



Ashurst

Governing AI

The role of General Counsel

Embracing opportunity, managing risk

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Outpacing change

As artificial intelligence (AI) rapidly advances, General Counsel (GC) are working to establish legal and ethical frameworks for its more widespread use. Is AI just another technology? Or is a new governance approach required as organisations seek to embrace AI's benefits while minimising related risks?

The Ashurst Leadership Centre (ALC) recently convened a roundtable in Melbourne to address these important questions, attended by GC and other leaders from major Australian and international companies. It was guided by Ashurst partner Sonia Haque-Vatcher and guest speaker Clayton Noble, the Head of Legal at Microsoft ANZ.

This paper captures the discussion and provides further insights to assist legal teams as they consider augmenting their professional roles and organisational strategies.

Observations

1

Decide what AI means to your business

The GC attending the roundtable represented companies from a wide array of sectors, including banking, healthcare, technology, retail, transport, property and investment management. The ways in which their organisations utilised AI were equally varied. At some, new generative AI tools were prohibited due to unresolved concerns about protecting confidential data. In contrast, other businesses were actively deploying AI across internal processes and beginning to explore customer-facing applications.

Roundtable participants whose organisations were using AI – including generative AI solutions to create content based on large language models – had varied requirements and goals. Some wanted to accelerate routine office work and administration by using tools such as Microsoft Copilot for drafting emails and summarising meetings. Other organisations sought to provide more self-service capabilities to frontline staff. One retail business was using the technology to identify problematic text and visuals in product descriptions and images received from suppliers before publishing online.

This variation highlights the diverse applications of AI solutions and their potential to transform business processes. "AI is more than just a tool; it's a complex ecosystem," stated Haque-Vatcher. "It integrates systems, technologies, data, processes, and the people who interact with it. One GC noted that their organisation already used AI extensively, so had recently conducted a review to identify all types of AI used by the business. "The board wants to know, what is the use of AI now and what guardrails do we have in place," they said.

Start with existing frameworks

“AI isn’t new, and many organisations have been managing model risk for decades,” said Haque-Vatcher. “While it is vital to assess, govern and mitigate AI risks across the business, organisations should start with existing risk frameworks covering data risk, cyber security, privacy and conduct.”

Noble agreed, stating, “We do see groups asking, ‘How do we even identify the risks we need to manage, and then how do we develop governance for those?’” he told the roundtable. “But it’s not something that has to be made up from scratch.”

Haque-Vatcher and Noble concurred that the same policies and governance processes that organisations have developed to manage risks like privacy compliance and information security could be adapted to ensuring the safe and responsible use of AI systems. In addition, frameworks for using cloud computing services could be extended to cover AI. Like all cloud computing services, AI governance usually involves some shared responsibility between the provider of the AI system and the customer using it, such as cloud companies taking ownership of data hosting and business customers being responsible for training relevant end users.

Noble encouraged organisations to apply the same risk-based approach to governing AI as included in the European Union’s (EU’s) landmark EU AI Act, which came into force on 1 August 2024. On this basis, common forms of AI used for non-critical tasks such as grammar checks could be considered lower risk. However, newer tools such as customer service chatbots, capable of generating customer responses without human intervention, should be considered higher risk due to their potential to act autonomously on behalf of a business.

One GC noted that their organisation had navigated significant intellectual property issues while implementing AI both internally and across customer-facing online applications. Another mentioned that their company had robust systems for introducing new technologies and establishing related rules, but added, “The tricky thing is ensuring our systems are configured to catch if someone uses the wrong tool or uses it in the wrong way”.

Overall, roundtable participants emphasised the importance of companies being deliberate and transparent about their approaches.

“We always take into account the role of AI in our clients’ businesses,” said Haque-Vatcher. “This helps them understand how AI can impact their operations, reputation and the wider community, while also addressing the specific legal and regulatory challenges it may present.”

The EU AI Act highlights a [range of issues](#) that all companies should consider, including understanding the role their business plays in AI value chains, assessing risks associated with different uses of AI, and distinguishing between elements such as the “foundation models” used to power generative AI solutions and AI systems more broadly.

The EU AI Act also lists banned AI uses that are likely to be seen as unacceptable in any market around the world. Examples include using AI to manipulate people in subliminal ways or categorising individuals based on biometric data.

Australia does not currently have AI-specific laws. However, the Privacy Act reforms mark the Government’s first step toward regulating AI usage. The introduction of Voluntary AI Safety Standards, along with proposed mandatory safeguards for high-risk AI, compels organisations to carefully consider how they utilise AI and manage individuals’ data.

The Australian Government has also released [discussion papers](#) and frameworks for the [use of AI within government](#). These provide a range of guidance and principles that companies can consider in addition to material such as Microsoft’s widely cited [Responsible AI Principles](#).

Microsoft has also produced a guidance paper titled [Generative AI for lawyers](#). As the paper reports, the absence of laws or regulations applying specifically to how lawyers should use AI in Australia and New Zealand places the emphasis on professional conduct rules. These highlight the responsibility of lawyers to deliver legal services competently and diligently, to act in the best interests of the client and to maintain confidentiality.

“AI is more than just a tool, it’s a complex ecosystem”

Sonia Haque-Vatcher, Ashurst

Focus on data quality and management

A key theme of the roundtable was that the usefulness and accuracy of AI depends on the quality and relevance of the data used. As a powerful capability with the potential to find information that is located deep within IT systems, AI can also expose weaknesses in companies’ data access, classification and storage systems. For these reasons, participants agreed that introducing or expanding the use of AI within their businesses required improvements in data quality and protection.

“Where is all of our data and how do I know it is correct? It’s a huge challenge,” one GC said. They added that their organisation was establishing guardrails for where and how AI was used. This included creating “sandboxes” to enable departments to experiment with AI in a limited environment, and generally ensuring customer data was used appropriately.

Participants noted that a renewed focus on data governance was required and that completing privacy impact assessments and privacy compliance audits can prove useful when preparing for AI. Such audits require companies to gain a strong understanding of the data they hold, who can access it and how it is used. One valuable output from audits could be the company developing a “data inventory” as a basis for future AI governance.

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Identify an owner

Who should “own” AI risk within a large business? Many of the roundtable attendees felt the accountable owner for AI risk could fall to a range of roles, such as a chief information officer, a chief data officer or even a legal leader. However, most agreed that it was ideal for a single person to hold overarching responsibility for the use of AI.

As one GC commented, there was a desire among CEOs and boards to turn to one person on AI because “this won’t be easy and things will go wrong”. But such a person required a myriad of skills and capabilities. They needed to understand AI, be innovative and yet play by the rules, be capable of working across the business and be good at communicating, they said.

Others felt that AI was too widely applicable and the related data was sourced from too many places for it to fall to a single role to oversee. “It’s always been hard to find an owner for data and documents, and I think that now extends to AI,” said one attendee.

Participants did agree that one critical way of managing AI-related risk was to keep a “human in the loop”. In practice, this meant that results generated by AI systems – such as the text in a document or a risk assessment – were checked by users before use.

Representatives from the financial services industry added that directors and senior executives are taking a direct interest in AI risk because it is captured under Australia’s new Financial Accountability Regime. As part of this, directors and executives are being required to take responsibility for the outcomes of certain operational processes.

5

Embrace AI within the legal team

The work of in-house lawyers offers a key testbed for the use of generative AI in large corporate environments. Both in-house and at external law firms, lawyers are finding the technology useful for a range of tasks, from searching documents to summarising transcripts, distilling previous jurisprudence and drafting legal agreements.

The GC at the roundtable reported differing rates of adoption within their legal departments. Some in-house teams are using or trialling legal-specific generative AI-based tools such as Lexis+ AI, with one saying their staff called such tools a “first-draft fairy” due to their ability to help compose basic contracts and other documentation. Ashurst itself has made [AI tool Harvey](#) available to its entire global team, after a comprehensive global trial.

One roundtable attendee had conducted extensive research but was yet to find solutions that they felt would be useful to their business. Another was still exploring ethical issues relating to the use of the technology in their specific sector.

Noble noted that Microsoft’s own lawyers were finding more ways to use generative AI to become more productive while retaining final responsibility for their work and advice. “I think lawyers and in-house teams see the opportunity to finally focus on the things they want to focus on because there’s never enough time,” he said.

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Prepare for a tipping point

While many companies see it as prudent to hasten slowly on AI, a lack of action could itself become a risk. Both Haque-Vatcher and Noble noted that many employees are starting to use readily available AI solutions with or without their company’s knowledge or consent. This is akin to the arrival of smart phones, which many employees embraced in advance of company policies.

Attendees noted that customer expectations could shift quickly too, potentially leaving organisations flat-footed. Consumers might prefer, and actively seek, the convenience of an AI-powered chatbot over a human response, for example. Healthcare providers could be seen as negligent for not using the latest AI tools if they were shown to improve the quality of patient care.

“There will be a tipping point where all of us who are dipping our toes will need to swim to the deep end,” said one GC.

It seems the question is not whether companies need to engage fully with AI but when and how. Based on this timely ALC discussion, any business should, at the least, know:

- where AI is being used today within the organisation, and in turn:
 - what data AI-based systems use and how it is managed
 - what benefits and risks the use of AI presents
 - what risk management and governance measures need to be put in place.

In terms of the opportunities presented by AI, companies should also explore:

- how AI could be used to improve the business, and in turn:
 - what potential solutions are available
 - how these solutions could be used across the business
 - what organisational and governance changes are needed to deploy them.

Learn more

To understand more about the Ashurst Leadership Centre and curated programs for boards and executives, please visit <https://www.ashurst.com/en/who-we-are/ashurst-leadership-centre/> or contact **Maja Reid**, Ashurst Leadership Centre program manager.

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