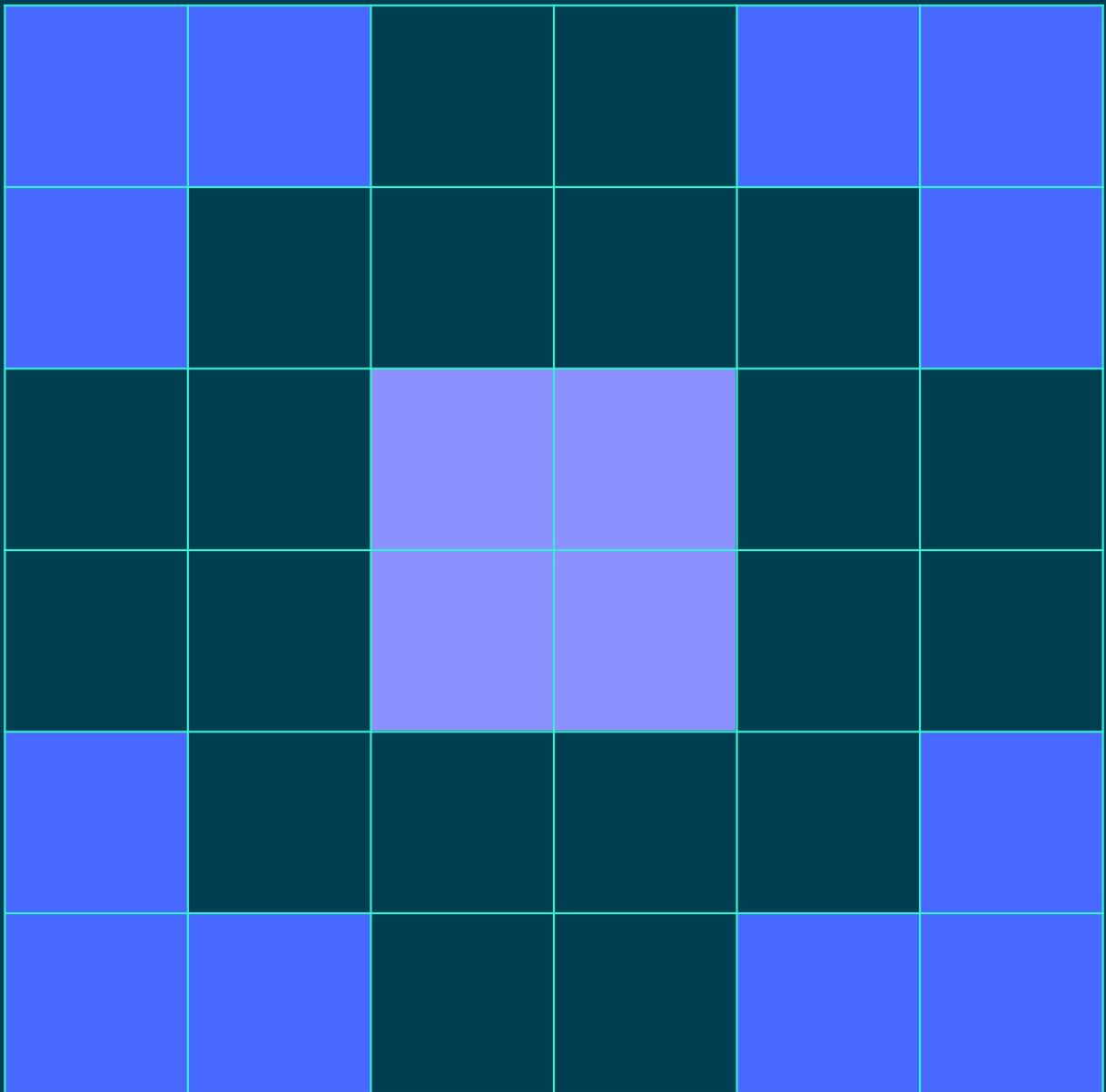


Navigating court eDiscovery requirements



In this guide we explore insights for navigating court eDiscovery requirements.

Introduction	3
Efficient and proportionate	3
Early action	3
Developing a plan	4
Limiting discovery and disclosure obligations	4
Understanding your client data	5
Court discretion	5
Helpful resources	6
How we help	7

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Key considerations that commonly appear throughout the various Australian Court jurisdictions when referencing discovery and disclosure obligations in context of using electronic discovery technology and services.

Efficient and proportionate

Throughout the various Acts and Rules, across all jurisdictions, there is a common reference to either the Courts, parties, and their legal representatives, (and in some cases third parties), having an obligation to ensure that matters are run efficiently and proportionate to the circumstances of each case. Whilst the sentiment is common, it is not always clearly expressed in the same way or in the same place.

All the Practice Directions and Notes relating to the use of electronic discovery and disclosure are either underpinned by the respective concept of efficiency and proportionality contained within that jurisdiction's Acts and/or Rules or some general pursuit of efficiency. Parties should familiarise themselves with the respective jurisdiction's principles and ensure that any action in respect of discovery and disclosure advances that jurisdiction's purpose and objectives around efficiency and proportionality.

Early action

For all jurisdictions within which electronic discovery and disclosure is recommended it is also a requirement that the parties consider their respective positions on the potential requirements as early as practicable. Some jurisdictions even suggest this take place prior to filing a defence. Factors to be considered include the volume of documents to be disclosed, the format of the documents that need to be reviewed and discovered, the complexity of the matter, and any related discovery and disclosure exercise.

The intention of the early consideration is for the parties to raise the use of eDiscovery with one another and formulate an agreement on how the technology can be used to ensure the matter progresses efficiently and at the minimum expense. The use of electronic disclosure is also something that should be raised with the Court for their consideration and, in some cases, approval.

Developing a plan

The early agreement between the parties of electronic discovery and disclosure is, in most jurisdictions, required to be formalised into a Document Management Plan and Exchange Protocol, (referred to in slightly different ways in different jurisdictions), which is meant to govern how the electronic disclosure process will take place and the way lists and documents will be exchanged between the parties.

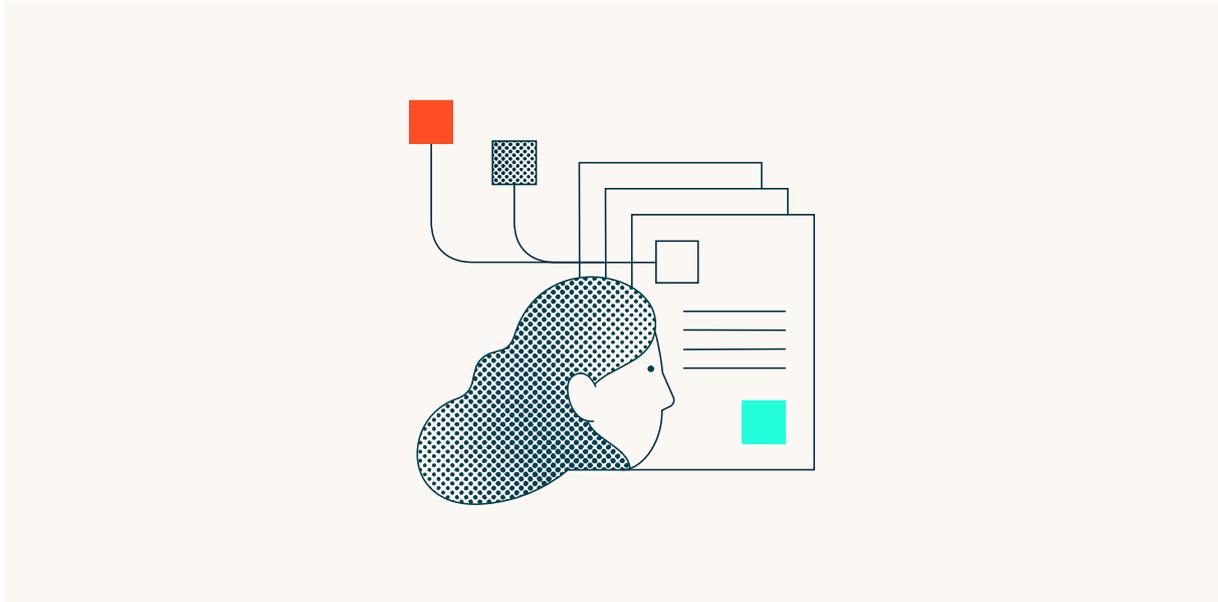
Some jurisdictions provide examples of Document Management Plans and Exchange Protocols where as others provide only basic guidance on some inclusions. In all those jurisdictions it is stated that these documents and suggested inclusions are to act only as a guide, and it is expected that the parties will develop plans and protocols that reflect the complexity and requirements of each matter. It is also important that the plans and protocols clearly aim to advance the respective jurisdictions efficiency and proportionality principles and objectives.

Even if the other party or parties do not want to use electronic discovery methods there is still a tremendous amount of efficiency to be gained from adopting these processes independently. It is still best to do so under the guidance of a particular plan of action that is documented and followed.

Limiting discovery and disclosure obligations

Many jurisdictions have legislative provisions that limit the more traditional concept of general discovery and disclosure. Instead of having a positive obligation on the parties to disclose all relevant documents, the obligations can be limited. The express limitations vary based on the jurisdictions and can include disclosure by issue of notice or court order and be limited by reference to categories, critical documents, key words, or reasonable searches, as well as amending the timing and stages of discovery and disclosure.

There are also broad discretionary powers within many of the jurisdictional legislative provisions that either singularly, or in combination with the relevant electronic discovery and disclosure practice directions, allow the Court to make virtually any order it considers to be appropriate where it would lead to the parties being more efficient in the resolution of proceedings and incurring costs proportionate to the circumstances of the matter.



Understanding your client data

To comply with many of the common requirements throughout this guide it is important that lawyers have a good understanding of their client's data and documents. The Court's regularly call upon the parties to justify why electronic discovery and disclosure is appropriate or why the scope of the disclosure and discovery should be extended or limited. Much of the justification is based on the nature of the data the parties have within their control. With the Court now focusing on resolving some of these matters early in the proceedings it is becoming a requirement for the parties to understand their potential data and document makeup sooner. Failure to do so may involve making a decision that is not ideal or being unable to properly address the Court's requirements at all.

Court discretion

There are broad discretionary powers within many of the jurisdictional legislative provisions that will allow the Court to make Orders that place varying discovery requirements upon parties. Even in jurisdictions that do not expressly reference electronic discovery and disclosure, the parties, by operation of these powers, may be able to seek an order that the disclosure and discovery process be varied to include the use of electronic discovery. The strength of such applications will certainly be bolstered by the links you can draw between the use of technology and the advancement of the respective efficiency and proportionality provisions within the jurisdiction.

Helpful resources and references

As specialists we continually invest in R&D and best practice so we can advise our partners with confidence. These insights culminate in helpful [resources](#) and [references](#) for lawyers and decision-makers.

Data Identification Questionnaire

Our questionnaire reference aims to help you quickly and accurately identify data potentially relevant to your matter. The information captured from key stakeholders will facilitate the development of a collection plan and enable its swift and defensible execution.

[Learn what to consider](#)

Key timings for disputes

Collaborative partnership with your eDiscovery specialist can extend beyond a specific project and, if progressed towards a more integrated solution, can create significant benefits and a competitive advantage for legal teams.

[Learn what to consider](#)

Learn more

Negotiating a document exchange protocol with opposing parties	↗
Reducing discovery obligations with another party	↗
Developing an appropriate review workflow	↗

Across hundreds of matter types in all sectors and jurisdictions, we focus on solutions and impact. Here is a selection of matters that may be relevant to you.

Relevant matters

Negotiating a document exchange protocol

Dispute, Analyse, Review, Produce

[Read](#)

Collecting critical data quickly

Dispute, Regulatory, Investigation, Locate, Collect

[Read](#)

Prioritising critical documents

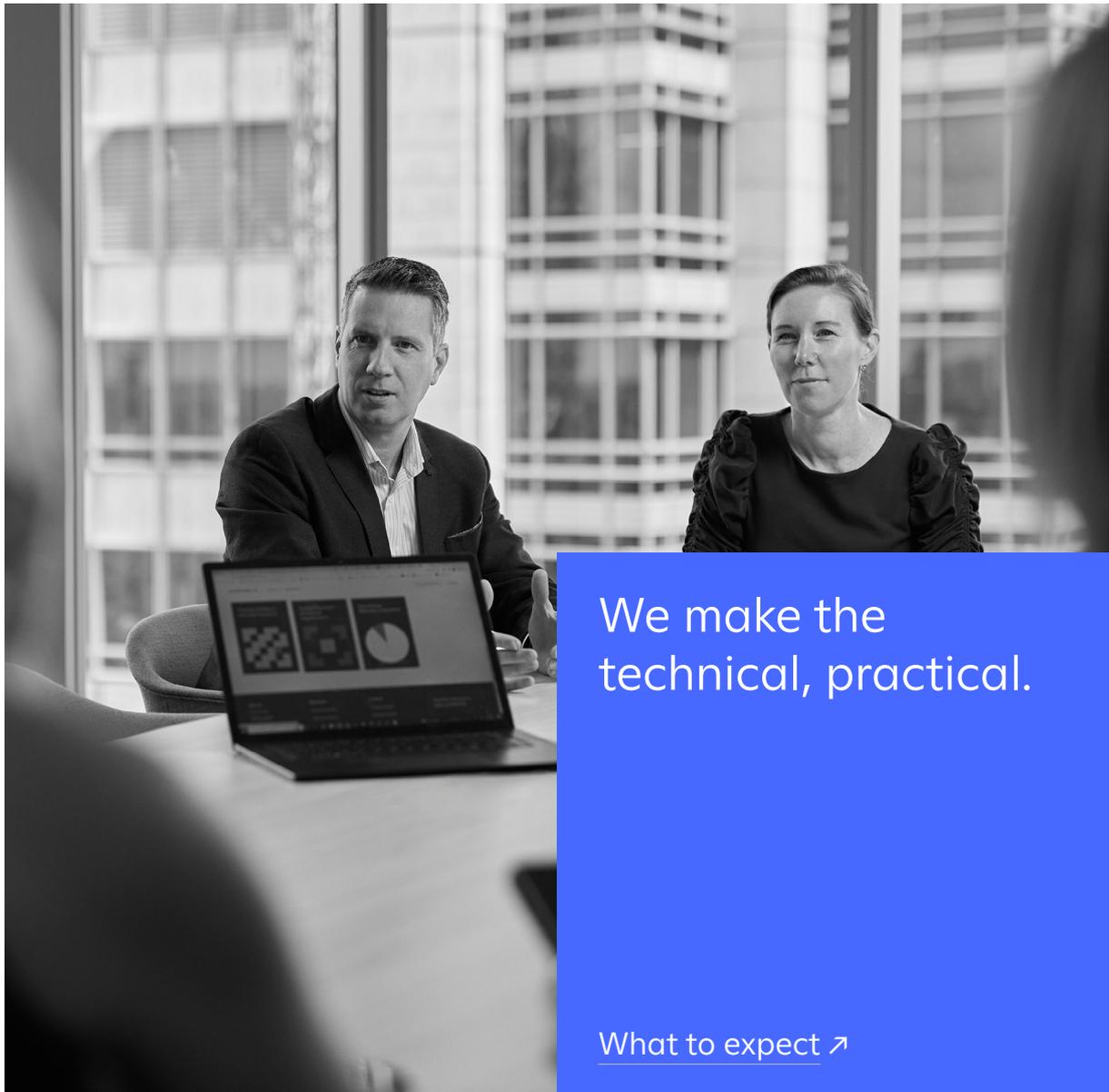
Dispute, Regulatory, Investigation, Collect, Process, Analyse

[Read](#)

[View all solutions ↗](#)

You need a team with a balance of legal, eDiscovery and technology expertise, this is who we are.

Our expert team of lawyers and technologists are available to assist you with navigating all stages of your matter, from the first meeting, through scoping, to completion. We focus on technical solutions so you can focus on the law. Find out how we help.



We make the technical, practical.

[What to expect ↗](#)

