



THE LAW SOCIETY  
OF NEW SOUTH WALES

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27 August 2014

The Director  
Justice Policy  
Department of Justice  
GPO Box 6  
Sydney NSW 2001

By email: [justice.policy@agd.nsw.gov.au](mailto:justice.policy@agd.nsw.gov.au)

Dear Director,

**Review of Government Information (Public Access) Act 2009**

Thank you for the invitation to make a submission in relation to the review of the *Government Information (Public Access) Act 2009* ("GIPA Act") and the *Government Information (Information Commissioner) Act 2009*.

I write to you on behalf of the Law Society's Environmental Planning and Development Committee ("the Committee"). The Committee represents the Law Society on environmental and planning law issues and includes experts drawn from the ranks of the Law Society's membership. The Committee's comments are set out below.

The Committee supports the principles underlying the GIPA Act and the role of disclosure regimes in promoting transparency and accountability in government decision making. It is important that those charged with the duty of releasing information are well resourced in that task so that information is made available, in accordance with the legislation, in a timely and efficient way.

The Committee appreciates that servicing requests under the legislation can, at times be resource intensive, in particular, for local councils. The Committee notes that councils can receive upwards of 1000 requests per year and that in many cases applicants are unsure of the exact information required. The Committee considers that those requesting information would be assisted by the charging regime being applied consistently as between agencies but at all times keeping in mind Parliament's intention to encourage access at the lowest reasonable cost.

**Copyright**

A matter of particular concern to the Committee is the impact of the *Copyright Act 1968* (Cth) on the release of government information both on a proactive and reactive basis. Once this issue came to light some councils removed information from their webpages.

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The Committee notes the comment by the Australian Law Reform Commission ("ALRC") in its report *Copyright and the Digital Economy* (ALRC R 122):

...In the ALRC's view, specific exceptions [from the Copyright Act] are necessary for local government. Councils play an important role in planning, development and environmental management. Public consultation and scrutiny of local government operations are essential, but are hindered by current copyright arrangements. (para 15.87)

The Committee is aware that in many cases the written permission of the copyright owner must be obtained before the information can be released. This process results in costs to the council and delays to the applicant.

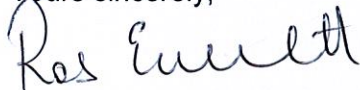
The Committee strongly supports the ALRC recommendation 15-4 which states:

.. The *Copyright Act* should provide for a new exception for uses where statutes require local, state or Commonwealth governments to provide public access to copyright material.

The Committee is very concerned that the Government's acceptance and enactment of this recommendation will take some time. There has not, as yet, been a formal Government response to the ALRC report. A more timely solution is necessary if the objects of the GIPA Act are not to be unduly compromised. In the meantime, councils have been encouraged to adopt various practical interim solutions and they have been advised to request additional copies of plans and reports from applicants for the purpose of compliance with the GIPA Act and to obtain written licenses from applicants and experts authorising release of documents. These interim solutions do not resolve the actual problem. The Committee intends to write to the Information Commissioner on this important matter.

Any questions in relation to matters raised above should be directed in the first instance to Liza Booth, Policy Lawyer for the Committee on (02) 9926 0202 or by email to [liza.booth@lawsociety.com.au](mailto:liza.booth@lawsociety.com.au) .

Yours sincerely,



Ros Everett  
**President**