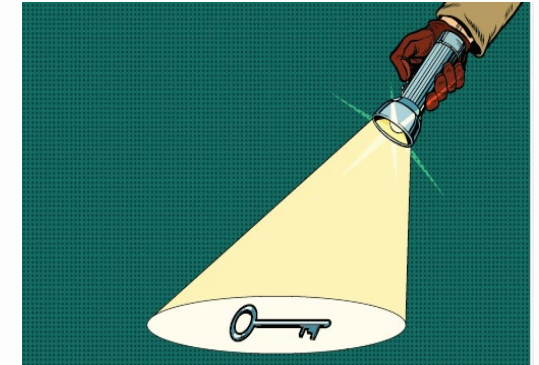


Freedom of Information Shining a Light into Dark Corners



Catherine Fletcher Information Commissioner

Presentation to Curtin Corner Webinar Series 2020
John Curtin Institute of Public Policy
23 October 2020



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Overview

- State secrecy and the emergence of FOI legislation
- Models of FOI law – first generation ‘pull’ model and second generation ‘push’ model
- FOI laws in Australia – political scandals and concerns about transparency
- The *WA Freedom of Information Act 1992*
- Studies regarding access to information – metrics and culture
- FOI laws in the digital age and beyond
- Questions



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FOI and freedom of the press to counteract the prevalence of official or state secrecy 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



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

“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



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Political and financial scandals, associated with concerns about transparency, led to FOI laws

Source: Ricketson, M (1996) 'Freedom from Information', *Freedom of Information Review*, 63



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 lynchpin 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 'WA Inc. Report' recommended that FOI law be enacted in WA as a matter of priority.



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FOI laws in Australia

- **‘First generation’ or ‘pull’ FOI laws** exists in some jurisdictions - where the requester for information has to ‘pull’ the information out of the government system by making an FOI request.
- Other jurisdictions enacted revised laws in recent years – they now have **‘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.
- Cth access laws enacted 1982 - substantial reforms in 2009
- NSW access laws first enacted 1989 - new push model law enacted in 2009
- QLD access laws first enacted 1992 - new push model laws enacted in 2009
- ACT access laws enacted 2016 – new push model law operative in 2018
- WA FOI Act enacted 1992 - no significant reforms to date



The *Freedom of Information Act 1992 (WA)*

- The 1992 WA Inc. Report and 1995 COG Report - enhanced government accountability and transparency by championing the introduction of the FOI Act, the *State Records Act 2000 (WA)* and other measures.
- FOI Act operative late 1993 – a hybrid of push and pull models
- The objects of the Act are to enable the public to participate more effectively in governing the state, and make the persons and bodies that are responsible for state and local government more accountable to the public.
- The WA Supreme Court has stated that these objects “*form the essential bedrock of open, democratic government. Their policy importance ... cannot be overstated.*”

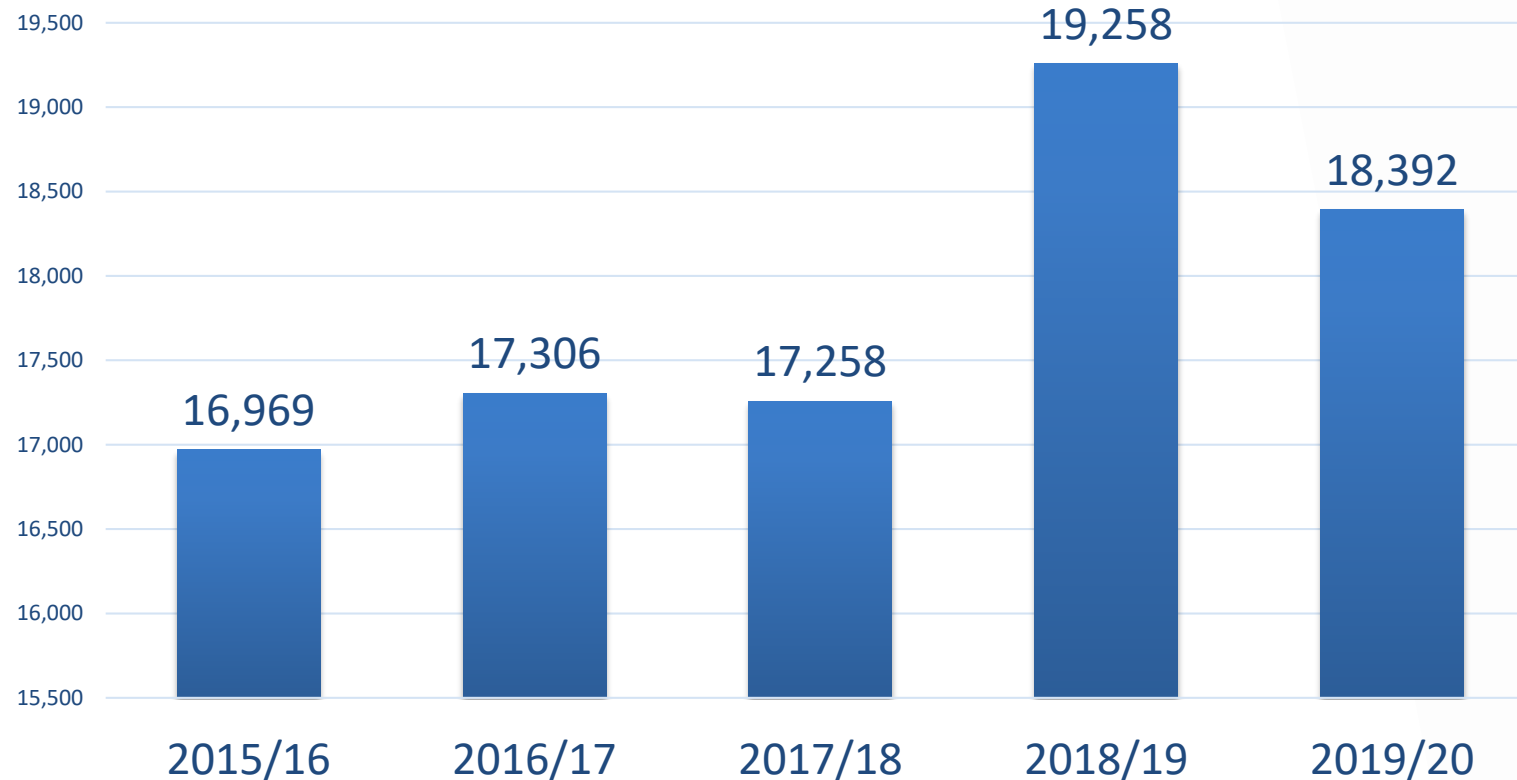
Martin J in [Water Corp. v McKay \[2010\] WASC 210](#) at [38]



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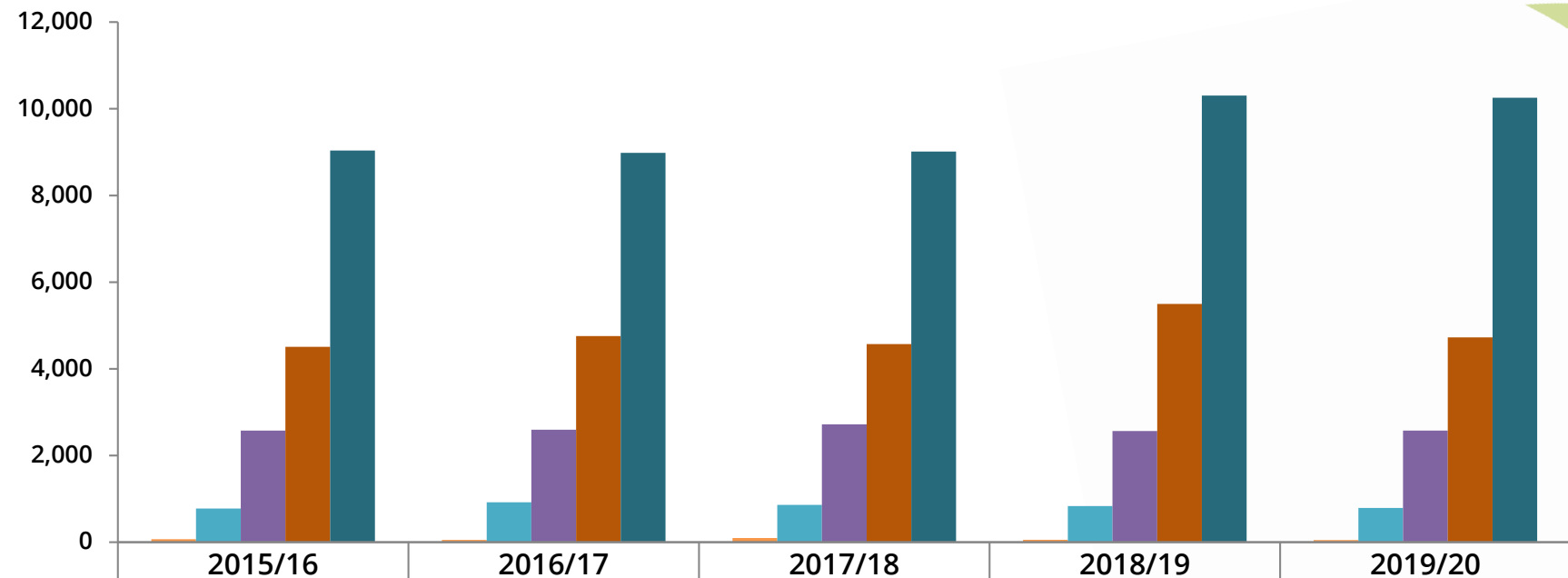
Number of FOI applications received by agencies in the last five years



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Access applications by agency type



	2015/16	2016/17	2017/18	2018/19	2019/20
Ministers	69	51	96	56	50
Local governments	778	920	860	832	790
Police	2,576	2,596	2,718	2,566	2,574
Departments and other agencies	4,508	4,757	4,572	5,498	4,725
Health related agencies	9,038	8,982	9,012	10,306	10,253



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National Metrics on Public Use of Information Access Rights

Five years of data published: 2014/15 to 2018/19

- The Australian Information Commissioners and Ombudsmen (**AIAC**), led by NSW, agreed on six proposed ***‘Metrics on Public Use of Freedom of Information Access Rights’***.
- See the Dashboard [here](#).
- 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

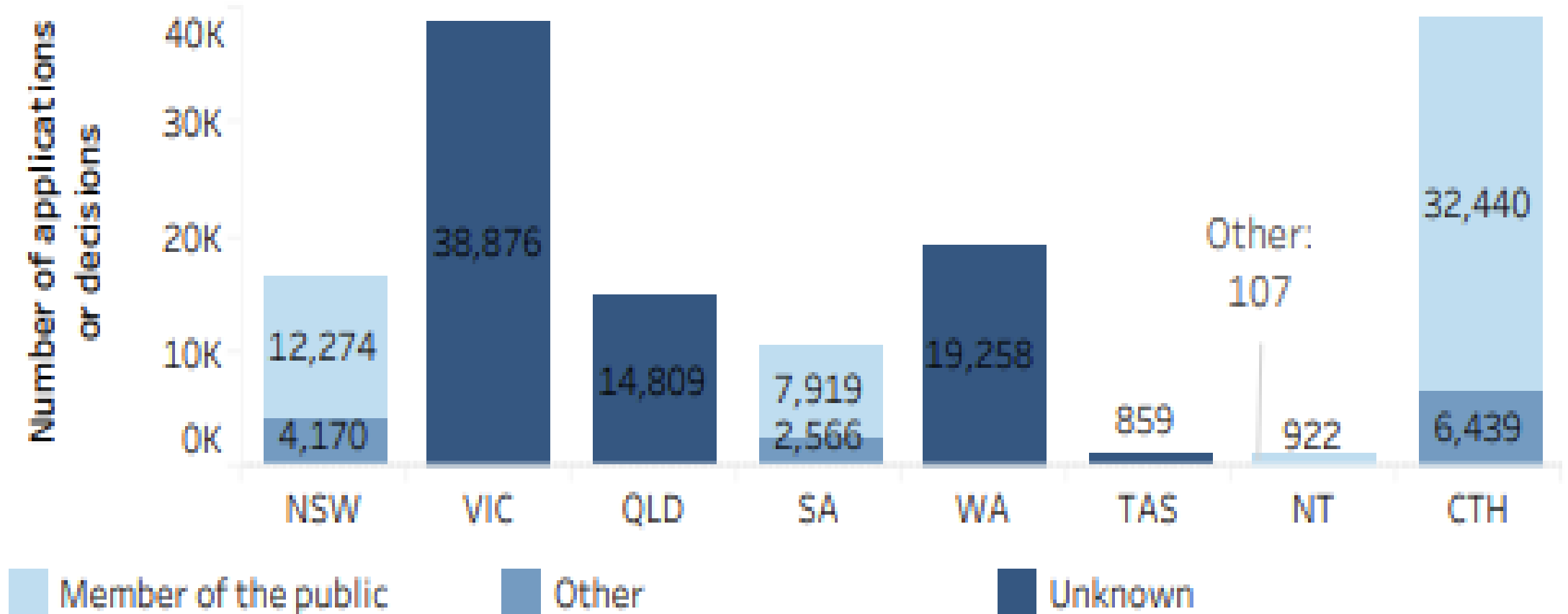
Metric 6: Percentage of applications received which are reviewed by the jurisdiction Info Commissioner /Ombudsman



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Metric 1: Count of formal applications/decisions by type of applicant (2018/19 only)

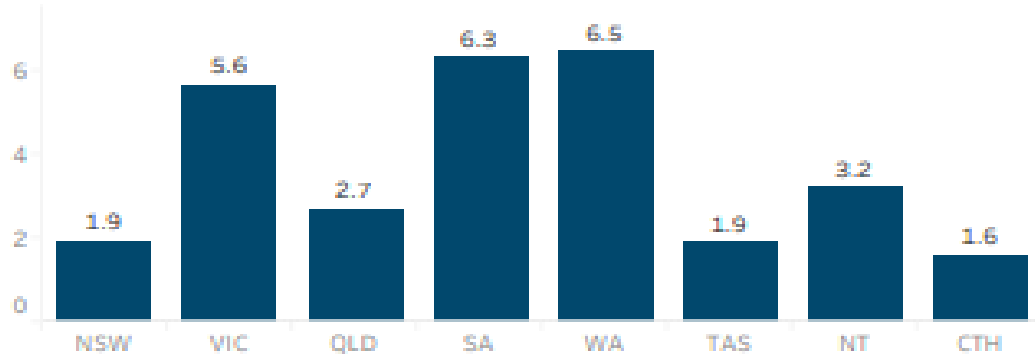


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Metric 2: Formal applications received per capita

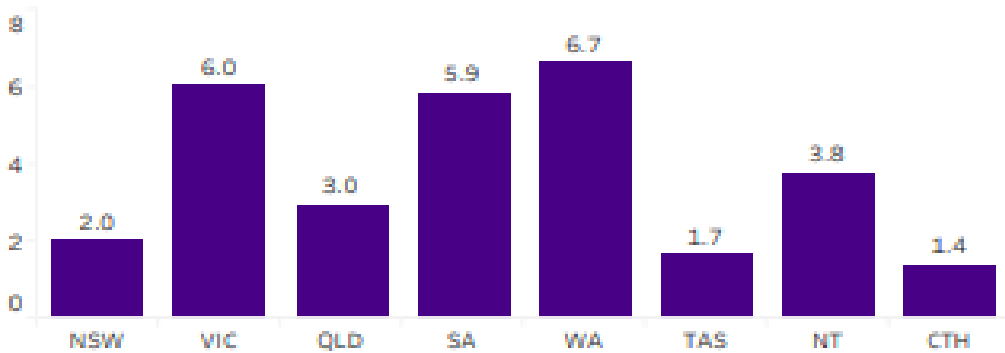
2015 - 16



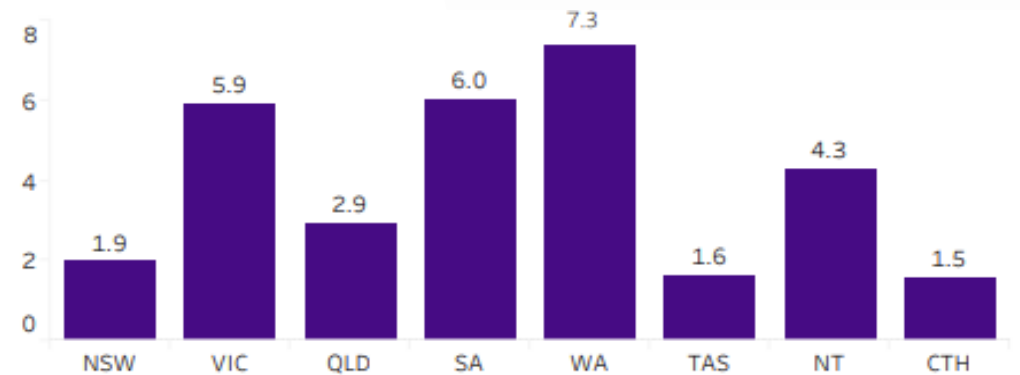
2016 - 2017



2017 - 18



2018 - 2019

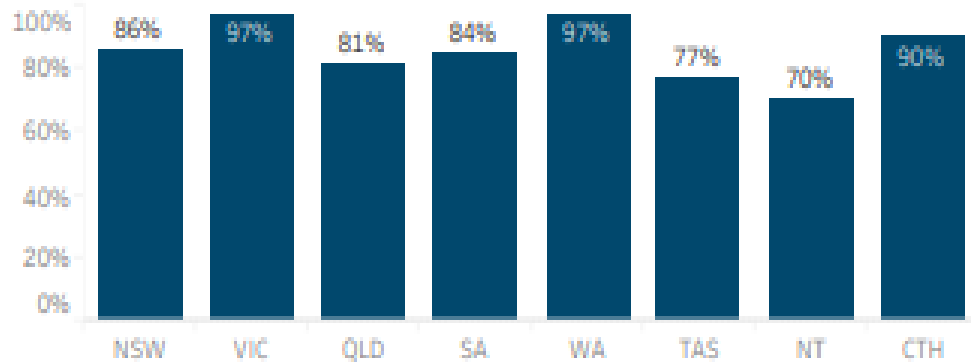


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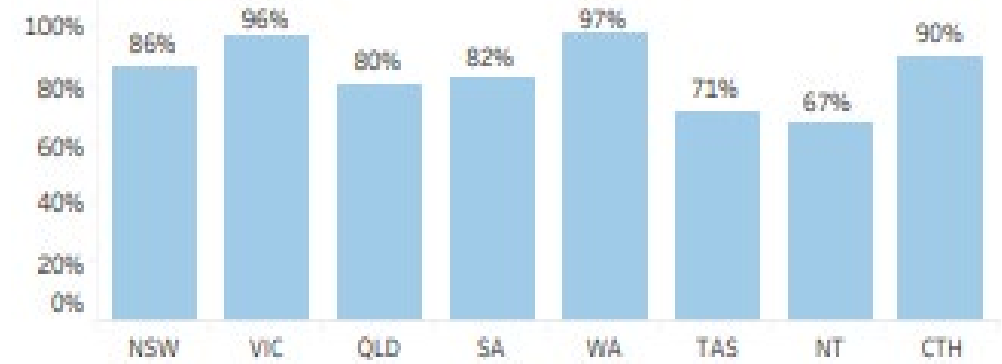
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Metric 3: Percentage of all decisions made on formal applications/pages where access was granted in full or in part

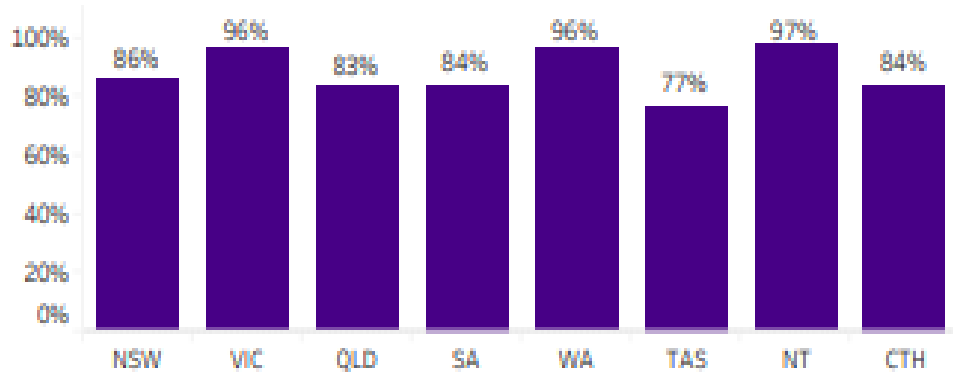
2015 - 16



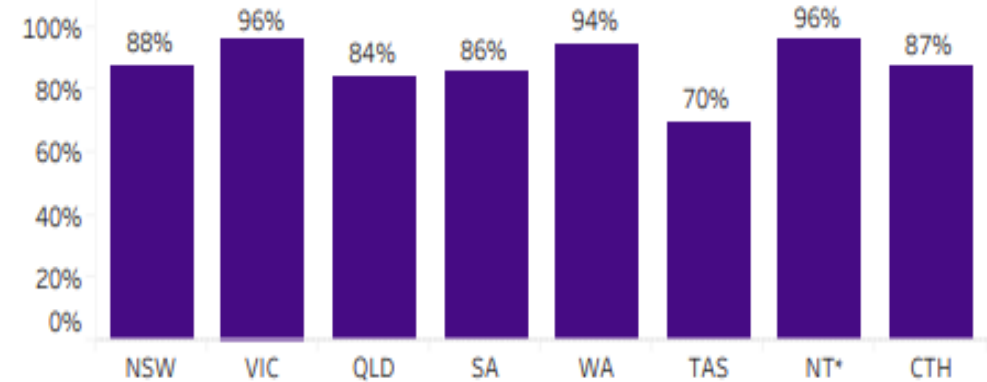
2016 - 2017



2018 - 19

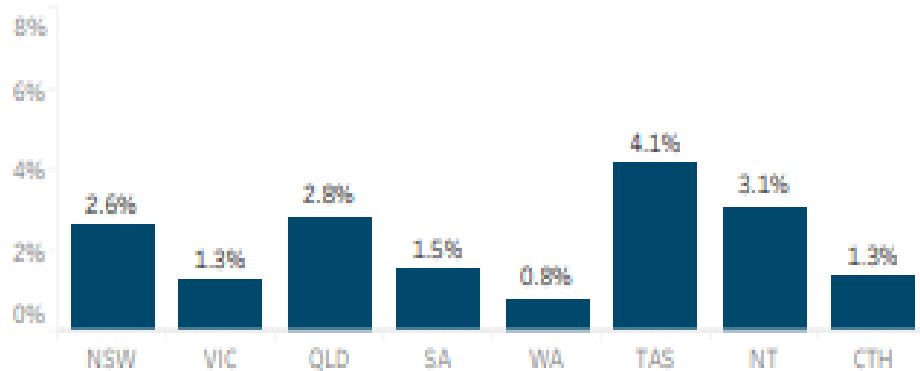


2018 - 2019

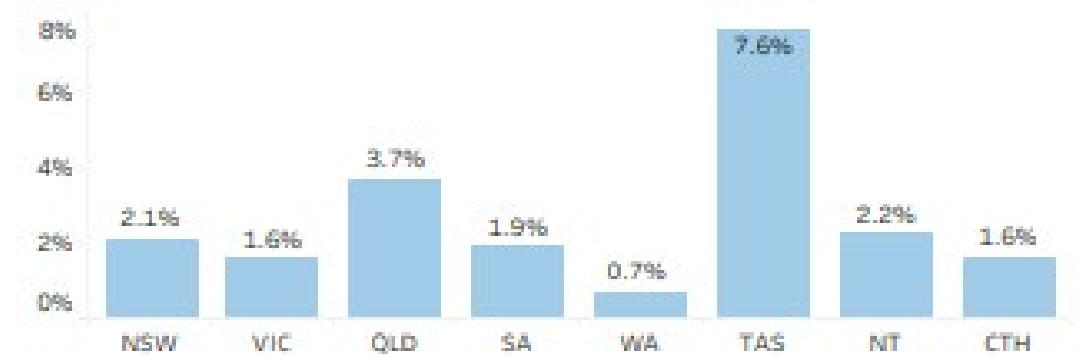


Metric 6: Percentage of applications received which are reviewed by the jurisdiction Information Commissioner/ Ombudsman

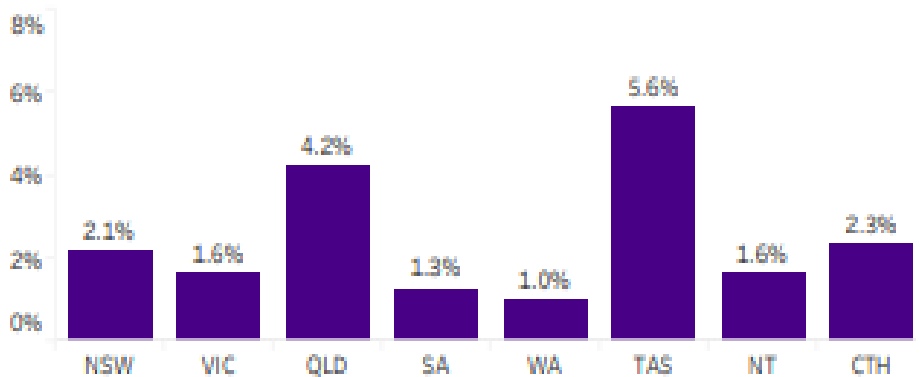
2015 – 16



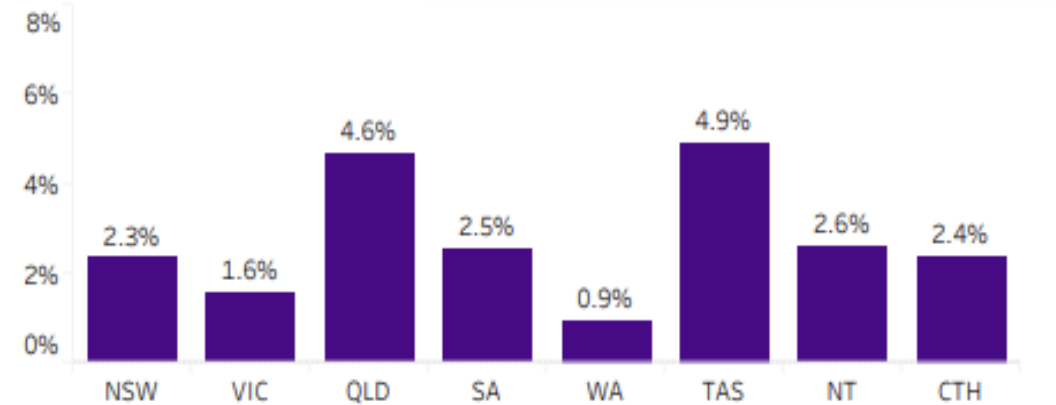
2016 -2017



2017 – 18



2018 -2019



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Conclusions from the National Metrics?

- Since 2014 WA has consistently had the highest rate of formal access applications per capita, one of the highest rates of full or partial access to requested document/s and the lowest rate of external review application in Australia.
- Whilst no published commentary is yet available to explain these trends the possibility exists that the high rate of use of the FOI Act to successfully obtain non-contentious information may be due to an overdependence on the formal processes of giving access to documents pursuant to the FOI Act as opposed to simpler, less costly and more timely, administrative or informal access obtained outside of the FOI Act.



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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

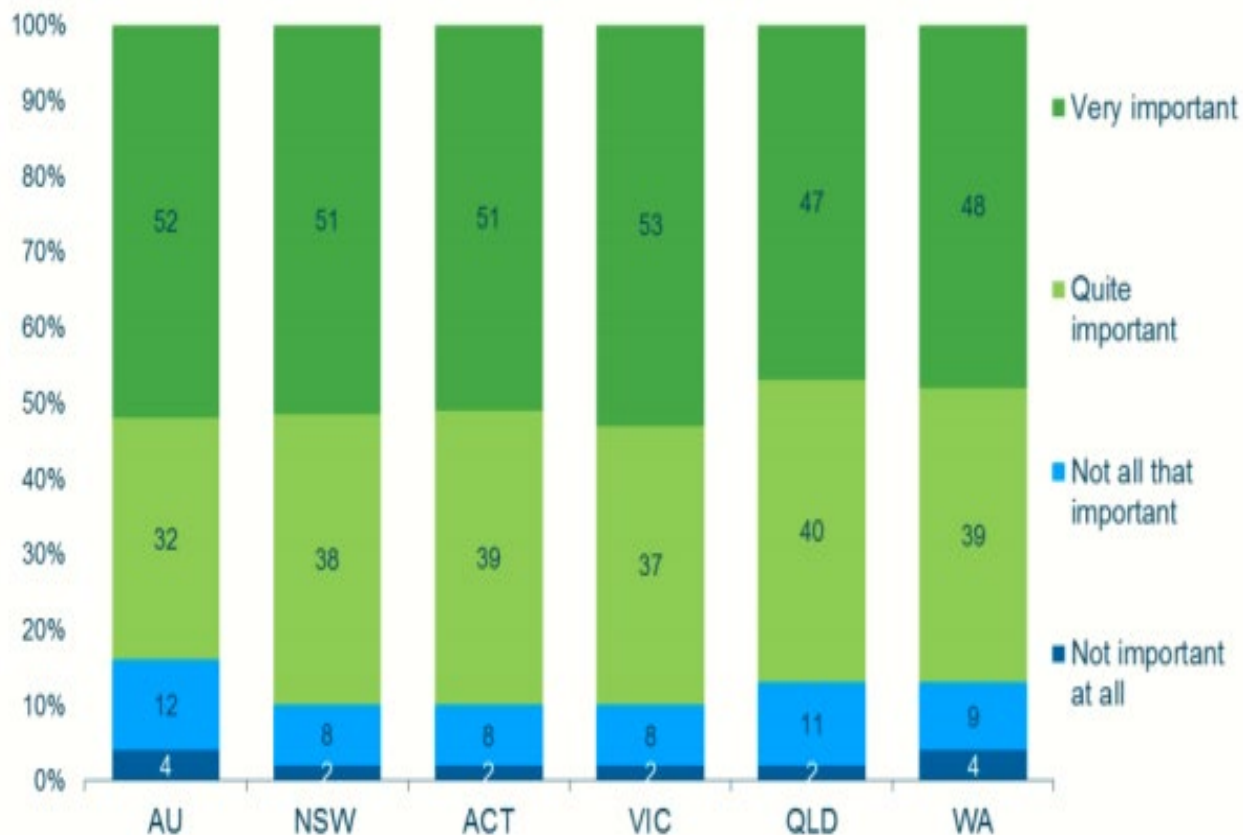
- If you want to access information held by a Western Australian State or local government agency, what would you do to get it?
- What types of government agency information and/or assistance would you like to access online?



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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



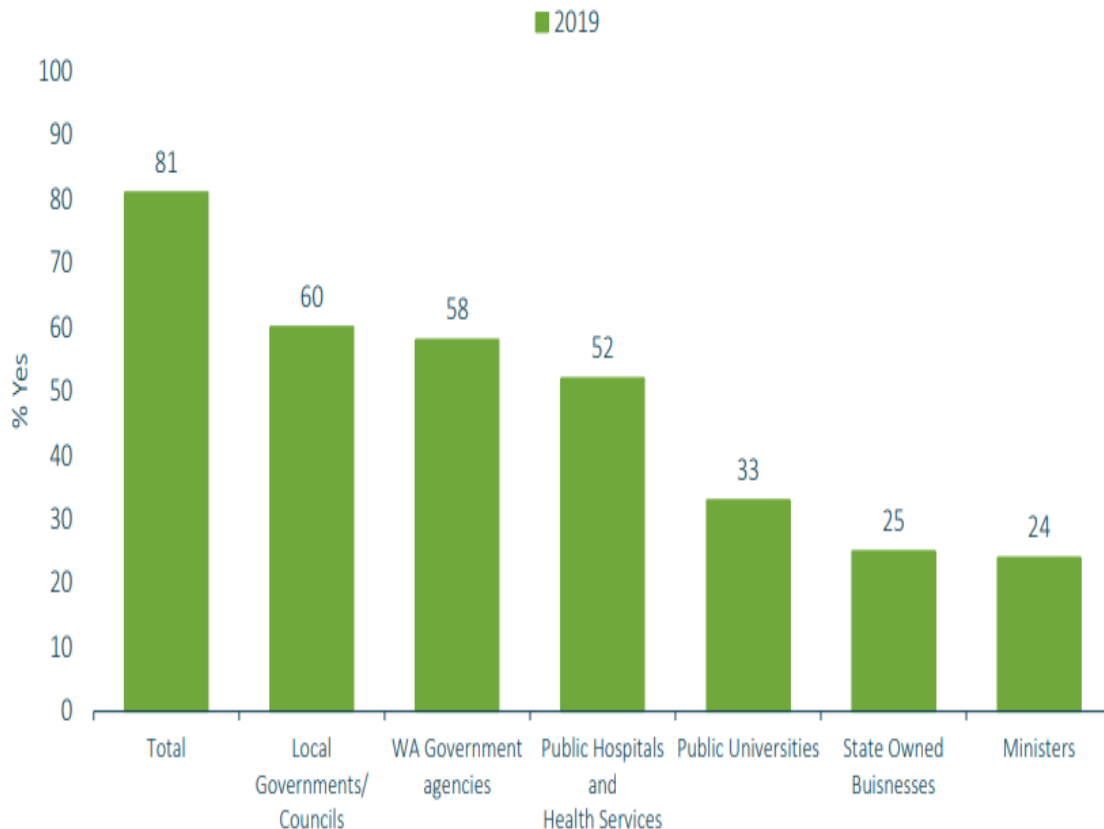
- The majority of the respondents across the jurisdictions were aware that they had the right to access information held by at least one of the agencies listed.
- Across all jurisdictions awareness was highest for 'state government agencies' and 'local councils'
- Awareness was also high for 'public 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):

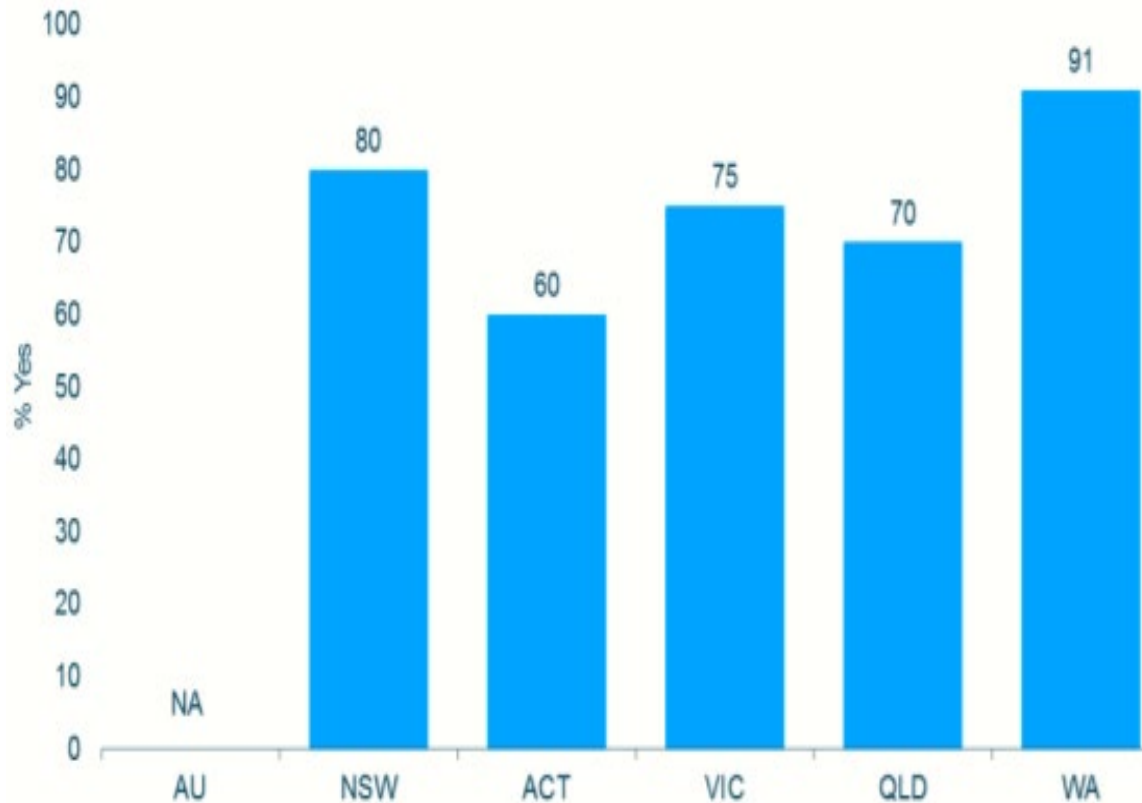
- Local Governments/Councils (60% aware)
- WA Government agencies (58% aware)
- Public Hospitals and Health Services (52% aware)
- Public Universities (33% aware)
- State Owned Businesses (25% aware)
- Ministers (24% aware)



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Total success in attempting to access information across jurisdictions



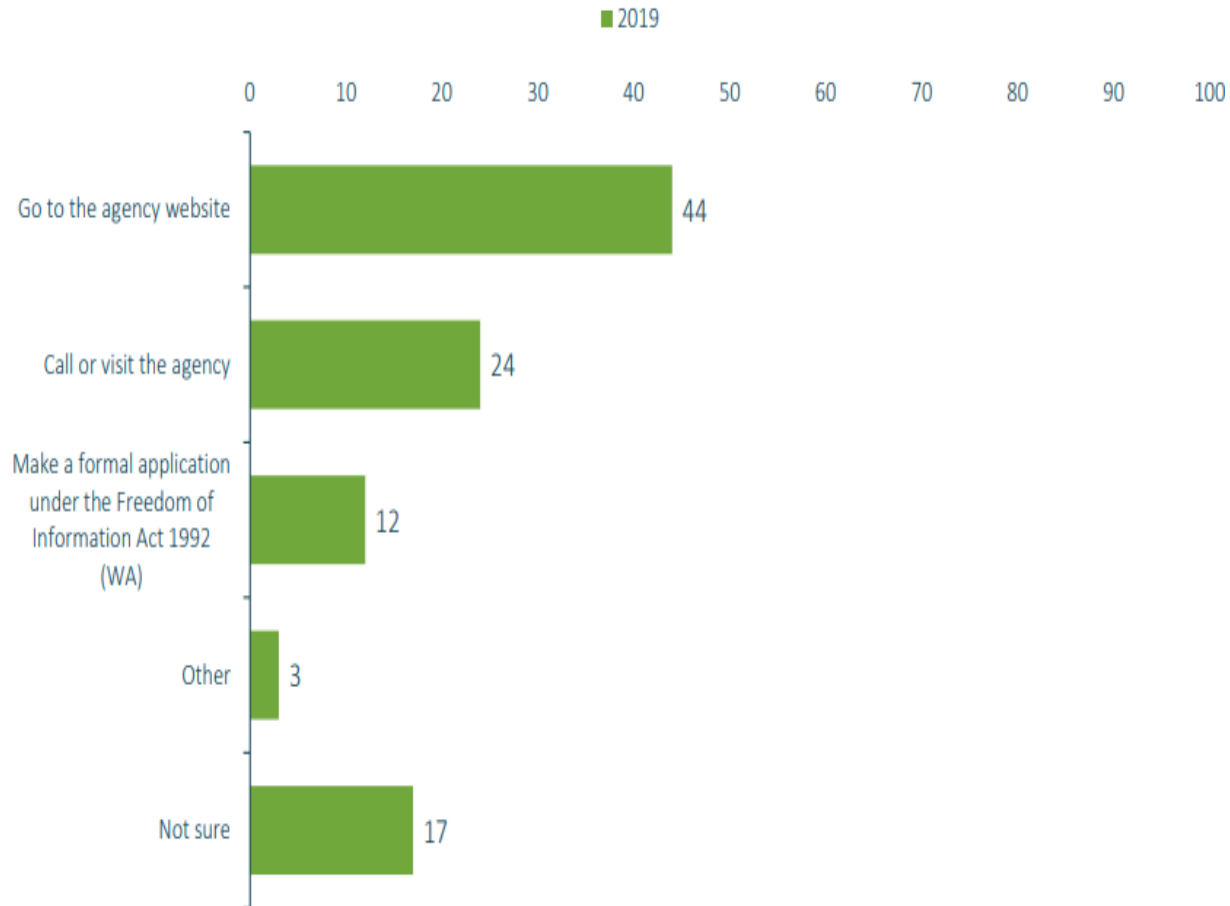
- Attempts were significantly more successful in Western Australia and NSW than in the ACT.



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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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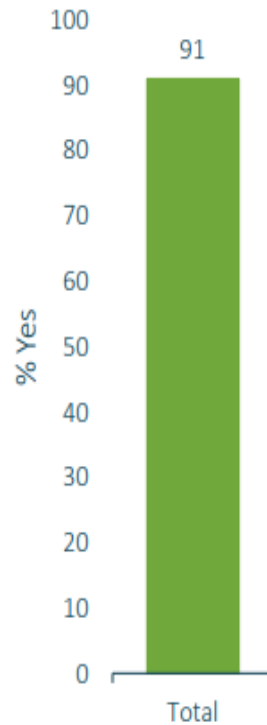
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CAUTION SMALL SAMPLE SIZES

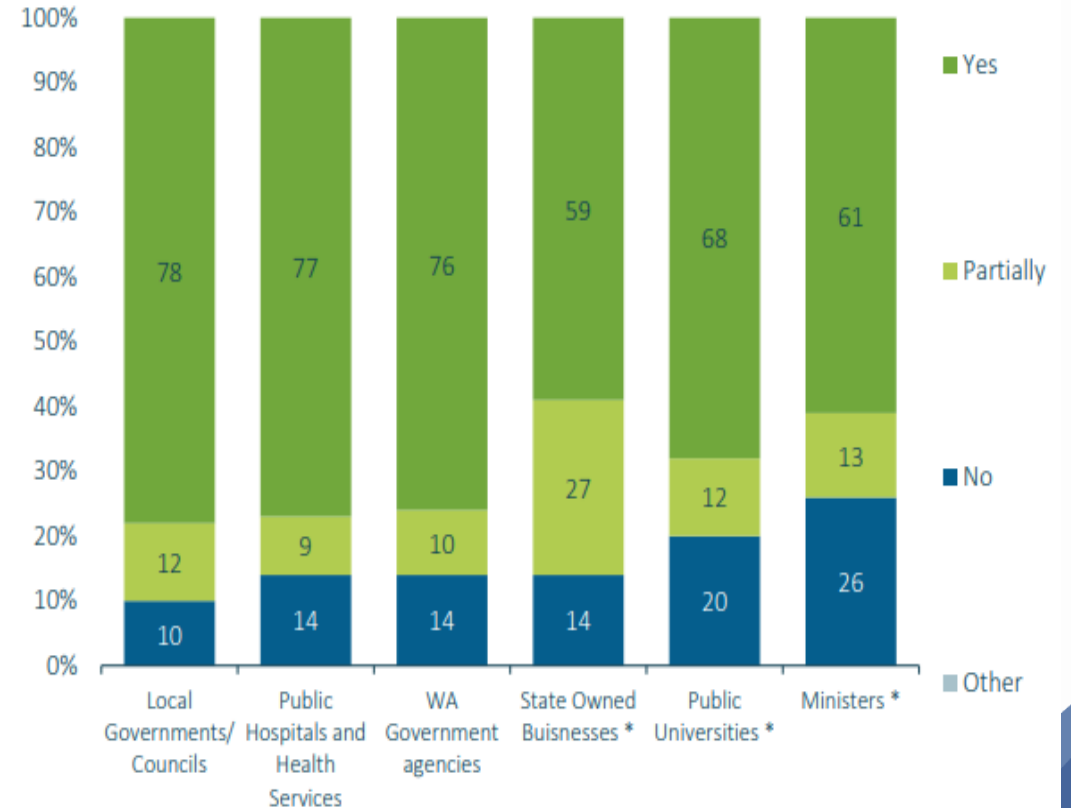
WA: Success in attempting to access information from agencies

- 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 information 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: 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



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Many 2010 WA FOI Study 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).



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

- A 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.

(Summary at <https://www.medianet.com.au/releases/179721/>)



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FOI laws in the digital age and beyond

- Rising levels of e-government internationally
- Accompanying digital transformation, there is a growing demand for transparency around technology and management of data
- Proliferation of digital records is an issue of increasing significance
- In the digital world, open and transparent government involves proactively pushing out useful, non-sensitive data which is both interactive and searchable
- FOI then becomes a last resort for seeking access to the most sensitive documents



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“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

40th Anniversary Lecture Series,
British Section of the International Commission of Jurists
17 December 1997, London



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Any Questions ?



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