

Information Commissioner's Update

Presentation to the Practitioners' Network Forum

17 August 2022

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Right to Know Week NSW 2022

26 Sep – 2 Oct 2022

Artificial Intelligence, e-Governance & Access to Information

Next steps in NSW digital government



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www.ipc.nsw.gov.au/RTK2022



Right to Know Week NSW 2022

- Right to Know Week NSW 2022 will take place on 26 September – 2 October 2022
- The theme is **Artificial Intelligence, e-Governance and Access to Information: Next steps in NSW digital government**
- The RTK NSW 2022 webpage launched earlier this week and additional information will be added over the coming weeks
- The RTK Champion program has also launched and agencies can sign up via the IPC website or via www.ipc.nsw.gov.au/RTK-2021-Champion-Registration



Joint statement by Australian Information Access Commissioners and Privacy Authorities

Principles for nationally consistent approaches to accessing Stolen Generations records

- Information Access and Privacy regulators from across Australia issued a joint statement to mark National Sorry Day on 26 May
- The statement recognised the important role of historical records in truth telling and sharing history, intergenerational healing, redress and reparations for Stolen Generation survivors and their families
- It acknowledged that the Healing Foundation's *Principles for nationally consistent approaches to accessing Stolen Generations records* will inform ongoing discussions about greater national consistency and support implementation of recommendations about access to records from the *Bringing Them Home* (1997) and *Make Healing Happen: It's time to act* (2021) reports

Significant Regulatory Matters

Proactive communication and engagement

- The Information Commissioner undertook proactive communication with ICAC over its announced public inquiry as relevant to the issue of Guideline 1
- Machinery of Government Audit is in the process of finalisation with draft reports prepared
- Proactive audits are underway in relation to the additional open access requirements specific to departments for assets and disposal of assets. Notices have been issued to all 10 departments
- IPC will also be undertaking a proactive engagement in relation to informal access pathways
- IPC concluded its review of the self – assessment tools and the feedback is being taken forward

IPC Joint Submission

Submission to the proposed changes to Queensland's Information Privacy and Right to Information Framework

Information access and privacy related reforms

- A single right of access including personal information

Information access related reforms

- Access applications and amendment applications
- Evidence of identity
- Single period of time for processing applications
- Removal of mandatory requirement for a schedule of relevant documents
- Amendment to the definition of processing period
- Clarify that other matters can be considered as part of the public interest balancing test
- Disclosure log requirements
- Publication scheme requirements
- Annual reporting requirements on the operation of the *Right to Information Act*

This submission was published on the IPC website in July 2022.

IPC Joint Submission

Submission to the Inquiry into the Conduct of Elections in NSW

Access to information

- Open access including publishing returns of pecuniary interests
- Authorised proactive release

E-government → e-governance and promoting Open Government

- ICTs enabling the decentralisation of services, i.e. “one-stop shop” culture
- Open Government – transparency, integrity, accountability, citizen participation

iVote software

- Authorised proactive release – operation and eligibility requirements of the iVote system
- Information access issues in relation to an electronic voting system:
 - Procurement processes for systems incorporate information access provisions
 - Compliance with mandatory contracts disclosure requirements under GIPA
 - Proactive publication of information and policies on the electronic voting systems
 - Audit capability and monitoring processes
 - Retention of data and contractual relationships

Speaking Engagements

The Information Commissioner presented at the following engagements this quarter:

- Executive Leadership Essentials – 1 June 2022
- 7th Annual FSTGov New South Wales – 2 June 2022
- Philippines Freedom of Information Project Management Office – 3 June 2022
- Expert Roundtable Discussion: ‘Towards a Model Law for Facial Recognition Technologies in Australia’ – 8 June 2022
- Council of Australasian Archives & Records Authorities Meeting – 21 June 2022
- Data Sharing in Government Morning Briefing – 23 June 2022
- Revolutionising Data Governance, Information Management & Data Strategy in Government – 28 July 2022

Information Access Resources

The following information access resources have been published since the last Forum:

UPDATED

- Fact Sheet – Applying for complaints information
- Fact Sheet – Applying for workplace investigation information
- Fact Sheet – Restraint orders under the GIPA Act
- Template – GIPA application form
- Template Letter – Third party consultation
- Flowchart – Dealing with GIPA applications
– Managing searches for information

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IPC Practitioner Feedback



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GIPA Act issues for consideration and/or reform

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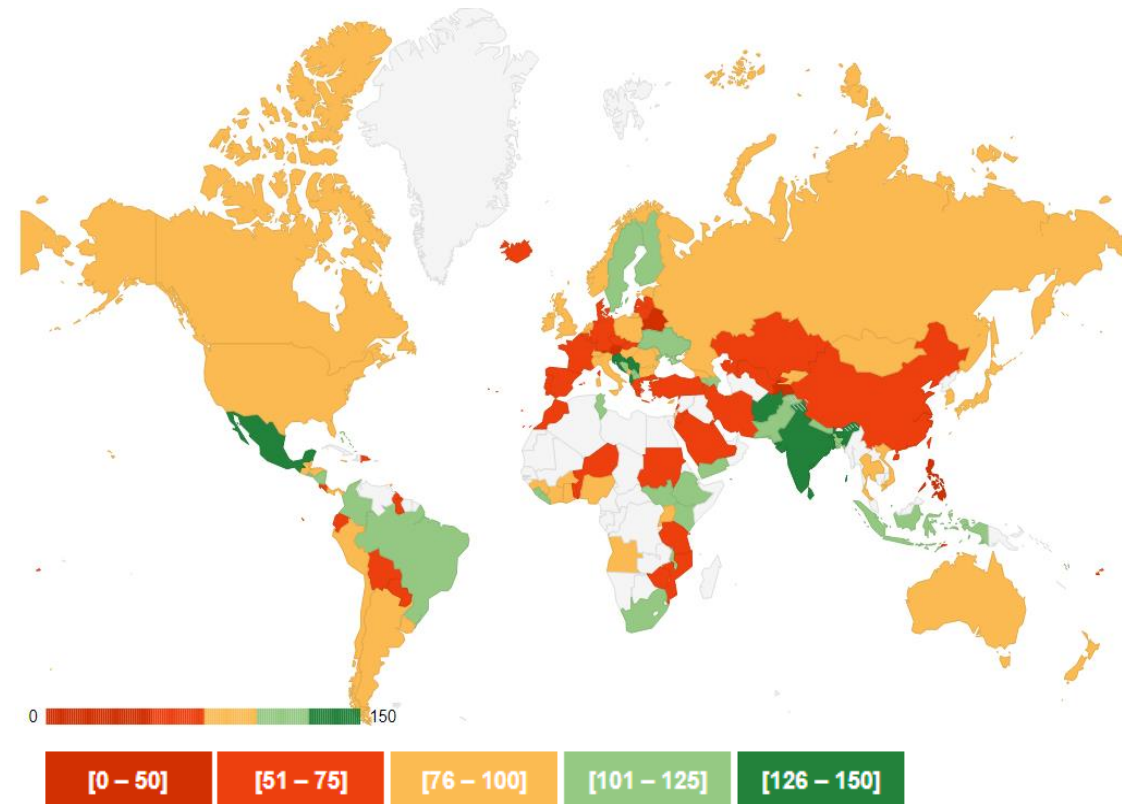
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Digital government issues

- Applications via voice-to-text (Global RTI Rating indicators 13-17)
- What is government information, when is it 'held' (combining datasets), and the creation of new records from digital – consider s74 (indicators 7, 28-29)
- Contracts with third party providers under s. 121 of the GIPA Act – service vs. decision-making
- Facial recognition technology – mandatory under proactive disclosure requirements?
- Records archive (indicators 5 & 6)
- Cluster/agency arrangements and GIPA Act obligations (indicator 54)
- Should the GIPA Act include an offence of reckless destruction of records? (indicator 50)



Access issues/jurisdiction

- Should animal welfare groups be within jurisdiction? (RSPCA submissions to the Inquiry into Animal Cruelty Laws)
- Care and protection of the environment as a factor in favour of disclosure (Global RTI Rating indicators 3 & 58)
- Access to personal information: combining and storage of personal and non-personal government information (indicators 25 & 26)
- Information that is out of scope is not a reviewable decision – should this be addressed? (indicators 36 & 37)
- Standing Order 52s and *Egan v Chadwick*

The Legislative Council's power to call for documents extends to privileged documents, on the basis that such a power may be reasonably necessary for the exercise of its legislative function and its role in scrutinising the Executive (indicator 7)

Compliance Issues & Regulatory Powers

- Powers of reporting and recommendation – are additional compliance powers required?
Example: a Compliance Notice, increased referral powers, a certificate of non-compliance or compliance (SARA and OIC UK) (Global RTI Rating indicators 51 & 55)
- IPC Integrity Agency status under the *Public Interest Disclosures Act* and Premier's Memorandum (indicator 39)



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