

It is now a crime in the Australian province of Victoria to destroy documents or anything else of any kind likely to be used as evidence in legal proceedings. Crimes (Document Destruction) Act 2006 (Vic) (Act) covers all kinds of documents, paper and electronic, as well as DVDs and sound and data recordings. The law applies to anyone that does business in Victoria.

The new legislation follows the widely publicized Victorian Court of Appeal decision in *British American Tobacco Australia Services Ltd v Cowell (Representing the Estate of McCabe (deceased))* (2002) 7 VR 524 (the BATA decision) and amends the Crimes Act 1958 (Vic).

Prior to this law, in Victoria, document destruction would generally not result in criminal charges unless the documents were destroyed after legal proceedings had begun and amounted to an attempt to pervert the course of justice or contempt.

Under the new law, individuals or companies may be found guilty of an indictable offense. A company may be guilty as a result of the activity of its officers or associates. According to the wording of the law, a company or person can be convicted under the law if a court finds that that company or individual knows that a document or other record will be, or is reasonably likely to be, used as evidence in legal proceedings and that person:

* "Destroys, conceals, or renders that document or other thing illegible, undecipherable, or incapable of identification

* Expressly, tacitly, or impliedly authorizes or permits any other person to perform such an act"

To prove an offense, it must be shown that a person acted intentionally to prevent the record from being used in legal proceedings that are in progress or may begin in the future. If a party is found guilty, the maximum penalty is five years in prison or a fine of up to \$62,886 for individuals or of up to \$314,430 for companies.

The law also stipulates that a company may be prosecuted whether or not the individual officers or employees that destroyed the documents are charged. If an employee or officer of a company disobeys the act, the law considers the company to have disobeyed the law as well.

If a company can show that it exercised due diligence to prevent any negligent or willful document destruction, it may be able to defend a charge of document destruction. But to do this, according to the law, the company must prove that its culture does not promote, authorize, tolerate, or encourage the destruction of documents that may be used in legal proceedings, and that it has a policy that clearly demonstrates compliance with a document retention and destruction program and enforces that policy.

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IMAGE ILLUSTRATION 1 Global dairy giant Parmalat SpA is in trouble over allegations of document destruction, forged signatures, and fictional finances. The Italian company's founder,

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Subject: Crime

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