

# Ethical and Responsible Use of Artificial Intelligence

## Introduction

This guidance focuses on the use of generative artificial intelligence (“Gen AI” or “AI”) and material produced to a client, opponent, a Court and a Tribunal. It applies to all practitioners and support staff in a law-practice and other organisations which deliver legal services.

AI offers many benefits to practitioners, and when used responsibly with appropriate risk management in place, can increase efficiency and productivity. When using AI, practitioners must also comply with their ethical obligations under the *Legal Profession Uniform Law 2015* (NSW) (“Uniform Law”), *Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015*, Court Practice Notes and common law.

## What is Artificial Intelligence?

Artificial Intelligence is a general term which refers to the ability of a computer to perform a task which would usually require human intelligence. It can take many forms, such as Large Language Models (“LLMs”), Machine Learning Models, and Deep Learning Models.

Gen AI is a form of artificial intelligence that generates text (or image, video or sound) based on prompts from the user. It has become increasingly popular and more widely used.

LLMs (which include systems such as ChatGPT) are a form of Gen AI and allow the user to interact

with it by essentially having a “conversation” with the LLM.

## Limitations of AI in Legal Practice

Practitioners need to be aware of the limitations of AI, as these pose real dangers. Practitioners should also be alert to the fact that tools they rely on could be using a form of AI. Some practitioners have found themselves in trouble after overlooking these limitations. These limitations arise because AI does not in fact understand the content it is generating and is also informed by limited sources of information.

LLMs may generate false or misleading information which appears factual and convincing but is in fact false (known as a hallucination).<sup>1</sup> This is irrespective of the quality of the training materials.<sup>2</sup>

This occurred in *Handa v Mallick* whereby a practitioner used AI integrated into practice management software to generate a list of case authorities. All the cases were non-existent, resulting in Humphreys J questioning the ‘competency and ethics ... aris[ing] from the veracity of information provided in [the] list of authorities’<sup>3</sup>. The practitioner was referred to the Victorian Legal Services Board and Commissioner (“VLSB+C”) for investigation in the ‘public interest’ to enable them ‘to be aware of the professional conduct issues arising ... given the increasing use of AI tools by legal practitioners in litigation’.<sup>4</sup>

<sup>1</sup> Queensland Law Society, *A Solicitor’s Guide to Responsible Use of Artificial Intelligence* (Guideline, 10 July 2024), 6.

<sup>2</sup> See other useful resources: The Law Society of NSW, *A Solicitor’s Guide to Responsible Use of Artificial Intelligence* (Guideline, 10 July 2024), 2; *Handa v Mallick* [2024] FedCFamC2F 957, [8]; Victorian Legal Services Board and Commissioner, *Statement on the use of artificial intelligence in*

*Australian legal practice* (Webpage, 6 December 2024) <<https://lsbc.vic.gov.au/news-updates/news/statement-use-artificial-intelligence-australian-legal-practice>>.

<sup>3</sup> *Handa v Mallick* [2024] FedCFamC2F 957, [8].

<sup>4</sup> *Dayal* [2024] FedCFamC2F 1166, [21]; See also *Ayinde v The London Borough of Haringey* [2025] EWHC 1040 (Admin).

For further information on AI and to see how it works, refer to the resources on the [LIV AI Hub](#).

## Overview of Best Practices Using AI

Practitioners who elect to use AI in legal practice should ensure they comply with the following to minimise the risks of ethical breaches, complaints to the VLSB+C or needing to make a professional indemnity insurance claim:

- Never enter confidential client information or legally privileged information into an open source or commercial AI system without client consent;
- Check all outputs generated by AI for accuracy and suitability;
- Check all cases generated by AI and ensure they exist and are relevant to the client matter;
- Disclose the use of AI to your client, and also be in the position to inform your opponent and the Court (if put on inquiry about its use);
- Read the Privacy Policy and terms of use of an AI before you use it for the first time and review them regularly;
- Review the Model Card and Data Nutrition Label (if available)<sup>5</sup> in conjunction with the Privacy Policy.
- Ask technology vendors relevant questions after reviewing the Privacy Policy, Model Card, and Data Nutrition Label to ensure informed choices are made when selecting an AI for your organisation;
- Ensure a client is charged fairly for work completed with AI; and
- Retain relevant information to conduct conflict checks after terminating a retainer as part of good practice management.

## Ethical Obligations

### Competence and Diligence

Practitioners have a duty to deliver legal services competently and diligently and should check that all AI generated content is accurate and suitable for use. A practitioner is ultimately accountable for any documents tendered,<sup>6</sup> whether to a Court or opponent, and cannot delegate that responsibility

to an AI, staff or their client. By extension, a practitioner 'should make appropriate enquiries' to verify whether 'any [document] being tendered has been written or rewritten with the assistance of a large language model'.<sup>7</sup>

Practitioners who choose to use AI should endeavour to keep up to date with technological advancements to reduce their risk of inadvertent ethical issues arising. The Supreme Court of Victoria's AI guidelines further provide:

*'practitioners who are using AI tools in the course of litigation should ensure they have an understanding of the manner in which these tools work, as well as their limitations'*<sup>8</sup>.

Practitioners should exercise caution in using AI until they have received appropriate training.

### Honesty

Practitioners are required to be honest in all dealings in legal practice.<sup>9</sup> Full and frank disclosure should be made to the client, the Court, and the opponent where appropriate when AI is used to draft documents relevant to a matter.

ASCR rules 19 and 22 require that a practitioner not mislead the Court or their opponent.<sup>10</sup> In *DPP v Khan*, the Supreme Court of the Australian Capital Territory emphasised that 'counsel appearing ... should ... be in a position to inform the Court' of the use of AI to generate or edit any documents submitted.<sup>11</sup>

The extent to which disclosure should be made of the use of AI is not entirely clear and therefore not every use of AI will need to be disclosed. Provided that a practitioner has fulfilled their obligation to thoroughly check generated text, disclosure of the use of AI may not be necessary. With the increased use of AI, disclosure of its use may become meaningless in practice.

Practitioners need to be aware if a document they are providing to a Court or opponent was drafted with AI and be in a position to inform the Courts when asked about its origin. Courts will generally be interested in the use of AI for the purposes of

<sup>5</sup> See <https://datanutrition.org/>.

<sup>6</sup> Supreme Court of Victoria, *Guidelines for Litigants: Responsible use of Artificial Intelligence in litigation* (Guideline, May 2024) <<https://www.supremecourt.vic.gov.au/sites/default/files/2024-05/AI%20Guidelines%20SCV.pdf>>.

<sup>7</sup> *DPP v Khan* [2024] ACTSC 19, [43].

<sup>8</sup> Supreme Court of Victoria (n 6).

<sup>9</sup> See also *Civil Procedure Act 2010* (Vic) ("CPA") s 17.

<sup>10</sup> See also CPA s 21.

<sup>11</sup> [2024] ACTSC 19, [43].

assessing the weight which needs to be placed on a document.<sup>12</sup>

Practitioners should also be transparent with their client, ensuring the client is aware that AI is being used to assist in their matter. This should be disclosed prior to any use in the client's matter. To minimise the chance of a client making a complaint to the VLSB+C, the VLSB+C recommends that practitioners proactively address concerns raised by clients in relation to AI use as they arise.<sup>13</sup>

## Confidentiality and Privilege

A key risk in using AI is that information included in questions to the AI (or used for the initial training of an AI) may be reused or disclosed by some AI providers. The Legal Practitioners' Liability Committee ("LPLC") also cautions that cyber-attacks are another threat to client confidentiality. The LPLC reported that ChatGPT had a confirmed data breach in March 2023.<sup>14</sup>

Before using any AI model, the law practice and its staff need to be familiar with its Privacy Policy (which outlines key information such as how information will be used, where it will be stored and who may have access to it) and the extent to which the Privacy Policy is legally enforceable. Some AI systems may also have a Model Card and/or Data Nutrition Label available.<sup>15</sup> These should be consulted in conjunction with the Privacy Policy. The Data Nutrition Label, if available, will provide an overview of an AI model's abilities by clarifying:

- the source of its training data;
- how the system's algorithm is designed to work;
- the potential for inaccuracy in the particular system; and
- The potential for bias in the system.

*Note: Data Nutrition Labels and AI Model Cards are not currently widely adopted. The LIV will update this guidance and provide additional resources on the AI Hub as required.*

The LIV strongly advises that, in order to reduce the risk of a breach of confidence or implied waiver of Legal Professional Privilege ("LPP"), practitioners not input confidential client

information or information subject to LPP into an AI, except in the case of a closed AI system (see below). Open access AI systems send information to the system's developer and may make the information available to other users, making them inappropriate for handling confidential client data. If a practitioner wishes to use confidential client information with an AI model, they should first seek the consent of the client.

Some AI systems may be closed to external sources, meaning inputted information is not accessible outside the law practice. Any assertion that an AI is a closed system should be carefully examined given the importance of protecting confidential information. Closed AI systems may still be vulnerable to data breaches, cyber-attacks and exfiltration of training data. Whilst law practices may elect to input confidential information into a closed AI, they need to weigh the benefits against the risk in determining whether this is appropriate for them. If a law practice wishes to train an AI model with client data, it may be prudent to anonymise the data.

Where a client's confidential information is with an AI, a law practice may unintentionally breach the obligation of confidentiality. This can occur if AI is subsequently used in relation to another client, and results in the model effectively disclosing or using the first client's information. Where a law practice has an information barrier in place, care must be taken to ensure that it doesn't become ineffective and create a conflict of interest due to the use of AI.<sup>16</sup>

For example, consider this fictitious scenario which may arise in legal practice.

A law firm previously acted for a client, Mary, whose file has been destroyed. However, Mary's confidential information was inputted into the law firm's closed AI system. The AI system has retained some of that confidential information and used it to train the system. The AI system can access this information and use it to generate an output to a prompt provided by a practitioner. Subsequently, Bob approaches the law practice to act in a matter against his former employer. Unbeknownst to the practitioner with carriage of Bob's matter,

<sup>12</sup> Supreme Court of Victoria (n 6).

<sup>13</sup> Victorian Legal Services Board and Commissioner, *Statement on the use of artificial intelligence in Australian legal practice* (Webpage, 6 December 2024) <<https://www.lsb.vic.gov.au/news-updates/news/statement-use-artificial-intelligence-australian-legal-practice>>.

<sup>14</sup> Legal Practitioners' Liability Committee, *Limitations and risks of using AI in legal practice* (Guideline, 17 August 2023) <<https://lplc.com.au/resources/lplc-article/limitations-risks-ai-in-legal-practice>>.

<sup>15</sup> See <https://datanutrition.org/>.

<sup>16</sup> See LIV Information Barrier Guidelines.

Mary's matter was also an employment matter against the same employer. Use of the AI system for Bob's matter may disclose or use sensitive information about the employer, which is confidential information of Mary, and give Bob a material advantage.

## Supervision of Legal Services

Principals are responsible for reasonable supervision of legal services in a law practice,<sup>17</sup> and can be held responsible for contraventions of ethical obligations by law firm employees if 'the principal was in, or ought reasonably to have been in, a position to influence the conduct'.<sup>18</sup>

Support staff such as paralegals, assistants and receptionists may have access to AI in a law practice. It is important that Principals have adequate supervision systems in place to ensure their staff do not inadvertently breach any of the law practices obligations.

Despite each individual practitioner being responsible for their own independence and competence,<sup>19</sup> the Principal is also ultimately accountable for everything within a law practice and may be subject to disciplinary action if they fail to supervise their employees adequately including being disqualified from practice.

## Costs

Law practices must charge fairly for their work by ensuring that costs are fair, reasonable, and proportionate to the work completed,<sup>20</sup> and conduct the matter in a way which avoids unnecessary increases in costs payable by the client and delays.<sup>21</sup> The VLSB+C and Courts have used broad terms in defining what it means to charge a client fairly. What is fair may depend on whether a law practice uses a time-based or item-based costing method.

In relation to billing a client where AI has been used to assist in their matter, the VLSB+C has taken the position that "lawyers using AI to support their work should ensure that the time and work items they bill clients for accurately represent the legal work done by the law practice for the client".<sup>22</sup> For example, a practitioner using time-based billing cannot bill a

client for 2 hours of work for a document generated with the assistance of AI in 20 minutes (including time spent instructing the AI and reviewing the results).

Practitioners should be transparent with their clients and ensure that costs related to the use of AI are reflected in the cost disclosure statement and cost estimate.<sup>23</sup>

## Privacy Obligations

The Privacy Obligations under the *Privacy Act 1988* (Cth) will also apply to an organisation providing legal services which has an annual turnover of over \$3 million and from 1 July 2026 (even if annual turnover is less than \$3 million) at least in relation to information collected for AML/CTF purposes to any practitioner who is a reporting entity for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).<sup>24</sup> These obligations apply to the use and storage of client "personal information"<sup>25</sup>, including with AI systems.

**AI is a rapidly changing and evolving space. Refer to the [LIV's AI Hub online](#) for the latest information on AI in Legal Practice.**

### How can we help you?

Visit the Ethics & Practitioner Support Department's website at <https://www.liv.asn.au/Ethics>

These are guidelines only and do not have the force of law. A solicitor must comply with the *Legal Profession Uniform Law and Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* and any other applicable rules or legislation.

To discuss ethical concerns about using artificial intelligence in legal practice, contact the Ethics & Practitioner Support Department on (03) 9607 9336.

*Approved by the CEO of the Law Institute of Victoria on 13 August 2025, under the Instrument of Delegation authorised by a resolution of the Board passed on 19 June 2019.*

*The LIV has consulted with the VLSB+C and the LPLC in the drafting of this guideline.*

<sup>17</sup> ASCR r 37.1.

<sup>18</sup> *Legal Profession Uniform Law Application Act 2014* (Vic) sch 1 s 35(1)(b).

<sup>19</sup> *Re Albert (a barrister) and McLean (a solicitor)* [2021] VSC 297, [57].

<sup>20</sup> *Legal Profession Uniform Law Application Act 2014* (Vic) sch 1 s 172.

<sup>21</sup> *Ibid* sch 1 s 173.

<sup>22</sup> Victorian Legal Services Board and Commissioner (n 13).

<sup>23</sup> *Ibid*.

<sup>24</sup> *Privacy Act 1988* (Cth) s 6E(1A).

<sup>25</sup> See the definition of "personal information" in *Privacy Act 1988* (Cth) s 6.