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INNOVATIVE LEGAL SOLUTIONS

**Information sharing session: Gearing up  
for POPIA (The Protection of Personal  
Information Act)**

# GEARING UP FOR POPIA

A brief overview of POPIA

The role of the Information Officer in terms of POPIA & PAIA

POPIA Readiness Assessment (PRA) showcased in the new BarnOwl cloud solution



# A brief overview of POPIA

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# INTRO: ABOUT POPIA

- **Purpose:** To promote the protection of personal information of 'data subjects';
- **Data subjects:** Individuals and Legal Entities;
- **Based on:** International best practice; reflects best features of international Privacy legislation; King IV; accommodates international standards;
- **8 Conditions:** To ensure lawful processing of personal information of data subjects;
- **Enacted:** Nov 2013; phased in – certain sections: operation 11 April 2014 (section 1; part A of Chapter 5; section 112 & section 113); Information Regulator appointed Sept 2016 and took office Dec 2016; Regulations published end of 2018; 1 July 2020: effective date for the bulk of POPIA's requirements – 1 year window period to comply; Information Regulator indicated no extension to be granted

Protection of Personal Information (POPIA) ... Is your business ready to comply?

# IMPORTANT DEFINITIONS

## “Personal information”:

- Information relating to identifiable, living, natural person
- Where applicable, identifiable, existing juristic person...



# IMPORTANT DEFINITIONS: PERSONAL INFORMATION

race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth

education or the medical, financial, criminal or employment history

identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment

biometric information

personal opinions, views or preferences

correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence

the views or opinions of another individual about the person

the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person

# IMPORTANT DEFINITIONS: (PI) SUMMARY

## DEFINITION

Processing (any operation/activity) of Personal Information



Physical Data and  
Personal  
Tendencies



Applied Historical  
Data



Numbers, Symbols  
and contact details



Biometric  
information



Personal Opinions,  
views and  
preferences  
including other  
people



Private  
Correspondence



Name and other  
data revealing  
something

By a Responsible Party

# IMPORTANT DEFINITIONS (CONTINUED)

**POPIA applies to the processing of personal information entered in a record...**

**WHAT IS PROCESSING?**



# IMPORTANT DEFINITIONS (CONTINUED)

**PROCESSING** - any operation/activity/set of operations, by automatic means or not, concerning personal information including:

**Use:** updating, alteration, modification, consultation, restrictions, merging, or linking of personal information.

**Distribution:** transmission, or making available personal information in another form.

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**Collection:** receipt, recording, organisation, collation or retrieval of personal information.

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**Storage:** electronic & physical storage of personal information.

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**Destruction:** degradation or erasure of personal information.

# IMPORTANT DEFINITIONS (CONTINUED)

**“Responsible party”**: a public or private body, or any other person which determines the purpose and means for processing personal information.

**“Data subject”**: the person to whom personal information relates.

**“Operator”**: person who processes personal information for Responsible Party in terms of a contract or mandate, without coming under the direct authority of that party

**“Information officer”**: of, or in relation to, a -

**Public body** is the information officer or deputy information officer contemplated in section 1 or 17 of the Promotion of Access to Information Act (PAIA); **or**

**Private body** is the head of the private body as contemplated in section 1 of PAIA (i.e. the **CEO** or equivalent officer of the juristic person or any **person duly authorised** by that officer)

# HOW DOES POPIA WORK?

- Applies to **processing** of personal information entered in a record by making use of automated or non-automated means\*  
\*i.e. forms part of a filing system or intends to do so
- By **responsible party**
  - domiciled in RSA
  - or not domiciled in the RSA, but makes use of automated or non-automated means in the RSA.  
(Exception: means are only used to forward personal information through the RSA).
- **Trumps all:** the exclusion of any provision of any other legislation that regulates the processing of personal information and that is materially inconsistent with an object/ specific provision in POPIA.

**[If any other legislation provides for conditions for the lawful processing of personal information that are more extensive than the 8 conditions, the extensive conditions apply.]**

# HOW DOES POPIA WORK (CONTINUED)

**Exclusions: POPIA does not apply to processing of personal information**

In the course of a **purely personal or household** activity.

that has been **de-identified** to the extent that it cannot be re-identified again

By or on behalf of a **public body** (involving national security i.e. identification of terrorist and related activities and purpose is prevention of proceeds from unlawful activities)

**By Cabinet, its Committees, Executive Council** of a province

Relating to **judicial functions of a court.**

# HOW DOES POPIA WORK (CONTINUED)

POPIA contains

**Rights of data subjects**

**Conditions**

for the lawful processing of the data subject's personal information...



# HOW DOES POPIA WORK? (CONTINUED)

- A data subject's personal information must not be interfered with
- If interference, the aggrieved party may lay a complaint with the Regulator
- A negotiated settlement is one of the outcomes of the complaints procedure

# HOW DOES POPIA WORK: CONDITIONS



## Accountability

Responsibility to comply to 8 conditions for lawful processing



## Processing Limitations

- Special Conditions
- Minimum required data incl. Consent, Objection and Justification



## Purpose Specification

- Must answer the why?
- Retention and restriction of access to records



## Further Processing Limitations

- Compatibility with initial process



## Information Quality

- Complete
- Accurate
- Updated



## Openness

- Documentation (explicit consent)
- Notifications on collection, 3<sup>rd</sup> party identification upfront.



## Security Safeguards

Data protection and security to ensure integrity and confidentiality of PI incl. Notification of security compromises



## Data Subject Participation

- Access to own PI
- Corrections to PI
- Manner of Access

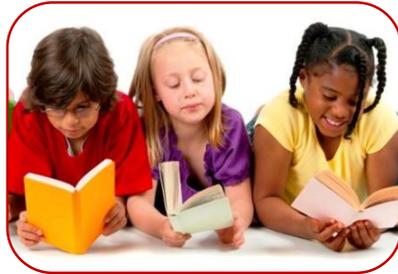
**OUT OF SCOPE of POPI Act**

Information in Public Domain and / or Enforced by Law

# PROCESSING LIMITATIONS



## Processing Limitations – Special Conditions



Personal Information of  
Children under 18



Unless specifically permitted  
Religious / Philosophical  
beliefs



Unless specifically permitted  
Trade Union Membership /  
Political opinions



Unless specifically permitted  
Health, sexual life or  
biometric details



Unless specifically permitted  
Race or Ethnic origin



Unless specifically permitted  
Criminal Behavior



Unless specifically permitted  
Transfer Across SA Borders

# HOW DOES POPIA WORK? (CONTINUED)

May transfer personal information to 3<sup>rd</sup> party in another country, if:

- recipient is subject to similar laws / binding corporate rules;
- data subject consents;
- transfer is necessary for performance of a contract; or
- transfer is for data subject's benefit

# PRACTICAL IMPLICATIONS... & CONSEQUENCES OF NON-COMPLIANCE

## Business processes and information systems:

- Customer interaction;
- Human Resources;
- Procurement Information;
- Information Management;
- Marketing;
- International transfer of information.

## Consequences of non-compliance:

- Reputational risk!
- Unique way to deal with contraventions, negotiated settlements;
- No court order required;
- Provides for civil remedies;
- 10 years imprisonment;
- Administrative fines up to R10 million.

# BUSINESS AREAS IMPACTED BY POPIA

POPIA has a substantial effect on current business processes, such as:

- **Strategic:** who is responsible for compliance with POPIA? And accountable?
- **Information management:** classification, retention and security of information
- **Customer interaction:** collecting and processing of customer information
- **Human resources:** collecting and processing of employee information; training of staff (awareness and understanding of end users)
- **Marketing:** customer relationship management, system restrictions on direct marketing, product leads, database: opt-out/do not call
- **International transfer of information:** restriction on cross-border transfers of information

**THEREFORE: BIG IMPACT ON SYSTEMS AND BUSINESS PROCESSES!**

# PRACTICAL IMPLICATIONS

## Practical implications of POPIA include:

- **Strengthening of the role of the “Information Officer”**, introduced by the Promotion of Access to Information Act (PAIA). One of the mechanisms to ensure compliance with the legislation is that this person has **personal liability** in respect of certain issues of non-compliance.
- **Identifying responsible parties, operators, data subjects**
- Organisations to ensure that **documents** (such as policies, agreements and consent documents) and **business processes** are aligned with POPIA’s requirements.
- **Amending the PAIA manual** in accordance with POPIA’s requirements (i.e. description of business processes and security measures).



# ROLE OF THE INFORMATION OFFICER



# THE INFORMATION OFFICER (IO)

- Every organisation has an IO – role introduced by The Promotion of Access to Information Act (PAIA)
- Register IO with Information Regulator 1 May onwards
- IO to take up duties after registering with the Information Regulator
- POPIA Section 55: *Duties and responsibilities of Information Officer* & POPIA Regulation 4 *Responsibilities of Information Officers*

# THE INFORMATION OFFICER (CONTINUE)

## Duties of IO:

- Encouraging compliance with the conditions for the lawful processing of personal information
- Dealing with information requests made to the responsible party
- In event of the responsible party being investigated, working with the Information Regulator
- “Otherwise ensuring compliance”
- Other duties which may be prescribed.

# THE INFORMATION OFFICER (CONTINUE)

## Ensuring that

- A compliance framework is developed, implemented, monitored and maintained
- A personal information impact assessment is done to ensure that adequate measures and standards exist in order to comply with the conditions for the lawful processing of personal information
- A manual is developed, monitored, maintained and made available as prescribed in sections 14 and 51 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)
- Internal measures are developed together with adequate systems to process requests for information or access thereto; and
- Internal awareness sessions are conducted regarding the provisions of the Act, regulations made in terms of the Act, codes of conduct, or information obtained from the Regulator.

# WHAT TO DO?

- Formulate an implementation plan (PRA to be presented by Jono)
- Areas of the business impacted
- Have a POPIA champion for the organisation, pulling together all implementation initiatives from representatives from areas of responsibility
- Documents and processes to change

# CLOSURE & ON-LINE TOOL

Way forward



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**THANK YOU!**



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