
IPOLA GUIDELINE

Applying the legislation – Information Privacy Act 2009

Key privacy concepts – practicable and impracticable

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 Overview

The Key Privacy Concepts guidelines explain important words and phrases used in the *Information Privacy Act 2009* (Qld) (**IP Act**). They are intended to assist in the interpretation and application of the Queensland Privacy Principles (QPPs).

2.0 QPPs which refer to 'practicable' / 'not practicable'

The word 'practicable' and the converse phrase 'not practicable' are used throughout the QPPs and certain other provisions of the IP Act, for example:

- QPP 1 (1.4(g))
- QPP 4 (4.3)
- QPP 5 (5.1)
- QPP 5 (5.2(j))
- QPP 6 (6.2(g(iii)))
- Section 33 (d)(iii) (disclosure of personal information outside Australia).

These concepts also appear frequently throughout Chapter 3A of the IP Act, the Mandatory Notification of Data Breach scheme.

3.0 QPPs which refer to 'impracticable'

The word 'impracticable' is also used throughout the principles, in particular:

- QPP 2 (2.2(b))
- QPP 3 (3.6(b))
- The 'permitted general situations' and 'permitted health situations' prescribed in schedule 4 of the IP Act.

4.0 Meaning of 'practicable'

The Macquarie Dictionary defines 'practicable' as 'capable of being done' especially with the available means or with reason or prudence i.e. it is feasible to be done. Whether something is practicable or not will be determined having regard to all the circumstances.

It is not sufficient to consider something not practicable simply because it is inconvenient, difficult, or will increase costs. While these factors, and the severity of them can be relevant when determining if something is or is not practicable, the fact that a practice is made slightly more onerous is not enough.

5.0 When would something be 'impracticable'?

Some of the factors that could make an action impracticable are where meeting the standard or principles would:

- increase costs to an unworkable extent, such that a project or action in the public interest could not be undertaken – if the project or action will primarily or only benefit an agency, this may not be a valid consideration
- render a legitimate and lawful action pointless, such as provision of a collection notice when collecting information covertly as part of a law enforcement investigation
- make a legitimate action in the public interest extremely difficult or impossible
- endanger the health or safety of an individual, or an investigation into a breach of the law
- be contrary to the public interest.

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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