



The Honourable Chief Justice Will Alstergren AO

Chief Justice of the Federal Circuit and Family Court of Australia (Division 1)

Chief Judge of the Federal Circuit and Family Court of Australia (Division 2)

Federal Circuit and Family Court of Australia

Owen Dixon Commonwealth Law Courts

305 William Street, Melbourne VIC 3000

By email

Cc: Judge Jonathan Forbes

Dear Chief Justice

Submission on Generative Artificial Intelligence

Thank you for facilitating my meeting with Judge Jonathan Forbes in June 2025. Since that meeting, MiAI Law has 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 full product release on 7 October 2025. As a result, I am now in a position to describe fully the architectural and methodological approach that underpins the MiAI Law technology, which forms the basis of the attached submission.

The Federal Circuit and Family Court of Australia plays a critical role in ensuring accessible and transparent justice. As generative AI becomes more capable, guidance will be essential to safeguard confidentiality, verification, and accuracy while recognising that AI systems can now be built to reflect law's own structured and auditable discipline.

Although the Court has not yet issued formal guidance on this topic, I understand from my discussions with Judge Forbes that the Court is considering how best to approach AI within



its practice. This submission is therefore offered to assist the Court in that process. It sets out the baseline understanding of generative AI reflected in other Australian jurisdictions and illustrates how modern legal AI can move beyond probabilistic text generation to operate within law's own verifiable method.

We respectfully submit this material for the Court's consideration in developing its future guidance on the responsible use of generative AI. The attached submission:

1. Surveys the baseline understanding of generative AI across Australian jurisdictions (NSW, Qld, Vic, WA consultation, SA survey);
2. Sets out recommended positions for the Court's Practice Note, including scope, disclosure, prohibited uses, safeguards, and verification;
3. Expands on confidentiality and data governance (encryption, key management, cross-border issues, API terms);
4. Explains why architecture and legal method (primary-source retrieval, structured analysis, auditability, guardrails, agentic workflows) matter; and
5. Endorses the Law Council of Australia's submission of 16 June 2025, which we adopt and build upon.

Yours faithfully,

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Submission to the Federal Court of Australia

By MiAI Law Pty Ltd

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I. Introduction

1. This submission is provided to assist the Federal Circuit and Family Court of Australia as it considers how to address the use of generative artificial intelligence in judicial and professional practice. The Court has not yet issued formal guidance on this subject, but it is understood that the Court is actively assessing its approach.
2. The purpose of this submission is twofold:
 - a. To set out the baseline understanding of generative AI reflected in guidance already issued by other Australian courts and tribunals; and
 - b. To illustrate what can now be done differently, showing that AI systems need not be limited to probabilistic text generation but can be designed to reflect law's discipline — verifiable, auditable, and structured according to legal method.

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-notice-to-practitioners; NT
<https://supremecourt.nt.gov.au/lawyers/practice-directions>; and TAS
<https://www.supremecourt.tas.gov.au/publications/directions/>)

III. Recommended Positions for Federal Court Guidance

A. Current and Future Uses of Generative AI

14. 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. Need for a Practice Note

15. The Court should issue a formal Practice Note, not guidelines, to provide clarity and enforceability. This is consistent with the approaches in NSW and QLD.

C. Scope of Application

16. The Practice Note should apply to legal practitioners, who owe duties of candour and accuracy, and also to self-represented litigants where disclosure is feasible. Judicial officers may require separate guidance, as in NSW and QLD.



D. Disclosure of AI Use

17. 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.

E. Prohibited Uses

18. 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.

F. Safeguards

19. Practitioners must verify citations, ensure jurisdictional accuracy, and maintain confidentiality of privileged material.
20. 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.

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

Gemini (Google)

22. 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

23. 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.

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

G. Verification Steps

25. 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

26. 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).

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

V. Method Provenance

28. 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

29. 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.



30. 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.
31. 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

32. The Federal Circuit and Family Court of Australia has the opportunity to build on the leadership shown by NSW and Queensland. Every jurisdiction so far has adopted the same baseline: LLMs are probabilistic, opaque, and unreliable without human verification. This understanding is correct for public chatbots. But it is incomplete if it assumes all AI is the same.



- 33. The Court should adopt the shared baseline — but also acknowledge that more is possible. AI can be built to reflect law’s discipline, constrained to primary sources, structured by legal method, and auditable at every step.
- 34. The future of legal AI is not plausibility. It is proof.



References

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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 against unnecessary disclosure burdens.	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)
Consultation Process	Calls for there to be continued consultation with the profession on draft guidance.	Adopts this; further consultation is essential.
aOpportunities 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 provisional patent (10202502330S, filed Singapore 18 Aug 2025).