

ASIC's New Document Production Guidelines

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What are the Guidelines?

On 2 March 2020, ASIC released new Document Production Guidelines, which govern how ASIC expects electronic and hard copy records to be produced in response to compulsory notices. While the Guidelines are not mandatory, consequences may apply to businesses that do not adhere to ASIC's preferred approach.

What does it mean for you?

In major disputes and investigations, Allens routinely uses technology, including artificial intelligence, to reduce the cost and improve the efficiency of document review. Allens welcomes ASIC's decision to allow these techniques, including the use of litigation support systems, predictive coding and document analytics.

You should be aware, however, that the Guidelines now seek detailed information (including your document collection and review process; document metadata; and the location of all duplicate documents) which will affect how law firms and businesses need to deal with, and respond to, ASIC investigations.

THE NATURE OF THE GUIDELINES:

The Guidelines set out ASIC's *preferred* method for the production of documents.

While the Guidelines are not mandatory, failure to comply can result in serious consequences. Among other things, ASIC may:

- (1) require the documents to be produced again in a compliant format;
- (2) issue a notice for production of the device on which the documents are stored; or
- (3) impose costs consequences.

ASIC expects that use of the Guidelines will reduce the 'time, cost and resources' required to comply with its notices.

However, there are aspects of the Guidelines that may make the production process more onerous than before.

TECHNOLOGY-ASSISTED DOCUMENT REVIEW:

The Guidelines allow the use of litigation support systems, such as Nuix Discover (Ringtail), to review and produce documents in response to compulsory notices.

Indeed, this is likely to be the easiest way for businesses to comply with ASIC's request for electronic copies of all documents, along with their associated metadata.

Importantly, the Guidelines also permit the use of new technologies, such as analytics and predictive coding, to streamline the document review.

Depending on how you intend to leverage these technologies, it may be prudent to consult with ASIC early in the process, along with a legal technology specialist, to outline your proposed approach.

DOCUMENTING REVIEW & COLLECTION PROCESSES:

ASIC now expects businesses to carefully document their collection and review process, and to have available a full audit trail for ASIC's inspection.

This includes information concerning:

- *whom* documents are collected from;
- *how* data is processed;
- *what* technologies are used (such as analytics and key word search terms); and
- *why* this approach was reasonable.

ASIC has the power to compel companies to explain these matters to it, and may ask for the process to be redone if it is not satisfied.

DE-DUPLICATION AND METADATA REQUIREMENTS:

De-duplication of documents is a common feature of document review exercises.

While de-duplication is generally allowed (unless the notice says otherwise), the Guidelines impose certain limitations. Businesses are asked to:

- (1) provide 'file pathway' information for each duplicate document; and
- (2) retain copies of all duplicates, as ASIC may require them to be produced later on.

The Guidelines also require a range of additional metadata to be provided to ASIC. This includes:

- the 'custodian' for all documents where this information is available; and
- the relevant category of the ASIC notice to which the documents respond.

How can we help?

Businesses today are often required to identify, review and produce data in short timeframes while meeting their legal obligations and minimising time and cost.

We are in a unique position to combine sophisticated technologies, diverse expertise and our forensic legal judgement to deliver high quality, cost-effective and sustainable legal data solutions to you. This includes:



Working with our clients to identify and collect data and documents in accordance with ASIC's Guidelines and requirements



Applying keyword search terms and filters to cull the document population for review



Using predictive coding and analytics to target relevant documents and reduce the overall pool of documents for review



Prioritising relevant documents to the front of the queue to increase review speed and consistency

Allens was one of a small number of firms consulted by ASIC in preparing the Guidelines. Having been involved in this process, we understand the Guidelines and ASIC's objectives.

Compliance with the Guidelines is best achieved through a strategic approach that begins with the accurate capture of data and documents, followed by a comprehensive methodology for document review.

If we can be of any assistance to you, please let us know.