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**TERMINATING EMPLOYEES FOR  
DATA BREACHES IS NOT THE END OF  
THE STORY**

Data security concerning confidential client information and privacy is trending at the moment particularly in relation to laws that closely regulate data security practices. Some organisations, however, may not be aware that they could be liable for data breaches perpetrated by their employees.

Most employers are aware of vicarious liability, which is a legal principle present in Australian employment law that places liability on their employer for the conduct or acts of its employees.

Injured clients of employee data breaches can pursue the employer to recover losses despite the conduct being attributable to an employee. Seeking redress through an employer is a more appealing option since generally the organisation has greater financial worth than the individual employee does.

Under the doctrine of vicarious liability an employer may be held liable for an employee's breach of the law. A finding of vicarious liability under Australian law generally requires that:

- a) There is an employment relationship between the two parties; and
- b) The employee's conduct occurred in the course of employment.

The line between what is and what isn't in the course of employment is not straightforward and considerations of the role that an employer

has assigned to the employee and the position the employee is placed in relation to the victim are critical.

These include the level of power, authority, trust and control over the victims of the data breach.

To clearly distinguish the rogue employee training and a privacy management framework are crucial.

In practical terms, organisations should ensure:

- System suppliers that process personal data provide sufficient guarantees that these requirements are met;
- Systems that hold personal data are secure;
- Access is managed on a need to know basis;
- Access and extraction of data is restricted through access controls and IT measures;
- Safeguards are implemented to identify potentially inappropriate activity;
- All access and use of the system is recorded in an audit trail.

In respect to data security and breaches, implementing a strategic and continuing training programme for employees will provide support to an argument that the actions of an employee were rogue and outside the course of employment and therefore outside the scope of vicarious liability.

If you require any assistance in relation to this area please contact **MEEHANS** on 4627 3333.

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IMPORTANT the material contained in this Newsletter is merely general commentary. The facts of each particular situation vary as does legislative and judicial interpretation of the law commented upon. The comments and information herein do not represent a legal or professional service. Advice should be sought from Meehans Solicitors before acting in any of these areas.

## **WHAT IS A MAJOR DEFECT?**

Have you recently engaged a builder to build for you a residential premises?

In a recent downpour you find that water has entered the building and has damaged the building internally. You have no idea where the water has entered the building. You contact the builder and the builder tells you that he is not interested in listening to you, as it is not his obligation to concern himself, given the home was built three years ago. What do you do?

The *Home Building Act (NSW)* gives you, as a Homeowner, the benefit of a number of statutory warranties for residential building work. These apply irrespective of some particular terms in a building contract. If your builder was found to have breached the statutory warranties, then you may make an application to the NSW Civil & Administrative Tribunal. Time limits do apply and there is a difference in time limits for major defects, which give you a warranty of up to six years from completion of the work, and non-major defects.

There have been recent changes to the definition of what constitutes a major defect, but it does cover load bearing components, such as foundations, footings, floors, walls and beams, as well as fire safety systems and waterproofing.

If you find yourself in a situation where you are suffering from any effects from building a home, please contact us at **MEEHANS**, as we will be able to assist you with questions such as when the warranty period commences, whether the defects are major, what your time limits are, what damages you might be able to claim.

We have experienced solicitors who can assist you from the beginning to the end of your building disputes.

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