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INNOVATIVE LEGAL SOLUTIONS

**Information sharing session: The Protection
of Personal Information Act (POPIA) is here!**

What now?



Introductions



INTRODUCTION: INLEXSO (PTY) LTD

Inlexso offers end-to-end legal solutions & transcription services

Outsourcing – outsourced, in-house advisors

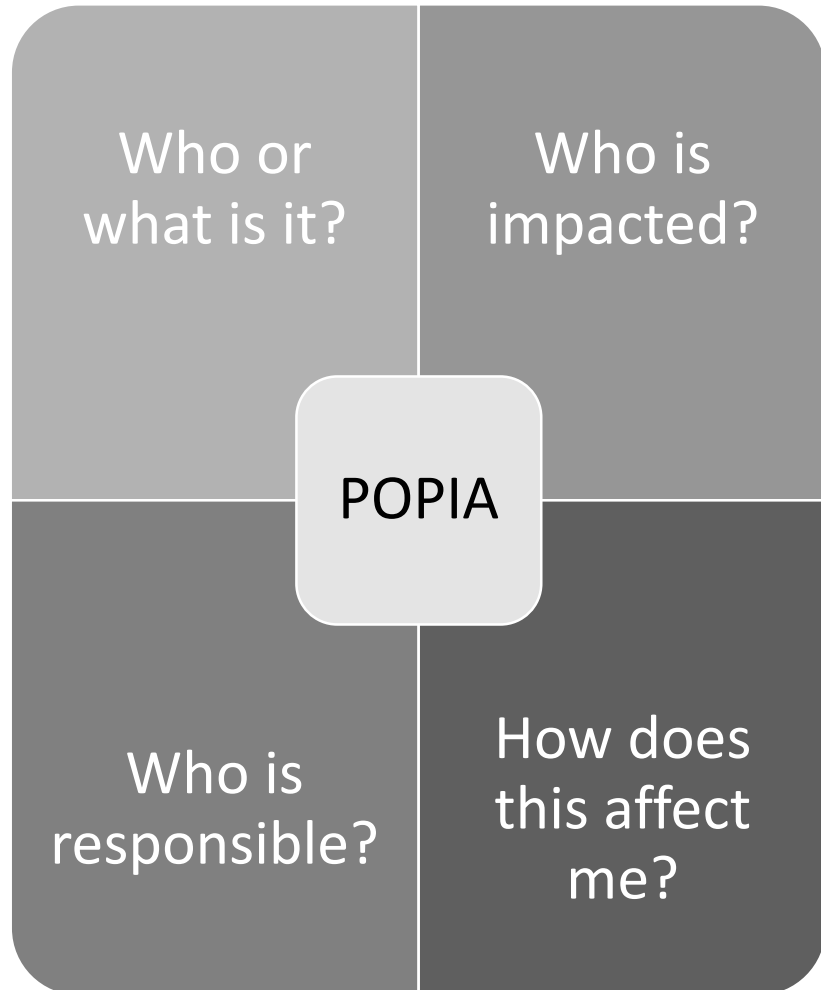
Highly trained and specialised professionals - legal (qualified attorneys and advocates) & other specialist consultants

Diverse areas of law - Compliance, Commercial, Mining, Property, Environmental, Labour, Health & Safety

Services offered on an exclusive basis or by means of outsourced model

Adaptable to clients' systems and processes and able to offer practical and strategic legal advice

How to make sure you are ready by 30 June 2021: discussion points



Risks... and opportunities!

Lessons learned whilst assisting organisations from various sectors and industries

How inlexso can assist you with POPIA readiness & implementation

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**

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



IMPORTANT DEFINITIONS

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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?

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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



EIGHT CONDITIONS FOR PROCESSING PI



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, 3rd 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 3rd 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



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



BUSINESS AREAS IMPACTED BY POPIA

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

- **Strategic:** who will be responsible for compliance with POPIA?
- **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 their **business processes** are aligned with POPIA’s requirements.
- Conducting a **risk assessment** of organisations’ security safeguards and remedying weaknesses.
- **Amending the PAIA manual** in accordance with POPIA’s requirements (i.e. description of business processes and security measures).

HOW TO MITIGATE RISKS?

Establish which business processes, docs and systems are impacted & align with Act's requirements – GAP analysis

Obtain consent to process

Policies – processing of PI

Access rights

Device security

Standard clauses in agreements

Training staff





OPPORTUNITIES

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OPPORTUNITIES

- Reputation: responsible corporate citizen – my PI is safe with you
- Identify opportunities in YOUR business area – example in stationery industry
- Contribution to Code of Conduct
- Strengthening of governance structures
- Technological opportunities



GAP ANALYSIS

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GAP ANALYSIS...WHAT TO DO

We've conducted gap analysis exercises incl. retail, construction, tertiary education and manufacturing industries

Conduct organisation-wide analysis of the state of processing of PI

Identify affected areas of the business (CRM, HR, Marketing/advertising, IT, etc)

Representatives per area on project com (project governance as applicable)



GAP ANALYSIS...WHAT TO DO

TYPICAL FORMAT

Kick-off meeting

Questionnaires
(requirements in
terms of the Act)
to areas
identified in the
business

Workshops/
interviews with
business

Compare
outcomes to
Act's
requirements

Report containing
recommendations/
Road map for
implementation

Formulate
project plan
from report/
road map

LESSONS LEARNED... (WHAT NOT TO DO)

- Ownership – whose project? IT/ Compliance/ Legal?
- PAIA & POPIA
- Importance of phased approach II 1st identify then implement
- Wider than 8 conditions – e.g. Special PI, International transfer of PI
- Importance of IAR: could be delivery mechanism

CLOSURE

Way forward



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THANK YOU!



PRESENTED BY

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