

FOI in WA

How do we fare and compare?

Catherine Fletcher, Information Commissioner

Presentation at the FOI in WA Conference

Fiona Stanley Hospital

21 November 2019



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Overview

- Government information access history, trust and the emergence of FOI legislation
- Evidence about how FOI in WA fares and compares
 - 2019 Information Access Study
 - 2014 – 2018 National Metrics on the Use of Information Access Rights
 - 2019 Victorian Pilot Study of the Culture of Administering Access to Government Information and FOI
 - 2010 Review of the Administration of FOI in WA
- Possible reforms to improve access to information and FOI in WA?



Why history of access to information and FOI is important

The present trend toward government secrecy could end in a dictatorship. The more information that is made available, the greater will be the nation's security.

John Moss, 1956



John Moss (1915 – 1997)
US Congressman
Champion of 20th century
FOI laws

18th century Swedish legislation linked notions of freedom of information, freedom of speech and transparency of government together with the principle of a free press



Anders Chydenius (1729 – 1803)
The first father of freedom of information

One strand of the evolution of FOI can be traced back to 7th century China



Emperor T'ai-tsung (Tai Zhong)
Reign: 626 - 649



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Corruption and concerns about transparency in Australia led to Freedom of Information laws



Queensland Premier
Joh Bjelke-Petersen
1968 –1987

Corruption exposed during the **Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct** 1987–1989 (the Fitzgerald inquiry) which recommended enactment of FOI laws.

Secrecy and propaganda are major impediments to accountability..... Information is the lynch-pin of the political process. Knowledge is, quite literally, power. If the public is not informed, it cannot take part in the political process with any real effect.

Chairman Tony Fitzgerald,
Brisbane, 1989



The **John Curtin Foundation** was infamously connected with the scandals of WA Inc.

The 1992 Report of the **Royal Commission into Commercial Activities of Government and Other Matters** (known as the 'WA Inc. Report') recommended that FOI be enacted in WA as a matter of priority.



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FOI law reform in Australia

- Some jurisdictions reviewed their laws in recent years – some now have revised or amended Acts referred to as **‘second generation’ or ‘push’ FOI laws** that have a pro-active information disclosure focus which pushes out the government information, with the goal of making formal applications a last resort.
- Other jurisdictions have not yet undertaken any substantial review of their **‘first generation’ or ‘pull’ FOI laws** where the requester for information has to ‘pull’ the information out of the government system by making an FOI request.
- The following table shows the States and Territories which have undergone the development from first generation ‘pull’ laws to second generation ‘push’ laws.



Australian FOI laws – first or second generation?

First generation FOI laws

- Vic laws enacted 1982
- ACT laws enacted 1989
- SA laws enacted 1991
- TAS laws enacted 1991
- WA laws enacted 1993
- NT laws enacted 2002

Second generation FOI laws

- Cth laws enacted 1982 - significant reforms in 2009
- NSW laws enacted 1989 - significant reforms in 2009
- QLD laws enacted 1992 - significant reforms in 2009



Information Access Study 2019

(compares NSW, WA, ACT, Vic & Qld)

4 common questions
2 state specific questions



Common Questions for Each Jurisdiction

- How important is it to you that you have a right to access government information?
- Did you know, under the [*the FOI/RTI law in your jurisdiction*] you have a right to access information held by [*various nominated*] agencies?
- In the last 3 years have you tried to access information held by [*various nominated*] agencies?
- Were you successful in accessing information from...?

Supplementary questions – WA

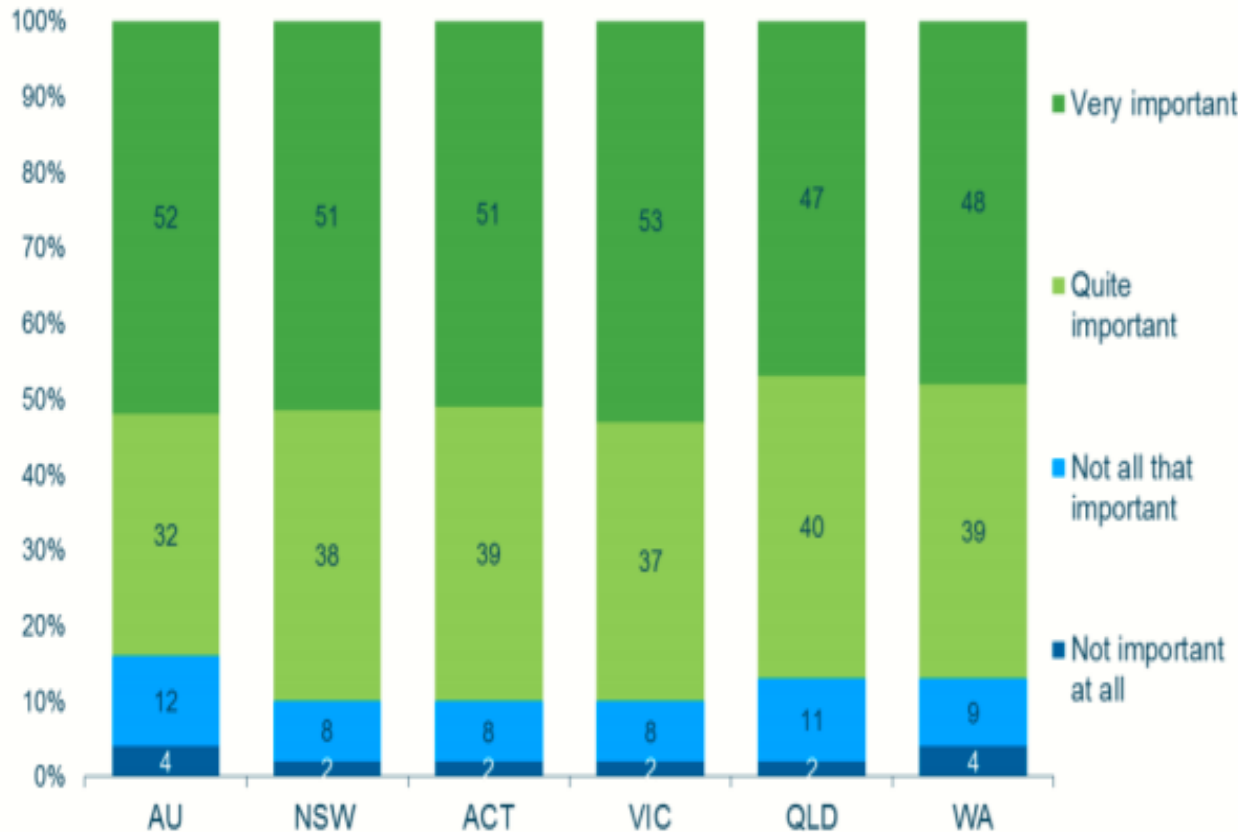
- If you want to access information held by a Western Australian State or local government agency, what would you do to get it?
- What types of government agency information and/or assistance would you like to access online?



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Importance of having the right to access government information across jurisdictions



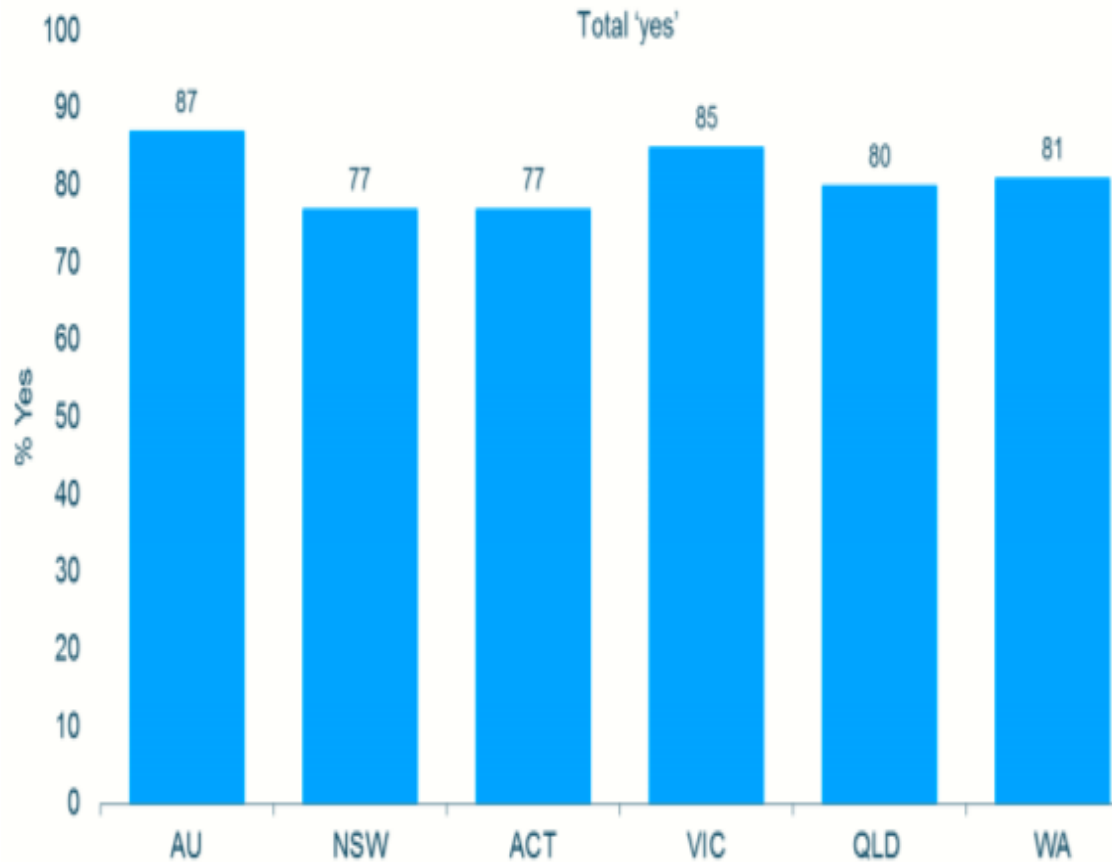
- Belief in the importance of the right to access government information was consistent across the jurisdictions
- Almost 90% those surveyed believed that having the right to access government information is either very important (50%) or quite important (39%).



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Total awareness of right to access information across jurisdictions



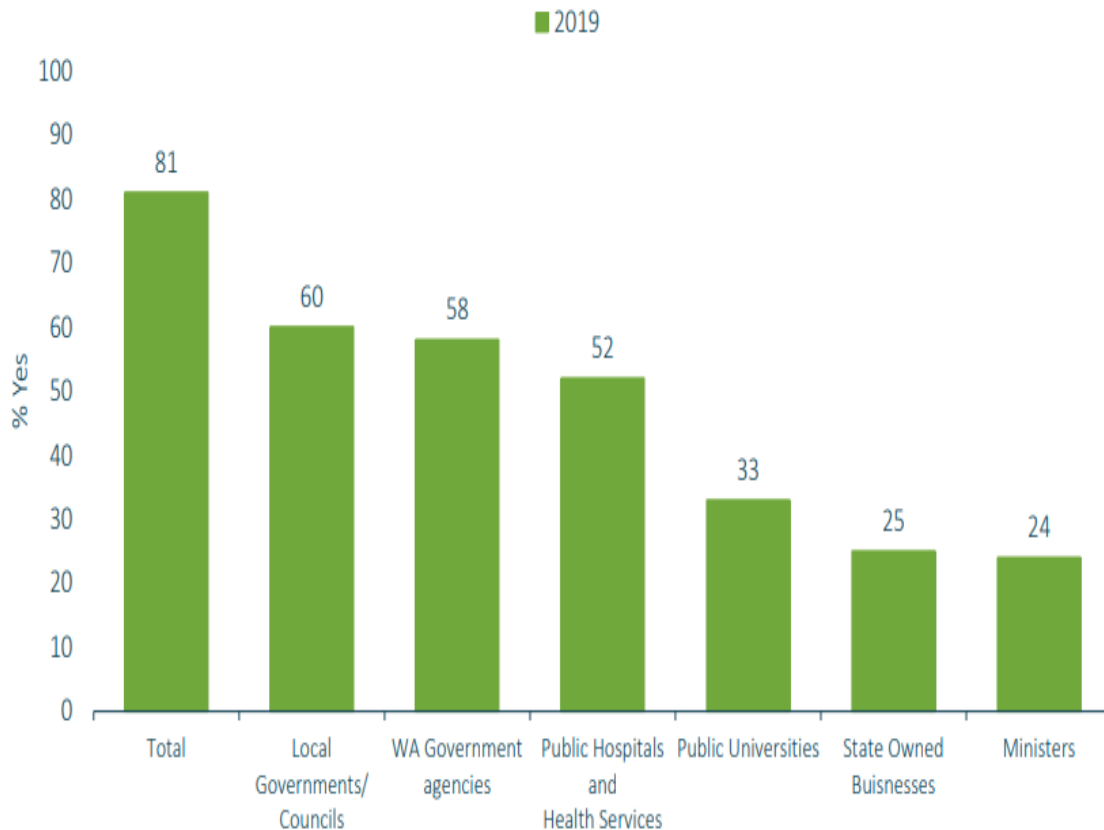
- The majority of the respondents across the jurisdictions were aware that they had the right to access information held by at least one of the agencies listed.
- Across all jurisdictions awareness was highest for ‘state government agencies’ and ‘local councils’
- Awareness was also high for ‘public hospitals and health services’ for those states where this agency was included, and for government schools in Vic.



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WA: Awareness of right to access information from agencies under FOI Act



Four out of five respondents were aware of their right to access information held by at least one of these WA government agencies (with younger people being less aware):

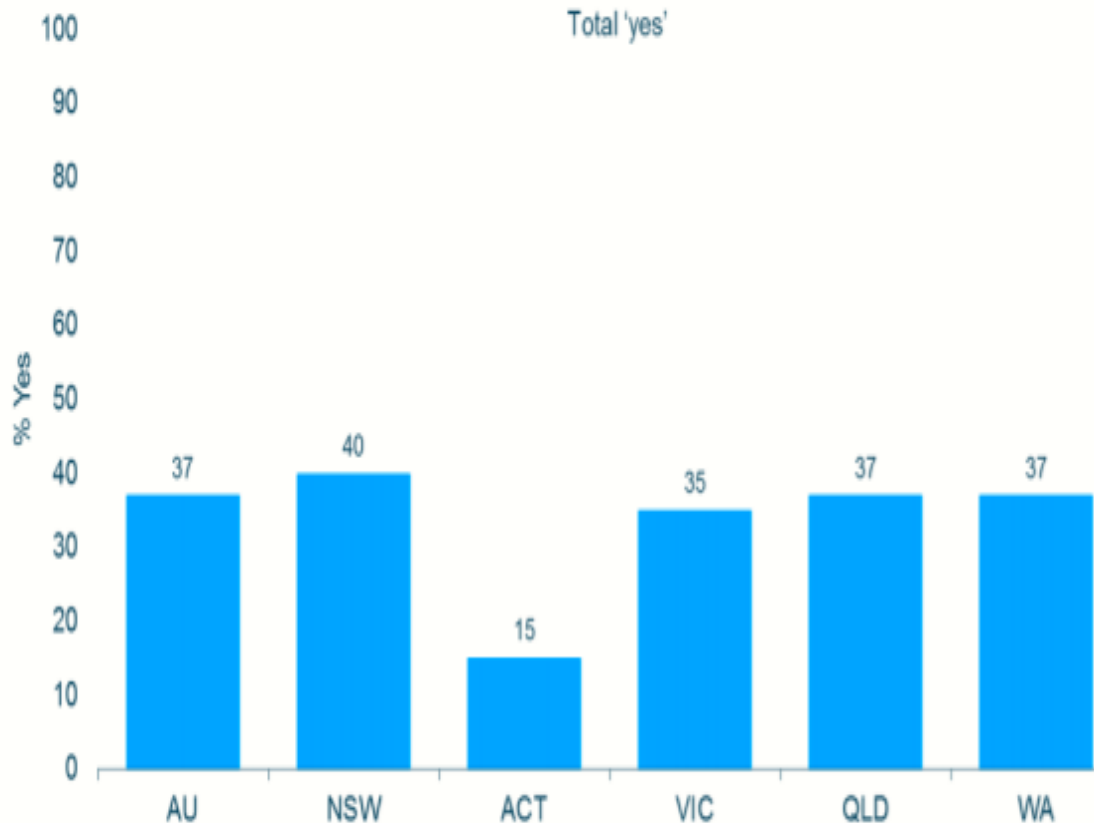
- Local Governments/Councils (60% aware)
- WA Government agencies (58% aware)
- Public Hospitals and Health Services (52% aware)
- Public Universities (33% aware)
- State Owned Businesses (25% aware)
- Ministers (24% aware)



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Total attempts to access information across jurisdictions



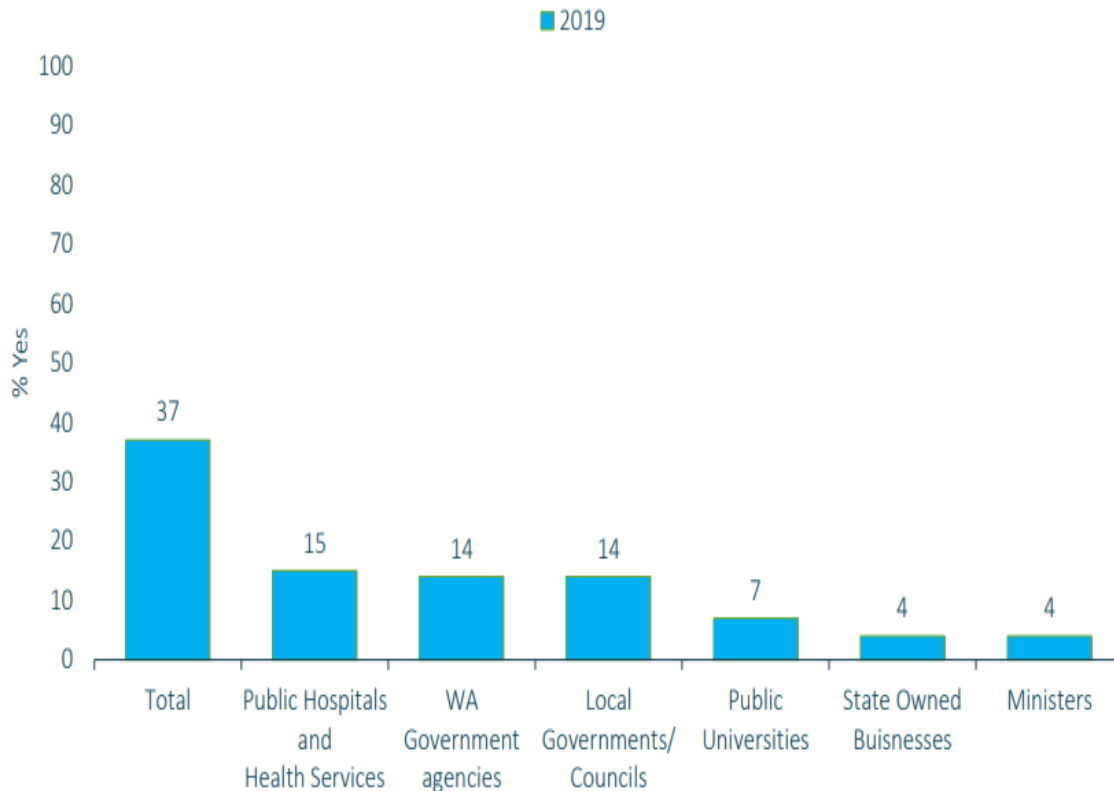
- Around four out of ten respondents had contacted at least one agency listed in the last three years, fewer in ACT
- In all jurisdictions respondents commonly attempted to access information held by state government agencies and local councils.
- In Vic, Qld and WA respondents also attempted to access information held by public hospitals and health services.
- Government schools were also contacted by respondents in Vic.



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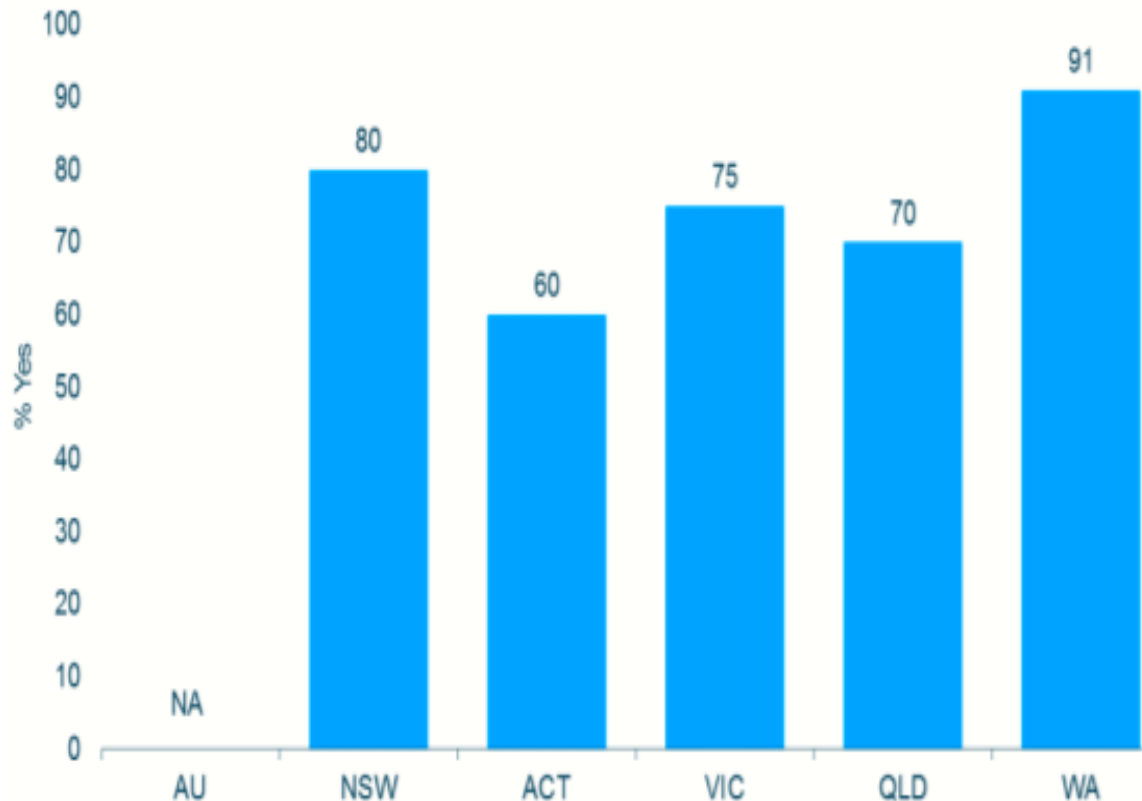
WA: Attempts to access information from WA agencies



- Over a third of respondents had attempted to access information held by at least one of the agencies listed (37%)
- The most common agencies for respondents to contact were Public Hospitals/ Health Services, State Government agencies and Local Governments/ Councils



Total success in attempting to access information across jurisdictions



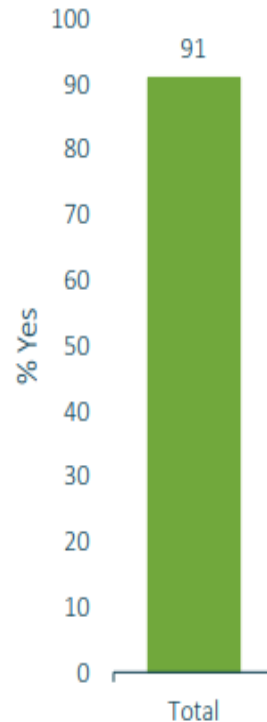
- Attempts were significantly more successful in Western Australia and NSW than in the ACT.
- Respondents in NSW and Victoria were most successful in accessing information from state governments and agencies



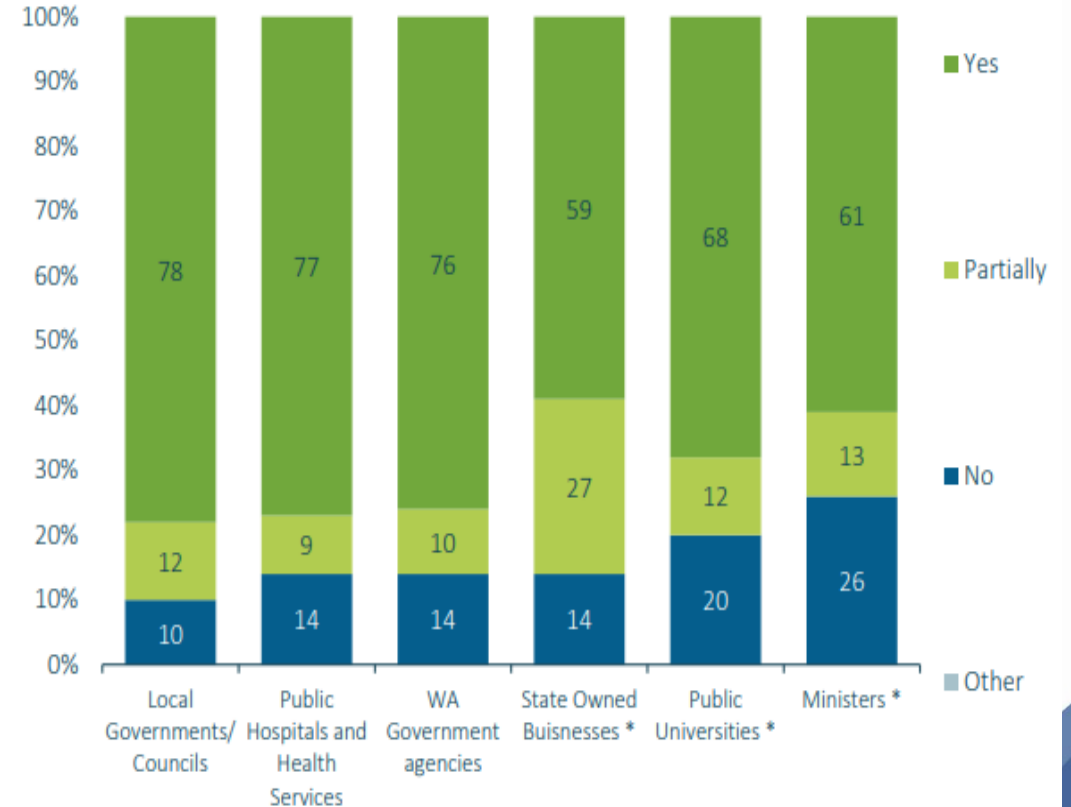
WA: Success in attempting to access information from agencies

- Nine out of ten respondents who attempted to access information held by at least one agency in the last 3 years were successful in doing so.
- The majority of those who tried to access were successful in gaining information held by at least one of the agencies listed.

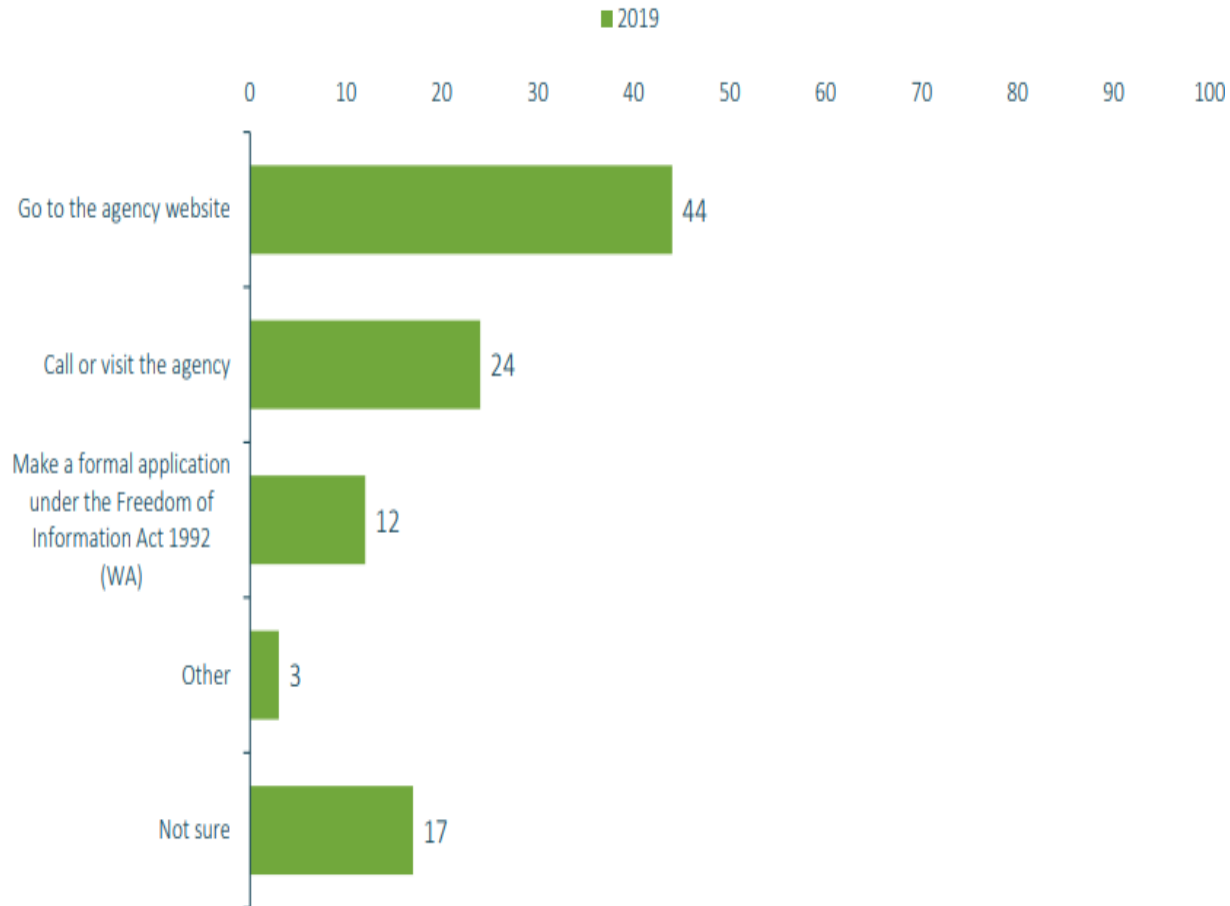
Successful at accessing information from at least one agency



Successful at accessing information from different agencies



WA: Methods of accessing information



QN. If you want to access information held by a Western Australian State or local government agency, what would you do to get it?

A: Almost half would attempt to access information through a specific agency's website. One in six were unsure about how they would access information held by a WA State or Local government agency.



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CAUTION SMALL SAMPLE SIZES

WA: Online information and assistance

Types of government agency information and/or assistance respondents would like to access online	All respondents (n=350) %
Policies and procedures	60
Being directed to online action, for example, obtaining a service or conducting a transaction online	54
Information about decision making processes affecting the community	50
Financial information, for example, expenditure, procurement and contracts	39
Statistics and datasets	36

QN. What types of government agency information and/or assistance would you like to access online?

Most respondents wanted to have online access to at least one of the types of government agency information and assistance listed

The most common type of government agency information and/or assistance that respondents would like to access online were policies and procedures



Highlights of the Information Access Study 2019 across jurisdictions

- Results for the importance of having the right to access government information were consistent across the jurisdictions – in total 50% believed that it is very important and 39% quite important to have the right to access government information (i.e. almost 90% thought it very or quite important).
- The majority of the respondents across the jurisdictions were aware that they had the right to access information held by at least one of the agencies listed.
- Across all jurisdictions awareness was highest for ‘state government agencies’ and ‘local councils’
- Awareness was also high for ‘public hospitals and health services’ for those states where this agency was included, and for government schools in Victoria.
- Around four out of ten respondents had contacted at least one agency listed in the last three years, fewer in ACT.
- Attempts were significantly more successful in Western Australia and NSW than in the ACT.
- Respondents in NSW and Victoria were most successful in accessing information from state governments and agencies.



Highlights of the Information Access Study 2019 for WA

- Four out of five respondents were aware of their right to access information held by at least one of these Western Australian government agencies (with younger people being less aware):
 - ❖ Local Governments/Councils (60% aware)
 - ❖ WA Government agencies (58% aware)
 - ❖ Public Hospitals and Health Services (52% aware)
 - ❖ Public Universities (33% aware)
 - ❖ State Owned Businesses (25% aware)
 - ❖ Ministers (24% aware)
- Over one third of respondents had attempted to access information held by at least one of the WA Government agencies listed
- Nine out of ten respondents who attempted to access information held by at least one agency were successful in doing so
- Had they needed to, visiting a government agency's website was the most common way that respondents would have tried to access information held by a State or local government agency
- Most respondents wanted to have online access to at least one of the types of government agency information and assistance listed, the most commonly selected being policies and procedures (60%)



Open Government National Action Plan and the Metrics on Public Use of Information Access Rights

Four years of data published: 2014/15, 2015/16, 2016/17 and 2017/18

- Since 2015 Australia has been involved in multilateral National Open Government Partnership (OGP) which is aimed at promoting transparency, empowering citizens, fighting corruption, and harnessing technologies to strengthen governance.
- The first Open Government National Action Plan 2016-2018 included a commitment to develop uniform metrics on public use of information access rights to promote the importance of better measuring and improving our understanding of the public's use of rights under freedom of information laws.
- The difference between the 'pull'/FOI 1.0 and 'push'/FOI 2.0 models may be reflected in the national dataset dashboard.

Metric 1: Count of formal applications/decisions by type of applicant

Metric 2: Formal applications received per capita

Metric 3: Percentage of all decisions made on formal applications/pages where access was granted in full or in part

Metric 4: Percentage of all decisions made on formal applications/pages where access was refused in full

Metric 5: Percentage of all decisions made within the statutory time frame

Metric 6: Percentage of applications received which are reviewed by the jurisdiction Info Commissioner /Ombudsman

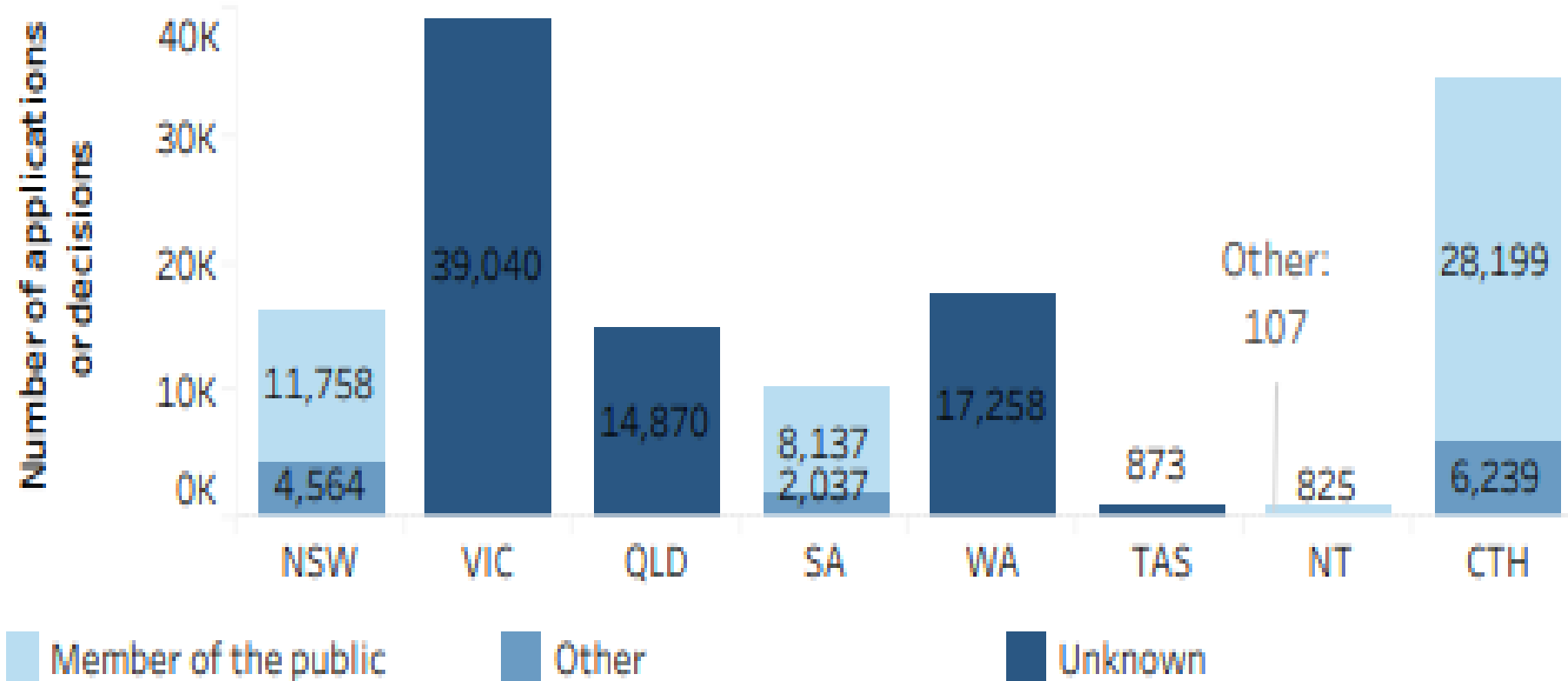
See the Dashboard on the [NSW IPC website](#)



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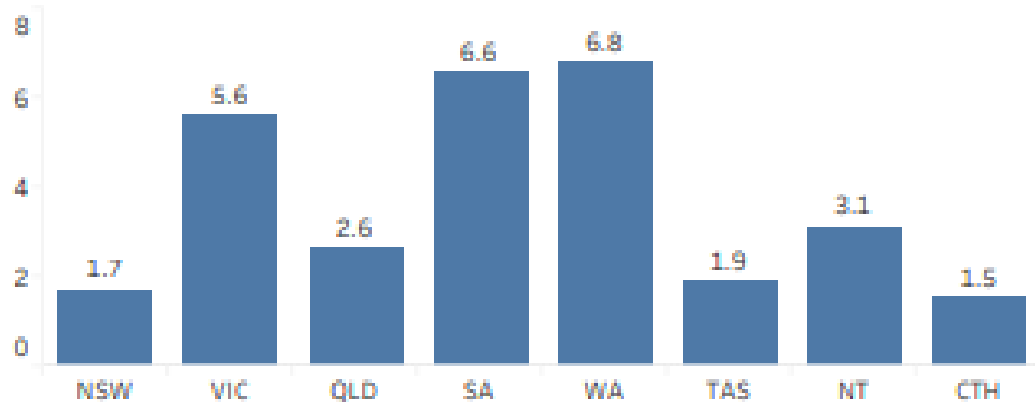
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Metric 1: Count of formal applications/decisions by type of applicant

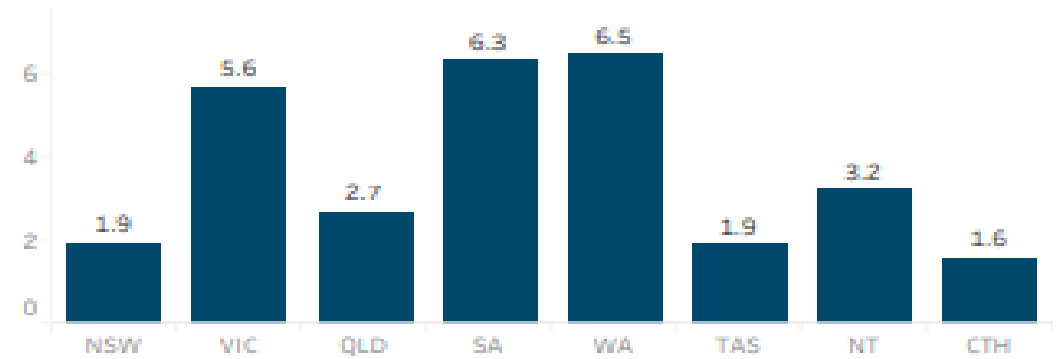


Metric 2: Formal applications received per capita

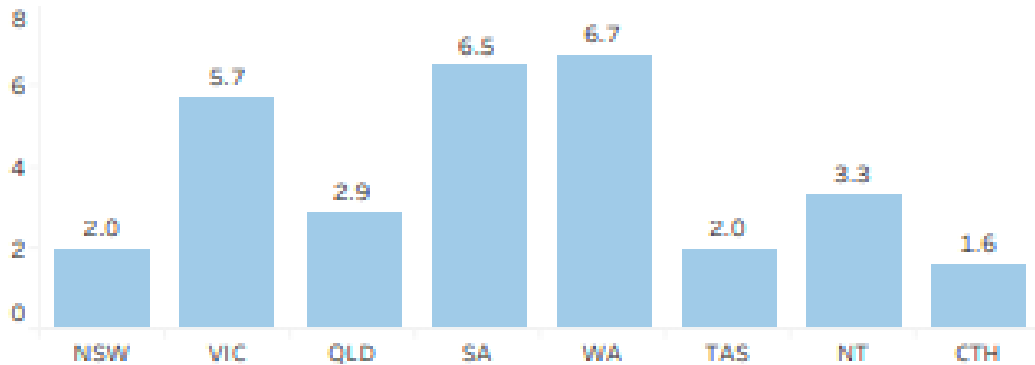
2014 - 15



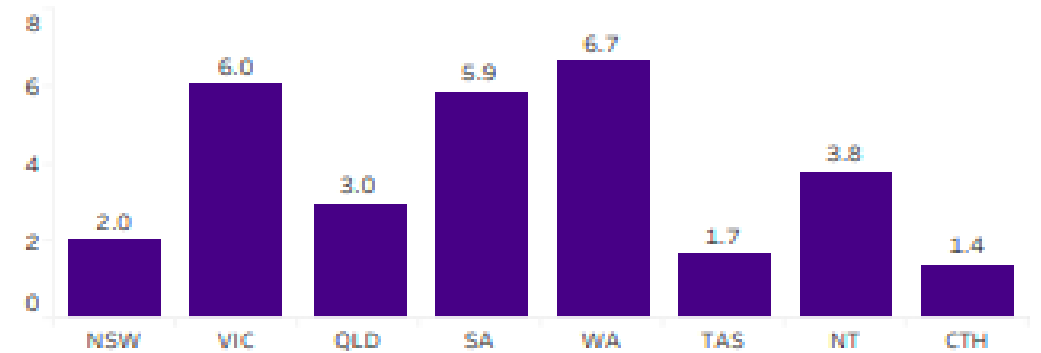
2015 - 2016



2016 - 17

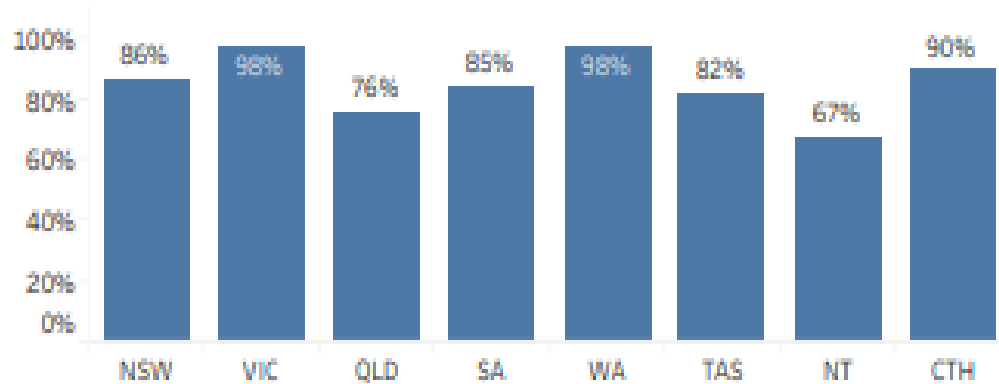


2017 - 2018

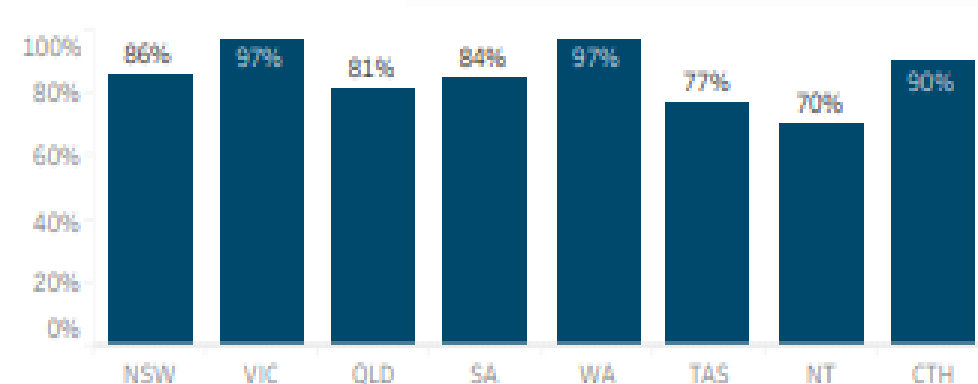


Metric 3: Percentage of all decisions made on formal applications/pages where access was granted in full or in part

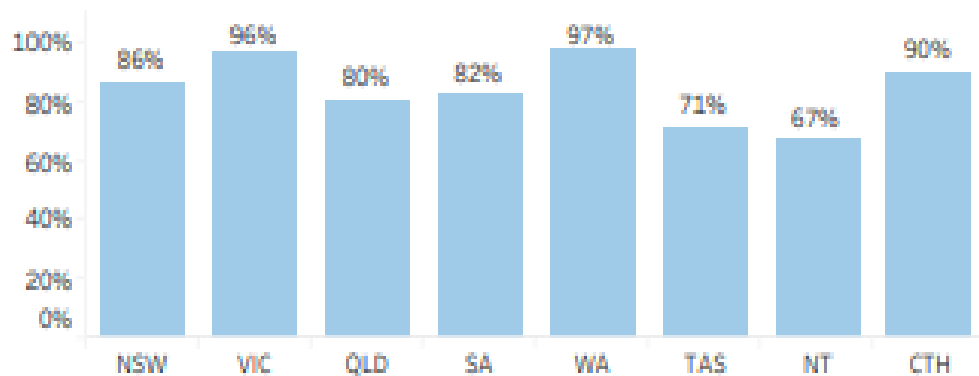
2014 - 15



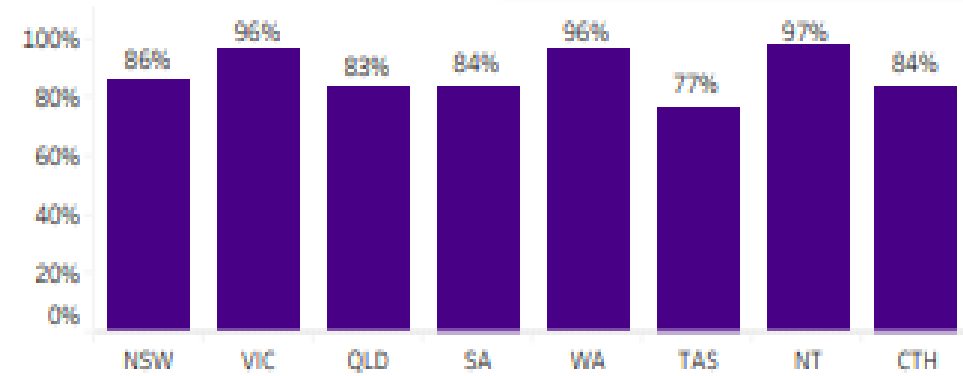
2015 - 2016



2016 - 17

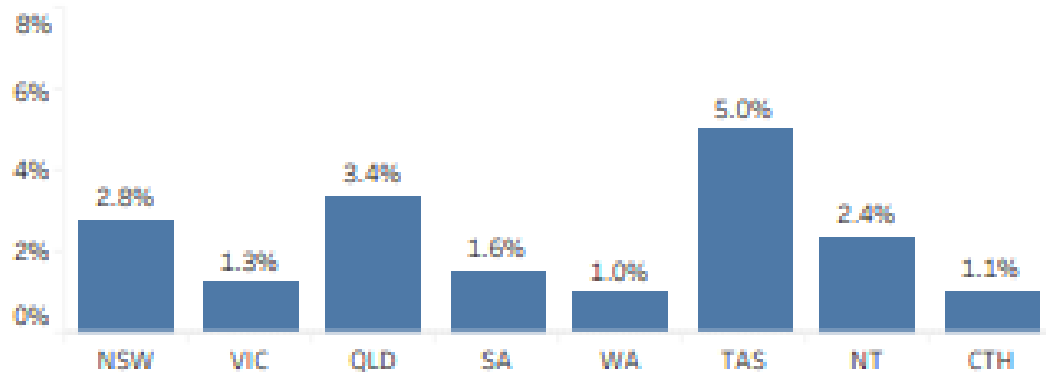


2017 - 2018

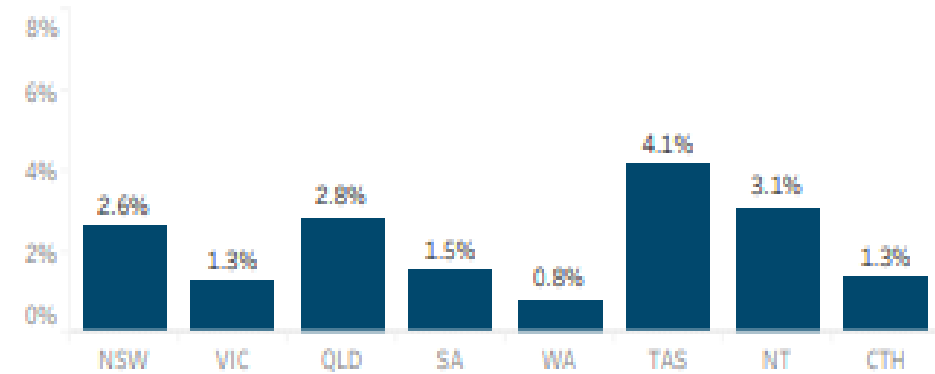


Metric 6: Percentage of applications received which are reviewed by the jurisdiction Information Commissioner/ Ombudsman

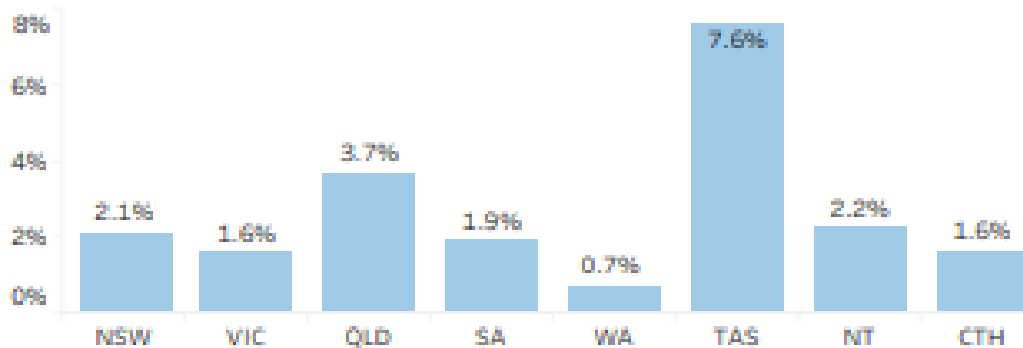
2014 – 15



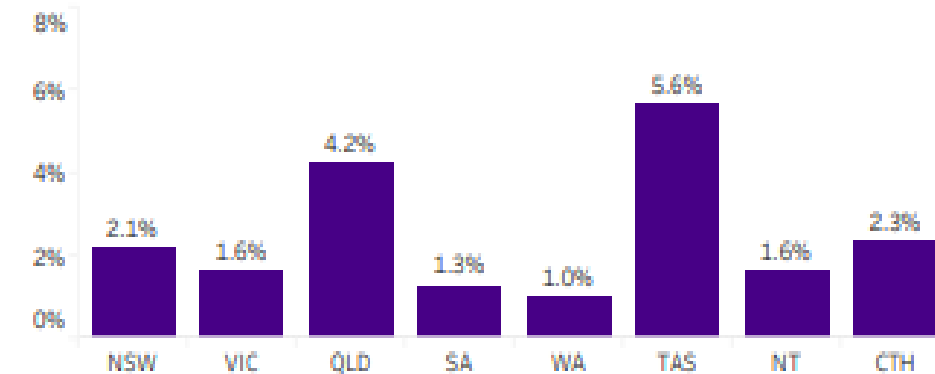
2015 -2016



2016 – 17



2017 -2018



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Highlights from the National Metrics – a research opportunity?

- There is no narrative yet around this data – a research opportunity?
- My own observations on trends for some of the metrics associated with WA, Vic and SA (first generation FOI laws) versus trends with Cth, Qld and NSW (second generation FOI laws).

Metric 2 - Formal applications received per capita

- WA has the highest applications per capita of all jurisdictions every year since 2014/15 to 2017/18.
- WA, Vic and SA have significantly higher rates per capita than NSW, Qld and Cth every year since 2014/15 to 2017/18

Metric 3 - Percentage of all access decisions by agencies where access was given either in full or in part

- WA and Vic have consistently higher percentage of full or partial access than NSW, Qld and Cth every year since 2014/15 to 2017/18

Metric 6 - Percentage of applications received by agencies which are subject of external review

- WA consistently has the lowest percentage of applications for external review in every year since 2014/15 to 2017/18
- WA, Vic and SA consistently have lower rates of external review than NSW and Qld. The Cth data is more variable.



2019 Pilot Study of the Culture of Administering Access to Government information and FOI in Victoria

- This pilot study was commissioned by the Office of the Victorian Information Commissioner (OVIC) with support from Monash University.
- It aims to capture the culture of administering the Victorian *Freedom of Information Act 1982* (Vic) and the Victorian information access system overall.
- Two main findings include:
 - FOI practitioners ranked government executives as more important than political leadership in building a positive and well-functioning FOI culture.
 - FOI officers' efforts to provide information are sometimes restricted by executive management at agencies that don't see FOI as a priority.



2019 Pilot Study of the Culture of Administering Access to Government information and FOI in Victoria

- The report also emphasises the importance of recruiting the right kind of people to work in FOI.
- The report produced eight recommendations on how to improve Victoria's FOI law and encourage a stronger and more consistent culture of proactive transparency across the public sector.
- The success of the pilot study hopefully paves the way for more comprehensive research involving several other jurisdictions



2010 Study on the Administration of FOI in Western Australia

Findings and Recommendations that dealt with:

- Perceptions about the intent of FOI and agency culture
- Agency policy and procedures
- Agency processes and application of the requirements of the FOI Act
- Assistance to applicants
- Interaction with applicant – notice of decision
- Proactive publishing of information
- Factors influencing decisions
- Third parties
- Exemptions
- Fees and Charges
- Information statements
- Websites
- Agency resources and costs
- Training and support



The 2010 WA FOI Review recommendations remain relevant

- **Agency culture** - a commitment to the objects, intent and principles of administration of the FOI Act.
- **Agency processes** - Compliance with *State Record Act 2000* obligations including the management of electronic and hard copy documents. Agency staff should be sufficiently trained, competent and supported to be able to conduct complete searches of electronic documents.
- **Assistance to applicants** - engage in meaningful and early discussion with members of the public who seek information. Design customer interfaces and information management systems to enhance the ability of members of the public to obtain access to information.
- **Proactive publishing of information** - Unless there is a good reason not to, agencies should disclose information on request without requiring a formal FOI application and should investigate means of more proactive, automated and timely disclosure of information, particularly through websites, using information stored in electronic records management systems and other records databases.



The 2010 WA FOI Review recommendations remain relevant

- **Third parties** - Agencies should routinely ask applicants whether they consent to third party information being removed from the scope of applications, to encourage faster disclosure of documents.
- **Information Statements** - agencies should annually review what information they routinely make available to the public outside the FOI process AND agencies should develop these as an integral element of their overall approach to information management.
- **Exemptions** - Agencies should consider disclosing exempt matter in circumstances where no harm is likely to result.
- **Websites** - agency websites should support the FOI objectives of government transparency and public participation, improve the profile of FOI and ensure that the public can access government information with relative ease.
- **Training and support** - the OIC needs appropriate resourcing to fulfil statutory training obligations (eg. to develop online learning to assist FOI officers in regional and remote agencies).



Summary

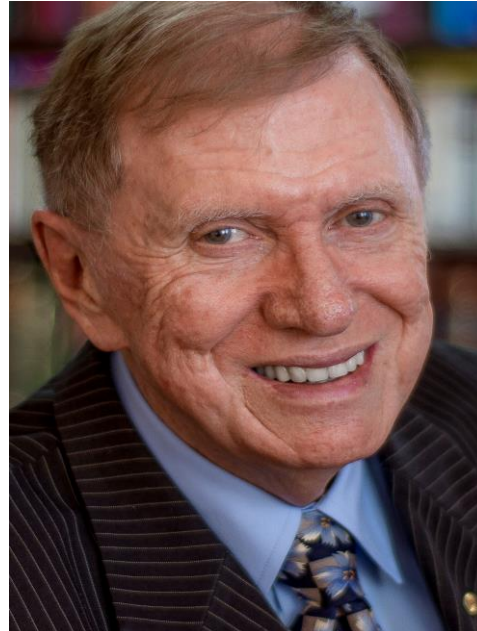
- Knowing why we have access to information and FOI is important.
- Remember the early champions of access to public records and FOI laws (*Emperor T'ai-tsung , Chydenius, John Moss, WA Inc Commissioners, Fitzgerald Inquiry etc.*)
- FOI challenges the tradition of state secrecy which breeds distrust of government (eg. WikiLeaks?)
- A connection between access to information and trust in government underscores the emergence of a lot of FOI legislation.
- Access to government information is a key safeguard of democracy in WA and reminds us that Government is a servant of the people.
- FOI is significant component to achieving Open Government which builds trust
- Recent studies show that the public want access to government information and they expect modern technology can deliver that to them in the Digital Age.
- The WA FOI Act could be modernised in order to align with public and government expectations about digital transformation of government and Open Government.
- Open Government needs modern champions.



Access to Government Information needs Champions



Civil Official carrying records among the Terracotta Army remind us that records have always been important



In a world of secrecy and opaque government, serious wrongs can occur which may never come to light. FOI legislation is at once a means of casting the light of scrutiny into dark corners of government and a contribution to a new culture of openness in public administration.

Hon Justice Michael Kirby AC CMG
Fortieth Anniversary Lecture Series,
British Section of the International
Commission of Jurists,
17 December 1997, London



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Building trust



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