



6 June 2018

The Director, Copyright Law Section
Department of Communications and the Arts
GPO Box 2154
Canberra ACT 2601

Email: copyright.consultation@communications.gov.au

Dear Sir/Madam,

Subject: Copyright modernisation consultation

I write on behalf of Central Cost Council to make a formal submission to the Federal Department of Communications and the Arts review of the *Copyright Act 1968*.

This submission deals primarily with the interaction between the *Copyright Act 1968* (Cth) (Copyright Act) and the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act) and the implications for local councils. I confirm that Council consent to this submission being made publically available.

The GIPA Act is the main legislative vehicle that facilitates public access to government held information in NSW. The GIPA Act has a broad goal of advancing democratic government that is open, accountable, fair and effective.

The object of the GIPA Act is to open NSW government information to the public by:

- (a) authorising and encouraging the proactive public release of government information by agencies, and
- (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.

Central Coast Council is committed to promoting transparency and accountability through the efficient and useful release of Council held information. However, as detailed below, limitations imposed by the Copyright Act are hampering our ability to meet our community's expectations around access to certain Council held information.

This submission is relevant to the review's consideration of the option to introduce additional fair dealing exceptions, including:



Certain government uses—certain government uses that are of a ‘public interest nature’, and ‘not commercially available’. This may include use for public inquiries, uses where a statute requires public access and use of material sent to governments in the course of public business.

The Central Coast region has a population of approximately 335,000 and is the 6th largest Local Government Area in Australia. Like most councils we hold a great deal of information. However, our ability to provide public access to certain information, as legislatively required, is impacted by copyright restrictions.

Recent Central Coast Council Resolutions have sought to respond to public frustration about the inability of Council to release or publish documents where Council does not have the express consent of the copyright owner. However, until amendments are made to the Copyright Act we will need to continue to follow the NSW Information and Privacy Commission’s Guidance and provide ‘view only’ access.

On our website, Council provides a Copyright FAQ explaining the copyright limitations imposed on Council and the need for the customer to arrange for the copyright owners’ written consent prior to requesting certain information from Council.

The most common example of copyright restrictions impacting upon our residents is when they try to access the building plans for their own home, which have been prepared years before, for another owner. Difficulties arise when permission cannot be obtained because the architect cannot be contacted for a variety of reasons.

Between 1 January 2018 and 30 April 2018 Council has completed 40 Formal and 343 informal requests for information under the GIPA Act. The majority of these requests are individuals requesting details of building plans of their own property.

The current constraints imposed by the Copyright Act undercuts the transparency and effectiveness of the GIPA Act by limiting councils’ ability to provide public access to documents that inform the basis of their decisions.

We note that in relation to the assessment and planning phase of a Development Application, councils have an indemnity under clause 57 of the *Environmental Planning and Assessment Regulation 2000* (NSW). Under that clause, a DA applicant (not being the copyright owner) is taken to have indemnified all persons using the DA and documents in accordance with the *Environmental Planning and Assessment Act 1979* (NSW) (the EPA Act) against any claim or action in respect of breach of copyright.

Therefore, councils may copy and distribute any DA information in accordance with the EPA Act and not be liable for an action for breach of copyright. However, this indemnity applies only during the planning and assessment phase, and only enables councils to copy and distribute information as required by the EPA Act. It does not apply to disclosure of information under the GIPA Act.

Ideally any amendments to the Copyright Act will balance the legitimate interests of copyright holders in protecting their rights, with the public interest in providing public access to information on which government decisions that affect the community are based.

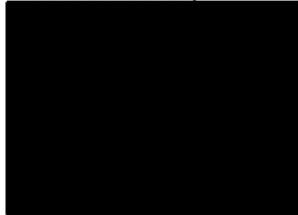
Council also notes that the practical difficulties the *Copyright Act* imposes on local councils were discussed in the Australian Law Reform Commission's 2012/2013 comprehensive review of the Copyright Act. The ALRC recommended in its report that:

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 (Recommendation 15-4)

Council fully supports this recommendation.

I am happy to expand on these submissions and my staff would be happy to assist with recent examples of how the Copyright Act adversely impacts upon Council's dealings with its residents.

Yours sincerely



Brian Glendenning
Acting Chief Executive Officer