



A SOLICITOR'S GUIDE TO RESPONSIBLE USE OF ARTIFICIAL INTELLIGENCE

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INTRODUCTION

Artificial intelligence (AI) is a form of science and engineering that is concerned with making machines work in an intelligent way - a way that attempts to mimic the problem-solving and decision-making capabilities of the human mind. Common forms of AI include automatic speech recognition, such as Apple's Siri and Amazon's Alexa, and messaging chatbots, such as ChatGPT and Google Bard.

AI systems are powerful tools and can be of great assistance in legal practice if used correctly, and within the framework of a solicitor's ethical and professional obligations. For solicitors to be able to gauge and assess whether AI is being used within this framework, it is recommended they have a general understanding of how the technology works.

This guideline focusses on generative AI, and sets out potential issues and considerations that arise in legal practice with the use of generative AI systems. Importantly, this guideline seeks to remind legal practitioners of their relevant legal and ethical obligations that may arise when engaging AI tools to perform legal tasks.

While this guideline is mainly concerned with the use of generative AI systems, it conveys a simple principle that can be applied to any new technology in legal practice:

1. Understand the tool you are using and know how it can assist (or damage) your legal practice.
2. Know what your professional and ethical obligations are and how they apply to the given tool.

Knowing your tools

The appropriate use of any new technology in legal practice first requires a basic understanding of how the technology works.

This helps ensure solicitors avoid breaching their professional and ethical obligations.

For example, take the obligation not to disclose confidential client information.¹ Before electronic documents and communications, standard practice for safeguarding confidential client information involved filing documents into a lockable filing cabinet or safe. With the advent of electronic communications, and more recently with cloud computing, antivirus software and data encryption has become part and parcel of securing confidential client information.

How a piece of technology works determines the measures a solicitor needs to put in place for its appropriate and ethical use. This is no different when it comes to generative AI systems, whether it's a publicly available system like ChatGPT, or a commercial proprietary system commissioned for in-house use.

1. Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015, rule 9.

What is generative AI?

Generative AI uses a learning model that produces outputs (such as text or images or sound) when given a prompt. The outputs are based on probabilistic modelling applied to a set of data (known as ‘the underlying data’). The AI learns from the aggregate underlying data and generates content based on the data it is fed.

It is generally trained over a large corpus of data, recognising common relationships between words and phrases. Generative AI is an iteration of AI.

How can generative AI assist in legal practice?

Although in its relative infancy as a tool of legal practice, generative AI has already been known to assist lawyers with many tasks, including:

- streamlining the client or matter intake process;
- summarising cases, reports and other documents;
- drafting correspondence;
- undertaking legal research;
- recording and transcribing minutes of meetings;
- drafting and reviewing contracts;
- preparing articles or presentations; and
- analysing case law to provide helpful insights into the potential outcomes of a particular case.

Given that it has a range of applications, generative AI can potentially improve client engagement and add substantial benefits to your practice if used to, say, assist in the explanation and nature of the processes a client is about to embark on. It can add a personalised experience to regular online engagement, by gathering information about what kind of referral services your client/s may need.

The abilities of generative AI can make legal services more affordable, lowering cost barriers for particular clientele. Discrete pieces of legal work may take less time, with fewer costs being passed onto the client. High-volume, more repeatable tasks are the most likely to be positively impacted, for example, when large volumes of documents need to be reviewed quickly.

The information processing power of AI is transforming the legal landscape, and its use is becoming increasingly common in legal practice across Australia and the world. As more practitioners explore and adapt to this new way of working, it is imperative that the issues arising from the use of generative AI remain front of mind with a clear understanding of relevant solicitors’ professional and ethical obligations.

Issues arising from the use of generative AI

Accuracy

Generative AI systems have been known to produce inaccurate information, for example, fictitious case law or academic references. This is known as a hallucination, where the algorithm effectively produces a reference that appears legitimate, but is in fact fictitious. While using a generative AI tool may be quick and easy, solicitors must therefore always thoroughly check its outputs to avoid compromising their integrity.

Use of AI does not negate the need for solicitors to ‘deliver legal services *competently, diligently* and as promptly as possible’, as required under Solicitor Conduct Rule 4.1.3. (emphasis added).

Remember, generative AI does not understand who the client is and cannot therefore, weigh up ‘best interests,’ optimise outcomes or provide explanations or reasoning. It lacks the skills of critical thinking and relevance. Humans are accountable, but generative AI is not. For this reason, it is not only necessary that practitioners thoroughly review and verify generative AI outputs for accuracy, but that law practice principals have policies and procedures in place for the appropriate use and supervision of generative AI in their legal practices. Under s 34 of the Legal Profession Uniform Law (LPUL), law practice principals are responsible for the legal services provided by the law practice and must take reasonable steps to ensure that all legal practitioner associates of the practice comply with their regulatory, professional and ethical obligations in legal practice. The requirement for reasonable supervision over law practice staff is also set out under Solicitor Conduct Rule 37.

Bias

Another issue lawyers need to be cognisant of when using generative AI is bias. In computer science terminology, bias refers to the tendency for an AI system to produce skewed results that are representative of bias in the underlying data that the tool has analysed, which may reflect systematic prejudice against individuals or groups. AI bias can be caused by a number of factors, including unrepresentative, limited or incomplete training data sets. Put simply, biased data, including subconsciously biased data, that is used to train AI systems may lead to biased information being generated.

Intellectual property

In addition to the quality of the information produced by generative AI tools, solicitors also need to be mindful of ownership rights attached to such information. Material produced by generative AI is usually based on existing data or creations, which means that the use of such material may be infringing on someone else's copyright.

Privacy and data security

More generally, lawyers should consider privacy and data security frameworks to support any generative AI system they use. Given the relative infancy of publicly available generative AI systems, such systems may have inadequate checks and balances regarding information sharing and privacy.

For example, some generative AI systems may share user data with third parties without explicit consent, or for purposes beyond what was initially communicated. There may also be AI systems with inadequate data anonymisation techniques. Like any other tool publicly available over the Internet, generative AI systems are at risk of data breaches.

Practitioners should not necessarily rule out the use of AI systems because of these issues. Rather, these issues highlight the need for appropriate checks and balances in legal practice management systems and processes to ensure human oversight is ever present, at all levels of an organisation, so as to avoid malpractice and harm to clients. Practitioners should always oversee and review AI-generated work to ensure accuracy and ethical compliance.

Having appropriate cyber security measures in place is also critical. Many generative AI products aim to further train and improve their AI by learning from users' prompts. This could mean potentially exposing confidential client data to the service provider, which could be accessed by any of the service provider's customers. Organisations are also finding it harder to respond as quickly to potential generative AI vulnerabilities to hacking and data breaches, given the lack of reporting and detection capabilities that exist to monitor generative AI tools.

Good accountability and governance are key to maintaining your professional responsibilities, as well as to protect clients' privacy and data security.

Legal costs

Law practices have an obligation under s 172 of the LPUL to ensure that legal costs charged to their clients are fair and reasonable and proportionate to the work completed. Further, s 174 of the LPUL requires law practices to provide their clients with appropriate costs disclosure, which includes disclosing the basis on which legal costs will be calculated in the matter.

In considering whether legal costs are fair and reasonable and proportionate to the work completed, regard must be had to whether the legal costs reasonably reflect:

- a) The level of skill, experience, specialisation and seniority of the lawyers concerned,
- b) The level of complexity, novelty or difficulty of the issues involved,
- c) The labour and responsibility involved,
- d) The circumstances of the matter, including its urgency, the time spent on the file, the time when business was transacted, the place where business was transacted and the number and importance of any documents involved,
- e) The quality of the work done, and
- f) The retainer and the instructions given.

When using generative AI to assist legal practice, solicitors should be mindful that their costs appropriately reflect the work undertaken for the client, and that costs related to the use of generative AI is reflected in the costs disclosure and estimate that is provided to the client.

For example, where a law practice uses time-based billing to bill clients, if the practice spends half the time completing a task, such as preparing a contract, because of assistance from generative AI, the time saved should be reflected in the law practice's bill to the client.

Ultimately, solicitors need to be upfront and transparent with their clients about their costs and the basis on which legal costs will be calculated. If generative AI can help deliver legal services more efficiently, then this needs to be reflected in what is charged to clients.

Relevant rules to consider under the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (Solicitor Conduct Rules)

When using generative AI systems solicitors should be particularly mindful of their obligations under the following Conduct Rules:

Rule 4 – Competence, integrity and honesty

Solicitors are responsible for the accuracy of any advice they give, irrespective of where they may have done their research. As with any other research, for full transparency, it may be appropriate to disclose to clients the fact that a generative AI program was used.

As previously mentioned, generative AI can create fabricated material, including fictitious case law. The materials it generates can therefore be completely wrong, inaccurate or outdated.

Furthermore, the AI models currently in use cannot properly identify when the output they are returning is factual. There is also a risk that generative AI may contain plagiarised material, or that it breaches intellectual property rights. Be aware that the sources of its information are often obscure.

Rule 9 – Confidentiality

Generative AI takes information entered, uses the information to learn, and then discloses that information to other users. Therefore, any placing of client confidential information into a publicly available generative AI system is akin to putting it in the public domain. This is likely to be a breach of confidentiality and clients may lose privilege.

Rule 17 – Independence (avoidance of personal bias)

Solicitors are not a mere mouthpiece for their clients. Solicitors have an obligation to exercise their best judgment independently, irrespective of the views of any generative AI system.

Rule 19 – Duty to the court

Solicitors must ensure they do not mislead or deceive the Court, even if inadvertently. The validity of any material presented to the Court needs to be tested by solicitors, whether or not that material has been

produced by generative AI. When using generative AI, solicitors should be particularly cautious, given the limitations discussed above, and ensure compliance with the requirements set out in applicable Court Practice Notes.

There have been an increasing number of cases across different Australian jurisdictions involving practitioners who have presented submissions to the court citing inaccurate or hallucinated authorities. In one instance, in Victoria, this resulted in the practitioner having his practising certificate varied by the Victorian Legal Services Board + Commissioner.²

Furthermore, solicitors should not rely on generative AI to verify sources produced by AI. This has been known to fail. In *Mata v. Avianca, Inc.*,³ a lawyer who appeared before the United States District Court for the Southern District of New York gave affidavit evidence to the Court to the effect that he had asked ChatGPT whether the cases it cited were real and ChatGPT answered the cases existed and could be found on legal research databases. Again, a number of the cases cited were fictitious.

It is also important to remember the Harman undertaking. This prohibits the use or disclosure of information which has been produced under compulsion other than for the litigation for which it was produced (unless it has been received into evidence). Such information therefore must not be disclosed when using generative AI.

Rule 37 – Supervision of legal services

A solicitor who is charged with supervising legal practice by others, and the provision of legal services generally, needs to be particularly cognisant of the risks of generative AI in legal practice.

In *Murray v Victoria*,⁴ the solicitors for the Applicant submitted a document in the proceedings which contained footnotes referencing reports and papers that were found to be mostly non-existent or incorrectly cited. The document was prepared by a junior solicitor who was authorised only to engage in supervised legal practice and, therefore, whose work needed to be reviewed and signed off by the law practice principal. The solicitor was working remotely at the time she prepared the document and relied on Google Scholar to find the material, as she did not have access to the source materials.

2. *Dayal* [2024] FedCFamC2F 1166.

3. *Mata v. Avianca, Inc.*, 1:22-cv-01461, (S.D.N.Y.).

4. *Murray on behalf of the Wamba Wemba Native Title Claim Group v State of Victoria* [2025] FCA 731.2.

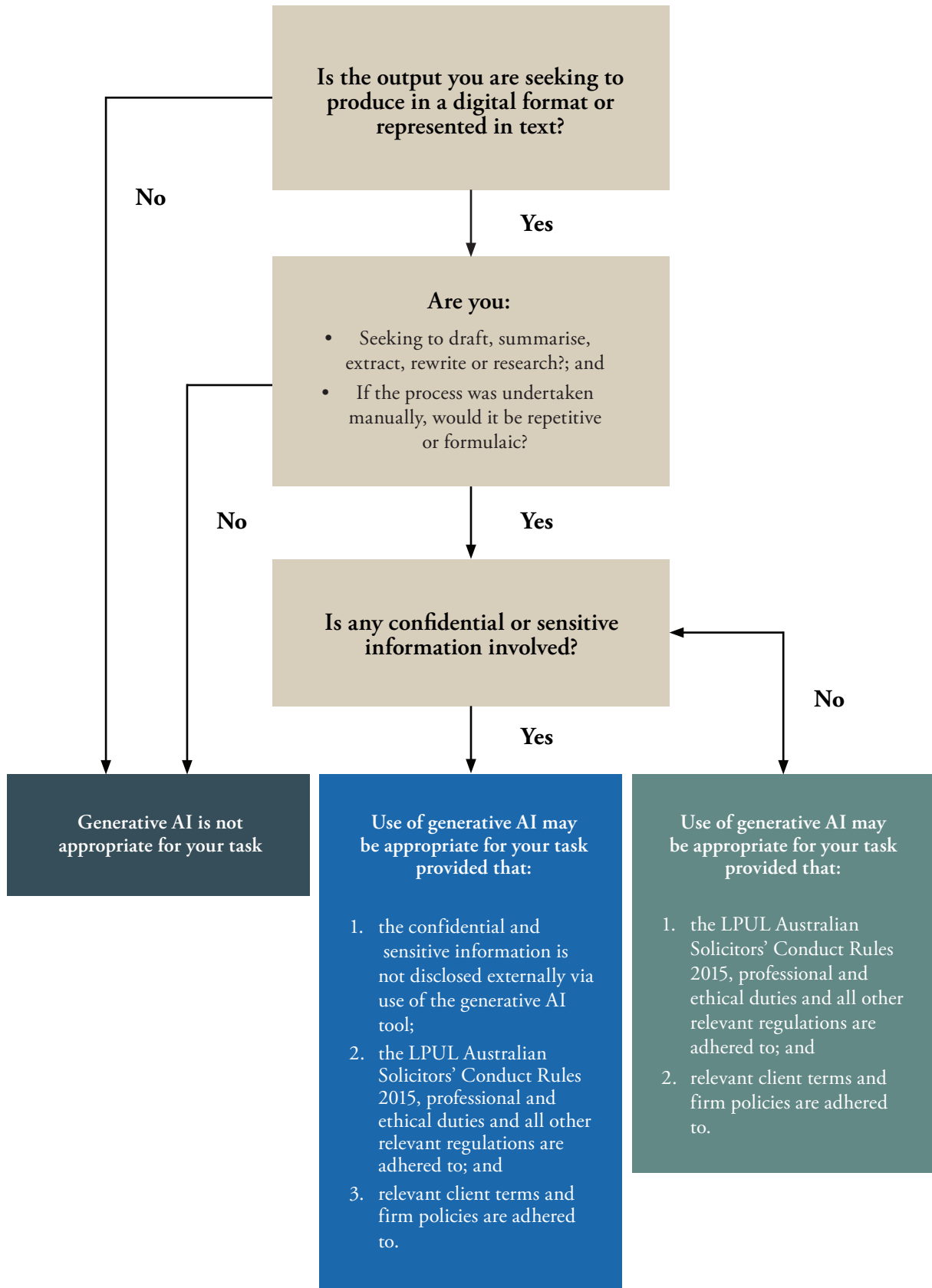
In this case, the Court found that the junior solicitor did not take sufficient care in using Google Scholar as the source of document citations, and in checking the citations. Further, the Court found that the solicitor's error was contributed to by, among other things, the failure of her supervisor to ensure the work was adequately supervised.

Being able to exercise reasonable supervision where generative AI is used requires critical evaluation of the accuracy and completeness of the AI tool's outputs. A more junior practitioner may not have the experience or knowledge to make that evaluation.

Key considerations for procurement and use of generative AI in legal practice

Used appropriately, generative AI may be an effective tool to assist you to provide legal services. The infographic set out below has been prepared in order to give an example of the kinds of questions that should be considered when determining whether the use of a generative AI product may be appropriate in the provision of legal services. A more detailed list of key considerations is provided following this.

IS GENERATIVE AI SUITABLE FOR THE LEGAL SERVICE I WISH TO PROVIDE?



The following considerations may help you decide whether your firm's use of generative AI in the delivery of legal services is appropriate and consistent with the Australian Solicitors' Conduct Rules discussed above.

Pre-Adoption

- Consider establishing the following:
 - An appropriate generative AI use case, or specific scenario in which generative AI could be used to solve a particular problem;
 - a desired output for the generative AI tool; and
 - benchmarks to measure the generative AI tool's effectiveness.
- Evaluate your organisation's existing internal policies and risk management frameworks governing the use of generative AI and consider forming new ones.
- Consider undertaking robust research on vendors and tools available for the generative AI use case and evaluate integration with existing IT systems, tools and apps. It may be prudent to give preferential consideration to generative AI tools which present their output in a manner which enables the user to interrogate the sources or authorities upon which the output is generated.
- Prior to purchasing a generative AI tool, endeavour to undertake a full contract review to understand the key issues relating to copyright, intellectual property, data ownership, data sharing, and access to data provided to the tool. This includes details on how prompts, queries and data are stored to ensure that use of the tool would not breach confidentiality obligations.
- If the generative AI tool will have access to internal documents and systems, the principle of least privilege should ideally be followed, meaning the tool is only provided with the data it needs to operate and nothing more.
- Check the source(s) of data upon which the tool has been trained, noting that databases may contain misinformation or incomplete information.

- Check that use of the tool is compliant with relevant legislation, including in relation to legislation regarding the use of AI, cyber-security, data usage, and privacy.
- Consider the establishment of access control mechanisms to ensure that only authorised users can access and utilise the generative AI tool.
- Explore the provision of 'prompt engineering' training to the users of the generative AI tool.
- Consider undertaking thorough testing of the generative AI tool prior to its adoption. Outputs should ideally be expected, determinable, impartial, and fit for purpose.
- Ensure your client is aware and approves of the use of generative AI in the provision of their legal services and consider the implications using a generative AI tool would have on a client's potential requirement for onshore data hosting.
- Institute a process to ensure that practitioners with the appropriate skills and knowledge level are supervising and reviewing the generative AI outputs and their accuracy.

Post-Adoption

- Consider continual testing of the generative AI tool against benchmarks to ensure that its outputs remain useful and fit for purpose.
- If applicable, consider maintaining records of each generative AI output for discovery and retention purposes.
- If any generative AI output is intended for use in litigation, consider any relevant court protocols and practice notes.
- Consider ongoing professional development opportunities to ensure that all practitioners have the skills and knowledge to:
 - Appropriately prompt the generative AI tool;
 - Evaluate the common limitations of the tool, including its susceptibility to AI bias; and
 - Supervise the outputs of tool and their accuracy.

Summary

When a solicitor uses generative AI to assist in their legal practice, they should employ the same level of care and caution as they would with any legal assistant or paralegal. Solicitors must exercise independent forensic judgement, based on their own training, experience and research, and review, check, edit and correct any output to be confident it is reliable and correct. Solicitors need to demonstrate understanding, and may need to explain this understanding in verbal or written forms or provide additional supporting material not obtained via generative AI.

Clients are entitled to expect that any work done by a solicitor is the solicitor's own work, reflecting the solicitor's experience, knowledge, application and judgment. Generative AI must, therefore, be used responsibly to supplement (rather than substitute) the legal services on offer.

Organisations can benefit from generative AI while limiting their risks. However, the only way of managing these risks is to understand them. Incorporating and/or adopting generative AI tools needs constant human oversight, at all levels of your business. Gaps in content need to be identified. In terms of privacy and data security, sensitive and client information should not be inputted into a public generative AI tool, particularly client information. Once in, it is hard to remove. Educating your employees on the risks and benefits of generative AI is essential.

