

# What to Watch in 2026: Legal Outlook for Schools



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# Agenda

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**AI and Automated Decision Making**

**2**

**Children's Privacy Code**

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**Regulation of ECEC & Child Safety**

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**Vicarious Liability for Volunteers**

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**Workplace Surveillance: Upcoming Reforms**

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**Modern Shifts in Contract Formation**

# AI and Automated Decision Making

## What is Automated Decision-Making?

Any decision which is assisted by a computer program (from automated calculations in excel spreadsheets through to AI).

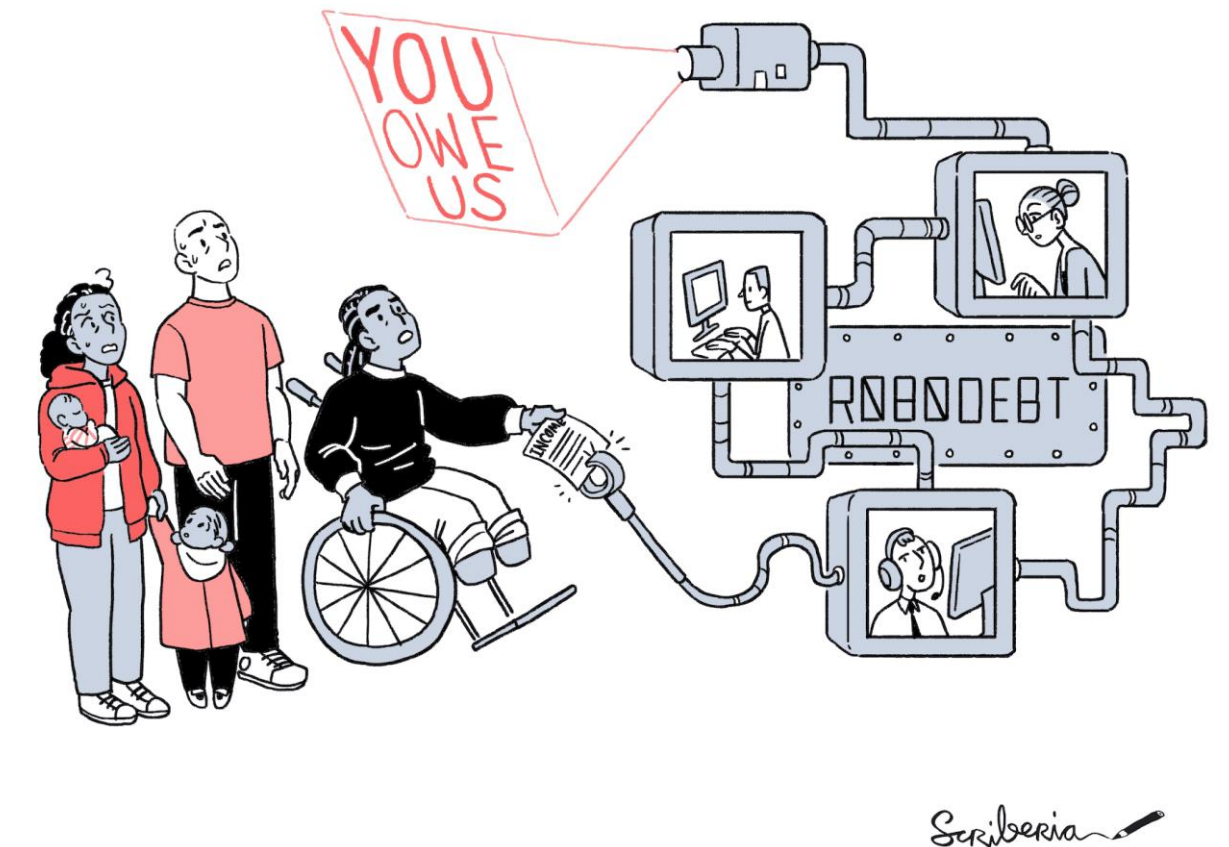
## What is the materiality threshold for the Automated Decision-Making Rules?

Where:

- personal information is used in Automated Decision-Making
- decisions are 'more than trivial'
- decisions can 'significantly influence' an individual's personal circumstances.

## What has changed?

- requirement for transparency (Privacy Policy update)
- requirement for a 'human review' option to automated decision-making





# Children's Privacy Code



*Privacy and Other Legislation  
Amendment Act 2024 (Cth)*



The Code will specify how online services  
accessed by children must comply with the  
Australian Privacy Principles.

IN PLACE BY 10 DECEMBER 2026



# Regulation of ECEC and Child Safety



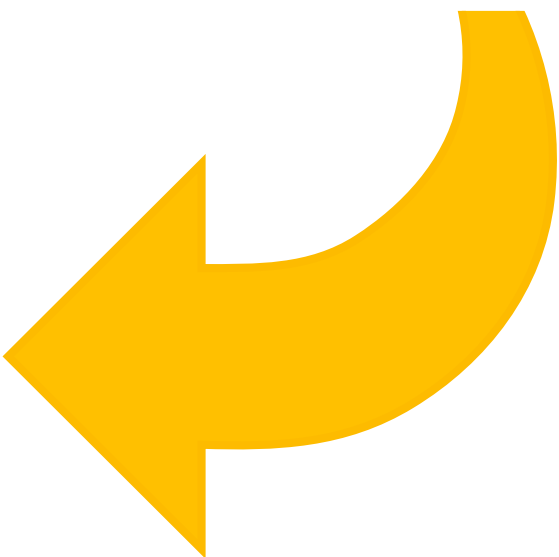
Department  
of Education

*The regulation of the  
Early Childhood  
Education and Care is  
going independent.*



**VECRA**

Victorian **Early Childhood**  
Regulatory Authority





# Regulation of ECEC and Child Safety

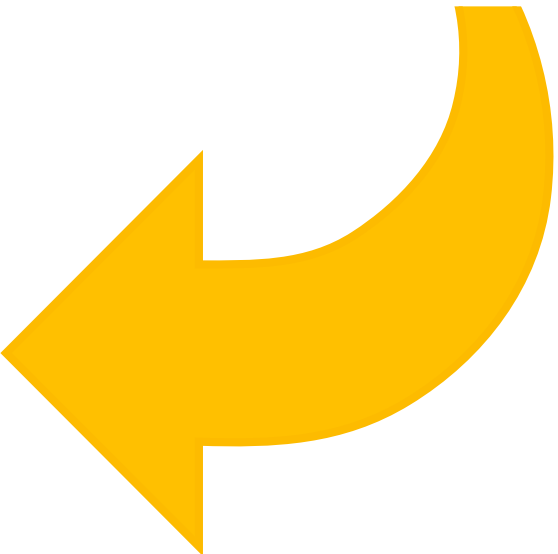


COMMISSION FOR CHILDREN AND YOUNG PEOPLE

*The regulation of the  
Reportable Conduct  
Scheme and Child  
Safe Standards is  
moving.*



**Social Services  
Regulator**





# Vicarious Liability & Volunteers

## AA v The Trustees of the Roman Catholic Church for the Diocese of Maitland Newcastle [2026] HCA 2

### 3 Key Takeaways for Schools

1

Liability extended beyond negligence, allowing for direct liability.

2

Analytical focus moved away from institutional knowledge and fault towards authority of volunteer position & institutional responsibility.

3

Non-delegable duties can be relied on where vicarious liability cannot be established.

### HIGH COURT OF AUSTRALIA

GAGELER CJ,  
GORDON, EDELMAN, STEWARD, GLEESON, JAGOT AND BEECH-JONES JJ

AA

APPELLANT

AND

THE TRUSTEES OF THE ROMAN CATHOLIC  
CHURCH FOR THE DIOCESE OF  
MAITLAND-NEWCASTLE

RESPONDENT

*AA v The Trustees of the Roman Catholic Church for the Diocese of  
Maitland-Newcastle*

[2026] HCA 2

*Date of Hearing: 7 August 2025*

*Date of Judgment: 11 February 2026*

S94/2025

#### ORDER

- Appeal allowed with costs.*
- Set aside orders 1 and 2 made by the Court of Appeal of the Supreme Court of New South Wales on 15 April 2025 and orders 7 and 8 made by the Court of Appeal on 7 May 2025. In their place, order that the appeal to the Court of Appeal be dismissed with costs save to the extent that order 1 of the orders made by Schmidt A-J on 18 October 2024 be varied to substitute for "\$636,480.00" the sum of \$335,960.*

On appeal from the Supreme Court of New South Wales



# Workplace Surveillance: Upcoming Reforms

Inquiry to the Legislative Assembly Economy and  
Infrastructure Committee in May 2024

Report released 13 May 2025

*29 findings and 18 recommendations*

In-principle support for 15 recommendations

## RECOMMENDATION 1

*That the Victorian Government introduce new principles-based workplace surveillance legislation that is technology neutral, defines a workplace as wherever work occurs, and places a positive obligation on employers to prove through a risk assessment that any surveillance they conduct is reasonable, necessary and proportionate to achieve a stated legitimate objective.*





# Contract Law

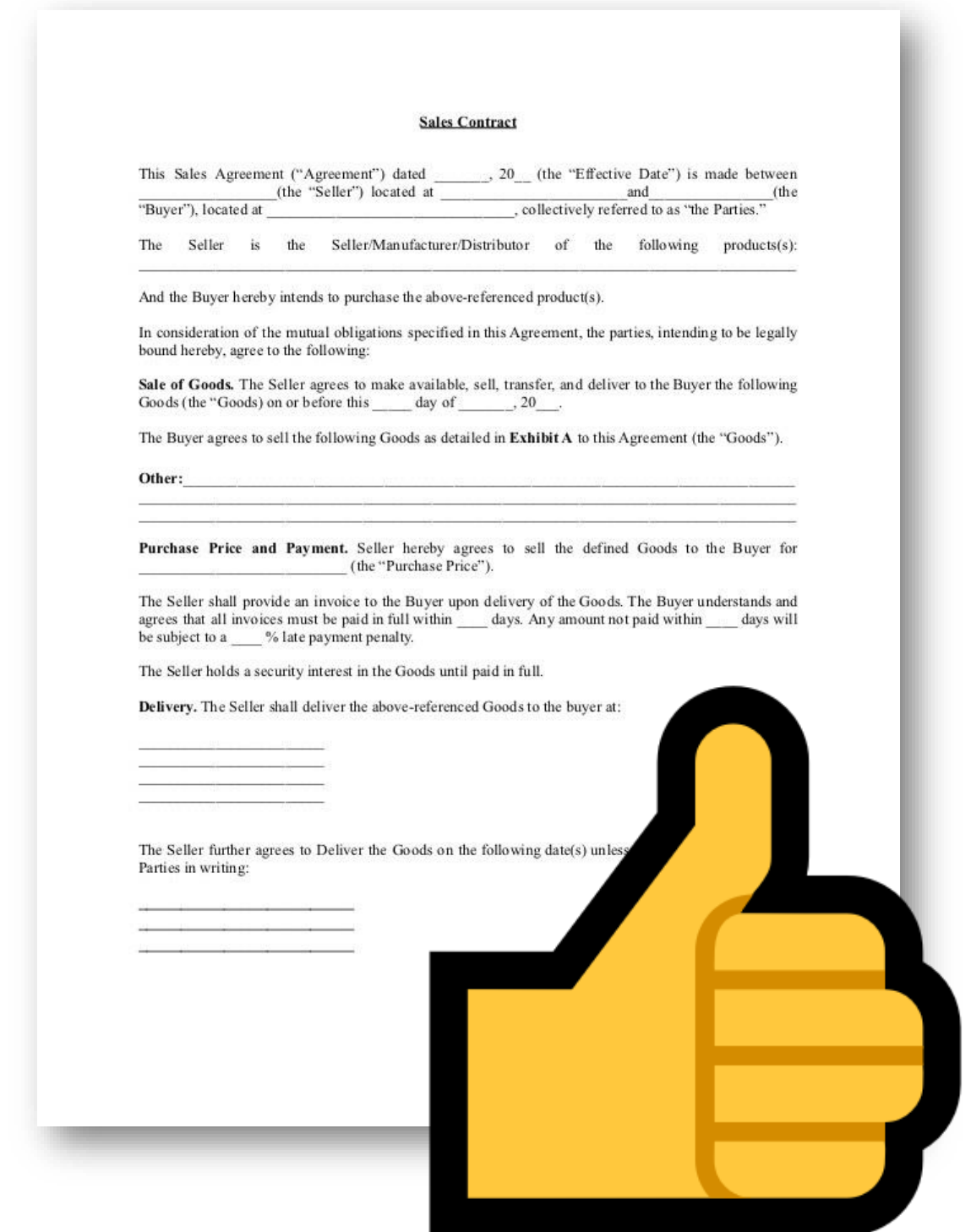
## *South West Terminal Ltd v Achter Land & Cattle Ltd, 2023 SKKB 116*

### Background:

- SWT and Achter reached an in-principle agreement for the sale of flax.
- SWT drafted a contract and sent a photo by text message to Achter writing *‘Please confirm flax contract’*.
- Achter replied with a thumbs’ up emoji.
- After SWT sued for breach of contract when delivery did not occur, Achter claimed there was no contract OR it was unenforceable due to uncertainty.

### Finding:

Due to factors including that text message agreement was common between the parties, the Court found ‘a meeting of the minds’ and a valid contract.





# Questions?



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