



COURTS OF NEW ZEALAND | NGĀ KŌTI O AOTEAROA

GUIDELINES FOR USE OF GENERATIVE ARTIFICIAL INTELLIGENCE IN COURTS AND TRIBUNALS

Lawyers

7 December 2023

The use of generative artificial intelligence (GenAI) (incl. chatbots such as ChatGPT, Bing Chat or Google Bard) in the Aotearoa New Zealand legal context is increasing. The judiciary has overall responsibility for the integrity of the administration of justice and court processes. It has developed these guidelines for the use of GenAI chatbots to assist lawyers who represent clients in court and tribunal proceedings. This guidance applies in relation to the courts and tribunals listed on page 7.

The guidelines remind lawyers that their existing professional obligations apply to the use of these new technologies. They ask lawyers to exercise caution when using GenAI chatbots because of their risks and limitations. They include practical suggestions for minimising the risks and to assist lawyers in complying with their professional obligations when using GenAI chatbots.

EXISTING PROFESSIONAL OBLIGATIONS APPLY

Every practising lawyer in Aotearoa New Zealand has duties and obligations under the Lawyers and Conveyancers Act 2006, and Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules). This includes a fundamental obligation to uphold the rule of law, to facilitate the administration of justice¹ and the overriding duty of a lawyer as an officer of the court.²

As officers of the court, lawyers must not mislead the court.³ They must take all reasonable steps to ensure the accuracy of information (including legal citations) provided to the court, and to avoid any risk of breaching suppression orders. In addition, lawyers have obligations to their clients, opposing parties and opposing counsel, including obligations to preserve and protect private and confidential information.

Any use of GenAI chatbots in the context of court and tribunal proceedings must be consistent with the observance of lawyers' obligations.

Anyone who has a complaint about a breach of the Rules by a lawyer can make a complaint to the New Zealand Law Society's [Lawyers Complaints service](#).

¹ Lawyers and Conveyancers Act 2006, s 4 and Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 2.

² Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, rr 2.1 and 13.

³ Rule 13.1.

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 **G**enerative **P**re-Trained **T**ransformer”.

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.

- 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 GenAI chatbots 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, statutory prohibitions on publication, privacy, or disclose confidential or sensitive information that may cause serious harm.
- In the event of unintentional disclosure of private, confidential, suppressed or privileged information, you should take steps of the kind that would otherwise be expected to be taken following the unintended disclosure of information (e.g. if a suppression order is breached, contact the registry as soon as possible).
- You should disable the chat history in AI chatbots if this option is available.⁴
- Further information about privacy and AI tools is available on the [Privacy Commissioner’s website](#).
- In future, law firms may have access to an in-house GenAI chatbot that protects confidential, suppressed, and private information. If that occurs this portion of the guidelines may be less relevant, however lawyers will continue to be bound by the relevant obligations and statutory prohibitions regarding privilege, suppression, and publication.
- The use of GenAI may raise copyright issues. Compliance with the law of copyright is your responsibility.

⁴ This option is currently available in ChatGPT and Google Bard but not yet in Bing Chat.

3) Ensure accountability and accuracy

You are responsible for ensuring that all information you provide to the court/tribunal is accurate. You must check the accuracy of any information you have been provided with by a GenAI chatbot (including legal citations) before using that information in court/tribunal proceedings.

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.

Fictitious material produced by GenAI chatbots can seem as though it has been taken from a real source even when it has not.

All information generated by a GenAI chatbot should be checked by an appropriately qualified person for accuracy before it is used or referred to in court or tribunal proceedings

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.

5) Disclosing GenAI use

You do not need to disclose use of a GenAI chatbot as a matter of course – unless asked by the court or tribunal.

- Provided these guidelines have been followed (in particular, checking for accuracy), the key risks associated with GenAI should have been adequately addressed. However, a court or tribunal may ask or require lawyers to disclose GenAI use.

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 sounds 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.

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.

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.

OWNER	Artificial Intelligence Advisory Group	APPROVED BY	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