



The Honourable Chief Justice Stephen Gageler AC

Chief Justice of Australia
High Court of Australia
Parkes Place West
Canberra ACT 2600

By email: enquiries@hcourt.gov.au

Dear Chief Justice,

Submission on the Responsible Use of Generative Artificial Intelligence

I write to provide, for the Court's information, a submission concerning the responsible and verifiable use of generative artificial intelligence in judicial and professional practice.

While the High Court has not yet issued formal guidance on this topic, courts across Australia have begun to consider the responsible use of AI. These include the Supreme Court of New South Wales Practice Note SC Gen 23 (Use of Generative AI), the Queensland Guidelines for Judicial Officers on the Use of Generative AI and Practice Direction No. 5 of 2025 – Accuracy of References in Submissions, and the Federal Court of Australia's Notice to the Profession (29 April 2025).

The enclosed submission consolidates those developments and outlines how recent advances in AI architecture now enable systems that operate within law's own structured and auditable discipline. It distinguishes between probabilistic text-generation tools and structured, verifiable legal AI, and is offered to assist the Court should it consider issuing guidance or contributing to national harmonisation on this subject.



MiAI Law has 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. These developments now allow me to describe fully the architectural and methodological approach that underpins the technology discussed in this paper.

I respectfully commend the attached material to the Court's consideration.

Yours faithfully,

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Submission to the High Court of Australia

By MiAI Law Pty Ltd

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I. Introduction

1. This submission is provided for the information of the High Court of Australia as part of the broader national consideration of the use of generative artificial intelligence in legal and judicial practice.
2. The purpose of this paper is to:
 - a. summarise the baseline understanding of generative AI reflected in judicial guidance across Australia; and
 - b. outline how AI can now be designed to operate within law's discipline — verifiable, auditable, and structured according to legal reasoning.

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. Observations on the Use of Generative AI in Submissions and Legal Research

A. Current and Emerging Uses

14. At present, generative AI tools are used primarily for summarisation, drafting correspondence, and exploratory research. In practice, these systems assist counsel and solicitors in navigating large volumes of material, including pleadings, legislation, and authorities.
15. More advanced applications now include structured legal research systems that generate audit-ready, verifiable reports grounded in primary sources. Such systems may, in time, enhance efficiency for smaller practices and self-represented litigants, while maintaining fidelity to law's reasoning process.

B. Implications for Submissions and Judicial Research

16. The use of generative AI in the preparation of submissions raises important questions of verification, transparency, and authorship. The fundamental duties of accuracy, candour, and independence remain unchanged, but new technologies may call for clarification of how those duties apply when AI tools are used in drafting or research.



17. In appellate advocacy, precision of citation and reasoning is critical. Any reliance on AI-generated material must therefore be verifiable against the authoritative source. This may be ensured by requiring that references in submissions be cross-checked against authorised reports, as already reflected in Queensland’s Practice Direction No. 5 of 2025 – Accuracy of References in Submissions.

C. Data Security and Confidentiality

18. The use of commercial AI tools also raises issues of data governance. When legal documents or case materials are uploaded to external platforms, it is essential to ensure that data are encrypted both at rest and in transit, and that providers cannot access, retain, or use that data for model training.
19. Where systems rely on public large language models such as those provided by OpenAI or Google, counsel should be aware of the providers’ differing terms.
20. **Google (Gemini):** For free-tier use, Google may use prompts and responses to improve its models, including for training; for paid or enterprise services, prompts and outputs are excluded from training and processed under a Data Processing Addendum.
21. **OpenAI:** For consumer services such as ChatGPT Free and Plus, prompts may be used for model improvement unless the user opts out. For API, Enterprise, and Business customers, data are not used for model training unless the customer opts in.



22. These distinctions underscore the importance of contractual safeguards and informed consent when AI tools are used in connection with legal material.

D. Verification and Professional Responsibility

23. Regardless of technological developments, practitioners remain personally responsible for the accuracy of all authorities and citations presented to the Court. Verification must extend beyond automated outputs to human review of the full judgments relied upon. AI should assist, but never replace, professional responsibility or legal reasoning.
24. Courts may consider, where appropriate, requiring certification that verification has been undertaken.

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. As the final court of appeal, the High Court plays a central role in promoting national coherence in judicial practice. The principles emerging from State and Federal guidance may in time benefit from overarching articulation at this level, particularly to distinguish between probabilistic text generation and verifiable, law-aligned AI.
- 32. Courts have correctly identified the risks inherent in probabilistic language models. The next step is to recognise that AI can be designed to reflect law's discipline itself - constrained to primary sources, structured by legal method, and auditable at every step.
- 33. The future of legal AI is not plausibility. It is proof.



VIII. 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 the Law Council of Australia’s Submission on AI Use

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.
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).