

WIN In-House Counsel Week 2025

Privacy and Cyber - A New Era

Presenters:

Sarah Birkett and Tim Lyons

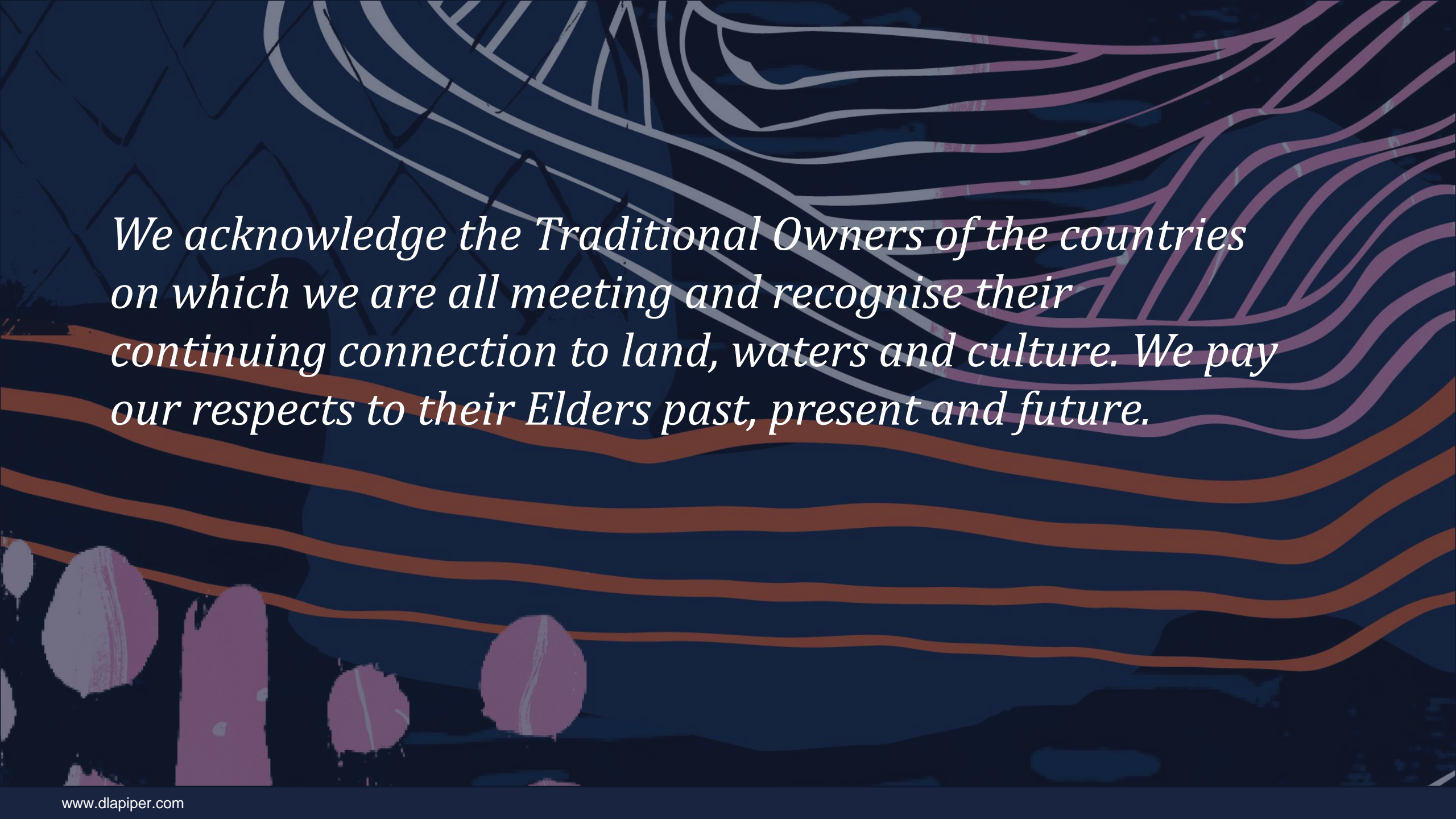
Thursday, 20 February 2025

08:00 - 09:00 AWST

10:00 - 11:00 AEST

11:00 - 12:00 AEDT





We acknowledge the Traditional Owners of the countries on which we are all meeting and recognise their continuing connection to land, waters and culture. We pay our respects to their Elders past, present and future.

Introduction

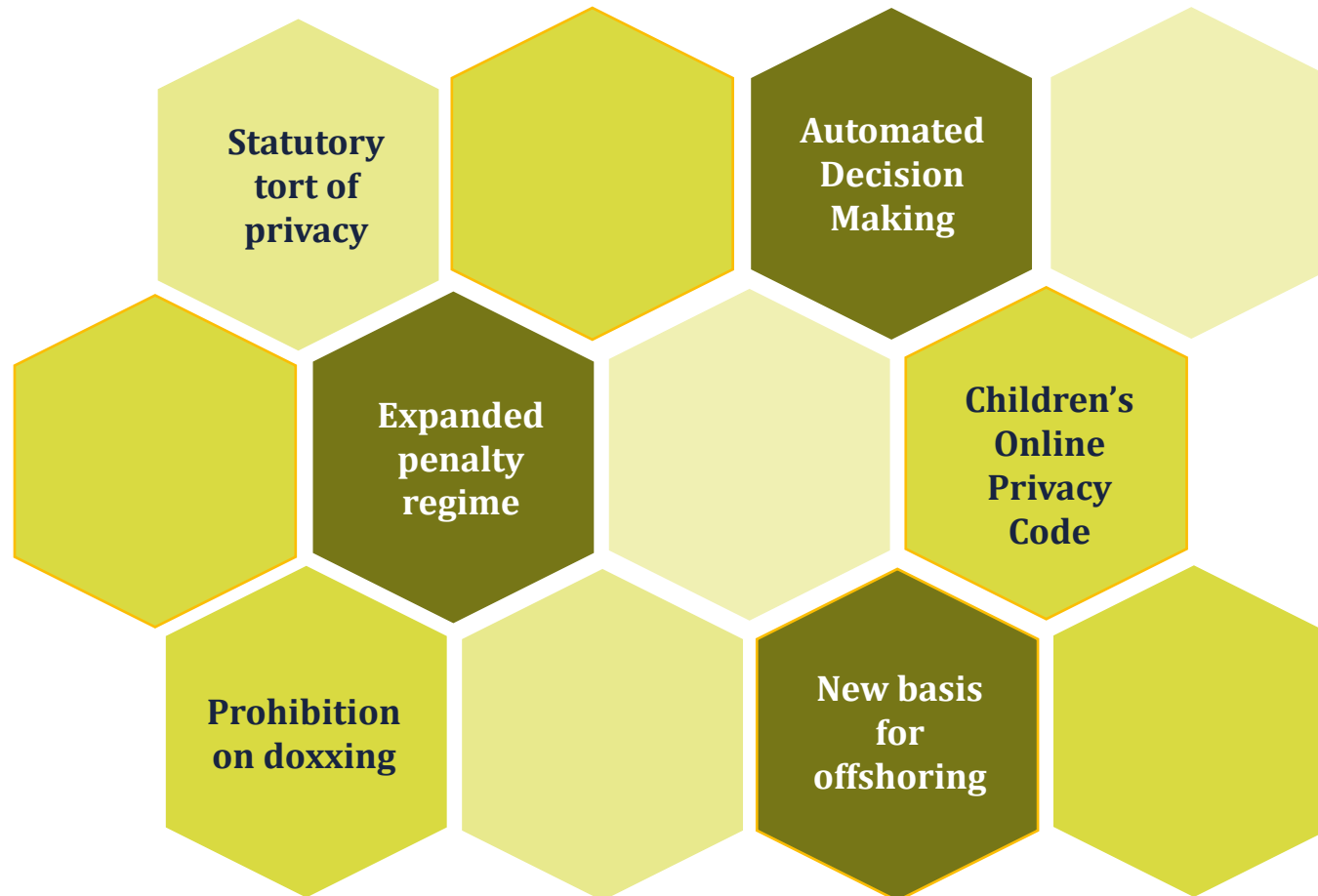


1. Privacy Act reform – what's here?
2. Privacy Act reform – what's next?
3. Cyber security – what is the law?
4. Data laws in context – what's left?
5. Questions and additional resources



Privacy Act Reform – what's here?

Overview of changes



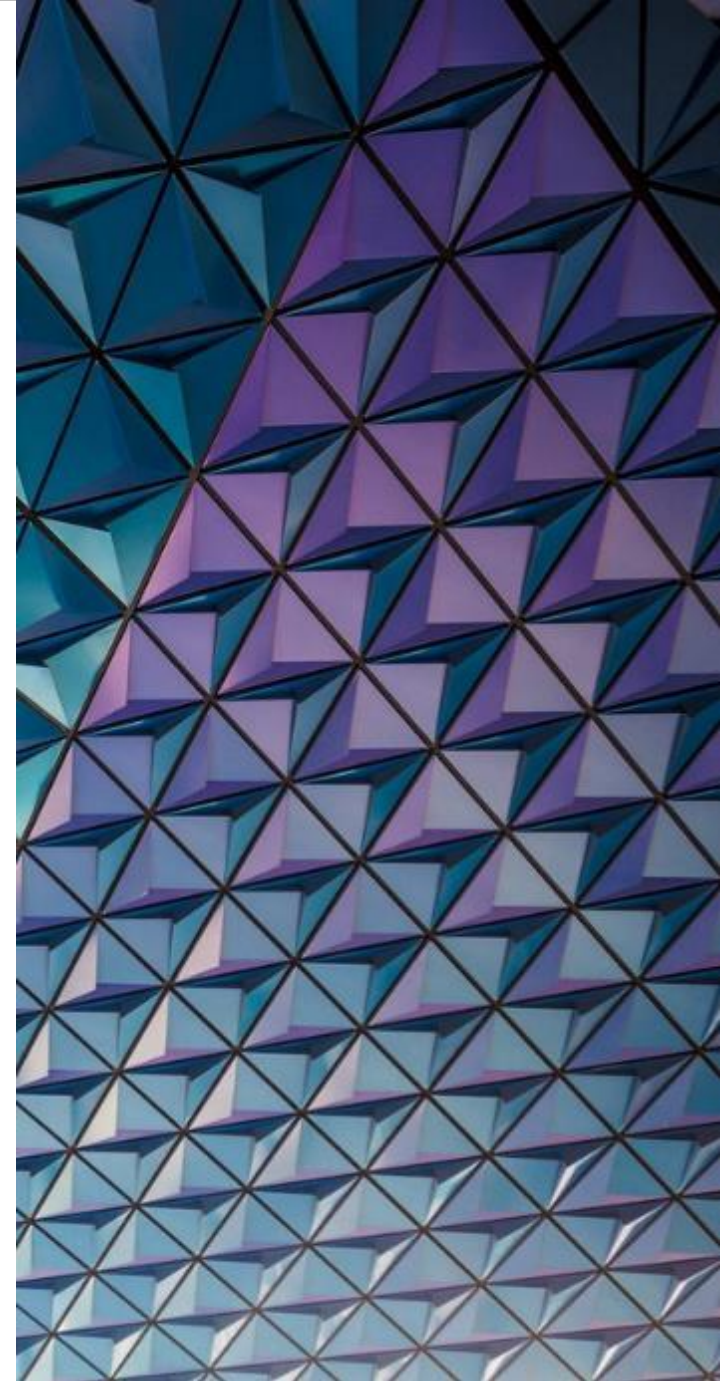
“ *The Privacy and Other Legislation Amendment Bill 2024 is a significant step forward for Australian privacy law. It begins the much-needed work of updating our privacy laws to be fit for purpose in the digital age.*

-- Mark Dreyfus, 12 September 2024

”

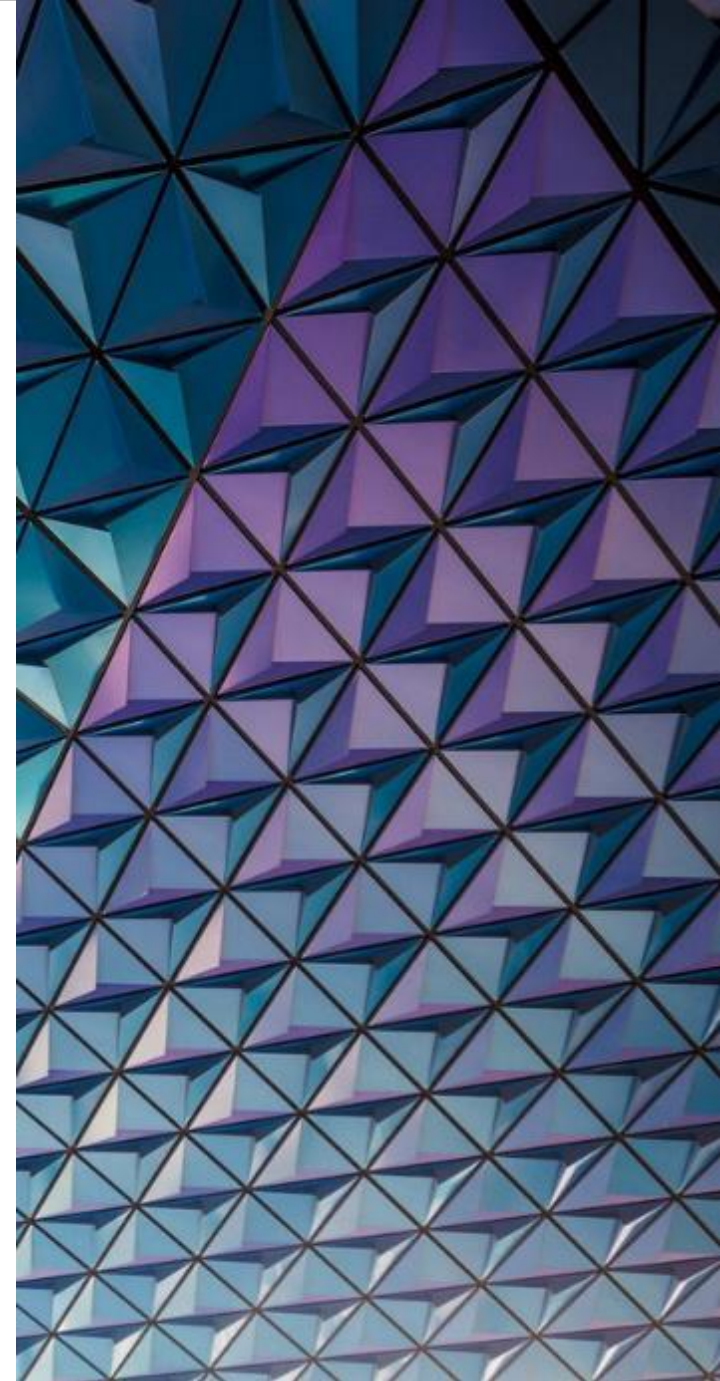
Overview – statutory tort

- Cause of action in tort for serious invasions of privacy
- **Four criteria:**
 - ❑ Defendant misused information that relates to the plaintiff, or intruded on the plaintiff's seclusion
 - ❑ A person in the position of the plaintiff would have had a reasonable expectation of privacy in all of the circumstances
 - ❑ The invasion of privacy was intentional or reckless
 - ❑ The invasion of privacy was serious
- **Defences** – required/authorised by law; consent; necessary to prevent or lessen a serious threat to the life, health or safety of a person
- **Damages** – includes non-economic losses (such as emotional distress) and exemplary/punitive damages, but subject to a cap
- **Not yet in force** – takes effect no later than June 2025.



Overview – expanded penalty regime

- Headline **civil penalties remain unchanged** - the greater of:
 - \$50 million
 - Three times the benefit obtained from the conduct
 - 30% of adjusted annual turnover
- These will apply to **serious** interferences with privacy
- Two additional tiers:
 - **Non-serious** interferences with privacy: 10,000 penalty units (currently \$3,330,000)
 - Breach of particular APPs (or breach notification requirement) and an infringement notice is issued: 60 / 1000 penalty units (currently a maximum of \$333,000)





Privacy Act Reform – what's next?

Ongoing privacy reform – tranche 2

Fair and Reasonable Processing



- Collection, use and disclosure must be fair and reasonable (even if all other APPs met)
- Even if consent is obtained

New Data Subject Rights



- Request deletion/de-identification of personal information
- Request to identify the source of indirectly collected information
- Request that certain online search results are de-indexed
- Right to object to collection, use or disclosure

Online Targeting



- Clarity around direct marketing, targeting, and trading in personal information
- No targeting of minors, unless in their best interests
- Enhanced disclosure obligations for targeting, including use of algorithms and profiling

Employee Records Exemption



- Exemption remains, but some obligations regarding employee records
- Greater transparency over processing
- APP 11.1 requirements will apply
- Data breach notification obligations

SME Exemption



- Exemption removed, but may be differentiated application of APPs for SMEs
- In the interim, processors will be subject to the APPs even if SMEs

Others



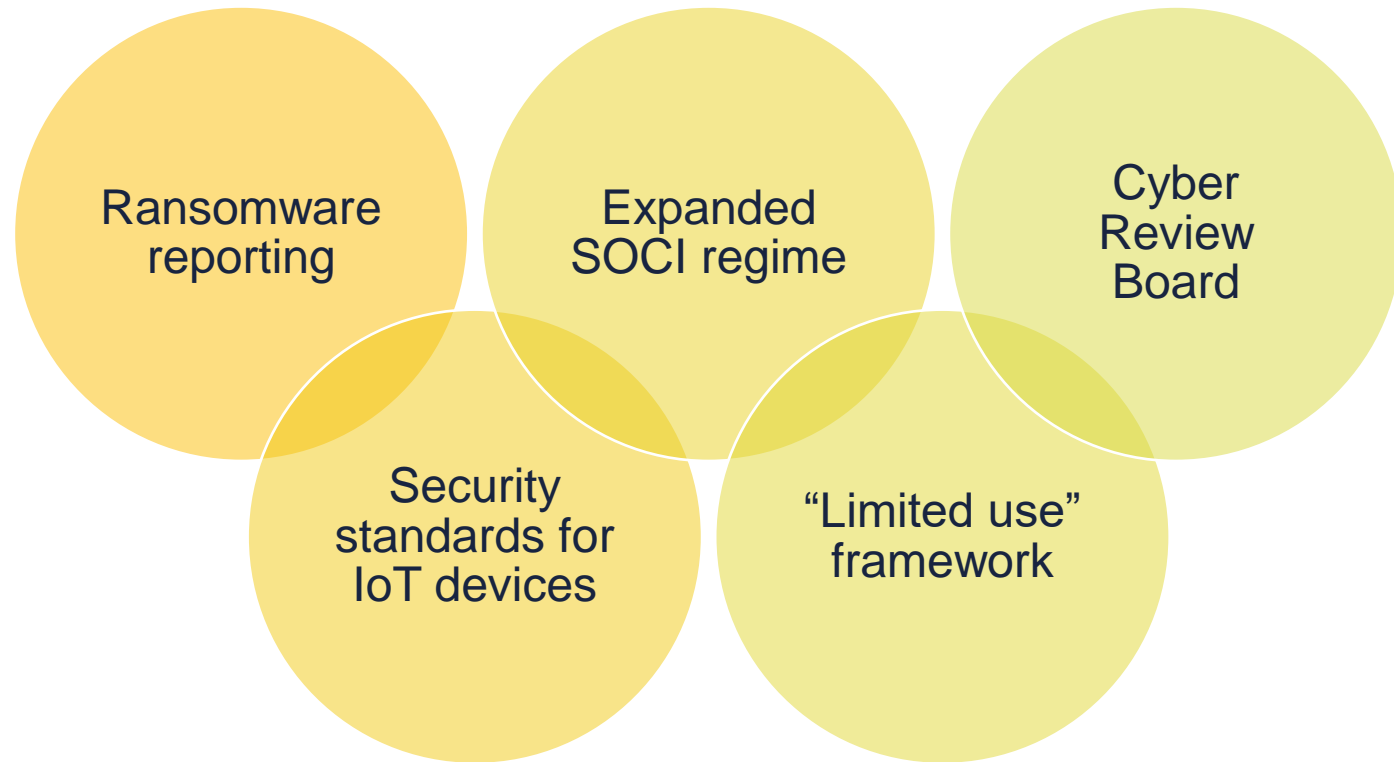
- Direct right of action
- PIAs for high-risk processing
- Collection notices to include details of high-risk processing
- Consent must be voluntary, informed, current, specific and unambiguous





Cyber Security – what is the law?

Legal frameworks



“ By 2030, Australia will be a world leader in cyber security. ”
-- 2023 - 2030 Australian Cyber Security Strategy ”



Data laws in context – what's left?

Data law landscape

Privacy

*Privacy Act
1988 (as
amended)*

*Spam Act
2003*

Privacy reform
Tranche 2

Cyber Security

*Security of
Critical
Infrastructure
Act 2018 (as
amended)*

*Cyber Security
Act 2024*

Scam
Prevention
Framework?

AI

Voluntary
guardrails
(September
2024)

OAIC's
guidelines
(October 2024)

Mandatory
guardrails?

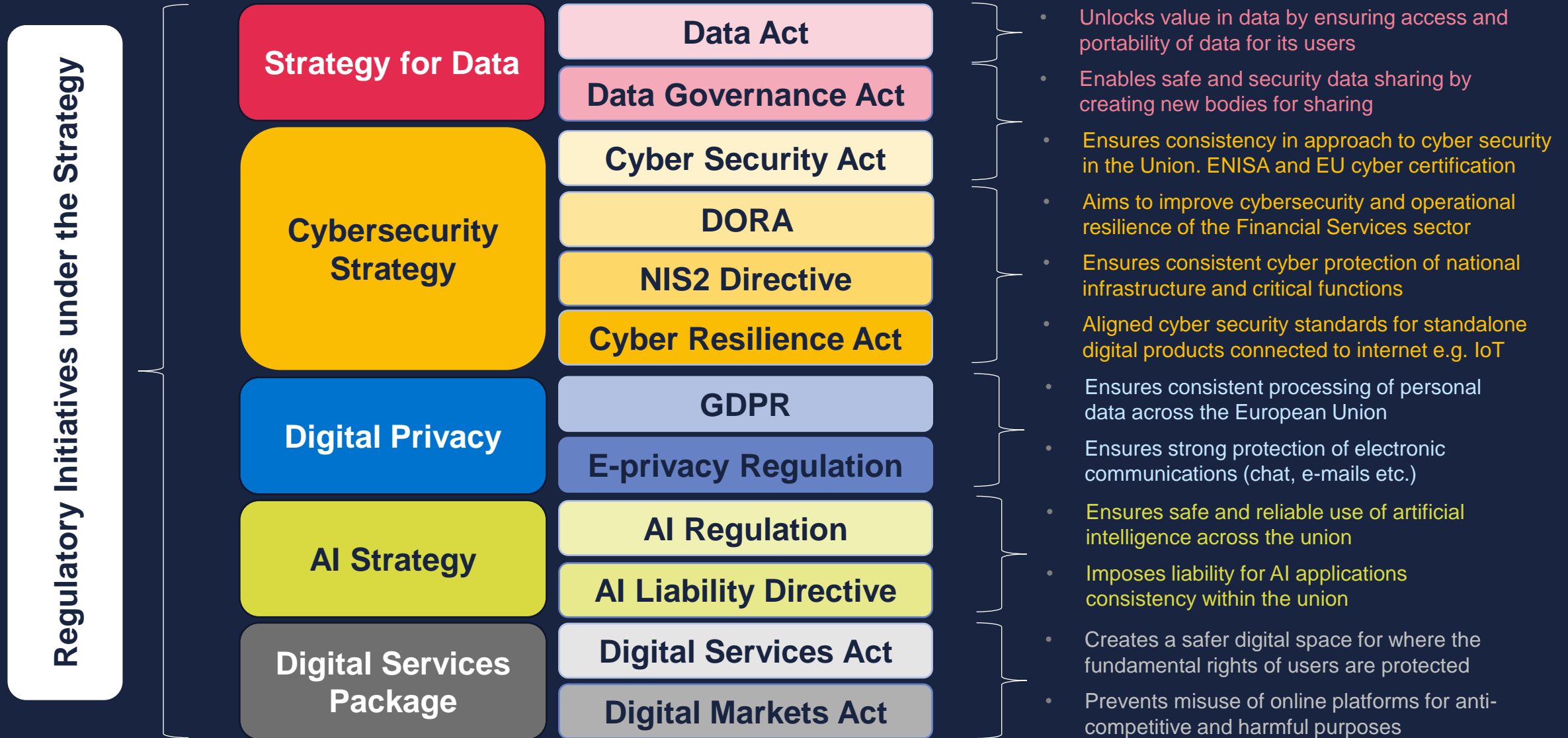
Sector Specific

Consumer
Data Right

CPS
230

CPS
234

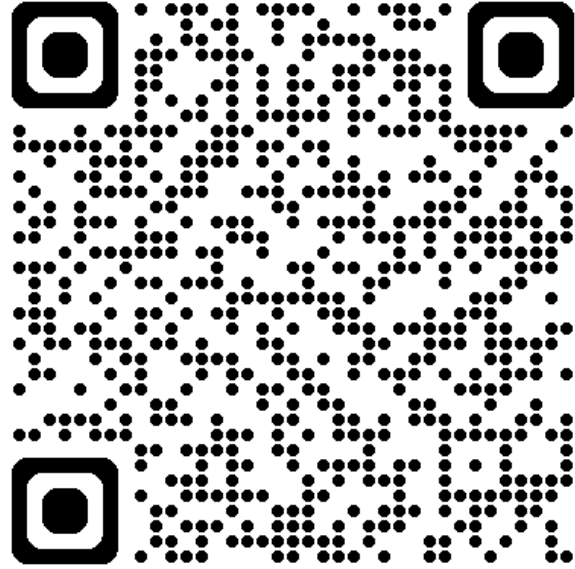
For comparison: EU Digital Decade Strategy



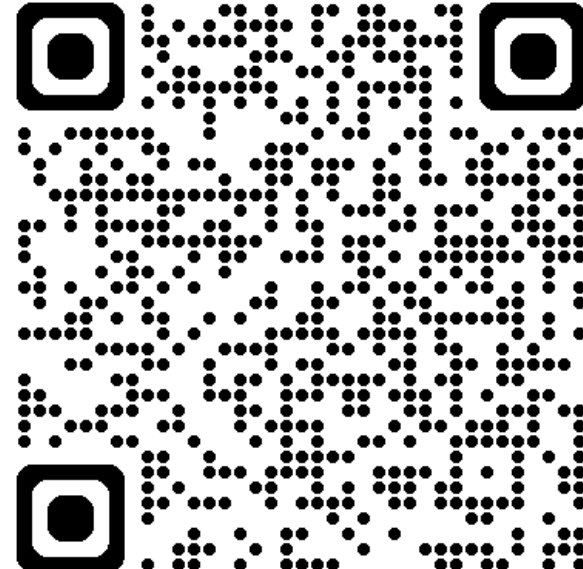
An aerial photograph of a river with turbulent rapids. The water is a deep, dark blue, and the white foam of the rapids is illuminated by bright sunlight, creating a high-contrast scene. The text "Questions and additional resources" is overlaid in a yellow, serif font on the left side of the image.

Questions and additional resources

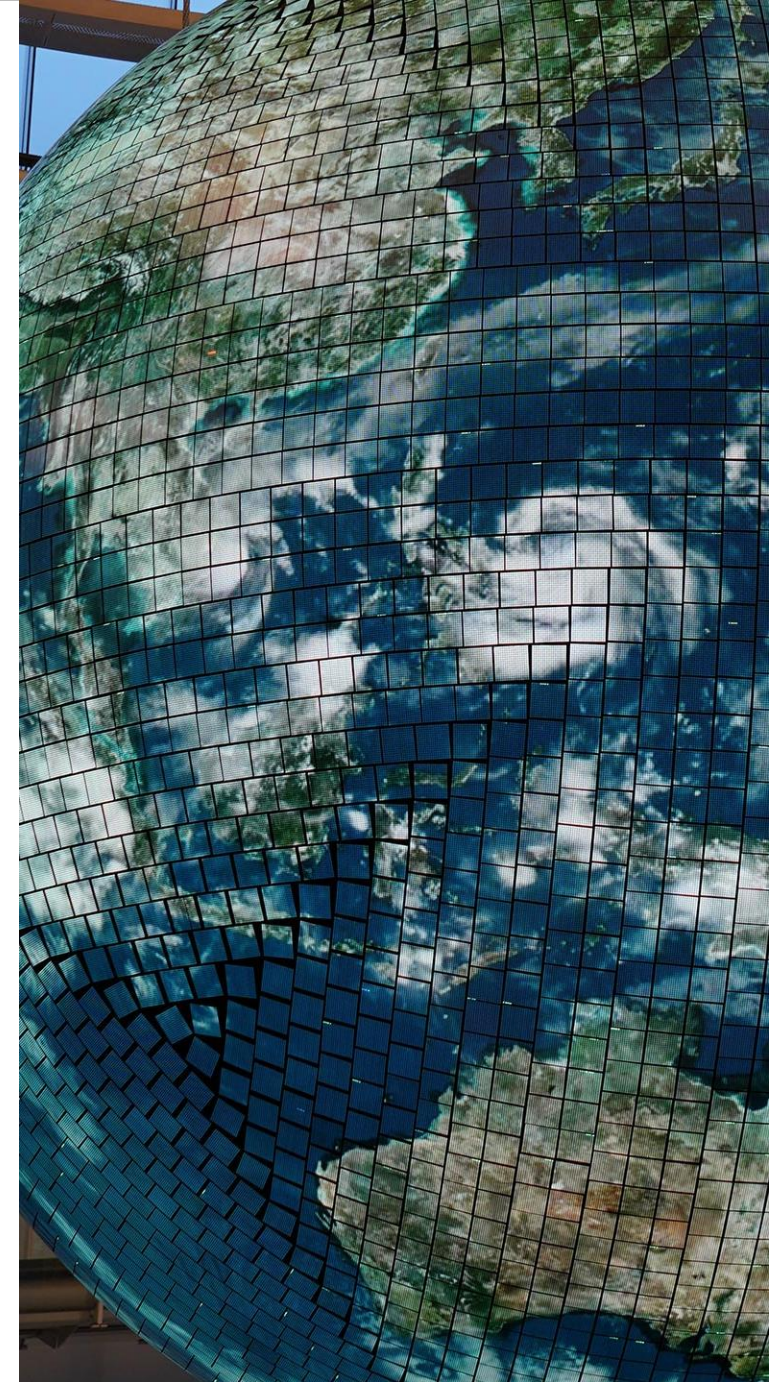
Additional resources



*Data Protection Laws
of the World*



*Privacy Matters - DLA Piper's
global privacy blog*



WIN In-House Counsel Week

Thank you for joining our webinar:
Privacy and Cyber – A New Era

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