Microsoft

Generative AI for lawyers

Working smarter and faster – while complying with legal professional obligations in Australia and New Zealand

October 2023

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Foreword

Artificial intelligence (AI) is revolutionising the arena of professional services. Lawyers are chief among those gaining opportunities and facing disruption from the emergence of generative AI tools – which process language and generate useful text outputs.

The ability to generate content – including client correspondence, contract terms, pleadings, legal advice memos and other documentation – represents an incredible opportunity for the legal profession to safely, securely and responsibly speed up routine legal work.

Less than a year after ChatGPT exploded onto the market, a new wave of generative AI solutions is proliferating. It's a little daunting to think that these are early days. At Microsoft, we believe it crucial for lawyers to quickly get acquainted with the benefits and opportunities that these technologies present. If machines can increasingly produce legal information, and anyone can hypothetically get "advice" from typing their query into a prompt.

What does this mean for the profession's future? How can law firms and in-house counsel adjust their business models and safeguard their unique value? What new skills will be needed by law graduates and experienced lawyers alike? And how will this affect the daily duties of everyone from junior lawyers to senior partners, and in-house counsel?

In this paper, our goal is to inform lawyers about the latest AI capabilities and their implications for professional compliance requirements. We highlight early industry leaders in generative AI innovation and examine the status of regulation in Australia, New Zealand and around the world.

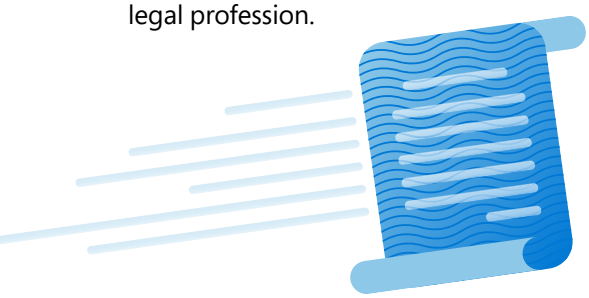
I hope you will uncover insights for your legal practice and start to use the new generative AI tools.

Clayton Noble
Head of Legal, Microsoft Australia and New Zealand

Introduction

Today's lawyers are accustomed to using new tools and technologies to augment their work. The COVID-19 pandemic accelerated the legal industry's digital transformation. Firms embraced virtual practices, using cloud-based workflow and collaboration tools to communicate and complete tasks. Even the court systems moved online.

Yet technology adoption is also being driven by commercial imperatives to deliver legal services faster, more efficiently and at a higher quality in a rapidly shifting market. Large firms, small practices and even in-house corporate teams must look to adapt to the rapid change in technology, which will allow for the delivery of legal services at a faster and more efficient pace whilst also delivering the level of quality expected of the legal profession.



Artificial intelligence (AI) tools automating the processes of document discovery, due diligence reviews and standard contract execution have long been widely used in the legal profession. Sophisticated data analytics and machine learning are helping legal teams find needles in haystacks and make better, faster strategic decisions. Yet lawyers always must balance speed with accuracy and reliability, remembering their obligations to exhibit high competence and diligence.

Now the arrival of generative AI tools in 2023 offers another incredible opportunity for lawyers to again increase their productivity – to effectively deliver smarter legal work, faster. Popularised initially by OpenAI's generative AI chatbot ChatGPT, a new wave of solutions is entering the market, enabling professionals to quickly produce more content. The technology is still in its early days. Currently, Australia and New Zealand have no AI-specific legal professional regulation, though professional associations and regulators may soon offer preliminary guidance. Legal practice and in-house legal use cases are still emerging. As so much of a lawyer's role involves creating, researching, analysing, applying or summarising text, the practice of the legal profession will change.

Generative AI already offers lawyers a 'copilot' to handle routine documentation and administrative tasks, allowing them to refocus on the more strategic, high-level and interpersonal requirements of their role. However, the technology also comes with potential risks and ethical issues, which can be managed as will be highlighted in this paper. As one of the pioneers of generative AI, as well as a global evangelist for responsible AI, Microsoft provides this paper to demystify the technology, highlight the benefits to the legal profession and foreshadow changes that are likely to come.

No matter what the future holds, advanced human capabilities, empathy and insight will continue to be needed in the legal profession. But viewing the AI revolution from the sidelines is not a viable option. With appropriate generative AI system selection and governance, lawyers can safely, securely and responsibly use these technologies in a way that is fully consistent with their professional obligations.

AI in the legal profession:
from promise to reality

> *To a degree the future must remain unknown. Artificial intelligence and its effect on the courts, the profession and the law will change the landscape of life in ways we cannot predict.*
>
> **James Allsop**
> Former Chief Justice
> Federal Court of Australia[1]

Though sometimes used in legal practice as a catch-all term to describe any form of process or workflow automation, AI refers to technologies that perform tasks normally requiring human cognition, decision-making and judgment. Early applications of AI among lawyers centred around data analytics, including making predictions based on data or searching large volumes of information. AI has been present in legal database services such as LexisNexis, platforms like Nuix, Relativity and Ringtail, and general search engines such as Bing and Google.

Over the past decade, lawyers have used dedicated AI e-discovery tools to quickly search large batches of documents. In addition, in large merger and acquisition (M&A) transactions, AI has been used as part of the due diligence process to review financial records, legal documents, agreements and any other relevant data.

Predictive coding, natural language processing and active machine learning have made it easier to sift through material – going far beyond the capabilities of a manual keyword search. A wave of bespoke contract management solutions has allowed lawyers to quickly identify key clauses and scan for legal issues and risks at a much faster pace than manual review. But until now, many AI systems and tools have been rudimentary. In relation to this, Caryn Sandler, Partner and Chief Knowledge and Innovation Officer at Gilbert+Tobin, estimates that they led to

15% - 20%

Efficiency gains at best in the absence of human review.

> *The promise was hyped up, but the reality didn't follow suit.*
>
> **Caryn Sandler**

[1] Chief Justice James Allsop, "The Role and Future of the Federal Court within the Australian Judicial System", 8 September 2017, Speech to 40th Anniversary of the Federal Court of Australia Conference

Rise of generative AI

Generative AI represents a step-change in artificial intelligence. The term refers to AI systems capable of generating new content, such as text, video, voice or images, in response to human prompts. This distinguishes it from early AI capabilities that involved processing information. The Large Language Models (LLMs) underpinning the technology have been trained on a vast amount of text data. Having an enhanced understanding of linguistic, creative and deductive patterns, enables AI tools to produce new written works in a matter of seconds.

It is this extraordinary potential that led ChatGPT in late 2022 to acquire 100 million users in just over two months, making it one of the fastest-growing consumer software applications in history. Given the reputation of lawyers as "word merchants" , studies have found that the legal profession is one of the industries most ripe with opportunities and also exposed to disruption.

Fundamentally the law is centred on language. And that's why we can very quickly determine that this technology will impact the way we practise law

Greg Dickason
Managing Director of LexisNexis[5]

For lawyers, including in-house, opportunities to automate legal work through AI can range from addressing administrative burdens to assisting on substantive legal work. Examples include evaluating information to determine compliance with legal, regulatory and corporate standards, automating scheduling meetings, estimating time to complete legal work based on past experiences and transcribing and summarising the content of both in-person and virtual meetings.

According to one report,

44% of legal work stands to be automated by generative AI[3]

A separate analysis by Microsoft and the Tech Council of Australia has found that

10% of a solicitor's tasks could be automated

32% augmented by generative AI[4]

[2] "AI is coming for lawyers again", New York Times, 10 April 2023, https://www.nytimes.com/2023/04/10/technology/ai-is-coming-for-lawyers-again.html
[3] Goldman Sachs Economics Research, 26 March 2023, https://www.key4biz.it/wp-content/uploads/2023/03/Global-Economics-Analyst_-The-Potentially-Large-Effects-of-Artificial-Intelligence-on-Economic-Growth-Briggs_Kodnani.pdf
[4] Microsoft & Tech Council of Australia, Australia's Generative AI Opportunity, July 2023, https://news.microsoft.com/wp-content/uploads/prod/sites/66/2023/07/230714-Australias-Gen-AI-Opportunity-Final-report.pdf
[5] LexisNexis, AI Decoded: The Growing Influence of Generative AI on the Legal Industry: What Lawyers Need to Know, Episode 1 of AI Decoded, Legal Talk podcast, https://www.lexisnexis.com.au/en/insights-and-analysis/practice-intelligence/2023/ai-decoded-the-growing-influence-of-generative-ai-on-the-legal-industry

The opportunity for lawyers

The capability of large language models – the sheer ability to produce content – is something we have never seen before. So I do expect there will be significant change coming.

Caryn Sandler
Partner and Chief Knowledge and Innovation Officer at Gilbert+Tobin

Generative AI offers a potential gamechanger for lawyers as it does not always require complex systems integrations. Many are easily accessible to firms of all sizes and in-house legal counsel. Microsoft 365 Copilot, for example, works alongside Microsoft applications commonly used by lawyers, such as Microsoft Word, Outlook and Teams, to provide real-time intelligent assistance by automating activities such as summarising documents and emails and editing documents.

In broad terms, generative AI has the potential to serve as a 'copilot' – augmenting but not replacing lawyers in completing routine, repetitive and time-consuming tasks. Yet crucially, generative AI systems and tools are only as good as the material they've been trained on, as well as their probability-based approaches. As such, legal practitioners must maintain a "human in the loop" to review, edit, customise and quality-assure content.

Most obviously, generative AI can expedite legal research. A lawyer can type a legal query into a chatbot and obtain the answer within seconds. This is much faster than having to manually sift through legal databases, case summaries and legislation. It not only can conduct legal research but can also analyse this information to identify trends.

The technology can be used to generate synopses, summaries and fact sheets, even a rough first draft of legal analysis for a client. It can help get lawyers off to a good start in drafting and editing documents in the right voice. This might range from basic client correspondence, form-filling and administration to creating first drafts of contracts, legal advice and court pleadings.

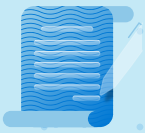
Using LLMs, generative AI also offers vastly updated document comparison and verification capabilities. An example is checking large volumes of contracts for risks and compliance, including potential issues arising from legislation and case law. This helps lawyers stress test their work, increase efficiency and minimise errors.[6] Tools such as Kira, Imprima and Document Intelligence are all gaining popularity as AI becomes standard part of conducting a due diligence review in a M&A transaction.[7]

Generative AI tools, such as Microsoft 365 Copilot and Microsoft Azure OpenAI Service are not designed specifically for any one industry. As such, these tools can help entire organisations implement a technology strategy that meets the diverse needs of different departments, such as Human Resources, Finance, Law and Compliance. In-house lawyers can benefit from generative AI tools that can also serve other functions within their organisation, instead of relying on dedicated legal tools that may not be available or prioritised as part of an organisation's overall technology strategy.

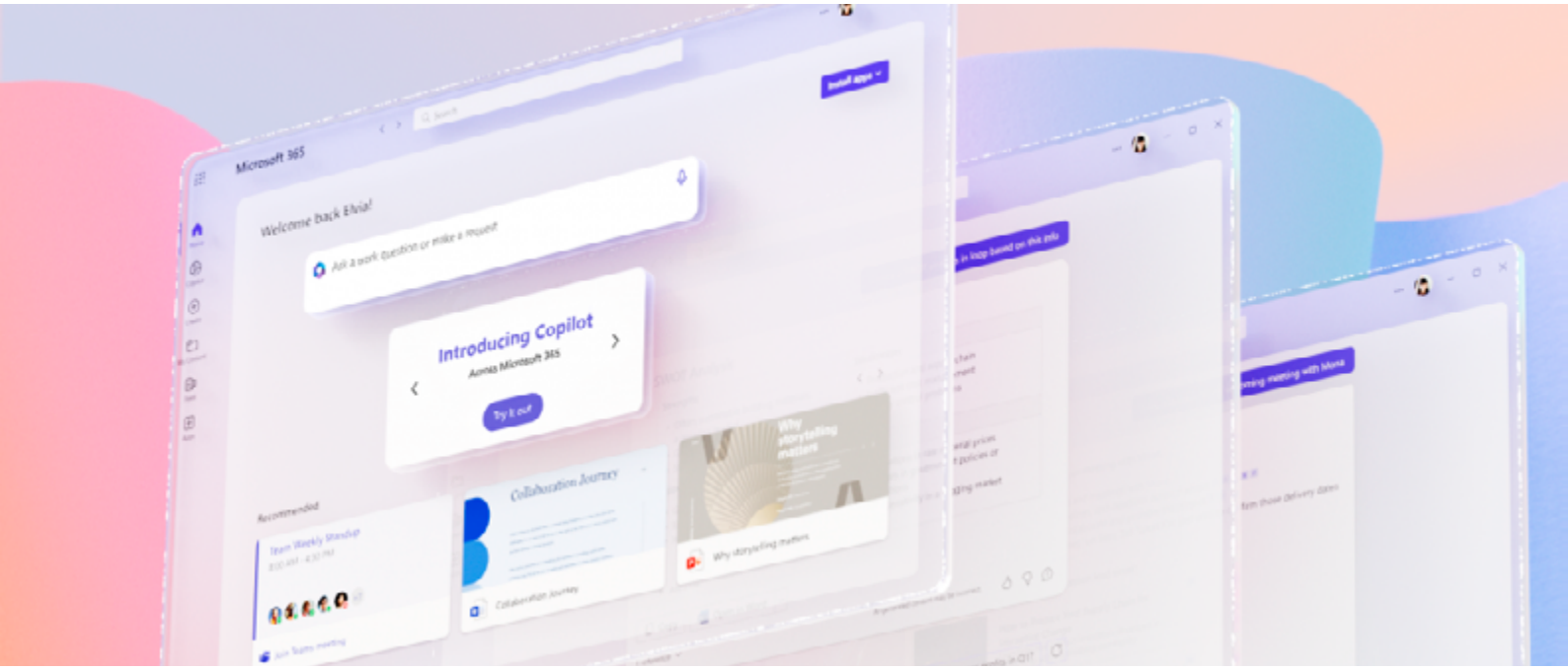
Microsoft's Corporate, External and Legal Affairs (CELA) has started a departmental wide initiative focused on identifying opportunities to leverage AI to drive operational efficiencies, increase productivity and amplify the department's impact. The initiative asked for creative ideas leveraging AI, which has so far generated over 250 submissions that use existing tools and new ideas with three common themes - better knowledge management, improve contracting and complying with an increasingly complex regulatory landscape.

1. Better knowledge management

2. Improve contracting



3. Complying with an increasingly complex regulatory landscape



[6] Jacqui Jubb, "The benefits of generative AI in law firms", Lawyers Weekly, 27 June 2023, https://www.lawyersweekly.com.au/newlaw/37591-the-benefits-of-generative-ai-in-law-firms
[7] Lauren Croft, "90% of lawyers confirm AI is crucial for M&A", Lawyers Weekly, 12 July 2023, https://www.lawyersweekly.com.au/newlaw/37714-90-of-lawyers-confirm-ai-is-crucial-for-m-a

Consumer versus enterprise-grade tools

Some early experiments with generative AI technology have leveraged ChatGPT for various purposes such as data analysis and content creation. However, a distinction should be made between these types of consumer-grade tools without enterprise-grade data privacy and security controls, and generative AI technology that leverages a firm or organisation's data without compromising the data privacy and security of the organisation's data boundary. In relation to generative AI,

> *We should actually be looking to embrace the potential because it's coming, like it or not. The earlier you get your head around it, the more likely you are to benefit from it. But absolutely it [generative AI] has to be used responsibly.*
>
> **Patrick Gunning**
> Partner at King & Wood Mallesons

Given this, whilst consumer versions of ChatGPT and other similar generative AI technology aimed at consumers can access a wide source of publicly available information, they are not designed for enterprise level customers. As such, they typically do not carry advanced data privacy and security protections such as that offered by Microsoft Azure OpenAI Service or Microsoft 365 Copilot, which allow for access to powerful LLMs to use on an organisation's own data within a secure environment. This makes them more capable of inputting firm, organisational or client data to develop answers, similar to the distinction between public and private cloud. For example, firms such as King & Wood Mallesons have signed up to the Early Access Program for Microsoft 365 Copilot, which will allow the firm to define the content that can be accessed by that service and restrict any third parties outside of the firm from accessing its information.

Moving up the value chain

What does seem clear is that by automating routine work, generative AI frees up lawyers to focus on more complex, intellectually or interpersonally challenging matters. This is where critical thinking, commercial acumen, human empathy and experience, and a holistic understanding of the needs of clients and stakeholders, may all come into play.

It has been suggested, for example, that generative AI would be less able to replace lawyers in areas requiring creativity or risk assessment skills.

> *Increasingly, lawyers' human skills are becoming more important in areas like strategy, commercial judgment, abstract reasoning, figuring out solutions, emotional intelligence. Things that we're probably not ready yet as a species to outsource to the machines.*
>
> **William Howe**
>
> Forensic Technology Director at Clayton Utz

In this way, the work of lawyers will "move up the value chain" into areas that involve more than simply providing a legal service – from developing industry expertise to offering strategic guidance and building trusted client relationships. More lawyers may be able to diversify their offerings.

To cater for the evolving definition of what it means to be a legal professional, education and training models will need a refresh. For example, junior lawyers may focus their learning on technological proficiency in addition to other basic legal skills required such as legal reasoning and drafting capabilities. Generative AI technology will assist lawyers, not replace the role of a lawyer. Firms and in-house legal operations of the future may be filled with knowledge engineers, data analysts, technologists, design thinkers and transformation experts in addition to lawyers. Traditional billing models will also be under severe pressure. "Undoubtedly, we are getting to a world where the billable hour is not going to be representative of what lawyers bring – and we're going to have to find different ways to attach value," Sandler says.

Gilbert+Tobin declares an AI bounty

Law firm Gilbert+Tobin is an industry leader in using technology to support lawyers' work, both for client services and internal business transformation. The firm recently created an AI bounty worth $20,000 in which lawyers were invited to submit ideas on how to use ChatGPT or other LLMs in the workplace. It received 106 submissions about how generative AI could streamline lawyers work – including summarising content, helping to draft documents, developing case chronologies and supporting business development activities.

The best ideas for using generative AI will likely arise overtime from individual experimentation through trial and error. As such, the firm will also explore generative AI's ability to engage in more advanced legal reasoning, such as identifying the weakness in an opponent's case or assessing contract clauses.

My view is that if the technology demonstrates it is capable of delivering higher-value legal work, we will have no option but to embrace it in a way that is safe and effective. It is just too early to tell

Caryn Sandler

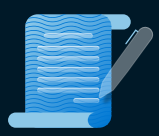
Partner and Chief Knowledge and Innovation Officer at Gilbert+Tobin

Generative AI can assist risk management across industries

Illustrative use case of Generative AI in professional services

Legal Services

1

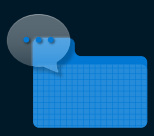


Lawyer completes first draft of a contract.

2

A GAI tool reviews the document, looking for missing clauses by comparing to other similar contracts.

3



The tool identifies a potential loophole, and suggests clauses to include as a solution.

[10] LSJ Online, "Law Firm Sets $20,000 AI Bounty for Staff", 1 May 2023, https://lsj.com.au/articles/law-firm-sets-20000-ai-bounty-for-staff/

[extract from Microsoft/Tech Council of Australia report]

Climate-ready for new tools

Australian law firms are already incorporating generative AI technology to support their clients and staff. For example, Clayton Utz has developed an environmental, social and governance (ESG) tool that tracks trends in climate change litigation in Australia and around the world. This is an area where the law is developing rapidly, with new policies to regulate carbon emissions, rigorous rules around climate disclosures and emerging types of actions between plaintiffs and defendants.

The tool developed by Clayton Utz uses Microsoft Azure OpenAI Service, which gives customers access to advance language AI models such as OpenAI GPT-4, GPT-3, Codex, and DALL-E but with the benefit of using it within a private data boundary and with responsible AI content filtering and abuse monitoring. Generative models such as Microsoft Azure OpenAI Service have significant potential benefits for lawyers as customers can tailor Microsoft Azure OpenAI Service models using their own dataset and train them to better respond to their specific prompts.

In the case of the ESG tool, it identifies trends in environmental case law by synthesising hundreds of pages of environmental law by leveraging language AI models available through Microsoft Azure OpenAI Service. Without AI, such information would usually take months to analyse and, instead, can be finalised in a couple of weeks. Clayton Utz requires human lawyers to review written work created by the ESG tool.

> *The humans are firmly in the loop,*
>
> *Yes, there are knowledge management hours involved, but if we have a whole bunch of junior lawyers sitting there typing summaries, is that the best use of their time? We use the AI to do a lot of that.*

William Howe

Forensic Technology Director at Clayton Utz

Clayton Utz was an early pioneer in incorporating AI capabilities. With the recent rise of AI, it formed an internal AI working group and developed legal risk frameworks to cover areas such as confidentiality, intellectual property and mitigating against generative AI hallucination. Today, Howe is one of the leaders of a team of more than 100, offering client-facing services to in-house counsel and other business functions such as compliance and risk.

In addition to its ESG tool, the firm has introduced several products that use generative AI to distil large amounts of information. Howe cites use cases such as e-discovery, data analysis for fraud or regulatory investigations, even simply helping employers identify their key obligations without having to navigate a thicket of industrial relations instruments. Another emerging area is risk and reputation management, where clients wish to proactively monitor everything from website content to annual reports and staff social media posts.

Inevitably, Howe believes, law firms will create new business models as large language models enable more advanced semantic searching and in-context learning.

Technology literacy is already a core skill for lawyers.

The future is a hybrid model where AI becomes a standard part of the technologies lawyers use on a daily basis. We have an optimistic view of the future and it's really exciting to be part of this journey with all my colleagues.

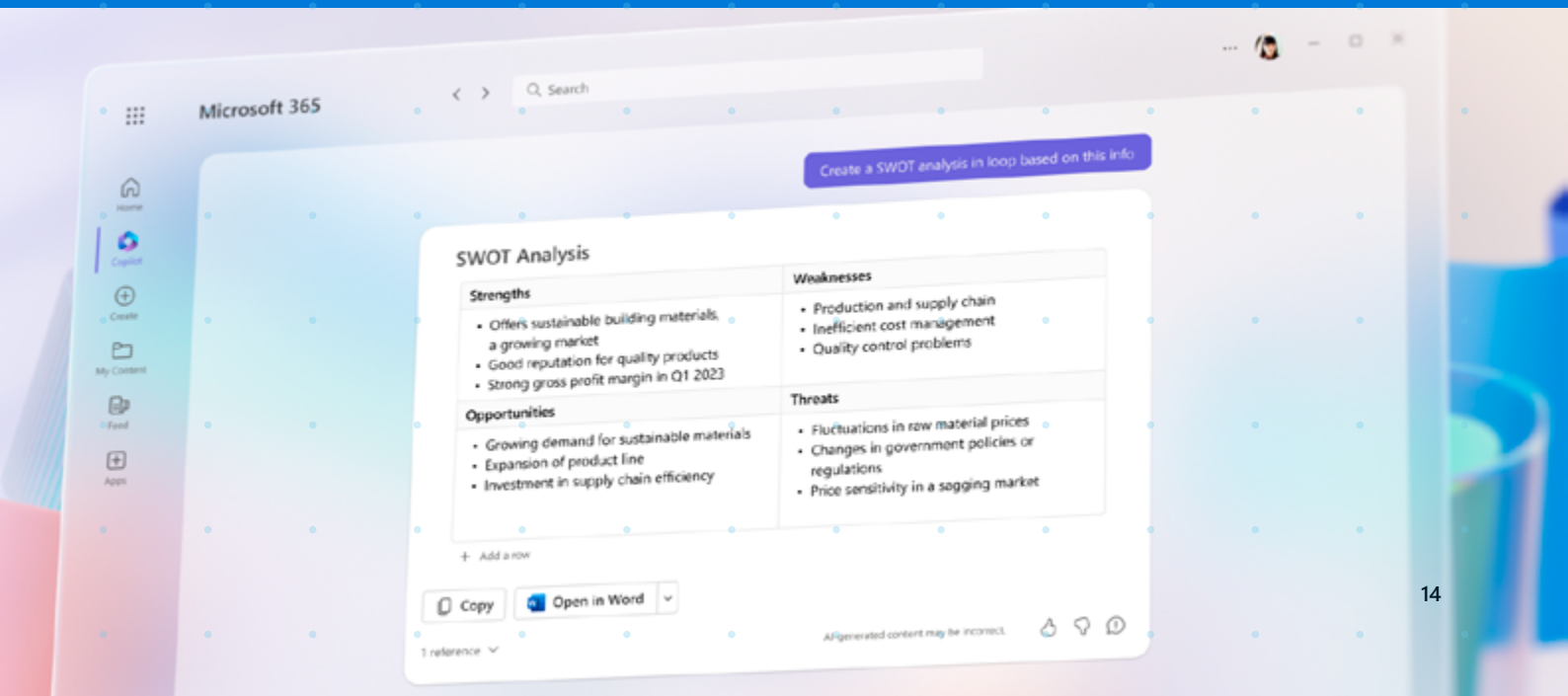
William Howe
Forensic Technology Director
at Clayton Utz

Microsoft 365 Copilot

for lawyers

Microsoft 365 Copilot is a sophisticated processing engine that leverages powerful LLMs with Microsoft 365 apps to capture natural language commands to automate a range of activities such as producing content, analysing data and building presentations. Microsoft 365 Copilot leverages existing Microsoft 365 role-based controls to limit its access only to information that a user already has authorisation to access. It also does not use customer data (including prompts and output responses) to train its foundational language model. Instead, it is designed so that data does not leave an organisation's boundary and, as such, does not unintentionally leak to individuals outside of the limits set by an organisation.

King & Wood Mallesons has signed-up to the Microsoft 365 Copilot Early Access Program. Like for many other organisations, client confidentiality is fundamental to King & Wood Mallesons. Generative AI relies on training natural language models, based on document sets. If those document sets include any client information being exposed in a public environment, it restricts a lawyer's use of such technology. In relation to Microsoft 365 Copilot,

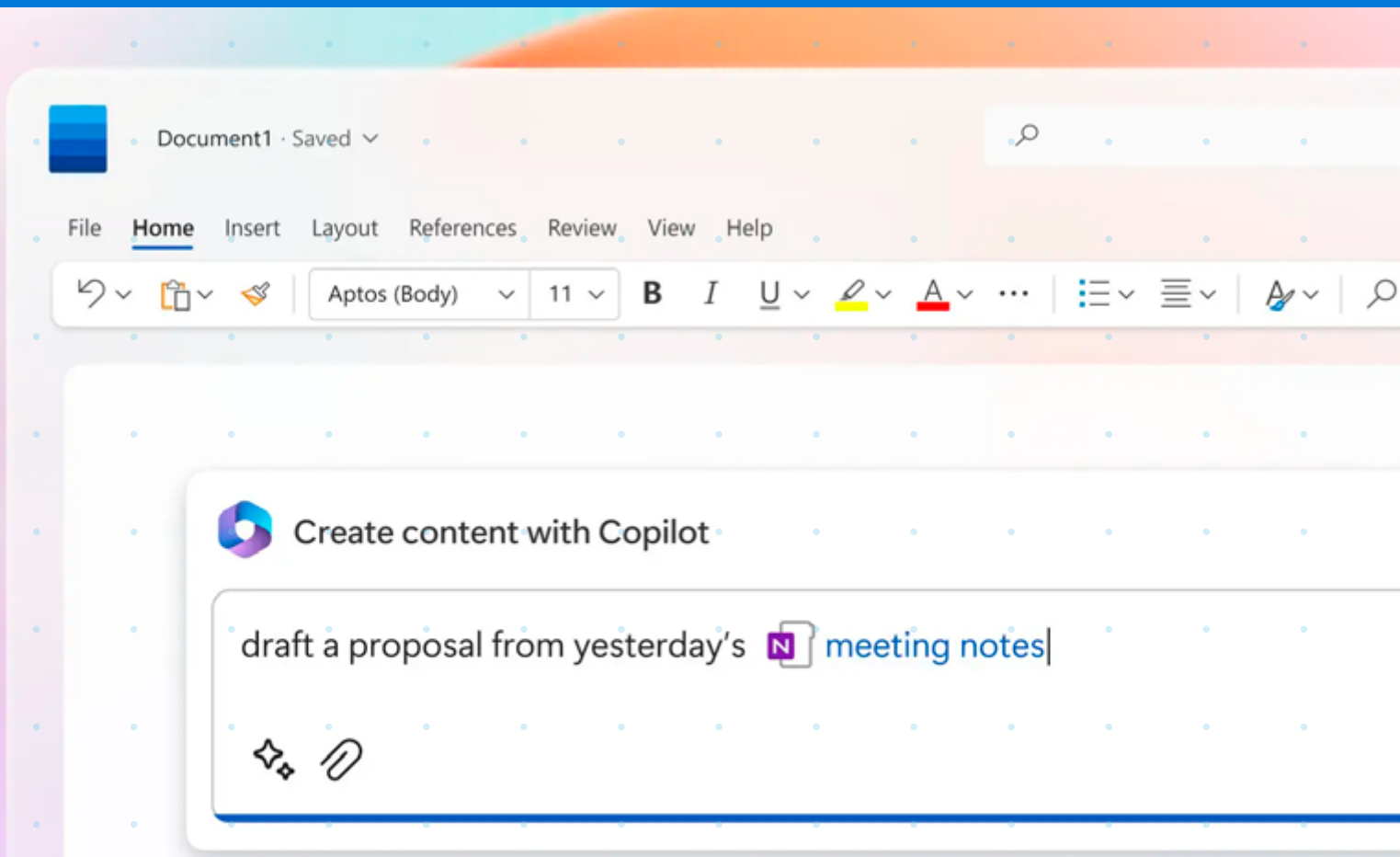


Having the various [Microsoft] Azure-based AI offerings is attractive to any law firm, frankly, because it's in a closed environment. You can be confident the information won't go outside. That's been an important consideration in our decision to go into the Microsoft preview program. We see that as a safe environment and that is the most important thing. We can't do any of the use cases without it.

Patrick Gunning
Partner at King & Wood Mallesons

King & Wood Mallesons has established a working group that not only involves it lawyers but also other areas of the firm such as business development, finance and innovation. This group is working together to identify and prioritise use cases to increase efficiencies and client outcomes using AI technology, such as Microsoft 365 Copilot. Areas of focus for the working group include improve efficiency through transformation of routine processes such as producing materials required for proposals to client and enabling better ways to communicate complex concepts by converting texts to diagrams and pictures.

Gunning says Microsoft 365 Copilot will also be useful in utilising pattern-matching capability to find the best recent examples of the firm's advice on a topic, thus allowing for better knowledge management.



Current regulatory landscape

Lawyers seeking to use generative AI tools must comply with all applicable laws, as well as specific rules and guidance governing the legal profession. So far, AI is an area where technology developers are moving fast and regulators are catching up, seeking to strike the right balance between the technology's opportunities and risks, while not stifling innovation as new use cases and possibilities cascade.

In Australia and New Zealand, there are currently no laws or regulations that apply specifically to AI. However, Microsoft and others are working with Australian and New Zealand governments to help identify and develop risk-based AI regulation to address potential gaps in the current legislative landscape and reduce risks of harm.

As part of a soft-law, principles-based approach, the Australian Government has published an AI Action Plan, along with a set of voluntary ethics principles that may be used by business or government in embracing AI.[9] Key principles include the need for AI systems to be fair, reliable, non-discriminatory, transparent and explainable to the people they impact. The government is also considering requiring organisations to provide more transparency about how they use automated systems to make decisions as part of planned reforms to the Australian Privacy Act. Meanwhile in New Zealand, government agencies have signed an Algorithm Charter that covers the ethical design of public services.[10] The New Zealand Privacy Commissioner has also published guidance to help organisations manage generative AI.[11]

Microsoft supports the regulatory reform actions of Australian and New Zealand governments and recognises its own responsibilities. Microsoft has implemented and publicly released its own Responsible AI Standard, which aligns with the Australian Government AI Action Plan and identifies six key principles that guide how Microsoft develops AI products. These principles encompass the key concepts of fairness, reliability and safety, privacy and security, inclusiveness, transparency and accountability. Microsoft understands that responsible AI is a journey. As such, the Responsible AI Standard is a living document that is evolving to address new research, technologies, laws and learnings from within and outside the company.

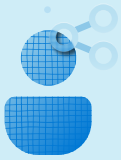
[9] Department of Industry, Science, Energy and Resources, AI Ethics Principles, accessible at: https://www.industry.gov.au/data-and-publications/building-australias-artificial-intelligence-capability/ai-ethics-framework/ai-ethics-principles,

[10] Office of the Prime Minister's Chief Science Advisor, "Why is regulating AI such a challenge?", 13 July 2023, https://www.pmcsa.ac.nz/2023/07/13/why-is-regulating-ai-such-a-challenge/

[11] New Zealand Privacy Commissioner, Generative Artificial Intelligence – 15 June 2023 update, https://www.privacy.org.nz/publications/guidance-resources/generative-artificial-intelligence-15-june-2023-update/

Ensuring responsible use of AI is not limited to technology companies and governments. Every organisation, including law firms, that creates or uses AI systems will need to develop and implement its own governance systems.

To guide this, Microsoft has announced its three AI Customer Commitments to assist our customers on their responsible AI journey. These commitments include:



Sharing Microsoft's learnings about developing and deploying AI responsibly.

Creating an AI Assurance Program to help ensure that AI applications that our customers deploy on Microsoft platforms meet the legal and regulatory requirements for responsible AI.

Supporting customers as they implement their own AI systems responsibly, including through our partner ecosystem.

Microsoft also provides in its customer agreements a Copilot Copyright Commitment, which provides that if a third party sues a commercial customer for copyright or other IP infringement by output generated by Microsoft's Copilot or Bing Chat Enterprise products, Microsoft will defend the customer and pay any resulting adverse judgments or settlements.

Europe's AI Act

Some indication of what future regulation could look like comes from the European Union's (EU's) proposed AI Act, one of the first comprehensive laws of this nature in the world.[12] This regulation follows a risk-based approach, ranking AI systems based on the level of risk they pose to users. For example, AI systems that contravene European Union values, such as violating fundamental human rights will be deemed as an 'unacceptable risk' and banned. Any AI systems that pose a fundamental risk to safety and security will be classified as 'high-risk'. Though permitted in the European market, these will be subject to additional compliance requirements, including an obligation to be registered in an EU database.

[12] EU AI Act: first regulation on artificial intelligence, 14 June 2023, https://www.europarl.europa.eu/news/en/headlines/society/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence

Professional conduct rules

We have an obligation to review everything that is produced using Large Language Models and verify it – as we would across any other legal work.

Caryn Sandler
Partner and Chief Knowledge and Innovation Officer at Gilbert+Tobin

In the absence of AI-specific regulations, lawyers need to abide by professional conduct rules in using AI tools. Uniform Conduct Rules have been adopted in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia. The Northern Territory has established its own rules, as has New Zealand. Each of these emphasises the responsibility of lawyers to deliver legal services competently and diligently and to act in the best interest of the client.

A lawyer using generative AI should deliver at least the same quality of legal service they would otherwise be obligated to provide. At a minimum, there is need for human oversight and independent legal analysis to deliver services competently and ensure the technology is not 'hallucinating' – that is, simply delivering wrong or misleading information. Given this, generative AI should be seen as a copilot, not an autopilot.

The notorious example of two New York lawyers who included fake citations from ChatGPT as part of a personal injury case stands as a cautionary tale. In a written opinion, the judge noted that "technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance". Nonetheless, he found there was a "gatekeeping role on attorneys to ensure the accuracy of their filings".

In addition to any disciplinary consequences from breaching their professional obligations of competence, a lawyer may also be liable for negligence. It is a lawyer's responsibility to use any content produced by an AI tool or system with reasonable care and skill. A client suffering loss from negligent use of AI by a lawyer could potentially be entitled to compensation.[13]

It is equally possible to imagine a day when there is a positive duty on lawyers to use the latest, technology to deliver legal services.

One could argue that subject to appropriate 'supervision', it is a solicitor's duty to consider using ChatGPT as part of our obligation to act in the best interests of our client.[14]

Genevieve Collins
Chief Executive Partner at Lander & Rogers

In the United States, the American Bar Association has approved changes to professional standards making clear that lawyers have a duty to maintain their knowledge and skill by keeping pace with changes in the law and its practice, "including the benefits and risks associated with relevant technology".

[13] Michael Guihot and Lyria Bennett Moses, Artificial Intelligence, Robots and the Law (LexisNexis Butterworths, 2020) 115.
[14] Michael Pelly, "Law firms say ChatGPT an 'opportunity, not a threat'", Australian Financial Review, 9 February 2023, https://www.afr.com/companies/professional-services/law-firms-say-chatgpt-an-opportunity-not-a-threat-20230208-p5cj2j

Maintaining confidentiality

A legal practitioner's duty of confidentiality is part and parcel of the fiduciary relationship with their client. It is also reflected in professional conduct rules across Australia and New Zealand. For example, under the Uniform Conduct Rules, a solicitor must not disclose any information that is confidential to a client and acquired during their engagement unless an exception applies.

In the early days of cloud computing, for example, client confidentiality was one of the key concerns for law firms when considering the move to the cloud. The issue was whether use of a third-party cloud provider such as Microsoft to store and process confidential client data would amount, in legal terms, to a disclosure requiring prior consent.

However, based on relevant guidelines published by industry and regulatory bodies in different Australian jurisdictions, as well as analysis by the Office of the Australian Information Commissioner (OAIC), the legal profession has widely deployed cloud computing to process and store confidential client data. Client consent has not been considered a requirement, as long as the nature of the cloud service and contractual arrangements between the parties are sufficiently protective.

Professional confidentiality obligations are clearer with respect to generative AI than the early days of cloud computing. Publicly accessible consumer tools such as ChatGPT that may use inputted data to train and improve the algorithm's workings could potentially result in disclosure of confidential information that is input.[15] Therefore, lawyers need to consider the data protection commitments and controls associated with an AI system before using it with confidential firm or client data.

[15]Karen Sloan, 'A lawyer used ChatGPT to cite bogus cases. What are the ethics?', Reuters (online), 31 May 2023 <https://www.reuters.com/legal/transactional/lawyer-used-chatgpt-cite-bogus-cases-what-are-ethics-2023-05-30>

What's next?

The speed of change is astonishing... I've been in technology a long time, and this is probably the most exciting thing I've seen in my career. What makes me excited, and actually a bit uneasy, is the thought that in five years, we will look back on today and think 'that was only the beginning...[16]

Claire Smith
Partner, Clayton Utz

Within the legal profession, there are markedly varying levels of digital literacy. Among law firms, the market is competitive and clients expect the use of the latest technology capabilities where available. Many firms have major change management programs in place – with lawyers engaging with innovation teams to improve processes and solve pain points.

In-house legal teams are also presented with powerful opportunities to benefit from enterprise AI systems and tools implemented by their organisation.

Generative AI promises to ripple across these divisions – placing exciting new capabilities in the hands of every lawyer and organisation. Research indicates that

40% of law firms are already experimenting with AI.[17]

The law is not immune in any way and there will be heaps of industries disrupted by this technology. Some of the more routine areas will experience the most disruption in the shortest period of time.

Patrick Gunning
Partner at King & Wood Mallesons

Gunning says that in relation to generative AI Some organisations will be happy to lead while others sit back until there are established industry-wide parameters and frameworks. However, the rapid advancement of generative AI capabilities indicates this is an area that organisations must prioritise to maintain a competitive advantage.

The practice of law is changing fast...

[16] Lauren Croft, "Clayton Utz accelerates ESG work with ChatGPT", Lawyers Weekly, 21 February 2023, https://www.lawyersweekly.com.au/newlaw/36705-clayton-utz-accelerates-esg-work-with-chatgpt

[17] Ellie Dudley, Half of Australian lawyers fear AI will take their jobs, research reveals, The Australian, 23 August 2023.