Government Information (Public Access) Regulation 2018

[2018-510]



Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes-

Does not include amendments by
 Medicines, Poisons and Therapeutic Goods Act 2022 No 73 (not commenced)
 Government Sector Finance Amendment (Grants) Act 2023 No 1 (not commenced — to commence on 1.7.2023)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the Interpretation Act 1987.

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Government Information (Public Access) Regulation 2018



Contents

Part 1 Preliminary	4
1 Name of Regulation	4
2 Commencement	4
3 Definitions	4
Part 2 Open access information of local authorities	4
4 Additional open access information	4
5 Additional ways in which open access information is to be made available	5
Part 3 Provisions relating to agencies generally	5
6 Additional open access information of certain agencies	5
7 Extension of decision period for access applications involving schools	7
8 Annual reporting requirements under section 125 of Act	7
9 Public availability of open access information of Ministers	8
10 Discounted processing charge	8
Part 4 Miscellaneous	8
11 Exempt documents under interstate FOI legislation—corresponding laws	8
12 Bodies declared to be public authorities	8
13 Agencies that are part of other agencies	9
14 Records in certain agencies	9
15 Repeal and savings	9

Schedule 1 Additional open access information—local authorities	5 9
Schedule 2 Statistical information about access applications to be included in annual report	De
	12
Schedule 3 Agencies declared to be part of other agencies	16

Government Information (Public Access) Regulation 2018



Part 1 Preliminary

1 Name of Regulation

This Regulation is the Government Information (Public Access) Regulation 2018.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note-

This Regulation repeals and replaces the *Government Information (Public Access) Regulation 2009*, which would otherwise be repealed on 1 September 2018 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation—

LGA means the Local Government Act 1993.

the Act means the Government Information (Public Access) Act 2009.

Note-

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Open access information of local authorities

4 Additional open access information

- (1) The government information listed in Schedule 1 that is held by a local authority is prescribed as open access information of the local authority.
- (2) An advertising compliance certificate issued by the head of a Government agency

under the *Government Advertising Act 2011* is prescribed as open access information of that agency.

Note-

The fact that information is open access information does not create an obligation to keep records indefinitely and does not interfere with records management practices and procedures of local authorities that are consistent with the *State Records Act 1998*.

5 Additional ways in which open access information is to be made available

- (1) A local authority must make its open access information publicly available by—
 - (a) making the information available for inspection free of charge by any person at the office of the local authority during ordinary office hours, and
 - (b) providing a copy of a record containing the information (or providing the facilities for making a copy of a record containing the information) to any person either free of charge or for a charge not exceeding the reasonable cost of photocopying.
- (2) This clause does not prevent a local authority from archiving records that contain open access information in accordance with the authority's records management practices and procedures. The authority is required to retrieve archived records and make the information available in accordance with this clause in response to a request for access as soon as reasonably practicable after the request is made.
- (3) This clause extends to open access information of a local authority that is open access information listed in section 18 of the Act (and is not limited to information listed in Schedule 1).

Part 3 Provisions relating to agencies generally

6 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) the following details concerning overseas travel undertaken by the Minister—
 - (i) the portfolio to which the travel relates,
 - (ii) the purpose and anticipated benefits to New South Wales of the travel,
 - (iii) the destinations visited,
 - (iv) the dates of travel,
 - (v) the number of persons who accompanied the Minister (including Ministerial

advisors, agency staff and family members),

- (vi) the total cost of airfares,
- (vii) the total cost of accommodation,
- (viii) the total cost of other travel expenses (including travel allowances).
- (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),
 - (e) any standard, code or other publication that has been applied, adopted or incorporated by reference in any Act or statutory rule that is administered by the Department.
- (3) The reference in subclause (2) to a Government Department includes a reference to—
 - (a) a Public Service agency, within the meaning of the *Government Sector Employment Act 2013*, except a Staff Agency listed in that Act, Schedule 1, and
 - (b) the Independent Commission Against Corruption, and
 - (c) the NSW Police Force, and
 - (d) the Judicial Commission of New South Wales.
- (4) Relevant entities 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 relevant entity—
 - (a) the total number and total value of properties disposed of by the relevant entity during the previous financial year,
 - (b) the relevant entity's guarantee of service (if any).
- (5) In this clause—

relevant entity means each of the following—

(a) a statutory body representing the Crown, including a NSW Government agency to

which the Interpretation Act 1987, section 13A applies,

- (b) a Council, within the meaning of the *Health Practitioner Regulation National Law* (NSW), Part 5A,
- (c) an entity with money held in an account within the Special Deposits Account, within the meaning of the *Government Sector Finance Act 2018*, except a Government Department covered by subclause (3).

7 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.

8 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—

- (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.

(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.

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).

9 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.

10 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

11 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) Freedom of Information Act 1991 of South Australia,
- (c) Freedom of Information Act 1992 of Western Australia,
- (d) Freedom of Information Act 2016 of the Australian Capital Territory,
- (e) Information Act of the Northern Territory,
- (f) Right to Information Act 2009 of Queensland,
- (g) Right to Information Act 2009 of Tasmania.

12 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) Australian Music Examinations Board NSW,
- (b) Duke of Edinburgh Award Scheme (NSW State Committee),
- (c) NSW Adult Migrant English Service,

(d) Regional Development Australia.

13 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.

14 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.

15 Repeal and savings

- (1) The Government Information (Public Access) Regulation 2009 is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Government Information (Public Access) Regulation 2009*, had effect under that Regulation is taken to have effect under this Regulation.

Schedule 1 Additional open access information—local authorities

(Clause 4)

1 Information about local authority

- (1) Information contained in the current version and the most recent previous version of the following records is prescribed as open access information—
 - (a) the model code prescribed under section 440 (1) of the LGA and the code of conduct adopted under section 440 (3) of the LGA,
 - (b) code of meeting practice,
 - (c) annual report,
 - (d) annual financial reports,
 - (e) auditor's report,
 - (f) management plan,
 - (g) EEO management plan,
 - (h) policy concerning the payment of expenses incurred by, and the provision of

facilities to, councillors,

- (i) annual reports of bodies exercising functions delegated by the local authority,
- (j) any codes referred to in the LGA.
- (2) Information contained in the following records (whenever created) is prescribed as open access information—
 - (a) returns of the interests of councillors, designated persons and delegates,
 - (b) agendas and business papers for any meeting of the local authority or any committee of the local authority (but not including business papers for matters considered when part of a meeting is closed to the public),
 - (c) minutes of any meeting of the local authority or any committee of the local authority, but restricted (in the case of any part of a meeting that is closed to the public) to the resolutions and recommendations of the meeting,
 - (d) reports by the Chief Executive of the Office of Local Government presented at a meeting of the local authority in accordance with section 433 of the LGA.
- (3) Information contained in the current version of the following records is prescribed as open access information—
 - (a) land register,
 - (b) register of investments,
 - (c) register of delegations,
 - (d) register of graffiti removal work kept in accordance with section 13 of the *Graffiti Control Act 2008*.
 - (e) register of current declarations of disclosures of political donations kept in accordance with section 328A of the LGA.
 - (f) the register of voting on planning matters kept in accordance with section 375A of the LGA.

2 Plans and policies

Information contained in the current version and the most recent previous version of the following records is prescribed as open access information—

- (a) local policies adopted by the local authority concerning approvals and orders,
- (b) plans of management for community land,
- (c) environmental planning instruments, development control plans and contributions

plans made under the *Environmental Planning and Assessment Act 1979* applying to land within the local authority's area.

3 Information about development applications

- (1) Information contained in the following records (whenever created) is prescribed as open access information—
 - (a) development applications (within the meaning of the *Environmental Planning and Assessment Act 1979*) and any associated documents received in relation to a proposed development including the following—
 - (i) home warranty insurance documents,
 - (ii) construction certificates,
 - (iii) occupation certificates,
 - (iv) structural certification documents,
 - (v) town planner reports,
 - (vi) submissions received on development applications,
 - (vii) heritage consultant reports,
 - (viii) tree inspection consultant reports,
 - (ix) acoustics consultant reports,
 - (x) land contamination consultant reports,
 - (b) records of decisions made on or after 1 July 2010 on development applications (including decisions made on appeal),
 - (c) a record that describes the general nature of the documents that the local authority decides are excluded from the operation of this clause by subclause (2).
- (2) However, this clause does not apply to so much of the information referred to in subclause (1) (a) as consists of—
 - (a) the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or
 - (b) commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it or to reveal a trade secret, or
 - (c) development applications made before 1 July 2010 and any associated documents received (whether before, on or after that date) in relation to the application.

(3) A local authority must keep the record referred to in subclause (1) (c).

4 Approvals, orders and other documents

Information contained in the following records (whenever created) is prescribed as open access information—

- (a) applications for approvals under Part 1 of Chapter 7 of the LGA and any associated documents received in relation to such an application,
- (b) applications for approvals under any other Act and any associated documents received in relation to such an application,
- (c) records of approvals granted or refused, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals,
- (d) orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA,
- (e) orders given under the authority of any other Act,
- (f) records of building certificates under the *Environmental Planning and Assessment Act* 1979,
- (g) plans of land proposed to be compulsorily acquired by the local authority,
- (h) compulsory acquisition notices,
- (i) leases and licences for use of public land classified as community land,
- (j) performance improvement orders issued to a council under Part 6 of Chapter 13 of the LGA.

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

(Clause 8)

Table A: Number of applications by type of applicant and outcome*								
	granted	granted	refused	Information	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.

Table B: Number of applications by type of application and outcome

	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 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

Table D: Conclusive presumption of overriding public interest against disclosure: matters listed in Schedule 1 to Act

	Number of times consideration used*
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	
Information about complaints to Judicial Commission	
Information about authorised transactions under <i>Electricity Network</i> Assets (Authorised Transactions) Act 2015	
Information about authorised transaction under Land and Property Information NSW (Authorised Transaction) Act 2016	

^{*} 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.

Table E: Other public interest considerations against disclosure: matters listed in table to section 14 of Act

	Number of occasions when application not successful
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	

Table F: Timeliness

	Number of applications
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	

Table G: Number of applications reviewed under Part 5 of the Act (by type of review and outcome)

	Decision varied	Decision upheld	Total
Internal review			
Review by Information Commissioner*			
Internal review following recommendation under section 93 of Act			
Review by NCAT			
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.

Table H: Applications for review under Part 5 of the Act (by type of applicant)

	Number of applications for review
Applications by access applicants	
Applications by persons to whom information the subject of access application relates (see section 54 of the Act)	

Table I: Applications transferred to other agencies under Division 2 of Part 4 of the Act (by type of transfer)

	Number of applications transferred
Agency-initiated transfers	
Applicant-initiated transfers	

Schedule 3 Agencies declared to be part of other agencies

(Clause 13)

Subsidiary agency	Parent agency
Aboriginal and Torres Strait Islander Health Practice Council of New South Wales	Ministry of Health
Advisory committee established under the <i>Food</i> Act 2003	Department of Regional NSW
Advisory committee established under the <i>National Parks and Wildlife Act 1974</i>	Department of Planning and Environment
Advisory committee established under the Protection of the Environment Administration Act 1991	Department of Planning and Environment
Agricultural industry services committee constituted by the <i>Agricultural Industry Services</i> Act 1998	Department of Regional NSW
Agricultural Scientific Collections Trust	Department of Regional NSW
Animal Research Review Panel	Department of Regional NSW
Anti-Discrimination Board	Department of Justice
Australian Music Examinations Board NSW	NSW Education Standards Authority Staff Agency
Belgenny Farm Agricultural Heritage Centre Trust	Department of Regional NSW
Biodiversity Conservation Trust of New South Wales	Department of Planning and Environment
Board of Surveying and Spatial Information	Department of Customer Service

Environment Protection Authority

Board of the Environment Protection Authority

Border Fence Maintenance Board Department of Regional NSW

Botany Cemetery Trust Department of Planning and Environment

Building and Construction Industry Long Service

Payments Committee

Treasury

Building Insurers' Guarantee Corporation **NSW Self Insurance Corporation**

Bush Fire Co-ordinating Committee Office of the NSW Rural Fire Service

Department of Planning and Environment Cape Byron State Conservation Area Trust

Carers Advisory Council Department of Family and Community Services

Central Coast Regional Development Corporation Department of Planning and Environment

Child Death Review Team Office of the Ombudsman

Children's Court Department of Justice

Children's Court Advisory Committee Department of Justice

Children's Court Clinic Department of Justice

Chinese Medicine Council of New South Wales Ministry of Health

Chiropractic Council of New South Wales Ministry of Health

Civil and Administrative Tribunal Department of Justice

Combat Sports Authority Office of Sport

Commissioner of the Land and Environment Court Department of Justice

Committee of inquiry established under the Energy

and Utilities Administration Act 1987

Department of Planning and Environment

Committee of Review appointed under the Health

Services Act 1997

Ministry of Health

Contract of Carriage Tribunal Department of Justice

Coroner (including the State Coroner and Deputy

State Coroner)

Department of Justice

Costs assessor appointed under the Legal

Profession Uniform Law Application Act 2014

Department of Justice

Crown Solicitor's Office Department of Justice

Dental Council of New South Wales Ministry of Health

Disability Council Department of Family and Community Services

District Court Department of Justice

Drug Court Department of Justice Duke of Edinburgh Award Scheme (NSW State

Committee)

Department of Education

Dumaresq-Barwon Border Rivers Commission

Department of Planning and Environment

Dust Diseases Tribunal

Department of Justice

Energy Corporation

Department of Planning and Environment

Environmental Trust

Department of Planning and Environment

Exhibited Animals Advisory Committee

Department of Regional NSW

Financial Counselling Trust Fund

Department of Customer Service

Fluoridation of Public Water Supplies Advisory Committee

Ministry of Health

Geographical Names Board

Hardship Review Board

Department of Customer Service

Department of Customer Service

Health Administration Corporation

Ministry of Health

Heritage Council of New South Wales

Department of Planning and Environment

Hunter and Central Coast Regional Planning Panel

Department of Planning and Environment

Hunter Development Corporation

Department of Planning and Environment

Hunter River Salinity Trading Scheme

Environment Protection Authority

Department of Customer Service

Independent Liquor and Gaming Authority

Industrial Committee established under the

Industrial Relations Act 1996

Department of Justice

Industrial Registrar

Department of Justice

Industrial Relations Commission

Department of Justice

Land and Environment Court

Department of Justice

Law Reform Commission

Department of Justice

Legal Profession Admission Board

Department of Justice

Legal Services Commissioner

Department of Justice

Liability Management Ministerial Corporation

Treasury

Library Council of New South Wales

Department of Premier and Cabinet

Local Court

Department of Justice

Local Government Boundaries Commission

Department of Planning and Environment

Local Government Grants Commission

Department of Planning and Environment

Local Government Remuneration Tribunal

Public Service Commission

Long Service Corporation Treasury

Medical Committee constituted under the *Poisons*Ministry of Health

and Therapeutic Goods Act 1966

Medical Radiation Practice Council of New South

Wales

Ministry of Health

Medical Services Committee established under the

Health Administration Act 1982

Ministry of Health

Mental Health Review Tribunal Ministry of Health

Mining and Petroleum Competence Board Department of Regional NSW

National Parks and Wildlife Advisory Council Department of Planning and Environment

New South Wales Biological Control Authority Department of Regional NSW

New South Wales Innovation and Productivity

Council

Treasury

New South Wales Land and Housing Corporation Department of Planning and Environment

New South Wales Rural Assistance Authority Department of Regional NSW

New South Wales Sentencing Council Department of Justice

Northern Regional Planning Panel Department of Planning and Environment

NSW Adult Migrant English Service Department of Education

NSW Coastal Council Department of Planning and Environment

NSW Food Authority Department of Regional NSW

NSW Procurement Board Treasury

NSW Self Insurance Corporation Treasury

NSW Skills Board Department of Education

NSW Telco Authority Department of Customer Service

Nursing and Midwifery Council of New South Wales Ministry of Health

Occupational Therapy Council of New South Wales Ministry of Health

Optometry Council of New South Wales Ministry of Health

Osteopathy Council of New South Wales Ministry of Health

Paramedicine Council of New South Wales Ministry of Health

Parliamentary Remuneration Tribunal Public Service Commission

Parramatta Park Trust Department of Planning and Environment

Personal Injury Commission Department of Customer Service

Physiotherapy Council of New South Wales Ministry of Health

Planning administrator or regional panel appointed The local authority whose functions the planning under section 9.6 of the *Environmental Planning* administrator or regional panel was appointed to

and Assessment Act 1979 exercise

Podiatry Council of New South Wales Ministry of Health

Poisons Advisory Committee Ministry of Health

Professional Standards Committee for nurses and midwives

Ministry of Health

Professional Standards Council Department of Customer Service

Property NSW Department of Planning, Industry and Environment

Psychology Council of New South Wales Ministry of Health

Public Defender (including the Senior Public Defender and Deputy Senior Public Defenders)

Department of Justice

Public Guardian NSW Trustee and Guardian

Radiation Advisory Council Environment Protection Authority

Registrar under the *Aboriginal Land Rights Act*1983 Department of Education

Rental Bond Board Department of Customer Service

Review panel under the Gas Supply Act 1996 Department of Planning and Environment

Rural Fire Service Advisory Council Office of the NSW Rural Fire Service

Serious Offenders Review Council Department of Justice

Small Business Commissioner Treasury

Southern Regional Planning Panel Department of Planning and Environment

State Aviation Working Group Department of Transport

State Parole Authority Department of Justice

Statutory and Other Offices Remuneration Tribunal Public Service Commission

Stewart House Preventorium Department of Education

Supreme Court Department of Justice

Sydney Eastern City Planning Panel Department of Planning and Environment

Sydney Olympic Park Authority Department of Planning and Environment

Sydney West City Planning Panel Department of Planning and Environment

Teacher Housing Authority of New South Wales Department of Planning, Industry and Environment

Trust established in respect of a common under the

Commons Management Act 1989

Department of Planning and Environment

Trustees of the Anzac Memorial Building

Department of Justice

Trustees of the Farrer Memorial Research

Scholarship Fund

Department of Regional NSW

Trustees of the Parliamentary Contributory

Superannuation Fund

Treasury

Victims Advisory Board Department of Justice

Waste Assets Management Corporation Department of Planning, Industry and Environment

Western Regional Planning Panel Department of Planning and Environment

Workers Compensation (Dust Diseases) Authority Treasury