

UNSW.AI

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Liam Russell
Senior Advisor
The Office of the Chief Justice

Dear Liam Russell,

Please thank the Honourable Justice Paul Radich, Judge of the High Court and Acting Chair of the AI Advisory Group for the opportunity to provide comments and feedback on the Draft Guidelines on the use of Generative AI in Courts and Tribunals.

For context, Prof. Lydia Bennett Moses is Director of the UNSW Allens Hub for Technology, Law and Innovation and a Professor and Associate Dean (Research) in the Faculty of Law and Justice at UNSW Sydney. Lyria's research explores issues around the relationship between technology and law, including the types of legal issues that arise as technology changes, how these issues are addressed in Australia and other jurisdictions, and the problems of treating "technology" as an object of regulation. Lyria is a Fellow of the Australian Academy of Law.

Prof. Toby Walsh is Chief Scientist at UNSW's new AI Institute. He is Laureate Fellow and Scientia Professor of Artificial Intelligence at the Department of Computer Science and Engineering at the University of New South Wales, adjunct fellow at Data61, adjunct professor at QUT, and an Associate Member of the Australian Human Rights Institute at UNSW. He is a Fellow of the Australian Academy of Science.

Sincerely yours,

Profs. Lyria.Bennett Moses and Toby Walsh

Common terms

0.1. "Generative AI: enables users to quickly generate new content based on a variety of inputs — can include text, images, sounds and other data."

This is accurate but ignores what will be an increasingly important and useful capability, namely the ability to summarise and synthesise information alongside the ability to generate new text, images, sound, etc.

Judges' Guide

1.1. Guideline 1:

You can expect LLMs to be available in the new future that are fine-tuned on legal cases, even perhaps New Zealand law. For example, LexisNexis already provides the Lexis+ AI generative AI tool that is trained on legal cases.

1.2. Guideline 2:

The sub dotpoints here offers better advice than the text in the box. One can certainly enter information into a chatbot that is not in the public domain, just not information you don't want to enter into the public domain. We would also note a concern about entering the text from eg copyrighted works that are not your own. This guideline is likely to become out of date quickly as generative AI tools become an enterprise product that runs on one's own servers. Courts may use generative AI tools that run locally or in a restrictive environment. Some law firms are already doing this with data storage security levels the same as for other firm data.

1.3. Guideline 3:

You might want to observe that chatbots can respond that information is accurate when it is not. [ie you cannot avoid the problem by asking it 'Does this apply in NZ?']

1.4. Guideline 4:

It might be better to title this more directly "Bias and misinformation" rather than "Ethical issues".

1.5. Guideline 5:

It is not clear why work devices are better than personal devices. The advice about security breaches seem generic to IT systems as a whole rather than anything specific to generative AI. It seems out of place.

1.6. Guideline 6:

It is unclear why judges/judicial officers/tribunal members are not required to be transparent about their use of generative AI. For instance, if text is copied from ChatGPT (and checked etc) then it may be considered plagiarism not to acknowledge the source.

1.7. Legal analysis example:

It isn't just that it doesn't 'understand the content', it also doesn't do analysis in the normal sense. For instance, a chatbot can make logical errors even when presented with the statements from which inferences should be drawn.

Lawyers' Guide

2.1. Guideline 1:

Similar point to 1.1.

2.2. Guideline 2:

Similar point to 1.2.

2.3. Guideline 3:

Similar point to 1.3.

2.4. Guideline 4:

Similar point to 1.4.

2.5. Transparency:

It might be desirable to include a transparency requirement (e.g. no plagiarism).

Non-Lawyers' Guide

3.1. It is not clear why these guidelines are ordered differently to the previous ones.

3.2. Perhaps add to list of things that chatbots cannot do:

Draw correct inferences even when given the relevant facts.

3.3. Ensure accountability and accuracy.

In addition to “get facts wrong” it might be helpful to add: “and draw incorrect inferences and conclusions”. In addition to “Fake material produced by AI chatbots can seem like it has been taken from a real source even when it has not” it might be helpful to add: “Chatbots will even lie when asked directly if the output is correct or relevant to NZ”.