Law Council
OF AUSTRALIA

Artificial intelligence use in the Federal Court of Australia

Federal Court of Australia

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About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its Constituent Bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its Constituent Bodies: 16 Australian State and Territory law societies and bar associations, and Law Firms Australia. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
- Western Australian Bar Association
- Law Society of Western Australia
- Law Firms Australia

Through this representation, the Law Council acts on behalf of more than 107,000 Australian lawyers.

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The Chief Executive Officer of the Law Council is Dr James Popple. The Secretariat serves the Law Council nationally and is based in Canberra.

The Law Council's website is www.lawcouncil.au.

Acknowledgements

The Law Council acknowledges the contributions of the following Constituent Bodies in the preparation of this submission:

- Law Firms Australia
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- New South Wales Bar Association
- Queensland Law Society
- Victorian Bar Incorporated

The Law Council also gratefully acknowledges the assistance of its Futures Committee, Professional Ethics Committee, Young Lawyers Committee, and the Federal Dispute Resolution Section's Alternative Dispute Resolution Committee and Legal Technology Committee.

Introduction

1. The Law Council of Australia welcomes the opportunity to contribute to the Federal Court of Australia's consultation on the use of artificial intelligence (**AI**) in the Court.

2. We are pleased that, as stated in Chief Justice Mortimer's Notice to the Profession dated 29 April 2025,[1] the Judges of the Court have been considering and discussing the development of either Guidelines or a Practice Note regarding the use of generative AI (**GenAI**) by practitioners and court users.

3. The advancement of AI, particularly GenAI, continues to be rapid. There are innumerable opportunities and benefits that AI brings to the community and the legal system. However, there are a range of risks associated with GenAI use in legal practice. We commend the approach taken by the Court in consulting widely with litigants conducting their own proceedings, the legal profession, and the public, and in examining existing practices regarding the use of GenAI.[2]

4. We see strong value in the Court's leadership on this issue, given its prominent role in the administration of justice in Australia. We consider that consistency of approach regarding any proposed expectations and obligations that may apply to the use of GenAI in litigation is desirable. At the same time, we appreciate that each jurisdiction may choose to take a different approach.

5. We understand that this is a preliminary consultation, aimed at addressing the threshold question of whether Guidelines or a Practice Note on the use of GenAI in the Court should be developed. To assist the Court in its consideration of this issue, our submission seeks to provide:

   - an overview of the legal uses of AI tools that are available;
   - a summary of existing guidance on the use of GenAI in Australia and overseas;
   - a high-level position on whether Guidelines or a Practice Note should be developed by the Court;
   - preliminary views on the form and content of any Guidelines or Practice Note, based on feedback received by the Law Council to date; and
   - information about various other related matters for the Court's consideration.

6. We acknowledge that the Court is seeking the unified position of the Australian legal profession, to the greatest extent possible. However, it is important to note that we have received significant interest in this consultation across our Constituent Bodies, Sections, and Advisory Committees. Much of the feedback we received was preliminary, noting the limited timeframe for consultation, and the complexities inherent in the subject matter. In addition, we have received diverse views on certain issues—particularly relating to what level of prescriptiveness is most appropriate—indicating that these are matters where reasonable minds across the legal profession will differ. We would be pleased to continue our consultations and refine our views as the Court determines its future direction in this area.

7. In principle, the Law Council supports the development of Guidelines or a Practice Note on the use of GenAI in the Court. Our preliminary view is that a Practice Note is preferable to Guidelines, as it will provide greater certainty and enforceability, and

[1] Federal Court of Australia, *Notice to the Profession: Artificial intelligence use in the Federal Court of Australia* (29 April 2025).
[2] Ibid.

it is more likely to be complied with, provided that there is sufficient awareness and education accompanying its publication. In addition, there may be merit in developing multiple Practice Notes applying to different court users, including legal practitioners, experts, self-represented litigants, the public, and the judiciary.

8. Given the widespread and growing use of GenAI by legal practitioners, clients, and self-represented litigants alike, a broadly framed prohibition on its use would be neither practical nor proportionate, and risks hindering innovation and access to justice. Therefore, it is important that any guidance material developed by the Court demonstrates a receptive attitude towards the use of AI, recognising its growing presence and utility, whilst sufficiently addressing the potential risks of misuse.

9. We do not yet have a settled position on the more granular matters with respect to the contents and parameters of such guidance. However, we provide preliminary comments on these matters below for the Court's consideration. If there are any specific matters that the Court would appreciate the Law Council's perspective on, we would be pleased to provide a supplementary submission to address these matters in due course.

10. We anticipate that this consultation represents the first phase of the Court's engagement on this evolving area. Given the substantial interest across the profession, and the complex issues raised by the use of GenAI in litigation, we respectfully request that the Court continue to consult closely with the Law Council as its thinking develops. We would especially welcome the opportunity to review, and provide feedback on, any draft materials that the Court produces, to ensure such documents will be workable in practice.

11. More broadly, given that the use of GenAI in legal proceedings is a common concern across jurisdictions, we would welcome a referral by the Council of Chief Justices to the Harmonisation of Rules Committee to consider the standardisation of court rules, forms, and practice documents for adoption by all participating courts.

12. Thank you again for the opportunity to contribute to this consultation. We trust our submission is of assistance and we look forward to continuing to engage with the Court on these matters.

Background

Forms and uses of AI

13. References to AI today are typically references to GenAI, such as the ChatGPT system that was released for public use in late 2022. GenAI has been in existence since approximately 2017, following research by Google that introduced 'Transformer' network architecture models.[3]

Uses in the legal context

14. There are many different forms of AI that have been in use for some time, including within the Australian legal sector. These are outlined below.

15. The Law Council references a number of available products in this context, as this may assist the Court's understanding of relevant uses and tools in the legal context. However, we do not preference any specific tools or models.

Litigation

16. GenAI has been gradually introduced into eDiscovery and large-scale document review over approximately the past 18 months.[4] However, this use is still in its infancy, and it is being used in an experimental manner. This is because the underlying GenAI models are evolving, and GenAI features are still being integrated into existing platforms used in Australia such as Relativity, Nuix, and Reveal. There are also several new products coming onto the market that are 'GenAI' centric, such as Cicero, Mary Technology, Merlin Search, and Epiq AI.[5]

17. In addition to being used in document review, GenAI is also being used in:

    (a) chronologies;

    (b) issue coding or classifying of documents;

    (c) analysing and summarising a corpus of documents;

    (d) summarising cases;

    (e) legal research;

    (f) analysing witness statements; and

    (g) extracting objective coding of documents.

18. Many existing and new systems are integrating existing, proven, and defensible technologies with GenAI to achieve more reliable results and address some of the issues arising from 'hallucinations'. Many systems are also focused on building in easy-to-use verification workflows. We expect these systems to continue to improve.

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[3] Ashish Vaswani et al., *Attention Is All You Need*, 31st Conference on Neural Information Processing Systems, Long Beach, CA, USA (2017).
[4] AI has been used in eDiscovery for many years, but using a different approach (an 'expert system') created in a different way. For a summary of the distinction between the two programming approaches and the practical implications for use in a high-stakes application, see the section below on 'Non-generative AI' and following.
[5] Epiq, *Epiq AI* (Web Page, 2025).

19. As a broad generalisation, any 'Software as a Service' or Cloud-based software has either already integrated GenAI, or will be releasing GenAI add-ons imminently. The impact of this is very significant in the legal context. The 'traditional' approach to AI risk management and governance in law (e.g., using eDiscovery or contract analysis software) was developed at a time when AI was a discrete product, deployed to do a specific job and usually with a team of specialists supervising it.

20. Moving forward, an element of AI involvement will creep into many aspects of routine legal work. Moreover, the same will apply in other aspects of the economy, such that AI involvement in material produced by clients, experts, witnesses, government departments, and computerised record systems will become almost ubiquitous.

Legal research and drafting

21. The major legal publishers (Thomson Reuters[6] and Lexis Nexis[7]) have both released numerous legal research tools that integrate GenAI to assist in legal research in search and retrieval, as well as potentially in legal drafting.

22. An early provider of an all-in-one legal AI 'solution' is Harvey.[8] Harvey has close links with—and is partially funded by—OpenAI, the company that created ChatGPT and is one of the major providers of commercial GenAI models.

Microsoft CoPilot

23. Microsoft has been heavily integrating and promoting GenAI into its Microsoft Office and Office365 products, branded as Copilot. This has been adopted by many organisations seeking to apply AI workflows to their own data.

Document management systems

24. The major document management systems (including iManage and NetDocs) have GenAI offerings designed to assist with searching and drafting.

Bespoke AI within large law firms

25. Some of the large commercial law firms have developed, or are developing, internal GenAI programs. These programs can operate as an internal ChatGPT or chatbot that employees can interact with, instead of using a search function in an intranet page. Other models may be operating as sophisticated knowledge managers that are able to craft and tailor precedents.

26. These bespoke programs are typically restricted to internal use within the law firm, and are expected to operate consistently with professional obligations, including those concerning privilege and confidentiality. For example, the use of such programs should ensure:

    (a) that confidential material (including material produced under compulsion) is not used to train the large language model of a GenAI program;

[6] Thomson Reuters, *Legal professionals expect professional-grade AI* (Web Page, 2025).
[7] LexisNexis, *The Legal Industry in the Age of AI* (Web Page, 2025).
[8] *Harvey AI* (Web Page, 2025).

(b) that access to the prompt, input materials, and AI-generated output from analysis of the confidential material is limited to those persons who are permitted access to the underlying confidential material; and

(c) that the confidential material (including prompts, input materials, and AI-generated outputs) is securely stored at all times.

Online meetings and transcription

27. The dominant online meeting systems (Teams and Zoom) both have an automatic GenAI transcription function, should the host choose to record the meeting.

28. This transcript is not human-vetted when initially generated and can contain inaccuracies. In particular, the transcription tool is often incorrect where multiple meeting participants are in the same room, as the tool has difficulties determining which person is speaking at any given time.

29. Some third-party add-on products that integrate with online meeting platforms (e.g., Otter.ai, buildbetter.ai, fireflies.ai, and Jamie.ai, among many others) have data-sharing policies that require careful scrutiny and may not be appropriate for use with clients, between colleagues, or while engaged in remote court appearances.

Benchmarking of legal GenAI models

30. Although there are many well-established benchmarks that are used to demonstrate the superiority of new GenAI models, there has been little work done to date in establishing legal benchmarks.

31. The most noteworthy efforts in this area so far are by Stanford University RegLab and Human-Centred Artificial Intelligence researchers, who released a study in late May 2024 that benchmarked the offerings of LexisNexis and Thomson Reuters.[9] The study found that the Lexis+ AI and Ask Practical Law AI systems produced incorrect information more than 17 per cent of the time, while Westlaw's AI-Assisted Research hallucinated more than 34 per cent of the time.[10]

32. While these results are not necessarily reflective of the capacity of these systems in 2025, it is significant that these legal GenAI models had many features that were supposed to create a clear improvement in accuracy compared to general purpose large language models such as ChatGPT and specialist systems intended for use in law firms. The lesson learned was that, while accuracy can be improved, for this generation of products, a minimum of line-by-line scrutiny is essential.

33. Other noteworthy legal GenAI benchmarking has been undertaken by Vals AI.[11]

[9] Stanford University Human-Centred Artificial Intelligence, *AI on Trial: Legal Models Hallucinate in 1 out of 6 (or More) Benchmarking Queries* (23 May 2024). We note that at the time, this study was criticised for using (by then) outdated GenAI models, and a contested methodology. In addition, there has been significant improvements in both the base model and the integration since that time.
[10] Ibid.
[11] Vals AI, *Public Enterprise LLM Benchmarks* (Web Page, 2025).

Forms of AI

34. Each form of AI presents unique implications that must be considered independently when the Court is developing its guidance. Understanding the distinct characteristics of each category—whether it be GenAI or other types of AI—is crucial to ensuring that any guidance is fit for purpose.

Non-generative AI

35. AI has been used since the early 2010s in large-scale document review. The underlying technologies that are used are generally stable, and were developed in the 1980s and 1990s.

Machine learning / Technology Assisted Review

36. Machine learning is a form of AI that is used extensively in the eDiscovery process, where the training for the model is based upon the coding by lawyers as they review documents. Typically, this training is based upon the relevance of a document where the document is either relevant or irrelevant.

37. Machine learning AI may be referred to by different names and acronyms, such as Technology Assisted Review (**TAR**), Computer Assisted Learning (**CAL**) or Active Learning (**AL**). It is also referred to as Predictive Coding: the Court references Predictive Coding and TAR in its *Technology and the Court Practice Note*,[12] and the supporting materials.[13]

38. One of the main differences between traditional TAR and GenAI for reviewing documents is how they decide what is relevant:

    - TAR relies on lawyers manually reviewing and tagging a sample of documents, and the system then finds similar ones and marks them the same way.
    - Conversely, with GenAI, a lawyer gives the system a prompt (instructions or questions), and the GenAI tool uses that to predict which documents are relevant.

39. TAR typically involves substantial human oversight. Lawyers check how well the system is working by comparing the AI's predictions with what they have already reviewed. TAR also needs a sufficiently large dataset to work properly. Often, lawyers will need to manually review thousands of documents first (sometimes 5000–10,000) to 'train' the system, and the entire collection of documents needs to be large enough for the method to be effective.

40. It is generally accepted across the legal industry and various regulators that TAR will be used in large-scale matters.[14] Further, in large and complex document reviews, it is common that there may be many different models used at points in time for different reasons.

[12] Federal Court of Australia, *Technology and the Court Practice Note* (GPN-TECH), 25 October 2016.
[13] Federal Court of Australia, *Litigation using Electronic Discovery* (Web Page, 2025).
[14] See *McConnell Dowell Constructors (Aust) Pty Ltd vs Santam Ltd (No 1)* [2016] VSC 734.

Document clustering

41. Another form of AI is document clustering where a model is built upon the textual contents of the corpus of documents, and the documents are classified into groupings of similar documents, based upon common themes or concepts from within the documents.

GenAI

Closed-source (commercial) GenAI models[15]

42. Closed-source models are proprietary, with restricted access to the code, training methods, and datasets, limiting user control and customisation. These models often provide improved performance and capabilities due to significant resources invested by their creators.

43. Closed-source models are typically those that one either uses for free (with usage restrictions) or one pays a monthly subscription fee. These include models by:

- ChatGPT and GPT4 by OpenAI;
- Claude by Anthropic; and
- Gemini by Google.

44. Closed-source models are also used as engines that are integrated into products. For example, Harvey uses the OpenAI GPT4 models.

Open-source GenAI models

45. Open-source models are fully accessible for anyone to use, modify, and distribute, although some models have some restrictions with commercial usage. These include models by:

- Llama by Meta (Facebook);
- Mistral; and
- Command R+ by Cohere.

46. Recently, there have been several open-source models released by foreign companies. These include:

- DeepSeek by the hedge fund High-Flyer; and
- Qwen by Alibaba.

[15] A note regarding terminology: 'Closed Source' and 'Closed Models' can mean different things, and the difference is significant. To add to the confusion, the terminology around Open/Closed (sometimes called Public/Private) AI models is not applied consistently. *Open Source* means an AI model for which the source code or programming of the model itself is published and can be adapted. *Closed Source* means that the model can be accessed and used (rather like Microsoft Word can), but users cannot generally see or alter what is going on 'under the hood'.

Conversely, a *Closed* or *Private* model described in other contexts usually means an AI model that has been licensed to a specific user or retailer. It is adapted for their specific use, hosted on their own network and any information that passes into the model during the process of fine tuning or use stays with that user. Most practice management software providers offering AI products to solicitors are using a model licensed in this way. A Public or Open model in this context is a service (such as Claude or ChatGPT) that can be used (usually with free and subscription tiers) but information 'absorbed' into the model stays with the provider. The degree to which information accretes to the model and passes to the control of the provider varies significantly depending on the product and the subscription tier.

47. There may be security concerns associated with the use of these platforms. For example, in February 2025, the Commonwealth Department of Home Affairs determined that the DeepSeek platform posed an 'unacceptable risk' to national security if used by Commonwealth agencies.[16]

Multi-modal GenAI

48. The main focus of GenAI tools used in the legal context are text based. However, there are also voice-, image- and video-based models, some of which allow a virtual representation of a real person's voice or image to be created. This 'Deepfake' technology has now evolved to the point that it may be difficult to determine whether voice recordings or video genuinely represent past events or have been created.

49. Each of these models could have significant impacts on causing distrust in evidence, given the ease with which these models can be used to generate completely fictitious—yet realistic—outputs.

Fine-tuning and training AI models

50. We understand that there is significant confusion and mistrust surrounding the use of AI models. For most models, day-to-day usage typically has little to no residual impact upon the model, meaning that documents and individual uploads, and their interactions with that model, are not likely to be incorporated into future versions of the model.

51. However, it is known that most models do have some level of human oversight and analysis of the prompts entered. Moreover, some providers—especially those offering a free service or with an open deployment model (see footnote 15) operate under terms of service allowing them to use or share data accessed by them quite extensively, including selling that data.

52. Data brokerage for AI training is a lucrative industry which has not been well-examined.[17] There is a significant appetite for information which—even if anonymised—can be mined for know-how to the benefit of the buyer and at the detriment of the party that supplied the information.

53. Training a model is very computationally expensive. High-end computer chips called Graphics Processing Units (**GPUs**) are used in training. It is common for the training of large models to take months, and cost many millions of dollars—including for the GPUs and the required electricity and cooling of the data centre.

54. There are known copyright issues with almost all GenAI models and there are numerous class actions underway in the United States. In December 2023, the Australian Government established the Copyright and Artificial Intelligence Reference Group, which has been directed to engage with stakeholders across a range of sectors on copyright issues in the context of AI.[18]

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[16] Australian Government (Department of Home Affairs), *PSPF Direction 001-2025: DeepSeek Products, Applications and Web Services* (4 February 2025).
[17] See Australian Competition & Consumer Commission, *Digital Platform Services Inquiry* (Interim Report, March 2024).
[18] Australian Government (Attorney-General's Department), *Copyright and Artificial Intelligence Reference Group (CAIRG)* (Web Page, 2025).

55. Fine-tuning an AI model, however, is not as computationally expensive as training. This is typically how most GenAI companies have used domain-specific content to fine-tune or tailor their model.

Existing domestic and international guidance

56. The Court will be cognisant of the ongoing development of approaches to AI use in courts, tribunals, and legal practice more broadly, in Australia and New Zealand. A range of approaches have emerged, particularly in terms of the level of flexibility that has been imposed by these guidance materials.

Australia

National

57. In June 2022, the Australian Institute of Judicial Administration published a guide on AI decision-making and the courts for judges, tribunal members, and court administrators.[19] This guide was updated in December 2023.

58. The Law Council supports the ongoing provision of educational material on these matters (like that guide) to members of the judiciary, tribunals, and court/tribunal staff. We recognise that, as with the legal profession itself and the broader Australian community, there are divergent degrees of understanding and awareness of the implications of GenAI for the administration of justice across the judiciary.

59. More broadly, the Law Council has developed an online portal that is designed to provide a centralised source of information to support legal professionals in understanding and responding to the opportunities, limitations, and risks presented by the use of AI, including GenAI.[20] This webpage compiles guidance, commentary, and tools from the Law Council's Constituent Bodies and other relevant bodies across Australia.

New South Wales

60. The New South Wales Supreme Court published its *Practice Note SC Gen 23—Use of Generative Artificial Intelligence* (**NSWSC GenAI Practice Note**) in November 2024, with a revised version commencing on 3 February 2025.[21]

61. The District Court of New South Wales has adopted the NSWSC GenAI Practice Note,[22] as has the Land and Environment Court of New South Wales.[23] In March 2025, the New South Wales Civil and Administrative Tribunal (**NCAT**) issued a Procedural Direction on the use of GenAI for commencement on 7 April 2025, heavily based on the NSWSC GenAI Practice Note, with minor modifications to accommodate the particular types of proceedings determined by NCAT.[24]

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[19] The Australian Institute of Judicial Administration, *AI Decision-Making and the Courts: A guide for Judges, Tribunal Members and Court Administrators* (June 2022, updated December 2023).
[20] Law Council of Australia, *Artificial Intelligence and the Legal Profession* (Web Page, 2025).
[21] Supreme Court of New South Wales, *Supreme Court Practice Note SC Gen 23—Use of Generative Artificial Intelligence (Gen AI)* (28 January 2025).
[22] District Court New South Wales, *District Court General Practice Note 2—Generative AI Practice Note* (18 December 2024).
[23] Land and Environment Court of New South Wales, *Practice Note—Use of Generative Artificial Intelligence (Gen AI)* (11 February 2025).
[24] New South Wales Civil and Administrative Tribunal, *NCAT Procedural Direction 7—Use of Generative Artificial Intelligence (Gen AI)* (7 March 2025).

62. The NSWSC GenAI Practice Note implements a relatively prescriptive approach, including by prohibiting the use of GenAI in certain circumstances (i.e., generating the content of affidavits, witness statements, and character references), requiring leave of the Court in specific instances of use, and verification of all citations.

63. The New South Wales Supreme Court also published *Guidelines for New South Wales judges in respect of use of Generative AI* in November 2024.[25]

Victoria

64. The Supreme Court and County Court of Victoria jointly published *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation* (**Victorian AI Guidelines**) in May and July 2024 respectively.[26] The Victorian AI Guidelines are high-level and principles-based, and include a glossary of key terms.

65. The Victorian Law Reform Commission is currently undertaking a project on AI in Victoria's courts and tribunals.[27] A detailed Consultation Paper was released in October 2024,[28] and a final report is expected to be released in late 2025.

Queensland

66. In May 2024, the Queensland Courts issued *The Use of Generative Artificial Intelligence Guidelines for Responsible Use by Non-Lawyers* (**Queensland AI Guidelines**).[29]

67. The Queensland AI Guidelines apply to civil and criminal proceedings in Queensland courts and tribunals, and are aimed at assisting self-represented litigants and non-lawyer advocates to understand the capabilities and limitations of GenAI tools, especially chatbots. The Queensland AI Guidelines also include a list of common terms.

68. At the request of the Queensland Supreme Court, the Queensland Law Society published a Guidance Statement on the use of AI by solicitors in Queensland in July 2024.[30] The Guidance Statement is focused on the professional and ethical obligations implicit in AI use, including AI use in court proceedings. This document accompanied by a Companion Guide, containing background information on tool selection, technical information, and the practical implementation of appropriate guardrails.[31]

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[25] Supreme Court of New South Wales, *Guidelines for New South Wales judges in respect of use of Generative AI* (21 November 2024).
[26] Supreme Court of Victoria, *Guidelines for litigants: Responsible use of artificial intelligence in litigation* (May 2024); County Court Victoria, *Guidelines for litigants: Responsible use of artificial intelligence in litigation* (July 2024).
[27] Victorian Law Reform Commission, *Artificial Intelligence in Victoria's Courts and Tribunals* (Web Page, 2025).
[28] Victorian Law Reform Commission, *Artificial Intelligence in Victoria's Courts and Tribunals: Consultation Paper* (October 2024).
[29] Queensland Courts, *The Use of Generative Artificial Intelligence (AI) Guidelines for Responsible Use by Non-Lawyers* (14 May 2024).
[30] Queensland Law Society, *No. 37 Artificial Intelligence in Legal Practice* (July 2024).
[31] Queensland Law Society, *AI Companion Guide* (July 2024).

Uniform Law jurisdictions

69. The Law Society of New South Wales, the Legal Practice Board of Western Australia, and the Victorian Legal Services Board and Commissioner jointly published a *Statement on the use of artificial intelligence in Australian legal practice* in December 2024.[32]

70. The Statement is based on the ethical conduct rules and duties under the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* that apply to practitioners in New South Wales, Western Australia, and Victoria in connection with the use of AI. The Statement clarifies the expectations that legal profession regulators have of practitioners when they use AI tools in their legal work, and sets out best practice principles regarding risk management when using AI.

Consultations on foot

71. In March 2025, the Supreme Court of Western Australia commenced a consultation on whether it should develop a Practice Direction on GenAI.

72. We understand that the Supreme Court of the Australian Capital Territory is considering a proposal to introduce a Practice Direction on the use of GenAI, mirroring the NSWSC GenAI Practice Note.

73. In May 2025, the Honourable Chris Kourakis, Chief Justice of South Australia, released a survey to the legal profession about the use of GenAI in South Australian courts.[33]

Overseas

New Zealand

74. In December 2023, the Courts of New Zealand released three guidelines for the use of GenAI in all courts and tribunals, relating to:

- judges, judicial officers, tribunal members, and judicial support staff;[34]
- lawyers;[35] and
- non-lawyers.[36]

75. Each guideline contains high-level principles for the use of GenAI, a list of common terms, and frequently asked questions, but is tailored to the three categories of readers, noting existing expectations and obligations.

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[32] The 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* (December 2024).
[33] Courts Administration Authority of South Australia, *A statement from The Honourable Chris Kourakis, Chief Justice of South Australia launching a survey about use of Generative AI in the South Australian courts* (30 May 2025).
[34] Courts of New Zealand, *Guidelines for use of Generative Artificial Intelligence in Courts and Tribunals: Judges, Judicial Officers, Tribunal Members and Judicial Support Staff* (7 December 2023).
[35] Courts of New Zealand, *Guidelines for use of Generative Artificial Intelligence in Courts and Tribunals: Lawyers* (7 December 2023).
[36] Courts of New Zealand, *Guidelines for use of Generative Artificial Intelligence in Courts and Tribunals: Non-lawyers* (7 December 2023).

United Kingdom

76. In December 2023, AI guidance was issued for judicial officeholders in the United Kingdom.[37] The guidance was developed to assist judicial officeholders' use of AI in their daily working lives, and observes that some litigants have been relying on AI tools to assist their pleaded cases. The guidance suggests that the judiciary can use AI to summarise large bodies of text, draft presentations, and compose emails and memoranda, but cautions against the use of AI for legal research and legal analysis.[38] The guidance was updated on 14 April 2025.

77. In addition, at the time of preparing this submission, the United Kingdom's High Court of Justice handed down its judgment in *R (Ayinde) v London Borough of Haringey*,[39] which focused on whether the Court would initiate contempt proceedings against legal representatives from and for Haringey Law Centre, after they submitted fictitious case references in a judicial review claim.

78. In its judgment, the Court also covered the wider implications of using AI and some of the baseline expectations for legal practitioners, including that:

- those who use AI to conduct any research have a professional duty to check the accuracy of such research against authoritative sources before using it in their professional work; and
- law firm leaders, and heads of chambers, have an active duty to impose 'practical and effective measures' to ensure that every individual currently providing legal services in England and Wales understands and complies with their professional and ethical obligations in their duties to the court if using AI.[40]

79. The Law Council is currently considering the implications of the issues raised in this case, in the Australian context. We would be pleased to inform the Court of our views, as these develop.

The need for guidance in the Federal Court

80. The Law Council is of the strong view that some form of guidance on the use of GenAI should be issued by the Court, to set expectations and standards for all users of the Court. More broadly, there is an opportunity for the Court's guidance to become a model for other courts in Australia, which could assist in avoiding fragmentation of GenAI regulation across jurisdictions.

81. We note that the Court's current approach to technology, as reflected in its *Technology and the Court Practice Note*,[41] has been supportive of the potential efficiency gains of emerging technologies, without loss of rigour. Further, while it may not be typical for the Court to single out a particular form of technology, there appears to be a consensus amongst the profession—and broader community—that GenAI is different to other technologies, in that it involves autonomous and intelligent systems. Therefore, specific guidance is warranted.

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[37] United Kingdom Courts and Tribunals Judiciary, *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (14 April 2025).
[38] Ibid.
[39] [2025] EWHC 1383 (Admin). For a summary of the case, see Caroline Hill, *UK High Court issues guidance on baseline expectations for practitioners using GenAI*, Legal Insider (6 June 2025).
[40] Ibid.
[41] Federal Court of Australia, *Technology and the Court Practice Note* (GPN-TECH), 25 October 2016.

82. The use and deployment of GenAI in Australia is rapidly evolving, and the prevalence of GenAI means that its use in some form, by legal practitioners, clients, and self-represented litigants, is inevitable. Consequently, guidance as to the use of GenAI, rather than a blanket prohibition, is preferable.

83. The fact that this technology will likely become ubiquitous also informs the nature and type of guidance, as it is likely that AI will become interwoven into many data systems and other software products. It will often be very difficult for a person to differentiate when they are 'using AI', in contrast to when they are simply using a computer.

84. As a result, while it may be tempting to attempt to target substantive versus incidental use of AI as the target of regulatory guidance, this is not a straightforward task. For example, proscribing the use of AI to draft an expert witness' report to ensure that words are not put in their mouth may fail to achieve its objective if that expert's opinions are based partly on material summarised, curated, or created with AI involvement.

AI and the mischief to be guarded against

85. Software tools that incorporate AI appear likely to facilitate access to justice at a lower cost. AI tools currently show promise in improving the performance of existing non-AI software (e.g., software that recognises speech to produce transcripts, and text recognition of printed documents). We recognise that AI tools allow new capabilities that may permit practitioners to perform tasks more efficiently and cheaply, such as summarising lengthy or complicated documents, and identifying facts in (or connections between) different documents and forms of media.

86. AI will be an increasingly important tool available to practitioners, and its use should not be discouraged in all circumstances or for all purposes. Nonetheless, the potential for the misuse of GenAI in Court proceedings is significant. Moreover, as noted earlier in this submission, it is likely that AI features will become ubiquitous in many systems. As such, the user may not be conscious of the fact that they are 'using AI' when producing the material.

False or misleading material being produced

87. There is, at present, an issue of concern with the use of GenAI to produce submissions made to a Court in proceedings. GenAI is capable of producing text output in response to requests by users (often called 'prompts'). However, due to the way it is programmed, GenAI can—and frequently does—produce written material that appears authoritative, but may contain errors (for example, 'hallucinations').

88. In the legal context, if GenAI is used to undertake legal research, or produce submissions, these errors may take the form of:

- inaccurate or fallacious summaries of the law;
- incorrect or baseless legal arguments; and
- references to fictitious cases (or legislation), or false attribution of propositions to real cases or legislation.

89. Effort and legal knowledge are needed to detect these errors. If they are not identified, then false or misleading submissions may be put to a court. Many instances have already occurred in Australia and overseas, involving both practitioners[42] and self-represented parties.[43] Of note, an online database has been established that tracks legal decisions in cases where GenAI has produced hallucinated content.[44] At the time of writing, 150 cases have been identified—40 of these occurred during May 2025.

90. At present, there is no way to put 'guardrails' on GenAI to completely prevent hallucinations of this kind: they are an inherent aspect of the way in which GenAI operates. That is because GenAI does not 'think' or 'reason', but generates textual output by statistical prediction, based on material that the GenAI model was trained on. However, one technique that can be used to reduce hallucinations is 'Retrieval Augmented Generation', where the model is instructed to utilise specific source materials.

91. Because the output of GenAI is, at the most basic level, produced statistically on a word-by-word basis, it can contain words that express a logically nonsensical proposition. The false appearance of correctness can be amplified by the use of valid legal syntax and convention (e.g., citations that, while syntactically correct, are to cases that do not exist), as well as legal terms and sentence structure, which appeared in the material that the GenAI model was trained on.

Loss of control of material

92. Another concern, of most relevance to the present consultation, is disclosure of material entered into a GenAI program, such as by a person using the program to analyse or draft a response to that material. Such material might be able to be accessed by the employees of the company offering the relevant tool. It might also (depending on the terms of the service) be incorporated into that tool, or future tools, and then be wholly or partly reproduced in responses produced for other users.

93. That may mean that confidentiality and client legal privilege would be lost. Further, breaches of the implied obligation of confidentiality[45] and/or (in some cases) privacy legislation may occur.

Form of guidance

94. Whatever form the guidance ultimately takes, the Court should emphasise the need to educate practitioners about the potentially problematic uses of GenAI. At the same time, the Court should not unduly prevent the use of AI tools that do not present a risk of misleading the Court or opponents due to hallucinations, and do not lose confidentiality in material entered into the tool.

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[42] *Dayal* [2024] FedCFamC2F 1166; *Handa & Mallick* [2024] FedCFamC2F 957; *Valu v Minister for Immigration and Multicultural Affairs (No 2)* [2025] FedCFamC2G 95.
[43] *Finch v Heat Group Pty Ltd* [2024] FedCFamC2G 16; *Kaur v Royal Melbourne Institute of Technology* [2024] VSCA 264; *Luck v Principal Registrar and Chief Executive Officer of the Federal Court of Australia* [2024] 1256. These cases are identified and summarised in the submission of the University of New South Wales Centre for the Future of the Legal Profession to the Victorian Law Reform Commission's review of Artificial Intelligence in Victoria's Courts and Tribunals (24 January 2025). A more recent example is *Nikolic v Nationwide News Pty Ltd* [2025] VSCA 112, specifically at [36] and [39].
[44] Damien Charlotin, *AI Hallucination Cases* (Web Page, 2025).
[45] *Hearne v Street* (2008) CLR 125.

95. In addition, it would be undesirable for the profession for there to be significant inconsistencies between the treatment of GenAI in federal, state and territory courts. While it is, of course, for the Court to determine its own approach, any relevant differences that emerge between state and territory practice should be considered, and tailored to minimise the extent of inconsistency, noting the potential for further ambiguity as users navigate an increasingly complex rules matrix.

Guidelines vs Practice Note

96. Our preliminary view is that, in this circumstance, a Practice Note is preferable to Guidance for the following reasons:

- As set out above, the known instances of GenAI use leading to false material being put to Australian courts include its use by self-represented litigants and by legal practitioners.
- Although legal practitioners' use of GenAI can be addressed by ethical guidelines, that cannot be done for self-represented litigants. We are aware that the Federal Court has a relatively large number of self-represented litigants in several of its National Practice Areas.
- The barriers to the use of GenAI are low, use of GenAI is widespread and increasing, and the market for GenAI by litigants and practitioners is expected to grow quickly.
- To the extent that the Court wants to implement mandatory provisions about the use of GenAI, a Practice Note is the more appropriate way to do so.

97. Further, the consequences of a party to proceedings putting forward false or misleading material are potentially serious if undetected, and detection of such material by opposing parties or the Court imposes a transaction cost upon them (in both time and resources). That cost could—and should—be borne by any party who uses GenAI, rather than the opposing party against whom it is deployed, or the Court.

98. Similarly, a party who discloses confidential information in proceedings under compulsion should not be at risk of that confidentiality being destroyed by an opposing party uploading it into a GenAI program.

99. Given the fact that legal practitioners can be treated differently from self-represented litigants, the Court should consider adopting an approach similar to that in New Zealand: having customised documents for different audiences (albeit the New Zealand Courts use guidelines, not Practice Notes).

100. In this respect, there is merit in the Court considering the development of a Practice Note that has tailored components, or separate documents, setting out the expectations and obligations for:

(a) legal practitioners, reiterating the paramount duty to the Court that is owed, along with other professional and ethical obligations;

(b) expert witnesses (which might instead be incorporated into the Court's Expert Evidence Practice Note, including the Harmonised Witness Code of Conduct);[46]

[46] Federal Court of Australia, *Expert Evidence Practice Note* (GPN-EXPT) (25 October 2016). See section later in this submission titled 'Expert evidence'.

(c) self-represented litigants, in plain English;

(d) the public (i.e., clients); and

(e) the judiciary, noting such a document could be produced internally within the Court, and need not be published.

101. Given the complexities, the Practice Note(s) will need to be carefully drafted, and coupled with education to avoid inadvertent non-compliance. The Practice Note(s) will need to be reviewed regularly, having regard to the rapid evolution of GenAI usage and the continued advancements in AI more broadly, such as agentic AI.[47]

102. An adequate lead-time from the publication to commencement of any Practice Note(s) will be important to alert the profession to any changes in procedure, particularly if these involve an obligation to make written disclosures. We expect it would be of assistance for the Court to conduct events, such as seminars/webinars or briefings for court users, to outline key provisions and to answer questions.

Content of guidance

103. We received a range of views from the profession on what should be considered for inclusion in the Court's guidance material, and what specific issues and uses of GenAI the guidance material should seek to address. We have not had an opportunity to reach a settled Law Council position on these matters in the time available. However, as a starting point, the Court must address concerns regarding the potential for GenAI to produce errors or misuse information in way that may undermine the integrity of proceedings.

104. In addition, the Practice Note(s) must recognise that AI tools are now likely to be used throughout the entire lifecycle of information used in court proceedings, in the business (and personal) information management systems of litigants, and the daily functions of law firms, expert witnesses, and government agencies. Consequently, any guidance that assumes that AI use can, or should, be easily quarantined into distinct steps, is likely to fall short of its intended objectives.

Prescriptive vs principles-based approach

105. We have received mixed views from the profession as to what level of flexibility should be built into the Practice Note, particularly, whether a more prescriptive or principles-based approach is preferred:

- Some feedback favours an approach that has prescriptive elements, including where the Court sets out when AI cannot be used, where it can be used, and what obligations are owed. Proponents of this approach argue that, given the unique and significant risks associated with the use of GenAI in litigation, a more granular level of detail may be beneficial to promote certainty and compliance for all court users.
- Other feedback indicates a preference for an approach that is principles-based, to promote flexibility and ensure that the Practice Note(s) remains relevant and fit-for-purpose, so far as is possible. Proponents of this approach

[47] Agentic AI refers to AI systems that can autonomously pursue goals and take actions in an environment, like booking appointments or managing workflows, while GenAI focuses on creating new content, like text or images, in response to prompts. Agentic AI has agency to plan and execute multi-step tasks independently, whereas GenAI primarily responds to requests without autonomous decision-making. Many modern systems, such as coding assistants, may combine both approaches.

caution against unnecessary prescription that curbs responsible use of GenAI, and submit that it will not be useful for the Practice Note(s) to have numerous iterations, revisions, or addendums to accommodate rapid changes in technology. Potential principles for inclusion may relate to (among other matters):

- observance of existing professional obligations;
- responsibility as to accuracy and appropriateness of material before the Court;
- disclosure of the use of GenAI;
- confidentiality, privacy, and suppression orders; and
- self-represented litigants.

106. We acknowledge that the ultimate level of prescriptiveness of the Practice Note(s) will likely depend on what matters the Court deems appropriate to include and what specific risks the Court seeks to address, including whether there should be any mandatory requirements upon litigants and their representatives in relation to the use of GenAI.

107. We have received feedback that the NSWSC GenAI Practice Note may be a useful starting point for the Court, noting that it attempts to:

- recognise that AI is already being used, but sets boundaries around its use, particularly when preparing affidavits;
- differentiate between work that is 'preparatory' and the substantive outputs; and
- clarify verification and disclosure requirements where AI is used in submissions.

108. However, we have also received feedback that there may be various practical limitations to the NSWSC AI Practice Note, including that:

- rigid prohibitions on the use of AI in certain circumstances may be counterproductive and stifle beneficial innovation, deterring cost-effective practices that may promote access to justice;
- the Practice Direction focuses too heavily on the way that documents are worded, rather than the information they rely on;
- there remains a difficulty with clearly capturing the distinction between using AI for substantive tasks (e.g., drafting content, such as legal arguments or expert opinions) and incidental tasks (e.g., formatting documents, generating chronologies, and summarising large volumes of material), particularly as AI becomes more integrated into workflows; and
- there are no specific requirements for verifying the accuracy of AI-generated content, other than for written submissions.

109. Noting the above, it may be beneficial for the Court to consider developing a hybrid framework, based on overarching principles to be observed when using GenAI and with mechanisms for disclosure of use of GenAI in certain identified circumstances. Such an approach would allow sufficient flexibility to accommodate rapid changes in technology, while incorporating transparency safeguards that acknowledge the understandable uncertainty surrounding GenAI as a powerful and evolving form of technology with capacity to transform legal process.

110. Outlined below are some matters that the Court may wish to consider in the development of its Practice Note(s).

Application and definitions

111. The Practice Note(s) should apply to both closed-source and open-source large language model GenAI, as per the NSWSC GenAI Practice Note.

112. The Practice Note(s) should apply broadly to all court users and litigants, given that the actions of one person involved in a proceeding could impact the entire proceeding. As suggested above, consideration should be given to developing separate, tailored, guidance for legal practitioners, experts, self-represented litigants, the public, and the judiciary.

113. The Practice Note(s) should not be limited to a particular jurisdiction, type of proceeding, or National Practice Area. Doing so may cause confusion as to the application of any guidance, and we cannot identify any justification for special requirements for one area of the law over another.

114. Regardless of scope, the Court must consider AI use that occurred before a proceeding was commenced. If there are prohibitions as to use, direction will need to be given as to how materials, work, and evidence created before the commencement of proceedings will be treated.

115. The Practice Note(s) could include clear and simple definitions of both AI and GenAI. We have, however, received some feedback querying the utility of including definitions in the Practice Note(s). In particular, definitions of AI and GenAI are usually not specific enough to operate as an actual boundary for determining what is regulated, and what is not.

116. We have not had sufficient opportunity to consider what definitions would be most appropriate for the Court to adopt, should the Court seek to include definitions in its Practice Note(s). Nonetheless, the following definitions have been suggested by the profession for the Court's consideration:

- The United Kingdom's *AI Guidance for Judicial Office Holders* includes the following definitions:[48]
  - **AI**: 'Computer systems able to perform tasks normally requiring human intelligence'.
  - **Generative AI**: '[A] form of AI which generates new content, which can include text, images, sounds and computer code. Some generative AI tools are designed to take actions.'
- The Organisation of Economic Co-Operation and Development provides the following internationally recognised definition of AI, which the Court could refine to reflect the legal context and distinguish between GenAI:[49]
  - **AI system**: 'An AI system is a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions

[48] United Kingdom Courts and Tribunals Judiciary, *Artificial Intelligence (AI) Guidance for Judicial Office Holders* (14 April 2025).
[49] OECD, *Explanatory Memorandum on the updated OECD definition of an AI System* (March 2024).

that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.'

Protection against misleading the Court

117. The use of GenAI tools by a legal practitioner is subject always to the overriding ethical obligations of the practitioner, including not to mislead the Court (even unintentionally) and to exercise due professional skill and diligence, including in the use of technology.

118. Practitioners should be reminded that their existing ethical obligations extend to the use of GenAI in relation to documents to be provided to the Court. That could, perhaps, be coupled with a declaration that submissions put to the Court that include material produced using GenAI (where such use is permitted by the Court) have been checked and certified to be accurate. The form in the NSWSC GenAI Practice Note may be appropriate for this purpose.[50]

119. However, we encourage the Court to closely consider the utility of declarations and whether there are other appropriate means of ensuring that practitioners and parties are aware of their obligations regarding the use of GenAI. We have received some feedback that disclosing how, or the process by which, legal work is performed could lead to unintended consequences, such as confidentiality issues, disputes, delays, and increased costs. The impact on matters where suppression orders have been (or will likely be made) should also be considered.

120. Further, we acknowledge that there are practical limits (that also exist outside of the GenAI context) when it comes to attesting the truth and accuracy of a document that a practitioner did not personally prepare, or has no direct knowledge about how it was prepared. In addition, it can be difficult to make a declaration to the Court in respect of all the work that may have been undertaken on a matter, particularly as it progresses to trial. This may be of particular concern to barristers, who are relying on work undertaken by instructing solicitors and their firm.

121. There is benefit in exploring whether there should be specified circumstances in which a party may submit a document produced using GenAI to the Court (somewhat analogous to a 'knowledge and belief' affidavit), without the person submitting the document having checked the accuracy of the document, or obtained leave of the Court. Such documents might include (for example):

- where the document is to be used in a civil proceeding; and
- the document is unlikely to be contentious; and
- the use of GenAI (including identifying the parts of the document that have not been checked) is appropriately disclosed in the document, and the contents of it have been verified to the extent otherwise appropriate, having regard to the overarching purpose of civil practice and procedure.

[50] Paragraph 17 of the NSWSC Gen AI Practice Note provides that where GenAI has been used in the preparation of written submissions or summaries or skeletons of argument, the author must verify in the body of the submissions, summaries, or skeleton, that all citations, legal and academic authorities and case law, and legislative references exist, are accurate, and are relevant to the proceedings.

Disclosure

122. The Practice Note(s) should outline whether any use of GenAI should be required to be disclosed to other parties to the proceeding or to the Court and, if so, in what circumstances practitioners and self-represented litigants should inform their opponent or the Court that GenAI has been used.

123. Existing disclosure models diverge in levels of prescription. The NSWSC GenAI Practice Note is at one end of the continuum, with a high level of control by way of a general prohibition on the use of GenAI and mandatory disclosure regimes. By contrast, the Victorian AI Guidelines are less prescriptive and encourage disclosure by way of voluntary statements.

124. Our preliminary view is that there should be an appropriate management of risk through a hierarchy of principled obligations, complemented by specific disclosure rules. This hybrid approach incorporates aspects of both the New South Wales and Victorian models and is likely to be more responsive to oversight of GenAI in the litigation context.

125. As a starting point, we consider that, if the use of GenAI to prepare a document has the potential to mislead the Court or other parties in relation to the provenance or reliability of the document, then the use of GenAI should be disclosed to the Court and other parties. Such disclosure should be in a form that is sufficient to prevent the risk that the document will be misleading, having regard to the particular circumstances and the risks.

126. Self-represented litigants and witnesses should, at the least, be required to disclose any of the GenAI in material produced by them (without the assistance of a legal practitioner). It should be considered whether such use should be prohibited, or (if not prohibited), what certification would satisfy the Court that the risk of false or misleading material has been minimised.

127. We suggest that the Court should be cautious against imposing broad obligations requiring disclosure of the use of GenAI to Courts or other parties, beyond circumstances where the author of the document has not verified the content of the final document, or where there is a risk that the document might otherwise mislead the Court or other parties.

128. The use of GenAI in the early stages of document creation is likely to become commonplace, such that disclosure requirement may soon become burdensome (if frequent content-specific disclosures are required) or of no real weight (if disclosure is to take the form of a standard disclaimer appearing in most documents.

Integrity of evidence put to the Court

129. The use of GenAI to create textual material (e.g., affidavits, expert reports), or audiovisual/sound material (e.g., pictures, videos) that is to be adduced as evidence should be considered by the Court when developing the Practice Note(s). We are particularly concerned by the risk to the integrity of evidence caused by the use of GenAI in the preparation of affidavits and witness statements that may not use the witness's own words, and may, therefore, present a misleading account of the witness's evidence.

130. Due to the importance of the integrity of evidence, such as witness statements, affidavits, and expert reports, the Court should set clear boundaries about the use of GenAI, if it is permitted, in the production of evidence. Given that GenAI is capable of producing images, video, and sound that may fool a human viewer, the use of GenAI to produce any such material that is to be adduced in evidence should be carefully regulated (with the requirement of disclosure), if not prohibited.

Lay evidence

131. Affidavits and witness statements are intended to record evidence in a manner consistent with the words and language of the witness. The unrestricted use of GenAI to produce these documents has the potential to fully derail that objective (acknowledging that there remains a risk that legal practitioners will introduce their own 'gloss' on what they are told).

132. Consequently, our preliminary position is that GenAI should not be used to prepare an affidavit, witness statement, or other document intended to reflect the evidence of any lay witness, except in some limited circumstances. Such exceptions might include:

- preparatory work directed at the form of the document, rather than the substance of the evidence; and
- the presentation of data or similar objective content that is otherwise in a form of evidence which that witness is able to give, and that must be checked and verified by the witness before deposing to or finalising the document.

Expert evidence

133. The Court should consider whether there is a need for an expert to disclose the use of AI in their report, or if a modified declaration is needed.

134. Our preliminary position is that the use of GenAI by experts should be specifically addressed in the Court's Expert Evidence Practice Note, including the Harmonised Witness Code of Conduct.[51]

135. Whilst appropriate amendments to those documents would be best finalised after consultation with experts from different fields, we consider that potential amendments might include:

    (a) Permitting the use of GenAI for the purpose of tasks that are akin to analysing data (or similar objective information), performing calculations or modelling, and presenting such information, calculations, or modelling in their reports, provided that this use is appropriately disclosed as per paragraph (c) below.

[51] Federal Court of Australia, *Expert Evidence Practice Note* (GPN-EXPT) (25 October 2016).

(b) Prohibiting the use of GenAI for the purpose of providing the substantive expert opinions contained in the reports.

(c) Requiring that experts disclose in their reports:

- the parts of it that have been produced using GenAI;
- the particular platform used to generate that content; and
- the extent to which the content has been verified by the expert.

If any GenAI-generated content has not been verified by the expert, the expert should provide reasons as to why that information has not been verified and explain why they are nevertheless satisfied that the output is reliable. This should include specifying the experience, or expertise, with respect to the relevant AI platform upon which the expert is qualified to make that assessment.

136. The Court should be cautious against imposing a general requirement for obtaining leave of the Court before allowing any use of GenAI by experts (such as that currently adopted in the NSWSC GenAI Practice Note). This is because there is expected to be a rapid increase in the utility of GenAI for such purposes, and these tools have the potential to significantly reduce the costs of expert evidence, which can be a material burden to clients.

Identifying permitted uses

137. Some members of the profession have suggested to us that the Court should consider identifying uses of GenAI that are unlikely to produce material that is false or misleading, and that may be expressly permitted with any appropriate limitations, including a requirement for all such uses of GenAI to be disclosed. This may include task-specific software or services that use GenAI internally and that do not utilise the prompt/answer interaction model of 'chatbots', or that use GenAI to summarise text, rather than generate it in a matter that may produce hallucinations. Examples of such uses of GenAI may include:

- spell-checking and formatting;
- extraction of text or data from other documents, including production of chronologies; and
- specialised legal research, where a commercial provider uses GenAI in a way that facilitates searching of curated legal databases, and cannot generate text in a 'free form' way that may contain hallucinations.

138. However, care should be taken when referencing a particular tool or system, as this could render these examples redundant within a short time, which would require the Practice Note(s) to be regularly updated and would be impractical for both the Court and the profession. Consideration should be given to adopting a technology-neutral approach for this reason.

139. Further, by identifying permitted uses of GenAI in litigation, the Practice Note(s) may be read to suggest that other uses of AI are inappropriate, even where such uses are otherwise consistent with professional obligations and the Practice Note(s). To address this concern, some members of the profession have suggested that the Practice Note(s) should instead outline the common uses of GenAI, and the potential pitfalls and professional obligations that Court users should bear in mind,

rather than seeking to specifically identify permitted uses of GenAI. Potential options for the Court in this regard include:

- stating that certain types of GenAI use should be regarded as high risk, and ought to be avoided unless the practitioner or firm can ensure that their professional obligations can be discharged;
- abandoning the usual language used in Practice Directions and replacing these with precatory statements, such as 'consider the risk of'; and/or
- publishing a separate 'companion' document, that is not intended to be a direction, but is a collection of statements of best practice, suggestions, and recommendations that can be more readily updated than the Practice Note(s).

Substantive vs incidental use

140. We have received comments recommending that the Court have close regard to paragraph 6 of the NSWSC GenAI Practice Note, which excludes from its operation the use of AI for spelling, grammar, transcription or translation, and formatting, which otherwise does not generate substantive content, and its use in respect of search engines and legal research software.

141. However, the difficulty with capturing the distinction between substantive and incidental AI use is significant. In the NSWSC GenAI Practice Note, the exclusion of tools used for 'transcription or translation' versus those that generate 'substantive content' may have an unintended consequence. The use of a tool to improve the flow and expression of a submission or affidavit should be treated with caution if there is a risk of altering the author's meaning. Equally, the use of a tool that translates source documents, selects salient parts of surveillance footage, or creates meeting minutes, could alter that author's understanding of the matter.

142. While both use cases may be deemed appropriate in proceedings of the Court, they require a clear understanding of the inherent limitations of the GenAI tool.

Overriding limitations on use

Responsibility for material tendered to the Court

143. Of course, any such use of GenAI should be subject to overriding limitations. One is that practitioners must remain ultimately accountable for any such use of GenAI tools. As recognised already in the Court's Notice to the Profession, it is essential that parties recognise that they are always responsible for the material that is tendered to the Court.

144. Any use of AI tools by parties and practitioners must only occur in a responsible way, consistent with their obligations to the Court and to other parties. The consequences for misuse by self-represented litigants should also be expressly considered.

Privilege and confidentiality

145. Another limitation is that obligations concerning privilege (in the absence of consent by the client), and confidentiality and the *Hearne v Street*[52] obligation (in the absence of consent by the disclosing party) must not be undercut.

146. Noting this, our preliminary view is that the Practice Note(s) should alert readers to the risk that engaging with GenAI tools in litigation may entail a breach of confidentiality, court orders, statutory obligations, copyright, or implied undertakings to the Court.

147. The Practice Note(s) should also alert readers to the risk of breach of client confidentiality, and risk of inadvertently waiving client legal privilege, if documents or case facts are uploaded to—or shared with—GenAI tools, particularly open-source tools.

148. Due to risks regarding the disclosure, use, and security of information that is submitted into GenAI platforms, the Court should consider imposing a general prohibition against entering or uploading confidential information relating to any proceedings, unless the technological platform meets certain requirements that mitigate those risks.

149. In this regard, including a requirement similar to that in paragraph 9A of the NSWSC GenAI Practice Note may be appropriate. That paragraph states that information subject to non-publication or suppression orders, or the *Hearne v Street* obligation, must not be entered into a GenAI program unless the legal practitioner, or person responsible for the conduct of the proceeding, is satisfied that the information:

- will remain confidential;
- will not be used to train a model or made publicly available; and
- will only be used for the purpose of the proceeding.

150. It is likely that restrictions against such use of information and documents are already covered by existing duties. Nonetheless, express requirements in the Practice Note(s) pertaining to the entering and uploading of information to GenAI programs are likely to be useful, given that it can provide great clarity on the circumstances in which such use is, and is not, permissible.

151. A significant point to note is that confidentiality of Personally Identifiable Information (**PII**) is not the only (or even the primary) issue in many cases. A party may suffer significant detriment if a large body of information that encapsulates know-how or skill and expense to produce were used to train an AI. For example, a collection of a bank's loan applications and property valuations is a significant repository of confidential information that must be stringently protected. However, even if every identifying particular were removed, the repository could be used to train an automated system to replicate the bank's process. Once the data was tokenised and blended with other anonymous data, the bank would have little chance of detecting this use of its data and protecting its rights.

152. Many of the Terms of Service documents in AI provider agreements focus heavily on protection of confidential information, defined primarily as PII. An assurance that 'we will not use your Confidential Information to train our model' does not necessarily offer protection against such use once it has been anonymised. Terms of Service change repeatedly and may vary significantly between subscription tiers.

[52] (2008) CLR 125.

As such, due diligence prior to tool selection can be complex and require ongoing vigilance.

Breaches and enforcement

153. We suggest that the Court consider whether the Practice Note(s) should address what a practitioner should do, upon becoming aware that an opponent has used GenAI in breach of any applicable guidance.

Other matters

Using GenAI in the courtroom

154. In developing the Practice Note(s), the Court should consider whether it will permit AI, especially GenAI, to be used in the courtroom during proceedings and, if so, what the appropriate parameters of such use should be.

155. There are several relevant use cases already facing courts in the United States (briefly outlined below),[53] and it is conceivable that Australian courts will soon be required to grapple with similar scenarios.

- GenAI deepfake videos may be sought to be used as part of witness testimony.
    - This use can have benefits where the witness is unavailable or could be re-traumatised by appearing in court and providing evidence.
    - Deepfake AI videos can interact in real time, so there is potential for a witness to appear via a deepfake video stream—and be subject to live questioning and cross-examination—without needing to physically appear in court or appear by video link.
    - For example, in the 2024 Arizonan case of *State v Horcasitas*,[54] the family of a murdered man created a deepfake video of the deceased victim to deliver the statement from the victim's family in preparation for sentencing.
- The use of GenAI could assist where a witness or party has a condition or disability that would prevent (or otherwise impact) their ability to present evidence, such as a speech impediment.
    - In the 2025 case of *Dewald v Massachusetts Mutual Insurance Company*,[55] the self-represented litigant alleged he suffered from a speech impediment that was made worse when appearing in a court or other stressful setting. He sought leave to submit a 'pre-recorded video', which was actually an AI deepfake. The self-represented litigant had originally created a deepfake of himself, but instead used a different 'person' without leave of the court.

[53] See Mack Degeurin, *This man was killed four years ago. His AI clone just spoke in court*, Popular Science (7 May 2025).
[54] No. 1 CA-CR 23-0215. Note that final rulings are yet to be published in this case.
[55] 2025 NY Slip Op 02267. The response of the Court can be viewed at YouTube, *Judge Discovers Fake AI Attorney During Live Court Case* (4 April 2025).

- There are also use cases where self-represented litigants, using an AI assistant earpiece, can be provided with live legal assistance and instructions through that earpiece during a proceeding.[56]

156. These potential uses of GenAI underscore the growing tension between the integration of technologies and traditional legal procedures. There are obvious concerns with the use of deepfake materials and GenAI legal assistance during proceedings in the courtroom, including witness tampering, false evidence, and 'representation' by an AI tool with no qualifications or standing in the court.

157. Nonetheless, there may be compelling arguments why this technology should be considered in some circumstances, including minimising re-traumatisation of victims, enabling evidence to be provided by vulnerable persons and persons living with a disability, and supporting access to justice. Careful consideration would need to be given to the alternative mechanisms by which to overcome the barriers experienced by vulnerable persons.

158. Consequently, it would be prudent for the Court to consider how such technologies may enhance or hinder the administration of justice, and to proactively establish clear and principled boundaries for their permissible use. With suitable controls in place, there may be a place for AI tools in the courtroom. We would be pleased to liaise with the Court on what types of controls could be appropriate to address the risks.

Assessing legal costs

159. While not strictly an issue for the Practice Note(s), regard ought to be had to the impact of AI tools on recoverable costs at a party/party level. Matters such as whether licencing fees and server costs could be recoverable, or best treated as part of overheads, warrant careful consideration, including with reference to current practices involving the use of document review platforms for discovery.

Alternative dispute resolution processes

160. As with the introduction of guidance for the use of AI in Court proceedings, the use of AI in alternative dispute resolution (**ADR**) processes undertaken in connection with Court proceedings requires balancing the interests of the administration of justice with the responsible use of emergent AI technologies.

161. A framework for the responsible and ethical use of AI in broader dispute resolution processes is necessary. Currently, the ADR Committee of the Law Council's Federal Dispute Resolution Section is undertaking research in this area and is considering developing guidance in the broader context of the use of AI in ADR processes, particularly mediation.

162. The issues relating to the available and perceived use of AI in arbitral proceedings are similar to those applicable to litigation. These need no additional comment, except in relation to international cross-border disputes and investor-state arbitrations. In these proceedings, AI applications relating to differing cultural expectations and accurate translation will need to be considered.

[56] See Matthew Sparkes, *AI legal assistant will help defendant fight a speeding case in court*, NewScientist (4 January 2023).

163. The more difficult process issues relate to consensual ADR processes such as mediation, hybrid processes such as med-arb or concilio-adjudication, conciliation and facilitation, including native title mediations.

164. In addition, it will be important not to neglect the use of AI, particularly GenAI, in online dispute resolution (**ODR**) processes. Australia is a geographically distant continent with isolated regions that are likely to rely upon ODR and AI ADR processes in the future for access to justice. The consideration of the potential risks in the use of AI in ODR processes should be identified and guidance provided about, for example, the use of AI tools for listening to and transcribing mediation sessions, as well as 'chat bots' or Avatars that might be used by parties to represent themselves in online mediation. The ADR Committee of the Law Council's Federal Dispute Resolution Section is of the view that courts (and ADR institutions) should strive to ensure that consensual processes such as mediation and settlement conferences remain—for as long as possible—a purely human interaction, whether conducted in person or online.

165. Significant matters relating to the use of AI in consensual dispute resolution processes, such as mediation, include confidentiality, disclosure, and informed consent. Therefore, consideration should be given to whether any Practice Note(s) that the Court develops could be equally given for the use of GenAI in the preparation for, and during, an ADR process, particularly mediation.

Impact of GenAI on the training and development of junior lawyers

166. Finally, we are conscious of the impact that the increasing use of GenAI in legal practice will have (or is already having) on the training and development of graduate and junior lawyers.

167. The Law Council's Young Lawyers Committee is currently examining these issues and their implications, including that:

- the increasing use of GenAI tools by junior lawyers for drafting correspondence, advice, and legal research may be limiting the development of foundational legal skills such as first-draft writing, critical thinking, and attention to detail;
- the learning process (which traditionally involved making mistakes, reviewing previous examples, and refining work through feedback) is being bypassed with AI use; and
- there is concern that it will take longer for junior lawyers to develop core competencies if GenAI is relied upon too early or too heavily. This impact may be particularly seen when the current junior lawyers reach Senior Associate level and are required to review juniors' work and provide feedback.

168. There is a tension between embracing technology and preserving rigorous legal training. While we do not yet have a position on how to resolve this tension, we would be pleased to continue to liaise with the Court on this point.