Invalid applications

The level and trend in invalid applications is an indicator of the extent to which the GIPA Act is understood by applicants and agencies. It can also be interpreted to measure the flexibility offered to applicants to amend their applications so that they can be considered.

Figure 8 shows the flow of applications from receipt to initial assessment and subsequent processing, together with the number of valid applications received in 2021/22.

Section 52(3) of the GIPA Act requires agencies to provide reasonable advice and assistance to enable applicants to make a valid application.

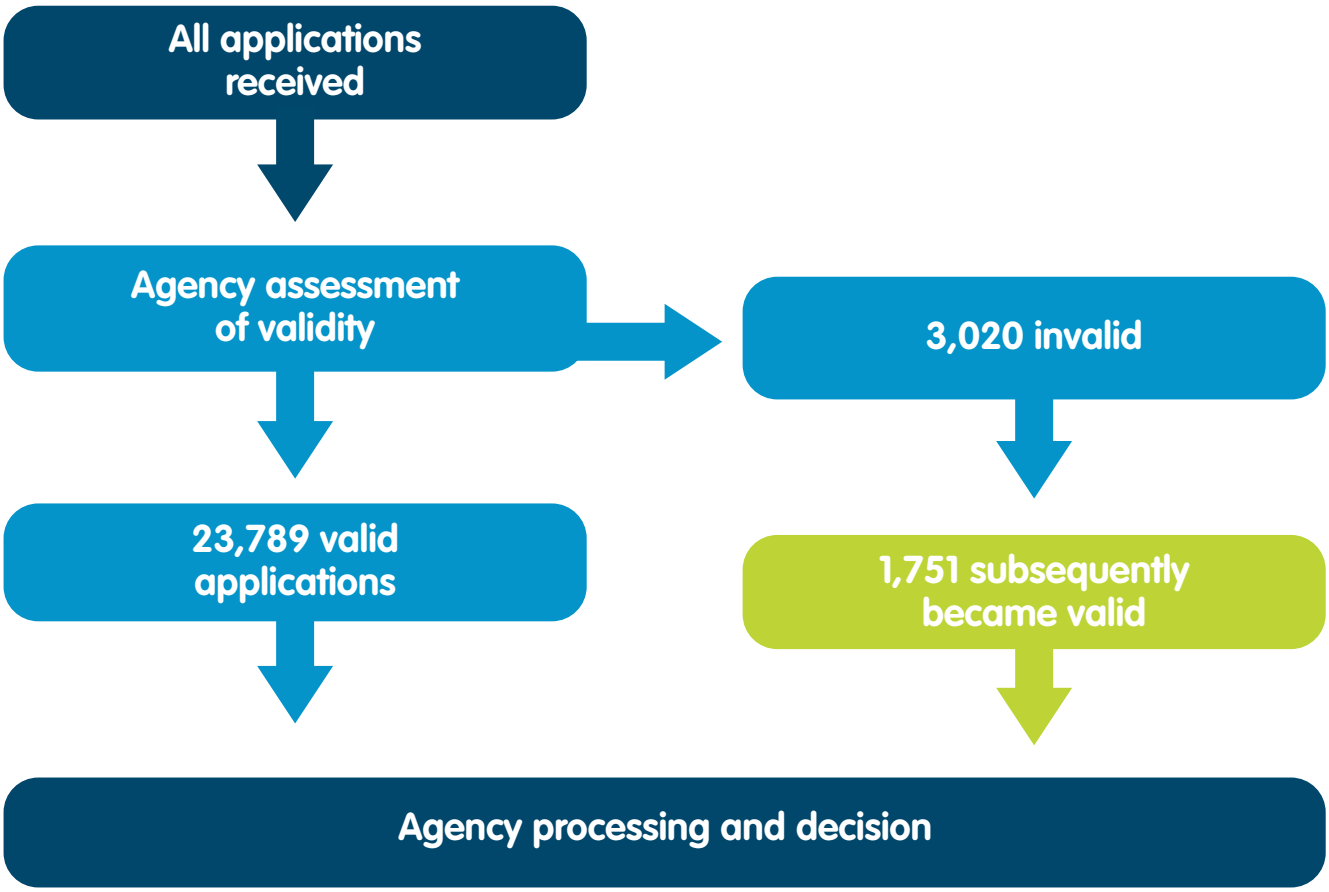
The rate of invalid applications received remains high

In 2021/22, agencies received 3,020 invalid applications, equivalent to 13% of all formal applications received (Figure 9).

This is consistent with the 2,829 or 13% of invalid applications reported in 2020/21.

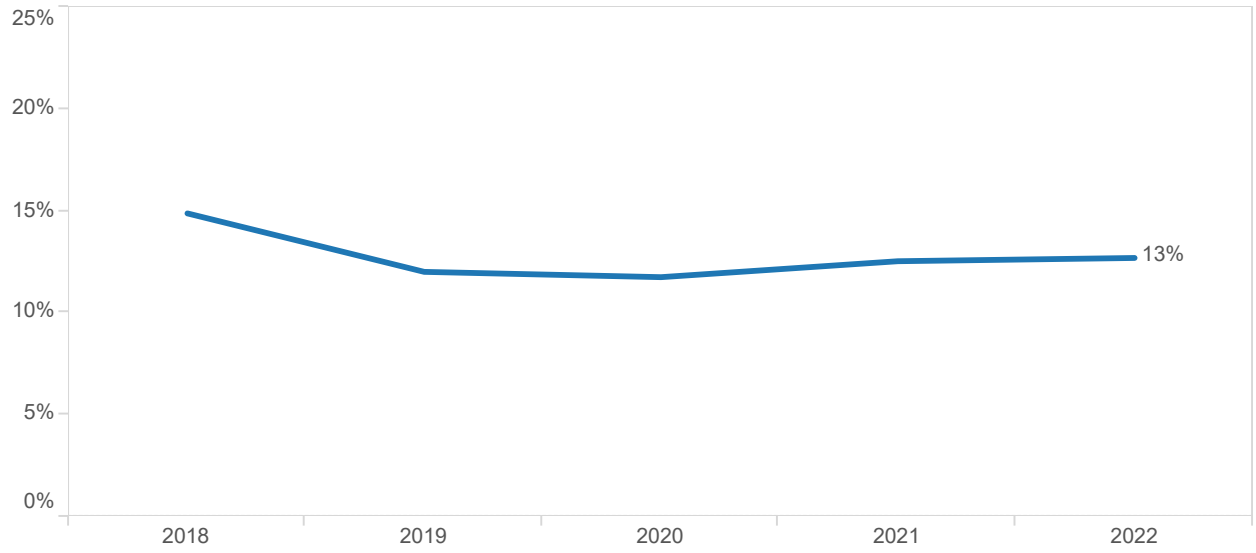
Consistent with previous years, in 2021/22 the most common reason for invalidity (applying in 96% of invalid applications) was that the application did not comply with formal requirements.

Figure 8: Flow of valid and invalid formal applications, 2021/22



'Invalid applications' are reported and measured by the requirement for agencies to report on the number of invalid applications specified in Table C of Schedule 2 to the GIPA Regulation.

Figure 9: Invalid applications as a percentage of all formal applications received, 2017/18 to 2021/22



The continuing high number of invalid applications remains concerning. As noted in previous reports, clear agency communication can help minimise the number of invalid applications and reduce time and effort that may be spent on preparing or assessing applications.

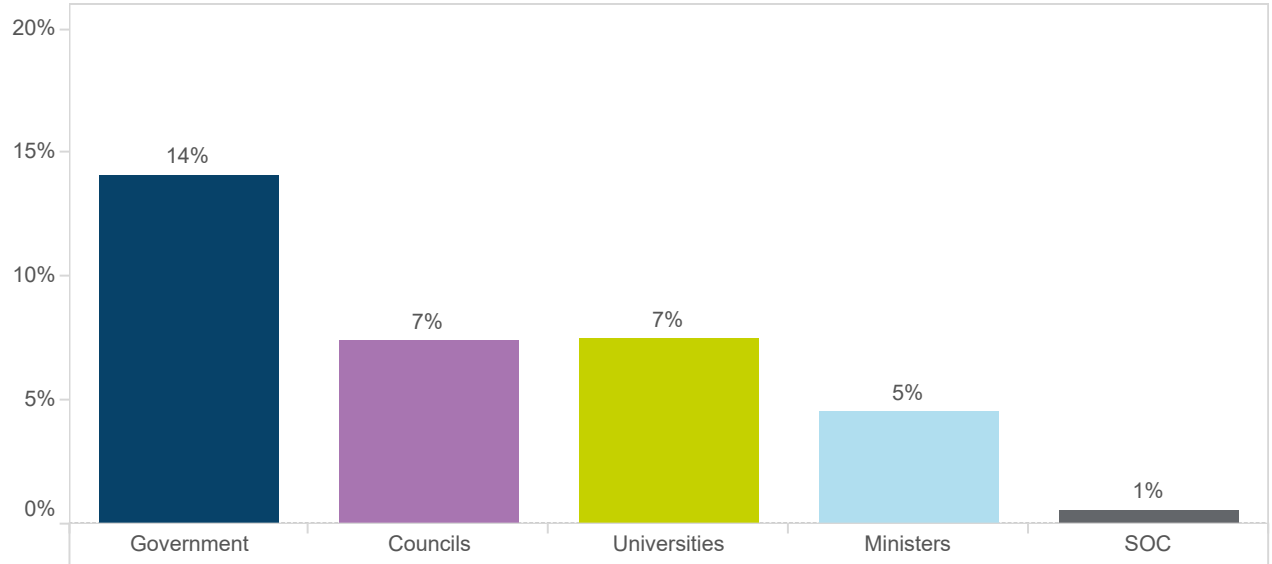
The GIPA Act requires an agency to provide advice and assistance to help an applicant make a valid application. Accordingly, opportunities to assist applicants through guided application processes, including electronic lodgement, should be promoted.

The Government sector had the highest percentage of invalid applications. The consistency of the percentage of invalid applications should be viewed in the context of increasing prevalence of online lodgement facilities.

These systems, if designed optimally, have the capacity to increase the number of valid applications by guiding applicants to meet the statutory requirements of a valid application. In response to the data reported for invalid applications in 2019/20, the IPC developed and published the Simplified guide for information access, which provides guidance in a simplified form on how to make an application under the GIPA Act, including outlining the five requirements to make a valid application.

The percentage of invalid applications remained stable across all sectors. Consistent with other years, the Government sector continued to have a high percentage of invalid applications at 14% (Figure 10).

Figure 10: Invalid applications as a percentage of all formal applications received, by sector, 2021/22



The number of invalid applications received remained largely stable

The number of invalid applications remained stable for most agencies, however, some government agencies experienced a moderate increase in the percentage of applications that were invalid compared with 2020/21. This included:

- the Ministry of Health, from 10% in 2020/21 to 17% in 2021/22
- the Department of Premier and Cabinet, from 5% in 2020/21 to 13% in 2021/22
- the Department of Planning and Environment, from 3% in 2020/21 to 9% in 2021/22.

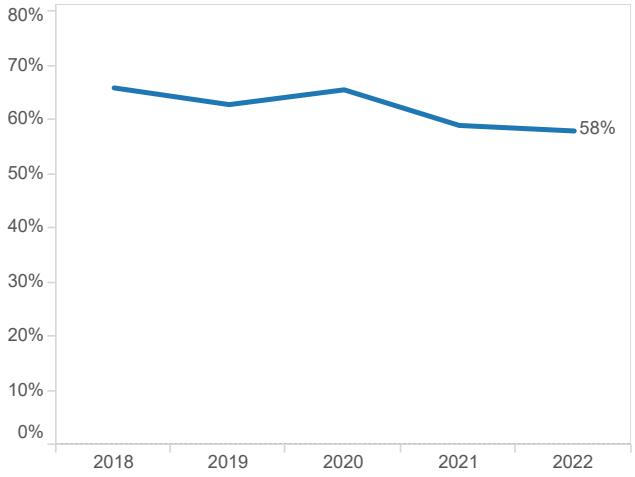
It should be noted that many invalid applications subsequently became valid.

Invalid applications that have subsequently become valid remains stable this year

Agencies are required to assist applicants to make a valid access application, and compliance with this requirement of the GIPA Act is reflected in the percentage of applications that subsequently become valid.

In 2021/22, 58% of invalid applications subsequently became valid. This is consistent with 59% reported in 2020/21 (Figure 11).

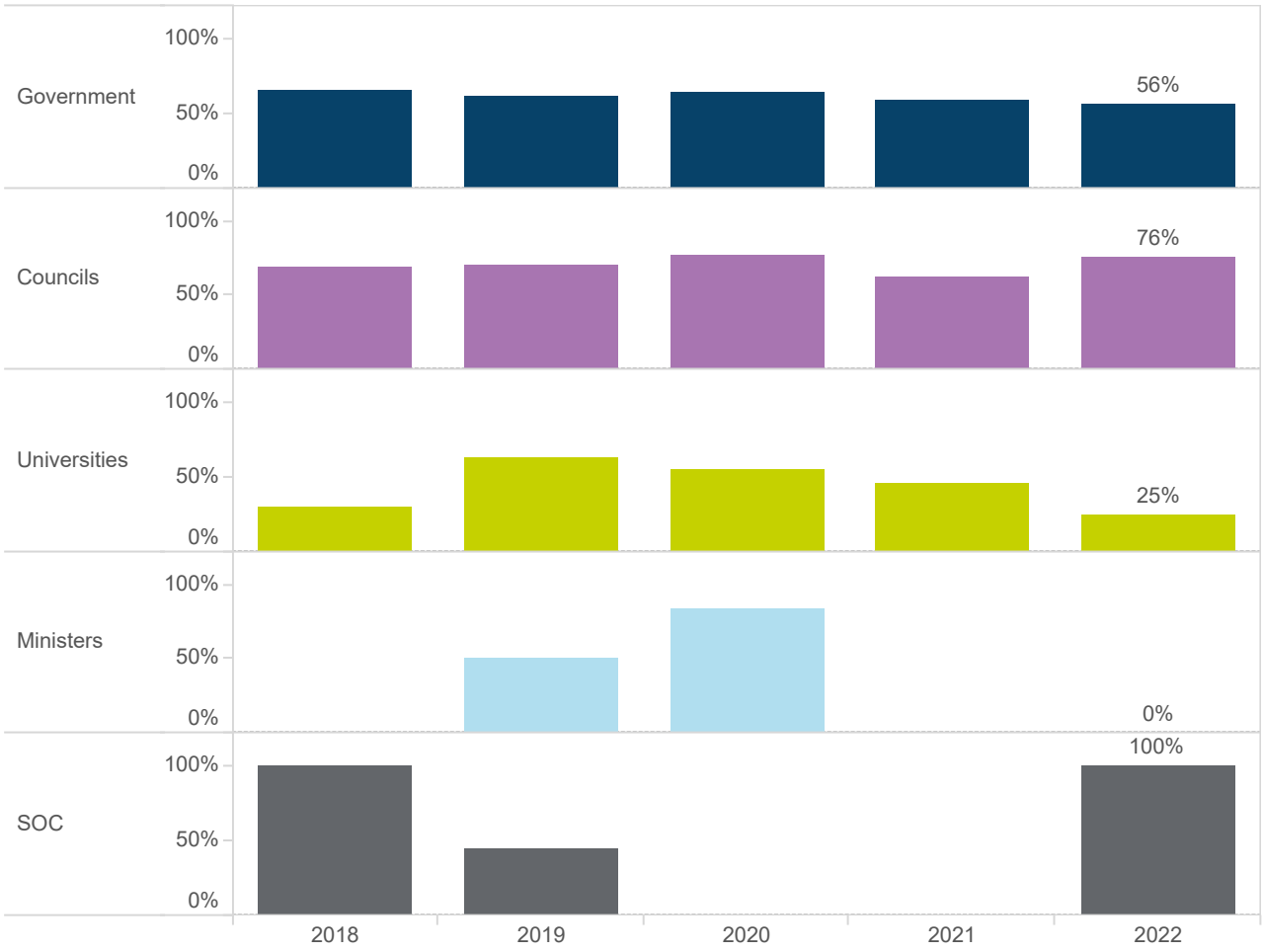
Figure 11: Invalid applications that became valid as a percentage of all invalid applications, 2017/18 to 2021/22



As Figure 12 shows, the percentage of invalid applications that subsequently became valid has:

- remained relatively stable in the Government sector, with 56% reported in 2021/22 consistent with 59% in 2020/21
- significantly increased in the Council sector, from 63% in 2020/21 to 76% in 2021/22
- significantly declined in the University sector, from 46% in 2020/21 to 25% in 2021/22
- significantly increased in the State-Owned Corporations sector from 0% in both 2019/20 and 2020/21 to 100% in 2021/22
- remained stable in the Minister sector, with 0% reported in 2021/22 and 2020/21 respectively.

Figure 12: Invalid applications that became valid as a percentage of all invalid applications, by sector, 2017/18 to 2021/22



Issue Highlight: What factors should an agency consider for the purpose of the identification requirement in section 41(1)(e)? – *Jeray v Blue Mountains City Council* [2021] NSWCATAP 310

This case dealt with the issue of whether an access application made under the GIPA Act contains enough information to enable the agency to identify the information sought pursuant to section 41(1)(e) of the GIPA Act.

This question arose because the applicant sought all records concerning an upcoming event and requested that if there were many records that they be provided with an index of records held so that documents could be selected as required. The respondent advised the applicant that the application was invalid and invited them to amend the application. The applicant replaced the words "an index" with "a list of records held".

The Appeal Panel overturned the Tribunal's ruling that the application did not include "such information as is reasonably necessary to enable the government information applied for to be identified." The Appeal Panel upheld the Appellant's appeal of the Tribunal's decision that the access application made was not valid according to section 41(1)(e) of the GIPA Act.

The Appeal Panel found that the wording of section 41(1)(e) requires a focus on the meaning of the "identification requirement" for validity and asks whether the application includes such information as is "reasonably necessary" to enable the government information to be "identified".

The *purpose* of the identification requirement in section 41(1)(e) is to enable the agency to perform its functions under the GIPA Act. In this context, the Tribunal held that the following factors are not relevant to determining validity:

- an agency's view of the reasonableness of an access application on its ability to perform its functions
- whether a broad scope of information is sought by an access application
- the time required to identify the information.

The Appeal Panel rejected the Tribunal's emphasis on "reasonableness" as the test for interpreting the "identification requirement" for validity in section 41(1)(e). This section merely requires that an applicant provide such information as is reasonably necessary to enable the government information applied for to be identified. *The fact that the information requested is vast and/or difficult to locate, does not invalidate the application.*

The Appeal Panel found that the Tribunal erred in the way it construed the identification requirement in section 41(1)(e) because:

- it failed to focus on the wording of the provision
- it construed the identification requirement incorrectly as the application did include "such information as is *reasonably necessary* to enable the government information applied for to be *identified*"
- the broad scope of the application, the time it would take to identify the information, and the risk that some information will be missed were not relevant.