

CGGLAW

A NEW ERA IN QUEENSLAND FOR PRIVACY PROTECTION AND ACCESS TO INFORMATION

On 1 July, the *Right to Information Act 2009 (RTI Act)* and *Information Privacy Act (IP Act)* came into force in Queensland. The RTI Act replaces the *Freedom of Information Act 1992*. The IP Act is the first statute-based privacy regime in Queensland - formerly, Government agencies were given guidance only in an administrative privacy policy and were not statutorily bound.

PRIVACY - WHO IS COVERED BY THE IP ACT?

State government agencies, including departments and statutory authorities are bound to comply from 1 July 2009. Local governments and tertiary institutions also need to gear up for compliance because they only have until 1 July 2010 to do so.

Importantly, the IP Act obliges state government agencies to ensure that any agreements with contracted service providers for the delivery of services on the behalf of the agency, and which involve the collection or transfer of personal information, adequately bind the contractor to observe the same statutory obligations as the contracting agency - to 'stand in the shoes' of the agency for the purposes of IP Act compliance.

Further, and perhaps most importantly for this alert, contractors under such agreements will be responsible for handling personal information supplied or obtained under state government service contracts, and are accountable under the new statutory privacy complaints process contained in the IP Act.

WHAT ARE SOME OF THE CONSEQUENCES OF NON-COMPLIANCE?

The new Queensland Civil and Administrative Tribunal will have jurisdiction to hear privacy complaints, with the power to order various remedies, including compensation for privacy breaches of up to \$100,000.

From a relationship perspective, any contractor providing services to government agencies who fail to comply might see their relationship damaged, or see service contracts affected or even terminated or not renewed, if it jeopardizes the agency's compliance record.

THE NEW 'FOI' SCHEME

The RTI Act is designed to shift Queensland government agencies from a 'pull' model of information release to a 'push' model, where more Government-held information is proactively disclosed and published on a routine basis, without the need for a formal statutory request.

Queensland Government agencies - departments, local governments, public authorities and Government Owned Corporations - are now required to develop and publish 'Publication Schemes', setting out publicly-available information and how that information can be accessed.

A statutory information request process, similar to the previous FOI process, is also a feature of the RTI Act. Anyone may make an application to a Queensland Government agency for access to documents held by the agency.

The way in which decisions on access are handled, however, is significantly different to the FOI process, with an increased emphasis on access and information release. The RTI Act makes it clear, for example, that RTI access applications are to be determined with a 'pro-disclosure bias'. The grounds on which documents may be withheld under the RTI Act are arguably narrower than the grounds for non-disclosure under the repealed FOI Act.

RTI ACT - CONSEQUENCES FOR BUSINESS

Anyone supplying information to State government agencies - for example, responding to local or state government invitations to tender, for regulatory or licensing purposes, or for the purposes of performing government contracts - should be aware that, generally, such information can be the subject of a statutory RTI request, with the potential for release of this information. This means that at the very least contractors dealing with government agencies should more closely scrutinize the commercially sensitive or confidential nature of any information supplied, and take active steps to review how that information may be the subject of a statutory RTI request.

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