



PRACTICE NOTE NO. 33

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Issued pursuant to Section 185A of the *Industrial Relations Act 1996*
and Section 15 of the *Civil Procedure Act 2005*

USE OF GENERATIVE ARTIFICIAL INTELLIGENCE (GEN AI)

COMMENCEMENT

1. This Practice Note will commence on 19 February 2025 and will apply to all proceedings from that date.
2. This Practice Note applies to all proceedings before the Commission including the Commission in Court Session.

INTRODUCTION

3. Generative AI (**Gen AI**) is a form of artificial intelligence that is capable of creating new content, including text, images or sounds, based on patterns and data acquired from a body of training material. That training material may include information obtained from “scraping” publicly and privately available text sources to produce large language models..
4. Gen AI may take the form of generic large language model programs such as ChatGPT, Claude, Grok, Llama, Google Bard, Co-Pilot, AI Media or Read AI or more bespoke programs specifically directed to lawyers such as Lexis Advance AI, ChatGPT for Law, Westlaw Precision, AI Lawyer, Luminance and CoCounsel Core. These examples are not intended to be exhaustive. Such programs may use “chatbots” and prompt requests and refined requests from the users of such programs.
5. This Practice Note applies to both closed-source and open-source large language model Gen AI.
6. Gen AI is capable of being used to assist legal practitioners and unrepresented parties with various tasks, including drafting documents and summarising information. This Practice Note is directed to the circumstances where such use is acceptable.
7. For the avoidance of doubt, for the purposes of this Practice Note, Gen AI does not include technology or functionality which merely corrects spelling or grammar, provides transcription or translation, assists with formatting and otherwise does not

generate substantive content, and nothing in this Practice Note is intended to preclude or apply to the use of:

- a. search engines such as Google which produce a list of websites that match search criteria but which do not produce an apparently personalised textual answer in response to a specific prompt;
 - b. dedicated legal research software which uses AI or machine learning to conduct searches across material comprising legislation or subordinate legislation, judgments of courts or tribunals, and/or books or articles written for a legal audience.
8. Legal practitioners and unrepresented parties should be aware of limits, risks and shortcomings of any particular Gen AI program which they use. These may include:
- a. the scope for “hallucinations”, that is, the generation of apparently plausible, authoritative and coherent responses but which are in fact inaccurate or fictitious. Examples include false citations and fabricated legislative, case or other secondary references;
 - b. the dependence of Gen AI on the quality and reach of underlying data sets, including the possibility that that underlying database(s) may include misinformation or selective or incomplete data, data that is not up to date or data that is not relevant in New South Wales or Australia;
 - c. the scope for biased or inaccurate output including by reason of the nature or limitations of the underlying data sets;
 - d. the fact that any search requests via a chatbot or interactions or prompts within a Gen AI program may, unless disabled, be automatically added to the large language model database, remembered and used to respond to queries from other users;
 - e. the lack of adequate safeguards, to preserve the confidentiality, privacy or legal professional privilege that may attach to information or otherwise sensitive material submitted to a public Gen AI chatbot; and
 - f. the fact that data contained in a Gen AI data set or database may have been obtained in breach of copyright.
9. Legal practitioners and unrepresented parties should also be aware that data entered into Gen AI programs may be used to train the large language model, potentially making confidential information available to others.

GENERAL PROHIBITION

10. Information subject to non-publication or suppression orders, the implied (*Harman*) undertaking not to use information produced under compulsion for any purposes extraneous to the proceedings without the leave of the Commission, material produced on subpoena, or any material that is the subject of a statutory prohibition upon publication must **not** be entered into any Gen AI program unless the legal practitioner or person responsible for the conduct of the proceeding is satisfied that the information:

- a. will remain within the controlled environment of the technological platform being used and that the platform is the subject of confidentiality restrictions on the supplier of the relevant technology or functionality to ensure that the data is not made publicly available and is not used to train any large language models;
 - b. is to be used only in connection with that proceeding (unless otherwise required or permitted by law to be disclosed or required to be reviewed by a law enforcement agency for policy purposes);
 - c. is not used to train the Gen AI program and/or any large language model.
11. Subject to paragraph 10 and for the avoidance of doubt, a Gen AI program may be used for any of the following purposes:
- a. the generation of chronologies, indexes and witness lists;
 - b. the preparation of briefs or draft Crown Case Statements;
 - c. the summarising or review of documents and transcripts;
 - d. the preparation of written submissions or summaries of argument (subject to paragraphs 18 to 20 below).

AFFIDAVITS, WITNESS STATEMENTS OR OTHER EVIDENTIARY MATERIAL

12. Gen AI must **not** be used in generating the content of affidavits, witness statements, character references or other material that is intended to reflect the deponent or witness' evidence and/or opinion, or other material tendered in evidence or used in cross examination. This paragraph does not prohibit the use of Gen AI for work that is merely preparatory to the drafting of the affidavit or other document setting out the witness' evidence and/or opinion.
13. Affidavits, witness statements, character references should contain and reflect a person's own knowledge, not AI-generated content.
14. Gen AI must not be used for the purpose of altering, embellishing, strengthening or diluting or otherwise rephrasing a witness's evidence when expressed in written form.
15. An affidavit, witness statement or character reference must contain a disclosure that Gen AI was **not** used in generating:
- a. its content (including by way of altering, embellishing, strengthening or diluting or rephrasing a witness's evidence); or
 - b. subject to leave having been obtained in accordance with paragraph 17 below, the content of any annexure or exhibit *prepared by the deponent* of the affidavit or witness statement or character reference for the purposes of his or her evidence.
16. For the avoidance of doubt, the deponent of the affidavit, witness statement or character reference is not required to make the disclosure referred to in paragraph [15(b)] where the annexure or exhibit has not been prepared or created for the purposes of the proceedings.

17. In exceptional cases, leave may be sought to use Gen AI for the preparation or generation of any annexure or exhibit to an affidavit, witness statement or character reference. Any application for leave must identify:
- a. the proposed use of Gen AI;
 - b. the Gen AI program that will be used (including the relevant version);
 - c. whether it is a closed-source or open-source program and or contains privacy and or confidentiality settings; and
 - d. the benefit to be derived from the proposed use of Gen AI in the preparation of the annexure or exhibit.

WRITTEN SUBMISSIONS AND SUMMARIES OF ARGUMENT

18. Where Gen AI 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 authority and case law and legislative references:
- a. exist,
 - b. are accurate, and
 - c. are relevant to the proceedings,
- and make similar verification in relation to references to evidence in written submissions or summaries or skeletons of argument to evidence (whether the evidence be contained in affidavits or transcript).
19. Such verification must not be solely carried out by using a Gen AI tool or program.
20. Any use of Gen AI to prepare written submissions or summaries or skeletons of argument does not qualify or absolve the author(s) of any professional or ethical obligations to the Commission or the administration of justice.

EXPERT REPORTS

21. Expert reports are required to state the opinion or opinions of the expert, and his or her reasoning process.
22. Gen AI must not be used to draft or prepare the content of an expert report (or any part of an expert report) without prior leave of the Commission.
23. Any application for leave must identify:
- a. the proposed use of Gen AI;
 - b. the Gen AI program (including the version) that will be used and whether it is a closed-source or open-source program or contains privacy and or confidentiality settings;
 - c. the benefit to be derived from the proposed use of Gen AI in the preparation of the expert report;

REVISION HISTORY

- d. any documents which it is proposed to submit to the Gen AI program for the purposes of generating any aspect of the expert report.
24. If an expert witness obtains prior leave to use Gen AI for any purpose in preparing an expert report for the Commission, the expert witness must:
- a. disclose in the report what part(s) of it was prepared using Gen AI or drawing upon Gen AI produced material and the Gen AI program, (and version) that was used;
 - b. keep records and identify in an annexure to the report a record of how the Gen AI tool or program was used (for example any prompts used, any default values used, and any variables set), except where the Commission grants leave to dispense with this requirement (for example, where the Commission determines this to be voluminous or unnecessary); and
 - c. if the use of Gen AI is regulated or addressed by any relevant code of practice or principles that bind or apply to the expert, identify that fact and annex to the report a copy of the relevant code(s) or principle(s).
- Examples of the above use of Gen AI may include experts using software that uses Gen AI to analyse sound, graphic or video data, or to interrogate very large data sets, or to conduct statistical analysis.
25. Legal practitioners and unrepresented parties must draw the requirements of this Practice Note to the attention of experts when instructing them.
26. Expert reports prepared between the date of issue of this Practice Note and the date of its commencement must identify which, if any, part or parts of the report has or have relied upon Gen AI in the preparation of its content.

REVIEW

27. Due to the rapidly developing nature of Gen AI, this Practice Note will be periodically reviewed.

JUSTICE I TAYLOR
PRESIDENT
14 FEBRUARY 2025