

IPOLA RESOURCE

Information Privacy Act 2009

CONTRACTED SERVICE PROVIDER CHECKLIST

This resource does not reflect the current law.

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

This resource 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.

This checklist will support agencies to update their knowledge to determine when they may be required to take reasonable steps to bind contracted service providers (CSP) to comply with the Queensland Privacy Principles (QPPs). Depending on the specific functions of an agency, binding CSPs may be critical in achieving agency compliance with the QPPs.

For detailed information regarding contracted service providers please read [Guideline – Binding Contractors to the IP Act](#) and [Guideline – Data breaches and contracted service providers](#).

Is the contract or other agreement a service arrangement for the purposes of the IP Act¹?

Section 34(2)(b)	Yes	No
Is the contracted service provider providing a service directly to the agency?		
Is the contracted service provider providing a service to someone else on behalf of the agency?		

If you answered **no to both** questions, the requirements for chapter 2 part 3 do not apply.

If you answered **yes to either** of these questions, continue to the next question.

¹ Section 34 IP Act.

Section 34(2)(a)	Yes	No
Is the service for the purposes of performing one of more of the agency's functions?		

If you answered **no** to this question, the requirements for chapter 2 part 3 do not apply.

If you answered **yes** to the question, continue to the next question.

Section 34(2)(c)	Yes	No
Is the contracted service provider acting in the capacity of an employee of the agency (whether temporary, casual, or some other arrangement) in providing the services?		

If you answered **yes** to this question, the requirements for chapter 2 part 3 do not apply.

If you answered **no** to the question, continue to the next question.

Is the contracting agency required to take all reasonable steps to bind the contracted service provider to the Queensland Privacy Principles (QPPs)²?

Section 35(3)	Yes	No
Will the contracting agency provide funding to the contracted service provider?		
Will the contracted service provider collect any personal information <u>for</u> the agency?		
Will the contracted service provider receive any personal information <u>from</u> the agency for the purpose of discharging its obligations?		
Will the contracted service provider be required to give any personal information it collects to the agency while discharging its obligations?		

If you answered **no to all** the questions, the agency is not required to take all reasonable steps to bind the contracted service provider to the Queensland Privacy Principles – parts 1, 2 and section 41.

If you answered **yes** to any of the questions, continue to the next question.

² Parts 1, 2 and section 41 IP Act.

Section 35(2)	Yes	No
Will the services being provided under the arrangement involve the contracted service provider dealing ³ with personal information in any way for the agency?		
Will the contracted service provider collect any personal information <u>for</u> the agency?		
Will the contracted service provider receive any personal information <u>from</u> the agency for the purpose of discharging its obligations?		

If you answered **yes to any** of the questions, the agency is required under section 35(1) of the IP Act to take all reasonable steps to bind the contracted service provider to the Queensland Privacy Principles.

Additional information - section 36 and section 37

Section 36 refers to the requirements for bound contracted service providers to comply with part 1, part 2 and section 41 in relation to the discharge of their obligations under the arrangement (contract), the requirement to continue to apply the bound contracted service in relation to personal information it continues to hold **after** the service arrangements have ended, compliance to the QPP's and their enforcement under the IP Act as if it were any agency

Section 37 refers to scenario where a contracted service provider is not a bound contracted service provider because the agency did not take the steps required under section 35 to bind the provider. The obligations under the IP Act will now fall to the agency.

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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³ Dealing with personal information includes receiving, collecting, storing, or processing personal information and includes situations where the service provider is simply holding the information.