



COURTS OF NEW ZEALAND | NGĀ KŌTI O AOTEAROA

# GUIDELINES FOR USE OF GENERATIVE ARTIFICIAL INTELLIGENCE IN COURTS AND TRIBUNALS

Judges, Judicial Officers,  
Tribunal Members and Judicial Support Staff

7 December 2023

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*These guidelines for the use of generative artificial intelligence (GenAI) chatbots (such as ChatGPT, Bing Chat or Google Bard) have been developed to assist judges, judicial officers, tribunal members and judicial support staff who may wish to use such tools in the course of their work.*

*Any use of GenAI chatbots or other generative AI tools by the judiciary and judicial staff must be consistent with the judiciary's overarching obligation to protect the integrity of the administration of justice and court/tribunal processes. The key risks inherent in GenAI chatbots, and some suggestions for mitigating them are set out below.*

*This guidance applies to all judges, judicial officers and members of the courts and tribunals listed on page 9, and to their support staff (including associates, personal assistants, clerks and legal research counsel). Examples of potential uses and a set of FAQs are included on pages 5-8.*

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## COMMON TERMS

**Artificial Intelligence (AI):** the theory and development of computer systems able to perform tasks normally requiring human intelligence.

**Generative AI (GenAI):** a form of AI that enables users to quickly generate new content — can include text, images, sounds and other data.

**GenAI chatbot:** computer programme for simulating online human conversations using generative AI.

**ChatGPT:** OpenAI's GenAI chatbot — "Chat Generative Pre-Trained Transformer".

**Google Bard:** Google's GenAI chatbot.

**Bing Chat:** Microsoft's GenAI chatbot.

**Large Language Model (LLM):** an AI algorithm which, through sophisticated pattern recognition and probabilistic calculations, learns to predict the next best word or part of a word in a sentence. Generative AI chatbots generally use LLMs to generate responses to "prompts".

**Prompt:** short instructions entered to a generative AI chatbot to obtain the desired answer/output.

# GUIDELINES FOR USE OF GENERATIVE AI IN COURTS AND TRIBUNALS

## 1) Understand GenAI and its limitations

Before using GenAI chatbots ensure you have a basic understanding of their capabilities and limitations.

*Some key limitations:*

- GenAI chatbots are not search engines. They do not provide answers from authoritative databases but, rather, generate new text using a complex algorithm based on the prompts they receive and the data they have been “trained” on. This means the output generated by a GenAI chatbot is what it predicts to be the most likely combination of words (based on the documents and data that it holds as source information). However, even if the output looks convincing, it may not be factually correct.
- The currently available GenAI chatbots appear to have had limited access to training data on New Zealand law or on the procedural requirements that apply in New Zealand courts and tribunals.
- The quality of any answers you receive will depend on how the GenAI chatbot has been trained, the reliability of the training data, and how you engage with the relevant GenAI chatbot, including the “quality” of the prompts you enter.
- Even with the best prompts, the output may be inaccurate, incomplete, misleading, or biased.

## 2) Uphold confidentiality, suppression, and privacy

Generally, you should not enter any information into an AI chatbot that is not already in the public domain. Do not enter any information that is private, confidential, suppressed or legally privileged information.

- Some GenAI chatbots can remember every question that you ask them, as well as any other information you put into them. They could then use that information to respond to queries from other users. As a result, anything you type into a GenAI chatbot could become publicly known. This could breach suppression orders or statutory prohibitions on publication, or disclose private, confidential or sensitive information that may cause serious harm.
- In the event of unintentional disclosure of private, confidential, suppressed, or privileged information:
  - judicial staff should immediately report this to their supervising judge/judicial officer/tribunal member.
  - Judges/judicial officers/tribunal members should notify their Head of Bench/Tribunal Chair.
  - For Ministry of Justice-supported courts/tribunals – depending on the nature of the incident, and its urgency, it may also be appropriate to report it to [Privacy@justice.govt.nz](mailto:Privacy@justice.govt.nz). This will enable the Ministry to take prompt action.
- You should disable the chat history in AI chatbots if this option is available.<sup>1</sup>
- Further information about privacy and AI tools is available on the [Privacy Commissioner’s website](#).
- In future, there may be an in-house GenAI chatbot procured for the New Zealand judiciary that protects confidential, suppressed, and private information. However, until that occurs, you must not enter any such information into publicly-available GenAI chatbots.
- The use of GenAI may raise copyright issues. Compliance with the law of copyright is your responsibility.

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<sup>1</sup> This option is currently available in ChatGPT and Google Bard but not yet in Bing Chat.

### 3) Ensure accountability and accuracy

You must check the accuracy of any information you have been provided by a GenAI chatbot before it is relied upon.

- Information provided by GenAI chatbots is known to be inaccurate, incomplete, or out of date. It may be based on overseas law that does not apply in New Zealand.
- GenAI chatbots may:
  - make up fictitious cases, citations or quotes, or refer to legislation, articles or legal texts that do not exist;
  - provide incorrect or misleading information on the law or how it might apply;
  - make factual errors; and
  - confirm that information is accurate if asked, even when it is not.

### 4) Be aware of ethical issues

Have regard to ethical issues – particularly biases and the need to address them.

- GenAI chatbots generate responses based on the dataset they are trained on (which is generally information from the internet). Information generated by a Gen AI chatbot will reflect any biases or misinformation in its training data.
- GenAI chatbots generally do not account for New Zealand’s cultural context, nor specific cultural values and practices of Māori and Pasifika.
- You may be assisted by reference to the bench book [Kia Mana te Tangata | Judging in Context: A Handbook](#).

### 5) Maintain security

Follow best practices for maintaining your own and the court/tribunals’ security.

- Use work devices (rather than personal devices) to access AI chatbots.
- Use your work email address (e.g., @courts.govt.nz; @justice.govt.nz).
- If you have a paid subscription to a GenAI chatbot platform, use it. Paid subscriptions are generally more-secure – but the inherent risks and limitations of GenAI chatbots remain.
- If there has been a potential security breach:
  - judicial staff should report it immediately to their supervising judge/judicial officer/tribunal member;
  - judges/judicial officers/tribunal members should report any incidents, as appropriate, to their Head of Bench/Tribunal Chair;
  - For Ministry of Justice-supported courts/tribunals – depending on the nature of the incident, and its urgency, it may also be appropriate to report it to [ICTSecurity@justice.govt.nz](mailto:ICTSecurity@justice.govt.nz). This will enable the Ministry to take prompt action to address any security risks.

### 6) Disclosing GenAI use

Judges/judicial officers/tribunal members: You do not need to disclose use of a GenAI chatbot.

Clerks/research counsel and judicial support staff: Discuss with your supervising judge/judicial officer/tribunal member how you are using GenAI chatbots (or any other GenAI tools) and the steps you are taking to mitigate any risks.

Provided these guidelines have been followed (in particular, checking for accuracy), the key risks associated with GenAI should have been adequately addressed.

## 7) Be aware of GenAI use by others

Check the accuracy of information contained in submissions that show signs they were produced by a GenAI chatbot.

Courts and tribunals in New Zealand and overseas have already experienced instances of lawyers and lay litigants using GenAI in court/tribunal materials, for example in submissions.

- Lawyers have a professional obligation to ensure that any material they present to the court/tribunal (however generated) is accurate. It may be necessary to remind individual lawyers of their obligations and confirm that they have independently verified the accuracy of any research or case citations generated by a GenAI chatbot.
- Lay litigants may use GenAI chatbots to identify and explain relevant laws and legal principles or to prepare basic legal documents. However, they will often not have the skills to independently verify the legal information provided, and may not be aware that it is prone to error. It may be appropriate to inquire whether a lay litigant has used a GenAI chatbot, and to ask what checks for accuracy they have undertaken (if any).
- “Red flags” that may indicate a GenAI chatbot has been used include:
  - submissions that use American spelling or refer to overseas cases;
  - content that (superficially at least) appears to be highly persuasive and well-written, but on closer inspection contains obvious substantive errors;
  - references to cases that do not sound familiar;
  - parties citing different bodies of case law in relation to the same legal issues; and
  - submissions that do not accord with your general understanding of the law in the area.
- Be aware that GenAI can also fabricate convincing images, audio and other media, which parties could present as evidence.
- For more information, refer to the guidelines on GenAI use in courts/tribunals for both lawyers and non-lawyers on the Courts of New Zealand website.

# EXAMPLES: POTENTIAL USES AND RISKS OF GENERATIVE AI IN COURTS AND TRIBUNALS

## Potential tasks:

### *Summarising information*

#### **Making information shorter:**

*e.g., "Here is a paragraph on consideration; condense it"*

#### **Changing tone or form of the language:**

*e.g., "Here is a paragraph on consideration; please write it in plain English"*

GenAI chatbots can be useful in condensing or summarising information. However, the following should be considered:

- Using a GenAI chatbot to summarise a portion of a textbook or other intellectual property could breach the author's copyright.
- Any such use would need to be carefully reviewed to ensure the summarised passage carries the same meaning as the original content.
- Depending on context, the source may need to be acknowledged and citations added.

### *Speech writing*

*e.g., "I am writing a speech on the development of common law in Aotearoa New Zealand; what are some potential headings or themes?"*

GenAI chatbots can be a helpful tool in planning a speech and producing an outline of potential speaking points. It could then be used to elaborate further on potential content for a specific speaking point. However:

- Careful oversight by a judge, judicial officer, tribunal member or staff member is required to use GenAI chatbots responsibly in this way.
- It is important to ensure that any AI-generated material is accurate and supported by reliable sources.

### *Administrative tasks*

*e.g., "Draft an email to my clerk instructing them to research the law of consideration in Aotearoa New Zealand"*

*e.g., "Draft an email to my associate scheduling a meeting with X on Y date"*

Using GenAI chatbots for such administrative tasks requires caution:

- Remember that GenAI chatbots can retain any data put into them, including names, email addresses and so on. They could potentially disclose such information to a subsequent user.
- GenAI chatbots lack nuance and understanding of context. As a result, any AI-generated written material needs to be reviewed for appropriate use of tone, language, cultural appropriateness, etc.

## Tasks requiring extra care:

### *Legal research*

*e.g., “How does the law of consideration differ between Aotearoa New Zealand and the United Kingdom?”*

With straightforward areas of law or for material you would recognise as correct but do not have to hand, GenAI chatbots might be able to produce helpful, higher-level legal explanations or summaries of relevant legal principles, but:

- Care must be taken to provide accurate and reliable information to the GenAI chatbot.
- The quality of legal research produced will be influenced by the type of prompts the GenAI chatbot is given — it is only capable of producing material in response to what it is asked. Writing high quality prompts, and tailoring them in response to the answers received, is a skill that takes some practice.
- While GenAI chatbots can produce some high-quality outputs (for example identifying and explaining relevant legal principles) they are also prone to errors and “hallucination”. For example, it is currently common for GenAI chatbots to generate fictitious legal citations. In doing so, the GenAI chatbot may appear authoritative.
- The use of GenAI chatbots is not a substitute for conducting research using trusted sources such as academic texts or legal databases.
- GenAI chatbots are limited by the date range, jurisdictional information, and type of legal materials they can access. For example, the outputs generated are often based on publicly available US legal materials, reflecting the data set that GenAI chatbots are trained on (generally, the internet).

### *Legal analysis*

*e.g., “How would the law of consideration apply on these facts?”*

*e.g., “Does the defendant owe a duty of care in this situation?”*

Using GenAI chatbots for legal analysis is not recommended because:

- GenAI is ill-suited to legal analysis as it generates text based on probability, rather than an understanding of text’s content or human inferences.
- GenAI does not have an ability to critically examine the patterns it identifies in data — this can result in it drawing inaccurate or biased conclusions.
- GenAI does not produce a “neutral” output and to rely on it uncritically would compromise the integrity of the judicial process.

# FAQs

## ***What are GenAI Chatbots and how do they work?***

GenAI chatbots, such as ChatGPT, Google Bard and Bing Chat, are AI tools that have been trained to respond in a conversational, online chat style. Users can enter prompts (questions) to get the GenAI chatbot to do things like generate or summarise text or answer questions. They can then enter more prompts to refine the chatbot's response.

GenAI chatbots are built on AI algorithms called Large Language Models (LLMs). LLMs analyse a large amount of training text to predict the probability of the next best word in a sentence given the context. Just as Google offers to autocomplete your search, LLMs autocomplete repeatedly to form words, sentences, and paragraphs of text.

LLMs have been further trained on ideal human written responses to prompts, and on survey results, about which responses sound most natural or best mimic human dialogue.

## ***What information is used to generate the response I receive?***

As GenAI chatbots output the next best word based on the text contained in their LLMs dataset, the source, quality, diversity and any bias of that text will determine the responses received.

Generally, the text used to train GenAI comes from various internet sources, such as webpages, online books, and social media posts. There appears to be limited New Zealand legal information in the training text, and to date the training text does not include a significant body of New Zealand cases. This impacts the accuracy of any legal information a GenAI chatbot may provide, although legal information on the internet, such as legislation and some legal commentary, may form part of the dataset.

GenAI chatbots cannot distinguish between facts, inferences and opinions contained in its dataset. This means that text generated by GenAI chatbots may contain incorrect, opinionated, misleading or biased statements presented as fact. The training data used by some chatbots may also be out of date.

GenAI draws on data that has been previously inputted by users. That means it may, depending on the platform and privacy settings, retain anything that users enter as prompts.

In terms of bias and harmful or dangerous information, algorithmic countermeasures have been employed to reduce the chance that such data ends up being used in GenAI chatbot responses. However, these countermeasures do not eliminate the risk of biases or harmful or dangerous information being included in responses.

## ***Why am I receiving incorrect information?***

As GenAI chatbots base their responses on probability-derived calculations about the next best word in context, they are unable to reliably answer questions that require a nuanced understanding of language content. These tools have no intrinsic understanding of what any word they output means, nor a conception of truth.

GenAI chatbots are known to produce false information that may appear true — this is called “hallucinating”. In the legal field, this may lead to GenAI chatbots making up non-existent cases, changing facts, and producing incorrect citations. By their very nature, LLMs will produce answers that sound convincing even when they are entirely fictitious.

***What are some tasks that GenAI may and may not be suitable for?***

GenAI chatbots are trained to recognise and reproduce sophisticated patterns in the form of language so they are best suited to natural language processing tasks. These tasks include summarising text by making it shorter or changing its tone or format; and generating new text in a requested format.

GenAI chatbots have been trained on large datasets containing extensive knowledge. This means they can often provide useful information about a certain topic and answers to specific questions. However, when used for these purposes it is important to remember that GenAI chatbots can ‘hallucinate’ and provide incorrect or inaccurate information.

***Multimedia-generative AI***

Multimedia-generating AI, such as DALL·E, Midjourney and Stable Diffusion, have emerged alongside text generative AI. These tools have been trained so that the algorithm can best predict the patterns and styles associated with different multimedia forms and their text descriptions. They are then able to generate new multimedia (i.e. images, audio or video) that is similar in style and content.

This technology allows for the creation of multimedia that appear authentic but are fake. These multimedia are known as ‘deepfakes’ and can be defamatory or spread dangerous misinformation or disinformation. Concerns may arise over the authenticity of multimedia when used in evidence.

***How do I protect myself from privacy and security risks if using GenAI chatbots?***

The Ministry of Justice has recently completed a Generative AI Security and Privacy Review for the courts. It notes that the technology is evolving at pace, with risks in adoption of GenAI chatbots likely to evolve. There are, however, known current risks. Suggested approaches to mitigating these risks have been included in the above guidelines. This information will be updated as further risks or mitigation strategies are identified.

<b>OWNER</b>	Artificial Intelligence Advisory Group	<b>APPROVED BY</b>	Heads of Bench Committee Tribunals Aotearoa Executive Tribunal/Authority Chairs
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## These guidelines apply to:

### **Courts of New Zealand:**

#### Senior Courts

- Supreme Court
- Court of Appeal
- High Court

#### District Court

- District Court
- Family Court
- Youth Court

#### Specialist courts

- Te Kooti Pira Māori | Māori Appellate Court
- Te Kooti Whenua Māori | Māori Land Court
- Employment Court
- Environment Court
- Coroners Court
- Court Martial
- Summary Appeal Court
- Court Martial Appeal Court

### **Permanent Commissions of Inquiry:**

- Te Rōpū Whakamana i Te Tiriti o Waitangi | Waitangi Tribunal

### **Tribunals:**

#### Civil

- Canterbury Earthquakes Insurance Tribunal
- Copyright Tribunal
- Disputes Tribunal
- Employment Relations Authority
- Human Rights Review Tribunal
- Motor Vehicle Disputes Tribunal
- Sports Tribunal of New Zealand
- Tenancy Tribunal

#### Administrative review

- Customs Appeals Authority
- Electricity Rulings Panel
- Immigration and Protection Tribunal
- Land Valuation Tribunal
- Legal Aid Tribunal
- Legal Aid Review Authority
- Mental Health Review Tribunal
- Social Security Appeal Authority
- Taxation Review Authority
- Veterans' Entitlement Appeal Board  
(formerly War Pensions Appeal Boards)

#### Professional Disciplinary and Licensing

- Building Practitioners Board
- Cadastral Surveyors Licensing Board
- Chartered Professional Engineers Council
- Electrical Workers Registration Board
- Engineering Associates Registration Board  
(formerly Engineering Associates Appeal Tribunal)
- Lawyers and Conveyancers Disciplinary Tribunal
- Legal Complaints Review Officer
- Licensing Authority of Secondhand Dealers and Pawnbrokers
- Plumbers, Gasfitters and Drainlayers Board
- Private Security Personnel Licensing Authority
- Social Workers Complaints and Disciplinary Tribunal
- Trans-Tasman Occupations Tribunal