

# Personal Identification Information in Property Data Code of Conduct



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# Code of Conduct

## 1. Title

- 1.1 This is the Code of Conduct for bulk data access to identified information in the Queensland Valuation and Sales System (QVAS) database.
- 1.2 The short title is the Personal Identification Information in Property Data Code of Conduct (the Code).

## 2. Objectives

- 2.1 The aims of this Code are to:
  - 2.1.1 Mandate a high degree of privacy protection for bulk data access to QVAS Identified Information;
  - 2.1.2 Develop a culture of confidence and trust in the services provided by Code Subscribers regarding the collection, use, storage and disclosure of all Personal Information; and
  - 2.1.3 Demonstrate a commitment to best practices regarding the secure, proper and consistent handling of all Personal Information.

## 3. Definitions

### — Code Subscriber

An organisation that has agreed to be bound by the Code and has been approved as a member by the Code Oversight Committee.

### — Code Subscriber Customer

An individual or organisation that purchases or otherwise obtains QVAS Identified Information from a Code Subscriber.

### — Code Oversight Committee

The committee administering the Code as described in section 5 of the Code.

### — Consumer

An individual whose Personal Information appears in any field in the QVAS Database.

### — Department

The Department of Natural Resources and Mines (DNRM) and any successor agency that takes responsibility for the management of the QVAS Database.

### — Direct Marketing

One to one marketing, normally supported by a database, which uses one or more advertising media to affect a measurable response and / or transaction from a person and includes, but is not limited to, telemarketing, bulk email messaging, postal canvassing and list brokering.

### — Independent Arbiter

An independent person with expertise in dispute resolution, appointed by the Code Oversight Committee.

### — Personal Information

Information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an

individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

— **Prohibition on Direct Marketing**

Not using or distributing QVAS Identified Information for Direct Marketing or with the intention of encroaching upon the privacy of a Consumer.

— **QVAS Database**

The Queensland Valuation And Sales System (QVAS) database administered by the Department.

— **QVAS Identified Information**

The details of any identified Consumer in the QVAS Database limited to the name and service address of the vendor and / or purchaser. For the avoidance of doubt QVAS Identified Information does not include the property address and transaction details.

## **4. Code membership**

- 4.1 Membership of the Code is open to all information broker organisations. An information broker organisation becomes a Code Subscriber by submitting an application for membership to the Code Oversight Committee agreeing to be bound to the provisions of the Code, and receiving the approval of the Code Oversight Committee.
- 4.2 Membership of the Code is mandatory for information broker organisations seeking to obtain and / or retain a bulk data access licence that includes QVAS Identified Information from the Department. The information broker organisation must also comply with any other relevant terms of the licence and, if inconsistent, the terms of the licence take precedence over the terms of the Code.
- 4.3 The State of Queensland (through the Department) is the owner of the intellectual property rights including copyright in and to the QVAS Database. The Code does not confer on the Code Oversight Committee, Code Subscribers or Code Subscriber Customers any rights of ownership in the QVAS Database and all intellectual property rights including copyright in the QVAS Database are unaffected by the Code.

## **5. Code Oversight Committee**

- 5.1 The Code is administered by a Code Oversight Committee, comprising:
  - 5.1.1 One independent chairperson – a person with experience in industry, commerce, public administration or government service. This person will be appointed for a maximum three-year term, and may be reappointed for further terms. The chairperson will be nominated by the Minister for the Department.
  - 5.1.2 One industry representative – a person with relevant experience at a senior level in the information broking industry nominated by a simple majority of the Code Subscribers. This person will be appointed for a maximum three-year term, and may be reappointed for further terms.
  - 5.1.3 One consumer representative – a person with experience in consumer advocacy. The consumer representative will be nominated by the Commissioner for Fair Trading and may be from a consumer advocacy organisation. This person will be appointed for a maximum three-year term, and may be reappointed for further terms.
- 5.2 The Code Oversight Committee will be funded by levying membership fees and / or complaint administration fees on Code Subscribers. These fees will include the following:

- 5.2.1 The Code Oversight Committee chairperson is to be remunerated at the rate set out for a chair for meetings in the Remuneration of Part-time Chairs and Members of Government Boards, Committees and Statutory Authorities Category C1.
- 5.2.2 The Code Oversight Committee industry representative is to be remunerated at the rate set out for a member for meetings in the Remuneration of Part-time Chairs and Members of Government Boards, Committees and Statutory Authorities Category C1.
- 5.2.3 The Code Oversight Committee consumer representative is to be remunerated at the rate set out for a member for meetings in the Remuneration of Part-time Chairs and Members of Government Boards, Committees and Statutory Authorities Category C1.
- 5.2.4 The Code Oversight Committee may organise and pay for administrative and systems support and maintenance of registers (including third party maintenance of registers) as necessary.
- 5.2.5 For the avoidance of doubt, the Code Oversight Committee is not a Government board, committee or statutory authority.
- 5.3 The roles of the Code Oversight Committee shall include:
  - 5.3.1 To monitor compliance under the Code;
  - 5.3.2 To manage the registration of Code Subscribers and maintain an accurate and up to date Register of Code Subscribers;
  - 5.3.3 To investigate, and to make a determination on, any complaints regarding breaches of the Code that have not been resolved by internal complaints processes;
  - 5.3.4 To investigate and to make a determination on, any matter that otherwise comes to the attention of the Code Oversight Committee regarding breaches of the Code;
  - 5.3.5 To appoint and manage an Independent Arbiter as required from time to time;
  - 5.3.6 To impose sanctions on Code Subscribers who breach the Code;
  - 5.3.7 To prepare and publish an annual report on Code administration and compliance;
  - 5.3.8 To commission, manage and publish an independent review of the Code every three years;
  - 5.3.9 To implement, manage and maintain an accurate and up to date Register of Excluded Parties;
  - 5.3.10 To implement, manage and maintain an accurate and up to date Register of Request Suppressions;
  - 5.3.11 To, if necessary, audit Code Subscribers' compliance with the Code; and
  - 5.3.12 To perform such other tasks necessary or desirable for the effective operation of the Code.

## **6. Prohibition on Direct Marketing**

- 6.1 A Code Subscriber or Code Subscriber Customer must not use QVAS Identified Information for Direct Marketing or with the intention of encroaching upon the privacy of a Consumer.
- 6.2 A Code Subscriber must not distribute QVAS Identified Information to any Code Subscriber Customer or any third party for the purpose of Direct Marketing or with the intention of encroaching upon the privacy of a Consumer.
- 6.3 A Code Subscriber must ensure that the Prohibition on Direct Marketing (set out

in clauses 6.1 and 6.2 of the Code) extends to Code Subscriber Customers and any third parties who gain access to QVAS Identified Information. This requires, as a minimum, the following steps:

- 6.3.1 A Code Subscriber must establish a binding legal agreement with all Code Subscriber Customers and any third parties who gain access to QVAS Identified Information. This binding legal agreement may be established by a Code Subscriber Customer indicating their acceptance of terms and conditions that are presented to them in an electronic format. This binding legal agreement must incorporate the Code definition of Direct Marketing and the Code Prohibition on Direct Marketing;
- 6.3.2 This binding legal agreement must include an obligation on the Code Subscriber Customer to assist the Code Oversight Committee with any investigation and notice that a person or organisation in breach of the Prohibition on Direct Marketing (set out in clauses 6.1 and 6.2 of the Code) or who refuses to assist the Code Oversight Committee with an investigation may be added to the Register of Excluded Parties (set out in Clause 17 of the Code) or be subject to public naming under clause 16.2.1;
- 6.3.3 A Code Subscriber must promote the Code and the Prohibition on Direct Marketing in relevant Code Subscriber Customer marketing literature and online material; and
- 6.3.4 A Code Subscriber must prominently display the Prohibition on Direct Marketing in the terms and conditions of use of its products.

## **7. Data security**

- 7.1 A Code Subscriber must not provide access to any QVAS Identified Information to an organisation or individual who appears on the Register of Excluded Parties (set out in Clause 17 of the Code).
- 7.2 A Code Subscriber must take reasonable steps to protect any Personal Information that it holds from misuse and loss and from unauthorised access, modification, disclosure and transfer.
- 7.3 A Code Subscriber must take all reasonable steps to maintain and safeguard the security of the QVAS Identified Information in its database.
- 7.4 A Code Subscriber must ensure that its employees and consultants maintain the security of QVAS Identified Information and use this data solely for purposes permitted under the Code.

## **8. Identification and logging of access**

- 8.1. A Code Subscriber must take all reasonable steps to identify and log Code Subscriber Customer and other third party access to QVAS Identified Information.
- 8.2. A Code Subscriber must retain access logs for a period of at least 12 months.
- 8.3 A Code Subscriber must provide one free access login to its system to the Code Oversight Committee to assist with investigation and audit.

## **9. Suppression of data**

- 9.1. A Code Subscriber must reasonably cooperate with all requests to suppress QVAS Identified Information.
- 9.2. Where a request to suppress QVAS Identified Information comes to a Code Subscriber directly from a Consumer the Code Subscriber must inform the Consumer of the existence of the Code and the Register of RequestSuppressions.

- 9.3 The Code Oversight Committee must maintain a Register of RequestSuppressions. The management and maintenance of this register, which may be website based, may be delegated to a third party service provider.
- 9.3.1 The Code Oversight Committee may, upon receipt of a written request from a Consumer, add the Consumer's QVAS Identified Information to the Register of Request Suppressions.
- 9.3.2 Code Subscribers must be informed at regular intervals of any additions to or removals from the Register of Request Suppressions and must reasonably ensure that all the Code Subscriber's relevant data is amended to reflect that suppression within 30 days of notification.
- 9.4 The Department will continue to manage statutory orders for suppression under Part 3 of the *Land Valuation Act 2010 (Qld)*. Where an order to suppress QVAS Identified Information comes from the Department pursuant to Part 3 of the *Land Valuation Act 2010 (Qld)*, the Code Subscriber must ensure that all the Code Subscriber's relevant historical and current data are amended to reflect that suppression.

## 10. Referral of complaints

- 10.1 Where a complaint is received directly by the Code Oversight Committee it will first be referred to the relevant Code Subscriber for the purpose of resolution through the internal complaints process. The complainant must be informed immediately regarding this referral.
- 10.2 Where a complaint is received by a Code Subscriber that would clearly be more appropriately directed to another Code Subscriber it may be referred to the Code Oversight Committee to identify and refer to the relevant Code Subscriber for the purpose of resolution through that Code Subscriber's internal complaints process. The complainant must be informed immediately by the first Code Subscriber that their complaint has been referred to the Code Oversight Committee as it may be more appropriately directed to another Code Subscriber. The Code Oversight Committee must inform the complainant immediately regarding referral to the other Code Subscriber.
- 10.3 Where a complaint is received directly by the Department it may refer the complaint to the Code Oversight Committee for resolution.

## 11. Internal complaints

- 11.1 A Code Subscriber must provide an internal complaints process for Consumers. The internal complaints process must be free of charge.
- 11.2 Upon receipt of an internal complaint (either directly from a Consumer or by referral from the Code Oversight Committee, the Department or another Code Subscriber), the following information must be provided to the complainant:
- 11.2.1 A copy of the Code (if it has not already been provided);
- 11.2.2 Full contact details for the management of the complaint; and
- 11.2.3 An acknowledgment that the complaint has been accepted and notification that the Code Subscriber has 30 days to resolve the complaint.
- 11.3 A Code Subscriber must endeavour to resolve all internal complaints promptly, but at least within 30 days of receipt.
- 11.4 Complainants must be provided with written reasons for any decisions made under the internal complaints process. Appropriate remedies and sanctions for the internal complaints process are at the discretion of the Code Subscriber.

- 11.5 Where a complaint is not resolved to the satisfaction of the Consumer or where the 30 day period is exceeded, a Code Subscriber must inform the complainant immediately of the external complaints process established by the Code (set out in Clause 12), including the provision of contact details for the Code Oversight Committee.
- 11.6 Where an internal complaint identifies a breach by a Code Subscriber Customer or third party of the Prohibition on Direct Marketing (set out in Clause 6), the Code Subscriber must inform the Code Oversight Committee, so that the Code Oversight Committee can determine whether an addition should be made to the Register of Excluded Parties (set out in Clause 17).

## **12. External complaints**

- 12.1 The external complaints process under the Code will apply in the following circumstances:
  - 12.1.1 Where a complaint cannot be resolved through the internal complaints process of a Code Subscriber;
  - 12.1.2 Where a complaint cannot be resolved within 30 days of receipt by a Code Subscriber;
  - 12.1.3 Where a complaint has been received and / or referred but it is unclear which Code Subscriber should be responsible for management of the complaint;
  - 12.1.4 Where the Department requests that a complaint be treated directly as an external complaint (including, but not limited to, circumstances where there is a requirement for urgent resolution); and / or
  - 12.1.5 Where a complaint involves a dispute between Code Subscribers.
- 12.2 External complaints must be made to the Code Oversight Committee in writing (electronic communication is acceptable). External complaints will be assessed at regular meetings of the Code Oversight Committee and are not subject to any specific timeline. The Code Oversight Committee must inform the Consumer in writing of the date that their external complaint will be assessed. The Code Oversight Committee may assess urgent matters out of session, at its discretion.
- 12.3 The external complaints process will be free of charge to Consumers and the Department. However, the Code Oversight Committee may levy a complaints administration charge on Code Subscribers to offset the costs of the external complaints process. The rates of any such charges will be notified in advance.
- 12.4 While there is no right to a formal hearing, the Code Oversight Committee will endeavour to consult both parties during the external complaints process. Written reasons for any decisions made in the external complaints process will be provided to both parties.

## **13. Independent Arbiter**

- 13.1 If either party is not satisfied with the outcome of the external complaints process, they may elect to have the complaint referred to an Independent Arbiter.
- 13.2 The Independent Arbiter will be appointed by the Code Oversight Committee. Appointments may be on an 'as required' basis.
- 13.3 The Independent Arbiter process will be free of charge to Consumers and the Department. However, the Code Oversight Committee may levy a complaints administration charge on Code Subscribers to offset the costs of the Independent Arbiter. Any such charges will be notified in advance.
- 13.4 Decisions of the Independent Arbiter are binding on Code Subscribers.



## **14. Breaches**

- 14.1 A breach of the Code can be found by the Code Oversight Committee following the assessment of an external complaint, or following their own investigation, or following advice from the Independent Arbiter. A determination that a breach has occurred must be provided to the Code Subscriber or Code Subscriber Customer in writing (electronic communication is acceptable). In finding a breach the Code Oversight Committee shall apply the civil standard of proof, that is, the balance of probabilities.
- 14.2 The following actions constitute a breach of the Code:
  - 14.2.1 The Code Subscriber or Code Subscriber Customer fails to comply with its obligations under the Code;
  - 14.2.2 The Code Subscriber or Code Subscriber Customer acts or engages or repeats a practice that is contrary to or inconsistent with the Code;
  - 14.2.3 The Code Subscriber or Code Subscriber Customer fails to respond to a complaint by a Consumer; and / or
  - 14.2.4 The Code Subscriber fails to pay a levy.

## **15. Serious or systemic breaches**

- 15.1 A serious or systemic breach of the Code can be found by the Code Oversight Committee following the assessment of an external complaint, or following their own investigation, or following advice from the Independent Arbiter. A determination that a serious or systemic breach has occurred must be provided to the Code Subscriber or Code Subscriber Customer in writing (electronic communication is acceptable).
- 15.2 The following actions constitute a serious or systemic breach of the Code:
  - 15.2.1 The Code Subscriber or Code Subscriber Customer is responsible for a breach of the Code resulting in substantial harm to Consumers and / or damage to the reputation of the industry;
  - 15.2.2 The Code Subscriber or Code Subscriber Customer has engaged in repetitive or ongoing non-compliance;
  - 15.2.3 The Code Subscriber or Code Subscriber Customer has ignored the Code Oversight Committee's request to remedy a breach or failed to do so within a reasonable time; and / or
  - 15.2.4 The Code Subscriber or Code Subscriber Customer has breached an undertaking given to the Code Oversight Committee.

## **16. Sanctions**

- 16.1 Where the Code Oversight Committee has made a finding that there has been a breach (see Clause 14) by a Code Subscriber or a Code Subscriber Customer of the Code, they may impose any of the following sanctions:
  - 16.1.1 Require the Code Subscriber or require the Code Subscriber to require its Code Subscriber Customer to undertake immediate remedial action including, but not limited to, changes to documentation, changes to business processes and / or corrective advertising;
  - 16.1.2 Require the Code Subscriber or require the Code Subscriber to require its Code Subscriber Customer to remove QVAS Identified Information from its data;
  - 16.1.3 Require the Code Subscriber or require the Code Subscriber to require its Code Subscriber Customer to remove specified Personal

Information from its data;

- 16.1.4 Require the Code Subscriber or require the Code Subscriber to require its Code Subscriber Customer to cease providing data and / or services to a Code Subscriber Customer or other third party;
  - 16.1.5 Require the Code Subscriber or require the Code Subscriber to require its Code Subscriber Customer to apologise to affected parties;
  - 16.1.6 Require the Code Subscriber or require the Code Subscriber to require its Code Subscriber Customer to undertake privacy training; and / or
  - 16.1.8 Issue a warning to a Code Subscriber or require the Code Subscriber to require its Code Subscriber Customer regarding the impact of any further breaches on future sanctions.
- 16.2 Where the Code Oversight Committee has made a finding that there has been a serious or systemic breach (see Clause 15) by a Code Subscriber or Code Subscriber Customer of the Code, they may impose any of the following sanctions:
- 16.2.1 Publication of the name of the Code Subscriber or Code Subscriber Customer and the nature of the serious or systemic breach in the annual report or in other publications;
  - 16.2.2 In the case of a Code Subscriber, suspension from membership of the Code and listing on the Register of Excluded Parties for a period of between one and six months, at the discretion of the Code Oversight Committee;
  - 16.2.3 In the case of a Code Subscriber, permanent suspension from membership of the Code and permanent listing on the Register of Excluded Parties;
  - 16.2.4 In the case of a Code Subscriber Customer, listing on the Register of Excluded Parties for a period of between one and six months, at the discretion of the Code Oversight Committee;
  - 16.2.5 In the case of a Code Subscriber Customer, permanent listing on the Register of Excluded Parties;
  - 16.2.6 Where the Code Oversight Committee has determined to impose a sanction that involves suspension from membership of the Code, the Code Oversight Committee must advise the Department (so that the Department knows to suspend provision of Personal Information under the licence).

## **17. Register of Excluded Parties**

- 17.1 The Code Oversight Committee must maintain a Register of Excluded Parties. The management and maintenance of this register may be delegated to a third party service provider.
- 17.2 Code Subscribers must add Code Subscriber Customers or other third parties to the Register of Excluded Parties where they have breached the Prohibition on direct marketing established in Section 6.3 of this Code.
- 17.3 Code Subscribers must check the Register of Excluded Parties before allowing access to QVAS Identified Information by a new Code Subscriber Customer or other third party.
- 17.4 The Code Oversight Committee may, upon receipt of a written request, remove a party from the Register of Excluded Parties, where a reasonable period has expired, and/or the Code Oversight Committee is satisfied that the removal does not represent a significant risk of further breaches.
- 17.5 Code Subscribers must be informed immediately of any additions to or removals

from the Register of Excluded Parties and must exclude access to QVAS Identified Information immediately for a Code Subscriber Customer or other third party who is on the Register of Excluded Parties.

## **18. Code annual report, three year review and amendment**

- 18.1 By 31 August 2010, and annually thereafter, the Code Oversight Committee must prepare and publish an annual report.
- 18.2 By 31 August 2012, and once every five years thereafter, the Code Oversight Committee must commission and publish an independent review on the operation and effectiveness of the Code. The review may include an analysis of changes in industry practice, privacy regulation and best practice. The review may recommend necessary changes and amendments to the Code.
- 18.3 The review must be conducted by an impartial, independent third party, with expertise in best practice self-regulation. Sufficient resources for the review process will be allocated. If necessary, Code Subscribers may be levied for the costs of the review.
- 18.4 Where major changes and amendments to the Code are proposed, the Code Oversight Committee must undertake adequate consultation with the Government, public, Code Subscribers and other interested parties and provide a report on the result of the consultation process, before finalising any proposed amendments.
- 18.5 The agreement of a simple majority of Code Subscribers must be sought before making any changes and amendments to the Code.

## **19. Reserve powers of Minister**

- 19.1 The Minister may direct the Code Oversight Committee to permanently list an entity on the Register of Excluded Parties should the Minister, in exceptional circumstances, consider it necessary.
- 19.2 The Minister may direct the Code Oversight Committee to permanently suspend a Code Subscriber from membership of the Code and list the Code Subscriber on the Register of Excluded Parties should the Minister, in exceptional circumstances, consider it necessary.
- 19.3 For the avoidance of doubt, it is not expected that the Minister or the Department will have a role in the day to day administration or review of complaints or will have occasion to exercise the reserve powers except in exceptional circumstances.