

# Information Release Pathways

# Pathway 1: Mandatory proactive release of information

Since 2010/11 the IPC has conducted an annual desktop audit of the compliance with key requirements under the GIPA Act to make publicly available specified open access information. The agencies audited have comprised all NSW principal departments, together with a changing sample of other, smaller agencies. Previously, the then nine principal departments were audited. For 2016/17, the ten principal departments<sup>8</sup> together with 20 other government sector agencies<sup>9</sup> were selected as the sample.

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

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

The desktop audit didn't examine the comprehensiveness of the information made available. For example, it was not possible to assess if all relevant agency policy documents were available.

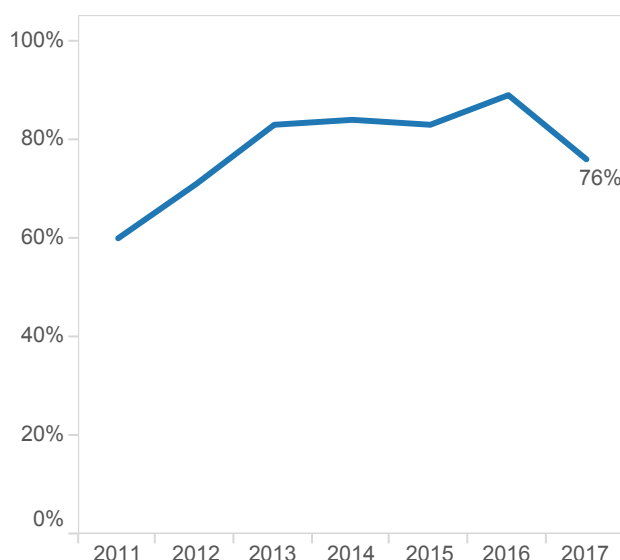
## Compliance with core open access requirements has declined, especially in sampled smaller agencies

Across all departments and sampled smaller agencies the desktop audit found that compliance with the mandatory proactive release requirements had declined to 76%, compared with 89% in 2015/16 (Figure 1).

This overall decline was due to changes in compliance with the individual requirements as follows:

- 60% had an AIG, a decline from 86% in 2015/16
- 87% had policy documents available, a decline from 97% in 2015/16
- 80% had a contracts register, a decline from 86% in 2015/16
- 77% had a disclosure log, a decline from 86% in 2015/16.

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



The decline in compliance was greater in the smaller, sampled agencies:

- compliance by the 10 principal departments declined from 100% in 2015/16 to 93% in 2016/17
- compliance by the 20 smaller, sampled agencies declined from 84% in 2015/16 to 68% in 2016/17.

<sup>8</sup> The principal departments selected were Department of Education, Department of Family and Community Services, Department of Finance, Services and Innovation, Department of Industry, Department of Justice, Department of Planning and Environment, Department of Premier and Cabinet, Ministry of Health, NSW Treasury and Transport for NSW.

<sup>9</sup> The government sector agencies selected were the Public Service Commission, NSW Ombudsman's Office, Office of Environment and Heritage, Cancer Institute NSW, Long Service Corporation, Parramatta Park Trust, Western Sydney Parklands Trust, New South Wales Rural Fire Service, Health Professional Councils Authority, The Rice Marketing Board For The State of NSW, Police Integrity Commission, SAS Trustee Corporation, New South Wales Aboriginal Land Council, Lifetime Care and Support Authority of NSW, Forestry Corporation, Sydney Water Corporation, Port Authority of New South Wales, NSW Trustee and Guardian, Sydney Harbour Foreshore Authority and Taronga Conservation Society Australia.

The decline across all four key requirements indicates that both principal departments and smaller agencies have not sufficiently prioritised mandatory proactive release as an important pathway to improve access to information. Accordingly during 2017/18 the IPC will target smaller government agencies to investigate the particular challenges presented and opportunities for improvement to facilitate the availability of government information to the public.

## Additional open access requirements for departments

The ten principal departments are subject to a number of additional requirements for mandatory proactive release, set out in clause 5 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); and
- (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.

During 2016/17 the IPC engaged with principal departments on a number of aspects of mandatory data release, particularly AIGs and disclosure logs (see below). The decline in compliance by departments is concerning, given their leadership role and significance of their potential contribution to opening access to government information. The IPC will continue work with departments to support a return to full compliance with these core open access requirements, as well as their specific, additional obligations.

### Issue Highlight: Monitoring of Agency Disclosure Log Practices Report

The *Report on the Operation of the Government Information (Public Access) Act 2009: 2014 – 2015* noted that:

*Disclosure logs are integral to accessing information, government accountability and engagement with the public. The logs are an efficient measure of ensuring 'self-service' by citizens and obviate the need for more resource intensive mechanisms, such as access applications.*

In May 2017, the IPC commenced a monitoring program to assess each of the ten principal departments' and the IPC's disclosure log and practices, with a focus on the category of 'other-than-personal information'.

The IPC found that agencies:

- are generally keeping applicants well-informed about the role of disclosure logs and their right to object to inclusion of information. However there is some variation in the comprehensiveness of the information provided;
- need to support their decision-making on what may be of interest to the community with more formal, structured policies and guidance; and
- can do more to ensure the disclosure logs function effectively as a way to release information and support proactive release, Open Data and Open Government.

In response to the IPC's monitoring, a number of agencies are now improving their processes and the IPC will revise its guidance to support agencies.

Agencies are encouraged to:

- develop documented guidance for decision-making on what may be of interest to other members of the public;
- ensure the format and structure of disclosure logs are compliant with the GIPA Act and facilitate access consistent with the Act's object, such as by using direct links;
- regularly review the role of the disclosure log as part of their general review of proactive release activities under section 7(3) of the GIPA Act;
- integrate the disclosure log into the agency's Open Data strategies; and
- institute practices to ensure the disclosure log is maintained as a contemporary record; for example by setting a target for uploading information within 30 days of release in response to an access application.

In 2016/17, the IPC identified inconsistent practices across sectors on the management of open access requirements and issued revised guidance to support improved understanding of requirements.<sup>10</sup> The IPC subsequently conducted a desktop audit of compliance by principal departments with these five additional open access requirements. The audit found that compliance by departments with the additional open access information requirements was generally low. Given these are mandatory requirements the IPC will investigate the reasons for the low compliance in particular responsibilities under the 'cluster' arrangements to improve awareness of the requirements.

This focus on AIG's advances the IPC's commitment to effective public participation and Open Government. It builds upon commitments made by the Information Commissioner in the *Towards a NSW Charter of Public Participation* report released in September 2015.

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

Complaints to the IPC continue to identify concerns with agency compliance of the mandatory requirements for proactive release of information. Of the complaints finalised by the IPC, a significant number related to the mandatory proactive release of information in the State and Local Government sectors, in particular open access.

The complaints concerned:

- agency compliance with inclusion of policy documents as publicly available information, and
- information associated with access to development application information in the local government sector including copyright.

In the local government sector, the open access issues increasingly 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 the subject of complaint to address the compliance issues raised with 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: Continued assistance in managing contract registers

Following release of the IPC e-learning module on contract registers, the IPC released further resources to support agency compliance with contract register requirements under Part 3 of the GIPA Act. The IPC published a self-assessment checklist, developed to provide support and assistance to agencies in achieving their contract register requirements. The development of the checklist furthers the commitment made by the IPC in its 2015 report on *Universities' Compliance with the GIPA Act: Audit Report*.

The self-assessment checklist:

- can be used by agencies to review their contract registers and easily identify where any requirements may need to be improved to ensure compliance with the GIPA Act;
- includes all mandatory practice requirements;
- includes areas where an agency can take more proactive and positive steps in meeting its compliance through the recommended practice; and
- fulfills the recommendation of the NSW Audit Office Audit report recommendations for the IPC to continue to assist and support agencies in elevating compliance.

The checklist is available for any officer that has a role in contract registers and includes mandatory and recommended practices.

<sup>10</sup> [https://www.ipc.nsw.gov.au/sites/default/files/file\\_manager/Fact\\_sheet\\_Open\\_access\\_information\\_under\\_the\\_GIPA\\_Act%20Agency\\_requirements.pdf](https://www.ipc.nsw.gov.au/sites/default/files/file_manager/Fact_sheet_Open_access_information_under_the_GIPA_Act%20Agency_requirements.pdf)



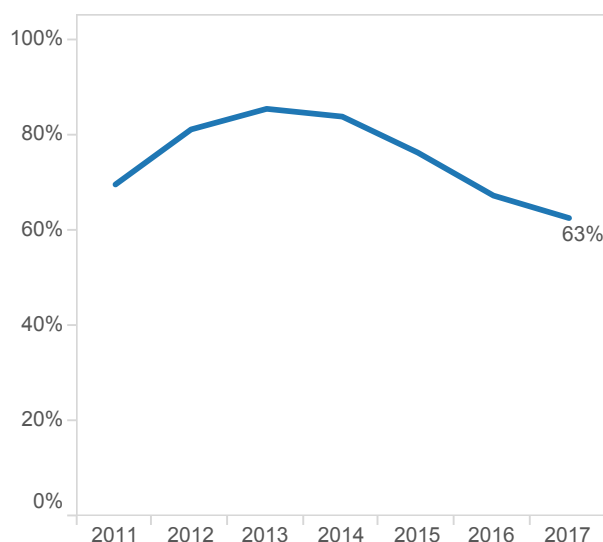
# Pathway 2: Authorised proactive release of information

## Continuing decline in reviews of programs for release of government information

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 2016/17, 63% of agencies reported having conducted a review of their program for the release of government information. This is a decline from around 71% in 2015/16 and is 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 2016/17**

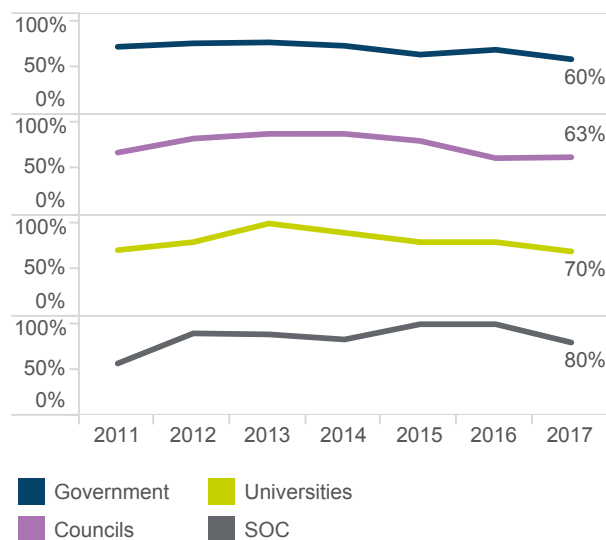


The decline is consistent for all sectors. In 2015/16 the IPC identified that the previous decline was most apparent in the council sector and attributed the decline to council mergers. However the significant decline this year appears to be driven by the reduction in reviews conducted in the government sector (Figure 3):

- 60% of agencies in the government sector conducted reviews – a significant decline from 70% reported to the IPC in 2015/16

- 63% of councils conducted reviews – consistent with 2015/16
- 70% of universities conducted reviews – a decline from 80% in 2015/16
- 80% of state owned corporations conducted reviews – a significant decline from 100% in 2015/16.

**Figure 3: Agencies that conducted annual information release reviews as a percentage of all agencies that reported, by sector, 2010/11 to 2016/17**



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 and case studies, infographics and advocacy through the Open Data Advocate work program.

Given the continuing decline, the IPC's focus for 2017/18 will include more targeted engagement 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.

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

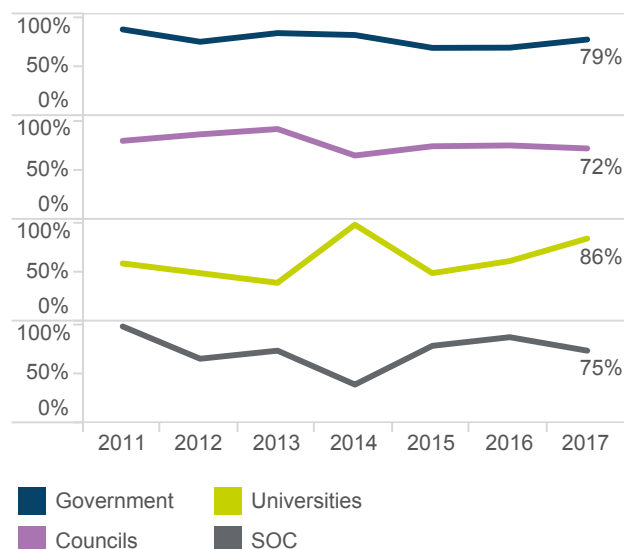
## Release of additional information following a review increased significantly in the university sector and slightly in other sectors

Ideally, all agency information release reviews should result in additional information being released. In 2016/17, 75% of agencies that conducted a review, released additional information. This is consistent with release rates in 2015/16 (74%). Figure 4 shows the trends in the percentage of reviews leading to the release of additional information and shows:

- 79% of agencies in the government sector released additional information following review – an increase from 71% in 2015/16
- 72% of councils released additional information following review – a decline from 75% in 2015/16
- 86% of universities released additional information following review – a significant increase from 63% in 2015/16

- 75% of state owned corporations released additional information following review – a decline from 89% in 2015/16.

**Figure 4: Agencies that released additional information as a percentage of agencies that conducted a review, by sector, 2010/11 to 2016/17**



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

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

- Upper Hunter Shire Council undertakes extensive consultation with both internal and external stakeholders to ensure that it maintains a rigorous proactive release program. This involves annual community consultations, regular surveying of staff, reviewing the Council's Disclosure Log and consideration of periodic external enquiries and correspondence from the community
- The City of Sydney Council developed two mandatory e-learning courses for all office-based staff: the *Records Management Challenge* and the *Information Access Challenge*. These courses promote a culture of openness and accountability and address important principles on the creation, quality, retention, legal rights and disclosure of information. The council has made the source code for both courses freely available to other government agencies, subject to Creative Commons licencing
- The Department of Planning and Environment requires all branches to review the proactive release program and provide input into building a new program for the coming year.

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

- Upper Lachlan Shire Council undertook a comprehensive review of its AIG which resulted in the identification of a significant volume of material for proactive release
- The University of New South Wales reviewed its proactive release program by assessing the type of information requested via formal access applications and informal requests to determine whether that information could be made available to the public by proactive release
- Orange City Council maintains a register of informal information requests to enable identification of frequently requested information that could be suitable for proactive release.

### *Improve the accessibility of the information that it identifies could be proactively released*

- The NSW Ombudsman Office uses social media to advise the public of the release of information proactively
- Maitland City Council proactively released its Burial Register via a new online portal system to allow the public to carry out family history enquiries
- The Department of Education launched its new Policy Library to improve and simplify that way it provides access to policy documents. [It can be accessed at the Department of Education website.](#)

# 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, recognising the safeguards for staff who release information informally and by linking the pathway to broader agency access mechanisms, in particular AIGs.

## Agency practices

Agencies may release any information informally unless there is an overriding public interest that would prevent release.

Informal release under the GIPA Act can be quicker and less costly for the applicant and for the agency, and can be applied and interpreted flexibly. Agencies can decide how information is released: by phone, email, letter, fax, or in person. Conditions can also be imposed on the use of the information released.

By highlighting the role of the informal 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.

During 2017 the IPC released guidance on *Managing access to audio visual information under the GIPA Act – guidance for agencies*,<sup>11</sup> which included consideration of the informal release pathway.

The IPC recommends that agencies exercise their discretion to deal with requests informally wherever possible as a way to facilitate and encourage access to government information, promptly and at the lowest reasonable cost.

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<sup>11</sup> <https://www.ipc.nsw.gov.au/managing-access-audio-visual-information-under-gipa-act-guidance-agencies-0>





# Pathway 4: Formal applications<sup>12</sup>

**In 2016/17, there was a further increase in the number of applications lodged and improvement in the overall release rate of information to applicants**

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 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 are that:

- 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
- 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 2016/17 was to further enhance its provision of open data and develop a publicly available dashboard enabling easy access and understanding of NSW agencies' operation of the formal pathway.

<sup>12</sup> This section of the report deals with the operations of agencies in regard to formal applications, as reported to the IPC. One change from last year's Report is that data is now presented for all five sectors: government agencies, local councils, universities, ministerial offices, and state owned corporations (SOCs). Previously SOCs' data had been included with that of the government sector. They have now been separately identified in order to give greater insight into the GIPA operations of this and the government sector.

### Issue Highlight: Australia's first dashboard on the use of the right to access information

The GIPA dashboard provides accessible data for the public, individual agencies and for all sectors. By making this data more accessible, the public and agencies can see how the GIPA Act is working for them against the eight key performance measures reported upon each year since 2014. Prior to the publication of the dashboard, agency-level GIPA data was publicly available through the annual Report on the operation of the GIPA Act, each agency's annual report, on the IPC's website and via the NSW government's data website [data.nsw.gov.au](https://data.nsw.gov.au).

The data is drawn from the GIPA Tool used by agencies to report their GIPA Act activities and comprises reports submissions from over 230 agencies across NSW. Importantly the dashboard reports against the average performance within the five regulated sectors in recognition that each sector has distinct internal inputs and external requirements that will impact the operationalisation of the GIPA Act and the outcomes of access decisions by agencies. Accordingly sector averages provide preliminary insights into performance and facilitate further examination of practices which may be effective in promoting Open Government under the GIPA Act.

The IPC developed the GIPA dashboard in consultation with regulated agencies to ensure that the data was well understood prior to release in this form and therefore applied to facilitate enhanced performance by agencies.

The benefits of this approach include:

- a greater understanding by agencies and the community of the GIPA operations of agencies
- improved visibility and self-assessment of performance and therefore increasing compliance by agencies with their GIPA Act obligations
- improved efficiency through agencies comparing their performance and seeking performance improvement strategies from peers
- greater collaboration between agencies on areas of common interest, such as timeliness
- improved transparency to the community and stakeholders, including Parliament
- improved and streamlined ability for agencies to report to their stakeholders and demonstrate compliance and performance outcomes
- enhanced engagement opportunities for the community.

The dashboard represents the IPC's commitment to Open Data and is part of the IPC's proactive release program.

The dashboard will go live in March 2018 following publication of this report. It will be available on the IPC website [ipc.nsw.gov.au](https://ipc.nsw.gov.au). For enquiries regarding the underlying agency data, contact the relevant agency.

### Issue Highlight: GIPA Act Statutory Review

In July 2017, the Attorney General tabled a report of the statutory review of the GIPA Act, and the associated GIIC Act. These statutes were enacted to foster change in the way NSW agencies make government information available to members of the public, and to contribute to a cultural shift in the way agencies and members of the public think about 'Open Government'.

[The report is available on the NSW Justice website.](#)

The report concludes that the GIPA Act and GIIC Act are generally well supported, the new pathways the GIPA Act created to access government information are useful and effective, and the Acts are operating efficiently. The objectives of both Acts remain valid, and their terms remain appropriate for securing those objectives.

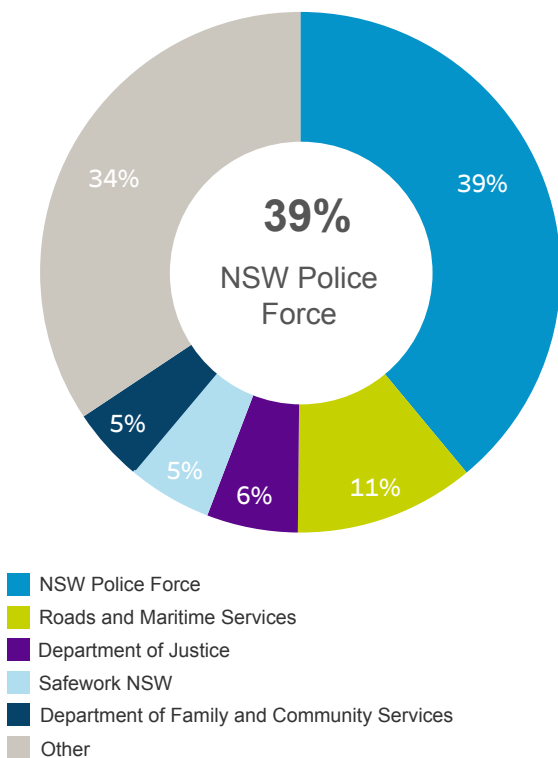
The report takes an operational view, making recommendations to address the mechanics of the GIPA Act.

The Government is currently considering its response to the Review's recommendations.

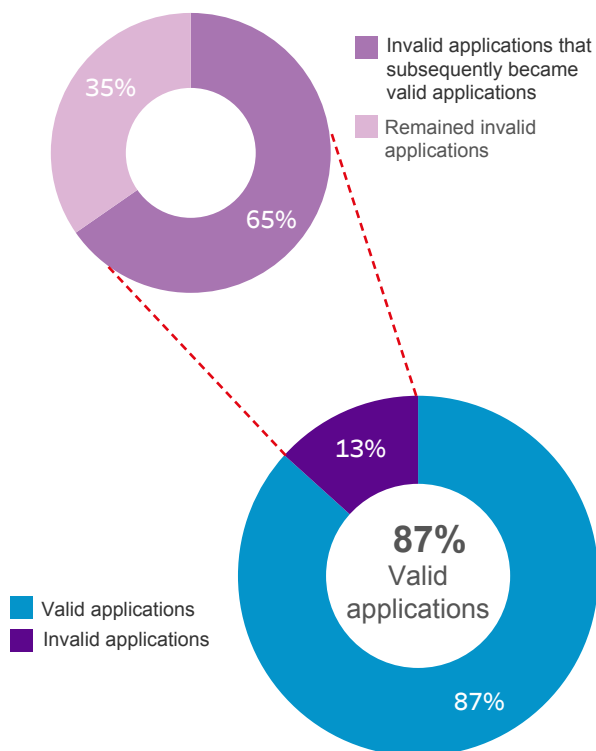
**IPC future focus:** The IPC will work with the Department of Justice and other stakeholders to support and implement any legislative changes.

# Year at a glance

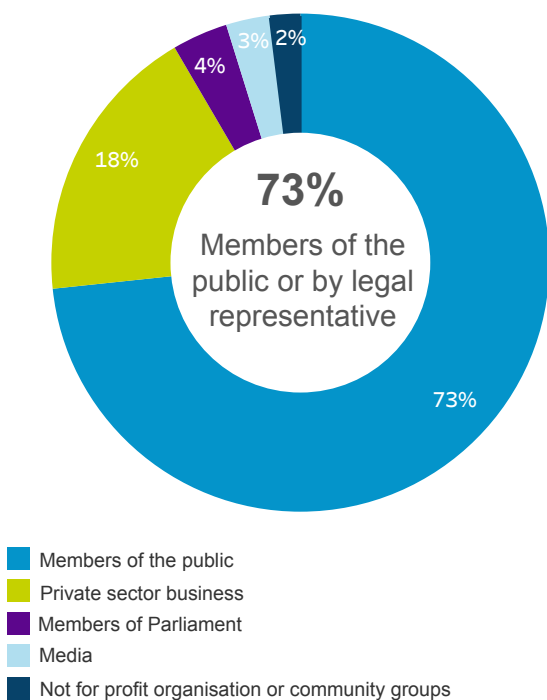
## Where were applications lodged?



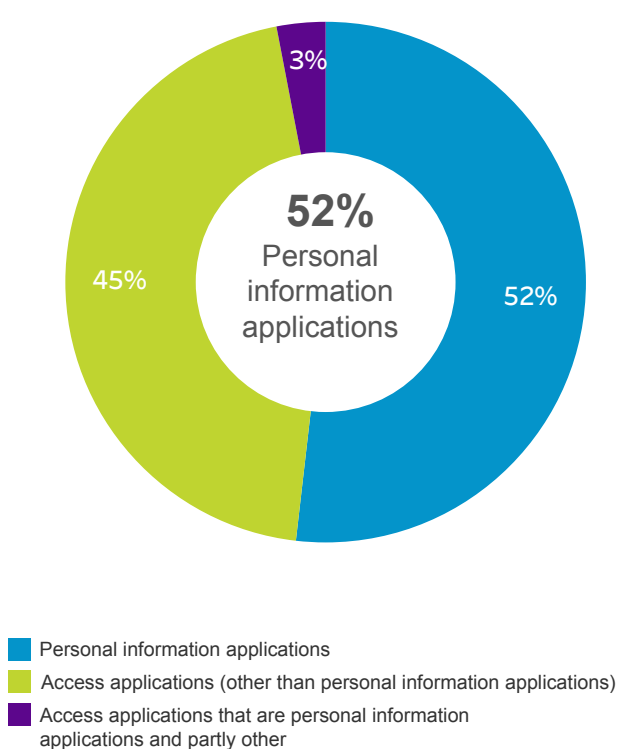
## Were applications invalid?



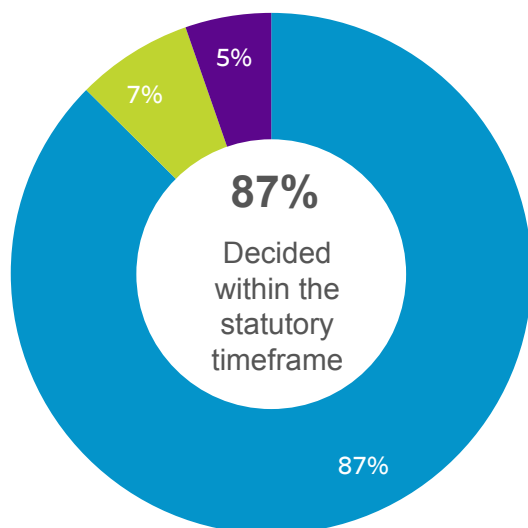
## Who applied?



## What was asked for?

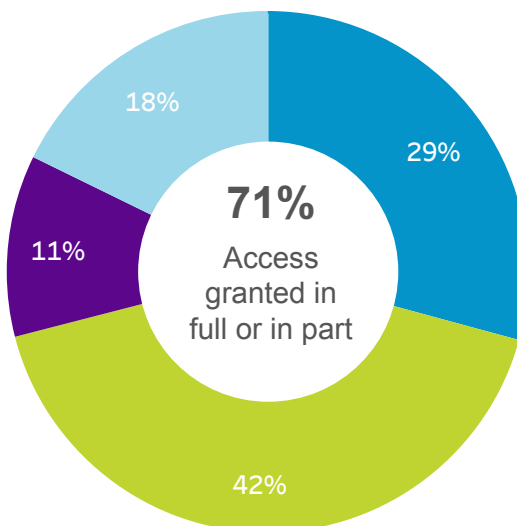


## How quickly were decisions made?



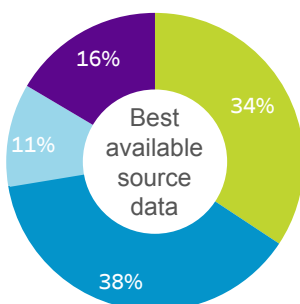
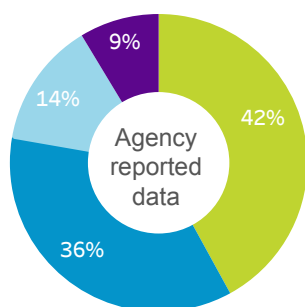
- Decided within the statutory timeframe (20 days plus any extensions)
- Decided after 35 days (by agreement with applicant)
- Not decided within time (deemed refusal)

## Did applicants get what they asked for?



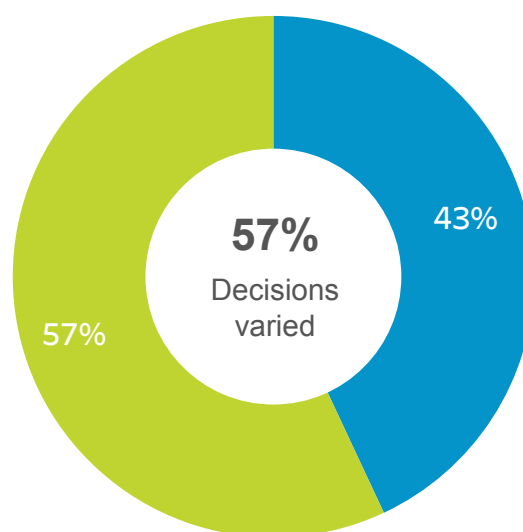
- Access Granted in Full
- Access Granted in Part
- Access Refused
- Other

## How were decisions reviewed?



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

## 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 2016/17

At the time of reporting, agencies had advised they received 15,551 valid applications during 2016/17. This compares with 14,762 valid applications in the previous financial year and represents a total increase of 789 (or 5%) in valid applications received. The trend in applications is shown in Figure 5. This overall increase represents a return to the numbers of applications received in 2012/13.

The number of applications received by agencies can be affected by a number of 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>13</sup>

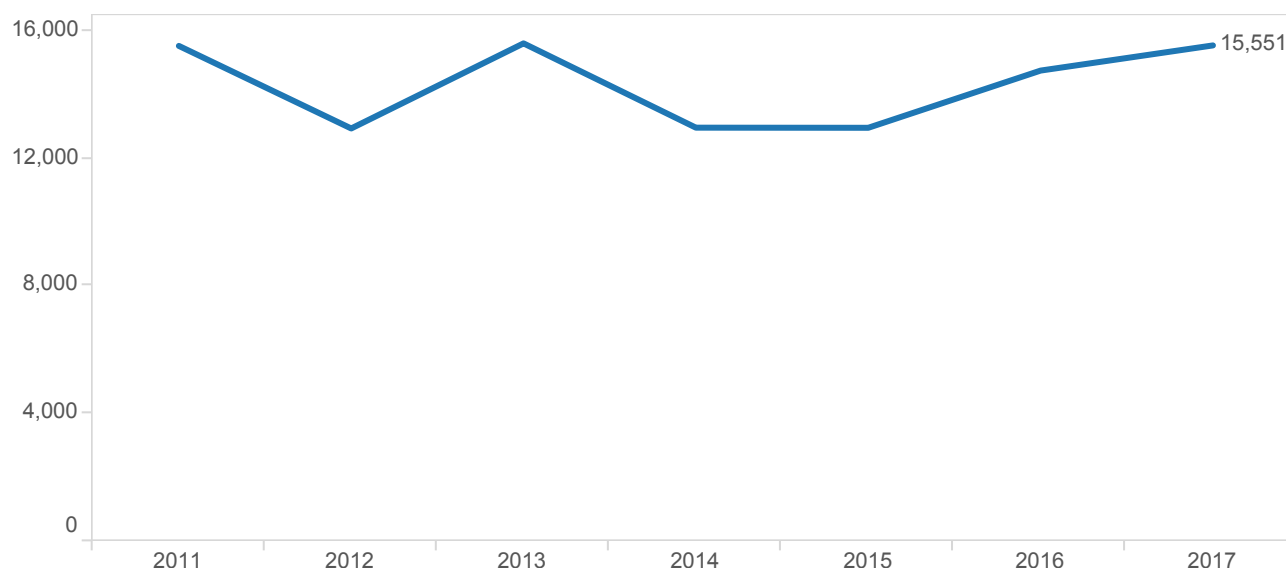
Consistent with previous years the government sector continued to account for the great majority (13,114 or 84%) of valid applications.

In 2016/17, the NSW Police Force and Roads and Maritime Services combined accounted for 50.2% of all valid applications (Figure 6). The number of applications received by the NSW Police Force was consistent with 2015/16. The number of applications received by Roads and Maritime Services rose by 10% compared to 2015/16.

The top six agencies by number of applications received were the same as in 2015/16. Notable changes in applications received across these agencies were rises of:

- 38% in applications to the Department of Justice (from 638 in 2015/16 to 879 in 2016/17)
- 18% in applications to Safework NSW (from 701 in 2015/16 to 826 in 2016/17).

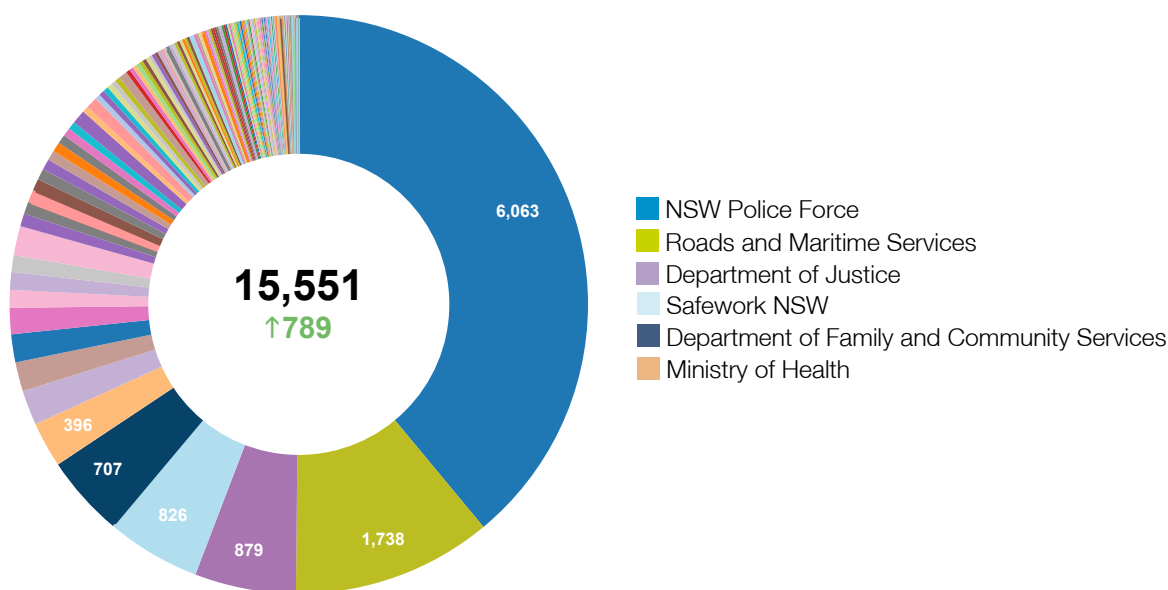
Figure 5: Total number of valid applications received, 2010/11 to 2016/17



'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 7(b) of the GIPA Regulation.

<sup>13</sup> From 2016/17 data is reported across five sectors, including state owned corporations. This will affect comparisons with previous years' published reports.

Figure 6: Distribution of valid applications received, by agency, 2016/17

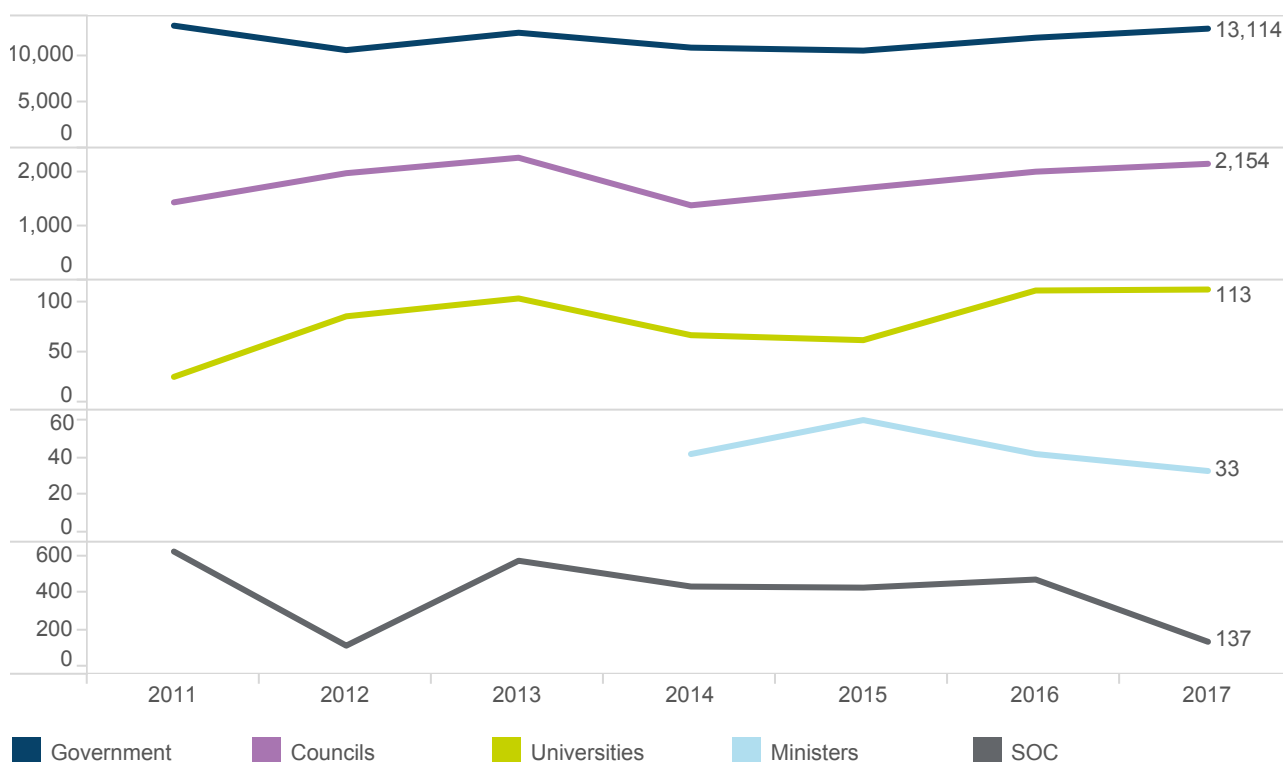


### Applications continue to increase in the government and council sector. However the overall rate of increase has moderated

After significant increases in recent years the growth in the number of applications received by the council sector moderated with a rise of 7% over 2015/16, compared to 18% in the previous year. There was also a smaller rise in the government sector of 8% over 2015/16 compared to 13% in the previous year.

Applications received in the ministers sector declined 21% and also declined 71% in the state owned corporation sector. Both of these sectors receive relatively few applications and their level of applications is therefore more variable. The university sector received similar numbers to 2015/16.

Figure 7: Number of applications received, by sector, 2010/11 to 2016/17



# Invalid applications

The level and trend in invalid applications is one indicator of the extent to which the GIPA Act is understood by applicants and agencies, as well as 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 as well as the number of applications considered in 2016/17.

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 increased significantly compared with 2016/17

### The rate of invalid applications increased slightly

In 2016/17 agencies received 2,067 invalid applications, equivalent to 13% of all formal applications received

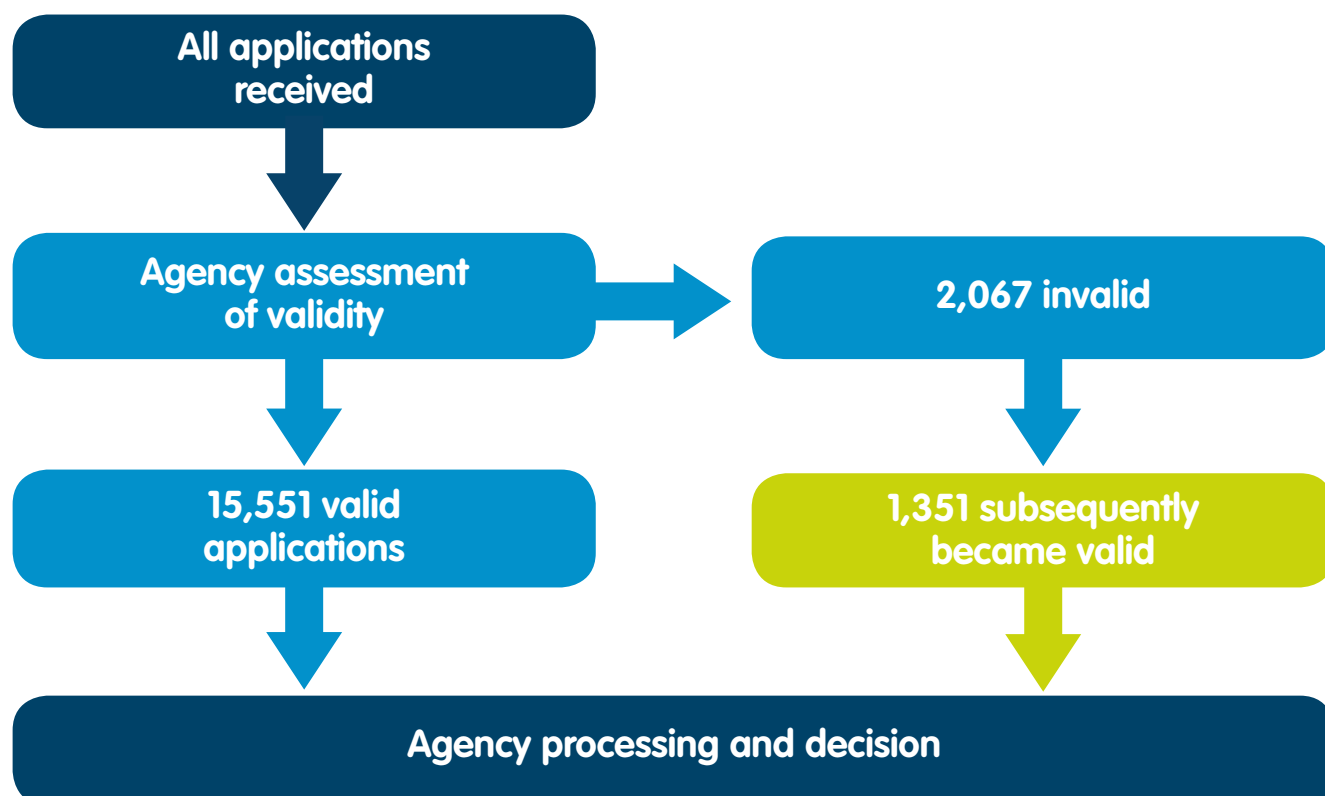
(Figure 9). This is equivalent to the percentage of invalid applications received in the first year of the GIPA Act's operation.

Consistent with previous years, in 2016/17 the most common reason for invalidity (applying in 98% of invalid applications) was that the application did not comply with formal requirements.

The continuing increase in the percentage of applications that were invalid is of concern. 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 their application valid. Accordingly opportunities to assist applicants through guided application processes including online lodgement should be promoted.<sup>14</sup>

Figure 8: Flow of valid and invalid formal applications

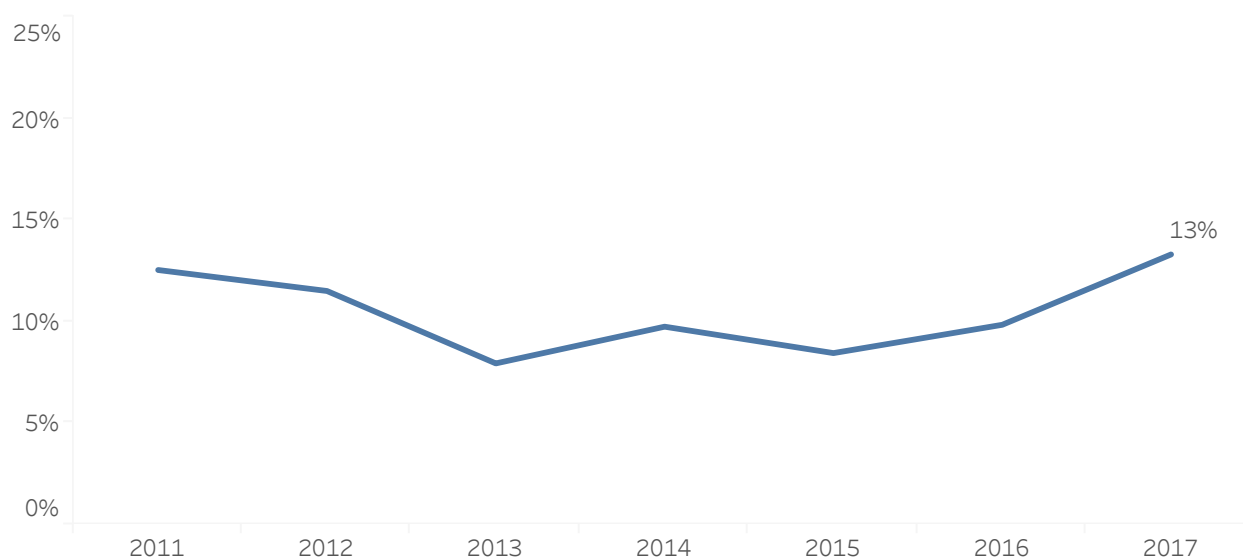


*'Invalid applications' are reported and measured by the requirement for agencies to report on the number of invalid applications specified in Table C of Schedule 2 to the GIPA Regulation.*

<sup>14</sup> Section 52 (3) of the GIPA Act states that an agency must provide reasonable advice and assistance to assist applicants make a valid application.



**Figure 9: Invalid applications as a percentage of all formal applications received, 2010/11 to 2016/17**



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. Agencies are encouraged to consider these solutions together with a review of their current access application templates to better assist applicants.

In the light of this general increase in invalid applications and the rise in some individual agencies, the IPC will include in its annual Regulatory Plan a commitment to engage with agencies to understand the drivers behind the increases in invalidity and identify strategies to halt this trend. The IPC will also work with agencies to develop a template that better assists applicants with the application process.

### **All sectors except state owned corporations had an increase in the percentage of applications that were invalid**

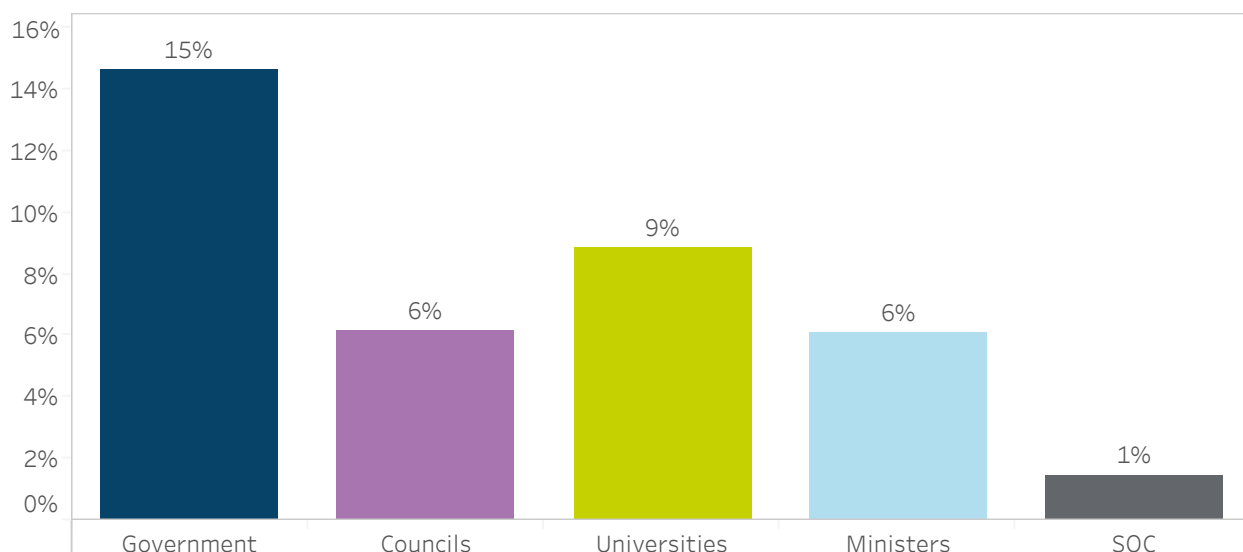
#### ***The government and university sectors had the highest percentage of invalid applications***

The pattern of invalid applications as a percentage of all applications varied across sectors (Figure 10). The government and university sectors had the highest percentage of invalid applications.

#### ***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 to 2015/16. Among major agencies

**Figure 10: Invalid applications as a percentage of all formal applications received, by sector, 2016/17**



(i.e. those who received a large number of applications overall), the percentage rose:

- from 10% to 42% for Transport for NSW
- from 10% to 33% for Roads and Maritime Services
- from 13% to 35% for the Department of Justice
- from 7% to 23% for the Department of Finance and Services
- from 3% to 22% for the Department of Industry.

However some agencies experienced a decline in the percentage of applications that were invalid compared to 2015/16, for example the percentage fell:

- from 9% to 4% for NSW Police Force
- from 5% to 3% for Safework NSW
- from 19% to 13% for the Ministry of Health.

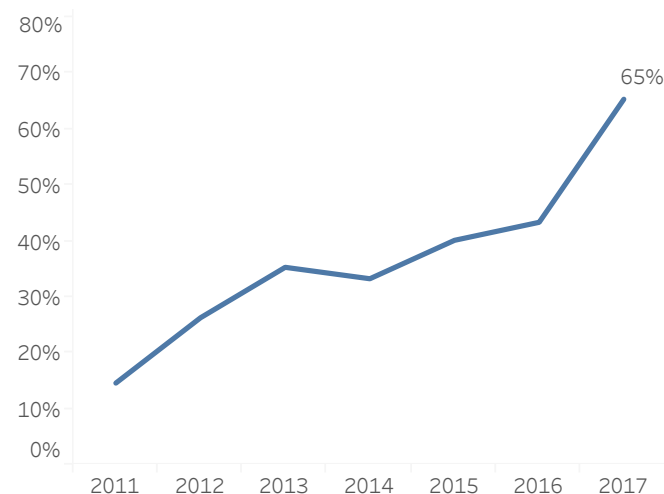
## Invalid applications are increasingly becoming valid

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 significant increase in the percentage of applications that subsequently become valid.

Continuing the upward trend, 65% of invalid applications subsequently became valid in 2016/17 (Figure 11).

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

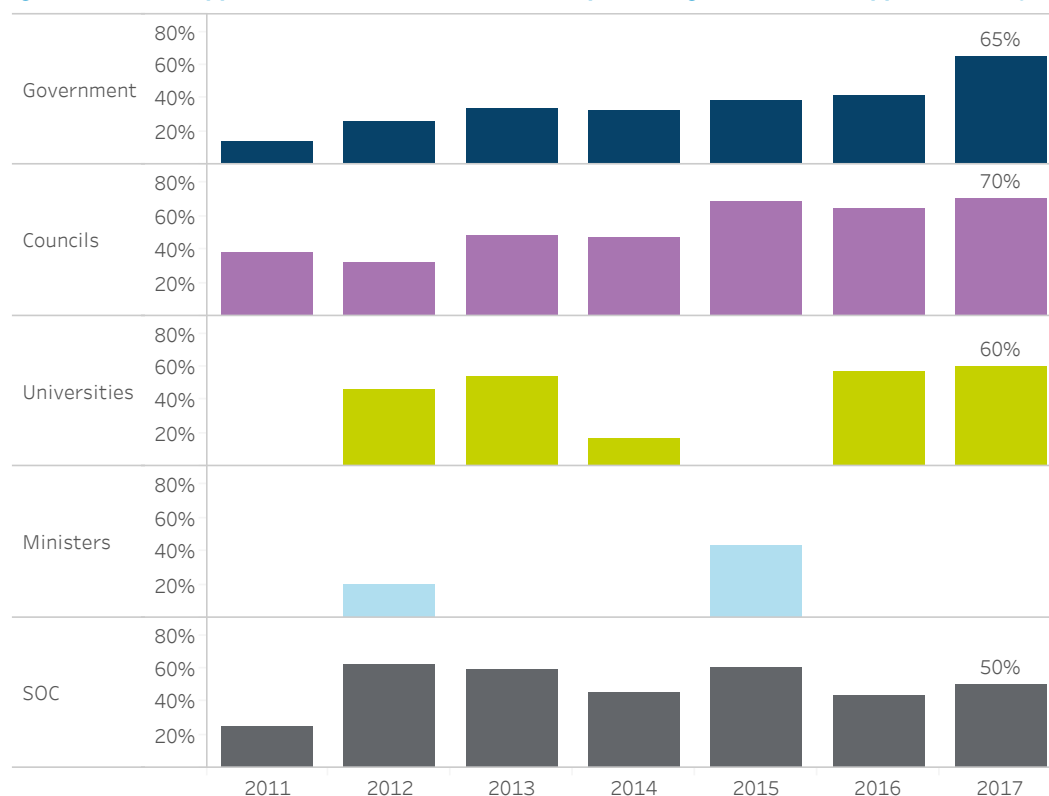
**Figure 11: Invalid applications that became valid as a percentage of all invalid applications, 2010/11 to 2016/17**



- increased steadily from 15% in 2010/11 in the government sector to 65% in 2016/17
- increased to 70% in the council sector.

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 2016/17**



Note: In some years, some sectors did not receive any invalid applications that became valid.



# Who applied?

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

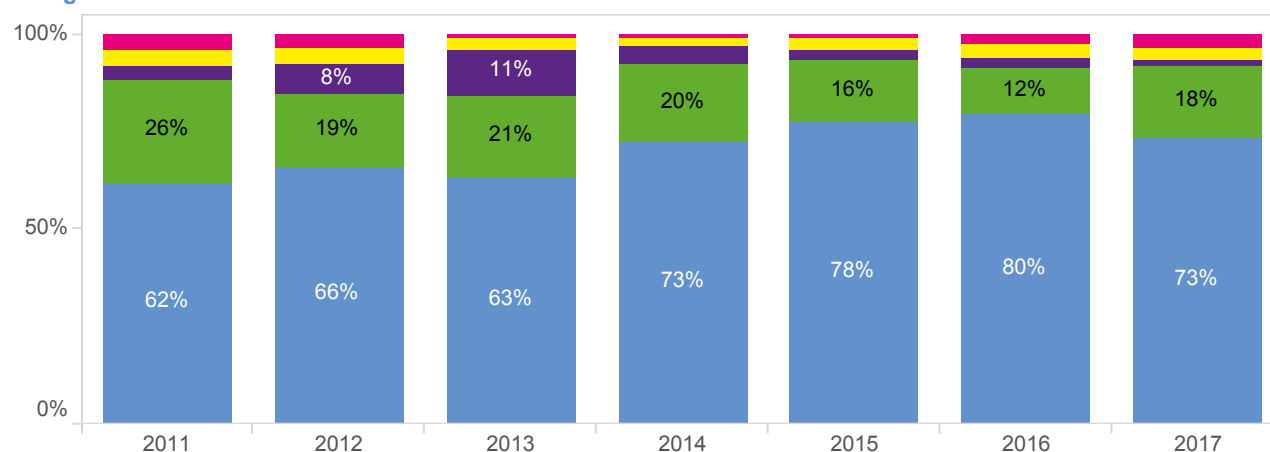
In 2016/17, over 73% of all outcomes related to applications from either a member of the public or their legal representative. This is a decline (of 7%) in the proportion of outcomes related to applications from members of the public, from the 80% reported in

2015/16. The largest single applicant type (41%) was members of the public represented legally.

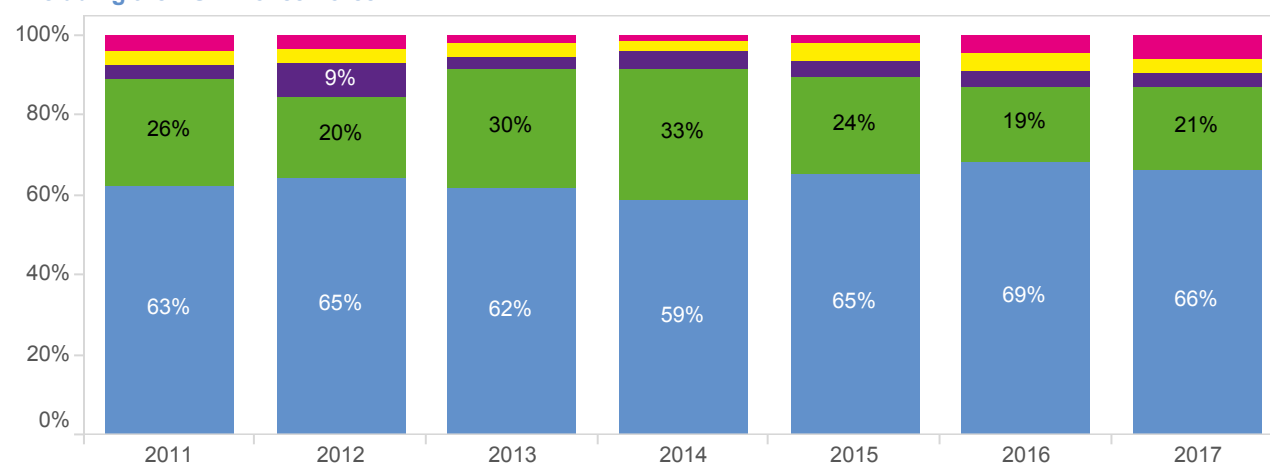
As apparent from Figure 6 on page 27, the volume and source of applications received by the NSW Police Force heavily influenced overall reported outcomes. In all agencies (other than NSW Police Force) the number of applications from members of the public grew by 7%, to 6,232.

**Figure 13: Trend in the proportion of outcomes, by type of applicant, 2010/11 to 2016/17**

### All agencies



### Excluding the NSW Police Force



'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.

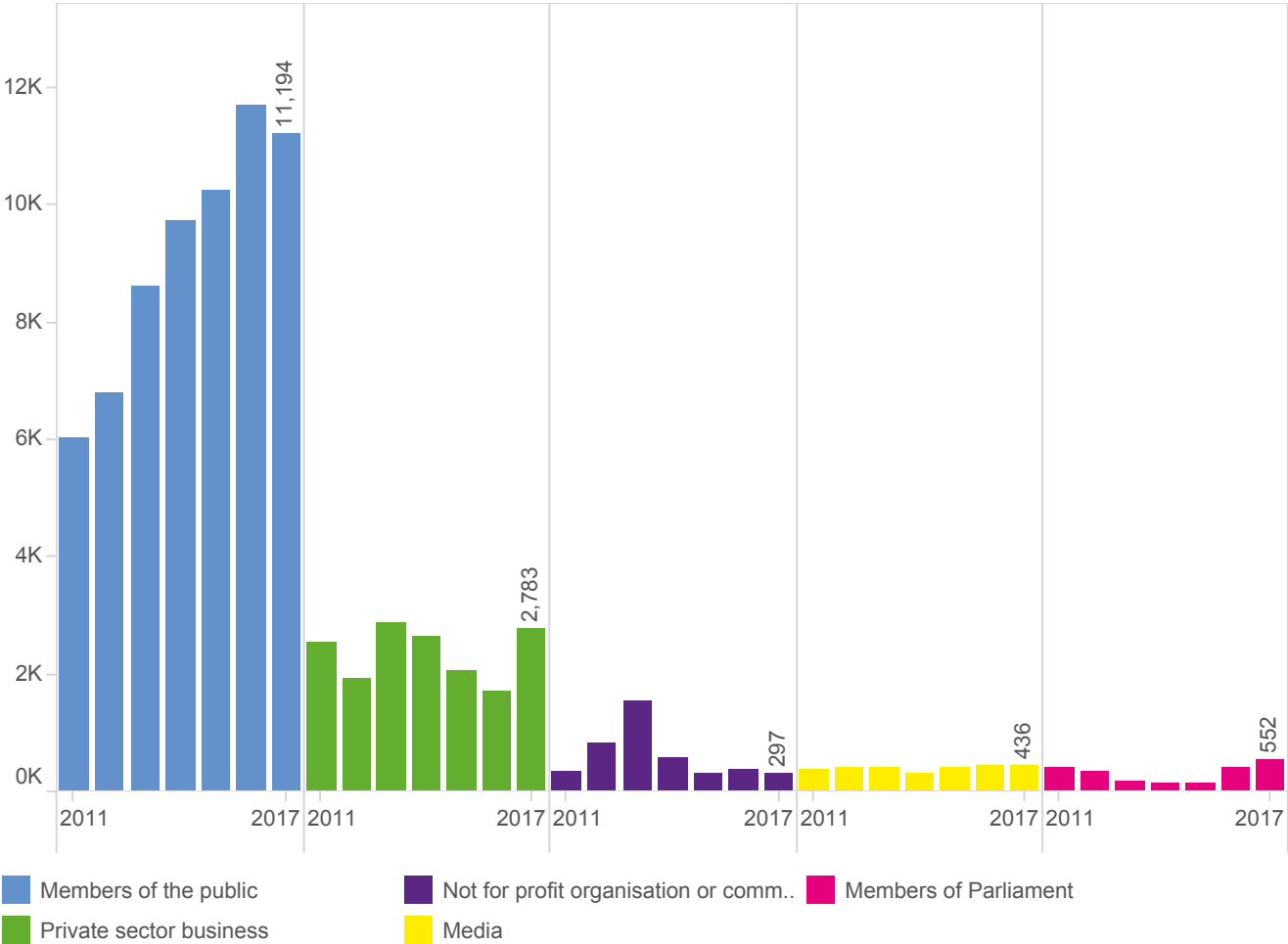
# Numerically there were fewer outcomes for members of the public and significant increases in outcomes for private sector businesses

Figure 14 shows how the number of outcomes for each applicant type has varied since 2010/11. In 2016/17 (as in most years) the greatest number of outcomes was for applications by members of the

public. However, the number of outcomes related to applications by members of the public declined 4% compared with 2015/16. In 2015/16 45% of outcomes were for legally represented members of the public and in 2016/17 this figure declined to 41%.

The number of outcomes for private sector business increased significantly, by 62%, from 1,715 in 2015/16 to 2,783 in 2016/17. This increase is consistent with 2013 levels of outcomes for private sector businesses.

Figure 14: Number of outcomes by type of applicant, 2010/11 to 2016/17

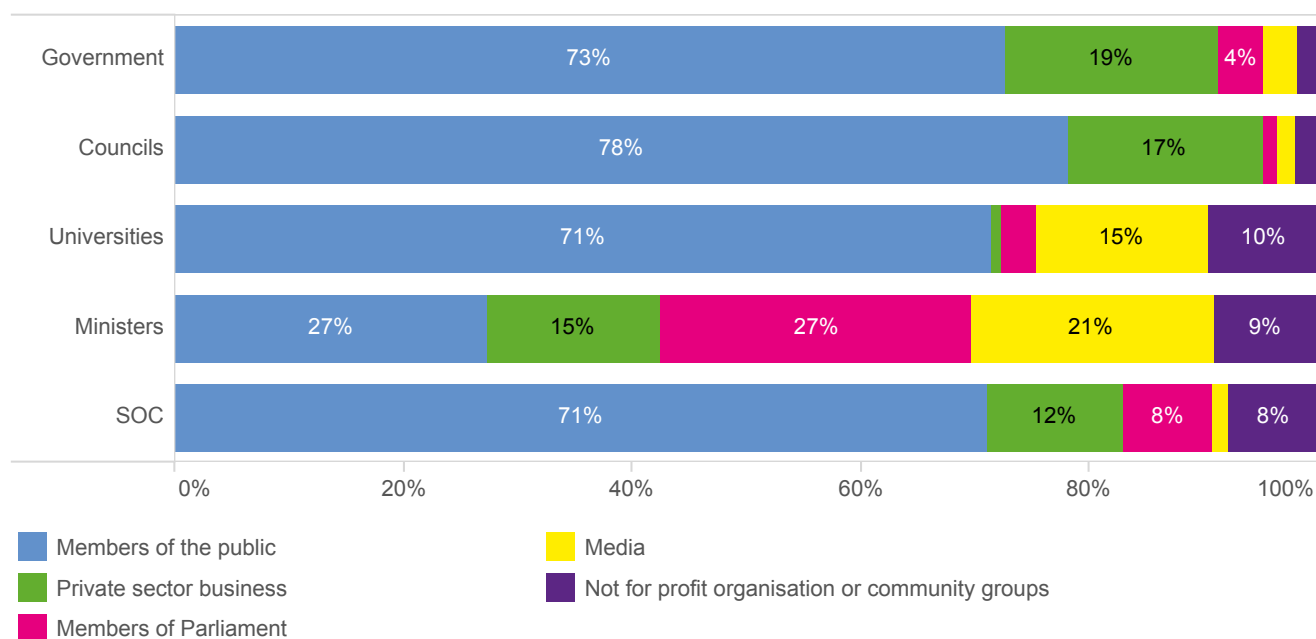


## Significant changes in applicant type were experienced in the university and minister sectors

In 2016/17, the distribution of applicant types varied markedly across sectors. Notable changes by sector since 2015/16 were:

- in the government sector, a decline in the percentage of outcomes related to members of the public (from 80% to 73%)
- in the university sector, a significant increase in the percentage of outcomes related to members of the public from 56% to 71%.

**Figure 15: Percentage of outcomes by sector and type of applicant, 2016/17**





# What information was asked for?

## There has been an increase in the percentage of 'other than personal information' application outcomes

In 2016/17:

- 52% of outcomes related to applications for personal information, consistent with 2015/16
- 45% of outcomes related to applications for 'other than personal information' compared with 39% in 2015/16
- 3% of outcomes related to applications for both types of information compared with 9% in 2015/16 (Figure 16).

The significant change in the proportion of outcomes is driven by the increase in applications seeking 'other than personal information'. As Figure 17 shows, in 2016/17:

- 'other than personal information' outcomes increased significantly by 20% (from 5,729 such outcomes in 2015/16 to 6,891 such outcomes in 2016/17)
- personal information outcomes increased by 4%
- outcomes that were partly personal information and partly other information declined (from a small base) to 64%.

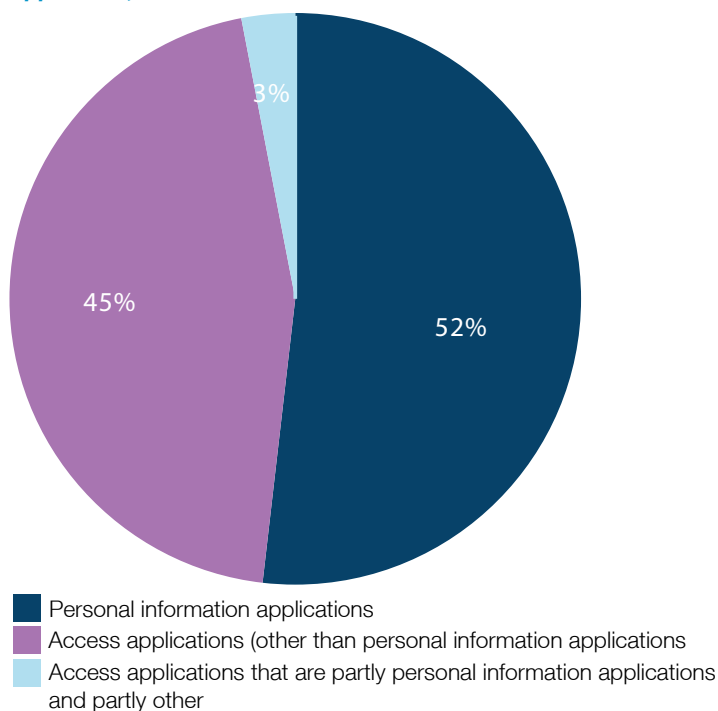
## The type of information sought varied across sectors and in the state owned corporations sector applications for personal information significantly declined

Different sectors experienced markedly different patterns of outcomes in 2016/17.

In 2016/17:

- the state owned corporations sector reported a significant decline in the number of personal information applications, from 338 in 2015/16 to three in 2016/17. This is largely attributed to the Superannuation Administration Corporation (trading as Pillar Administration) ceasing to be a statutory state owned corporation. It accounted for 328 of personal information applications made to state owned corporations in 2015/16. The number of applications for 'other than personal information' remained

Figure 16: Outcomes by type of information applied for, 2016/17



consistent with 2015/16 and accordingly accounted for 97% of all outcomes in this sector

- in the council sector, 85% of outcomes related to applications for 'other than personal information'. This is an increase of 7% from 2015/16
- in the university sector, 50% of outcomes related to applications for 'other than personal information'. This is a significant decline from the 69% reported in 2015/16.

In the government sector, 61% of outcomes related to applications for personal information. As Figure 18 shows, this declined to 31% if outcomes relating to the NSW Police Force were excluded (as 95% of outcomes for that agency related to applications for personal information). This pattern of applications is consistent with the data reported in 2015/16.

*'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 2016/17

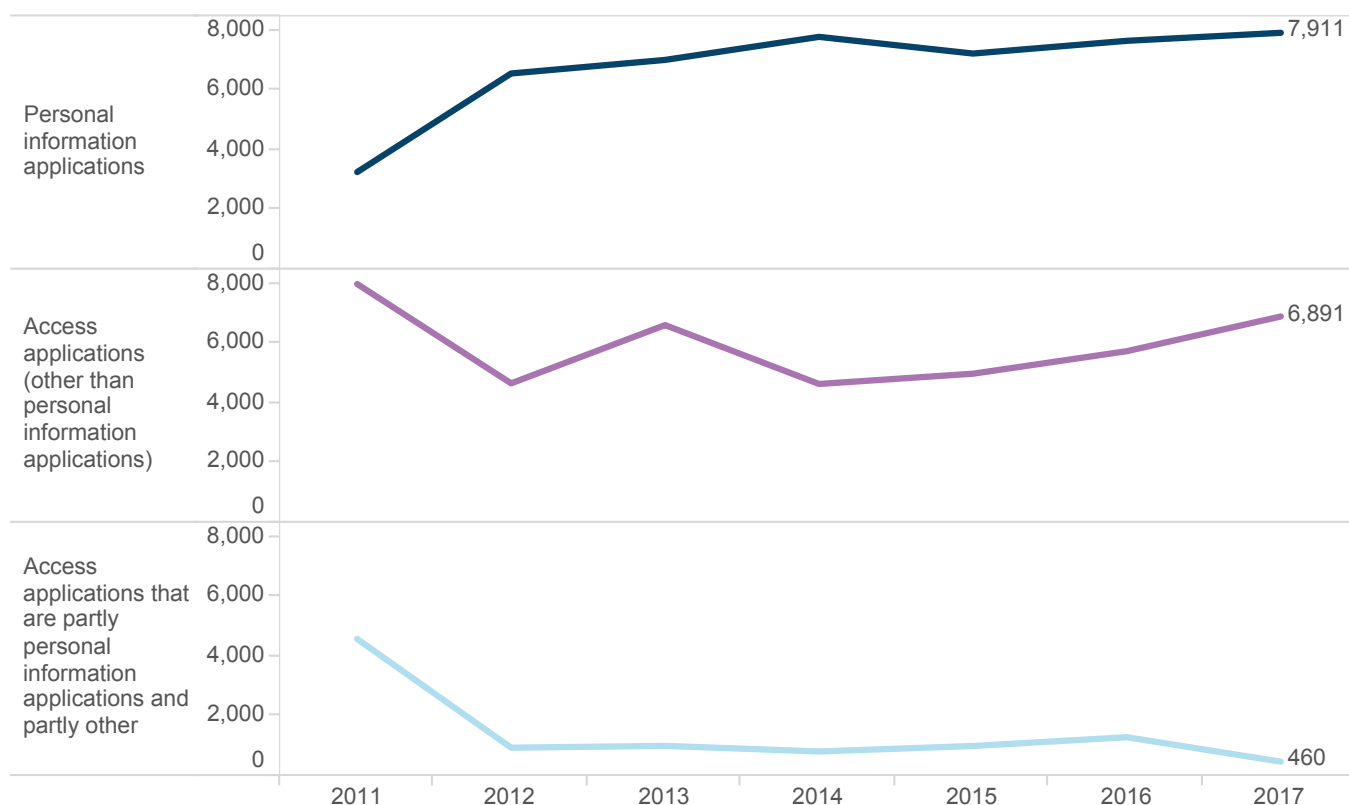
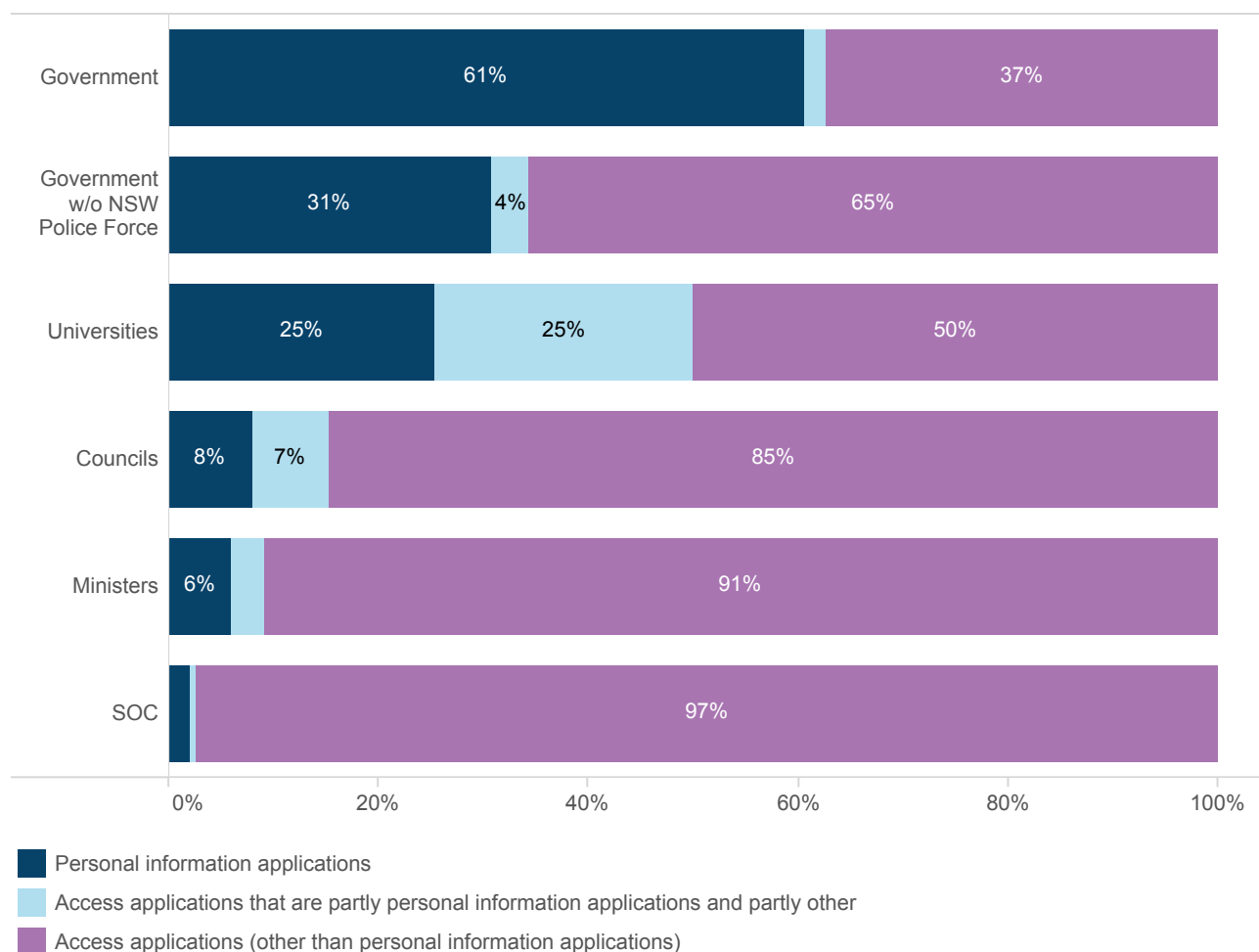


Figure 18: Percentage of all outcomes by type of information applied for, including and excluding NSW Police Force data, 2016/17



# Did applicants get what they asked for?

## Overall 'release rates' have increased slightly driven largely by the government, council and university sectors

In 2016/17, the overall release rate was 71%, representing the combined access granted in full and in part outcomes (Figure 19). This is an increase (3%) on the combined release rate of 68% in 2015/16. Release rates increased in the largest sectors: the government, local council and university sectors.

At the sector level (Figure 20) in 2016/17 the state owned corporations sector had the highest release rate, of 80%. However, this represents a decline from the release rate of 93% reported in 2015/16.

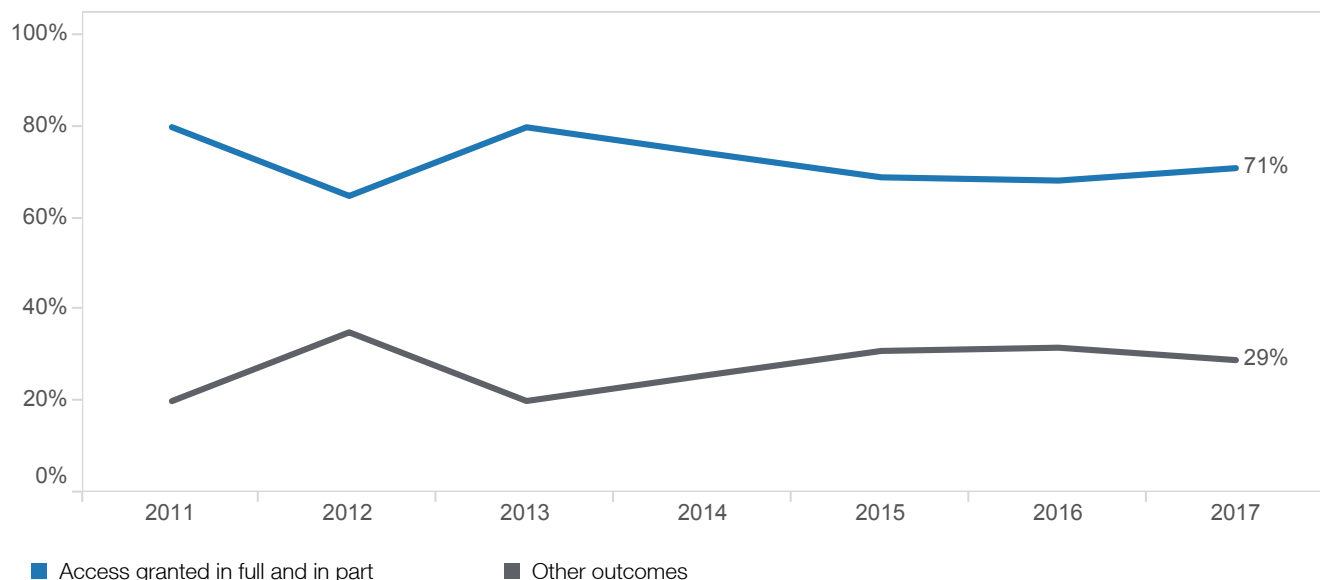
For the council sector, 74% of outcomes granted access in full and in part in 2016/17, an increase from 70% in 2015/16.

For the government sector, 70% of outcomes resulted in access being granted in full and in part. This is an increase on the 67% reported in 2015/16.

For the university sector, 69% of outcomes granted access in full and in part in 2016/17, a significant increase from 52% in 2015/16.

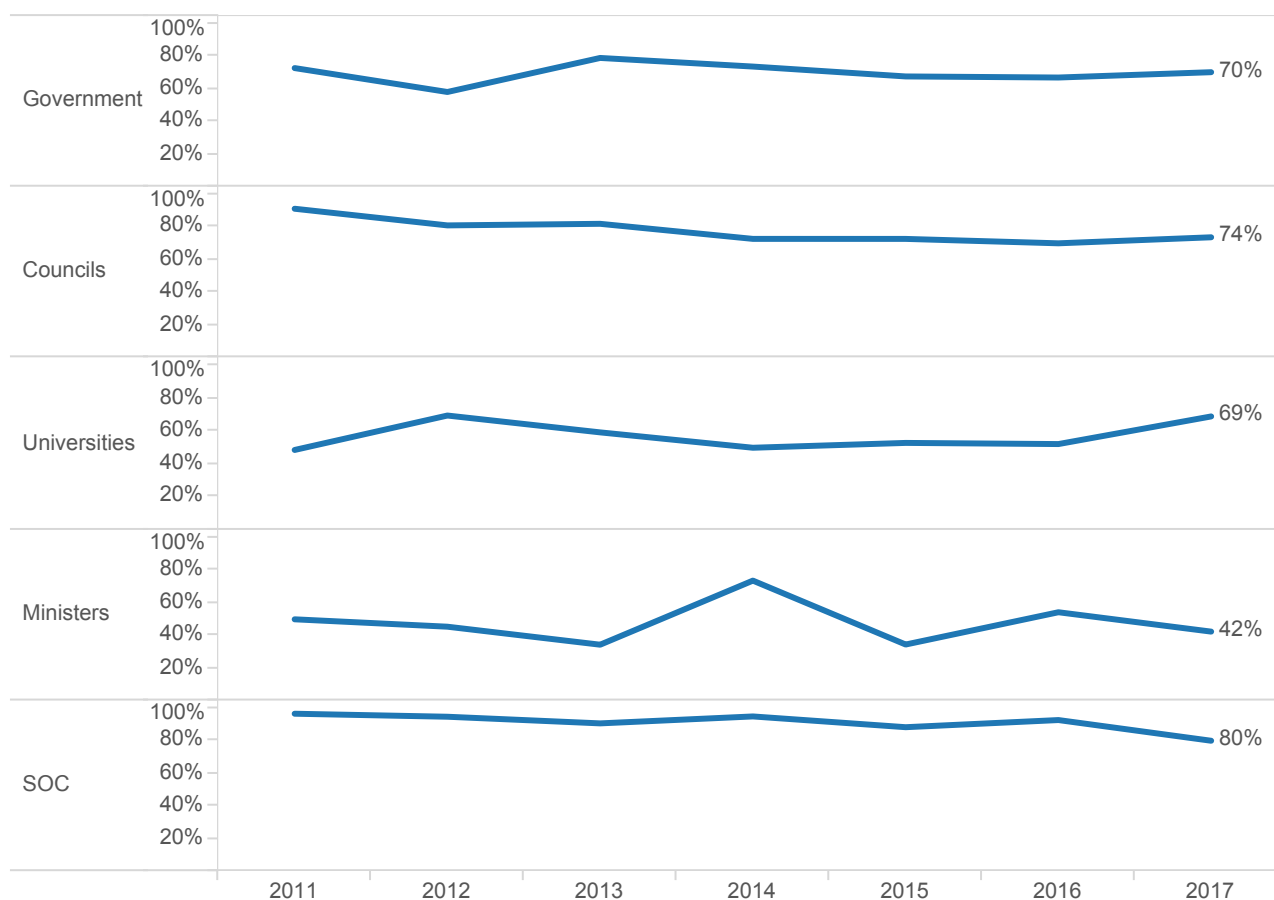
The minister sector demonstrated a decline in access being granted in full and in part with a release rate of 42% in 2016/17, a decline from 54% in 2015/16. This variation should be considered in the context of the overall low numbers of applications received by the minister sector.

Figure 19: Overall release rate across all sectors, 2010/11 to 2016/17



'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 2016/17**



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

In 2016/17, 29% of all outcomes granted access in full (Figure 21). This is consistent with the 28% reported in 2015/16.

Access granted in part outcomes were also consistent at 42% compared to 40% in 2015/16. 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 2016/17**

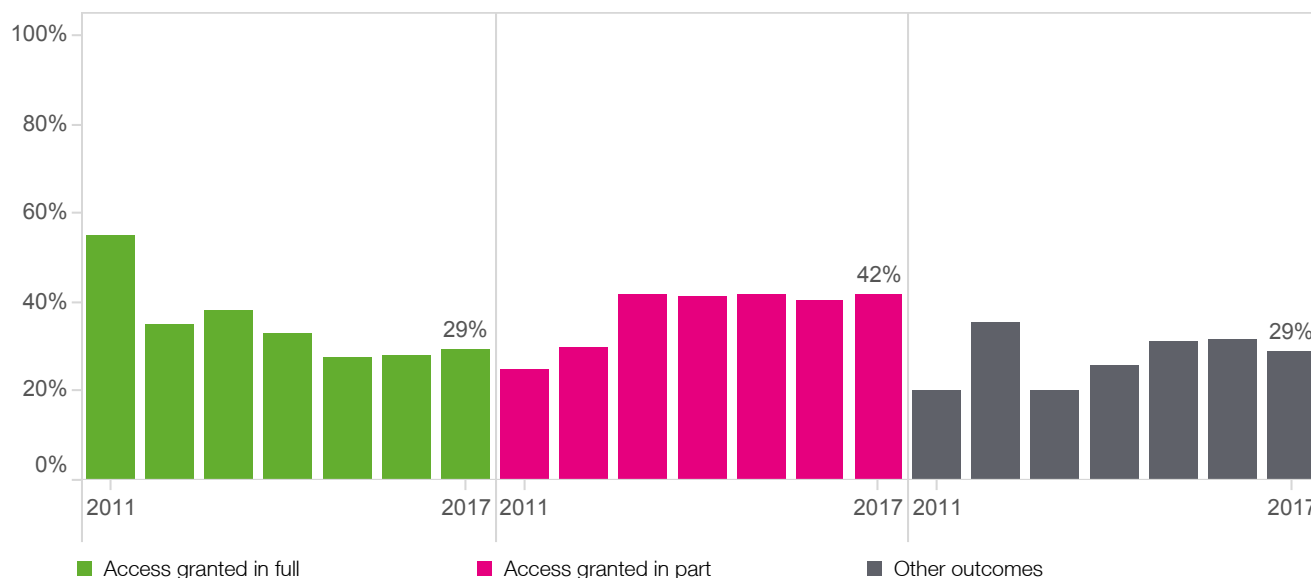
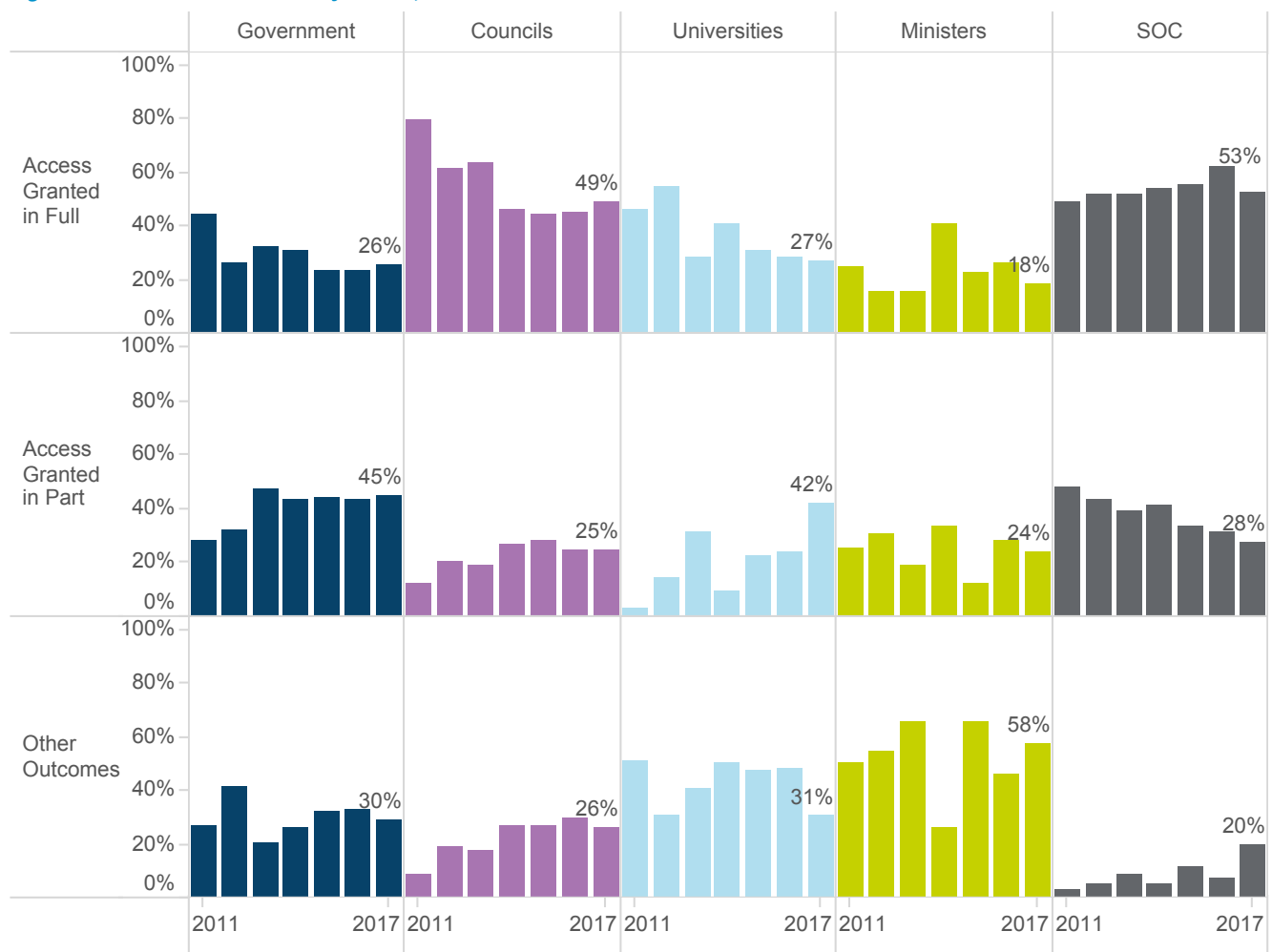


Figure 22: Release outcomes by sector, 2010/11 to 2016/17



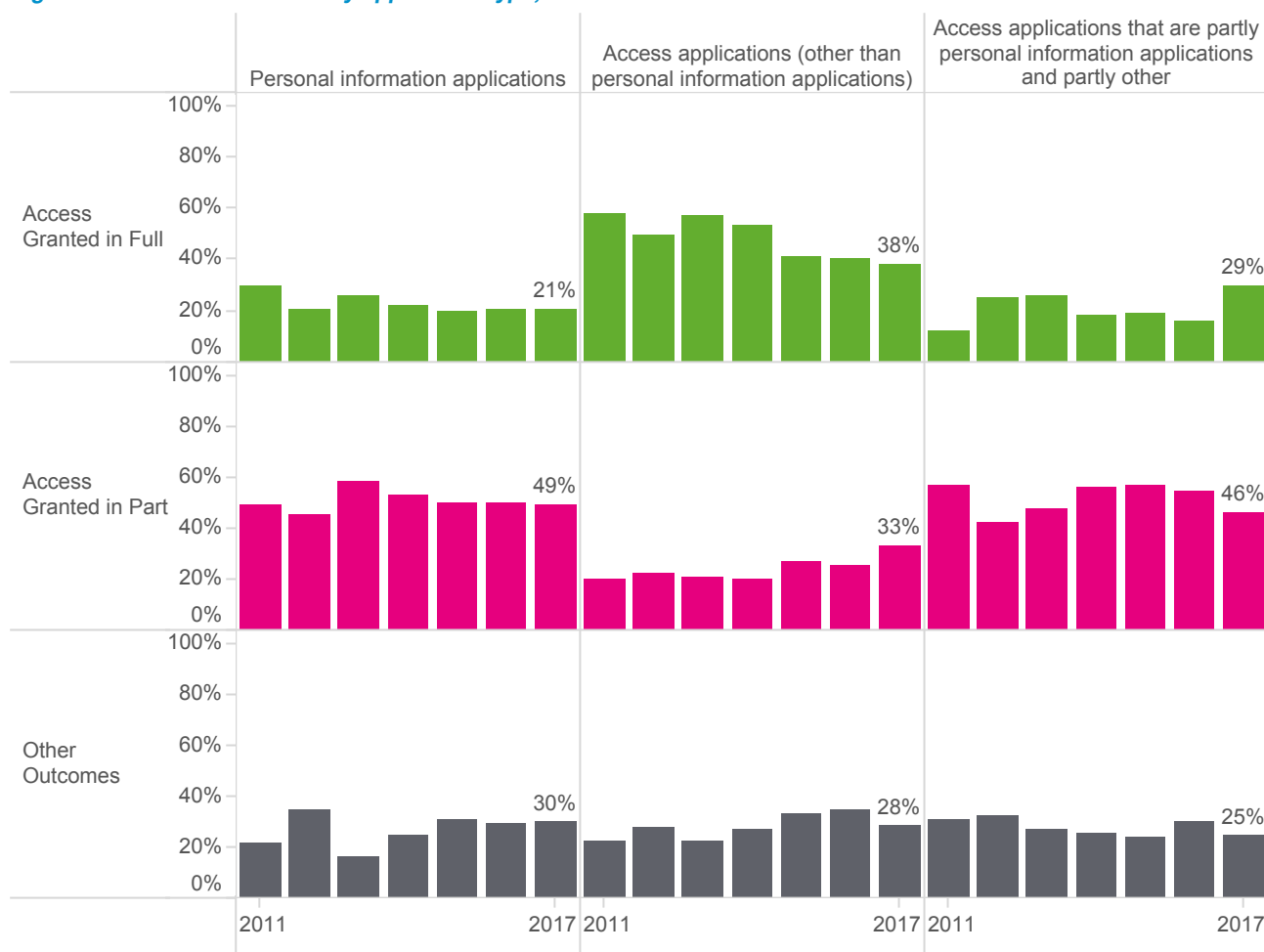
## Applications for personal information resulted in a greater release of information. However, applications for 'other than personal information' were more likely to have access granted in full

The overall release rate of information for applications for personal information and applications for 'other than personal information' were similar in 2016/17, at 70% and 71% respectively. The release rate for 'other than personal information' increased (by 6%) from 65% reported in 2015/16.

In examining the release rates for these two categories, key trends were that (Figure 23):

- In 2016/17, 21% of all outcomes for applications for personal information granted access in full and 49% of all outcomes granted access in part. This is consistent with 2015/16
- In 2016/17, 38% of all outcomes for applications for 'other than personal information' granted access in full and 33% of all outcomes granted access in part. Access in part outcomes increased from 25% of outcomes in 2015/16.

Figure 23: Release outcomes by application type, 2010/11 to 2016/17



**Overall release rates are highest for members of the public and private sector business. However, release rates for not-for-profit organisations or community groups are significantly lower**

The highest release rates in 2016/17 were for applications by private sector business (74%) and members of the public (72%) (Figure 24).

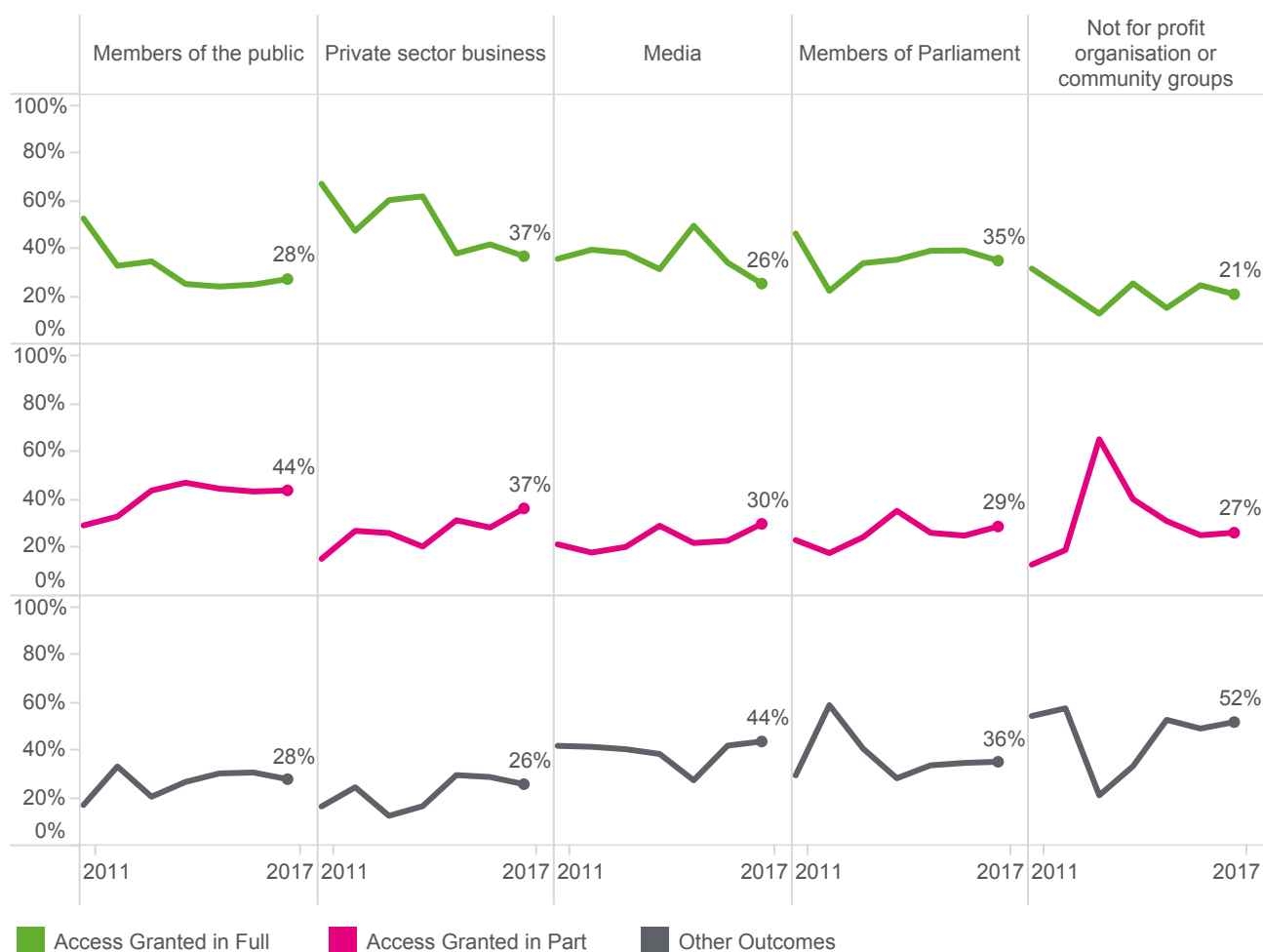
The lowest overall release rate (48%) was for not-for-profit organisations or community groups, a decline from 51% in 2015/16. The 24% difference in release rates between members of the public and not-for-profit or community groups is significant. The IPC has monitored this trend since 2015/16 and the increasing

disparity will be addressed through engagement with agencies to understand the drivers behind these lower release rates.

The composition of outcomes for the top two applicant types varied in 2016/17 from 2015/16 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 44% granted access in part.
- For private sector business, 37% of outcomes granted access in full, consistent with the 38% in 2015/16 and 37% granted access in part, an increase from 29% in 2015/16. Private sector businesses continue to be more likely to have access granted in full compared to other applicant types.

Figure 24: Outcomes by applicant type, 2010/11 to 2016/17



### Issue Highlight: Contemporary issues in information access

During the year a number of contemporary issues demonstrated the importance of the right to access information and the relevance of a structured, pro-active approach to information release.

The Royal Commission Into Institutional Responses to Child Sexual Abuse has identified critical issues regarding information release and sharing between governments. A research report commissioned to support its work noted that:

*Appropriate and timely sharing of information between government agencies and non-government organisations, and across jurisdictions in Australia is essential to allow institutions to work together in an integrated way to identify, prevent and respond to institutional child sexual abuse.<sup>15</sup>*

The IPC has provided advice to the Royal Commission on information access and sharing, noting the importance of appropriate information sharing schemes as a means to protect children in institutional contexts. The advice highlighted the value of a public interest test model of sound, structured decision-making that is focused on the purposeful release of information to foster responsible stewardship of information and promote public trust.

The IPC has also engaged with agencies in NSW to support improved access to historical records by members of the 'stolen generations' and their relatives. Appropriate access to these records requires a careful but efficient balancing of interests to ensure the various perspectives of the holders and applicants for information are managed consistently and with regard to the sensitivity of the information. The IPC has met with a range of stakeholders to assist this process. The Information Commissioner also attended a national *Setting the Record Straight for the Rights of the Child Summit* convened to promote a child or young person's best interests and foster their wellbeing through quality recordkeeping systems.

**IPC future focus:** In response to the significant issue of access to information by people who have been in and out of home care, the Information Commissioner will produce statutory guidelines to promote the factors in favour of disclosure of information to those people.

<sup>15</sup> Adams, C & Lee-Jones, K, 2016, A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney. p.1

## Issue Highlight: Application of 'unreasonable and substantial diversion of resources'

Under the GIPA Act, Agencies may assess an access application and determine that to process it would require an unreasonable and substantial diversion of resources pursuant to section 60(4) of the GIPA Act. Before an agency decides to refuse to deal with the application under section 60(4), agencies are required to give the applicant a reasonable opportunity to amend the application. This may include providing advice and assistance to applicants including narrowing the scope of the access application.

The Information Commissioner has observed a number of agency decisions to refuse to deal with an access application because searches have revealed a large volume of information or documents. In these decisions agencies have highlighted that to process the access application would lead to an unreasonable and substantial diversion of their resources.

Section 16 of the GIPA Act requires agencies to take a positive approach to assisting applicants to identify the information of relevance to their access application. While agencies are providing an opportunity to amend the scope of the access application the period in which an application should be decided stops running.

In some instances, agencies have worked effectively with applicants to narrow the scope of the access application resulting in the successful processing of the access application.

Under the NSW government sector's cluster, arrangements have been implemented to bring together large and complex service and policy units. Principal departments within these clusters have, in many instances, established a centralised GIPA unit responsible for the management of access applications. Under these administrative arrangements it is important to ensure that all business units have a knowledge and familiarity with the record keeping systems used within the cluster agency. Agencies are encouraged to:

- assess recording keeping systems;
- reach out to the different agencies and business units in clusters to identify and obtain information within the scope of the access application; and
- refine search terms to ensure that only relevant information is returned.

These steps may reduce the possibility of a refusal to deal with the application because doing so would require an unreasonable and substantial diversion of resources.

To assist agencies fulfil their requirements under section 60(4) of the GIPA Act, the Information Commissioner updated the fact sheet titled *Substantial and unreasonable diversion of agency resources*.

**IPC future focus:** The Information Commissioner will continue to monitor the application of section 60(4) of the GIPA Act to identify if further guidance is required.

## Issue Highlight: Follow-up of release rates in the NSW Police Force and Roads and Maritime Services

The 2015/16 Report noted a decline in release rates in the NSW Police Force and Roads and Maritime Services.

In response to IPC engagement NSW Police Force advised that release rates and in particular the increase in 'information not held' outcomes are affected by applications that seek to confirm the existence of information. Examples may include applications seeking information recording a motor vehicle accident.

Roads and Maritime Services advised the IPC that the low release rates were reflective of a high number of applications that sought a third party's personal information.

A decision to refuse in full is made when there is no positive consent from a third party to provide their personal information to another party. In circumstances where consent is refused, Roads and Maritime Services determines that the public interest in not disclosing personal information without their consent outweighs the public interest considerations in favour of disclosure.

Roads and Maritime Services is currently investigating further options for dealing with these types of applications and maximise release of information where appropriate.





# How quickly were decisions made?

## Timeliness of decisions has declined

In 2016/17, 13,160 or 87% of decisions by agencies were made within the statutory time frame (Figure 25). This is a decline in timeliness from 2015/16 (93%) and represents the first overall decline in three years.

## Government and ministers sector timeliness has reduced, while that of councils, universities and state owned corporations were consistent with the previous year

In 2016/17 (Figure 26) the:

- government sector decided 87% of applications within the statutory time frame, a decline from 93% in 2015/16
- council sector decided 92% of applications within the statutory timeframe consistent with 90% reported in 2015/16. The council sector has consistently been deciding 90% or more applications within time since 2010/11
- minister sector decided 66% of applications within the statutory time frame, which is a significant decline from 79% in 2015/16

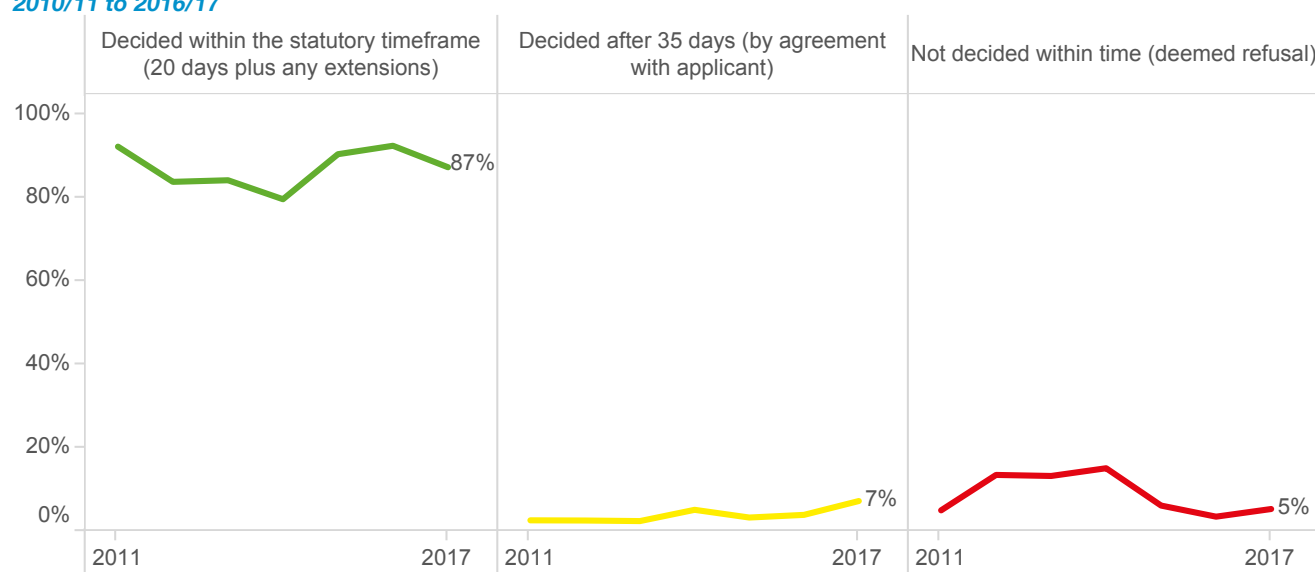
- university sector decided 72% of applications within time, similar to 74% reported in 2015/16
- the state owned corporations sector's timeliness was 95%, consistent with the previous year.

The decline in timeliness of the government sector is attributable to a small number of agencies that receive high volumes of applications. Both NSW Police Force and Safework NSW reported delays in timeliness as follows:

- NSW Police Force, from 92% in 2015/16 to 84% in 2016/17
- Safework NSW from 95% in 2015/16 to 88% in 2016/17

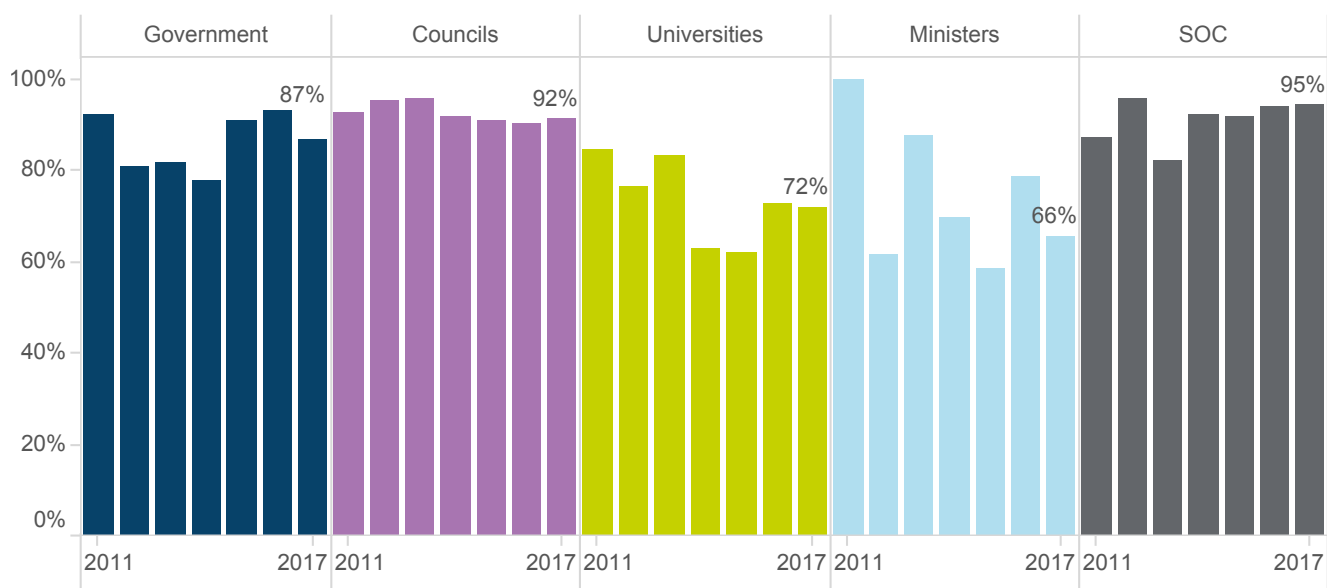
Timeliness was maintained at a high level for NSW Roads and Maritime Services notwithstanding the increase in applications received. It is important that agencies apply the data available to them and the good practices demonstrated by other agencies to elevate compliance with statutory timeframes. Better practice will enable agencies to meet statutory timeframes when faced with increasing volumes and complexity of applications.

**Figure 25: Applications that were decided within the statutory time frame as a percentage of all applications decided, 2010/11 to 2016/17**



'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.

**Figure 26: Applications that were decided within the statutory time frame as a percentage of all applications decided, by sector, 2010/11 to 2016/17**



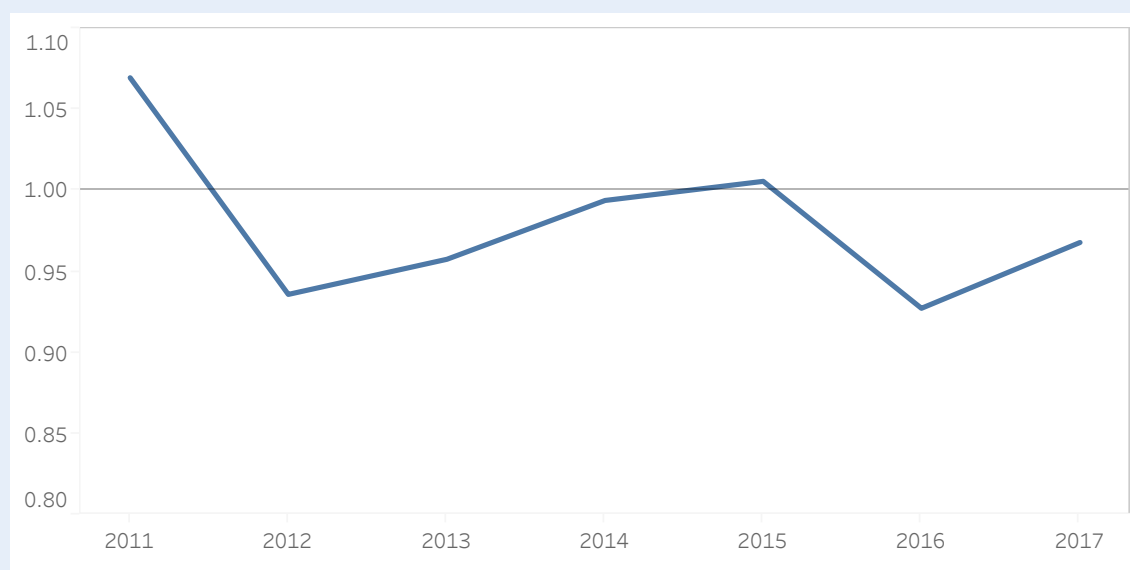
### Issue Highlight: Agency clearance ratios

A frequent measure of organisational efficiency in the public sector is the 'clearance ratio'. This measures the extent to which case completion is keeping pace with incoming cases. A ratio of over one indicates more cases are being closed than received. Conversely, a ratio below one indicates that a backlog may be emerging, which may, in the longer term, lead to delays.

The provision of this analysis will assist agencies in better managing surges in applications and institute longer-term process improvements to respond to increasing applications. The number of applications has continued to increase since 2014/15 (see page 26). The decline in timeliness may reflect the increase in volume and more subjectively complexity.

In light of the recent decline in timeliness the IPC analysed agency data and found that, overall, agencies clearance ratios may not be sufficient to ensure continued delivery of timely decisions. In 2015/16 and 2016/17 agency clearance ratios were below one. The IPC suggests agencies monitor their clearance ratios and, if necessary, review the procedures used and the resources available to ensure timely decision-making.

**Figure 27: Clearance ratio for all agencies handling of formal GIPA requests 2010/11 to 2016/17**



## Issue Highlight: Application of extensions to timeframes for deciding applications (section 57 GIPA Act) and deemed refusals (section 63)

The object of the GIPA Act, as outlined in section 3, is to open government information to the public. Section 3(2)(b) requires that the discretions conferred under the Act are exercised, as far as possible, to promptly facilitate and encourage access to government information.

Section 57 of the GIPA Act outlines the statutory timeframes to decide access applications. This includes extensions to the decision-making period (with the applicant's consent).

The circumstances in which an agency may extend the time for deciding an access application are limited:

- the timeframe may be extended by a further ten working days either to consult another party or to retrieve archived records;
- where the agency has to both consult and retrieve archived records, the timeframe may be extended by a maximum of 15 working days; and
- the timeframe can also be extended and further extended with the agreement of the applicant.

If an agency does not decide an access application within the statutory timeframes, the application decision is considered a deemed refusal, pursuant to section 63(1) of the GIPA Act.

The Information Commissioner has observed a consistent pattern of complaints (10%) relating to the time taken by agencies to decide access applications. In a number of these matters complaints have arisen following the applicant's refusal to consent to an extension of time resulting in the access application becoming a deemed refusal.

Agencies are required to uphold the fundamental right of access to government information. Accordingly, the actions of agencies in processing applications should be accompanied by sound, timely processes and well documented actions that demonstrate support for the objects of the GIPA Act and the presumption in favour of disclosure. This is particularly relevant in the context of cluster arrangements, where information is often not centrally held. Cluster arrangements also highlight the importance of ensuring that there is clarity of roles and responsibilities to respond promptly to search requests and support timely decision making by the agency. Extending timeframes under section 57 of the GIPA Act is not a mechanism to be used by agencies to delay the processing of access applications or manage internal resourcing constraints.

To highlight the intent of the GIPA Act and better promote systemic compliance within large government agencies the Information Commissioner produced a fact sheet, *The role of principal officers and senior executives in supporting the object of the GIPA Act* directed to senior executive officers. This fact sheet recognises the importance of leadership in achieving compliance and upholding the responsibilities of principal officers within cluster arrangements.

**IPC future focus:** The Information Commissioner will continue to monitor the application of the extension of time provisions available under the GIPA Act and update guidance for agencies to ensure compliance with the GIPA Act when considering the appropriateness of extensions.



# How was the public interest test applied?

This section examines:

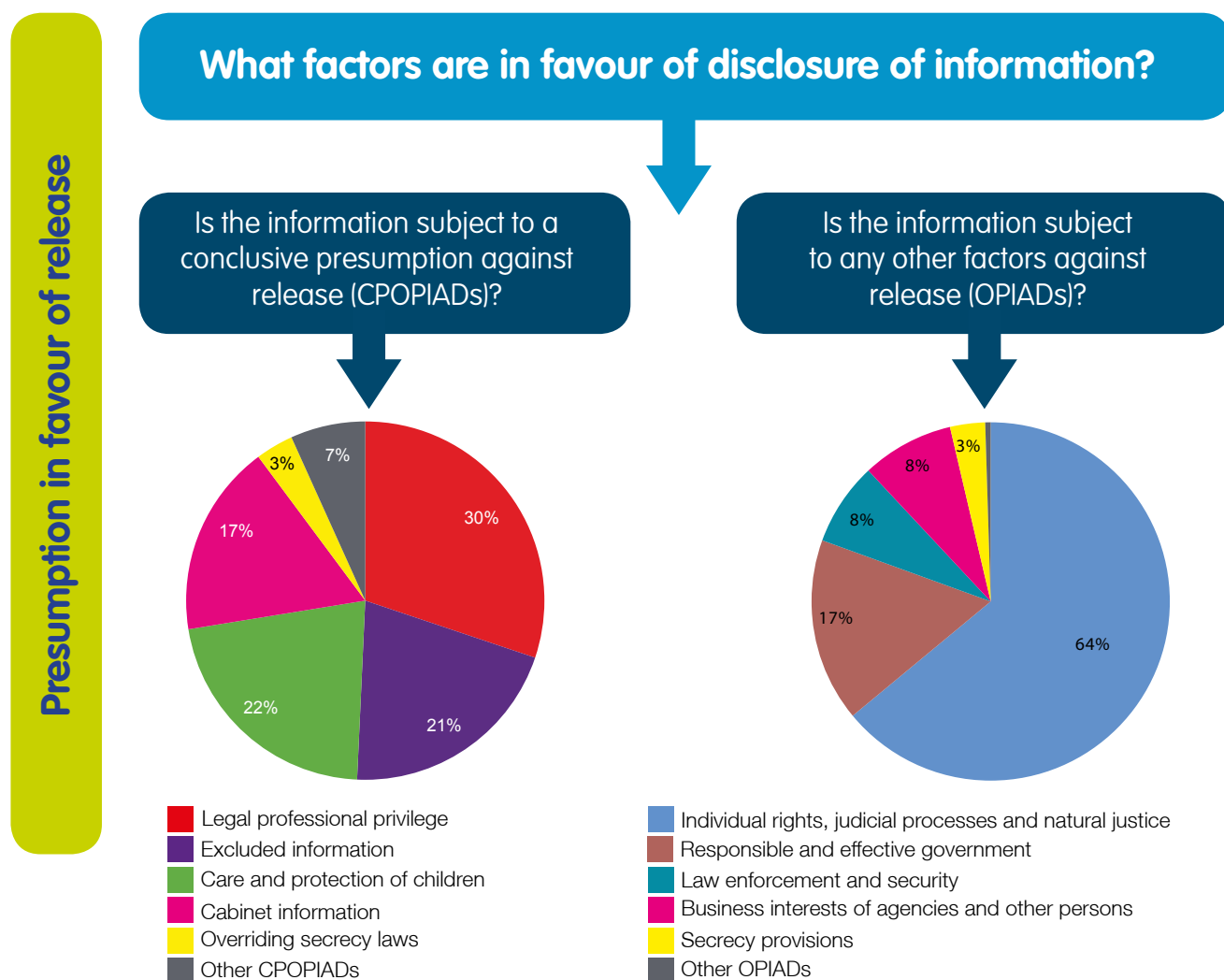
- the number of applications that were refused because of a conclusive presumption of overriding public interest against disclosure (CPOPIAD)
- which categories of CPOPIADs were applied
- the use of categories of considerations for which there is an overriding public interest against disclosure of information (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 2016/17, 910 applications (or 6% of total applications received) were refused wholly or partly because of a CPOPIAD. This is consistent with 2015/16.

Figure 28: A snapshot of the use of CPOPIADs and OPIADs public interest test 2016/17



'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, however application of the 'Cabinet information' CPOPIAD has increased

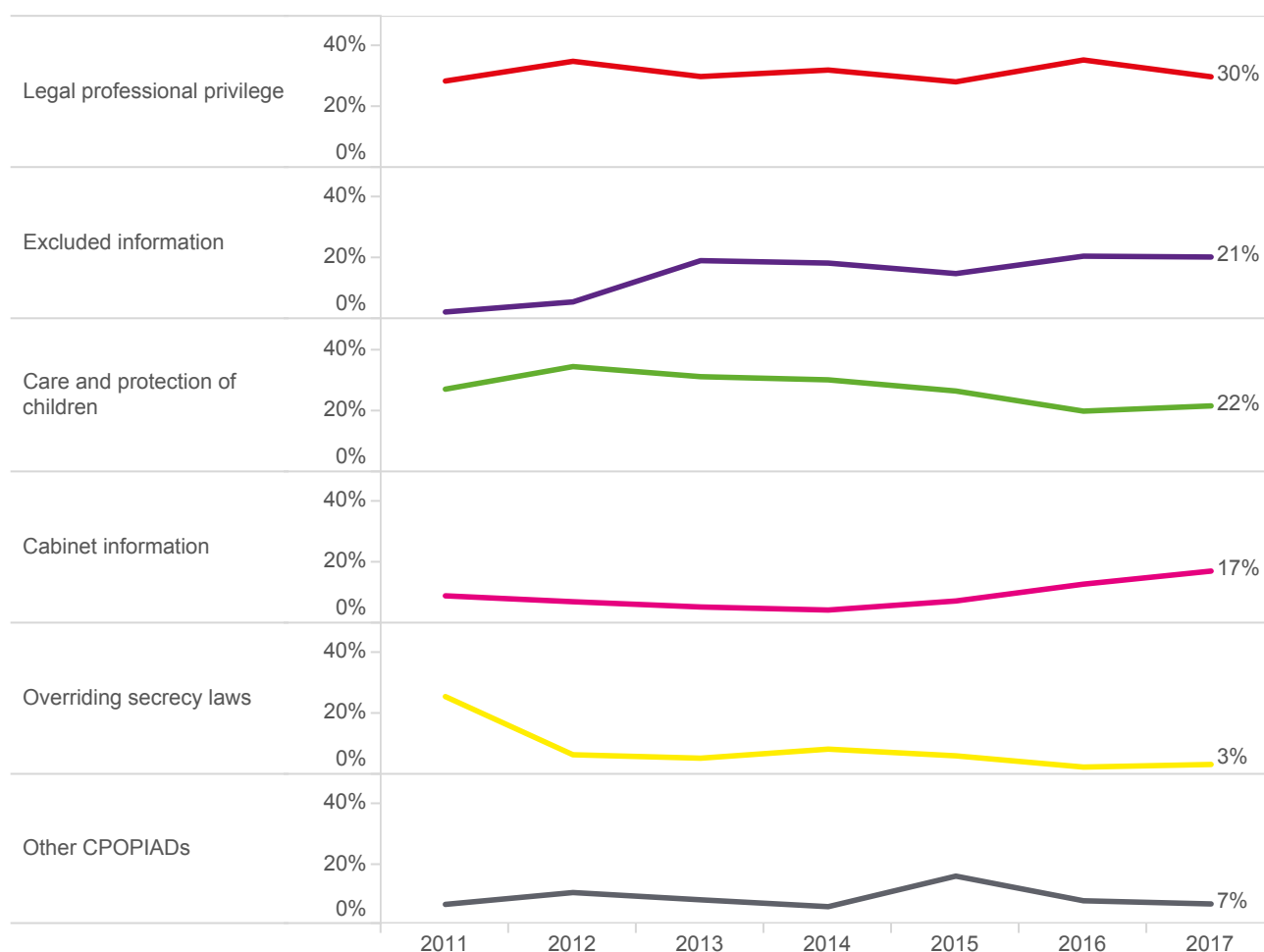
In 2016/17, legal professional privilege remained the most applied CPOPIAD across all sectors (Figure 29). The CPOPIAD was applied 30% of all the times that CPOPIADs were applied. This is a decline from 36% in 2015/16.

The care and protection of children consideration was the second most applied CPOPIAD, being applied 22% of all the times that CPOPIADs were applied, compared to 2015/16, when it was the third most applied CPOPIAD (20%).

The excluded information consideration was the third most applied CPOPIAD, being applied 21% of all the times that CPOPIADs were applied consistent with 21% in 2015/16.

The use of the Cabinet information consideration has continued to increase, being applied on 17% of occasions where a CPOPIAD was applied. Agencies where use of this CPOPIAD has increased compared to 2015/16 are the Departments of Industry, NSW Treasury, Roads and Maritime Services and Transport for NSW. Use of this CPOPIAD declined in the Department of Premier and Cabinet.

**Figure 29: Percentage distribution of the use of CPOPIADs, 2010/11 to 2016/17**

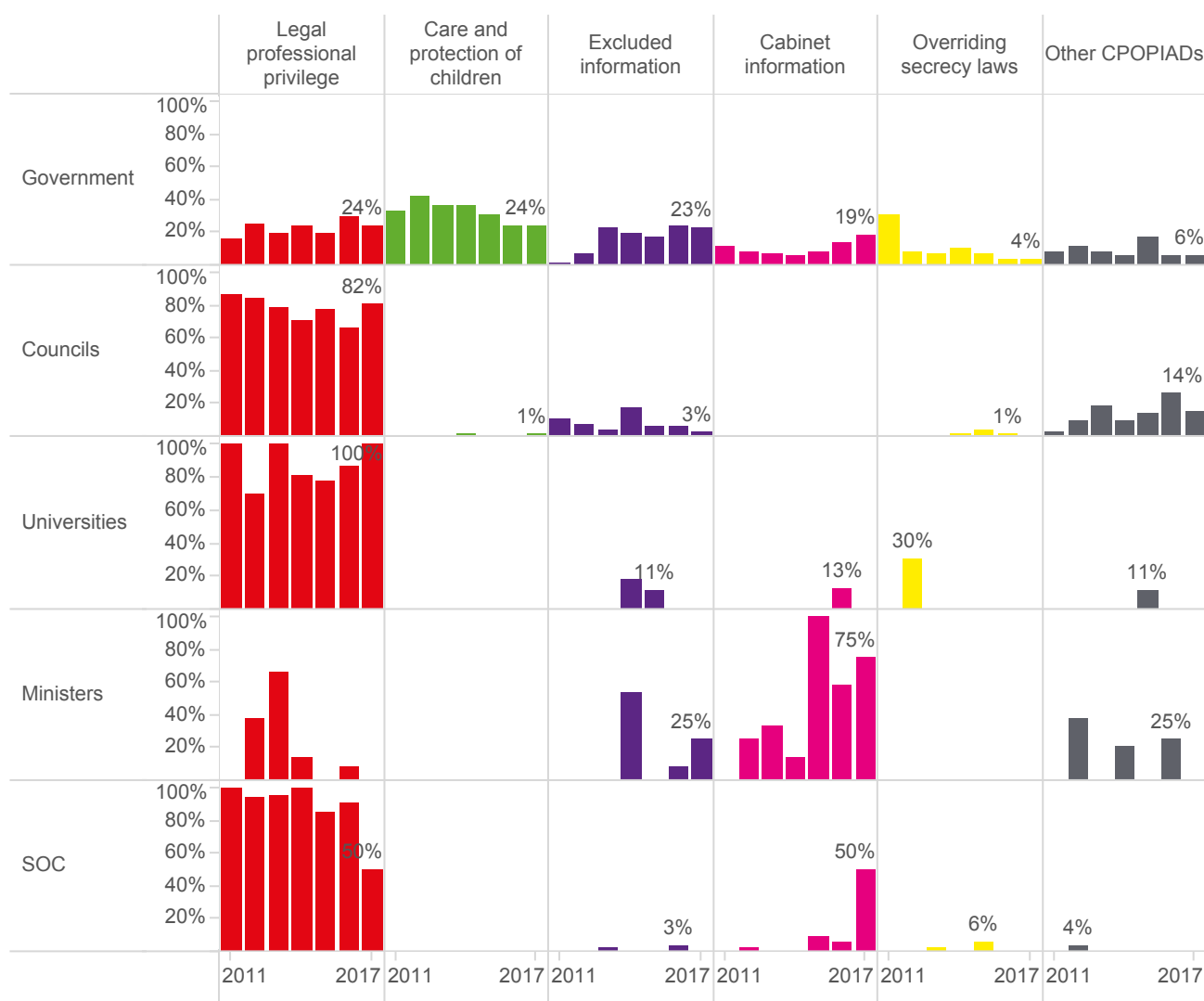


### **The application of the legal professional privilege CPOPIAD remained high in the council and university sectors**

The most applied CPOPIAD in 2016/17 was legal professional privilege across the government, council, state owned corporations and university sectors (Figure 30). In the council and university sector this CPOPIAD was by far the most commonly applied CPOPIAD (for example accounting for 82% of cases in the council sector and 100% in the university sector).

In the government sector there was a greater diversity of CPOPIADs applied with the care and protection of children (24%) and excluded information CPOPIAD (23%) 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 30: Percentage distribution of CPOPIADs applied, by sector, 2010/11 to 2016/17**



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



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

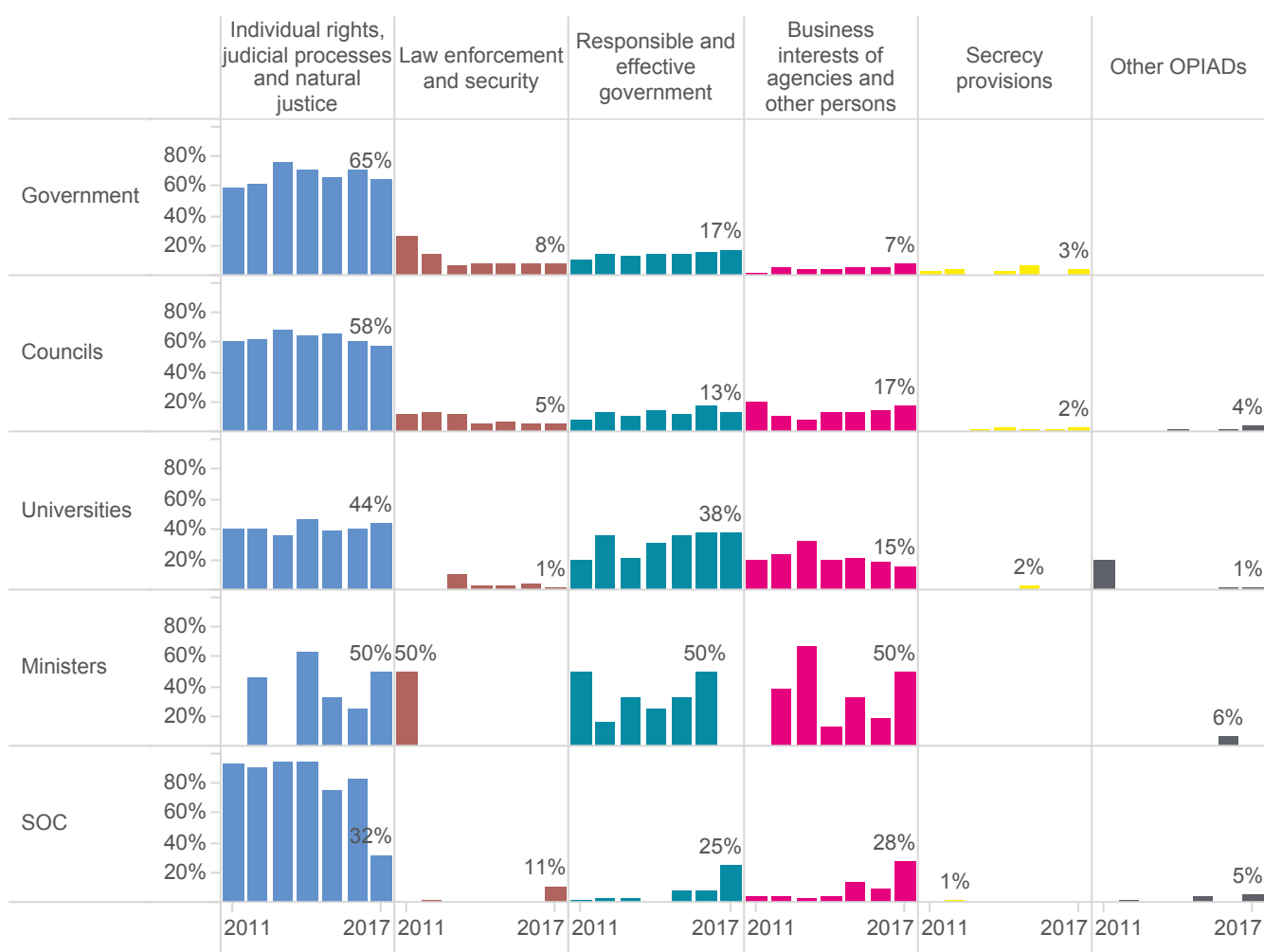
The most frequently applied OPIAD in 2016/17 was individual rights, judicial processes and natural justice across all sectors (64%) (Figure 31). This was the dominant OPIAD applied by the government sector (65%) and council sector (58%). Reliance on this OPIAD is consistent with all previous years since 2010/11.

For major agencies, the consideration was applied 75% of the time by Roads and Maritime Services, 77% by the NSW Police Force, 68% by the Ministry of Health, and 56% by the Department of Family and Community Services.

As noted in the 2015/16 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 31: Percentage distribution of OPIADS applied, by sector, 2010/11 to 2016/17



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

# 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 as the number of relevant applications – a ‘review rate’
- number of reviews, by type
- composition of reviews, by type.

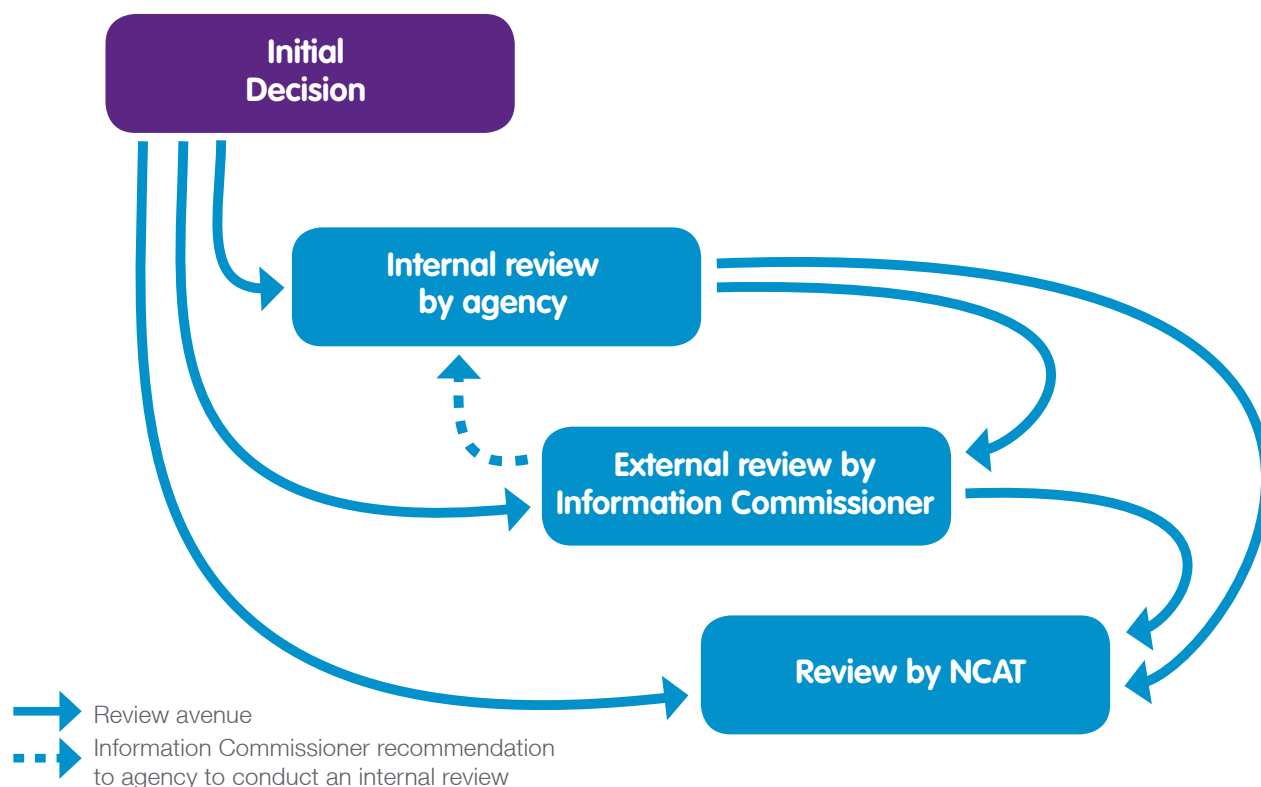
Figure 32 shows the different pathways available for reviews in the GIPA Act.

## 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 2016/17. This is consistent with the review rate of 6% reported in 2015/16.

As shown in Figure 33, data on reviews under the GIPA Act is available from agency reported data and data held by the IPC and published by NCAT.

Figure 32: 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 33: Agency, IPC and NCAT data on internal and external reviews, 2016/17

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	287	287
External review by the Information Commissioner	244	319
Review by NCAT	59	138
Agency internal review/reconsideration following a recommendation by the Information Commissioner	93	93
<b>Total</b>	<b>683</b>	<b>837</b>

Figure 34: Distribution of reviews by type, as reported by agencies, 2016/17

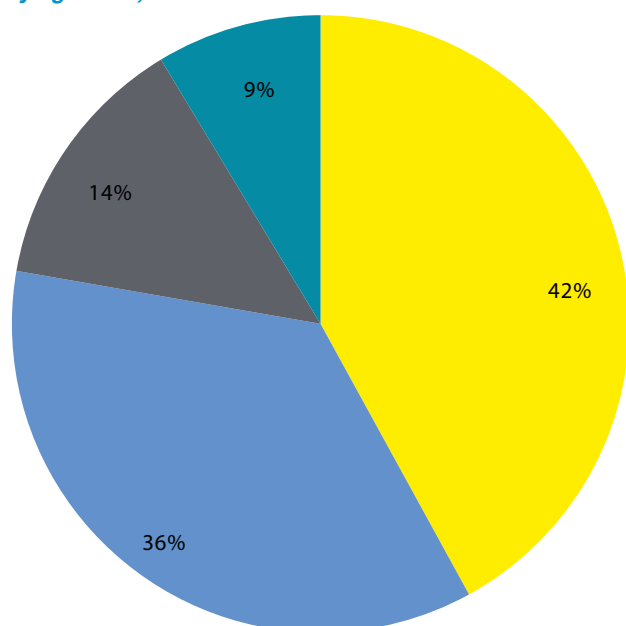
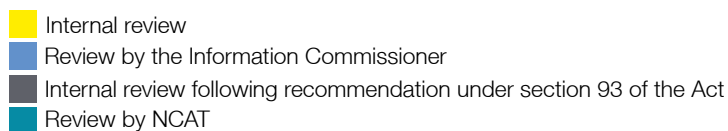
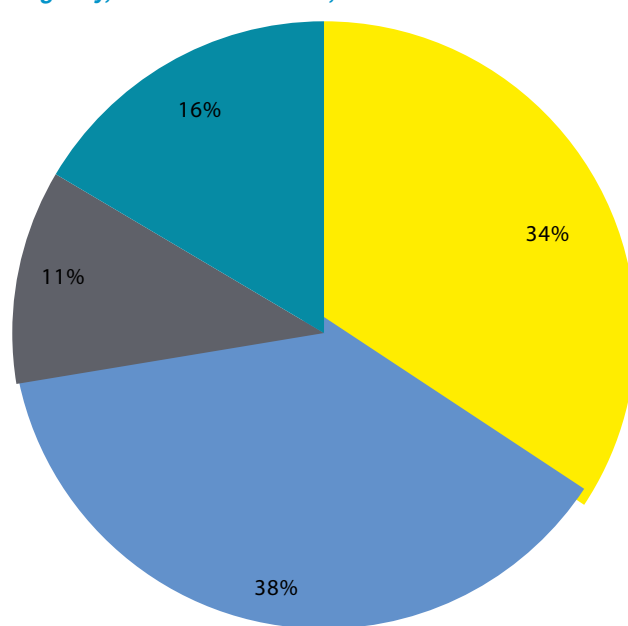


Figure 35: Distribution of reviews by type, using agency, IPC and NCAT data, 2016/17



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 34. If the most reliable source for each review avenue is used to calculate the total number of reviews, a total of 837 reviews were conducted in 2016/17. This distribution is shown in Figure 35. This is a significantly higher number of reviews than reported by agencies, particularly in respect of external reviews by the Information Commissioner.

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 GIIPA data. Since 2013/14 the under-reporting has declined from 81% to 26% in 2016/17.

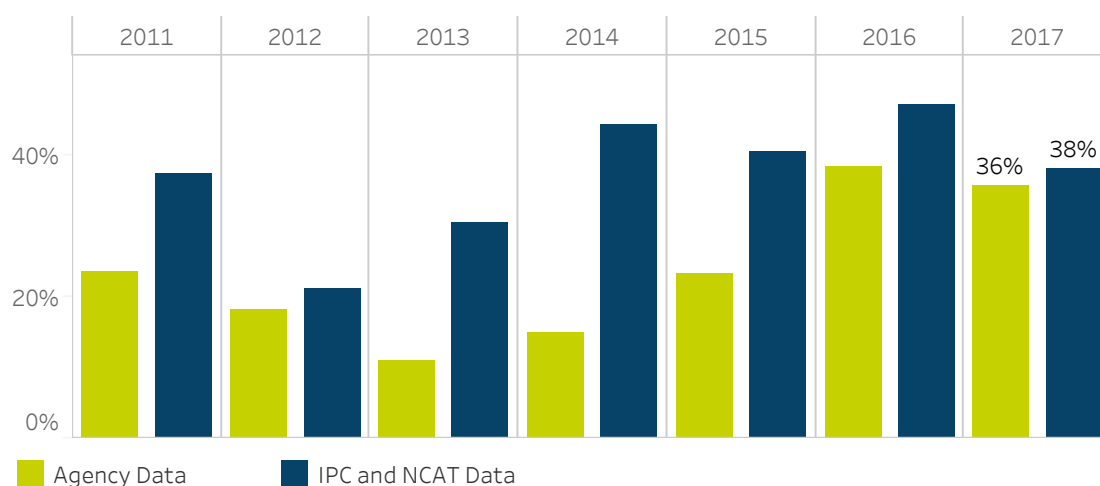
Using best available data, the proportion of all reviews conducted by the Information Commissioner declined 9%.

In 2016/17, the review applications to the Information Commissioner represented 38% of all reviews and in 2015/16 they represented 47% of all reviews.

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

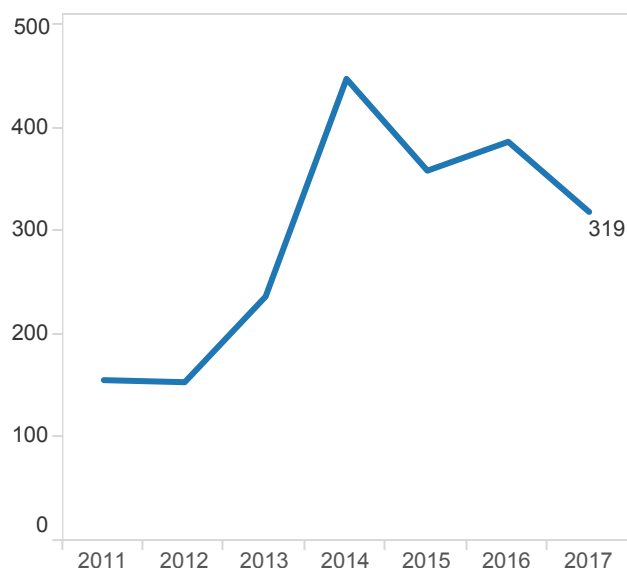
Using data reported by agencies, external reviews by the Information Commissioner represented 36% of all reviews conducted in 2016/17, a decline from 38% in 2015/16 (Figure 36). A similar trend is seen using the more reliable IPC data, which indicates that such reviews accounted for 38% of all reviews conducted, a decline from 47% in 2015/16. A similar trend in the number of reported reviews was identified in relation to NCAT (Figure 40). This may be reflective of the overall increase in release rates (71%) leading to fewer applications for external review.

**Figure 36: External reviews by the Information Commissioner as a percentage of all reviews, 2010/11 to 2016/17**



Source: agency, NCAT and IPC data

**Figure 37: Number of external reviews conducted by the Information Commissioner, 2010/11 to 2016/17**



Source: IPC data

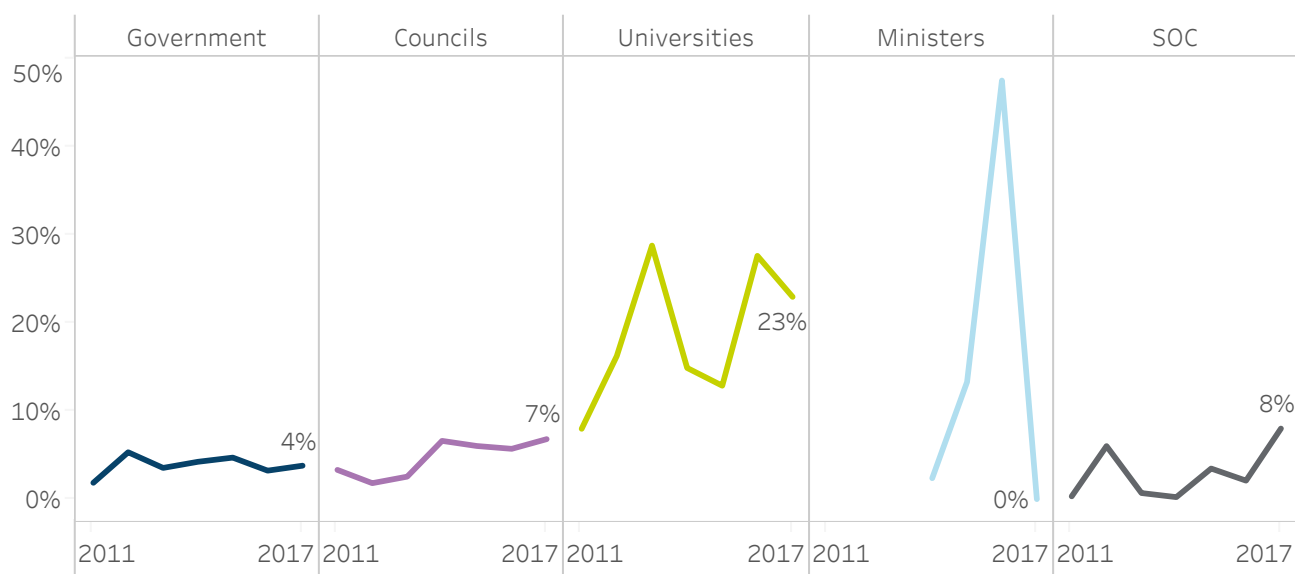
Similarly, the 138 review applications reported by NCAT is significantly higher than the 59 reviews reported by agencies.

For reporting purposes, the remainder of this section uses data reported by agencies to allow for comparison across review avenues, across sectors and to examine changes over time. It will therefore not reflect the total number of external reviews conducted by the IPC.

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

The percentage of applications for review received by the government sector as a percentage of all applications to that sector increased to 4% in 2016/17, from 3% in 2015/16, for councils from 6% to 7% and for state owned corporations from 2% to 8% (Figure 38).

**Figure 38: Total number of reviews as a percentage of all applications received, by sector, 2010/11 to 2016/17**



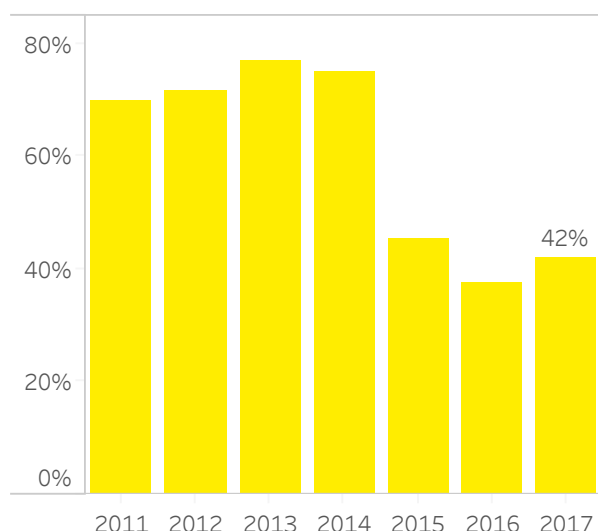
Source: agency data

The percentage of applications for review received by the ministers sector as a percentage of all applications to that sector fell significantly to 0% in 2016/17, from 48% in 2015/16 and for universities from 28% to 23%. 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 2016/17, 541 (91%) applications for review were made by the original applicant. This is consistent with levels observed in 2015/16 when 88% of applications for review were made by the original applicant. The number of applications made by third party objectors was also consistent in 2016/17 at 56 (12%) compared with 56 (9%) reported in 2015/16.

**Figure 39: Internal review as a percentage of all reviews 2010/11 to 2016/17**



Source: agency data

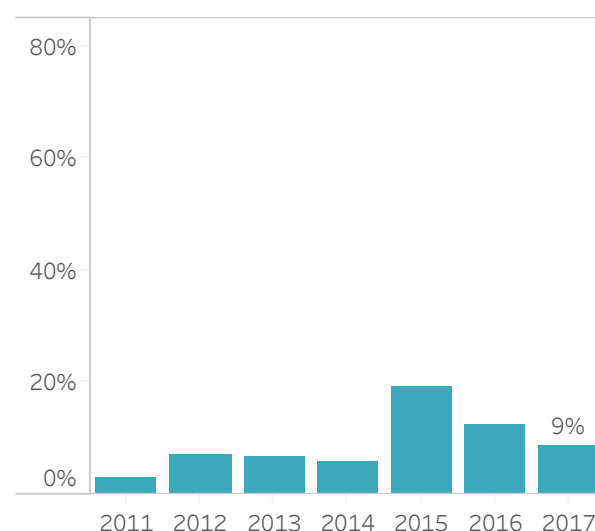
#### **Internal reviews rose as a percentage of all reviews conducted**

Internal reviews represented 42% of all reviews conducted in 2016/17 (Figure 39), compared to 38% of all reviews conducted in 2015/16.

#### **There was a decline in reviews by NCAT**

Using data reported by agencies, reviews by NCAT represented 9% of all reviews conducted in 2016/17 (Figure 40). This is a decline from 2015/16 when NCAT reviews represented 12% of all reviews conducted. While this reflects a decline in the percentage of all reviews conducted by NCAT, it remains elevated compared with the percentages reported between 2010/2011 and 2013/14.

**Figure 40: NCAT reviews as a percentage of all reviews, 2010/11 to 2016/17**

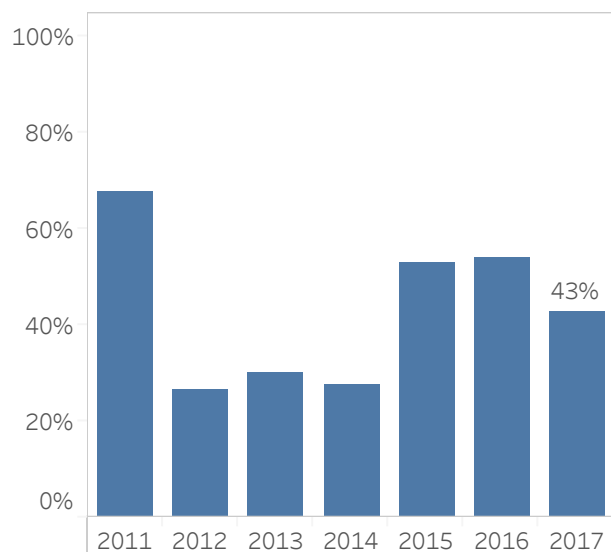


Source: agency data

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

In 2016/17, 43% of all internal and external reviews conducted upheld agencies' decisions. This is a decline from 2015/16 when 54% of reviews upheld agencies' decisions (Figure 41).

**Figure 41: Percentage of all reviews that upheld the original decision, 2010/11 to 2016/17**

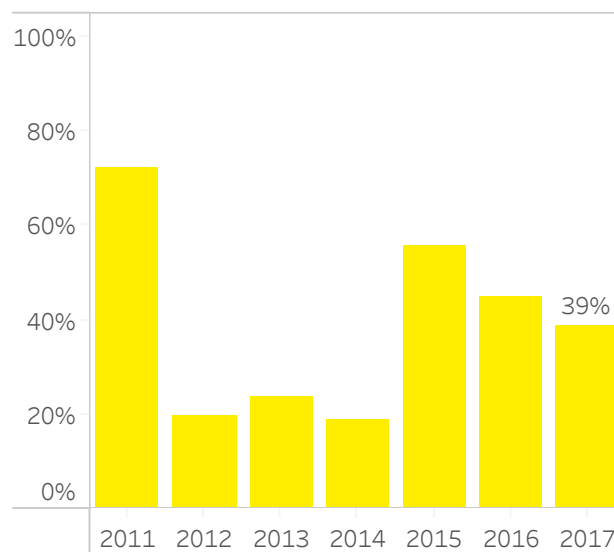


Source: agency data

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

In 2016/17, 39% of all internal reviews upheld agencies' decisions, which is a decline from 2015/16 when 45% of internal reviews upheld the decisions (Figure 42). However, these rates remain higher than the reported percentage of outcomes that upheld the agency decisions between 2011/12 and 2013/14.

**Figure 42: Internal reviews where the decision was upheld as a percentage of all internal reviews, 2010/11 to 2016/17**



Source: agency data

## Issue Highlight: Review of IPC recommendations to agencies under s93 of the GIPA Act

Under section 93 of the GIPA Act the Information Commissioner may recommend that the agency reconsider the decision.

In the light of the increasing trend toward making these recommendations, the IPC undertook an internal audit of a number of its external review reports and the response by agencies to the section 93 recommendations made by the IPC.

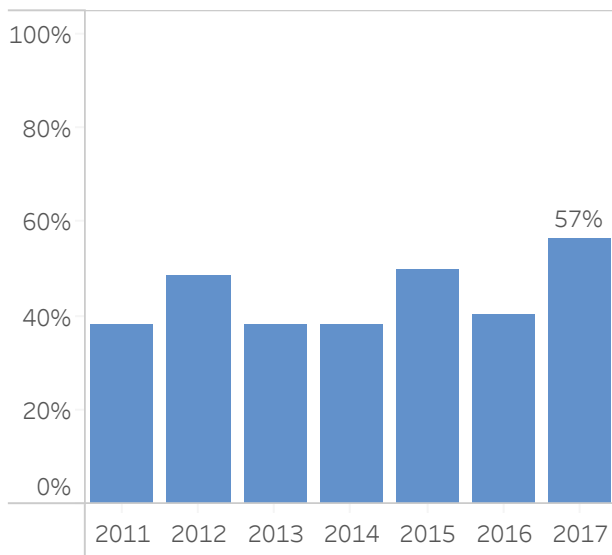
In its review, the IPC observed that while agencies were able to identify relevant considerations against disclosure of information, there appeared to be a lack of nexus between the application of the consideration by agencies and the actual information sought by the applicant. The IPC observed that in a number of the cases the OPIAD was simply asserted or there was a failure to explain the consequential effect that is, the prejudice that would occur if the information was revealed. In these instances there was a failure to address the specific information to which the consideration applied and a demonstrated reasoning process setting out what weight should be afforded to the considerations relied on.

Explanation of the effect of the release of the information is core to sound and robust administrative decision making. The Information Commissioner will engage with identified sectors, in particular the local government sector, and Office of Local Government to further enhance the decision making processes and through the development of further guidance.

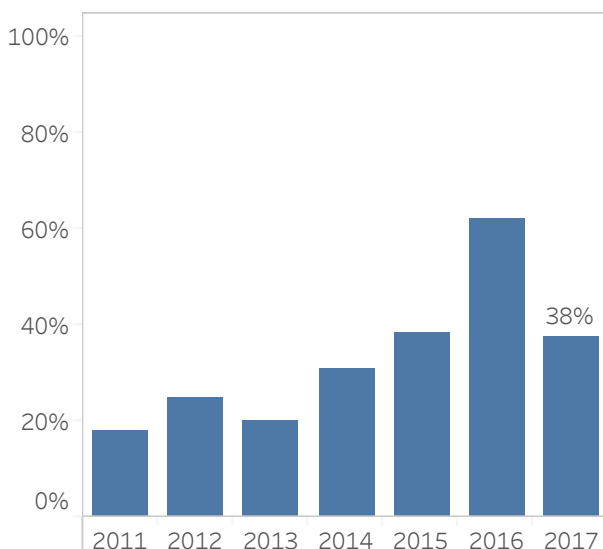
## Reviews by the Information Commissioner were more likely to recommend that agencies re-consider their decision

Agencies reported that 57% of reviews by the Information Commissioner in 2016/17 recommended that agencies reconsider their decisions, a significant rise from 40% reported in 2015/16 (Figure 43). The IPC identified a similar trend in its data and conducted an internal audit of a random selection of completed external reviews. Its purpose was to assess and understand the drivers that were contributing to the decline. The findings of this internal audit are detailed below.

**Figure 43: 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 2016/17**



**Figure 44: Internal reviews following a section 93 recommendation that upheld agencies' original decisions as a percentage of all internal reviews, 2010/11 to 2016/17**



## Internal reviews following a section 93 recommendation by the Information Commissioner were significantly less likely to uphold the original decisions

Agencies reported that in 2016/17, 38% of internal reviews that followed a section 93 GIPA Act recommendation (i.e. a recommendation from the Information Commission that the agency reconsider its decision) upheld agencies' original decisions. This is a significant decline from 62% reported by agencies in 2015/16 (Figure 44).

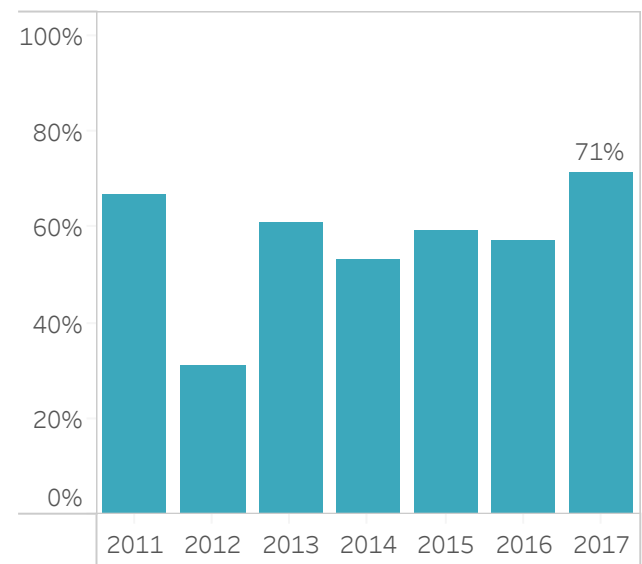
This significant increase in the adoption of the IPC recommendations may be reflective of an improved regulatory response by agencies.

Additionally, the IPC has implemented more robust procedures following the conclusion of external reviews to monitor and record agency responses to recommendations made by the IPC.

## Reviews by NCAT increasingly upheld agencies' decisions

Agencies reported that 71% of reviews by NCAT upheld agency decisions in 2016/17. This outcome is a significant increase from the 57% reported in 2015/16 (Figure 45).

**Figure 45: Reviews by NCAT where the decision was upheld as a percentage of all reviews by NCAT, 2010/11 to 2016/17**





## 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 agencies' application of the considerations against disclosure.

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 increased to 15% in 2016/17, from 10% reported in 2015/16.

There was a significant increase in the proportion of all reviews conducted by the Information Commissioner relating to OPIADs, from 45% in 2015/16 to 58% in 2016/17.

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 and were subject to the Information Commissioner's review were:

- legal professional privilege (49%)
- overriding secrecy laws (15%)
- cabinet information (13%).

### ***CPOPIADs: The majority of external reviews by the Information Commissioner of CPOPIADs resulted in a recommendation to agencies to reconsider the decision***

In 2016/17, 62% of all the CPOPIADs that were the subject of review by the Information Commissioner resulted in a recommendation to agencies to reconsider the decision. This is a significant increase over the last two years.

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

- for reviews of the legal professional privilege consideration, 78% resulted in a recommendation to reconsider the decision
- for reviews of the overriding secrecy laws consideration, 63% resulted in a recommendation that agencies reconsider the decision
- for reviews of the cabinet information consideration, 29% resulted in a recommendation that agencies 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 (39%)
- responsible and effective government (34%)
- business interests of agencies and other persons (17%).

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

### ***OPIADs: Around 60% of external reviews by the Information Commissioner of OPIADs resulted in a recommendation to agencies to reconsider***

In 2016/17, 61% of all the OPIADs that were the subject of review by the Information Commissioner resulted in a recommendation to agencies to reconsider the decision. This is an increase on the 57% reported in 2015/16.

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

- for reviews of the individual rights, judicial processes and natural justice consideration, 59% resulted in a recommendation to agencies to reconsider the decision, compared to 52% in 2015/16
- for reviews of the responsible and effective government consideration, 65% resulted in a recommendation to agencies to reconsider the decision, compared to 54% in 2015/16
- for reviews of the business interests of agencies and other persons consideration, 60% resulted in a recommendation to agencies to reconsider the decision, compared to 61% in 2015/16.

To better inform our Regulatory Plan for 2017/19 the IPC conducted a review of a sample of IPC review reports. The outcome of this sampling is highlighted at page 58. These outcomes demonstrate that there is an opportunity for the IPC to continue to work with agencies to improve their understanding and use of the top three most reviewed OPIADs and their application to the facts considered by the agency in deciding the access application. This issue will inform the Information Commissioner's forward work program.



## Issue Highlight: Decision by the NSW Civil and Administrative Tribunal *McKay v Transport for NSW*

In 2016/2017, NCAT handed down *McKay v Transport for NSW* [2017] NSWCATAD 212, which considered public interests grounds against disclosure of information:

- cabinet information (Schedule 1 clause 2);
- the privilege of Parliament (Schedule 1 clause 4); and
- responsible and effective government (section 14 Table clause 1).

### **Cabinet information**

NCAT distinguished the differing procedures applying to its review of decisions. The Tribunal observed that the usual task under section 63 of the *Administrative Decisions Review Act 1997* is to determine the “correct and preferable decision”. However, in accordance with section 106 of the GIPA Act, where documents are claimed to contain cabinet information, the Tribunal is limited to deciding whether there are reasonable grounds for the claim. In circumstances where the Tribunal has considered the evidence and is not satisfied that there were reasonable grounds for the claim, the Tribunal must reject the claim and may then make “the correct and preferable decision”. In this case, examination of the reasonableness of the agency’s claim turned to the weight to be given to the evidence of witnesses and their involvement in information claimed to have been prepared for Cabinet.

In relation to the reports prepared by service providers to government the Tribunal considered the terms of engagement of those service providers, and the documents marked as “Cabinet in Confidence” in finding that the documents were prepared for the dominant purpose of submission to Cabinet.

### **The privilege of Parliament**

In determining the claim of privilege over briefings to Parliamentarians the Tribunal recognised recent cases where disclosure of party room briefings was found to infringe parliamentary privilege. The Tribunal held that the preparation of briefings to Parliamentarians for question time fall within the scope of privilege.

### **Responsible and effective government**

The Tribunal also considered release of information Transport for NSW claimed to be confidential; subject to objection to release, and release would serve as a deterrent to agencies providing information to Transport for NSW. In dismissing the claim the Tribunal was not persuaded that a request to keep information confidential made following unrestricted release could retrospectively support a claim of confidentiality or found an action for breach of confidence against Transport for NSW.

### **Adequacy of searches**

The Tribunal also considered evidence regarding the existence of documents other than those identified in response to the access application and remitted aspects of the decision to Transport for NSW to conduct additional searches and reconsider its decision.

# Were applications transferred between agencies?

## Continued increase in transfers between agencies

During 2016/17, agencies reported that 763 applications were transferred to another agency (Figure 46). This is a significant increase from the 601 transfers reported in 2015/16.

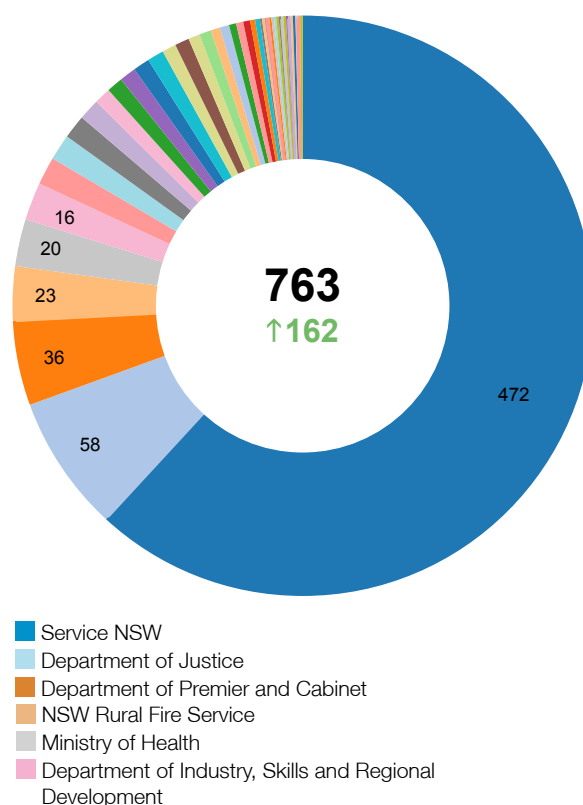
Figure 46 shows that the government sector accounted for most transfers, and that most transfers were agency-initiated.

**Figure 46: Number of applications that were transferred, by sector and by whether agency or applicant initiated, 2016/17**

	Agency initiated transfers	Applicant initiated transfers	Total
<b>Government</b>	697	45	742
<b>Councils</b>	12	1	13
<b>Universities</b>	1	0	1
<b>State owned corporations</b>	3	0	3
<b>Ministers</b>	4	0	4
<b>Grand total</b>	<b>717</b>	<b>46</b>	<b>763</b>

In 2016/17, Service NSW accounted for 472, or 62%, of transferred applications, consistent with the number reported in 2015/16. The second and third highest numbers of transfers were attributed to the Department of Justice, with 58 transferred applications (8%), and the Department of Premier and Cabinet, with 36 transferred applications (5%) (Figure 47).

**Figure 47: Distribution of applications transferred, by agency, 2016/17**



The inclusion of this reporting requirement and data provides a means of examining the assistance provided by agencies to applicants in upholding their information access obligations. More importantly, it provides a mechanism to facilitate a whole of government citizen-centric approach to information access.