

COPY



Ref: A5948667
5 February 2024

Mr Peter Mellander
28 Lidco Street
ARNDILL PARK NSW 2148

Email: pe [REDACTED]

Re: Notice of Decision – your GIPA application – Civil Procedure Act 2005 and Australia Acts 1986

Dear Mr Mellander

On 11 December 2023 we received your access application under the Government Information (Public Access) Act 2009 (**GIPA Act**) requesting access to:

"I request formal access application under Government Information (Public Access) Act 2009 (NSW) (the GIPA Act) for the following:

I am researching Civil Procedure Act 2005.

The Parliament of New South Wales confirms His Majesty King Charles III is Constitutional Monarch of Australia and the existence of the Commonwealth Constitution.

I am searching for the specific instrument supporting the lawful validity of Civil Procedure Act 2005 confirming Civil Procedure Act 2005 correctly searches for it's head of power under the Commonwealth Constitution.

My Hansard search confirms, following readings by the Legislative Assembly and the Legislative Council on April 6, 2005 and May 24, 2005 and May 3, 2005 the Civil Procedure Bill 2005 assented as law on June 1, 2005 as Civil Procedure Act 2005 Number 20 of 2005.

The Civil Procedure Act 2005 gave rise to Uniform Civil Procedure Rules 2005.

My detailed research is unable to confirm lawful validity of the Civil Procedure Act 2005 and Uniform Civil Procedure Rules 2005 correctly search for their head of power under the Commonwealth Constitution and the authority of His Majesty King Charles III in his position as Constitutional Monarch of Australia.

Specifically, I request from The Cabinet Office the instrument that the Australia Act 1986 (Commonwealth) and Australia Act 1986 (U.K.) looks to for their head of power under the Commonwealth Constitution for it's valid creation by the Commonwealth Parliament or, a lawfully valid instrument outside of those powers set out in Section 51 of the Commonwealth

Constitution. This instrument is mandatory to establish the Australia Act 1986 (Commonwealth) and Australia Act 1986 (UK) are lawfully qualified in the exercise of the executive powers in the Commonwealth of Australia.

and,

Specifically, I request from The Cabinet Office the instrument that the Civil Procedure Act 2005 looks to for it's head of power under the Commonwealth Constitution for it's valid creation by the Commonwealth Parliament or, a lawfully valid instrument outside those powers set out in Section 51 of the Commonwealth Constitution. This instrument is mandatory to establish the Civil Procedure Act 2005 is lawfully qualified in the exercise of the executive powers in the Commonwealth of Australia.

The information sought is not available on the Parliament of New South Wales website.

The information sought is not available in the public domain".

I note that on 20 December 2023, you agreed to an extension to the timeframe for deciding your application to **5 February 2024**. Thank you for your cooperation in this regard.

Decision

I have today decided your application by deciding that information is not held by the Department (section 58(1)(b) of the GIPA Act).

Statement of reasons

Searches conducted

Section 53(2) of the GIPA Act requires that agencies must undertake such reasonable searches as may be necessary to find any of the government information applied for that was held by the agency when the application was received.

Section 53(3) of the GIPA Act states that the obligation of an agency to undertake reasonable searches extends to searches using any resources reasonably available to the agency including resources that facilitate the retrieval of information stored electronically.

Searches for information relating to your application were undertaken by Elections & Constitutional Law, Legal Branch.

Legal Branch undertook searches in Objective, the Department's document management system, using the following search terms:

- "civil procedure act" and "instrument" and "constitution"
- "Australia Act 1986" and "instrument" and "constitution"
- "Section 51 Constitution" and "Australia Act 1986"

I am advised that no government information falling within the scope of your application has been identified.

Information not held

I have therefore decided under section 58(1)(b) of the GIPA Act that the information sought is not held by the Department.

You may, however, wish to consider the following Acts and links to the relevant websites below:

- *New South Wales Constitution Act 1855 (UK)* - <https://www.foundingdocs.gov.au/item-sdid-78.html>
- *Constitution Act 1902 (NSW)* - <https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-1902-032#sec.5> (in particular section 5)
- *Australia Act 1986 (Cth)* - <https://www.legislation.gov.au/Details/C2004A03181>
- *Australia Act 1986 (UK)* - [https://www.legislation.gov.uk/ukpga/1986/2#:~:text=\(1\)No%20law%20or%20instrument,the%20Parliament%20of%20the%20State](https://www.legislation.gov.uk/ukpga/1986/2#:~:text=(1)No%20law%20or%20instrument,the%20Parliament%20of%20the%20State)

Please note that The Cabinet Office is providing this response for informational purposes only and it is not intended to be, nor should it be taken to constitute, legal advice.

Rights of review

This decision is reviewable under section 80(e) of the GIPA Act. If you are aggrieved by the decision that the information sought is not held, you may seek review under Part 5 of the GIPA Act.

There are three forms of review:

- internal review by a senior officer of the Department,
- external review by the Information Commissioner, or
- external review by the NSW Civil and Administrative Tribunal.

Your review rights are summarised in the enclosed fact sheet. You have four weeks from the date of this letter to apply for an internal review, and eight weeks to apply for an external review.

Fees and charges

The GIPA Act entitles the Department to charge for the processing of an application, even in circumstances where a decision is made that the Department does not hold any information falling within the scope of the application.

Although 3 hours have been spent by the Department processing your application, I have decided that no further charges should be imposed for this application.

Inquiries

Please contact infoandprivacy@tco.nsw.gov.au, if you have any questions in relation to the application.

Sincerely



Sarah Johnson
Director, Legal