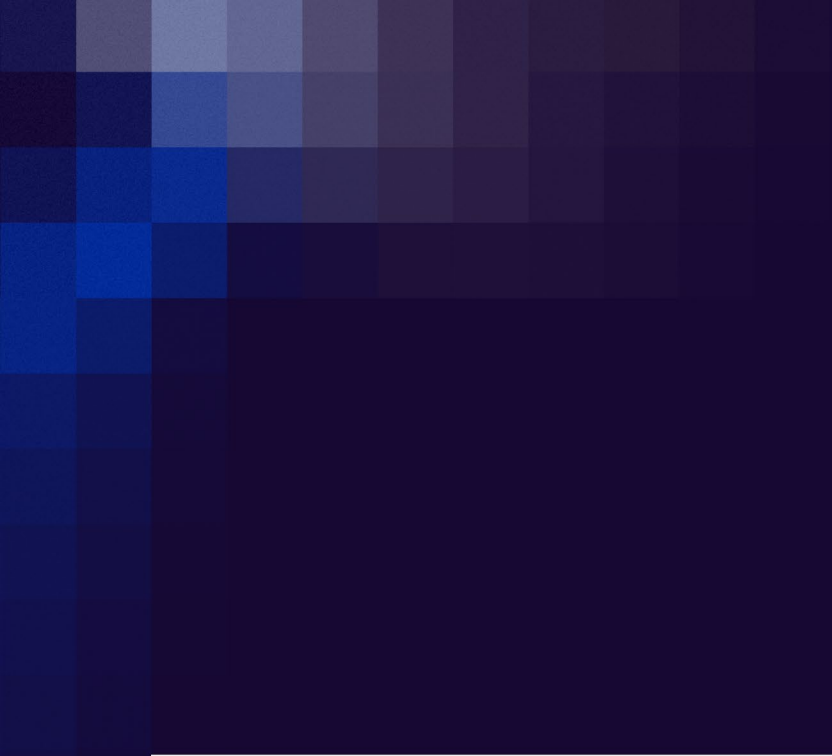


Ethics in Estates Practice: From Costs to AI

PRESENTED BY KATIE BINSTOCK

2026 WILLS AND ESTATES CONFERENCE - 13 OCTOBER



Thomsons

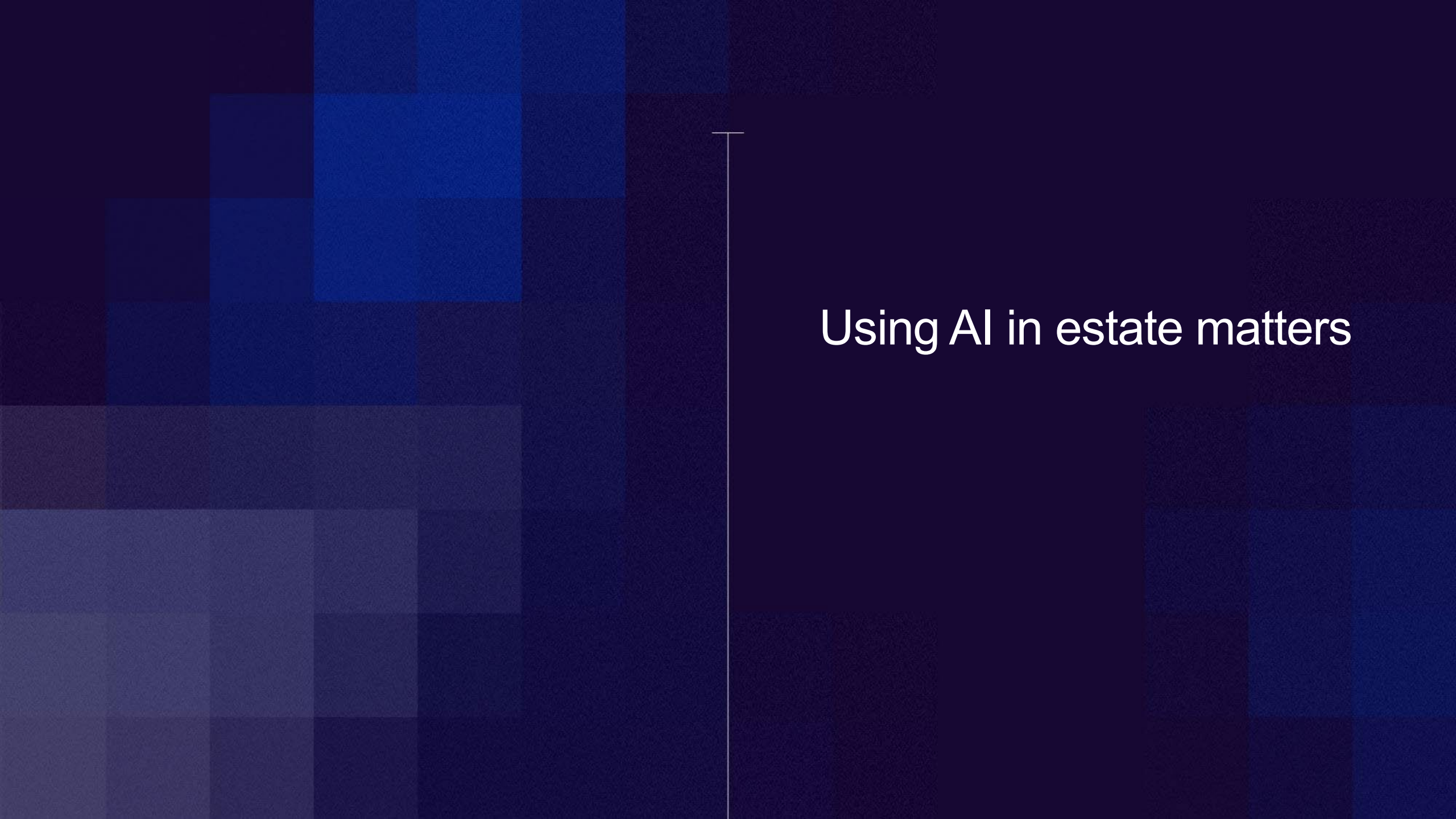
Ethics in Estates Practice: From Costs to AI

13 October 2026



Topics

1. Using AI in estate matters
2. Safe custody
3. Acting for attorneys
4. Conflicts
5. Costs and charging issues



Using AI in estate matters

Legal Profession (Solicitors) Conduct Rules 2026 (ACT)

- **R 4.1.1** – A solicitor must act in the best interests of a client in any matter in which the solicitor acts for the client.
- **R 4.1.3** – A solicitor must deliver legal services competently, diligently and as promptly as reasonably possible.
- **R 5** – A solicitor must not engage in conduct which is likely, to a material degree to be prejudicial to, or diminish the public confidence in, the administration of justice or bring the profession into disrepute.
- **R 9** – Confidentiality.
- **R 19** – A solicitor must not deceive or knowingly or recklessly mislead the court.
- **R 37** – A solicitor with designated responsibility for a matter must exercise reasonable supervision over solicitors and all other employees engaged in the provision of the legal services for that matter.

State/Territory practice directions – as at 12 October 2026

ACT/Tas/NT	NSW	Victoria	SA	WA	Qld
No specific direction	NSW Supreme Court - Practice Note SC Gen 23 – Use of Generative Artificial Intelligence - 28 January 2025	Supreme Court of Victoria - SC Gen 25 - The use of Artificial Intelligence by Court users - 14 May 2026	Guidelines concerning the use of Generative artificial intelligence in litigation in South Australian Courts - 1 January 2026	Supreme Court of Western Australia: Guidelines for the Use of Generative Artificial Intelligence – November 2025	Supreme Court of Queensland- Practice Direction Number 5 of 2025 - Accuracy of References in Submissions - 24 September 2025
	District Court General Practice Note 2 - Generative AI Practice Note and Judicial Guidelines - 18 December 2024	Victorian County Court - Use of Artificial Intelligence by Court Users Practice Note – 9 June 2026			QCAT Practice Direction No. 10 of 2025 Accuracy of references in submissions - 17 October 2025
	Local Court - Practice Note – Generative Artificial Intelligence - 12 December 2025				
	Land and Environment Court - Use of Generative Artificial Intelligence - 11 February 2025				
	NCAT - Procedural Direction 7 - Use of Generative Artificial Intelligence (Gen AI) - 7 March 2025				

Federal practice directions

- Federal Court of Australia: Use of Generative Artificial Intelligence Practice Note (GPN-AI) - 16 April 2026
- FCFCOA Practice Direction: Use of Artificial Intelligence - 29 May 2026
- Administrative Review Tribunal (Generative AI) Practice Direction - 20 August 2026

Some decisions

- *Dayal* [2024] FedCFamC2F 1166 (27 August 2024) at [11]

...Mata v Avianca Inc-drew worldwide attention to the risk of relying on generative AI for research purposes in litigation without independent verification. In that case, attorneys of a firm who relied on generative AI to prepare legal submissions which were filed referring to non-existent cases, and initially stood by the submissions when called into question by the court, were found to have abandoned their professional responsibilities and sanctioned. The USA District Court outlined the potential harms flowing from the filing of bogus submissions in its judgment as follows:

Many harms flow from the submission of fake opinions. The opposing party wastes time and money in exposing the deception. The Court's time is taken from other important endeavors. The client may be deprived of arguments based on authentic judicial precedents. There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the American judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity.

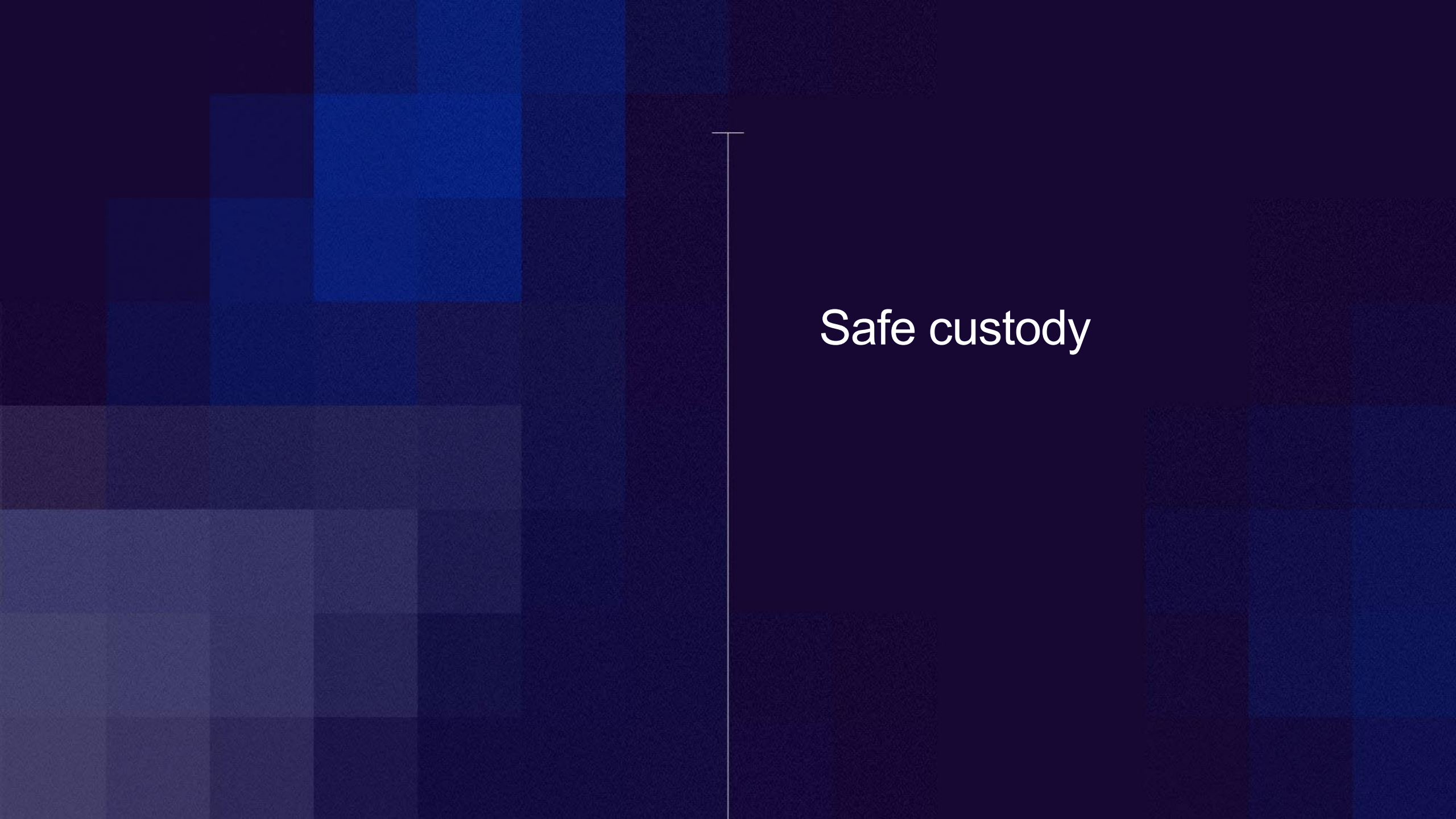
- *Valu v Minister for Immigration and Multicultural Affairs (No 2)* [2025] FedCFamC2G 95 (31 January 2025)
- *JNE24 v Minister for Immigration and Citizenship* [2025] FedCFamC2G 1314 (15 August 2025)
- *DPP v Khan* [2024] ACTSC 19 (7 February 2024)

UK Jurisdiction Taskforce (**UKJT**) publication - Legal Statement on Liability for AI Harms under the Private Law of England and Wales – July 2026

- At [67]: *It is important to be aware of the possibility that a professional could also be liable for failing to use AI for a task when a professional exercising reasonable care and skill would have done so. Whether there is a breach of duty in failing to use AI will, of course, be judged according to whether a reasonable professional of a comparable rank/specialism should have used AI in that context. That will, again, turn upon professional bodies' regulations and/or guidance (if any) and on the expert evidence as to the actions of competent professionals in the field. The possibility of breaches of duty arising from a failure to use AI reflects the fact that AI, in a professional's hands, is a tool. The question of whether such a tool should be used, and, if so, how, is no different from that which arises in respect of any other tool available to a professional.*

- Examples:

1. *A radiologist fails to use an AI system that is extremely effective at identifying cancerous tumours and could have been procured at a reasonable cost.*
2. *An auditor fails to use an AI system to help detect anomalies and fraud in a business that involves a very large number of similar individual transactions, where individual human review would be impossible in practical terms.*
3. *A solicitor in the Business and Property Courts fails to advise their client that it may wish to consider some form of AI-assisted tool in order to review large volumes of documents.*



Safe custody

Safe custody

- Method of storage
- Length of storage
- Unauthorised fees – R 16
- Centralised register and review
- Release and verification

Transfer of solicitor's practice

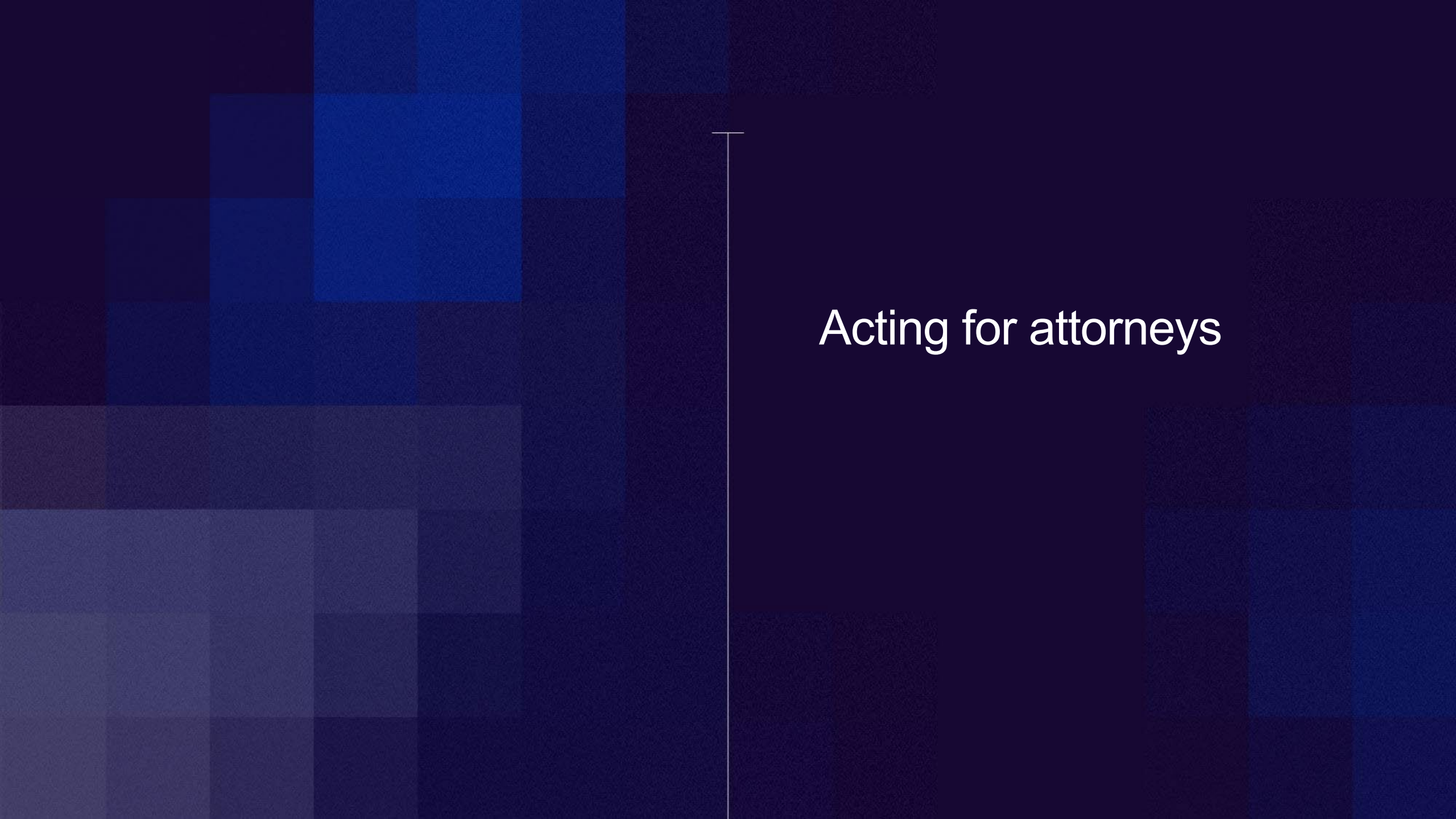
- ACT – no rule.
- Cf. NSW r 6

6.1 When a solicitor intends to transfer to another solicitor the whole or part of the solicitor's practice, including clients' work in progress, and to put the other solicitor in possession of the documents held by the solicitor on behalf of clients, before the solicitor delivers possession of the practice to the solicitor acquiring it the solicitor must give to each client at least 14 days (or such other period as may be reasonable in the circumstances) notice in writing of—

6.1.1 the intended transfer of documents to the solicitor acquiring the practice, unless a contrary direction is received from the client, and

6.1.2 the client's right to give to the solicitor a contrary direction in relation to the conduct of the client's affairs and the delivery of the client's documents.

6.2 Any notice sent to a client on whose behalf the solicitor holds money in trust or under the solicitor's control must advise the client of—



Acting for attorneys

Acting for attorneys

- *Powers of Attorney Act 2006 (ACT)*
 - S 34 – Powers of attorney do not generally give authority to benefit attorneys.
 - S 38 – Enduring powers of attorney do not generally give authority to make gifts.
 - S 42 – Conflict transactions.
 - S 48 – Keeping property separate—enduring powers of attorney.
- Relevant decisions
 - *Council of the Law Society of the ACT v Legal Practitioner 20215 (Occupational Discipline)* [2022] ACAT 34
 - *Council of the Law Society of the ACT v LP082024* [2025] ACAT 58

Council of the Law Society of the ACT v LP082024 (Occupational Discipline) [2025]

ACAT 58

- Charge 1: Conduct in relation to acting for N as attorney

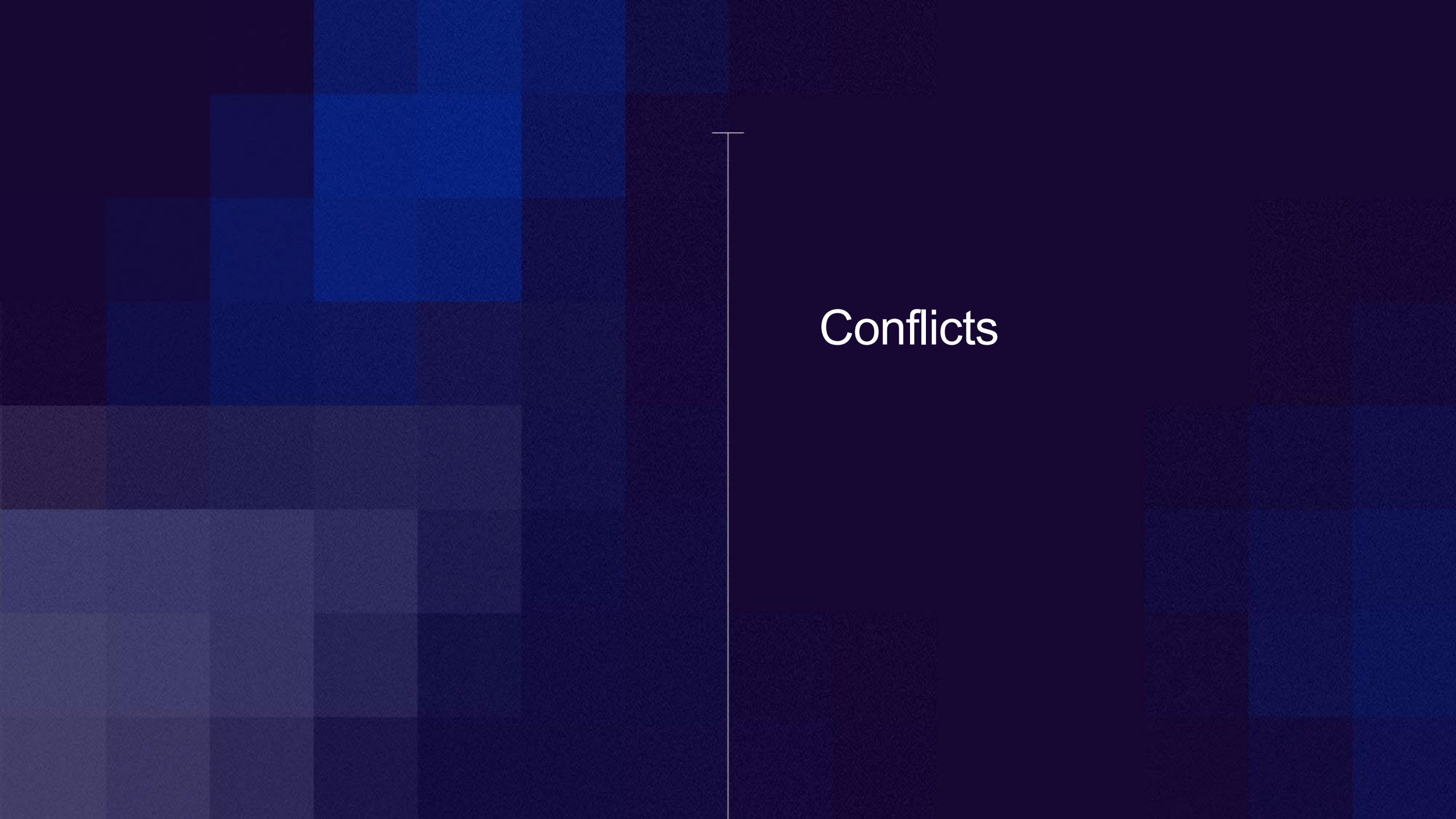
That the Respondent failed to deliver legal services competently and diligently in breach of Rule 4.1.3 by failing to act with competence and diligence by failing to advise N in his capacity as the attorney for Mr and Mrs X that he could not execute loan documents as attorney for Mr and Mrs X in light of sections 34 and 42 of the POAA.

- Charge 2: Conduct in relation to Mr and Mrs X

That the Respondent:

- (i) failed to deliver legal services competently and diligently in breach of Rule 4.1.3; and/or
- (ii) failed to act in the best interests of his clients, Mr and Mrs X, in the loan transaction in breach of Rule 4.1.1; and/or
- (iii) failed to provide clear and timely advice to Mr and Mrs X to assist them to understand relevant legal issues and to make informed choices about the matter in breach of Rule 7.1.

- Definition of client in the Rules - “**“client”** with respect to the solicitor or the solicitor's law practice means a person (not an instructing solicitor) for whom the solicitor is engaged to provide legal services for a matter.”
- Second acknowledgment - “5. After receiving the above advice the guarantors freely and voluntarily authorised their attorney N to sign the loan documents.”
- Cf. *Mascarello & Anor v Registrar-General of New South Wales* [2018] NSWSC 284



Conflicts

Council of the Law Society of the ACT v LP082024 (Occupational Discipline) [2025]
ACAT 58

- Charge 3: Conflict of interest

That the Respondent failed to avoid a conflict between his duties owed to two or more current clients in breach of Rule 11 in circumstances where he acted for the guarantors (N, and Mr and Mrs X) and the borrower Company in the loan transaction.

- Charge 4: Professional misconduct based on carelessness in the sense of gross negligence

That the Respondent:

(i) engaged in conduct, in the course of practice or otherwise, which demonstrates that the solicitor is not a fit and proper person to practise law, or which is likely to a material degree to be prejudicial to, or diminish the public confidence in, the administration of justice or bring the profession into disrepute in breach of Rule 5.1; and/or

(ii) failed to be honest in all dealings in the course of legal practice in breach of Rule 4.1.2; and/or

(iii) failed to deliver legal services competently and diligently in breach of Rule 4.1.3; and/or

(iv) failed to avoid any compromise to their integrity and professional independence in breach of Rule 4.1.5.

Own interest conflicts

- *The Council of the Law Society of New South Wales v McCarron* [2025] NSWCATOD 154.
- New rule 12 – Conflicts concerning a solicitor's own interests:

12.1 A solicitor must not act for a client where there is a conflict between the duty to serve the best interests of a client and the interests of the solicitor or an associate of the solicitor, except as permitted by this Rule.

12.2 A solicitor must not do anything:

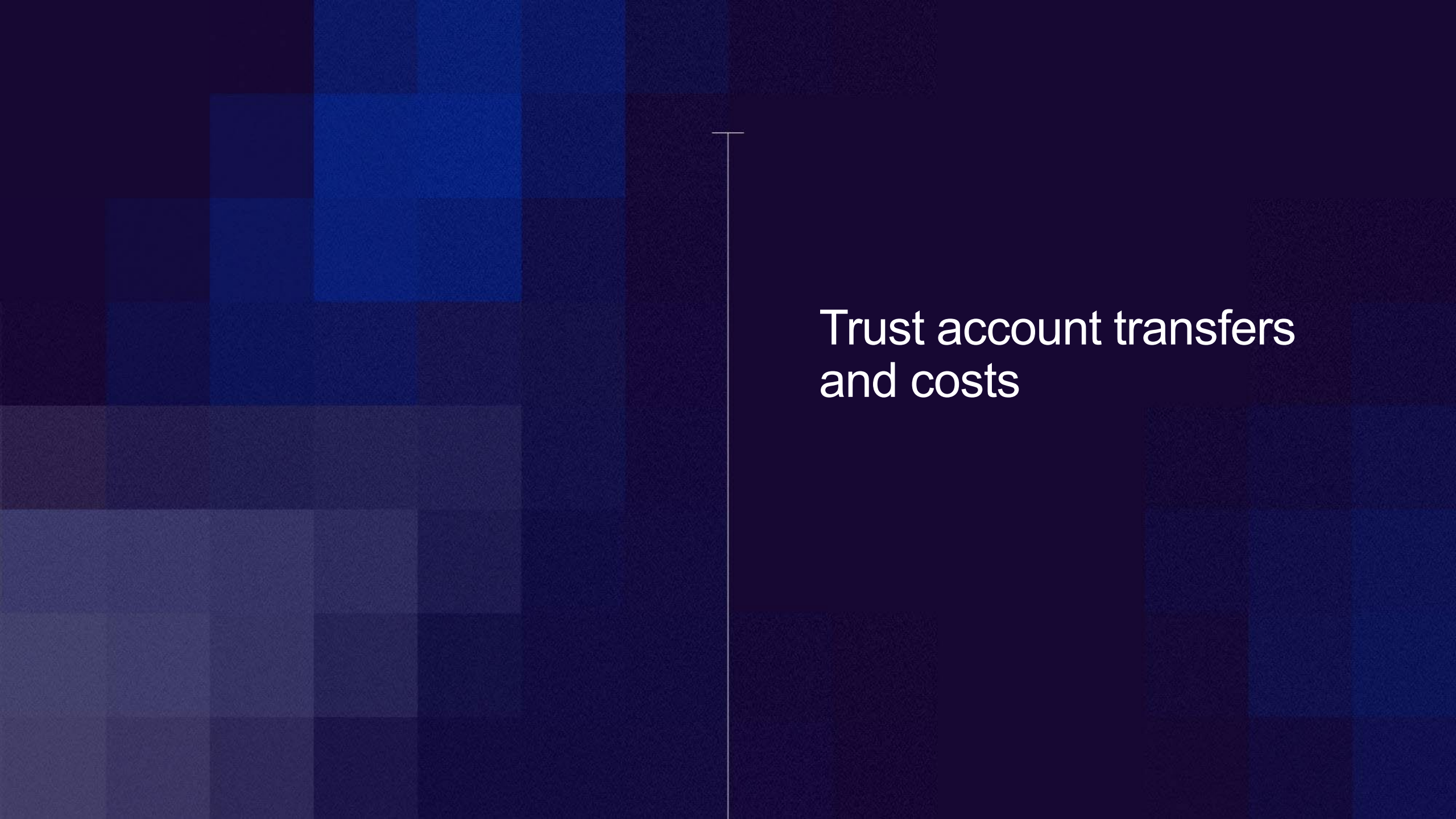
- *12.2.1 calculated to influence a client or a third party to confer on the solicitor, either directly or indirectly, any benefit in excess of the solicitor's fair and reasonable remuneration for legal services provided to the client, or*
- *12.2.2 that the solicitor knows or ought reasonably to anticipate, is likely to induce the client or third party to confer such a benefit and is not reasonable incidental to the performance of the retainer.*

Appointing a solicitor or associate as executor – R 12

The solicitor must inform the client in writing before the Will is signed:

1. of any entitlement of the solicitor, or the solicitor's law practice or associate, to claim executor's commission;
2. of the inclusion in the Will of any provision entitling the solicitor, or the solicitor's law practice or associate, to charge legal costs in relation to the administration of the estate; and
3. if the solicitor or the solicitor's law practice or associate has an entitlement to claim commission, that the client could appoint as executor a person who might make no claim for executor's commission.

See example letter: *Practical Ethical Dilemmas* by Dr John de Groot



Trust account transfers and costs

Trust money

- S 223 - Holding, disbursing and accounting for trust money
 - A law practice must—*
 - (a) hold trust money deposited in a general trust account of the practice exclusively for the person on whose behalf it is received; and*
 - (b) disburse the trust money only in accordance with a direction given by the person.*
- Regulation 62 - Withdrawing trust money for legal costs
 - Compliant costs agreement and written notice of the proposed withdrawal and when it will occur.
 - Specific instructions (if not in writing - confirmed in writing).
 - Giving a bill and no objections within 7 days (or objection and no review within 60 days).

Council of the Law Society of the ACT v LP 012022 (Occupational Discipline)

[2025] ACAT 14 – charges

- Charge 1 – Withdrawal of funds from trust account or trust to office transfer contrary to section 223(1)(b) of the Act.
- Charge 2 – Misappropriation of funds from trust, constituting dishonest conduct, contrary to the common law.
- Charge 3 – Causing a deficiency in the trust account contrary to section 230 of the Act.
- Charge 4 – Intermixing trust money contrary to section 228 of the Act.
- Charge 5 – Failure to report trust account irregularities to the Law Society contrary to section 231 of the Act.
- Charge 6 – Failure to accurately keep trust records contrary to regulations 44(1)(e), 46(4)(d), and/or 46(8).
- Charge 7 – Failure to provide trust account statements contrary to regulation 57(6).
- Charge 8 – Failure to meet revenue obligations in not remitting PAYG withholding tax and GST instalments to the ATO.

Council of the Law Society of the ACT v LP 012022 (Occupational Discipline)
[2025] ACAT 14 - outcome

- Professional misconduct globally
- Strike off recommendation
- Costs

Applicant OR 3 of 2025 v Council of the Law Society of the ACT (Occupational Discipline) [2025] ACAT 76

- S 269 - A law practice must disclose to a client in accordance with this division—
 - an estimate of the total legal costs if reasonably practicable; or
 - if it is not reasonably practicable to estimate the total legal costs, a range of estimates of the total legal costs and an explanation of the major variables that will affect the working out of the costs
 - ...

