

Guide for NSW government agencies on engaging with IPART reviews

1 Introduction

The Independent Pricing and Regulatory Tribunal (**IPART**) has produced this guide for NSW government agencies involved in IPART's reviews. Many agencies engage with IPART only occasionally or may be doing so for the first time, and may be unfamiliar with IPART's review processes.

This guide is designed to assist NSW government agencies that are involved in, or considering requesting, an IPART review. It explains how IPART reviews operate, what agencies can expect during a review, and how agencies can engage with IPART appropriately and effectively.

2 IPART's role, functions and independence

IPART was established under the *Independent Pricing and Regulatory Tribunal Act 1992* (**IPART Act**) to provide the people and government of NSW with confidence that important services, markets and systems are functioning efficiently and effectively in the public interest.

IPART performs a wide range of roles: this guide relates to what we call "reviews" (for example, reviews of maximum prices under the IPART Act or industry matters referred by the Premier for investigation under the IPART Act). This guide does not apply to IPART's other functions, such as licensing, compliance and enforcement.

IPART is an independent NSW government agency within the portfolio of the Premier. Its Tribunal members are appointed individually by the Premier to bring their judgment and expertise to a variety of industries and markets. Tribunal members are not employed under the *Government Sector Employment Act 2013* and as such are statutory decision makers who are independent of the NSW public service.

Section 7 of the IPART Act provides for IPART's independence. The Tribunal is generally not subject to the control or direction of any Minister, including the Premier, in respect of the contents of its determinations or recommendations. This means, for example, that the Premier can direct the Tribunal to perform certain reviews, but cannot control what the Tribunal decides once the review has commenced.

The Chair of the Tribunal employs staff, led by a Chief Executive Officer, to form an independent Secretariat which provides, among other things, research, advice and support for the Tribunal's review work. This employment arrangement allows IPART staff to perform their duties independently.

It is important that we undertake our responsibilities independently and free from undue influence. The ability for government to refer complex issues to the Tribunal for consideration depends on community, consumer and industry trust in the Tribunal's independence. We aim to conduct ourselves and our reviews in a way that strengthens that trust, maintaining confidence in the capacity of the Tribunal and its delegates to make transparent and apolitical decisions in the public interest.

Once a review is underway, we expect that the government entities we interact with will support us in these aims. However, it is recognised that public servants working for agencies may have access to IPART in ways that other stakeholders do not, making it very important that public servants understand their obligations to retain public confidence in reviews. This guide is designed to assist you to navigate through this process.

3 Commencing an IPART review

IPART has powers under legislation to conduct reviews, make reports to the Premier and determine the pricing of specified services. IPART may also enter into arrangements with a government agency or other public or private sector body to provide services that are within the Tribunal's field of expertise and relevant to its functions.

Except where the Tribunal has a standing reference (see Schedule 1 of the IPART Act), IPART may only commence a review with the approval of the Premier.

There are three types of these reviews:

- a formal review in which IPART holds powers to gather evidence and compel witnesses and which requires formal consultation processes and publication of the final report (under section 12A of the IPART Act).
- a pricing review, which bestows similar powers to a formal review on IPART and requires it to report on and prepare a determination for the pricing of a government monopoly service (under sections 11 and 12 of the IPART Act).
- a commissioned review, which draws on IPART's expertise but does not give specific investigation powers or authority to IPART (under section 9 of the IPART Act).

Each type of review has its individual merits. The most appropriate review type for the subject matter to be reviewed should be discussed with IPART's Secretariat before a review commences.

A summary of the key differences between each type of review (which are explored in greater detail in the remainder of this document) is set out in Table 1 below.

Table 1 – Key differences between types of review

	Commissioned review	Pricing review	Formal review
Source of power in IPART Act	Section 9	Section 11 or 12	Section 12A

	Commissioned review	Pricing review	Formal review
Requires approval from Minister responsible for IPART (Premier)	Yes	For reviews commenced under section 11 (standing reference), no. For reviews commenced under section 12 (reference by Minister), yes.	Yes
Compulsory information-gathering powers available under IPART Act?	No	Yes	Yes
Public hearing required under IPART Act?	No	Yes	Yes
Final report made public?	This is for the Government or commissioning agency to decide.	Yes	Yes
Final report to be accompanied by a pricing determination?	No	Yes	No

3.1 Terms of reference

IPART must have regard to any terms of reference or letters of referral provided by the Premier and/or other commissioning Minister in the course of a review. Such terms of reference or letters of referral will typically:

- define the scope of the review,
- provide the statutory source of power for the review,
- establish the range of matters that IPART must or may consider in the course of the review (in addition to the relevant mandatory and discretionary factors in the IPART Act and any other relevant legislation), and
- set out any relevant timeframes.

Note: In the case of a formal review, the draft terms of reference are required to be the subject of public consultation before the final version is issued by the Premier or commissioning Minister. In this case, we will publish the draft terms of reference and invite comments from interested parties. We will then provide our feedback on the draft terms of reference to the Premier and/or Minister, considering any public comments.

Government agencies seeking an IPART review into a matter or interested in the scope of an upcoming IPART review are encouraged to contact the IPART Secretariat to discuss the proposed scope of the review. It is important to have a Terms of Reference which is clear and specific in its intentions and requirements. IPART's staff have deep experience in conducting reviews and can provide helpful feedback on different options and approaches.

IPART is a fee-for-service agency and is not resourced to provide review services outside of its core statutory functions. Agencies should therefore also expect the Secretariat to give an indication of the funding and resources which might be required, depending on the scope of the review.

Government agencies seeking an IPART review should ensure that IPART staff are kept up to date regarding the process and notified as soon as possible once Terms of Reference have been approved by the Premier and/or Minister. A signed and dated copy of the Terms of Reference should be sent to the Chair at chair@ipart.nsw.gov.au in order to proceed with a review.

In the case of a commissioned review, the Terms of Reference may be signed by the commissioning Minister with reference to the concurrence of the Premier (example from a commissioned review [here](#)), or the commissioning Minister may ask the Premier to sign and send the Terms of Reference to IPART (example from a commissioned review [here](#)). The Premier may also provide the sole signature on Terms of Reference if he/she is the commissioning Minister of the review (example from a formal review [here](#)).

4 IPART's review process

IPART makes decisions that are evidence-based and transparent. We will always seek to ensure that stakeholders are involved in matters that affect them and that the information we rely on is publicly available wherever possible. These practices instil confidence in our processes and decisions. As a result, we prefer to consult widely and transparently. Our review process includes consultation with a range of different stakeholders, and we typically provide multiple options for engagement during a review.

The review process can vary. For formal and pricing reviews, it would usually follow the steps set out below.

Commissioned reviews are more flexible, and the commissioning agency can propose review timeframes, matters to be considered, consultation requirements and confidentiality requirements. However, in commissioned reviews, IPART does not have compulsory information-gathering powers.



1. Referral

During this step we prepare our approach and publish a timetable. Each consultation is different, and the complexity of the issues under review will affect the amount of time we spend consulting and the questions we'll ask.

2. Issues paper and consultation

We publish an Issues Paper or Call for Submissions paper to explain our objectives and the process and methods we propose to use to make our decisions. We invite comments on the Issues Paper.

3. Draft report and consultation

After we have consulted on the Issues Paper, we prepare and publish a Draft Report and seek comments on it. Our Draft Report explains how the Tribunal has approached the review to date, including the weight it has given to submissions and other evidence it has received so far when forming its draft decisions and recommendations.

4. Public hearings, workshops and other stakeholder forums

We engage with stakeholders through online or in-person hearings, workshops and/or stakeholder forums at various times in the consultation process. These provide a forum for feedback and help inform our decisions. Pricing reviews and formal reviews require a public hearing under the legislation.

5. Final report

Final Reports will generally be made public at the conclusion of the review.

The exception is commissioned review reports, which are submitted to the NSW Government. Typically, the release of these reports will be a matter for the NSW Government.

A common question asked of IPART is how quickly it can undertake a review. Reviews requiring substantial levels of consultation and engagement will generally take longer – anywhere between six and twelve months is considered typical, depending on the complexity of the review. Commissioned reviews, particularly where the terms of reference are confined and substantial consultation is not required, may be able to be completed more quickly.

5 Provision of information and assistance to IPART

Where IPART is undertaking a review in an area that we are unfamiliar with, we will typically require background information and assistance from the responsible government agency. This ensures that we are aware of any relevant context, including past reviews, key stakeholders and related work that is being undertaken.

This assistance may include, but is not limited to:

- Formal and informal information requests from IPART staff
- Presentations covering background and context to IPART staff and/or Tribunal members
- Meetings between IPART staff and relevant agency staff
- Secondment of agency staff to IPART's Secretariat.

We expect that agencies will work with IPART to assist us to identify and access all relevant information held by the agency. We may seek to publish some of this information but understand that this may not always be appropriate. We will consider requests for confidentiality on a case-by-case basis and discuss this with the agency involved.

IPART staff will be mindful of the impact of requests on agency resources and will be flexible wherever possible on the form and timeframes. Due to confidentiality, any secondees are required not to share information on IPART's review or decisions with their home agency.

5.1 Compulsory information gathering notices

For pricing reviews and formal reviews, IPART's Chair has the power to compel any person to produce relevant information. Failing to do so without reasonable excuse is an offence.

Such a notice may be issued where a government agency is subject to confidentiality obligations to third parties and could not otherwise disclose information. The Chair may also consider exercising these powers if the government agency has not been responsive to voluntary information requests. IPART will generally seek to escalate a request inside the agency before using these powers, unless the matter is urgent.

6 Other interactions with agencies during a review

As an independent agency, IPART cannot be directed as to its decisions or findings. However, there are times where a government agency would like to provide clarification, feedback or input for IPART's consideration during a review that goes beyond the provision of background information or context.

Where this is provided by a government agency outside of usual consultation channels, this may give rise to an apprehension of bias. This is because other stakeholders may not have visibility of, or an opportunity to respond to, that information. As a result, IPART's strong preference is that any such information is provided as part of the broader consultation process and is visible to all stakeholders.

Accordingly, agencies providing information or assistance to the Tribunal should be careful not to provide information which might be construed as seeking a particular outcome or which might otherwise seek to influence the Tribunal's decisions. Where this occurs, the Tribunal will generally treat such advice as a submission and may choose to publish the information or a summary of it.

Government agencies that engage with other stakeholders about matters relevant to an ongoing IPART review must take care that they are not perceived to be interfering with that review. Interference may include seeking to influence the information provided to IPART by a stakeholder or threatening or penalising stakeholders in any way for providing information or opinions to IPART during a review.

Government agencies should also be aware that the IPART Act includes offences designed to protect the integrity of IPART's review processes. In particular, it is an offence to:

- give the Tribunal information that is false or misleading in a material particular
- hinder, obstruct or interfere with a member of the Tribunal in the exercise of their functions
- take any action that detrimentally affects the employment of another person, or threaten to do so, because that person has assisted the Tribunal in an investigation.

The maximum penalty for these offences is 100 penalty units (\$11,000) or 6 months' imprisonment, or both.

The existence of these offences underscores the weight that Parliament has placed on the integrity of IPART's consultation processes.

The following sections discuss the key options available for providing clarification, feedback or input that goes beyond the provision of background information or context to the Tribunal (submissions and attending stakeholder forums), as well as direct engagement with Tribunal members.

6.1 Submissions

Submissions are IPART's preferred option for receiving this type of input from government agencies. Our [Submissions Policy](#) outlines how stakeholders can make a submission to IPART and how IPART will handle and consider submissions.

The Policy adopts an inclusive definition of 'submission'. IPART may treat any correspondence or oral statements setting out information, reasons or arguments relevant to a matter IPART is considering as a submission. For example, a letter sent by a government agency that seeks to influence a report may be treated as a submission, even if it is not labelled as a submission.

However, the Policy does not apply in several contexts in which IPART may engage with other government agencies. These include background information provided by an agency, pricing proposals submitted by regulated businesses, requests by the Tribunal for information and information provided in response to a compulsory information provision notice.

We prefer to publish as much information in a submission as is practicable on our website in the interests of transparency. Stakeholders may claim confidentiality over part or all of a submission, and instructions for doing so are available on the IPART website. However, we urge government agencies to consider carefully whether a claim for confidentiality is necessary before making it. We may ask you to provide reasons for claiming confidentiality.

The Tribunal will consider claims for confidentiality on a case-by-case basis, and in response, may decide to redact part of the submission or not publish the submission at all. In some circumstances, the Tribunal may choose or be required to publish some or all of the material over which a submitter has made a claim for confidentiality.

Please also refer to [M2025-02](#) and [M2025-03](#) for guidance from the Premier to NSW government agencies on how to make submissions and responses to inquiries, including inquiries conducted by NSW statutory agencies such as IPART. It is not IPART's role to ensure adherence to this policy and agencies are encouraged to discuss making submissions to IPART with The Cabinet Office.

6.2 Public hearings and forums

IPART will typically hold a public hearing (or another type of forum such as a workshop, focus group, information session, working group or webinar) so that stakeholders can attend to provide feedback in person for each review. The type and timing of these events will vary depending on the requirements of the IPART Act and the nature of the review.

6.2.1 Hearings

Hearings are generally held in public and via videoconference to encourage attendance from across NSW. They are typically transcribed or recorded in some way and the record or transcription is published. The Tribunal may sometimes consider an in-person hearing where the matter under review is very specific to a local community.

In general, hearings are public processes and can include media who are welcome to report on matters arising. IPART may choose to hold a hearing or part of a hearing in private or prohibit the publication of evidence or documents given to IPART during a hearing. Hearings are often held after the publication of IPART's draft report, to allow stakeholders and the public to respond to IPART's draft decisions.

Staff members of relevant government agencies can attend and participate at public hearings, as can members of the public and other stakeholders. IPART will often invite representatives of affected government agencies, regulated entities and stakeholder groups to present at public hearings. IPART staff will conduct the hearing and manage the hearing so discussion remains focused within the scope of the review.

IPART seeks to maximise public confidence in the transparency of its processes. Accordingly, IPART welcomes the open participation of government agencies and other stakeholders at public hearings. This enables the Tribunal to hear a range of perspectives directly and reduces the need for stakeholders to engage directly with the Tribunal (see 6.3 below).

On some occasions, questions are asked of or comments are directed to government agencies. We find it valuable and preferable if there are staff members in attendance who are authorised to respond to any relevant matters raised. Those staff may be able to immediately clarify uncertainties, correct inaccuracies raised by other stakeholders or take questions on notice.

6.2.2 Other forums

Other forums, such as workshops, may be open to the public or limited to particular stakeholder groups. Unlike public hearings, these events are typically designed to canvass particular aspects of a review (including technical or methodological topics), or the impact of a review on particular stakeholders. In contrast to public hearings, workshops tend to be concentrated early on in the review process. We typically summarise the discussion at these forums and publish that summary. Depending on the circumstances, the summary may not attribute individual comments to the stakeholders that made them.

IPART may or may not invite a government agency to attend workshops or other targeted events. We have found that in some instances, the presence of government agencies may reduce participation from other stakeholders, even where agency staff do not actively participate. The decision on the structure and invitees of these forums will be made by IPART on a case-by-case basis.

Where IPART holds separate workshops with different stakeholder groups, in the interests of procedural fairness, we will strive to:

- Present for feedback the same decision options at the different workshops
- Provide participants at the workshops with the same summary of what IPART has heard from stakeholders to date, and an equal opportunity to comment on the matters raised
- Create an environment where all participants feel comfortable to raise issues and express their views, without fear of reprisal from other participants
- Publish the agendas and presentation slides from all workshops, and, if appropriate, summaries of the workshops, even if the workshop was not open to the public.

6.2.3 Publishing transcripts and summaries

Published transcripts and summaries of public hearings and other forums are records of the discussions that have taken place. Publishing these records provides transparency to all stakeholders around the matters raised and as a result, we take care to ensure that they record faithfully and completely what was said. In some cases, stakeholders may express views or provide feedback that is critical of IPART or the government or may not be factually correct. These statements are not edited, but IPART will endeavour to make it clear that stakeholders' views expressed during public consultation are their own and do not necessarily represent the views of IPART.

6.3 Direct engagement with Tribunal members

This section addresses *direct* engagement between the Tribunal itself (or its Committees) and NSW government agencies. Direct engagement includes:

- direct written correspondence, and
- one-on-one or limited invitation meetings.

Agencies may seek to engage directly with the Tribunal to encourage a free flow of information or to engage on the progress of the review. However, this may not always be possible or advisable. The Tribunal will need to consider risks including a perception of regulatory capture and apprehension of bias.

In many cases, it will be preferable for discussions to occur at a staff level. IPART staff may engage with agencies on operational or tactical issues (such as clarifications, information-sharing, progress reporting, and technical discussions). While these interactions may be more informal than discussions occurring at the executive and Tribunal level, IPART staff will never entertain attempts to improperly influence the outcomes of a review. In the event this occurs, file notes, emails or letters to IPART staff may also be treated as submissions.

The Tribunal must make decisions independently and will never engage with an agency to seek input regarding the agency's preferred outcomes from a review.

In some limited cases, the Tribunal (or the staff of IPART on behalf of the Tribunal) may find it helpful to engage with an agency in the course of the review: for example, to clarify some aspect of the Terms of Reference, or to clarify facts and context, or to conduct a site visit to understand more clearly how some matters work in practice.

In particular, in reviews that involve making recommendations rather than decisions, the Tribunal may seek to understand more clearly the problem at hand so the Tribunal can direct its work accordingly. These are typically but not exclusively Commissioned reviews.

Where a government agency involved in a review engages directly with Tribunal (or Committee members), we will implement the following conditions:

- Meetings are to have a pre-defined purpose which is clear to all parties in attendance
- IPART will keep records of all correspondence and records of all meetings

- IPART will allow all stakeholders access to information that is material to an upcoming decision that will affect their interests (subject to confidentiality claims) and provide them an opportunity to comment on or contest the information through the submissions and hearings processes. This may include publishing slides or meeting notes that are presented to Tribunal or Committee members
- IPART will consider how to provide balanced access to other stakeholders during the review.

Details of meetings between Tribunal and/or Committee members and external stakeholders are kept on a [public register](#). Notes or minutes of these meetings may be published if these materials are captured by a relevant request under the GIPA Act or a Parliamentary Order for Papers. The Tribunal may also decide to publish notes or minutes of such a meeting if it considers that an external stakeholder has made an oral submission during the meeting (in line with IPART's Submissions Policy).

7 Fact, implementability and confidentiality checks

IPART may arrange for agencies with an interest in an IPART decision to check a draft document for:

- factual or technical accuracy, or
- whether it is able to be implemented.

A wide range of documents can be checked, including reports, determinations, licences, notices, undertakings and findings.

IPART may also arrange confidentiality checks, where we ask for a stakeholder to review a document to confirm that:

- publishing it would not disclose information which is confidential to the stakeholder, in breach of a duty owed to them, and
- (in some cases) the stakeholder would not perceive that such a breach would occur if the document were published in its proposed form.

Fact, implementability and confidentiality checks will often be limited to particular facts, chapters or passages that we are unsure about, with sensitive information that does not need checking (such as recommendations) redacted.

The decision about whether an agency is asked to undertake a check and the scope of that request will be made by IPART on a case-by-case basis. While we will allow as much time to respond as we reasonably can, the turnaround required will often be short to avoid delays to the review.

These checks are intended to reduce the risk that IPART publishes documents that contain factual errors, cannot be implemented, or breach confidence. They are not an opportunity for agencies to comment on the merits of a prospective IPART decision or to seek to 'correct the record' privately. In the event that an agency provides broader views or comments in response to a fact, implementability or confidentiality check, the Tribunal may decide not to consider those comments. Alternatively, on a case-by-case basis, the Tribunal may elect to release the comments publicly in the interests of transparency. This may in turn give rise to the need for further consultation with other stakeholders to remove any perception of bias and ensure procedural fairness for all stakeholders.

Stakeholders asked to conduct a check may only use the information provided for the purposes set out in the covering email or letter. Agencies must not, without prior written consent from IPART, distribute the information provided to anyone except staff of the agency who need access to conduct the check.

8 Publication

For pricing reviews and formal reviews, once IPART has completed its final report, the Premier's office must arrange for copies of IPART's report to be made available for public inspection as soon as practicable after receiving the report from IPART. This includes:

- tabling a copy of the report in each House of Parliament within 5 sitting days of the House
- forwarding a copy of the report to the Parliamentary Librarian within 5 days of its receipt by the Minister, and
- making a copy of the report available for public inspection at the office of the Tribunal during its ordinary hours of business.

Additionally, the Premier may also be responsible for publishing IPART's final determination in the NSW Government Gazette.

For commissioned reviews, IPART will submit the final report to the Premier and relevant Minister. In these cases, publication of the report is a matter for the NSW Government.

We may choose to share copies of reports, determinations, media releases or other documents with government agencies or other stakeholders under embargo until publication.

9 Further information

If you would like further information about IPART's review process in general, please contact ipart@ipart.nsw.gov.au.

If you would like further information about a particular review, please direct your enquiries to the Key Contact identified on the IPART webpage for that review.

10 Document control

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