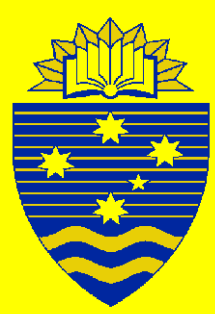


Online workplace surveillance – the view from down under

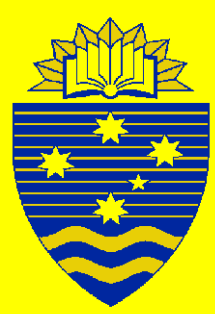




Privacy Act 1988 (Cth):

- **Key legislation, but not the only Act regulating workplace privacy**
- **Similar to EU Directive in scope**
- **Exemption for *employee records***



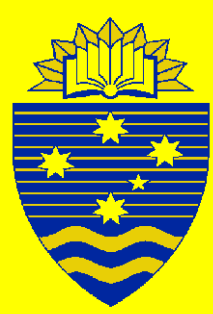


Privacy disputes – employee use in the workplace

- *Fair Work Act 2009 (Cth)*
- **The contract of employment**
- **Workplace policies**
- **Consent – the weakest link in ALL privacy regulation**

I Agree

I Have No Idea
What This Says



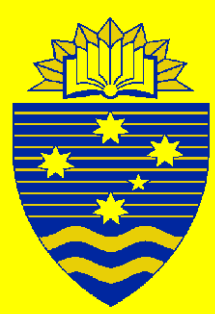
Privacy disputes – employee use of work IT resources outside the workplace

- ***Griffiths v Rose* [2011] FCA 30**
 - Senior member of the Australian Public Service (Mr Griffiths) using a Departmental laptop from his home
 - Using his personal Internet Service Provider, he accessed pornographic images
 - Deleted the browser's Internet history, but routine audit showed what he had done (due to use of Spector360)

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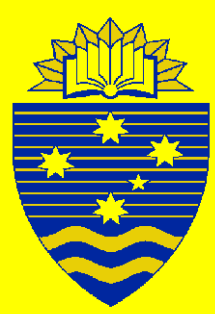
Privacy disputes – employee use of work IT resources outside the workplace

- ***Griffiths v Rose* [2011] FCA 30**
- **no suggestion that Mr Griffith had committed any offense;**
- **apart from investigators, no person apart from Mr Griffiths saw the images;**
- **none of Mr Griffiths colleagues were exposed to the images;**
- **no evidence that Mr Griffiths had passed the images on;**
- **no suggestion that Mr Griffiths was a recidivist; and**
- **Mr Griffiths had had a 25 year career with the Australian Public Service.**

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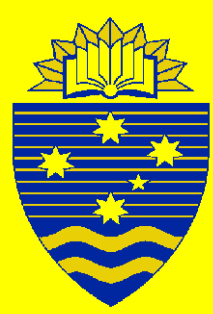


Privacy disputes – employee use of work IT resources outside the workplace

- *Griffiths v Rose* [2011] FCA 30:

“Employees are prohibited from using Departmental ICT facilities to deliberately access, display, download, distribute, copy or store:

- **pirated software and/or material;**
- **racist material;**
- **pornography; or**
- **links to such material.”**



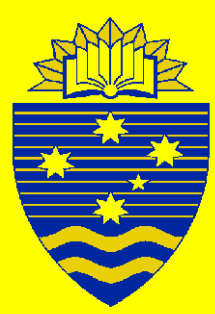
Privacy disputes – employee use of work IT resources outside the workplace

- *Griffiths v Rose* [2011] FCA 30,
- **Employee's arguments:**
 - Collection was not directly work-related
 - Collection was not lawful
 - Collection was unfair
- **Employer's argument:**
 - As owners of the laptop, with no obligation to provide it, the employer had right to dictate the conditions for its use.

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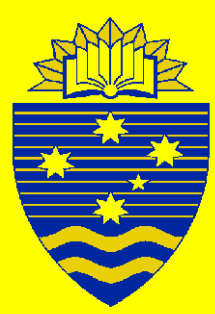
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Privacy disputes – employee online conduct outside the workplace

- ***O’Keefe v Williams Muir’s P/L t/a Troy Williams The Good Guys [2011] FWA 5311***
 - **Dismissal due to posting on Facebook:** *“Damien O’Keefe wonders how the f..k work can be so f..king useless and mess up my pay again. C..ts are going down tomorrow.”*
 - **Action for unfair dismissal**
 - **Conduct outside workplace and work hours**
 - **No use of employer-provided resources**

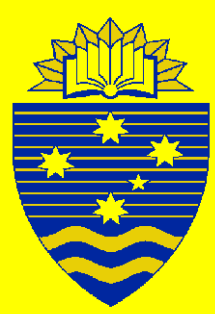


Privacy disputes – employee online conduct outside the workplace

- ***O’Keefe v Williams Muir’s P/L t/a Troy Williams The Good Guys [2011] FWA 5311:***

“common sense would dictate that one could not write and therefore publish insulting and threatening comments about another employee in the manner in which this occurred

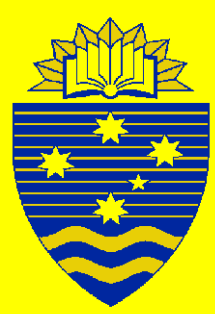
The fact that the comments were made on the applicant’s [i.e. the employee] home computer, out of work hours, does not make any difference. [...] the separation between home and work is now less pronounced than it once used to be.”



Analysis – what interests are we balancing?

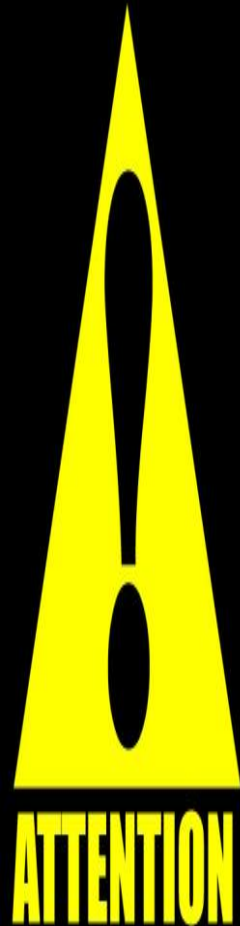
- **Reputation**
- **Protecting information, knowhow, business secrets and other intellectual property**
- **Limiting liability for employee conduct**
- **Limiting IT risks stemming from employee use**
- **Ensuring business efficiency**
- **Promoting order in workplace**
- **The ownership argument**

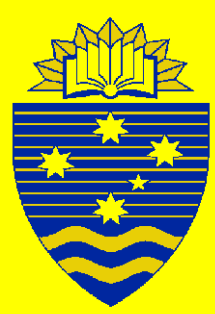




What can employers do to ensure they comply with privacy laws?

- 1. Risk identification**
- 2. Realistic and fair policies**
- 3. Ongoing dialogue and education**
- 4. Abuse monitoring**





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