

# How quickly were decisions made?

## Overall timeliness of decisions has declined slightly, however deemed refusals remain at low levels

In 2021/22, 88% of decisions by agencies were made within the statutory time frame (Figure 25). This result is a slight decline from 92% in 2020/21 and 91% in 2019/20.

The number of applications decided after 35 days by agreement with the applicant, increased from 7% in 2020/21 to 11% in 2021/22.

The rate of deemed refusals in 2021/22 remained stable at 1%, consistent with results in 2020/21.

## Timeliness is stable across most sectors

In 2021/22 (Figure 26), the:

- Government sector decided 88% of applications within the statutory time frame, a slight decline from 92% reported in 2020/21
- Council sector decided 86% of applications within the statutory time frame, a moderate decline from 94% reported in 2020/21
- University sector decided 67% of applications within the statutory time frame, consistent with 69% reported in 2020/21

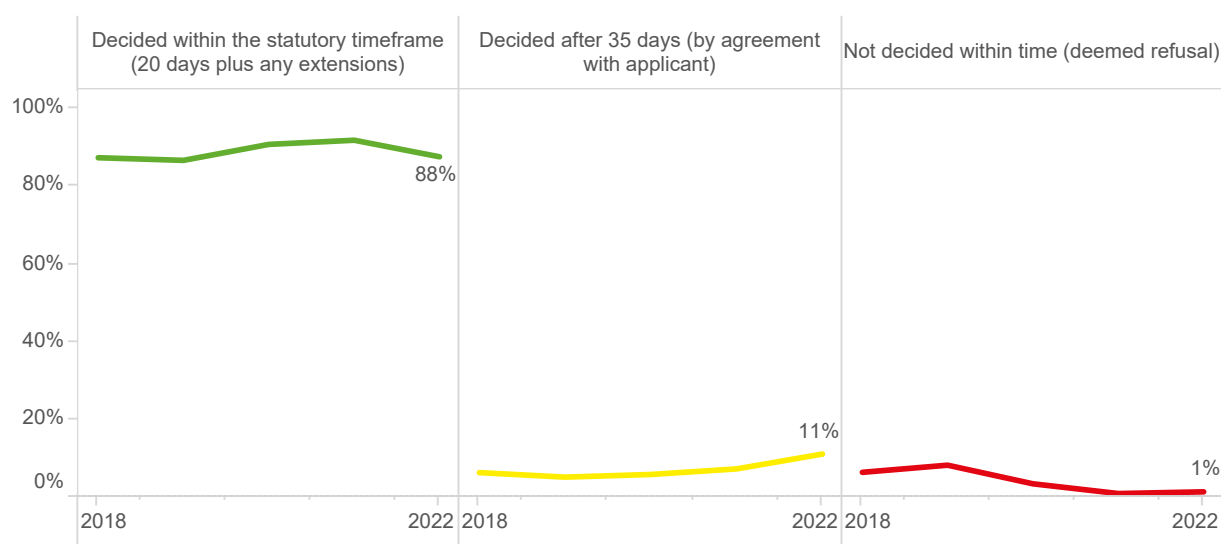
- Minister sector decided 79% of applications within the statutory time frame, a moderate decline from 93% reported in 2020/21
- The State-Owned Corporations sector decided 74% of applications within the statutory time frame, a significant decline from the 97% reported in the previous year.

Timeliness was maintained at high levels for the NSW Police Force, Department of Customer Service, Department of Education, and Transport for NSW. This result is pleasing and builds on the positive results reported in 2020/21 as most of these agencies experienced an increase on the number of applications received.

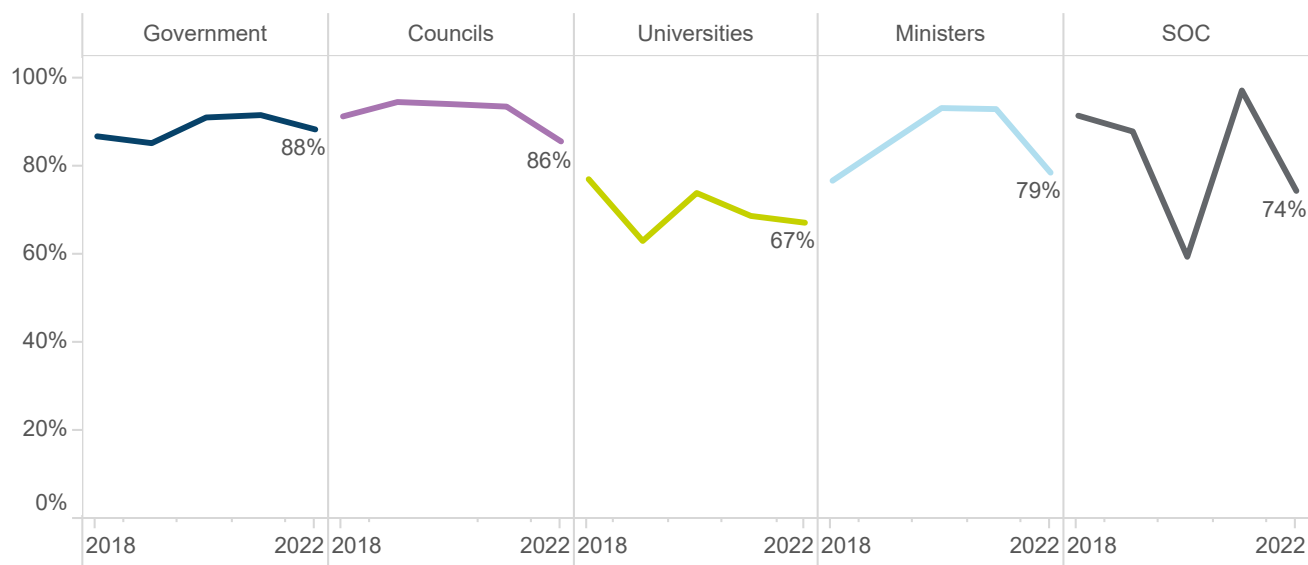
Of the principal departments, four departments reported a moderate or significant decline in compliance with the first reporting category: statutory timeframe (20 days plus any extensions). In 2021/22:

- Department of Planning, Industry and Environment reported 38% of applications were decided within the statutory timeframe, compared with 90% in 2020/21
- Department of Communities and Justice reported 52% of applications were decided within the statutory timeframe, compared with 79% in 2020/21

**Figure 25: Applications that were decided within the statutory time frame as a percentage of all applications decided, 2017/18 to 2021/22**



**Figure 26: Applications that were decided within the statutory time frame as a percentage of all applications decided, by sector, 2017/18 to 2021/22**



- Department of Premier and Cabinet reported 60% of applications were decided within the statutory time frame, compared with 71% in 2020/21
- NSW Treasury reported 78% of applications were decided within the statutory time frame, compared with 85% in 2020/21.

It is important that agencies apply the data available to them, together with regulatory guidance and the good practices demonstrated by other agencies, to elevate compliance with statutory time frames. Better practice will ensure that agencies are able to meet statutory time frames when faced with increasing volumes and complexity of applications.

Whilst engaging with an applicant to extend time is contemplated under the GIPA Act agencies should be mindful of an increased reliance upon this avenue to extend time. It is important to maintain vigilance in relation to timeliness to ensure the object of the GIPA Act is achieved. Additionally the digitisation of records should facilitate ease of access and preparation of reports. In this context the increase in extensions of time by agreement that has grown over the last 5 years should be managed thoughtfully by agencies.

### **What are the statutory timeframes?**

Agencies are required to report on timeliness against the three categories prescribed in Table F of the GIPA Regulation:

- Decided within the statutory timeframe (20 days plus any extensions)
- Decided after 35 days (by agreement with applicant)
- Not decided within time (deemed refusal)

These reporting categories reflect the requirements of the GIPA Regulation. Importantly the categories accommodate agencies' engagement with applicants and the agreement to extend time with consent. However, agencies should be mindful that in the context of digital government and the availability of digital solutions to effect ready access to information, a rise in extension of times may be at odds with the object of the GIPA Act and in particular, to provide access in a timely manner.

### **Issue Highlight: Extensions of time and retrieval from digital archives - *Walton v Eurobodalla Shire Council* [2022] NSWCATAD 46**

This case dealt with the issue of whether the Council could extend the time to make the GIPA decision on the basis that retrieval from a digital archive satisfied the preconditions concerning records retrieval.

Section 57(1) of the GIPA Act provides an agency with 20 working days, after receipt of an access application, to determine the application. Under section 57(2)(b), this period may be extended by up to 10 working days if records are required to be retrieved from a records archive.

The Council submitted that the GIPA Act does not restrict the term 'archive' to a physical place such as a library or warehouse. The Council submitted that it was commonplace to refer to a 'digital back end server' as a 'digital archive' and that not only is an act of retrieval required but also special permissions to access the software.

The Tribunal agreed with the submissions of the Information Commissioner that the process involved in retrieving records must involve some degree of difficulty related to the act of retrieval from a place where public or historical records are kept, for the provision to be enlivened. Given that the records sought were at the time only a maximum of eight months old, it was concerning that the Council's position was that it needed additional time to search its email archives to retrieve them. The fact that searches were being done on a digital archive did not of itself establish any additional time requirements.

Ultimately, the Tribunal disagreed with the notion that once records are digitally archived, the provisions of section 57(2)(b) would be enlivened. The Council's evidence indicated that records are routinely archived after a period of only 90 days. This means that in the majority of GIPA applications citizens would be seeking information from the Council that has been archived. It was the Tribunal's view that irrespective of the retrieval process, that cannot be what was intended.

The Tribunal found that the matter had not been decided within the period provided for in section 57(1) because the extension of the decision-making period by the Council was without foundation.

*'How quickly were decisions made?' is reported and measured by the requirement for agencies to report on how quickly they dealt with access applications that they received. The data used in this section draws on Table F, Schedule 2 to the GIPA Regulation.*