

This guide explores practical experience following the formal adoption of DRDs in England and Wales' Business and Property Courts.

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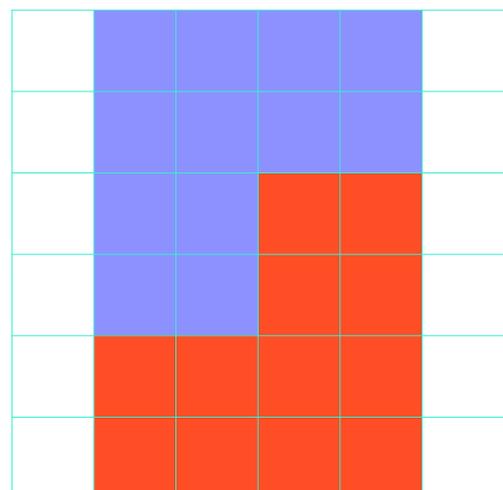
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Can a Disclosure Review Document be your best friend or worst enemy?

The short answer is that the Disclosure Review Document (DRD) can be either. Whether your DRD is a friend or foe largely depends on its contents, specifically, what is (or is not) included in the final document.

This guide explores the areas where eDisclosure (or eDiscovery) experts can have a significant and positive impact on cases based on practical experience following the formal adoption of DRDs in England and Wales's Business and Property Courts.



Key considerations for drafting, or coming to, a DMP agreement.

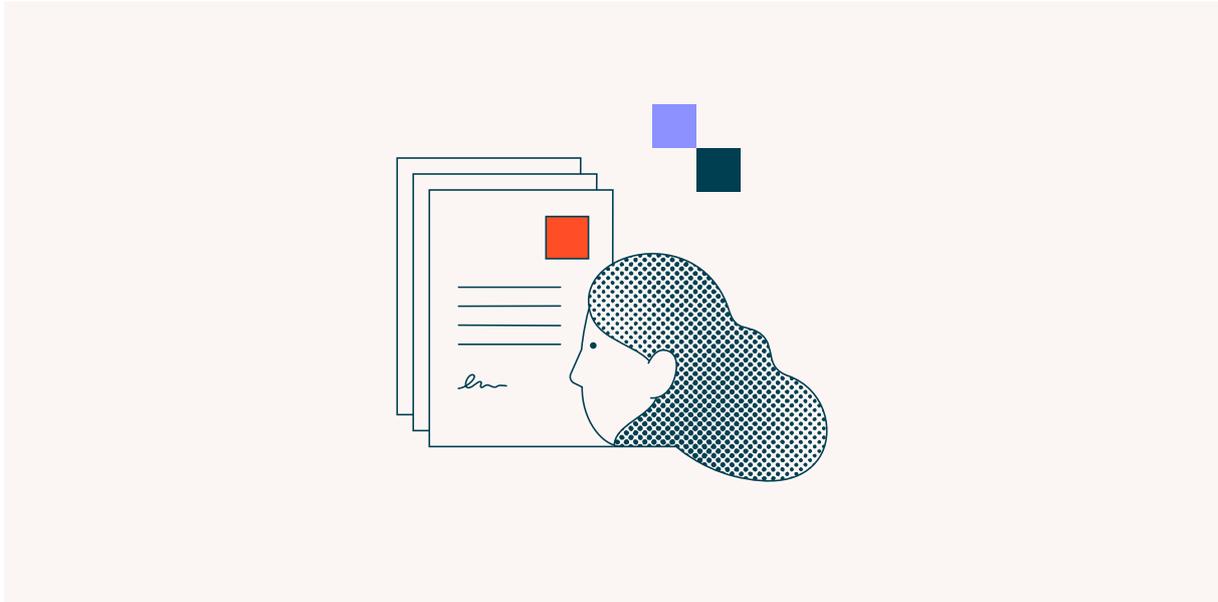
Background

Under Practice Direction 57AD, the DRD sets out the scope of document disclosure in civil litigation. The DRD replaces the disclosure report and Electronic Documents Questionnaire (EDQ) in the Business and Property and Technology and Construction Courts. The EDQ is still encountered in cases brought under the King's Bench Division (CPR PD 31B) and some other exceptions.

The DRD is submitted jointly by all parties engaging in Extended Disclosure. This requires practitioners to cooperate with their counterparts to agree on the disclosure process, addressing themes such as the case's material issues, potential sources of electronic data, and review methodologies. The aim is to ensure a disclosure process proportionate to the matter's value and complexity.

While the questions posed in the DRD are fundamentally legal, the answers can be informed by the views of eDisclosure experts. Unfortunately, and regularly, this does not happen. The first time eDisclosure experts may see a DRD is long after it has been agreed and submitted to the court. Failure to obtain their assistance earlier in the negotiations can result in missed strategic advantages or, at worst, increased time and costs for lawyers and their clients.

Several other emerging and growing factors will see the importance of a structured and considered approach to DRD formulation grow over time. The most pressing involves the exponential increase in the volume and complexity of data sources within organisations.



Influence of the DRD over your case

The DRD impacts your client's disclosure and the disclosure from all other parties to the litigation. A DRD completed at the last minute or not properly thought through can overlook vital data sources, potentially resulting in incomplete disclosure. At the other end of the spectrum, it could include too many data sources, resulting in ballooning document volumes that increase the cost of review and hosting.

The DRD can also be used as part of a broader legal strategy. For example, a DRD may be drafted in such a way as to pave the way for a data dump: a tactic commonly used by counsel when their client is a large corporation with significant resources to force a prolonged review process, which may be challenging to fund by a smaller organisation. On the other hand, the DRD can be used to exert pressure on all parties to adopt technology and design more innovative and efficient review methodologies to meet court deadlines.

Engaging an eDisclosure expert early in the negotiation will offer insights to ensure you take advantage of a strategy or a more efficient course of action. It is much easier to implement change during the DRD negotiation than after the DRD has been submitted to the Court as agreed.

DRDs can significantly affect the time, cost, and effort for the disclosure process.

Data sources

The DRD requires parties to list the potential data sources relevant to the dispute. The challenge is to ensure the sources listed are proportionate. This involves striking a balance between locating all the relevant documents against the cost of collecting and reviewing those documents.

Backup systems are an excellent example of finding this balance. Often, they are not included as a source due to the high retrieval cost and the potential low value of the documents. However, that position may change if the dispute is historic or covers a broad timeline. The backup system may be the only source of relevant documents, and the cost of examining the backups must be weighed against the claim's value. An argument for or against the proportionality of data source inclusion will always be made concerning the case's specific circumstances. An eDisclosure expert will assist with mapping an organisation's data systems to understand where relevant data may be stored, asking the right questions of individuals or IT teams to truly understand the data landscape, data storage practices and the cost and time of extracting said data.

The collection of data also needs due attention. Whilst collection may be deemed an "IT exercise", not all IT professionals have the skills or time to execute data collection to the required standard. Data collection needs to be performed so that, if necessary, the individuals responsible can testify in court about the process they went through. It is also essential to verify with other parties that their approach to data collection will be adequately documented. For example, critical metadata such as document dates and authors must be preserved during collection. The DRD should confirm these requirements, including any requirements specific to the data types subject to collection.

Keyword searching

There is a strong focus on the use of keywords in most DRDs. When keywords are proposed or search results shared, they should not be unquestioningly accepted but instead analysed to determine their impact and effectiveness. Keywords may be crafted to be overly broad, to emphasise the volume of data to review and invoke the proportionality of reviewing that volume of data, or to influence a trial date. Alternately, keywords may be crafted narrowly to reduce the cost of a review exercise, even when it's clear those keywords are insufficient to capture all potentially relevant documents.

When revisions are made to keywords due to DRD negotiations, the impact of those revisions should be tested on the data. Several techniques can be used to determine how effective a particular keyword is at identifying relevant material. The outputs from these techniques can be used by parties to support their relevant position and inform negotiations with parties resistant to reformulating keywords.

Review methodologies

The DRD process was adopted to enhance disclosure by encouraging the use of technology to address document review issues. Reviewing large volumes of documents is a time-consuming and expensive exercise. Still, legal teams often need to be made aware of the benefits of using technology to accelerate their review or are unwilling to engage with the technology in favour of a more traditional approach. The DRD requires parties to explain why technology is not used to review documents, significantly when volumes exceed 50,000.

Newer technologies are not without risk of error.

Technology such as Continuous Active Learning can help meet challenging disclosure deadlines and trial dates. A well-drafted DRD should consider what technology options might be available to parties needing to review large volumes of data and outline how the results of those technology-assisted reviews can be appropriately verified.

It can be the case that a review carried out with Continuous Active Learning may rely on a poorly built and tested computer model, which yields a poor result. The only way for a party to be satisfied that the review was carried out following best practice (at least, before receiving disclosure) is to request statistical information verifying the accuracy of the workflow.

An eDisclosure expert can assist with the interpretation of the statistical measurements and the parameters of how those measurements should be taken. Importantly, they can also help develop a DRD that places the appropriate validation requirements.

Conclusion

Formulating a DRD should not be treated as a formality. It is a strategically important document that can significantly impact the cost and quality of the disclosure process.

Practitioners should use all the relevant tools at their disposal to ensure that the impact of the DRD on the matter is positive. One such tool is the insight and assistance that can be provided by a specialised eDisclosure or eDiscovery practitioner. They will be able to assist with an array of DRD considerations, providing the technical insights necessary to develop an accurate, efficient and proportionate process. The corresponding benefit is that the risk of time delays and cost blowouts is minimised drastically.

Helpful resources

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 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](#)

Practice direction by jurisdiction (Australia & UK)

Reference our index of all Australian and UK eDiscovery practice directions.

[Learn what to consider](#)

Learn more

Capturing critical document sources in the collection process	↗
Minimising errors in your discovery/disclosure production	↗
Using eDiscovery beyond discovery/disclosure	↗

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 fair and balanced Electronic Data Questionnaire (UK)

Dispute, Review, Collect

[Read](#)

Using Continuous Active Learning for category-based discovery

Dispute, Analyse, Review

[Read](#)

Collecting critical data quickly

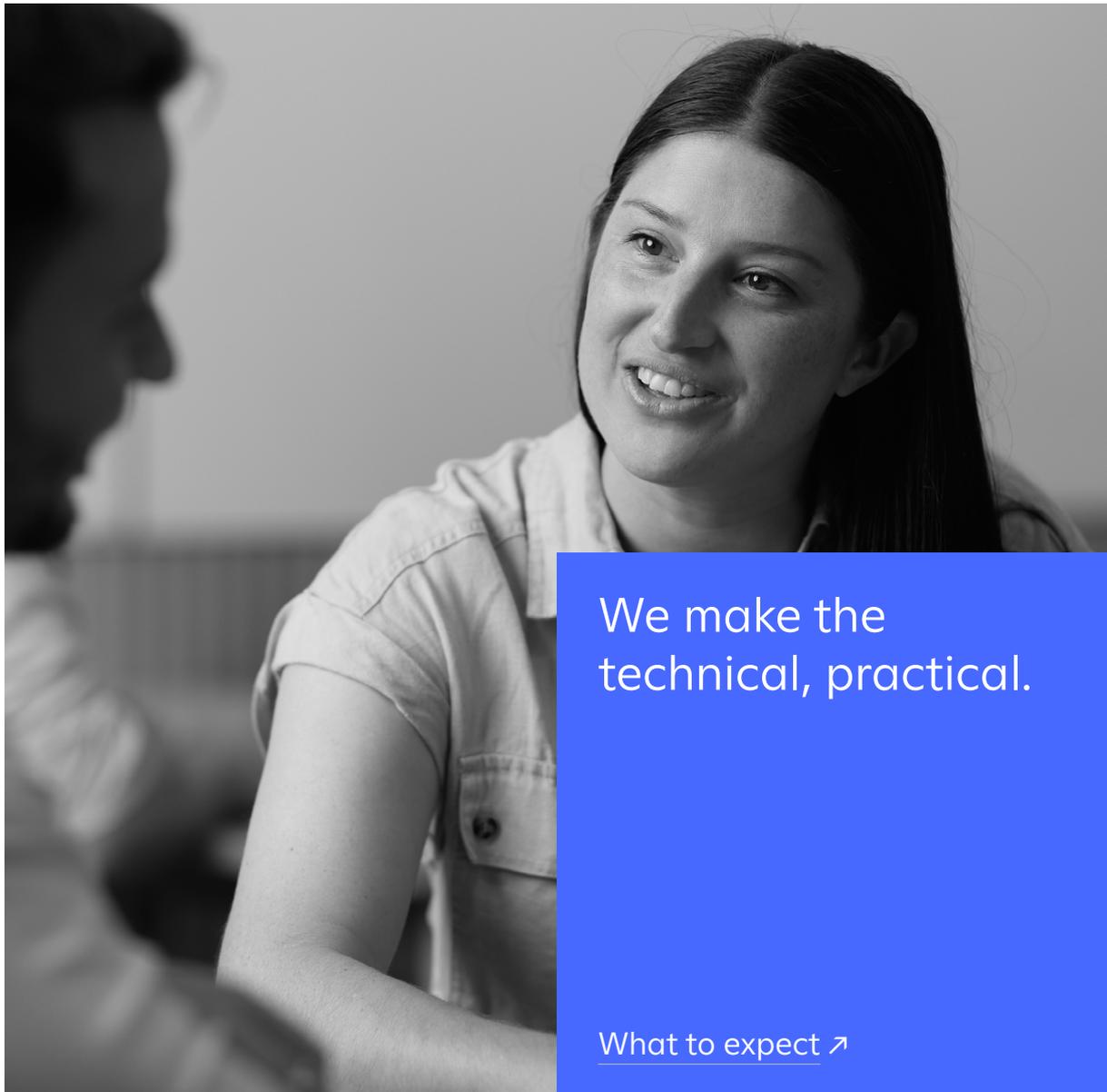
Dispute, Regulatory, Investigation, Locate, Collect

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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 ↗

