

Regulatory Responsiveness Key Issues

Local Government Professionals Conference
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Local Government Sector Key Issues and Guidance

- Universal Human Rights and Democratic Values
- Complaints data – local council sector
- External reviews – local council sector
- Protections under the GIPA Act
- Offences under the GIPA Act
- Decision-making
- Tools and Guidance
- Mandatory pro-active release and contemporary issues
- National Regulators Community of Practice

Open Government and the Right to Know

Universal Declaration of Human Rights Art. 19:

- *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

UNESCO Sustainability Goal 16:

- *Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.*

Target 16.10:

- *Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.*

Government Information (Public Access) Act

- Section 3(1) In order to maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective, the object of this Act is to open government information to the public by -
 - (a) authorising and encouraging the proactive public release of government information by agencies,
 - (b) giving members of the public an enforceable right to access government information, and
 - (c) providing that access to government information is restricted only when there is an overriding public interest against disclosure.

Local Council Sector



Complaints data

- High % of complaints per application by Sector
- Issues raised in complaints:
 - Contracts Register
 - Decision making process
 - Decision making timeframes
 - Disclosure log
 - Formal access application required for open access information
 - Information not provided
 - Invalid application
 - Management of records
 - Open access information not available
 - Refuse to deal with application
 - Timeframe to provide access to information

Local Council Sector



External review by Information Commissioner

- Applications for external review % of applications
- S93 issued 33-100% (30-45% norm.)
- Primary issues:
 - **s14T(3)(a) personal information**
 - **Information Not Held/Searches**
 - s14T(3)(b) IPP/HPP
 - s14T(1)(f) effective exercise agency function
 - s14T(1)(d) supply of confidential information/agency function
 - s14T(1)(e) deliberative process of government
 - IPC Legislation\GIPA Act 2009
 - s14T(4)(d) business/professional interests
 - s14T(1)(h) audit/test/investigation/review
 - **s14T(1)(g) breach of confidence**

Protections under the GIPA Act

- **Section 113** - Protection in respect of actions for defamation or breach of confidence
- **Section 114** - Protection in respect of certain criminal actions
- **Section 115** - Personal liability



Offences under the GIPA Act



- **Section 116** – offence of acting unlawfully.
- **Section 117** – offence of directing unlawful action.
- **Section 118** – offence of improperly influencing decision on an access application.
- **Section 119** – offence of unlawful access.
- **Section 120** – offence of concealing or destroying government information.

Agency decision-making

- **Section 58(1)** of the GIPA Act sets out the available decisions. These decisions include deciding to:
 - provide access
 - refuse to provide access because of an overriding public interest against disclosure
 - refuse to deal with the application.
- Decisions must also be made in accordance with the relevant mandatory procedures and obligations set out in the GIPA Act. These obligations include certain actions such as:
 - conducting the '**public interest test**' for public interest determination
 - conducting 'reasonable searches' for government information
 - stating the reasons for a decision.

Public interest considerations in favour of disclosure

- promote open discussion of public affairs, enhance government accountability, contribute to positive/informed debate on issues of public importance
- inform the public about the operations of agencies, their policies and practices for dealing with members of the public
- ensure effective oversight of the expenditure of public funds
- personal information of the person to whom it is to be disclosed
- reveal or substantiate that an agency has engaged in misconduct or negligent, improper or unlawful conduct

Public interest considerations against disclosure

Section 14:

- Responsible and effective government (cl 1)
- Law enforcement and security (cl 2)
- Individual rights, judicial processes and natural justice (cl 3)
- Business interests of agencies and other persons (cl 4)
- Environment, culture, economy and general matters (cl 5)
- Secrecy provisions specifically provided in legislation (cl 6)
- Exempt documents under interstate Freedom of Information legislation (cl 7)

Weighing the public interest test

- The identification of one or even several public interest considerations against disclosure **is not sufficient** justification to refuse to provide information.
- In each case, decision makers will consider a range of factors, including:
 - the nature and context of the information
 - any personal factors of the application (section 55)
 - the relative weight of public interest considerations for and against disclosure.
- Agencies should refuse to disclose information **if and only if** there is an overriding public interest against disclosure.
- Where considerations on balance favour disclosure, or are evenly balanced, the presumption in favour of disclosure stands, and information should be published or released.

External review by the Information Commissioner

- In 2021/22, external reviews by the Information Commissioner accounted for **40% of all reviews conducted**.
- Citizens can apply directly to the Information Commissioner, and have 40 working days from the time the decision is provided.
- Once an application is received, the Information Commissioner will:
 - Review the application
 - Contact the applicant to confirm receipt and give a reference number
 - Notify the agency that the IPC has received an application for review
 - Conduct a preliminary assessment to determine whether we have jurisdiction
 - The IPC may make inquiries or ask either party (applicant or agency) to provide information or documents
 - Allocate the review request to one of the IPC investigation & review officers
 - Notify the applicant and agency when the review is allocated and ready to be progressed.

External review by the Information Commissioner

Next, the review officer:

- may need to gather additional information about the agency's decision including information from both parties.
- will review the decision made by the agency and decide whether it was justified.
- will look at a range of factors, the process that the agency followed and the decision to form a view about whether the agency correctly followed and applied the provisions of the GIPA Act.
- will write a report outlining the Information Commissioner's view and any recommendations for the applicant and/or agency.
- will, once satisfied that all relevant information has been properly considered, issue a final review report to both parties.

If an applicant or an agency disagrees with the final review report or recommendations made by the Information Commissioner, they may seek a review with the **NSW Civil and Administrative Tribunal (NCAT)**.

GIPA Act Tools

- E-learning modules
- Essential Guidance Toolkit on information access and privacy fundamentals – Local Government
- [Information Access Guideline 1 - For Local Councils on the disclosure of information \(returns disclosing the interest of councillors and designated persons\) September 2019](#)
- IPC Information Access Self-assessment Tool
- GIPA Dashboard
www.ipc.nsw.gov.au/information-access/agency-gipa-dashboard/gipa-dashboard
- IPC GIPA Tool



Mandatory Proactive release and Contemporary Issues



- Mandatory pro-active release – current audit reports
- Publication of development information, delegations, disclosure logs and information not made available
- Informal release of information research and guidance
- Machine enhanced decision making
 - *Ireland v Central Coast Council* [2022] NSWCATAD 366

National Regulators Community of Practice (NRCoP)



- The **National Regulators Community of Practice** (NRCoP) is an active network of public sector regulators from all three levels of government and from every regulatory sector, professional background, role and level of seniority, who are keen to learn from and with each other
- **Corporate subscription:**
<https://anzsog.edu.au/partner-with-anzsog/regulators/about/nrcop-membership/>
- **For individual regulators to join and have access to events and resources:**
<https://anzsog.edu.au/partner-with-anzsog/regulators/join-the-nrcop/>

National Regulators Community of Practice: 3-Year Plan

	Connect	Inspire	Enrich	Educate
Objectives	To build a community of regulators across jurisdictions, sectors and roles, connecting practitioners with experts and leaders, to build regulatory expertise and improve outcomes	To inspire regulators that their work is intellectually, professionally and ethically worthwhile and the foundation for a rich and satisfying career	To enrich debate on the profession of regulation and to ensure enduring benefit for regulated entities and the public	To educate regulators to improve their skills and expose them to best regulatory practice to support improved outcomes
2022 Actions	<p>Grow the NRCoP community by establishing new Chapters in SA and ACT</p> <p>Re-establish local community face-to-face activities through national and local hybrid (online and in-person) events</p> <p>Refresh the NRCoP website to improve member experience</p> <p>Enhance our social media strategy</p> <p>Encourage members to share learnings and ideas by including NRCoP activities on social media</p> <p>Create strong links with regulatory agencies in each jurisdiction and at Commonwealth level</p> <p>Build alliances with key networks of academics and regulators including RegNet and AELERT</p>	<p>Bring regulatory practitioners and world-leading thinkers together to share knowledge through a national webinar series</p> <p>Be responsive to members' ideas in the design and programming of NRCoP events and activities through Annual Member Survey and stakeholder feedback</p> <p>Increase the range and accessibility of outputs from the national webinar series, including short videos</p> <p>Provide access to support material on key regulatory issues through the NRCoP website</p> <p>Highlight ideas and opportunities for regulators through our monthly Regulator Email and monthly Australia Policy Observatory newsletter</p> <p>Build capability in culturally responsible regulation in collaboration with the ANZSOG First Nations Team</p>	<p>Draw on network of scholars and practitioners to inform developments in regulatory thinking</p> <p>Develop the NRCoP Regulation Policy and Practice collection on APO, the Analysis and Policy Observatory</p> <p>Add a new role of Academic Adviser (Early Career Researcher) to the NRCoP National Steering Committee to support the career development of regulatory academics</p> <p>Build capability in media monitoring, ensuring that the NRCoP can respond to the needs of regulators on matters of public concern</p> <p>Provide a Jobs Board, enabling regulatory policy and practice roles to be viewed by interested regulators across Australia and NZ</p>	<p>Design a six-module program of regulatory professional development in collaboration with G: Reg NZ</p> <p>Work with NRCoP members to ensure that the professional development program is innovative, contemporary and inclusive, and will meet the needs of regulators</p> <p>Develop the online delivery mechanism for the roll-out of the professional development program</p> <p>Identify options for locally based teaching support mechanisms to ensure online learning for regulators is further embedded on the job</p>
2023 Actions	<p>Grow the NRCoP community by establishing new Chapters in NT and TAS</p> <p>Improve local government uptake of NRCoP through relevant content and opportunities</p> <p>Design a regulatory professionals mentoring program to connect individuals across the career spectrum (early, mid, senior)</p> <p>Embed new chapters, and continue to support existing chapters through a program of national hybrid events</p> <p>Be responsive to members' ideas in the design and delivery of a program of development activities</p>	<p>Host a National Forum, bringing together regulatory practitioners, leading experts and researchers from across the country and internationally</p> <p>Extend the National Forum into each jurisdiction by hosting local events featuring key speakers from the National Forum</p> <p>Provide a range of innovative and accessible outputs from the National Forum to ensure maximum accessibility for all members</p> <p>Continue to inspire through a national webinar series and associated resources that are responsive to members' aspirations</p> <p>Develop a program of curated conversations that support regulators to collaborate on common issue</p>	<p>Bring together academics and practitioners to support the development of research which addresses contemporary issues in regulatory thinking</p> <p>Prepare a monograph, co-authored by academics and practitioners on key developments in regulatory theory and practice</p> <p>Build NRCoP as a thought leader through knowledge curation and translation that meets the needs of members</p> <p>Develop a Regulatory Awards scheme to recognise and celebrate achievement and best practice in regulatory practice</p>	<p>Launch regulatory professional development program in collaboration with G: Reg NZ</p> <p>Deliver and continuously review implementation of professional development program</p>
2024 Actions	<p>Launch regulatory professional mentoring program</p> <p>Deliver and continuously review implementation of professional mentoring program</p>	<p>Host a National Speaking Tour of an international leader in regulatory thinking</p> <p>Be responsive to member ideas in the development of new NRCoP offerings, including podcasts, master classes, facilitated conversations.</p>	<p>Launch monograph key developments in regulatory theory and practice</p> <p>Launch Regulatory Awards scheme</p> <p>Undertake formal evaluation of NRCoP 2013-2023</p>	<p>Evaluate Year 1 of the regulatory professional development program</p> <p>Explore demand for further professional development offerings (in line with G:Reg NZ)</p>

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