



NSW Law Reform Commission
GPO Box 5199
SYDNEY NSW 2001

By email: nsw_lrc@agd.nsw.gov.au

Dear NSW Law Reform Commission,

Re: Consultation Paper 16: Dispute Resolution: Frameworks in New South Wales

I write to you in regard to the NSW Law Reform Commission's (LRC) release of *Consultation Paper 16: Dispute Resolution: Frameworks in New South Wales*.

I am pleased to provide the following information to assist the NSW LRC with its review of the dispute resolution frameworks in NSW.

I understand that the NSW LRC views the term 'alternative dispute resolution' to be a term that "*encompasses processes, other than determination by a court or tribunal in which an impartial person assist those in a dispute to resolve the issues between them*" (page 2, Consultation Paper 16).

The Government Information (Public Access) Act 2009 (GIPA Act)

NSW citizens expect open, transparent and accountable government decision making and access to government information. The GIPA Act encourages proactive release of government information and provides the public with the ability to access their personal information held by a government agency.

The GIPA Act recognises that there are circumstances where an agency may take into account public interest considerations against disclosure determining an application under the Act. Generally, as it relates to a GIPA Act access application, individuals' rights would be a consideration which agencies may take into account.

The GIPA Act enables individuals aggrieved by a reviewable decision of an agency to have a decision reviewed internally by the agency, by the Information Commissioner or by the NSW Civil and Administrative Tribunal (NCAT) under Part 5 of the GIPA Act. Generally, an internal review involves making a new decision as if the decision being reviewed had not been made. A review by the Information Commissioner must only be undertaken if it has been the subject of an internal review by an agency. The administrative review of a decision by NCAT involves the agency justifying its decision before NCAT.

My role and functions

I am responsible for the oversight of the operation of the GIPA Act which upholds the principles of transparency and accountability, and for measuring and monitoring agency compliance with the GIPA Act.

Complaint handling and dispute resolution

The *Government Information (Information Commissioner) Act 2009* (GIIC Act) and the GIPA Act provide frameworks for complaint management and procedures which reflect the overarching legislative objective to maintain and advance an open, accountable, fair and effective government.

Under Part 5 of the GIPA Act, there are internal and external review processes available to aggrieved individuals regarding decisions made by the agency. These are mechanisms to review decisions, not necessarily mechanisms to resolve disputes. For example, an initial decision may be reviewed by me under the GIPA Act and I may make recommendations about the initial decision to the agency.

Under the GIIC Act in section 17 "any person may complain to me about the conduct of an agency (including action or inaction) in the exercise of functions under an Information Act, including conduct that is alleged by the person to constitute a contravention of an Information Act".

Under section 18 of the GIIC Act, I may decide to deal with a complaint or decline to deal with a complaint. I may also make preliminary inquiries for the purposes of deciding how to deal with the complaint and request further information from the complainant.

Under section 19(1) of the GIIC Act, I will deal with a complaint by taking appropriate measures to assist in the resolution of the complaint by using measures such as:

- (a) providing information to the parties to the complaint,
- (b) undertaking discussions concerning the complaint with the parties to the complaint,
- (c) facilitating the direct resolution of the complaint by the parties to the complaint (including by conciliation or other informal process).

I can also deal with a complaint by investigating the complaint under Division 3 of the GIIC Act.

The relationship between the complaint handling processes under the GIIC Act and ADR, as defined by the NSW LRC's review, is evident in section 19(1)(c) of the GIIC Act. I may facilitate direct resolution of a complaint by using, for example, neutral evaluation. In 2013, there were 45 complaints made under section 19 of the GIIC Act, all of which were settled after the ADR process. I have attached my survey results which were requested by NSW LRC in March 2014.

Desirability of just, quick and cheap resolution of disputes through use of mediation and other forms of dispute resolution in appropriate contexts

No submission on this term of reference.

Issues of referral powers (including timing of referrals), confidentiality, status of agreements reached, and proper protections required for the parties, mediators and others involved in dispute resolution

No submission on this term of reference.

The proper role for legislation, contract and other legal frameworks in establishing frameworks for dispute resolution

No submission on this term of reference.

I hope this information will be of assistance to you. Please do not hesitate to contact me if you require anything further.

Please do not hesitate to contact Meredith Claremont, Executive Director, on [REDACTED], or by email [REDACTED] if you have any questions.

Yours sincerely

 13 June 2014
Elizabeth Tydd
IPC CEO, Information Commissioner