



GUIDELINES FOR NEW SOUTH WALES JUDGES IN RESPECT OF USE OF GENERATIVE AI

1. These Guidelines apply to all courts in New South Wales and have been developed after a process of consultation with Heads of Jurisdiction and review of recently published guidelines of other common law courts.
2. 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.
3. Gen AI may take the form of generic large language model programs such as Chat-GPT, Claude, Grok, Llama, Google Bard, Copilot, 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. Such programs may use “chatbots” and prompt requests and refined requests from the users of such programs.
4. Judges in New South Wales should **not** use Gen AI in the formulation of reasons for judgment or the assessment or analysis of evidence preparatory to the delivery of reasons for judgment.
5. Gen AI should **not** be used for editing or proofing draft judgments, and no part of a draft judgment should be submitted to a Gen AI program.
6. If using Gen AI for secondary legal research purposes or any other purpose, judges should familiarise themselves with the limits and shortcomings of large language model Gen AI, including:
 - the scope for “hallucinations”, that is, the generation of inaccurate, fictitious, false or non-existent citations and fabricated legislative, case or other secondary references;
 - the dependence of large language model Gen AI programs on the quality and reach of underlying data sets, including the possibility that underlying database(s) may include misinformation or selective or incomplete data or data that is not up to date or relevant in New South Wales and Australia;
 - the scope for biased or inaccurate output because of the nature or limitations of the underlying data sets;

- the fact that any search requests or interactions or prompts with a Gen AI chatbot may, unless disabled, be automatically added to the large language model database, remembered and used to respond to queries from other users;
 - the potential inability or lack of adequate safeguards to preserve confidentiality or privacy of information or otherwise sensitive material submitted to a public AI chatbot;
 - the fact that data contained in a data set upon which a Gen AI program draws may have been obtained in breach of copyright; and
 - the risk of inadvertently providing, through requested “permissions”, access to information on a judge’s or judicial staff member’s devices such as smartphones, ipad or other tablets.
7. The product of all Gen AI generated research, even if apparently polished and convincing, should be closely and carefully scrutinised and verified for accuracy, completeness, currency and suitability before making any use of it. Gen AI research should not be used as a substitute for personal research by traditional methods.
 8. Judges should require that their associates, tipstaves or researchers disclose to the judge if and when they are using Gen AI for research purposes or any other related purpose, and associates, tipstaves or researchers should be separately required to verify any such output for accuracy, completeness, currency and suitability.
 9. Judges may require litigants (including litigants in person) and legal representatives including counsel to disclose any use of Gen AI in respect of written submissions or other documents placed before the Court, and may also require an assurance that any such documents have been verified for accuracy, including an identification of the process of verification followed including, where applicable, for the purpose of ensuring compliance with Practice Note SC Gen 23.
 10. Judges should be astute to identify any undisclosed use of Gen AI in court documents by litigants, including litigants in person, and legal practitioners.
 11. ‘Red flags’ associated with content generated by Gen AI, and which may indicate the unsafe, inappropriate or improper use of Gen AI, and hence the need to make further inquiries with practitioners or litigants in person, include:
 - inaccurate or non-existent case or legislative citations;
 - incorrect, inaccurate, out of date or incomplete analysis and application of the law in relation to a legal proposition or set of facts;
 - case law references that are inapplicable or unsuited to the jurisdiction, both in terms of substantive and procedural law;

- case law references that are out of date and do not take account of relevant developments in the law;
 - submissions that diverge from your general understanding of the applicable law or which contain obvious substantive errors;
 - the use of non-specific, repetitive language; and
 - use of language, expressions or spelling more closely associated with other jurisdictions.
12. Due to the rapidly evolving nature of Gen AI technology, these guidelines will be reviewed on a regular basis.

The Hon. A S Bell

**Chief Justice of New South Wales
21 November 2024**