



State Owned Corporations Review
Department of Premier and Cabinet
GPO Box 5341
SYDNEY NSW 2000

Attention: State Owned Corporations Review
By email: SOC@dpc.nsw.gov.au

Dear Sir/Madam

Re: State Owned Corporations Review Submission

The opportunity to make a submission on the review of the *State Owned Corporations Act 1989* (The SOC Act) is appreciated. I wish to provide a submission on the 'Review of the Legislative Framework that provides for the Governance and Accountability of State Owned Corporations' (Issues Paper) in light of NSW State Owned Corporations (SOCs) *Government Information (Public Access) Act 2009* (GIPA Act) obligations.

Under the GIPA Act, the Information Commissioner has responsibility for championing citizen rights for open government and access to information, for the operation of the GIPA legislation and for measuring and monitoring agency compliance with the GIPA regime.

Clause 2(1)(e) of Schedule 4(1) to the GIPA Act defines SOCs as public authorities subject to the GIPA Act. SOCs are required to meet GIPA obligations that ensure the NSW government sector is open, transparent and accountable.

In section 3 of GIPA, the object of the GIPA regime is to:

- a) authorise and encourage the proactive release of government information by agencies,
- b) give members of the public an enforceable right to access government information, and
- c) provide that access to government information is restricted only when there is an overriding public interest against disclosure.

GIPA promotes openness, transparency and accountability of agencies, including SOCs. Some of the other legislation to which SOCs are subject is identified in Chapter 10 of the Issues Paper. These are the *Independent Commission Against Corruption Act 1988* (ICAC Act), *Independent Pricing and Regulatory Tribunal Act 1992* and *Government Sector Employment Act 2013* (SOC Legislation).

In my view the oversight of SOCs under the SOC Legislation is necessary to ensure accountability typically expected of government entities. This is reflected in the Issues Paper.

What is not addressed in the Issues Paper is that GIPA has objectives that are similar to those of the SOC Legislation, and that these are also desirable. Instead the Issues Paper notes:

While the Act [GIPA] provides for a number of considerations against disclosure (including various business interests), GIPA subjects SOCs to potential claims which may result in release of information or resources that a private company would not have to expend. Notably the Act operates with a presumption in favour of disclosure.

The Issues Paper compares SOCs with private companies and outlines that the latter are not subject to GIPA. This is broadly correct, although when private companies interact with the NSW government sector their information may be subject to GIPA.

The ICAC Act does not apply directly to private companies, and this is set out in the Issues Paper. However, the only comparison made between the effect of SOCs having to comply with oversight legislation, and the position of private companies who do not, involves GIPA. The costs for SOCs complying with ICAC investigations must also be considerable, yet there is no suggestion in the Issues Paper that SOCs ought not to be subject to this form of oversight and I do not suggest this.

GIPA also has an oversight role by ensuring that citizens have a right to openness, transparency and accountability regarding the government sector. This is not adequately addressed in the Issues Paper. There is no mention, for example, of the public interest consideration in favour of disclosure in GIPA where disclosure of the information could reasonably be expected to reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct. This consideration in favour of disclosure would presently apply to SOCs or a member of a SOC. The objective of substantiating this kind of conduct within government is also clearly associated with the objectives of the ICAC Act.

In principle, a robust governance framework is best supported through a consistent application of oversight legislation, such as GIPA and the ICAC Act. However it is also appreciated that an examination of differing SOC entities and their applicable governance arrangements will be undertaken through the review process.

Please do not hesitate to contact the Information and Privacy Commission if you have any questions.

Yours sincerely

Ms Elizabeth Tydd
CEO IPC, NSW Information Commissioner