
IPOLA GUIDELINE

Applying the legislation – Information Privacy Act 2009

Who does the IP Act apply to

This guide does not reflect the current law.

It highlights important changes to the *Information Privacy Act 2009*.

This guide does not constitute legal advice and is general in nature only. Additional factors may be relevant in specific circumstances. For detailed guidance, legal advice should be sought.

1.0 Introduction

The *Information Privacy Act 2009* (Qld) (**IP Act**) provides for the fair collection and handling of personal information by the Queensland public sector. The IP Act includes the Queensland Privacy Principles (**QPPs**), which regulate the collection, management, use and disclosure of personal information, and provides for mandatory data breach notification.

2.0 Agencies under the IP Act

The IP Act applies to agencies. Section 18 provides that an agency is a Minister, a department, a local government, and a public authority.

If a body is established to help an agency, or perform functions connected with an agency, then it is considered to be part of that agency and not an agency in its own right. These bodies can include boards, councils, committees and subcommittees.

Agency does not include the entities listed in schedule 2 of the IP Act, which are either entirely excluded from the IP Act,¹ or excluded for specific functions². These include the Legislative Assembly, commissions of inquiry, Government Owned Corporations, and courts and tribunals in relation to their judicial or quasi-judicial functions.

¹ Schedule 2, Part 1.

² Schedule 2, Part 2.

3.0 Ministers

Queensland Ministers are appointed by the Governor on the advice of the Premier. In the IP Act, 'Minister' includes Assistant Ministers.³

Under the IP Act, *agency* includes a Minister, however section 20 limits this to acts done or practices engaged in by the Minister in their capacity as a Minister in relation to the affairs of an agency they administer.

Additionally, under section 38, an agency does not contravene the QPPs when it gives personal information to a Minister to inform the Minister about matters relevant to the Minister's responsibilities in relation to the agency.

4.0 Departments and local governments

Departments are declared under the *Public Sector Act 2002 (Qld)*. Local governments are:

- the Brisbane City Council established under the *City of Brisbane Act 2010 (Qld)*
- a local government or joint local government established under the *Local Government Act 2009 (Qld)*, and
- the Wide Bay Water Corporation.⁴

5.0 Public authorities

Section 21 lists the kinds of public sector entities which are public authorities, and includes entities declared by regulation to be public authorities. If an entity is declared to be a public authority, the IP Act only applies to the public functions it has been given under an Act.

Entities which are public authorities include:

- entities established for a public purpose by an Act
- entities established by government under an Act for a public purpose (whether or not the public purpose is stated in the Act)
- an entity created by the Governor in Council or a Minister
- another entity declared by regulation to be a public authority as set out in section 21(1)(c)
- a person holding an office established under an Act; and
- a person holding an appointment made by the Governor in Council or Minister otherwise than under an Act and declared by regulation to be a public authority.

5.1 Established by an Act

The phrase 'established by an Act' means that the Act in question needs to have *directly* provided for the entity's establishment.⁵

³ Schedule 5.

⁴ Section 18(3)(c) of the IP Act.

⁵ [English and Queensland Law Society Inc. \(1995\) 2 QAR 714.](#)



5.2 Established by government under an Act

The *Acts Interpretation Act 1954* (Qld) defines *under* for an Act or a provision of an Act to include by, for the purposes of, in accordance with, and within the meaning of.

It will often be necessary to consider the history of the entity to determine whether it was established by government or established by others (for example, a group of concerned citizens). 'Government' includes an agency, so an entity established by a department is established by government.

An entity can be established under more than one Act.⁶

5.3 A public purpose

The meaning of 'public purpose' is considered to be 'relatively straightforward'⁷ and means a purpose that is for the benefit of members of the community.⁸ The public purpose does not need to be specified in the establishing Act.⁹

When determining if an entity is established for a public purpose, it is relevant to consider the primary functions of the entity. An entity is likely established for a public purpose if:¹⁰

- it undertakes works that are ordinarily a government responsibility
- it involves a significant use of public monies; and
- the projects undertaken are intended to be for public use and to benefit members of the community.¹¹

6.0 Contractors

Chapter 2, part 3 of the IP Act requires agencies to take reasonable steps to bind contracted service providers to comply with the QPPs, the overseas disclosure rule in section 33, and any QPP code issued under section 41, as if the contracted service provider were an agency.

The obligation in chapter 2, part 3 does not apply to all contracts or contractors, only those who meet the criteria in sections 34 and 35 of the IP Act. However, if an agency should have taken reasonable steps to bind a contractor and didn't, the agency will be responsible if the contractor breaches privacy.

Refer to ***Binding contractors to the IP Act*** (guideline under development) for more information.

⁶ *Davis v City North Infrastructure Pty Ltd* [2011] QSC 285, [32].

⁷ Considering section 9(1)(a) of the repealed FOI Act in *English v Queensland Law Society Incorporated* (1995) 2 QAR 714 at paragraph 74.

⁸ *McPhillimy and Gold Coast Motor Events Co.* (1996) 3 QAR 376 (**McPhillimy**) at paragraph 22.

⁹ *Price and Local Government Association of Queensland Inc.* (2000) 5 QAR 417 at paragraph 19.

¹⁰ *Davis and City North Infrastructure Pty Ltd* (Unreported, Queensland Information Commissioner, 31 March 2010) at paragraphs 127-128.

¹¹ *McPhillimy* at paragraph 22. This view was endorsed by the Information Commissioner in *Davis and City North Infrastructure* (Unreported, Queensland Information Commissioner, 31 March 2010).



For additional IPOLA assistance, please contact the IPOLA team by email IPOLA.Project@oic.qld.gov.au

For information and assistance on current legislation, please refer to the OIC's guidelines, or contact the Enquiries Service on 07 3234 7373 or by email enquiries@oic.qld.gov.au

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