

Right to Information and Other Legislation Amendment Regulation 2022

Explanatory notes for SL 2022 No. 184

made under the

Right to Information Act 2009
Information Privacy Act 2009

General Outline

Short Title

Right to Information and Other Legislation Amendment Regulation 2022.

Authorising law

Section 193 of the *Right to Information Act 2009* and section 201 of the *Information Privacy Act 2009*.

Policy objectives and the reasons for them

The *Right to Information Act 2009* (RTI Act) provides a right to apply for access to documents of agencies and ministers. Chapter 3 of the *Information Privacy Act 2009* (IP Act) provides a right to apply for access to documents of agencies and Ministers to the extent they contain the individual's personal information, and a right to apply to amend personal information in documents held by agencies and Ministers.

Under section 24 of the *Right to Information Act 2009* (RTI Act), a person who wishes to be given access to a document of an agency under the RTI Act may apply to the agency for access to the document.

Under section 43 of the *Information Privacy Act 2009* (IP Act), a person who wishes to be given access to a document of an agency, to the extent it contains the individual's personal information, may apply to the agency under the IP Act for access to the document.

Under section 44 of the IP Act, a person who has had access to a document of an agency or a Minister may apply to the agency or Minister under the IP Act for amendment to the individual's personal information contained in the document that the individual claims is inaccurate, incomplete, out of date or misleading.

Section 30 of the RTI Act and section 50 of the IP Act require that applications made to an agency be dealt with by the agency's 'principal officer.'

Courts and tribunals are 'agencies' under the RTI Act, except in relation to their judicial and quasi-judicial functions (in which case they are excluded from the RTI Act in relation to those functions under section 17 and schedule 2, part 2). The IP Act provides that for chapter 3, 'agency' means anything that is an agency under the RTI Act.

Schedule 5 of the RTI Act and Schedule 5 of the IP Act define 'principal officer' to mean:

- (a) in relation to a department—the chief executive of the department; or
- (b) in relation to a local government—the chief executive officer (however described) of the local government; or
- (c) in relation to a government owned corporation—the chief executive officer (however described) of the government owned corporation; or
- (d) in relation to a subsidiary of a government owned corporation—the principal officer (however described) of the subsidiary; or
- (e) in relation to a public authority for which a regulation declares an office to be the principal office—the holder of the office; or
- (f) in relation to another public authority—
 - (i) if it is an incorporated body that has no members—the person who manages the body's affairs; or
 - (ii) if it is a body (whether or not incorporated) that is constituted by 1 person—the person; or
 - (iii) if it is a body (whether or not incorporated) that is constituted by 2 or more persons—the person who is entitled to preside at a meeting of the body at which the person is present.

The definition of 'principal officer' does not readily lend itself to courts and tribunals. This may lead to uncertainty as to the identity of the principal officer for dealing with applications under the RTI Act and chapter 3 of the IP Act for a court or tribunal.

However, paragraph (e) of the definition enables the making of a regulation to declare a principal office for a public authority.

The objective of the *Right to Information and Other Legislation Amendment Regulation 2022* (Amendment Regulation) is to prescribe principal offices for the Supreme Court, the District Court, a Magistrates Court, the Industrial Court of Queensland, the Land Court, the Mental Health Court, the Childrens Court of Queensland, the Planning and Environment Court, the Coroners Court, an Industrial Magistrates Court, the Queensland Civil and Administrative Tribunal, the Queensland Industrial Relations Commission, the Mental Health Review Tribunal, a development tribunal under the *Planning Act 2016*, a medical assessment tribunal under the *Workers' Compensation and Rehabilitation Act 2003* and the Queensland Independent Remuneration Tribunal.

Achievement of policy objectives

The policy objective is achieved by declaring principal offices for courts and tribunals for the RTI Act and IP Act, schedule 5, definition *principal officer*.

There are no alternative ways of achieving the policy objective.

Consistency with policy objectives of authorising law

The RTI Act requires applications to be dealt with by an agency's principal officer. The RTI Act and IP Act define a 'principal officer' to mean, in relation to a public authority for which a regulation declares an office to be the principal office – the holder of the office.

This allows a regulation to be made to declare a 'principal office' for courts and tribunals. The Amendment Regulation will clarify that the holder of the principal office declared for each court and tribunal referred to in the Amendment Regulation is the person who is to deal with applications under the RTI Act and IP Act.

The Amendment Regulation is consistent with the objectives of the RTI Act and IP Act that the principal officer of an agency is to deal with applications made to the agency. The Amendment Regulation is within scope of schedule 5, definition of *principal officer*.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The benefit of the Amendment Regulation is that it clarifies the 'principal officer' for dealing with applications to courts and tribunals referred to in the Amendment Regulation.

There are no costs associated with the implementation of the Amendment Regulation.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

Consultation has occurred with heads of jurisdiction in the portfolio responsibilities of the Department of Justice and Attorney-General (DJAG) and Departments having responsibility for other courts and tribunals referred to in the Amendment Regulation in relation to the Amendment Regulation.

DJAG has self-assessed the regulatory proposal to be excluded from further analysis under the Regulatory Impact Statement (RIS) system under exclusion category (j) of the *Queensland Government Guide to Better Regulation Regulatory – proposals relating to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services*.