

# Legal and Ethical Practice





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# Welcome

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- Housekeeping
- Emergency procedures
- Course outline and structure
- Assessment requirements and submission dates

# ***Icebreaker Activity: Simple Self- Introduction***





# Session 1



# Working Within an Ethical Framework

# Brainstorm





# Watch: Ethics in the Workplace

## 4. Appearance

Show good etiquette





# Introduction

Agents should consider many things in working ethically:

- provide surety to clients and guidance to employees
- Codes of Ethics and Standards – built into licence requirements.

A yellow rectangular sign with a black border. The word 'RIGHT' is written in large, bold, black capital letters. To the right of the word is a black arrow pointing to the right.

**RIGHT** →

A yellow rectangular sign with a black border. The word 'WRONG' is written in large, bold, black capital letters. To the left of the word is a black arrow pointing to the left.

← **WRONG**

# Ethics

Moral principles.

Guided by **values**.

**Values** – beliefs that guide behavioural rules or guidelines.

**Ethics** – includes principles that are covered by legislation.





# *Research*

# Ethics in Real Estate

Handling conflicts of interest

Accurately quoting the sale prices of properties

Accurately describing the home

Items that must be included in the authority to sell

The default period for an authority



# Ethics in Real Estate

Copies of documents provided to clients

Advertised price of a property

Handling of trust money

Acting in the best interest of the client and principal agent

Not disclosing confidential information you acquire

# Code of Ethics

- Accountability framework – provides guidance on a range of ethical issues.
- Ensure compliance.
- Promote a requirement for fair and ethical treatment of all stakeholders.
- Includes a process for reporting breaches.

# Code of Ethics

- Sometimes developed by an employer organisation for its employees.
- Sometimes developed by industry organisations for the industry that it represents.



# *Think, Pair, Share*



# Why Code of Ethics are Important

- **The Industry** – to ensure integrity and guidance.
- **Organisations** – consistency in the organisation.
- **Individuals** – provides clear guidelines for expected behaviour, assists with legislative compliance.



# Why Code of Ethics are Important

Honesty and  
integrity

Professionalism

Professional  
development

Privacy

Intellectual  
property

# Why Code of Ethics are Important

Copyright

Respect and  
courtesy

Diligence

Legislative  
compliance

Confidentiality

# REIA Principles of Conduct

- Set of Principles of Conduct.
- Underpinned by Codes of Conduct.
- Specific to each state and territory.
- Ensure REIA members work to a high level of professionalism.
- Maintain credibility and confidence.







# *Research*

# Your Obligations

- Adhere to the code.
- Stay up to date with changes to the code.
- Tell others about the code of ethics.
- Keep the code at front of mind when implementing new work practices.

# Your Obligations

- Regularly review existing work practices to ensure they are ethical.
- Check with stakeholders to ensure compliance with the code.
- Report breaches of the code.

# Your Obligations

- Know how to access the code/codes of ethics.
- Discuss the code of ethics in meetings, performance appraisals and team briefings.
- Consider for planning new work processes.
- Make a checklist.
- Seek feedback – supervisor, colleagues and stakeholders.





# Session summary

- Working Within an Ethical Practice



# Session 2

# Other Factors of Ethical Practice



# *Warm Up Activity*



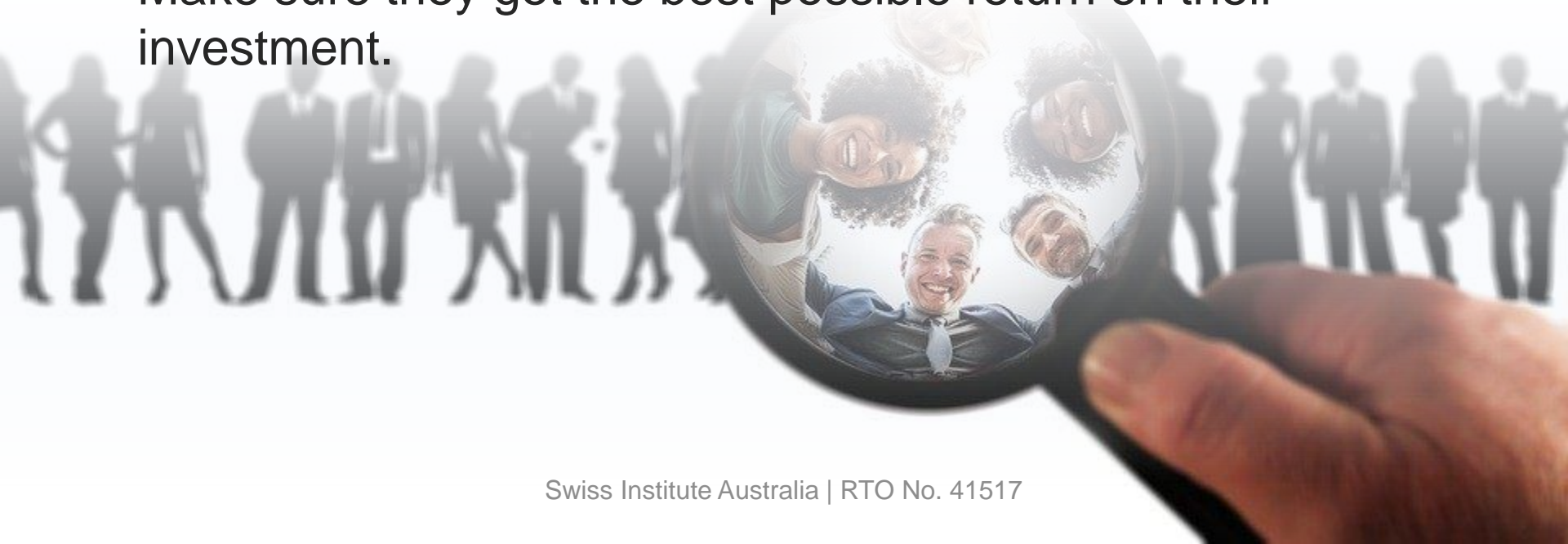


# Brainstorm



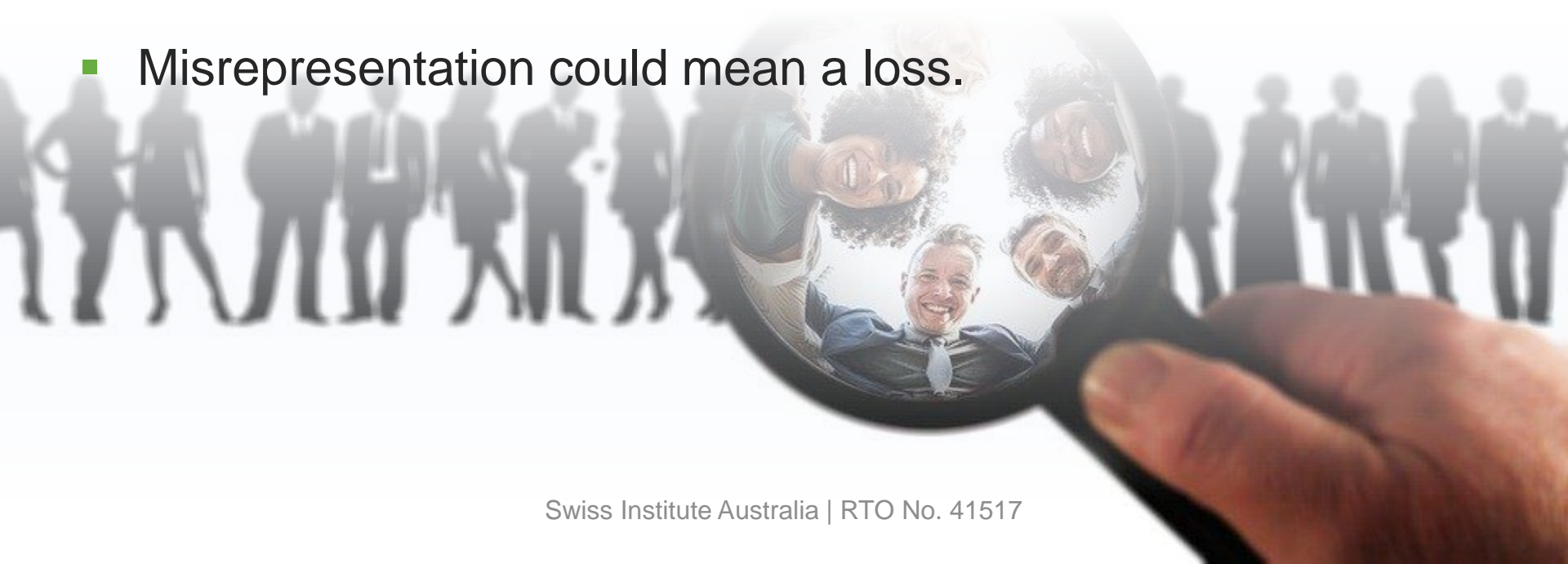
# Duty of Care

- Obligation to someone who could suffer a loss or be injured as a result of lack of care.
- Agencies – act in the best interest of the client.
- Landlords (rental providers) or vendors.
- Make sure they get the best possible return on their investment.



# Duty of Care

- Agency has a responsibility to make sure the property is safely maintained.
- Any work done on the property is carried out appropriately.
- Agencies – legal duty of care to make sure purchases do not suffer a loss.
- Misrepresentation could mean a loss.



# Negligence

Agents are negligent if:

- they breach duty of care by committing a wrongful act or omission
- making verbal or written negligent misstatements when providing info and giving advice.

**What is negligence?**





# Negligence

Negligence is:

- the omission to do something that a reasonable person would do
- doing something which a prudent and reasonable person would not do.

**Professional negligence claim** includes compensation for loss of profit and/or expenses incurred.



# Breach of Contract

Breach of contract – a breach of a legal duty, a failure to do something that is required in a contract.

Penalties include:

- fines
- warnings
- criminal/police action
- legal claims.



# *Research*



# Consumer Protection Requirements

- Australian Competition and Consumer Commission.
- Regulation of consumer rights in Australia.
- Not misleading a consumer.
- Use fair contract terms in line with commonwealth, state and territory laws.





# Consumer Protection Requirements

Real estate agents and professionals must not do the following:

- intentionally mislead consumers
- lead consumers to make a wrong conclusion or impression
- give someone a false impression
- leave out or hide important information like a fine print disclaimer
- make false or inaccurate claims.

A magnifying glass is positioned on the left side of the slide, with its lens focused on the text. The handle of the magnifying glass is visible at the bottom left corner.

# False and Inaccurate Claims

- Disclose all information relevant to the price of a property.
- Advertise the selling price based on a reasonable market appraisal.
- Not make false claims about the price of the property.



# False and Inaccurate Claims

- Not advertise or underquote a property at a price a lot less than the selling price to attract interest.
- Not make false claims about the location, characteristics, or use that can be made of the land of a property.

# False and Inaccurate Claims

- **Advertising** a property as ‘passed in’ at a price higher than what was actually bid.
- **Claiming** that the vendor has already rejected offers more than the buyer is willing to pay.
- **Advertising** a property at a price that is less than a previously rejected offer.



# Conflicts of Interest

- Situation where a person or organisation is involved in multiple interests.
- Financial or interests that affect another.
- Financial, personal, business, shareholdings or a role in a company.





# *Think, Pair, Share*

# Types of Conflict

Direct Conflict	Indirect Conflict
<p>Involve receiving a personal benefit directly from a transaction or process you are involved in.</p>	<p>May arise if you assist someone to who you are closely related or affiliated to, on a property that your agency has a listing for.</p>

# Types of Conflict

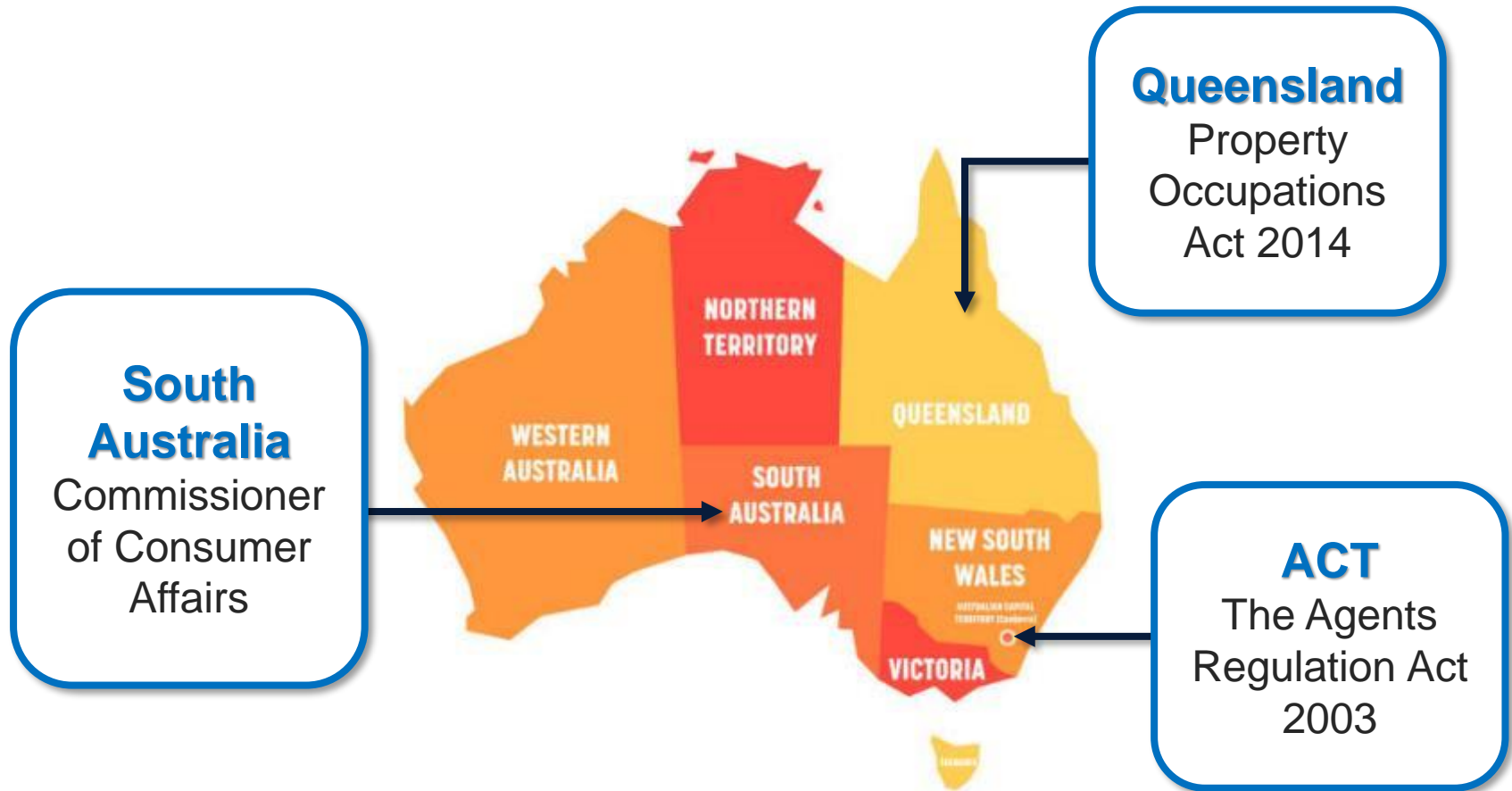
Real estate agents are required to:

- declare their conflicts of interests when working in real estate
- states and territories differ when it comes to these requirements.

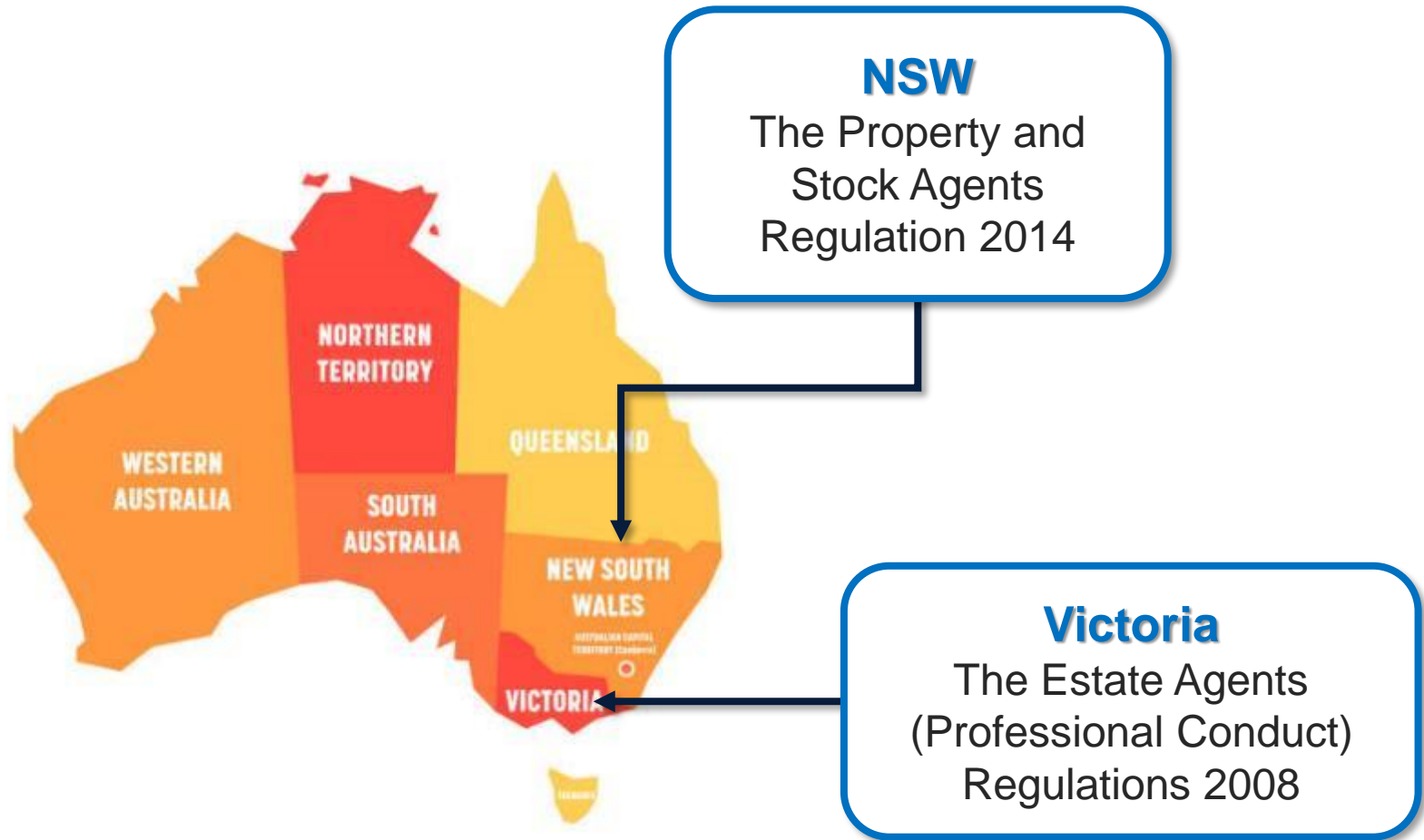




# State and Territory Considerations



# State and Territory Considerations



# State and Territory Considerations

## WA

Real Estate and Business Agents Act 1978 (the REBA Act)

Code of Conduct for Agents and Sales Representatives 2011 (the Code)



**NT**  
Agents  
Licencing Act  
2017

**Tasmania**  
Property Agents and  
Land Transactions Act  
2016



# *Research*



# Perceived Conflicts of Interest

- A conflict of interest exists.
- Your performance of your duties might be affected by your personal interests.
- Conflicts of interest should be managed and declared.

# Trust Accounts

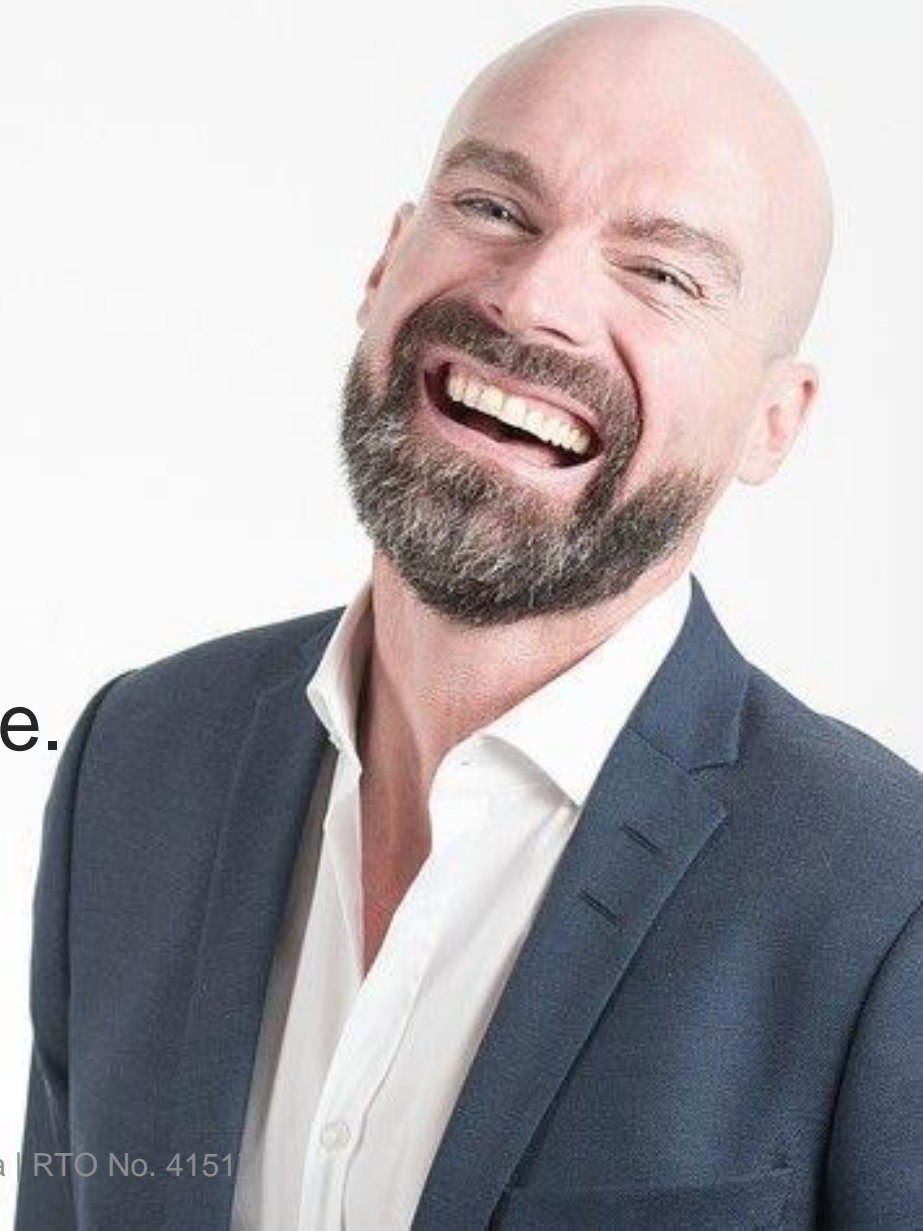
- Managing money and assets of another person.
- Your client is entrusting you with their hard-earned money.

## **Fiduciary Duties:**

- A person or organisation that acts on behalf of another person or persons to manage assets.

# Barriers to Being Ethical

- **Self-interest** – to improve personal circumstances such as earning more money.
- **Expedience** – quick sale.
- **Safety in numbers** – doing what you see others are doing.



# Ethical Decision Making

- Gather the facts.
- Define the ethical issues.
- Identify the consequences.
- Identify obligations (principles, rights, justice).





# Ethical Decision Making

- Consider your character and integrity.
- Think about potential actions.
- Decide on proper ethical actions.

# Session summary

- Other Factors of Ethical Practice



# Session 3



# Understanding Legislation



# *Warm Up Activity*



# Legislation

- The laws that Parliament has enacted – such as Acts of Parliament.
- Also known as primary legislation.
- Subsidiary legislation:
  - regulations
  - local laws
  - planning schemes
  - rules.



# Legislation

## Equity Law:

- treating each person the same
- same opportunity and rights
- nobody is disadvantaged
- no bias on nationality, religion and or sexuality
- each person has the right to access the legal system.

# Interrelationships Between Legislation

- Do not sit in isolation from each other.
- Usually an Act and subsidiary legislation will sit alone.
- Evidence Act 1906, the Criminal Investigation Act 2006 and The Criminal Code and the Fines.







# *Research*

# Interpreting Legislation

- Commonwealth Interpretation Act – to guide on interpreting Acts of Parliament.
- The following are not parts of the law:
  - table of contents
  - headings and footnotes
  - notes at the end of reprints.

# Interpreting Legislation

- Order – the last item is just as important as the first item.
- Headings – only a pointer to help you find what you are looking for.
- Definitions – you must rely on the definition of the words within the legislation for the defined words.
- Gender and plurals – Section 10 of the Interpretation Act 1984.

# Structure of Legislation

## Contents

how the Act is structured,  
easy to read  
and find things

## Parts

allows  
sections to be  
grouped

## Long Title

explains the  
purpose of the  
Act





# *Research*

# Structure of Legislation

- **Short Title** – name of the Act, including the year.
- **Commencement** – when the Act commences or comes into effect.



# Structure of Legislation

- **Purpose** – a broad overview of the purpose of the Act.
- **Application** – what the legislation applies to.
- **Schedules and Clauses** – one or more schedules; divided or subdivided.
- **Sections** – numbers, headings, words.



# Legislation Amendments

- Subsidiary Amendment Act.
- Deleting or inserting the words that need to be changed in the original legislation.
- A note is made in italics if there are amendments made.



# Contract Law

- Common law or case law.
- Legal enforcement of promises made of a bargain entered into.
- Forming a legal relationship called a contract.

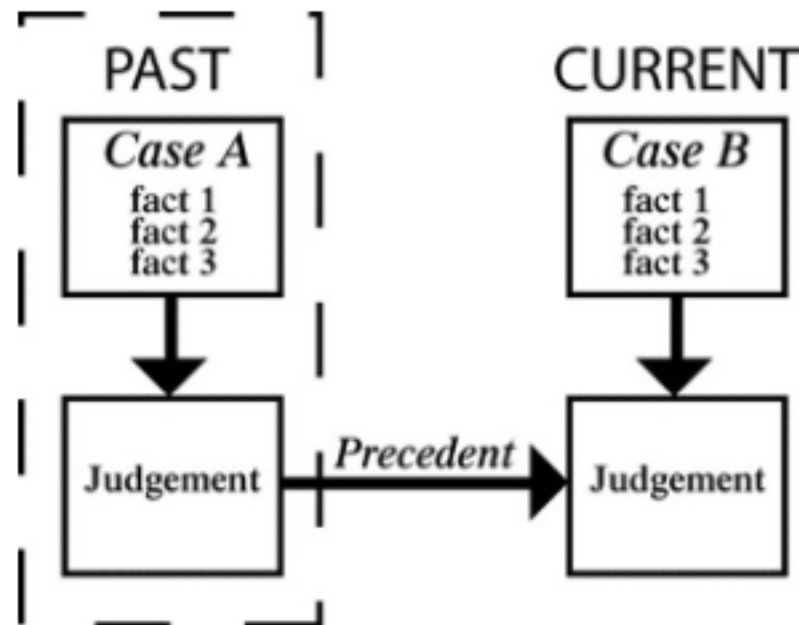
A photograph of a brass scale of justice and a wooden gavel. The scale is in the background, and the gavel is in the foreground, resting on a wooden block. The image is semi-transparent, allowing the text to be overlaid.

# Common Law

- Help you interpret legislation.
- Precedents – a legal principle should be followed in other similar cases by courts.
- Binding precedent – binding on a court.
- Persuasive precedent – if established by a superior court.

# Finding Case Law

[https:// www.austlii.edu.au/databases.html](https://www.austlii.edu.au/databases.html)



# Precedents

- Consistency in decision-making by judges.
- On the basis that like cases should be determined in a like manner.
- Binding and persuasive.





# Binding Precedent

Must be followed if the precedent is relevant and the circumstances of the cases are sufficiently similar.

- **High Court** – binding on all courts in Australia.
- **Supreme Court** – not binding on the High Court.
- **District Court** – not binding on the Supreme Court.



# Persuasive Precedent

- Persuasive if it was established by a superior court that is not higher in the hierarchy of courts.
- Not required to be followed.

Example:

A precedent established by the Supreme Court of NSW is persuasive but not binding on the Supreme Court of Vic.

A large, faint silhouette of a person holding scales of justice, serving as a background for the left side of the slide.

## Interpretation of the Law

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# Literal Approach

Relies on plain meaning of words used in legislation.

Not primarily concerned with putting into effect the intention of the parliament.

Will apply the legislation to its ordinary and natural meaning – as its written.

A blurred background image of a justice scale, showing a figure holding a scale of justice.

# Interpretation of the Law

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# Golden Rule

The court would modify the meaning under the literal rule.

The court has to decide what the intention of the Parliament was at the time of enacting the legislation.





# Interpretation of the Law

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## Purpose (Mischief)

Focuses on the particular social 'mischief' or social condition which parliament intends to correct or regulate.

The court considers what the intention of the legislation was in correcting the social mischief.

A blurred background image of a justice scale, showing a figure holding a scale of justice.

# Interpretation of the Law

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## The Class Rule

Used by judges when there are general words following specific words in legislation.

General words get their meaning from other specific words.

# Extrinsic and Intrinsic Evidence

- Acts allow courts to use extrinsic evidence to assist interpretation.
- Extrinsic evidence – information which is obtained from outside of the Act itself.
- Intrinsic evidence is information contained within the Act.

# Extrinsic and Intrinsic Evidence

- An example of intrinsic evidence – definition section of the Act.
- An example of extrinsic evidence is a publication called Hansard.
- Hansard records might become a useful reference source to assist interpretation.



# Conflicts Between Legislation

- If there is a conflict between an Act and its subsidiary, then the Act prevails.
- Conflict between two of the same state's Acts need to be resolved by statutory interpretation.
- A conflict between a state or territory Act and a Commonwealth Act, then the Commonwealth Act prevails.



# Conflicts Between Legislation

- The level that one piece of legislation prevails over another is hard to know at times – can be resolved by looking at case law.
- Getting legal advice when unsure is always the safest solution.



# Conflicts Between Legislation

- An Act may say two things that conflict one another.
- The legislation therefore needs to advise which one takes priority.
- Often resolved by saying provision (1) is 'subject to' provision (2).





# Brainstorm





# Staying Up to Date

Subscribing to industry newsletters

Monitoring industry journals

Joining industry associations

Attending professional development

# Staying Up to Date

Developing checklists

Ensuring adherence with policy and procedures

Seeking expert review and advice

Including legislative requirements in sign-off processes



# Recap

- Key learnings
- Final questions
- Trainer/session feedback
- Thank you