



information
and privacy
commission
new south wales

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

2018 – 2019

Open Government, Open Access, Open Data

Letter of Transmission

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

The Hon. Jonathan O'Dea MP
Speaker, Legislative Assembly
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr President and Mr Speaker,

In accordance with section 37 of the *Government Information (Information Commissioner) Act 2009*, I am pleased to present the *Report on the Operation of the Government Information (Public Access) Act 2009: 2018 – 2019*.

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

Yours sincerely,



Elizabeth Tydd
IPC CEO, Information Commissioner
NSW Open Data Advocate

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Commissioner's Overview

Transformational change - securing information access and the public interest

Globally there have been epic changes in the way that government makes decisions and delivers services. Three fundamental changes are now immutable features of a new government paradigm: digital government and data application, increasing partnerships and outsourcing arrangements, and novel models of government that transcend traditional sectoral arrangements.

These changes have significant impacts upon citizens and importantly their right to access information. Accordingly, there is an increasing need to promote accountability and transparency and to assure Open Government.

Vigilance is essential to promote transparency and accountability, and robust independent oversight is required to re-evaluate information access rights and safeguard those rights under this new paradigm.

Securing public interest outcomes in the face of these three transformational changes is the contemporary challenge faced by agencies: and is to be addressed by the Information Commissioner in upholding and promoting the object of open government, enshrined in the *Government Information (Public Access) Act 2009* (GIPA Act).

1. Digital government - better services realised through greater access and accountability

Technology is a recognised enabler for the delivery of more accessible, effective and often lower-cost services. It is also recognised as an effective tool in combatting corruption as it enables ready access to information and audit mechanisms. Accordingly, in the government context technology should promote and enable faster, more effective and lower cost access to information. New South Wales is at the forefront of initiatives to harness the benefits of technology and data to provide excellence in public services. For instance, Service NSW has become the single contact point for licensing, permits, registrations and payment of fines. It provides services both online and via apps and has digitised licences.

Accountability and capability within the public sector are essential to the success of digital programs.

Globally there have been epic changes in the way that government makes decisions and delivers services. Three fundamental changes are now immutable features of a new government paradigm: digital government and data application, increasing partnerships and outsourcing arrangements, and novel models of government that transcend traditional sectoral arrangements.

The increasing adoption of technology demands the preservation, assurance and assertion of information access rights. To achieve these outcomes, government licensing and contractual arrangements should ensure accessibility and 'explainability' in the provision of government services and decision making. These requirements are heightened in the context of machine-enhanced decision making to ensure the preservation of information access rights.

The pro-integrity force of the GIPA Act is demonstrated by its mandatory open access requirements. In 2019, the IPC revised statutory guidance to support Local Councils' compliance with mandatory publication of declarations of interest by office holders and key personnel on a Council's website. In this way the GIPA Act operates to preserve information, ensure accessibility and importantly facilitate the identification of corruption or other malfeasance.

A genuine commitment to accountability can only be evidenced by compliance with open access requirements that move beyond paper-based records and reflect contemporary and legitimate community expectations about integrity and access to information.

2. Increasing partnership and outsourcing arrangements

The domain of government service delivery is increasingly contested. Importantly, the GIPA Act recognises that citizens' rights do not diminish under these arrangements. Accordingly, there is increasing demand for the preservation of accountability, transparency, and citizen engagement within these arrangements particularly those harnessing digital innovation.



These outcomes can be achieved through express contractual provisions that secure the right to access information including enhanced mandatory contract reporting and additional open access information requirements.

3. Administrative arrangements and service delivery models that transcend agencies and sectors

Increasingly, government is implementing a 'single point of service' model to efficiently deliver services. Additionally, interagency/intersectoral administrative arrangements and cross agency taskforces are established to deal with complex problems and provide holistic advice to government. That advice derives from data-sharing between agencies collected and disseminated through combined databases or cross sector portals.

Legal rights are not displaced under new service delivery models and increasingly, there is a need for the IPC to raise awareness of the obligation to protect and promote information access rights and the principles of open government. There is scope for agencies to better embed information governance in their projects and initiatives from the earliest stages of development.

The GIPA Act promotes open government strategically and operationally. This report provides the vehicle to examine the practices of agencies and apply the operational insights gained to assure that the strategic intent of the GIPA Act is met in the face of transformational change.

How is the GIPA Act working?

Significant trends and analysis 2018/19

The value of GIPA Act compliance reporting by agencies lies in the transparency of information and the ability to apply trend insights to highlight, and where necessary address, performance issues.

The number of valid applications remained stable in 2018/19 with 15,774 valid applications received compared to 15,921 in the previous financial year. 75% of outcomes continue to be by, or on behalf of, members of the public. Consistent with previous years the government sector continued to account for the great majority (12,637 or 80%) of valid applications.

Legal rights are not displaced under new service delivery models and increasingly, there is a need for the IPC to raise awareness of the obligation to protect and promote information access rights and the principles of open government. There is scope for agencies to better embed information governance in their projects and initiatives from the earliest stages of development.

In summary four areas warrant emphasis:

1. This year's data is largely reflective of the positive maturation of information access systems, policies and procedures within agencies to deal with proactive release of information. It also reflects enhanced compliance in most regulatory areas targeted by the IPC.

Compliance with Agency Information Guide (AIG) requirements has steadily increased from 60% in 2016/17 to 73% in 2017/18 and 93% in 2018/19. Disclosure log and contract register compliance also increased.

100% compliance with the mandatory proactive requirements for AIG; policy documents; disclosure log and contracts register was achieved by government departments. This is a convincing and commendable outcome.

In contrast, compliance by government departments with additional open access requirements continues to be low. Only 20% (two departments) had a partial list of major assets and acquisitions (an increase from 10% in 2017/18). 30% (three departments) had a partial list of the total number and total value of properties the department disposed of during the previous financial year (an increase from 10% in 2017/18).

Programs for the release of government information increased to the highest level reported to date at 93%. This is a significant increase from 74% in 2017/18. Additionally, for the first time two sectors, the university and state-owned corporations sector, demonstrated that the review led to a 100% additional release rate.

Commissioner's Overview

2. Overall timeliness has been consistent at 87%. The government sector decided 85% of applications within the statutory time frame. Significantly, there has been a downward trend in timeliness since 2015/16 when 93% of applications were decided within time in the government sector.

The overall decline in timeliness is concerning in the context of declining numbers of applications to some high-volume government agencies. In contrast, other government agencies significantly improved timeliness in an environment of decreasing applications. This indicates that the application of sound processes and a commitment to timeliness is required by agencies to ensure compliance with statutory timeframes.

The rate of deemed refusals has increased steadily from 3% reported in 2015/16 to 8% in 2018/19. In summary, the impact of a rise in deemed refusals on agencies is duplication of effort. The impact on citizens is to curtail the fundamental right to access information.

3. Overall release rates increased slightly to 70%, an increase from 68% in 2017/18. This is a positive outcome reflecting a return to the 2016/17 release rates.

The highest release rates in 2018/19 were for applications by private sector businesses at 76%. This is the highest release rate recorded for any applicant type since 2014/15 and is reflective of a continuing increase in the release rates for private sector businesses.

4. The total number of reviews was equivalent to 6% of total valid applications received across all sectors in 2018/19. This is consistent with the review rate of 5% reported in 2017/18. The review rate will continue to be monitored given the number of applications declined by 1% in 2018/19.

External review by the Information Commissioner was the most frequently used review pathway accounting for 40% of all reviews. Applications to the Information Commissioner for external review was consistent in 2018/19 with 38% in 2017/18. Consistent with my previous commitment, I confirm that these reviews were completed within the new statutory timeframe of 40 days after the Information Commissioner receives all of the information the Information Commissioner considers necessary to complete the review.

I commend IPC staff and management for their diligence in achieving these timeframes and their commitment to effective independent oversight of the right to access information. The foresight necessary to secure this right is well demonstrated in the IPC's strategic and regulatory plans.

Opportunities to Open Government

Rapid technological innovation, increased data holdings, outsourcing and new models of service delivery present opportunities for both government and citizens. To ensure that legislated rights are not diminished by these significant changes, there is a heightened need to assess the operation of these rights.

There are a number of provisions under the GIPA Act and *Government Information (Information Commissioner) Act 2009* (GIIC Act) that provide a framework for examination including those dealing with:

- preservation of access rights when government services are provided by non-government providers
- public reporting of contracts and other information
- mandatory reporting of decision-making functions, information holdings, government assets and policies
- fees and charges imposed for dealing with access applications
- offences and regulatory functions that support improvement and prohibition
- investigation of agency systems, policies and practices that relate to agency functions under the GIPA Act.

Rapid technological innovation, increased data holdings, outsourcing and new models of service delivery present opportunities for both government and citizens. To ensure that legislated rights are not diminished by these significant changes, there is a heightened need to assess the operation of these rights.

Collaboration and the injection of expert advice will provide the safeguards necessary to ensure rights are preserved and enable the benefits of transformation change to be realised.

Administrative practices may also provide sound assurance measures to safeguard the legislated commitment to open government and the fundamental right of access to information. Measures that provide administrative mechanisms to complement increasing reliance upon digital and other forms of service delivery by government include:

- procurement standards and elevated contractual arrangements
- inventories of machine enhanced decision-making systems and databases
- certification and attestation requirements in relation to information access searches and the imposition of processing charges.

Government exercises a unique and significant role in the development and application of citizen rights. Open government is also secured by public sector capability and a commitment to act lawfully and ethically.

Collaboration and the injection of expert advice will provide the safeguards necessary to ensure rights are preserved and enable the benefits of transformational change to be realised.



Elizabeth Tydd
IPC CEO, Information Commissioner
NSW Open Data Advocate

Future Focus

1

MANDATORY PROACTIVE RELEASE

IPC strategies

- The IPC will update its guidance on copyright and the GIPA Act, noting decision of *Sandy v Kiama Municipal Council [2019] NSWCATAD 49*
- The IPC will develop a fact sheet on open access information, with a focus on the Council sector
- The IPC will undertake identified proactive audits to elevate and influence compliance within the Council sector
- The IPC will include a focus on compliance with mandatory proactive release by Government departments in its review of the Agency Self-assessment Tool

Agency strategies

- Comply with open access requirements under the GIPA Act and the *Government Information (Public Access) Regulation 2018*
- Council sector to apply and comply with *Information Access Guideline 1 - For Local Councils on the disclosure of information (returns disclosing the interest of councillors and designated persons)*
- Council sector to apply and comply with *Information Access Guideline 3 - For local councils - personal information contained in development applications: What should not be put on council websites*
- Utilise self-assessment tool to monitor and maintain compliance with the GIPA Act

2

AUTHORISED PROACTIVE RELEASE

IPC strategies

- The IPC will review and revise its guidance to agencies and citizens on authorised proactive release

Agency strategies

- Integrate a commitment to proactive release in agency policies and culture, and identify information that can be proactively released as part of core business
- Comply with *Information Access Guideline 7 - Open Data*

3

INFORMAL RELEASE

IPC strategies

- The IPC will conduct research about opening government

Agency strategies

- Utilise digital solutions and processes to facilitate informal release, for example, the Council sector webcasts its meetings

4

FORMAL ACCESS APPLICATIONS

IPC strategies

- Examine fees and charges applied by agencies under the GIPA Act and provide guidance to citizens and agencies
- Survey citizens on their experience of accessing information under the GIPA Act, including their experience of receiving advice and assistance from agencies under section 16 of the GIPA Act

Agency strategies

- Apply IPC self-assessment tool to enhance and assess compliance with the GIPA Act
- Apply the principles in the IPC Fact Sheet - *The GIPA Act: Agency systems, policies and practices - guidance for principal officers*
- Consider ways and means to facilitate electronic lodgement of access applications or payment of an application fee

5

EXTERNAL REVIEWS

IPC strategies

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

Agency strategies

- Cooperate with requests from the IPC for information necessary for the Information Commissioner to complete external review of an agency's decision

Year in Review

The 2017/18 Report identified a range of priority actions for the IPC and agencies. The outcomes of the IPC actions identified in that report, as they are aligned with the information access pathways, are outlined below.

Systemic compliance

The 2017/18 Report identified that there were opportunities to undertake proactive initiatives to increase agency capacity and elevate compliance.

Action	Outcome
The IPC will release the agency self-assessment tool to elevate compliance with core requirements for sound information management.	The IPC launched the Information Governance Agency Self-assessment Tool on 22 May 2019.
The IPC will progress regulatory engagement with the NSW Police Force to enhance systems, policies and practices.	The IPC released the NSW Police Force Compliance Report in April 2019. The IPC continues to liaise with the NSW Police Force to enhance systems, policies and practices and monitors implementation of recommendations under the Report. A further audit will be undertaken by the IPC in 2020.

Mandatory proactive release

The 2017/18 Report identified that there were opportunities to enhance regulatory guidance and compliance with mandatory proactive release obligations, particularly for open access information requirements prescribed in Part 3, Clause 6 of the GIPA Regulation.

Action	Outcome
The IPC will further investigate the low compliance of agencies with additional open access requirements in order to improve awareness of the requirements.	The IPC published a revised Guideline 1: For Local Councils on the disclosure of information (returns disclosing the interest of councillors and designated persons) . The IPC published a revised Guideline 3: For local government – personal information in development applications . The IPC will review the Information Governance Agency Self-assessment Tool which assists agencies to measure and elevate their level of compliance with open access information requirements. The IPC continues to review complaints about open access information as part of the work of its Compliance Committee in order to identify trends and consider proactive regulatory approaches.

Authorised proactive release

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

Action	Outcome
The IPC will publish guidance to promote release of Open Data by agencies.	The IPC released Guideline 7: Open Data on 30 May 2019. The Guideline provides information and assistance to public sector agencies and citizens regarding open data, and defines open data, opening data and release of government data using the access to information pathways under the GIPA Act.

Informal release

The GIPA Act authorises agencies to release government information in response to an informal request by an individual unless there is an overriding public interest against disclosure of the information.

Action	Outcome
The IPC will work with identified agencies, including the NSW Police Force, to promote informal release of information.	The IPC has engaged with the NSW Police Force through its proactive risk and intelligence-based compliance program to promote informal release of information. The Information Governance Agency Self-assessment Tool assists agencies to implement best practice in relation to processes and procedures for managing informal applications for the release of information.

The Year in Review

Formal access applications

The GIPA Act provides citizens with an enforceable right to apply for and access government information unless there is an overriding public interest against disclosure.

Action	Outcome
The IPC will conduct a further high-level audit of the Office of Sport and the Sydney Cricket and Sports Ground within 12 months.	Further audits of the Office of Sport and the Sydney Cricket and Sports Ground are scheduled to occur in 2020.
The IPC will engage with agencies that experienced a decline in the percentage of valid applications compared to 2016/17 and seek to share insights with agencies experiencing increases, to assist in the receipt of valid applications.	<p>The IPC actively promoted the GIPA on-line lodgement facility developed by the former Department of Family and Community Services as a model for other agencies.</p> <p>The IPC is monitoring the impact of the November 2018 amendment to section 41 of the GIPA Act concerning facilities for electronic lodgement of applications, as well as recent machinery of government changes, on levels of validity.</p> <p>Through its external review function the IPC continues to promote the importance of sections 16 and 52(3) of the GIPA Act, which require agencies to assist applicants in making valid applications. This requirement is consistent with the object of the Act. The IPC will continue to engage with agencies experiencing increases in respect of invalid applications.</p>

External reviews

The IPC has undertaken a review of its workflows and procedures following an amendment to the GIPA Act in November 2018 introducing a 40-day time limit for the finalisation of external reviews by the Information Commissioner.

Action	Outcome
The IPC will enhance operations to ensure that statutory requirements for the finalisation of external reviews are met.	<p>The IPC has implemented significant operational process and organisational structural change to ensure the timely and effective completion of external reviews. This has included:</p> <ul style="list-style-type: none"> • a review of the case management process workflow to support the timely management and completion of access reviews within the statutory timeframe • a restructure of the IPC's Investigation and Review Team.
The IPC will publicly report on compliance with timeliness in finalising external reviews.	The IPC Annual Report 2018/19 , published on 28 October 2019, reported that since the commencement of the new statutory requirements the Information Commissioner has finalised 100% of all reviews received within the statutory requirements.

Issue Highlight: Australian Information Access Commissioners and Ombudsman release survey results on community attitudes

In September 2019, Information Access Commissioners and Ombudsman released the findings of their first cross-jurisdictional survey of community attitudes to access to government information.

Commissioners from NSW, Victoria, Queensland, Western Australia, the Commonwealth of Australia and the Ombudsman from ACT sponsored the research as part of Australia's Second Open Government National Action Plan 2018–2020.

The [Information Access Study 2019](#) measured citizens' awareness of the right to access government information, and their experiences and outcomes in exercising that right. The research provides a broad insight into citizens' views and experiences of the right to access information. Key findings include:

- the importance of the right to access information is consistently recognised by respondents across state and national jurisdictions (85 – 93%)
- the majority of respondents across the jurisdictions were aware that they had the right to access information from government departments/agencies (77 – 85%)
- around 4 in 10 respondents had contacted at least one government agency in the past three years to obtain government information
- in general, citizens were able to obtain information successfully (60 – 91%*).

The study's results will help inform activities to promote and support the right to access government information and will enable governments to examine the performance of their respective access to information laws from a citizen perspective.

The right to access government information is independently overseen by the Commonwealth and State and Territory Information Commissioners and Ombudsmen.

The insights provided in this inaugural cross jurisdictional survey will assist in building a better understanding of information access frameworks. It reinforces commitments under the Open Government National Action Plans to better measure and understand the value citizens place on the right to access government information, their experiences and outcomes.

* The results recognise that the legislation varies in each jurisdiction with one jurisdiction (ACT) only recently introducing legislation to provide the right to information.

The Year in Review

Issue Highlight: Significant legislative amendments - New provisions on 'refuse to deal'

Section 60(1)(a) of the GIPA Act provides for the decision to refuse to deal with an access application on the basis of unreasonable and substantial diversion of resources.

Sub-sections (3A) and (3B) in section 60 commenced on 28 November 2018 and were the result of the statutory review of the GIPA Act. The review suggested amendment to section 60 of the GIPA Act on the basis that submissions to the review identified some uncertainty for agencies and applicants in applying section 60(1)(a) and it was proposed that a non-exhaustive list of factors be provided in the section that decision makers could refer to when applying section 60(1)(a).

Section 60(3A) provides a non-exhaustive list of factors that decision-makers may take into account when deciding whether an application would involve an unreasonable and substantial diversion of an agency's resources. The agency may, without limitation, take the following factors into consideration:

- the estimated volume of information involved in the request
- the agency's size and resources
- the required period for deciding the application.

Section 60(3B) provides that any consideration under subsection (3A) must, on balance, outweigh:

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

The IPC is not aware of any NSW Civil and Administrative Tribunal decisions that consider the operation of sub-sections (3A) or (3B). However, the IPC is aware that there are some current cases on foot where these sub-sections may be considered by the Tribunal. Case notes of the decisions, once received, will be developed for inclusion on the IPC's website.

The IPC suggests that best practice in section 60(1)(a) decision-making is to ensure considerations referred to in sub-section (3A) and Tribunal case law such as *Cianfrano*¹ and *Colefax*² are balanced against the general public interest in favour of disclosure and the demonstrable importance of the information to the applicant described in sub-section (3B).

¹ *Cianfrano v Director General, Premier's Department* [2006] NSWADT 137.

² *Colefax v Department of Education and Communities* (NSW) (No 2) [2013] NSWADT 130.





Information Release Pathways

Pathway 1: Mandatory proactive release of information

Since 2010/11, the IPC has conducted an annual desktop audit of agency compliance with mandatory proactive release requirements under the GIPA Act (also known as open access information). In 2018/19 the IPC conducted a desktop audit of the 10 principal departments and a sample of 20 smaller agencies.³ The desktop audit identified whether, in compliance with the GIPA Act, each department or sampled smaller agency published on its website:

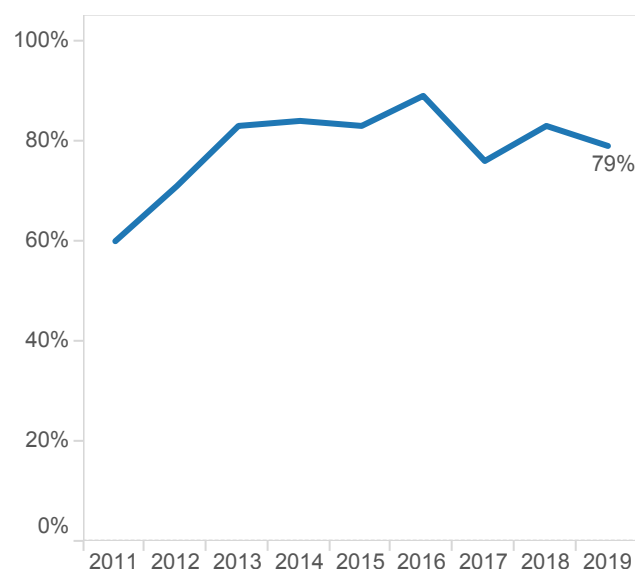
- an Agency Information Guide (AIG)
- agency policy documents
- an agency disclosure log
- an agency contracts register.

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

Compliance with open access requirements is stable

Across all departments and sampled smaller agencies, the desktop audit found that compliance with the mandatory proactive release requirements had remained relatively stable at 79% compared with 83% in 2017/18 (Figure 1).

Figure 1: Departments and sampled smaller government agency compliance with mandatory proactive release requirements 2018/19



The desktop audit also showed the following:

- 93% of sampled agencies had an AIG, a significant increase from 73% in 2017/18
- 93% of sampled agencies had policy documents available, consistent with 2017/18
- 87% of sampled agencies had a disclosure log, consistent with 82% in 2017/18
- 87% of sampled agencies had a contracts register, consistent with 83% in 2017/18.

³ The principal departments audited were Department of Education, Department of Family and Community Services, Department of Finance, Services and Innovation, Department of Planning and Environment, Department of Industry, Department of Premier and Cabinet, Transport for NSW, Department of Justice, Ministry of Health and NSW Treasury.

The smaller agencies audited were the Crown Solicitors Office, Greyhound Welfare and Integrity Commission, Office of Local Government, Parliamentary Counsel Office, Office of Sport, Aboriginal Housing Office, Audit Office of NSW, Dental Council of NSW, Health Care Complaints Commission, Independent Pricing and Regulatory Tribunal, Medical Radiation Practices Council of NSW, Multicultural NSW, NSW Education Standards Authority, Trustee of the ANZAC Memorial Building, Western Sydney and Aerotropolis Authority, Destination NSW, NSW Police Force, NSW Crime Commission, Law Enforcement Conduct Commission and the University of Technology Sydney.

Compliance by departments was significantly higher at 100%, than the rate for all agencies. This is the first time that 100% compliance has been achieved within the Departmental sample and that is a commendable outcome.

Agencies other than departments had a significantly lower overall compliance rate of 85%. However, this is a moderate increase compared to the 2017/18 results (78%) for sampled agencies and demonstrates progress towards uniform compliance. The lower compliance by other, often smaller government agencies, will continue to be considered by the IPC when developing future regulatory priorities.

Additional open access requirements for departments

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

- (a) *a list of the Department's major assets, other than land holdings, appropriately classified and highlighting major acquisitions during the previous financial year*
- (b) *the total number and total value of properties disposed of by the Department during the previous financial year*

- (c) *the Department's guarantee of service (if any)*
- (d) *the Department's code of conduct (if any)*
- (e) *any standard, code or other publication that has been applied, adopted or incorporated by reference in any Act or statutory rule that is administered by the Department.*

The IPC conducted a desktop audit of compliance by principal departments with these five additional open access requirements. The audit found that compliance with these additional requirements was low. The following results of compliance varied depending on the requirement:

- 20% (2 departments) had a partial list of major assets and acquisitions (an increase from 10%)
- 30% (3 departments) had a partial list of the total number and total value of properties the department disposed of during the previous financial year (an increase from 10%)
- 10% (1 department) had the department's guarantee of service (consistent with 2017/18)
- 100% had the department's code of conduct (consistent with 2017/18)
- 100% had a number of documents/webpages with 'standard' or 'code' available on the website (consistent with 2017/18).

Issue Highlight: Supporting pecuniary interest disclosure requirements in local government – Release of revised Guideline 1 for local government

Section 6 of the GIPA Act requires that open access information must be disclosed on the website of an agency unless there is an overriding public interest against disclosure. For local councils, this includes the disclosure of the returns of interest of councillors and designated persons.

In September 2019, following consultation with the Office of Local Government and the local government sector, the Information Commissioner released the revised [*Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons developed under the Government Information \(Public Access\) Act 2009 \(NSW\)*](#).

The Guideline assists councils with meeting their obligations under the mandatory proactive release provisions of the GIPA Act. It provides guidance on the factors to be considered when undertaking the public interest test under section 13 of the GIPA Act. In particular, the revised Guideline provides clear guidance on the weight to be given to personal information as a consideration against the release of returns of interest.

The Guideline confirms the legislative requirements for disclosure of certain information including details about properties and shareholdings, debts and business interests that is to be published on council websites. It also confirms that councils may, following consideration of each individual case, redact some of the information because of an overriding public interest against disclosure.

Disclosing pecuniary interests of councillors and other designated decision makers furthers openness, transparency and accountability in local government. It also facilitates the identification and management of potential conflicts of interest that might arise where councillors and staff participate in decisions from which they may derive, or be perceived to derive, personal or financial benefit. Importantly, disclosure minimises the risk of fraud and corruption.

Compliance has improved slightly in two of the five additional open access requirements. This result demonstrates a need to further promote the Fact Sheet [Open access information under the GIPA Act – agency requirements](#) to inform agencies about open access information required to be released, and assist them to identify their responsibilities for mandatory proactive release. The IPC will include a focus on compliance with mandatory proactive release by Government departments in its review of the Agency Self-assessment Tool.

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

Complaints to the IPC about mandatory proactive release of information

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

In 2018/19, 16% of complaints finalised by the IPC were about open access information. This is a decline from the 22% reported in 2017/18. These complaints mainly concerned agencies not making open access information available.

Issue Highlight: *Sandy v Kiama Municipal Council* [2019] NSWCATAD 49

Sandy applied for access to information (plans, drawings and reports) relating to a development application for an abattoir adjacent to his property under the GIPA Act. The Tribunal affirmed the decision of the Council to provide access to information by way of inspection, on the basis that to provide a copy of the records containing the information would infringe copyright under the *Copyright Act 1968* (Cth) (Copyright Act).

Access to government information in response to an access application may be provided in several specified ways under the GIPA Act, including by allowing the applicant to inspect the record or by providing a copy of a record (section 72(1)). The general requirement that access be provided in the way requested by the applicant is subject to exceptions, including where to do so would involve an infringement of copyright (section 72(2)(c)).

A decision not to provide access in the way requested by the applicant is a reviewable decision under section 80(i) of the GIPA Act, which means it is capable of being internally reviewed, as well as externally reviewed by the Information Commissioner and the Tribunal.

In this matter, the Applicant did not accept that the information he sought was subject to copyright and applied to the Tribunal for administrative review of the decision of the agency to provide access by inspection, rather than to provide him a copy.

The Tribunal found that the information to which ‘view only’ access had been provided comprised literary or artistic works protected by copyright. Because the Council had no express or implied licence to copy the information, the Tribunal agreed with the Council that to provide access in the way requested by the Applicant would involve an infringement of copyright.

See [IPC case notes](#) for more information about this case.



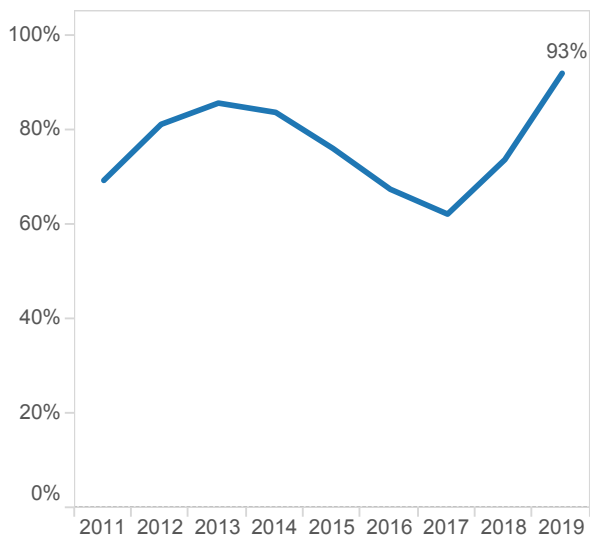
Pathway 2: Authorised proactive release of information

Significant increase in agency 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).⁴

In 2018/19, 93% of agencies reported having conducted a review of their program for the release of government information. This is a significant increase from 74% in 2017/18, and is the highest level reported to date (Figure 2).

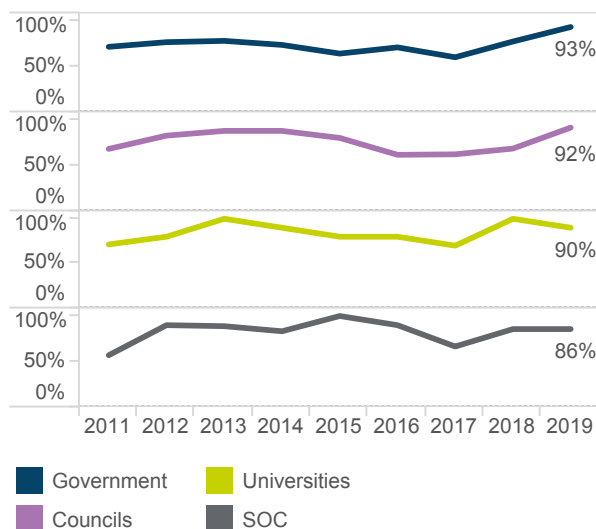
Figure 2: Agencies that conducted annual information release reviews as a percentage of all agencies that reported, 2010/11 to 2018/19



The increase is driven by the Government and Council sectors. There was a decline in the University sector (Figure 3):

- 93% of agencies in the Government sector conducted reviews, a significant increase from 78% reported to the IPC in 2017/18
- 92% of councils conducted reviews, a significant increase from 69% in 2017/18
- 90% of universities conducted reviews, a moderate decrease from 100% in 2017/18
- 86% of state-owned corporations conducted reviews, consistent with 86% in 2017/18.

Figure 3: Agencies that conducted annual information release reviews as a percentage of all agencies that reported, by sector, 2010/11 to 2018/19



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. Overall the program has demonstrated success. As part of the program, the IPC enhanced the GIPA Tool in 2018/19 to remind agencies that the conduct of reviews is mandatory.

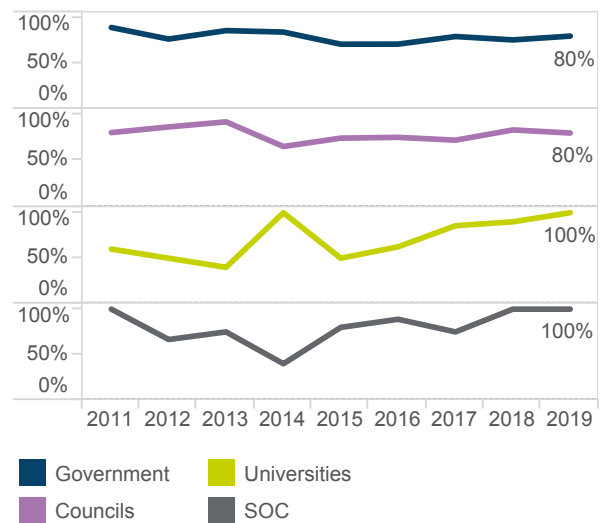
⁴ Clause 8 of the GIPA Regulation requires an agency (other than a Minister) to report the details of the review carried out by the agency under section 7(3) of the GIPA Act during the reporting year and the details of any information made publicly available as a result of the review.

Release of additional information following a review remained stable

Ideally, all agency information release reviews should result in additional information being released. In 2018/19, 81% of agencies that conducted a review released additional information. This is consistent with the 82% reported in 2017/18. Two sectors for the first time demonstrated that the review led to a 100% additional release rate. Figure 4 shows the trends in the percentage of reviews leading to the release of additional information and shows:

- 80% of agencies in the Government sector released additional information following review, consistent with the 76% reported in 2017/18
- 80% of councils released additional information following review, consistent with the 83% reported in 2017/18
- 100% of universities released additional information following review, a moderate increase from 90% in 2017/18
- 100% of state-owned corporations released additional information following review, consistent with the 100% reported in 2017/18.

Figure 4: Agencies that released additional information as a percentage of agencies that conducted a review, by sector, 2010/11 to 2018/19



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

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

- Gunnedah City Council maintains and promotes a practice of openness and accountability of corporate information and decision making as embodied in the Council's organisational values of "Open, Accountable and Customer Satisfaction".
- Department of Justice has developed and implemented a program of education and training to further promote proactive release obligations and encourage greater release of information.

Identify the information that can be released proactively

- Ku-ring-gai Council identified that an increasing percentage of informal applications are requesting information about the age of properties, copies of modifications to development applications, or copies of Private Certifier Complying Development Certificates. In response, Council is scanning a number of hard-copy building registers and uploading them to its website. Together with copies of registers already scanned, this will give members of the public access to a list of building applications from 1927-1982.
- NSW Police Force identified certain categories of firearms and related statistical information was of particular interest to the community. As a result, the NSW Police Force has commenced publication of a quarterly report on its website.
- Uralla Shire Council is rolling out a number of technology projects to enable implementation of e-service technologies to facilitate more efficient support for the ongoing proactive release of information. This has included the successful launch of a new OpenCities provisioned Council Website in January 2019.

Improve the accessibility of the information identified for proactive release

- Ku-ring-gai Council has implemented the Scan on Demand initiative to reactively scan archived files, making it easier, quicker and more cost effective to locate and provide archived information. The requested information is scanned and delivered to the applicant as a secured electronic file.
- University of Wollongong has undertaken a Digital Presence Review to ensure that its public website delivers a first-rate user experience and to enhance access to information.
- NSW State Emergency Services has brought together flood risk information from State and Local governments into the NSW Flood Data Portal – a central repository with access available to the public.

Issue Highlight: Information Access Guideline 7 - Open Data

In May 2019, the Information Commissioner released Information Access [Guideline 7 - Open Data](#).

The Guideline is issued by the Information Commissioner under section 12(3) of the GIPA Act. The Commissioner may issue guidelines for the assistance of NSW Government agencies about public interest considerations in favour of the disclosure of information. The Guideline provides information and assistance to public sector agencies and citizens regarding open data including the definition of open data, and opening data or release of government data using the access to information pathways under the GIPA Act.

'Open data' means simply that information an organisation holds that is stored digitally should be made freely available to the community. This is usually done by making a digitised dataset accessible from the organisation's website. Anyone who accesses and downloads the data is then free to use it, rearrange it and publish it as they wish. They are not restricted in doing so by principles of copyright or original authorship or ownership.

'Opening data' means releasing data in a form that ensures that it is accessible and usable. Government holds vast amounts of data that is, in its existing form or could become, open data.

Government agencies can also release data using the GIPA Act access pathways. Increasingly, government is holding information in digital form. The GIPA Act encompasses all information held by a government agency – this includes data. This data might not ever fulfil the definition of 'open data' in that it might be limited by conditions that could be imposed under the informal release pathway.

Democracy is underpinned by the principles of open government. This relationship is enshrined under the GIPA Act. Transparency, democratic accountability and public service go together. Information collected or created by government to perform its functions is an important public asset and 'opening data' is critical to:

- Improving government
- Empowering citizens
- Creating opportunities
- Solving problems.

Pathway 3: Informal release of information

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

Agency practices

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

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

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

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

The importance of accountable transparent decision making and the value of engagement to strengthen outcomes for local communities is highlighted in the Local Council sector.

Case Study: Transparency in decision making – webcasting of council meetings

The stated objective of the GIPA Act is to open government information to the public to advance a system of responsible government that is open, accountable, fair and effective. One way that councils have sought to fulfil this objective is through the webcasting of council meetings and councillor-only committee meetings.

Transparency and accountability are essential prerequisites for good governance, particularly in local government. As councillors are elected by their communities to make decisions on their behalf, it is important that the community can see this decision-making in action and understand how and why decisions are made.

Webcast of council meetings facilitates increased citizen awareness of government decision-making and encourages citizen participation in the processes of government. Webcasting also promotes greater community confidence in the integrity of council meetings, and the conduct of elected representatives. For example, declarations of interest are made and recorded during the webcasts to ensure that members of the public can have confidence in the decision-making processes of councils.

The formats adopted by councils has varied with some councils providing an audio-only webcast and others providing audio-visual webcast of their meetings.

Similarly, the type of webcast also varies with some councils electing to webcast on the council's website at a later time for on-demand viewing, providing an additional live-stream so that viewers can watch the meeting in real-time as it happens or both.

From 14 December 2019, all councils in NSW are required to webcast their council and councillor-only committee meetings under the *Model Code of Meeting Practice for Local Councils in NSW*.

Case Study: The ability to access government information has an immense impact on the lives of individuals and communities – bridge and road maintenance

In December 2017, the Bega Valley Shire Council passed a resolution in a closed session to no longer maintain or be responsible for two bridges on an access road across private land.

One affected landowner and others depended upon the maintenance of bridges for essential aspects of their lives and community safety including:

- feeding stock, particularly in times of drought when trucks were needed to cart feed to sustain livestock
- fencing to protect and maintain livestock and properties
- accessing properties and essential water supplies
- the prevention and management of bush fires.

The affected landowner was not aware of the resolution to cease maintenance of the bridges until he received a letter from the Council in March 2018 to talk about the decision impacting the road and bridges. The resolution was not publicly available and the landowner had to lodge a formal GIPA application to access the resolution affecting his farm and the surrounding area.

In May 2019, the landowner became aware that the matter was on the agenda for an upcoming meeting of Council. The landowner was able to present at the meeting of Council and describe the impact the Council's decision had on him and the community generally.

Council was persuaded of the importance of the bridges and resolved to obtain a report that outlined the implications of implementing possible options to minimise cost and impact for all parties.

Ultimately, Council resolved to dispose of one of the existing bridges and replace it with a concrete bridge or culvert.

Access to information by the landowner enabled Council to make a better decision based upon all relevant information.

This case study illustrates the importance of openness and transparency in government decision making and the central role that the GIPA Act has in providing access to government information that directly impacts community safety together with the livelihood and property of citizens.

Pathway 4: Formal applications

The number of applications lodged remained stable in 2018/19

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

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

The main benefits of the formal access pathway are:

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

The IPC continues to publish on its website a publicly available dashboard enabling easy access and understanding of NSW agencies' operation of the formal pathway. This initiative provides insights for agencies and citizens alike and has been widely commended.

Case Study: Online GIPA applications: accessibility, ingenuity and efficiency

For an access application to be valid under the GIPA Act it must be sent by post to or lodged at an office of the agency concerned or made in a manner approved by the agency and accompanied by a fee of \$30. The GIPA Act provides that an agency may approve additional facilities for the making of an access application or the payment of an application fee. This gives agencies the flexibility to allow citizens to use more modern methods for making and paying for their access applications such as using an online facility. One agency that has approved such a facility is the Department of Family and Community Services (FACS), now part of the Department of Communities and Justice.

In June 2019, FACS launched its GIPA online application lodgement facility. This facility allows an applicant to lodge formal and informal GIPA applications, as well as lodge internal review applications. The facility also allows the applicant to pay for their applications online at the same time as lodging the application.

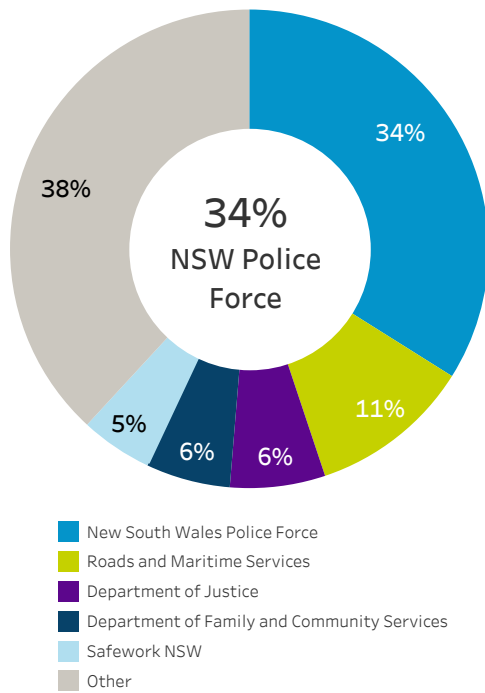
Other features of the facility include the ability to upload supporting documentation, SMS and email notifications, address verification, document verification and DocuSign and accessible web content.

The online lodgement facility has reduced the administrative workload of FACS staff processing information access requests, and at the same time provides citizens with a platform that gives them the opportunity to exercise their information access rights in an accessible and efficient manner.

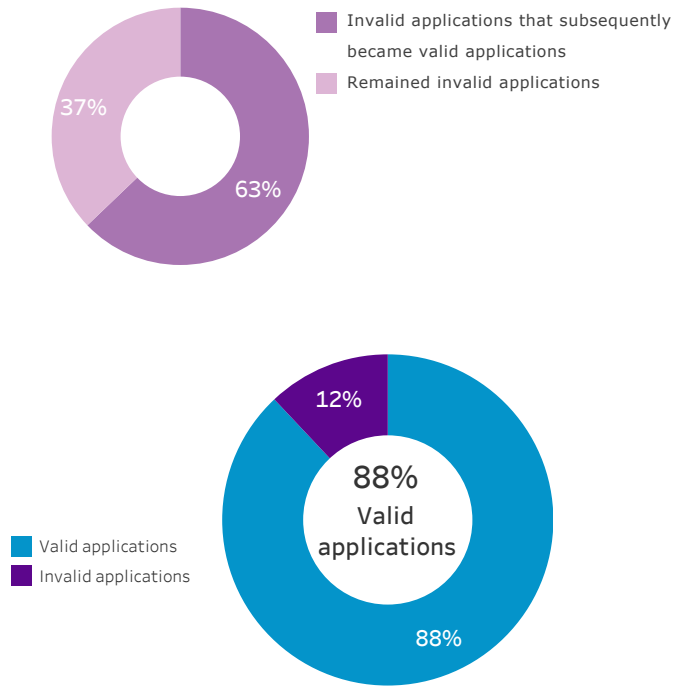
This example shows a valuable and significant commitment by a NSW agency to develop solutions to enhance efficiency in dealing with information access applications, and benefit citizens in seeking access to information.

Year at a glance

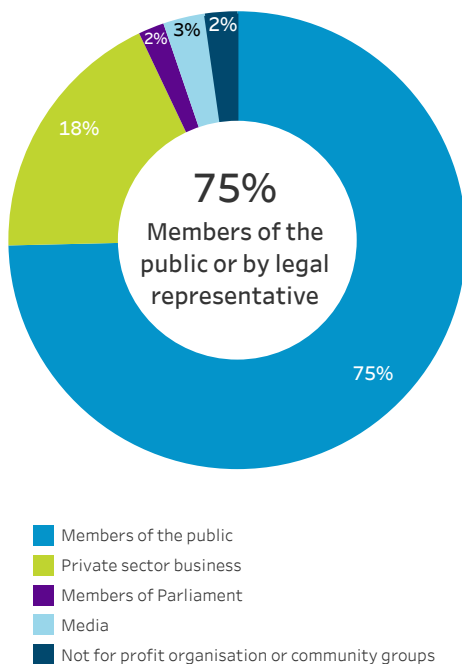
Where were applications lodged?



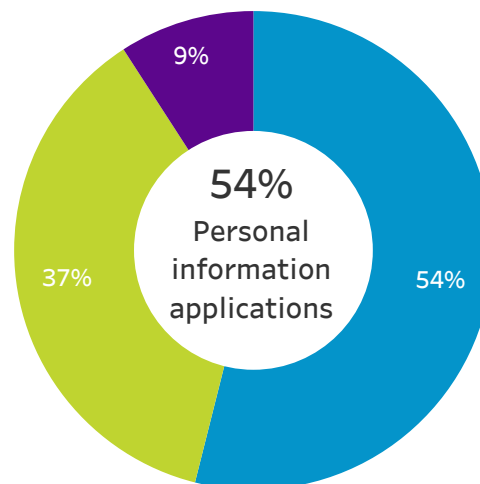
Were applications invalid?



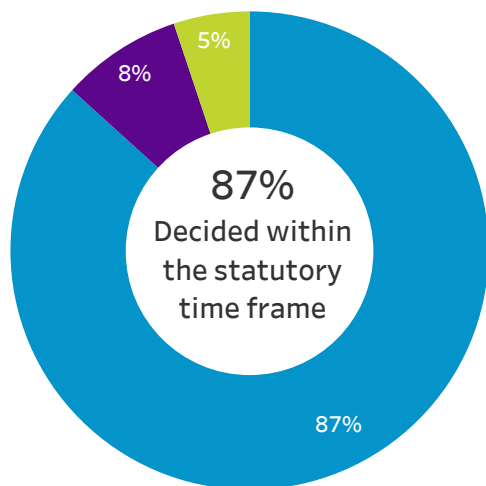
Who applied?



What was asked for?

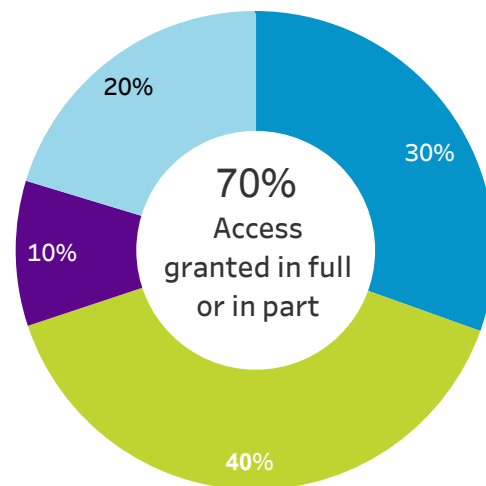


How quickly were decisions made?



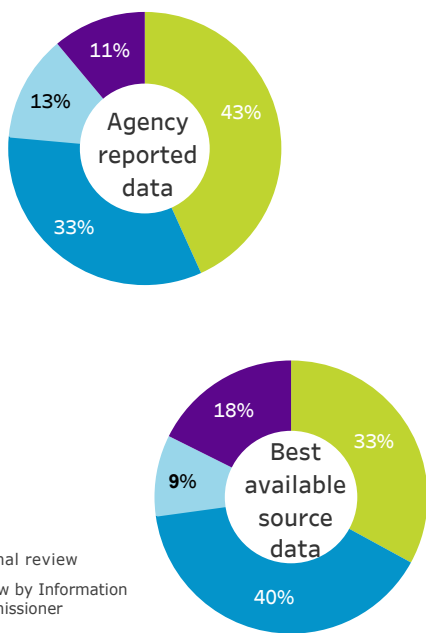
- Decided within the statutory timeframe (20 days plus any extensions)
- Not decided within time (deemed refusal)
- Decided after 35 days (by agreement with applicant)

Did applicants get what they asked for?



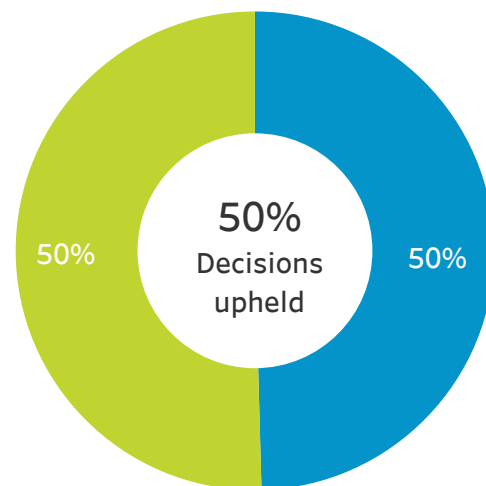
- Access Granted in Full
- Access Refused in Full
- Access Granted in Part
- Other

How were decisions reviewed?



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

What were the main review outcomes?



- Decision upheld
- Decision varied

How many applications were lodged?

The number of valid applications received remained stable in 2018/19

At the time of reporting, agencies advised that they received 15,774 valid applications during 2018/19. This compares with 15,921 valid applications in the previous financial year and represents a total decrease of 147 (1%) in valid applications received. The trend in applications is shown in Figure 5.

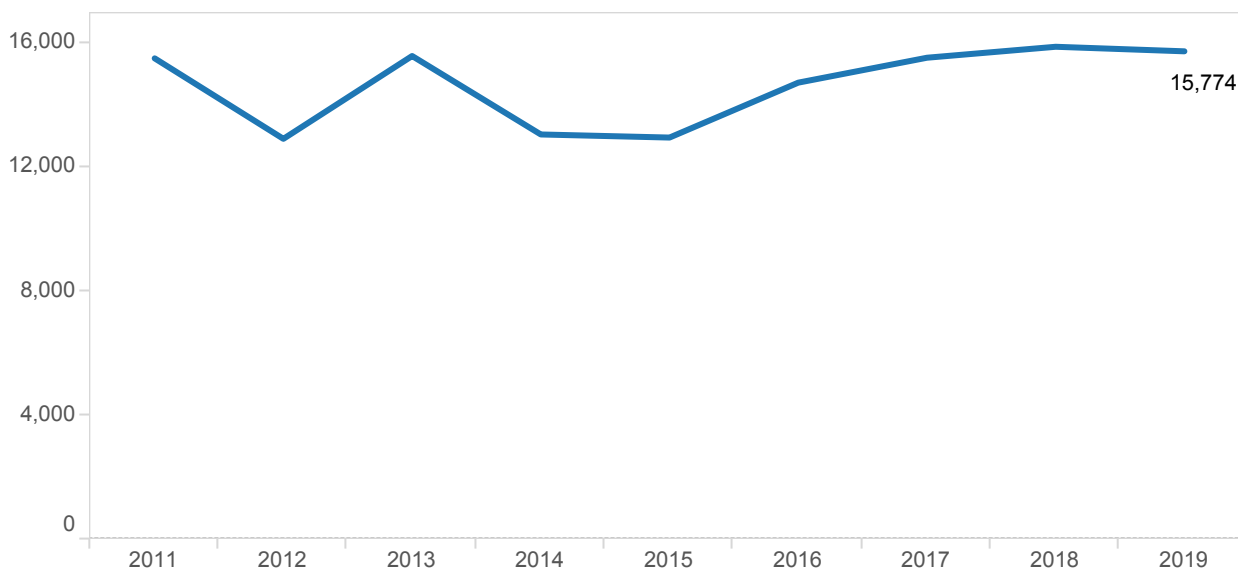
The number of applications received by agencies can be affected by certain factors, such as the type of information sought, the extent to which agencies proactively make information available and the use of the informal access pathway.

Most applications were made to the Government sector⁵

Consistent with previous years the Government sector continued to account for the great majority (12,637 or 80%) of valid applications (Figure 7).

In 2018/19, the NSW Police Force and Roads and Maritime Services combined accounted for 45% of all valid applications (Figure 6). The number of applications received by the NSW Police Force declined by 12% in 2018/19. The number of applications received by Roads and Maritime Services decreased, falling by 9% in 2018/19.

Figure 5: Total number of valid applications received, 2010/11 to 2018/19



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

⁵ Since 2016/17 data is reported across five sectors, including state owned corporations. This will affect comparisons with the published reports in previous years.

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

- A 10% rise in applications to the Department of Family and Community Services (from 802 in 2017/18 to 884 in 2018/19). This follows a 12% increase in the previous year. Examining trends over the past two years indicates a 25% increase in applications to the Department of Family and Community Services since 2016/17. (See p.25 for case study).
- A 12% increase in applications to Safework NSW (from 675 in 2017/18 to 757 in 2018/19).

Applications remained stable in the Government sectors while increasing significantly in the Council and University sectors

The growth in the number of applications received by the Council sector continued with a rise of 21% since 2017/18, following the 7% increase in the previous year. The Government sector remained stable with only a 5% decrease since 2017/18 compared to rises of 1% and 8% in the previous two years.

Applications received by the Minister sector decreased significantly, falling by 60% in 2018/19. Applications received in the University sector increased significantly, rising by 47% in 2018/19, while a moderate increase was reported for the State-Owned Corporations sector which rose by 11%. Each of these sectors receive relatively few applications and their level of applications is therefore more variable.

Figure 6: Distribution of valid applications received, by agency, 2018/19

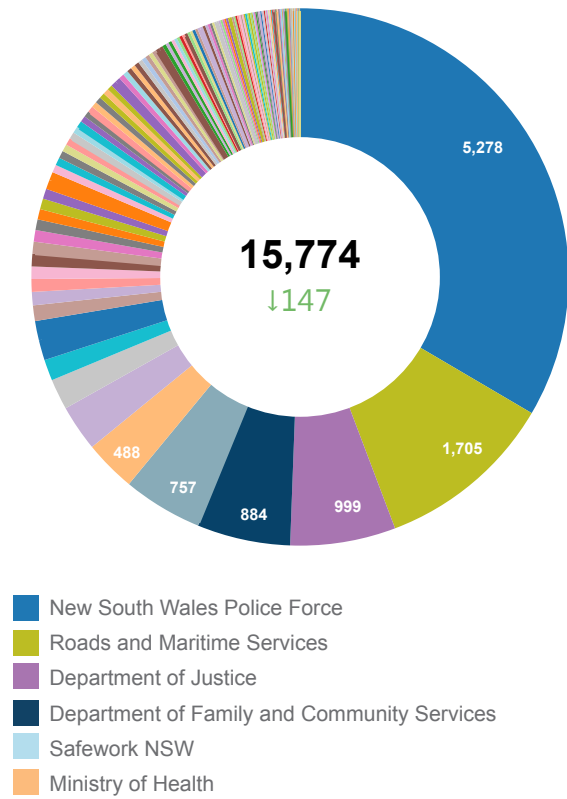
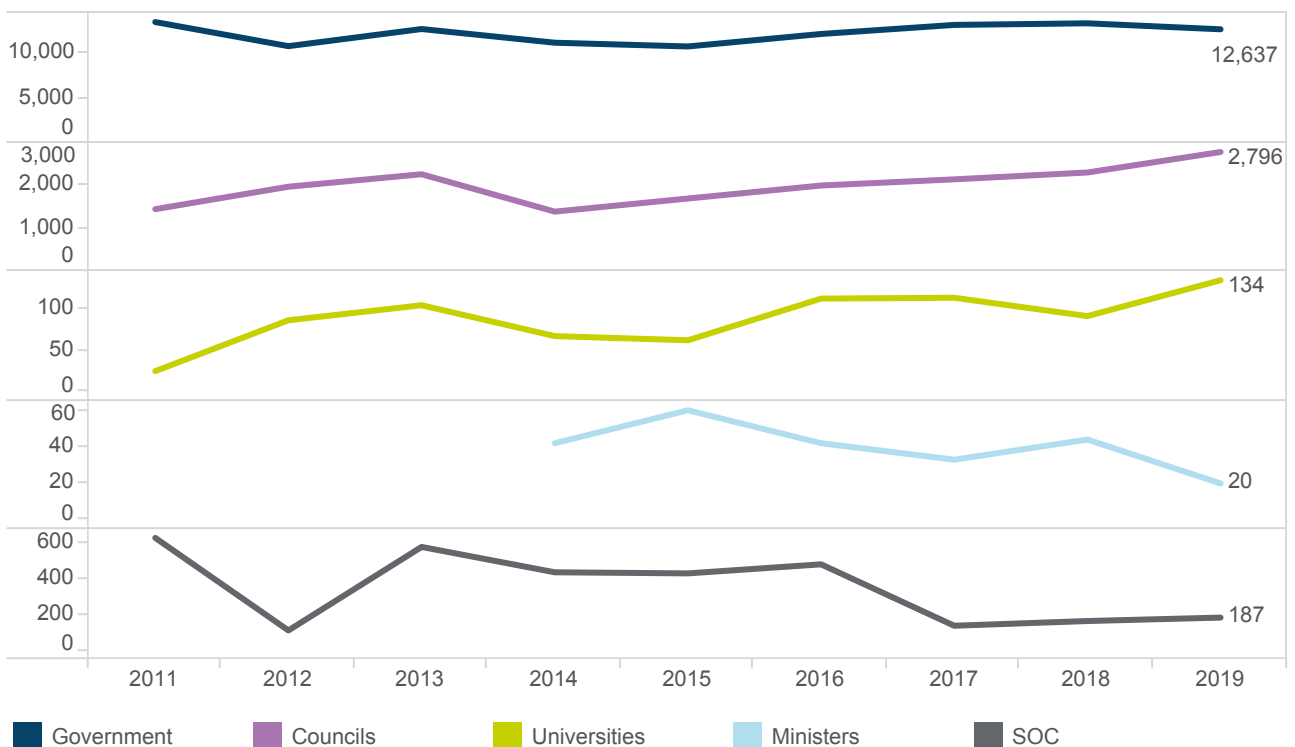


Figure 7: Number of applications received, by sector, 2010/11 to 2018/19



Invalid applications

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

Figure 8 shows the flow of applications from receipt to initial assessment and subsequent processing, together with the number of applications received in 2018/19.

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

The rate of invalid applications received remains high

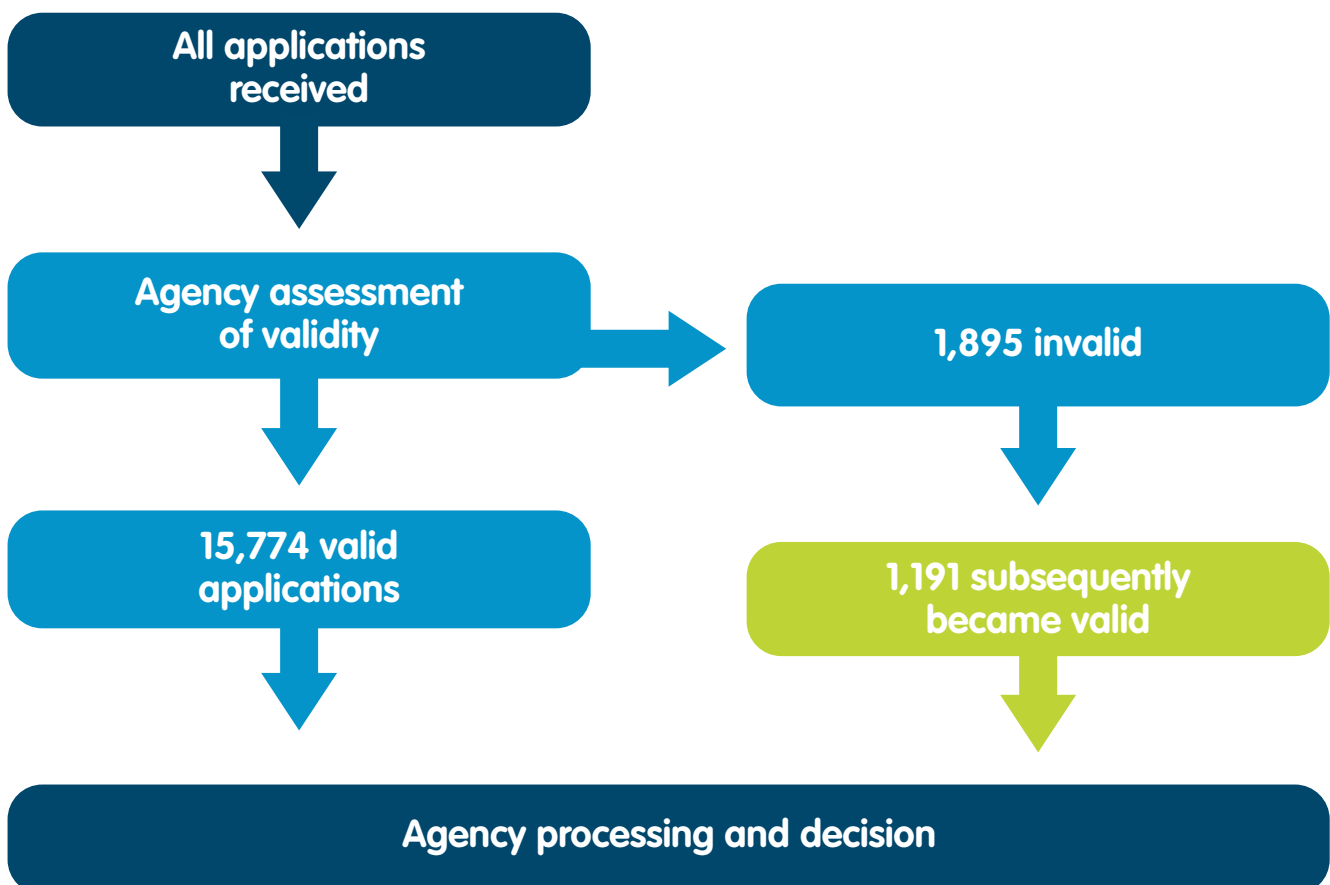
The rate of invalid applications decreased significantly however the rate remains high

In 2018/19 agencies received 1,895 invalid applications, equivalent to 12% of all formal applications received (Figure 9).

This is a 20% decline on the 2,368 or 15% of invalid applications reported in 2017/18.

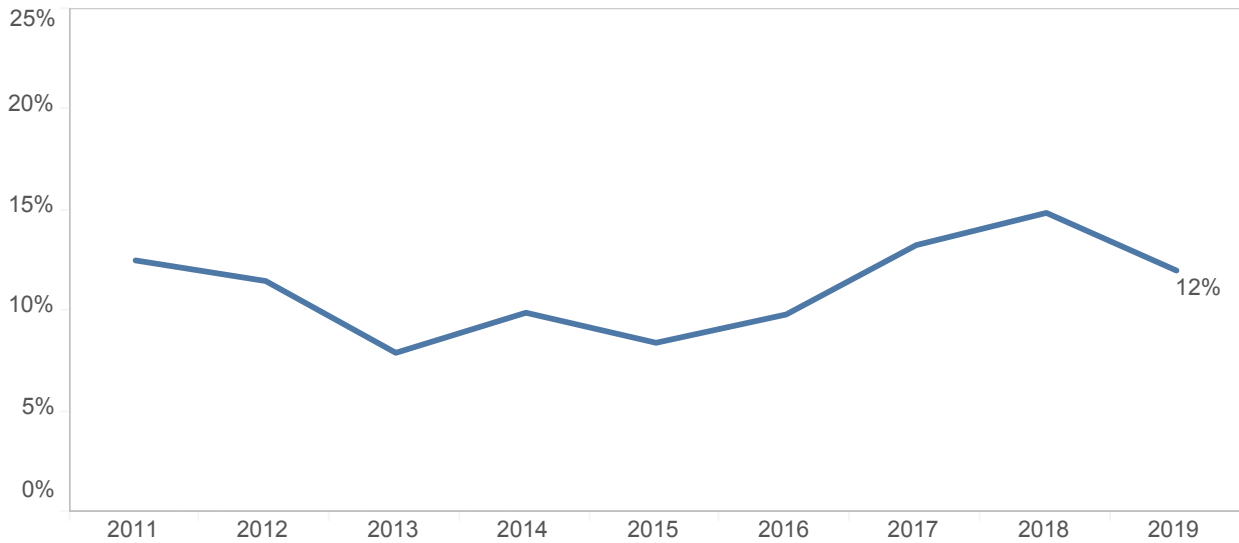
Consistent with previous years, in 2018/19 the most common reason for invalidity (applying in 98% of invalid applications) was that the application did not comply with formal requirements.

Figure 8: Flow of valid and invalid formal applications, 2018/19



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

Figure 9: Invalid applications as a percentage of all formal applications received, 2010/11 to 2018/19



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

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

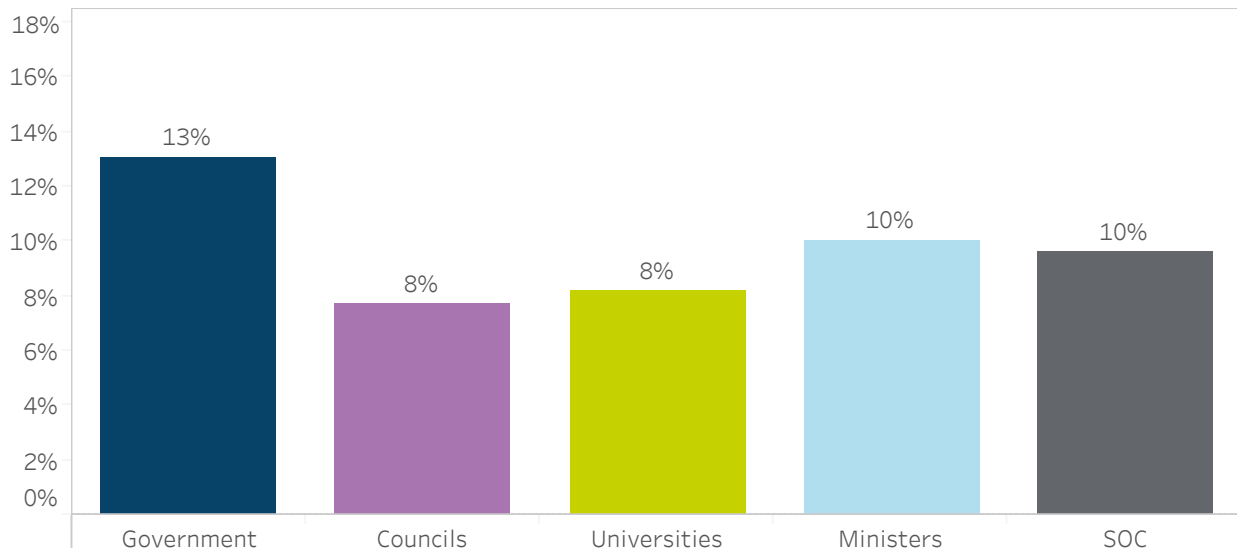
The Information Commissioner has published resources for citizens to assist them in framing a valid application. In September 2019, the Information Commissioner released a checklist [Tips for framing your information access application](#) which provides further advice on key information that is often overlooked by applicants and can potentially cause an application to be rejected.

The Government sector had the highest percentage of invalid applications

Although the Government sector continued to have the highest percentage of invalid applications, there was a decrease in the number of invalid applications in both the Government and University sectors. The Government sector decreased from 17% in 2017/18 to 13% in 2018/19 and the University sector decreased from 14% in 2017/18 to 8%.

There have been moderate increases in the Ministers and State-Owned Corporations sectors (Figure 10). The Ministers and State-Owned Corporations sectors recorded the largest increase in invalid applications with the Ministers sector increasing from 5% in 2017/18 to 10% in 2018/19, and the State-Owned Corporations sector increasing from 2% in 2017/18 to 10% in 2018/19 (although on small numbers).

Figure 10: Invalid applications as a percentage of all formal applications received, by sector, 2018/19



Issue Highlight: Providing advice and assistance benefits citizens and agencies

Ensuring that GIPA applications are valid and can be dealt with efficiently by agencies has benefits for citizens and agencies, including:

- clearer and more manageable access applications
- more efficient processing
- prompt and comprehensive outcomes.

In 2019, the NSW Information Commissioner led a national survey to examine community attitudes to information access. As part of that survey the NSW IPC asked specific questions regarding access to information and the advice and assistance provided by agencies to citizens.

The key findings were that:

- of those who tried to access information, 60% stated that the agencies were helpful in providing advice and assistance
- only 13% thought agencies were not helpful.

In 2020, the Information Commissioner will undertake a further citizen survey designed to identify the action taken by agencies that assisted citizens. This information will be used to provide guidance to agencies designed to ensure their efforts are effective in providing advice and assistance.

The number of invalid applications received by some agencies decreased significantly

The number of invalid applications remained stable for most agencies, however some agencies experienced a decline in the percentage of applications that were invalid compared to 2017/18. The percentage of invalid applications fell to:

- 13% (from 33%) for Transport for NSW
- 8% (from 31%) for Roads and Maritime Services.

It is noted that the decrease reported by Transport for NSW follows the introduction of an electronic lodgement system for applications in 2017/18.

Among agencies that received a large number of applications, only the Department of Education reported a significant increase in the percentage of invalid applications, from 7% to 26% in 2018/19.

Concerningly, two of the agencies that reported significant increases in the number of invalid applications in 2017/18 have continued to report at these levels in 2018/19:

- 62% for Department of Justice
- 40% for Department of Finance, Services and Innovation.

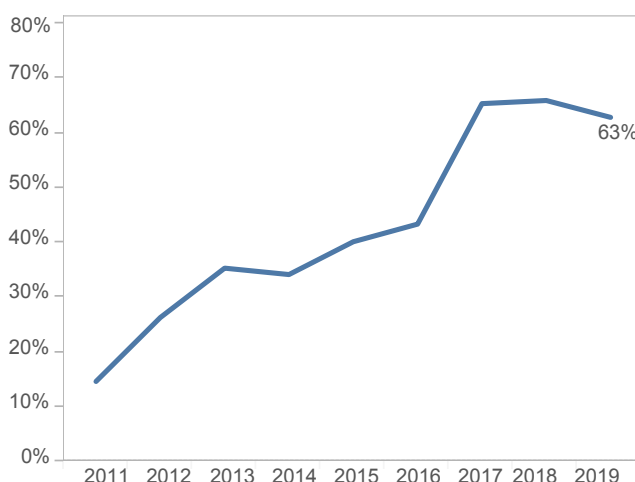
However, it should be noted that many invalid applications subsequently became valid.

Invalid applications are increasingly becoming valid

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

Consistent with 2017/18, 63% of invalid applications subsequently became valid in 2018/19 (Figure 11).

Figure 11: Invalid applications that became valid as a percentage of all invalid applications, 2010/11 to 2018/19

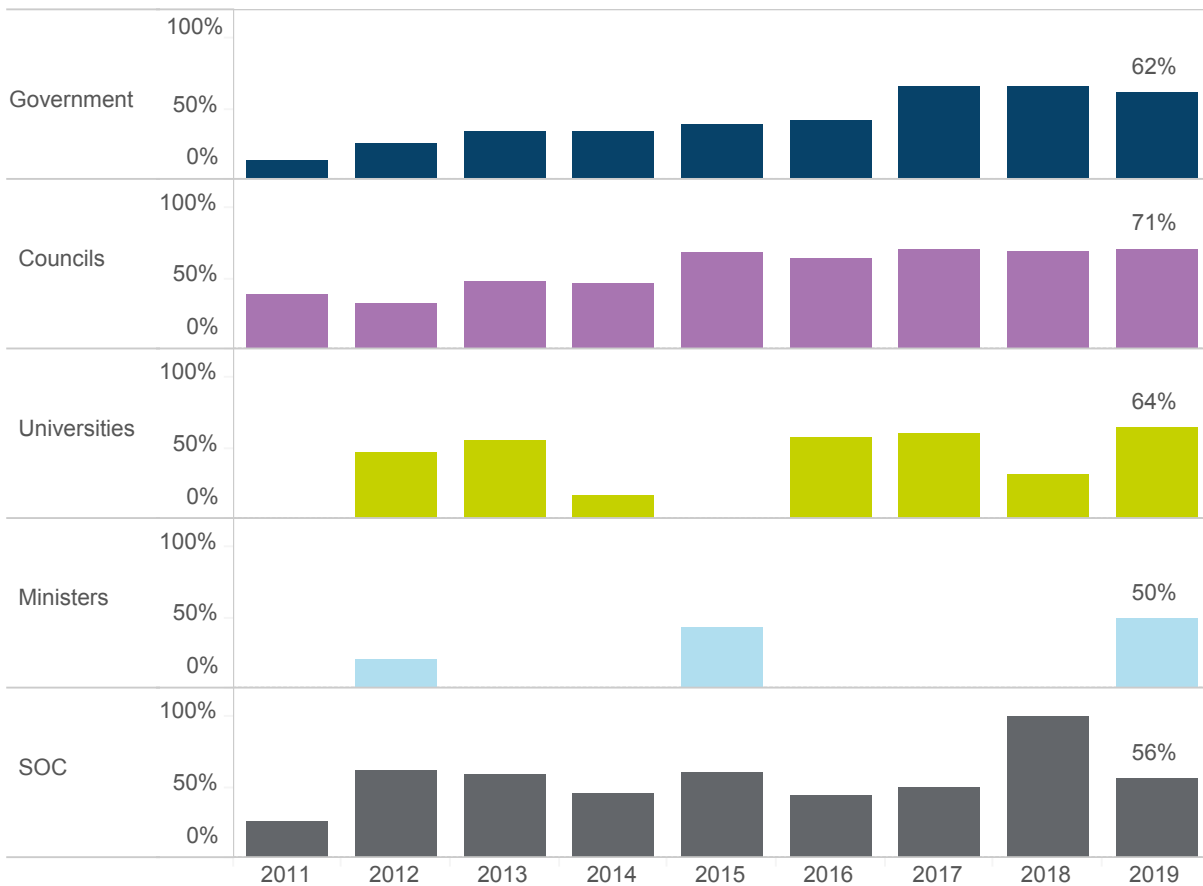


As Figure 12 shows, the percentage of invalid applications that subsequently became valid has:

- remained stable in the Government and Council sectors since 2016/17
- increased significantly in the University sector from 31% in 2017/18, to 64% in 2018/19, noting that this level is consistent with those reported in 2015/16 and 2016/17
- decreased significantly in the State-Owned Corporations sector from 100% in 2017/18 to 56% in 2018/19.

The high rate of invalid applications that became valid is a positive illustration of agencies discharging their responsibilities under the GIPA Act to assist applicants. The IPC's intention in conducting further research is to ensure that agencies adapt their advice and assistance to reflect the perspective of citizens. In this way, agency practices can become more efficient and effective.

Figure 12: Invalid applications that became valid as a percentage of all invalid applications, by sector, 2010/11 to 2018/19

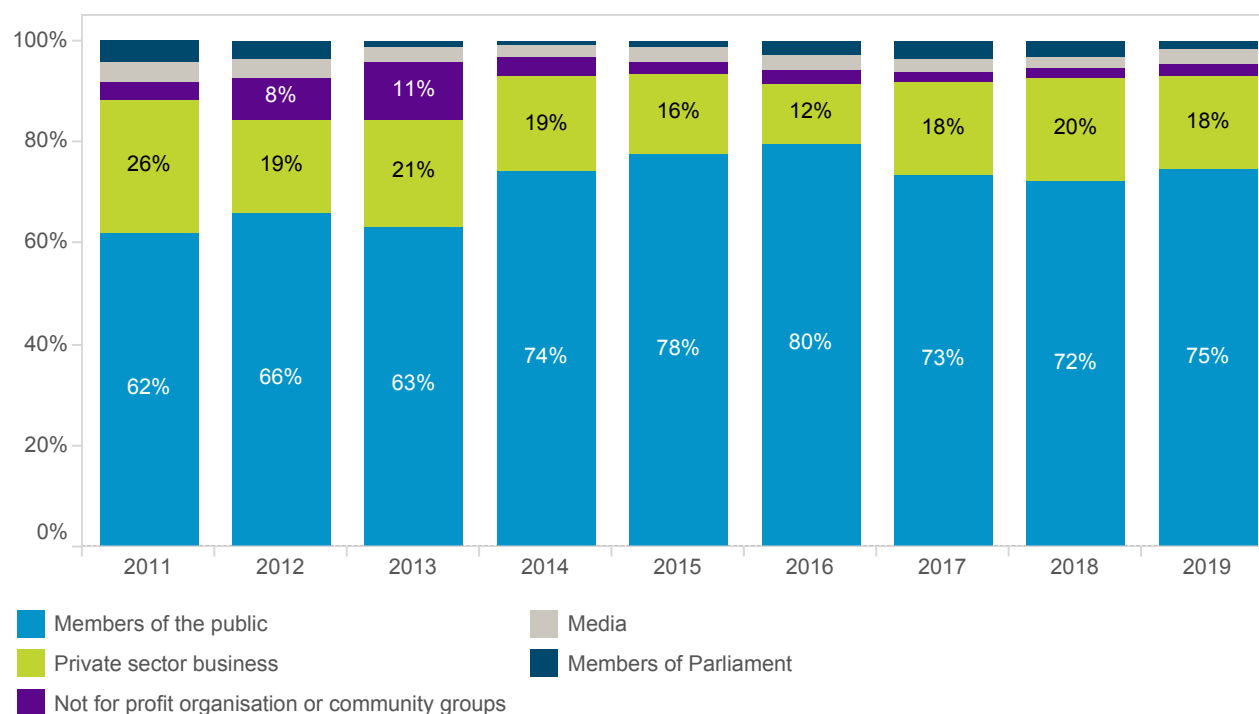


Who applied?

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

In 2018/19, 75% of all outcomes related to applications from either a member of the public or their legal representative. This is consistent with the 72% reported in 2017/18. Within this group, the largest single applicant type (38%) was members of the public represented legally.

Figure 13: Trend in the proportion of outcomes, by type of applicant, 2010/11 to 2018/19



There were increased outcomes for all applicant types except private sector businesses and members of Parliament

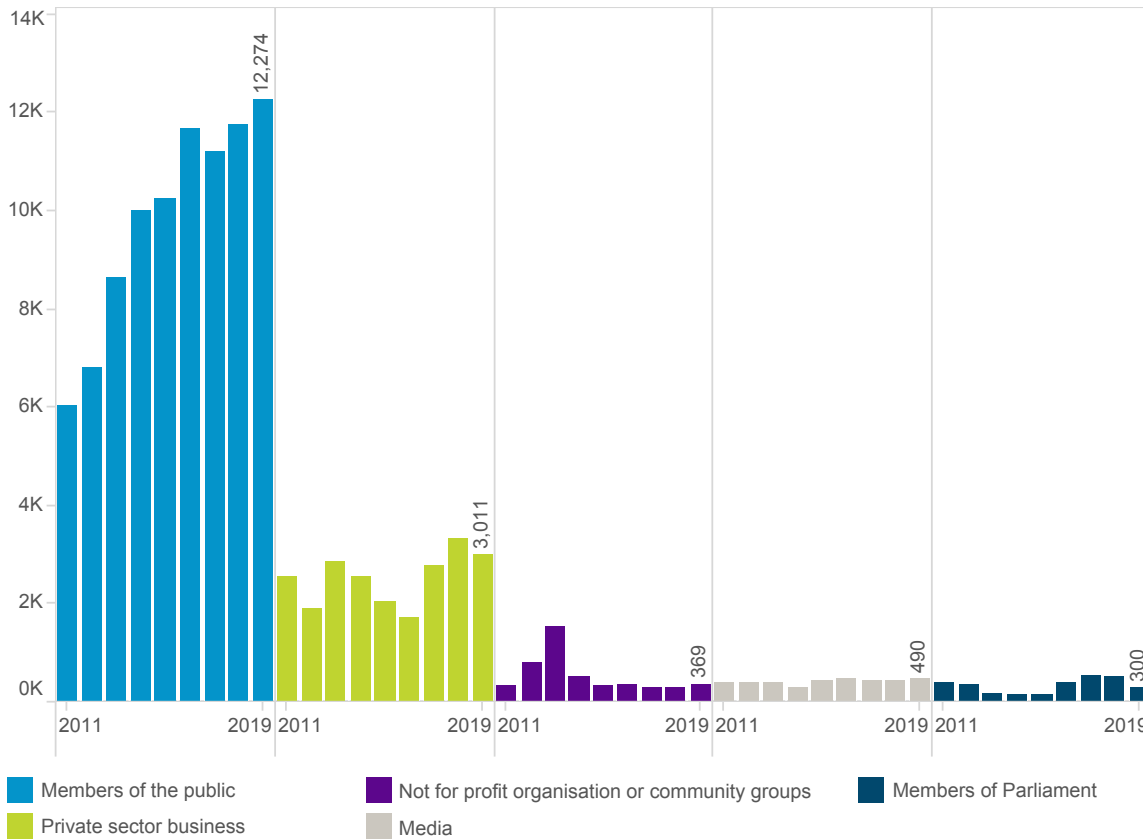
In 2018/19 (as in all years), the greatest number of outcomes was for applications by members of the public, which rose 4% compared with 2017/18. Outcomes for legally represented members of the public remained consistent between 2018/19 and 2017/18 at 38%.

The number of outcomes for media rose by 15% and for not-for-profit organisations or community groups by 20%.

The number of outcomes for members of Parliament decreased significantly by 40%, from 503 in 2017/18 to 300 in 2018/19. The number of outcomes for private sector business decreased by 10%, from 3,342 in 2017/18 to 3,011 in 2018/19.

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

Figure 14: Number of outcomes by type of applicant, 2010/11 to 2018/19



Significant changes in applicant type were experienced in the University and Minister sectors

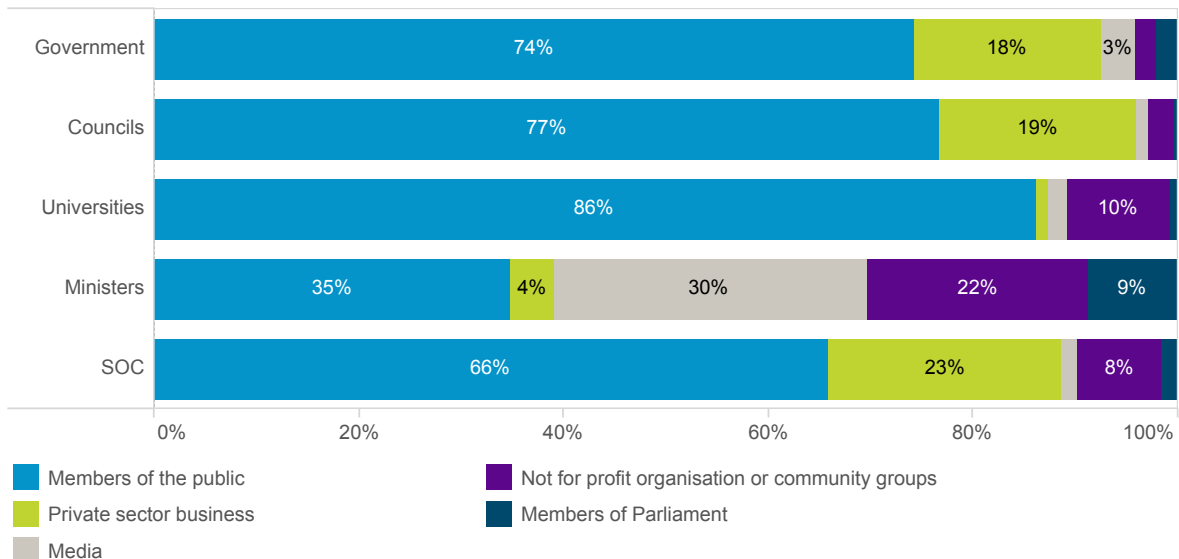
In 2018/19, the distribution of applicant types varied markedly across sectors. Percentages remained stable in the Government and Council sectors.

Notable changes by sector since 2017/18 were:

- Universities sector – an increase in the percentage of outcomes related to members of the public, from 66% to 86%

- Ministers sector – a decrease in the percentage of outcomes related to members of Parliament, from 22% to 9% and an increase in the percentage of outcomes related to not-for-profit organisations, from 4% to 22%
- State-Owned Corporations sector – an increase in the percentage of outcomes related to not-for-profit organisations, from 3% to 8%, and a decrease in outcomes related to members of Parliament, from 9% to 2%.

Figure 15: Percentage of outcomes by sector and type of applicant, 2018/19



Issue Highlight: Information Access Guideline 8 - Care Leavers' access to their Out-of-Home Care Records

In June 2019, the Information Commissioner released [*Guideline 8 - Care Leavers' access to their Out-of-Home Care Records*](#).

The Guideline was developed following the conclusion of the Australian Government's National Apology to Forgotten Australians and Former Child Migrants in 2009 and the *Report of the Royal Commission into Institutional Responses to Child Sexual Abuse* in 2017. A significant theme of those inquiries was that stronger guidance is needed to ensure that former care leavers can more easily obtain access to their records relating to their time in institutional care.

Under section 12(3) of the GIPA Act, the Information Commissioner can issue guidelines for the assistance of agencies about public interest considerations in favour of the disclosure of government information. The Information Commissioner's Guideline is directed specifically to agencies to which the GIPA Act and the *Privacy and Personal Information Protection Act 1998* (PPIP Act) apply.

The Information Commissioner's Guideline is informed by the Commonwealth Department of Social Services, *Access to Records by Forgotten Australians and Former Child Migrants* (DSS Guidelines) and recognises the importance of national consistency for people who are seeking access to records that may be held by more than one agency.

The Guideline deals with access to records, which is an important aspect of records management of out-of-home care records. The principal focus of the Guideline is upon access to historical out-of-home care records.

Agencies are encouraged to manage access applications in accordance with the Guideline and have particular regard to the section of the GIPA Act which confirms the presumption in favour of disclosure, together with the significant public interest considerations in favour of disclosure. Additionally, agencies must comply with the principles that apply to a public interest determination set out at section 15 of the GIPA Act.

Broadly, the Guideline addresses the following matters:

- why access to out-of-home care records is important
- the nature and scope of out-of-home care records in NSW
- mechanisms for access to information in NSW
- consultation considerations
- considerations of the personal factors of the applicant
- common legal and practical issues faced by care leavers in obtaining access to records.

What information was asked for?

Partly personal applications outcomes increased significantly

As Figure 16 shows, in 2018/19:

- Outcomes that were partly personal information and partly other information increased significantly by 31% (from 1,147 outcomes in 2017/18 to 1,499 in 2018/19)
- Personal information application outcomes also remained consistent with the previous year (8,870 outcomes in 2018/19 compared to 9,001 in 2017/18)
- ‘Other than personal information’ outcomes remained consistent with the previous year (6,075 outcomes in 2018/19 compared to 6,117 in 2017/18).

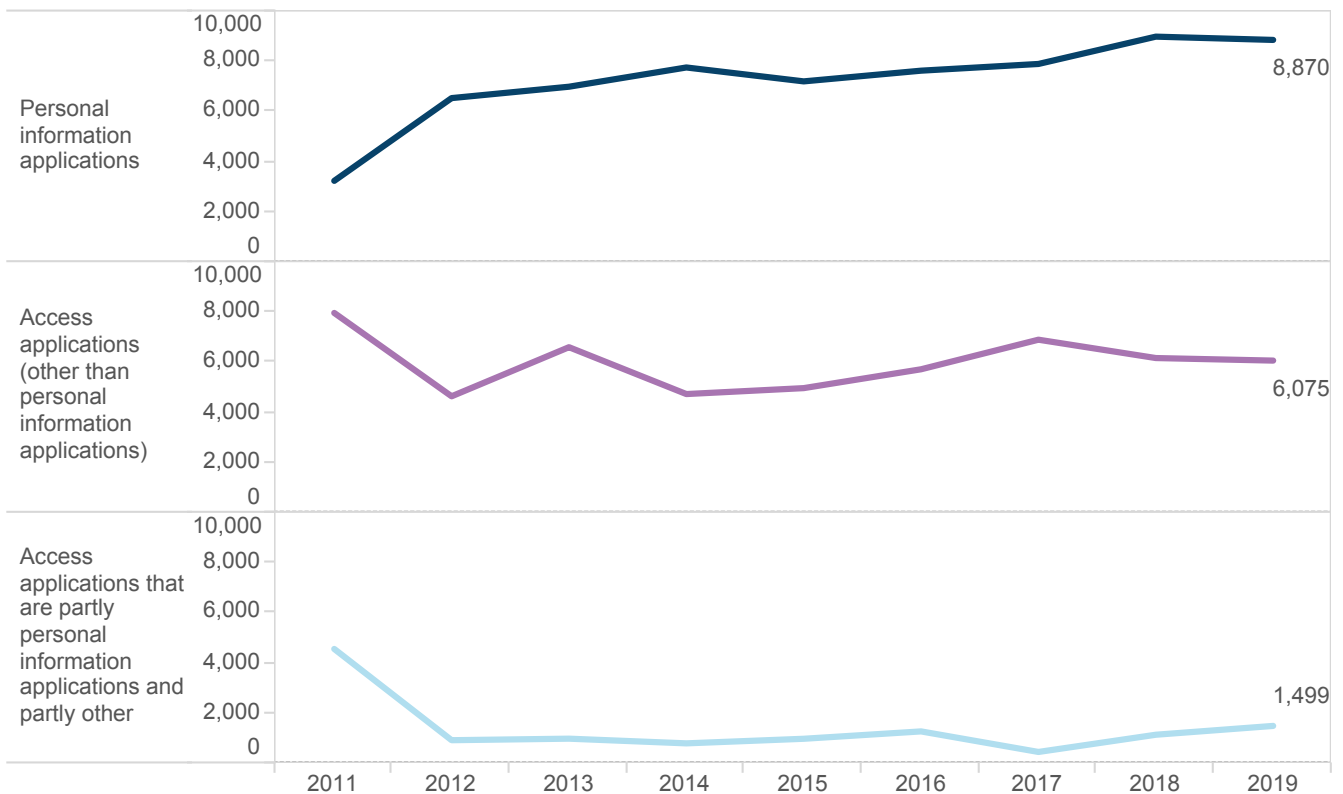
The type of information sought varied across sectors, and in the University sector applications for personal information significantly increased

Notwithstanding the significant increase in the number of outcomes for partly personal information, the percentage of outcomes remained consistent with previous years.

In 2018/19:

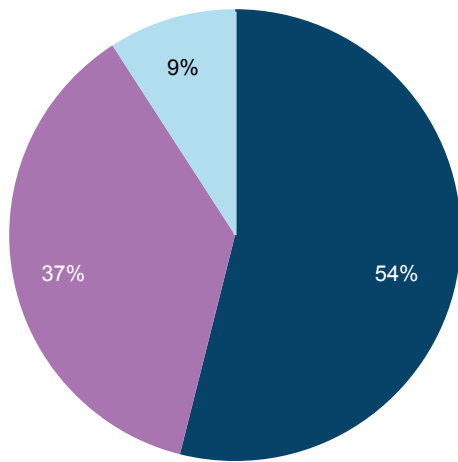
- 54% of outcomes related to applications for personal information, compared with 55% in 2017/18
- 37% of outcomes related to applications for ‘other than personal information’, compared with 38% in 2017/18
- 9% of outcomes related to applications for both types of information, compared with 7% in 2017/18 (Figure 17).

Figure 16: Number of outcomes by type of information applied for, 2010/11 to 2018/19



‘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: Outcomes by type of information applied for, 2018/19



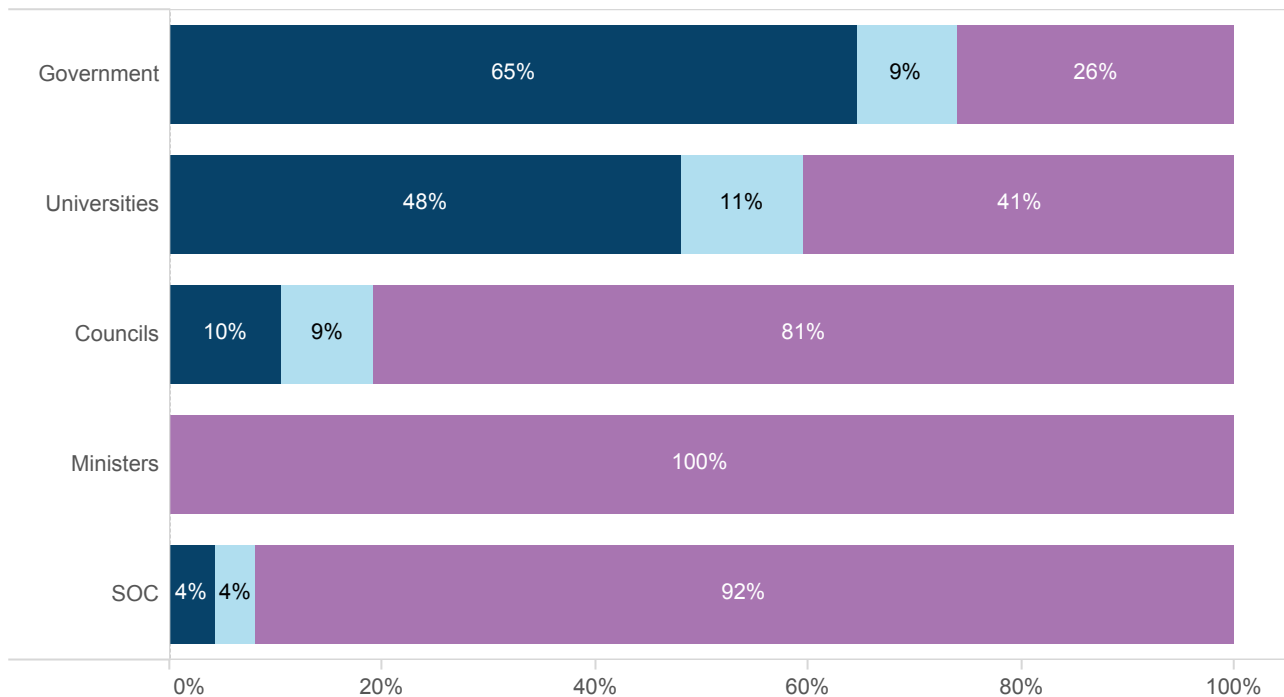
■ Personal information applications
■ Access applications (other than personal information applications)
■ Access applications that are partly personal information applications and partly other

Different sectors experienced different patterns of outcomes in 2018/19, however these patterns remain consistent with those reported in 2017/18 for all sectors except the university sector.

In 2018/19:

- In the University sector, 48% of outcomes related to applications for personal information compared to 22% in 2017/18. A corresponding decrease was reported in outcomes related to applications for 'other than personal information', falling to 41% in 2018/19 compared to 63% in 2017/18
- The number of applications for 'other than personal information' in the State-Owned Corporations sector remained consistent with 2017/18, accounting for 92% of all outcomes in this sector
- In the Council sector, 81% of outcomes related to applications for 'other than personal information', consistent with 2017/18
- In the Ministers sector, 100% of outcomes related to applications for 'other than personal information', consistent with 2017/18
- In the Government sector, 65% of outcomes related to applications for personal information, consistent with 2017/18 (Figure 18).

Figure 18: Percentage of all outcomes by type of information applied for, 2018/19



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

Did applicants get what they asked for?

Overall 'release rates' are stable

In 2018/19, the overall release rate was 70%, representing the combined access granted in full and in part outcomes (Figure 19). This is similar to the combined release rate of 68% in 2017/18. Release rates were relatively stable in the Government, State-Owned Corporation and Ministers sectors.

At the sector level (Figure 20), in 2018/19 the State-Owned Corporations sector had the highest release rate of 82%, similar to the 84% release rate in 2017/18.

For the Council sector, 78% of outcomes granted access in full and in part in 2018/19, representing a moderate increase on the 72% in 2017/18.

For the Government sector, 68% of outcomes resulted in access being granted in full and in part in 2018/19. This is similar to the 67% reported in 2018/19 and 2017/18.

For the University sector, 64% of outcomes granted access in full and in part in 2018/19, a moderate decrease on 70% reported in 2017/18.

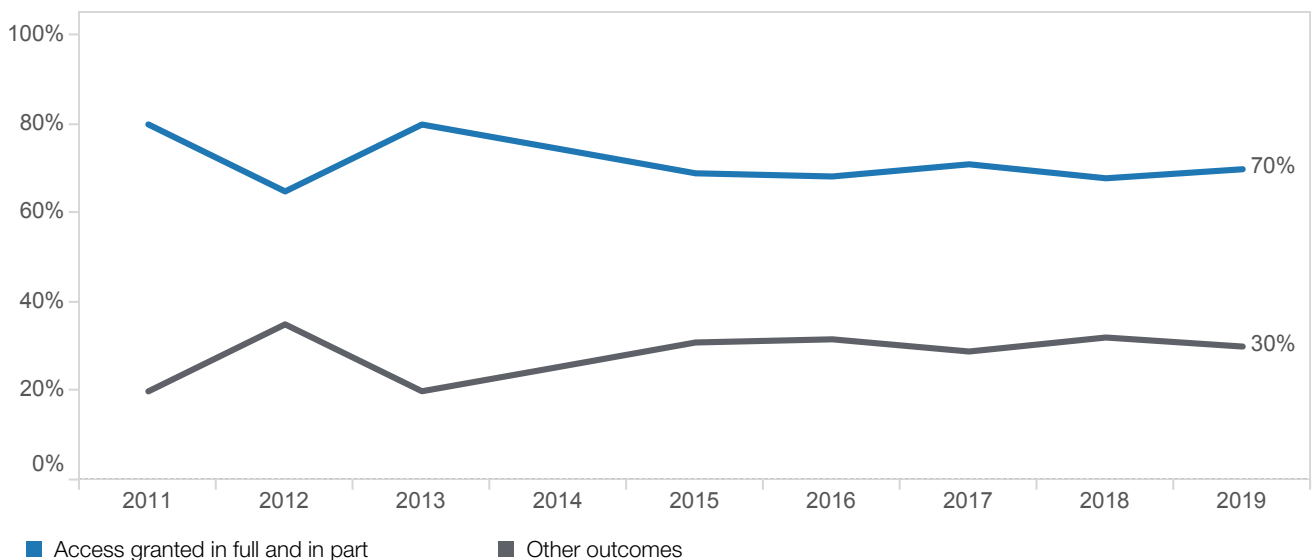
For the Ministers sector 39% of outcomes resulted in access being granted in full and in part in 2018/19, consistent with 36% in 2017/18. This outcome should be considered in the context of information holdings and the overall low numbers of applications (44) received by the Ministers sector.

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

In 2018/19, 30% of all outcomes granted access in full (Figure 21). This is consistent with results over the previous two years.

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

Figure 19: Overall release rate across all sectors, 2010/11 to 2018/19



'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 2018/19

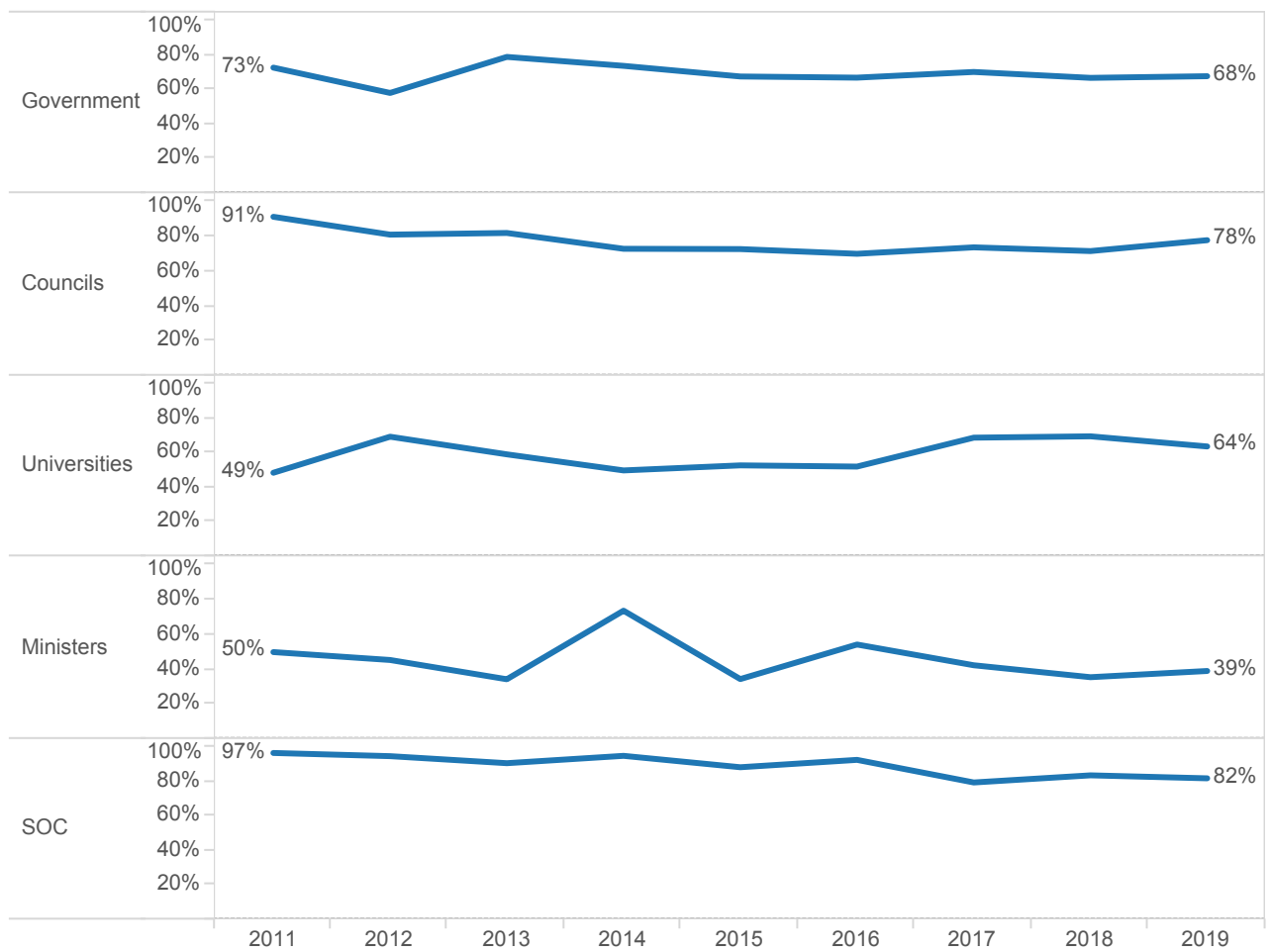
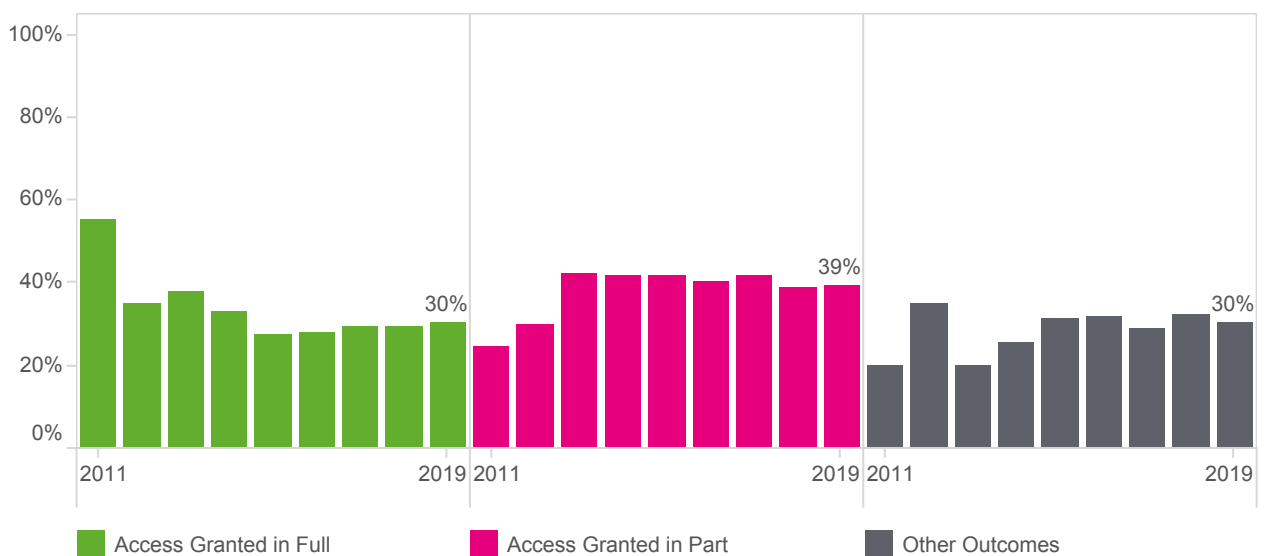
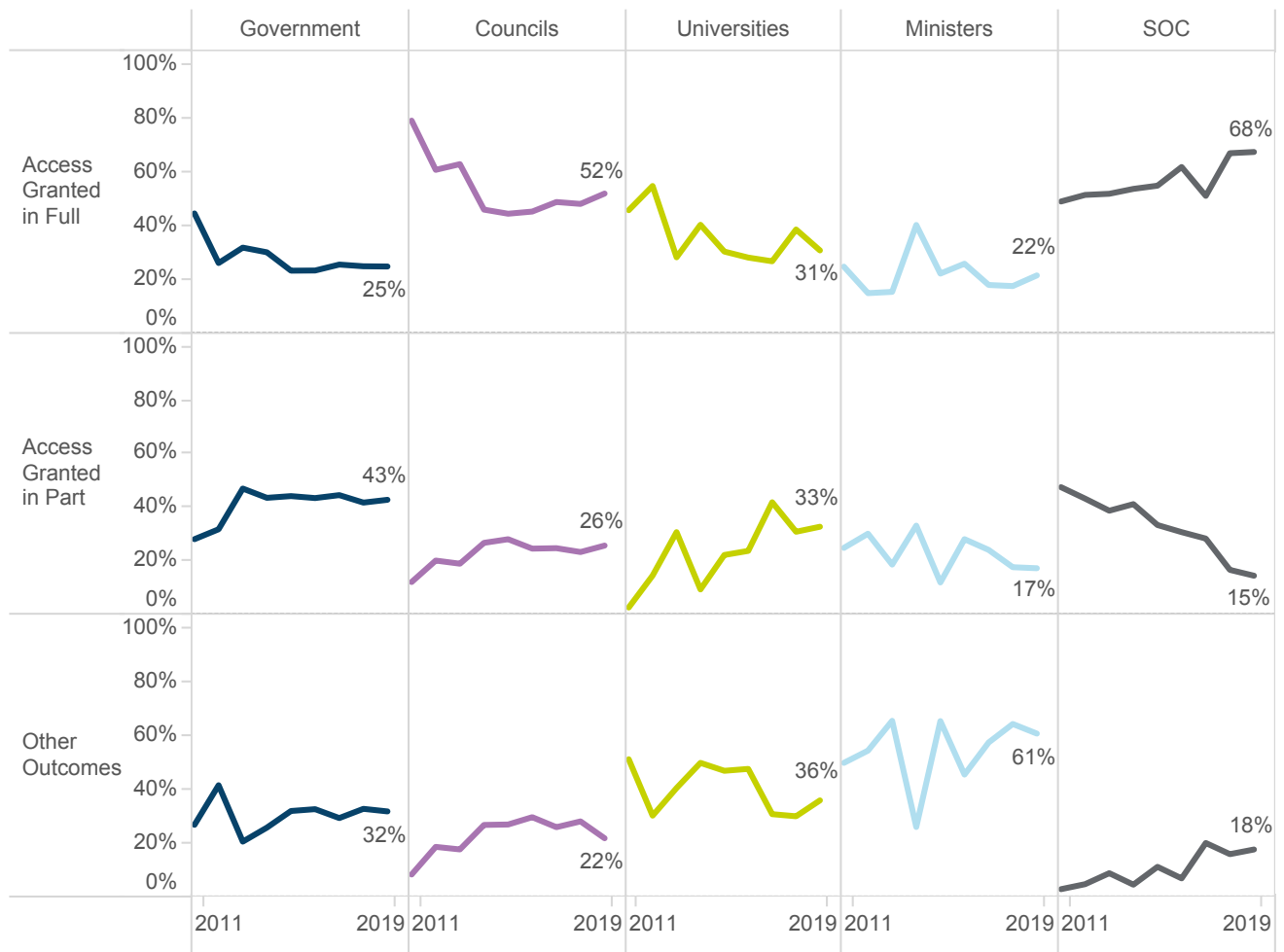


Figure 21: Release outcomes across all sectors, 2010/11 to 2018/19



The data presented may vary slightly from that in Figure 19 due to rounding.

Figure 22: Release outcomes by sector, 2010/11 to 2018/19



The overall release rate across all application types was largely stable

The overall release rates remained stable for all applications types: personal information, 'other than personal information' or partly personal and partly other.

The overall release rate for 'other than personal information' was stable at 71% in 2018/19, compared to 69% in 2017/18. The overall release rate of information for applications for personal information remained stable at 70% in 2018/19, compared with 68% in 2017/18. Similarly, the overall release rate for applications that sought partly personal and partly other information was stable at 65% in 2018/19, compared to 64% in 2017/18.

The detailed release rates for partly personal and partly other information show some minor variations from 2017/18, while all other application types remained stable:

- Release in full increased moderately from 11% in 2017/18, to 18% in 2018/19
- Release in part decreased moderately from 53% to 47% in 2018/19 (Figure 23).

Release rates were stable

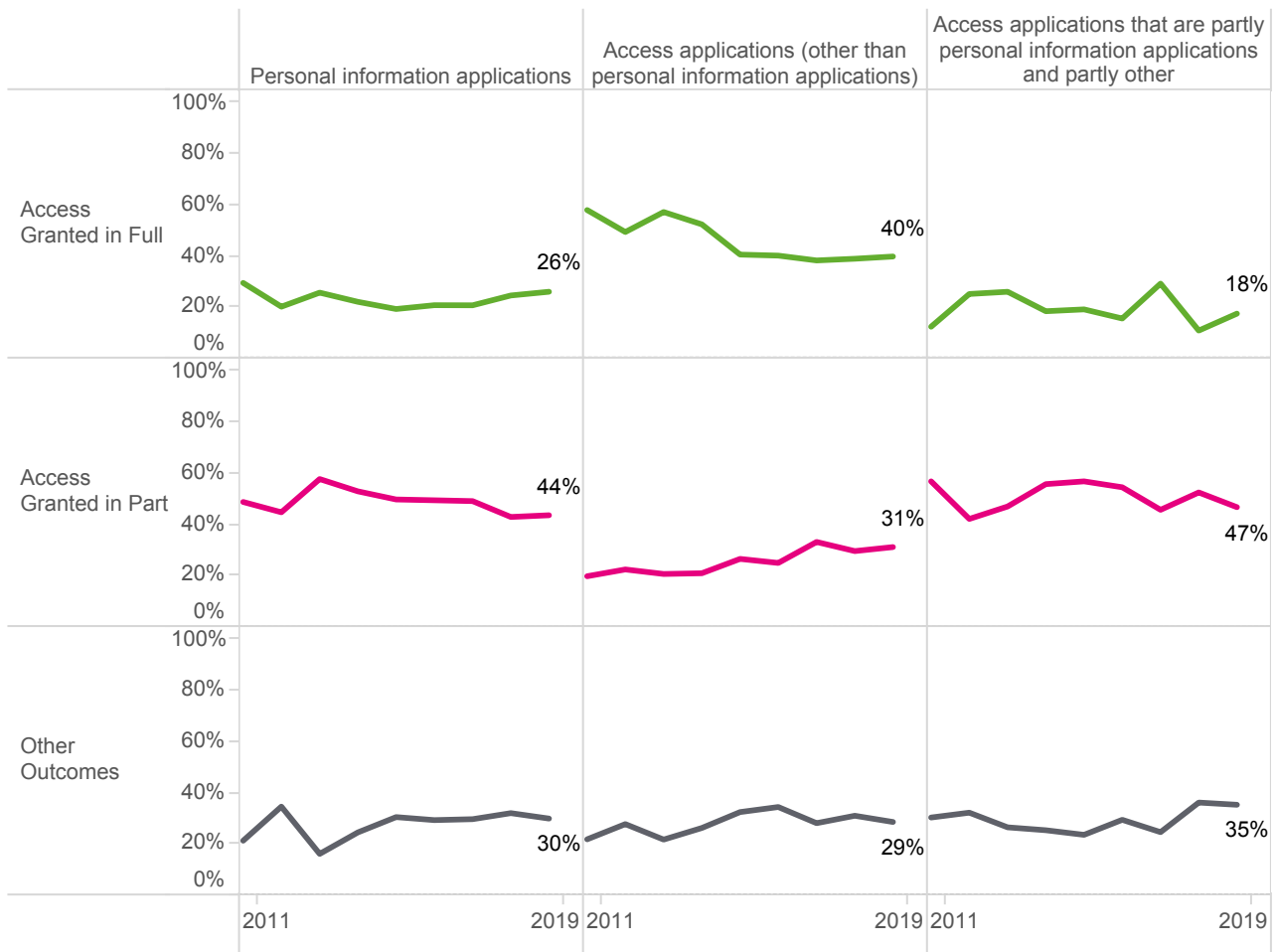
There was relative equity for a second year in a row in release rates for members of the public, private sector businesses, and not-for-profit or community groups.

The lowest overall release rate (56%) was for applications by members of Parliament, a moderate decline from 64% in 2017/18.

The highest release rates in 2018/19 were for applications by private sector business (76%). This is the highest release rate recorded for any applicant type since 2014/15 and is reflective of a continuing increase in the release rates for private sector businesses.

The release rate for members of the public was 70%, consistent with 68% in 2017/18. The overall release rate for members of the media remained stable at 59%, consistent with the result reported in 2017/18 (Figure 24).

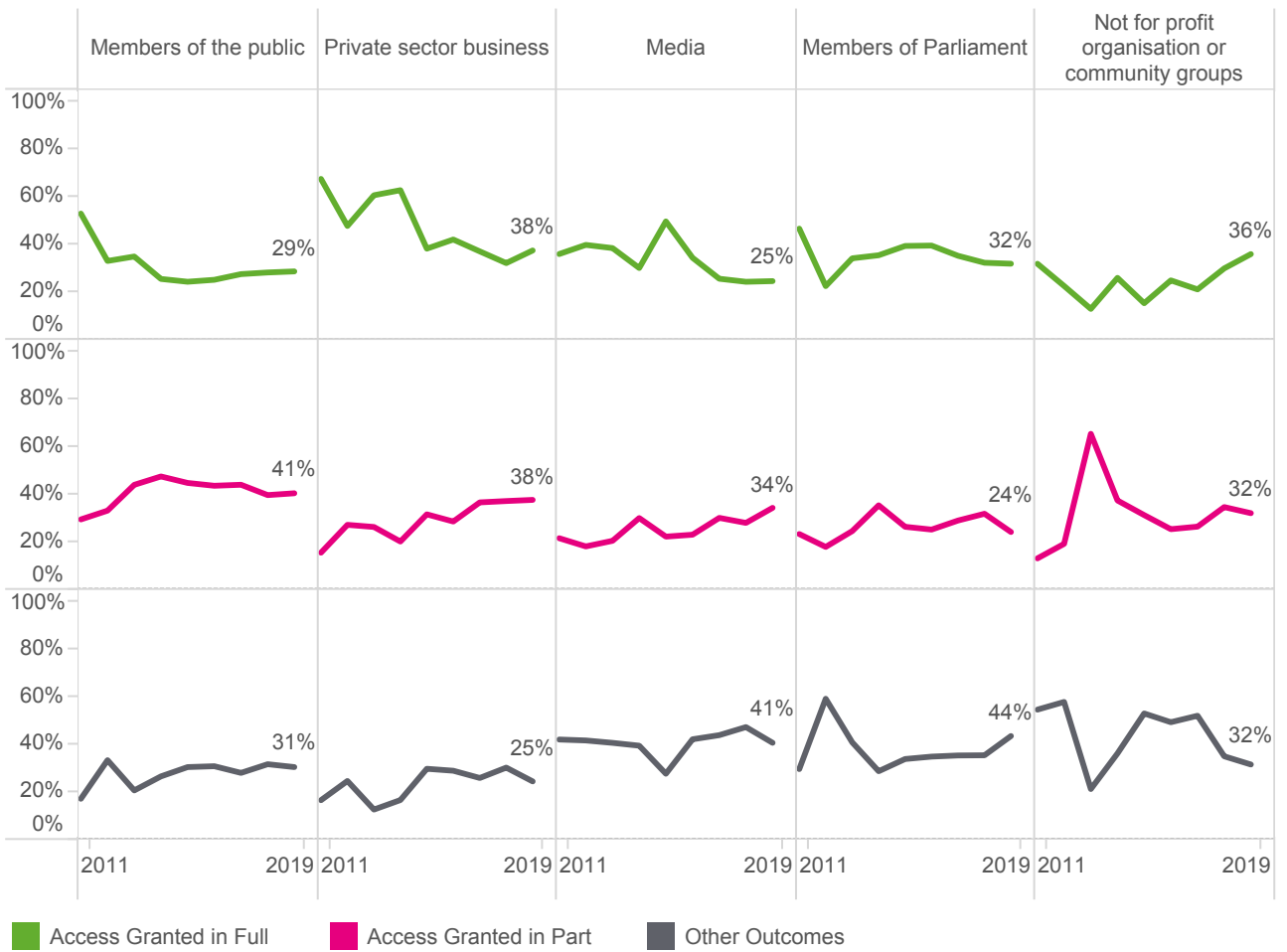
Figure 23: Release outcomes by application type, 2010/11 to 2018/19



While overall release rates remained stable, the composition of outcomes varied in 2018/19 from 2017/18 in relation to private sector business and members of Parliament, but remained consistent for members of the public and legally represented members of the public:

- For members of the public, 29% of outcomes granted access in full and 41% granted access in part. This is consistent with outcomes reported in 2017/18.
- For private sector business, 38% of outcomes granted access in full, a slight increase from the 32% in 2017/18, while 38% granted access in part, consistent with 2017/18.
- For members of Parliament, 24% of outcomes granted access in part, a moderate decline from 32% in 2017/18. There was a moderate increase in 'other outcomes' (44%) compared with 2017/18 (36%).

Figure 24: Outcomes by applicant type, 2010/11 to 2018/19



How quickly were decisions made?

Overall timeliness of decisions has remained stable

In 2018/19, 87% of decisions by agencies were made within the statutory time frame (Figure 25). This is consistent with timeliness from 2017/18 (87%).

The rate of deemed refusals (8%) in 2018/19 was consistent with the result reported in 2017/18 (6%). However, as seen in Figure 25, the rate of deemed refusals has increased steadily since the 3% reported in 2015/16.

Sector timeliness is variable

In 2018/19 (Figure 26) the:

- Government sector decided 85% of applications within the statutory time frame, consistent with 87% reported in 2017/18. Significantly, there has been a downward trend in timeliness since 2015/16 when 93% of applications were decided within time in the Government sector
- Council sector decided 95% of applications within the statutory timeframe, consistent with 91% reported in 2017/18, with this sector consistently deciding 90% or more applications within time since 2010/11
- Universities sector decided 63% of applications within time, a moderate decrease in timeliness from the 77% reported in 2017/18

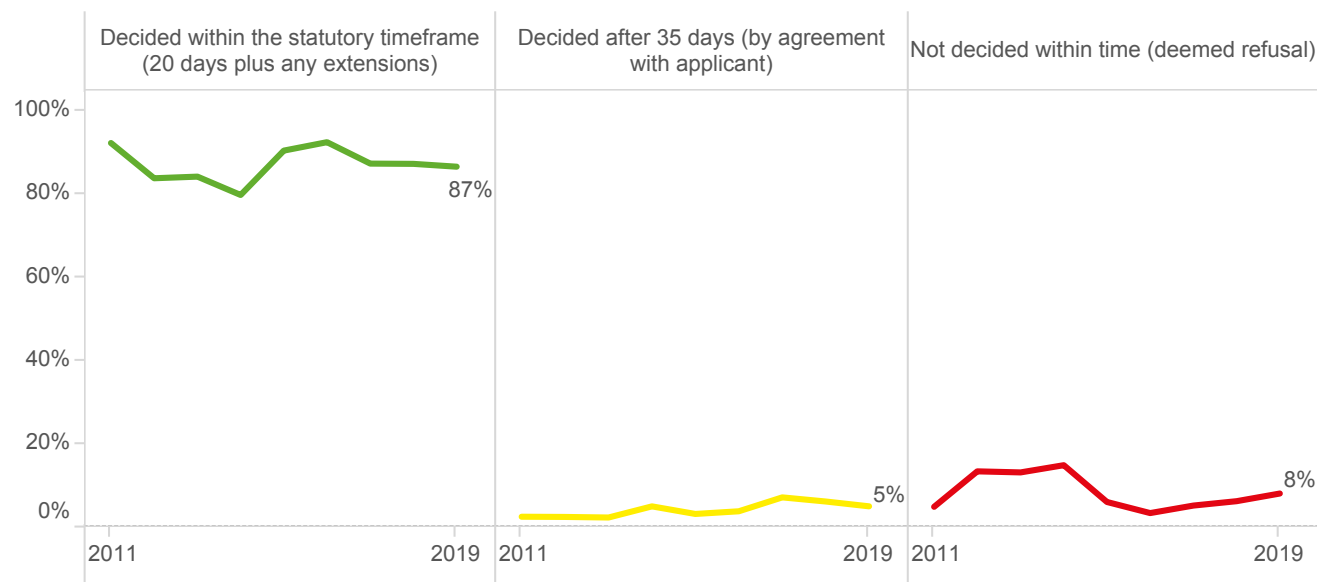
- Ministers sector decided 85% of applications within the statutory time frame, a moderate increase from 77% in 2017/18
- The state-owned corporations sector's timeliness was 88%, consistent with the 91% reported in the previous year.

Examination of timeliness in the Government sector demonstrates that the continuing decline in timeliness may be driven by two agencies responsible for large numbers of applications. This decline in timeliness is notable as applications to the Department Finance, Services and Innovation declined by 40% and applications to the NSW Police Force declined by 12% in 2018/19. The NSW Police Force timeliness has consistently declined from 92% in 2015/16 to 73% in 2018/19. Department of Finance, Services and Innovation timeliness has declined from 81% in 2017/18 to 63% in 2018/19.

Timeliness was maintained at high levels for the Department of Education and Communities, Department of Family and Community Services, Safework NSW, Ministry of Health and NSW State Emergency Service. Timeliness improved significantly for:

- the Department of Premier and Cabinet, from 61% in 2017/18 to 81% in 2018/19
- Transport for NSW, from 64% in 2017/18 to 97% in 2018/19
- NSW Treasury, from 69% in 2017/18 to 89% in 2018/19.

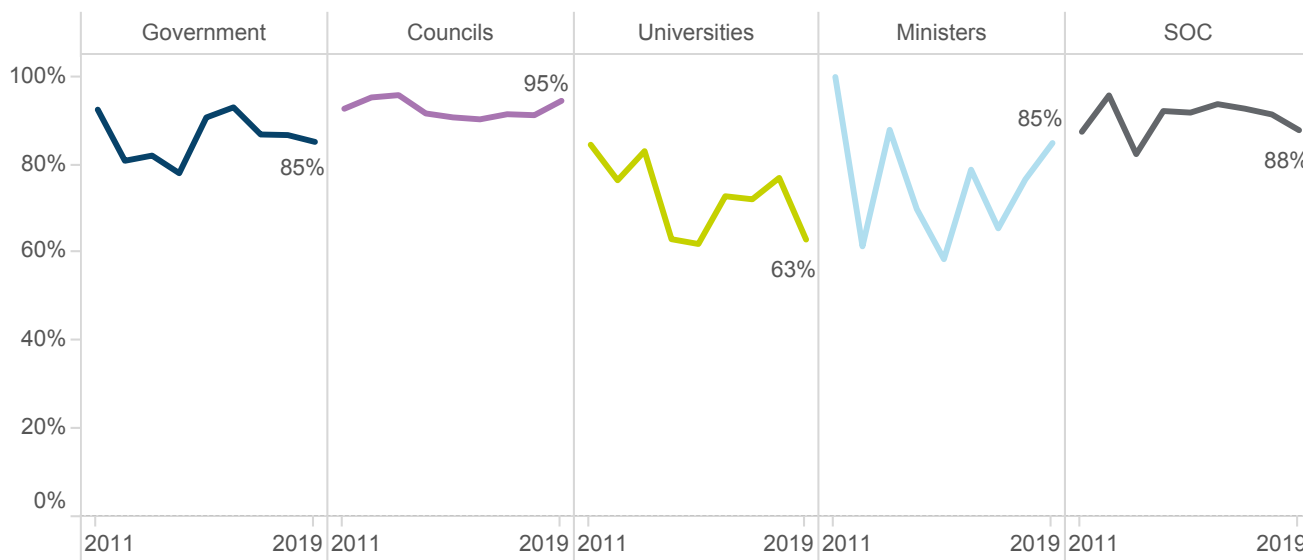
Figure 25: Applications that were decided within the statutory time frame as a percentage of all applications decided, 2010/11 to 2018/19



These improvements in timeliness may also be reflective of the application of established processes for dealing with applications in the context of declining application numbers.

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

Figure 26: Applications that were decided within the statutory time frame, as a percentage of all applications decided, by sector, 2010/11 to 2018/19



Case Study: Improving agency compliance through new Information Access Self-assessment Tool

In May 2019, the IPC NSW launched an [Information Access Agency Self-assessment Tool](#) for all agencies within New South Wales. The Tool enables agencies to conduct an assessment of their systems and policies to ensure their compliance with information access requirements under the GIPA Act.

The online Self-assessment Tool enables agencies to:

- assess compliance against key information access requirements
- link to IPC guidance that promotes better practices and enhances compliance
- generate a dashboard report detailing agency compliance levels
- more precisely identify areas where improvements are required
- develop comprehensive plans to improve compliance with information access requirements.

The tool provides a dashboard report to ensure that leaders are able to assess information governance maturity within their organisations. This will then assist them to support a commitment to action, to further develop systems and implement plans that will ensure compliance with information access requirements. The tool focuses on leadership within agencies as they occupy an important role in promoting awareness and fostering an organisational culture that advances sound information governance.

The adoption of an open access and open data culture within government and by agencies requires a cultural shift – from controlling and shielding information to releasing it and allowing others to use it. This must be supported by a governance framework that is committed to an open access/data culture.

As the tool facilitates self-assessment of the information access, information management and governance practices of organisations, it efficiently assists agencies to fulfil their requirement to provide access to information and the IPC’s role of improving information access and management throughout NSW.

The Information Access Agency Self-assessment Tool is available free of charge and is downloadable from the Information and Privacy Commission NSW [website](#).

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

How was the public interest test applied?

This section examines:

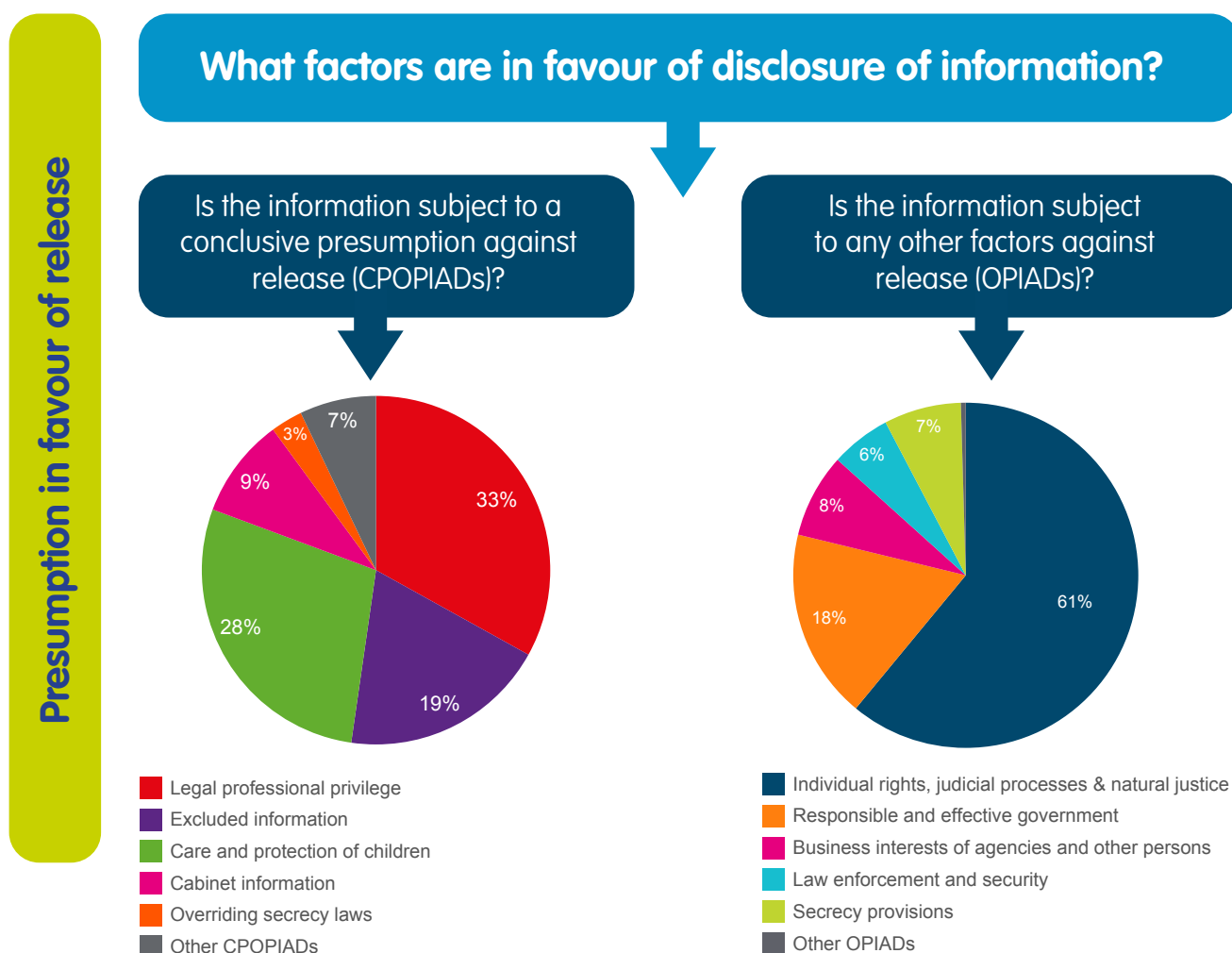
- the number of applications that were refused because of a conclusive presumption of overriding public interest against disclosure (CPOPIAD)
- which categories of CPOPIADs were applied
- the use of categories of considerations for which there is an overriding public interest against disclosure of information (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 2018/19, 876 applications (or 6% of total applications received) were refused wholly or partly because of a CPOPIAD. This is consistent with previous years.

Figure 27: A snapshot of the use of CPOPIADs and OPIADs 2018/19



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

Legal professional privilege continues to be the most applied CPOPIAD

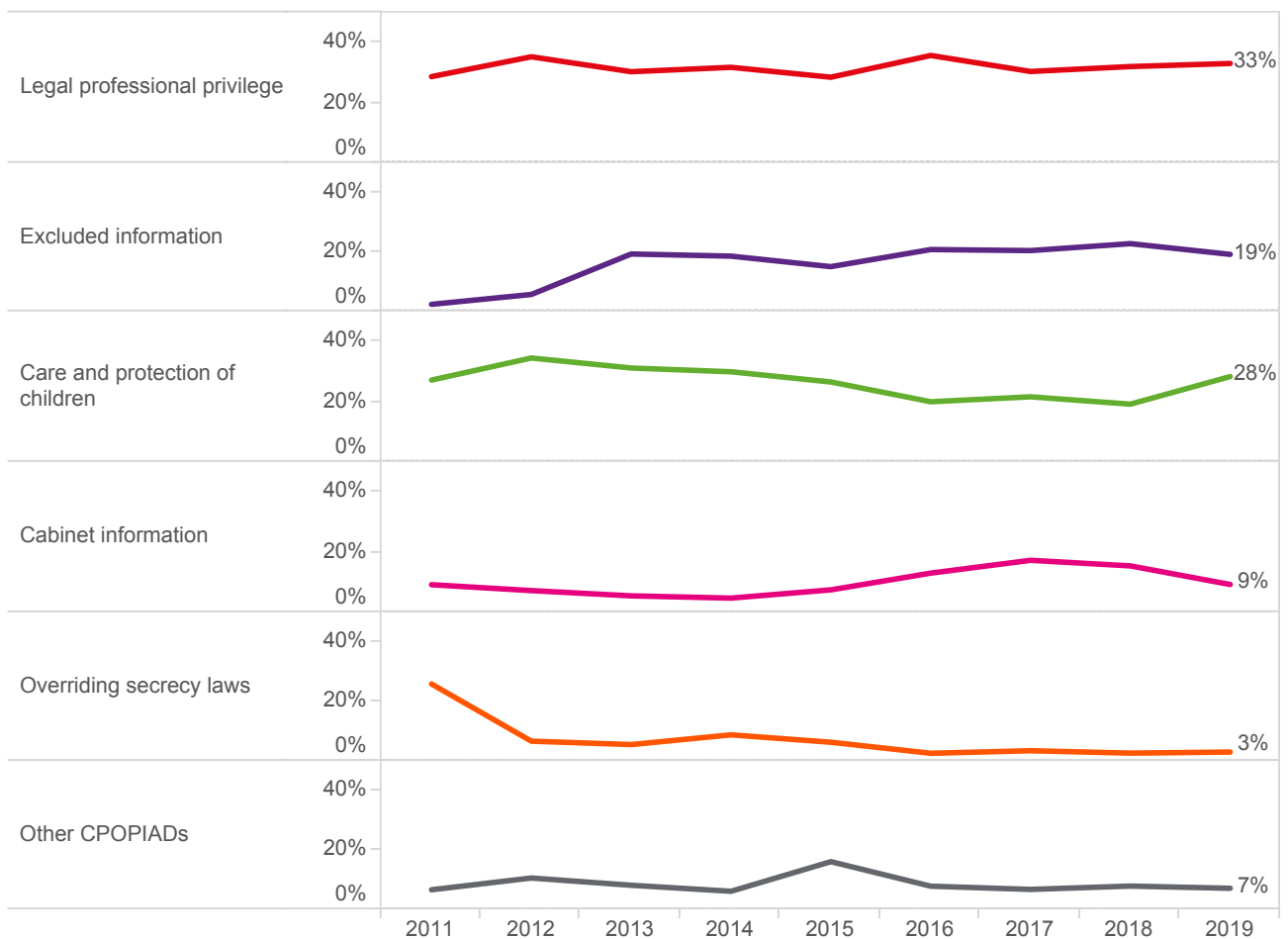
In 2018/19, legal professional privilege remained the most applied CPOPIAD across all sectors (Figure 28). This CPOPIAD was applied 33% of all the times that CPOPIADs were applied. This is consistent with the 32% in 2017/18.

The care and protection of children consideration was the second most applied CPOPIAD, being applied 28% of the time, which is a moderate increase from 19% in 2017/18.

The excluded information consideration was the third most applied CPOPIAD, being applied 19% of all the times that CPOPIADs were applied, compared to 2017/18, when it was the second most applied CPOPIAD (23%).

The use of the Cabinet information consideration decreased moderately from 15% in 2017/18 to being applied on 9% of occasions in 2018/19.

Figure 28: Percentage distribution of the use of CPOPIADs, 2010/11 to 2018/19



The application of the legal professional privilege CPOPIAD remained high in the Council and University sectors

Consistent with 2017/18, the most applied CPOPIAD across the Council, University and State-Owned Corporations sectors in 2018/19 was legal professional privilege (Figure 29). In the Council and University sectors, this CPOPIAD was by far the most commonly applied CPOPIAD, accounting for 71% of cases in the Council sector and 94% in the University sector.

In the Government sector there was a greater diversity of CPOPIADs applied with the care and protection of children (33%) and excluded information CPOPIAD (19%) 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.

The Ministers sector reported a significant increase of the excluded information CPOPIAD (40% in 2018/19 compared to 0% in 2017/18) and significant decrease in use of the cabinet information CPOPIAD (20% in 2018/19 compared to 63% in 2017/18).

Figure 29: Percentage distribution of CPOPIADs applied, by sector, 2010/11 to 2018/19



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

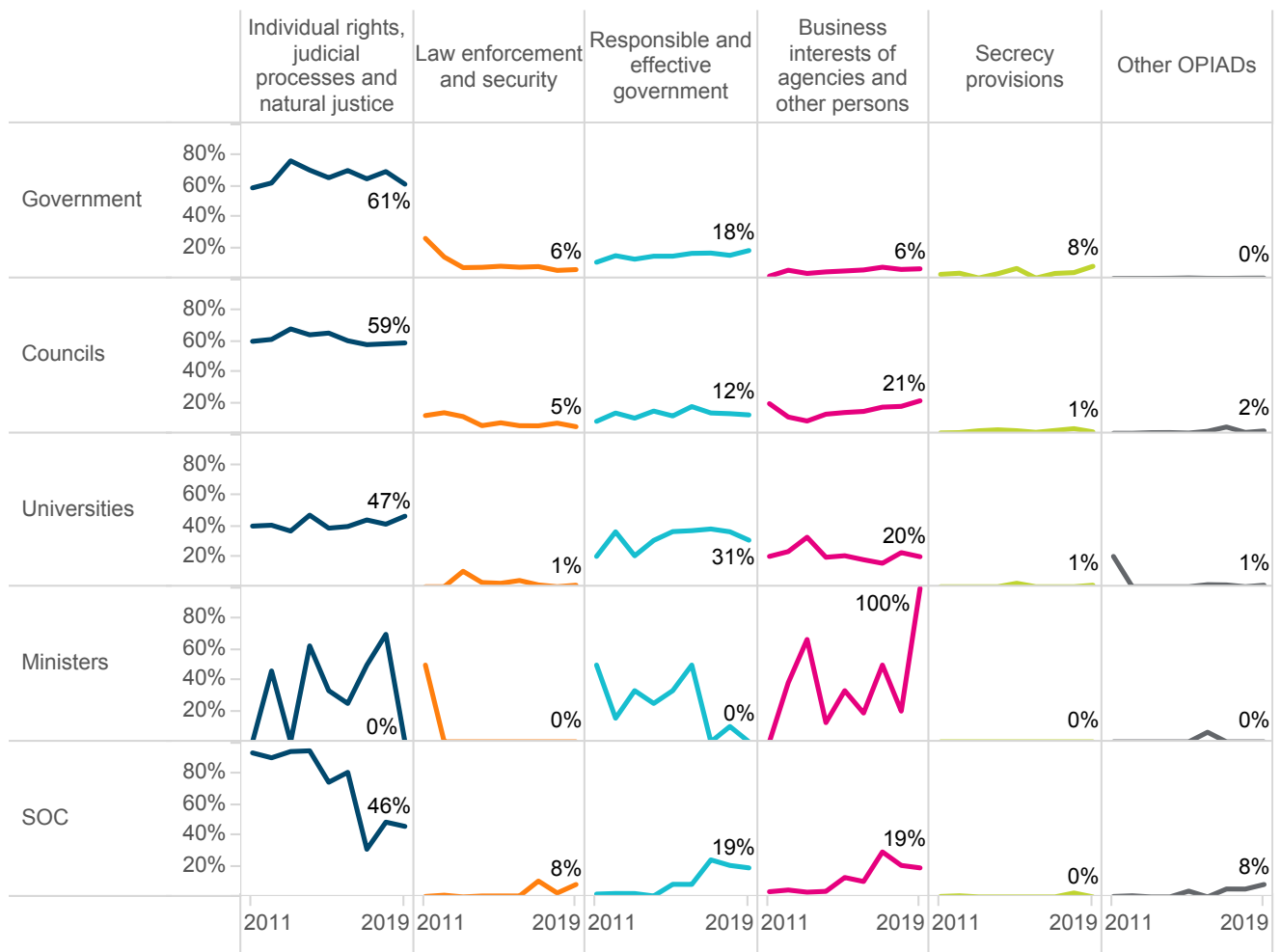
Consistent with 2017/18, the most frequently applied OPIAD in 2018/19 was individual rights, judicial processes and natural justice across all sectors, except the Ministers sector (Figure 30). Reliance on this OPIAD is consistent with all previous years since 2010/11.

This OPIAD was applied on 61% of occasions in the Government sector (Figure 30). For major agencies, the consideration was applied 70% of the time by the NSW Police Force, 62% by the Department of Education and Communities, 59% by the Department of Family and Community Services, and 54% by Roads and Maritime Services.

As noted in the 2017/18 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](#) was reviewed and updated in November 2018 to reflect developments in the law and provide further assistance to agencies.

Figure 30: Percentage distribution of OPIADS applied, by sector, 2010/11 to 2018/19



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

Case Study: Appeal Panel decision in *Destination NSW v Taylor* [2019] NSWCATAP 123

Mr Taylor, a journalist, sought access to information about major events supported by Destination NSW for the three years prior to April 2015. Destination NSW refused to provide access to the information sought because of an overriding public interest against disclosure of the information. In reviewing the decision, the Tribunal found that Destination NSW had provided limited evidence to support their assertions of a public interest against disclosure. The Tribunal ordered Destination NSW to set aside its decision and provide the applicant with access to the 79 documents caught by the access application. Destination NSW appealed to the Appeal Panel of the Tribunal.

On the various grounds of appeal, the Appeal Panel found no error of law in the Tribunal's decision. The Appeal Panel found, relevantly, that:

- in applying the public interest test, it was a relevant consideration for the Tribunal to take into account the strength of the evidence and the submissions on specific pieces of information
- the weight that the Tribunal gave to the considerations against disclosure depended on the probative value of the evidence about the effect of disclosing that information
- if Destination NSW had understood and applied the principles correctly, it would have realised from the outset that there was no overriding public interest against disclosure of much of the information.

The Appeal Panel affirmed the Tribunal's application of the public interest test in section 13 of the GIPA Act:

- The Tribunal noted that the onus was on Destination NSW under section 105(1) of the GIPA Act to justify its decision about the information it had withheld. The Tribunal found that Destination NSW did not discharge its onus under section 105(1) because it had wrongly applied the public interest considerations to categories of documents instead of to specific information in each of the documents
- The Tribunal correctly identified the relevant considerations in favour of disclosure of the information as required by section 12, and also that there was an overriding public interest against disclosure of certain information in particular documents. The Tribunal adopted descriptors to indicate the weight of each consideration both for and against disclosure
- By taking into account third party submissions, the Tribunal was informed of factors against disclosure, which included commercially sensitive or confidential information.

See [IPC case notes](#) for more information about this case.

Issue Highlight: Information Access Guideline 9: Cabinet Information

In June 2019, the Information Commissioner released [Information Access Guideline 9: Cabinet Information](#).

The Guideline is intended to be a helpful aid for agencies to understand how the GIPA Act operates with respect to Cabinet information. The Information Commissioner is empowered under section 17(d) of the GIPA Act to issue guidelines to assist agencies in connection with their functions under this Act.

Schedule 1 of the GIPA Act provides the conclusive presumption for classes of information to which there is an overriding public interest consideration against disclosure. Clause 2 of Schedule 1 deals with Cabinet information. When agencies deal with access requests to information which they consider to be subject to clause 2, they are required to provide the reasons to support their claim to Cabinet information.

Case examples are used throughout the Guideline to identify the types of documents that are captured by the conclusive presumption under clause 2 of Schedule 1 and illustrate the approach taken by the NSW Civil and Administrative Tribunal in conducting administrative reviews of decisions involving Cabinet information.

The Information Commissioner consulted the NSW Department of Premier and Cabinet (DPC) in the development of the Guideline, particularly noting DPC's role coordinating the NSW Cabinet system and having regard to *M2006-08 Maintaining Confidentiality of Cabinet Documents and Other Cabinet Conventions*.

Issue Highlight: Combustible cladding advice for councils regarding information access requests under the *Government Information (Public Access) Act 2009 (GIPA Act)*

In 2018, new laws were introduced in NSW to deal with buildings with combustible cladding. Under the laws, owners of certain buildings with external combustible cladding are required to register their building with the NSW Government through the Cladding Registration Portal (Cladding Register).

In August 2019, the Department of Planning, Industry and Environment issued an advice to councils regarding information access requests to the Cladding Register. The advice contained the Department's recommended approach to be adopted by councils in the exercise of their statutory functions under the GIPA Act.

On 20 November 2019, the Information Commissioner wrote to the Secretary of the Department requesting the Department respond to issues identified by the Commissioner in respect of the Department's advice to councils.

Having regard to the access pathways and the public interest test under the GIPA Act, the Information Commissioner was concerned that the Department's advice to councils was not in the spirit of the GIPA Act and did not recognise:

- the access applicant's enforceable right to access government information
- that access applications are to be determined by the agency that holds the government information to which access is sought, and that agency should not be subject to direction in dealing with a particular access application
- that access applications are to be determined on a case by case basis applying the public interest test and having regard to the personal factors of the application and consultation provisions, among other things
- the public interest test applies to information, rather than a category or type of document/ record
- that it is irrelevant that disclosure of information might cause embarrassment or loss of confidence in the Government or that disclosure of information might be misinterpreted or misunderstood by any person
- the advice referred only to factors which may operate to justify a refusal of cladding registration information and made no reference to factors in favour of disclosure in individual cases and the general right of access set out in section 9 of the GIPA Act
- omitting factors in favour of disclosure and explanation of the balancing exercise under the GIPA Act meant the advice was incomplete, potentially misleading in respect of the exercise of statutory functions and processes and inappropriately influenced councils to determine access applications a particular way
- the Department's stated preference in the advice that councils decline to deal with informal access applications and advise applicants to make a formal application did not recognise that it is the council not the Department who can deal with an informal access application in accordance with section 8 of the GIPA Act.

The role of the information Commissioner in providing advice and guidance to agencies and individuals is confirmed under the GIPA Act together with the GIIC Act. Under the GIIC Act the Information Commissioner is charged with investigating agency systems, policies and practice that relate to functions of agencies under the GIPA Act. In this context, the Information Commissioner requested the Department's advice as to the authority under which it provided the advice to the Local Council Sector regarding the exercise of their functions under the GIPA Act.

The Information Commissioner encouraged the Department to reconsider its advice to the Local Council Sector and have regard to the IPC's fact sheet: [*The role of principal officers and senior executives in supporting the object of the GIPA Act*](#) which is designed to assist principal officers and senior executives to promote awareness and foster an organisational culture that advances the object of the GIPA Act.

Responsive to the Information Commissioner's engagement, as at February 2020, the Department reconsidered and adjusted its advice to the Local Council Sector.

How were decisions reviewed?

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

This section reports on the:

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

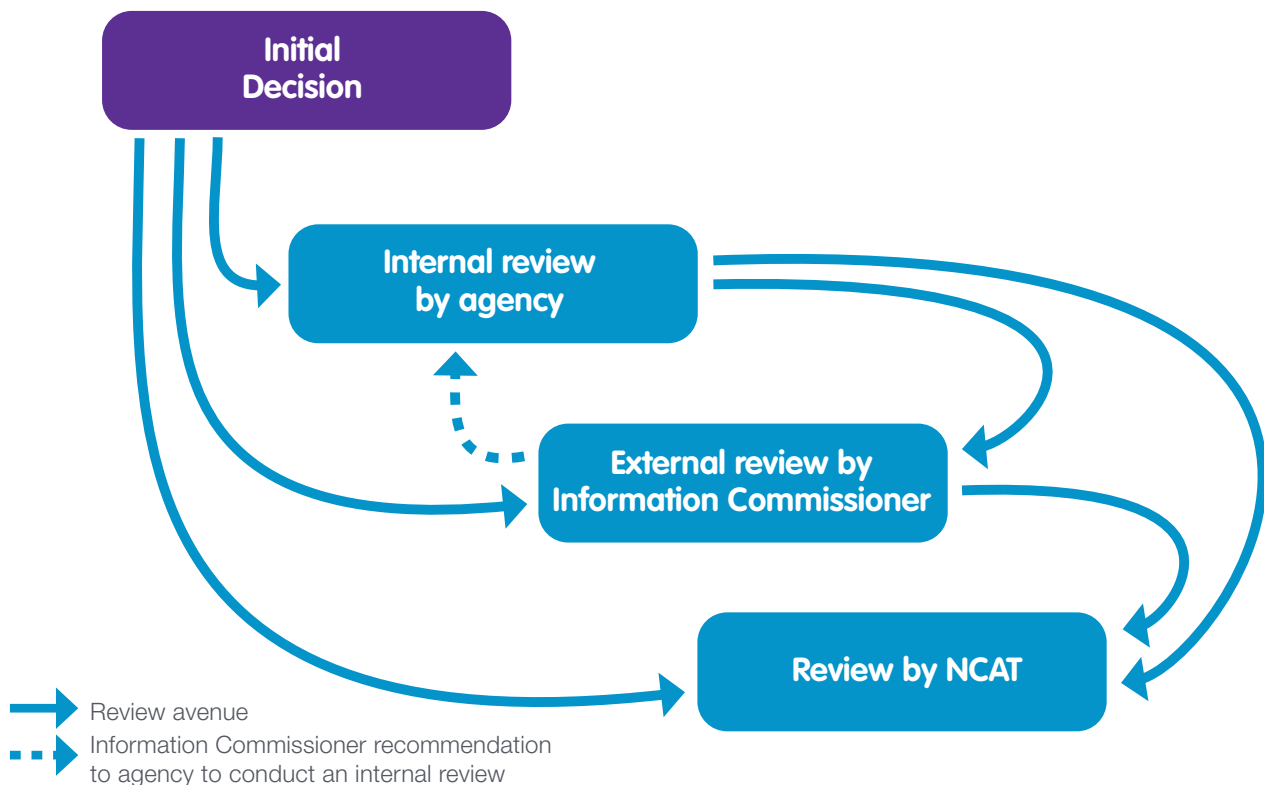
Figure 31 shows the different pathways available for reviews in the GIPA Act.

The overall review rate for total valid applications was 6%

Using the most reliable sources of data to calculate the total number of reviews, reviews were equivalent to 6% of total valid applications received across all sectors in 2018/19. This is consistent with the review rate of 5% reported in 2017/18. However, the review rate will continue to be monitored given the number of applications declined by 1% in 2018/19.

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

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



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

Figure 32: Agency, IPC and NCAT data on internal and external reviews, 2018/19

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	301	301
External review by the Information Commissioner	231	364
Review by NCAT	77	161
Agency internal review/reconsideration following a recommendation by the Information Commissioner	87	87
Total	696	913

Figure 33: Distribution of reviews by type, as reported by agencies, 2018/19

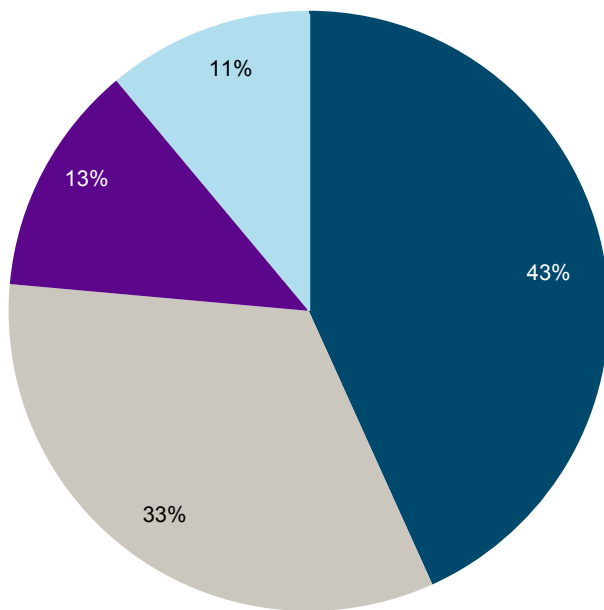
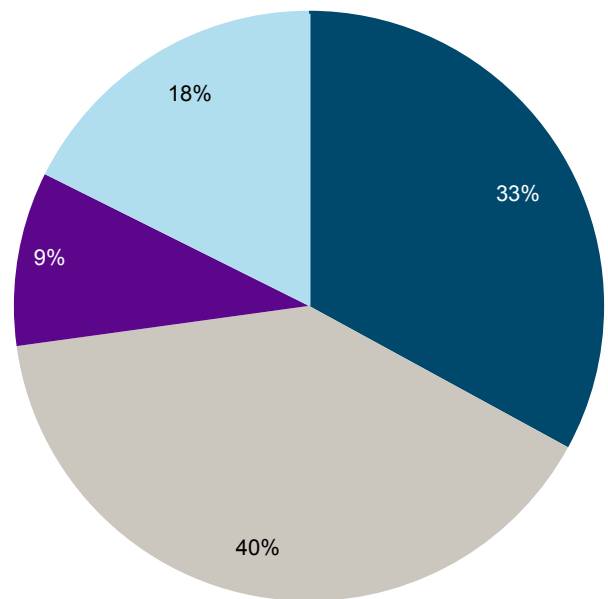


Figure 34: Distribution of reviews by type, using agency, IPC and NCAT data, 2018/19



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

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

The distribution of reviews across all review avenues as reported by agencies is shown in Figure 33. If the most reliable source for each review avenue is used to calculate the total number of reviews, a total of 913 reviews were conducted in 2018/19. This is an increase of 11% in reviews against a total decrease in applications of 1%.

The distribution of reviews is shown in Figure 34. This is a significantly higher number of reviews than reported by agencies, particularly in respect of external reviews by the Information Commissioner and external reviews by NCAT.

The completion of reviews during this reporting period that were received in the previous financial year may be a factor contributing to under-reporting of Information Commissioner reviews. The IPC has engaged with agencies across all sectors to improve the reporting of GIPA Act data. Since 2013/14 the under-reporting has declined from 81% to 37% in 2018/19, similar to the 32% reported in 2017/18, but an increase on the lowest level of 26% reported in 2016/17.

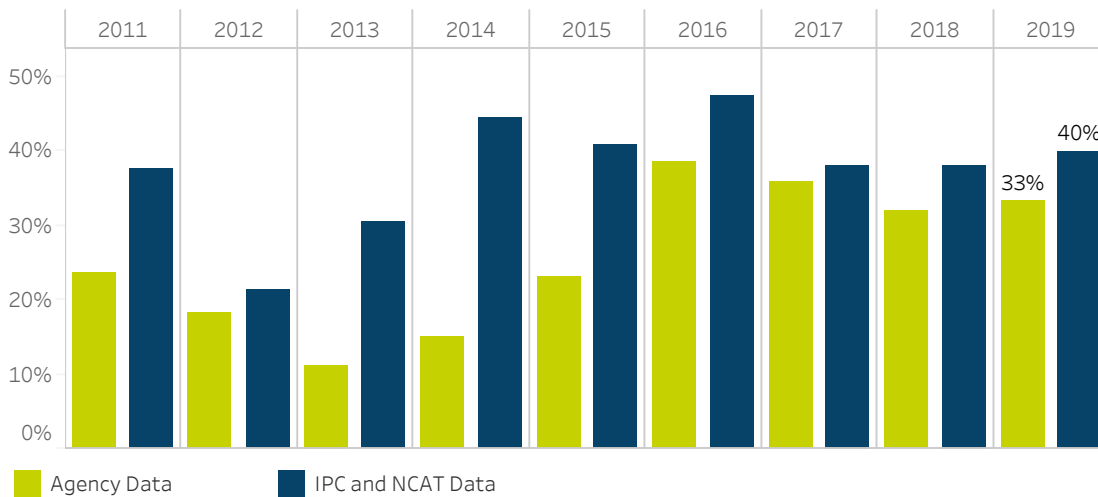
Using IPC internal data, the number of external reviews conducted by the Information Commissioner increased by 16% between 2018/19 (364 reviews) and 2017/18 (313 reviews). This is a significant increase in applications to the Information Commissioner representing an overall increase in the use of this review avenue.

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

Using data reported by agencies, external reviews by the Information Commissioner represented 33% of all reviews conducted in 2018/19, similar to 32% in 2017/18 (Figure 35). However, with reference to the more reliable IPC data, such reviews accounted for 40% of all reviews conducted, consistent with 38% in 2017/18.

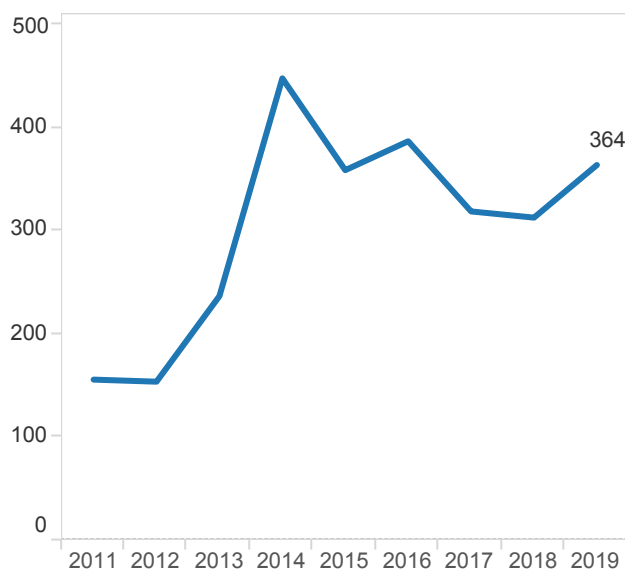
Accordingly, the review pathway most frequently used is external review by the Information Commissioner.

Figure 35: External reviews by the Information Commissioner as a percentage of all reviews, 2010/11 to 2018/19



Source: agency, NCAT and IPC data

Figure 36: Number of external reviews conducted by the Information Commissioner, 2010/11 to 2018/19



Source: IPC data

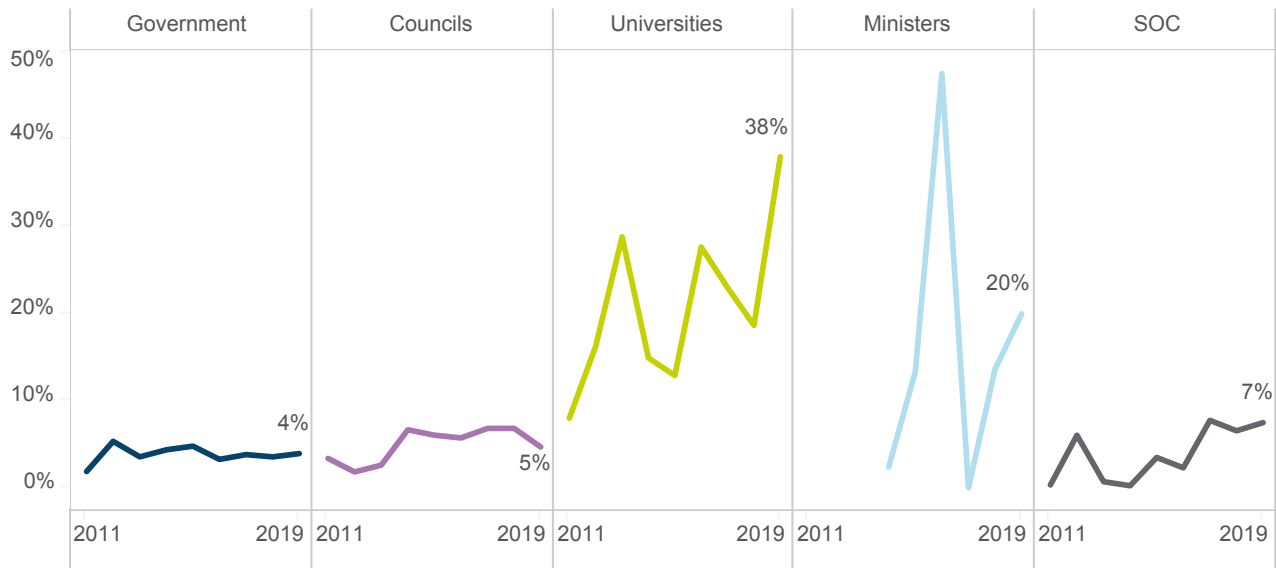
Similarly, the 161 review applications reported by NCAT is significantly higher than the 77 reviews reported by agencies.

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

Review rates have remained stable in the Government, Council and State-Owned Corporations sectors, and have increased significantly in the Universities sector

The percentage of applications for review received by the Government sector, as a percentage of all applications to that sector, remained stable at 4% in 2018/19, consistent with 4% in 2017/18. The Council (5%) and State-Owned Corporations (7%) sectors also remained stable (Figure 37).

Figure 37: Total number of reviews, as a percentage of all applications received, by sector, 2010/11 to 2018/19



Source: agency data

The percentage of applications for review received by the Ministers sector, as a percentage of all applications to that sector, increased moderately to 20% in 2018/19, from 14% in 2017/18. For universities, the percentage increased significantly from 19% in 2017/18, to 38% in 2018/19. In the University sector this is the highest reported review rate. However, this should be considered against a 47% increase in applications to this sector in 2018/19. Additionally, 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 2018/19, 89% of applications for review were made by the original applicant. This is consistent with levels

observed in 2017/18 when 94% of applications for review were made by the original applicant. The number of applications made by third party objectors was 6% in 2017/18 and 11% in 2018/19.

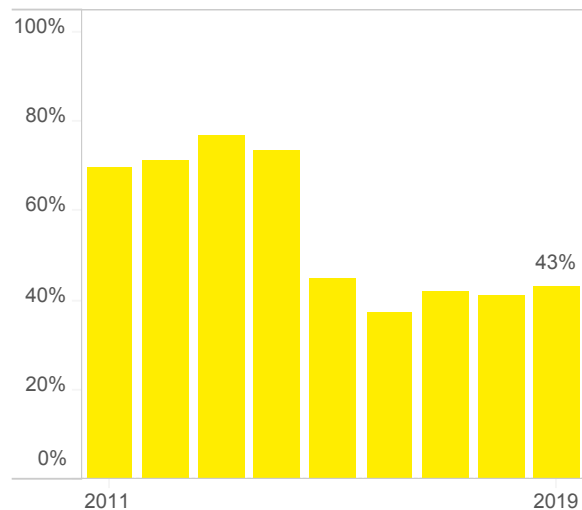
Internal reviews as a percentage of all reviews conducted remained stable

Internal reviews represented 43% of all reviews conducted in 2018/19 (Figure 38), consistent with 41% of all reviews conducted in 2017/18.

Reviews by NCAT remained stable

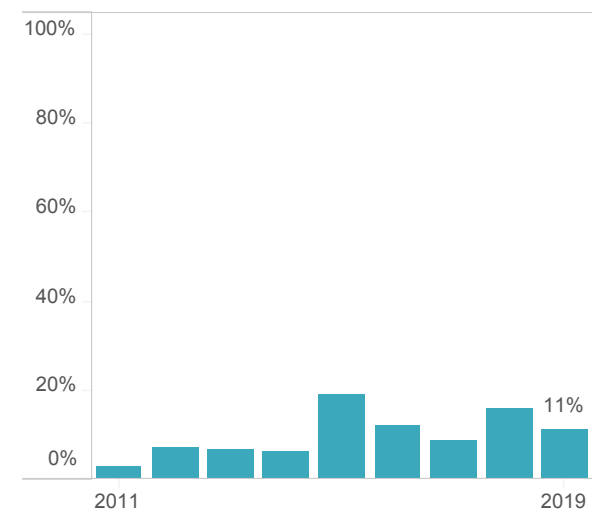
Using data reported by agencies, reviews by NCAT represented 11% of all reviews conducted in 2018/19 (Figure 39). This is similar to 2017/18 when NCAT reviews represented 16% of all reviews conducted.

Figure 38: Internal review as a percentage of all reviews, 2010/11 to 2018/19



Source: agency data

Figure 39: NCAT reviews as a percentage of all reviews, 2010/11 to 2018/19



Source: agency data

Case Study: Appeal Panel decision in Office of Environment and Heritage v Scenic NSW Pty Ltd [2019] NSWCATAP 176

The Appeal Panel considered whether notice by an agency to an access applicant, that information to which access has been granted is to be withheld pending the exercise of third-party review rights, is a reviewable decision under Part 5 of the GIPA Act. The Tribunal found such notice was simply an acknowledgment by the agency as to the operation of sections 54(6) and (7) of the GIPA Act, and not a reviewable decision under sections 80 and 100 of the Act. Therefore, the Tribunal did not have jurisdiction to undertake the review and the underlying administrative review application was dismissed.

Where an access application is made for information that relates to a third party, such as their personal or business information, an agency may need to consult with the third party under section 54 of the GIPA Act. If the third party objects to the disclosure of their information and the agency decides to provide access in response to the application, the agency must withhold the information until the third party's review rights under Part 5 of the GIPA Act have expired and any review applied for has been finalised (sections 54(6) and (7) of the GIPA Act).

The obligation on an agency to withhold access to information it has decided to release protects third party rights of review. The decision of the Appeal Panel confirms that this is not a decision that can be reviewed under the GIPA Act. In particular, it is not a decision to defer providing access, which has a specific meaning under section 78 of the GIPA Act.

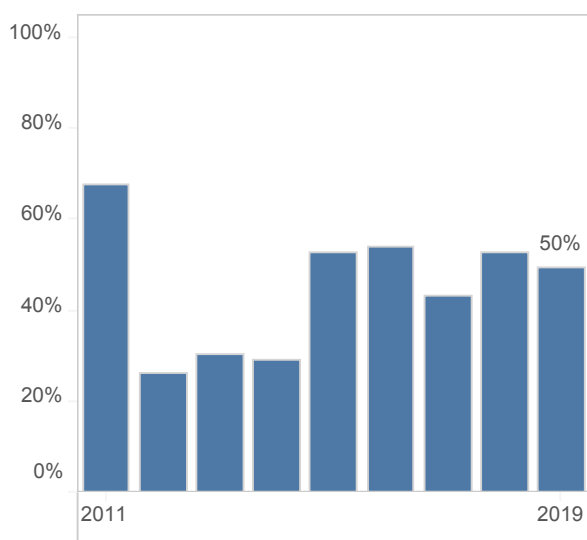
Section 88 of the GIPA Act provides that a person is not entitled to an internal review of a decision made on the internal review of a reviewable decision. The Appeal Panel's decision confirms that this provision prevents a third party consulted under section 54 of the GIPA Act from seeking a further internal review, even in circumstances where the applicant for access to government information has exercised their right to seek an internal review of the initial decision and the agency has decided to release further information. The third party can still apply for review by the Information Commissioner under section 89 of the GIPA Act or to the Tribunal under section 100 of the GIPA Act.

See [IPC case notes](#) for more information about this case.

Overall, there was an equal balance between decisions upheld and overturned on review

In 2018/19, 50% of all internal and external reviews conducted upheld agencies' decisions. This is similar to 2017/18, when 53% of reviews upheld agencies' decisions (Figure 40).

Figure 40: Percentage of all reviews that upheld the original decision, 2010/11 to 2018/19

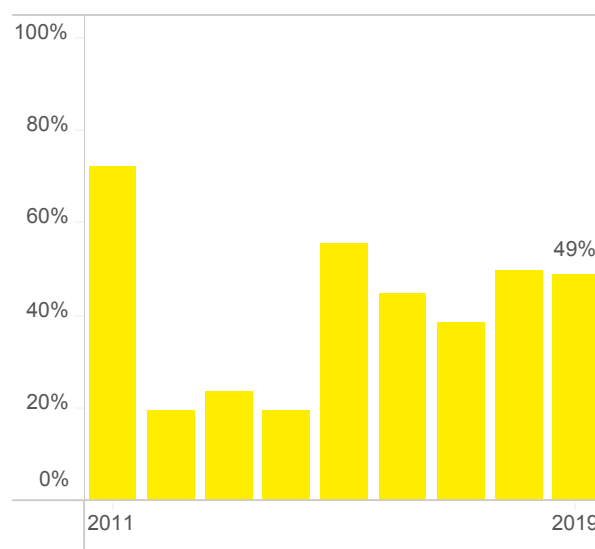


Source: agency data

Internal reviews were closely balanced between upholding and overturning the original decision

In 2018/19, 49% of all internal reviews upheld agencies' decisions, consistent with 2017/18 (Figure 41).

Figure 41: Internal reviews where the decision was upheld as a percentage of all internal reviews, 2010/11 to 2018/19

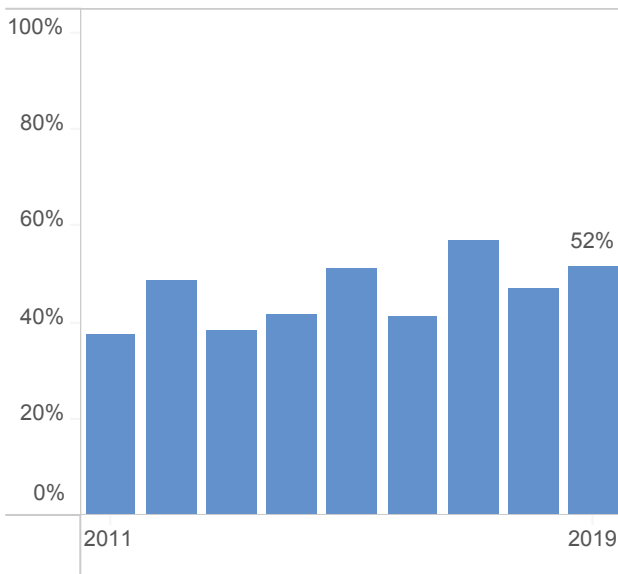


Source: agency data

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

Agencies reported that 52% of reviews by the Information Commissioner in 2018/19 recommended that agencies reconsider their decisions, similar to 47% reported in 2017/18 (Figure 42).

Figure 42: Reviews by the Information Commissioner where there was a recommendation to reconsider the decision as a percentage of all reviews by the Information Commissioner, 2010/11 to 2018/19

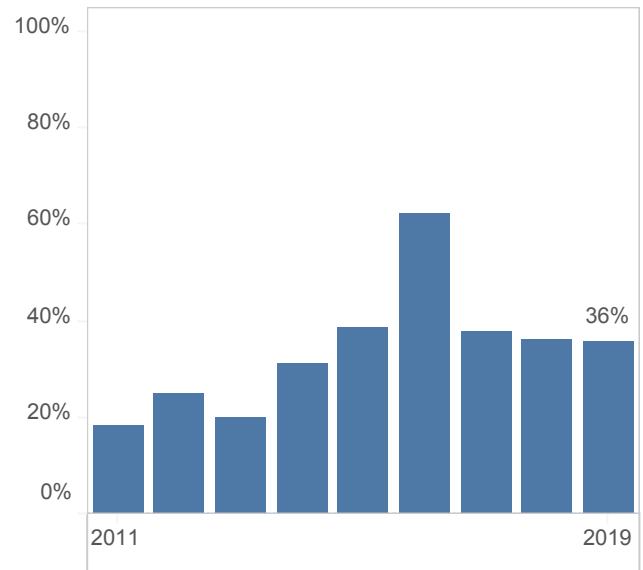


Internal reviews following a section 93 recommendation by the Information Commissioner which upheld the original decision remain consistent with the previous year

In 2018/19, agencies reported 36% of internal reviews that followed a section 93 GIPA Act recommendation (a recommendation from the Information Commissioner consistent with that the agency reconsider its decision) upheld agencies' original decisions. This is consistent with 2017/18 (Figure 43).

Accordingly, in 64% of internal reviews in 2018/19, agencies modified their decision in response to a recommendation by the Information Commissioner.

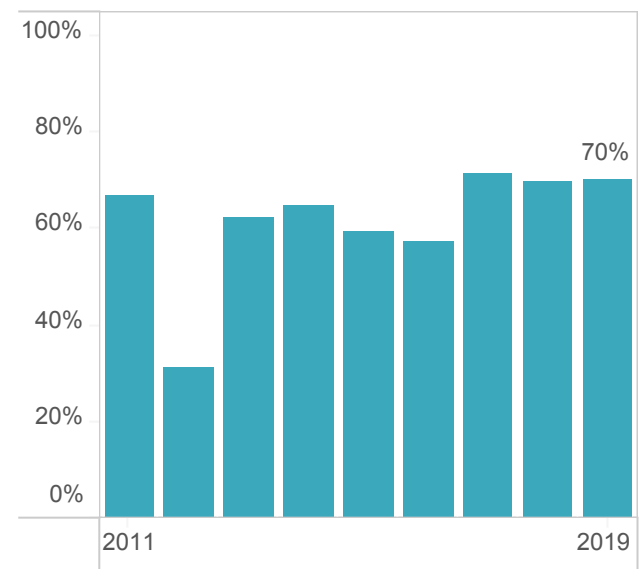
Figure 43: Internal reviews following a section 93 recommendation that upheld agencies' original decisions as a percentage of all internal reviews, 2010/11 to 2018/19



Reviews by NCAT of agency decisions

Agencies reported that 70% of reviews by NCAT upheld agency decisions in 2018/19, consistent with 70% in 2017/18 (Figure 44).

Figure 44: Reviews by NCAT where the decision was upheld as a percentage of all reviews by NCAT, 2010/11 to 2018/19



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

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

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

The proportion of all reviews conducted by the Information Commissioner relating to CPOPIADs remained consistent with the previous year at 11% in 2018/19.

There was a moderate decrease from 51% in 2017/18, to 45% in 2018/19 in the proportion of all reviews conducted by the Information Commissioner relating to OPIADs. Other issues that were the subject of review by the Information Commissioner include:

- 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.

In 2018/19, the Information Commissioner conducted a workshop to assist agencies in undertaking searches and documenting searches and other processing steps in their decisions. In the coming year, the Information Commissioner has identified the fees and charges imposed by agencies in dealing with access applications as a priority.

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

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

- Legal professional privilege (46%)
- Cabinet information (17%)
- Excluded information (15%).

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

In 2018/19, 38% of all the CPOPIADs that were the subject of review by the Information Commissioner resulted in a recommendation to agencies to reconsider the decision, compared with 45% in 2017/18 and 62% in 2016/17. This consistent, progressive decline may indicate an increased level of understanding by agencies in the application of CPOPIADs.

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

- for reviews of the legal professional privilege consideration, 59% resulted in a recommendation to agencies to reconsider the decision, consistent with 2017/18
- for reviews of the Cabinet information consideration, 13% resulted in a recommendation to agencies to reconsider the decision
- for reviews of the excluded information consideration, none resulted in a recommendation to agencies to reconsider the decision.

OPIADs: Responsible and effective government was the main OPIAD subject of external review by the Information Commissioner

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

- Responsible and effective government (40%)
- Individual rights, judicial processes and natural justice (33%)
- Business interests of agencies and other persons (19%).

Whilst reviews of the business interests OPIAD increased from 11% in 2017/18, the remaining percentages are generally consistent with those reported in 2017/18.

OPIADs: The number of external reviews by the Information Commissioner of OPIADs that resulted in a recommendation to agencies to reconsider has remained stable

In 2018/19, 54% of all the OPIADs that were the subject of review by the Information Commissioner resulted in a recommendation to agencies to reconsider the decision, similar to 50% in 2017/18.

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

- for reviews of the responsible and effective government consideration, 46% resulted in a recommendation to agencies to reconsider the decision, compared with 55% in 2017/18
- for reviews of the individual rights, judicial processes and natural justice consideration, 52% resulted in a recommendation to agencies to reconsider the decision, compared with 41% in 2017/18
- for reviews of the business interests of agencies and other persons consideration, 77% resulted in a recommendation to agencies to reconsider the decision, compared with 71% in 2017/18.

Issue Highlight: Fact Sheet – Safeguards to address the misuse of the GIPA Act

There are mechanisms and safeguards available under the GIPA Act to address misuse of the Act and provide protection to citizens and agencies. The IPC has published a new [fact sheet](#) to explain these aspects of the GIPA Act.

Part 5 of the GIPA Act provides for review of decisions made under the Act. Administrative review by the NSW Civil and Administrative Tribunal (NCAT) (set out in Division 4 of Part 5) is one of the avenues for review. In respect of its administrative review function, NCAT has discretionary powers that can affect the rights of citizens and agencies under the GIPA Act.

The fact sheet explains what those discretionary powers are and how they serve to address misuse of the GIPA Act, promote the object of the Act and protect agencies and citizens under the Act. The fact sheet also identifies offences under the GIPA Act that may be prosecuted by the Director of Public Prosecutions (DPP).

Were applications transferred between agencies?

Decrease in transfers between agencies

During 2018/19, agencies reported that 591 applications were transferred to another agency (Figure 46). This is a 31% decrease from the 854 transfers reported in 2017/18.

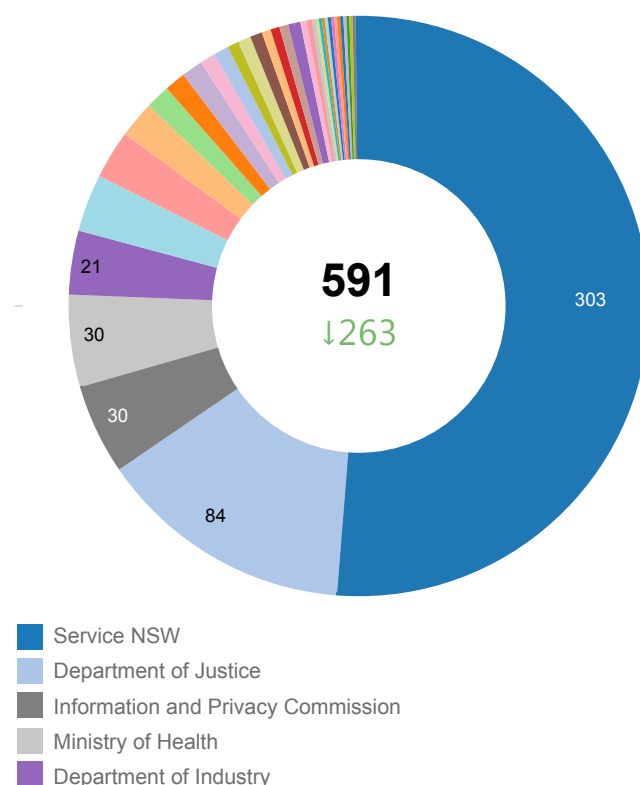
Figure 45 shows that the Government sector accounted for most transfers (86%), and that most transfers were agency-initiated (88%).

Figure 45: Number of applications that were transferred, by sector and by whether agency or applicant initiated, 2018/19

	Agency initiated transfers	Applicant initiated transfers	Total
Government	508	63	571
Councils	9	6	15
Universities	1	0	1
State Owned Corporations	3	0	3
Ministers	0	1	1
Grand total	521	70	591

In 2018/19, Service NSW accounted for 303 (51%) of transferred applications, a moderate decrease from 64% in 2017/18. The second highest numbers of transfers was reported by the Department of Justice with 84 transferred applications (14%), while the Information and Privacy Commission and Ministry of Health each transferred 30 applications (5%) (Figure 46).

Figure 46: Distribution of applications transferred, by agency, 2018/19



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



Appendices

Appendix 1

Note on data sources and previous reports

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

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

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

The data analysed for this Report should be considered as a snapshot of agencies' compliance as at 6 January 2020 (the date when agencies' reported data was downloaded by the IPC from the GIPA Tool). It should be noted that not all agencies had submitted their annual reports to the IPC by this time. This means their data is not included in the Report.

Data updates by agencies may affect historical data and future reports. This is particularly relevant to data regarding timeliness reported in the 2017/18 Report. On 29 April 2019, the Information Commissioner tabled an erratum notice to correct data reported by an agency.

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

- Government
- Councils
- Universities
- Ministers
- State-Owned Corporations.

Previously, State-Owned Corporation (SOC) data had been included with that of the Government sector. SOCs have now been separately identified in order to give greater insight into their GIPA operations and those of the Government sector. Accordingly, data for the Government sector reported in previous years is not comparable to data in this Report.

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

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

Legislative amendments made during late 2018 have impacted the operation of the GIPA Act. As a result the IPC updated relevant guidance and resources for agencies in November 2018.

Data reported for 2018/19 reflects the structure of agencies prior to the machinery of government changes which commenced on 1 July 2019. Therefore, agencies referenced in this report continue to be referred to by their previous titles. This will be updated for the 2019/20 report.

Appendix 2

The Legislative Framework

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

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

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

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

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

1. Mandatory proactive release

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

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

2. Authorised proactive release

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

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

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

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

3. Informal release

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

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

4. Formal access applications

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

- putting an application in writing
- stating that the application is seeking information under the GIPA Act
- including a postal address or email address
- explaining clearly the information that is being requested
- paying an application fee of \$30.

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

The main benefits of the formal access pathway include:

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

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

Government Information (Public Access) Regulation 2018

The GIPA Regulation:

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

Government Information (Information Commissioner) Act 2009

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

- promoting public awareness and understanding of the Act
- providing information, advice, assistance and training to agencies and the public
- dealing with complaints about agencies
- investigating agencies' systems, policies and practices
- reporting on compliance with the Act.

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

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



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