

# PART 13 — INFORMATION PUBLICATION SCHEME

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## PART 13 — INFORMATION PUBLICATION SCHEME

### Introduction

13.1 Part II of the FOI Act establishes an Information Publication Scheme (IPS) for Australian Government agencies subject to the Act. The IPS requires agencies to publish a broad range of information on their website and provides a means for agencies to proactively publish other information. Agencies must also publish a plan that explains how they intend to implement and administer the IPS (an agency plan).

13.2 The IPS underpins a pro-disclosure culture across government, and transforms the freedom of information framework from one that is reactive to individual requests for documents, to one that also relies more heavily on agency-driven publication of information. The IPS requirements also reflect the objective that information held by government is a national resource to be managed for public purposes (s 3(3)).

13.3 Publication of government information can stimulate innovation and economic prosperity. It can also enhance participatory democracy by assisting the public to better understand how government makes decisions and administers programs. An informed community can participate more effectively in government processes, and contribute to better policy and decisions. Transparency in government can also lessen the risk that people will be disadvantaged in dealings with government through lack of knowledge or a misunderstanding of government processes.

13.4 The IPS requirements are intended to facilitate and promote public access to information promptly and at the lowest reasonable cost.

### Elements of the IPS

13.5 The IPS requires Australian Government agencies to which the FOI Act applies to:

- publish an agency plan (ss 8(1) and 8(2)(a))
- publish specified categories of information (s 8(2))
- consider proactively publishing other government information (s 8(4)).

Those three elements are referred to in these guidelines as an agency's IPS entry. Individual agencies' IPS entries together constitute the IPS.

13.6 Agencies must have regard to the objects of the FOI Act and these Guidelines in complying with the IPS requirements (ss 9A and 93A). These Guidelines provide information about the IPS requirements applying to agencies. They also include recommendations and guidance to encourage better practice.

13.7 Agencies must comply with the IPS requirements from 1 May 2011. The IPS will however continue to evolve. Agencies are required to keep their IPS entry accurate, up-to-date and complete; they are encouraged to publish additional information beyond that required by the Act; and an agency can take steps to make existing information more accessible to members of the public.

13.8 The IPS does not apply to minister's offices. They are subject to other requirements of the FOI Act, including the obligation to provide access to documents upon request under Part III of the Act, and the obligation to publish a disclosure log under s 11C (see Part 14 of these Guidelines).

### Guiding principles

13.9 The FOI Act embodies six principles that should guide agencies in meeting their IPS obligations:

- agency plans and IPS compliance should further the objects of the FOI Act
- information published by an agency under the IPS should be easily discoverable, understandable and machine-readable
- published information should be accessible — in particular, it should comply with an agency's obligation to meet the Web Content Accessibility Guidelines version 2.0 (WCAG 2.0) (see [13.124]–[13.125] below)
- agencies are encouraged to adopt the publication framework set out in these Guidelines, to ensure a consistent look and feel across agencies in IPS compliance
- published information should, so far as it is reasonable and practicable, be made available for reuse on open licensing terms, so as to enhance the economic and social value of the information
- published information should be reviewed regularly for accuracy, currency and completeness.

13.10 Agencies are also encouraged to have regard to the eight principles on open public sector information, published by the Australian Information Commissioner in *Principles on open public sector information* (May 2011), available at [www.oaic.gov.au](http://www.oaic.gov.au).

### Agency plan

13.11 Section 8(1) of the FOI Act requires agencies to prepare a plan showing:

- (a) the information the agency proposes to publish under the IPS (its IPS entry)
- (b) how, and to whom, the agency proposes to publish that information
- (c) other steps the agency will take to comply with IPS requirements.

The purpose of an agency plan is to explain how an agency will comply with the IPS requirements.

13.12 Section 8B requires agencies to ensure that all information the agency publishes under the IPS, including the agency plan, is 'accurate, up-to-date and complete'. Agencies should therefore ensure that the agency plan is regularly reviewed and updated where necessary. This review could be undertaken as part of an agency's annual strategic planning.

13.13 An agency plan and IPS entry can be strengthened by inviting public comment on them. Agencies should explain in their plan how they will evaluate and act on any comments received.

***Structure and contents of the agency plan***

13.14 Agencies should consider adopting the following headings in their agency plan, to promote consistency across government and make it easier for the public to access agency information:

- establishing and administering the agency's IPS entry
- IPS information architecture
- information required to be published under the IPS (s 8(2))
- other information to be published (s 8(4))
- IPS compliance review (s 8F).

13.15 Each of those headings is discussed in more detail below. In addition, an agency plan template is available at

Annexure A — AGENCY PLAN TEMPLATE.

### ***Establishing and administering the agency's IPS entry***

13.16 The agency plan should explain the steps the agency will take to prepare its IPS entry and to manage the entry on an ongoing basis. The following matters could be addressed:

- who (within the senior executive) is responsible for leading the agency's work on IPS compliance
- the resources allocated to establishing and administering the agency's IPS entry
- the processes and timetable for identifying information required to be published under s 8(2), for publishing additional information under s 8(4), and for adding to or revising the agency's IPS entry
- measures being taken to ensure that the agency's IPS entry is accurate, up-to-date and complete (discussed below at [13.122]–[13.123])
- measures (if any) being taken to improve an agency's information asset management framework, to support its IPS compliance (see [13.18]–[13.19] below)
- whether the agency has developed an internal IPS information register to assist it to efficiently identify documents for publication, record decisions made in relation to publication and systematically review IPS information for accuracy, currency and completeness (see [13.20] below)
- provide details of access charges (if any) that the agency may impose for accessing information published under the IPS, and how charges will be calculated (ss 8D(4),(5)) (see [13.126]–[13.128] below).

13.17 The details of an agency plan are likely to reflect the agency's size, functions and reporting obligations, and its resources and skills in information and communications technology, and information management. The agency plan could elaborate on those matters.

#### **Information asset management framework**

13.18 An asset management framework brings together key corporate planning activities and asset management. Asset management involves developing a process to manage, demand and guide the acquisition, use and disposal of assets. This process is intended to maximise service delivery potential and manage risks and costs over an asset's lifecycle.

13.19 An information asset management framework is a subset of an agency's wider asset management framework and deals specifically with information assets.<sup>1</sup> It would ideally be linked to an agency's records management system and IPS information register.

#### **IPS information register**

13.20 An IPS information register could include the following information:

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<sup>1</sup> For further discussion of information asset management frameworks, see the OAIC issues paper, *Towards an Australian Government Information Policy* (November 2010), at [www.oaic.gov.au](http://www.oaic.gov.au).

- which agency business area owns a particular document
- when the document was last updated
- the formats in which the document is available and the file size
- if the document is not published online, who may be contacted within the agency to arrange public access and the number of requests received
- categories of information that were considered for publication under the IPS but were not published under s 8C (because the document contains exempt matter or publication is prohibited or restricted by an enactment).

### ***IPS information architecture***

13.21 The agency plan should explain how the agency will facilitate public access to the information published in an agency's IPS entry. Matters that could be addressed include:

- whether information will be published on the agency's website, or on another website such as the website of the portfolio department (where applicable), [www.comlaw.gov.au](http://www.comlaw.gov.au) or [www.data.gov.au](http://www.data.gov.au)
- the headings under which information will be published (see [13.120]–[13.121] below for a suggested heading structure)
- how the IPS entry will be notified on the agency website (for example, by using the IPS icon recommended by the Information Commissioner in the *Guidance for agency websites: 'Access to information' webpage*)<sup>2</sup>
- whether a sitemap and search function will be provided
- whether an alert service will be provided for changes or additions to the IPS and how a member of the public can subscribe to the alert service
- how the agency will comply with its WCAG 2.0 obligations in establishing and maintaining its IPS entry
- the mechanism(s) that will be adopted by the agency for inviting community feedback on its IPS entry and compliance, and how the agency will evaluate and respond to comments received.

### ***Information required to be published under the IPS***

13.22 The agency plan should describe the information an agency will publish as required by s 8(2). Those requirements are described in more detail below. A series of headings that agencies could use to enhance public access to government information published under the IPS is suggested below at [13.120]–[13.121].

### ***Other information to be published under the IPS***

13.23 The agency plan should describe the information an agency will publish under s 8(4) (discussed further below at [13.106]–[13.111]). The plan should specify how the agency has

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<sup>2</sup> Available as an agency resource at [www.oaic.gov.au](http://www.oaic.gov.au).

or will identify other information to be published. The timetable for publishing the information should also be included.

### ***IPS compliance review***

13.24 Agencies are required to complete a review of their IPS compliance by 1 May 2016, in conjunction with the Information Commissioner (ss 8F(a) and 9(1)). The OAIC's compliance review program is described at [13.131]–[13.133].

13.25 It is open to an agency to undertake more regular reviews, or to review the individual elements of its IPS compliance at different times. The agency plan should indicate when and how the agency will undertake its compliance reviews. The plans should also explain whether the public will be invited to comment on the agency's IPS entry as part of the compliance review.

### **Information required to be published under the IPS**

13.26 Agencies are required by s 8(2) of the FOI Act to publish the following information:

- the agency plan (discussed above at [13.11]–[13.15])
- details of the structure of the agency's organisation (for example, in the form of an organisation chart) ([13.29]–[13.37] below)
- details of the agency's functions, including its decision-making powers and other powers affecting members of the public (or any particular person or entity, or class of persons or entities) ([13.38]–[13.49] below)
- details of appointments of officers of the agency that are made under Acts (other than Australian Public Service employees within the meaning of the *Public Service Act 1999* — such as appointments of statutory office holders ([13.50]–[13.53] below)
- the agency's annual reports ([13.54]–[13.57] below)
- details of arrangements for members of the public to comment on specific policy proposals for which the agency is responsible, including how (and to whom) those comments may be made ([13.58]–[13.62])
- information in documents to which the agency routinely gives access in response to requests under Part III (access to documents) of the FOI Act, except information that is otherwise exempt ([13.63]–[13.75])
- information that the agency routinely provides to the Parliament in response to requests and orders from the Parliament ([13.76]–[13.80])
- details of an officer (or officers) who can be contacted about access to the agency's information or documents under the FOI Act ([13.81]–[13.83])
- the agency's operational information (information held by the agency to assist it to perform or exercise its functions or powers in making decisions or recommendations affecting members of the public — or any particular person or entity, or class of persons or entities — for example the agency's rules, guidelines, practices and precedents relating to those decisions and recommendations) ([13.84]–[13.103]).



13.27 Each of these categories of information is discussed below. The categories build on the classes of information that agencies have been required to publish under Part II of the FOI Act since its commencement in 1983.

### ***Agency plan***

13.28 Agencies must publish an agency plan. This requirement was discussed above at [13.11]–[13.15].

### ***Agency organisation structure***

13.29 Agencies must publish details of their organisational structure (s 8(2)(b)). This requirement is designed to make the details of an agency's organisation structure easily accessible and discoverable by the public on the agency's website. In meeting this requirement, agencies should consider their main audience — the general public — as well as particular classes of people or entities that are likely to visit the agency website.

13.30 Organisational information may be presented as a chart and supported by other information about the agency. It is important that any abbreviation, acronym or specialist description or term that is used in the organisation chart is properly explained. If this explanation is given in a separate document on the website, a clear link should be provided.

13.31 Agencies already publish organisational information in various locations, including the agency website, the agency annual report, and at [www.directory.gov.au](http://www.directory.gov.au). Agencies may achieve compliance by linking to where the organisational information is already published.

### ***Level of detail required***

13.32 The level of detail an agency provides about its organisational structure may depend on the agency's particular characteristics, such as its size and functions.

13.33 For smaller agencies or those with a limited number of functions, it may be appropriate to identify each business line or unit that is managed by an officer in the Senior Executive Service responsible for carrying out one of the agency's functions or powers. The lines of accountability from the manager of the business unit through to the agency's chief executive officer could be specified. The nature of the agency function or power, and the role of the business unit, could also be explained.

13.34 For larger agencies, providing comprehensive organisational information could make the IPS entry unhelpfully long. If so, an agency should consider limiting its organisational information to the responsibilities of key Senior Executive Service officers. The nature of the agency function or power that officer supervises, and the key business units that carry out the function, could be explained. If this approach is taken, details should be given of how a person may obtain further information about the agency's organisational structure.

13.35 Where an agency is responsible for a statutory committee, the agency should provide information about the committee and committee members.

13.36 Although not expressly required by s 8(2)(b), it is good practice to provide the name and contact details for each manager of a business unit. If this is not appropriate (for

example, because of the risk of harassment, email spam or due to regular changes of staff), the agency should list the position title and provide contact details.

### **Organisational change**

13.37 Information about an agency's organisational structure must be accurate, up-to-date and complete ([13.122]–[13.123]). An agency's IPS entry should be updated at the earliest opportunity following an internal agency reorganisation or a reallocation of responsibilities between agencies. It may assist the public to explain any key organisational changes, and to provide a link to other relevant agencies.

### **Functions and powers**

13.38 Agencies must publish details of their functions. This includes an agency's decision-making and other powers that affect members of the public (or any particular person or entity, or class of persons or entities) (s 8(2)(c)). This requirement extends to functions and powers that derive from an enactment or an executive scheme (s 8(5)).

13.39 Agencies are not required to publish details of the activities they undertake that are incidental to their designated functions. See [13.47]–[13.49] below for more detail about incidental powers and functions.

13.40 Where agencies share responsibility for a function or power, the relationship between the agencies should be explained. For example, one agency may develop policy about a particular issue while another agency delivers a service based on that policy.

13.41 Agencies already provide details of their functions and powers in annual reports, and at other locations such as [www.australia.gov.au](http://www.australia.gov.au). It may be appropriate to just provide a link to this source, if the information provided there is comprehensive or presented in a way that will better assist the public to understand the agency's function.

### **Functions**

13.42 An agency's functions should be described in terms that enable the public to ascertain the range and scope of those functions. Agency functions derive from many sources:

- The Administrative Arrangements Order (AAO) made by the Governor-General specifies the functions of departments of state. The AAO describes the matters each department deals with and the legislation administered by the ministers responsible for each department.
- Decisions of the Government, often in the form of a ministerial announcement, may require an agency to administer a new policy or program. The activity may be sufficiently broad and important to be listed separately in an IPS entry as a function of the agency.
- The functions of a body or office holder established by legislation (a 'statutory authority') will be specified in the enabling legislation. Other legislation may also confer functions on the agency. The description of these functions in an IPS entry may

need to go beyond the legislative definition of the function in order to convey a full picture of the agency's role.

- The functions of a body established by executive action — for example, by the Governor-General under s 65 of the Public Service Act or by Cabinet or a minister — are likely to be described in the order or instrument establishing the body. The description of the function that is published may need to be more detailed than the description given in that order or instrument.
- Agencies sometimes develop other functions that should be described in an IPS entry. For example, a function may be developed with the assistance of funding received from a government funding or grant agency.

13.43 It may assist the public to provide a link to the legislation, instrument or government announcement that provides the source for the agency function.

### **Powers**

13.44 Powers can be conferred on an agency either by an Act of Parliament, a legislative instrument (including subordinate legislation), or an executive instrument. An executive instrument may, for example, establish a grant program and confer power to award a grant to a member of the public, impose conditions on a grant, and revoke a grant.

13.45 An agency's powers can be described in their IPS entry separately, or as part of the description of the agency's functions. Either way, the description should be adequate to enable the public to understand the range and scope of the agency's powers that can affect them. It is not necessary to refer separately or in detail to each specific power conferred by legislation or otherwise. A general description of an agency's powers and their source will be adequate. Nor is it necessary to refer to the particular section of an Act or clause of an instrument that confers a power, unless that will better assist a person to understand the agency's functions.

13.46 There is a risk that too much detail in describing the functions or powers of an agency may unnecessarily lengthen or complicate the description and make it harder for the public to understand the agency's role.

### **Incidental powers and functions**

13.47 Agencies have incidental powers and functions to complement those expressly conferred on the agency. These incidental powers and functions enable an agency to carry on its business and administer the affairs of government. Examples are the corporate functions of an agency, such as its human resources, public relations and property management activities. Other incidental activities of government agencies include administering FOI requests and complying with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

13.48 It is not necessary to publish in an IPS entry these incidental functions and related powers that are common to all agencies. An exception would apply where the function is a core or designated function of a particular agency — for example, if the agency is established to provide training to other agencies, to administer the FOI Act or to manage Commonwealth property.

13.49 An agency can include additional information in its IPS entry (s 8(4)), and it is therefore open to an agency to include information about functions and powers that are incidental, implied or not enumerated. This should be considered where the function is a distinct agency activity or the agency exercises a significant power. An example is the work an agency undertakes, or the powers it exercises to ensure compliance with its directions or program conditions.

### ***Statutory appointments***

13.50 Agencies must publish details of appointments of agency officers that are made under Acts, other than the appointment of APS employees within the meaning of the Public Service Act (s 8(2)(d)).

13.51 This requirement applies to officers who are appointed under statute to a position or role in an agency – for example, the Commonwealth Ombudsman appointed under the *Ombudsman Act 1976* s 4, or the Chief Executive of Centrelink appointed under the *Human Services (Centrelink) Act 1997* s 7 (and who is also an Associate Secretary in the Department of Human Services). An officer who is appointed to a statutory position in another agency should be listed under the IPS entry of both agencies — for example, an officer of a department appointed to the Administrative Review Council under the *Administrative Appeals Tribunal Act 1975* s 49.

13.52 An agency is not required to list staff appointed under statute to a position with a generic designation, such as ‘investigator’. Nor are agencies that employ staff other than under the Public Service Act required to list staff they appoint under a general statutory authority.

13.53 Each appointment required to be listed in the IPS entry should include the following details:

- the name of the person appointed
- the length or term of appointment
- the position to which the person is appointed (and particulars of the position)
- the provision of the Act under which the person is appointed.

### ***Annual reports***

13.54 Agencies are required to publish the full text of their most recent annual report as laid before the Parliament (s 8(2)(e)). Agencies may also include the annual reports for earlier years, many of which are already published on the internet.

13.55 This requirement applies to annual reports of the following kind:

- the annual report prepared by each Commonwealth entity on their activities during the preceding financial year, as required by the PGPA Act s 46
- the annual report prepared by the directors of a Commonwealth company, as required by the PGPA Act s 97

- the annual report that a statutory agency is required to prepare on its operations during the year — for example, see the Ombudsman Act s 19
- the annual report that an officer is required to prepare on the operation of a particular statute during the year — for example, the *Environment Protection and Biodiversity Conservation Act 1999* s 516, which requires the Secretary to prepare a report on the operation of that Act; the *Bankruptcy Act 1966* s 12(1)(d) which imposes a similar obligation on the Inspector-General in Bankruptcy; and the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* which requires the Commissioner of Taxation to prepare quarterly (s 54(1)) and annual (s 54(2)) reports on the working of that Act
- a report prepared by an agency to enable a minister to satisfy an obligation to present an annual report to the Parliament — for example, the *Aged Care Act 1997* s 63.2.

13.56 Many other agency reports are laid before the Parliament, as requested by government or as the result of a specific agency inquiry. Publication of these reports is not required by s 8(2)(e), but publication is open to an agency under s 8(4).

13.57 To avoid duplicating information, if an agency is aware that its reports are published elsewhere (for example, on the Parliament of Australia website) a link could be provided to that website rather than publishing the reports twice.

### **Consultation arrangements**

13.58 Agencies that undertake public consultation on specific policy proposals for which they are responsible are required to publish details of how and to whom comments may be made (s 8(2)(f)). This requirement applies whenever an agency administers or establishes a public consultation arrangement in the course of developing a specific policy proposal.

13.59 Section 8(2)(f) applies to public consultation arrangements of a broad kind, including consultation:

- undertaken by an agency when making a legislative instrument, as required by the *Legislative Instruments Act 2003* s 17
- undertaken by an agency in preparing a regulatory impact statement, in accordance with the *Australian Government Guide to Regulation*<sup>3</sup>
- that an agency has decided to undertake for a specific policy development purpose
- under an arrangement that an agency has established to enable members of the public to provide ongoing comment on an existing policy or program that is administered by the agency.

13.60 As s 8(2)(f) applies to a policy development activity ‘for which the agency is responsible’, it can apply even though the obligation to consult is formally imposed by statute upon a minister or statutory officer. For example, the *Gene Technology Act 2000* s 22 provides that the Ministerial Council in developing policy principles may consult with ‘such industry groups ... and such environmental, consumer and other groups as the

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<sup>3</sup> Available at [www.cuttingredtape.gov.au/handbook/australian-government-guide-regulation](http://www.cuttingredtape.gov.au/handbook/australian-government-guide-regulation).

Ministerial Council considers appropriate'. The Australian Government agency that is carrying out that consultation for the Ministerial Council may need to publish details of that consultation.

13.61 There is no requirement to publish consultation exercises that do not contribute to policy development. For example, s 8(2)(f) would not ordinarily apply to consultation undertaken by the Australian Heritage Council pursuant to the *Australian Heritage Council Act 2003* s 22, which requires the Council to provide a reasonable opportunity to comment to the owner or occupier of a place that is proposed for inclusion in the register of the National Estate. Nor would s 8(2)(f) apply in carrying out the obligation imposed by the Environment Protection and *Biodiversity Conservation Act 1999* s 14, to consult a State before a property within that State is declared to be a World Heritage property.

13.62 If an agency has established an online consultation process for a specific policy proposal, the agency's IPS entry should link to this process. The Australian Government *Web Guide* provides further information about online consultation and Government 2.0 tools.<sup>4</sup>

### ***Information routinely given through FOI access requests***

13.63 Agencies are required to publish information in documents to which the agency routinely gives access in response to FOI requests (s 8(2)(g)).

13.64 Section 8(2)(g) does not apply to:

- personal information about any individual, if it would be unreasonable to publish the information (s 8(2)(g)(i)); as a general rule, this does not prevent publication of the names of Australian Government agency staff in connection with their official duties,<sup>5</sup> although agencies may wish to consult affected staff beforehand in cases where potential harm could arise from publishing their names (see also Part 14 of these Guidelines)
- information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information (s 8(2)(g)(ii))
- other information that the Information Commissioner has determined under s 8(3) would be unreasonable to publish (s 8(g)(iii)) (see [13.73]–[13.75] below).

13.65 Those exceptions indicate that agencies are generally not expected to publish information given to an individual or business applicant in response to an FOI request that is personal to that applicant.

13.66 In deciding what information is 'routinely' accessed, agencies should have regard to the similar requirement in s 11C to publish a disclosure log of information released in response to FOI access requests (see Part 14 of these Guidelines). The purpose of the IPS is also relevant to deciding what is routine. It forms part of a new approach to information disclosure, which recognises that information held by government is a national resource, and that agencies should proactively publish information that may be of public interest. The IPS is also designed to lessen the number of individual document requests to agencies.

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<sup>4</sup> Available at <http://webguide.gov.au/web-2-0>.

<sup>5</sup> Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2009, p 7.

Agencies should therefore take an expansive rather than a narrow view of what information is 'routinely' accessed. In particular, agencies should consider whether publishing the information would:

- promote the objects of the FOI Act
- be in the public interest
- reduce the likelihood of further requests for the information.

13.67 While the disclosure log will contain information an agency has released in response to individual requests, an IPS entry is to contain information that is 'routinely' released. That is, agencies are required to include in their IPS entry information that has been requested on multiple occasions. The information that was released may not have been identical on each occasion: it may have been revised or updated between requests, or the information may reflect a later development on the same topic. For example, an IPS entry could include statistical information about an agency's service delivery performance that is regularly requested by the media or other members of the public. Another example would be the minutes of meetings that are regularly sought under the FOI Act.

13.68 Publication of information in a disclosure log will in some instances satisfy the requirement in s 8(2)(g) to publish that information under the IPS. To avoid dual publication, an agency's IPS entry may contain a link to the disclosure log and a reference to the information to which the agency has routinely given access. Alternatively, an agency may decide that it is preferable, in complying with s 8(2)(g), for the IPS entry to contain either an extract from the disclosure log or a separate summary of information that is routinely released by the agency in response to FOI requests.

13.69 Whichever approach is adopted, agencies must ensure that the information is accurate, up-to-date and complete (s 8B). Consequently, if information contained in the disclosure log has been revised or replaced, an IPS entry which links to the disclosure log will also need to be amended.

#### **Exceptions — personal and business information**

13.70 As with the disclosure log requirements, an agency is not required to publish personal or business information as part of its IPS entry if it would be unreasonable to publish that information (ss 8(2)(g)(i), (ii)). As noted above at [13.65], agencies will generally not publish information given to an individual or business applicant in response to an FOI request that is personal to that applicant.

13.71 The third party consultation requirements that apply before a decision can be made under Part III of the FOI Act to release business documents or documents affecting personal privacy in response to an FOI request (ss 27, 27A) do not apply to the IPS and disclosure log publication decisions. It is nevertheless open to an agency to put procedures in place to ensure that it has considered the views or interests of an FOI applicant or third party before publishing information under the IPS or disclosure log.

13.72 Where information is not published because an exception applies, agencies may record this in an IPS information register, including the title of the document to which an exception applies and the reason it was not published under the IPS (see [13.20] above on

information registers). Capturing this information may help an agency if it needs to respond to any complaints to the Information Commissioner about its IPS compliance.

#### **Exceptions — Information Commissioner determinations**

13.73 The Information Commissioner may make a determination that the requirement to publish routinely accessed information under s 8(2)(g) does not apply to information specified in the determination (s 8(2)(g)(iii)). A determination of this kind is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (s 8(3)). A determination may apply to information of a general kind that is held by many agencies, or to a specific kind of information held by a particular agency. A similar exemption applies to the requirement to publish information in a disclosure log (s 11C(2)) (see Part 14 of these Guidelines).

13.74 In deciding whether to make a determination, the Information Commissioner will have regard to:

- the extent to which publication of the information in question would further the objects of the FOI Act
- whether there is an established and reasonable public demand for the information
- the estimated resource requirement for an agency to publish the information and whether this would impose an unreasonable burden on the agency.

13.75 For further information about determinations under s 8(3), see the *Information publication scheme and disclosure log determinations policy and procedure* (available at [www.oaic.gov.au](http://www.oaic.gov.au)).

#### **Parliamentary information**

13.76 Agencies are required to publish information they hold that is routinely provided to the Parliament in response to requests and orders from the Parliament (s 8(2)(h)). This includes:

- Senate Order No 8: Production of departmental file lists
- Senate Order No 9: List of departmental contracts (\$100,000 or more)
- Senate Order No 10: List of advertising/public information projects (\$100,000 or more)
- Information of a kind that is routinely requested from an agency by Parliament through a parliamentary committee.

13.77 Section 8(2)(h) does not apply to an answer provided to a Question on Notice in the Parliament, unless the Question is of a recurring nature for information of a similar kind (including a Question requesting an update or revision of information earlier provided in response to a Question). Nor does s 8(2)(h) apply to an agency submission to a parliamentary committee. It is nevertheless open to an agency to publish that information in the IPS under s 8(4) of the FOI Act (other information). Agencies should also note that s 8(2)(h) operates alongside another guideline that requires online publication of information presented to the Parliament — see Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Documents to the Parliament (including Government*



*Documents, Government Responses to Committee Reports, Ministerial Statements, Annual Reports and Other Instruments*), at [4.35].<sup>6</sup>

13.78 In applying s 8(2)(h), agencies should adopt a similar approach to that for s 8(2)(g) (routine access requests). In particular, an agency should consider including in its IPS entry information that was provided to the Parliament, if:

- this would promote the objects of the FOI Act
- the information is of public interest
- further requests or orders from the Parliament for the information are likely.

13.79 Agencies should establish internal procedures for ensuring that information routinely provided to the Parliament is identified as such and published under the IPS.

13.80 If an agency is aware that information provided to Parliament has been published elsewhere (for example, on the Parliament's website<sup>7</sup>), it would be appropriate to provide a link to that website.

### **Contact officers**

13.81 Agencies must publish contact details of an officer (or officers) who can be contacted about access to the agency's information or documents under the FOI Act (s 8(2)(i)).

13.82 To meet this requirement, agencies should publish the name (or position title), telephone number and email address of the FOI contact officer or officers. Agencies should establish generic telephone numbers and email addresses (for example, [foi@agency.gov.au](mailto:foi@agency.gov.au)) that will not change with staff movements.<sup>8</sup>

13.83 Where it is not appropriate to include the name and contact details for each FOI contact officer (for example, because of the risk of harassment, spam or due to regular staff changes) the agency should provide contact details for the position.

### **Operational information**

13.84 An agency's operational information must be published as part of an agency's IPS entry (s 8(2)(j)). 'Operational information' is defined in s 8A(1) as:

... information held by the agency to assist the agency to perform or exercise the agency's functions or powers in making decisions or recommendations affecting members of the public (or any particular person or entity, or class of persons or entities).

13.85 The publication of operational information ensures that members of the public can be adequately informed about the framework of rules, policies, principles and procedures

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<sup>6</sup> Available at [www.dpmmc.gov.au/guidelines/index.cfm](http://www.dpmmc.gov.au/guidelines/index.cfm).

<sup>7</sup> Agencies are advised to check what information is accessible and where it can be located on the Parliament's website before providing links (for example, the majority of submissions to committees are published on the inquiry webpages of the committees).

<sup>8</sup> See the model FOI page included in the Information Commissioner's *Guidance for agency websites: 'Access to information' webpage*, available as an agency resource at [www.oaic.gov.au](http://www.oaic.gov.au).

that agencies apply in making decisions or recommendations that affect members of the public.

13.86 Publication of that information is important in its own right, but is necessary also to ensure that members of the public are not disadvantaged through lack of awareness of the information used by agencies in decision making. Section 10 of the FOI Act reinforces that objective, by providing that a person must not be subjected to any prejudice that could have been avoided by the person had they been aware of operational information that should have been but was not published in the IPS. For more information about s 10 see [13.102]–[13.103].

13.87 Operational information is all information an agency holds, whether generated by the agency or not, that assists it to perform or exercise its functions or powers in making decisions or recommendations that affect members of the public (or any particular person or entity, or class of persons or entities). The person affected by an agency decision may be an individual, an organisation or a business entity. Examples of operational information include rules, guidelines, practices and precedents relating to decisions and recommendations affecting members of the public (s 8A).

13.88 The concept of operational information includes the information that agencies were required to make available for inspection and purchase under s 9 of the FOI Act prior to 1 May 2010. Section 9 applied to agency documents that met the following three requirements:

- the document is available to agency officers to assist them to make decisions or recommendations under legislation or schemes the agency administers
- the decision or recommendation concerns a right, privilege or benefit of a member of the public, or an obligation, penalty or detriment to which a person may be subject
- the document
  - is in the nature of a manual
  - contains an interpretation, rule, guideline, practice or precedent, including a letter of advice
  - provides particulars of a scheme administered by the agency
  - is a statement as to how legislation or a scheme will be administered or enforced by the agency, or
  - is a procedure followed by the agency in investigating breaches or evasions of legislation and schemes.

13.89 Four terms in the definition of ‘operational information’ in s 8A(1) mark out the breadth of the concept:

- information held by an agency to ‘assist’ it
- in performing or exercising its ‘functions or powers’
- in making ‘decisions or recommendations’

- ‘affecting members of the public (or any particular person or entity, or class of persons or entities)’.

13.90 Those terms are discussed below.

#### **Information that can assist agency officers**

13.91 Information that can assist agency officers to make decisions and recommendations is of a wide range. It is not confined to rules or precedents that can be applied directly to reach a decision, but includes other documents that facilitate good decision making — such as policy guidance, procedures, decision templates, model letters, training packages and checklists. If an agency has multiple versions of the same document with minor variations from one to another, publication is only required of a single or representative document.

13.92 Information held by a contracted service provider that assists it to provide services to the public on behalf of an agency may be operational information which an agency must publish in its IPS entry. This will apply if the agency holds a copy of the information (whether generated by the agency or the contracted service provider) and the information otherwise falls within the definition of operational information in s 8A(1)). If the agency does not have a copy of the information held by the contracted service provider, the agency can nevertheless arrange for that information to be published under s 8(4) (optional information). This may advance the IPS objective of ensuring that the public has easier access to information that is used by or on behalf of government agencies in making decisions about rights, privileges, benefits, obligations, penalties and detriments.

#### **Functions or powers of an agency**

13.93 An agency’s functions and powers must be published in the IPS under s 8(2)(c). As described above at [13.38]–[13.49], a function may be assigned to an agency by legislation, an executive instrument or in some other manner; and an agency’s powers can be conferred in a similar way.

13.94 The list of functions and powers to be published in the IPS under s 8(2)(c) may be more extensive than the functions and powers that fall within the definition of ‘operational information’. Nevertheless, the s 8(2)(c) list provides a reliable starting point in identifying operational information to be published under s 8(2)(j).

#### **Making decisions or recommendations**

13.95 The term ‘decision’ is to be understood broadly. For example, the *Administrative Decisions (Judicial Review) Act 1977* s 4(2) defines ‘making a decision’ to include making, suspending, revoking or refusing to make an order, award or determination; giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission; issuing, suspending, revoking or refusing to issue a licence, authority or other instrument; imposing a condition or restriction; making a declaration, demand or requirement; retaining, or refusing to deliver up, an article; and doing or refusing to do any other act or thing.

13.96 The term ‘recommendation’ in s 8(2)(j) should be construed in a similarly broad manner.

**Affecting members of the public or a class of people**

13.97 These are words of limitation. They confine the concept of ‘operational information’ to decision making that affects members of the public in an individual manner or as members of a particular group or class (including an organisation or business entity).

Examples are decisions or recommendations that concern a right, privilege or benefit of a member of the public or a class of people, or an obligation, penalty or detriment to which a person or class of people may be subject.

**What is not operational information?**

13.98 The concept of operational information does not encompass all government decision making that directly or indirectly affects the public. The following categories of information are examples that would not ordinarily fall within the definition of operational information, even though the information may examine the effect of a government action on the public:

- policy analysis and decisions occurring within government about legislation, budgets and programs
- hypothetical discussion within government about the operation of a program or legislation
- case study and capability reports that discuss an agency response to an actual or foreshadowed event
- audit and evaluation reports on the operation of a government program or compliance with legislative requirements
- agency case management procedures for recording the handling of a matter or the making of a decision.

13.99 Such documents that are not operational information can nevertheless be published by an agency under s 8(4). If such a document is released in response to an individual FOI request it may need to be published in the agency’s disclosure log under s 11C.

13.100 The reference in the definition of operational information in s 8A(1) to information that assists an agency to make decisions or recommendations ‘affecting members of the public’ means that the definition does not extend to agency manuals and rules relating to personnel management and staff conditions of employment. Those manuals and rules relate to employees in their employment capacity and not as members of the public. Nor, for the same reason, does the definition extend to information held by the Australian Public Service Commission relating to the review of decisions about APS employees.

13.101 Section 8A(2) provides that ‘[a]n agency’s operational information does not include information that is available to members of the public otherwise than by being published by (or on behalf of) the agency’. This exclusion applies to information such as law reports, books, guides and standards that are published by another body and that are used by agency officers in making decisions that affect members of the public.

**Failure to publish operational information**

13.102 Section 10 provides that a person must not be subjected to any prejudice, stemming from an agency’s performance of a function or exercise of a power, that the person could

have avoided if they had had access to unpublished operational information. This rule applies, for example, where the eligibility requirements for a benefit or allowance (such as a closing date) are specified only in an agency publication, and should have been, but were not, published under the IPS. The rule applies only if the person could lawfully have avoided the prejudice if they had been aware of the unpublished information.

13.103 The rule does not apply to the agency's performance of a function or the exercise of a power unless the agency had existed for more than 12 months. The agency is nevertheless expected to publish operational information under the IPS as soon as reasonably practicable after it acquires that information.

### **Exemptions from publication under the IPS**

13.104 Section 8C(1) provides that an agency is not required to publish exempt matter in their IPS entry. Exempt matter is matter whose inclusion in a document causes a document to be an exempt document (s 4(1)). An exempt document is:

- a document of an agency which is exempt under an exemption provision in Part IV of the Act; if a document contains exempt and non-exempt material the agency should prepare an edited copy (see Parts 5, 6 and 8 of these Guidelines)
- an official document of a minister that contains some matter not relating to the affairs of an agency or a department of state (see Part 2 of these Guidelines), or
- a document in respect of which an agency, person or body is exempt under s 7 of the Act, such as an intelligence agency document or a document relating to the commercial activities of a specified body (see Part 2 of these Guidelines).

13.105 Section 8C(2) provides that an agency is not required to publish information that is restricted or prohibited from publication by an enactment. That is, an agency is not required to publish information contrary to a legislative secrecy provision.

### **Other information to be published under the IPS**

13.106 The power to publish other information under s 8(4) is in addition to any other power an agency has to publish information. The FOI Act does not limit or restrict publication of information by agencies, including information that is exempt from disclosure under the FOI Act (s 3A).

13.107 Agencies are generally best placed to identify other information that should be published under s 8(4). In doing so, agencies should strive to implement the objects of the FOI Act, which declare that information held by government is a national resource that should be managed for public purposes, and that the Parliament intends to increase scrutiny, discussion, comment and review of the Government's activities (s 3). Agencies should also consider:

- the Information Commissioner's *Principles on open public sector information*, which encourage agencies to ensure government information is accessible without charge,

based on open standards, easily discoverable, understandable, machine-readable, and freely reusable and transformable<sup>9</sup>

- the OAIC's *Information policy agency resource 2: Open data quick wins — getting the most out of agency publications*, which explains how agencies can transform data they already publish in reports, websites and mobile apps into machine-readable formats that support reuse by others<sup>10</sup>
- advice from the Australian Government *Open Data Toolkit* (currently in draft) and the Australian Government *Web Guide*, both of which discuss technical and other relevant matters that should be taken into account when publishing government data online.<sup>11</sup>

13.108 As recommended earlier in these Guidelines (see [13.16] above), agencies should explain in their agency plan the steps they will take to review their information holdings and identify information that may be suitable for publication. This information should be described in the agency plan. To the extent possible, information that is suitable for publication should be identified as such from early in its lifecycle and published as soon as reasonably practicable. The agency plan should also provide a timetable of when information will be published or updated.

13.109 Agencies should review whether they hold any datasets that can be published for reuse. Publication of datasets on [www.data.gov.au](http://www.data.gov.au) should be considered.<sup>12</sup> The agency website can link to that website to avoid duplication in publication. Agencies should ensure that published information is described according to the appropriate metadata standards to enable users to find it easily.

13.110 Agencies should have regard to the following in deciding what information to publish:

- What information is of interest to clients and stakeholders of the agency?
- What information about the agency will be of general community interest?
- Is there a public demand for categories of information held by the agency?
- Will publication of particular information assist the community in dealing with the agency or in commenting on programs or policies for which the agency is responsible?
- Will publication of particular information promote greater agency accountability, or better public understanding of agency decisions?
- Is information considered for publication in an appropriate format to make it accessible and reusable by the public?
- Will published information require revision or updating, or is it part of the historical record of agency activity?

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<sup>9</sup> Available at [www.oaic.gov.au](http://www.oaic.gov.au).

<sup>10</sup> Available at [www.oaic.gov.au](http://www.oaic.gov.au).

<sup>11</sup> Available at <https://toolkit.data.gov.au> and <http://webguide.gov.au/web-2-0/publishing-public-sector-information/>.

<sup>12</sup> For guidance about preparing open data and publishing datasets on data.gov.au, see <https://toolkit.data.gov.au>.

- Are there privacy or security concerns that require information to be edited or aggregated before it is published?<sup>13</sup>

13.111 Publication of information under s 8(4) should not become a burdensome task for agencies. They may consider releasing data in 'beta' form and with appropriate caveats on its limitations. Engagement with stakeholders prior to publication may help agencies identify the data and formats for which there is the greatest demand.

### **Managing an agency IPS entry**

13.112 This section discusses the principles agencies should observe in managing their IPS entry. Some of the principles are expressly required by the FOI Act, while some others are implicit in the objects of the Act (s 3) and in Part II establishing the IPS.

### ***Performance of agency functions***

13.113 Section 10A provides that a function or power given to an agency under Part II of the Act can be performed or exercised by the principal officer of the agency or by an agency officer in accordance with arrangements approved by the principal officer. This is an equivalent provision to s 23, which provides that a decision on a request to an agency for access to a document can be made on behalf of the agency by an authorised person.

13.114 Unless the principal officer of an agency intends to exercise all functions and powers under Part II of the Act, he or she must approve arrangements under s 10A nominating the authorised persons in the agency and the scope of their authority. The functions and powers to be exercised under Part II include:

- the preparation of an agency plan under s 8(1)
- the publication of information required to be published by the agency under s 8(2), including deciding whether information is exempt from publication under s 8(2)(g)
- the publication of other information by the agency under s 8(4)
- ensuring that information published by the agency is accurate, up-to-date and complete as required by s 8B
- ensuring that information published by the agency is published on a website in accordance with ss 8D(2),(3)
- deciding whether the agency will impose a charge for accessing information published by the agency (s 8D(4)), and publishing details of any charges the agency may impose (s 8D(5))
- arranging for a review of the operation of the IPS in the agency to be conducted by 1 May 2016 (s 9), and
- if the need arises, taking appropriate action under s 10 to ensure that a person is not subjected to any prejudice as a result of not having access to operational information that was not published as required by s 8(2)(j).

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<sup>13</sup> For guidance about de-identifying data before publication, see *Information policy agency resource 1: de-identification of data and information* at [www.oaic.gov.au](http://www.oaic.gov.au).

### ***Publication on a website***

13.115 Information published under the IPS must be published on a website (s 8D(3)). The information may be published on the agency website, on another website to which a link is provided, or by some other accessible means that are described on the website.

13.116 Many agencies maintain their own website and will publish their IPS entry on that website. As stated in the guiding principles to these Guidelines (see [13.9] above), the IPS entry should be easily discoverable by the public, consistent with the object of the FOI Act to facilitate and promote public access to information, promptly and at the lowest reasonable cost (s 3(4)). Adopting the following practices will assist in facilitating public access:

- Agencies should consider using the IPS icon published by the Information Commissioner to link to their IPS entry. Options include using the IPS icon on the agency homepage or including the icon on a dedicated ‘Access to information’ webpage. The Commissioner’s intention in publishing the icon is to aid the discoverability of agency IPS entries by encouraging a consistent approach across government. For more details see *Guidance for agency websites: ‘Access to information’ webpage*.<sup>14</sup>
- An agency IPS entry can contain links to other pages on the agency website or other websites where the required information is available. This may be particularly useful in cases where an agency has already published information falling under the IPS requirements.
- The sitemap for the agency website should list information that the agency is required to publish under s 8(2) or has decided to publish under s 8(4).
- The search function on the agency website should be able to access information published in the agency’s IPS entry, through key terms and descriptive metadata. To aid that search function, online content should be published in a format that can be searched, copied and transformed.
- The agency should provide an alert service, such as an email notification service or RSS feed, to notify subscribers of new publications under the IPS or other developments in relation to the agency’s compliance with the IPS.

13.117 Guidance on publishing information on the web is available at the following places:

- the Australian Government *Web Guide*,<sup>15</sup> which contains advice on publishing public sector information, implementing search and RSS functionality on websites, and agency online accessibility obligations
- the Australian Human Rights Commission, *World Wide Web Access: Disability Discrimination Act Advisory Notes (Version 4.0)*,<sup>16</sup> discussed below at [13.125]
- technical guidance on implementing the AGLS Metadata Standard (AS 5044-2010) to improve visibility and availability of online resources.<sup>17</sup>

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<sup>14</sup> Available as an agency resource at [www.oaic.gov.au](http://www.oaic.gov.au).

<sup>15</sup> See <http://webguide.gov.au>.

<sup>16</sup> See [www.humanrights.gov.au/disability\\_rights/standards/www\\_3/www\\_3.html](http://www.humanrights.gov.au/disability_rights/standards/www_3/www_3.html).



13.118 Some smaller agencies do not maintain their own website but maintain a homepage on the webpage of another agency, usually the portfolio department. Where that is the case, there should be a clear link to the agency's website so that its IPS entry is easily accessible by the public.

13.119 Agencies can also publish information that is part of their IPS entry on another website (s 8D(3)(b)). One such website is [www.data.gov.au](http://www.data.gov.au), which has been established to facilitate the publication of datasets for use by the commercial, research and community sectors. Other websites that publish information from across government are [www.comlaw.gov.au](http://www.comlaw.gov.au) (a collection of Commonwealth legislation), [www.directory.gov.au](http://www.directory.gov.au) (the Government Online Directory), and [www.australia.gov.au](http://www.australia.gov.au) (the gateway to government information).

### ***Structure of agency IPS entry***

13.120 The FOI Act specifies the information an agency must publish under the IPS, but not the format of publication. The FOI Act does not require that agencies use the headings or language specified in s 8(2). It will, however, be easier for the public to locate information published by each agency under the IPS if there is a consistent presentation of information on agency websites.

13.121 Agencies may consider using the following headings in their publication framework. The information provided under those headings may extend beyond the categories of information described in s 8(2).

- Agency plan  
The agency plan as required by s 8(2)(a)
- Who we are  
The organisation and structure of the agency, the location of offices, governance arrangements, senior management team and statutory appointments referred to in s 8(2)(d)
- What we do  
A description of the functions and powers of the agency, and the rules, guidelines, practices and precedents relating to those functions and powers (that is, operational information)
- Our reports and responses to Parliament  
Annual reports laid before the Parliament, and other information routinely provided to the Parliament
- Routinely requested information and disclosure log  
Information to which the agency routinely gives access in response to FOI requests and the disclosure log of information that has been released under the FOI Act
- Consultation arrangements

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<sup>17</sup> See [www.agls.gov.au](http://www.agls.gov.au).

Consultation arrangements that enable members of the public to comment on specific policy proposals for which the agency is responsible

- Our priorities

For example, the corporate and strategic plans of the agency, and assessments and reviews undertaken of agency programs

- Our finances

For example, financial information relating to pay and grading structures in the agency, procurement procedures, tendering and contracts

- Our lists

For example, agency contracts, grants and appointments, links to datasets published by the agency, information held in registers required by law, and other lists and registers relating to the agency's functions

- Contact us

The contact details of an officer (or officers) who can be contacted about access to the agency's information under the FOI Act.

### ***Accuracy and currency of published information***

13.122 Each agency IPS entry is required to be 'accurate, up-to-date and complete' (s 8B).

13.123 The action an agency should take to comply with that requirement may vary according to the nature of the information in the IPS entry. The following is given as a general guide for agencies, but does not diminish the obligation of agencies to ensure compliance with s 8B:

- Some categories of information should be updated as soon as reasonably practicable after any change to that information — for example, information about the structure of an agency, senior officers, statutory appointments and contact arrangements; and reports that have been laid before the Parliament.
- Operational information should be updated in the IPS at the same time that a revised or updated version of the information is provided to agency officers.
- Other categories of information can be updated on a periodic basis, following a scheduled agency review of the accuracy, currency and completeness of the information — for example, the agency plan, and information that is routinely provided to the Parliament or in response to FOI requests. It is advisable to include a notation on the document that is published under the IPS indicating when it was last published or updated. It is also advisable when creating a document that is published to consider when it would be appropriate to review the content.
- Consultation arrangements should be updated as soon as a new or varied arrangement is established.
- Any change to an agency's functions or powers, especially a change resulting from a legislative amendment or alteration of an executive scheme, should be updated as soon as reasonably practicable.

- Agencies should bear in mind that other FOI Act provisions are relevant to the agency's publishing obligations: specifically, information must be published on a disclosure log within ten days of release under the FOI Act (s 11C(6)), and a person cannot be subjected to any prejudice as a result of not having access to unpublished operational information (s 10).
- If an agency has multiple versions of a document that contain minor and insignificant variations (for example, training materials), it will be sufficient compliance with s 8(2) for the agency to publish one representative and current version of the document.
- Information published on a website can later be removed from the website and archived, provided that details are published of how the information can be obtained if the agency is still required to publish that information under s 8(2).

### Accessibility

13.124 Information that forms part of the IPS must be published 'to members of the public generally' (s 8D(2)(a)) and, if an agency considers it appropriate to do so, 'to particular classes of persons or entities' (s 8D(2)(b)).

13.125 Accessibility of published information by all members of the community is an important principle underlying the IPS. Three requirements reinforce this principle:

- The *Disability Discrimination Act 1992* s 24 provides that it is unlawful for a person (including a government agency) to provide services to a person with a disability less favourably than to a person without that disability.
- Government agencies are required to conform to WCAG 2.0.<sup>18</sup> A staged compliance model requires agencies to conform to Level A by December 2012 and Level AA by December 2014.<sup>19</sup> Any new web content needs to conform to these standards as much as possible from the outset.
- The Australian Human Rights Commission has also published *World Wide Web Access: Disability Discrimination Act Advisory Notes* (Version 4.0) which echo the obligation on agencies to conform to WCAG 2.0.<sup>20</sup>

### Charges

13.126 Subject to a limited exception, information published under the IPS must be available free of charge to the community. An agency can charge for information under the IPS only where the information cannot be downloaded from a website, and the agency has incurred specific reproduction or incidental costs in giving a person access to that information under the IPS (s 8D(4)). The details of the charge must be published under the IPS before any charge is imposed (s 8D(5)).

13.127 For example, information may be contained in a recording that cannot be readily converted to electronic format for publication on and downloading from a website.<sup>21</sup> The

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<sup>18</sup> See [www.finance.gov.au/publications/wcag-2-implementation/index.html](http://www.finance.gov.au/publications/wcag-2-implementation/index.html).

<sup>19</sup> The requirements of each level are explained in the Web Content Accessibility Guidelines (version 2), available at [www.w3.org/TR/WCAG20/](http://www.w3.org/TR/WCAG20/).

<sup>20</sup> Available at [www.humanrights.gov.au/disability\\_rights/standards/www\\_3/www\\_3.html](http://www.humanrights.gov.au/disability_rights/standards/www_3/www_3.html).

agency can instead publish on a website details of how the information may be obtained, including the charge that would be imposed for making it available in a suitable format (s 8D(3)(c)).

13.128 A charge for IPS access is separate from the charges that can be imposed for processing access requests under the Charges Regulations.<sup>22</sup> The Charges Regulations may, however, provide useful guidance to an agency in calculating or imposing a charge for access under the IPS. The Charges Regulations are discussed in Part 4 of these Guidelines.

### **Information Commissioner's IPS functions and powers**

13.129 The FOI Act confers three specific functions on the Information Commissioner for reviewing the operation of the IPS (s 8F):

- reviewing the operation of the IPS in each agency, in conjunction with the agency
- investigating an agency's compliance with IPS requirements, either upon receipt of a complaint or at the Information Commissioner's initiative
- otherwise monitoring, investigating and reporting on the operation of the IPS.

13.130 Each of those functions is described in more detail below.

#### ***Review of agency IPS compliance***

13.131 Each agency must complete a review of its IPS compliance by 1 May 2016 (s 9(1)). The review must be undertaken in conjunction with the Information Commissioner.

13.132 The OAIC has published an IPS self-assessment tool to help agencies identify any shortcomings in their IPS practices when undertaking the review under s 9.<sup>23</sup> The OAIC also conducted a major survey of IPS compliance in 2012.<sup>24</sup> Agencies can use the survey results together with the self-assessment tool to help improve their IPS performance.

13.133 Agencies should focus on the following five key elements of IPS compliance when undertaking the s 9 review:

1. *Agency plan* — has the agency published a comprehensive plan for its IPS compliance?
2. *Governance and administration* — does the agency have appropriate governance mechanisms in place to meet its IPS obligations, including an information management framework?
3. *IPS document holdings* — has the agency reviewed its document holdings to decide what information must be published under s 8(2) and information that can be published under s 8(4)? Is the agency IPS entry accurate, up-to-date and complete?

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<sup>21</sup> Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2010, p 8.

<sup>22</sup> Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2010, p 8.

<sup>23</sup> Available as an agency resource at [www.oaic.gov.au](http://www.oaic.gov.au).

<sup>24</sup> The survey report is available at [www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-reports](http://www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-reports).

4. *IPS information architecture* — does the agency have a publication framework in place and has it taken the necessary steps to ensure that information in its IPS entry is easily discoverable and accessible to the Australian community?
5. *Agency compliance review* — does the agency have appropriate processes, systems and resources in place to monitor and review its IPS compliance and to make necessary improvement in the agency's IPS implementation?

### ***Investigations and complaints***

13.134 The Information Commissioner can investigate complaints about an agency's IPS compliance (s 70). The Commissioner can also undertake an own motion investigation into an agency's FOI actions (s 69(2)). For more information see Part 11 of these Guidelines.

13.135 An agency's IPS actions are not subject to IC review under Part VII of the Act.

### ***Monitoring and reporting***

13.136 The Information Commissioner is required to prepare an annual report on the operations of the OAIC (AIC Act s 30). The Commissioner will include in that report information on the administration of the IPS by agencies.

13.137 Section 93 of the FOI Act requires agencies to provide the Information Commissioner with information the Commissioner requires to prepare an annual report.<sup>25</sup> From July 2011, agencies have been required to provide information about staff resources devoted to managing the IPS.

13.138 For more information about reporting requirements see Part 15 of these Guidelines.

## **Copyright**

13.139 As noted in the guiding principles to these Guidelines (see [13.9] dot point five above), the Information Commissioner encourages agencies to make information they publish under the IPS available for reuse on open licensing terms, as far as that is reasonable and practicable. Agencies should have a clear statement on their websites, on their homepage and/or on their IPS entry page, about the extent to which the public can reuse material in which they hold copyright.

13.140 In deciding on the appropriate licensing, agencies should consider the *Australian Government Intellectual Property Manual* and *Guidelines on Publishing Public Sector Information*.<sup>26</sup>

13.141 While most of the information an agency publishes in its IPS entry will have been created by government, there may be documents in the agency's possession where a third party (such as the author or publisher of the material) owns the copyright.

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<sup>25</sup> See *Guidance on agency FOI statistical returns to the OAIC* (October 2012), available as an agency resource at [www.oaic.gov.au](http://www.oaic.gov.au).

<sup>26</sup> Available at [www.ag.gov.au/Intellectualproperty/Pages/IntellectualPropertyManual.aspx](http://www.ag.gov.au/Intellectualproperty/Pages/IntellectualPropertyManual.aspx).

13.142 No action lies against the Commonwealth, a minister, an agency or an officer of any agency for breach of copyright, amongst other things, if the minister or an agency officer publishes a document in good faith, in the belief that publication is required or permitted under the IPS or the disclosure log provisions (s 90(1)(a)). However, this provision does not constitute authorisation or approval for reuse of the material, including by members of the public.

13.143 Where a third party owns copyright in material an agency publishes as part of its IPS entry, the agency should include a clear statement on its website advising the public that they may need to seek permission from the copyright owner in order to reuse the material. A statement such as the following could be used:

To the extent that copyright in some of this material is owned by a third party, you may need to seek their permission before you can reuse that material.

13.144 If an agency knows the details of third party ownership of copyright in material it has published under the IPS, the agency should, with the copyright owner's consent, provide contact details on its website, in order to help members of the public.

### **Legal protection for IPS publication**

13.145 The FOI Act provides legal protection where information has been published in good faith in the belief that publication was either required or permitted under the IPS (ss 90 and 92). The protection applies to the Commonwealth, a minister, an agency or an officer of an agency. The scope of the protection is that no action lies for defamation, breach of confidence or infringement of copyright or (as to ministers and agency officers) for criminal liability.

13.146 These protections complement the policy objective of the FOI Act, of providing a secure framework for publication of Australian Government information to the public. The protections are conditional, and apply only where a minister or agency officer publishes a document in good faith in the belief that the publication was required or permitted under the Act.

13.147 The legal protection provided by ss 90 and 92 applies also to the release of information in response to an FOI request, and to publication apart from the FOI Act where a minister or agency officer believes in good faith that publication is required or permitted. For more information about these protections see Part 3 of these Guidelines.

**ANNEXURE A — AGENCY PLAN TEMPLATE*****Introduction***

Outline why the agency has prepared the plan.

***Purpose***

Describe the purpose of the plan.

***Objectives***

Describe the agency's objectives in relation to the plan.

***Establishing and administering the agency's IPS entry***

Describe how the agency will prepare its IPS entry and manage the IPS entry on a continuing basis. This may include describing:

- who (within the senior executive) is responsible for leading the agency's work on IPS compliance
- the resources allocated to establishing and administering the agency's IPS entry
- the processes and timetable for identifying information required to be published under s 8(2), for publishing additional information under s 8(4), and for adding to or revising the agency's IPS entry
- measures being taken to ensure that the agency's IPS entry is accurate, up-to-date and complete
- measures (if any) being taken to improve the agency's information asset management framework, to support IPS compliance
- whether the agency has developed an internal IPS information register to assist it to efficiently identify documents for publication, record decisions made in relation to publication and systematically review IPS information for accuracy, currency and completeness
- access charges (if any) that the agency may impose for accessing information published under the IPS, and how charges will be calculated.

***IPS information architecture***

Describe how the agency will facilitate public access to the information published in an agency's IPS entry. This may include describing:

- whether information will be published on the agency's website, or on another website such as the website of the portfolio department, [www.comlaw.gov.au](http://www.comlaw.gov.au) or [www.data.gov.au](http://www.data.gov.au)
- the headings under which information will be published
- how the IPS entry will be notified on the agency website (for example, by using the IPS icon recommended by the Information Commissioner on the agency homepage or

'Access to information' page as described in the *Guidance for agency websites: 'Access to information' webpage* available at [www.oaic.gov.au](http://www.oaic.gov.au))

- whether a sitemap and search function will be provided
- whether an alert service will be provided for changes or additions to the IPS entry and how a member of the public can subscribe to the alert service
- how the agency will conform with WCAG 2.0 in establishing and maintaining its IPS entry
- the mechanism that will be adopted by the agency for inviting community feedback on its IPS entry and compliance, and how the agency will evaluate and respond to comments received.

### ***Information required to be published under the IPS***

Clearly identify the types of information (including datasets) the agency will publish under ss 8(2)(a) to 8(2)(j).

Describe any timeframes the agency proposes to follow to publish these documents.

### ***Other information to be published under the IPS***

Clearly identify the types of optional information (including datasets) the agency will publish under s 8(4).

Describe any timeframes the agency proposes to follow to publish these documents.

### ***IPS compliance review***

Identify when the agency proposes to review their agency plan.

Identify when the agency will review its IPS entry and compliance, in conjunction with the Information Commissioner.

Outline the criteria the agency will adopt to measure its performance in complying with IPS requirements.