



Answers to frequently asked questions

Since I wrote to members last week about the email search conducted by BCL in August last year I have received a number of questions from members seeking more detail about the matter.

I have set out below answers to the most frequently asked questions I have received.

Who conducted, and who authorised, the search?

The search was undertaken by two employees of BCL who acted on the instruction of its CEO, Mr Paul Clark, following a discussion that Mr Clark had with the then President of the Bar, Ms Róisín Annesley KC.

The question of 'authorisation' is complicated. Mr Clark was simply doing what he could to assist the President with the investigation, and the President was acting in good faith to respond to the offensive notice.

I have decided not to identify the other two employees of BCL who were involved. There is no suggestion that they were doing anything other than acting on instructions they received from Mr Clark.

At the time the search was conducted in August last year, neither the then Bar Council, nor the then Bar Council Executive, were consulted as to the deployment of the search software prior to its use.

What authority was there to conduct the search?

The then President and the CEO of BCL took the view that BCL's terms and conditions which governed member emails permitted the search.

Those terms and conditions are being amended to make it clear that a search of the type that occurred is not permitted in future, and to

enshrine the clear and shared understanding that electronic environments used by members are to be maintained **in the strictest confidence** and will only be interrogated under the compulsion or authorisation of law.

How is the clear and shared understanding between BCL and the Bar that electronic environments are to be maintained in the strictest confidence to be enforced?

The Chairman of BCL, the Hon John Digby KC, and its CEO, Mr Clark, have given me and the Bar Council their assurance that in future the Bar's electronic environments will be maintained in the strictest confidence. Mr Clark is progressing the amendment of BCL's terms and conditions and its Privacy Policy so that they expressly reflect this shared understanding. The current Vice Presidents of the Bar, Georgina Schoff KC and Elizabeth Bennett S.C., have been actively engaged in that process.

Furthermore, a working group has been convened to review all documents connected with privacy to ensure they accord with this understanding.

Members will be informed when the work has been done. While it is being completed, members can be assured that our electronic environments are being maintained in the strictest confidence.

What steps has BCL taken to remove/restrict staff access to prevent further searches of the type described?

I am satisfied that BCL staff would not have undertaken the search unless instructed to do so. No such instruction will be given in the future. Indeed, the terms and conditions and the Privacy Policy will prevent searches of the type conducted reoccurring in future.

Additionally, I have asked BCL to explore the practicality and workability of deploying encryption technology within its electronic environments (either on a system-wide or individual 'opt-in' basis). That possibility is being investigated and I intend to report back to members about that matter when I can.

What steps has BCL taken to remove/restrict staff access to prevent further searches of the type described?

The current Bar Council is working with BCL to amend the terms and conditions and the Privacy Policy that govern the provision of electronic services by BCL to our members. I am reassured by the forthright way in which BCL has addressed the issue.

Sam Hay KC

President

The Victorian Bar