

# THE AUSTRALIAN LAW JOURNAL

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### STOCHASTIC JUDGES: THE LIMITS OF LARGE LANGUAGE MODELS

**Lyria Bennett Moses**

This article explores the potential for using large language models to draft court judgments in whole or part. It explains the need to consider not only the quality of the output but also likely broader outcomes of such a shift and whether such a change in the process of judgment-writing would be appropriate. .... 640

### AI FOR ASSISTING JUDICIAL DECISION-MAKING: IMPLICATIONS FOR THE FUTURE OF OPEN JUSTICE

**Brian M Barry**

Judges and other legal adjudicators are increasingly relying on AI systems to assist them with their decision-making. This has profound implications for the judicial process and the right to a fair trial. This article considers what these developments mean for the principle of open justice.

Two key rules that operationalise the principle of open justice – the rule that justice ought to be administered in public and the judicial duty to give reasons for decisions – are, in their current form, strained and perhaps broken altogether when AI is used to assist judicial decision-making. Consequently, these rules need to be modernised and recalibrated. To achieve this, theories, concepts and findings from “explainable AI” and “procedural justice theory” ought to be incorporated into these two rules so that they can better actualise open justice in the AI era. A key requirement is that appropriate, understandable explanations about how AI systems help judges to decide individual cases are provided to affected parties and the public. .... 656

### ARTIFICIAL INTELLIGENCE AND LAW IN AUSTRALIA – FROM EARLY RESEARCH PROTOTYPES TO CURRENT USABLE SYSTEMS

**John Zeleznikow**

Our goal is to examine how Artificial Intelligence has been used in the Australian legal process over the last 35 years, with the expectation that the lessons learned will enable us to appropriately use Artificial Intelligence in the future. We observe that many research

prototypes have been developed, but very few have been used in legal practice. Through a study of the development and use of rule-based reasoning and machine learning in law, and Online Dispute Resolution, both in Australia and globally, we conclude that a fundamental requirement for the successful use of such systems is appropriate evaluation. .... 670

**“FAKE IT ‘TIL YOU MAKE IT” – NOT WITH AI AND THE COURTS: LAWYERS’ DUTIES AS PROTECTIONS FOR THE ADMINISTRATION OF JUSTICE**

**Michael Legg**

Artificial intelligence (AI), including generative AI, has been identified as a profound opportunity for the judicial system due to the efficiency and cost savings it promises. Equally concerns have been raised about “fake law” due to generative AI hallucinating, and “fake evidence” created by malevolent actors. This article argues that the lawyer’s compliance with their ethical duties to the court and the administration of justice, as well as duties of independence, competence and supervision, will assist in the effective use of AI and guard against a range of harms, such as AI misleading judges, causing unfairness and undermining public confidence in the judicial system. The lawyer’s ethical obligations as a source of protection against the misuse of AI for the court system continue the historical collaboration between the judiciary and the legal profession in the provision of justice. .... 685

**REPLACING, SUPPORTING OR ENHANCING JUDGES? JUDGE AI CONSIDERATIONS FOR THE FUTURE**

**Tania Sourdin**

Technologies that have emerged over the past five years are changing the way in which judges work. Some of the technologies can support judges and others have the potential to replace them. This article considers international developments in selected jurisdictions as well as barriers to the take-up of technology. From the use of supportive technologies including generative AI and videoconferencing, to the development of technologies that guide and monitor judges, there are differing ethical impacts as well as impacts on the role of judges as guardians of the court system and protectors of democratic arrangements. The impacts on the judiciary of these types of technologies are considered together with more future-focused options. For example, how might judges be “enhanced” in the future and what options could be available to enhance, rather than replace, judges with supportive technologies? .... 696

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