



# CYBERSECURITY & PROFESSIONAL GUIDELINES

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## CYBERSECURITY

1. Legal ethical obligations re data/privacy
2. Types of cyber risks
3. Various professional body guidelines
4. Conduct that may amount to UPC or PMC
5. Consequences of poor cyber resilience – role of regulators
6. Law reform & Statutory tort for serious invasions of privacy
7. Artificial Intelligence – conduct issues

## LEGAL AND ETHICAL OBLIGATIONS

- Privacy Act 1988 (Cth) – turnover >\$3mill – Cth contracts – health orgs – Govt agencies
- Australian Privacy Principles
- Mandatory data breach notification scheme
- Duty not to disclose any information that is confidential to a client unless otherwise permitted by the Legal Profession Uniform Law Australian Solicitors' Conduct Rules (the Conduct Rules) [rule 9 of the Conduct Rules].
- Bar Rules r114
- Paramount duty to administration of justice
- Privileged and confidential documents
- Reputational and professional risk

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## TYPES OF RISKS

- Phishing – scam messages
- Malware
- Business Email Compromise
- Ransomware
- Data loss
- Data breach

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## PROFESSIONAL GUIDELINES

- NSW Bar Association Cybersecurity Guidelines
- Law Society NSW Cybersecurity Checklist
- Victorian Legal Services Board Commissioner Minimum Cybersecurity Expectations
- Other jurisdictions
  
- LAWCOVER
- CYBER INSURANCE

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## CONSEQUENCES OF POOR CYBER RESILIENCE

- Actions by regulators
  - Regulatory investigation (possibly publicised).
  - Multi-year enforceable undertakings.
  - PC revocation or PC conditions.
  - Proceedings (eg breach of civil penalty provisions).
  - Breach of director duties.

# CONSEQUENCES OF POOR CYBER RESILIENCE

- Actions by private persons
  - Complaints to the Office of the Australian Information Commissioner.
  - Class actions (eg under the Privacy Act 1988 (Cth)).
  - Contractual shortfalls and material non-compliance, triggering a cause of action (eg where agreements set out minimum cyber resilience requirements, including indirectly through privacy, confidentiality or information security clauses).
  - Breach of the equitable duty of confidence.
  - Tortious claims based on negligence
  - Misleading or deceptive conduct under the Australian Consumer Law
- Australian Securities and Investments Commission v RI Advice Group Pty Ltd  
[2022] FCA 496

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## PRIVACY ACT AMENDMENTS

- New Statutory Cause of Action for Serious Invasions of Privacy  
- intrusions into personal seclusion or misuse of personal information.
- Automated Decision-Making
- Doxxing Offence
- Children's Online Privacy Code
- Overseas Dataflows, Whitelist Powers

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## ARTIFICIAL INTELLIGENCE

- NSW Supreme Court Practice SC Gen 23
- District Court of NSW General Practice Note 2
- Industrial Relations Commission of NSW's Practice Note No 33
- Land and Environment Court of NSW's Practice Note on the Use of Generative Artificial Intelligence.
- NSW Bar Association Issues Arising from the Use of AI Language Models (including ChatGPT) in Legal Practice' published July 2023.
- Law Society of NSW - <https://www.lawsociety.com.au/publications-and-resources/ai-legal-professionals>

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# ARTIFICIAL INTELLIGENCE

- Restrictions for use with sensitive data:
  - Information will remain within the controlled environment of the technological platform being used
  - Information in the platform is the subject of confidentiality restrictions on the supplier of the relevant technology or functionality to ensure the data is not made publicly available
  - Information in the platform is the subject of confidentiality restrictions on the supplier of the relevant technology or functionality to ensure that the data is not used to train any large language models.

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## ARTIFICIAL INTELLIGENCE – CONDUCT ISSUES

- Valu v Minister for Immigration and Multicultural Affairs (No 2)  
[2025] FedCFamC2G 95
- Dayal [2024] FedCFamC2F 1166
- Handa & Mallick [2024] FedCFamC2F 957



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