

Crown Law
QUEENSLAND

Recent amendments to the *Right to Information Act 2009* and the *Information Privacy Act 2009*

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Information Privacy and Other Legislation Amendment Act 2023 (IPOLA)

- Date of assent 4 December 2023
- Expected to commence 1 July 2025.

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Key changes

- Defining 'personal information'
- Single set of Queensland Privacy Principles (QPP)
- Mandatory Data Breach Notification (MDBN) Scheme
- Enhanced powers of the Information Commissioner
- Improvements to access and amendment applications
- Time limit to request referral of privacy complaint to QCAT
- Amend the Criminal Code offence in s 408E
- Proactive release of Cabinet documents.

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Defining 'personal information'

- Current s 12:
 - Personal information is information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

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Defining 'personal information'

- Operation Impala, A report on misuse of confidential information in the Queensland public sector, recommendation 16
- IPOLA, s 12 – replaces ss 12 to 14, IP Act
- New s 12:
 - Personal information means information or an opinion about an identified individual or an individual who is reasonably identifiable from the information or opinion—
 - (a) whether the information or opinion is true or not; and
 - (b) whether the information or opinion is recorded in a material form or not.
- Section 13 (Meaning of a document of an agency for ch 3) and s 14 (Meaning of a document of a Minister for ch 3) replaced with a new s 13 (Meaning of held or holds in relation to personal information).

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Queensland Privacy Principles

- Current: two sets of privacy principles –
 - Information Privacy Principles (IPPs)
 - National Privacy Principles (NPPs)
- New schedule 3 of the IP Act: single set of QPPs
- Review of the *Right to Information Act 2009* (RTI) and *Information Privacy Act 2009* (IP), recommendation 13
- Operation Impala, A report on misuse of confidential information in the Queensland public sector, recommendation 16.

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Queensland Privacy Principles

- QPP 1 – Open and transparent management of personal information
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- QPP 2 – Anonymity and pseudonymity
- QPP 3 – Collection of solicited personal information
- QPP 4 – Dealing with unsolicited personal information
- QPP 5 – Notification of the collection of personal information
- QPP 6 – Use or disclosure of personal information
- QPP 10 – Quality of personal information
- QPP 11 – Security of personal information
- QPP 12 – Access to personal information
- QPP 13 – Correction of personal information
- Useful summary of the QPPs – *Report No. 40, 57th Parliament – Information Privacy and Other Legislation Bill 2023*, tabled on 24 November 2024
- Anticipated commencement 1 July 2025.

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QPP Codes

- New chapter 3 of the IP Act
- A QPP code is a written code of practice about information privacy, approved by regulation, that states how one or more of the QPPs are to be applied or complied with, and the agencies that are bound by the code, or a way of determining the agencies that are bound by the code: s 40(1)
- A QPP code may also impose additional requirements to those imposed by a QPP, to the extent the additional requirements are not inconsistent with a QPP: s 40(2)
- An agency must not do an act, or engage in a practice, that contravenes a QPP code: s 41
- The information commissioner or an agency may prepare a draft QPP code or draft amendment of a QPP code and submit the draft to the Minister for endorsement: s 42.

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Mandatory Data Breach Notification (MDBN) Scheme

- New chapter 3A of the IP Act
- Recommendation 13 of the Review Report, Recommendation 12 of the Impala Report, and Recommendation 10 of the Coaldrake Report
- Delayed commencement for local government until 1 July 2026.

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MDBN Scheme

- Obligations of agencies in relation to data breaches: s 48
 - immediately take all reasonable steps to contain the data breach
 - assess whether it is an 'eligible data breach' (generally, within 30 days)
 - take all reasonable steps to mitigate the harm caused by the data breach
 - notify other agencies about data breaches that may affect them.
- Meaning of eligible data breach: s 47
 - likely to result in serious harm to the individual to whom the information relates
- Extension of period for assessment by agency: s 49
- Notifying eligible data breaches: ss 51 and 53.

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MDBN Scheme

- Exemptions
 - investigations and proceedings: s 55
 - eligible data breach of more than 1 agency: s 56
 - agency has taken remedial action: s 57
 - inconsistency with confidentiality provision: s 58
 - serious risk of harm to health or safety: s 59
 - compromise to cybersecurity: s 60
- Register of eligible data breaches: s 72
- Data breach policy: s 73.

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MDBN Scheme

- Enhanced powers of the Information Commissioner
 - direction to give statement and make recommendations: s 61
 - authorised officers: Part 5, Division 1
 - general power to enter places occupied by agency: s 67.

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Improvements to access and amendment applications

- Single right of access to documents and amendment of personal information under RTI Act
- Remove the right of internal review and external review to the Information Commissioner of a decision by an entity that an application is outside the scope of the Act, because the Act does not apply to an entity in relation to an entity's judicial or quasi-judicial functions.
 - *Carmody v Information Commissioner & Ors* [2018] QCAT 14

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Referral of privacy complaints to QCAT under the IP Act

- New time limit of 20 business days: s 175A
- *Saunders v Department of Housing and Public Works* [2022] QCAT 159.

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Amend the Criminal Code offence in s 408E

- Section 408E – Computer hacking and misuse
 - (1) A person who uses a restricted computer without the consent of the computer's controller commits a ~~misdemeanour~~ ~~an offence~~.
 - Maximum penalty—~~3~~ 2 years imprisonment.
- Operation Impala, A report on misuse of confidential information in the Queensland public sector, recommendation 10
- *ZIL v Queensland Police Service* [2019] QCAT 79.

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Proactive release of Cabinet documents

- *Let the sunshine in-Review of culture and accountability in the Queensland public sector* (the Coaldrake Report), recommendation 2
- See <https://cabinet.qld.gov.au/cabinet.aspx> and chapter 7 of the Cabinet Handbook
- Amendments to the RTI Act: ss 18A, 22A and new sub-s (3A) in sch 3, s 2
- Commenced on 1 March 2024.

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Questions?

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