



New South Wales

# Government Information (Public Access) Amendment Regulation 2010

under the

Government Information (Public Access) Act 2009

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Government Information (Public Access) Act 2009*.

JOHN HATZISTERGOS, MLC  
Attorney General

## Explanatory note

The object of this Regulation is to amend the *Government Information (Public Access) Regulation 2009* which was made as Schedule 5 to the *Government Information (Public Access) Act 2009* (the **GIPA Act**) as follows:

- (a) to prescribe additional government information held by Ministers, Government Departments and statutory bodies as open access information that is required to be made publicly available by the agency concerned under the GIPA Act,
- (b) to require the annual report by an agency under section 125 of the GIPA Act to include statistical information about access applications made to the agency and details about the agency's yearly review of its program for releasing government information held by the agency,
- (c) to extend, in the case of an access application relating to a school, the period in which the application must be decided if the usual 20-day period for deciding the application occurs during the school holidays,
- (d) to specify the corresponding FOI laws of other Australian jurisdictions under which information may be made exempt from the relevant disclosure requirements under the GIPA Act,
- (e) to declare certain bodies to be public authorities for the purposes of the GIPA Act,
- (f) to declare certain agencies to be treated as being part of another agency (so that government information held by the subsidiary agency is, for the purposes of an access application, taken to be held by the parent agency),

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- (g) to provide that records held by the Audit Office or the Ombudsman's Office that were originally created or received by another agency are taken to be held by that other agency.

This Regulation is made under the *Government Information (Public Access) Act 2009*, including sections 14 (clause 7 of the Table to that section), 18 (g), 57 (3), 125 and 129 (the general regulation-making power), clause 1 of Schedule 3 and clauses 2 (2) (b), 6 and 13 (1) (e) of Schedule 4.

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### **1 Name of Regulation**

This Regulation is the *Government Information (Public Access) Amendment Regulation 2010*.

### **2 Commencement**

This Regulation commences on 1 July 2010 and is required to be published on the NSW legislation website.

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### **Schedule 1 Amendment of Government Information (Public Access) Regulation 2009**

**Note.** The *Government Information (Public Access) Regulation 2009* was made as Schedule 5 to the *Government Information (Public Access) Act 2009*.

#### **[1] Parts 3 and 4**

Insert after Part 2:

### **Part 3 Provisions relating to agencies generally**

#### **5 Additional open access information of certain agencies**

##### **(1) Ministers**

For the purposes of section 18 (g) of the Act, the following government information is prescribed as open access information of a Minister:

- (a) any media release issued by the Minister,
- (b) details (including the costs and purpose) of any overseas travel undertaken by the Minister.

##### **(2) Government departments**

For the purposes of section 18 (g) of the Act, the following government information is prescribed as open access information of a Government Department:

- (a) a list of the Department's major assets, other than land holdings, appropriately classified and highlighting major acquisitions during the previous financial year,
- (b) the total number and total value of properties disposed of by the Department during the previous financial year,
- (c) the Department's guarantee of service (if any),
- (d) the Department's code of conduct (if any).

##### **(3) The reference in subclause (2) to a Government Department includes a reference to a public authority that is a Department within the meaning of the *Annual Reports (Departments) Act 1985*.**

##### **(4) Statutory bodies**

For the purposes of section 18 (g) of the Act, the following government information is prescribed as open access information

of a public authority that is a statutory body within the meaning of the *Annual Reports (Statutory Bodies) Act 1984*:

- (a) the total number and total value of properties disposed of by the statutory body during the previous financial year,
- (b) the statutory body's guarantee of service (if any).

**6 Extension of decision period for access applications involving schools**

The decision period under section 57 of the Act is:

- (a) in the case of an access application that involves a school, and
- (b) if any part of the decision period occurs when the school is closed for school holidays,

extended by the number of working days occurring in that school holiday period after the application is received.

**7 Annual reporting requirements under section 125 of Act**

The annual report of an agency (other than a Minister) required to be prepared under section 125 of the Act must include the following:

**Note.** An agency's report under section 125 of the Act can be included in the agency's annual report required to be prepared under the annual reporting legislation—see section 6 of the *Annual Reports (Departments) Act 1985* or section 5A of the *Annual Reports (Statutory Bodies) Act 1984* (as the case requires).

- (a) details of the review carried out by the agency under section 7 (3) of the Act during the reporting year and the details of any information made publicly available by the agency as a result of the review,
- (b) the total number of access applications received by the agency during the reporting year (including withdrawn applications but not including invalid applications),
- (c) the total number of access applications received by the agency during the reporting year that the agency refused, either wholly or partly, because the application was for the disclosure of information referred to in Schedule 1 to the Act (Information for which there is conclusive presumption of overriding public interest against disclosure),

**Note.** Table D in Schedule 2 also requires information relating to access applications in respect of which there is a conclusive presumption of overriding public interest against disclosure.

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- (d) information, as set out in the form required by the tables in Schedule 2, relating to the access applications (if any) made to the agency during the reporting year.

### 8 Public availability of open access information of Ministers

The open access information of a Minister may, without limiting section 6 of the Act, be made publicly available on a website maintained by a Government Department for which the Minister is responsible.

### 9 Discounted processing charge

An agency is required to reduce, by 50%, the processing charge payable under the Act for dealing with an access application if the applicant provides evidence that the applicant:

- (a) is the holder of a Pensioner Concession card issued by the Commonwealth that is in force, or
- (b) is a full-time student, or
- (c) is a non-profit organisation (including a person applying for or on behalf of a non-profit organisation).

## Part 4 Miscellaneous

### 10 Exempt documents under interstate FOI legislation— corresponding laws

The following laws are prescribed as corresponding laws for the purposes of clause 7 of the Table to section 14 of the Act:

- (a) *Freedom of Information Act 1982* of Victoria,
- (b) *Right to Information Act 2009* of Queensland,
- (c) *Freedom of Information Act 1989* of the Australian Capital Territory,
- (d) *Freedom of Information Act 1992* of Western Australia,
- (e) *Right to Information Act 2009* of Tasmania,
- (f) *Freedom of Information Act 1991* of South Australia,
- (g) *Information Act* of the Northern Territory.

### 11 Bodies declared to be public authorities

For the purposes of clause 2 (2) (b) of Schedule 4 to the Act, each of the following bodies is declared to be a public authority:

- (a) NSW Adult Migrant English Service,
- (b) Australian Music Examinations Board NSW,

- (c) Duke of Edinburgh Award Scheme (NSW State Committee),
- (d) Regional Development Australia.

**12 Agencies that are part of other agencies**

For the purposes of clause 6 of Schedule 4 to the Act, each agency referred to in Schedule 3 to this Regulation (the *subsidiary agency*) is declared not to be a separate agency but is taken to be part of and included in the agency (the *parent agency*) specified in that Schedule in respect of the subsidiary agency.

**13 Records in certain agencies**

For the purposes of clause 13 (1) (e) of Schedule 4 to the Act, the following agencies are prescribed:

- (a) Audit Office,
- (b) Ombudsman's Office.

**14 Savings and transitional provisions**

**(1) FOI Act annual reports due for 2010**

Section 68 of the FOI Act continues to apply (as if it had not been repealed) to and in respect of any report that would, but for that repeal, have been required to be prepared at any time during 2010.

**(2) Publication of information concerning affairs of agencies under FOI Act**

Despite the repeal of section 14 of the FOI Act, the requirement under that section to publish a statement of the affairs of an agency, or an up-to-date summary of those affairs, that was due by 30 June 2010 is, if that statement or summary was not published on or before that date, extended until 30 July 2010. However, any such statement or summary is not required to be published if the agency adopts its publication guide under section 20 of the Act before 30 July 2010.

**(3) In this clause:**

*FOI Act* means the *Freedom of Information Act 1989* as in force immediately before its repeal.

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### [2] Schedules 2 and 3

Insert after Schedule 1:

## **Schedule 2 Statistical information about access applications to be included in annual report**

(Clause 7)

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Media								
Members of Parliament								
Private sector business								
Not for profit organisations or community groups								
Members of the public (application by legal representative)								
Members of the public (other)								

\* More than one decision can be made in respect of a particular access application. If so, a recording must be made in relation to each such decision. This also applies to Table B.



	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Personal information applications*								
Access applications (other than personal information applications)								
Access applications that are partly personal information applications and partly other								

\* A **personal information application** is an access application for personal information (as defined in clause 4 of Schedule 4 to the Act) about the applicant (the applicant being an individual).

Reason for invalidity	No of applications
Application does not comply with formal requirements (section 41 of the Act)	
Application is for excluded information of the agency (section 43 of the Act)	
Application contravenes restraint order (section 110 of the Act)	
Total number of invalid applications received	
Invalid applications that subsequently became valid applications	

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<b>Table D: Conclusive presumption of overriding public interest against disclosure: matters listed in Schedule 1 to Act</b>	
	<b>Number of times consideration used*</b>
Overriding secrecy laws	
Cabinet information	
Executive Council information	
Contempt	
Legal professional privilege	
Excluded information	
Documents affecting law enforcement and public safety	
Transport safety	
Adoption	
Care and protection of children	
Ministerial code of conduct	
Aboriginal and environmental heritage	

\* More than one public interest consideration may apply in relation to a particular access application and, if so, each such consideration is to be recorded (but only once per application). This also applies in relation to Table E.

<b>Table E: Other public interest considerations against disclosure: matters listed in table to section 14 of Act</b>	
	<b>Number of occasions when application not successful</b>
Responsible and effective government	
Law enforcement and security	
Individual rights, judicial processes and natural justice	
Business interests of agencies and other persons	
Environment, culture, economy and general matters	
Secrecy provisions	
Exempt documents under interstate Freedom of Information legislation	

<b>Table F: Timeliness</b>	
	<b>Number of applications</b>
Decided within the statutory timeframe (20 days plus any extensions)	
Decided after 35 days (by agreement with applicant)	
Not decided within time (deemed refusal)	
Total	

<b>Table G: Number of applications reviewed under Part 5 of the Act (by type of review and outcome)</b>			
	<b>Decision varied</b>	<b>Decision upheld</b>	<b>Total</b>
Internal review			
Review by Information Commissioner*			
Internal review following recommendation under section 93 of Act			
Review by ADT			
Total			

\* The Information Commissioner does not have the authority to vary decisions, but can make recommendations to the original decision-maker. The data in this case indicates that a recommendation to vary or uphold the original decision has been made by the Information Commissioner.

<b>Table H: Applications for review under Part 5 of the Act (by type of applicant)</b>	
	<b>Number of applications for review</b>
Applications by access applicants	
Applications by persons to whom information the subject of access application relates (see section 54 of the Act)	

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### Schedule 3 Agencies declared to be part of other agencies

(Clause 12)

<b>Subsidiary agency</b>	<b>Parent agency</b>
Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal	Department of Human Services
Administrative Decisions Tribunal	Department of Justice and Attorney General
Advisory committee or consultation forum established under the <i>Protection of the Environment Administration Act 1991</i>	Department of Environment, Climate Change and Water
Advisory committee established under the <i>Food Act 2003</i>	Office of the NSW Food Authority
Advisory committee established under the <i>National Parks and Wildlife Act 1974</i>	Department of Environment, Climate Change and Water
Advisory committee established under the <i>Noxious Weeds Act 1993</i>	Department of Industry and Investment
Agricultural industry services committee constituted by the <i>Agricultural Industry Services Act 1998</i>	Department of Industry and Investment
Animal Research Review Panel	Department of Industry and Investment
Anti-Discrimination Board	Department of Justice and Attorney General
Australian Music Examinations Board NSW	Office of the Board of Studies
Biological Control Authority	Department of Industry and Investment
Biological Diversity Advisory Council	Department of Environment, Climate Change and Water
Board of the Environment Protection Authority	Department of Environment, Climate Change and Water
Board of Surveying and Spatial Information	Land and Property Management Authority
Board of Vocational Education and Training	Department of Education and Training
Bookmakers Revision Committee	Communities NSW

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<b>Subsidiary agency</b>	<b>Parent agency</b>
Botany Cemetery Trust	Land and Property Management Authority
Building and Construction Industry Long Service Payments Committee	Building and Construction Industry Long Service Payments Corporation
Bush Fire Co-ordinating Committee	Department of Rural Fire Service
Casino, Liquor and Gaming Control Authority	Communities NSW
Charity Referee appointed under the <i>Dormant Funds Act 1942</i>	Department of Justice and Attorney General
Children's Court	Department of Justice and Attorney General
Children's Court Advisory Committee	Department of Justice and Attorney General
Children's Court Clinic	Department of Justice and Attorney General
Chipping Norton Lake Authority	Land and Property Management Authority
Chiropractic Care Assessment Committee	Department of Health
Chiropractors Registration Board	Department of Health
Chiropractors Tribunal	Department of Health
Coal Competence Board	Department of Industry and Investment
Combat Sports Authority	Communities NSW
Commissioner of the Land and Environment Court	Department of Justice and Attorney General
Committee of inquiry established under the <i>Energy and Utilities Administration Act 1987</i>	Department of Industry and Investment
Committee of Review appointed under the <i>Health Services Act 1997</i>	Department of Health
Consumer, Trader and Tenancy Tribunal	Department of Services, Technology and Administration
Contract of Carriage Tribunal	Department of Justice and Attorney General
Co-operatives Council constituted under the <i>Co-operatives Act 1992</i>	Department of Services, Technology and Administration

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<b>Subsidiary agency</b>	<b>Parent agency</b>
Costs assessor appointed under the <i>Legal Profession Act 2004</i>	Department of Justice and Attorney General
Dental Technicians Registration Board	Department of Health
Director of Equal Opportunity in Public Employment	Department of Premier and Cabinet
Disability Council under the <i>Community Welfare Act 1987</i>	Department of Human Services
District Court	Department of Justice and Attorney General
Drug Court	Department of Justice and Attorney General
Duke of Edinburgh Award Scheme (NSW State Committee)	Communities NSW
Dust Diseases Tribunal	Department of Justice and Attorney General
Electrical Equipment Safety Advisory Committee	Department of Services, Technology and Administration
Energy Corporation	Department of Industry and Investment
Environmental Trust	Department of Environment, Climate Change and Water
Exhibited Animals Advisory Committee	Department of Industry and Investment
Fair Trading Advisory Council	Department of Services, Technology and Administration
Farrer Memorial Trust	Department of Industry and Investment
Festival Development Corporation	Land and Property Management Authority
Financial Counselling Trust Fund	Department of Services, Technology and Administration
Fluoridation of Public Water Supplies Advisory Committee	Department of Health
Geographical Names Board	Land and Property Management Authority
Guardianship Tribunal	Department of Human Services
Hardship Review Board constituted under the <i>Taxation Administration Act 1996</i>	The Treasury

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<b>Subsidiary agency</b>	<b>Parent agency</b>
Hazardous Chemicals Advisory Committee	Department of Environment, Climate Change and Water
Health Administration Corporation	Department of Health
Heritage Council	Department of Planning
Home Building Advisory Council	Department of Services, Technology and Administration
Hunter Development Corporation	Land and Property Management Authority
Industrial Committee established under the <i>Industrial Relations Act 1996</i>	Department of Justice and Attorney General
Industrial Registrar	Department of Justice and Attorney General
Industrial Relations Commission	Department of Justice and Attorney General
Lake Illawarra Authority	Land and Property Management Authority
Land and Environment Court	Department of Justice and Attorney General
Land and Housing Corporation	Department of Human Services
Law Reform Commission	Department of Justice and Attorney General
Legal Profession Admission Board	Department of Justice and Attorney General
Legal Services Commissioner	Department of Justice and Attorney General
Library Council	Communities NSW
Local Court	Department of Justice and Attorney General
Local Government Boundaries Commission	Department of Premier and Cabinet
Local Government Grants Commission	Department of Premier and Cabinet
Local Government Remuneration Tribunal	Department of Premier and Cabinet
Local Government Pecuniary Interest and Disciplinary Tribunal	Department of Premier and Cabinet

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<b>Subsidiary agency</b>	<b>Parent agency</b>
Local land board under the <i>Crown Lands Act 1989</i>	Land and Property Management Authority
Medical Committee constituted under the <i>Poisons and Therapeutic Goods Act 1966</i>	Department of Health
Medical Services Committee established under the <i>Health Administration Act 1982</i>	Department of Health
Mental Health Review Tribunal	Department of Health
Metalliferous Mines and Extractive Industries Competence Board	Department of Industry and Investment
Mine Subsidence Board	Department of Industry and Investment
Ministerial Corporation for Industry	Department of Industry and Investment
Ministerial Review Panel appointed under section 35 of the <i>Heritage Act 1977</i>	Department of Planning
Motor Vehicle Industry Advisory Council	Department of Services, Technology and Administration
National Parks and Wildlife Advisory Council	Department of Environment, Climate Change and Water
New South Wales Council on Environmental Education	Department of Environment, Climate Change and Water
New South Wales Innovation Council	Department of Industry and Investment
Non-Indigenous Animals Advisory Committee	Department of Industry and Investment
Nurses and Midwives Board	Department of Health
Nurses and Midwives Tribunal	Department of Health
Optical Dispensers Licensing Board	Department of Health
Optometrists Registration Board	Department of Health
Osteopaths Registration Board	Department of Health
Osteopaths Tribunal	Department of Health
Parliamentary Remuneration Tribunal	Department of Premier and Cabinet
Physiotherapists Registration Board	Department of Health
Physiotherapy Standards Advisory Committee	Department of Health



<b>Subsidiary agency</b>	<b>Parent agency</b>
Planning administrator appointed under section 118 of the <i>Environmental Planning and Assessment Act 1979</i>	The local authority that the planning administrator was appointed to exercise functions of
Planning assessment panel appointed under section 118 of the <i>Environmental Planning and Assessment Act 1979</i>	The local authority that the planning assessment panel was appointed to exercise functions of
Podiatrists Registration Board	Department of Health
Poisons Advisory Committee	Department of Health
Pool Fencing Advisory Committee	Department of Premier and Cabinet
Privacy Commissioner	Department of Justice and Attorney General
Products Safety Committee	Department of Services, Technology and Administration
Professional Standards Committee under the <i>Nurses and Midwives Act 1991</i>	Department of Health
Professional Standards Council	Department of Justice and Attorney General
Property Services Advisory Council	Department of Services, Technology and Administration
Psychological Care Assessment Committee	Department of Health
Psychologists Registration Board	Department of Health
Radiation Advisory Council	Department of Environment, Climate Change and Water
Registrar under the <i>Aboriginal Land Rights Act 1983</i>	Department of Human Services
Reserve trust established under the <i>Crown Lands Act 1989</i>	Land and Property Management Authority
Review Panel established under the <i>Gas Supply Act 1996</i>	Department of Industry and Investment
Riverina Citrus	Department of Industry and Investment
Roads and Traffic Advisory Council	Roads and Traffic Authority
Rural Assistance Authority	Department of Industry and Investment
Rural Fire Service Advisory Council	Department of Rural Fire Service
Sentencing Council	Department of Justice and Attorney General

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<b>Subsidiary agency</b>	<b>Parent agency</b>
Serious Offenders Review Council	Department of Justice and Attorney General
Small Business Development Corporation	Department of Industry and Investment
Sporting Injuries Committee	Compensation Authorities Staff Division
State Aviation Working Group	Transport NSW
State Debt Recovery Office	The Treasury
State Parole Authority	Department of Justice and Attorney General
Statutory and Other Offices Remuneration Tribunal	Department of Premier and Cabinet
Supreme Court	Department of Justice and Attorney General
The Stewart House Preventorium, Curl Curl	Department of Education and Training
Teacher Housing Authority	Department of Services, Technology and Administration Training
Trustees of Anzac Memorial Building	Department of Premier and Cabinet
Trust established in respect of a common under the <i>Commons Management Act 1989</i>	Land and Property Management Authority
Trustees of the Parliamentary Contributory Superannuation Fund	The Treasury
Trustees of the West Scholarship Scheme	Department of Education and Training
Victims Advisory Board	Department of Justice and Attorney General
Victims Compensation Fund Corporation	Department of Justice and Attorney General
Victims Compensation Tribunal	Department of Justice and Attorney General
Vocational Education and Training Accreditation Board	Department of Education and Training
Vocational Training Tribunal	Department of Education and Training

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<b>Subsidiary agency</b>	<b>Parent agency</b>
Wagga Wagga Interim Joint Planning Panel constituted under section 23G of the <i>Environmental Planning and Assessment Act 1979</i>	Wagga Wagga City Council
Wild Dog Destruction Board	Land and Property Management Authority
Workers Compensation and Workplace Occupational Health and Safety Council	Compensation Authorities Staff Division
Workers Compensation Commission	Compensation Authorities Staff Division
Workers Compensation (Dust Diseases) Board	Compensation Authorities Staff Division

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