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The Honourable A.S. Bell,
Chief Justice of New South Wales
Supreme Court of New South Wales
Queens Square
Sydney NSW 2000

7 October 2025

By email: edwina.chapman@courts.nsw.gov.au

Dear Chief Justice,

Submission to the Supreme Court of New South Wales re GenAI

I refer to my meeting with Your Honour, the President of the Court of Appeal, and Stern JA on 9 September 2025, during which I demonstrated MiAI Law's capabilities. With MiAI Law having recently completed several key milestones: the filing of its provisional patent application (No. 10202502330S, Intellectual Property Office of Singapore) on 18 August 2025; the completion of beta testing on 22 September 2025; and the full product release on 7 October 2025, I am now in a position to describe fully the architectural and methodological approach that underpins the MiAI Law technology.

When Your Honour issued Practice Note SC Gen 23 (Use of Generative AI), you observed that:

> "The Court recognises that the use of generative artificial intelligence will continue to evolve. The Court will continue to engage with the profession as this technology develops."

Although I write not as a practitioner but as the developer of an Australian-designed legal AI research platform, I respectfully offer this submission as part of that continuing engagement. The enclosed submission expands upon the demonstration previously provided and illustrates how AI can be designed to reflect law's discipline: grounded in primary sources, structured according to legal reasoning, and auditable at every step.

I would be grateful if the Court would consider this contribution as part of its ongoing engagement on Practice Note SC Gen 23.

Yours faithfully,

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Submission to the Supreme Court of New South Wales

By MiAI Law Pty Ltd

Prepared by: Laina Chan, Barrister & CEO, MiAI Law Pty Ltd

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I. Introduction

1. This submission supports the Supreme Court of New South Wales' continuing engagement with the profession and service providers on the use of generative artificial intelligence, following the release of Practice Note SC Gen 23 (Use of Generative AI).

2. The submission aims to illustrate how AI systems can be built to reflect law's discipline rather than mere probability, producing verifiable and audit-ready outputs.

II. National Baseline Understanding

3. Across jurisdictions, courts have converged on a baseline understanding of generative AI:

   a. LLMs are probabilistic text generators that predict the next word.

   b. They do not reason in a human or legal sense.

   c. They are prone to hallucinations (non-existent cases).

   d. Their processes are opaque (no audit trail).

   e. They conflate fact, inference, and opinion.

   f. Human verification of all citations is essential.

A. New South Wales

4. On 21 November 2024, the NSW Supreme Court issued Practice Note SC Gen 23 – Use of Generative AI, effective from 3 February 2025: see https://supremecourt.nsw.gov.au/documents/Practice-and-Procedure/Practice-Notes/general/current/PN_SC_Gen_23.pdf.

5. The Court also issued Guidelines for New South Wales Judges in Respect of Use of Generative AI: https://supremecourt.nsw.gov.au/documents/About-the-Court/policies/Guidelines_Gen_AI.pdf.

6. These emphasise similar principles to Queensland: that generative AI tools are not intelligent in the human sense, operate by predicting words, should not be used to draft reasons, and outputs must always be verified.

B. Queensland

7. Queensland has addressed both judicial and practitioner use:

    a. Guidelines for Judicial Officers on the Use of Generative AI (2025): https://www.courts.qld.gov.au/__data/assets/pdf_file/0009/879714/the-use-of-generative-ai-guidelines-for-judicial-officers.pdf.

    b. Key paragraphs include:

        i. [7] “Despite the name, Generative AI chatbots are not actually intelligent in the ordinary human sense. Nor is the way in which they provide answers analogous to the human reasoning process.”

ii. [7](a) “Generative AI chatbots are built on LLMs. LLMs analyse a large amount of training text to predict the probability of the next best word in a sentence given the context. Just as Google offers to autocomplete your search, LLMs autocomplete repeatedly to form words, sentences, and paragraphs of text.”

iii. [25] “AI tools should not be used for decision-making nor used to develop or prepare reasons for decision. The development and expression of judicial reasoning must be done by the judicial officer themselves.”

8. Practice Direction No 5 of 2025 – Accuracy of References in Submissions: see https://www.courts.qld.gov.au/__data/assets/pdf_file/0010/882064/sc-pd-5-pf-2025.pdf. This directs practitioners that they are personally responsible for ensuring the accuracy of all citations.

C. Victoria

9. Supreme Court of Victoria – Guidelines for Litigants: Responsible Use of AI in Litigation (2024) (see https://www.supremecourt.vic.gov.au/sites/default/files/2024-05/AI%20Guidelines%20SCV.pdf.

10. These apply to practitioners and self-represented litigants, requiring disclosure of AI use and verification of citations.

D. South Australia

11. Chief Justice of South Australia – Survey on Generative AI use (May 2025): see https://www.courts.sa.gov.au/2025/05/30/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/.

E. Federal Court of Australia

12. Notice to the Profession (29 April 2025) – AI use: see https://www.fedcourt.gov.au/law-and-practice/practice-documents/notice-to-profession/29-april-2025.

F. ACT, NT, TAS

13. As at the date of these submissions, no AI-specific practice notes have been issued by the ACT, NT or Tasmanian Supreme Courts. (see ACT: https://www.courts.act.gov.au/supreme/law-and-practice/practice-notes-and-directions-and-notices-to-practitioners; NT https://supremecourt.nt.gov.au/lawyers/practice-directions; and TAS https://www.supremecourt.tas.gov.au/publications/directions/)

III. Continuing Engagement and Supplementary Guidance

14. The Court's leadership in adopting Practice Note SC Gen 23 has provided a benchmark nationally. As generative AI develops further, it may be appropriate for the Court to issue supplementary guidance to ensure continued clarity and consistency.

A. Current and Future Uses of Generative AI

15. Generative AI is currently used for summarisation, drafting correspondence, and exploratory research. Future uses include structured legal research systems that produce audit-ready, verifiable reports grounded in primary sources, and tools that expand access to justice for smaller firms and self-represented litigants.

B. Disclosure of AI Use

16. Disclosure should be mandatory in relation to affidavits, witness statements, and expert reports, and where AI outputs have not been independently verified. Where a practitioner has fully verified AI-assisted content against authoritative sources, the existing duty of candour should suffice. Over time, disclosure may be limited to evidence documents and unverified outputs.

C. Prohibited Uses

17. Generative AI should not be used in affidavits, witness statements, expert reports, or any document purporting to be first-hand evidence. This reflects prohibitions already adopted in NSW.

D. Safeguards

18. Practitioners must verify citations, ensure jurisdictional accuracy, and maintain confidentiality of privileged material.

19. If using an AI tool, steps must be taken to ensure that any data uploaded to the cloud is encrypted both at rest and in transit. In addition, contractual arrangements should be in place with the service provider that the data will never be accessed by the service provider or used for any training purposes. If offered, the encryption key should be dynamic and within the control of the user. The risk with this is that if the encryption key is lost then the data is also lost. The service provider will not be able to access the data either. We note that even when the data is encrypted both at rest and in transit, the data is unlocked and decrypted is during a user session.

20. Further, data has to be sent to LLM providers like OpenAI and Google.

Gemini (Google)

21. Under Google's Gemini API Additional Terms, the treatment of prompts and outputs depends on whether the service is used in a paid or unpaid capacity. For unpaid/free-tier use, Google may use submitted prompts and generated responses to improve its products and services, including for model training and evaluation, and such content may be reviewed by human reviewers. For paid services (via billing or Google Cloud), Google does not use prompts or outputs to train its base models; data is processed under the Google Data Processing Addendum. Google may retain prompts and outputs for up to 55 days for abuse monitoring and policy enforcement, but not for training.

OpenAI

22. OpenAI draws a similar distinction. For consumer services (such as ChatGPT Free and Plus), user interactions may be used to improve models unless a user

opts out. By contrast, for business offerings (including the API, ChatGPT Enterprise, and ChatGPT Business), OpenAI states that prompts and outputs are not used to train its base models unless the customer has expressly opted in. Data submitted through the API is processed under OpenAI's Data Processing Addendum, with retention limited to operational needs such as abuse monitoring and policy enforcement.

23. Courts should consider requiring certification that verification has been undertaken, similar to QLD PD 5/2025.

E. Verification Steps

24. Practitioners must check authorities against authorised reports, read the full judgments, and ensure all references are accurate. Verification is non-negotiable. AI should assist but never replace professional responsibility.

IV. What Can Be Done Differently

25. The baseline characterisation of AI is correct for public chatbots such as ChatGPT. But AI can be built differently. Architecture and methodology matter. A legal AI system can:

a. Retrieve only primary sources (judgments and legislation).

b. Adopt structured legal method (IRAC: Issue, Rule, Application, Conclusion).

c. Produce audit-ready outputs (pinpoint citations linked to source law).

d. Employ guardrails (responding “I don’t know” when unsupported).

e. Use agentic workflows (multi-step reasoning, discarding irrelevant material).

26. Such an approach moves AI from plausibility to proof.

V. Method Provenance

27. MiAI Law has adopted this architectural approach — constraining retrieval to primary sources, embedding structured legal reasoning, and ensuring outputs are audit-ready. These methods are the subject of Provisional Patent Application No. 10202502330S filed with the Intellectual Property Office of Singapore on 18 August 2025. This is noted solely to establish provenance.

VI. Alignment with the Law Council of Australia

28. This submission endorses the Law Council of Australia’s submission to the Federal Court of Australia dated 16 June 2025. As the peak national body representing the Australian legal profession, the Law Council’s views are of primary importance. We adopt the Law Council’s core positions:

a. A Practice Note should be issued to provide authoritative guidance.

b. Risks must be balanced with benefits.

c. Blanket prohibitions are undesirable.

d. Disclosure obligations are important.

e. The profession should be consulted on draft guidance.

29. We acknowledge that the Law Council's submission provides further nuance, including:

    a. that disclosure obligations should be contextual and proportionate (particularly for evidence documents and where outputs have not been independently verified),

    b. that guidance should be tailored for different court users (lawyers, self-represented litigants, experts),

    c. that a balance is needed between prescriptive detail and principles-based flexibility, and

    d. that issues of confidentiality, privilege, ADR, and professional training should also be addressed.

30. We respectfully endorse these positions. We add only that while the Law Council has focused appropriately on regulatory principles, the Court's guidance should also recognise that architecture and methodology matter: AI can be designed to reflect law's discipline, constrained to primary sources, structured by legal method, and auditable at every step.

VII. Conclusion

31. The Supreme Court of New South Wales has demonstrated national leadership in establishing clear expectations through Practice Note SC Gen 23. Recent technological advances now show that AI can be designed to move beyond probabilistic text generation, operating instead within the structured and verifiable discipline of law. Recognising this distinction will be critical as the Court refines its approach to the use of generative AI.

32. Recent developments demonstrate that AI can be built to reflect law's discipline, constrained to primary sources, structured by legal method, and auditable at every step. The future of legal AI is not plausibility. It is proof.

References

1. WA Supreme Court – Consultation Note on AI Practice Direction (2025): https://www.supremecourt.wa.gov.au/_files/AI_practice_direction.pdf

2. NSW Supreme Court Practice Note SC Gen 23 – Use of Generative AI (21 Nov 2024): https://supremecourt.nsw.gov.au/documents/Practice-and-Procedure/Practice-Notes/general/current/PN_SC_Gen_23.pdf

3. NSW Supreme Court – Guidelines for New South Wales Judges in Respect of Use of Generative AI: https://supremecourt.nsw.gov.au/documents/About-the-Court/policies/Guidelines_Gen_AI.pdf

4. Queensland Courts – Guidelines for Judicial Officers on the Use of Generative AI: https://www.courts.qld.gov.au/__data/assets/pdf_file/0009/879714/the-use-of-generative-ai-guidelines-for-judicial-officers.pdf

5. Queensland Supreme Court – Practice Direction No 5 of 2025 (Accuracy of References in Submissions): https://www.courts.qld.gov.au/__data/assets/pdf_file/0010/882064/sc-pd-5-pf-2025.pdf.

6. Supreme Court of Victoria – Guidelines for Litigants: Responsible Use of AI in Litigation (2024): https://www.supremecourt.vic.gov.au/sites/default/files/2024-05/AI%20Guidelines%20SCV.pdf

7. Supreme Court of South Australia – Chief Justice's survey on use of generative AI (30 May 2025): https://www.courts.sa.gov.au/2025/05/30/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/

8. Federal Court of Australia – Notice to the Profession on AI Use (29 Apr 2025): https://www.fedcourt.gov.au/law-and-practice/practice-documents/notice-to-profession/29-april-2025

9. ACT Supreme Court – Practice Notes and Directions page: https://www.courts.act.gov.au/supreme/law-and-practice/practice-notes-and-directions-and-notices-to-practitioners

10. NT Supreme Court – Practice Directions & Guidelines page: https://supremecourt.nt.gov.au/lawyers/practice-directions

11. Tas Supreme Court – Practice Directions page: https://www.supremecourt.tas.gov.au/publications/directions/

12. Tasmanian Government – Guidance for the use of artificial intelligence in Tasmanian Government (not court-specific): https://www.dpac.tas.gov.au/__data/assets/pdf_file/0024/420468/FINAL-AI-OPP-1.1.pdf

13. Law Council of Australia – Submission on AI Use in the Federal Court of Australia (16 Jun 2025): https://lawcouncil.au/resources/submissions/artificial-intelligence-use-in-the-federal-court-of-australia

Google (Gemini)

14. Gemini API Additional Terms of Service: https://ai.google.dev/gemini-api/terms

15. Google Cloud Gemini Data Governance: https://cloud.google.com/gemini/docs/discover/data-governance

16. Gemini API Usage Policies: https://ai.google.dev/gemini-api/docs/usage-policies

OpenAI

17. Data Usage for Consumer and Business Services FAQ: https://help.openai.com/en/articles/7039943-data-usage-for-consumer-services-faq

18. Data Processing Addendum: https://openai.com/policies/data-processing-addendum

19. Platform Documentation – Your Data: https://platform.openai.com/docs/guides/your-data

20. Usage Policies: https://openai.com/policies/usage-policies

Annexure A: Alignment with Law Council Submission

This is a summary of how this submission aligns with, and adds to, the Law Council of Australia's submission on Artificial Intelligence Use in the Federal Court of Australia (16 June 2025). It is provided for ease of comparison and to demonstrate support for the Law Council's leadership in this area.

Issue	Law Council Position	Position of MiAI Law (prepared by Laina Chan)
Form of Guidance	Supports a Practice Note over guidelines, for clarity and enforceability.	Endorses this position; a Practice Note is essential.
Recognition of Risks	Highlights hallucinations, opacity, data security, and risk of misleading outputs.	Fully adopts these concerns, with additional examples from NSW, QLD, VIC guidance.
Blanket Prohibition	Opposes blanket prohibition; considers it impractical and disproportionate. Prefers regulated use.	Agrees; prohibition would stifle innovation and access to justice.
Disclosure Obligations	Recommends contextual disclosure: particularly for affidavits, witness statements, expert reports, and where outputs are unverified or risk misleading. Cautions	Endorses disclosure in these contexts. Adds that where AI outputs are fully verified, the duty of candour suffices.

Issue	Law Council Position	Position of MiAI Law (prepared by Laina Chan)
	against unnecessary disclosure burdens.	
Consultation Process	Calls for there to be continued consultation with the profession on draft guidance.	Adopts this; further consultation is essential.
Opportunities and Benefits	Recognises efficiency, innovation, and access to justice benefits. Also refers to ADR, privilege/confidentiality, and professional development.	Adopts these. Adds detail on how structured AI can deliver efficiency and access benefits, while strengthening confidentiality through system design.
Additional Perspective	Focuses primarily on regulatory principles and risks.	Adds that architecture and methodology matter: AI can be designed to reflect law's discipline (primary sources, IRAC, auditability, guardrails, agentic workflows). Provenance established by MiAI Law SEZC provisional patent (10202502330S, filed Singapore 18 Aug 2025).