application for the GIPA training manuals originating from the Crown Solicitor's Office (CSO) was vehemently challenged and was successfully withheld from the public on the basis of commercial interest, with the Tribunal completely ignoring the object and purpose of the GIPA Act 2009.

The question must be asked: Does the NSW Crown Solicitor promote the seeking of costs in the context of the GIPA Act 2009 through its training? This is not an irrational question when the CSO is providing the GIPA training to government agencies, and it is now evidenced her sister agency Justice NSW has openly promoted the seeking of costs as a GIPA Applicant management strategy, when the enabling legislation does not make provision for such.

In relation to the GIPA Act 2009, it is reasonable the public see it align with the PPIP Act 1998's Sections 53 and 55, giving access applicants the ability to seek a review of agency conduct.

At present the NCAT has made abundantly clear "*we don't do conduct*" in the context of the GIPA Act 2009.

Added to that is the public's realisation the NCAT has not made a single referral of systemic issues to the IPC under the GIPA Act 2009 since the inception of NCAT, despite hundreds of petitions to do so.

Not one.

The public has the right to expect accountability and giving them that mechanism within the legislation would be a very good start.

Such a clause also needs to incorporate financial compensation as with the PPIP Act 1998.

These recommendations support the fact the GIPA Act, like the PPIP Act, is beneficial legislation.

Additionally, regulations need to make clear agency decision-makers should be the ones sitting alongside access applicants at the bar table.

Those decision-makers should not be permitted to expand on any reasoning within the reviewable decision. At present the NCAT allows agencies to do so, placing those seeking administrative reviews at additional disadvantage as they realise they are not only dealing with the original determination, but more complicated legal arguments.

This simple requirement will save hundreds upon thousands of public dollars, whilst also ensuring some equity between the parties. After all, decision-makers are expected to be fully fluent in the legislation they administer; they should be expected to support their decisions directly as part of their every-day duties.

The use of pseudonyms by delegated officers must be prohibited. The legislation makes clear an access application is not valid unless it contains the personal information of the applicant.

Section 126 of the Act states an agency is to make the contact details of a delegated officer available to the access applicant.

The use of pseudonyms to sign off on documentation, including digital communications related to the access to information process, must be prohibited.

An extension of the use of pseudonyms, are agency personnel who delete their author information from both hard and soft copy documentation. This should also be prohibited as acting in contravention of the GIPA Act 2009.

However, there are numerous agency-generated GIPA records which do not comply with this section of the Act. The GIPA Act 2009 Schedule 4, 4, 3(b) makes clear the contact details of government employees is not personal information, and as such is information that is disqualified from deidentification in the context of the GIPA Act.

Open Access information mandated for release should be just that. There should never be any opportunity for an agency to fabricate a public interest against disclosure, as is evidenced to have occurred with Port Stephens Council.

The legislation needs to make clear agency application forms are not mandated and as such the refusal to process a valid access application without utilising such is unlawful.

Processing charges is another problem, with Port Stephens Council as recently as May 2024 imposing fees of approximately \$900.00 for requested personal information within one access application, which can only be viewed as a deterrent strategy.

Third party consultations should be occurring at the time of processing the access application, and not commenced only if judicial review has commenced, which discloses the applicant's personal information.

Claimed searches need to be qualified by a simple printout of the search parameter results. In 2018 during NCAT proceedings concerning Port Stephens Council, the Council solicitor held up a USB device, asking the tribunal to listen to a recording which had evidently been made that day, at the NCAT premises. Both presiding members rejected the opportunity to do so as evidence had already been submitted. This recording was later formally requested under the GIPA Act, however Council was adamant the information was not held by it. The evidence of the recording, the offer to listen to it, and the tribunal's rejection to do so, is all recorded in the transcript of the proceedings, yet Council maintains its deception that the recording does not exist and worse if that were possible, no Council person present at the hearing, and neither the solicitor in question, has any recollection or knowledge of it.

Of course, the side issue is the fact this rogue agency unlawfully recorded information in breach of the Court Security Act 2005, but by denying the existence of the information it avoided prosecution.

An extension on the issue of searches, is the claim by agencies the current EDRMS / TRIM / HPRM8 digital recordkeeping software is completely inadequate. On 09th July 2024 Justice NSW's Ms Jodie Cobbin stated under oath that current software used by the department are incapable of searching document content, leaving no assurance whatsoever a determination of 'information not held' is founded on any credibility.

Ministers and Members, this is a critical issue in the access to information arena particularly, that your staff are publicly stating software used by the NSW government for the specific purpose of recordkeeping and responding to valid access applications is not capable of performing the most fundamental search and identification functions.

External Reviews should be completely open and transparent. At present these records are Exempt Information.

Likewise the complaint handling process should be completely open and transparent, declassified from Exempt Information.



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The public currently has no faith due processes are being afforded; this is supported by the evidenced case of Port Stephens Council providing false and misleading statements to the IPC as part of a public interest against disclosure ruse.

The GIPA Act 2009 Section 14 Table 3(f) should be completely abolished, given the now evidenced cases of Port Stephens Council using it for corrupt purposes. Additionally a submission during the 2014 Review of the Act conceded government employees are not qualified to determine whether or not any member of the public poses a serious risk to public safety.

Use of the Disclosure Log should be mandatory, and not a choice of the agency dependant on whether or not an officer sees the information of interest to the public. At present this is a reviewable decision which requires significant effort, time and resources for an access applicant, all of which can be totally avoided. The option to properly complete the Disclosure Log has left numerous caselaw claiming release of information to the public cannot be controlled and release to the world at large is not desirable. However, the object of the Act is to open up government, not conceal released information from the public.

The GIPA Act 2009 Section 110 is another clause that demands abolishing. The ready labelling of members of the public as consorting criminals is an abomination and in complete contradiction to the object of the Act. It is not surprising to note the individual who made the submission for the term 'acting in concert' is an active member of NIPPN and owns a private business where she peddles her wares directly to the group bypassing established procurement processes.

The ability of NCAT to impose a life-time Section 110 Order defies democracy, as we see serious criminal offenders under the Crimes Act 1900 able to appeal harsh sentencing, but which is denied those simply asking for government information.

Ministers and Members, an Inquiry is able to ask the crucial questions:

- Is Section 110 working?
- Is it effective?
- Is the public getting value for money?
- And how are agencies responding to access applications under Section 110 constraints?

The current costs for Section 110 Applications are, exclusive of NCAT where the Tribunal stated it cannot quantify its costs for any of these matters:

Port Stephens Council v Webb & Webb v Port Stephens Council	\$210,000.00
Pittwater Council v Walker	\$19,089.90
Dept of Education v Zonneville	\$127,521.71
Palerang, Queanbeyan & Goulburn Mulwaree Councils v Powell	\$60,756.58
CEU v University of Technology Sydney & University of Technology Sydney v CEU	Refused to Disclose
Dept of Communities & Justice, Port Stephens Council & Goulburn Mulwaree Shire Council v Webb, McEwan and DraftCom Pty Ltd (costs in excess of)	\$300,000.00

This brings the known costs for Applications for Section 110 Orders to approximately \$700,000.00, paid by public monies.

That is the costs for the Agency Applications only.

This does not include the Tribunal's costs to hear these applications and appeals.

This does not include the ongoing costs for the processing of access applications under a Section 110 Order; all of which see large legal teams arguing why approval should not be given, which does not align with the Object of the Act.



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The NCAT recently determined a single GIPA access application in the NCAT forum under a Section 110 Order which had soaked up (4) four years.

Four years Ministers and Members! For (1) one access application under a Section 110 Order!

The access applicant was self-represented opposed by senior and principal solicitors.

Currently an Application for a Section 110 Order does not require any proof of claimed unmeritorious access applications; a prerequisite qualifier for such an application.

Likewise, the relied upon claimed unmeritorious access applications are not tested.

Given the seriousness of the implications of a Section 110 Order, an agency must be required to validate a claimed unmeritorious application relied upon for the purpose. As was revealed above under the topic of qualifying searches, agencies do fabricate outcomes, and those outcomes can be used to corrupt the Section 110 process.

In the recent case of *Dept of Communities & Justice & Ors v Webb & Ors* (decision reserved), the collective applicants for the orders produced voluminous documentation to support the applicants absent of any evidence whatsoever the claimed unmeritorious access applications were so. It was just an empty statement.

If Section 110 remains intact, the low number of (3) three access applications which lack merit in the previous (2) two years as a pre-qualifier for a Section 110 Application must be increased as this sets a very low bar that is easily achievable by agenda-driven agencies.

Currently the inference is that an access applicant is somehow deliberately acting to lodge access applications which lack merit and that this kind of 'conduct' must be impeded.

However the question must be asked ‘*how can an access applicant determine whether an access application lacks merit*’ when requested information is generally expected to exist?

These issues are the major or key issues repeatedly documented to cause serious hurt and trauma to your public by its beneficial legislation. A parliamentary inquiry is necessary in order to facilitate the public’s ability to exercise democratic rights to speak to the legislators and relay the avoidable problems they continue to endure and precisely how agency personnel respond to access applications.

All of these reasons and examples support the abolition of Section 110.

A summary of the unacceptable behaviours currently practiced by right to information and privacy practitioners includes but is not limited to:

Port Stephens Council

Regrettably this agency is 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, acting corruptly, and using unquantifiable public funds to do so.

This agency 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:

- Collude with secondary agencies to secure Section 110 Order
- 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



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- Deny the existence of government information
- Influence subordinate officers
- Impose unwarranted fees and charges
- Fabricate public interests against disclosure
- Initiate unlawful agreements to fabricate public interests against disclosure
- Concoct personal factors of the application
- Recommend fabricating public interests against disclosure
- Make false and misleading statements to the Information Commissioner
- Provide false and misleading statements and submissions to the judiciary
- Provide false and misleading statements to third-party agencies
- Engage in manifestly excessive advocacy against non-represented parties
- Unlawfully claiming legal costs
- Instigate bankruptcy proceedings to gain payment of unlawful legal costs
- Use public monies for personal use to have information deleted from the internet
- Use public monies for personal use to threaten and initiate defamation action
- Breach 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

Goulburn-Mulwaree Shire Council

- Collude with secondary agencies to secure a Section 110 Order
- Refuse to accept valid access application unless nominated form utilised
- Deny the existence of government information
- Impose unwarranted fees and charges
- Breach the public's privacy
- Use public monies for personal use to threaten and initiate defamation action



NSW Dept of Education

- Unlawfully claiming legal costs
- Refuse to accept valid access application unless nominated form utilised
- Demand provision of identification without due cause

Secretary, Dept of Communities & Justice

- Collude with secondary agencies to secure a Section 110 Order
- Unlawfully claiming legal costs
- Use pseudonyms to sign off on documentation
- Deny the existence of government information
- Repeatedly acting in troll-like manner to identify information for use against unrepresented access applicants
- Abuse the Work Health & Safety Act to deny access to information
- Label access applicants as vexatious
- Recommend agencies unlawfully seek costs
- Threaten access applicants with legal costs
- Recommend agencies utilise NSW Police
- Recommend agencies utilise Section 110 proceedings
- Recommend agencies procrastinate applications by enforcing formal document delivery and communication processes
- Suggest agencies interpret individual writing styles as bullying, harassing, threatening and intimidating in order to justify departmental restriction of services and formal punishments
- Solicit secondary agencies for personal information of access applicants
- Falsely claiming departmental study for purpose of soliciting personal information from secondary agencies
- Use public's personal information for collateral purposes
- Breach the public's privacy



- Issue warning letters to unrepresented parties, threatening departmental restriction of access to services, in response to valid submissions in judicial administrative review
- Endorse the use of Chatham House Rules to facilitate the unlawful disclosure of government information
- Share government information in a public forum
- Use government resources to disseminate government information in a public forum

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
- Use GIPA Training programs as a gateway to securing legal engagements

iCARE NSW

- Continually obstructing access to government information on the false premise the information is personal in nature
- Procrastinate valid access applications
- Breach the public's privacy
- Promote the use of Chatham House Rules to facilitate the unlawful disclosure of government information
- Promote the use of Chatham House Rules to facilitate the unlawful disclosure of personal information



Commissioner of Police, NSW Police Force

- Unlawfully claiming legal costs.

These are the stand-out agencies at this point.

And it is shocking to see the Secretary, Department of Communities & Justice among those.

Ministers and Members, these documented behaviours by senior staff entrusted to uphold the laws and principles of justice is happening on a daily basis.

And these are the behaviours they each propagate as acceptable in the exercise of the GIPA Act 2009, promoted and endorsed by example as acceptable throughout the NIPPN cartel.

Ministers and Members, your public is bringing undeniable systemic issues to your personal and direct attention, issues which evidently involve the whole of the state's right to information and privacy officer population.

These are not isolated occurrences. They are indisputably systemic.

There can be no question as to the urgency of this legitimate request for parliamentary inquiry into the GIPA Act 2009.

The public seeks the creation of new legislation which rightfully regulates delegated officers.

The public seeks the creation of new legislation which regulates GIPA training, making that training open and transparent and fully accessible to the public.

It is only when the government is open and transparent can the public have any confidence agency decision makers are complying with the legislation.



Presently the public has no confidence trainers are upholding the legislation and principles of application as ambassadors of the public's beneficial legislation.

Minimum Recommendations:

Recommendation 1:

Total disbandment of NSW Right to Information & Privacy Practitioners Network, NIPPN (since renamed NSW Privacy & Right to Know Practitioners Network)

This group has been operating covertly for over (2) two decades to the detriment of the NSW public. It facilitates the unlawful sharing of the public's personal information through invoking Chatham House Rules which has been debunked by the Attorney General's Department as not having any legislative basis and not extinguishing public servant statutory obligations. NIPPN also embraces collective response strategies designed to globally obstruct an individual's right to access NSW government information. Agencies bypass obligations under the GIPA Act 2009, seeking out information directly from secondary agencies and ignoring formal access application mandates. Further, private enterprise enjoys NIPPN membership and has access to the public's personal information, additionally bypassing legislated procurement processes to promote products and services directly to decision makers.

An alternative Recommendation 1:

Total transparency of the NIPPN group, with full access to meetings and documentation made available to the public on reliance of the caselaw of *Webb v iCARE NSW 2023*) *NSWCATAD 316* which establishes such records as government information and thereby subject to the GIPA Act 2009.

The general public should also have full access to NIPPN meetings.

Recommendation 2:

Creation of Legislation: GIPA Act Regulation of Training

Currently all GIPA Act training is unregulated. This also leaves training unqualified / not certified. At present there are several organisations including the NSW Crown Solicitor providing GIPA Training but none of which is certified to meet any industry standard of any kind. The public expects its GIPA delegated officers to meet industry standard qualifications as they are making legally binding and judicially reviewable decisions.

Recommendation 3:

Creation of Legislation: GIPA Act Delegated Officer Regulation

Currently no delegated officer is regulated. This has resulted in no accountability of any officer for defective, unlawful, biased decisions. The public expects its GIPA delegated officers to be fully accountable.

Recommendation 4:

Amendment to Section 14, Table 1©

Add Notation: *“another government is government that is not part of the Australian system of government.”* There are numerous cases where agencies have attempted to prevent the proper release of government information on the claim that ‘government’ means ‘a secondary NSW government agency’, which has been refuted.

Recommendation 5:

Abolishment of Section 14, Table 3(f)

As has been evidenced in numerous caselaw, agencies have acted to falsify this public interest consideration against disclosure of information, by the making of covert unlawful agreements with favoured members of the public, preventing the lawful release of information via false claims access applicants presented a serious risk to public safety. These published decisions have left an indelible mark on the public, and a dark shadow over NSW government agencies including NCAT, leaving the victims perpetually irreparably damaged.

Additionally, in submissions for the statutory review of the GIPA Act 2009 in 2014, an agency delegated officer conceded determining officers are not qualified to draw such conclusions or form such opinions about the public, that is whether or not any access applicant poses a serious risk to public safety.

Recommendation 6:

Amend Section 25: Requirement for disclosure log

Agencies are on the record using this clause to determine whether or not information is of interest to other members of the public in order to conceal what kind of information has been requested. The agency disclosure log should be all inclusive at first instance, with the publication of a disclosure a reviewable decision. At present the reverse is in operation which necessitates an access applicant seeking a formal review.

As such, it is recommended to delete the words “...if the information is information that the agency considers may be of interest to other members of the public.”

With notation: “This section does not apply to Section 26, 3, (a) and (b).”

Recommendation 7:

Section 43: Access application cannot be made for excluded information

Align Section 43 (1) Note: with **Recommendation 25** – Excluded Information (below)

Recommendation 8:

Section 53: Searches for Information

Currently there is no requirement for any agency to provide proof of searches for requested information. An agency simply states it has searched and the public is expected to accept that on face value. Likewise the NCAT does not insist on proof of searches for information; it simply accepts agency submissions. Given the simplicity and speed with which a print-out of a search can be undertaken and obtained, reliance on searches should be evidenced. This is directly connected to a claim that an access application would qualify as an unreasonable use of resources.

This is also directly connected to fees and charges. To date agencies simply issue an estimate of fees and charges, are able to impose a 50% advance deposit, and refuse to process an application, without any evidence any of these are applicable or qualified.

Recommendation 9:

Section 54: Third Party Consultations

There are numerous agency documents supporting the fact third-party consultations regularly occur at the twelfth hour of the access application process; that is they are not commenced at first instance but at end of the (20) twenty-day processing period. This then leads to an unnecessary and avoidable extension of time. Any relied upon third-party consultations should be initiated at first instance ensuring an access application is processed and the resulting information accessed in a reasonable time frame.

Add new subclauses:

Access Applicant personal information to be deidentified and / or withheld during agency original decision making and internal review stages.

Access Applicant personal information to be deidentified and / or withheld during IPC External Review stage.

Recommendation 10:

Section 55: Consideration of Personal Factors of Application

Delete Subsection 1(b). An agency does not have any capacity to determine an access applicant's motive for seeking government information.

Delete Subsection 6. There is evidence of agencies using this clause to falsify a public interest against disclosure allegation against the public.

Recommendation 11:

Section 57: Required period for deciding applications

Delete Subsection 2(a). Agencies are evidenced to use this clause to unnecessarily extend the application processing time, commencing third party consultations at the twelfth hour, that is at the end of the (20) twenty-day period instead of at expected first instance, frustrating the application and applicant.

Recommendation 12:

Section 58: How applications are decided

Amend Section. Add provision additional to (1) (b), being that if an agency decided that the information is not held by the agency, it must provide evidence of the searches conducted, inclusive of full disclosure of the search parameters.

Recommendation 13:

Section 60: Decision to refuse to deal with an application

Subsection 1(a): A claim of an unreasonable use of resources requires validation on the part of the agency. At present there is no requirement, which has seen numerous agencies able to refuse to deal with an access application without any substantiation.

Subsection 1(e): Delete the words “or a person acting in concert with the applicant”.

An agency is bound by the statute, there is no provision for suspicion or assumptions, which leave a decision maker open to influence of their own personal opinion or views.

Subsection 3: Delete the words “or by persons who are acting in concert in connection with those applications.” An agency is bound by the statute, there is no provision for suspicion, assumptions, or innuendo. The deletion of these words would better align with the Object of the Act. The GIPA Act 2009 speaks of an Applicant, not groups of people, and most particularly people who may be simply assisting an inexperienced Access Applicant.

Recommendation 14:

Section 63: Deemed refusal if application not decided within time

This section of the Act repeatedly contradicts itself.

A deemed refusal to deal with an application must be supported by a Notice of Decision.

An Access Applicant's Review Application is prejudiced by not being provided with a Notice of Decision; an access applicant is not able to provide any argument. This is particularly relevant for those that are self-represented and inexperienced in GIPA.

In its present format this Section makes provision for an agency to simply do nothing on receipt of a valid access application which does not align with the Object of the Act.

Recommendation 15:

Section 73: Access to be unconditional

This Section of the Act is repeatedly contradictory.

On the one hand it states that providing access is to be unconditional.

However, this is offset by conditions of access.

In numerous cases before the NCAT agencies have successfully argued withholding information including policy documents on the basis that the information once released was considered 'released to the world at large.' This is fundamentally the principle of the GIPA Act 2009, that is to make NSW government information publicly available.

This Section needs to be amended to include at the end of (1) "which is considered to be released to the world at large."

Recommendation 16:

Section 80: Which decisions are reviewable decisions

Section 80, e, to be amended to align with **Recommendation 8: Searches for Information** (above).

Recommendation 17:

Section 84: Conduct of internal review

Add subsection to (1), to align with **Recommendation 8: Searches for Information** (above)

Recommendation 18:

Section 100: Administrative review of decision by NCAT

Add: An agency respondent in NCAT review proceedings is to make the decision-maker available to manage proceedings for any external review brought by an aggrieved person. This is not only intended to save potentially hundreds of thousands of dollars to the public purse, it also ensures equity between the parties, preventing manifestly excessive advocacy, bullying and intimidation, against predominantly self-represented administrative review applicants. Currently agencies regularly engage multiple solicitors including barristers and special counsels, and often the Crown Solicitor. A self-represented Access Applicant currently has no equity in proceedings of this unbalanced calibre.

Recommendation 19:

Section 105: Onus on agency to justify decisions

Add Subsection limiting agency arguments to agency issued decisions, either original or the result of an internal review.

Caselaw currently lists NCAT permitting new and / or expanded arguments to justify decisions. For self-represented parties, particularly those with little to no experience in the NCAT, this provision causes uncertainty and distress to them. An Access Applicant has the right to expect the original or internal review decision and the parameters of those decisions will form argumentative basis on the part of the agency. Currently, agencies are permitted to effectively move the goal posts which is prejudicial to the petitioning public.

Recommendation 20:

Section 107: Procedure for dealing with public interest considerations

Subsection (2): Delete the words “the review applicant and the applicant’s representative”, as this does not align with the NCAT Act 2013 Section 49. NCAT is on the record excluding the applicant and / or representative from confidential sessions which prevent evidence being effectively tested. An applicant and / or representative is able to participate in any confidential session under NCAT Order Section 64.

Recommendation 21:

Section 110 – Restraint Orders

Total Abolishment of Section 110

This section demands complete abolishment as it contradicts the object and purpose of the GIPA Act 2009. In its current format it provides a ready mechanism for agencies to collude, breach the public's privacy, unlawfully share the public's personal information, and formulate collective response strategies without evidence to support such an application. In its present format it does not require evidence claimed unmeritorious access applications are such; meaning agencies are able, and do, rely on claimed unmeritorious access applications without having to provide any proof. In its current format, claimed unmeritorious access applications are not tested.

In its current format it is far too easy for an agency to rely on a claimed unmeritorious access application in relation to seeking a Section 110 Order. At present there is evidence of NCAT granting Section 110 Orders in perpetuity with no possibility of review or revoking of orders. The costs to the public purse through government use of resources when processing an access application under Section 110 is currently not quantifiable with the NCAT itself evidenced as unable to identify those costs; likewise those costs are not disclosed within statutory annual reports. The ongoing costs and distress to the public endeavouring to exercise rights under constraints of a Section 110 Order are also not quantifiable, as one Section 110 victim has had one single access application in the NCAT forum for (4) four years and which is still not resolved. In its current format agencies have utilised confidential sessions to make submissions that are not able to be tested, which is completely prejudicial to a Section 110 Application Respondent.

In its current form Section 110 facilitates an agency repeatedly pursuing the same Access Applicant, despite repeatedly failing.

Presently, a GIPA Application under a Section 110 Order of Restraint costs an access applicant the NCAT Application Fee of \$124.00, which is 313.33% higher than the legislated fee of \$30.00.

Presently, a GIPA Application for Internal Review (ordinarily an Appeal) under a Section 110 Order of Restraint costs an access applicant the NCAT fee of \$506.00, which is 1,165% higher the legislated fee of \$40.00.

In its present format, a GIPA Application under a Section 110 Order of Restraint denies the Object and Purpose of the Act, particularly to provide access to information at the lowest possible / reasonable cost.

An Alternative Recommendation 21:

Amendment of Section 110

The Parliament must make seeking and being granted a Section 110 Order as difficult as possible, if for no other reason than such actions deny the Object and Purpose of the Act.

A Section 110 Application to NCAT must be proceeded by a merits based Review of the Application by the IPC.

A Section 110 Application must show evidence of unmeritorious access applications.

A Section 110 Application must show evidence of at least (5) five claimed unmeritorious access applications within the past (12) twelve months.

A Section 110 Application can only list one agency applicant, not multiple applicants.

A Section 110 Applicant cannot list corporations or entities.

A Section 110 Application cannot rely on claimed unmeritorious access applications from secondary agencies.

A Section 110 Order can only be issued for a (12) twelve-month period. This clause must be retrospective as current victims of such an order suffer a perpetual time frame with no possibility of parole / revocation.

A Section 110 Order cannot be issued in perpetuity.

A Section 110 Order cannot be issued to apply globally, that is across all NSW government agencies.

An agency may not apply more than twice for a Section 110 Order against the same Access Applicant. Secondary Section 110 Order Applicants cannot rely on applications and evidence previously provided in the first such application; the time applicable for a secondary Section 110 Order Application commences at the date of the first Application decision which was dismissal.

A Section 110 Order cannot rely on confidential submissions.

A GIPA Application under a Section 110 Order of Restraint can only be charged at the legislated fee which is currently \$30.00; the statutory provision for fee waiver or reduction is applicable.

A GIPA Application Internal Review under a Section 110 Order of Restraint can only be charged at the legislated fee which is currently \$40.00; the statutory provision for a fee waiver or reduction is applicable.

Recommendation 22:

Section 126: Requirements for notices given by agencies

At present agencies actively engage in conduct that does not align particularly with Section 126 (1) (d), using pseudonyms.

Such actions completely discredit an agency Notice of Decision, making it legally defective.

Such actions also complicate the review process within the NCAT arena as delegated officers are unable to be properly identified for summoning.

Amend this clause to reiterate Schedule 4, 4, 3, (b), “(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.”

Recommendation 23:

Section 130: Review of Act

Add: Review every (5) five years following initial review.

Add: Submissions on review are public information.

Add: Round table discussions on review are public information to be published on agency website. (Currently the IPC publishes some of the presentations it makes to the NIPP group).

This is crucial to ensuring agencies and agenda-driven interest groups are not afforded any special process or consideration. The object of the act is to ensure open, transparent government; it is reasonable to expect those processes include any statutory review of the legislation.

Recommendation 24:

Processing Charges: Qualify Personal Information

There are numerous agency documents supporting the fact processing charges are not properly qualified in the context of personal information; particularly that the first (20) twenty hours of processing time for personal information is not chargeable.

The legislation must articulate these charges / free processing parameters more clearly.

Recommendation 25:

Amend Schedule 2: Excluded Information

Delete any and all reference both directly and indirectly concerning investigative / investigation, complaints / complaint handling, administrative reviews, deliberative processes, and reporting functions.

Currently the public has no reassurance whatsoever such processes have been treated fairly, impartially and totally. Those seeking access to those processes are generally excluded, with the subject of those matters provided access to any and all information in stark contrast.

Given the evidence of the actions of NIPP, where the public's personal information is unlawfully shared and privacy breached under the false premise of Chatham House Rules, the public now expects those matters are treated in an open and transparent way in order to align with the object and purpose of the GIPA Act 2009.

This is also essential to ensuring agenda-driven agencies do not fabricate untested evidence against the public as has now been repeatedly documented.

Recommendation 26:

Insert New Clauses Aligned to PPIP Act 1998, Sections 53 and 55

Despite the sections of the GIPA Act 2009 listing proceedings for offences and referral of systemic issues to the IPC, no such actions have ever been taken by the NCAT or any other regulatory body. This is due to the fact such reporting of offences is reliant on the NCAT exercising its discretion to do so, and which is first based on NCAT forming an opinion such actions are warranted. As such, it is clear NCAT is reluctant to make any reportings despite the public's hundreds of petitions and pleadings with the Tribunal to do so.

However, the public has shown its capacity and willingness to address offences directly as has occurred in the PPIP Act 1998.

In this regard the Act should be amended to include new provisions aligning with the PPIP Act to enable the public to seek redress directly. These amendments are expected to include a mechanism for compensation which should not be capped. Not capping compensation amounts would encourage legal practitioners to represent the public for breaches of the GIPA Act 2009, which would support the public in seeking redress.

Recommendation 27:

GIPA Regulation clause 1(2)(a) of Schedule 1: Open Access Information

Add: For all agencies; agendas, business papers and minutes of meetings. Currently agencies obstruct access to information particularly pertaining to statutory review of legislation and stakeholder consultations and forums. The NCAT and DCJ in particular have selected the membership and participants of these group sessions, at the deliberate exclusion of the public. The public has the right to access such fundamental government records as an alternative to that unethical and prejudicial exclusion.

Recommendation 28:

Interest Disclosures:

Agencies to publish a record of employee affiliations, group membership and capacity (if any) both internal and external to position of employment. For example, membership to the Local Government Professionals in the capacity of an office holder. Currently government employees obstruct the public's access to this kind of information. The public has the right to know what activities and groups its public servants are members of and in what capacity.

In closing:

Ministers and Members, it may eventuate that you refer this matter for a Royal Commission into the wide spread corruption, maladministration, and systemic issues of abuse and misuse of the Government Information (Public Access) Act 2009 by NSW government agencies.

The behaviours of government employees charged with lawful administration of this piece of beneficial legislation demand addressing in a public forum where both government and the public are given their rightful voice to be heard.

Your public are being criminalised with a corrupted GIPA Act 2009.

Agency personnel are weaponizing the GIPA Act 2009.



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NCAT is making very poor decisions some of which are unlawful.

Something must be done, about the unfettered powers your employees abuse, about the maladministration and manipulation of the legislation that was given to the public as a free gift from parliament. The above recommendations are the minimum expectations of due change, all of which align to support the object and purpose of the Government Information (Public Access) Act 2009.

This request for urgent Parliamentary Inquiry into the GIPA Act 2009 comes over a decade since its statutory review in 2014; in this regard such an inquiry is not premature but timely.

I look forward to the Ministers and Members replying to this petition indicating they agree a Parliamentary Inquiry is necessary at minimum to commence addressing the current situation with this piece of legislation, giving the public its rightful voice to speak to the parliament about the legislation which is causing them so much hurt, trauma, and suffering.

I also look forward to the Ministers and Members replying to this petition in agreeance the legislation needs serious reconsideration and modification. And that training and officers must be regulated with proper accountability mechanisms, which might see incorporating into the existing Regulations.

And I thank the Ministers and Members for their forthcoming letter advising when a meeting has been secured for my husband and I to discuss our concerns in person towards the commencement of the way forward inclusive of a parliamentary inquiry at minimum.

The author reserves the right to make further submissions towards these issues if and when they present.

Yours Sincerely

Telina Webb



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