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Thursday 10th October 2024 Pages Total: (42) Forty-Two

Dear Ministers

RE: Administration of Acts (2001 SI 338)

- **Submission for Urgent Request for Parliamentary Inquiry into the maladministration, systemic abuse and failures 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 supplementary 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 to fully grasp the seriousness and urgency of the public's current situation concerning the Government Information (Public Access) Act 2009.

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

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".*

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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 Ministers and providing 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 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.

Regrettably, such abuse 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 participants.

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 seemingly unlimited public funding resources, and resultantly in most cases leaving agency personnel completely free from accountability for their flawed and often unlawful government administrative decisions.

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.

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 that 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. The latter of course in contradiction to 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 sharing personal information and the public's records, with educational strategies on just how to deal with what is now commonly referred as Fixated (GIPA) Applicants.

What is likely most shocking about that in particular, is the fact the identified cartel includes members from private enterprise.

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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 it is up to you do what the public expects. There is nowhere else to go.

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 legislation to address the regulation and training of your officers.

The reports from the IPC on how the 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 biased.

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 new government to step in and make the overdue changes to ensure such actions cease.

As the whole of Australia has witnessed during the 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 to initiate an urgent Parliamentary Inquiry into this most critical piece of legislation, the GIPA Act, to ensure current agency actions cease, as we work together to make the greatest efforts to stop the people of NSW from being hurt and damaged by this legislation.

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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 and unclear, and where investigative bodies do anything 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 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 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) having jointly indicated 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 in 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 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.

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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 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 Petitioner
- The Honourable Nathan Rees
- What is beneficial legislation?
- 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 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 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 accept my submission Request an Urgent Parliamentary Inquiry, Amend the Legislation, and create complimentary supporting legislation, on the basis that I have endeavoured to follow a similar format, noting that each of those previous submissions was accepted on 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 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 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 committee nominated for that Parliamentary Inquiry on request and has not been attached today strictly due to the volume of such documents.

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 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 Right to Information Officers, does not seek any investigation into any matter of occurrence with any NSW agency, albeit the Ministers 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*."

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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 for their mutual understanding as I am not legally qualified nor legally trained, with the Ministers 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 GIPA Applicants. It was clear from those conversations a common denominator between GIPA Applicants, moreso those enduring the administrative review process, were symptoms of PTSD.

These failings 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.

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.

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.

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 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.

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 your community 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.

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 to right this ongoing unacceptable situation.

In this regard, this request for 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.

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.

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Should a member of the public eventually find themself 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.

Nothing about this can be considered informal or straightforward, and I for one can attest as you may also be able to Ministers, although the NCAT is not a court per say, 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 both fully digest the true experiences of your public, and the documented actions of your agencies, as you agree this request for 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.

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 the antiquated cultural attitude to control government information remains firmly entrenched and is in fact thriving.

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.

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.

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.

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

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.

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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".

NCAT itself acknowledges the term "beneficial legislation" and the existence of it in the context of both the GIPA and PPIP Acts:

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

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.

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***

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 and in urgent need of repair.

It is only in this state because of the actions of NSW government agencies, and not due to any actions 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.

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 administrative duties, 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 that criminalises those public 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'*.

Report after report has been made to a number of regulatory bodies concerning the indisputable corrupt conduct of Port Stephens Council, as an example, 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.

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.

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.

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 to discuss legislative concerns.

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

   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.
   - 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.
   - 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.

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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.

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.

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 legitimate criticism against a concerned public, 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.

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.

- **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....."

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.

This bias extends into the formal review arena NCAT in administering the GIPA Act 2009.

- **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 prejudge 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 288at 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 Jia165.

- **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.

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.

It appears the legislation is filled with loopholes that enable agency personnel to easily escape accountability in most instances.

This needs immediate attention and is able to be scrutinised through a Parliamentary Inquiry.

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 Senior Privacy Officer at iCARE NSW.

I had requested the provision of the membership list and other NIPPN information. The Chair stated unless I had an agency email address the information would not be released, with information on the nominated Site the only details available.

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 every NSW government department as well as private enterprise.

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.

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 private enterprise.

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, Theatrette 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 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 corruption of the access to information process.

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

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.

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.

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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 Rules.

Circulating Recommended Punitive Management Strategies

On 27th March 2019, Justice NSW's Director Open Government & 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.

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.

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 highlighting, 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.

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, and corrupting the access to information processes.

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 without the need for evidence.

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 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 government.

Mr Wickham is listed as an active member of NIPPN.

This person also occupies other roles concurrently within the organisation, 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:

- 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 Officer 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 the Officer 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.

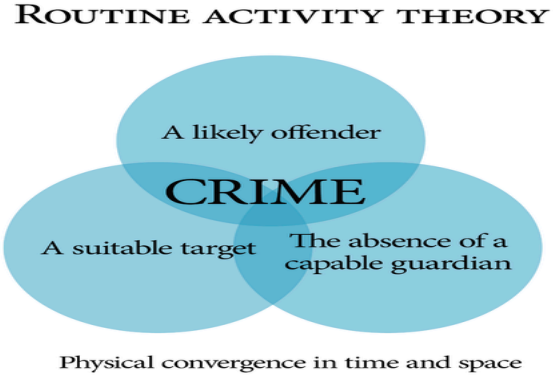
In the case of my husband and I, the false and misleading statements repeatedly made by Tony Leslie Wickham for the specific purpose of undermining legislated rights, has resulted in atrocious damning case law at first instance, which took over four years to overturn, and where terminologies such as ‘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.

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.
- 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 whatsoever, and the Crime Triangle referred to at www.crimeprevention.nsw.gov.au is completely relevant under the circumstances.



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.

However self-policing does not work as we now know.

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.

As far back as 1998 the ICAC has been reviewing various literature pertaining to corruption and misconduct, determining there were inexpungeable 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.

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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.

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.

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 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.

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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 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.

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, 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, 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.

In the case of Port Stephens Council which is estimated to have wasted in the vicinity of $500,000.00 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.

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 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 NIPPN.

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

That expose 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 were credible.

In my personal experience no agency has been proactive and willing to release information informally, particularly when it is very clear such provision seriously implicates trusted executive employees.

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.

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 contact of the GIPA Act 2009, which does not enable such actions. An access application for the training manuals originating from the Crown Solicitor's Office was vehemently challenged and was disputed to be procedural government information.

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The question must be asked: Does the NSW Crown Solicitor promote the seeking of costs in the context of the GIPA Act 2009? This is not an irrational question as it is now evidenced the Secretary, Dept of Communities & Justice has openly promoted the seeking of costs as a GIPA Applicant management strategy, when the enabling legislation does 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 penalty 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.

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 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.

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.

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.

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, 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.

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, 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 application 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.

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 rewriting. 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 such a term 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, an Inquiry is able to ask the crucial question: Is Section 110 working? Is it effective? Is the public getting value for money?

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	$201,000.00
Pittwater Council v Walker	$19,089.90
Dept of Education v Zonnevylle	$127,521.71
Palerang Council & Ors v Powell	$60,756.58
CEU v Uni of Tech Sydney & Uni of Tech v CEU	Not Disclosed

This brings the known costs for Section 110 Orders to almost $410,000.00, paid by public monies.

There is currently a single GIPA access application in the NCAT forum under a Section 110 Order which has been ongoing for (4) four years.

Four years Ministers!

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Additionally concerning 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.

These recommendations 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.

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, 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:

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

- Executive Officer colluding with secondary agency to ensure statements and submissions aligned to the detriment of unrepresented party in judicial proceedings

Goulburn-Mulwaree Shire Council

- Refusing to accept valid access application unless nominated form utilised
- Denying the existence of government information
- Imposing unwarranted fees and charges
- Breaching the public's privacy

NSW Dept of Education

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

Secretary, Dept of Communities & Justice

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

- Using government resources to disseminate government information in a public forum

Office of the NSW Crown Solicitor

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

iCARE NSW

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

These are the stand-out agencies at this point.

And it is shocking to see the Secretary, Department of Communities & Justice among those. Minister Daley, these behaviours by senior staff entrusted to uphold the laws and principles of justice is happening on a daily basis right under your nose.

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 forum.

Ministers 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.

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

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In closing:

As recent as Tuesday 08th October 2024, I received documentation from iCARE NSW which makes abundantly clear this government cartel NIPPN is very angry a spotlight has been shone on the group, where proceedings are on foot with NCAT for access to information which is in the public domain, but which it continues to deny access to. This matter has been ongoing for over (3) three years. NIPPN is angry it has been exposed, and the public can understand why.

Ministers I have already disclosed to you the fact my husband continues to suffer suicide ideation the direct result of the actions of Port Stephens Council, most particularly by Tony Leslie Wickham in the exercise of the GIPA Act 2009.

As such, and at my husband's request, I enclose a redacted copy of the unlawful agreement of March / April 2012, Tony Wickham's false and misleading letter to an Investigating Officer of the IPC of March 2015, and both his and Council solicitor Lisa Marshall's false and misleading statements and submissions of January 2017 to the judiciary as evidence, noting the resulting caselaw of ***McEwan v Port Stephens Council (2017) NSWCATAD 269***, https://www.caselaw.nsw.gov.au/decision/59af2591e4b074a7c6e186b0.

- ***Refer to Attachment 1***

This is the public's reality. It is happening right now and has been for several years.

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

Something must be done, about this individual, 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.

I look forward to the Ministers replying to this petition indicating they both agree a Parliamentary Inquiry is necessary at minimum to address 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 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.

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

Yours Sincerely

Telina Webb