

INFORMATION PRIVACY ACT 2009

OBLIGATIONS OF CONTRACTED SERVICE PROVIDERS

Background and purpose

The Department of Communities, Child Safety and Disability Services (**the department**) engages service providers to assist with its functions. For the purposes of the *Information Privacy Act 2009 (IP Act)*, these entities are described as 'contracted service providers' (**CSPs**).

In the course of fulfilling contracts, CSPs often handle personal information of individuals. The IP Act applies to this information. The standard terms of the department's contracts require CSPs to comply with relevant provisions of the IP Act.

Where a CSP is required to comply with the IP Act, the CSP is defined as a 'bound contracted service provider'.

If a bound CSP fails to comply with the standard terms, not only will the CSP be in breach of the contract, but will be liable under the IP Act for any breach of privacy that it commits.

Sections 34-37 of the IP Act contain the provisions of relevance to CSPs.

The purpose of this fact sheet is to indicate the nature of the obligations of a bound CSP.

This fact sheet does not include specific guidance as to how a bound CSP should perform its obligations because compliance is a matter for each CSP. **Given the statutory liability that falls on CSPs under the IP Act, the department is not able to provide specific advice to a CSP on its privacy obligations.**

General guidance on the IP Act may be found on the website of the Office of the Information Commissioner (**OIC**) <http://www.oic.qld.gov.au>. However, if a CSP is unsure as to its obligations, the CSP should obtain independent legal advice.

The overview below is intended only to alert CSPs who are unfamiliar with the IP Act to likely issues. The department assumes that each CSP will develop its own full privacy policy and practice with reference to the IP Act.

Obligations under *Information Privacy Act 2009*

A bound CSP is required by the IP Act to comply with the Information Privacy Principles (**IPPs**) set out in schedule 3 of the Act¹.

Additionally, a bound CSP is required to comply with section 33 of the IP Act, which prohibits the transfer of personal information outside Australia, except in limited circumstances. CSPs should note that a transfer of personal information outside Australia will occur if its computer systems involve personal information being transferred to an internet service provider based overseas.

¹ *If the CSP is a 'health agency' [as defined in the IP Act], the CSP will be obliged alternatively to comply with the National Privacy Principles (NPPs) set out in schedule 4 of the Act. However, this department does not normally engage CSPs as health agencies. In the circumstances, this fact sheet does not discuss the NPPs.*

If a person alleges that a bound CSP has breached an IPP in respect of their personal information, it is the CSP's responsibility to deal with the complaint.

If the complainant is dissatisfied with the CSP's response, the complainant may take the complaint to the OIC. The OIC will attempt to resolve the matter by mediation. If that process fails, the matter may be referred to the Queensland Civil and Administrative Tribunal (**QCAT**) for decision. QCAT may make a variety of orders, including an award of compensation of up to \$100,000 per breach against the CSP.

Additional obligations under standard terms of contract

Aside from requiring each CSP to comply with the IPPs and section 33 of the IP Act, the standard terms of the department's contracts require the CSP to notify the department of any breach of the privacy requirements under the IP Act or contract.

A breach of privacy may involve the privacy of a single individual. However, a general loss of data may occur. For example, the CSP's computer system could be hacked, or a laptop could be stolen. In any event, the department will want to ensure any potential harm is avoided or minimised. For this reason, the department regards notification of any breach as highly important.

Notification of any breach does not mean the CSP is absolved of responsibility for taking its own remedial action.

Obligations under other legislation

The IP Act is subject to other legislation that may specifically restrict the disclosure of information. Of likely relevance to CSPs engaged by the department are the confidentiality provisions in the *Child Protection Act 1999* and the *Disability Services Act 2006*. The department expects each CSP to be aware of any relevant legislation.

A CSP may in its own right be subject to the Commonwealth *Privacy Act 1988*. However, that Act does not override the Queensland IP Act nor the terms of any State contract (see sections 3 and 7B of the *Privacy Act 1988*).

'Personal information'

The IPPs (summarised below) govern the collection, use and disclosure of all personal information, and require that it be kept secure.

As a fundamental requirement, CSP staff should be able to recognise what constitutes 'personal information'. 'Personal information' is defined in section 12 of the IP Act:

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.

'Individual' means a natural person as opposed to, for example, a company or corporation.

Personal information may include:

- name, date and place of birth
- race or ethnicity
- financial/banking details
- health/diagnostic information

- employment details
- photograph (including images captured on CCTV)
- signature
- uniquely identifying number – e.g. driver license number, tax file number, employee number
- details of services requested or obtained by a person
- unique physical characteristics – e.g. tattoo, birthmark

Personal information may reveal a person's identity even if their name is not mentioned. Other information may enable their identity to be deduced.

A CSP's privacy obligations remain as long as it has possession or control over the personal information.

Whenever a CSP staff member proposes to collect or deal with personal information in any way, the staff member must consider whether what they propose is in accordance with the IP Act.

The Information Privacy Principles

The IPPs set out how personal information is to be collected, handled and accessed. The IP Act should be consulted for the full requirements, but in summary the 11 IPPs provide as follows:

IPP 1 – Collection of personal information must be lawful, fair, and necessary for the agency's functions.

IPP 2 – Where an agency requests an individual to provide personal information, the agency must advise the individual of the purpose of the collection, any laws which give the agency authority to collect the information, and to whom the agency usually discloses or gives the information.

NOTE: The advice required by IPP2 may be given orally or in writing. It is commonly known as a 'collection notice' or 'privacy notice'. CSPs may wish to provide staff who collect personal information orally with a suitable script that the staff may use. If the collection is in writing, a written notice is usually more appropriate.

IPP3 – Personal information that is collected must be relevant, up-to-date and complete. The collection must not be an unreasonable intrusion into the personal affairs of the individual.

IPP 4 – The agency must ensure personal information is protected against loss, unauthorised access or other misuse. The safeguards must be *'adequate to provide the level of protections that can reasonably be expected to be provided'*.

IPP 5 – The agency must ensure individuals can find out what personal information is held about themselves.

IPP 6 – The agency must give the individual access to their personal information unless a law allows for refusal².

IPP 7 – An individual has the right to require correction or amendment of their personal information, or alternatively the agency must attach a statement of correction.

IPP 8 – Before using personal information, an agency must take reasonable steps to check the information is accurate, complete and up to date.

IPP 9 – An agency must only use personal information for its original intended purpose.

IPP10 – An agency may only use³ personal information for its original intended purpose, subject to the listed exceptions.

IPP11 – An agency may only disclose³ personal information in the listed circumstances.

Policy and practice

CSP staff who are not familiar with the IP Act may find it difficult to apply the IPPs in practice. Issues commonly encountered include:

- The nature and amount of personal information that needs to be collected for the CSPs functions. The IP Act prohibits the collection of excess information (IPP1)
- Preparation and delivery of collection or privacy notices (IPP2)
- Steps required to keep personal information secure to the standard required (IPP4). Suitable practice and policy will likely be required for:
 - physical security of files and computers within office
 - prevention of unauthorised access or inspection (e.g. clean desk policy, individual staff passwords etc.)
 - rules as to removal of files, laptops etc. from office and keeping them safe from loss or theft
 - interviews being conducted in private
- How to keep personal information relevant, accurate, complete and up to date (IPPs 3 and 8)
- Decisions on requests for access and amendment of personal information (IPPs 5-7)
- Decisions whether particular personal information may lawfully be disclosed to, or shared with, a family member of a client or another agency (IPPs 8-11).

The department would suggest that each CSP develops specific privacy policy and practice to assist staff by reference to the categories of personal information that the CSP may handle. To the same end, each CSP may find it useful to train and assign a specific staff member to deal with issues relating to privacy.

The Office of the Information Commissioner provides information, advice and training on meeting privacy obligations.

² For example, the IP Act provides for information that is exempt from disclosure or contrary to public interest and grounds for refusal. (refer to Chapter 3 of the IP Act, and the *Right to Information Act 2009*, schedules 1-4.)

³ Section 23 of the IP Act defines 'use' and 'disclosure' for purposes of IPPs 10 and 11.