

## GENERATIVE ARTIFICIAL INTELLIGENCE IN SMALL VALUE CONSUMER CLAIMS: HALLUCINATION RISK, SYSTEM DESIGN, AND GOVERNANCE IN ONLINE DISPUTE RESOLUTION

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*This article examines the benefits and risks of generative artificial intelligence ('GenAI') use in an important domain that is currently under-serviced by the civil justice system: small value consumer claims, where GenAI has been proposed as a means of closing the access to justice gap. In the online dispute resolution ('ODR') field, use of digital tools such as expert systems and rules-based chatbots has been advanced to assist potential litigants. GenAI has considerable attractions in this context because of its adaptivity and flexibility in responding to prompts. The question is whether the risk of hallucinations inherent in GenAI undermines these benefits. While strategies such as retrieval augmented generation may improve the accuracy of GenAI in legal domains, it is unclear whether this technique can overcome the information asymmetries that typically characterise consumer disputes. Any resolution of these issues requires careful attention to ODR design and artificial intelligence governance.*

### I INTRODUCTION

In law, as in many other fields, ChatGPT and other generative artificial intelligence ('GenAI') tools have captured public attention.<sup>1</sup> GenAI's speed, capacity for contextual search, and creative capabilities appear to offer value

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1 AI language models that operate as generative pre-trained transformers ('GPTs') are a group of language models 'pre-trained' on a large data set to generate human-like text responses. One currently prominent GPT is 'ChatGPT', which operates as a chatbot that users can interact with to ask questions, including requests to generate documents. A feature of ChatGPT is that it is possible to use 'prompts' which direct the kind and format of the answers received: see New South Wales Bar Association, 'Issues Arising from the Use of AI Language Models (including ChatGPT) in Legal Practice' (Guidelines, 12 July 2023) 1 <<https://inbrief.nswbar.asn.au/posts/9e292ee2fc90581f795ff1df0105692d/attachment/NSW%20Bar%20Association%20GPT%20AI%20Language%20Models%20Guidelines.pdf>>.

over earlier, rules-based expert systems or data-driven tools,<sup>2</sup> at least in some contexts. Lawyers, and even some courts, are experimenting with using the technology in various parts of their core legal work. Suggested uses for GenAI include summarising large documents, drafting correspondence and documents, proofreading drafts, and ‘spur[ring] the human creative process’<sup>3</sup> by suggesting arguments and counterarguments to a claim or defence.<sup>4</sup>

Conversely, this very creativity creates novel risks,<sup>5</sup> which may manifest differently for various user groups: lawyers, the judiciary, litigants, and those yet to enter the civil justice system. This article examines the benefits and risks of GenAI use in one particular and important domain that is currently under-served by the civil justice system: small value consumer claims. It acknowledges that GenAI tools may have a significant role to play in closing the access to justice gap in this domain, especially in the context of an increasing digitalisation of civil processes, and a policy climate increasingly sympathetic to online dispute resolution (‘ODR’). ODR for these purposes includes the use of automated decision-making within dispute resolution settings, as well as virtual courts and online alternative dispute resolution mechanisms, such as online negotiation, mediation, and early evaluation of disputes. It is widely promoted as a means of enabling easier, more accessible, and more efficient pathways to legal remediation, and is gaining considerable traction in the United States (‘US’), the European Union and elsewhere, particularly for more straightforward and low value litigation.<sup>6</sup>

Up until recently, ODR as applied to low value disputes has primarily made use of fixed (not adaptive or generative) digital tools such as expert systems and rules-based chatbots to provide information and guidance to potential litigants,<sup>7</sup>

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- 2 While data-based approaches extrapolate directly from primary legal sources, expert system tools have relied primarily on human domain experts to construct rules that represent the norms and strategies used by lawyers when analysing a defined legal issue. It is these rules, converted to code (as decision trees, if/then rules, or weightings), not the law itself, that constitute the tool’s knowledge base: Donald A Waterman, Jody Paul and Mark Peterson, ‘Expert Systems for Legal Decision Making’ (1986) 3(4) *Expert Systems* 212 <<https://doi.org/10.1111/j.1468-0394.1986.tb00203.x>>. See also Philip Leith, ‘The Rise and Fall of the Legal Expert System’ (2016) 30(3) *International Review of Law, Computers and Technology* 94 <<https://doi.org/10.1080/13600869.2016.1232465>>; Judith Bennett et al, ‘Current State of Automated Legal Advice Tools’ (Discussion Paper, Networked Society Institute, 2 May 2018) 13.
  - 3 Colin E Moriarty, ‘The Legal Ethics of Generative AI: Part 3’ [2023] (October) *Colorado Lawyer* 30, 32.
  - 4 See, eg, Clayton Noble, ‘Why Generative AI Is a Gamechanger for Lawyers in Australia and New Zealand’, *Microsoft* (Web Page, 7 December 2023) <<https://news.microsoft.com/en-au/features/why-generative-ai-is-a-gamechanger-for-lawyers-in-australia-and-new-zealand/>>; Zach Warren, ‘Generative AI in Legal Work: What’s Fact and What’s Fiction?’, *Thomson Reuters* (Web Page, 25 October 2023) <<https://legal.thomsonreuters.com/blog/generative-ai-in-legal-work-whats-fact-and-whats-fiction/>>.
  - 5 See also Naomi Neilson, ‘“Not a Substitute”: Chief Justice Responds to Criticisms of GenAI Ban’, *Lawyers Weekly* (online, 4 December 2024) <<https://www.lawyersweekly.com.au/biglaw/41101-not-a-substitute-chief-justice-responds-to-criticisms-of-genai-ban>>.
  - 6 See, eg, Amy J Schmitz, ‘Expanding Access to Remedies through E-Court Initiatives’ (2019) 67(1) *Buffalo Law Review* 89; Federica Casarosa, ‘Access to (Digital) Justice: Is There a Place for Vulnerable People in Online Dispute Resolution Mechanisms?’ (2024) 13(3) *Journal of European Consumer and Market Law* 126 <<https://ssrn.com/abstract=4162985>>; Wei Gao, *Online Dispute Resolution in China: Institutional Analysis and Legal Practice* (Routledge, 2025) <<https://doi.org/10.4324/9781003594512>>.
  - 7 Lyria Bennett Moses et al, ‘AI Decision-Making and the Courts: A Guide for Judges, Tribunal Members and Court Administrators’ (Revised Research Report, The Australasian Institute of Judicial

assist in characterising the nature of the dispute,<sup>8</sup> or engage predictive analytics to suggest parameters for settling disputes.<sup>9</sup> The attraction of using GenAI in this context lies in its potential for more naturalistic communication that is capable of responding to a wider range of prompts and providing more personalised assistance to potential claimants than is available through rules-based methods.<sup>10</sup>

However, as is now well recognised, artificial intelligence ('AI') and data-driven automated decision-making systems give rise to concerns about bias<sup>11</sup> and pose a threat to privacy,<sup>12</sup> as well as involving other security risks.<sup>13</sup> Additionally, GenAI carries a unique propensity to 'hallucinate', that is, to produce fabricated content.<sup>14</sup> Lawyers and courts are still experimenting with GenAI to find the ways in which it may offer value to their work without undermining their professional obligations or the integrity of the justice system.<sup>15</sup> These insights will be useful in informing the use of GenAI in consumer ODR. However, the uses of AI that offer value to lawyers may not have the same impact in disputes involving consumers. *Summarising, drafting and brainstorming*<sup>16</sup> are not the assistance required by consumers unaware even of what their claim may be and how best to pursue it. Nor do consumers necessarily have the time or experience to 'verify' as 'accurate'

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Administration, December 2023) 22. See generally Vivi Tan, 'Online Dispute Resolution for Small Civil Claims in Victoria: A New Paradigm in Civil Justice' (2019) 24 *Deakin Law Review* 101 <<https://doi.org/10.21153/dlr2019vol24no1art873>>.

8 'Our AI Project', *Justice Connect* (Web Page, 2025) <<https://justiceconnect.org.au/about/innovation/legal-help-experience/ai-project/>>.

9 For an example of how this has been done in the context of divorce, see 'Simplifying the Separation Process', *Amica* (Web Page) <<https://amica.gov.au/>>.

10 See, eg, Lydia Lam, 'Generative AI Being Tested for Use in Singapore Courts, Starting with Small Claims Tribunal', *Channel News Asia* (online, 27 September 2023) <<https://www.channelnewsasia.com/singapore/artificial-intelligence-court-small-claims-singapore-chatgpt-3801756>>; Sir Geoffrey Vos, 'Speech by the Master of the Rolls to the Bar Council of England and Wales' (Annual Law Reform Lecture, Lincoln's Inn, 21 June 2023) [23]; John G Roberts Jr, *2023 Year-End Report on the Federal Judiciary* (Report, 31 December 2023) 5 <<https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf>>.

11 See generally Victorian Law Reform Commission, *Artificial Intelligence in Victoria's Courts and Tribunals* (Consultation Paper, October 2024).

12 Monika Zalnieriute and Felicity Bell, 'Technology and the Judicial Role' in Gabrielle Appleby and Andrew Lynch (eds), *The Judge, the Judiciary and the Court: Individual, Collegial and Institutional Judicial Dynamics in Australia* (Cambridge University Press, 2021) 116 <<https://doi.org/10.1017/9781108859332.008>>.

13 Heather Frase and Owen Daniels, 'Understanding AI Harms: An Overview', *Center for Security and Emerging Technology* (Blog Post, 11 August 2023) <<https://cset.georgetown.edu/article/understanding-ai-harms-an-overview/>>.

14 See, eg, *Mata v Avianca Inc*, 678 F Supp 3d 443 (SDNY, 2023). See generally Matthew Dahl et al, 'Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models' (2024) 16(1) *Journal of Legal Analysis* 64 <<https://doi.org/10.1093/jla/laae003>>; Varun Magesh et al, 'Hallucination-Free: Assessing the Reliability of Leading AI Legal Research Tools' (2025) 22(2) *Journal of Empirical Legal Studies* 216 <<https://doi.org/10.1111/jels.12413>>.

15 See 'Generative AI and Lawyers', *Victorian Legal Services Board and Commissioner* (Web Page, 17 November 2023) <<https://lsbc.vic.gov.au/news-updates/news/generative-ai-and-lawyers>> ('Generative AI and Lawyers').

16 These are uses of GenAI for lawyers suggested by Moriarty (n 3) 32.

the outputs of a GenAI chatbot or interface provided as a pathway to dispute resolution.<sup>17</sup>

We argue that the effective use of GenAI in ODR, and especially in small value consumer claims, which are characterised by significant information asymmetries, requires attention to system design and the operation of the technology, including the risk of hallucination. It also requires a commitment to a robust governance framework for managing the inherent risks nuanced to the particular context in which the technology is being used. This rich array of considerations is not captured in mere appeals to ‘access to justice’ in deploying GenAI nor in abstract references to AI in expounding the potential of ODR. In this regard we seek to go deeper into the key issues to better understand the potential offered by GenAI in ODR.

Our argument is presented in four parts. Part II outlines the development and use of GenAI in the legal context, both generally and specifically in relation to small claims. Part III discusses the key drivers behind the move to a digital justice system and the potential use of ODR to resolve small value disputes, focusing on consumer disputes in particular. It also addresses the use of externally facing applications at the front-end of a consumer ODR system and the potential applications of GenAI in this context. Part IV considers the issue of hallucination, the mechanisms being developed to respond to this risk, and the impact that uncertainty about performance has on the case for using GenAI in ODR for consumer disputes. Part V considers the critical role of governance in using GenAI in ODR, noting the significance of institutional values of a justice system in designing these oversight and accountability mechanisms. Part VI concludes.

We do not consider issues of privacy, data breach or bias, although these are critical considerations in any legal context.<sup>18</sup>

## II GENAI IN LAW FIRMS, COURTS, AND SMALL CLAIMS DISPUTES

Assessing the role of GenAI in business to consumer ODR requires some understanding about the operation of the technology as well as the uses being explored in the legal context. In the fast-moving field of AI, the capacities of AI models are constantly improving. However, it is important not to overestimate the kinds of tasks the technology is likely to be able to complete, nor to underestimate the importance of the strategies used to address key risks such as hallucinations and bias. In considering the role for GenAI in supporting ODR, scrutiny of the technology’s usage within law firms and courts and the debates about that use

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17 Cf the following advice to Australian lawyers using GenAI: Law Society of New South Wales, Legal Practice Board of Western Australia and Victorian Legal Services Board and Commissioner, ‘Statement on the Use of Artificial Intelligence in Australian Legal Practice’ (Media Release, 6 December 2024) <<https://lsbc.vic.gov.au/news-updates/news/statement-use-artificial-intelligence-australian-legal-practice>>.

18 See generally Victorian Law Reform Commission (n 11).

can be valuable, although not determinative, in assessing how the tools might be deployed and where they will be less effective.

## A GenAI

The term GenAI describes AI models that can generate new outputs, such as text, image, video, or code.<sup>19</sup> GenAI is based on neural networks (a form of machine learning) using transformers, which learn from large volumes of data to create foundation models.<sup>20</sup> A subset of foundation models, known as large language models ('LLMs'), are trained on textual data and use a technique known as natural language processing to interpret text-based prompts and generate textual responses. The main advance in accessibility with GenAI comes from an LLM being linked with a chatbot interface, which allows it to receive and respond to text (as opposed to code).<sup>21</sup> These combined tools are now readily available as web or smart phone applications, including through OpenAI's ChatGPT, Microsoft's Copilot and Google's Gemini.

A user of a GenAI chatbot can initiate a conversation with it by typing a message or a question into the chat interface. Once the GenAI tool receives the user's message, it will utilise its natural language processing capabilities to predict the user's intention from the context of the conversation.<sup>22</sup> The chatbot will then generate a response that is human-like based on its LLM training.<sup>23</sup> The response is provided in the chat interface and the user can subsequently choose to respond with follow-up questions or comments. Refinement of the responses can take place as the conversation continues between the user and GenAI.<sup>24</sup>

The language-based capacities of GenAI are attractive to lawyers and are increasingly being used in and by law firms; there are also cautious experiments with the technology in some courts.

## B Use of GenAI in Law Firms

The legal profession has been making use of advances in digital technology for some time.<sup>25</sup> Initially, digital technology was largely used to assist in research, process, and practice management. Increasingly, with the advent of LLMs, it has been employed to support lawyers directly in delivering client-facing legal services,

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19 Cole Stryker and Mark Scapicchio, 'What is Generative AI?', *IBM* (Web Page, 22 March 2024) <<https://www.ibm.com/think/topics/generative-ai>>.

20 Timm Teubner et al, 'Welcome to the Era of ChatGPT et al.' (2023) 65(2) *Business and Information Systems Engineering* 95, 95 <<https://doi.org/10.1007/s12599-023-00795-x>>.

21 Ivan Belcic and Cole Stryker, 'What is GPT (Generative Pretrained Transformer)?', *IBM* (Web Page, 18 September 2024) <<https://www.ibm.com/think/topics/gpt>>.

22 Genevieve Bell et al, Australian Council of Learned Academies, *Generative AI: Language Models and Multimodal Foundation Models* (Rapid Response Information Report, 24 March 2023) 4.

23 *Ibid* 2.

24 *Ibid* 4.

25 See Michael Legg and Felicity Bell, *Artificial Intelligence and the Legal Profession* (Hart Publishing, 2020) <<https://doi.org/10.5040/9781509931842>>; Julian Webb, 'Legal Technology: The Great Disruption?' in Richard L Abel et al (eds), *Lawyers in 21st-Century Societies: Comparisons and Theories* (Hart Publishing, 2022) vol 2, 515 <<https://doi.org/10.5040/9781509931248.ch-022>>.

including technology-assisted document review<sup>26</sup> and contract analysis and review, along with research and legal knowledge management technologies.<sup>27</sup> The available information suggests there has been a steady take-up of GenAI technology within law firms and in-house. A Thomson Reuters survey of Australian firms in July 2023 found that 15% were using GenAI and 27% were considering using it.<sup>28</sup> By October 2024, Thomson Reuters reported that ‘[t]wo in five private practice professionals (40%) said firms are experimenting with GenAI but proceeding with caution’.<sup>29</sup> By 2025, Thomson Reuters’ global report on GenAI in professional services reported an upswing of 41% use by individuals and 55% optimism about its future benefits.<sup>30</sup>

Lawyers are already making use of generally available GenAI tools, such as ChatGPT.<sup>31</sup> However, increasingly, GenAI tools specifically designed for legal practice are available for legal research, summarising documents and drafting correspondence.<sup>32</sup> For example, the Thomson Reuters product CoCounsel is promoted as being capable of summarising large groups of documents ‘including dense agreements, complex contracts, and lengthy opinions – faster than humanly possible and without missing key details’, as well as organising questions for depositions and performing other tasks.<sup>33</sup> Lexis+ AI is marketed as ‘fast and accurate legal generative AI’ providing ‘conversational search, drafting, summarising, document analysis and linked legal citations’.<sup>34</sup> Additionally, Australian law firms have been experimenting with developing their own bespoke GenAI tools. For example, MinterEllison<sup>35</sup> and Allens<sup>36</sup> have announced the use of an in-house chatbot to assist lawyers with routine tasks, research and drafting. MinterEllison is reported as saying that the chatbot’s outputs were ‘on par with what a graduate lawyer could produce’.<sup>37</sup>

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26 Courts in the United States, Ireland, England, Wales and Australia have approved the use of technology-assisted review in the litigation process: Felicity Bell et al, ‘AI Decision-Making and the Courts: A Guide for Judges, Tribunal Members and Court Administrators’ (Research Report, Australasian Institute of Judicial Administration, June 2022) 16.

27 See Thomson Reuters, *Tech and the Law 2023: Perceptions and Priorities* (Report, 24 August 2023) 19.

28 Ibid 18.

29 Thomson Reuters, *Tech, AI and the Law 2024: Australian Edition* (Report, October 2024) 3.

30 Thomson Reuters, *2025 Generative AI in Professional Services* (Report, 2025) 3 (‘2025 Generative AI in Professional Services’). See also Centre for Artificial Intelligence and Digital Ethics, *AI in the Law SnapShot 2024* (Report, 30 July 2025) <<https://www.unimelb.edu.au/caide/research/caide-law/technology-in-the-law-snapshot-reports>>.

31 Thomson Reuters, *2025 Generative AI in Professional Services* (n 30) 13.

32 Ibid 11.

33 This quote can be found on slide 5 of ‘What Can CoCounsel Do?’: Thomson Reuters, *The Legal AI You’ve Been Waiting For* (Web Page) <<https://web.archive.org/web/20240804111644/https://casetext.com/cocounsel/>>.

34 ‘Lexis+ AI’, *LexisNexis* (Web Page) <<https://archive.is/Qv7o1>>.

35 Noah Yim, ‘Australia’s Biggest Law Firm, MinterEllison, is Using a Version of ChatGPT for Its First Draft of Some Legal Advice’, *The Australian* (online, 4 December 2023) <<https://www.theaustralian.com.au/nation/australias-biggest-law-firm-minterellison-is-using-a-version-of-chatgpt-for-its-first-draft-of-some-legal-advice/news-story/517fe2e4ea2371b62ac69ce75aecd66a>>.

36 ‘Allens Launches Enterprise Version of ChatGPT, Airlie’, *Allens* (Blog Post, 18 August 2023) <<https://www.allens.com.au/insights-news/news/2023/08/allens-launches-enterprise-version-of-chatgpt-airlie/>>.

37 Yim (n 35).

Guidance on the use of GenAI in legal practice by law societies<sup>38</sup> and legal regulators<sup>39</sup> has been cautiously optimistic about the potential for its use, while emphasising the ongoing relevance of ethical and professional obligations. From the perspective of small claims disputes involving consumers, this level of activity in law firms likely does little to enhance access for everyday consumers. Subscriptions to bespoke legal GenAI tools, like Lexis+ AI, are expensive and largely the preserve of larger law firms and corporate counsel. In-house developments are likewise the preserve of the large firms. Where smaller firms are using GenAI, it is currently likely to be only the generic tools, like ChatGPT or Microsoft Copilot, that are accessible.

Some use of bespoke GenAI is also being made within community legal centres and equivalents. In Australia, for example, Justice Connect has ‘developed and trained a natural language processing AI model to diagnose legal problems within people’s everyday language’.<sup>40</sup> But such bespoke tools are relatively scarce, leaving lawyers in the third or public sector also heavily reliant on the generic tools (at best). The comparative lack of institutional expectation and support for GenAI use in this sector also means that determinants of digital uptake (such as age and ease of access to technical support, and – more surprisingly perhaps – gender)<sup>41</sup> are likely to result in an under-utilisation of these new technologies.

### C GenAI in the Court

The courts are clearly a significant influence on the scope and form of the use of GenAI in ODR. Guidance from courts on the use of GenAI tools by litigants and their legal representatives has in most instances accepted the potential for their use while emphasising the need for professional oversight, compliance with ethical responsibilities, and transparency.<sup>42</sup> There are some limits to the accepted use of

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- 38 Law Society of New South Wales, ‘A Solicitor’s Guide to Responsible Use of Artificial Intelligence’ (Guide, October 2024) <[https://www.lawsociety.com.au/sites/default/files/2024-12/LS4527\\_MKG\\_ResponsibleAIGuide\\_2024-10-25%5B43%5D.pdf](https://www.lawsociety.com.au/sites/default/files/2024-12/LS4527_MKG_ResponsibleAIGuide_2024-10-25%5B43%5D.pdf)>; New South Wales Bar Association (n 1); Queensland Law Society, ‘Artificial Intelligence in Legal Practice’ (Guidance Statement No 37, 24 October 2024) <<https://web.archive.org/web/20250712102755/https://www.qls.com.au/Guidance-Statements/No-37-Artificial-Intelligence-in-Legal-Practice>>.
- 39 ‘Generative AI and Lawyers’ (n 15).
- 40 ‘Our History of Innovation’, *Justice Connect* (Web Page) <<https://justiceconnect.org.au/about/innovation/history/>>.
- 41 See Colleen V Chien and Miriam Kim, ‘Generative AI and Legal Aid: Results from a Field Study and 100 Use Cases to Bridge the Access to Justice Gap’ (2025) 57(4) *Loyola of Los Angeles Law Review* 903.
- 42 Supreme Court of Victoria, ‘Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation’ (Guidelines, May 2024) 4 <<http://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>>; County Court of Victoria, ‘Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation’ (Guideline, 3 July 2024) 3; ‘Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals’, *Courts of New Zealand* (Web Page, 7 December 2023) <<https://www.courtsofnz.govt.nz/going-to-court/practice-directions/practice-guidelines/all-benches/guidelines-for-use-of-generative-artificial-intelligence-in-courts-and-tribunals/>>; Supreme Court of New South Wales, *Practice Note SC Gen 23: Use of Generative Artificial Intelligence (Gen AI)*, 28 January 2025, 1 [5], 5 [18] (‘*Supreme Court Practice Note*’). See also *May v Costaras* [2025] NSWCA 178 on that Court’s approach to AI misuse by a self-represented litigant.

GenAI.<sup>43</sup> Most notably, in New South Wales, the Supreme Court has advised that GenAI should not be used for affidavits, witness statements, and other evidentiary documents.<sup>44</sup> This view is consistent with the suggested uses of GenAI for information and guidance earlier in the dispute resolution process, as opposed to the conduct of litigation.

Courts' own use of GenAI will also impact on access to justice considerations, in guiding deployment for ODR and in potentially making court processes more efficient and accessible. Indeed, giving the 20<sup>th</sup> Annual Law Reform Lecture at Lincoln's Inn in 2023, Sir Geoffrey Vos, Master of the Rolls, argued that courts have a duty to engage with relevant AI technology in order 'to provide a better, quicker and more cost effective dispute resolution processes',<sup>45</sup> while also providing effective regulatory and governance responses to the risks of harm raised by such uses.<sup>46</sup>

In the popular imagination, discussions about AI in the courtroom might summon up images of a robot or AI judge.<sup>47</sup> At this time in Australia, or comparable common law jurisdictions, there is little support for and little real likelihood of the judicial function being fully automated.<sup>48</sup> Judges and scholars generally agree that judicial decision-making requires more than the statistical analysis of data; much of what judges do involves moral reasoning and judgment.<sup>49</sup> AI cannot replicate this kind of insight, experience and intuition.<sup>50</sup> The inherent expectations of the judicial function equally counsel against any large scale deferral of decision-making responsibility to an AI system.<sup>51</sup> Even the use of data analytics to inform

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43 Neilson (n 5).

44 *Supreme Court Practice Note* (n 42) 3 [10].

45 Vos (n 10) 2 [4]. See also Lady Chief Justice, the Baroness Carr of Walton-on-the-Hill, 'Mansion House speech' (Speech, Courts and Tribunals Judiciary, 3 July 2025) <<https://www.judiciary.uk/mansion-house-speech-by-the-lady-chief-justice-2/>>.

46 Vos (n 10) 2 [4]–[5].

47 On AI as judge, see Tania Sourdin, 'Judge v Robot? Artificial Intelligence and Judicial Decision-Making' (2018) 41(4) *University of New South Wales Law Journal* 1114 <<https://doi.org/10.53637/ZGUX2213>> ('Judge v Robot?').

48 However, see Moses et al (n 7) 32–4, discussing international efforts to automate decision-making. See also United Nations Educational, Scientific and Cultural Organization, *Global Toolkit on AI and the Rule of Law for the Judiciary* (Report, 2023) 79–80 <<https://unesdoc.unesco.org/ark:/48223/pf0000387331>>, discussing the Prometea system in Argentina which provides automated opinions and decisions.

49 Sourdin, 'Judge v Robot?' (n 47) 1123–4; Thomson Reuters, *State of the Courts Report 2024* (Report, 2024) 3 <<https://legal.thomsonreuters.com/en/insights/reports/2024-state-of-the-courts-report/>> ('*State of the Courts Report 2024*').

50 Ellie Dudley, 'Ex-Federal Court Chief Justice Rejects Robots in Court, Says Compassion Is Key', *The Australian* (online, 22 November 2023) <<https://www.theaustralian.com.au/business/legal-affairs/ex-federal-court-chief-justice-rejects-robots-in-court-says-compassion-is-key/news-story/e1fafc662fccdf2f8b64e303951a1295>>. See also Florence G'sell, 'AI Judges' in Larry A DiMatteo, Cristina Poncibò and Michel Cannarsa (eds), *The Cambridge Handbook of Artificial Intelligence: Global Perspectives on Law and Ethics* (Cambridge University Press, 2022) 357 <<https://doi.org/10.1017/9781009072168.032>>; Tania Sourdin, 'Technology and Judges in Australia' (2023) 97 *Australian Law Journal* 636, 647.

51 Justice Melissa Perry, 'The Future of Administrative Discretions' (Speech, Commonwealth Law Conference, 24 February 2023); Chief Justice Niall, 'AI and the Judicial System' (Speech, Ninian Stephen Oration, The University of Melbourne, 9 September 2025).

judicial decision-making remains highly controversial, particularly in bail<sup>52</sup> or sentencing decisions.<sup>53</sup>

Nonetheless, advances in AI and related technologies offer opportunities for courts in functions further removed from adjudication and in more controlled environments where greater human scrutiny is possible.<sup>54</sup> Data analytics has the potential to improve administrative functions, such as court management and case allocation.<sup>55</sup> There are a range of use cases for GenAI in the courts. Many of these are analogous to those we have already seen in law firms, including research, document review, retrieving and summarising documents or other legal materials, summarising cases, and drafting.<sup>56</sup> Some courts have been open to the possibilities of using GenAI in these ways.<sup>57</sup> Thus, for example, Sir Geoffrey Vos has described these kinds of functions as inevitable and useful.<sup>58</sup> Chief Justice Sundaresh Menon of the Singapore Supreme Court has likewise commented:

If used properly, AI can be a tremendously useful assistive tool that can improve the quality of decision-making and enable judges to surpass ordinary human limitations. Indeed, AI may prove to be indispensable in dealing with the increasing technical, evidential and legal complexity that we see in many categories of disputes today.<sup>59</sup>

While the acceptable use cases for GenAI in the court room are still to be agreed, it is clear that some courts are experimenting in this area. Lord Justice Birss has advised that he used ChatGPT to write part of a judgment, relying on the tool to summarise an area of the law.<sup>60</sup> In *Snell v United Specialty Insurance*

52 In particular, much attention has been given to the issues of bias in the US recidivism prediction tool, COMPAS: see *Wisconsin v Loomis*, 881 NW 2d 749 (Wis, 2016); Alyssa M Carlson, ‘The Need for Transparency in the Age of Predictive Sentencing Algorithms’ (2017) 103 *Iowa Law Review* 303.

53 Moses et al (n 7) 30–1. See also Monika Zalnieriute and Tatiana Cutts, ‘How AI and New Technologies Reinforce Systemic Racism: Submission to the Study on Patterns, Policies and Processes Leading Racial Discrimination and on Advancing Racial Justice and Equality for the 54<sup>th</sup> Session of the United Nations Human Rights Council’ (Submission, 3 October 2022) 4.

54 Roberts (n 10) 6; *State of the Courts Report 2024* (n 49) 3–4; Moses et al (n 7) 34.

55 United Nations Educational, Scientific and Cultural Organization (n 48) 73, discussing the Hebei High Court in China, which has developed a smart court management system. See also Emily S Taylor Poppe, ‘Courts as Data Guardians for the Public Good’ (2023) 73(1) *University of Toronto Law Journal* 34 <<https://doi.org/10.3138/utlj-2023-0005>>; Natalie Byrom, ‘Computational Law and Access to Justice’ (2024) 2(2) *Journal of Cross-disciplinary Research in Computational Law* 1.

56 Moriarty (n 3) 32.

57 Sourdin, ‘Technology and Judges in Australia’ (n 50) 646.

58 James Titcomb, ‘Judges Given Green Light to Use ChatGPT in Legal Rulings’, *Telegraph* (online, 12 December 2023) <<https://www.telegraph.co.uk/business/2023/12/12/judges-given-green-light-use-chatgpt-legal-rulings/>>.

59 Chief Justice Sundaresh Menon, ‘Judicial Responsibility in the Age of Artificial Intelligence’ (Speech, Inaugural Singapore-India Conference on Technology, 13 April 2024) [11] <<https://www.judiciary.gov.sg/news-and-resources/news/news-details/chief-justice-sundaresh-menon--keynote-speech-at-the-inaugural-singapore-india-conference-on-technology>>.

60 Hibaq Farah, ‘Court of Appeal Judge Praises “Jolly Useful” ChatGPT after Asking it for a Legal Summary’, *The Guardian* (online, 15 September 2023) <<https://www.theguardian.com/technology/2023/sep/15/court-of-appeal-judge-praises-jolly-useful-chatgpt-after-asking-it-for-legal-summary>>. See also Ellie Dudley, ‘Artificial Justice: Will AI Supersede Discretion of Judges?’ *The Australian* (online, 26 December 2023) <<https://www.theaustralian.com.au/business/legal-affairs/artificial-justice-will-ai-supersede-discretion-of-judges/news-story/48d6eabe1c7add8866cb18d8f3e36f29>>, reporting that a

Co, Newsom J used ChatGPT to determine the plain and ordinary meaning of a contentious term in an insurance policy.<sup>61</sup>

### D Proposals for GenAI in Small Claims Disputes

Another possible use of GenAI in the civil justice system is in the context of small claims disputes, where the cost of legal representation can deter the parties from bringing otherwise justified relatively low value claims. Speaking in 2023, Sir Geoffrey Vos referred to the possibility of early advice to litigants<sup>62</sup> ‘undoubtedly’ being ‘provided by AI’.<sup>63</sup> Vos further suggested that AI might be used to diagnose the issues in dispute and even resolve some disputes.<sup>64</sup> In Singapore, in 2024, Justice Aidan Xu @ Aedit Abdullah<sup>65</sup> announced that the Singaporean courts are seeking to develop a GenAI program to assist individuals in the Small Claims Tribunal. The aim is to utilise GenAI to streamline legal processes, including providing advice on rights, indicating viable claims, and guiding the user through filing their claim.<sup>66</sup> Again the task is proceeding in conjunction with US start-up Harvey AI.<sup>67</sup>

The interest in using GenAI for ODR is unsurprising as it appears to be a way of providing non-legal experts with accessible and timely information about legal claims in small value disputes, such as those over consumer products. However, the use of GenAI in small claims involves a rather different risk profile from its utilisation by lawyers and judges. GenAI in law firms and in courts supports – rather than replaces – legal decision-making and, moreover, requires oversight and review from human experts. The uses of AI in ODR for small value consumer disputes must necessarily be quite different because the information will be used by non-legally qualified parties who do not have legal representation and may have already made their own inquiries through free, generalist tools such as ChatGPT.

The suggestions cited above about the role for GenAI in small claims have not provided a great deal of information about how that technology would be used.<sup>68</sup> Most emphasis seems to be placed on the earlier stages of the dispute to assist the consumer in seeking to resolve their dispute prior to entering the formal civil justice process. Thus, suggested uses include assisting the consumer ‘to diagnose

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Colombian judge recently used ChatGPT to determine whether an autistic child’s insurance should cover the full costs of their medical treatment, using the tool to support his own preliminary conclusion.

61 102 F 4<sup>th</sup> 1208, 1222–5 (11<sup>th</sup> Cir, 2024).

62 Referring to the early legal advice pilot scheme being conducted in Middlesbrough and Manchester at that time: see United Kingdom, Parliamentary Debate, House of Lords, 10 March 2022, vol 819, col 547GC <<https://hansard.parliament.uk/lords/2022-03-10/debates/7EBA57BD-8BE6-4F73-B7A6-E8B503DA852A/EarlyLegalAdvicePilotSchemeOrder2022>>.

63 Vos (n 10) [19]. See also Chief Justice Andrew Bell, ‘Change at the Bar and the Great Challenge of Gen AI’ (Speech, Australian Bar Association, 29 August 2025) [45], referring to the potential for access to justice through the combination of Austlii and AI.

64 Vos (n 10) [24].

65 Previously Justice Aedit Abdullah: see ‘Justice Aidan Xu @ Aedit Abdullah’, *Organisational Structure of the Supreme Court* (Web Page) <<https://www.judiciary.gov.sg/who-we-are/justice-aedit-abdullah>>.

66 Lee Li Ying, ‘Small Claims Tribunals to Roll Out AI Program to Guide Users Through Legal Processes’, *The Straits Times* (online, 15 November 2023) <<https://str.sg/iq98>>.

67 Ibid.

68 Ibid.

the problem in simple cases’,<sup>69</sup> explaining what they ‘could possibly get from [the] claim and what the legal costs are’,<sup>70</sup> helping consumers ‘be fully informed of every stage of the process that is being undertaken’,<sup>71</sup> providing details of ‘how to proceed with [the] claim and ... the relevant websites and forms’,<sup>72</sup> advising consumers on evidentiary material and possible settlement amounts,<sup>73</sup> and supporting them to ‘understand and interrogate complex sets of rules and instructions’.<sup>74</sup> GenAI might also support the court process by providing translation services, for example, to translate English correspondence into Malay, Chinese and Tamil,<sup>75</sup> and to assist tribunal officers in summarising and sorting evidence, particularly from self-represented parties.<sup>76</sup>

The feasibility of using GenAI to provide these kinds of effective assistance within the ODR process depends on its place in the overall design of the ODR system and the degree to which the accuracy flaws in GenAI can be overcome. It is to these issues that we now turn.

### III DESIGNING EFFECTIVE ODR FOR CONSUMER DISPUTES

The interest in using GenAI to assist parties with small claims disputes follows on from a wider movement to develop effective ODR for consumer disputes. The lessons from these earlier initiatives are relevant and indeed essential in thinking about the place of GenAI in ODR.

#### A ODR in Small Value Disputes

There have been four key drivers behind the uptake of ODR in public judicial institutions (as opposed to private ODR used by businesses). The first is the recognition that there are significant barriers to justice for many court users, who face informational, economic and geographical constraints in accessing physical court processes. Secondly, drivers from within the courts and government for improved efficiency and economy in the delivery of services, together with (thirdly) a renewed focus on the experience of court and tribunal users, have focused on ODR as a way of streamlining processes and reducing costs. Lastly, the growing sophistication and accessibility of technological solutions has increased the feasibility of using

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69 Ibid.

70 Lam (n 10).

71 Vos (n 10) [23].

72 Lam (n 10).

73 Ibid.

74 Vos (n 10) [23].

75 Clare Lin, ‘Four Ways AI is Shaking Up Singapore’s Legal Practice’ *GovInsider* (online, 5 June 2025) <<https://govinsider.asia/intl-en/article/four-ways-ai-is-shaking-up-singapores-legal-practice>>.

76 Justice Aedit Abdullah, ‘Technology as a Bridge to Justice’ (Speech, Conversations with the Community, 30 May 2024) <<https://www.judiciary.gov.sg/news-and-resources/news/news-details/justice-aedit-abdullah--speech-delivered-at-conversations-with-the-community-on-30-may-2024>>.

ODR to provide more flexible and timely dispute resolution.<sup>77</sup> Properly designed ODR can and should be able to surpass traditional offline processes in helping people deal with everyday legal problems in a fair, timely, and accessible manner. As such, opportunities for ODR have ranged across online information platforms that provide access to information and advice, electronic filing for documentation, online guided pathways and, ultimately, ODR processes.<sup>78</sup>

Recognition of the potential for technology to improve dispute resolution processes and increase access to justice is at the heart of the wider discourse on ODR and, more broadly, ‘cyberjustice’.<sup>79</sup> Cyberjustice has been said to encompass ‘both the integration of information and communication technologies into judicial and extrajudicial dispute resolution processes and the digital networking of all stakeholders involved in judicial cases’.<sup>80</sup> In this way, the primary goal of cyberjustice is to utilise modern technologies ‘to aid in the administration of justice such as to allow for the conceptualisation of a more efficient method of achieving justice for litigants’, thereby reducing the myriad of access to justice issues.<sup>81</sup>

Cyberjustice discourse is also consistent with attempts to reconceptualise the objectives of the civil justice system using multidimensional lenses amidst recognition of the practical obstacles that people face in accessing the civil courts.<sup>82</sup> The costs and time taken to obtain justice have increasingly been perceived as ‘critical components of the definition of justice’ in addition to the pursuit of accurate judgments, ‘thus transforming the very concept of [civil] justice’.<sup>83</sup> Anticipated legal fees and extended hearing and resolution timeframes can often leave litigants, particularly individual litigants, unable to pursue an action, let alone pursue it with professional assistance.<sup>84</sup> At the same time, however, the complexities of legal processes also concurrently make it harder for litigants to take legal action themselves or to effectively defend an action taken against them.

Moreover, the increasing uptake of ODR systems has often been associated with a shift in thinking within the access to justice movement from a rights-centred approach (focused on, for example, an individual’s right to legal representation) to

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77 On ODR, see generally Michael Legg, ‘The Future of Dispute Resolution: Online ADR and Online Courts’ (2016) 27(4) *Australasian Dispute Resolution Journal* 227; Richard Susskind, *Online Courts and the Future of Justice* (Oxford University Press, 2019) 61–3 <<https://doi.org/10.1093/oso/9780198838364.001.0001>>.

78 Tan (n 7) 103–6.

79 Karim Benyekhlef et al (eds), *eAccess to Justice* (University of Ottawa Press, 2016) <<https://doi.org/10.1515/9780776624303>>.

80 Ibid 1.

81 Ibid.

82 Mauro Cappelletti, ‘Alternative Dispute Resolution Processes within the Framework of the World-Wide Access-to-Justice Movement’ (1993) 56(3) *Modern Law Review* 282, 283 <<https://doi.org/10.1111/j.1468-2230.1993.tb02673.x>>. See also Harry Woolf, *Access to Justice* (Final Report, July 1996) 284 [1]–[3], 287–8 [11]. Note also that chapter 21 was dedicated exclusively to the role of information technology.

83 Dorcas Quek Anderson, ‘Counting the Cost of Enlarging the Role of ADR in Civil Justice’ (2021) 14(4) *Erasmus Law Review* 256, 257 <<https://doi.org/10.5553/ELR.000208>>.

84 Amy J Schmitz and John Zeleznikow, ‘Intelligent Legal Tech to Empower Self-Represented Litigants’ (2022) 23(1) *Columbia Science and Technology Law Review* 142, 144 <<https://doi.org/10.52214/str.v23i1.9391>>.

one that focuses on the state's obligation to provide an affordable and accessible yet effective justice system. Such obligations can be discharged 'by helping people gain access to fair representation in the courts, lowering legal costs, and reducing delays and the complexity of the justice systems'.<sup>85</sup> This combined emphasis on the fair, early, informal and efficient resolution of disputes reminds us of the need to balance accessibility with respect for traditional rule of law values at the centre of *public* dispute resolution. ODR processes, if driven too strongly by the (process) goals and values of informality and digitisation, could fall short of the public standards of fairness, certainty, and validity that we expect from public adjudication.<sup>86</sup>

Small value disputes have become an important focus of digitalisation debates and processes.<sup>87</sup> They tend to be low value and low-intensity proceedings, but high in volume, and thus an obvious target for digital solutions. While much of this work has until recently focused on process automation and online hearings, ODR for small value disputes has also made use of expert systems and rules-based chatbots to provide information and guidance to potential litigants,<sup>88</sup> or to third parties, such as mediators and facilitators, and to support online guided pathways.<sup>89</sup> In Australia, Amica thus uses a combination of an expert system and insights from a machine learning model to assist in the division of assets in amicable family separations.<sup>90</sup> In Singapore, an automated tool guides individuals involved in motor vehicle accidents through the probable allocation of responsibility and damages awards.<sup>91</sup> Some end-to-end public ODR systems have been established, and the Civil Resolution Tribunal in British Columbia, Canada, remains the best-known example of such a system, though it does not address general consumer disputes.<sup>92</sup>

Small value consumer disputes are, however, a significant part of the small claims landscape, and one that has not, even in relative terms, been well-served by public dispute resolution processes. They share many features with other cases in this landscape, but also have some distinctive qualities and challenges, as we shall now describe.

## B ODR in Consumer Disputes

Disputes involving consumers and suppliers/manufacturers provide a useful illustration of the attractions of ODR. Small claims involving consumers have some unique features that both distinguish them from commercial litigation,

85 Hadas Cohen and Michal Albertstein, 'Multilevel Access to Justice in a World of Vanishing Trials: A Conflict Resolution Perspective' (2019) 47(1) *Fordham Urban Law Journal* 1, 5.

86 See, eg, Tan (n 7) 133–7.

87 See the discussion of the UK's Online Court in Sourdin, 'Judge v Robot?' (n 47) 1120–1.

88 Moses et al (n 7) 22. See generally Tan (n 7).

89 See, eg, John Zeleznikow, 'Using Artificial Intelligence to Provide Intelligent Dispute Resolution Support' (2021) 30 *Group Decision and Negotiation* 789 <<https://doi.org/10.1007/s10726-021-09734-1>>.

90 *Amica* (n 9).

91 Clement Yong, 'How Much Can I Claim? Traffic Accident Claims Simulator Launched to Help Motorists Settle Out of Court', *The Straits Times* (online, 21 March 2022) <<https://www.straitstimes.com/singapore/how-much-can-i-claim-traffic-accident-claims-simulator-launched-to-help-motorists-settle-out-of-court>>.

92 Shannon Salter and Darin Thompson, 'Public-Centred Civil Justice Redesign: A Case Study of the British Columbia Civil Resolution Tribunal' [2016–17] (3) *McGill Journal of Dispute Resolution* 113; Tan (n 7) 116–18.

and create distinctive problems for both access to justice, and the design of technological solutions. Most potential consumer claims never reach the public courts. They are more likely to be addressed by direct communication between the seller and consumer,<sup>93</sup> or other methods that include relying on friends, information derived from websites, mediation, assistance from a state consumer protection agency, or an industry-specific ombudsman service.<sup>94</sup> A significant portion of claims goes unresolved.<sup>95</sup>

Barriers to dispute resolution arise due to both structural and situational factors. Situational factors include consumers' lack of legal knowledge and lack of awareness of resolution mechanisms.<sup>96</sup> Structural factors include slow dispute resolution processes, complex legislation, and high direct and indirect costs.<sup>97</sup> In the context of small claims disputes, the costs of pursuing the claims may be a significant deterrent to the claimant.<sup>98</sup> The claim may not justify the expense of traditional litigation, or even seeing a lawyer, unless as part of a class action.<sup>99</sup> This challenge is complex as there is often a tension between the different objectives of consumer protection, including between providing timely and cost-efficient redress on the one hand and, on the other, protecting substantive consumer rights, addressing asymmetries of bargaining power and information, and identifying systemic breaches of the cognate law or other problematic business practices.<sup>100</sup>

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93 'Seventy two percent of consumers who have experienced a problem say they took direct action to resolve it'. Of those consumers, 'three quarters (74%) contacted the business that sold them the product or service directly': Kantar Public Australia, *Australian Consumer Survey 2023* (Final Report, December 2023) 65–6 <<https://consumer.gov.au/sites/consumer/files/2025-02/report-australian-consumer-survey-2023.pdf>>.

94 Ibid 74.

95 'Sixty-nine percent of surveyed consumers have had their most recent problem or issue, resolved. Roughly two thirds of those who have had their problem resolved are satisfied with the resolution, leaving a third who are not. Thirty-one percent have not had their problem resolved yet. The majority of these consumers believe it is unlikely that the problem will be resolved at this point': ibid 71.

96 The recent Victorian Public Understanding of Law Survey thus identified consumer law as the lowest ranked by respondents, in terms of substantive knowledge, out of five areas of law (the other four being matters relating to neighbours, rented accommodation, employment, and family), with only 51.5% demonstrating accurate understanding of consumer law: Nigel J Balmer et al, *The Public Understanding of Law Survey Volume 2: Understanding and Capability* (Report, Victoria Law Foundation, 2024) 41–2. See also Kantar Public Australia (n 93) 20: 'Among the 92% of consumers aware of consumer rights laws, 28% have a very good or extremely good understanding, 43% have a moderate and 23% have some understanding'.

97 Treasury (Cth), *Improving the Effectiveness of the Consumer Guarantee and Supplier Indemnification Provisions under the Australian Consumer Law* (Report, December 2021) 19, reporting that for formal legal processes in a court or tribunal, 'application fees, private expert legal opinions (beyond the guidance and advice provided by ACL regulators) and expert technical reports about the condition of a good or the cause of a fault, may be required to make a compelling case'.

98 Michael J Trebilcock, 'Rethinking Consumer Protection Policy' in Charles EF Rickett and Thomas GW Telfer (eds), *International Perspectives of Consumers' Access to Justice* (Cambridge University Press, 2009) 68, 97–8 <<https://doi.org/10.1017/CBO9780511494833.006>>.

99 See Deborah R Hensler, 'Using Class Actions to Enforce Consumer Protection Law' in Geraint Howells, Iain Ramsey and Thomas Wilhelmsson (eds), *Handbook of Research on International Consumer Law* (Edward Elgar, 2<sup>nd</sup> ed, 2018) 445 <<https://doi.org/10.4337/9781785368219.00022>>.

100 Shi Chang-qing, 'From Judgment to Settlement: The Impact of ADR on Judicial Functions from a Comparative Perspective' in Tania Sourdin and Archie Zariski (eds), *The Multi-Tasking Judge: Comparative Judicial Dispute Resolution* (Thomson Reuters, 2013) 139, 152.

Different jurisdictions have responded to these challenges by introducing small claims courts<sup>101</sup> and ombudsman schemes,<sup>102</sup> and by funding consumer advocacy legal centres.<sup>103</sup> Some attention has also been given to ODR processes to help further reduce the costs and complexity of consumer disputes and thereby improve access to justice.<sup>104</sup>

Moreover, unauthorised practice of law rules have also restricted the ability of courts and other organisations, whether commercial or in the third sector, from providing tailored legal advice to consumers other than through the services or under the supervision of a qualified lawyer.<sup>105</sup> This means that, where they do decide on litigation, consumer-litigants are often left unrepresented, and largely unsupported by the court system itself. While courts and tribunals have commonly sought to reduce the barriers to consumers by introducing greater procedural informality, this is often not just insufficient, but problematic, since it can expose litigants to a ‘hidden legalism’ trap, whereby procedural informality disguises just how much formal legal knowledge may be required to mount a successful action.<sup>106</sup>

ODR may appear an attractive response to these challenges. In short, it is argued that a carefully designed public consumer ODR system can promote multiple goals that are consistent with the objectives of consumer protection policy and civil justice values. The aim is not only to reduce the private costs of dispute resolution but also to ensure that consumers are more aware of their rights and more equipped to deal with disputes. Another aim is to ensure traders are deterred from wrongdoing, knowing that consumers are able to access justice through a cost-effective avenue. A comprehensive public consumer ODR system would ideally allow parties to resolve their disputes from beginning to end, that is, from the making of the claim to the resolution of the dispute, in an online forum (see Figure 1). It has been suggested that if ODR could be made a central or one-stop system that could resolve various consumer disputes, consumers and businesses would be provided with the opportunity to effectively engage with only one system. The Association of Southeast Asian Nations (‘ASEAN’) Guidelines on ODR note that a single point of entry to a dispute resolution system may

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101 See, eg, ‘Before You Apply: Goods and Services Disputes’, *Victorian Civil and Administrative Tribunal* (‘VCAT’) (Web Page) <<https://www.vcat.vic.gov.au/case-types/goods-and-services/apply-goods-and-services>>.

102 See, eg, ‘What to Expect’, *Telecommunications Industry Ombudsman* (Web Page) <<https://www.tio.com.au/guide-complaints-process>>.

103 *Consumer Action Law Centre* (Web Page) <<https://consumeraction.org.au/>>.

104 See, eg, Colin Rule, ‘Online Dispute Resolution and the Future of Justice’ (2020) 16 *Annual Review of Law and Social Science* 277 <<https://doi.org/10.1146/annurev-lawsocsci-101518-043049>>; ‘Make a Court Claim for Money’, *UK Government* (Web Page) <<https://www.gov.uk/make-court-claim-for-money>>. See also Victorian Civil and Administrative Tribunal ‘VCAT Online Dispute Resolution Pilot’ (YouTube, 14 September 2018) <<https://www.youtube.com/watch?v=1cuKRgj-0ng>>.

105 See generally GE Dal Pont, ‘Unauthorised Practice of Law’ (2018) 45 *Australian Bar Review* 224. See also Mia Bonardi and L Karl Branting, ‘Certifying Legal AI Assistants for Unrepresented Litigants: A Global Survey of Access to Civil Justice, Unauthorized Practice of Law, and AI’ (2024) 26(1) *Columbia Science and Technology Law Review* 34 <<https://doi.org/10.2139/ssrn.4901658>>.

106 Hazel Genn, ‘Tribunals and Informal Justice’ (1993) 56(3) *Modern Law Review* 393, 402–3 <<https://doi.org/10.1111/j.1468-2230.1993.tb02680.x>>, citing Richard Lempert, ‘The Dynamics of Informal Procedure: The Case of a Public Housing Eviction Board’ (1989) 23(3) *Law and Society Review* 347, 393.

benefit consumers by reducing the hurdle to complaints that arises from otherwise impenetrably complex options for dispute resolution, and may benefit businesses by providing a straightforward, timely and therefore efficient method of resolving consumer disputes.<sup>107</sup>

Conversely, the public integration of such a system, if not properly designed, might discourage consumers from bringing small claims due to negative perceptions about formal processes in courts and tribunals. Consumers may assume that the process will be expensive or time consuming, or they may lack the capacity to understand and meaningfully participate in such processes. Consumers with small claims may have, as Michael Trebilcock has put it, ‘a strong aversion to entanglement either with lawyers or courts, or anything that looks like lawyers or courts, not only because of the cost and delays but because of the stress and general unpleasantness associated with a structured adversarial process’.<sup>108</sup> Christopher Hodges, too, has made similar observations:

[F]orcing every claim through a procedure that is unnecessarily cumbersome, and designed to deal with unnecessary formality to finding facts and applying clear law, simply slows things down unnecessarily and adds unnecessary cost, and makes the procedure less attractive for consumers to use.<sup>109</sup>

The dangers of procedural complexity seem to have been heard and understood by those designing court-based ODR systems. The UK reforms have proceeded,<sup>110</sup> but (further) procedural simplification and informality were not the core solution, not least because, without accompanying support for participants’ legal and digital capability, the move online would simply maintain, if not deepen, Hazel Genn’s hidden legalism trap.<sup>111</sup> The consequences of normalising informality and self-representation need to be addressed as a design issue if expectations of fair, accurate, and hence minimally valid adjudication are to be maintained.<sup>112</sup> As detailed below, the early stages of users’ interactions with the system are highly significant; providing accurate and, to some degree, personalised information may be valuable not only to those users, but also to the legitimacy of the system.

### C The Value of Information at the Pre-adjudicative Stages of ODR

A particularly important stage in consumer disputes, and our focus in this article, occurs before the more well-recognised options of negotiation, mediation and adjudication. Since ‘[t]he court journey starts well before one even steps foot

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107 Association of Southeast Asian Nations Secretariat, ‘ASEAN Guidelines on Online Dispute Resolution (ODR)’ (Guideline, February 2022) 6 <<https://asean.org/book/asean-guidelines-on-online-dispute-resolution-odr/>>.

108 Trebilcock (n 98) 85.

109 Christopher Hodges, ‘The Promise of Consumer ADR’ in Joachim Zekoll, Moritz Bälz and Iwo Amelung (eds), *Formalisation and Flexibilisation in Dispute Resolution* (Brill Nijhoff, 2014) 336, 351.

110 See, eg, *Judicial Review and Courts Act 2022* (UK) s 19(3)(b), which makes provision for specialist online civil procedure rules, and sets as an objective that the rules be ‘both simple and simply expressed’.

111 Genn (n 106) 402.

112 For discussion, see, eg, Julian Webb, ‘Book Review: Delivering Dispute Resolution’ (2020) 39(4) *Civil Justice Quarterly* 376, 379.

in a court, and, in the majority of cases, it ends before that point too',<sup>113</sup> a functional consumer ODR system should be designed to include early-stage information for the parties about their dispute and the dispute resolution process. More specifically, it should include early front-end, participatory ODR processes including self-help and online exploration and assessment to encourage dispute prevention or de-escalation and private resolution. There is potential for utilising GenAI to provide timely information to consumers about their legal rights and remedies at this early stage. This in itself may lead to earlier and fairer dispute resolution.



Figure 1: Public consumer ODR process architecture

The guiding proposition for these initiatives is that information provided at these early stages of a dispute (ie, Stages 1 to 3 in Figure 1) may promote legal awareness of consumers' rights and help resolve disputes at that point, or at least prevent them from escalating. Such information has generally taken the form of printed factsheets or general self-help information from websites to manage their disputes. The problem with relying on these kinds of sources is that such information may not be accessible in the sense of being specific to the dispute or tailored to the information needs of the actual consumer seeking assistance. Even relatively simple technologies may overcome these hurdles with more personalised and targeted responses. For example, a rule-based or AI chatbot might be used to answer questions on whether the dispute is a legal dispute, which areas of law apply to the dispute, and the appropriate forum for resolving the dispute.<sup>114</sup> Consumer facing chatbots might also provide information relevant to resolving the dispute privately, including providing resources relevant to that process, such as, for example, a pre-filled or templated letter of complaint to engage the other

113 Chief Justice James Allsop, 'Technology and the Future of the Courts' (2019) 38(1) *University of Queensland Law Journal* 1, 5–6.

114 Chatbots are computer programs that can interact with humans online using text or voice-based natural dialogue. There are different types of chatbots depending on their complexity and functions. They may utilise a more conventional rules-based model without using any AI or they can be more complex and sophisticated and utilise different AI techniques such as natural language algorithms to understand and interpret the user's inputs and to respond accurately and appropriately to such inputs over time: United Nations, *Technology and the Future of Online Dispute Resolution (ODR): Platforms for Consumer Protection Agencies* (Report, 2023) 17.

disputant. This kind of approach might be particularly effective in delivering information which a consumer wants and needs in an interactive, dynamic, and non-overwhelming manner.

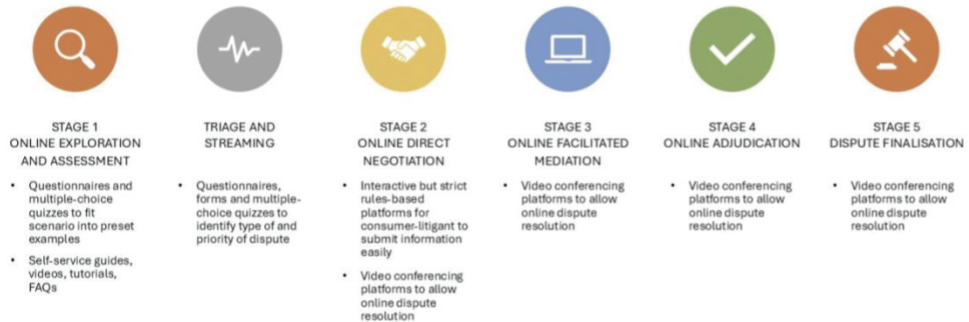


Figure 2: Public consumer ODR information options

A working example of this kind of approach, albeit not limited to consumer disputes, is provided by Justice Connect. Justice Connect has designed and implemented a suite of digital self-help tools with the aim of ensuring that ‘people with a legal need can be empowered with information about their rights and options, without having to go through the traditional route of finding a lawyer’.<sup>115</sup> These tools include an online tool for helping renters in Victoria understand their legal rights and obligations,<sup>116</sup> as well as databases of self-help resources for individuals<sup>117</sup> and community organisations.<sup>118</sup>

The design goal of such interventions is to promote early dispute resolution between the parties themselves in a manner that promotes substantive consumer rights and fairness. Particular regard should be had to the legal needs, capability and problem-solving behaviours of the specific classes of users.<sup>119</sup> It is entirely possible that where carefully designed, most disputes should be able to be finalised or resolved at the front-end without the need for further escalation. However, it will be inevitable that more complex disputes will need to be resolved at later stages. When provided with more information about their legal rights, consumers may be able to exercise more caution when dealing with businesses, and they may be more inclined to seek early advice. At the same time, businesses may be able to directly resolve their disputes with consumers more quickly and fairly when consumers are

115 ‘Scaling Our Reach and Impact with Online Self-Help’, *Justice Connect* (Web Page) <<https://justiceconnect.org.au/about/innovation/self-help/>>.

116 ‘Dear Landlord’, *Justice Connect* (Web Page) <<https://justiceconnect.org.au/about/innovation/self-help/dear-landlord/>>.

117 ‘Self-Help Resources for Individuals’, *Justice Connect* (Web Page) <<https://justiceconnect.org.au/about/innovation/self-help/for-individuals/>>.

118 ‘Self-Help Resources and Tools for Community Organisations’, *Justice Connect* (Web Page) <<https://justiceconnect.org.au/about/innovation/self-help/for-organisations/>>.

119 In Ayelet Sela’s conceptual framework, process designs are categorised into transposition, restructuring and novelty: Ayelet Sela, ‘The Effect of Online Technologies on Dispute Resolution System Design: Antecedents, Current Trends and Future Directions’ (2017) 21(3) *Lewis and Clark Law Review* 633, 650.

better informed of their rights. This could in turn result in the prevention of future disputes and less demand for dispute resolution in the first place. The consumer ODR system should therefore strive to promote such upstream intervention in disputes.

Critics and supporters of digitalisation both acknowledge that self-help resources cannot be a standalone strategy or an effective replacement for more comprehensive and multimodal forms of assistance.<sup>120</sup> Richard Susskind has argued that online legal guidance (for example, websites, chatbots, live chats, document automation, flowcharts and decision trees, guided pathways, triage systems) ‘can take us only so far, no matter how friendly and well-designed’ they are, due to the gap between someone having a knowledge of their rights on the one hand, and on the other, being able to enforce those rights in a way that delivers results.<sup>121</sup> Simply making these processes and resources available will not in itself increase consumers’ access to and use of them, nor overcome the hurdles to enforcing their rights, particularly among consumers who experience higher levels of disadvantage. Other factors such as access to resources to pursue the claim, the scope of the legal regime, oversight by regulators, and the attitude of the supplier and manufacturer all come into play. Insights from the financial services sector have revealed a move away from a regulatory focus on disclosure and the provision of information, in light of the limitations of this approach.<sup>122</sup> For example, disclosure of information may not be effective if consumers have low functional literacy levels and hence cannot meaningfully understand the information.<sup>123</sup> Similarly, *generalised advice* may be inadequate for consumers who need individualised advice about their dispute.<sup>124</sup>

Nonetheless, for many jurisdictions that are plagued with access to civil justice problems, this risks being a counsel of perfection. These kinds of front-end ODR processes can at least start to fill an important gap in the existing consumer dispute resolution framework, empowering a range of consumers to obtain adequate redress directly with businesses (both through their own ODR processes, where available, or through offline avenues) rather than pursuing any formal resolution through courts or tribunals. However, consideration still needs to be given to the kinds of information and interactions that these front-end processes can provide to users. The existing systems disseminate only generalised information, because delivering context-sensitive and personalised information automatically has been difficult, and is subject to limits on providing legal advice. It is here that the attraction of GenAI becomes more apparent.

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120 Hugh M McDonald, Suzie Forell and Zhigang Wei, ‘Uptake of Legal Self-Help Resources: What Works, for Whom and for What?’ (Justice Issues Paper No 30, Law and Justice Foundation of New South Wales, December 2019) 4.

121 Susskind (n 77) 107.

122 Jeannie Marie Paterson, ‘From Disclosure to Design: The Australian Regulatory Response to Mis-Selling to Consumer Investors by Financial Services Providers’ in Sandra Booyesen (ed), *Financial Advice and Investor Protection* (Edward Elgar, 2021) 165 <<https://doi.org/10.4337/9781800884625.00021>>.

123 Ibid 173.

124 Ibid 183.

## D The Possibility of Using GenAI in the Early (Pre-adjudicative) Stages of ODR

As shown in Figure 2, the possibility of providing information-based assistance to consumers has been identified as a critical part of ODR. Much of that assistance might be provided by traditional rule-based chatbots or expert systems, combined with perhaps a predictive machine learning model to provide an estimate of the case outcome or settlement amount.<sup>125</sup> These approaches are predictable in the way that they produce outputs but require information to be inputted in fixed ways. GenAI chatbots are more attuned to variations in language prompts and possibly more responsive to fine differences in context and language. Thus, GenAI presents the possibility of providing answers to user questions, even where these questions are poorly or unconventionally expressed, and rephrasing responses where the user does not understand or is unsatisfied with the initial answer. If we go back to the uses that are being made of GenAI by law firms, then that may give better insight into the possible uses of GenAI in consumer ODR. As discussed earlier in this article, firms are already experimenting with using GenAI for reviewing, summarising and drafting documents. This indicates that GenAI might be combined with existing processes at the early stages of a dispute to assist in identifying the kind of claim or dispute being raised, summarising the key features of the legal process for that claim, completing relevant forms, reviewing the evidence relevant to the claim, and translating materials.<sup>126</sup>

In principle, GenAI could be utilised as a front-end user-facing application in a public consumer ODR system to undertake a number of bespoke functions. First, GenAI might be used in triage and pre-classification of claims based on relevant laws or court rules, helping users to identify the appropriate dispute resolution process or avenue for their claims. Secondly, GenAI might provide claim intake functionality by gathering information from users, summarising it and presenting it in a form suitable to be uploaded to commence the dispute resolution process. Thirdly, GenAI might provide ongoing information about the progress of the claim in a digestible form for the litigant. Fourthly, GenAI might act as a virtual assistant by providing reminders about relevant deadlines, as well as continuing to assist in answering queries and providing relevant documents. The possibilities for its use are indicated in Figure 3.

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125 See, eg, *Amica* (n 9); Schmitz and Zeleznikow (n 84) 175–7.

126 See ‘Forms and Filing Processes: Understandable, Accessible and Digital’, *Stanford Law School Filing Fairness Project* (Web Page) <<https://filingfairnessproject.law.stanford.edu/forms-filing-processes/>>. See also Colleen V Chien et al, ‘How Generative AI Can Help Address the Access to Justice Gap through the Courts’ (2024) *Loyola of Los Angeles Law Review* (forthcoming), which explores using GenAI for ‘translation into diverse languages, curation of legal provider information, guidance through self-help forms and procedures for eviction and expungements, and technical infrastructure planning for the courts’.



Figure 3: Possible uses of GenAI in a public consumer ODR process

This more flexible and comprehensive use of (generative) AI in dispute resolution has been a gold standard for those interested in cyberjustice for some time. Writing in 2018, Judith Bennett et al forecast the possibility of AI tools that would identify ‘concepts and patterns in the data, form and test hypotheses, and develop recommendations’ as a result of their analysis of legislation, relevant courts and tribunals’ rules and other relevant data and provide such information in response to the user’s prompts.<sup>127</sup> They predicted that AI tools might be able to diagnose the legal issues as well as provide recommendations as to the potential resolution of those issues based on their training data, thus performing a diagnostic assessment function as well as delivering advisory information.<sup>128</sup> Similarly, Kevin Ashley asked whether it would be feasible that some model of computational reasoning and arguments could be ‘linked with text analysis tools to enable the construction of a new generation of legal applications and some novel legal practice tools’ which would have the potential to use information extracted automatically from legal texts to help users answer legal questions, predict case outcomes, and make legal arguments more effectively.<sup>129</sup>

Amy Schmitz and John Zeleznikow have made similar observations, arguing that the gaps in the ODR landscape can be filled with the development of AI and data analytics especially to support unrepresented litigants.<sup>130</sup> They found that many of the existing private ODR providers only utilise technology for case management and online facilitated communication.<sup>131</sup> They proposed a more holistic, six-module system for ODR programs comprising of case management,

127 Bennett et al (n 2) 13.

128 Ibid.

129 Kevin D Ashley, *Artificial Intelligence and Legal Analytics: New Tools for Law Practice in the Digital Age* (Cambridge University Press, 2017) 5 <<https://doi.org/10.1017/9781316761380>>.

130 Schmitz and Zeleznikow (n 84) 142.

131 Ibid 174.

triaging, advisory tools, communication tools, decision-support tools and drafting software or agreement technologies.<sup>132</sup>

Equally, the application of technology to these processes needs to be grounded in what they are capable of providing, having regard to the context of the legal field, the nature of the dispute and, importantly, the experience of the user. As the use of such technology by law firms shows, there is potential for GenAI to allow some of these aspirations to be achieved.<sup>133</sup> In the context of consumer ODR, GenAI may well complement the use of automated answers to frequently asked questions or generic self-help resources such as guides, videos or tutorials. It may overcome some of the laborious nature of the manual legal knowledge acquisition process which often presents a bottleneck problem associated with conventional expert systems.<sup>134</sup> However, this kind of usage requires the issue of hallucinations inherent in GenAI to be squarely addressed.

#### IV GENAI, HALLUCINATION, ERROR AND ACCURACY

‘Hallucination’ refers to the propensity of GenAI to provide incorrect responses to a prompt,<sup>135</sup> that are delivered confidently and appear plausible.<sup>136</sup> The tendency of GenAI to hallucinate represents a hard limitation on its adoption within the law, and even more so in ODR, for parties with insufficient legal knowledge to scrutinise its outputs for error.<sup>137</sup> Of course, consumers and other unrepresented parties in legal disputes will inevitably turn to GenAI for assistance, bearing the risk of error as outweighing that of no advice at all. The issue of hallucination presents a greater hurdle to suggestions for its incorporation into the formal civil justice system.<sup>138</sup> More needs to be understood about the phenomenon of hallucination and the efficacy of various responses before forming a view about acceptable uses of or indeed investment in GenAI.

##### A Hallucinations

Hallucinations, or perhaps more accurately ‘fabrications’, are a feature of the technology rather than some kind of error in its programming or design. GenAI uses pattern matching, or more specifically, makes calculations about the probabilities of various word patterns. It does not understand the content or context of what it produces. Though it is semantically creative, and able to construct rather than

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132 Ibid 175–7.

133 See above Part II(B).

134 Ashley (n 129) 4–5; Martin Možina et al, ‘Fighting Knowledge Acquisition Bottleneck with Argument Based Machine Learning’ (Conference Paper, European Conference on Artificial Intelligence, January 2008).

135 ‘IBM Watsonx as a Service: Hallucination Risk for AI’, *IBM* (Web Page) <<https://www.ibm.com/docs/en/watsonx/saas?topic=atlas-hallucination>>.

136 See Teubner et al (n 20).

137 Bell (n 63) [88] notes the use of GenAI by unrepresented litigants in increasing access to justice must be balanced against the increased workload on judges in checking the content.

138 *State of the Courts Report 2024* (n 49) 16.

merely retrieve content, its purpose is not to ascertain new insights from complex data or identify the most accurate or true response from a set of possibilities. In other words, ChatGPT has no understanding of *ground truth*. This means the accuracy of ChatGPT outputs may necessarily be unreliable.

The frequency of hallucinations in GenAI, and the circumstances in which they are likely to occur, are still not well understood.<sup>139</sup> In the legal context, GenAI is commonly promoted for use in summarising materials, such as cases, legislation and reports. It appears to produce reasonably competent and fluent summaries of such materials, which can be improved using particular strategies,<sup>140</sup> but still hallucinates some content.<sup>141</sup> ChatGPT has been reported to perform well on information retrieval in some contexts, passing the New York bar exam.<sup>142</sup> It appears to perform moderately in law school assessments.<sup>143</sup> However, its tendency to produce erroneous or fake material is increasingly well publicised. There has been a stream of reported instances in the US, Canada and Australia of lawyers using GenAI for court documents,<sup>144</sup> which were subsequently discovered to contain fabricated cases.<sup>145</sup>

There is no generally agreed definition or taxonomy of hallucinations.<sup>146</sup> In the legal context, Matthew Dahl et al have defined hallucinations as a ‘factual infidelity between an LLM’s response and the controlling legal landscape’.<sup>147</sup> There

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139 An additional complication in using GenAI for legal materials is limitations in the number of tokens, or more simply the size of the document summarised. This restriction requires ‘chunking’ of documents, which may further impede accuracy. See Aniket Deroy, Kripabandhu Ghosh and Saptarshi Ghosh, ‘How Ready Are Pre-trained Abstractive Models and LLMs for Legal Case Judgement Summarization?’ (Research Report, ArXiv, 14 June 2023) <<https://arxiv.org/abs/2306.01248>>.

140 Diego de Vargas Feijo and Viviane P Moreira, ‘Improving Abstractive Summarization of Legal Rulings through Textual Entailment’ (2023) 31(1) *Artificial Intelligence and Law* 91 <<https://doi.org/10.1007/s10506-021-09305-4>>.

141 Deroy, Ghosh and Ghosh (n 139).

142 Daniel Martin Katz et al, ‘GPT-4 Passes the Bar Exam’ (2024) 382(2270) *Philosophical Transactions of the Royal Society A* 1 <<https://doi.org/10.1098/rsta.2023.0254>>. Cf Jonathan H Choi et al, ‘ChatGPT Goes to Law School’ (2022) 71(3) *Journal of Legal Education* 387, where the researchers found that although exams drafted by GPT-3.5 often included solid explanations of basic legal rules and strong organisation and composition, they also often struggled to identify the relevant issues and tended to only superficially apply the rules to the facts as compared to real law students.

143 Choi et al (n 142).

144 Damien Charlotin, ‘AI Hallucination Cases’, *Damien Charlotin* (Web Page) <<https://www.damiencharlotin.com/hallucinations/>>.

145 See, eg, *Zhang v Chen* [2024] BCSC 285; *Mata v Avianca Inc* (n 14). Following the decision in *Dayal* [2024] FedCFamC2F 1166, the Victorian Legal Services Board has varied the practising certificate of a solicitor who had presented hallucinated legal authorities to the Family Court, removing his entitlements to practise as a principal lawyer, and to run his own law firm, and requiring him to undertake two years of supervised practice, with reporting requirements: ‘Statement on the “Mr Dayal” Matter’, *Victorian Legal Services Board + Commissioner* (Web Page, 2 September 2025) <<https://www.lsbvc.vic.gov.au/news-updates/news/statement-mr-dayal-matter>>. See also Josh Taylor, ‘Australian Lawyer Caught Using ChatGPT Filed Court Documents Referencing “Non-Existent” Cases’, *The Guardian* (online, 1 February 2025) <<https://www.theguardian.com/australia-news/2025/feb/01/australian-lawyer-caught-using-chatgpt-filed-court-documents-referencing-non-existent-cases>>.

146 Kees van Deemter, ‘The Pitfalls of Defining Hallucination’ (2024) 50(2) *Computational Linguistics* 807 <[https://doi.org/10.1162/coli\\_a\\_00509](https://doi.org/10.1162/coli_a_00509)>.

147 Dahl et al (n 14) 68.

are unique challenges in assessing the tendency to hallucinate in this sense because GenAI tools generate responses that will differ over time and with different prompts. One testing method involves asking the same set of direct and verifiable questions a number of times over a given time period. A study by Dahl et al used this method to test the accuracy of ChatGPT and other open GenAI models in responding to questions about the law.<sup>148</sup> The authors found that legal hallucinations were prevalent: ‘when asked a direct, verifiable question about a randomly selected federal court case, LLMs hallucinate between 58% (ChatGPT 4) and 88% (Llama 2) of the time’.<sup>149</sup> Additionally, Dahl et al found that GenAI models ‘struggle to predict their own hallucinations, and often uncritically accept users’ incorrect legal assumptions’.<sup>150</sup> The team asked relatively straightforward legal questions about the outcomes of cases, not requiring more sophisticated legal analysis, such as applying general legal principles to specific fact scenarios. Even so, Dahl et al found that LLMs perform best on tasks related to higher court decisions and worse on material related to lower court decisions, and are more likely to respond with accurate information about recent, prominent cases.<sup>151</sup> Accuracy may also be impacted by the jurisdictions on which the underlying LLM was trained, with, it might be suggested, lower accuracy outside the US.<sup>152</sup> Thus, United Kingdom (‘UK’) advice to courts states as follows:

Some key limitations:

- Public AI chatbots do not provide answers from authoritative databases. They generate new text using an algorithm based on the prompts they receive and the data they have been trained upon. This means the output which AI chatbots generate is what the model predicts to be the most likely combination of words (based on the documents and data that it holds as source information). It is not necessarily the most accurate answer.
- ...
- The currently available LLMs appear to have been trained on material published on the internet. Their ‘view’ of the law is often based heavily on US law although some do purport to be able to distinguish between that and English law.<sup>153</sup>

Given the tendency of GenAI to hallucinate, and the strong need for accuracy in the law, legal publishers have moved into the market to provide more specialised GenAI tools specifically for legal practice. Reuters and LexisNexis have developed a specialised AI legal assistant. Harvey has provided legal chatbots for several

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148 Ibid 66. The method involved asking questions about ‘a random sample of cases across each level of the federal judiciary – the US District Courts (‘USDC’), the US Courts of Appeals (‘USCOA’), and the US Supreme Court (‘SCOTUS’) – and evaluating them using four popular LLMs: OpenAI’s ChatGPT 4, OpenAI’s ChatGPT 3.5, Google’s PaLM 2, and Meta’s Llama 2’.

149 Ibid.

150 Ibid 64.

151 Ibid 66, 80. See also Magesh et al (n 14) for a follow-up study on GenAI tools specifically for legal practice.

152 See United Kingdom Courts and Tribunals Judiciary, ‘Artificial Intelligence (AI): Guidance for Judicial Office Holders’ (Guidance, 12 December 2023) 3 <<https://www.judiciary.uk/wp-content/uploads/2023/12/AI-Judicial-Guidance.pdf>>. Also, similarly, see guidance from the New Zealand Supreme Court: ‘Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals’ (n 42).

153 United Kingdom Courts and Tribunals Judiciary (n 152) 3.

large law firms, including A&O Shearman, Ashurst and PwC.<sup>154</sup> Singapore is also using this provider to develop legal information for small claims litigants.

## B Improving Accuracy through Fine-Tuning and Retrieval Augmented Generation

While hallucinations are inherent to GenAI,<sup>155</sup> the margin for error may be reduced by governance processes and technical strategies.<sup>156</sup> Technical strategies for reducing the prevalence of hallucinations include refining or retraining general models on legal information<sup>157</sup> and the use of retrieval augmented generation models ('RAG'), which limit the response from a GenAI to particular sources.<sup>158</sup>

Refining or fine-tuning is an apparently effective but costly technical response to the issue of hallucination.<sup>159</sup> Fine-tuning takes the language-based capacity of GPT (the foundational model) and then retrains it by referencing a more limited body of material, usually databases of more specialised materials.<sup>160</sup> This stage can also reinforce guardrails on the kind of permitted prompts and outputs, as well as privacy and security protocols.<sup>161</sup> In a legal context, an LLM might be fine-tuned by retraining the model on a database of firm precedents, Australian statutes or case law.

Compared to refining or retraining, RAG is a more straightforward and cheaper way of making LLMs more accurate on specialised content.<sup>162</sup> RAG is used to improve the performance of an LLM by requiring its responses to a prompt to reference expert knowledge contained in a specific database outside its original training data.<sup>163</sup> In the legal context, RAG links the LLM into specialised databases to limit the responses provided by the GenAI tool. This approach should reduce the risk of hallucinations because the answer to a prompt is generated from a retrieved

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154 Caroline Hill, 'Harvey's \$300m Raise: You Cannot Ignore the Speed of Adoption', *Legal Insider* (online, 18 February 2025) <<https://legaltechnology.com/2025/02/18/comment-harveys-300m-raise-you-cannot-ignore-the-speed-of-adoption/>>.

155 Sourav Banerjee, Ayushi Agarwal and Saloni Singla, 'LLMs will Always Hallucinate, and We Need to Live with This', (Research Paper, ArXiv, 10 September 2024) <<https://arxiv.org/abs/2409.05746>>.

156 'What Are AI Hallucinations?', *IBM* (Web Page, 1 September 2023) <<https://www.ibm.com/think/topics/ai-hallucinations>>.

157 See 'Refining Models', *IBM* (Web Page, 24 June 2025) <<https://www.ibm.com/docs/en/mas-cd/maximo-vi/continuous-delivery?topic=configuring-refining-models>>.

158 See 'What is Retrieval-Augmented Generation?', *IBM Research* (Web Page, 22 August 2023) <<https://research.ibm.com/blog/retrieval-augmented-generation-RAG>>.

159 Dave Bergmann, 'What is Fine Tuning?', *IBM* (Web Page, 15 March 2024) <<https://www.ibm.com/think/topics/fine-tuning>>.

160 'Accenture Pioneers Custom Llama LLM Models with NVIDIA AI Foundry', *Accenture* (Web Page, 23 July 2024) <<https://newsroom.accenture.com/news/2024/accenture-pioneers-custom-llama-llm-models-with-nvidia-ai-foundry>>.

161 'What Are AI Guardrails', *McKinsey & Company* (Web Page, 14 November 2024) <<https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-are-ai-guardrails>>.

162 Ivan Belcic and Cole Stryker, 'RAG vs. Fine-Tuning', *IBM Think* (Web Page, 14 August 2024) <<https://www.ibm.com/think/topics/rag-vs-fine-tuning>>.

163 'What is RAG (Retrieval-Augmented Generation)?', *Amazon AWS* (Web Page, 2025) <<https://aws.amazon.com/what-is/retrieval-augmented-generation/>>.

document.<sup>164</sup> Additionally, RAG allows a GenAI response to provide an authoritative source supporting that response.<sup>165</sup> This provides confidence about the accuracy of the answer, at least for an expert reader. RAG also gives the LLM access to up-to-date materials that may not have been included in its original training.<sup>166</sup>

### C Efficacy of Legal RAG Models

The degree to which methods of refining and RAG improve the performance of GenAI in the legal domain is uncertain. Providers of GenAI tools specifically for the legal market have promoted their ability to improve the accuracy of the tools through these technical methods. Thus, for example, Varun Magesh et al report that legal providers are promoting ‘retrieval-augmented generation (RAG) as “eliminating” or “avoid[ing]” hallucinations, or guaranteeing “hallucination-free” legal citations’.<sup>167</sup> These statements prove less useful in light of different understandings of what amounts to a hallucination and the lack of agreed methods of measuring rates of hallucination.

Magesh et al studied the legal research tools made available by legal publishers as part of their general suite of offerings. The researchers found that legal publishers described hallucinations narrowly, primarily as fabricating the existence of a case or statute presented as the source for a legal proposition.<sup>168</sup> Legal publishers have promoted RAG as removing this problem.<sup>169</sup> Magesh et al adopted a wider definition of hallucinations that would arguably track more closely to the demands of lawyers’ work. They divided hallucinations produced by GenAI legal research tools into two main categories: incorrect statements of law and ‘ungrounded’ statements, namely statements for which incorrect (false or fake) authorities are cited.<sup>170</sup> The researchers accordingly defined hallucinations as occurring where ‘a model makes a false statement or falsely asserts that a source supports a statement’.<sup>171</sup> Using this definition, they found that:

While hallucinations are reduced relative to general-purpose chatbots (GPT-4), we find that the AI research tools made by LexisNexis (Lexis+ AI) and Thomson Reuters (Westlaw AI-Assisted Research and Ask Practical Law AI) each hallucinate between 17% and 33% of the time.<sup>172</sup>

On one view, this error rate may seem quite high – it is nowhere near ‘perfect’. On the other hand, lawyers are unlikely to be perfectly accurate when researching or advising on law. Additionally, the technology will no doubt continue to improve in terms of accuracy. However, the very way in which GenAI produces outputs,

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164 Magesh et al (n 14) 219.

165 ‘What is RAG (Retrieval-Augmented Generation)?’ (n 163).

166 *Ibid.*

167 Magesh et al (n 14) 216.

168 *Ibid.* 221.

169 *Ibid.* 219. Notably many but not all of the reported cases of fabricated cases identified in documents presented to courts appear to involve generalist GenAI tools not the legal RAG models: see Charlotin (n 144).

170 Magesh et al (n 14) 221.

171 *Ibid.*

172 *Ibid.* 216.

through learnt statistical relationships between words – or, more accurately, *tokens* – means that hallucinations are unlikely to be eliminated altogether.<sup>173</sup> Accuracy is also affected by the successful retrieval of relevant texts or documents<sup>174</sup> – again, a process dependent on matching the prompts to the texts in question, and therefore inevitably containing a margin of error.<sup>175</sup>

Moreover, accuracy depends on the task for which the tool is deployed, and the skills of the person using it. The abovementioned studies focused on legal research tasks – aimed at retrieving information from cases and statutes, such as the date of a decision or statute or a summary of the facts or a particular provision. Yet the legal tasks on which lawyers spend time involve not merely finding information but applying it to reach an opinion or provide advice on particular facts, or more generally the process of legal reasoning.<sup>176</sup> For consumers thinking about legal disputes, they may need an understanding of the nature of their claim, an assessment of the likely success of that claim, and guidance about how to resolve the dispute or pursue the claim while protecting their own interests. RAG or fine-tuning combined with an LLM may assist in these tasks, but the average consumer will not have the technical legal knowledge to engage in advanced prompting techniques, and will be in no position to assess whether the outputs are sound or not.

#### D Transparency in Assessing the Gains

The risks of inaccuracy and hallucination are reduced, but not removed, by strategies used to make GenAI more attuned to legal content. If law firms or courts use these tools to produce ‘first drafts’ or akin to ‘paralegals’, then some level of inaccuracy may not present a significant problem.<sup>177</sup> The tools simply need to be as accurate as the human who would otherwise be doing the work. Checking or reviewing the GenAI outputs can (and should) be built into the governance or oversight system.<sup>178</sup> Hallucinations are more problematic in contexts where there is no expert who can oversee the outputs,<sup>179</sup> such as for unrepresented litigants or consumers in the initial phases of ODR. This reality starkly raises the question of whether it is justified to use unreliable tools to provide information to unrepresented litigants in small value consumer disputes.

In this context, the policy question is not whether GenAI can provide relevant information to prospective litigants in a way that is perfectly accurate, or even equal to a human legal representative. It is whether the information and assistance provided through these tools is sufficiently valuable, even with a margin for error, having regard to the costs of not providing such support. Additionally, and importantly, a key consideration is how GenAI tools compare in providing

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173 Banerjee, Agarwal and Singla (n 155) 27.

174 Dahl et al (n 14) 88; Magesh et al (n 14).

175 Magesh et al (n 14) 6.

176 For a comprehensive analysis of the potential and limitations of LLMs in performing higher order legal tasks like legal reasoning, see Eliza Mik, ‘Caveat Lector: Large Language Models in Legal Practice’ (2024) 19(2) *Rutgers Business Law Review* 70.

177 Law Society of New South Wales (n 38) 5.

178 Ibid.

179 Victorian Law Reform Commission (n 11) 42, 80–1.

assistance and information relative to other kinds of more ‘brittle’ but reliable technologies, like expert system tools. For this kind of task, it may be that more established technologies such as rule-based chatbots, expert systems or non-adaptive or generative machine learning models provide just as useful and more reliable assistance.

These kinds of trade-offs between enhanced access and due process and fairness risks are not easily resolved.<sup>180</sup> However, assessing the gains of GenAI requires some evaluation of the capabilities of that system in performing the tasks assigned to it. Currently there are a number of hurdles to making this assessment. One key limitation is opacity about the kinds of GenAI systems being proposed in particular contexts. It is difficult to find out what foundation model is being used or what retraining, refining or RAG is being contemplated. These are questions the commercial providers of systems may be disinclined to address, at least in any public way, but this makes independent or public scrutiny of decisions about the architecture for providing automated assistance difficult. Perhaps more significantly, there is still overall uncertainty about how to assess the accuracy and effectiveness of GenAI systems. As we have seen, while AI will perform worse on some tasks than others, hallucinations also have a random element and so a robust and ongoing methodology is required to assess and recalibrate the performance of these systems. Performance tests need to be carefully designed to account for jurisdictional differences and to provide a genuine assessment of the tools’ performance, having regard to identified strengths and weaknesses and user needs. We need to understand these strategies and not only the metrics they provide, but also the reliability of those metrics. Only with this insight can the role for GenAI in consumer small claims – a context where these systems will be used by some of the least informed litigants – be assessed.

## V GOVERNANCE

Governance in the context of (private) ODR has been defined as a process of:

[C]reating policies, prescribing their implementation, and continuously monitoring ODR practitioners, service providers, systems and services, all to ensure that the underlying procedures are just, and that the services are delivered in a professionally satisfactory manner, for the purposes of enhancing and advancing the field of ODR.<sup>181</sup>

As ODR mechanisms move increasingly into the realm of public, court-annexed or court-centred dispute resolution, the question of what constitutes robust governance becomes more complex. Any public legal system and its offerings must be legitimate. Processes, procedures and rules demonstrate legitimacy through consistency with the values and principles that are commonly accepted

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180 See Amy J Schmitz, ‘Measuring “Access to Justice” in the Rush to Digitize’ (2020) 88(6) *Fordham Law Review* 2381.

181 Noam Ebner and John Zeleznikow, ‘No Sheriff in Town: Governance for the Online Dispute Resolution’ (2016) 32(4) *Negotiation Journal* 297, 300 <<https://doi.org/10.1111/nej.12161>>.

as fundamental to the legal system, and reflective of the substantive values of democratic governance, including principles of participation, transparency, equality of access, and due process. As Richard Reuben has argued, these values in turn can be used in governance ‘to understand, assess, and constructively cultivate the democratic character of a dispute-resolution method, process, or system’.<sup>182</sup> They may also be important in benchmarking operational standards on testing, monitoring and evaluation, which in turn are critical to maintaining accountability between the public, the system and the state.

The provision of robust governance systems has not been a strong feature of much court/dispute system design,<sup>183</sup> and may not seem to be a priority in times of economic stringency. Judicial institutions are experienced in defending due process and judicial values; they are expert in the kind of careful, incremental change integral to the common law tradition, but they tend to lack wider expertise in dispute system design, and may be significantly less adept at responding to rapid technological innovation.<sup>184</sup> Nonetheless, governance standards for ODR have already been developed by a number of supranational bodies, including ASEAN<sup>185</sup> and the Council of Europe (‘COE’). The COE Guidelines<sup>186</sup> in particular follow the layered approach of developing high-level principles – of trustworthiness, accessibility, procedural equivalence (to offline processes) and security – and substantive guidelines advocated here. However, most of these guidelines pre-date the rapid evolution of GenAI.

In the Australian context, AI governance in ODR is further complicated by a federalist framework that both ties court management to the judicial role and its valuation of judicial independence, and institutionally limits centralised oversight across jurisdictions. The potential for fragmented and divergent responses to AI governance problems is self-evident.<sup>187</sup> However, explicit governance mechanisms are important and increasingly demanded under existing and nascent AI regulatory mechanisms. These are already part of Australia’s Voluntary AI Safety Standard,<sup>188</sup> and critical in implementing any high-risk AI, such as in judicial decision-making.<sup>189</sup>

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182 Richard C Reuben, ‘Democracy and Dispute Resolution: The Problem of Arbitration’ (2004) 67(1) *Law and Contemporary Problems* 279, 285.

183 The Victorian Law Reform Commission acknowledges the importance of ‘governance arrangements’ specific to AI, however there is limited consideration in its issues paper of what these might entail and how they fit with wider court governance and accountability mechanisms: see Victorian Law Reform Commission (n 11) [6.40]–[6.41].

184 See Sir Ernest Ryder, ‘Securing Open Justice’ in Burkhard Hess and Ana Koprivica Harvey (eds), *Open Justice: The Role of Courts in a Democratic Society* (Nomos, 2019) vol 13, 125.

185 Association of Southeast Asian Nations Secretariat (n 107).

186 Council of Europe, ‘Online Dispute Resolution Mechanisms in Civil and Administrative Court Proceedings’ (Guidelines, 2021) <<https://www.coe.int/en/web/cdcj/online-dispute-resolution-mechanisms>>.

187 See Cary Coglianese and Lavi M Ben Dor, ‘AI in Adjudication and Administration’ (2021) 86(3) *Brooklyn Law Review* 791, 793.

188 Department of Industry, Science and Resources and National Artificial Intelligence Centre, *Voluntary AI Safety Standard* (Report, August 2024) iv.

189 See also *Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence and Amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and*

GenAI creates particular challenges at the nexus between institutional (court) and technology (AI) governance. Figure 4 offers an overview of what we see as the key operative principles, mapped against the process model already advanced in this article. It highlights that there is significant alignment between court and AI governance regarding the centrality of fairness, transparency and accountability principles. It also begins to illustrate what a commitment to process-wide governance in this context might involve. This breadth of approach is in itself important, we submit, if ODR systems are to take seriously Frank Pasquale's reminder that critical questions of social governance often reside in mundane decisions and routine processes.<sup>190</sup>

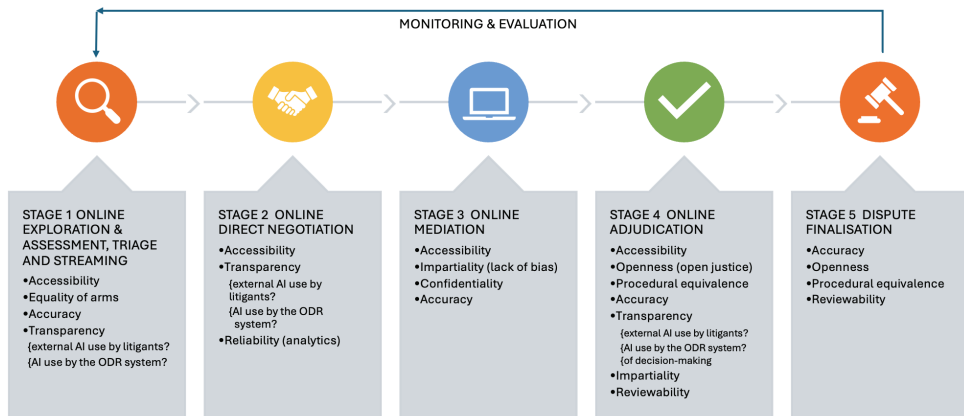


Figure 4: Key governance principles for GenAI-assisted public consumer ODR

The analysis here assumes that the need for robust AI governance is heightened in consumer ODR by the greater likelihood of harm to self-represented litigants. AI governance principles in this schema are supported by due process principles to ensure procedural fairness and equivalency with conventional dispute processes where that is deemed essential to public trust and legitimacy.

The mapping of risks to each stage in the dispute resolution process is not straightforward. Not all uses of AI are high-risk, and not all AI tools will necessarily have the same risk profile. Some functions, like general letter writing and simple document summarisation, are generally lower risk; technical, accurate, translation may be higher up the risk scale, and the provision of accurate legal information and tailored advice (if permitted) is higher still. Basic cybersecurity and data safety risks, conversely, are part and parcel of any ODR system, and data safety requirements may not be significantly increased by the use of GenAI tools. The critical empirical question throughout is, where do GenAI's biases, hallucinations,

*Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) [2024] OJ L 2024/1689, para 61.*

190 Frank Pasquale, *New Laws of Robotics: Defending Human Expertise in the Age of AI* (Belknap Press, 2020) 230 <<https://doi.org/10.2307/j.ctv3405w6p>>.

relative lack of explainability and absence of robust benchmark standards increase the risks inherent in its use beyond an acceptable level? Uncertainties about these elements undermine attempts at risk assessment, and in turn threaten to undermine the trustworthiness and possibly safety of ODR systems seeking to utilise GenAI.

Figure 4 accordingly also indicates where clarity and transparency about the performance of GenAI is essential for building suitably robust accountability and governance, and is suggestive of the points at which human oversight should be required, as well as the importance of putting testing and auditing regimes in place if GenAI systems are adopted.

## VI CONCLUSION

In this article we have sought to review the developing use of GenAI within the legal domain and examine its potential in supporting access to justice in small consumer disputes, particularly in the context of a drive towards ODR. We remain sceptically encouraged that GenAI in some form has a valuable role to play, but have sought to demonstrate that the hype over this technology tends to overlook important systemic risks attaching to its use, particularly as a legal information and guidance tool. If courts are to go down the path of adopting GenAI for ODR in small claims such as those involving consumers, then addressing these risks is an important governance issue, for which at present they may not be wholly equipped.

Certainly, GenAI, potentially combined with other digital technologies such as rule-based chatbots, expert systems or machine learning models, might prove useful in providing information to consumers trying to assert their legal rights and resolve disputes with a trader. However, careful thought needs to be given to how and where these tools might be useful given the specific needs of consumer complainants. While lawyers may use GenAI for summarising and research, consumers may need different kinds of assistance, for instance in characterising and assessing their claim, and this requires clear understanding of where exactly GenAI is to be deployed in the consumer ODR context. Moreover, it is important to appreciate the limitations of the technology, especially with regard to accuracy and the issue of hallucinations. These tools do not need to be perfect – humans make errors and moreover, currently, many consumers receive no assistance at all. Nonetheless, we need to know more about the kinds of tasks that GenAI performs well and its propensity to err. This is relevant to assessing the comparative performance of other tools in providing the contemplated assistance to consumers in small claims disputes.

The broader lesson from ODR is that system design and governance are central to achieving the goals of fair and accessible dispute resolution. System design requires thinking about the experience of the end user, and the information they require, along with the ways they can access and use that information. Governance processes help ensure ODR systems remain trustworthy and fit for purpose. System design and governance also require fidelity to the ambitions of civil justice and the rule of law. GenAI may advance or threaten these goals, but there is likely no technological ‘quick fix’ to the complex problem of access to justice in small claims disputes involving under-resourced and relatively inexperienced parties such as consumers.