



BAR ASSOCIATION OF QUEENSLAND

GUIDELINES FOR THE USE OF ARTIFICIAL INTELLIGENCE IN LEGAL PRACTICE

A. INTRODUCTION

The use of Artificial Intelligence (**AI**) and Generative Artificial Intelligence (**Generative AI**) in the Australian legal profession has become increasingly widespread. AI has become commonly used for analysis, research, and document review. At a high level, Generative AI is a type of artificial intelligence that is trained using high volumes of existing data to create new content, such as text and images, in response to a user's 'prompt' or request. Large language models (**LLMs**), such as ChatGPT, Claude, Grok, Deepseek, Microsoft Co-Pilot, Google Gemini, and Llama, as well as models provided by LexisNexis and Westlaw, are a sub-type of Generative AI specifically designed to generate text in a way that mimics human communication. But LLMs do not comprehend or understand prompts or the answers to those prompts the way that humans do.

The most common applications for AI and Generative AI tools (**AI Tools**) in legal practice include legal research, legal document drafting, document review, and analysis. AI Tools have the potential to improve work quality and efficiency, barristers must be mindful of their professional and ethical obligations when considering whether to use AI Tools in their practice. Barristers can only comply with their professional and ethical obligations in respect of AI if they take the time to understand its evolving capabilities and, importantly, limitations.

B. ABOUT THIS DOCUMENT

The purpose of this guideline is to help Queensland barristers understand their professional and ethical obligations, including under the *2011 Barristers' Rule, as amended* (**Barristers' Conduct Rules**), as they apply to the use of AI Tools in legal practice. It also seeks to highlight the risks that barristers' use of AI Tools poses to their ethical obligations to provide competent and diligent representation, uphold their duties to the Court, client and opponent in the efficient administration of justice, maintain independence and integrity, and ensure the confidentiality of client information.

This document is intended to give guidance about the use of AI Tools generally.

C. COMMON TERMS

Artificial Intelligence – A machine-based system that is designed to generate outputs such as predictions or decisions based on specific inputs or prompts. AI systems may operate with varying levels of independence and adaptability based on their design. Depending on the AI

system, they can operate under explicit or implicit objectives set during development. Common outputs include predictions, content, recommendations, or decisions that can influence physical or virtual environments.

Generative Artificial Intelligence – A subset of AI technology that creates new content in response to human inputs or prompts (such as text, images, or audio). Using Generative AI is different to using search engines (such as Google). This is because Generative AI creates ‘new’ content (i.e. the exact sequence and combination of words, images or sounds may never have existed before) in response to a specific prompt, whereas a search engine only produces a list of websites that match the search term provided.

Generative AI Tools – Generative AI technology made available to consumers, normally accessible through an application or web browser, that allows a user to access and interact with a Generative AI model.

Prompt – a text, image or other data inputted into an AI system (similar to a search term), to produce a response or output. The quality and specificity of a prompt determines the relevance, coherence, and accuracy of the outputs.

Large Language Models (LLMs) – a natural language processing model trained on vast amounts of text data to predict the next word or sequence of words, based on the context provided in the prompt. This training enables LLMs to perform a wide range of tasks, including text generation, summarisation, translation, and classification. An example of an LLM is ChatGPT, a model fine-tuned for conversational and interactive text generation tasks.

D. BARRISTERS’ CONDUCT RULES

The Barristers’ Conduct Rules are the primary source of the standards expected of barristers as specialised professional advocates. They mandate that barristers use their forensic ability and exercise independent judgement when providing legal services to their clients. Barristers are accordingly required to execute their duties diligently, demonstrating the competence expected by the public of an appropriately qualified legal practitioner.

When using AI Tools, barristers should be particularly mindful of their obligations under Barristers’ Conduct Rules, including the fundamental principles finding expression in the following key rules:

- (a) Rule 5 – summarises key principles including the duties to act competently, independently and in the best interests of the court and clients;
- (b) Rule 26 - duty not to mislead the court; and
- (c) Rule 108 - duty not to disclose confidential information.

E. KNOWN LIMITATIONS OF USING ARTIFICIAL INTELLIGENCE

Barristers need to develop a proper understanding of the limitations of AI. Some of the most recognised limitations of AI Tools include the following.

Incompleteness and Currency – AI models are trained using large volumes of historical data. Those data sets are finite and over time may become outdated, resulting in:

- (a) incomplete or inaccurate output as the training data used may not contain sufficient or reliable sources on a particular topic. For example, a Generative AI model may be prompted to provide a response regarding an area of law in which it has not been trained. In some circumstances, Generative AI models may produce output that contains false or fictional information to simply provide an answer. This phenomenon is known as a ‘hallucination’ (discussed further below); and
- (b) output that reflects information that is no longer current. For example, an output may refer to legislation or case law that is out of date.

Hallucination – This refers to when a Generative AI model produces false, misleading, or fictional information that generally appears to be plausible. It often occurs when it does not have access to sufficient data to produce an answer. Generative AI does not independently understand the content it generates and is not capable of verifying its own output. See below example in *Mata v Avianca, Inc* where it was found that output generated by ChatGPT contained fictional and incorrect case references.

Bias – AI models rely on training data to generate a response or output. The presence of bias in the training data has the potential to cause AI models to produce biased outputs. For example, when the training data used is not diverse or representative (i.e. it over-represents one group and under-represents or fails to recognise another group), it can result in unintentional discrimination against a certain group of people (i.e. based on their race, gender, beliefs or socioeconomic status). Further, as outlined in (a) above, the quality of any output generated depends on the quality and currency of training data used. Therefore, if a Generative AI model is not trained using the most up to date versions of legislation and case law, it has the potential to generate output that does not reflect current legal principles and societal norms.

Unintended Disclosure – AI Tools require user input. If sensitive or privileged client information is inputted into a Generative AI Tool, this data may be stored by the technology service provider and used to refine the model or for another ancillary purpose. Data that has been inputted could be inadvertently exposed to third parties in breach of confidentiality and other client duties. This could also contravene ethical obligations that are owed to clients, or impact upon legal professional privilege. As a general rule sensitive information should not be included in any prompts or inputs used for Generative AI Tools.

Transparency and Explainability – Generative AI outputs are created using predictive algorithms. LLM models will also typically not disclose the step-by-step reasoning which underpins these algorithms. This lack of transparency can make it difficult to verify the accuracy of information provided by a Generative AI Tool, or to confirm the appropriateness of any automated decision making processes that rely upon this technology. This can be a problem not only in terms of documents prepared by lawyers and litigants genuinely for court processes, but also creates opportunities for fraudsters to mislead lawyers and the court, such as in *Contax Partners Inc BVI v Kuwait Finance House* [2024] EWHC 436 (Comm), which involved registration of a fake arbitral award.

As the use of Generative AI by lawyers and litigants increases, the stories of its misuse in litigation are mounting. Those examples are already too numerous to mention, as searching for ‘ChatGPT’ on any legal database will demonstrate. However, almost all of those examples demonstrate at their heart a failure on the part of the lawyers and litigants in question to

understand one or more of the limitations listed above and, in some cases, have prompted courts to refer practitioners to legal regulatory bodies for further investigation.

To be clear, the Association does not seek a Luddite solution of advising against the use of AI Tools altogether. What the Association wishes to emphasise is that the careless use of such tools pose very real risks for barristers, litigants and the administration of justice. It is therefore essential that barristers remain conscious of their ultimate responsibility for any work that may have been prepared with the assistance of AI tools.

F. USING ARTIFICIAL INTELLIGENCE — RULES AND ISSUES

1. Independence, Competence and Diligence, Accountability

Context: A barrister should:

- apply their own knowledge and exercise their own independent judgment;
- demonstrate the competence and skill reasonably expected of barristers practising their profession;
- not engage in conduct which is dishonest, discreditable to a barrister, prejudicial to the administration of justice, or otherwise bring the profession into disrepute;
- be accountable to the court and to the client for ensuring the quality and reliability of work produced with the assistance of AI Tools.

Relevant Rules: 5, 12, 25, 26, 37, 41, 59, 60, 63

When using AI Tools to assist in the preparation of legal work, barristers should be mindful of their obligations under the following Rules:

Rule 5,...

(c) barristers as specialist advocates in the administration of justice, must act honestly, fairly, skilfully and with competence and diligence;

(e) barristers should exercise their forensic judgments and give their advice independently and for the proper administration of justice, notwithstanding any contrary desires of their clients;

Rule 12, A barrister must not engage in conduct which is:

(a) dishonest or otherwise discreditable to a barrister;

(b) prejudicial to the administration of justice; or

(c) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute.

Rule 25, A barrister has an overriding duty to the Court to act with independence in the interests of the administration of justice.

Rule 26, A barrister must not deceive or knowingly or recklessly mislead the Court.

Rule 37, A barrister must promote and protect fearlessly and by all proper and lawful means the client's best interests to the best of the barrister's skill and diligence, and do so without regard to his or her own interest or to any consequences to the barrister or to any other person.

Rule 41, A barrister must not act as the mere mouthpiece of the client or of the instructing solicitor and must exercise the forensic judgments called for during the case independently, after the appropriate consideration of the client's and the instructing solicitor's wishes where practicable.

Rule 59, A barrister must take care to ensure that the barrister's advice to invoke the coercive powers of a court:

(a) is reasonably justified by the material then available to the barrister;

(b) is appropriate for the robust advancement of the client's case on its merits;

...

Rule 60, A barrister must take care to ensure that decisions by the barrister to make allegations or suggestions under privilege against any person:

- (a) are reasonably justified by the material then available to the barrister;
- (b) are appropriate for the robust advancement of the client's case on its merits; and

...

Rule 63, A barrister must not allege any matter of fact in:

- (a) any court document settled by the barrister;
- (b) any submission during any hearing;
- (c) the course of an opening address; or
- (d) the course of a closing address or submission on the evidence;

unless the barrister believes on reasonable grounds that the factual material already available provides a proper basis to do so.

The rules set out above require barristers to apply their specialised knowledge, skills, professional judgement, to be honest, and to exercise reasonable care when providing legal services to their clients. The obligation to act with honesty, competence, and diligence extends to the correct and responsible use of technology.

The responsible use of AI Tools requires a proper understanding of how AI systems operate (See Part 3 'Confidentiality and Privilege' below, for further information regarding reviewing the 'Terms of Use' of Generative AI models).

Barristers should also be aware of, and understand, the risks and limitations of using AI Tools. As set out above, material produced by Generative AI is susceptible to (among other things) hallucination, bias, incompleteness and opacity. The use of AI Tools should support, rather than replace, a barrister's legal knowledge, skill, experience and judgment.

The risks associated with AI Tools have the potential to negatively impact not just a barrister's practice, but also the interests of their clients and the integrity of the justice system.

Ultimately, a barrister is responsible for ensuring the quality and reliability of work produced by, or with the assistance of, AI Tools. It is imperative that barristers critically review any output from Generative AI to ensure it accurately reflects the state of the law and any relevant facts. In this way, the barrister will ensure they are discharging their duty to apply their own professional judgement.

Guidance:

- (a) Barristers should never cite a case they have not read, the relevant corollary being that a barrister using Generative AI for legal research should read any case cited in response to a query before relying on that case in argument or to give advice;
- (b) Barristers should undertake training to ensure they have a proper understanding of how Generative AI systems operate, their limitations, and when they should or should not be used;
- (c) Barristers should carefully review and analyse any legal work undertaken with the assistance of Generative AI Tools to ensure that:
 - it is not expressed in a manner which is likely to be broadly regarded as offensive;
 - it is not dishonest or misleading;

- it is not otherwise discreditable to the barrister or inimical to the administration of justice.
- (d) Barristers should adopt best practices when using prompts to generate relevant and accurate output—that includes considering the following checklist before entering any information into a Generative AI system:
- have you provided clear instructions?
 - have you provided specific details?
 - have you provided background for the task?
 - have you formatted your prompt with a clear structure?
 - have you used simple and concise language?
 - have you included personal or confidential information?
- (e) Barristers should keep a record of prompts used, the outputs produced, and any decisions they have made using that data (many platforms have a ‘history’ function, similar to a web browser, which can assist with this process);
- (f) Barristers should closely examine any AI-generated material before relying on it. The barrister conducting the review should have appropriate knowledge, experience and training (in the relevant area of law) to ensure that they are able to identify any errors or inaccuracies in the information. Work created by, or with the assistance of, Generative AI should be reviewed with the same standard of care as any other piece of work undertaken by a person who provides administrative or legal support to the barrister;
- (g) Barristers should be conscious of and carefully review evidence provided by a client or a third party, which is known to have or likely to have been, created with the assistance of Generative AI Tools, prior to relying on it for any purpose; and
- (h) Barristers should consider contacting their professional indemnity insurer to discuss the options available for cover (if any) for the use of Generative AI in their practice.

2. Transparency and Disclosure

Context: A barrister should:

- be transparent about their use of AI Tools;
- advise the court and the opposing parties if any materials submitted to the court include AI-generated content;
- ensure that legal costs, particularly in respect of any use of AI Tools, are fair and reasonable and in line with the costs agreement.

Relevant Rules: 27, 28, 48 and 49

There is currently no formal position in Australia in respect of whether legal practitioners should disclose the use of Generative AI in the provision of legal services to clients, or in documents submitted to a court. However, there have been several guidance documents issued by courts and regulatory bodies in respect of the responsible use of Generative AI in legal practice. Those documents are set out in a list at the end of this document. The general consensus is that legal practitioners should be transparent about the use, or potential use, of Generative AI Tools in the provision of legal services.

In addition to the above, the Barristers’ Conduct Rules require that:

Rule 27, *A barrister must take all necessary steps to correct any misleading statement made by the barrister to a court as soon as possible after the barrister becomes aware that the statement was misleading.*

Rule 28, *A barrister must alert the opponent and if necessary inform the court if any express concession made in the course of a trial in civil proceedings by the opponent about evidence, case-law or legislation is to the knowledge of the barrister contrary to the true position and is believed by the barrister to have been made by mistake.*

Rule 48, *A barrister must not knowingly make a false statement to an opponent in relation to the case (including its compromise).*

Rule 49, *A barrister must take all necessary steps to correct any false statement in relation to the case made by the barrister to an opponent as soon as possible after the barrister becomes aware that the statement was false.*

Barristers should, as soon as possible after becoming aware of any errors or inaccuracies in AI generated material contained in client documents or documents submitted to court, take all necessary steps to correct any misleading statements made to the court and alert the opponent of any false statements made in relation to a case.

Guidance:

- (a) Barristers should never provide documents produced using Generative AI Tools to a court or an opponent without first reviewing such documents for accuracy (both in terms of statements of the law and in terms of statements as to evidence and facts);
- (b) Barristers should be transparent about the use of Generative AI Tools in connection with the provision of legal services. This may extend to disclosing the fact that evidence to be put before the Court has been generated using such tools;
- (c) The extent of disclosure will need to be determined on a case-by-case basis and will depend on the nature and scope of the work to be undertaken and the characteristics of each client. For example, a barrister may let the client know how the Generative AI Tool will be used to assist with legal tasks, the types of information the system will have access to, and the safeguards in place to manage the risks associated with using such technology; and
- (d) Barristers should be mindful of how the use of Generative AI Tools in the provision of legal services may impact the costs charged to a client. In any event, barristers should ensure that any amount charged to a client is fair and reasonable and accurately represents the work undertaken by the barrister.

3. Confidentiality and Privilege

Context: A barrister should exercise caution when engaging with AI systems to ensure that personal, sensitive, confidential or privileged information is not disclosed.

Relevant Rule: 108

The Barristers' Conduct Rules provide that:

Rule 108, *A barrister must not disclose (except as compelled by law) or use in any way confidential information obtained by the barrister in the course of practice concerning any person to whom the barrister owes some duty or obligation to keep such information confidential unless or until:*

- (a) the information is later obtained by the barrister from another person who is not bound by the confidentiality owed by the barrister to the first person and who does not give the information confidentially to the barrister; or
- (b) the person has consented to the barrister disclosing or using the information generally or on specific terms; or

A barrister must promote and protect the interests of their client, which includes safeguarding a client's personal data and other confidential or privileged information. This is particularly relevant when using any type of AI Tool. Barristers should carefully consider the terms of service of a particular AI tool and ensure that any use is consistent with the terms of service.

By way of illustration, OpenAI (which develops ChatGPT), states on its website (on the 'Terms of Use' page) that it may use 'content' to develop, improve, and train its models. 'Content' is defined on OpenAI's website as follows:

***"Your content.** You may provide input to the Services ("Input") and receive output from the Services based on the Input ("Output"). Input and Output are collectively "Content." You are responsible for Content, including ensuring that it does not violate any applicable law or these Terms. You represent and warrant that you have all rights, licenses, and permissions needed to provide Input to our Services".¹*

OpenAI goes on to say that it makes its models more helpful by training them using their users' chat history (unless a user manually "opts out" of training by disabling the training function on the privacy portal or data control settings). This means that, unless a user "opts out" of the training function, any material (be it text, image or other) input by the user into ChatGPT will form part of the "content" OpenAI may use to train its models.

It is worth noting that these settings depend on the version of ChatGPT being used. For example, the 'Enterprise' version (aimed at global companies) has enterprise data excluded from training by default. On the other hand, the 'Free' version does not automatically exclude user data from being used for training.

Other models and the applications based on them have their own terms and conditions attached to their use.

While it is not the intention that Generative AI Tools simply regurgitate training data, there have been instances where Generative AI Tools have been found to 'memorise' training data and reproduce that data verbatim.

Given the above, there is a real risk that inputting data into AI Tools can lead to unauthorised disclosure of personal or confidential information to third parties (such as the developer of the model or even another user). This could amount to a breach of contractual obligations (such as under a non-disclosure agreement), or a waiver of legal professional privilege, or a breach of the Australian Privacy Principles set out in the *Privacy Act 1988* (Cth).

Guidance:

- (a) Barristers must be conscious of their duty to maintain their clients' legal professional privilege and entitlement to confidentiality and, in that connection, carefully review the terms of service and any user settings that may apply to AI Tools;

¹ OpenAI, 'Terms of Use', see <https://openai.com/policies/terms-of-use/>.

- (b) Barristers should consider the characteristics of each client (for example, do they hold confidential or valuable information) and the nature of the work to be undertaken, including the use of AI tools for proof reading purposes, to determine whether the use of AI Tools is appropriate in the circumstances;
- (c) Barristers should consider the nature of the information they intend to enter into an AI Tool. For example, barristers should not disclose data that:
- includes personal information or personally identifiable information;
 - was obtained by the barrister in the course of practice and which may include privileged legal advice or communications;
 - is subject to a statutory prohibition on publication, non-disclosure agreement, copyright or licensing restrictions; or
 - is considered sensitive or valuable and as such is intended to be treated as confidential.
- (d) In the event of an inadvertent disclosure of privileged or confidential information, barristers should take reasonable steps to correct the error and prevent further disclosure of the data. This includes notifying the relevant parties as soon as possible.

4. Other Considerations

(a) Intellectual Property

Generative AI models are fed large quantities of existing data as part of their training process. These models then use that training to generate output, based on the context provided in a user's question or prompt. This process comes with a range of legal risks, including intellectual property infringement and right of use issues. For example, whether training data used contains unlicensed content, whether ownership rights attach to AI generated output, and whether the protections afforded by copyright laws apply to it.

In any event, barristers should be mindful that the use of Generative AI Tools may raise intellectual property issues, and that ensuring compliance with intellectual property laws (such as the *Copyright Act 1968* (Cth)) is the barrister's own responsibility. Barristers should always critically review AI-generated content, and exercise caution when using it to assist with legal tasks.

(b) Privacy

As noted above, the use of Generative AI Tools also requires consideration of the obligations that govern the use and disclosure of personal and sensitive information under the *Privacy Act 1988* (Cth), as well as any obligations that may apply in respect of the disclosure of confidential information.

As the exact origin of the data used to train Generative AI models is generally unknown, barristers should be mindful that any output generated may contain personal or confidential information (that may not have been obtained with the appropriate authorisation or consent). Barristers should also be conscious of the information they input into a Generative AI system, taking care to ensure that it does not include personal or sensitive client information, or information that is considered confidential (such as information subject to a non-disclosure agreement, or legal professional privilege). Disclosure of such information to a third party could lead to a breach of the Australian Privacy Principles, a breach of contractual obligations, or a waiver of legal professional privilege.

Barristers should also consider the security of information entered into Generative AI models, as well as any output generated as a result. As noted above, OpenAI may use a user's chat history to train future versions of its models without explicit prior consent. Therefore, it would be prudent to assume that user input data (and the resulting output) can be viewed and accessed by other users—, that is, that there is a real risk that the information can be shared with third parties or used for other unknown purposes. Barristers should carefully review the terms of service and privacy policies, any user settings that may apply, and the cyber security measures in place to protect data (if any), prior to using a Generative AI Tool.

G. CONCLUSION

While the potential use and benefits of Generative AI technology in the Australian legal industry is substantial, it is not without risk and should be used with caution. Ultimately, barristers must ensure that any use of AI and Generative AI Tools in the performance of a legal task is reasonable and that the results are verified. Such an approach should be taken not just for publicly available AI models, but also for legal software packages with AI features.

As this technology continues to evolve, barristers who wish to harness its capabilities must balance it against the risks of using such technology and ensure that any use of AI and Generative AI in their practice is consistent with their professional and ethical obligations under the Barristers' Conduct Rules. A failure to do so can lead to serious consequences, including disciplinary action and costs orders. The critical point in relation to the use of AI and Generative AI, and which this document hopes to have made abundantly clear, is that it should be viewed as a tool rather than as a replacement for a barristers' knowledge, skill, and professional judgment.

Given the rapid pace of technological advancement in this area, it is intended that this document will be regularly reviewed and updated.

H. MORE INFORMATION

For further information, visit:

- Queensland Courts website
- Office of the Australian Information Commissioner
- Australian Signals Directorate's Australian Cyber Security Centre website
- Commonwealth Scientific and Industrial Research Organisation website

For other guidelines and commentary, see:

- NSW Bar Association – 'Issues arising from the Use of AI Language Models (including ChatGPT) in Legal Practice' (12 July 2023)
- Courts of New Zealand – 'Guidelines for use of Generative Artificial Intelligence in Courts and Tribunals' (7 December 2023)

- Queensland Courts – ‘The Use of Generative Artificial Intelligence (AI), Guidelines for Responsible Use by Non-Lawyers’ (13 May 2024)
- Queensland Law Society – Guidance Statement ‘No.37 Artificial Intelligence in Legal Practice’ (30 May 2024)
- Supreme Court of Victoria – ‘Guidelines for Litigants: Responsible use of Artificial Intelligence in Litigation’ (May 2024)
- The Law Society of NSW – ‘A Solicitor’s Guide to Responsible Use of Artificial Intelligence’ (October 2024)
- New South Wales Supreme Court Practice Note – ‘Use of Generative Artificial Intelligence (Gen AI)’ (November 2024)

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