

# GIPAA

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# 5 fundamentals

1. General principles
2. The Life Cycle of a Formal Application
3. Making Applications Well
4. Analysing a decision
5. Review Options

# General Principles

- don't ask, don't get
- make it easier to say 'yes' than 'no': s 5
- it's all a balancing act - max info, min fuss
- read the Act, use the Act

# The Fundamental Equation

IF (s 5 + PICIFOD) > PICAD  
then

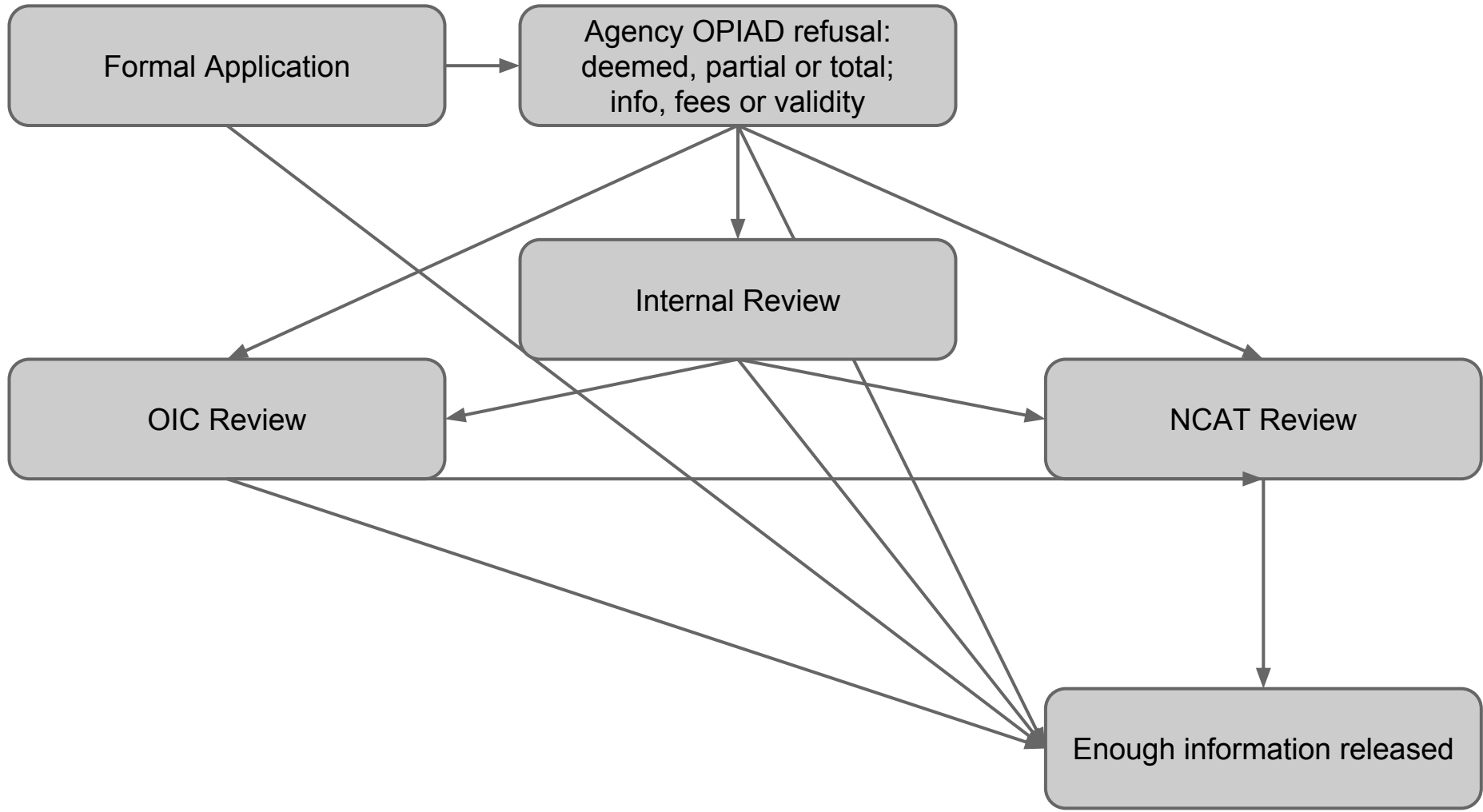
You get what you asked for

# what does Formal mean?

- per s 41:
  - in writing
  - indicate that it is made under the Act
  - fee paid
  - postal address
  - gives what is 'reasonably necessary' to identify the govt info
- it does not mean a specific form

# what does it achieve?

- engages most of the Act
- time frames become binding
- statutory review is available



Formal Application

Agency OPIAD refusal:  
deemed, partial or total;  
info, fees or validity

Internal Review

OIC Review

NCAT Review

Enough information released

# Things to avoid in your application

- unnecessary fees
- delays
- transfers
- failure
- annoying the staff



# Unnecessary fees - Pt 4, Div 5

- not just a question of concession status
- 20hrs free - personal info only (s 67)
- financial hardship
- special public benefit - consider open access info instead (s 6, s 23)

# Timeframes (aka delays)

- is it valid? - 5 days
- decision - 20 days + 10 for consultation + 10 for archives (to a maximum of 35)
- extensions by consent
- agencies can make decisions out of time
- DIARISE

# Transfers

- where an agency passes the application to a different agency (not consultation)
- they are usually your fault
- they can be avoided, with a bit of research

# Failure

- failure is asking incorrectly
- failure IS NOT being denied
- failure IS NOT being told it doesn't exist

# Things to include in your application

- a clear schedule of requested information
- s 42 - Inclusion of additional information in applications
  - Requesting that problematic information be separated from the bulk of the application;
  - Claiming it is 'open access information' and should be made available free of charge to the applicant; (s 6, s 18)
  - Anticipating public interest factors (if you really think you can get it);
  - Any third party authorisations to release information that have already been obtained by the applicant;
- s 72 - Forms of access: be specific.

# When you get the decision

- expect a decision from a template
- scrutinise the decision as well as the docs
- did they give you what you asked for?
- incomplete? mistakes?
- do the refusals properly rely on the s 14 Table?

# Do you really want to review?

- redactions
- supplementary decisions
- are you going to subpoena?
- where would you pick?
  - internal review
  - OIC
  - NCAT

# Internal Reviews - key features

- 20 days to request (but see s 83(2))
- no fee for deemed refusals
- 15 days to decide + 10 for new consultation
  - only review option with a timeframe
- no new processing fees



# Tribunal tips

- 40 days, but you can seek leave
- ask for a fee waiver
- hearing de novo
- know your goals
- hearing on the papers
- in camera evidence

# cases regularly relevant to CLCs

*Hurst v Wagga Wagga City Council* [2011] NSWADT 307 - public interest test - conduct, effectiveness or integrity of any audit, test or investigation - false or unsubstantiated allegations about a person

*Flack v Commissioner of Police, New South Wales Police* [2011] NSWADT 286 - public interest test - personal information - witness statements for court proceedings

*Richards v Commissioner, Department of Corrective Services* [2011] NSWADT 98 - personal information - reveal - public interest test

*APD v Commissioner of Police, NSW Police Force* [2012] NSWADT 42 - disclosure of personal information - public interest test - alleged assailant - personal characteristics of the applicant - intention to commence proceedings did not work against applicant there

*Camilleri v Commissioner of Police, NSW Police Force* [2012] NSWADTAP 19 - public interest test - expectation of Police intervention - implied confidentiality - 000 call