



**Land And Environment Court
Practice Note - Use Of
Generative Artificial
Intelligence (Gen AI)**

**LAND AND ENVIRONMENT COURT PRACTICE NOTE - USE
OF GENERATIVE ARTIFICIAL INTELLIGENCE (GEN AI)**

The Land and Environment Court of New South Wales has recently released a new practice note on the Use of Generative Artificial Intelligence (Gen AI). Experts and Council Officers who regularly give evidence in the LEC should be aware of these new obligations.

The practice note defines Gen AI as “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.” It notes this may include use of “generic large language model programs such as Chat-GPT, Claude, Grok, Llama, Google Bard, Co-Pilot, AI Media or Read AI” amongst other similar programs, however would not include “technology or functionality which merely corrects spelling or grammar, provides transcription or translation, assists with formatting and otherwise does not generate substantive content”, as well as general use of search engines.

The practice note warns of the risks of use of Gen AI for generating documents, such as “hallucinations” of seemingly plausible but inaccurate information, potential that the underlying data is inaccurate or irrelevant to NSW, and bias in the underlying data.

DISCLAIMER

The above are summaries only. They are not intended to take the place of legal advice.

In legal proceedings, there is also an implied undertaking given by parties that information provided in the proceedings will not be used for some other purpose. Feeding information relevant to proceedings into AI models may inadvertently allow that platform to access and use that data, potentially causing a party to breach this implied undertaking. As such, use of Gen AI in relation to proceedings may cause a party to breach its obligations to the Court.

As such, leave of the Court is required for any party seeking to rely on affidavits, witness statements, or character statements prepared using Gen AI. Such leave will only be granted in "exceptional cases".

Some key obligations imposed on witnesses and experts in proceedings include:

- Gen AI must not be used in generating the content of affidavits, witness statements, character references or other material that is intended to reflect the deponent or witness' evidence and/or opinion. This includes using Gen AI for the purpose of altering, embellishing, strengthening or diluting or otherwise rephrasing material.
- An affidavit, witness statement or character reference must contain a disclosure that Gen AI was not used in generating:
 - (a) its content (including by way of altering, embellishing, strengthening or diluting or rephrasing a witness's evidence); or
 - (b) the content of any annexure or exhibit prepared by the deponent of the affidavit or witness statement or character reference for the purposes of his or her evidence.
- Gen AI must not be used to draft or prepare the content of an expert report (or any part of an expert report) without prior leave of the Court.
- If leave is obtained to use Gen AI for use in preparing an expert report, clause 22 of the practice specifies the information which must be provided in the report as to how the Gen AI content was produced.

Councils with in-house legal teams should also be aware of the specific obligations on practitioners in preparing material for the Court using Gen AI and the briefing of experts on their obligations under the Gen AI Practice Note.

A copy of the practice note can be accessed [here](#).

For more information about this update, please contact Tom Ward and Kristyn Glanville.

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