

Generative AI: Promise, Pitfalls, and Professional Responsibility

Risk Management Topics:

Practice Management

Cybersecurity

The use of generative AI, particularly in professional settings is rapidly gathering momentum, with a wave of new offerings emerging, including ChatGPT, Microsoft Copilot, Claude, Google Gemini, ClickUp – the list is seemingly endless.

However, opinions on the use of generative AI in legal practice vary widely. Some view it as a ‘game changer’, with the potential to streamline and enhance the way we work. Others see it as a disruption – or even a threat – seeking to replace the role of the solicitor. Regardless of perspective, there is little doubt that technology can help enhance efficiencies, accessibility and improve service to clients.

In one of the first known uses of generative AI by a British appeal judge, Lord Justice Birss used a generative AI tool to draft a small part of his judgment. He prompted it to provide a summary of the relevant law, which was a narrow and defined aspect of the draft judgment.



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As he noted, the prompt was well within his own area of expertise, and he was able to review the text generated and identify potential issues before incorporating it. Importantly, he retained “full personal responsibility” for the draft and for the prompting that led to its creation. He described generative AI tools as “jolly useful”, but strongly emphasised that their use should be appropriately risk mitigated.

Contrast this with recent cases that have highlighted the implications of failing to implement adequate risk management around the use of generative AI in legal practice. In [*Handa & Mallick \[2024\] FedCFamC2F 957*](#); [*Dayal \[2024\] FedCFamC2F 1166*](#), the solicitor acted for the husband in family law proceedings and was asked to tender a list of authorities. The solicitor tendered a single page list but, on review, the Judge was not able to locate any of the cases cited. When asked to provide copies of the authorities the solicitor was unable to do so.

When questioned, the solicitor informed the court that the list had been created using a generative AI tool available through existing practice management software but had not been checked or verified by the solicitor. This was an example of “hallucination” which is a known problem with AI tools.

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The court raised concerns as to the solicitor's competency and ordered submissions to be filed as to why the solicitor ought not be referred to the Victorian Legal Services Board and Commissioner.

The solicitor's submissions were considered in the case of *Dayal*, with the court stating that '...use of technology is an integral part of efficient modern legal practice and whilst... the use of AI tools offer opportunities for legal practitioners, it also comes with significant risks' [at 10]. The solicitor was referred to the Victorian Legal Services Board and Commissioner for further investigation.

A balanced approach

Whether or not your practice has made generative AI tools available, it is highly likely that one or more individuals within the practice have used them in their everyday work. Taking a balanced and measured approach to adoption is key; establish strong use protocols, risk management frameworks and assurance review processes to ensure careful and appropriate use. To help with this, there are several resources available. The Supreme Court of NSW has issued a [practice note](#) which provides additional guidance about the use of generative AI in legal practice. Additionally, The Law Society of NSW has a suite of [resources](#) to help guide solicitors in the responsible and safe use of generative AI.

If you are using or thinking of using generative AI you should:

- Do comprehensive research. Look at the available tools and select which is the best fit for your practice
- Ensure you understand the manner in which generative AI works, as well as the limitations and risks associated with its use
- Ensure you have appropriate systems, checks and processes in place to verify outputs
- Be aware that the privacy, confidentiality and security of information used may not be guaranteed

Remember that the use of generative AI does not relieve you of the need to exercise judgment, professional skill and responsibility.