GUIDELINES ON DRAFTING CODES OF CONDUCT

Issued under the Protection of Personal Information Act, 2013

(Act No. 4 of 2013) (POPIA)

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PART 1 – INTRODUCTION THE LEGISLATIVE FRAMEWORK

The Purpose of Protection of Personal Information Act, 2013 (Act No. 4 of 2013) (POPIA and the need for Codes.

The purpose of POPIA is, amongst others, to give effect to the constitutional right to privacy by safeguarding personal information when processed by a responsible party.

1.   POPIA applies to the processing of personal information:

   1.1. entered in a record by or for a responsible party by making use of automated or non-automated means; and

   1.2. where the responsible party is:
      1.2.1.   domiciled in the Republic; or
      1.2.2.   not domiciled in the Republic but makes use of automated and non-automated means in the Republic.

   1.3 Chapter 3 of POPIA regulates the processing of personal information by or for a responsible party by providing for the eight (8) conditions for the lawful processing of personal information, the processing of special personal information and the processing of personal information of children.

   1.4 POPIA empowers the Regulator from time to time to issue, amend and revoke codes; to make written guidelines to assist bodies to develop or to apply codes; to approve codes; and to consider afresh upon application the determinations by adjudicators under approved codes.

   1.5 The purpose of a code is to provide data subjects with transparency about how their information will be processed. Codes do not replace the relevant provisions in POPIA, but operate in addition to the requirements in POPIA. A code of conduct cannot limit data subjects' right to privacy as provided for in POPIA.

1.6 The bodies bound by an approved code of conduct must not do an act, or engage in a practice, that breaches that code. A breach of an approved code is deemed to be a breach of the conditions for the lawful processing of personal information referred to in Chapter 3 and shall be dealt with in terms of Chapter 10 of POPIA.

1.7 A code should limit itself to provisions which outline the specific obligations of bodies bound by the code. The code should comply with all the conditions for the lawful processing of personal information or meet higher standards of lawful processing of personal information. The code must also cover governance and administrative issues.

1.8 In deciding whether to issue a code, the Regulator will consider whether the code meets the requirements set out in Chapter 7 of the Act and the requirements set out in these guidelines.

1.9 The guidelines are to encourage different sectors to develop codes within an established framework and harmonise codes with POPIA.

2. Scope of guidelines

The objective of these guidelines is to serve as an interpretative aid to Chapter 7 of POPIA. It will further serve as a practical guide that outlines minimum criteria, and provide a framework to ensure that codes are evaluated in a standard manner. This will foster transparency relating to requirements and processes that will enable the approval of codes.

3. Definitions

The following terms used in these Guidelines are defined in the Protection of Personal Information Act, 2013 (Act No.4 of 2013) (POPIA):

'code of conduct' means a code of conduct issued in terms of Chapter 7;

'Constitution' means the Constitution of the Republic of South Africa, 1996;

'data subject' means the person to whom personal information relates;

'information matching programme' means the comparison, whether manually or by means of any electronic or other device, of any document that contains personal information about ten or more data subjects with one or more documents that contain personal information of ten or more data subjects, for the purpose of producing or verifying information that may be used for the purpose of taking any action in regard to an identifiable data subject;

'prescribed' means prescribed by regulation or by a code of conduct;

'Regulator' means the Information Regulator established in terms of section 39;

'Republic' means the Republic of South Africa; and

'this Act' includes any regulation or code of conduct made under this Act.

In these Guidelines:

'**cod**e' refers to a code of conduct as defined in POPIA;

'**Regulator**' refers to the Information Regulator; and

'**relevant body**' refers to:

    (a) any specified body or class of bodies; and

    (b) Any specified industry, profession, or vocation or class of industries, professions, or vocations.

4. Who should use these guidelines?

These guidelines should be used by:

41. relevant bodies that are considering developing a code for approval;
4.2. stakeholders in considering a proposed code developed by a relevant body; and

4.3. stakeholders and relevant bodies in considering a proposed code developed on the Regulator's own initiative.

5. Purpose of these guidelines

These guidelines:
    5.1. will assist bodies to decide whether it is appropriate for them to develop a code;
    5.2. clarify when the Regulator will develop a code on its own initiative, or when bodies may develop a code;
    5.3 provide for stakeholder consultation when a code is being considered;
    5.4 outline matters that need to be addressed in the issuing and registration of codes;
    5.5 clarify when notifications will be issued on the availability of an approved code for inspection;
    5.6 outline the procedures that must be prescribed in a code for dealing with complaints; and
    5.7 outline matters relating to the reviewing, amendment or revocation of approved codes.

5.8 The purpose of the code will generally prescribe the types of personal information, activities, industry or technology that cover the code.

5.9 Codes afford an opportunity to develop a framework that will support the correct application of POPIA in a transparent and cost effective manner.

5.10 Guidelines that foster the responsible processing of personal information in accordance with POPIA are of benefit to all sectors encompassing the needs of small, medium and micro enterprises.

5.11 Codes assist responsible parties which include persons that control and process personal information to comply with POPIA.

5.12 Codes build trust of data subjects and stimulate transparent processing of personal information.

5.13 Codes create the opportunity to develop best practices and ultimately attain improved compliance of protection of personal information.

5.14 codes enable compliance with the requirements of POPIA in relation to trans border information flows of personal information and serve as a mechanism to protect the international flow of personal information.

5.15 Codes that have been approved serve as a mechanism to hold responsible parties accountable. Breaches of the applicable code of conduct will impact on evaluation and determination of offences, penalties and administrative fines.

6. **Why develop a code?**

The primary purpose of a code is to outline how all the conditions for the lawful processing of personal information are to be applied or complied with. The reason for developing a code may include:

6.1. clarity on how the conditions for lawful processing of personal information are to be applied and complied with given the particular features of the sector or sectors of society in which the relevant responsible parties are operating;

6.2 functional equivalent means of achieving the obligations related to the conditions for the lawful processing of personal information;

6.3. higher standards than that which POPIA requires for the protection of privacy rights;

6.4 additional obligations for the processing of personal information than those prescribed in POPIA;

6.5. practices to promote cultural change for a relevant body in relation to the lawful processing of personal information;

6.6 specified processing conditions for specified information or classes of information;

6.7 specified processing conditions for any specified activity or class of activity;

6.8 rules and procedures for information matching programmes if such programmes are used within a specific sector;

6.9 how the legitimate interests of data subjects are to be protected insofar as automated decision making affects them;

6.10 the review of the code by the Regulator; and

6.11 details regarding the expiry of the code.

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7. Criteria for Approving Codes

In deciding whether to develop a code, relevant bodies should also consider the following:

7.1. whether the relevant bodies that will be bound by the code meet the resource requirements set out in par 15 below; and

7.2. whether POPIA, the Regulations relating to the Protection of Personal Information, 2018, or an approved code covers the same issues which may negate the need to develop a code.

7.3 Draft codes must be prefaced with a clear explanatory statement outlining the purpose and scope of the code.

7.4 The draft code must be submitted by a representative organization and must define the respective roles of its members, controllers and processors

7.5 The processing scope must clearly outline how personal information is processed, the role of responsible parties that process personal information must be identified, the manner in which breaches of POPIA will be governed and the mechanisms that will be available to data subjects in the event personal information is breached.

7.6 The code must identify its territorial scope and whether it has national and international application.

7.7 The oversight mechanisms that ensure compliance must be identified.

7.8 A draft code must include a confirmation that the code is compliant with POPIA.

7.9 The draft code must be available in national languages.

7.10 Code owners must outline the need to develop a code, outline problems it seeks to address, provide adequate safeguards in relation to the needs of a data subject[1] and how it will ensure compliance with POPIA and how it will address industry specific needs.

7.11 The code must illustrate clear requirements as to how high risk processing of personal information is administered and monitored.

7.12 Code owners must show how its monitoring mechanisms are resourced and submit details on the level of expertise that resides within these bodies.

7.13 The code must exemplify the practical application of POPIA and provide clear resolutions to breaches of POPIA.

7.14 Codes must be unambiguous, clear and enforceable.

7.15 Random audits, unannounced site visits and annual inspections must be conducted by monitoring bodies to assess compliance.

7.16 A monitoring body must ensure that it is capacitated to assess the ability of responsible parties which include controllers and processors to implement the code and monitor compliance of the code.

7.16 Regular reports must be submitted to monitoring bodies and must include complaints received, resolutions and identify risks and how these are mitigated.

7.17 Monitoring bodies must review existing codes to ensure that they are relevant and support the application of POPIA.

8. Application of POPIA

Bodies which are planning to develop a code are first encouraged to gain a detailed understanding of POPIA, in particular the conditions for the lawful processing of personal information. Information to assist entities is available on the Information Regulator website.

9. Administrative Mechanisms

An industry body that develops a code should have resourced administrative mechanisms in place to develop the code. This may include an entity forming a code development committee or some

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[1] 1.(children and health information will require more stringent safeguards)

other administrative mechanisms to manage the development of a code. Where possible the mechanism should include consultations with the relevant stakeholders.

10. Resource requirements

The development and implementation of a code requires resources. The relevant body must determine how these resources are obtained and managed at the time of the development of the code. Resources may need to be allocated when:

      10.1. investigating the need for the development for a code;

      10.2. establishing an administrative mechanism responsible for developing a code;

      10.3. drafting and scoping of the code;

      10.4. seeking legal or professional advice;

      10.5. involving stakeholders in effective consultations on the draft code;

      10.6. obtaining the necessary authorization;

      10.7. establishing representativeness;

      10.8. establishing a function to oversee the operation of the code, reporting on the operation of the code and regular reviews of the code;

      10.9. establishing a procedure for the making and dealing with complaints; and

      10.10. maintaining information about the code on a website, including a list of bodies bound by the code.

11. Role of the Regulator

11.1. The relevant bodies should notify the Regulator of their intention to develop a code and keep the Regulator informed throughout the process of the development of a code.

11.2. In the first instance, the industry bodies should consult these guidelines, POPIA and the regulations.

11.3. The Regulator will be able to provide some advice and preliminary views to the relevant bodies, however, any advice would not alter the discretion of the Regulator in deciding whether to issue a code.

12. Code requirements under POPIA

12.1. POPIA sets out minimum requirements of what must be included in a code and how a code should apply. The code does not replace the relevant provisions of POPIA, but operates in addition to the requirements of POPIA.

12.2 Any failure to comply with an approved code is deemed to be a breach of the conditions for the lawful processing of personal information. A code should limit itself to provisions which outline the specific privacy related obligations of relevant bodies bound by the code and any mandatory requirements under POPIA.

12.3. Any matters unrelated to the conditions for the lawful processing of personal information should not form part of the code to be approved by the Regulator.

PART 2 – ISSUING OF CODES BY THE REGULATOR

13. Process for issuing of codes of Conduct

The Regulator may issue a code on its own initiative after consultation with the relevant stakeholders.

14. Codes issued by the regulator on own initiative

14.2 The code must:
      14.2.1. are in writing;
      14.2.2. incorporate all the conditions for the lawful processing of personal information;

14.2.3. prescribe how the lawful conditions for the lawful processing of personal information are to be applied or complied with; and

14.2.4. set out the period during which the code is in force.

14.3. The code will commence operation on notification of the commencement date and will continue to be in force until it is revoked by the Regulator. The Regulator may specify a period for which the code will be in force.

15. Other matters that may be included in a code

A code may:

15.1. impose additional requirements to those imposed in POPIA, so long as the additional requirements are not contrary to, or inconsistent with any of the conditions for the lawful processing of personal information;

15.2. cover exempt acts or practices;

15.3. consider a process for dealing with complaints by all bodies bound by the code and provide for the reporting to the Regulator about those complaints; and

15.4. deal with any other matters relating to privacy in general.

16. POPIA provides that the code may apply to any one or more of the following:

16.1. any specified information or class of information;

16.2. any specified body or class of bodies;

16.3. any specified activity or class of activities; or

16.4. any specified industry, profession, or vocation or class of industries, professions, or vocations

17. A code must also specify appropriate measures:

17.1. for information matching programmes; or

17.2. for protecting the legitimate interests of data subjects' in so far as automated decision making is concerned.

18. Codes covering exempt acts or practices

18.1. The code may include obligations that deal with certain acts or practices that would otherwise be exempt under POPIA.

18.2. If the code covers exempt acts or practices, POPIA will apply to those acts or practices as if they were not exempt.

19. Consultation on codes

19.1 The Regulator is required to undertake public consultation with affected stakeholders or body representing such stakeholder before issuing a code and must:

19.1.1. give notice in the Gazette that the issuing of a code is being considered;

19.1.2. make a draft of the code publicly available, for example on the website;

19.1.3. invite the public to make written submissions to the Regulator within a specified period; and

19.1.4. give consideration to any submissions made within the specified period.

19.2. The Regulator should, where practicable, notify all bodies proposed to the bound by the code. The draft code should be brought to the attention of stakeholders to ensure that they are aware of the public consultation period and that they are aware that the code is being developed and what it needs to achieve. Relevant stakeholders include:

19.2.1. individuals and bodies which may be impacted by the code

19.2.2. relevant community associations.

19.3. The appropriate way to bring the code to the attention of the relevant stakeholders will depend on the circumstances but will usually include:

19.3.1. placing the code or information about the code on the website of the Regulator;

19.3.2. public notices in newspapers or industry publication;

25.3.3. direct engagement with relevant government departments and industry groups; and

19.3.4. consultation with relevant regulators to assess any other legal issues associated with the code.

19.4. When formulating a consultation, the Regulator must ensure that:

19.4.1. participation in the consultation is accessible to all interested stakeholders;

19.4.2. full and proper consideration is given to the comments raised by the affected parties and stakeholders consulted; and

19.4.3. comments are considered promptly and, where appropriate, relevant stakeholders are included in any redrafting exercise as part of an ongoing consultation process.

19.5. When considering whether to issue a code, the Regulator will have particular regard to the views of stakeholders provided during consultation. The Regulator should make a reasonable effort to work with stakeholders to resolve the issues before a code is submitted to the Regulator for registration.

19.6. The Regulator must submit a statement of consultation with the application to issue a code which should contain the following details:

19.6.1. the period that the draft code was available for public consultation;

19.6.2. the industry bodies to be affected by the code;

19.6.3. the methods that were employed by the Regulator to consult with industry bodies and the public;

19.6.4. a list of industries and individuals who made submissions to the draft code;

19.6.5. details of the changes made to the code following public consultations;

19.6.6. a summary of issues raised by the consultation that remain unresolved, if any; and

19.6.7. the reasons why other feedback was not incorporated into the final document.

20. Drafting style

20.1. Approved codes are legally binding. It is important that bodies are bound by the code, the Regulator, other stakeholders and the general public is able to easily understand and interpret the code.

20.2. Codes should be written in plain English language that is clear, concise and easy to understand. The obligations should be set out in the code in a logical order. For example, the obligations for the conditions for the lawful processing of personal information should be grouped under headings for each condition and in the order in which the conditions appear in POPIA.

20.3. Drafting the code in this way will:

20.3.1. ensure that obligations in the code follow the lifecycle of the lawful processing of personal information;

20.3.2. explain how bodies bound to a code can apply or comply with the conditions for lawful processing of personal information; and

20.3.3. outline how a data subject can expect when determining if bodies bound by the code has acted in a way which may breach the code.

21. Openness and transparency

21.1. The bodies must document policies on how personal information is managed. This includes information about how a data subject may complain about a breach of the conditions for the lawful processing of personal information, and how the industry bodies will deal with such a complaint.

21.2. To assist in making these policies easily available, codes should contain provisions which require bodies bound by the code to have these policies and information about the code easily accessible on their website.

22.Codes issued by the Regulator on application by bodies

22.1. The Regulator may issue a code of conduct on the application, in the prescribed form, to a body which is sufficiently representative of any class of bodies, or of any industry, profession, or vocation.

22.2. The application for the issuing of a code must be made in the form and manner specified by the Regulator in the Regulations.

22.3. The application must amongst others be accompanied by the following documentation:

22.3.1. a copy of the code;

22.3.2. submissions received during consultations;

22.3.3. a copy of the explanatory material that has been prepared in relation to the code;

22.3.4. if all the requirements in these guidelines are not met, a statement explaining reason why those requirements have not been met or why they are not relevant; and

22.3.5. any other material that may be relevant to the Regulator's decision to issue a code.

23. Matters the Regulator will consider in deciding whether to issue a code

23.1. In deciding whether to issue a code, the Regulator will consider whether the code meets the conditions for the lawful processing of personal information and the requirements set out in these guidelines.

23.2. The Regulator may consult any person the Regulator deems appropriate, and name all parties consulted in an explanatory statement accompanying the decision to issue a code.

23.3. In deciding whether to consult prior to issuing a code, the Regulator may consider the extent to which bodies that will be bound by the code and members of the public have been given the opportunity to comment.

23.4. The Regulator may consult industry groups that represent those bound by the code, advocacy associations that represent the interests of the community, and others that have an interest of the community and the interests of whoever may be affected by the registration of the code.

24. Timeframes

24.5. The Regulator will acknowledge receipt of the application in writing. The timeframes for assessing the issuing of a code will vary depending on a number of factors including:

24.5.1. the length and complexity of the code, the application and any accompanying materials;

24.5.2. the comprehensiveness of the consultation process undertaken by bodies, if the Regulator is not satisfied that an adequate consultation has been undertaken, the Regulator may request that additional consultation occur, or conduct its own consultation; and

24.5.3. whether all documentation has been provided to the Regulator at the time the code is submitted for issuing.

25. Notification

25.1. The Regulator will notify bodies of a decision to issue a code in writing. The decision will include the date when the issuing of the code will take effect. Upon issuing of the code the Regulator will publish an explanatory statement outlining the reasons for approving the code.

25.2. The Regulator will also notify bodies of a decision not to issue a code and the notice will include reasons for such decision.

26. Register for approved codes of conduct

26.1. POPIA requires the Regulator to keep a register of approved codes. Where the Regulator approves a variation to a code, the register will include the relevant code as varied. The register will not include any code that the Regulator has removed from the register. Variation and revocation of codes are discussed in Part 5.

26.2. The register, including the full content of any approved code will be made publicly available on the website of the Regulator.

26.3. One the code is in force; it is legally binding for identified bodies.

PART 3 – CODE GOVERNANCE

27. Governance Arrangements

POPIA does not state how a code should be administered. However, there are a number of matters regarding governance arrangements of a code to consider when deciding whether to develop a code. The Regulator will consider the governance arrangements of a code upon receiving an application for registration of a code.

28. Bodies bound by the codes

The code must clearly state the bodies that are bound by the code, or establish a way of identifying the bodies bound by the code. The bodies which are bound by the code may be subjected to privacy complaints for not complying with the code.

29. Identifying bodies bound by codes

The code must identify the bodies which are bound by that code, for example by listing the bodies in the code itself. Failure to clearly identify bodies bound by the code, either through listing the bodies that will be bound or by clearly describing the way in which bodies bound by the code can be identified, may constitute a reason not to issue the code or to remove the code from the register of approved codes.

30. Monitoring Compliance with the code

30.1 All the industry bodies must have practices or procedures in place to deal with complaints or enquiries from data subjects about the entity's compliance with the code. The Regulator should as part of ongoing code governance, put mechanisms in place to monitor the effectiveness of the code in achieving compliance from the bodies bound by the code.

30.2 In order to assist the Regulator to monitor compliance of bodies bound by the code, the Regulator should require bodies bound by the code to provide an annual report to the Regulator. These annual report should outline how bodies are complying with the code including the number, nature and outcomes of any complaints made to bodies. The report should include amongst others:

30.5.1. the number of complaints in relation to the code received in the financial year;

30.5.2. the average time taken to resolve the complaints;

30.5.3. statistical information about the nature of the complaints;

30.5.4. statistical information about the outcomes of the complaints; and

30.5.5 the information about the remedies awarded in resolving the complaint.

31. Reporting on compliance with a code

31.1. The bodies should provide an annual report to the Regulator and made available online. The report should include:

31.1.1. accurate, up to date and sufficient information on how a body has monitored compliance with the code. This includes information received in reports from bodies bound by the code and from audits or investigations.

31.1.2. aggregate information about systematic issues or serious or repeated interference with the condition for the lawful processing of personal information that occurred during the reporting period; and

31.1.3. if information regarding the effectiveness of a code in achieving compliance has significantly changed from the last report, a description of the change and any proposed process or practice to address the change.

31.2. If the reports are not provided to the Regulator or they indicate a lack of compliance with the code, this may inform a decision by the Regulator to review, vary or revoke the code.

31.3. The bodies bound by the code should also report systematic issues or serious and repeated breaches of the code to the Regulator as soon as they become aware of them.

32. PART 4 – COMPLAINTS HANDLING PROCEDURE

32.1 The purpose of the complaints handling procedure is to:
   a) ensure that complainant's are aware of the principles that will be utilized in handling complaints
   b) ensure that a standard policy entrenches procedures that can deal with complaints in a transparent and unbiased manner.
   c) Enable expedient resolution of complaints
   d) Promotes effective decision making
   e) Effective complaint handling reassures complainants of the commitment to resolving problems and improving public relations
   f) A complaints handling process with necessary resources must be publicly accessible

32.2 Complaints must first be raised with the party that you believe has compromised your personal information. This party must be afforded the opportunity to respond to the complaint.

32.3 In limited circumstances the complaint may be escalated to the Regulator :
   - The complainant will be disadvantaged if the complaint is directed to the party directly
   - A systemic issue of breach of personal information exists

- The party has a history of breaching the protection of personal information
- Complainants represent a class of individuals against the same party, the complaints arise out of a similar circumstance there is a common issue of law or fact

32.4 Complaints must be managed in an accountable and transparent manner upholding the principles of fairness, efficacy, accessibility, responsiveness and impartiality.

32.5 Complaints must be dealt with in a timely manner.

32.4 Who should complain?

32.4.1 An individual or relevant person acting on behalf of another individual can lodge a complaint; such authorization must be made in writing;

32.4.2 A parent or legal guardian can lodge a complaint if the individual is a minor;

32.4.3 If an individual has been declared by a court of law to be unable to manage his/her own affairs then a relevant person appointed by the court may lodge a complaint.

32.5   The Complaints Process

32.5.1 The complainant must provide his/her name, identity number, address and must specify the identity of the complainant, the nature of the complaint(the alleged infringement against protection of personal information) and the relief sought, in writing;

2 The complaint must first be raised with the party that is being complained about;

32.5.3 the complaint must be acknowledged in writing within seven days of receipt;

32.5.4 A register of all complaints must be maintained detailing the date of receipt, nature of complaint and assign and independent adjudicator to address the complaint;

32.5.5 Complainants have the right to privacy during the handling of their complaint;

The conditions espoused in POPIA relating to lawful processing, collection, storage, and use of personal information secured whilst handling the complaint are observed;

32.5. 6 Complaints must be assessed and given priority;

32.5.5 Complainants must be afforded progress reports;

32.5.7 The adjudicator must prepare an investigation plan;

32.5.8 A fair investigation process must unfold observing the principles of impartiality, confidentiality and transparency;

32.5.9The complainant must be apprised of the outcome of the investigation in writing. An explanation on the findings and decisions must comprise the feedback to the complainant;

32.5.10 Complaints must be referred to relevant organisations if not for the receiving organization or individual;

32.5.11 If the complainant is dissatisfied with the outcome or complaint remains unresolved the complaint will be referred to a certified alternate dispute resolution (ADR) entity that is competent to handle the complaint.

32.5.12 ADR means settling a complaint out of court with the assistance of an impartial dispute resolution body. The benefit of resolving complaints through ADR is that its inexpensive, expedient and negotiated outcomes can be reached. ADR is a voluntary process.

There are many types of ADR, such as

- mediation
- conciliation
- arbitration
- Information Regulator

32.6 Responsibilities of the Independent Adjudicator

32.6.1 The adjudicator must have due regard to the matters listed in section 44 of POPIA;

32.6.2 The adjudicator must utilize a process that is accessible, flexible, and expedient and observe the principles of natural justice and procedural fairness;

32.6.3 The adjudicator must prepare and submit a report, in a form satisfactory to the Regulator, within five months of the end of a financial year of the Regulator on the operation of the code during that financial year; and

32.6.4 The report that is prepared for each year must specify the number and nature of complaints made to an adjudicator under the code during the relevant financial year.

32.6.5 A responsible party or data subject who is aggrieved by a determination, including any declaration, order or direction that is included in the determination, made by an adjudicator after having investigated a complaint relating to the protection of personal information under an approved code of conduct, may submit a complaint in terms of section 74(2) with the Regulator against the determination upon payment of a prescribed fee.

32.7 The adjudicator's determination continues to have effect unless and until the Regulator makes a determination under Chapter 10 relating to the complaint or unless the Regulator determines otherwise.

32.8 The Regulator will handle complaints in terms of Section 40 of POPIA.

32.9   The Regulator may implement dispute resolution mechanisms to resolve complaints

32.10 In instances where a complaint may be resolved successfully through conciliation the Regulator will facilitate such Conciliation

32.11 The factors that would be considered as to whether conciliation is possible may include:

- The willingness of the parties to conciliate
- Outcomes achieved through previous conciliation efforts
- Responsiveness of parties
- The lapse of time taken to attempt resolution of the complaint.

32.12 The possible outcomes in conciliated matters involving the protection of personal information:

- Revision of policies and practices that fail to protect personal information
- Training of information handlers and staff
- Review of polices that protect personal information
- Private or Public Apology
- Financial compensation
- Granting access to information

PART 5 – REVIEWING, VARYING AND REVOCATION OF APPROVED CODE

33. Review of the operation of the approved code by the Regulator

33.1. The Regulator may review the operation of an approved code. The review may occur where the Regulator becomes aware, amongst other matters:

33.1.1. a change in industry practices, technology or consumer expectations that may impact the effective operation of the code.
33.1.2. the lack of compliance with an approved code.

33.2. The outcome of the review of a code may inform a decision by the Regulator to approve a variation of an approved code or to revoke the approved code from the register.

34. Variations to an approved code

34.1. The Regulator may approve, in writing, a variation of an approved code. A variation may occur:
34.1.1. when an industry representing one or more bodies bound by the approved code applies for variation;
34.1.2. when a body bound by the approved code applies for variation; and
36.1.3. on the Regulator's own initiative.

34.2. Where the Regulator decides to vary an approved code on its own initiative, the variation cannot include provisions that deal with exempt acts or practices. However if a representative body applies for a variation of a code, the variation may deal with exempt acts or practices.

34.3. Before deciding whether to approve a variation, the Regulator may undertake a consultation which may include:

34.3.1. making a draft of the variation publicly on the Regulator's website; and
34.3.2. consulting any interested parties the Regulator considers appropriate for the variation.

34.4. In deciding whether to consult regarding a variation, the Regulator may consider the extent to which bodies bound by the code and members of the public have been given the opportunity to comment on the variation. If considered appropriate, the Regulator may consult industry groups that represent those bound by the code, advocacy associations that represent the interests of the community, and others that have interests of the community and others that have an interest or who may be affected by the variation.

34.5. In deciding whether to approve a variation, the Regulator will consider the matters specified in these guidelines. The decision will primarily be informed by whether the proposed variation effectively addresses the issues it seeks to resolve.

34.6. If the Regulator decides to vary an approved code, the Regulator will:

34.6.1. notify the person or body that applied for the variation, and of the decision, including the date on which the variation will occur;
34.6.2. publish a notice about the proposed variation of the approved code on the Regulator's website before the approve code is due to be varied. The Regulator will endeavor to publish the variation as soon as practicable to ensure that bodies have sufficient time to implement any variation;
34.5.3. add the code as varied to the register and remove the original approved code; and
34.5.4. publish a notice on the Regulator's website stating that the original approved code has been varied.

35. The form and manner of the application to vary an approved code

35.1. An application for a variation of an approved code must be made in the form and manner specified by the Regulator and must be accompanied by the information specified by the Regulator.

35.2. An application to vary an approved code must be made in writing. There is no formal application form to complete; however, the application would normally consist of a letter addressed to the Regulator which sets out the following:

35.2.1. the title of the approved code;

35.2.2. the name of the body bound by the code, or the industry representing one or more of the bodies bound by the code, that is applying for variation;

35.2.3. the details of the proposed variation;

35.2.4. the reasons for the variation;

35.2.5. any potential consequences resulting from the variation, including the impact on bodies bound by the approved code; and

35.2.6. details of any consultation carried out with bodies bound by the approved code along with other relevant stakeholders.

35.3. The application must also include:

35.3.1. a copy of the variation as a marked up version of the current approved code, unless that is impractical, and a separate document showing the complete code as varied;

35.3.2. submission received on any consultation undertaken on the variation;

35.3.3. if all the requirements in these guidelines are not met, a statement explaining why those requirements have not been met or why they are not relevant; and

35.3.4. any other material that may be relevant to the Regulator's decision to issue a code as varied.

36. Revocation of an approved code

36.1. The Regulator may revoke an approved code from the register. In deciding whether to revoke an approved code, the Regulator will consider the matters specified in these guidelines.

36.2. The Regulator may revoke an approved code:

36.2.1. on application by an industry representing one or more bodies bound by the code;

36.2.2. on application of any body bound by the code; and

36.2.3. on the Regulator's own initiative.

36.3. In revoking an approved code, the Regulator will undertake a consultation in the same way as for a variation of an approved code.

36.4. If an approved code is revoked from the register, the Regulator will:

36.4.1. notify the industry or body that applied for the revocation of a decision to revoke the approved code, including the date on which the revocation will occur;

36.4.2. publish a public notice about the proposed revocation of the approved code on the Regulator's website before the approved code is due to be revoked;

36.4.3. remove the approved code from the register on the specified date; and

36.4.4. publish a public notice that the approved code has been revoked from the register on the Regulator's website.

37. The form and manner of the application to revoke an approved code

37.1. An application for revocation of an approved code must be made in the form and manner specified by the Regulator and must be accompanied by such information as is specified by the Regulator.

37.2. An application to revoke an approved code must be made in writing. There is no formal application form to complete; however, it is recommended that the application take the form of a letter addressed to the Regulator which sets out the following:

37.2.1. the title of the relevant approved code;

37.2.2. the name of the body bound by the code, or the industry representing one or more of the bodies bound by the code, that is applying for revocation;

37.2.3. the reasons of the removal;

37.2.4. any potential consequences resulting from the revocation, including the impact on bodies bound by the approved code; and

37.2.5. details of any consultation carried out with bodies bound by the approved code along with other relevant stakeholders; and

37.2.6. any submissions received during the consultation on revocation of the code.