



information  
and privacy  
commission  
new south wales

# REPORT ON THE OPERATION OF THE GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009

## 2017 – 2018

Open Government, Open Access, Open Data

# Letter of Transmission

The Hon. John Ajaka MLC  
President, Legislative Council  
Parliament House  
Macquarie Street  
Sydney NSW 2000

The Hon. Shelley Hancock MP  
Speaker, Legislative Assembly  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Mr President and Madam Speaker,

In accordance with section 37 of the *Government Information (Information Commissioner) Act 2009*, I am pleased to present the *Report on the Operation of the Government Information (Public Access) Act 2009: 2017 – 2018*.

I recommend that the Report be made public forthwith pursuant to section 39(2) of the *Government Information (Information Commissioner) Act 2009*.

Yours sincerely,



Elizabeth Tydd  
**Information Commissioner**  
**CEO, Information and Privacy Commission NSW**  
**NSW Open Data Advocate**

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# Commissioner's Overview

## Institutional integrity is secured by access to information, transparency and accountability

In the face of an unprecedented decline in trust, the impetus for institutional integrity has galvanised in a commitment to establish a national integrity commission.<sup>1</sup> Access to information, transparency and accountability by public institutions and public office holders is essential to integrity and the promotion of public trust.

Information is knowledge, power and evidence. It is a sword to combat and a shield to prevent corruption.

Open Government mandates citizen participation in government decision making and their entitlement to hold governments to account. In New South Wales, the *Government Information (Public Access) Act 2009* (GIPA Act) enshrines a commitment to Open Government.<sup>2</sup> Upholding that legislated right to access government information and the presumption in favour of the disclosure of information is the foundation from which integrity can be instigated.<sup>3</sup>

Commitments under Australia's second Open Government National Action Plan further evidence the entrenchment of Open Government within our governance framework to combat corruption and promote trust. I am honoured to serve as a member of Australia's second Open Government Forum and lead the commitment to *Engaging with States and Territories to better understand information access* on behalf of all Information Commissioners/Ombudsmen and supported by the Department of the Prime Minister and Cabinet.<sup>4</sup>

## Investigative and reporting powers fortify independent oversight of the right to information

Leadership plays a crucial role in assuring integrity. This year, in response to risks identified through regulatory interventions and intelligence, I focused on the leaders of our public institutions and provided guidance to principal officers to assist them in confidently upholding their responsibilities under the GIPA Act.<sup>5</sup>

As a leading integrity agency, the Information and Privacy Commission NSW (IPC) successfully implemented a strategic, proactive approach to regulation and conducted a number of audits as well as monitoring agency compliance. These initiatives provided measurable results and enabled targeted regulatory action to be taken to elevate compliance.<sup>6</sup>

This approach applies the insights gained through complaints to the Information Commissioner and other intelligence to address institutional risks and elevate systemic compliance. The response by agencies has demonstrated a commitment to compliance.

The significant regulatory results are well demonstrated in this report and I am committed to the continued application of this strategic approach to address extant and emerging compliance risks.

Importantly, this report provides an established and independent measurement of the effectiveness of Open Government in NSW at a strategic and operational level.

<sup>1</sup> <https://www.edelman.com/post/australia-trust-in-tumult>

<sup>2</sup> GIPA Act section 3

<sup>3</sup> GIPA Act section 5

<sup>4</sup> <https://ogpau.pmc.gov.au/australias-second-open-government-national-action-plan-2018-20>

<sup>5</sup> <https://www.ipc.nsw.gov.au/fact-sheet-gipa-act-agency-systems-policies-and-practices-guidance-principal-officers-0>

<sup>6</sup> <https://www.ipc.nsw.gov.au/gipa-compliance-reports>



## How is the GIPA Act working?

### **Significant trends and analysis 2017/18**

This year's report provides positive indicators that tangible progress has been made in achieving the strategic intent of the GIPA Act – to authorise and encourage the proactive release of information to the public.

Three measures best evidence the appreciable improvement in compliance with the 'push pathways' under the GIPA Act:

- 75% of agencies reported that they had conducted the review of their program for release of information – up from 63% in 2016/17. This represents an arrest in the four-year decline in agencies conducting annual information release reviews and a revival approximating 2013 levels.
- 82% of agencies that conducted a review reported releasing more information publically. This is a significant increase from 75% in 2016/17.
- Compliance with the mandatory proactive release requirements increased to 83%, compared with 76% in 2016/17.

These improvements well demonstrate the commitment of agencies to proactive release of information through better systems, governance and resourcing.

However, the results of the IPC's audit into compliance with open access requirements demonstrate the need for a continued focus by agencies.

### **Pull pathways**

In 2017/18 there was an overall increase in applications with agencies receiving 15,918 valid and 2,368 invalid applications. Both valid and invalid applications increased by 2% compared with 2016/17. Combined, these application numbers reflect a return to the highest levels of applications received in the first year of operation of the GIPA Act and continue the trend of increasing numbers which commenced in 2015.

Overall, information release rates declined by 3% and returned to 2015/16 levels. Significantly, for the first time, there was relative equity in the release rates for four of the five applicant categories specified under the

GIPA regulations, being applications made by: members of the public, members of parliament, not-for-profit and community groups and businesses, and media. Applications from not-for-profit and community groups experienced a release rate of 65% in 2017/18, a significant improvement compared with 48% in 2016/17. The lowest overall release rate (52%) was experienced by members of the media who also play a significant role in information dissemination.

Timeliness in agency decision making remained the same for 2017/18 at 87% being completed within the statutory time frame.



### **Opportunities to better serve citizens and uphold their right to information**

Amendments to the GIPA Act came into force on 28 November 2018. The amendments are largely mechanical, reflecting consultation during the early years of the transformation change envisaged under the Act.

One significant change is the introduction of a timeframe for the Information Commissioner's review function with the associated consequence of deeming that the Information Commissioner has made no recommendation if the timeframe is not met. This amendment, in part, aligns with the time constraints placed upon agencies under the GIPA Act and promotes prompt decision making to advance the object of the Act.

Further, the amendment distinguishes NSW as the only Australian jurisdiction in which the independent reviewer operates under a statutory timeframe.

Given that independent review by the Information Commissioner has been established as the dominant review avenue used by citizens, it is essential that this pathway continues to be accessible and operate effectively.

To meet this requirement the IPC has conducted a review of the regulatory processes and resources that support two independent commissioners in fulfilling their statutory functions.

Process improvements and associated changes are well underway to ensure that the IPC continues to implement

# Commissioner's Overview

a strategic regulatory approach, whilst also providing a high quality and timely service to effectively uphold and promote both information access and privacy rights. The privilege of my second term of appointment provides the opportunity to lead the implementation of this significant change.

A key focus going forward must be timeliness and quality. Just as agencies are required to report on timeliness, the IPC will publically report on compliance with timeliness in finalising external reviews.

It is opportune to reiterate my support for electronic lodgement. It provides advantages for timeliness and quality of decision making, including instructive guidance to ensure that applications are valid upon lodgement and efficiencies that remove duplication and enable agencies to process applications effectively, as well as supporting the timely outcomes required under the GIPA Act.

Notwithstanding amendments to the GIPA Act that remove the requirement for the Information Commissioner to approve additional facilities to make applications, agencies are encouraged to consult with the IPC to ensure that these facilities comply with the legislative requirements and are accessible to citizens. The data contained in this report provides support for the proposition that electronic lodgement facilities may provide an antidote to the continuing rise in invalid applications and may also alleviate unnecessary application of resources by agencies.

## **Pioneering initiatives in information governance**

In leading an integrated strategic approach to information governance the IPC has committed to the provision of integrated advice and guidance. The piloting of an agency self-audit tool to assess compliance and provide regulatory direction represents the first comprehensive approach to assessing information governance requirements by public sector agencies. Agencies have responded positively and I am grateful to the Privacy Commissioner, Ms Samantha Gavel for her valuable contribution to this pioneering initiative.

Other substantial regulatory guidance included the production of two comprehensive e-learning modules: *Open Data* and *Towards Open Government Information in NSW* to build the capability of NSW agencies and secure credible stewardship. These initiatives would not have been possible without the generous contribution of other experts.

The next frontier in building accountability in the management of government information will be guided by ethics and citizen engagement. Data ethics has evolved beyond a computer science model in which technicians develop algorithms to address misinformation. It now provides the basis for ethical decision making informed by citizen input. It can, when properly understood and applied, address ambiguity and provide principles that guide an assessment of public benefit, individual and collective good, citizen rights, justice and virtuous conduct.<sup>7</sup> That assessment, like the public interest test established under the GIPA Act, promotes integrity in decision making by government.<sup>8</sup>

The application of a robust legal and sound ethical framework to the management of information in all forms, ensures that as stewards of information we engage with citizens, act with integrity and promote public trust in the institutions created and the people appointed, to serve citizens.



**Elizabeth Tydd**  
**Information Commissioner**  
**CEO, Information and Privacy Commission NSW**  
**NSW Open Data Advocate**

<sup>7</sup> [www.scu.edu/ethics-app/](http://www.scu.edu/ethics-app/)

<sup>8</sup> GIPA Act section 13



# Future Focus

# 1

## SYSTEMIC COMPLIANCE

### IPC strategies

- The IPC will release the agency self-audit tool to elevate compliance with core requirements for sound information governance.
- The IPC will progress regulatory engagement with the NSW Police Force to enhance systems, policies and practices.

# 2

## MANDATORY PROACTIVE RELEASE

### IPC strategies

- The IPC will further investigate the low compliance of agencies with additional open access requirements in order to improve awareness of the requirements.

### Agency strategies

- Comply with open access requirements as required under the GIPA Act and the *Government Information (Public Access) Regulation 2018* (GIPA Regulation)
- Apply the guidance provided by the IPC's *Guideline 6: Agency Information Guides*

# 3

## AUTHORISED PROACTIVE RELEASE

### IPC strategies

- The IPC will publish a guideline to promote release of Open Data by agencies.

### Agency strategies

- Integrate a commitment to proactive release in an agency's corporate culture and identify information that can be released proactively through review and revision of agency processes and systems.



# 4

## INFORMAL RELEASE

### IPC strategies

- The IPC will work with identified agencies, including the NSW Police Force, to promote informal release of information.

### Agency strategies

- Engage with, and apply guidance in the IPC's e-Learning modules for agency GIPA officers. IPC e-Learning modules include *Open Data* and *Towards Open Government Information in NSW*.

# 5

## FORMAL ACCESS APPLICATIONS

### IPC strategies

- The IPC will conduct a further high level audit of the Office of Sport and the Sydney Cricket and Sports Ground within 12 months.
- The IPC will engage with agencies that experienced a decline in the percentage of invalid applications compared to 2016/17 and seek to share insights with agencies experiencing increases, to assist in the receipt of valid applications.

### Agency strategies

- Review available data and good practices to elevate timeliness.
- At an executive level, promote engagement, training and a collaborative approach to investigate, analyse and respond to issues identified in this report, apply an intelligence-led approach to meeting obligations under the GIPA Act and maximise achievements of Open Government.

# 6

## EXTERNAL REVIEWS

### IPC strategies

- The IPC will enhance operations to ensure that statutory requirements for the finalisation of external reviews are met.
- The IPC will publically report on compliance with timeliness in finalising external reviews.

# Year in Review

The 2016/17 Report identified a range of future focus priority actions to be taken by the IPC and agencies. The outcomes of the IPC strategies identified in that report, as outlined below, are aligned with the information access pathways.

## Mandatory proactive release

The 2016/17 Report identified that there were opportunities to enhance regulatory guidance and compliance with mandatory proactive release obligations, particularly for open access information requirements prescribed in Part 3, Clause 6 of the GIPA Regulation. Significantly, in June 2018 the IPC published the [\*Charter for Public Participation – a guide to assist agencies and promote citizen engagement\*](#).

Action	Outcome
Engage with identified agencies to promote opportunities for improvement in compliance with core open access requirements.	<ul style="list-style-type: none"> <li>Engaged with Hornsby Shire Council on its approach to open access and issued guidance to Councils to promote compliance with these requirements.</li> <li>Engaged with a number of Regional Organisation of Councils (ROC) and Joint Organisation of Councils (JOC) on information access and open access requirements including: Sydney Coastal Councils Group Inc, Southern Sydney ROC, Macarthur ROC, Shoalhaven Illawarra Pilot JOC, Mid North Coast ROC, Northern Sydney ROC, New England Group of Councils, and Western Sydney ROC.</li> <li>Reviewed and updated guidance <a href="#"><i>Open access information under the GIPA Act – agency requirements</i></a>. Particular consideration was given to the requirements specific to local councils.</li> </ul>
Further explore with departments the reasons for low compliance with core open access requirements, and improve awareness of compliance with the five additional open access requirements.	<ul style="list-style-type: none"> <li>Released the <a href="#"><i>Charter for Public Participation - a guide to assist agencies and promote citizen engagement</i></a>.</li> <li>Conducted reviews of Agency Information Guides and provided guidance to enhance compliance.</li> <li>Published the Fact Sheet <a href="#"><i>The role of principal officers and senior executives in supporting the object of the GIPA Act</i></a> to promote activation of all access pathways.</li> </ul>

## Authorised proactive release

A priority for the IPC continues to be the publication of guidance on the legislative provisions that support the GIPA Act's 'push' model of information release, including authorised proactive release.

Action	Outcome
Targeted engagement with agencies that have demonstrated on-going non-compliance with the requirements to conduct a review of their information release activities, including an examination of governance practices and accountability within agencies to ensure compliance with this GIPA Act mandatory requirement.	<ul style="list-style-type: none"> <li>Developed and trialled a self-audit tool for agencies to review and assess compliance activities.</li> <li>Published <a href="#"><i>The GIPA Act: Agency systems, policies and practices - guidance for principal officers.</i></a></li> </ul>
Enhancing the GIPA Tool to ensure agencies recognise that the conduct of reviews is mandatory.	<ul style="list-style-type: none"> <li>Amended the GIPA Tool to include a pop up reminder that under section 7(3) of the GIPA Act, agencies are required to review their program for the release of government information at intervals of not more than 12 months.</li> </ul>
Conduct a further audit of agency compliance with AIG requirements that support release of information.	<ul style="list-style-type: none"> <li>Completed a follow up audit of compliance with AIGs under the GIPA Act across the 10 cluster agencies. The <a href="#"><i>Agency Information Guide Review Report</i></a> published on 29 June 2018 found significant improvements in compliance levels by NSW principal departments.</li> </ul>

## Informal release

The 2016/17 Report highlighted the benefits for agencies and citizens of the informal release pathway. This included improving accessibility of information and providing flexibility in responding to informal requests for information.

Action	Outcome
Continue to promote the appropriate use of the informal pathway with agencies.	<ul style="list-style-type: none"> <li>Published a Knowledge Update resource for agencies <a href="#"><i>Informal release of information</i></a> in May 2018.</li> <li>Published a fact sheet for citizens <a href="#"><i>FAQs for Citizens: Informal release of information</i></a> in May 2018.</li> </ul>
Develop statutory guidance to promote the public interest considerations in favour of disclosure of government Open Data.	<ul style="list-style-type: none"> <li>Guidance is currently under development and is expected to be finalised and published in 2019.</li> </ul>

# The Year in Review

## Formal access applications

The GIPA Act provides citizens with an enforceable right to apply for and access government information unless there is an overriding public interest against disclosure. The findings in the 2016/17 Report informed areas of future focus for the formal access application pathway.

Action	Outcome
Engage with agencies to understand the drivers behind the increases in invalid applications and facilitate the development of practices by agencies to decrease invalid applications.	As noted later in this report, some agencies experienced a decline whilst others an increase in the percentage of applications that were invalid compared with 2016/17. Through its external review function the IPC has promoted the importance of section 16 of the GIPA Act, which requires agencies to assist applicants in making valid applications. This requirement is consistent with the object of the Act. The IPC will continue to engage with agencies experiencing increases in respect of invalid applications and monitor the impact of electronic lodgement of applications on levels of validity.
Engage with agencies dealing with applications from not-for-profit or community groups to understand the drivers behind their relatively low release rates.	<ul style="list-style-type: none"> <li>• Consulted and published the fact sheet <a href="#">Non-government organisation's guide to section 121 of the GIPA Act</a> in June 2018.</li> </ul>
Continue to monitor the application of section 60(4), particularly within cluster arrangements, and provide guidance to ensure understanding and appropriate application of the provision.	<ul style="list-style-type: none"> <li>• Released the checklist <a href="#">Unreasonable and substantial diversion of resources</a> for agencies in May 2018, which was updated in line with amendments to the GIPA Act in December 2018.</li> <li>• Released the agency guide <a href="#">Managing formal GIPA applications</a> in December 2017.</li> </ul>
Promote monitoring of timeliness in agency decision making and collaborate with agencies to identify opportunities to enhance timeliness.	<ul style="list-style-type: none"> <li>• Launched the interactive <a href="#">GIPA Agency level Dashboard</a> in February 2018, which enables review of agency performance against eight performance measures, including timeliness.</li> </ul>
Continue to monitor application of the extension of time provisions and update guidance for agencies to ensure compliance when considering extensions.	<ul style="list-style-type: none"> <li>• Developed a resource for agencies <a href="#">Timeframes and extensions for deciding access applications under the GIPA Act</a> published in December 2018.</li> </ul>
Work with the Department of Justice and other stakeholders to support and implement any changes made to the GIPA Act flowing from the Statutory Review.	<ul style="list-style-type: none"> <li>• Amendments to the GIPA Act commenced on 28 November 2018. These amendments were made in line with the recommendations of the Statutory Review. The IPC developed resources for <a href="#">citizens</a> and <a href="#">agencies</a> on the changes to the GIPA Act. The IPC also reviewed existing publications to ensure consistency with the amendments to the GIPA Act (some of these have been noted).</li> </ul>

Action	Outcome
<p>Develop guidance to promote public interest considerations in favour of disclosure to individuals seeking access to their out of home care information.</p>	<ul style="list-style-type: none"> <li>• Reviewed and updated the fact sheet <a href="#"><i>What is the Public Interest Test?</i></a></li> <li>• Commenced development of a guideline to assist agencies when determining applications from individuals seeking information about their out of home care arrangements. The guideline is currently subject to consultation and will be finalised in early 2019.</li> </ul>
<p>Engage with identified sectors, in particular, the local government sector and the Office of Local Government to further enhance decision making processes, including the development of further guidance.</p>	<ul style="list-style-type: none"> <li>• Engaged directly with identified councils.</li> <li>• Commenced a review of the IPC <i>Decision Making</i> e-Learning module</li> <li>• Released <a href="#"><i>Managing formal GIPA applications – guide for agencies</i></a> in December 2017.</li> </ul>



# Information Release Pathways

# Pathway 1: Mandatory proactive release of information

Since 2010/11 the IPC has conducted an annual desktop audit of agency compliance with mandatory proactive release requirements under the GIPA Act (also known as open access information). For 2016/17, 10 principal NSW government departments<sup>9</sup> were audited, together with a sample of other public sector agencies. In 2017/18 the IPC conducted a desktop audit of the same 10 principal departments and a sample of 20 other smaller agencies.<sup>10</sup>

The desktop audit identified whether, in compliance with the GIPA Act, each department or sampled smaller agency published on its website:

- An agency information guide (AIG)
- Agency policy documents
- An agency disclosure log
- An agency contracts register.

The desktop audit did not examine the comprehensiveness of the information made available, such as whether an agency has published all of its policy documents.

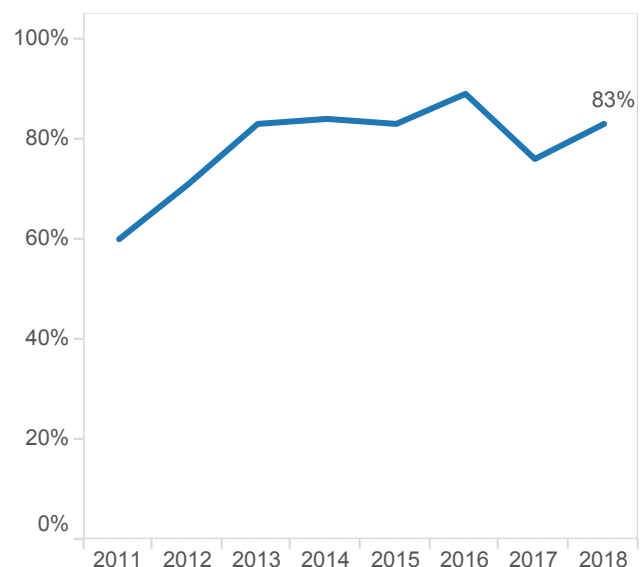
## Compliance with open access requirements has increased since 2016/17

Across all departments and sampled smaller agencies, the desktop audit found that compliance with the mandatory proactive release requirements had increased to 83%, compared with 76% in 2016/17 (Figure 1).

The desktop audit also showed the following:

- 73% of sampled agencies had an AIG, an increase from 60% in 2016/17
- 93% of sampled agencies had policy documents available, an increase from 87% in 2016/17
- 83% of sampled agencies had a disclosure log, an increase from 77% in 2016/17
- 83% of sampled agencies had a contracts register, an increase from 80% in 2016/17.

**Figure 1: Departments and sampled smaller government agency compliance with mandatory proactive release requirements**



Compliance by departments was significantly higher at 95%, than the rate for all agencies. Agencies other than departments had a significantly lower overall compliance rate of 78%. However, this is a significant increase compared with the 2016/17 results (68%) for sampled agencies. The lower compliance by other, often smaller government agencies will continue to be considered by the IPC when developing future regulatory priorities.

<sup>9</sup> The principal departments audited were Department of Education, Department of Family and Community Services, Department of Finance, Services and Innovation, Department of Planning and Environment, Department of Industry, Department of Premier and Cabinet, Transport for NSW, Department of Justice, Ministry of Health and NSW Treasury.

<sup>10</sup> The smaller agencies audited were the Office of the Children's Guardian, Independent Commission Against Corruption, NSW State Emergency Services, Service NSW, Fire and Rescue NSW, Sydney Opera House Trust, Art Gallery of NSW, Barangaroo Delivery Authority, Independent Liquor and Gaming Authority, Legal Aid Commission of NSW, Medical Council of NSW, NSW Electoral Commission, Pharmacy Council of NSW, Veterinary Practitioners Board, Judicial Commission of NSW, State Records Authority (State Archives and Records Authority of NSW), Historic Houses Trust of NSW (Sydney Living Museums), Dams Safety Committee, Nursing and Midwifery Council of NSW and Venues NSW.



## Issue Highlight: Promoting access to information and public participation - AIG follow up audit

Agency Information Guides (AIGs) are published in accordance with section 20 of the GIPA Act and are a key mechanism in making government information accessible by promoting the release of government information.

During 2017/18, the IPC continued its engagement with NSW public sector agencies on AIGs and undertook a follow-up to measure improvements in AIG compliance since the first audit conducted in May 2016.

The audit found significant improvements in compliance with AIG requirements across all agencies. It assessed the AIGs of the 10 principal NSW public sector departments and the IPC.

Key findings included:

- Eight department AIGs, including that of the IPC had been updated within the last two years, a significant increase on 2016
- Only two department AIGs did not include a date indicating when they were last updated, compared with five principal department AIGs in 2016
- All 10 departments and the IPC included a statement that expressed a commitment to public participation, a significant improvement from the 2016 audit where only six AIGs included this feature
- The AIGs of all 10 departments and the IPC's AIG included an articulation of the arrangements in place to promote public participation, an increase from six in 2016.

These results demonstrate a commitment to compliance by agencies and the utility of IPC guidance. The results of the follow up audit were published in June 2018 in the *Agency Information Guide Review Report*.

## Issue Highlight: Advancing democratic government

In 2018, the [Charter for Public Participation - a guide to assist agencies and promote citizen engagement](#) (the Charter) was released to assist NSW agencies to seek effective public input into the development and delivery of policies and services.

The Charter is underpinned by the GIPA Act, which has as its object to advance government that is open, accountable, fair and effective. This object is promoted by the requirement for AIGs to specify how the public can participate in the formulation of agency policies and the exercise of the agency's functions.<sup>11</sup>

The Organisation for Economic Co-operation and Development (OECD) has recommended that in order to embed public participation as part of their core business, governments should provide:

- Strong leadership and commitment
- Coordination of public participation across, and within government agencies
- Adequate financial, human and technical resources
- Appropriate guidance and training
- A supportive and accountable organisational culture.

The Charter provides a practical and principle-based approach for embedding public participation and brings together leading authorities to assist in planning for, and conducting effective engagement including:

- A framework for developing a policy on public participation
- A guide to encourage, enable and embed effective citizen engagement in policy design and development, thereby building public confidence in government decision making processes and service delivery outcomes
- A practical and flexible roadmap to guide agencies in embedding public participation in agency work programs
- Practical information, steps and tools for planning effective engagement with citizens
- Useful examples of successful public participation.

The Charter is the first comprehensive guide directed to building the engagement skills of the NSW public sector. It assists agencies to identify and use a range of engagement tools and promotes open government through public engagement and participation.

<sup>11</sup> See Section 20(1) of the GIPA Act

## Additional open access requirements for departments

The 10 principal departments are subject to a number of additional requirements for open access as set out in clause 6(2) of the GIPA Regulation. These are to make available:

- (a) a list of the Department's major assets, other than land holdings, appropriately classified and highlighting major acquisitions during the previous financial year
- (b) the total number and total value of properties disposed of by the Department during the previous financial year
- (c) the Department's guarantee of service (if any)
- (d) the Department's code of conduct (if any)
- (e) any standard, code or other publication that has been applied, adopted or incorporated by reference in any Act or statutory rule that is administered by the Department.

The IPC conducted a desktop audit of compliance by principal departments with these five additional open access requirements. The audit found that compliance

with these additional requirements was low. The following results of compliance varied depending on the requirement:

- 10% (one department) had a partial list of major assets and acquisitions
- 10% (one department) had a partial list of the total number and total value of properties the department disposed of during the previous financial year
- 10% (one department) had the department's guarantee of service
- 100% had the department's code of conduct
- 100% had a number of documents/webpages with 'standard' or 'code' available on the website.

In September 2018, the IPC published the fact sheet [Open access information under the GIPA Act – agency requirements](#) to inform agencies about open access information required to be released and assist them to identify their responsibilities for mandatory proactive release. The IPC will continue to promote this guidance and further investigate the low compliance by departments in order to improve awareness of the requirements.

## Issue Highlight: Supporting new pecuniary interest disclosure requirements in local government - Review of Guideline 1 for local government

A key issue identified during the consultation on the revised *Model Code of Conduct for Local Councils in NSW*, is the interpretation of section 6 of the GIPA Act relevant to the disclosure of information contained in the returns of interests lodged by councillors and designated persons (which is 'open access information'). Section 6 requires that returns of interest be disclosed on the website of each local council unless there is an overriding public interest against disclosure.

Disclosing the information contained in returns of interest promotes openness, transparency and accountability in local government. It also assists with the identification and management of potential conflicts of interest that might arise where councillors and senior staff participate in decisions from which they may derive, or are perceived to derive personal or financial benefit.

Councils have expressed concerns regarding the disclosure of personal information contained in the returns. They have also requested clearer guidance on the weight to be given to personal information as a consideration against the release of returns of interest when undertaking the public interest test under section 13 of the GIPA Act.

The IPC's *Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons developed under the Government Information (Public Access) Act 2009 (NSW)* is being reviewed to ensure that councils are provided with consistent and up-to-date resources to assist their compliance with the Act's open access obligations. The existing *Privacy Code of Practice for Local Government* will also be reviewed to ensure that the local government sector receives comprehensive advice and/or guidance.

The IPC will release the revised Guideline 1 for consultation in early 2019.

## Complaints to the IPC about mandatory proactive release of information

Complaints to the IPC continue to identify concerns regarding compliance with the mandatory requirements for proactive release of information.

In 2017/18, 22% of complaints received by the IPC were about open access information. These complaints mainly concerned disclosure logs and not making open access information available.

In the council sector open access issues interact with other legislative requirements, such as the *Environment Planning and Assessment Act 1979* (NSW) and *Copyright Act 1968* (Cth). Wherever possible, the IPC engages with the agencies that are the subject of a complaint, to address the compliance issues relevant to the mandatory proactive release of information requirements. This provides an effective approach to enhancing knowledge of the requirements and objects of the GIPA Act.

### Issue Highlight: Confirming open access requirements for local government

In April 2018, the IPC was informed of a new approach being taken by a local council in relation to its open access obligations regarding development application assessments. The Council applied a uniform process to open access requirements under section 6 of the GIPA Act and as prescribed by clause 1(3) of Schedule 1 of the GIPA Regulation. The process did not consider each matter individually and involved only the development application (DA) and 'accompanying documents' being made publicly available during the DA assessment period for all applications. After the DA had been determined, other 'associated documents' were made available. The Council recognised that 'accompanying documents' were, in fact, documents that were included as open access documents under the GIPA Regulation.

The IPC met with Council representatives and confirmed that the approach was not supported. The IPC undertook to provide guidance to ensure that the Council was aware of the open access requirements of the GIPA Act.

The IPC provided advice to Council in writing to confirm the following:

- The approach adopted was contrary to the requirement that an agency make open access information publicly available (sections 6 and 18(g) of the GIPA Act and clause 4 of the GIPA Regulation)
- The approach was also contrary to the requirement that an agency apply the public interest test to the particular government information in issue, including where the information contains personal information
- Council's approach to delaying or limiting access to 'associated documents' prescribed by clause 4(1) of the GIPA Regulation as open access information, until after the determination of the DA, is contrary to the open access obligations and the object of the GIPA Act.

The IPC also communicated this advice to councils through the Regional Organisations of Councils.

The IPC has issued relevant guidance to support compliance:

- [The GIPA Act: Agency systems, policies and practices – guidance for principal officers](#)
- [The role of principal officers and senior executives in supporting the object of the GIPA Act](#)
- [Open access information under the GIPA Act – agency requirements](#)

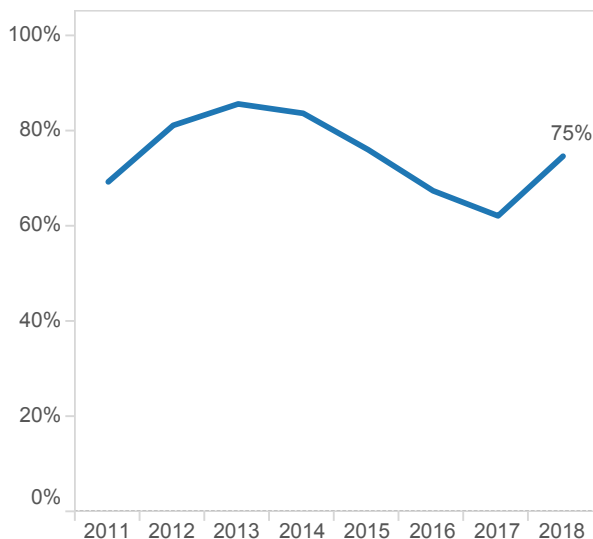
# Pathway 2: Authorised proactive release of information

## Agency reviews of programs for release of government information are increasing

Agencies are required to conduct reviews of their program for the release of government information, at least annually (section 7(3) of the GIPA Act).

In 2017/18, 75% of agencies reported having conducted a review of their program for the release of government information. This is a significant increase from 63% in 2016/17 which was the lowest level reported (Figure 2).

**Figure 2: Agencies that conducted annual information release reviews, as a percentage of all agencies that reported, 2010/11 to 2017/18**

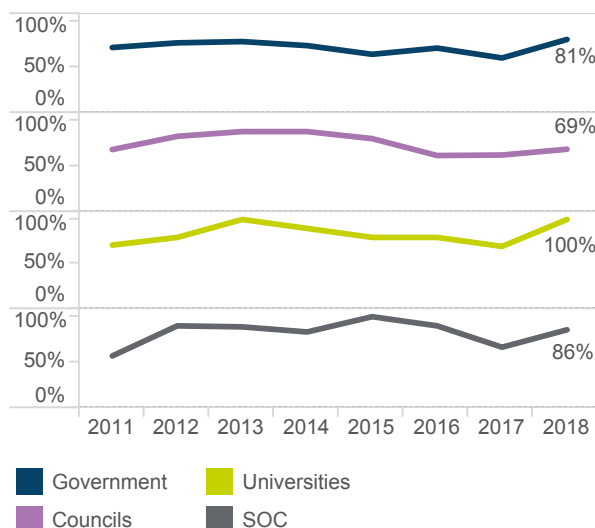


The increase is apparent across all sectors, with the government and universities sectors showing significant improvement (Figure 3):

- 81% of agencies in the government sector conducted reviews – a significant increase from 60% reported to the IPC in 2016/17
- 69% of councils conducted reviews – a moderate increase from 63% in 2016/17

- 100% of universities conducted reviews – a significant increase from 70% in 2016/17
- 86% of state owned corporations conducted reviews – a moderate increase from 80% in 2016/17.

**Figure 3: Agencies that conducted annual information release reviews, as a percentage of all agencies that reported, by sector, 2010/11 to 2017/18**



Since July 2015, the IPC has focused on assisting agencies with proactive release programs in recognition of declining compliance with this obligation, first identified in 2013/14. This program to elevate compliance has included production of fact sheets, case studies, info-graphics and advocacy through the Open Data Advocate work program.

During 2017/18 the IPC worked with agencies that have demonstrated ongoing non-compliance, including an examination of governance practices and accountability within agencies to ensure compliance with this mandatory requirement of the GIPA Act. These positive results demonstrate the effectiveness of IPC interventions and a high level of commitment and responsiveness by agencies.

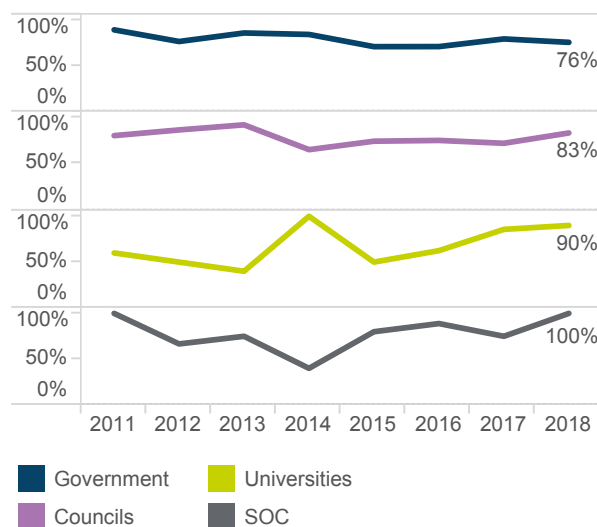
The IPC also enhanced the GIPA Tool to remind agencies that the conduct of reviews is mandatory.

## Release of additional information following a review increased significantly in the SOC sector

Ideally, all agency information release reviews should result in additional information being released. In 2017/18, 82% of agencies that conducted a review released additional information. This is an increase from 75% in 2016/17. Figure 4 shows the trends in the percentage of reviews leading to the release of additional information and shows:

- 76% of agencies in the government sector released additional information following review – consistent with 2016/17
- 83% of councils released additional information following review – a significant increase from 72% in 2016/17
- 90% of universities released additional information following review – consistent with 2016/17
- 100% of state owned corporations released additional information following review – a significant increase from 75% in 2016/17.

Figure 4: Agencies that released additional information as a percentage of agencies that conducted a review, by sector, 2010/11 to 2017/18



### Issue Highlight: Practices to promote proactive release of information to the public

#### Integrate a commitment to proactive release into the agency's corporate culture

- Transport for NSW has implemented a Proactive Disclosure Committee with representatives from across the transport cluster. The Committee meets quarterly to discuss categories of information that can be considered for proactive release and to update the proactive disclosure program.
- Woollahra Municipal Council undertakes regular briefings with Customer Information call centre staff, management and other targeted or new staff to reinforce Council's open and accountable ethos, and Council's responsibilities under the GIPA Act and the relationship to other relevant legislation.
- Western Sydney University has established an Agency Information Guide Review Committee with representatives from across the University. The committee meets regularly to discharge the University's responsibilities under section 7(3) of the GIPA Act.

#### Identify the information that can be released proactively

- NSW State Emergency Services (NSW SES) reviewed its statistics on formal applications and identified that most access applications by members of the public relate to Requests for Assistance. NSW SES has determined that formal applications are not required in order to access this type of information/advice.
- Hawkesbury City Council undertook a review of its Access to Information Policy, with a new policy adopted by the Council in March 2018. A key action under the revised policy is designing a new proactive release program.
- WaterNSW conducts regular reviews of the content and currency of information available on its website and seeks feedback from customers and members of the general public to make accessing its information easier.

#### Improve the accessibility of the information identified for proactive release

- Uralla Shire Council initiated a number of technology projects for the upgrade of existing digital systems and roll-out of e-service technologies to facilitate more efficient support for the ongoing proactive release of information.
- Shellharbour City Council implemented the 'Let's Chat Shellharbour' initiative to provide an online forum for community engagement. Information about current topics and projects is placed on the site and the community is encouraged to have their say and post their ideas, thoughts and contributions.
- Blayney Shire Council has continued promotion of its Rates E-notice project encouraging ratepayers to receive notices electronically enabling them to access a five year rates history.

## Issue Highlight: Transparency in decision making – the NSW Independent Planning Commission

On 1 March 2018, the Independent Planning Commission of NSW was established to fulfil a crucial role in deciding state-significant development and state-wide land-use planning.

The Commission identified that transparency and public trust in its decision making processes was a key priority. To achieve this, the Commission undertook a review of its internal policies and procedures and consulted with stakeholders. This review informed the introduction of new and improved guidelines for public meetings, public hearings, site inspections and locality tours.

Public hearings/meetings provide an opportunity for the Commission to ensure community input to state-significant development applications or planning matters. In recognition of the need for greater transparency and in line with new legislative requirements, the Commission adopted a proactive practice of using audio recordings for all public meetings and public hearings. Recently, the Commission decided to record its meetings with stakeholders when undertaking various functions under the *Environmental Planning and Assessment Act 1979*.

The Commission transcribes these recordings and pro-actively publishes written transcripts on its website. Presentations, submissions, comments and notes provided to the Commission may also be made publicly available on the Commission's website. To balance privacy concerns, the Commission applies reasonable endeavours to remove any personal contact details (other than names) from documents published on its website. There are also limited circumstances where the Commission may decide to withhold part, or all of a transcript, including but not limited to, a real or perceived breach of the law, or to protect the confidentiality of Cabinet information.

Encouraging greater participation in the Commission's processes and promoting community input to inform decision making is a powerful example of better decision making processes and outcomes. It also demonstrates transparency and independence, and fosters responsiveness and expertise, which in turn builds public trust and confidence in the work of the Commission and its decisions.

# Pathway 3: Informal release of information

The informal release of information provides benefits for agencies and citizens and helps to increase access to information. The effectiveness of this pathway can be enhanced through sound agency practices and by linking the pathway to broader agency access mechanisms such as AIGs.

## Agency practices

Agencies can release government information informally, unless there is an overriding public interest against disclosure of the information.

Informal release under the GIPA Act is a quicker and cheaper access option for both the applicant and the agency. Agencies have flexibility in deciding the means by which information is to be informally released. Conditions can also be imposed on the use of the information released.

By highlighting the role of the informal release pathway, agencies can create opportunities to streamline the handling of common requests for information and ensure that citizens are able to avoid the cost, time and effort required to prepare and lodge a formal access application.

In May 2018, the IPC published a knowledge update [Informal release of information](#) to inform the community and agencies about this release pathway and promote the benefits of the informal release of government information.

The IPC recommends that agencies exercise their discretion to deal with requests informally wherever possible, as a way to facilitate and encourage timely access to government information at the lowest reasonable cost. Review rights should also be considered by agencies in discussions with applicants regarding the option to deal with a request for information informally.

## Issue Highlight: *Government Information (Public Access) Regulation 2018*

The GIPA Regulation 2018 commenced on 31 August 2018. The 2018 Regulation replaces and largely replicates the previous 2009 Regulation with only minor technical amendments. These are largely reflective of machinery of government changes.

The GIPA Regulation contains one substantive change which amends the open access requirements for local government in relation to development applications and the records of decisions on development applications.

The effect of this amendment is that from 31 August 2018, the following information no longer falls within the definition of open access information for local government:

- Development applications made before 1 July 2010
- Any associated documents of a development application made before 1 July 2010 which were received before, on, or after 1 July 2010
- The records of decisions (including decisions on appeal) on development applications made before 1 July 2010.

This information remains 'government information' within the meaning of the GIPA Act and can still be the subject of an access application. Local councils should apply the public interest test under Part 2 Division 2 of the GIPA Act when making a decision to release, or refuse access to this information, in the same way as any other access application.

## Issue Highlight: IPC e-Learning

During 2018 the IPC released two e-Learning modules.

### **Open Data**

The IPC's e-Learning course *Open Data* was launched in May 2018 as part of Information Awareness Month, offering significant value to the community and to government.

*Open Data* was designed to help NSW Public Sector employees collect better data that is open and accessible to everyone. It provides a clear understanding of what constitutes good and safe data, how data is identified, and the legal obligations on agencies within NSW regarding the use and release of the information they create and hold. Examples of NSW government agencies using best practice to make valuable information open to the public are also included in the course.

### **Towards Open Government Information in NSW**

This module was released in September 2018 as part of Right to Know Week NSW. It is the first comprehensive guidance to NSW public sector employees, bringing together information management responsibilities in one single training package.

The course provides a framework to assist NSW public sector staff in managing government information and understanding the importance of complying with legislation and policies relating to information management and record keeping.

It also provides useful resources, guidance and links to promote better information management and an increased knowledge of open government, information access, privacy, state records, digital and cyber security responsibilities.

Since release, a total of 217 participants have either completed or commenced the modules.

Both modules were developed with the input of subject matter experts drawn from NSW agencies such as State Archives and Records, the NSW Public Service Commission and the Department of Finance, Services and Innovation, together with the NSW Privacy Commissioner. Their assistance is gratefully acknowledged.

Both modules are currently under review as a result of the recent GIPA Act amendments.



# Pathway 4: Formal applications

## The number of applications lodged continued to increase in 2017/18

The GIPA Act provides citizens with a right to access government information, unless there is an overriding public interest against disclosure.

Agencies must assess each application for information that is received. For valid access applications, agencies must apply the public interest test and balance the factors for, and against the disclosure of the information that is requested.

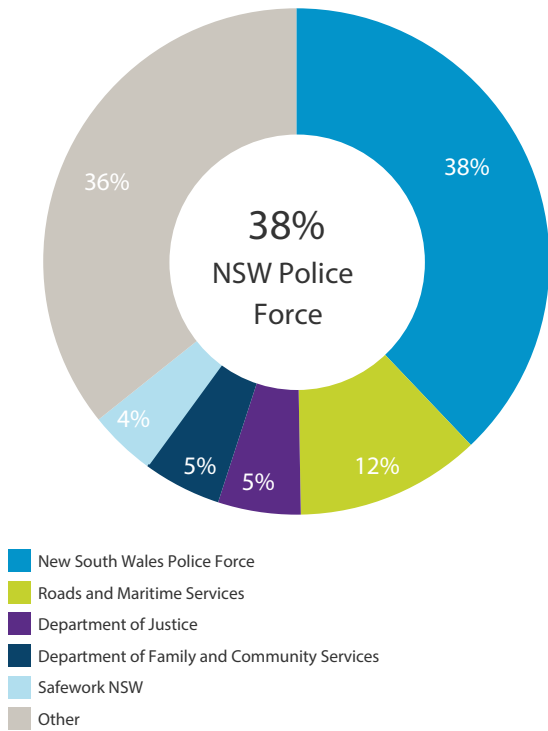
The main benefits of the formal access pathway are:

- The right to seek access is legally enforceable
- Agencies are not subject to the direction or control of any minister in the exercise of the agency's functions when dealing with an access application
- Agencies must apply the public interest balancing test and consult with third parties to whom the information relates. Applicants have a right to seek review of an agency's decision about the application through a number of review avenues: an internal review by the agency, an external review by the Information Commissioner and an external review by NCAT.

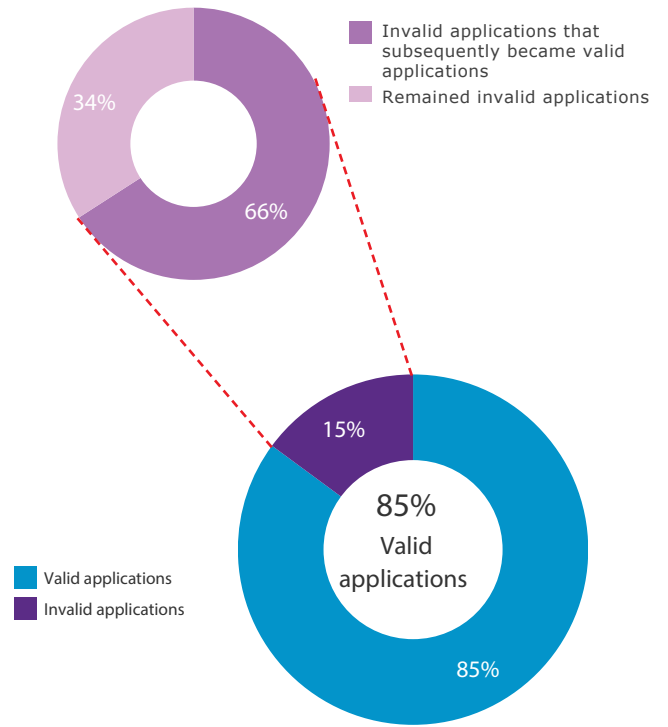
One of the IPC's major initiatives during 2017/18 was to publish on its website a publicly available dashboard enabling easy access and understanding of NSW agencies' operation of the formal pathway. This initiative provides insights for agencies and citizens alike and has been widely commended.

# Year at a glance

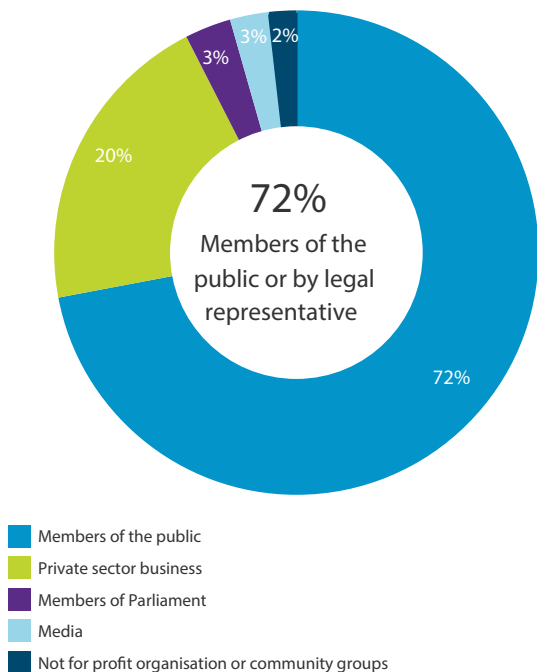
Where were applications lodged?



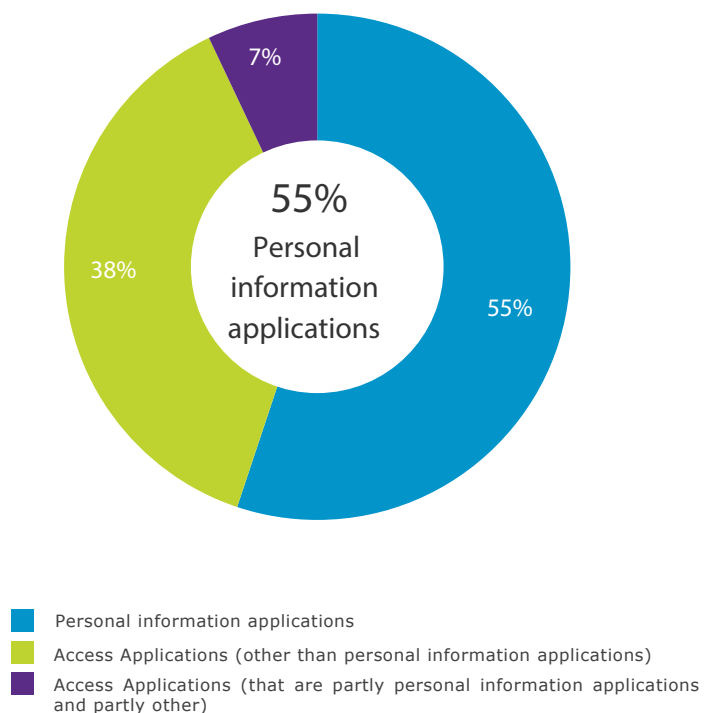
Were applications invalid?



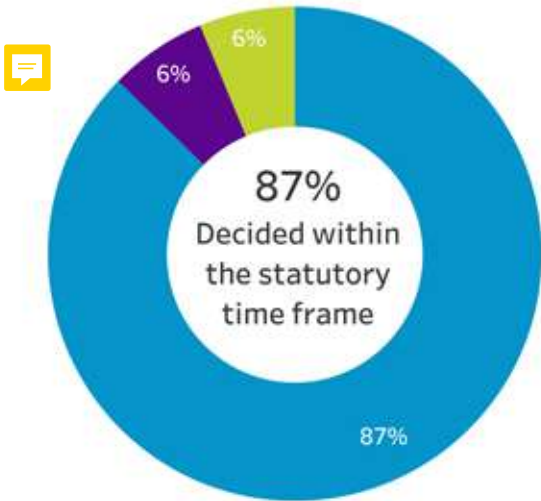
Who applied?



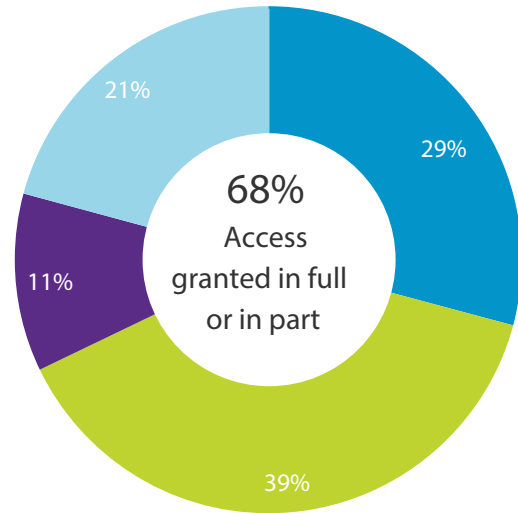
What was asked for?



### How quickly were decisions made?

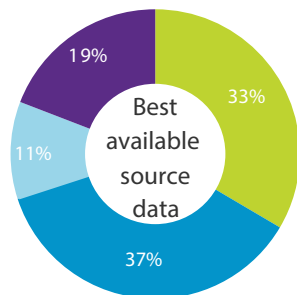
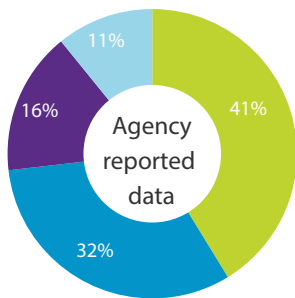


### Did applicants get what they asked for?



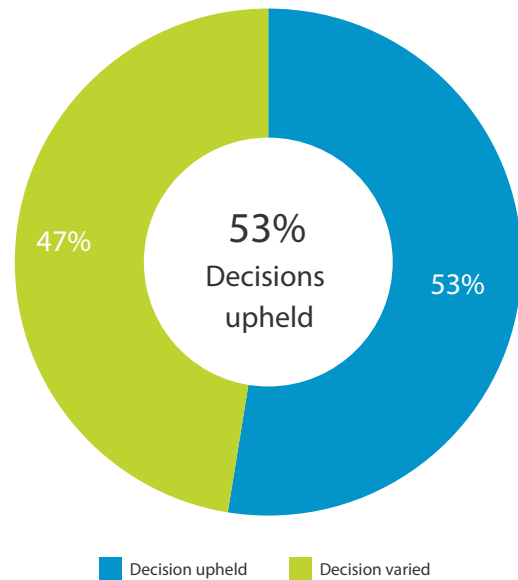
- Decided within the statutory timeframe (20 days plus any extensions)
- Not decided within time (deemed refusal)
- Decided after 35 days (by agreement with applicant)
- Access granted in full
- Access refused in full
- Access granted in part
- Other

### How were decisions reviewed?



- Internal Review
- Review by Information Commissioner
- Review by NCAT
- Internal review following recommendation under section 93 of Act

### What were the main review outcomes?



- Decision upheld
- Decision varied

# How many applications were lodged?

## The number of valid applications received continued to increase in 2017/18

At the time of reporting, agencies advised that they received 15,918 valid applications during 2017/18. This compares with 15,567 valid applications in the previous financial year and represents a total increase of 351 in valid applications received. The trend in applications is shown in Figure 5. It is analogous to the numbers of valid applications received in the first year of operation of the GIPA Act when applications were at an all-time high.

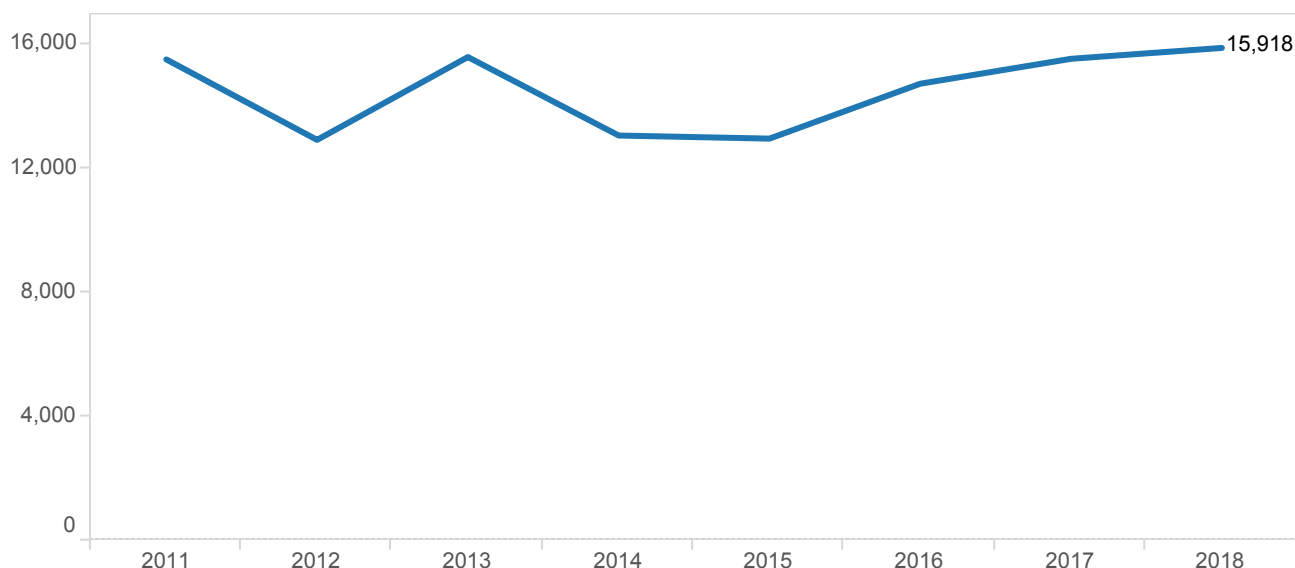
The number of applications received by agencies can be affected by certain factors, such as the type of information sought, the extent to which agencies proactively make information available and the use of the informal access pathway.

## Most applications were made to the government sector<sup>12</sup>

Consistent with previous years, the government sector continued to account for the great majority (13,300 or 84%) of valid applications (Figure 7).

In 2017/18, the NSW Police Force and Roads and Maritime Services combined accounted for 50% of all valid applications (Figure 6). The number of applications received by the NSW Police Force was consistent with 2016/17 and 2015/16. The number of applications received by Roads and Maritime Services continued to increase, rising by 8% in 2017/18 following the previous increase of 10% in 2016/17. Pleasingly Roads and Maritime Services has continued to maintain timeliness with 99% of decisions made within time.

Figure 5: Total number of valid applications received, 2010/11 to 2017/18



*'How many applications were lodged?' is reported and measured by the requirement for agencies to report on the total number of formal applications received during the year and that were assessed as valid in clause 8(b) of the GIPA Regulation.*

<sup>12</sup> Since 2016/17 data is reported across five sectors, including state owned corporations. This will affect comparisons with the published reports in previous years.

The top six agencies by number of applications received has remained consistent since 2015/16. Notable changes in applications received across these agencies were:

- A 12% increase in applications to the Department of Family and Community Services (from 707 in 2016/17 to 802 in 2017/18)
- An 18% decrease in applications to Safework NSW (from 826 in 2016/17, to 675 in 2017/18) returning the volume of applications to the level seen in 2015/16.

### Applications have stabilised in the government and council sectors while increasing in the ministers and state owned corporations sectors

The growth in the number of applications received by the council sector continued with a rise of 7% over 2016/17, consistent with the 7% increase in the previous year. The government sector remained stable with only a 1% increase over 2016/17 compared to rises of 8% and 13% in the previous two years.

Applications received by the minister sector increased by 33% and also increased by 23% in the state owned corporation sector in 2017/18. Both of these sectors receive relatively few applications and their level of applications is therefore more variable.

Figure 6: Distribution of valid applications received, by agency, 2017/18

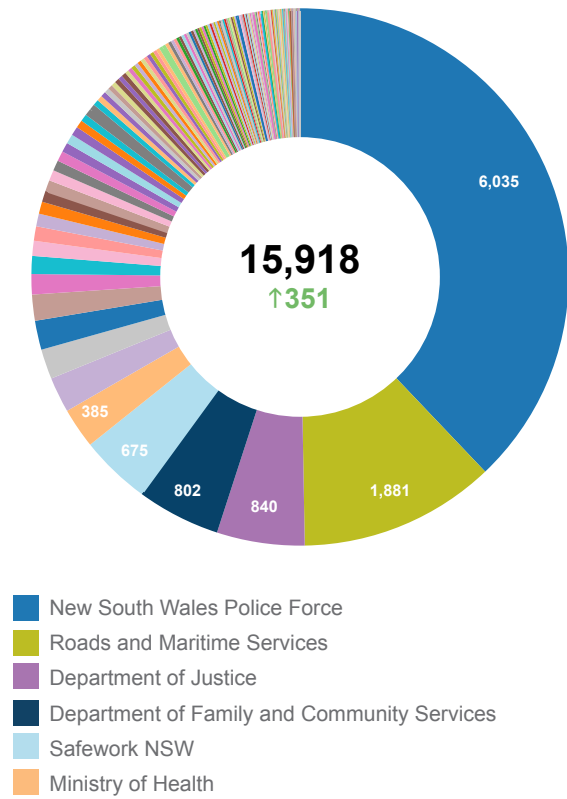
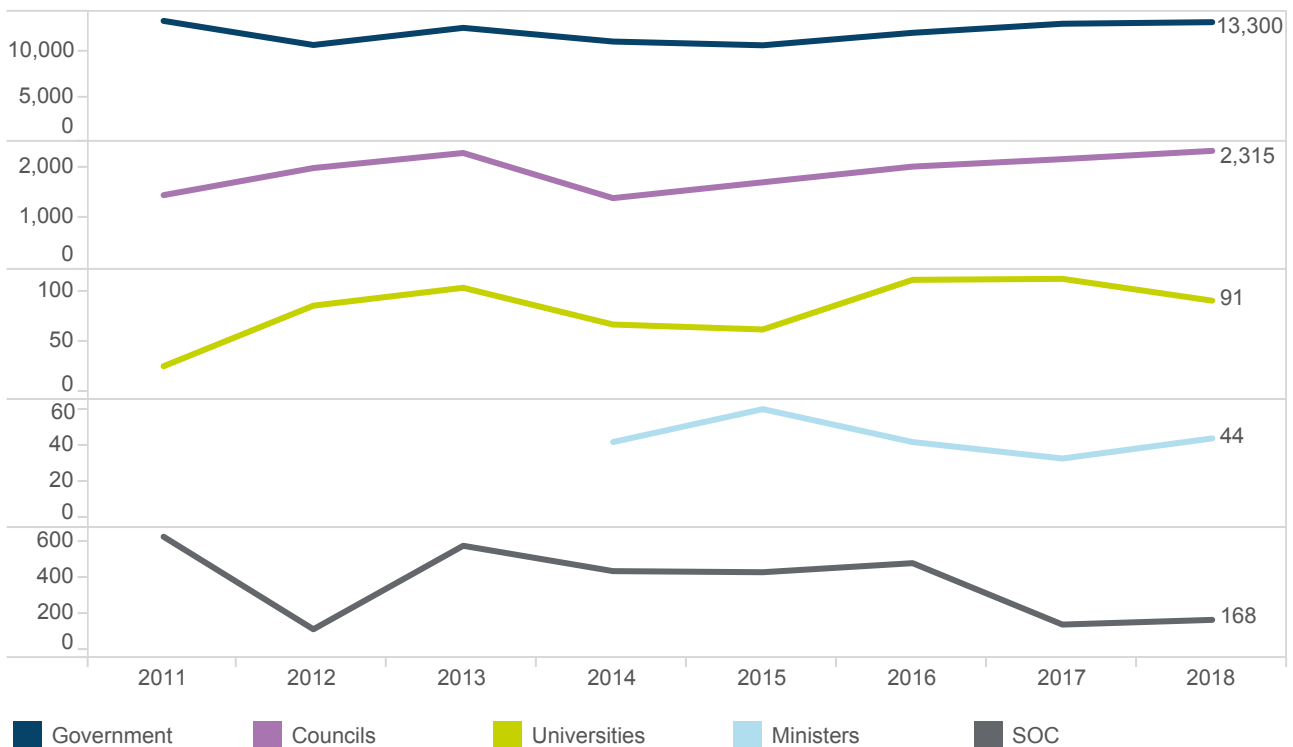


Figure 7: Number of applications received, by sector, 2010/11 to 2017/18



# 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 they can be considered.

Figure 8 shows the flow of applications from receipt to initial assessment and subsequent processing together with the number of applications received in 2017/18.

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 is the highest since the introduction of the GIPA Act

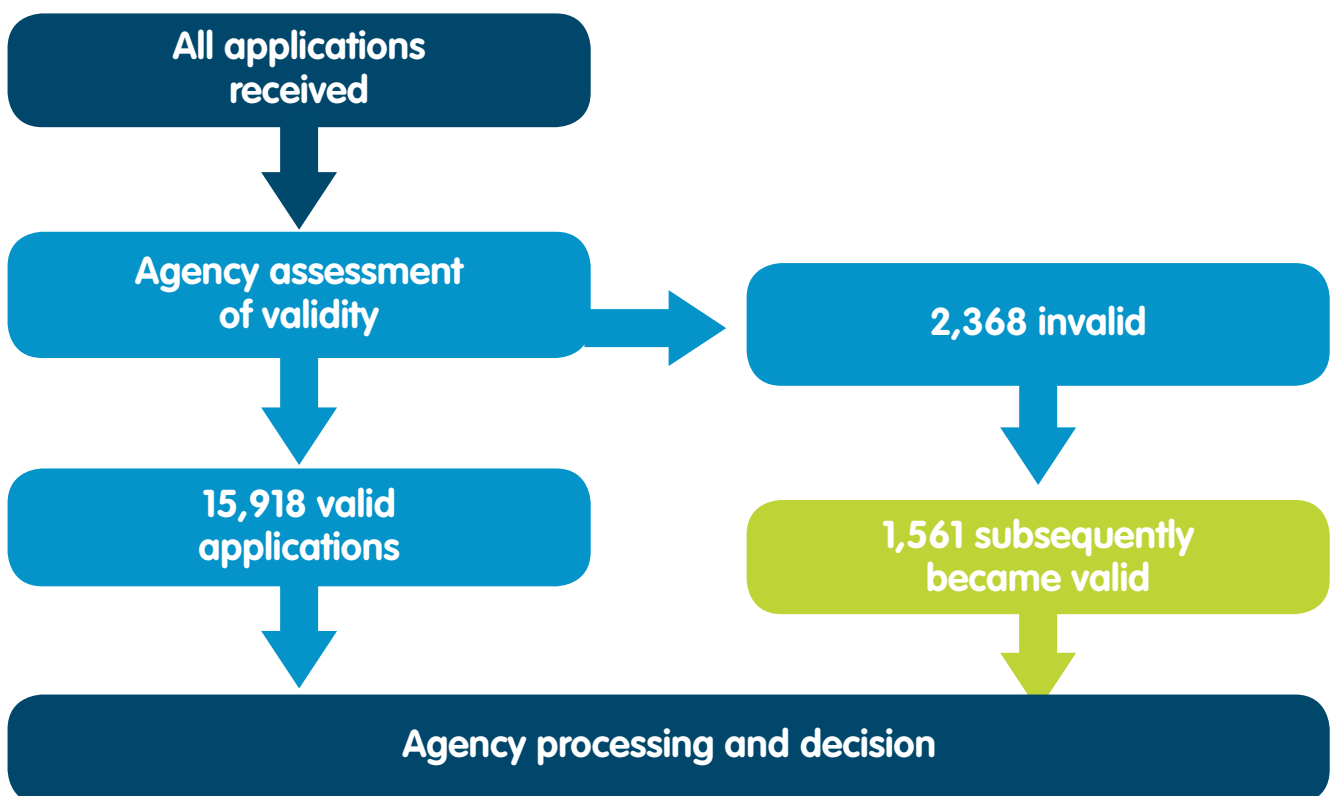
### The rate of invalid applications continued to increase

In 2017/18, agencies received 2,368 invalid applications, equivalent to 15% of all formal applications received (Figure 9). This is the highest level of invalid applications recorded since the introduction of the GIPA Act.

This is a slight increase on the 2,067 or 13% of invalid applications reported in 2016/17.

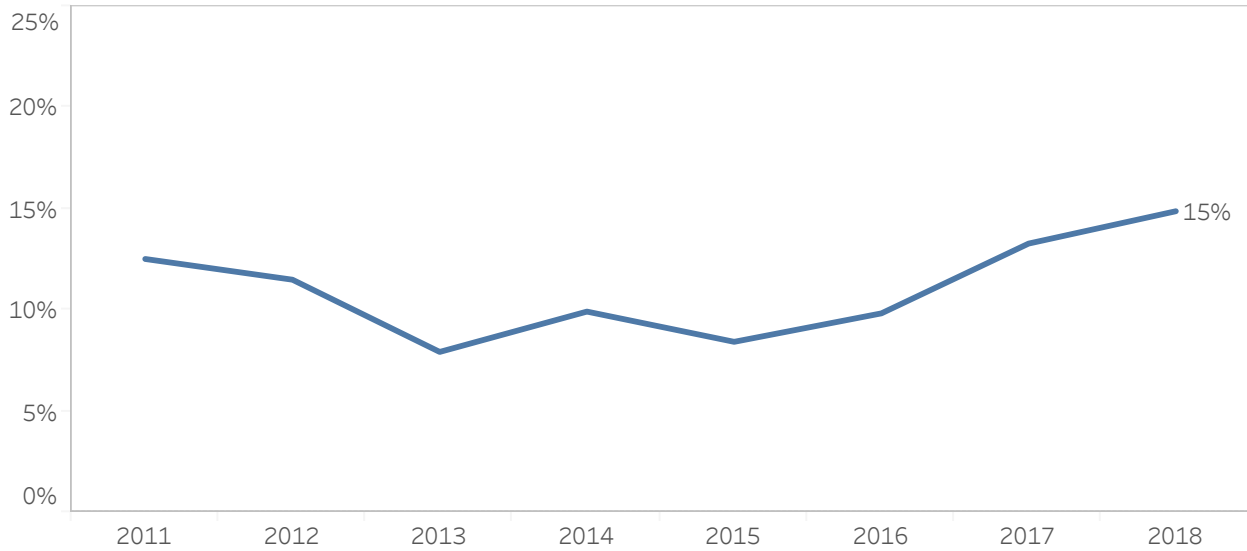
Consistent with previous years, in 2017/18 the most common reason for invalidity (applying in 98% of invalid applications) was that the application did not comply with formal requirements.

Figure 8: Flow of valid and invalid formal applications



*'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, 2010/11 to 2017/18**



The continuing increase in the percentage of applications that were invalid is concerning. As noted in the 2015/16 Report, 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. As set out in submissions to the statutory review of the GIPA Act, electronic lodgement provides advantages for agencies and citizens including instructive guidance to ensure that applications are valid upon lodgement and efficiencies that remove duplication and enable agencies to process applications effectively.

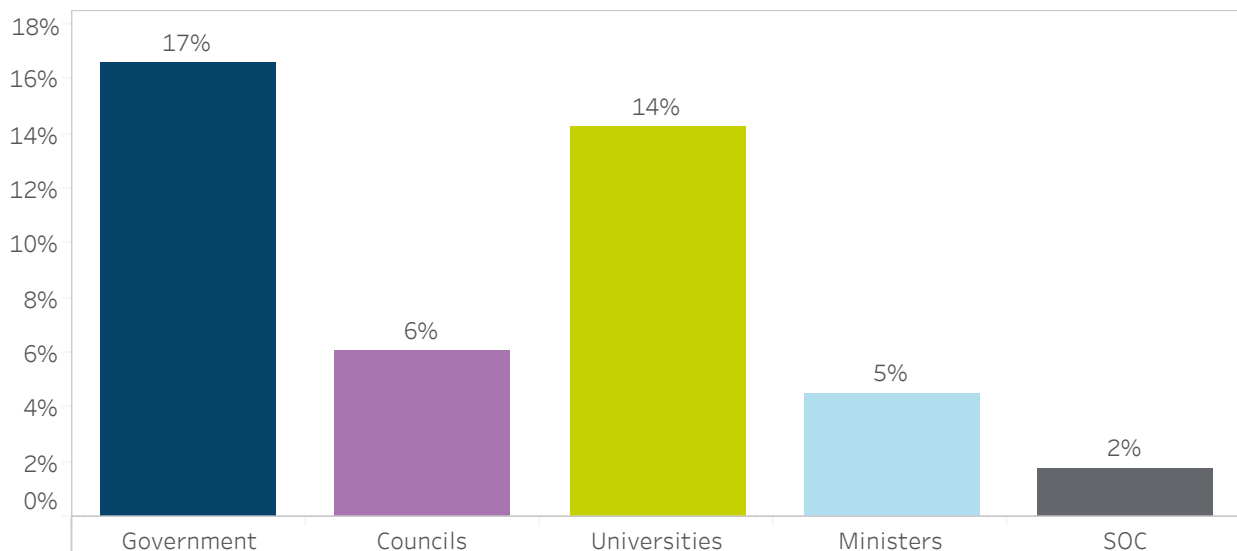
Notwithstanding amendments to the GIPA Act made in November 2018 to remove the requirement for

the Information Commissioner to approve additional facilities to make applications, agencies are encouraged to consult with the Information Commissioner to ensure that these facilities comply with the legislative requirements and are accessible to citizens.

Additional solutions include clear readily accessible guidance, sufficient resourcing to enable applicants to discuss their access requirements, the regular review of information holdings, and proactive release of information by agencies. To better assist applicants, agencies are encouraged to consider these solutions together with a review of their current access application templates.

The introduction of the IPC self-audit tool is designed to promote the review and enhancement of agencies' systems and processes to assist in the exercise of GIPA Act functions. Following its pilot, this tool will be available to all sectors.

**Figure 10: Invalid applications as a percentage of all formal applications received, by sector, 2017/18**



### The government and universities sectors had the highest percentage of invalid applications

The pattern of invalid applications as a percentage of all applications varied across sectors (Figure 10). The government and universities sectors continued to have the highest percentage of invalid applications. These two sectors also recorded the largest increase in invalid applications with the government sector increasing from 15% in 2016/17 to 17% in 2017/18 and the universities sector increasing from 9% in 2016/17 to 14% in 2017/18.

### The number of invalid applications received by some agencies increased significantly

A number of agencies experienced a significant increase in the percentage of applications that were invalid compared with 2016/17. Among major agencies (those who received a large number of applications overall) the percentage rose to:

- 65% (from 35%) for the Department of Justice
- 47% (from 23%) for the Department of Finance, Services and Innovation
- 19% (from 13%) for the Ministry of Health.

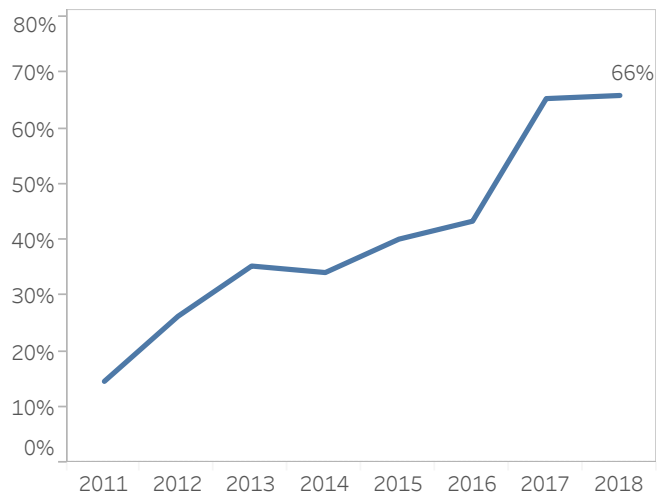
However, it should be noted that many invalid applications subsequently became valid and agencies have reported that their improved triage processes have also resulted in enhanced, targeted information and assistance to applicants. For example, 75% of the invalid applications received by the Department of Justice in 2017/18 subsequently became valid.

Some agencies experienced a decline in the percentage of applications that were invalid compared with 2016/17. The IPC will engage with these agencies and seek to share insights with agencies experiencing increases to assist in the receipt of valid applications. The percentage of invalid applications fell to:

- 33% (from 42%) for Transport for NSW
- 30% (from 33%) for Roads and Maritime Services
- 10% (from 41%) for Sydney Trains
- 7% (from 22%) for the Department of Industry
- 7% (from 20%) for the Department of Education.

Notably, Transport for NSW introduced electronic lodgement of applications during this reporting period.

Figure 11: Invalid applications that became valid, as a percentage of all invalid applications, 2010/11 to 2017/18





## Invalid applications are increasingly becoming valid

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.

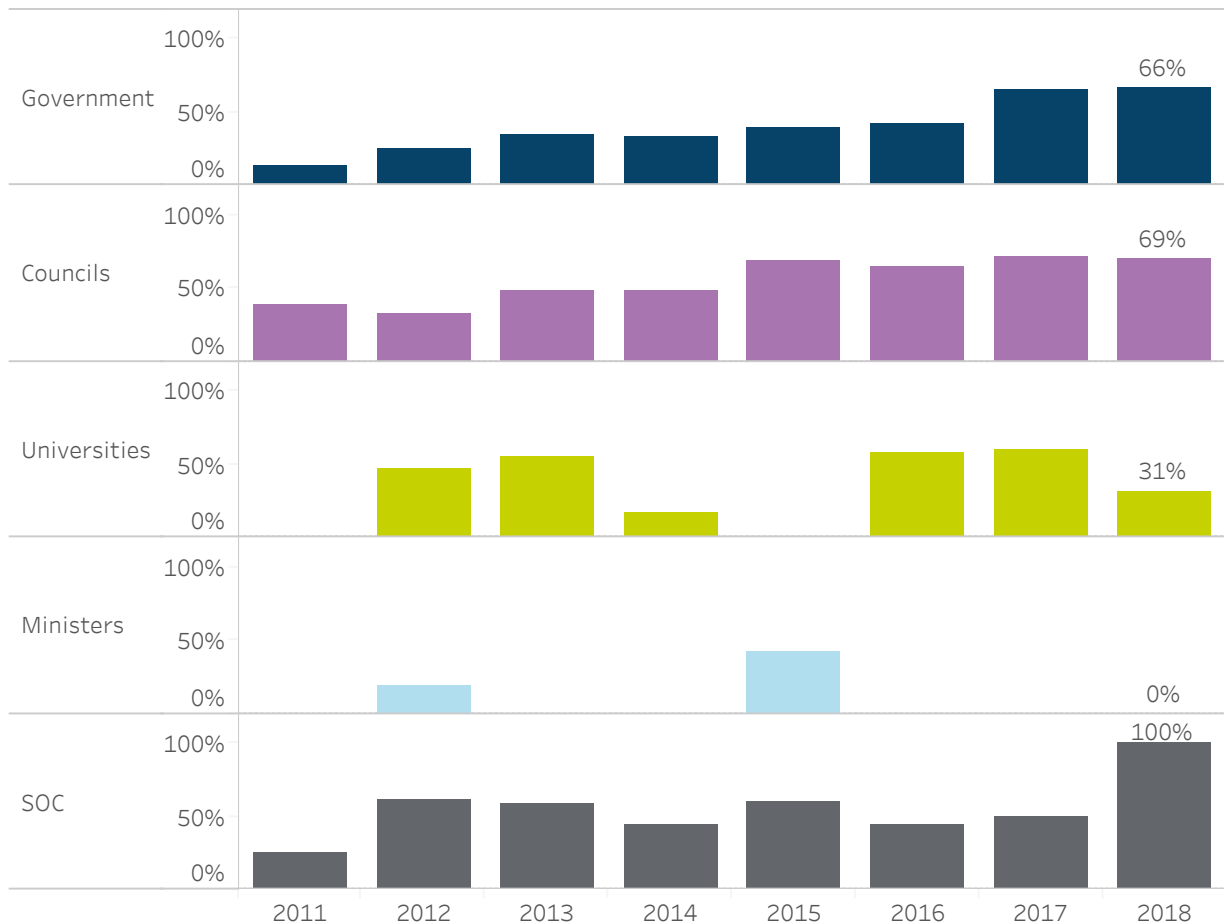
Consistent with 2016/17, 66% of invalid applications subsequently became valid in 2017/18 (Figure 11).

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

- Increased steadily in the government sector from 15% in 2010/11, to 66% in 2017/18
- Declined significantly in the universities sector from 60% in 2016/17, to 31% in 2017/18
- Increased significantly in the state owned corporations sector from 50% in 2016/17, to 100% in 2017/18.

The increase in the percentage of invalid applications that became valid is a positive illustration of agencies discharging their responsibilities under the GIPA Act to assist applicants. However, given the additional work required to assist applicants in this way, the high level of applications becoming valid also represents an opportunity to improve efficiency and timeliness through reducing the number of applications that are initially invalid.

**Figure 12: Invalid applications that became valid, as a percentage of all invalid applications, by sector, 2010/11 to 2017/18**

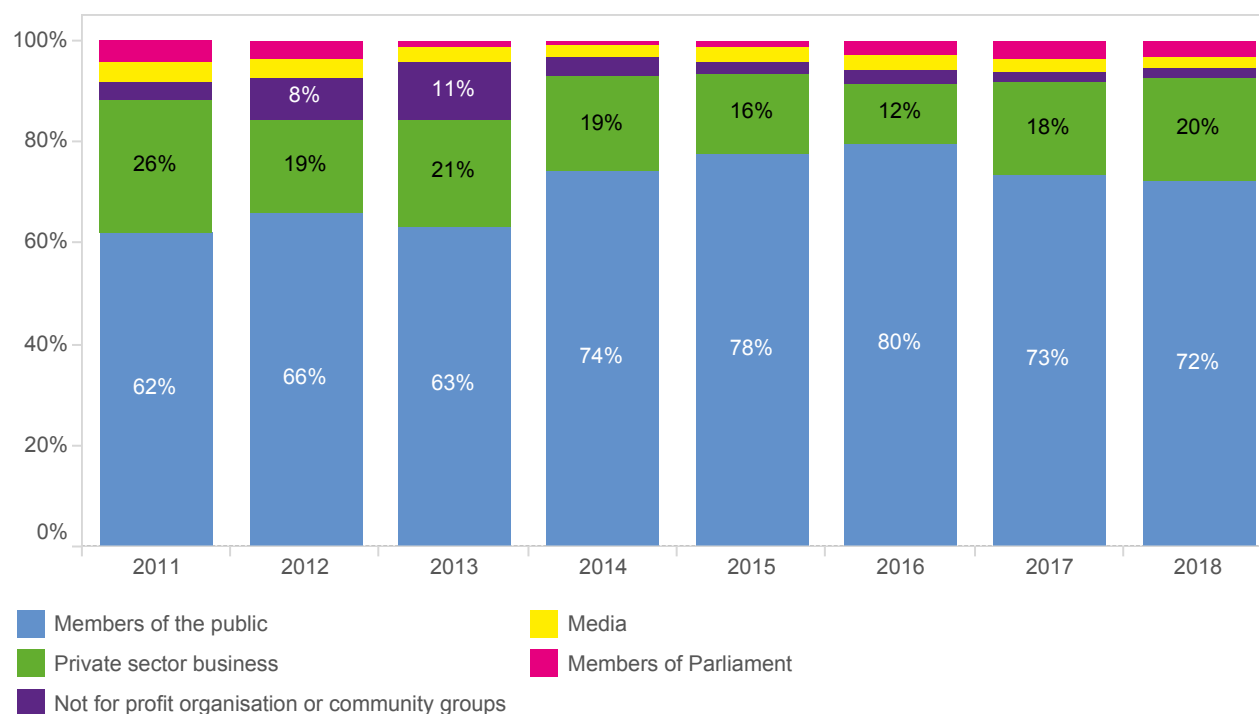


# Who applied?

## Most application outcomes continue to be by, or on behalf of, members of the public

In 2017/18, 72% of all outcomes related to applications from either a member of the public or their legal representative. This is consistent with the 73% reported in 2016/17. The largest single applicant type (37%) was members of the public represented legally.

Figure 13: Trend in the proportion of outcomes, by type of applicant, 2010/11 to 2017/18



## There were increased outcomes for members of the public and significant increases in outcomes for private sector businesses

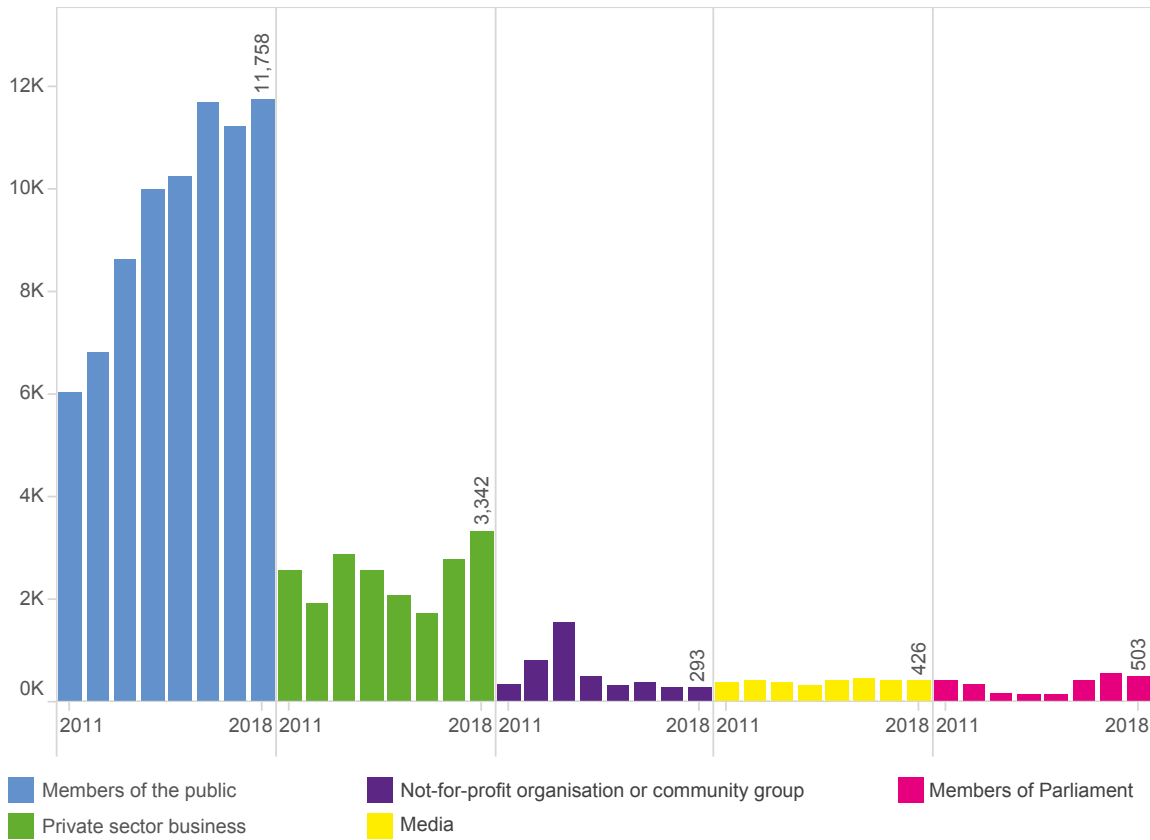
In 2017/18 (as in most years) the greatest number of outcomes was for applications by members of the public, which rose 5% compared with 2016/17. Outcomes for legally represented members of the public remained consistent between 2017/18 and 2016/17 at 37%.

The number of outcomes for private sector business increased significantly by 20%, from 2,787 in 2016/17, to 3,342 in 2017/18. This increase builds on the 32% increase reported in 2016/17 and is now the highest level recorded of outcomes for private sector businesses.

Further analysis of this data confirms that the increase in outcomes for applications lodged by private sector businesses is referable to two government agencies – the NSW Police Force and Roads and Maritime Services. Together these two agencies account for 87% of applications lodged by private sector business in the government sector.

*'Who applied' is reported and measured by the requirement for agencies to report on the number of outcomes for applications by type of applicant. As an application can have multiple outcomes, the total number of outcomes reported in this section will usually be higher than the number of applications reported. This section draws on data from Table A of Schedule 2 to the GIPA Regulation.*

Figure 14: Number of outcomes, by type of applicant, 2010/11 to 2017/18



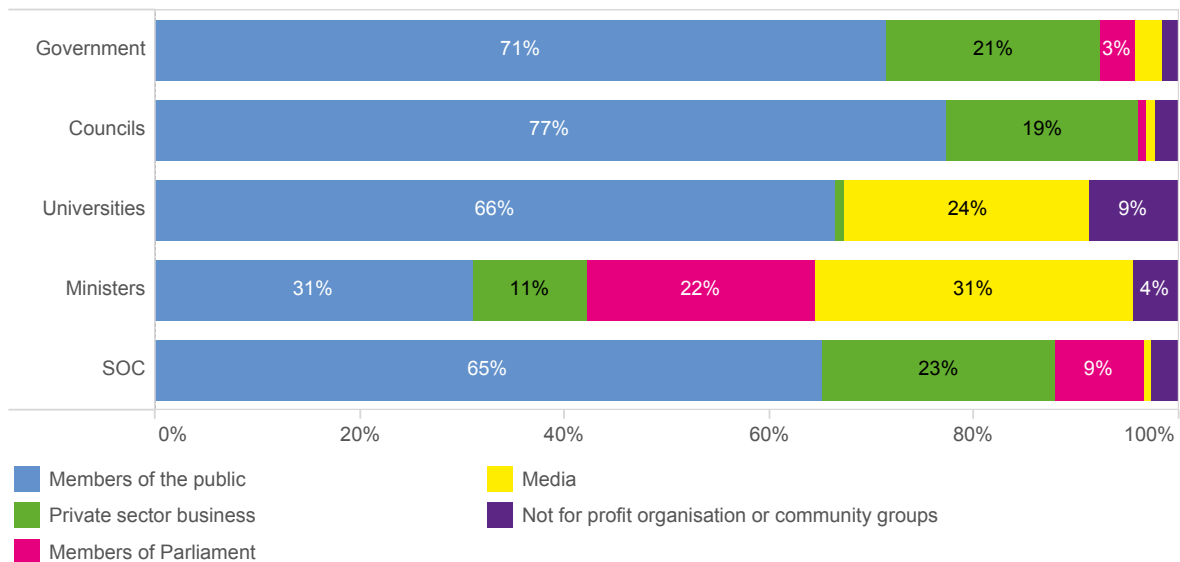
### Significant changes in applicant type were experienced in the universities and ministers sectors

In 2017/18, the distribution of applicant types varied markedly across sectors. Percentages remained stable in the government and council sectors.

Notable changes by sector since 2017/18 were:

- Universities sector – an increase in the percentage of outcomes related to the media, from 15% to 24%
- Ministers sector – an increase in the percentage of outcomes related to the media, from 21% to 31%
- State owned corporations sector – an increase in the percentage of outcomes related to private sector businesses, from 12% to 23%.

Figure 15: Percentage of outcomes, by sector and type of applicant, 2017/18





# What information was asked for?

## Personal information applications outcomes and partly personal applications outcomes increased significantly

As Figure 16 shows, in 2017/18:

- Outcomes that were partly personal information and partly other information increased significantly by 149% (from 460 outcomes in 2016/17 to 1,147 in 2017/18)
- Personal information application outcomes also increased significantly by 14% (from 7,911 outcomes in 2016/17 to 8,998 in 2017/18)
- ‘other than personal information’ outcomes declined by 11% (from 6,909 outcomes in 2016/17 to 6,177 in 2017/18).

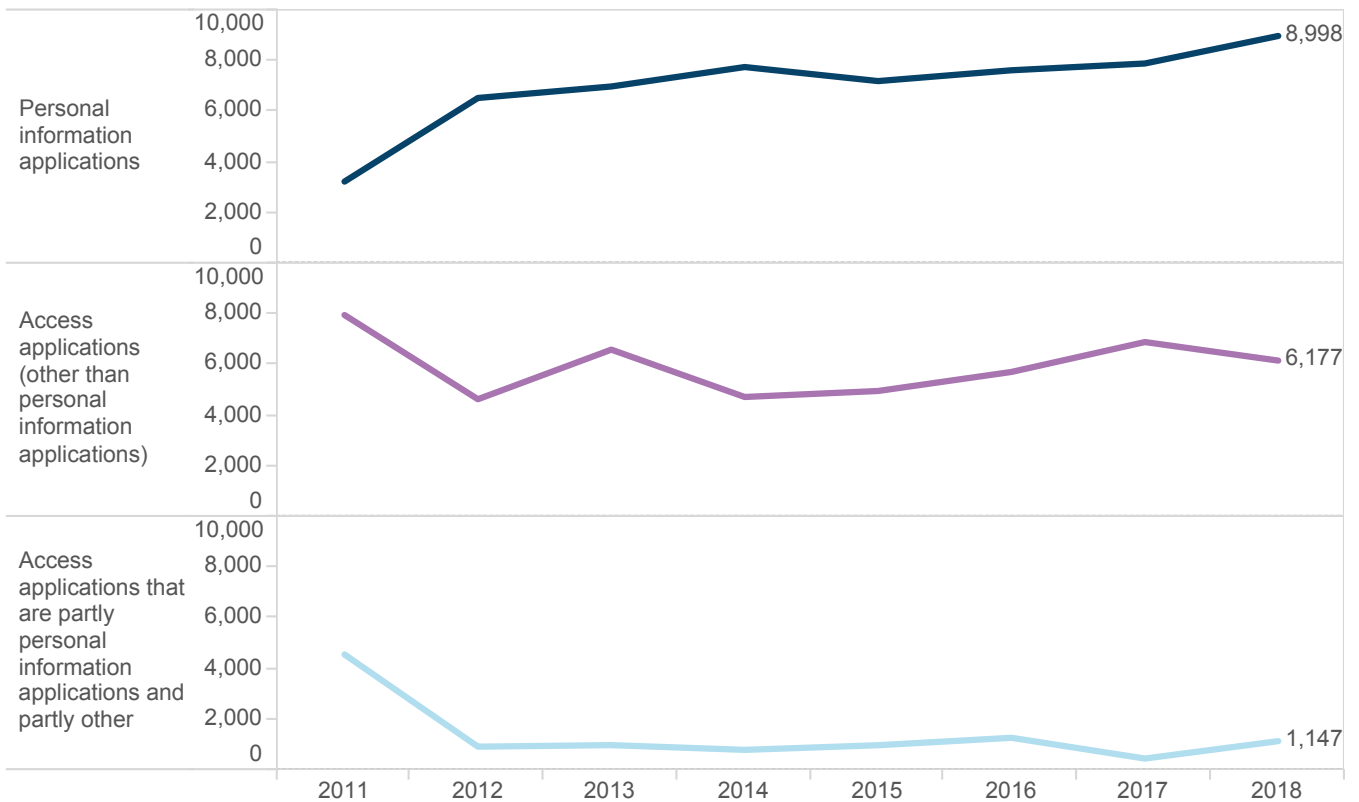
## The type of information sought varied across sectors, and in the state owned corporations sector applications for personal information significantly declined

Notwithstanding the significant increase in the number of outcomes for personal information, the percentage of outcomes remained relatively proportionate to previous years with the greatest change being the decrease in outcomes for ‘other than personal’ applications.

In 2017/18:

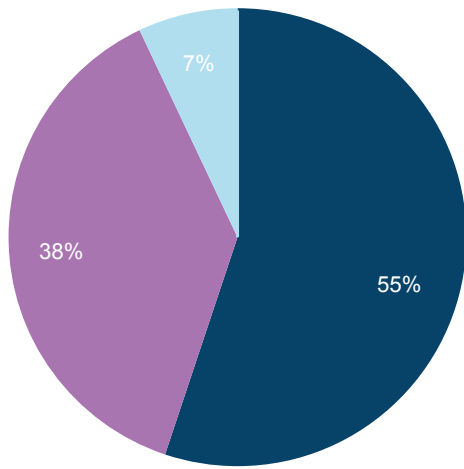
- 55% of outcomes related to applications for personal information, compared with 52% in 2016/17
- 38% of outcomes related to applications for ‘other than personal information’, compared with 45% in 2016/17

Figure 16: Outcomes by type of information applied for, 2010/11 to 2017/18



‘What information was asked for?’ is reported and measured by the requirement for agencies to report on the number of outcomes for applications made for personal information, other than personal information, or a combination of both types of information from Table B, Schedule 2 to the GIPA Regulation.

**Figure 17: Number of outcomes, by type of information applied for, 2010/11 to 2017/18**



■ Personal information applications  
■ Access applications (other than personal information applications)  
■ Access applications that are partly personal information applications and partly other

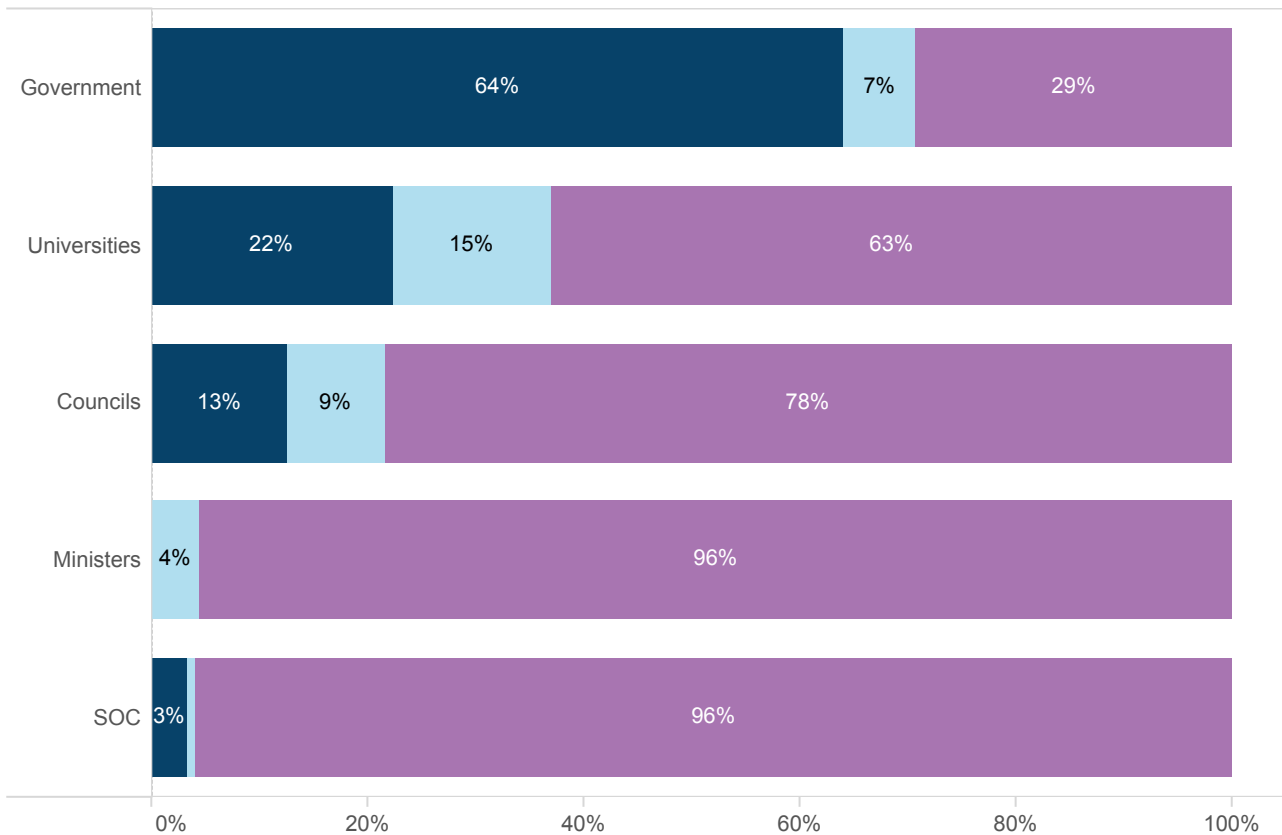
- 7% of outcomes related to applications for both types of information, compared with 3% in 2016/17 (Figure 17).

Different sectors experienced markedly different patterns of outcomes in 2017/18.

In 2017/18:

- The number of applications for 'other than personal information' in the state owned corporations sector remained consistent with 2016/17, accounting for 96% of all outcomes in this sector
- In the council sector, 78% of outcomes related to applications for 'other than personal information', compared to 85% in 2016/17
- In the universities sector, 63% of outcomes related to applications for 'other than personal information', compared to 50% in 2016/17. In the government sector, 64% of outcomes related to applications for personal information, consistent with 2016/17 (Figure 18).

**Figure 18: Percentage of all outcomes, by type of information applied for, 2017/18**



■ Personal information applications  
■ Access applications (other than personal information applications)  
■ Access applications that are partly personal information applications and partly other

# Did applicants get what they asked for?

## Overall 'release rates' have declined slightly

In 2017/18, the overall release rate was 68%, representing the combined access granted in full and in part outcomes (Figure 19). This is a slight decrease (3%) on the combined release rate of 71% in 2016/17. Release rates were relatively stable in the largest sectors (government, council and universities sectors) with only minor changes from the previous year.

At the sector level (Figure 20), in 2017/18 the state owned corporations sector had the highest release rate of 84%. Although a slight increase compared to the 80% in 2016/17, this represents a decline from the release rate of 93% reported in 2015/16.

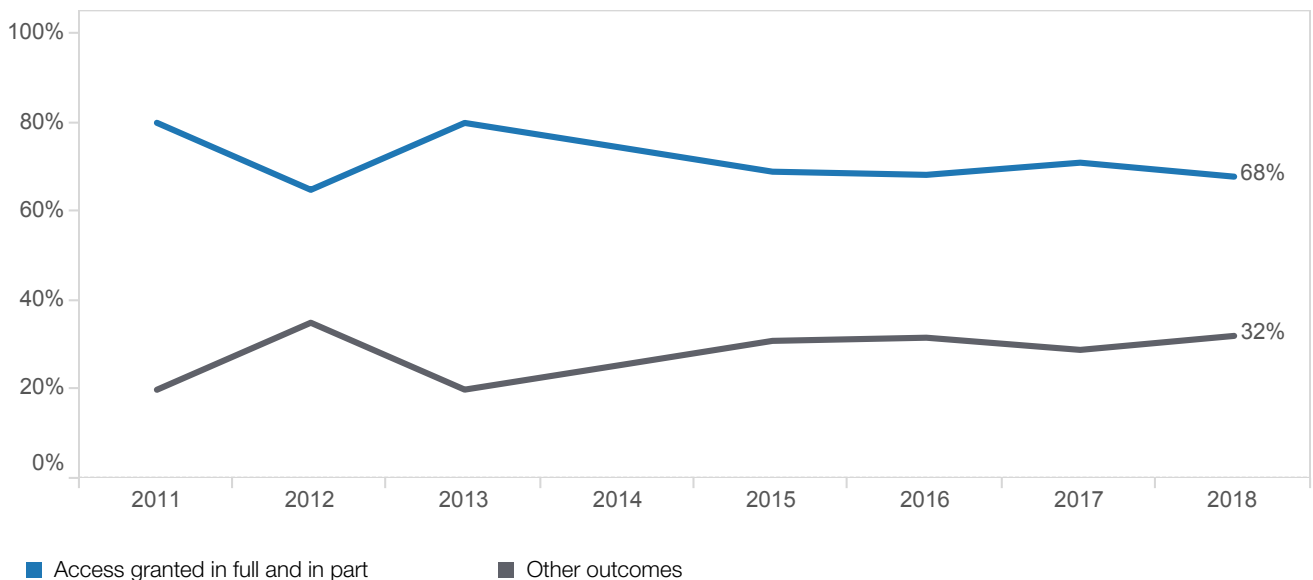
For the council sector, 72% of outcomes granted access in full and in part in 2017/18, representing a slight increase on the 70% in 2016/17.

For the government sector, 67% of outcomes resulted in access being granted in full and in part in 2017/18. This is a slight decline on the 70% reported in 2016/17.

For the universities sector, 70% of outcomes granted access in full and in part in 2017/18, similar to the 69% reported in 2016/17.

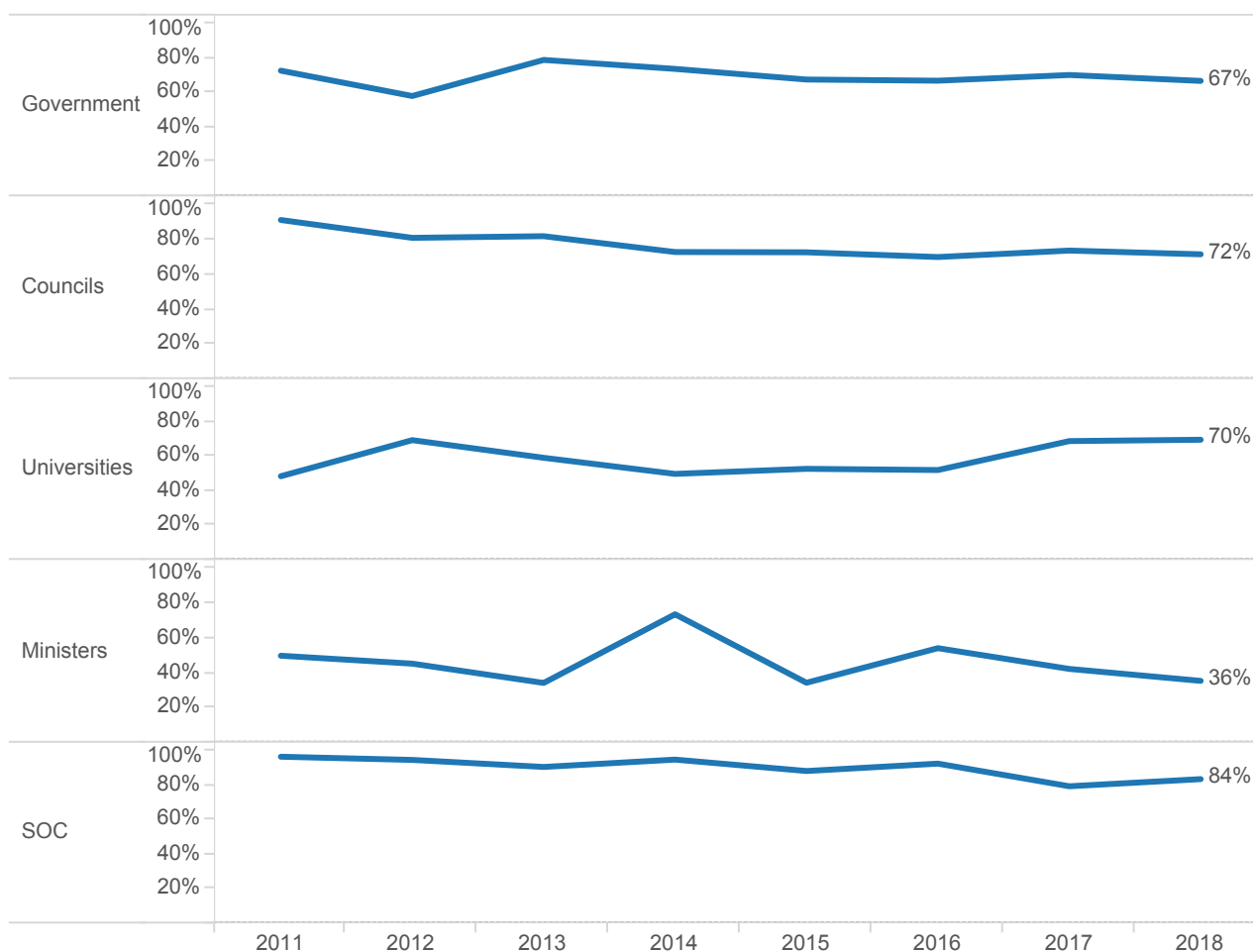
The ministers sector demonstrated a further decline in access being granted in full and in part with a release rate of 36% in 2017/18, compared to 42% in 2016/17 and 54% in 2015/16. This variation should be considered in the context of information holdings and the overall low numbers of applications (44) received by the ministers sector.

Figure 19: Overall release rate across all sectors, 2010/11 to 2017/18



'Did applicants get what they asked for?' is reported and measured by the requirement for agencies to report on the outcomes of applications for information by the type of applications (listed in Table A of Schedule 2 to the GIPA Regulation) and the type of information that is applied for (listed in Table B of Schedule 2 to the GIPA Regulation). The term 'other outcomes' refers to the following outcomes – access refused in full, information not held, information already available, refuse to deal with application, refuse to confirm or deny whether information is held and application withdrawn.

Figure 20: Overall release (access granted in full and in part) rate, by sector, 2010/11 to 2017/18



### Applicants were more likely to be granted access in part than access in full

In 2017/18, 29% of all outcomes granted access in full (Figure 21). This is consistent with results over the previous two years.

Access granted in part outcomes were similar to previous years at 39%, compared with 42% in 2016/17. For each year since 2012/13 there have been more outcomes granting access in part than granting access in full.

Figure 21: Release outcomes across all sectors, 2010/11 to 2017/18

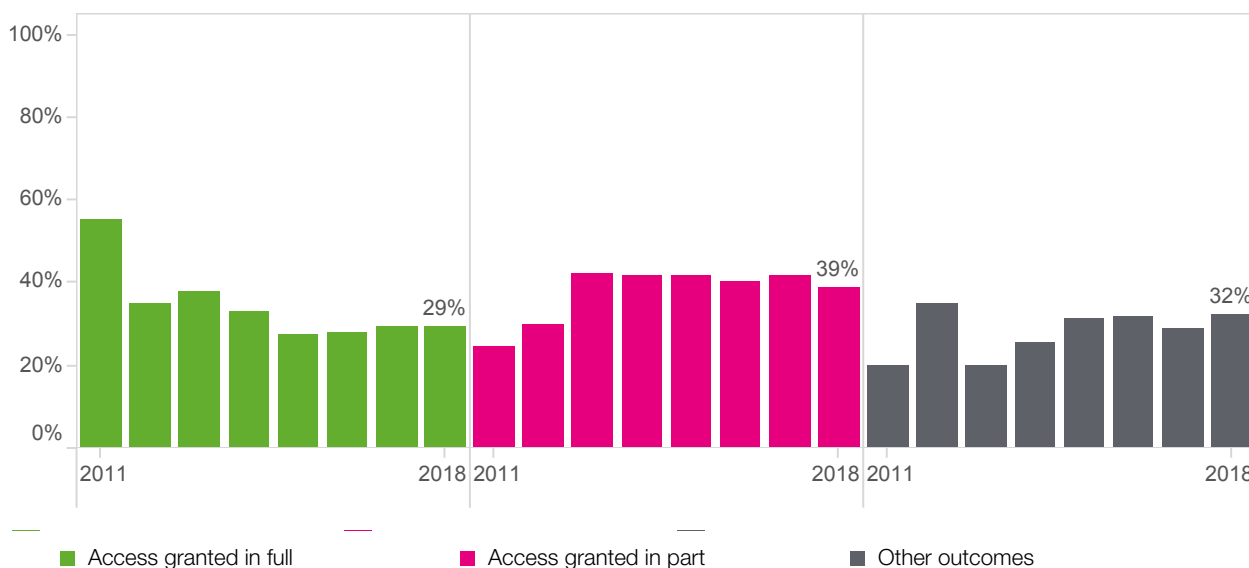
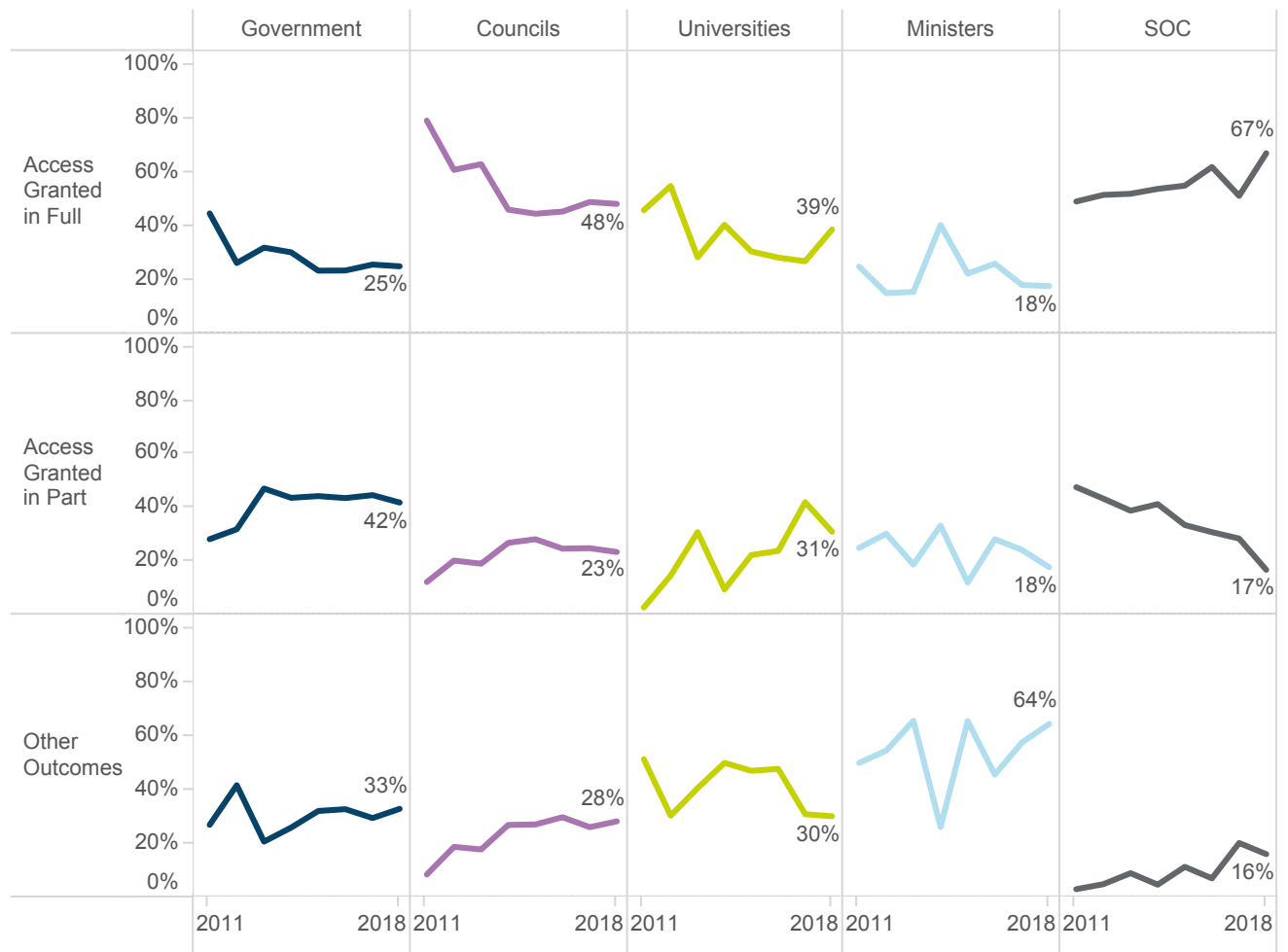




Figure 22: Release outcomes, by sector, 2010/11 to 2017/18



**There is a decline in overall release rates for applications seeking partly personal information and partly ‘other information’**

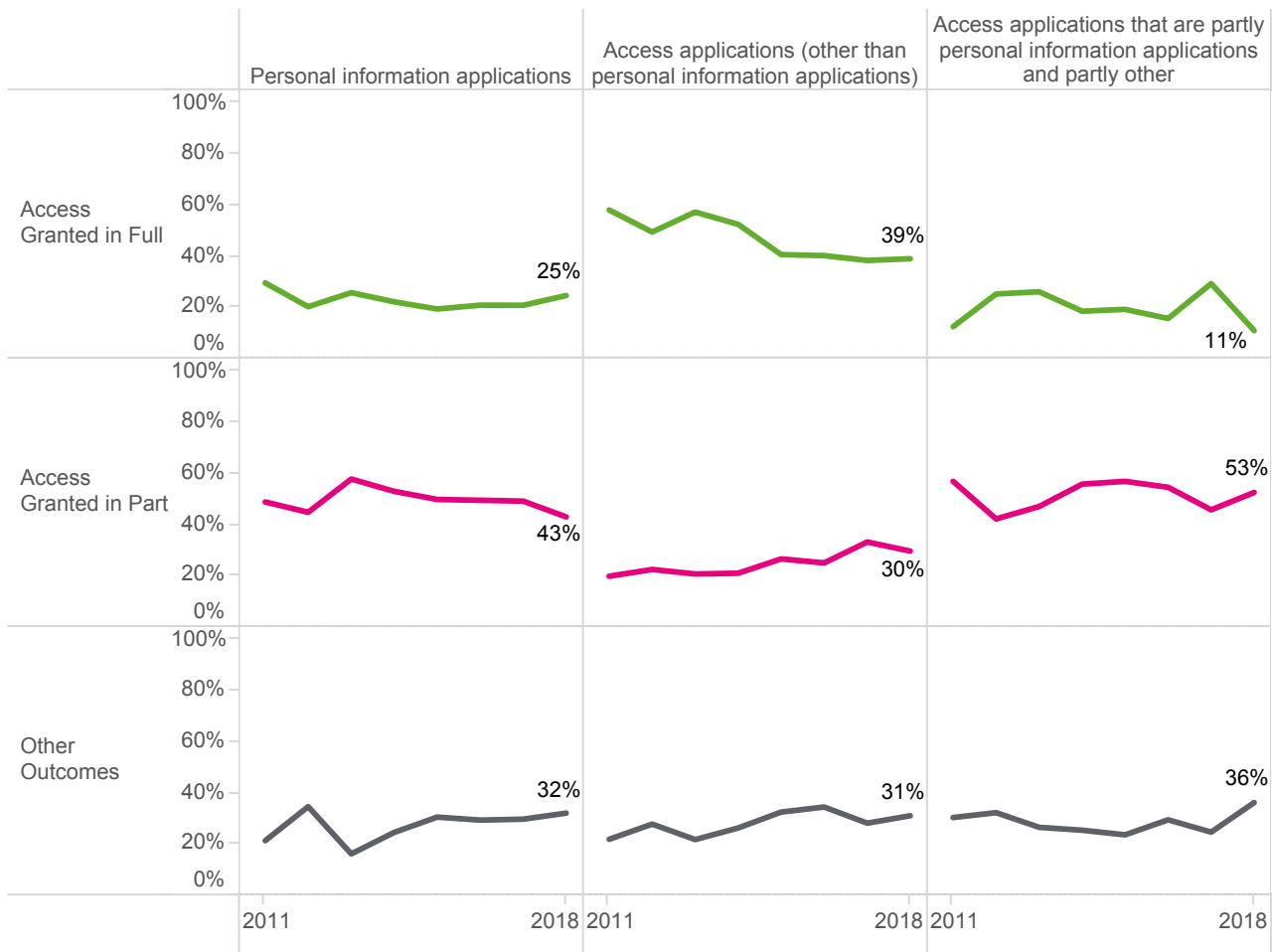
The most significant decline in release rates occurred in applications that sought partly personal and partly other information, from a total of 75% in 2016/17, to 64% in 2017/18. Release in full declined from 29% in 2016/17, to 11% in 2017/18. However, release in part increased from 46% to 53% in 2017/18 (Figure 23). This change may represent application of redaction mechanisms and better reporting by agencies.

The overall release rate of information for applications for personal information declined slightly from 70% in 2016/17, to 68% in 2017/8. The release rate for ‘other than personal information’ also declined slightly to 69% in 2017/18, from 71% in 2016/17.

In examining the 2017/18 release rates for these three categories, key trends were that: (Figure 23):

- There was a decline in the overall release rates for applications seeking partly personal and partly ‘other information’, with access granted in full and in part at 64%, compared with a 75% in 2016/17
- 25% of all outcomes for applications for personal information granted access in full, representing an increase from the 21% reported in 2016/17, while 43% of all outcomes granted access in part, a decline from the 49% reported in 2016/17
- 39% of all outcomes for applications for ‘other than personal information’ granted access in full and 30% of all outcomes granted access in part, consistent with the 2016/17 release rates.

Figure 23: Release outcomes, by application type, 2010/11 to 2017/18



### Release rates for not-for-profit organisations or community groups have increased significantly

The most significant trend in release rates from the previous year was in relation to not-for-profit organisations or community groups with a release rate of 65% in 2017/18, compared with 48% in 2016/17. This change represents relative equity for the first time in release rates across members of the public, private sector businesses, members of parliament and not-for-profit or community groups.

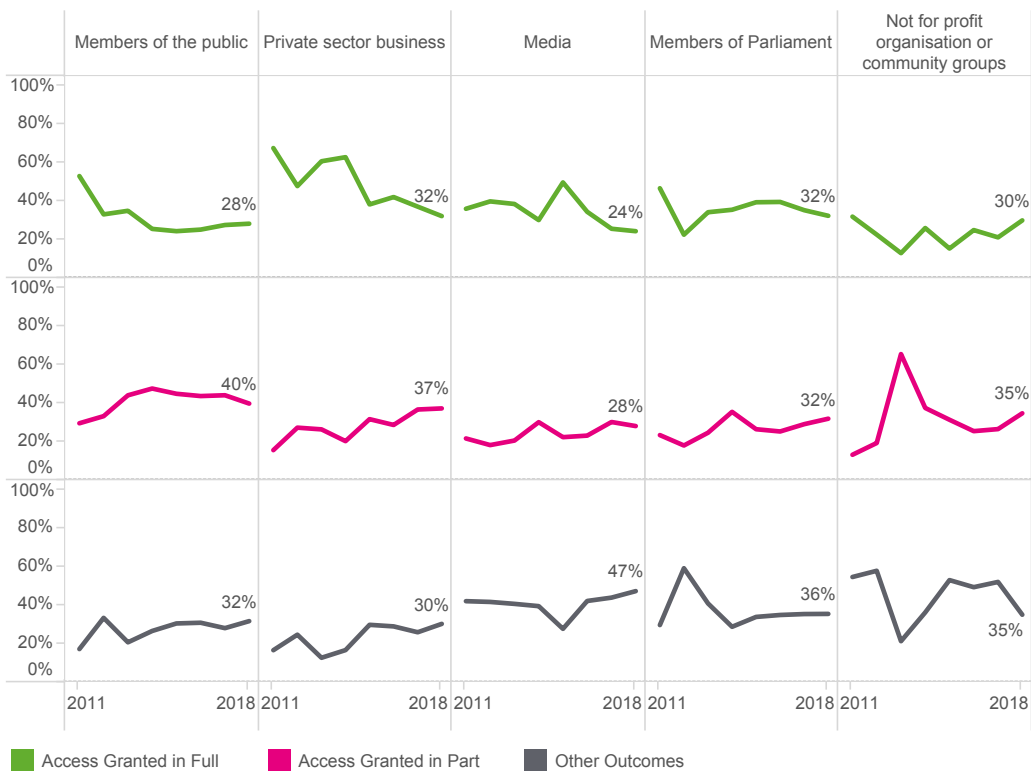
The lowest overall release rate (52%) was for members of the media, a decline from 56% in 2017/18.

The highest release rates in 2017/18 were for applications by private sector business (69%) and members of the public (68%) (Figure 24).

The composition of outcomes for the top two applicant types varied in 2017/18 compared with 2016/17 in relation to private sector business, but remained consistent for members of the public and legally represented members of the public:

- For members of the public, 28% of outcomes granted access in full and 40% granted access in part – a slight decline from the 44% granted in part reported in 2016/17
- For private sector business, 32% of outcomes granted access in full – a slight decline from the 37% in 2016/17, while 37% granted access in part, consistent with 2016/17.

Figure 24: Outcomes, by applicant type, 2010/11 to 2017/18



### Case Study: Unreasonable and substantial diversion of agency resources

Agencies are able to refuse to undertake searches for information and refuse to deal with an access application if dealing with the application would require an unreasonable and substantial diversion of agency resources. This is a significant curtailment of information access rights and it can only be relied upon if certain conditions are met.

The IPC has addressed the need for guidance regarding the 2018 amendments to the GIPA Act that deal with the operation of this aspect of the legislation with the fact sheet [Unreasonable and substantial diversion of agency resources](#).

The GIPA Act does not define what is meant by an unreasonable and substantial diversion of resources. However, section 60(3A) now provides that in deciding whether dealing with an application would require an unreasonable and substantial diversion of the agency’s resources, the agency may, without limitation, take into account the following factors:

- The estimated volume of information involved in the request
- The agency’s size and resources
- The decision period under section 57.

In making its decision, the agency is required to determine if, on balance, these factors outweigh:

- the general public interest in favour of the disclosure of government information, and
- the demonstrable importance of the information to the applicant, including whether the information:
  - is personal information that relates to the applicant, or
  - could assist the applicant in exercising any rights under any Act or law.

The fact sheet sets out factors agencies may have regard to in determining whether a response to an application would involve an unreasonable and substantial diversion of resources.

Importantly, before an agency can refuse to deal with an access application because the agency has identified that it would require an unreasonable and substantial diversion of resources, the agency must give the applicant a reasonable opportunity to amend the application.

The fact sheet also sets out rights of review in respect of a decision to refuse to deal with an access application on this basis.

# How quickly were decisions made?

## Timeliness of decisions has declined

In 2017/18, 87% of decisions by agencies were made within the statutory timeframe (Figure 25). This is consistent with timeliness in 2016/17 (87%). Deemed refusals increased slightly to 6% in 2017/18, compared to 5% in 2016/17.

## Sector timeliness remains stable and consistent with previous year

In 2017/18 (Figure 26) the:

- Government sector decided 87% of applications within the statutory time frame, consistent with 2016/17
- Council sector decided 91% of applications within the statutory timeframe, consistent with 92% reported in 2016/17, with this sector consistently deciding 90% or more applications within time since 2010/11
- Universities sector decided 77% of applications within time, an increase on the 72% reported in 2016/17

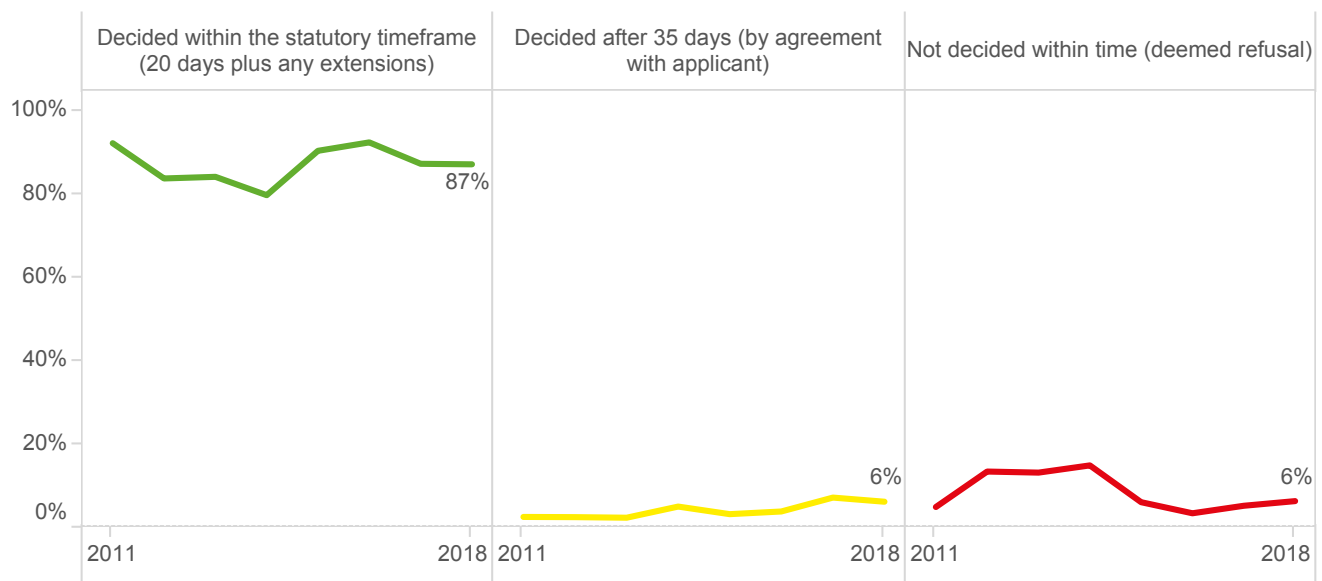
- Ministers sector decided 77% of applications within the statutory time frame, an increase from 66% in 2016/17
- The state owned corporations sector's timeliness was 91%, consistent with the 93% reported in the previous year.

While the timeliness of the government sector remained at 87%, NSW Police Force and Transport for NSW reported delays in timeliness over the past two years:

- NSW Police Force timeliness has declined from 92% in 2015/2016, to 82% in 2017/18
- Transport for NSW timeliness has declined from 88% in 2015/16, to 64% in 2017/18.

Applications to the NSW Police Force represent 38% of all applications made and accordingly the timeliness of that agency impacts overall timeliness. The IPC has engaged with the NSW Police to provide guidance in relation to GIPA Act processes.

Figure 25: Applications that were decided within the statutory time frame, as a percentage of all applications decided, 2010/11 to 2017/18



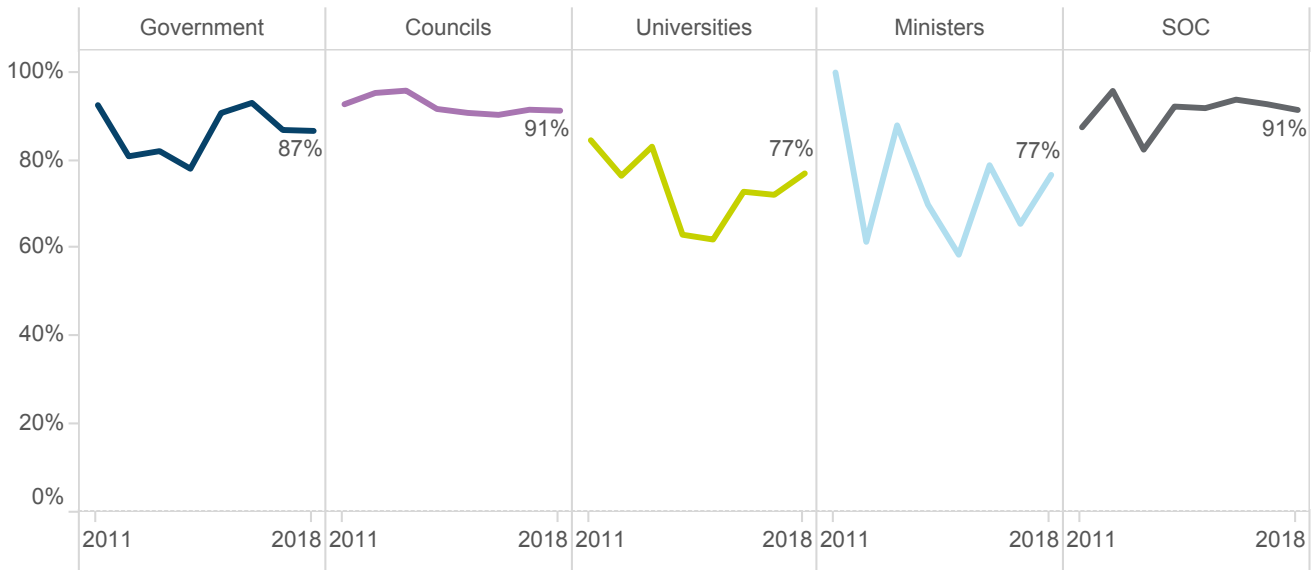
Timeliness was maintained at a high level for NSW Roads and Maritime Services notwithstanding the increase in applications received. Timeliness improved significantly for:

- Department of Justice – from 71% in 2016/17, to 90% in 2017/18
- Ministry of Health – from 78% in 2016/17, to 91% in 2017/18.

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



**Figure 26: Applications that were decided within the statutory time frame, as a percentage of all applications decided, by sector, 2010/11 to 2017/18**



### Case Study: Calculation of time and the GIPA Act

Decision makers are required to apply specified timeframes in determining access applications under the GIPA Act. In 2018, the IPC released the knowledge update [Calculation of time and the GIPA Act](#) to reflect recent amendments to the GIPA Act – in particular, changes to the definition of ‘working day’ under the Act.

The GIPA Act sets out time frames for:

- Deciding that an application for access to government information is valid<sup>13</sup>
- Deciding an access application, including any extensions<sup>14</sup>
- Seeking a review of an agency’s decision.<sup>15</sup>

Under the GIPA Act, the required period for making decisions is by reference to working days.<sup>16</sup> In November 2018, the definition of ‘working day’ under the GIPA Act was amended.

A ‘working day’ now means any day that is not a Saturday, a Sunday, a public holiday or any day during the period declared by the Premier as the Christmas closedown period.<sup>17</sup> This amendment has the effect of lengthening the timeframe in which action is taken by agencies during the Christmas closedown period.

Agencies are encouraged to communicate the impact of this amendment to citizens who have made, or who are considering making an access application.

*‘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 of the GIPA Regulation.*

<sup>13</sup> GIPA Act section 51

<sup>14</sup> GIPA Act section 57

<sup>15</sup> GIPA Act sections 83, 90 and 101

<sup>16</sup> GIPA Act sections 51(2), 57, 83, 86, 90 and 101

<sup>17</sup> GIPA Act clause 1 of Schedule 4

# How was the public interest test applied?

This section examines:

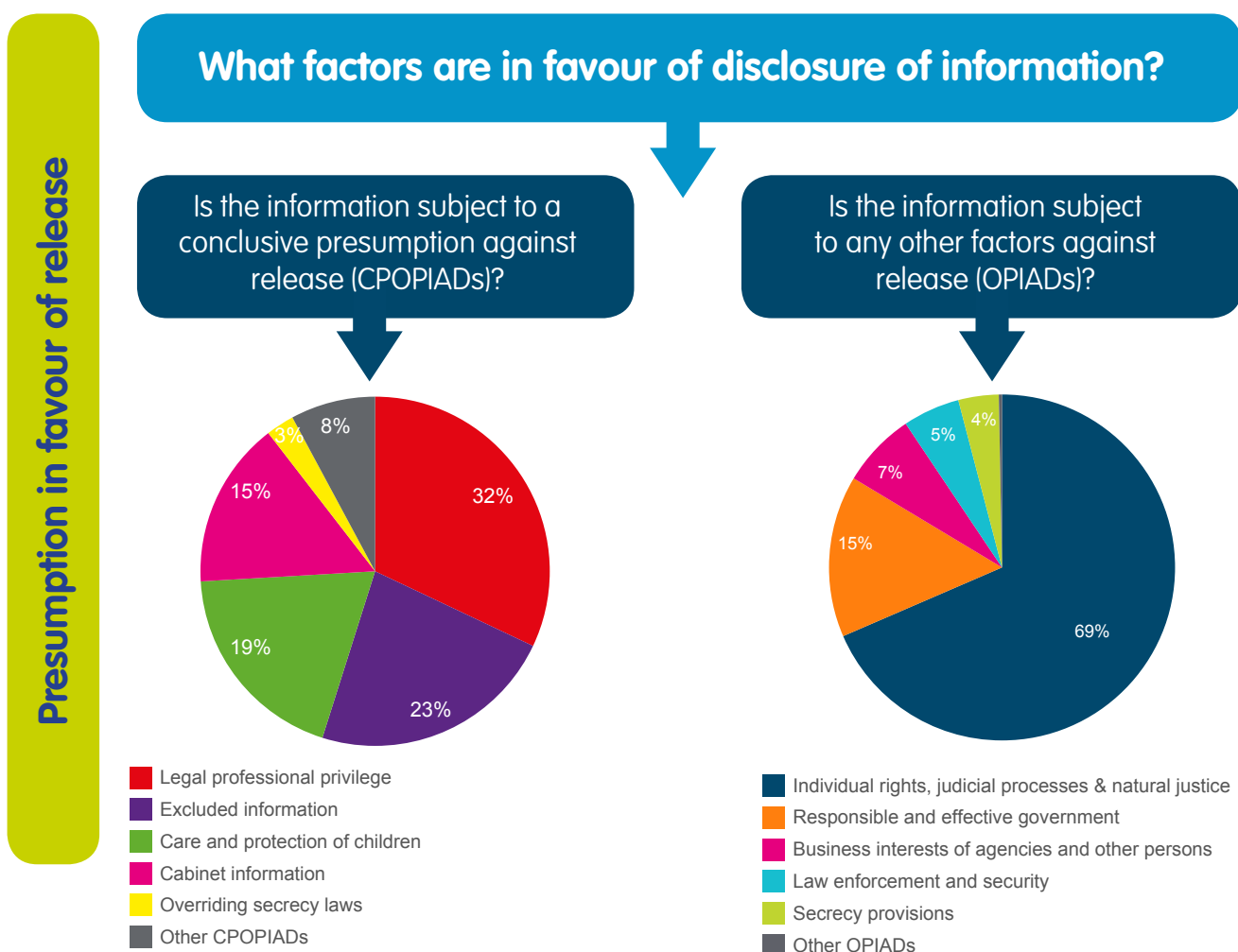
- The number of applications that were refused because of a conclusive presumption of overriding public interest against disclosure (CPOPIAD)
- Which categories of CPOPIADs were applied
- The use of categories of considerations for which there is an overriding public interest against disclosure of information (OPIAD).

More than one CPOPIAD and OPIAD may apply in respect of an application. Each consideration is recorded only once per application.

## Only a small number of applications were refused because of a CPOPIAD

In 2017/18, 857 applications (or 5% of total applications received) were refused wholly or partly because of a CPOPIAD. This is consistent with previous years.

Figure 27: A snapshot of the use of CPOPIADs and OPIADs public interest test 2017/18



'How was the public interest test applied?' is reported in Tables D and E of Schedule 2 of the GIPA Regulation.

## Legal professional privilege continues to be the most applied CPOPIAD

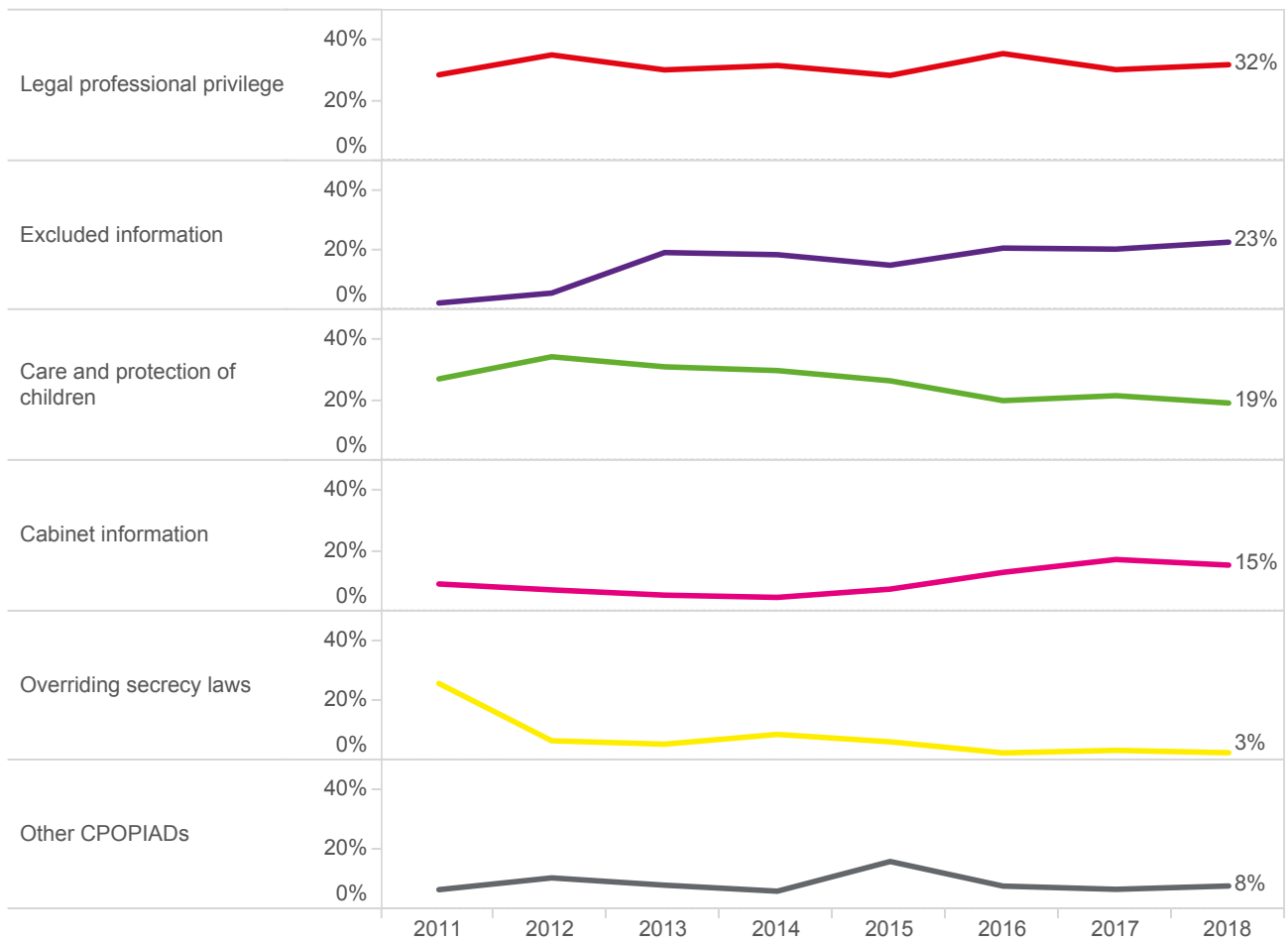
In 2017/18, legal professional privilege remained the most applied CPOPIAD across all sectors (Figure 28). The CPOPIAD was applied 32% of all the times that CPOPIADs were applied. This is consistent with the 30% reported in 2016/17.

The excluded information consideration was the second most applied CPOPIAD, being applied 23% of times that CPOPIADS were applied, which is consistent with 21% in 2016/17.

The care and protection of children consideration was the third most applied CPOPIAD, being applied 19% of all the times that CPOPIADs were applied, compared to 2016/17, when it was the second most applied CPOPIAD (22%).

The use of the Cabinet information consideration has decreased slightly from 17% in 2016/17, being applied on 15% of occasions where a CPOPIAD was applied.

Figure 28: Percentage distribution of the use of CPOPIADs, 2010/11 to 2017/18

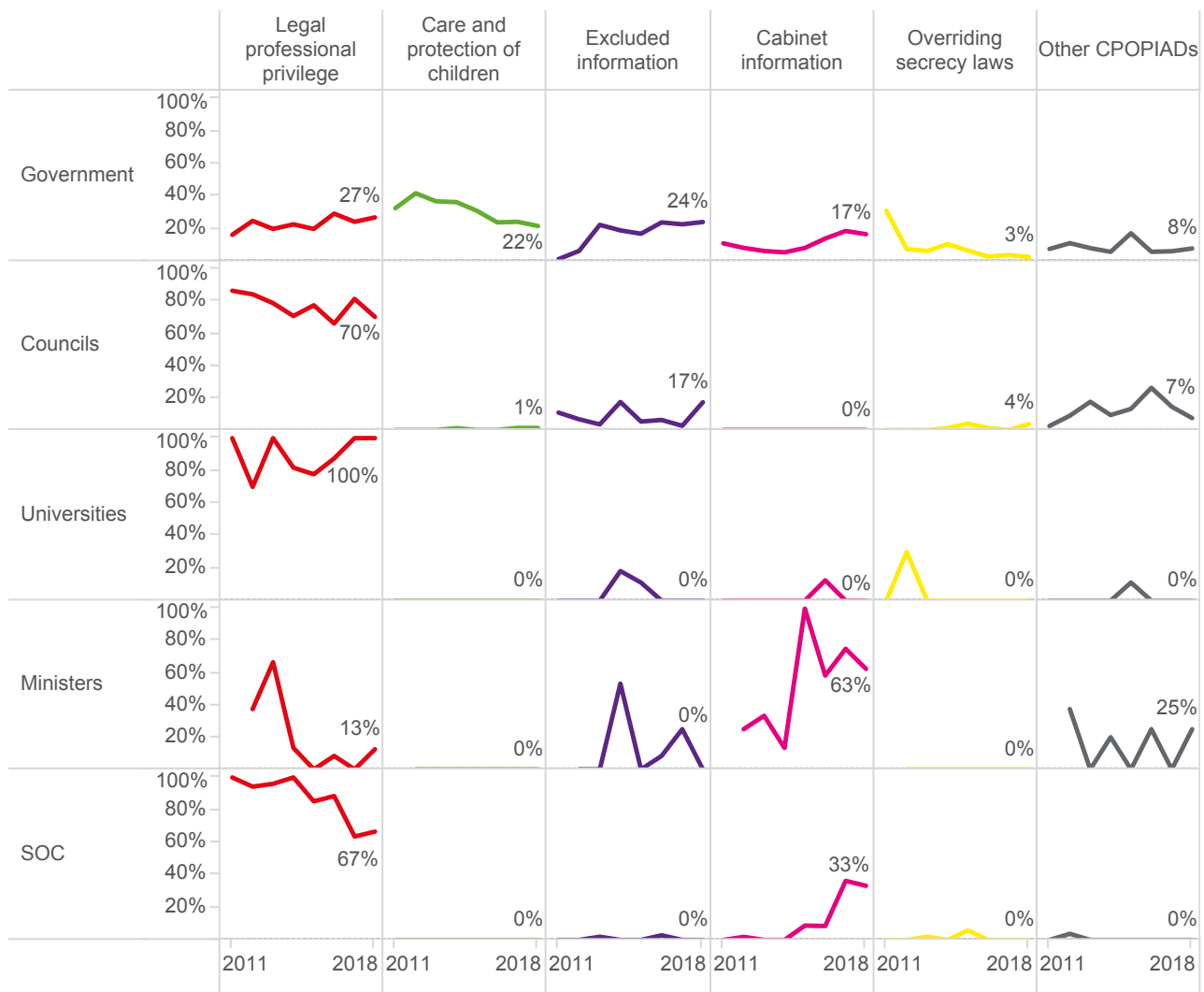


**The application of the legal professional privilege CPOPIAD remained high in the council and universities sectors**

Consistent with 2016/17, the most applied CPOPIAD in 2017/18 was legal professional privilege across the government, council, universities and state owned corporations sectors (Figure 29). In the council and universities sectors this CPOPIAD was by far the most commonly applied CPOPIAD accounting for 70% of cases in the council sector and 100% in the universities sector.

In the government sector there was a greater diversity of CPOPIADs applied with the care and protection of children (22%) and excluded information CPOPIAD (24%) also used. The Department of Family and Community Services primarily applied the care and protection of children CPOPIAD. The NSW Police Force was the main agency that applied the excluded information CPOPIAD.

**Figure 29: Percentage distribution of the use of CPOPIADs, 2010/11 to 2017/18**



Note: In some years, certain CPOPIADs were not applied to applications to the council, universities and ministers sectors.



## Individual rights, judicial processes and natural justice was the most applied OPIAD

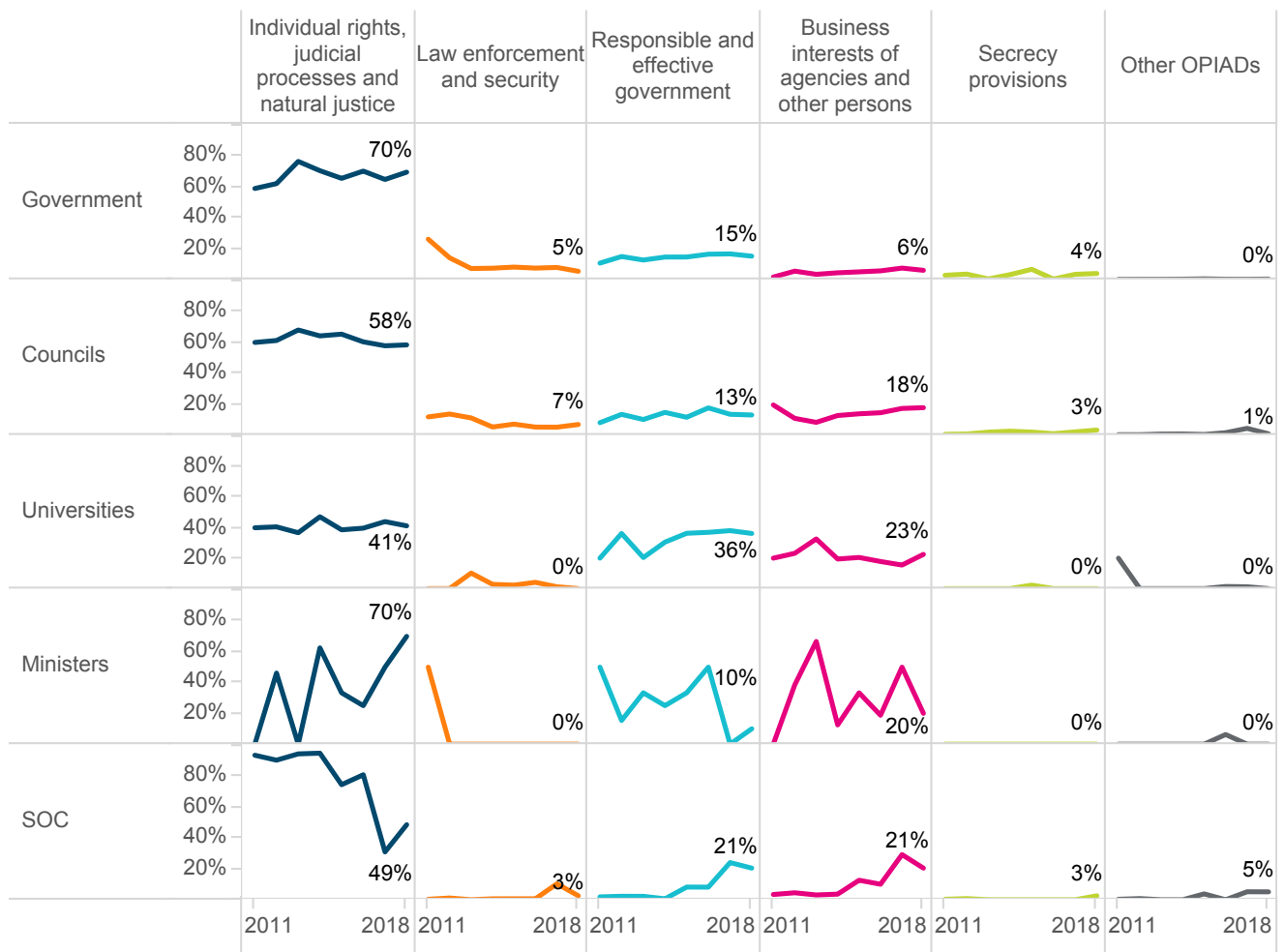
Consistent with 2016/17, the most frequently applied OPIAD in 2017/18 was individual rights, judicial processes and natural justice across all sectors (69%) (Figure 30). Reliance on this OPIAD is consistent with all previous years since 2010/11.

The OPIAD was applied (70% of occasions) in the government and ministers sector (Figure 30). For major agencies, the consideration was applied 65% of the time by Roads and Maritime Services, 77% by the NSW Police Force, 62% by the Ministry of Health, and 57% by the Department of Family and Community Services

As noted in the 2016/17 Report, this category of OPIAD contains a broad range of specific considerations, from personal information and privacy through to court proceedings, a fair trial and unsubstantiated allegations. As such, the application of this OPIAD by agencies could have been related to any of these specific considerations in this category and is likely to reflect the nature of the information held by these agencies.

In relation to the personal information consideration, the IPC's [Guideline 4: Personal information as a public interest consideration under the GIPA Act](#) assists agencies to understand what personal information means and how to properly apply the considerations when carrying out the public interest test.

Figure 30: Percentage distribution of OPIADS applied, by sector, 2010/11 to 2017/18



Note: In some years, certain OPIADS were not applied to applications across all sectors.

## Case Study: Supporting sound decision making – review of public interest fact sheet

Information access decisions require agencies to apply the public interest test set out under the GIPA Act. In June 2018, the IPC revised its fact sheet [What is the Public Interest Test?](#)

The fact sheet has been developed to assist agencies in applying the public interest test under the GIPA Act, which promotes the right to information and aims to foster responsible and representative government that is open, accountable, fair and effective.

Under the GIPA Act there is a presumption in favour of disclosure of information. Accordingly, all government agencies must disclose or release information unless there is an overriding public interest against disclosure. When deciding whether to release information, agencies must apply the public interest test. This means they must weigh the factors in favour of disclosure against the public interest factors against disclosure in the context of a presumption in favour of disclosure.

Unless there is an overriding public interest against disclosure, agencies must provide the information requested. There are some limited exceptions to this, for example, if dealing with an application would constitute an unreasonable and substantial diversion of an agency's resources.

The presumption in favour of disclosure has been highlighted in the revised fact sheet to ensure that this presumption provides the foundation for application of the public interest test. This approach ensures that agencies are aware that the considerations against disclosure must outweigh the presumption in favour of disclosure and the identified factors in favour of disclosure. The fact sheet sets out the factors to be taken into account in applying each of the three steps in the public interest test. These steps are:

1. Identify the relevant public interest considerations in favour of disclosure
2. Identify the relevant public interest considerations against disclosure
3. Determine the weight of the public interest considerations in favour of and against disclosure and where the balance between those interests lies.

## Issue Highlight: Decision by the NSW Civil and Administrative Tribunal *Taylor v Office of Destination NSW*

In 2017/18, NCAT handed down *Taylor v Destination NSW [2018] NSWCATAD 195*, which considered:

- Whether there was an overriding public interest against disclosure of information
- Whether the searches conducted by the agency were reasonable in the circumstances and in accordance with section 53 of the GIPA Act.

The key points for agencies arising from this decision include:

### **Overriding public interest against disclosure**

- Agencies hold information that includes the business, commercial and financial interests of non-government entities. These interests must be balanced against the presumption in favour of disclosure under the GIPA Act.
- It will not be sufficient to refuse access to documents based on broad categories and generalised assertions of confidentiality and prejudice.
- The specific information to which public interest considerations against disclosure apply needs to be particularised and agencies must consider whether a redacted copy of a document can be provided.
- Agencies should consider whether the commercial value of information has diminished over time.

### **Reasonableness of searches**

- Searches must be undertaken to identify relevant documents prior to making a decision to refuse access on public interest grounds. The public interest test applies to the decision on access, not to the obligation to conduct searches.
- Searches must be undertaken unless doing so would create an unreasonable and substantial diversion of resources. The content of the documents does not determine whether the diversion of resources is reasonable or unreasonable.
- In administrative review proceedings before NCAT, where an applicant has demonstrated that there are reasonable grounds for believing that further information falling within the scope of the access request exists that has not been supplied, the respondent agency bears the onus of satisfying NCAT that the searches conducted were reasonable in the circumstances of the case.
- To demonstrate reasonable searches, agencies should provide evidence of what those searches entailed the extent of those searches, or any other explanation for why existing documents were not identified.

This decision has been appealed. The decision on the appeal is yet to be delivered and published.

# How were decisions reviewed?

**The right of review can be exercised by the original information access applicant or by third parties whose information is the subject of the application**

This section reports on the:

- Number of reviews as a percentage of the number of relevant applications – a 'review rate'
- Number of reviews by type of review
- Composition of reviews by type of review.

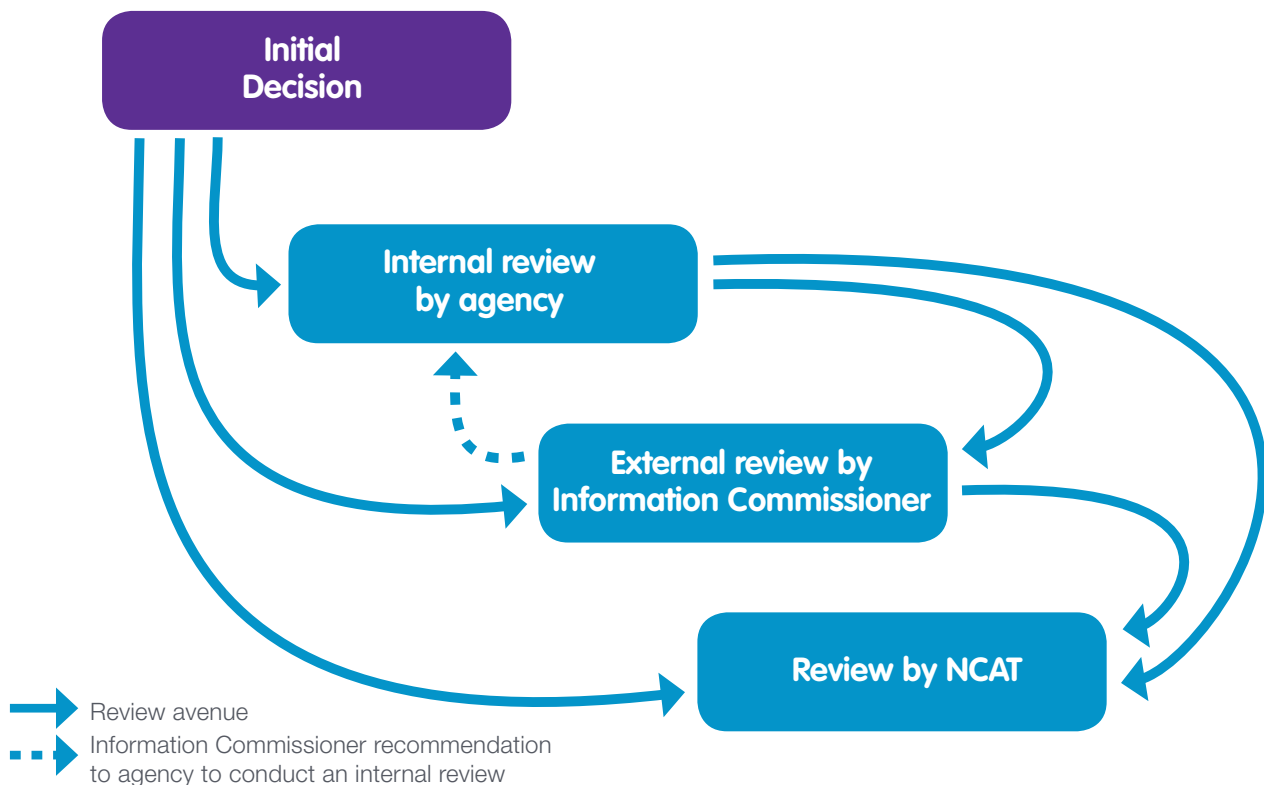
Figure 32 shows the different pathways available for reviews in the GIPA Act.

**The overall review rate for total valid applications was 5%**

Using the most reliable sources of data to calculate the total number of reviews, reviews were equivalent to 5% of total valid applications received across all sectors in 2017/18. This is consistent with the review rate of 5% reported in 2016/17.

As shown in Figure 32, data on reviews under the GIPA Act is available from agency reported data and data held by the IPC and published by NCAT.

*Figure 31: The relationship between the review pathways in Part 5, GIPA Act*



*'How were decisions reviewed?' is reported and measured by the requirement for agencies to report on the number of applications reviewed under Part 5 of the Act in Tables G and H of Schedule 2 of the GIPA Regulation.*

Figure 32: Agency, IPC and NCAT data on internal and external reviews, 2017/18

Review type	A: Agency reported data for all reviews closed	B: Using agency, IPC and NCAT data on reviews closed
Agency internal review of initial decision	274	274
External review by the Information Commissioner	212	313
Review by NCAT	106	164
Agency internal review/reconsideration following a recommendation by the Information Commissioner	72	72
<b>Total</b>	<b>664</b>	<b>823</b>

Figure 33: Distribution of reviews by type, as reported by agencies, 2017/18

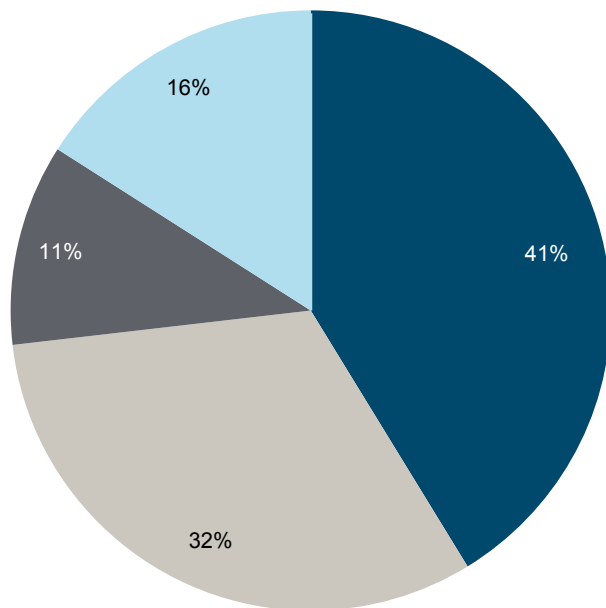
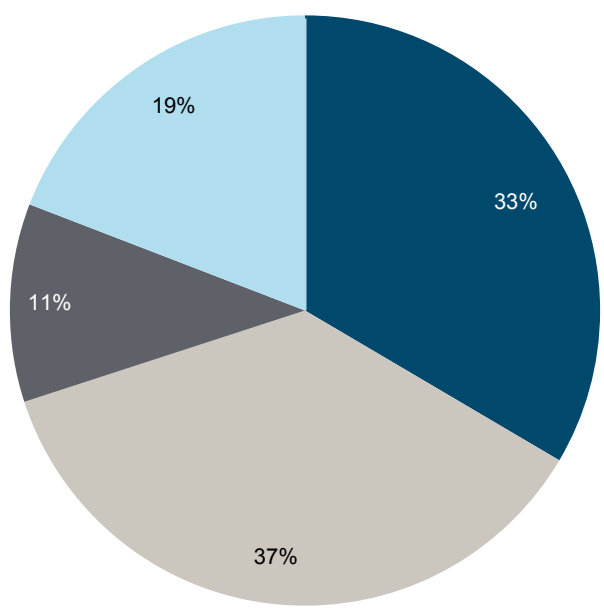


Figure 34: Distribution of reviews by type, using agency, IPC and NCAT data, 2017/18



- Internal review
- Review by the Information Commissioner
- Internal review following recommendation under section 93 of the Act
- Review by NCAT

Source: Agency, IPC and NCAT data. Note this data applies to cases reported as closed in the year.

The distribution of reviews across all review avenues as reported by agencies is shown in Figure 33. If the most reliable source for each review avenue is used to calculate the total number of reviews, a total of 823 reviews were conducted in 2017/18. This distribution is shown in Figure 34. This is a significantly higher number of reviews than reported by agencies, particularly in respect of external reviews by the Information Commissioner and external reviews by NCAT.

The completion of reviews this reporting period that were received in the previous financial year may be a factor contributing to under-reporting of Information Commissioner reviews. The IPC has engaged with agencies across all sectors to improve the reporting of GIPA Act data. Since 2013/14 the under-reporting has declined from 81% to 32% in 2017/18, although this is a slight increase from 26% in 2016/17.

Using best available data, the number of all reviews conducted by the Information Commissioner declined by 2% between 2017/18 (313 reviews) and 2016/17 (319 reviews).

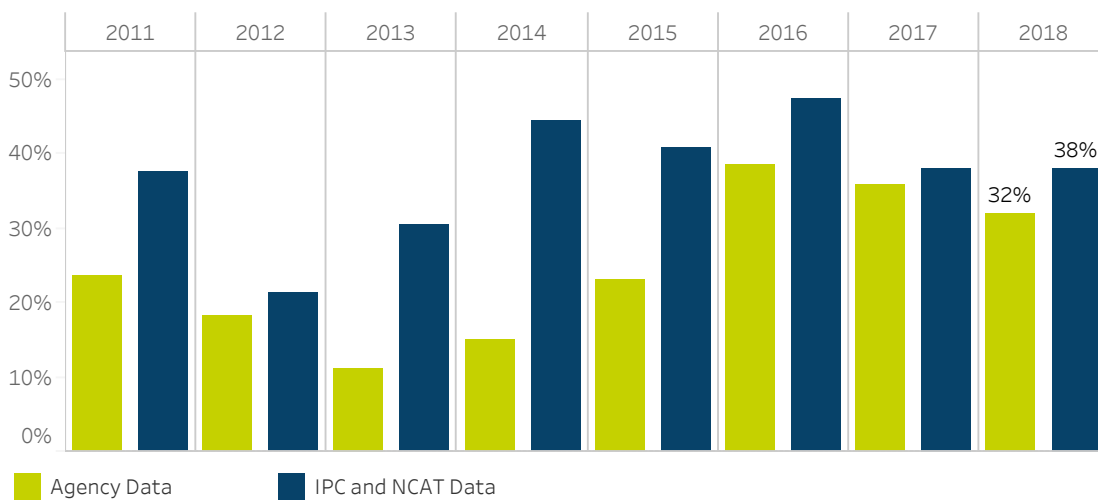
In 2017/18, the review applications to the Information Commissioner represented 37% of all reviews consistent with 38% in 2016/17.

## External reviews by the Information Commissioner remains steady as a proportion of all reviews conducted

Using data reported by agencies, external reviews by the Information Commissioner represented 32% of all reviews conducted in 2017/18, a slight decline from 36% in 2016/17 (Figure 35). However, with reference to the more reliable IPC data, such reviews accounted for 37% of all reviews conducted, consistent with 2016/17.

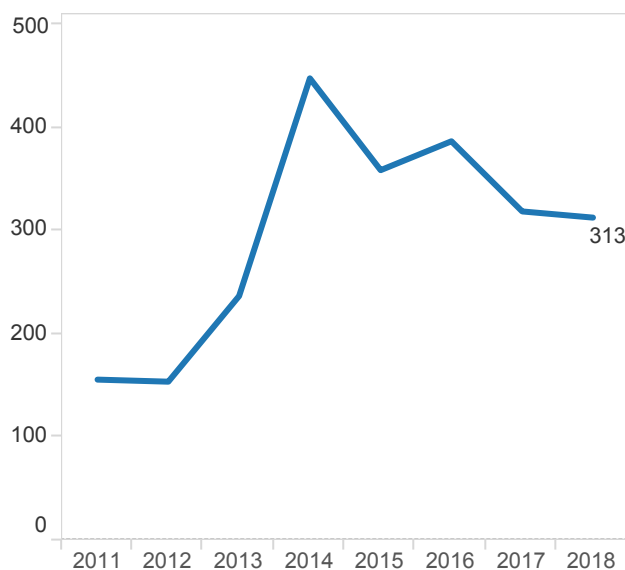
Accordingly, the review pathway most frequently used is to the Information Commissioner. Amendments to the GIPA Act made in November 2018 have significant implications for this review pathway and for the IPC (see Commissioner's Overview).

Figure 35: External reviews by the Information Commissioner, as a percentage of all reviews, 2010/11 to 2017/18



Source: agency, NCAT and IPC data

Figure 36: Number of external reviews conducted by the Information Commissioner, 2010/11 to 2017/18



Source: IPC data

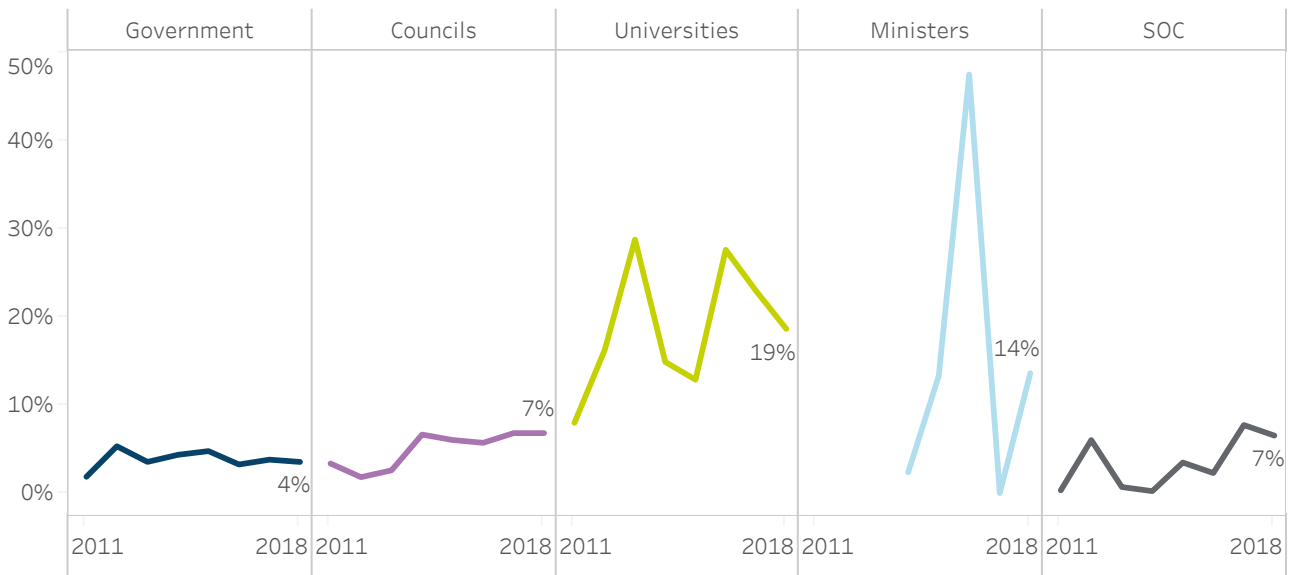
Similarly, the 164 review applications reported by NCAT is significantly higher than the 106 reviews reported by agencies.

For reporting purposes, the remainder of this section only uses data reported by agencies to allow for comparison across review avenues, across sectors and to examine changes over time.

## Review rates have remained stable in the government, council and state owned corporations sectors and increased in the ministers sectors

The percentage of applications for review received by The percentage of applications for review received by the government sector, as a percentage of all applications to that sector, remained stable at 4% in 2017/18, consistent with 2016/17. The councils sector (7%) and state owned corporations sector (7%) also remained stable (Figure 37).

**Figure 37: Total number of reviews, as a percentage of all applications received, by sector, 2010/11 to 2017/18**



Source: agency data

The percentage of applications for review received by the ministers sector, as a percentage of all applications to that sector, increased significantly to 14% in 2017/18, from 0% in 2016/17. For universities the percentage declined from 23% in 2016/17, to 19% in 2017/18. However, these two sectors received relatively small numbers of applications and are subject to more variability than other sectors. These trends will remain under observation to ensure that an appropriate sector specific regulatory response is implemented.

**The majority of applications for review were made by the original applicant for information**

In 2017/18, 94% of applications for review were made by the original applicant. This is consistent with levels observed in 2016/17 when 91% of applications for review were made by the original applicant. The number of applications made by third party objectors has

declined for the fourth consecutive year, falling from 13% in 2014/15, to 6% in 2017/18.

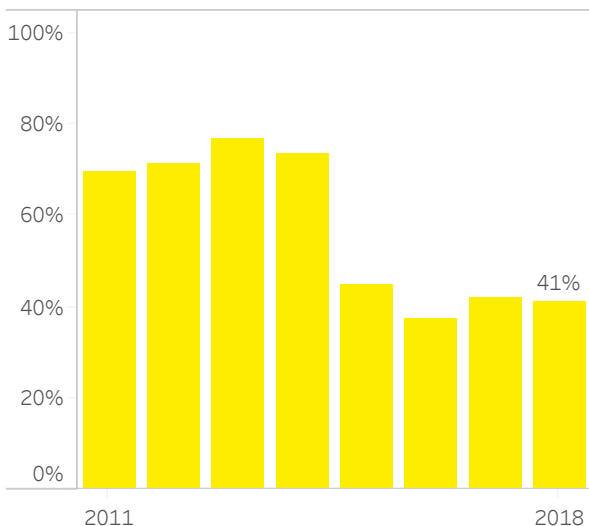
**Internal reviews as a percentage of all reviews conducted remained stable**

Internal reviews represented 41% of all reviews conducted in 2017/18 (Figure 38), consistent with 42% of all reviews conducted in 2016/17.

**There was an increase in reviews by NCAT**

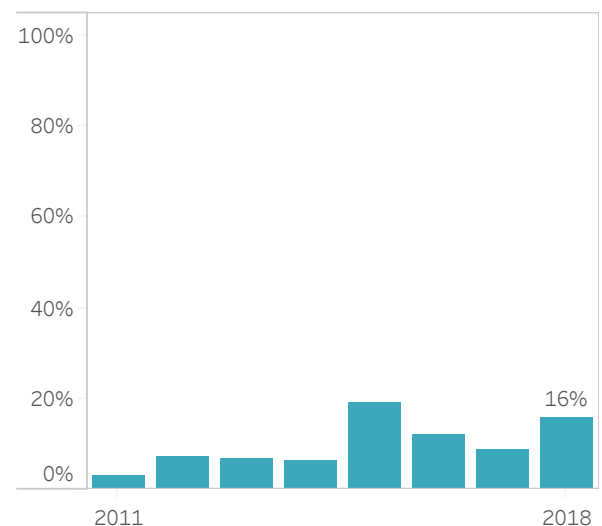
Using data reported by agencies, reviews by NCAT represented 16% of all reviews conducted in 2017/18 (Figure 39). This is an increase from 2016/17 when NCAT reviews represented 9% of all reviews conducted.

**Figure 38: Internal review, as a percentage of all reviews 2010/11 to 2017/18**



Source: agency data

**Figure 39: NCAT reviews, as a percentage of all reviews, 2010/11 to 2017/18**

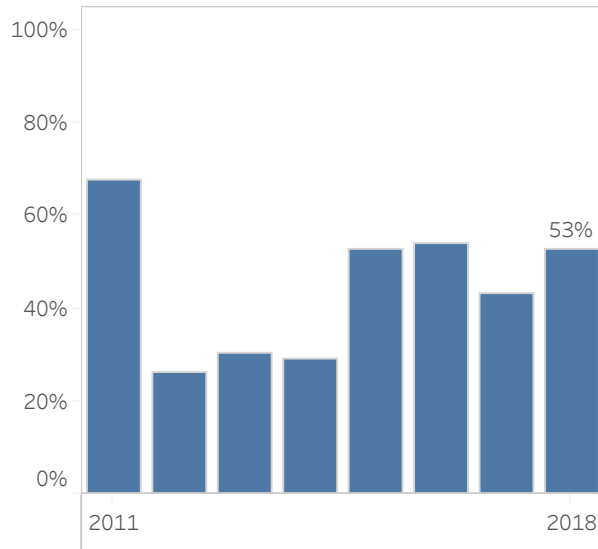


Source: agency data

## Overall, across all review types agency decisions were more likely to be upheld on review

In 2017/18, 53% of all internal and external reviews conducted upheld agencies' decisions. This is an increase from 2016/17 when 43% of reviews upheld agencies' decisions (Figure 40).

**Figure 40: Percentage of all reviews that upheld the original decision, 2010/11 to 2017/18**

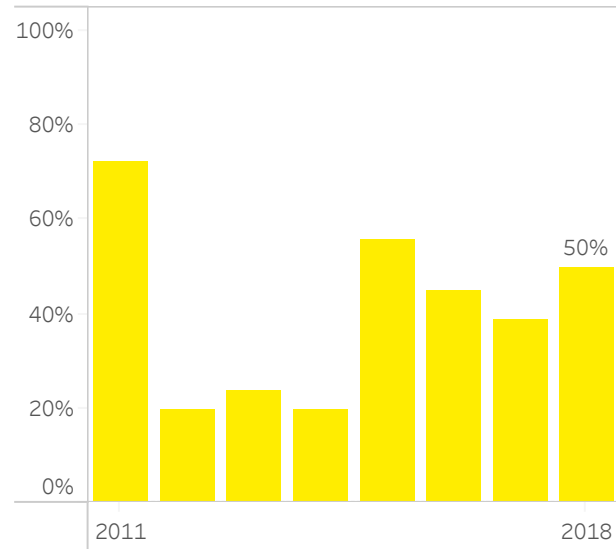


Source: agency data

## Internal reviews were more likely to uphold agencies' decisions

In 2017/18, 50% of all internal reviews upheld agencies' decisions, an increase from 39% in 2016/17 (Figure 41).

**Figure 41: Internal reviews where the decision was upheld, as a percentage of all internal reviews, 2010/11 to 2017/18**



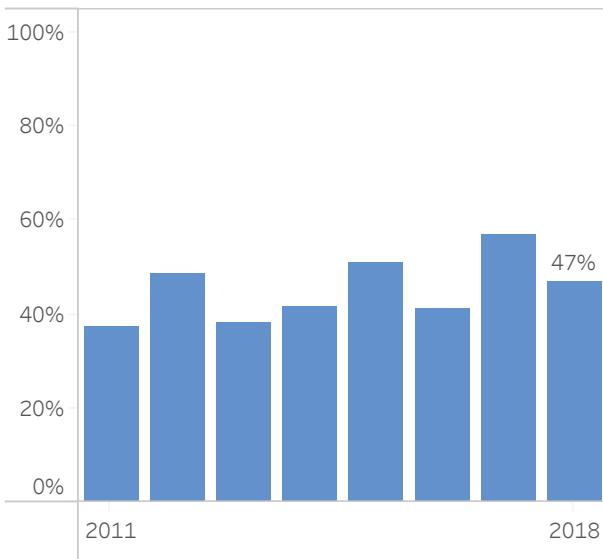
Source: agency data



## Reviews by the Information Commissioner were less likely to recommend that agencies re-consider their decision

Agencies reported that 47% of reviews by the Information Commissioner in 2017/18 recommended that agencies reconsider their decisions, a decline from 57% reported in 2016/17 (Figure 42).

**Figure 42: Reviews by the Information Commissioner where there was a recommendation to reconsider the decision, as a percentage of all reviews by the Information Commissioner, 2010/11 to 2017/18**

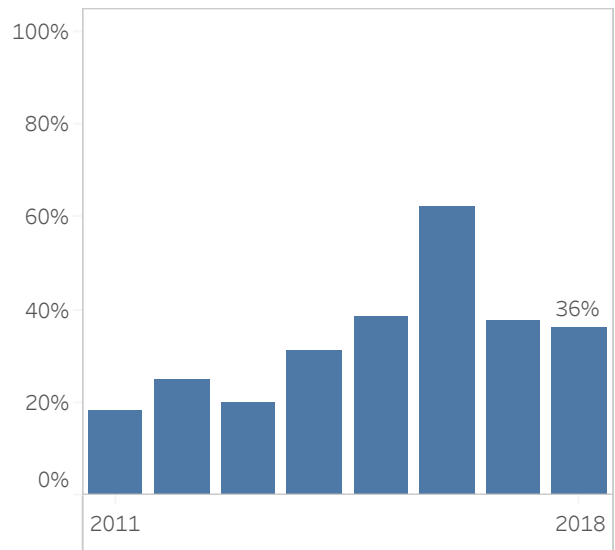


## Internal reviews following a section 93 recommendation by the Information Commissioner which uphold the original decision remain consistent with the previous year

In 2017/18, agencies reported 36% of internal reviews that followed a section 93 GIPA Act recommendation (a recommendation from the Information Commission that the agency reconsider its decision) upheld agencies' original decisions. This is consistent with 38% in 2016/17 (Figure 43).

Accordingly, in 2017/18, 64% of internal reviews agencies modified their decision in response to a recommendation by the Information Commissioner.

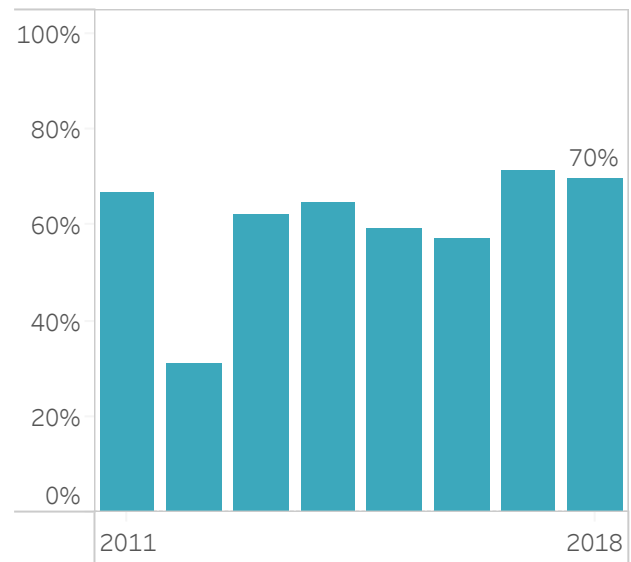
**Figure 43: Internal reviews following a section 93 recommendation that upheld agencies' original decisions, as a percentage of all internal reviews, 2010/11 to 2017/18**



## Reviews by NCAT of agency decisions

Agencies reported that 70% of reviews by NCAT upheld agency decisions in 2017/18, consistent with 71% in 2016/17 (Figure 44).

**Figure 44: Reviews by NCAT where the decision was upheld, as a percentage of all reviews by NCAT, 2010/11 to 2017/18**



## External review by the Information Commissioner of agencies' use of CPOPIADs and OPIADs

The IPC's internal data provides further insight into external reviews by the Information Commissioner in relation to the application of the considerations against disclosure by agencies.

The Information Commissioner conducts external reviews that cover a range of different issues that go to the process for dealing with applications and agencies' decisions to provide, or refuse access to information.

The proportion of all reviews conducted by the Information Commissioner relating to CPOPIADs remained consistent with the previous year at 15% in 2017/18.

There was a small decline from 58% in 2016/17, to 51% in 2017/18, in the proportion of all reviews conducted by the Information Commissioner relating to OPIADs. Other issues that were the subject of review by the Information Commissioner include:

- The conduct of searches by agencies
- Imposition of fees and charges
- Form of access
- Unreasonable and substantial diversion of resources.

Reviews regarding these more administrative or mechanical matters can provide insights into the operational and cultural environment in which access decisions are made within agencies. Accordingly, intelligence gathered through conducting these reviews is being collected and analysed to inform the Information Commissioner's forward work program.

### **CPOPIADs: Legal professional privilege remains the primary CPOPIAD subject of external review by the Information Commissioner**

The top three CPOPIADs that were relied on by agencies that were subject to the Information Commissioner's review were:

- Legal professional privilege (47%)
- Cabinet information (15%)
- Complaints handling and investigative (9%).

### **CPOPIADs: There has been a decline in the number of external reviews by the Information Commissioner of CPOPIADs that resulted in a recommendation to agencies to reconsider the decision**

In 2017/18, 45% of all the CPOPIADs that were the subject of review by the Information Commissioner resulted in a recommendation to agencies to reconsider the decision, compared with 62% in 2016/17.

Following a review, the Information Commissioner's findings in respect of the top three CPOPIADs were:

- For reviews of the legal professional privilege consideration, 54% resulted in a recommendation to agencies to reconsider the decision
- For reviews of the cabinet information consideration, 50% resulted in a recommendation to agencies to reconsider the decision
- For reviews of the complaints handling and investigative consideration, 20% resulted in a recommendation to agencies to reconsider the decision.

### **OPIADs: Individual rights, judicial processes and natural justice was the main OPIAD that was the subject of external review by the Information Commissioner**

The top three OPIADs that were relied on by agencies and were subject to the Information Commissioner's review were:

- Individual rights, judicial processes and natural justice (42%)
- Responsible and effective government (37%)
- Business interests of agencies and other persons (11%).

These rankings and percentages are generally consistent with those reported in 2015/16 and 2016/17.

### **OPIADs: There has been a decline in the number of external reviews by the Information Commissioner of OPIADs that resulted in a recommendation to agencies to reconsider**

In 2017/18, 50% of all the OPIADs that were the subject of review by the Information Commissioner resulted in a recommendation to agencies to reconsider the decision – a decrease from 61% in 2016/17.

Following a review, the Information Commissioner's findings in respect of the top three OPIADs were:

- For reviews of the individual rights, judicial processes and natural justice consideration, 41% resulted in a recommendation to agencies to reconsider the decision, compared with 59% in 2016/17
- For reviews of the responsible and effective government consideration, 55% resulted in a recommendation to agencies to reconsider the decision, compared with 65% in 2016/17
- For reviews of the business interests of agencies and other persons consideration, 71% resulted in a recommendation to agencies to reconsider the decision, compared with 60% in 2016/17.

# Were applications transferred between agencies?

## Continued increase in transfers between agencies

During 2017/18, agencies reported that 854 applications were transferred to another agency (Figure 46). This is a 6% increase from the 763 transfers reported in 2016/17 and continues the trend of increasing transfers.

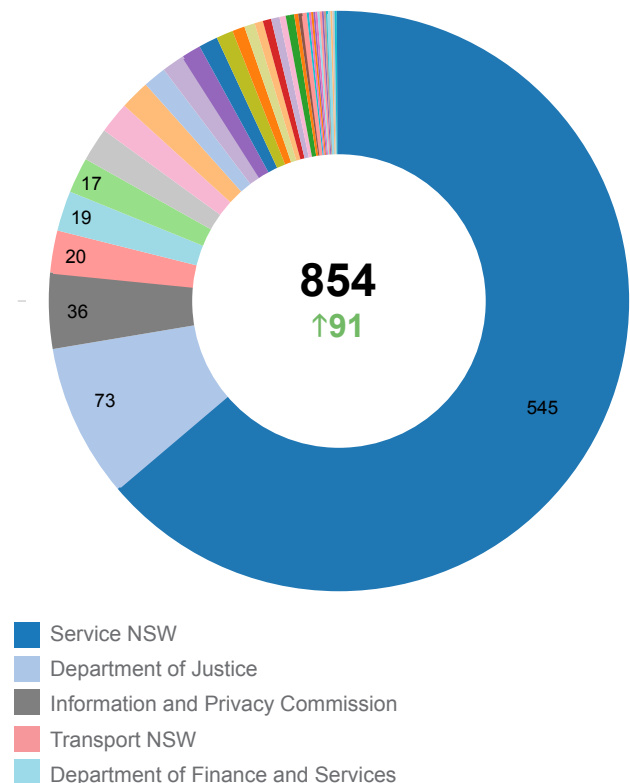
Figure 45 shows that the government sector accounted for most transfers, and that most transfers were agency-initiated.

**Figure 45: Number of applications that were transferred, by sector and by whether agency or applicant initiated, 2017/18**

	Agency initiated transfers	Applicant initiated transfers	Total
<b>Government</b>	779	59	838
<b>Councils</b>	12	0	12
<b>Universities</b>	0	1	1
<b>State owned corporations</b>	3	0	3
<b>Ministers</b>	0	0	0
<b>Grand total</b>	<b>794</b>	<b>60</b>	<b>854</b>

In 2017/18, Service NSW accounted for 545 (64%) of transferred applications, consistent with 62% in 2016/17. The second and third highest numbers of transfers were attributed to the Department of Justice with 73 transferred applications (9%), and the Information and Privacy Commission with 36 transferred applications (4%) (Figure 46).

**Figure 46: Distribution of applications transferred, by agency, 2017/18**



Importantly, the transfer mechanism facilitates a whole of government citizen-centric approach to information access. The inclusion of this data provides a means of examining the assistance provided by agencies to applicants.

# Appendices

# Appendix 1

## Note on data sources and previous reports

The IPC's annual *Report on the Operation of the Government Information (Public Access) Act 2009* is based on information submitted by NSW public sector agencies and analysed within the IPC. Data has now been collected for eight years, since 2010/11.

For the first four years, data was submitted by agencies in a variety of formats, then manually entered into a database within the IPC.

In mid-2015, the IPC introduced a new online GIPA Tool as a way for agencies to manage their applications, provide their annual reports to the IPC and directly upload data.

The data analysed for this Report should be considered as a snapshot of agencies' compliance as at 11 December 2018 (the date when agencies' reported data was downloaded by the IPC from the GIPA Tool). It should be noted that not all agencies had submitted their annual reports to the IPC by this time. This means their data is not included in the Report.

Data updates by agencies may affect historical data and future reports.

Since 2016/17, data has been reported on the following sectors:

- Government
- Councils
- Universities
- Ministers
- State owned corporations.

Previously, state owned corporation (SOC) data had been included with that of the government sector. SOCs have now been separately identified in order to give greater insight into their GIPA operations and those of the government sector. Accordingly, data for the government sector reported before 2016/17 is not comparable to data in this Report.

In March 2018, the IPC published an online, interactive [Agency GIPA Dashboard](#) to facilitate agency and community access to this data. This online data may be updated to take account of changes advised by agencies. Accordingly, the online GIPA Dashboard will represent the most up-to-date and accurate source of data on agency GIPA operations.

The annual reporting period for universities and the Department of Education is a calendar year. This calendar-year data is included in the relevant financial year to assist with cross-sector comparability. For example, GIPA data from universities' 2017 annual reporting has been treated as for the 2017/18 financial year.

Legislative amendments made during late 2018 have impacted the operation of the GIPA Act. As a result the IPC updated relevant guidance and resources for agencies in November 2018. For this reason significant changes have been referenced in this Report, notwithstanding that they fall outside the reporting period.

# Appendix 2

## The Legislative Framework

### ***Government Information (Public Access) Act 2009 (GIPA Act)***

The object of the GIPA Act is to maintain and advance a system of responsible and representative government that is open, accountable, fair and effective by:

- Authorising and encouraging the proactive public release of government information by agencies
- Giving members of the public an enforceable right to access government information
- Ensuring that access to government information is restricted only when there is an overriding public interest against disclosure.

The GIPA Act applies to government departments and agencies, local councils, universities, ministers and their staff and state owned corporations.

The guiding principle of the GIPA Act is to make information more accessible to the public. The Act embodies the general presumption that the disclosure of information is in the public interest unless there is a strong case to the contrary.

#### **1. Mandatory proactive release**

The mandatory proactive release of information is one of the GIPA Act's four pathways for information release and access. Through this pathway, the GIPA Act requires NSW public sector agencies to release a prescribed set of information to the public, known as open access information. This information must be made publicly available online and free of charge. Open access information of ministers may be made available on the website of the relevant department.

The benefit of mandatory proactive release is that the pathway ensures that a minimum, consistent set of information that is regularly reviewed and updated to maintain relevance and currency, is freely available to the public. Mandatory proactive release is an important vehicle in achieving better service delivery through information access, transparency and increased citizen input to government policy and service delivery.

#### **2. Authorised proactive release**

The GIPA Act authorises and encourages agencies to make information available unless there is an overriding public interest against disclosure.

Agencies (except ministers) are required under the GIPA Act to review their program for the proactive release of information at least annually, and identify additional kinds of information that should be made publicly available. These agency reviews are not merely a reporting obligation. They provide the tool to drive the continuous release of information under this pathway. This information can be made publicly available in any manner that the agency considers appropriate either free or at the lowest reasonable cost.

Through this pathway, agencies have a responsibility to promote policies and practices that ensure as much information as possible is made publicly available.

The aim of proactive release is to maximise the amount of information that is released by agencies. This requires creating a culture where information release is a matter of course. The proactive release of information has many benefits, including a more informed community that is better able to engage and influence the development and delivery of services, agency operations and broader policy and community debates.

### 3. Informal release

The GIPA Act enables agencies to release government information in response to an informal request for information, unless there is an overriding public interest against disclosure.

This pathway promotes the transition to a system which will result in the general release of government information.

### 4. Formal access applications

The GIPA Act provides citizens with a right to apply for, and access most government information, unless there is an overriding public interest against disclosure (section 9). The GIPA Act outlines a formal process that must be followed by applicants and agencies. The steps for applicants include:

- Putting an application in writing
- Stating that the application is seeking information under the GIPA Act
- Including a postal address or email address
- Explaining clearly the information that is being requested
- Paying an application fee of \$30.

Agencies must assess each application that is received. For valid access applications, agencies must apply the public interest balancing test and consider the factors for and against the disclosure of the information that is being requested.

The main benefits of the formal access pathway include:

- The right to seek access is legally enforceable
- Agencies are not subject to the direction or control of any Minister in the exercise of the agency's functions when dealing with an access application
- Agencies must apply the public interest balancing test and consult with third parties to whom the information relates, and also may consult with other agencies
- Applicants have a right to seek review of an agency's decision about the application through an internal review by the agency, an external review by the Information Commissioner or an external review by NCAT.

Section 125 of the GIPA Act requires agencies to report to Parliament annually on their obligations under the GIPA Act, including reporting on GIPA data. A copy of the report is to be provided to the Information Commissioner after the report has been tabled in Parliament. This mandated information is set out in clause 8 (a), (b), (c) and (d) of the GIPA Regulation. Schedule 2 of the GIPA Regulation sets out the prescribed form for clause 80(d) reporting through Tables A to I.

## ***Government Information (Public Access) Regulation 2018***

The GIPA Regulation:

- Prescribes additional open access information that local authorities, ministers, departments and statutory bodies must make publicly available
- Sets out the statistical information regarding formal applications that agencies must include in their annual reports
- In the case of an access application relating to a school, extends the period in which the application must be decided if the usual 20-day period for deciding the application occurs during the school holidays
- Specifies the corresponding access to information laws of other Australian jurisdictions under which information may be exempt (this is a relevant public interest consideration against disclosure under section 14)
- Declares certain bodies to be public authorities for the purpose of the GIPA Act
- Declares certain entities to be sub-agencies and parent agencies for the purpose of access applications
- Provides that records held by the Audit Office or the Ombudsman's Office that were originally created or received by another agency, are taken to be held by the original agency.

## ***Government Information (Information Commissioner) Act 2009***

The system of public access to information is overseen by the Information Commissioner, established under the *Government Information (Information Commissioner) Act 2009* (GIIC Act). Under the GIIC Act the Information Commissioner's role includes:

- Promoting public awareness and understanding of the Act
- Providing information, advice, assistance and training to agencies and the public
- Dealing with complaints about agencies
- Investigating agencies' systems, policies and practices
- Reporting on compliance with the Act.

Under section 37 of the GIIC Act, the Information Commissioner is required to provide an annual report to Parliament on the operation of the GIPA Act, generally, across all agencies.

This Report fulfils the Information Commissioner's obligation in this regard.





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