



information  
and privacy  
commission  
new south wales

# Agency information guide review report

June 2018



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## 1 Purpose

This Review examines whether there has been an improvement by the ten NSW Government principal departments (principal departments) and Information and Privacy Commission (IPC) in the articulation of arrangements for public participation as documented and published in Agency Information Guides (AIG's). It follows an earlier review undertaken in June 2016 by the IPC.

This review was undertaken in accordance with section 17(g) of the [Government Information \(Public Access\) Act 2009 \(GIPA Act\)](#), to monitor, audit and report on the exercise by agencies of their functions under, and compliance with, the GIPA Act. Its purpose is to assess the extent of progress made by the ten principal departments and the IPC in facilitating citizen engagement in government service delivery and policy development.

## 2 Background

In June 2016, the NSW Information Commissioner published the '[Towards a charter for public participation](#)' report. As part of the report a desktop review of Agency Information Guides of the ten cluster agencies including the IPC was conducted and found that:

- all (100%) principal departments and the IPC had an AIG in place
- 50% of principal departments provided some detail on arrangements for the public to participate in agency policy formulation and the exercise of agency functions, and
- the general nature of the description of arrangements for public participation, together with an absence of integration with any other existing arrangements for public participation are barriers to compliance with the legislative provisions to promote public participation.

In December 2016, the NSW Information Commissioner published, and promoted to agencies, [enhanced guidance on AIGs](#), including a self-assessment checklist.

In late February 2018, the IPC undertook a desktop review of the ten principal department's AIG's. Consistent with the approach adopted in 2016, the desktop review included the IPC's AIG.

This report outlines the findings and proposed recommendations as a result of the 2018 review.

## 3 Methodology

### 3.1.1 Sample selection

In undertaking this Review the IPC adopted the same methodology applied in 2016 in which each of the principal departments of the ten NSW ‘clusters’ were selected for the review. This was because:

- under the Departmental ‘cluster’ structure Departmental Heads, Secretaries assume responsibility under the *Government Sector Employment Act 2013* (GSE Act) for the employment of public servants and determining the branches or groups of employees (section 22 of the GSE Act).
- The GSE Act requires public sector employees to ‘uphold the law, institutions of government and democratic principles’ and ‘provide transparency to enable public scrutiny’ (section 7 of the GSE Act)
- the scope of the principal departments included a range of different bodies, and so would give a broad base for assessing compliance
- principal departments include many of the most significant governmental functions where transparency is particularly important, and
- as principal departments, they would be expected to demonstrate leadership in the use of AIGs.

The principal departments are:

- Department of Education
- Department of Family and Community Services
- Department of Finance, Services and Innovation
- Department of Industry
- Department of Justice
- Department of Planning and Environment
- Department of Premier and Cabinet
- NSW Ministry of Health
- NSW Treasury, and
- Transport for NSW

In addition, the review assessed the IPC’s own AIG on the basis that the IPC should strive to model best practice in regards to GIPA compliance.

The process and methodology used in this follow up review is identical to that used in 2016. This enables comparison to be drawn across the two reviews.

### 3.1.2 Assessment Criteria

The GIPA Act implements a non-prescriptive approach to the ‘arrangements’ for public participation. Further, unlike jurisdictional counterparts, there is limited NSW whole-of-government guidance on public participation generally that would form the basis for such criteria.

Following the 2016 review of AIGs, the IPC developed new guidance for agencies on creating an AIG. [Guideline 6: Agency Information Guides](#) provides guidance to agencies regarding the content of AIGs:

*8.3. Specify any arrangements that exist to enable members of the public to participate in the formulation of the agency's policy and the exercise of the agency's functions.*

*Agencies may consider describing:*

- *participation through [Have Your Say](#), expert panels, consultative committees, feedback channels, digital channels and calls for submissions*
- *channels of engagement with the public and stakeholders, especially innovative approaches such as mobile apps*
- *contact points for feedback and complaints about the agency.*

This Review has adopted the same set of indicative criteria as were applied during the 2016 review.

**Table 1 – Assessment Criteria**

The assessment criteria are that the agency's AIG:
1. exists
2. provides an express articulation of the mechanisms available to support public participation
3. differentiates between arrangements for public participation between the 'formulation of policy' and 'exercise of the agency's functions'
4. has been updated regularly (the GIPA Act requires agencies to review their AIG and adopt a new guide at intervals of not more than 12 months)
5. where relevant, refers to any other actions occurring or mechanisms in place to encourage participation such as referring to 'Have Your Say', expert panels, consultative committees, feedback channels, digital channels and calls for submissions.

### 3.1.3 Conduct of the analysis

The analysis of AIGs was conducted in February 2018. IPC staff examined each agency's website and downloaded a copy of the AIG. Each AIG was then assessed and the results entered into a summary spreadsheet.

## 4 Findings

The findings of the Review are presented below in two parts:

- assessment against select legislated requirements that the AIG exists and is updated, and
- the extent to which the AIGs describe public participation arrangements.

### 4.1 Existence, currency and content of AIGs

The Review again considered whether the AIG was present on the agency website and up-to-date as required by sections 20(1) and 21 of the GIPA Act.

Consistent with the 2016 review, all of the ten principal departments and the IPC had an AIG accessible on their website.

As shown in Table 1 below, there has been a significant improvement in currency of AIGs since the 2016 review:

- 80% (eight) of principal department AIGs have been updated within the last two years, a significant increase from 40% (four) in 2016
- only 20% (two) of principal department AIGs did not include a date indicating when they were last updated compared to 50% of principal department AIGs in 2016
- the IPC AIG had also improved since the 2016 review and included a date indicating when it was last updated.

The number of principal departments that submitted an amended AIG to the NSW Information Commissioner has also increased from four in 2016 to six in 2018.

It is noted that three of the principal departments which had submitted amended AIGs had not yet updated the currency information on the agency's website at the date of the review.

Similarly, two agencies appear to have amended their AIG without notifying the NSW Information Commissioner as required under section 22(1) of the GIPA Act. These issues will be raised with the agencies during consultation on the outcomes of this review.

The AIGs of all the ten (100%) principal departments and the IPC contained a statement that expresses a commitment to public participation. This is a significant improvement from the 2016 review, where only six AIGs contained this feature.

**Table 1: Existence and currency of AIGs**

Agency	Is the AIG on the agency website?	Date displayed on AIG/webpage	Has the AIG been updated in the past 2 years?	Date revised AIG submitted to the Information Commissioner
Department of Education	Yes	November 2017	Yes	18 May 2017
Department of Family and Community Services	Yes	8 August 2017	Yes	21 August 2017

Agency	Is the AIG on the agency website?	Date displayed on AIG/webpage	Has the AIG been updated in the past 2 years?	Date revised AIG submitted to the Information Commissioner
Department of Finance, Services and Innovation	Yes	No date displayed	Yes	13 June 2017
NSW Ministry of Health	Yes	8 April 2015	No	Not submitted
Department of Justice	Yes	July 2015	No	Not submitted
Transport for NSW	Yes	No date displayed	Yes	30 August 2017
NSW Treasury	Yes	17 December 2013	Yes	19 December 2017
Department of Premier and Cabinet	Yes	August 2017	Yes	Not submitted
Department of Planning and Environment	Yes	13 February 2018	Yes	31 August 2017
Department of Industry	Yes	15 August 2017	Yes	Not submitted
Information and Privacy Commission	Yes	November 2017	Yes	n/a

## 4.2 AIGs and public participation

### 4.2.1 Types of arrangements described by agencies

Although the legislation does not specify the mechanisms to be used for public participation the IPC has identified a number of approaches that are available to NSW agencies and which it would be reasonable to expect to see mentioned in an AIG. These approaches are detailed in the IPC's *Guideline 6: Agency Information Guides* and include use of:

- the NSW government portal for consultation, 'Have Your Say'
- expert panels
- consultative committees
- structured feedback channels
- innovative digital mechanisms, e.g. specific webpages or apps, and
- calling for submissions.

### 4.2.2 Do AIGs include mechanisms to facilitate public participation?

The review considered whether the principal department AIGs contained an expression of the arrangements that are in place to promote public participation as required by section 20(1)(c) of the GIPA Act.



Overall, there has been some improvement in the articulation of arrangements in place to promote public participation with increases observed for each participation mechanism considered:

- 50% (five) of principle department AIGs mention ‘Have Your Say’ compared to 10% (one) of principle departments in 2016
- only 20% (two) of principle departments mention expert panels, although this in an increase from 10% (one) in 2016
- 40% (four) of principle department AIGs mention committees with public members, compared to 10% (one) in 2016
- 90% (nine) of principal department AIGs mention feedback channels for public participation, compared to 40% (four) in 2016
- 70% (seven) of principal department AIGs mention digital channels for public participation, compared to 50% (five) in 2016
- 60% (six) of principal department AIGs mention calls for submissions, compared to 20% (two) in 2016
- the IPC’s AIG has also improved since 2016 and now makes mention of most listed public participation mechanisms, excluding expert panels and committees with public members.

It should be noted that it is not compulsory for all mechanisms to be included and not all mechanisms may be suitable for each principal department.

Table 2 – Mechanisms to facilitate public participation Agency	Have your say		Expert panels		Committees with members of the public		Feedback channels		Digital channels		Calls for submissions	
	2016	2018	2016	2018	2016	2018	2016	2018	2016	2018	2016	2018
Department of Education	No	No	No	No	No	No	No	Yes	No	Yes	No	Yes
Department of Family and Community Services	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	No	No
Department of Finance, Services and Innovation	No	Yes	No	No	No	No	No	No	No	No	No	No
NSW Ministry of Health	No	No	No	Yes	No	Yes	No	Yes	No	No	No	No
Department of Justice	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Transport for NSW	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes
NSW Treasury	No	No	No	No	No	No	No	Yes	Yes	Yes	No	Partial
Department of Premier and Cabinet	No	Yes	No	No	No	No	No	Partial	No	Partial	No	Partial
Department of Planning and Environment	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Department of Industry	No	Yes	No	No	No	No	No	Yes	No	No	No	No
Information and Privacy Commission	No	Yes	No	No	No	No	No	Yes	Yes	Yes	No	Yes

### 4.2.3 Does the AIG differentiate between participation in policy development and exercise of its functions

The Review found that 50% of principal department AIG's differentiated between public participation in policy development and the exercise of functions in 2018, up from 40% (three) in 2016. The IPC's AIG has also improved since the 2016 review and now meets this requirement. Table 3 summarises the results between 2016 and 2018.

**Table 3: Does the AIG differentiate between public participation in policy development and the exercise of functions?**

Agency	Differentiates between policy and functions	
	2016	2018
Department of Education	No	Yes
Department of Family and Community Services	Yes	Yes
Department of Finance, Services and Innovation	No	No
NSW Ministry of Health	Yes	Yes
Department of Justice	Yes	Yes
Transport for NSW	No	No
NSW Treasury	No	No
Department of Premier and Cabinet	No	No
Department of Planning and Environment	Yes	Yes
Department of Industry	No	No
Information and Privacy Commission	No	Yes

## 5 Conclusions and Recommendations

Overall, there was significant improvement in the AIGs of principal departments and the IPC. Importantly, there were no areas where AIGs were less compliant in this review than was observed in the 2016 review.

Consistent with 2016 results, all sampled principal departments and the IPC had an AIG in place. Of these, 80% had been updated within the last two years, representing a significant increase from 40% in 2016.

All (100%) AIGs sampled contained a statement of commitment to public participation, a significant increase from the 60% found in 2016.

The articulation of arrangements for the public to participate in agency policy development and the exercise of agency functions have also improved with 100% of principal departments and the IPC specifying at least three different public participation mechanisms from the six suggested mechanisms set out in the IPC guidance. This is a significant improvement from the 2016 review which found five (50%) principal department AIGs made no reference to any of the public participation mechanisms.

**Table 4: Summary of AIG analysis 2018**

Agency	AIG exists	Updated within 2 years	Contains commitment to public participation	Differentiates between policy & function	Mentions Have Your Say	Mentions Expert Panels	Mentions Committees with members of the public	Mentions Feedback Channels	Mentions Digital Channels	Mentions calls for submissions	Includes pointers to key mechanisms and/or processes
Department of Education	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes
Department of Family & Community Services	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	No
Department of Finance, Services & Innovation	Yes	Yes	Yes	No	Yes	No	No	No	No	No	Partial
NSW Ministry of Health	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	No	No
Department of Justice	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Transport for NSW	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes
NSW Treasury	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Partial	Yes
Department of Premier & Cabinet	Yes	Yes	Yes	No	Yes	No	No	Partial	Partial	Partial	Partial
Department of Planning & Environment	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Department of Industry	Yes	Yes	Yes	No	Yes	No	No	Yes	No	Partial	No
Information & Privacy Commission NSW	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes

Table 5: Summary of AIG analysis 2016

Agency	AIG exists	Updated within 2 years	Contains commitment to participation	Differentiates between policy and functions	Mentions "Have your say"?	Mentions "Expert panels"	Mentions "Committees with members of the public"?	Mentions "Feedback channels"	Mentions "Digital/online channels"	Mentions "Calls for submissions"	Includes pointers to key mechanisms and/or processes
Department of Education	Yes	No	No	No	No	No	No	No	No	No	No
Department of Family and Community Services	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes	No	No
Department of Finance, Services and Innovation	Yes	No	No	No	No	No	No	No	No	No	No
NSW Ministry of Health	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No
Department of Justice	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Transport for NSW	Yes	Yes	Yes	No	No	No	No	Yes	Yes	No	No
NSW Treasury	Yes	Yes	Partial	No	No	No	No	No	Yes	No	No
Department of Premier and Cabinet	Yes	No	No	No	No	No	No	No	No	No	No
Department of Planning and Environment	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes
Department of Industry	Yes	No	No	No	No	No	No	No	No	No	No
Information and Privacy Commission	Yes	No	Yes	No	No	No	No	Yes	Yes	No	No

## 5.1 Future actions

Based on the findings of this review, the IPC will consider the following actions:

1. Continue to update its own AIG to be a model of good practice for agencies
2. Write to the principal departments to advise them of the findings of the review and provide feedback on the quality of the AIGs, including suggestions for improvement.

## Appendix 1 – Chronology of Review

- In June 2016, the NSW Information Commissioner published the '*Towards a charter for public participation*' report. As part of the report a desktop review of agency information guides of the ten principal departments and the IPC was conducted and found that:
  - all (100%) principal departments and the IPC had an AIG in place
  - 50% of principal departments provided some detail on arrangements for the public to participate in agency policy formulation and the exercise of agency functions, and
  - the general nature of the description of arrangements for public participation, together with an absence of integration with any other existing arrangements for public participation are barriers to compliance with the legislative provisions to promote public participation.
- In December 2016, the NSW Information Commissioner published, and promoted to agencies, enhanced guidance on AIGs, including a self-assessment checklist.
- In February 2017, the NSW Information Commissioner wrote to agency heads providing agency-specific feedback on their AIG.
- In March-April 2017, the IPC conducted officer-level meetings with all principal departments to support them to improve their AIGs and to understand issues such as agency management of AIGs. The IPC advised principal department that a follow-up review would likely be conducted by the IPC in 2017/18.
- In August 2017, the IPC wrote to principal departments to request that amended AIGs be provided to the IPC by 1 September 2017.
- As at 31 January 2018, six of the ten agencies have provided amended AIGs for review by the IPC.
- In January 2018, the NSW Information Commissioner wrote to agency heads to advise that the follow up review would commence.
- In February 2018, the IPC undertook a desktop review of the 10 principal department's AIGs and the IPC's AIG.



information and  
privacy commission

new south wales

[www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

Level 17, 201 Elizabeth Street, Sydney 2000

GPO Box 7011, Sydney NSW 2001

1800 IPC NSW (1800 472 679)

Fax: (02) 8114 3756

[ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)

[www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

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