

Article Information

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Generative AI and a new era of legal technology governance in the Supreme Court of NSW

On 21 November 2024, the Chief Justice of New South Wales issued Practice Note SC Gen 23, which provides comprehensive guidelines for the use of Generative Artificial Intelligence (Gen AI) in legal proceedings. This Practice Note will take effect on 3 February 2025.

Alongside the Practice Note, amendments to the *Uniform Civil Procedure Rules* will also come into force. These measures are aimed at ensuring the responsible use of Gen AI in the legal domain while addressing potential risks and ethical considerations.

Generative AI: Benefits and Challenges in the Legal Sector

Generative AI, leveraging large language models, can generate a wide range of content including text, images, and sounds. Prominent platforms like ChatGPT, Google Bard, and Llama, alongside legal-specific tools such as Westlaw Precision and Lexis Advance AI, have demonstrated their utility in drafting documents, summarising information, and analysing extensive datasets. However, this advancement introduces challenges:

1. **Accuracy Issues:** AI tools may generate “hallucinations,” producing outputs that seem credible but are factually inaccurate or entirely fabricated.
2. **Data Bias:** The quality and scope of training datasets may lead to biased or incomplete outputs, impacting the relevance and applicability of AI-generated content.
3. **Confidentiality Concerns:** Public Gen AI tools often lack adequate safeguards, raising the risk of sensitive data exposure or misuse.
4. **Ethical and Legal Risks:** The use of copyrighted material in AI training datasets could result in unintended breaches of intellectual property laws.

Key Provisions in Practice Note SC Gen 23

The Practice Note addresses multiple facets of Gen AI’s integration into legal processes, providing specific guidance and restrictions:

General Prohibition

Restricted Information: A prohibition upon entering information subject to non-publication or suppression orders, or other sensitive material, into any Gen AI program.

Use in Affidavits and Witness Statements

Authenticity: A prohibition upon using Gen AI to generate content for affidavits, witness statements, character references, or other evidentiary materials. The intention being that such documents reflect the genuine knowledge and opinions of the individuals involved.

Disclosure: Any affidavit, witness statement, or character reference **must** include a disclosure statement

that Gen AI was not used in its preparation. In exceptional cases, leave may be sought to use Gen AI for specific purposes, subject to strict conditions and disclosures.

Expert Reports

Restrictions: Gen AI must **not** be used to draft or prepare any part of an expert report without prior court approval. Such leave applications **must** include detailed information about the proposed use, the specific Gen AI program, and the expected benefits.

Transparency: If Gen AI is used in preparing an expert report, the expert **must** disclose its use and keep detailed records of how the tool was employed.

Written Submissions and Summaries

Verification: When Gen AI is used to prepare written submissions or summaries of arguments, the author **must** verify all citations, legal authorities, and references for accuracy and relevance. This verification **must** be conducted manually, without relying on Gen AI.

Professional Obligations: The use of Gen AI does **not** absolve legal practitioners of their professional and ethical responsibilities to the Court and the administration of justice.

Scope Limitation

Exclusions: The Practice Note does not apply to tools that merely correct spelling or grammar, provide transcription, or assist with formatting. It also excludes traditional search engines and dedicated legal research software that do not generate substantive content.

Judicial Guidelines

In addition to the Practice Note, guidelines have been issued for judges regarding the use of Gen AI. These guidelines caution against using Gen AI for formulating judgments or analysing evidence. Judges are encouraged to familiarise themselves with the limitations of Gen AI and to ensure any AI-generated research is thoroughly verified for accuracy and relevance.

Moving Forward

The introduction of Practice Note SC Gen 23 and the accompanying judicial guidelines represents a significant step towards integrating Gen AI into legal practice responsibly. These measures aim to harness the benefits of Gen AI while mitigating potential risks, ensuring the integrity of legal proceedings and the administration of justice.