



**Priority areas for reform: thematic proposals for the *Government Information (Public Access) Act 2009* statutory review**

The Information Commissioner may provide assistance to the statutory review in accordance with section 130 of the *Government Information (Public Access) Act 2009*.

The statutory review commenced in 2014 and received the majority of submissions some two years ago. The operating environment for government and for the Information Commissioner has substantially changed in that time. Accordingly, the input presented here is raised to assist the statutory review address the new and pressing needs to ensure that the GIPA regime keeps abreast of:

- the international open government agenda and Australia's move to join the Open Government Partnership

The WJP Open Government Index 2015<sup>1</sup> provides scores and rankings on four dimensions of government openness: (1) publicized laws and government data, (2) right to information, (3) civic participation, and (4) complaint mechanisms. These dimensions are intended to reflect how people experience varying degrees of openness in their daily interaction with government officials. Australia is ranked 9<sup>th</sup> behind Sweden, New Zealand and Norway. For all levels of economic development, countries that participate in the Open Government Partnership attain higher WJP Open Government Index 2015 scores than non-member countries. The Australian Government committed to finalising membership of the Open Government Partnership (OGP) in November 2015.

- increasing emphasis on government data as a subset of government information to be open and accessible

The review of the NSW Open Data Policy in 2016 renews the NSW Government commitment to open data to support transparency, innovation, and new knowledge and insights from combined data sources. The new Data Analytics Centre facilitates data sharing between agencies and manages whole-of-government analytics projects. The DAC advises agencies on how data can be opened to the public. The Information Commissioner has taken on the role of NSW Open Data Advocate. The Open Data Advocate will play a key role in ensuring that the new Open Data Policy is successfully implemented.

Current Productivity Commission and Office of the Australian Information Commissioner inquiries and consultations on data use and availability, including access management and privacy protection, indicate the trajectory of change.

- increasing information sharing and use in digital environments across agencies

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<sup>1</sup> [http://worldjusticeproject.org/sites/default/files/ogi\\_2015.pdf](http://worldjusticeproject.org/sites/default/files/ogi_2015.pdf)

For example, the digital licence and the growth of Service NSW as the leading transactional service provider for government through a variety of channels including digital, presents opportunities and challenges to the GIPA model reliant on public access through individual agencies.

- improvements in the delivery of Information Commissioner regulatory functions

Over the past two years the IPC has addressed the historical backlog of GIPA cases. The IPC increased the percentage of matters on hand that are under 4 months old from 36% in June 2014 to 75% in January 2015. In April 2015 the backlog was eliminated.

The Information Commissioner's external review role provides a timely, accessible and cost-efficient mechanism to ensure information access rights. The holistic view of the performance of the regulated sector supports the delivery of proactive regulatory guidance and regulatory initiatives to champion and promote elevated levels of compliance and a culture of open government.

The review and development of a new online GIPA tool has provided a more responsive service and improved quality and timeliness of agency application management and decision-making. This functionality has also eased the regulatory reporting burden.

The IPC is well advanced in developing a contemporary strategic regulatory approach with the development of a robust regulatory framework which will articulate our jurisdiction, our regulatory approach and inform a more targeted, effective regulatory suite of actions based on risk and proportionality.

The input that follows does not seek to replace or re-prosecute the advice provided to date in submissions by the Information Commissioner, the IPC input on technical issues or the valuable analysis contained in the three Reports on the Operation of the GIPA Act. While the statutory review is necessarily focused on the technical elements of the legislation, it is important to recognise the underpinning that the legislation provides for the regime as a whole. Realizing the right to information begins with its codification into law. The WJP Open Government Index 2015 results indicate that while right to information laws may be an important first step, such laws do not suffice in guaranteeing the right to information in practice. Realising those rights requires an effective regulatory architecture and well-calibrated authorising environment. The input that follows seeks to address priority improvements to the architectural components of the GIPA regime to support better the achievement of open government.

**Table: Areas for reform**

Principles of Open Government Information	Issue	Suggested change	References
<b>1. Modernising the authorising environment for proactive release of information and data</b>			
<b>Innovation</b>	While the GIPA Act is technologically neutral, it does not cater well for the increasing need for appropriate information and data flow between agencies to support policy and service delivery	Amend - the objects of the Act to make explicit the role of GIPA in authorising proactive release/sharing of information and data between agencies for proper public purposes. The proactive intent of GIPA is evident in the legislative mechanisms in GIPA to support the push model of information.	2014-15 Report on the Operation of the GIPA Act, p 6
	While the GIPA Act is oriented to government information, it does not cater well for the increasing outsourcing of government services and the need for appropriate information and data flow between agencies and service providers to support policy and service delivery, especially where there is no direct government contracting for s 121 to operate eg. the National Disability Insurance Scheme	Amend - the objects of the Act to make explicit the role of GIPA in authorising proactive release/sharing of information and data between agencies and service providers for proper public purposes. Insert provisions to provide an appropriate mechanism similar to s 121.	2014-15 Report on the Operation of the GIPA Act, p 6
	NSW Government appointed the Information Commissioner as open data advocate to support implementation of open data and DAC initiatives. This is an important role as open government champion, but is not recognised as a statutory function	Amend - GIPA and/or GIIC Act to include the role of Open Data Advocate as a function including to issue guidelines and other publications on open data for the assistance of the public and agencies.  Recommend – government consider supplementary funding to the IPC to build the technical and regulatory capability to oversight this new frontier in open government.	2RS reference to “champion” role.  2014-15 Report on the Operation of the GIPA Act, p 7
<b>Transparency</b>	Agency disclosure logs on websites often do not contain direct links to the information or data disclosed in response to an access application, increasing the	Amend – Division 4 of the GIPA Act requiring that the disclosure log contain all released information unless there is an overriding public interest	2014-15 Report on the Operation of the GIPA Act, p 16

Principles of Open Government Information	Issue	Suggested change	References
	effort required for the public to access information already decided under the public interest test as being in favour of disclosure and failing to fully realise the proactive release pathway.	against disclosure.	
<b>2. Improving the efficiency and effectiveness of review rights</b>			
<b>Independent complaints mechanism</b>	<p>The Information Commissioner's independent external review provides a unique and valuable regulatory capacity to bring together knowledge and visibility of the agency specific practices and outcomes (original decisions) together with case specific authority (NCAT decisions) to drive cultural and practical change across government sectors. The Information Commissioner could be better equipped to deliver quicker and more certain outcomes on individual cases at external review.</p> <p>It is noted that internal reviews should remain options for access applicants to accommodate applicant experience/confidence in individual agencies and agency resource capacity.</p>	<p>Amend – the GIPA Act and/ or the GIIC Act with a power for the Information Commissioner to resolve reviews, similar to the GIIC Act power to resolve complaints.</p> <p>Amend – the GIPA Act and/ or the GIIC Act with a determinative/directions power for the Information Commissioner to deal with reviews to finality where they do not involve the public interest test (e.g. on fees and charges). Cost and timeliness benefits for the escalation model in dealing with mechanical matters without the need for quasi-judicial resources.</p> <p>Amend – the GIPA Act or Regulation to require agencies to report on the outcome of Information Commissioner recommendations.</p>	2014-15 Report on the Operation of the GIPA Act, p 8
<b>3. Simplifying the avenues for government information and data access and release</b>			
<b>Accessibility</b>	A single-point-of-service has been a driving force for improved access to government information and data, including the harmonisation of information access, privacy and data regimes. Having multiple pieces of legislation can make it difficult and time-consuming for agencies	Amend – information access, data sharing and privacy legislation to harmonise.	Productivity Commission Data Use and Availability Issues Paper, April 2016, p 20

<b>Principles of Open Government Information</b>	<b>Issue</b>	<b>Suggested change</b>	<b>References</b>
	<p>and businesses to understand and fulfil their obligations. The complex governance of personal information can also make it difficult for individuals to understand and act on their rights.</p>		
<b>Accessibility</b>	<p>It is becoming increasingly difficult for applicants to identify the correct and current holder of government information and data to which they seek access.</p> <p>There has been slow progress by many agencies in providing online payment options for application fees.</p>	<p>Amend – the GIPA Act to allow agencies to transfer the application fee at the time of transferring an application to another agency.</p> <p>Recommend – Government request the Information Commissioner to collaborate across the government sector to institute online application and fee payment arrangements, including through single points of service where appropriate.</p>	<p>See also IPC comments to proposal 6 in DoJ's second tranche of technical proposals (sent to Aneta Veneska on 3/6/2016)</p>