

Information Privacy and Other Legislation Amendment Regulation 2024

Explanatory notes for SL 2024 No. 83

Made under the

Information Privacy Act 2009
Right to Information Act 2009

General Outline

Short title

Information Privacy and Other Legislation Amendment Regulation 2024

Authorising law

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

Policy objectives and the reasons for them

Section 194 of the *Information Privacy Act 2009* (IP Act) and section 185 of the *Right to Information Act 2009* (RTI Act) require the responsible Minister to prepare an annual report on the operation of the IP Act and RTI Act. The report must include particulars of the matters prescribed by the *Information Privacy Regulation 2009* (IP Regulation) and the *Right to Information Regulation 2009* (RTI Regulation).

Section 6 of the IP Regulation and section 8 of the RTI Regulation provide for the matters which must be included in the annual report, including the number of access applications and amendment applications received by each agency or Minister under the IP Act and the number of access applications received by each agency or Minister under the RTI Act.

Section 43 and section 44 of the IP Act and section 24 of the RTI Act provide for the requirements for making access and amendment applications in a compliant form. Applications which do not comply with application requirements are described as being 'non-compliant' or 'not valid'. The IP Act (section 53) and RTI Act (section 33) set out processes which apply where there is noncompliance with application requirements.

Each annual report on the operation of the RTI Act and IP Act includes, for each agency and Minister, the total number of valid (compliant) applications received. Reporting on valid (compliant) applications is consistent with established practice and the *Reporting guidelines: Right to Information and Information Privacy* which are issued by the Department of Justice and Attorney-General (DJAG) to agencies each financial year for the purpose of preparing the annual report. Requiring only valid (compliant) applications

to be counted avoids the risk of double counting (i.e. counting a non-valid application, then counting the application again when a valid application is submitted). Counting total applications (i.e. valid and invalid applications) may also distort annual reporting overall given that only valid (compliant) applications result in an agency decision (e.g. about release or refusal to release documents).

In *Poyton and Department of Education* [2023] QICmr 13 (Poyton), the Right to Information Commissioner applied *Powell & Anor v Queensland University of Technology & Anor* [2017] QCA 200 (Powell) and found that the processing period for an application commences when the application is received, not when a valid application is received.

Annual reporting was not considered in Powell and Poyton as both decisions were confined to the context of calculating timeframes and processing access applications. However, to avoid legal uncertainty about the inadvertent impact that these decisions may have on annual reporting requirements and practice, the *Information Privacy and Other Legislation Amendment Regulation 2024* (Amendment Regulation) provides that agencies and Ministers are only required to report on valid applications.

Achievement of policy objectives

The policy objective is achieved by amending section 8(a) of the RTI Regulation and section 6(a) of the IP Regulation to refer to the number of valid access applications and valid amendment applications. For the IP Regulation, a valid access application is defined as an access application complying with sections 43(2) and (3) of the IP Act and a valid amendment application is defined as an amendment application complying with sections 44(4) and 44(5) of the IP Act. For the RTI Regulation, a valid access application is defined as an application complying with sections 24(2) and (3) of the RTI Act.

There are no alternative ways of achieving the policy objective.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main objects of the RTI Act and IP Act, that is, to ensure the right to access information in the government's possession or control.

The Amendment Regulation clarifies that only valid (compliant) access applications and valid amendment applications received will be required to be reported for the purposes of the RTI Act and IP Act annual reports.

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 reduces potential legal uncertainty about which applications are to be reported on for IP Act and RTI Act annual reports.

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 the Office of the Information Commissioner, and no concerns were raised in relation to the Amendment Regulation.