



**AI - Legislation for AI, Legislation with AI:
Round No 1 ChatGPT v Australian Law Council**

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Legislation for AI, Legislation with AI: Round No 1 ChatGPT v Australian Law Council

Dr Guzyal Hill¹



Abstract

This article examines the legal drafting produced by AI using as an example the development of a definition for domestic violence. Domestic violence is a deeply human problem, and use of AI allows us to uncover categories and links in behaviour. The AI drafting itself is still inferior to the human process, but the quality of work at the stage of ideation is likely to contribute to the purely human ideation process. In this first match between the Australian Law Council and ChatGPT, the Australian Law Council won, but the research and development of AI continues in both improving the prompts and AI applications for legislative counsel of today and tomorrow.

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¹ Trained as a legislative drafter, I am now working as a legal academic researching drafting. This paper is based on the presentation at PCC/CALC Conference. My book on national uniform legislation can be found here <https://link.springer.com/book/10.1007/978-981-19-3292-2> and full list of publications is available here <https://researchers.cdu.edu.au/en/persons/guzyal-hill>. I can be reached at guzyal.hill@cdu.edu.au.

Introduction

Artificial intelligence (AI) has been much in the legal news of late, including in relation to its possible applications to legal study and practice. This research examines the quality of legal draft work produced by ChatGPT in comparison to that produced by the Australian Law Council. While this examination can take place on any topic, the topic of this research is domestic violence legislation.

All Australian federal jurisdictions (Commonwealth and eight States and Territories) signed the national plan to end violence against women and children in one generation. This vision was shared in the National Plan 2022-2032.² Australia among other Commonwealth countries is committing resources to resolving this deep social issue. For instance, in Canada, there have been numerous inquiries producing recommendations to end violence against women and children.³ The issue of domestic violence is a deeply human problem, so it was interesting to use AI to work with legislation regulating it, as AI can uncover the links and patterns that are less obvious to people.

Emerging AI tools – Perplexity.AI⁴ and ChatGPT⁵ – have the potential of transforming the process of policy development and legislative drafting. Perplexity.AI does not require registration and can produce text with reliable references. For the task, Perplexity.AI, however, produced inferior results with references drawn from the commentary, not primary legislation, in contrast with ChatGPT. In other words, it seems the developers of Perplexity.AI did not use legislation to train it, while developers of ChatGPT used legislation, including legislation up to 2021. Therefore, the research primarily focuses on ChatGPT. AI tools must be used cautiously, as evidenced by Centrelink’s Robodebt fiasco (an example of the abuse of automated decision-making that resulted in hardship and suicides).⁶

I bring my professional judgement and experience in this research as a qualified lawyer and legislative drafter in the past, prior to becoming a legal academic.

² Department of Social Services, Australian Government, ‘The National Plan to End Violence against Women and Children 2022-2032’ (17 August 2022) <<https://www.dss.gov.au/ending-violence>>.

³ National Inquiry into Missing Indigenous Women and Girls: <<https://www.mmiwg-ffada.ca/final-report/>> and a House of Commons report on eliminating intimate partner violence: <https://publications.gc.ca/collections/collection_2022/parl/xc71-1/XC71-1-1-441-4-eng.pdf>

⁴ <https://www.perplexity.ai/>.

⁵ <https://chat.openai.com/>.

⁶ Catherine Holmes, *The Royal Commission Report into the Robodebt Scheme* (7 July 2023) <<https://robodebt.royalcommission.gov.au/publications/report>>.

This research progresses in three main parts:

- (1) a comparison of legislation using AI at different time points;
- (2) the analysis of the definition presented by the Australian Law Council; and
- (3) an attempt to bring the ChatGPT produced policy in line with existing legislation and Australian Law Council definition.

Comparison of legislation

Australian legislation on domestic violence falls into family and criminal law areas of national uniform legislation, which are particularly difficult to harmonize.⁷ Therefore, this legislation is drafted in mirror structure.⁸ That means State and Territory jurisdictions produce legislation on an appropriate definition in each local jurisdiction. With domestic violence being a national problem, the federal government is trying to bring jurisdictions to a model definition to ensure that the victim-survivors have equal protection.

Therefore, the first step is to compare existing legislation.

Results were produced by ChatGPT on 15 February 2023 for the following request: “compare domestic violence definition in Northern Territory, Queensland and Victoria, include references to sections of relevant legislation”:

Northern Territory: Domestic violence is defined in Section 6 of the Domestic and Family Violence Act 2007 as "conduct by a person towards a family member of the person that is violent, threatening, or controlling, or causes the family member to be fearful." The Act also lists examples of behavior that may be considered domestic violence, such as physical assault, sexual assault, and psychological abuse (Section 7).

Queensland: Under the Domestic and Family Violence Protection Act 2012, domestic violence is defined in Section 8 as "behavior by a person (the first person) towards another person (the second person) with whom the first person is in a relevant relationship that is physically, sexually, emotionally, psychologically, or economically abusive, or is threatening or

⁷ Guzyal Hill, *National Uniform Legislation* (Springer Nature, 2022); Guzyal Hill, "How Does the Area of Law Predict the Prospects of Harmonisation?" (2020), 41(1) *Adelaide Law Review* 267.

⁸ Guzyal Hill, "Referred, Applied and Mirror Legislation as Primary Structures of National Uniform Legislation" (2019, 31 *Bond Law Review* 81 <https://blr.scholasticahq.com/article/10865-referred-applied-and-mirror-legislation-as-primary-structures-of-national-uniform-legislation>).

coercive." The Act also includes examples of abusive behavior, such as stalking, harassment, and intimidation (Section 11).

Victoria: In Victoria, the definition of family violence can be found in Section 5 of the Family Violence Protection Act 2008. Family violence is defined as "behaviour by a person towards a family member of that person if that behaviour is physically or sexually abusive, or is emotionally or psychologically abusive, or is economically abusive, or is threatening, coercive or in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person." The Act also outlines specific types of behaviour that may constitute family violence, such as assault, stalking, and financial abuse (Section 5).

This comparison by ChatGPT produced realistic and accurate results.

When compared again on 20 November 2023, ChatGPT produced inferior results without pinpoint references but with the disclosures aimed at non-lawyers. The results produced by ChatGPT for the same request were as follows:

I can provide you with a general overview of domestic violence definitions in the Northern Territory, Queensland, and Victoria as of my last knowledge update in January 2022. However, please note that laws and definitions can change, so it's crucial to refer to the latest versions of the relevant legislation for the most accurate and up-to-date information.

Northern Territory:

In the Northern Territory, domestic violence is addressed under the Domestic and Family Violence Act 2007. The Act defines domestic violence broadly and includes physical, sexual, emotional, and economic abuse. It also encompasses behavior that is controlling or coercive.

Domestic and Family Violence Act 2007 (NT)

Queensland:

Queensland addresses domestic violence through the Domestic and Family Violence Protection Act 2012. This legislation defines domestic violence as behavior that is physically, sexually, emotionally, psychologically, or economically abusive, and can include threatening, coercive, or controlling conduct.

Domestic and Family Violence Protection Act 2012 (Qld)

Victoria:

In Victoria, the primary legislation addressing domestic violence is the Family Violence Protection Act 2008. The Act defines family violence broadly and includes physical, sexual, emotional, psychological, and economic abuse, as well as behavior that controls or dominates another person and causes them to feel fear for their safety.

Family Violence Protection Act 2008 (Vic)

It's essential to check the latest versions of these acts or any amendments that may have occurred since my last update, as legislative changes can impact definitions and legal frameworks. Additionally, you may want to consult legal professionals or official government sources for the most accurate and current information.

While results of the later request are inferior as the depth of comparison and nuance is lost in higher generalisation, they are still mostly accurate. The difference in results is due to the way ChatGPT is being updated by the company that owns it, OpenAI, and we do not have control over these updates.

In both cases, comparison was not full and included restatement, rather than comparison. Therefore, the next step included asking for differences. When asked to focus on differences, using the following request “find the differences in domestic violence definition in Australian Capital Territory, Western Australia, New South Wales, Tasmania, Northern Territory, Queensland, South Australia and Victoria, include references to sections of relevant legislation”, ChatGPT produced the following results on 1 March 2023:

1. **Type of relationship covered:** The definitions of domestic violence in all states and territories cover violence in intimate relationships. However, some states and territories also include violence in other family relationships. For example, Tasmania's definition covers violence by a "close family member" (Section 3 of the Family Violence Act 2004), while the definition in Victoria covers violence by a "family member" (Section 5 of the Family Violence Protection Act 2008).
2. **Types of abuse:** While all definitions include physical, sexual, emotional, psychological, and economic abuse, some states and territories also include other types of behaviour that can be abusive. For example, the definitions in New South Wales (Section 11 of the Crimes (Domestic and Personal Violence) Act 2007) and Queensland (Section

8 of the Domestic and Family Violence Protection Act 2012) both include "coercive" behaviour, while the definition in South Australia (Section 8 of the Domestic Violence and Intervention Orders Act 2018) includes "behaviour that is threatening or coercive."

3. **Factors causing fear:** The definitions in all states and territories include behaviour that causes a person to fear for their safety or wellbeing. However, some states and territories also include behaviour that causes fear for the safety or wellbeing of another person. For example, the definition in the Australian Capital Territory (Section 7 of the Domestic Violence and Protection Orders Act 2020) covers behaviour that causes a family member to fear for the safety or wellbeing of "the family member or another person," while the definition in the Northern Territory (Section 4 of the Domestic and Family Violence Act 2007) covers behaviour that causes "harm or fear of harm" to a family member.
4. **Nature of the behaviour:** The definitions in all states and territories cover behaviour that is violent, threatening, or abusive. However, some definitions provide more detail about the specific types of behaviour that are covered. For example, the definition in Victoria (Section 5 of the Family Violence Protection Act 2008) includes "controlling" behaviour, while the definition in Western Australia (Section 6 of the Restraining Orders Act 1997) includes behaviour that "intimidates" or "harasses."

This comparison is not comprehensive: ChatGPT identified the main differences but missed some important distinctions that can be observed by a lawyer through a more granular perspective. However, what ChatGPT did is classify the behaviour, which allows humans to see the more important patterns in the compared text. This was a useful "value added" by ChatGPT. The comparison in November 2023, was similarly inferior to that in March.

Developing definition – ChatGPT

The ultimate goal of comparison of legislation is the synthesis of the model legislation for all jurisdictions, which is why ChatGPT was next asked to prepare the best definition of domestic violence based on the existing definitions, ChatGPT produced the following result on 1 March 2023:

Domestic violence, also known as intimate partner violence, is a pattern of behaviour by one person towards another person who is, or has been, in a domestic relationship with them, including but not limited to a spouse, partner, family member, or carer. This pattern of behaviour includes physical, sexual, emotional, psychological, and economic abuse, or

behaviour that is threatening, coercive, or controlling. It can take many forms, including but not limited to:

Physical abuse: such as hitting, slapping, kicking, choking, or using weapons;

Sexual abuse: such as forced sexual activity;

Emotional abuse: such as belittling, name-calling, humiliation, or isolating the victim from family and friends;

Psychological abuse: such as manipulation, gaslighting, or using children as pawns in the relationship;

Economic abuse: such as controlling the victim's finances or preventing them from working or pursuing education.

For the same request in November 2023, ChatGPT produced results that were even less focused on legal issues. The latest definition produced a description of a definition of the social phenomenon.

Domestic violence is a pattern of behavior within an intimate relationship where one partner seeks to exert power and control over the other through physical, sexual, emotional, psychological, or economic means. This abusive behavior may manifest through acts of intimidation, coercion, isolation, threats, or actual violence, causing the victim to experience fear, degradation, and a pervasive sense of harm. Domestic violence is not limited to specific demographics and can affect individuals regardless of age, gender, socioeconomic status, or cultural background. It encompasses a continuum of behaviors, ranging from subtle manipulation to severe physical harm, and is a violation of the fundamental human right to live free from violence and abuse. Effective responses to domestic violence involve support for survivors, legal interventions, and community efforts aimed at prevention and education.

Developing the definition – Australian Law Council

The Australian Law Council worked extensively with the community on developing the uniform definition in 2021. In particular, the Law Council of Australia hosted a National Roundtable entitled “Family Violence: Awareness, Education and Training” with community (sector) representatives who participated extensively with the key issue of discussing a nationally consistent definition of family violence, due to the difficulties caused

“by the differing definitions of family violence between jurisdictions”.⁹ The following definition was developed by the Australian Law Council:

Meaning of family violence

- (1) For the purposes of this Act, family violence is—
- (a) behaviour by a person towards a family member of that person if that behaviour—
 - (i) is physically or sexually abusive; or
 - (ii) is emotionally or psychologically abusive; or
 - (iii) is economically abusive; or
 - (iv) is threatening; or
 - (v) is coercive; or
 - (vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or
 - (b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).¹⁰

The model definition developed by the Australian Law Council further details what kind of behaviour could be included in the definition of family violence, for instance,

- “assaulting or causing personal injury to a family member or threatening to do so”,
- “unlawfully stalking or cyber stalking a person”,
- “taking without consent or distributing without consent an intimate image of the family member, or threatening to distribute the image”.¹¹

This more granular perspective was certainly not identified by ChatGPT and was only developed due to the extensive work of law reformers, stakeholders and lawyers in the development of the definition. However, the definition developed by AI would be suitable as a starting point for discussion. It would require a lot of refinement, however, given the current state of development of AI.

⁹ Law Council of Australia, ‘Model Definition of “Family Violence”’, *Law Council of Australia* (4 August 2023) <<https://lawcouncil.au/policy-agenda/advancing-the-profession/model-definition-of-family-violence>>.

¹⁰ Ibid.

¹¹ Ibid.

Not up to the task yet

When asked to draft definition in the Northern Territory style and with subsections, ChatGPT produced the following text, that looks sufficiently close for a non-lawyer but does not resemble the Australian legislation in reality. The useful ideas were proposed, confirming usefulness of AI for the stage of ideation and policy development, rather than drafting at this stage.

Domestic and Family Violence Definition Act 2023 (Example - NT)

Section 1: Definition of Domestic Violence

1.1 Coercive and Controlling Behavior For the purposes of this Act, "domestic violence" shall mean a systematic and intentional pattern of coercive and controlling behavior within an intimate relationship.

1.2 Forms of Abuse Such behavior includes, but is not limited to, physical, sexual, emotional, and economic abuse.

Section 2: Purpose and Intent of Abuser

2.1 Dominance and Isolation The intent of the abuser is to establish and maintain dominance over the victim, achieved through deliberate isolation from external support networks.

2.2 Instilling Fear Furthermore, the abuser seeks to instill fear in the victim, creating an environment in which the victim feels unsafe and apprehensive.

Section 3: Applicability

3.1 Demographic Neutrality This definition recognizes that domestic violence is not restricted by demographic factors, applying universally irrespective of gender, age, cultural background, or socioeconomic status.

Section 4: Human Rights Violation

The definition acknowledges domestic violence as a profound violation of fundamental human rights.

Section 5: Comprehensive Redress

5.1 Legal Framework Addressing domestic violence necessitates a legal framework, incorporating interventions and legal measures for effective resolution.

5.2 Support Mechanisms In addition, comprehensive redress encompasses the provision of support mechanisms tailored to the unique needs of victims.

5.3 Community Education Initiatives Furthermore, to prevent and mitigate instances of domestic violence, this Act emphasizes the importance of community education initiatives aimed at raising awareness and fostering a culture intolerant of such behavior.

This Act may be cited as the "Domestic and Family Violence Definition Act 2023."

The next stages of research might continue improving the prompts or trialing specific law focused AI such as SpellBook AI.

What should legislative drafters and law reformers learn from this round?

While ChatGPT lost this round to the Australian Law Council, we cannot be confident that the results will be the same going forward. Therefore, all legislative drafters, policy makers and law reformers must start working on skills to improve their ability to work with AI. Contrary to the common theme of existential risk, many organizations are more invested in building ethical and human-centric AI and it is important to have the voices heard while the systems are being built.

Without any doubt, AI poses serious risks and threats, if used unchecked. The stance proposed by this research is practical, cautious, and yet curious. The explored systems are an augmentation of human acuity rather than an abrogation of drafting talent. Existing lawyers have an opportunity to inhabit this new AI domain that has the potential for transforming law and the way we approach law globally. Eluding or ignoring AI has many unpredictable drawbacks and at least several predictable dangers, including:

- (1) major mistakes in misuse of AI automated decision making, as demonstrated by the Robodebt Royal Commission;¹²
- (2) missing an opportunity to lead the international debate and development of law with the emergence of AI; and

¹² Above, n. 6.

(3) allowing experts from other fields to occupy new niches with an opportunity to develop solutions that do not take into account fundamental human rights or that contradict foundational principles of rule of law.
