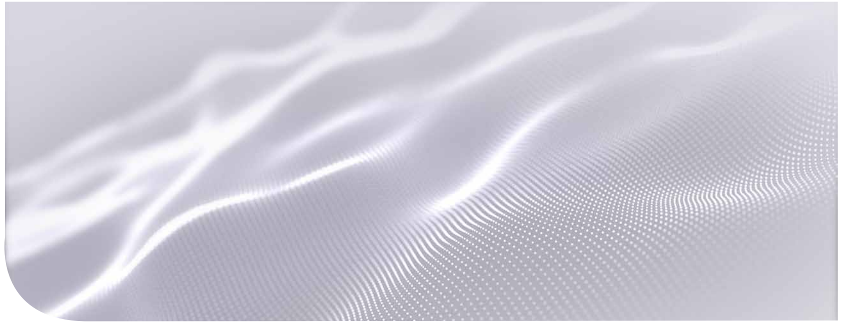
Cowell Clarke
COMMERCIAL LAWYERS

FS Compliance Newsletter

MAY 2026

Contents



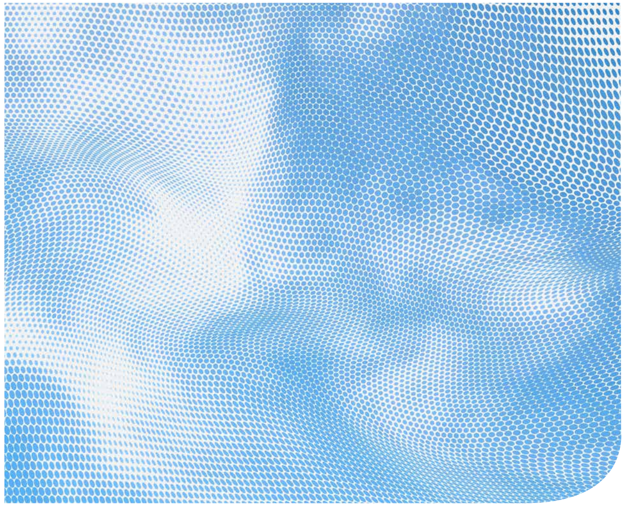
Introduction

In this edition, ASIC has updated its guidance RG 234 on advertising financial products and services and issued a warning to providers of financial services involving digital asset financial products urging them to consider their licensing arrangements prior to the expiration of ASIC's no-action position.

ASIC has released an update on its regulatory simplification project highlighting the significant progress it has made in clarifying and simplifying regulatory guidance, expanding digital service capabilities, and streamlining its website. ASIC has released an update regarding its financial reporting, audit, and sustainability focuses for the upcoming financial year.

Following a review, the Administrative Review Tribunal has increased a registration prohibition order against a former financial adviser who gave non-compliant advice regarding an SMSF. ASIC has continued its crackdown on the provision of unlicensed financial advice by issuing warning notices to four 'finfluencers' and commencing a review of three AFS licensees who authorise and supervise 'finfluencers' as authorised representatives.

AFCA has published another edition of its Systemic Issues Insights Report, highlighting key systemic issues and markers of excellence it identified in the first half of the 2025-26 financial year. ASIC has released a consultation on proposed changes to multiple instruments relating to relief from dollar disclosure and certain AFS licensing requirements for a period of five year.



Regulation

ASIC updates guidance on marketing financial products and services

On 9 June 2026, ASIC updated 'Regulatory Guide 234: Advertising financial products and services' ("**RG 234**"), its guidance on advertising financial products and services. RG 234's guidance applies to any communication, through any medium and in any form, intended to inform consumers about or promote financial products and services.

The guidance is provided by ASIC to assist financial services businesses and promoters to comply with their legal obligations and avoid misleading consumers. In assessing whether advertising or promotional content is misleading or deceptive ASIC will consider the overall impression the advertising creates for the 'ordinary or reasonable person' consuming the content.

RG 234, which had not been updated since 2012, has been revised to consolidate over a decade of regulatory developments, enforcement outcomes and guidance into a single simplified framework aimed at reducing misleading or deceptive conduct. The updates to RG 234 include:

- new guidance reflecting enforcement and regulatory actions relevant to advertising content;
- further guidance to cover intermediaries, including lead generators;
- best practice examples in relation to contemporary advertising activities and mediums, including 'finfluencer' marketing, streaming, social media posts, in-app advertising, and AI-generated advertising; and
- consolidated guidance on the use of past performance figures in advertising from Regulatory Guide 53: *The use of past performance in promotional material* ("**RG 53**").

In light of these updates, financial services businesses should consider undertaking a review of their:

- website content and service descriptions;
- social media posts and marketing campaigns;
- seminar and webinar materials;
- client acquisition and lead generation activities;
- use of testimonials, performance data, case studies; and
- internal marketing approval processes.

The full media release can be viewed here.

The updated RG 234 can be viewed here.

Warning issued to digital asset businesses ahead of expiration of no-action position

On 4 May 2026, ASIC issued a warning to providers of financial services involving digital asset financial products urging them to act quickly to decide whether they are required to apply for an AFS licence, or variation to their existing AFS licence, and apply by 30 June 2026 prior to the expiration of ASIC's "no-action" position.

In 2025, ASIC issued updated guidance in the form of *'Information Sheet 225: Digital Assets: Financial products and services'* ("**INFO 225**") directed at businesses and individuals offering financial products and services in relation to digital assets. The guidance provided clarity for digital asset providers by outlining which digital asset products are considered to be financial products. As part of the updated guidance, ASIC granted a sector-wide no-action letter to allow existing digital asset providers to consider the guidance and, where necessary, apply for a new or varied licence by 30 June 2026.

Firms who need a licence or variation to their existing authorisations must apply by 30 June 2026 or risk being engaged in unlicensed conduct and breaching financial services laws which carry serious civil and criminal penalties. Firms that provide financial services involving digital assets must urgently consider whether they must apply for a new or varied licence prior to the expiration of the no-action letter.

The full media release can be viewed here.

ASIC issues an update on the progress of its regulatory simplification project

On 19 May 2026, ASIC released a progress update in relation to its regulatory simplification project outlining the steps it has taken towards clearer regulation, expanding digital services capability, streamlining its website, and simplifying regulatory guidance. In September 2025, ASIC released *'Report 813: Regulatory Simplification'* ("**REP 813**") which explored ideas to simplify regulation and ease regulatory burdens and outlined the regulator's intention to conduct simplification work.

Regulatory simplification is a strategic priority for ASIC in 2026 and *'Report 830: Regulatory simplification progress report'* ("**REP 830**") highlights ASIC's achievements and progress so far, including:

- **improved access to regulatory information on ASIC's website** with approximately 280 form landing pages updated to make it easier for industry stakeholders to find, understand and comply with regulatory requirements;
- **modernised digital services** driving a 380% increase in forms available for electronic lodgement, reducing paper-based lodgements by 45,000 and simplifying how businesses interact with ASIC;
- **simplified regulatory guidance** by taking immediate steps to improve the clarity, structure and usability of ASIC's guidance; and
- **reducing reporting and data collection burdens** through improved engagement and consultation with industry stakeholders prior to issuing data requests or notice s during thematic surveillance.

ASIC will continue to priorities regulatory simplification and has a strong pipeline of simplification initiatives in progress.

ASIC has stated that upcoming simplification work over the next six months will include:

- the development of sector-based regulatory roadmaps;
- improving the ASIC registers through the RegistryConnect program;
- working with other regulators to streamline and consolidate data requests;
- further enhancing the clarity, structure and usability of ASIC's regulatory guidance; and
- continuing the simplification and codification of legislative instruments.

The full media release can be viewed here.

ASIC proposes to remake relief from dollar disclosure and AFS licensing requirements

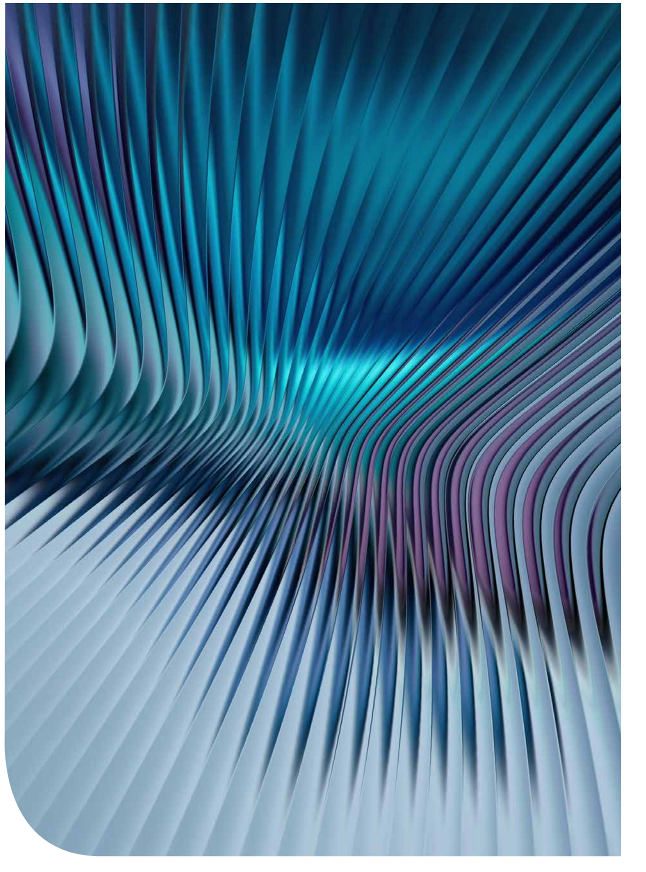
On 5 May 2026, ASIC announced that it is seeking feedback on a proposal to remake two legislative instruments that provide relief from dollar disclosure and certain AFS licensing requirements for a period of five years. The legislative instruments, which will expire on 1 October 2026, are:

- *ASIC Corporations (Disclosure in Dollars) Instrument 2016/767* ("**ASIC Instrument 2016/767**"); and
- *ASIC Corporations (Financial Product Advice – Exempt Documents) Instrument 2016/356* ("**ASIC Instrument 2016/356**").

ASIC is proposing to extend the dollar disclosure exemptions in ASIC Instrument 2016/767 to certain risk products provided by discretionary mutual funds. The remaining changes proposed by ASIC are minor and technical in nature aiming to improve the clarity and consistency of both instruments.

Submissions closed on 1 June 2026.

The full media release can be viewed here.



Enforcement

ASIC issues warnings and commences reviews amid continued finfluencer crackdown

ASIC, alongside 16 global regulators, has continued its crackdown on finfluencers amid growing concern about the influence of social media and online financial information on financial decision making.

Recent MoneySmart research has revealed that 63% of GenZ Australians (aged 18-28) rely on social media for financial information, with over half saying they somewhat or completely trust financial information on social media and from finfluencers. ASIC Commissioner Alan Kirkland emphasised that online financial information is largely *"designed to drive clicks and engagement, rather than promoting accurate information"* exposing consumers to biased or misleading content.

On 24 April 2026, ASIC issued warning notices to four finfluencers and commenced a review of another 15 finfluencers operating under AFS licences suspected of providing unlicensed financial advice or engaging in misleading or deceptive conduct. The four finfluencers were issued warning notices in relation to the suspected unlicensed provision of financial services, including promoting claims of guaranteed returns. ASIC has also met with three AFS licensees who authorise and supervise a total of 15 'finfluencers' as authorised representatives.

ASIC emphasised its expectation that AFS licensees authorising finfluencers have adequate and documented arrangements in place to actively supervise their conduct and maintain records of this supervision. ASIC issued a reminder to licensees that they remain responsible and liable for the conduct of finfluencers authorised under their AFS licences, including for any breaches.

The full media release can be viewed here.

Registration prohibition order against a former financial adviser increased to three years following review

On 12 May 2026, a two-year prohibition order against a former financial adviser has been set aside and increased to three years following a review by the Administrative Review Tribunal ("**ART**").

The Financial Services and Credit Panel ("**FSCP**") had previously made a registration prohibition order against Mr Rogers for two years. The FSCP found that Mr Rogers, while authorised by United Global Capital Pty Ltd ("**UGC**"), inappropriately used:

- a scaled advice model that excluded consideration of the suitability of establishing an SMSF and investing into products related to Mr Rogers' licensee; and
- a rate of return in the benefit comparison in his statement of advice ("**SOA**").

Mr Rogers sought a review of that decision, which was ultimately set aside and increased to three years. Following the ART's decision, Mr Rogers is banned from being registered with ASIC and providing personal advice to retail clients on relevant financial products during the prohibition period. Mr Rogers' registration prohibition will end on 27 November 2028.

The full media release can be viewed here.

Updates from the industry

Australia well-placed to unlock opportunities from innovation in the financial system

ASIC has released new research indicating that Australia is well-placed to harness the ongoing surge in financial innovation. The 'Innovation in Financial Technology and RegTech research' conducted by the Digital Finance Cooperative Research Centre ("**DFCRC**"), released on 21 May 2026, outlines the nature of global innovation in financial services, the practical changes driven by this innovation, and how regulators are responding to these changes.

The research highlights that Fintech and RegTech innovations are evolving globally due to the development and integration of artificial intelligence ("**AI**"). AI is becoming embedded in crucial financial operations, including credit underwriting, portfolio management, disclosure, and claims processing, which is gradually changing the structure and provision of financial products and services. The research emphasised that financial services are becoming more digital, automated and closely integrated with digital platforms.

According to ASIC Chair Joe Longo, Australia is a global leader in some areas, including its payments infrastructure and pioneering 'buy now pay later' sector, and is well positioned to identify, facilitate and support innovation opportunities. Mr Longo emphasised ASIC's role to ensure innovation *"happens safely and responsibly"* and *"strikes the right balance between protecting consumers, boosting market integrity and promoting innovation"*. The research was commissioned by ASIC forming part of ASIC's strategy to support responsible innovation and informing ongoing industry engagement, including through targeted roundtables and ASIC's Digital Finance Advisory Panel ("**DFAP**").

The full media release can be viewed here.

ASIC outlines financial reporting, audit and sustainability focus areas for the 2026–27 financial year

On 18 May 2026, ASIC released its key focus areas for its financial reporting, audit and sustainability reporting activities for the 2026-27 financial year ("**FY27**"). ASIC has also released updates to its surveillance programs, which are ongoing.

Financial Reporting

In FY27, ASIC will review the disclosures and financial reports of listed and unlisted companies, registrable superannuation entities ("**RSEs**") and managed investment schemes ("**MISs**"). ASIC will continue to monitor areas where significant judgment from the preparers of financial reports is required, including:

- revenue recognition;
- assessment of asset impairment; and
- recognition and measurement of financial instruments.

Audit Focus Areas

In FY27, ASIC will review a total of 25 audit files while maintaining a focus on listed and unlisted companies, RSEs and MISs. ASIC will select audit files from a variety of sources:

- where there is a material correction to a financial report;
- where ASIC is concerned a financial report may be materially misstated;
- based on internal or external data indicating a risk to audit quality; or
- from a random selection process.

ASIC will closely monitor and report the implementation of remedial actions arising from its audit findings.

Sustainability reporting and assurance focus areas

ASIC has taken a range of measures to support the compliance of AFS licensees with the sustainability reporting framework, including by providing guidance, relief and new educational materials on the regulator's sustainability reporting webpage.

The full media release can be viewed here.

AFCA

AFCA publishes latest Systemic Issues Insight Report

On 21 May 2026, AFCA published Edition 8 of their Systemic Issues Insights Report, highlighting the systemic issues and markers of excellence identified in the first half of the 2025-2026 financial year ("**FY26**"). The report highlights both opportunities to improve operational practice and markers of excellence in practices across Australia's financial services sector, including case studies, practical examples and insights from the systemic issues identified.

The report identifies cross-sector themes which indicate deficient systems, processes or oversight arrangements and insights observed through AFCA's investigations undertaken during the reporting period, including:

- reflecting obligations in operations;
- complaint handling failures as a driver of systemic risk;
- system migrations and automation failures;
- third-party administration and operational risk oversight;
- claims handling delays; and
- consumer vulnerability that is not embedded into processes.

Over 180,000 consumers and small businesses benefited from AFCA's systemic work during the first half of FY26 with $1.9 million secured in financial remediation.

The full media release can be viewed here.

The full media release can be viewed here.

AI and [any profession]: many times it is a case of the Emperor's New Clothes

Andrew Bullock
Associate Director Dispute Resolution Team

Professor Tony Hoare, a titan of early computer programming, recently passed away at 92. An article highlighting some of his views on programming prompted these reflections on AI, which have been raised internally here within Cowell Clarke.

This piece is largely spurred by Professor Hoare's statement in his 1980s speech, "The Emperor's Old Clothes":

"I conclude that there are two ways of constructing a software design: One way is to make it so simple that there are obviously no deficiencies and the other way is to make it so complicated that there are no obvious deficiencies."

The application of this observation to AI and the law follows, but first an illustration closer to Professor Hoare's quip.

A recent and practical example

The screenshot to the right is of the start of a "Kris Kringle" (KK) app developed using Google's AI Studio last year. It was an attempt to replicate the functionality of a KK app used each year which is now marooned on an old device and no longer supported on the app store.

On its face, this early attempt appears to have all of the functionality sought to be replicated.

Does it operate as intended? Will it actually work when deployed on a phone?

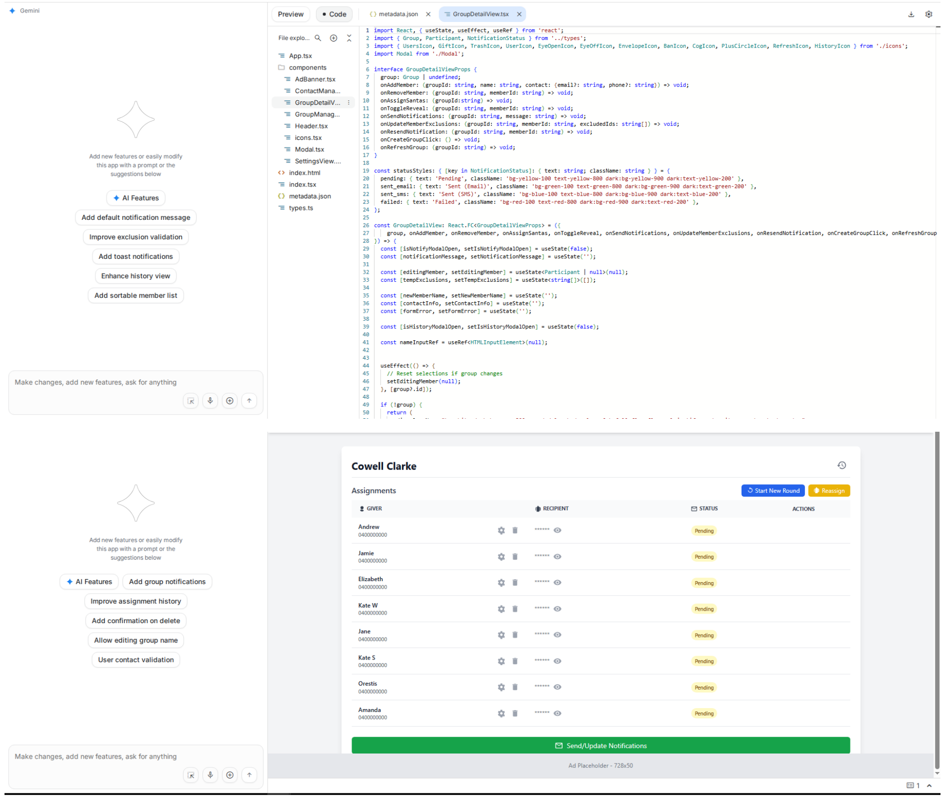
That is unclear.

For a non programmer, the AI generated code cannot be meaningfully interrogated. It may as well be powered by Santa costume wearing unicorns for all that can be discerned from the underlying code.

What is known, is that studies have suggested that up to 45% of AI generated code contains security flaws, and Amazon has recently adopted a "human in the middle" approach following a number of incidents involving AI. There are clear echoes of Professor Hoare's observations on the risks of unreliable programming being a far greater risk than unsafe cars or nuclear power stations.

More importantly, even to a programmer, AI can produce "bad code that looks good".

As a result, this app is unlikely to be appearing on a phone any time soon.



The legal parallel

Now to the Emperor's (legal) clothes.

Many lawyers will by now have had clients provide them with "memorandums of advice" generated by ChatGPT, often accompanied by a confident assurance of success (sometimes even on a percentage basis).

The issue with AI advice is now not limited to hallucinated case citations or invented chronologies.

The more significant issue is AI now produces "bad law that looks good".

(CONTINUES)

Quoted cases may exist but not support the propositions advanced. Arguments may appear persuasive, even to those with legal training, but fail when even lightly interrogated.

Why does this matter?

Those involved in litigation are accustomed to interrogating every footnote in an opponent's submissions. However, as AI evolves, errors are becoming more latent and less obvious and may only be apparent to those able to see through the complexity.

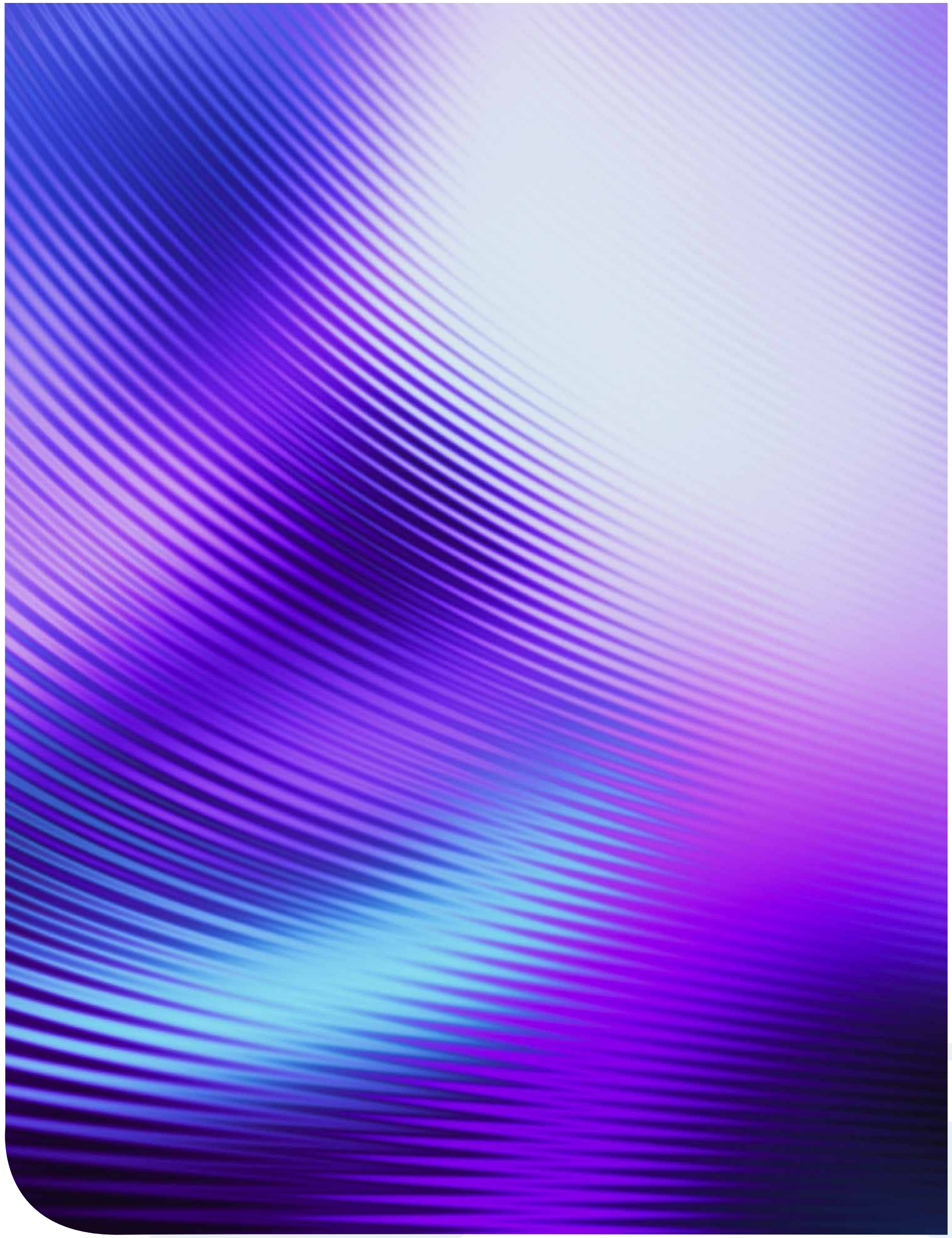
Key takeaways

AI can produce outputs that appear highly polished and authoritative, but that surface quality may mask underlying flaws, inaccuracies, unsupported assumptions or interpretations or other risks.

Both in coding and legal analysis, AI often generates "bad work that looks good," which makes human expertise and critical review essential.

The increasing sophistication of AI means errors are becoming less obvious and more difficult to detect without domain knowledge.

A "human in the loop" is not optional. Responsible use of AI requires verification, interrogation, and professional judgment before relying on its outputs.



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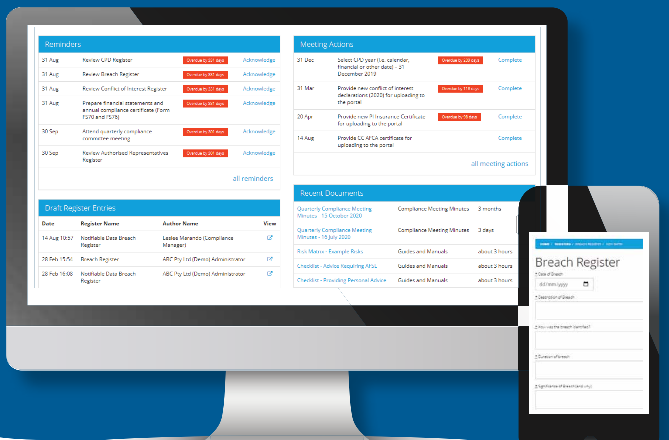

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