

The AI Trap: Why Solicitors Must Verify Everything

Risk Management Topic:

Cyber Security



Gina Tasoulis
Claims Solicitor

Over the last twelve months courts across Australia have issued practice directions and guidance regarding the use of Artificial Intelligence (AI) in the context of court proceedings. While the approach between court jurisdictions differs (solicitors should be aware of each jurisdiction's guidance) the overall message is clear – solicitors must be alive to the risks and pitfalls associated with the use of AI in everyday legal practice.

The recent Federal Court decision of *Murray on behalf of the Wamba Wemba Native Title Claims Group v State of Victoria* [2025] FCA 731 provides solicitors with yet another reminder of the risks associated with the use of AI in the preparation of court documents.

This case concerned a native title determination application brought by Gary John Murray and others on behalf of the Wamba Wemba native title claim group.

The Applicant filed a summary document titled “Applicant’s Summary of Native Title Claim Group and Decision Making Process” (Applicant’s Summary) on 23 January 2025. The document contained numerous footnotes referencing anthropological and historical reports and papers relied upon by the Applicant.

First Nations Legal and Research Services (FNLRS) was tasked with producing the documents mentioned in the footnotes. The FNLRS produced a report to the Court concluding that most of the documents cited either did not exist or existed but were incorrectly cited. The FNLRS described the citations as “fabricated”.

The Applicant’s solicitor was therefore ordered to file an affidavit to explain how the document was prepared, including an explanation regarding the supervision of the junior solicitor who prepared it. As evidenced, the junior solicitor prepared the footnotes while working away from the office. They did not have access to the physical or electronic copies of the source material and therefore relied on Google Scholar to find the material. It seems that the false citations came about through an AI tool within Google Scholar. Further, the junior solicitor’s work was not checked.

Findings

Murphy J noted that the Applicant’s solicitor’s use of AI in the preparation of two court documents had given rise to cost, inconvenience and delay to the parties and had compromised the effectiveness of the administration of justice. However, they did not find that the use of AI in this instance would justify referring the solicitors’ conduct to the Victorian Legal Services Board.

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Murphy J stated:

The error was centrally one of failing to check and verify the output of the search tool, which was contributed to by the inexperience of the junior solicitor and the failure of Mr Briggs to have systems in place to ensure that her work was appropriately supervised and checked [at 15].

The Applicant's firm was ordered to personally pay the costs of the Respondents, on an indemnity basis.

Murphy J recognised that the use of AI in the legal profession is rapidly growing but solicitors must be aware of its limitations. Any use of AI must be consistent with the overriding duty of legal practitioners as officers of the court and their fundamental obligation to uphold, promote and facilitate the administration of justice [at 11 and 12].

This case serves as a reminder to solicitors to ensure appropriate processes are in place for the use of AI, and for supervision of legal staff.

Risk tips

- Ensure robust policies and processes are implemented regarding the responsible use of AI including human verification of outputs
- Be aware of privacy and confidentiality obligations and set protocols around the input of sensitive information into AI tools
- Ensure that proper processes are in place to review and verify the accuracy of AI generated content including the proper supervision of staff
- Educate and train staff on the responsible use of AI, including its limitations and use within a legal context
- Stay up to date on each jurisdiction's court protocols, guidance and practice notes

Generative AI does not remove the need to ensure appropriate checks and balances are in place. Any use of AI must be consistent with the overriding duty of solicitors as officers of the court and their obligation to uphold, promote and facilitate the administration of justice.