THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: LLPC/BLC/PDLC/Ethics:JBsh160925

16 September 2025

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
BRADDON, ACT 2612

By email: [redacted]

Dear Dr Popple,

FEDERAL COURT OF AUSTRALIA – REVIEW OF DIGITAL PRACTICES AND PROCEDURES

The Law Society appreciates the opportunity to provide input to a Law Council submission in response to the Federal Court of Australia's, *Review of Digital Practices and Procedures*. The Law Society's Litigation Law and Practice, Privacy and Data Law, Business Law and Ethics Committees contributed to this submission.

General

The Law Society welcomes the ongoing, broad-based engagement with practitioners, litigants and the general public by the Federal Court of Australia (**Court**) in relation to the review of its digital practices. We commend the Court for its leadership in modernisation and digitisation of systems for the conduct of proceedings and acknowledge it is regarded as an exemplar in this field.[1] Noting that the Court has chosen mid-2025 as a "useful juncture at which to take stock of where the Court has landed on digital practice following the COVID-19 pandemic",[2] we provide the following feedback in response to specific topics highlighted by the Court.

Virtual hearings

In 2022, the Law Society commissioned the conduct of research with our members to better understand how the significant changes to the court environment prompted by the COVID-19 pandemic had impacted NSW practitioners.[3] The vast majority of members appreciated the time and cost benefits that remote delivery of legal processes through virtual hearings had brought to their legal practice and to outcomes for their clients,

[1] The Court first launched its eServices Strategy in 2008 and followed with implementation of its Digital Court File initiative in 2014. CourtPath case management system upgrades were rolled out in 2024. See Alan Diner, "Looking Up from Down Under: The Federal Court of Australia's Digital Strategy and its Lessons for Canadian Courts", 31 May 2024 (public version last modified 28 July 2025), online; https://ciaj-icaj.ca/wp-content/uploads/2025/08/alan-diner_diner-study-leave_report_public-v3.pdf, 5-6; Chief Justice Mortimer has described the Federal Court as "one of the technology leading courts in Australia", see Malcolm Blue memorial address, "Livestreaming: Peaks and Pitfalls", 22 February 2025, online, https://www.fedcourt.gov.au/digital-law-library/judges-speeches/mortimer-cj/mortimer-cj-20250222, [9].
[2] Federal Court of Australia Consultation, *Review of Digital Practices and Procedures*, 1 August 2025, online, https://www.fedcourt.gov.au/news-and-events/1-august-2025-2#content.
[3] Heartward Strategic, *Research Summary Report*, *The Law Society of NSW*, *A Fair Post-COVID Justice System: Canvassing Member Views*, January 2022, online, https://www.lawsociety.com.au/sites/default/files/2022-02/21051%20Post-COVID%20Justice%20System%20Summary%20Report%20FINAL%20220124.pdf.

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Law Council OF AUSTRALIA
CONSTITUENT BODY

particularly for those living in rural, regional and remote areas. However, there was also general recognition that virtual hearings were not appropriate in some circumstances and that substantive and/or contested hearings, in particular, should be conducted in-person.[4]

While we acknowledge that virtual hearing procedures and practices will be determined in accordance with the needs and capacity of each jurisdiction, we would encourage the advancement of the Law Council's *Principles for determining the appropriateness of online hearings* (**Principles**). As stated in our recent comments to the Law Council,[5] we consider the Principles are an important frame of reference against which evolving online court practices should be continuously measured to safeguard key justice values. In our view, an explicit adoption of the principles by the Court would promote a national approach to setting best practice standards for virtual hearings, particularly given the Court's profile as an innovator in digital practice.

Digital court books

The eBooks Practice Note (GPN – eBOOKS)[6] provides guidance on requirements for court books that are proposed to be provided in electronic format. Our members have reported that, on occasion, practitioners are ordered by the Court to provide eBooks on short notice and, in some instances, just before trial. Preparation of eBooks, including Optical Character Recognition as required, can be extremely time and cost intensive. We are aware of one example of an eBook costing in excess of $15,000 to produce. A protocol regarding the appropriate notice period for the preparation of eBooks would be of great assistance to practitioners.

Use of artificial intelligence (AI) in litigation

The Law Society reiterates the views expressed in our response to the Court's preliminary consultation on this topic, and our support for the development of guidelines or a practice note on the use of AI, including generative AI (**GenAI**). In our view, any guidelines or practice note developed should appropriately manage risk while avoiding duplicative regulation of the profession. We favour a framework based on overarching principles consistent with existing obligations[7] to the Court and parties complemented with specific disclosure rules to ensure the integrity of evidentiary material, namely, witness statements, affidavits and expert reports.[8] We also note this approach aligns with the Law Council's view that a broadly framed prohibition on GenAI use would be "neither practical nor proportionate".[9] Further, we suggest delivery of supplementary briefings by the

[4] Ibid, 15.
[5] See our letter, *Review of the Law Council's Principles for Determining the Appropriateness of Online Hearings*,18 June 2025, attached.
[6] Federal Court of Australia, *eBooks Practice Note (GPN-eBOOKS)*, 17 August 2022, online, https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-ebooks.
[7] For example, the *Statement on the Use of Artificial Intelligence in Australian Legal Practice*, outlines ethical conduct rules and duties under the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* that apply to NSW, WA and Victorian practitioners in connection with the use of AI, and clarifies the expectations legal profession regulators have of practitioners when they use AI tools in their legal work. The Statement also sets out best practice principles in relation to risk management when using AI. The Statement is a joint publication by the Law Society of NSW, Legal Practice Board of WA, and Victorian Legal Services Board and Commissioner, December 2024, online https://www.lawsociety.com.au/sites/default/files/2024-12/LS4590_PSP_Statement_AI_LawSocietyVersion121224.pdf.
[8] See our letter to the Law Council, *Use of Artificial Intelligence in the Federal Court of Australia,* 5 June 2025, attached.
[9] Law Council submission to the Federal Court, 16 June 2025, online https://lawcouncil.au/resources/submissions/artificial-intelligence-use-in-the-federal-court-of-australia, 7 [8].

Court on the application of any guidelines or practice note that may be developed by the Court. Our members have reported that court-led sessions are well attended and highly effective in achieving positive learning outcomes when it comes to education in procedural compliance.

Uniformity in use of AI

The Law Society considers that consistency of approach regarding any proposed expectations or protocols that may apply to the use of AI in litigation is desirable. As previously stated, and given use of GenAI in legal proceedings is a particular and common concern across jurisdictions, we would welcome a referral by the Council of Chief Justices to the Harmonisation of Rules Committee to consider standardisation of court rules, forms and practice documents for adoption by all participating courts.

Any other topics in relation to digital practice of concern

Self-represented litigants (**SRLs**)

The impacts of SRLs on civil justice are not insignificant. Their participation tends to increase costs and expenses for opposing parties, create difficulties for court staff in maintaining the line between providing information and providing legal assistance, and take up considerable court time.[10] Recently, judicial commentary has noted the impact on the courts of SRLs using GenAI in proceedings.[11] The Law Society welcomes the Court's communication that it is in the process of preparing a Litigant in Person Practice Note for all matters before the Court in which one or more parties are litigants in person.[12] We suggest that the Practice Note would benefit from targeted guidance in relation to the use of GenAI and note that Queensland Courts have issued guidelines that may serve as a useful model.[13]

Ability to settle a dispute early

In our members' experience, virtual proceedings remove the incidental opportunity to settle a matter outside of a hearing. We suggest practices and procedures are developed to facilitate the quarantining of spaces in the online environment, such as virtual "break-out rooms" or "advocate rooms", to enable lawyers and litigants to confer.

[10] The Australasian Institute of Judicial Administration Incorporated, Liz Richardson et al, "The Impacts of Self-Represented Litigants on Civil and Administrative Justice", October 2018, online, https://aija.org.au/wp-content/uploads/2018/11/SRL-Policy-and-Practice-FINAL.pdf, 3.
[11] See Whitbourn and Brook, "Judge Judith slams gavel on 'imaginary' AI judgments", 3 September 2025; *Sydney Morning Herald;* and Justice Jane Needham, "AI and the Courts in 2025", 27 June 2025, online, https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-needham/needham-j-20250627.
[12] Federal Court of Australia, "Litigants in person and pro bono project", retrieved 29 August 2025, online, https://www.fedcourt.gov.au/going-to-court/i-am-a-party/litigants-in-person-and-pro-bono-project
[13] Queensland Courts, *The Use of Generative Artificial Intelligence (AI) Guidelines for Responsible Use by Non-Lawyers,* 13 May 2024, online, https://www.courts.qld.gov.au/about/news/news233/2024/the-use-of-generative-artificial-intelligence-ai .

Costs

The Law Society endorses the Law Council's call for the Joint Costs Advisory Committee to examine the uses of technology as a rapidly evolving aspect of legal practice and how that can be reflected in costs.[14] Our members have reported that the scales of costs have not kept pace with changes in practices of the federal courts and legal practitioners as a result of increased use of technology.

Thank you for the opportunity to comment. Questions at first instance may be directed to Sonja Hewison, Policy Lawyer, at (02) 9926 0219 or sonja.hewison@lawsociety.com.au.

Yours sincerely,

Jennifer Ball

Jennifer Ball
President

Attachment

[14] Law Council submission to the Joint Costs Advisory Committee 2025 Consultation, 28 August 2025, online, https://lawcouncil.au/publicassets/c50a3f5a-f186-f011-94ba-005056be13b5/4713%20-%20S%20-%20Joint%20Costs%20Advisory%20Committee%20Inquiry.pdf.

THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: LLPC/BLC/PDLC/Ethics:JBsh050625

5 June 2025

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
BRADDON, ACT 2612

By email: [redacted]

Dear Dr Popple,

USE OF ARTIFICIAL INTELLIGENCE IN THE FEDERAL COURT OF AUSTRALIA

The Law Society is grateful for the opportunity to provide preliminary feedback to the Law Council ahead of the Federal Court's consultation on the development of guidelines, or a practice note, about the use of generative artificial intelligence (**Gen AI**) by practitioners and court users. The Law Society's Litigation Law and Practice, Privacy and Data Law, Business Law and Ethics Committees contributed to this submission.

General comments

The Law Society commends the approach taken by the Federal Court in consulting widely with litigants conducting their own proceedings, the legal profession and the public and in examining existing judicial practices in relation to the use of Gen AI.

We support the Court providing guidance to its users that balances the interests of the administration of justice with the responsible use of emergent technologies. Our members favour a hybrid framework based on overarching principles to be observed when using Gen AI and with mechanisms for disclosure of use of Gen AI in certain identified circumstances. This pragmatic approach allows sufficient flexibility to accommodate rapid changes in technology and avoid unnecessary prescription that curbs responsible use of Gen AI to facilitate the just resolution of disputes as quickly, inexpensively and efficiently as possible. The incorporation of transparency safeguards also acknowledges the understandable uncertainty surrounding Gen AI as a powerful and evolving form of technology with capacity to transform legal process.

Our members recognise that the courts must address concerns regarding the potential for Gen AI to produce errors or misuse information that may undermine the integrity of proceedings. A principles-based guidance or practice note will align with existing professional and ethical obligations that apply to the practitioner cohort of court users and that are designed to ensure honesty, accuracy, confidentiality and reliability in litigation practice. In our view, any additional requirements in connection with the use of Gen AI should be carefully considered noting discrepancies in approach across jurisdictions and the potential for further ambiguity as users navigate an increasingly complex rules matrix.

Potential principles and existing obligations

In 2024, the Law Society established an AI Taskforce to develop projects to guide the profession, from educational and ethical perspectives, on the use of AI tools in legal practice. A subcommittee of the Taskforce was specifically convened to discuss the duties of NSW court users regarding the use of AI tools for the purpose of litigation. The subcommittee considered different approaches taken by common law jurisdictions to the issue. Attached, for your reference, is a brief discussion paper prepared by the AI Taskforce in 2024 which summarises five overriding principles that may be applied across jurisdictions and that the Court may wish to consider in developing guidance or a practice on the responsible use of Gen AI in litigation in the Court. On a more recent review, we also note that in addition to the matters discussed under principle 4, legal practitioners need to consider whether documents obtained in litigation to which an implied undertaking attaches can in fact be entered into Gen AI tools, given that the Large Language Models employed by Gen AI products may be trained on such data.

We also draw your attention to the *Statement on the Use of Artificial Intelligence in Australian Legal Practice*[1] jointly issued by the Law Society of NSW, the Legal Practice Board of WA, and the Victorian Legal Services Board and Commissioner as the legal profession regulators across the Uniform Law states. The Statement is based on the ethical conduct rules and duties under the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (**ASCR**) that apply to NSW, WA and Victorian practitioners in connection with the use of AI and clarifies the expectations legal profession regulators have of practitioners when they use AI tools in their legal work. The Statement also sets out best practice principles in relation to risk management when using AI.

Disclosure

Existing disclosure models diverge in levels of prescription. The Supreme Court of NSW Practice Note, *Use of Generative Artificial Intelligence*, (**SC GEN 23**) is at one end of the continuum with a high level of control by way of a general prohibition on use of Gen AI and mandatory disclosure regimes.[2] The Supreme Court of Victoria *Guidelines for litigants: responsible use of artificial intelligence in litigation* is less prescriptive and encourages disclosure by way of voluntary statements.[3]

Our members support appropriate management of risk through a hierarchy of principled obligations complemented by specific disclosure rules. This hybrid approach incorporates aspects of both the NSW and Victorian models and, we suggest, can be more responsive to oversight of Gen AI in the litigation context.

[1]The Statement is available online, https://www.lawsociety.com.au/sites/default/files/2024-12/LS4590_PSP_Statement_AI_LawSocietyVersion121224.pdf.
[2] SC GEN 23, 28 January 2025, [9A], [10], [13], [16], [20], [22], online, https://supremecourt.nsw.gov.au/documents/Practice-and-Procedure/Practice-Notes/general/current/PN_SC_Gen_23.pdf.
[3] Supreme Court of Victoria, *Guidelines for litigants: responsible use of artificial intelligence in litigation*, May 2024, [3], online https://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation.

We have identified affidavits, witness statements and other evidentiary material tendered in evidence or used in cross-examination, together with expert reports, as material requiring transparency safeguards potentially in the form of prior approval or mandatory disclosure to the Court of the use of Gen AI.

Affidavits, witness statements or other evidentiary material

SC GEN 23 prohibits the use of Gen AI to generate material that is intended to reflect the evidence and/or opinion of a deponent of an affidavit or witness statement, or other material tendered in evidence or used in cross examination.[4] A positive obligation is placed on the deponent to make a disclosure that Gen AI was not used in the creation of the material.[5] In exceptional prescribed circumstances, leave may be sought to use Gen AI for the preparation or generation of an annexure or exhibit to an affidavit, witness statement or character reference.[6]

As noted above, we agree that this material requires transparency safeguards when prepared using Gen AI. An alternative, technologically neutral solution may be available through pro-forma declarations affirming the evidentiary material is a record of the deponent's own knowledge and anchored by the relevant ethical duties under the ASCR.[7] This approach, in conjunction with continuing professional development and customised guidelines for non-practitioner court users may overcome duplicative regulation.

Expert reports

SC GEN 23 prohibits the use of Gen AI to draft or prepare expert reports without the prior approval of the Court.[8] Moreover, where approval is obtained, detailed records must be kept and annexed to the report on how the Gen AI tool or program was used including:

- any prompts used,
- any default values used, and
- any variables set.[9]

Leave must be sought to dispense with this requirement.

An alternative requirement, consistent with the suggestion regarding affidavits and witness statements above, may be to require either prior approval or disclosures that Gen AI has been used in the production of the expert report, to be accompanied with a declaration stating the Gen AI tool used and affirming that the content of the report contains the expert's independent opinion, has been verified for accuracy, and is free from Gen AI bias.

[4] SC GEN 23, n 2, [10].
[5] Ibid [13]; Rule 35.3B, Forms 40 and 163, *Uniform Civil Procedure Rules 2005* (NSW).
[6] SC GEN 23, n 2, [15]
[7] ASCR, ibid.
[8] SC GEN 23, n 2, [20].
[9] Ibid, [22(b)].

Consistency

The Law Society considers that consistency of approach regarding any proposed expectations or protocols that may apply to the use of Gen AI in litigation is desirable. At the same time, we appreciate that each jurisdiction may choose to take a different approach.

We suggest that an adequate lead-time, from the publication to commencement of a guidance or practice note, will be of utility, to alert the profession to any changes in procedure, particularly if these involve an obligation to make written disclosures. In addition, it may be helpful for the Court to conduct seminars/briefings for users to outline key provisions and to answer questions.

Given use of Gen AI in legal proceedings is a common concern across jurisdictions, we would also welcome a referral by the Council of Chief Justices to the Harmonisation of Rules Committee to consider standardisation of court rules, forms and practice documents for adoption by all participating courts.

Thank you for the opportunity to comment. Questions at first instance may be directed to Sonja Hewison, Policy Lawyer, at (02) 9926 0219 or sonja.hewison@lawsociety.com.au.

Yours sincerely,

Jennifer Ball

Jennifer Ball
President

Attachment

RESPONSIBLE USE OF AI IN LITIGATION ACROSS NEW SOUTH WALES COURTS AND TRIBUNALS: DISCUSSION PAPER

Proposal:

To discuss the development of a set of guidelines to assist persons conducting litigation across courts and tribunals in NSW as to the responsible use of AI.

Terminology

While we recognise that there are no settled definitions in this area, for ease of understanding, we have adopted the definition of AI system set out in the OECD's Recommendation of the Council on Artificial Intelligence[1], namely:

> An **AI system** is a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.

Rationale:

The Law Society considers that it would be desirable for Heads of Jurisdiction in NSW to agree on a set of principles and publish consistent guidelines for the responsible use of AI systems in litigation across NSW courts and tribunals. In our view, these guidelines should address the use of AI systems by both legal practitioners and unrepresented litigants.

Guidance as to the use of AI systems in court proceedings may assist in ensuring both the actual and perceived integrity of proceedings, by reminding practitioners of their existing professional obligations, and conveying to them the principles to which they should have attention when preparing material for the purpose of court proceedings with the assistance of AI systems.

Current Approaches:

We have surveyed the approaches being adopted in common law jurisdictions around the world by various professional bodies, judicial commissions and courts (see **Appendix A**). This survey has revealed two main approaches at the current time:

1. It is unnecessary to disclose the use of an AI system in court proceedings as a matter of course, although the court may require disclosure in certain circumstances. Legal practitioners continue to be bound by existing professional and ethical obligations.
2. Litigants must advise the court of any AI system used to generate content for the purposes of the proceedings.

There is also what we might refer to as a 'hybrid' approach adopted by the Supreme Court of Victoria, which encourages disclosure in some circumstances, for example to aid understanding of the provenance of certain documents. Disclosure to the Court of assistance rendered by generative AI to unrepresented litigants is also encouraged.

[1] OECD/LEGAL/0449 (Adopted May 22, 2019; Revised 3 May 2024).

Principles:

Below we suggest a set of five possible principles drawn from the guidance documents already developed in common law jurisdictions that may be desirable to be included in any guidance produced for the purpose of the responsible use of AI systems across NSW courts and tribunals.

1. **Observance of existing professional obligations**

- Every practising lawyer in NSW is subject to existing professional obligations, including their duty as an officer of the court. The use of AI systems must be consistent with these existing obligations.
    - This includes the obligations of legal practitioners in the conduct of litigation, e.g., the duty of candour to the court and the duty not to mislead the court or other party as to the nature of any material put before the court, or exchanged in the course of proceedings.

2. **Responsibility as to accuracy and appropriateness of material before the court.**

- Parties and practitioners who are using AI systems maintain the responsibility for the accuracy and appropriateness of material put before the court.
    - Lawyers must therefore be alive to the risks and limitations of the AI systems which they deploy, for example:
        - The potential to produce legal research and or legal references that are out-of-date, incorrect, incomplete, or inapplicable to the jurisdiction, and/or biased;
        - The risk of infringing copyright or other intellectual property rights; and
        - The risk of breaching client confidentiality.
    - Particular care should be exercised in connection with the production of expert opinions (the relevant expert codes of conduct etc. continue to apply).
    - Affidavits and witness statements, which by definition involve a person testifying in their own words, should be produced without the assistance of generative AI.

3. **Disclosure of the use of AI**

- Parties and practitioners will be expected to know whether AI systems have been used in the preparation of any material before the court, and how they have been used.
    - While it is unnecessary to keep track of every step of legal research, given most platforms incorporate AI systems, parties and practitioners should have high-level records of specific legal databases, search engines etc. used, but particularly where generative AI systems have been used.
- While they are not required to disclose the use of AI systems in the preparation of material as a matter of course, practitioners should use their professional judgement as to the circumstances where disclosure, both to other parties and to the court, is desirable and/or necessary e.g., to aid understanding of the provenance of a document.
    - There may be circumstances where a Tribunal Member or Judge requires disclosure as to the use of AI systems and this should be made promptly by the relevant party, for example, where the use of AI systems is relevant to the reliability of material before the Court.
    - It may be worth considering whether disclosure of the use of a generative AI system should be required in the Expert Code of Conduct, and, where generative AI has been used in the production of images or recordings.

4. Confidentiality, privacy and suppression orders

- Parties and practitioners should be aware, in the course of using AI systems, of the risks associated with disclosing information not already in the public domain, particularly to those AI systems where input data is used by the service provider (e.g., for the purposes of training).
    - Data entered into an AI system may breach suppression orders, statutory prohibitions on publication, and/or other obligations as regards privacy and the treatment of confidential and legally privileged information.
    - In circumstances of unintended disclosure (e.g., breach of a suppression order), the relevant Tribunal/Court Registry should be informed as soon as possible.

5. Unrepresented litigants

- Unrepresented litigants may be increasingly likely to use generative AI systems to prepare documents, including submissions, and as a source of legal advice.
    - It is recognised that such litigants may lack the training and skill to verify the accuracy of any legal research or information obtained through such use.
- Unrepresented litigants should be reminded not to rely on content solely generated by AI systems as an accurate source of legal information and advice.
- Unrepresented litigants should be strongly encouraged to identify the AI system used in the preparation of any document filed before the court.
    - This is a way of assisting the Tribunal Member or Judge to understand the provenance and context of a document.
- There may be circumstances where a Tribunal Member or Judge requires disclosure as to the use of AI systems, and this should be made promptly by the unrepresented litigant.

APPENDIX A

AUSTRALIA		
BODY/ASSOCIATION/COURT	DOCUMENT	DUTIES TO THE COURT
Supreme Court of Victoria	Guidelines for Litigants: Responsible User of Artificial Intelligence in Litigation (May 2024)	The Principles for Use of AI by litigants are as follows: Parties and practitioners who are using AI tools in the course of litigation should ensure they have an understanding of the manner in which those tools work, as well as their limitations. Parties and practitioners should be aware that the privacy and confidentiality of information and data provided to an external program that provides answers generated by AI may not be guaranteed and the information may not be secure. The use of AI programs by a party must not indirectly mislead another participant in the litigation process (including the Court) as to the nature of any work undertaken or the content produced by that program. Ordinarily parties and their practitioners should disclose to each other the assistance provided by AI programs to the legal task undertaken. Where appropriate (for example, where it is necessary to enable a proper understanding of the provenance of a document or the weight that can be placed upon its contents), the use of AI should be disclosed to other parties and the court. The use of AI programs to assist in the completion of legal tasks must be subject to the obligations of legal practitioners in the conduct of litigation, including the obligation of candour to the Court and, where applicable, to obligations imposed by the Civil Procedure Act 2010, by which practitioners and litigants represent that documents prepared and submissions made have a proper basis. Self-represented litigants (and witnesses) who use generative AI to prepare documents are encouraged to identify this by including a statement as to the AI tool used

		in the document that is to be filed or the report that is prepared. This will not detract from the contents of the document being considered by the relevant judicial officer on its merits but will provide useful context to assist the judicial officer. For example it will assist in forming a more accurate assessment about the level of legal knowledge or experience possessed by a self-represented party
Queensland Courts	The use of Generative Artificial Intelligence (AI): Guidelines for responsible use by non-lawyers (May 2024)	You are responsible for ensuring that all information you rely on or provide to the court or tribunal is accurate. You must check the accuracy of any information you get from a Generative AI chatbot before using that information in court or tribunal proceedings.
Law Society of NSW	A solicitor's guide to responsible use of artificial intelligence (Professional Support Unit, 14 November 2023)	Relevant rules to consider under the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 *Rule 19 – Duty to the court* Solicitors must ensure they do not mislead or deceive the Court, even if inadvertently. The validity of any material presented to the Court needs to be tested by solicitors, whether or not that material has been produced by generative AI. When using AI, solicitors should be particularly cautious, given the limitations discussed above. Solicitors should not rely on generative AI to verify sources produced by AI. This has been known to fail.
NSW Bar Association	Issues Arising from the Use of AI Language Models (including ChatGPT) in Legal Practice (12 July 2023)	Under the Legal Profession Uniform Conduct (Barristers) Rules 2015 (NSW): Rule 23 provides: A barrister has an overriding duty to the court to act with independence in the interests of the administration of justice. (pp 1-2) Rule 24 provides: A barrister must not deceive or knowingly or recklessly mislead the court. (p 2) Where AI tools are used the answers generated should be carefully checked and interrogated before the barrister relies upon them in any way to assist in producing work for clients or courts. (p 3)

		In using material generated by an AI language model, barristers should note that the AI's response may include language which may put them in a position of contravening Rule 8 and/or Rule 123. Any output produced from AI tools should be carefully reviewed to ensure that such language is not repeated or endorsed in any way in work produced by, or communications emanating from, the barrister. If biased, discriminatory and/or offensive language is deployed in any communication with the court …a barrister may thereby have contravened the above bar rules and exposed themselves to disciplinary action. (p 5) The critical point in relation to AI technology is that it cannot be used as a substitute for the proper exercise of a barrister's professional judgement in matters of law or in ignorance of their professional and ethical obligations. It is not a substitute for a barrister's own work. (p 5)
NEW ZEALAND		
Courts of New Zealand	Guidelines for use of generative artificial intelligence in Courts and Tribunals (Lawyers) (7 December 2023) Guidelines for non-lawyers (7 December 2023)	**Guidelines for lawyers:** Lawyers have "a fundamental obligation to uphold the rule of law, to facilitate the administration of justice and the overriding duty of a lawyer as an officer of the court. As officers of the court, lawyers must not mislead the court. They must take all reasonable steps to ensure the accuracy of information (including legal citations) provided to the court, and to avoid any risk of breaching suppression orders." (p 1) You are responsible for ensuring that all information you provide to the court/tribunal is accurate. You must check the accuracy of any information you have been provided with by a GenAI chatbot (including legal citations) before using that information in court/tribunal proceedings. (p 4) Have regard to ethical issues – particularly biases and the need to address them. (p 4)

		You do not need to disclose use of a GenAI chatbot as a matter of course – unless asked by the court or tribunal. (p 4) Provided these guidelines have been followed (in particular, checking for accuracy), the key risks associated with GenAI should have been adequately addressed. However, a court or tribunal may ask or require lawyers to disclose GenAI use (p 4)
UNITED KINGDOM		
Courts and Tribunals Judiciary	Artificial Intelligence: Guidance for Judicial Office Holders (12 December 2023)	All legal representatives are responsible for the material they put before the court/tribunal and have a professional obligation to ensure it is accurate and appropriate. Provided AI is used responsibly, there is no reason why a legal representative ought to refer to its use, but this is dependent upon context. Until the legal profession becomes familiar with these new technologies, however, it may be necessary at times to remind individual lawyers of their obligations and confirm that they have independently verified the accuracy of any research or case citations that have been generated with the assistance of an AI chatbot. AI chatbots are now being used by unrepresented litigants. They may be the only source of advice or assistance some litigants receive. Litigants rarely have the skills independently to verify legal information provided by AI chatbots and may not be aware that they are prone to error. If it appears an AI chatbot may have been used to prepare submissions or other documents, it is appropriate to inquire about this, and ask what checks for accuracy have been undertaken (if any). AI tools are now being used to produce fake material, including text, images and video. Courts and tribunals have always had to handle forgeries, and allegations of forgery, involving varying levels of sophistication. Judges should be aware of this new possibility and potential challenges posed by deepfake technology. (p 5)

UNITED STATES		
New York State Bar Association	Report and Recommendations of the New York State Bar Association Task Force on Artificial Intelligence (April 2024)	**Candor to the Court:** Attorneys' signatures and attestations appear on legal documents submitted to the court, documents which make representations about case law and other authorities relied upon in support of the attorney's case. Regardless of the use of and reliance upon new and emerging technologies like generative AI tools, as officers of the court and in the interest of justice, attorneys must identify, acknowledge and correct mistakes made or represented to the court (pp 36-37). **Deepfakes – Synthetic Media as Evidence in Court** …evidentiary issues surrounding Deepfakes – a form of AI called deep learning that makes images of fake events – may also implicate the Duty of Candor to the Court. Deciding issues of relevance, reliability, admissibility and authenticity may still not prevent deepfake evidence from being presented in court and to a jury (p 39).
New Jersey Supreme Court Committee on Artificial Intelligence	Preliminary guidelines for the use of artificial intelligence (25 January 2024) [Source: https://btlaw.com/insights/alerts/2024/new-jersey-judiciary-releases-preliminary-guidelines-for-unavoidable-use-of-ai-by-attorneys - the Guidelines themselves do not appear to be generally available]	Lawyers remain responsible for the validity of legal submissions, including those generated using AI. Lawyers must not submit false, fake, or misleading content, and they are prohibited from manipulating or creating evidence using AI. The use of AI will not excuse false, fake, or misleading content, and lawyers must uphold candor to the tribunal.
Standing Orders Issued by Trial Judges – Various	Several Judges from US federal courts have issued standing orders requiring lawyers to affirmatively disclose use of AI/file certifications regarding the use of AI. See legal update here.	Examples cited in legal update quoted below: Judge Brantley Starr of the U.S. District Court for the Northern District of Texas issued a standing order requiring counsel to file a certificate attesting either that no portion of any filing will be drafted by generative artificial intelligence or that any language drafted by generative artificial intelligence will be checked for accuracy. Magistrate Judge Gabriel A. Fuentes of the U.S. District Court for the Northern District of Illinois issued a standing

		order requiring any party using any generative AI tool in the preparation or drafting of documents for filing with the Court must disclose in the filing that AI was used and the specific AI tool that was used to conduct legal research and/or to draft the document. Judge Stephen Alexander Vaden of the U.S. Court of International Trade issued an Order on Artificial Intelligence requiring disclosure of any generative AI program used and of all portions of text drafted with the assistance of generative AI, as well as certify that the use of the generative AI tool did not disclose confidential information to unauthorized parties. Judge Michael Baylson of the U.S. District Court for the Eastern District of Pennsylvania has issued a broader order requiring the disclosure of any type of AI as opposed to limiting the disclosure requirement to the use of generative AI.
CANADA		
Law Society of British Columbia	Practice Resource: Guidance on Professional Responsibility and Generative AI (October 2023)	Courts in some jurisdictions in Canada, as well as some US states, require lawyers to disclose when generative AI was used to prepare their submissions. Some courts even require not just disclosure that generative AI was used, but how it was used. If you are thinking about using generative AI in your practice, you should check with the court, tribunal, or other relevant decision-maker to verify whether you are required to attribute, and to what degree, your use of generative AI.
Federal Court of Canada	Notice to the Parties and the Profession: The Use of Artificial Intelligence in Court Proceedings (20 December 2023)	The Court expects parties to proceedings before the Court to inform it, and each other, if they have used artificial intelligence to create or generate new content in preparing a document filed with the Court. If any such content has been included in a document submitted to the Court by or on behalf of a party or a third-party participant ("intervener"), the first paragraph of the text in that document must disclose that AI has been used to create or generate that content.

		This Notice requires counsel, parties, and interveners in legal proceedings at the Federal Court to make Declaration for AI-generated content, and to consider certain principles when using AI to prepare documentation filed with the Court. (p 1) The Court recognizes that counsel have duties as Officers of the Court. However, these duties do not extend to individuals representing themselves. It would be unfair to place AI-related responsibilities only on these self-represented individuals, and allow counsel to rely on their duties. Therefore, the Court provides this Notice to ensure fair treatment of all represented and self-represented parties and interveners. (p 3)
Supreme Court of Yukon	General Practice Direction 29 (Use of Artificial Intelligence Tools) (26 June 2023)	If any counsel or party relies on artificial intelligence (such as ChatGPT or any other artificial intelligence platform) for their legal research or submissions in any matter and in any form before the Court, they must advise the Court of the tool used and for what purpose.
Court of King's Bench of Manitoba	Practice Direction: Use of Artificial Intelligence in Court Submissions (23 June 2023)	When artificial intelligence has been used in the preparation of materials filed with the court, the materials must indicate how artificial intelligence was used.
Alberta Courts Court of Appeal of Alberta; Court of King's Bench of Alberta; Alberta Court of Justice	Notice to the Public and Legal Profession: Ensuring the Integrity of Court Submissions when using Large Language Models (6 October 2023) Note a similar practice direction is issued by the Nova Scotia Supreme Court	… urge practitioners and litigants to exercise caution when referencing legal authorities or analysis derived from LLMs in their submissions. In the interest of maintaining the highest standards of accuracy and authenticity, any AI-generated submissions must be verified with meaningful human control. Verification can be achieved through cross-referencing with reliable legal databases, ensuring that the citations and their content hold up to scrutiny. This accords with the longstanding practice of legal professionals.
OTHER		
Dubai International Financial Centre Courts	Practical Guidance Note No. 2 of 2023 Guidelines on the use of large language models and generative AI in proceedings	Parties should declare at the earliest possible opportunity if they have used or intend to use AI-generated content during any part of proceedings. Any issues or concerns

	before the DIFC Courts (December 21, 2023	expressed by either party in respect of the use of AI should be resolved no later than the Case Management Conference stage. Early disclosure of the use or intention to use AI gives all parties the opportunity to raise any concerns they might have or to provide their consent to such use. It also provides the Courts with the opportunity to provide any necessary case management orders on the reliance on AI-generated content during proceedings. Parties should not wait until shortly before trial or the trial itself to declare that they intend to use AI-generated content. This is likely to lead to requests for adjournments and the loss of trial dates, which must be avoided. Where parties seek to use AI in the course of proceedings, they must ensure that such use is first discussed with the other side, and where no agreement is made, the request may be put before the Courts by way of a Part 23 application for determination.

THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: FLC/IIC/RIC:JBsh18065

18 June 2025

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
BRADDON, ACT 2612

By email: [redacted]

Dear Dr Popple,

REVIEW OF THE LAW COUNCIL'S *PRINCIPLES FOR DETERMINING THE APPROPRIATENESS OF ONLINE HEARINGS*

The Law Society is grateful for the opportunity to provide feedback to inform the Law Council's internal review of its *Principles for determining the appropriateness of online hearings* (**Principles**).

General comments

We note that the Principles were developed in 2022 by the Law Council's Access to Justice Committee, with input from constituent bodies including the Law Society[1], in response to concerns in the wake of the COVID-19 pandemic, that there had been a significant increase in the use of online proceedings with no national framework to promote consistency across jurisdictions.

Processes for online hearings have evolved considerably since 2022. Most jurisdictions have developed detailed policies and protocols to facilitate the conduct of certain proceedings without the need for participants to attend in person. Our members consider that the Principles continue to provide a central frame of reference against which evolving online practices should be continuously measured to safeguard key values including access to justice, procedural fairness and open justice.

We note recent developments in the NSW criminal justice jurisdiction and make a number of suggestions in our responses to the specific consultation questions below.

(a) To what extent are current court and tribunal practices aligned with the Law Council's Principles?

In our view, court and tribunal practices are generally aligned with the key justice values reflected in the Principles. However, we note the following recent developments in the NSW criminal jurisdiction signalling a

[1]See Law Society submission to the Law Council, *Draft best practice principles for online proceedings* dated 28 October 2022. Our submission also referred to the Law Society's Research Summary Report, *A Fair Post-COVID Justice System: Canvassing Member Views* (January 2022) which considered, among other things, the extent to which members supported changes that facilitated virtual court. The Report is available online, https://www.lawsociety.com.au/sites/default/files/2022-02/21051%20Post-COVID%20Justice%20System%20Summary%20Report%20FINAL%20220124.pdf.

divergence from the principle that substantive and/or contested hearings are ideally conducted in-person (Principle 3) and incompatibility with principles in relation to the appropriate and efficient use of fit for purpose technology (Principles 8 – 10).

From July 2025, it is intended that a Bail Division of the NSW Local Court will be established and that all NSW bail proceedings will be conducted, by default, in online court rooms utilising audio visual technology.[2] These arrangements will be formalised with the expected passage of the Evidence (Audio and Audio Visual Links) Amendment (Local Court Bail Division) Bill 2025, currently before Parliament. Additionally, the Bill contemplates, in limited circumstances, that an accused person may appear in bail proceedings via audio link where the audio visual link fails or is otherwise not available.[3] It is currently unclear how the proposed Local Court Bail Division will enable attendance by members of the public at these hearings and how adequacy of current audio visual technology and sound-proofing of cells to properly facilitate remote bail hearings may be assured.

This is a significant departure from the previous legislative presumption that first instance bail proceedings be conducted in-person.[4] We acknowledge that the proposed reforms confer a discretionary power on the court to issue a practice note / directions to provide for exclusions from the presumption.[5] In our view, this emphasises the importance of the Principles as a stated set of values designed to assist courts/tribunals in the development of online hearing practice.

b) Do the Principles strike an appropriate balance between the risks of overreliance on virtual hearings (such as impacts on open justice or digital exclusion) and the practical benefits of online proceedings (such as reducing travel time and costs), particularly for RRR lawyers and their clients?

In our view, the Principles generally strike an appropriate balance between the risks of overreliance on virtual hearings and the practical benefits of online proceedings. We also note that the Principles are very broadly drawn to encompass high-level values that apply to all proceedings. It is suggested that the framework may benefit from the incorporation of second-level principles applicable to particular types of proceedings. For example:

- In criminal proceedings – the right to a fair trial and that the accused receives a public and impartial hearing.
- In civil proceedings – the just, efficient, timely, and cost-effective resolution of disputes.
- In family law proceedings – prioritising the safety of children and vulnerable parties.

[2] NSW Government, Statement of Public Interest, Evidence (Audio and Audio Visual Links) Amendment (Local Court Bail Division) Bill 2024, 25 May 2025, online: https://www.parliament.nsw.gov.au/tp/files/190998/SPI%20-%20Evidence%20(Audio%20and%20Audio%20Visual%20Links)%20Amendment%20(Local%20Court%20Bail%20Division)%20Bill%202025.pdf.
[3] Evidence (Audio and Audio Visual Links) Amendment (Local Court Bail Division) Bill 2024 (AVL Bill), Schedule 1[6].
[4] Evidence (Audio and Audio Visual Links) Act 1998, s 5BA.
[5] AVL Bill, n 3, Schedule 1[7].

This may encourage a deeper focus on essential considerations when determining the appropriateness of online hearings which, in our view, may be warranted given the proliferation of audio and audio visual technology since the onset of the COVID-19 pandemic. It may also allow for a more effective balancing of competing considerations. For instance, audio visual technology is commonly utilised in NSW criminal courts to enable convenient remote attendance by inmates for non-contentious or administrative court appearances. Notwithstanding this convenience, it is observed that, in some cases, remote appearances of defendants in custody can make it more difficult for a presiding judicial officer to be sensitive to indications of physical or mental health issues or cognitive impairments (see also under c), Principle 5).

c) What updates or changes, if any, would you recommend to ensure that the Principles remain relevant and reflective of the profession's perspective on appropriate hearing modes in a post-pandemic legal system?

Apart from the incorporation of second-level principles relevant to particular types of proceedings as suggested under b), we provide the following additional comments in relation to particular principles.

Principle 2

While we acknowledge this principle contemplates a right to culturally safe participation we suggest it may be improved with the addition of further factors to be taken into account by the court in the context of Aboriginal and Torres Strait Islander litigants and defendants. For example, appearance via an online platform if a hearing is on Country may be more acceptable.[6] Consideration should also be given to countervailing concerns that appearances via online platforms may leave some litigants feeling isolated, and that this method of hearing does not allow for the real-time presence of support people.

Principle 3

We endorse the principle that substantive and/or contested hearings are ideally conducted in-person. In the case of an accused detainee, it is important that they are able to participate fully in substantive court proceedings, including seeing and hearing the legal representatives and the presiding judicial officer. In our view, particular care should be exercised if a court is contemplating the use of an audio link without video technology.

Currently, under this principle, examples of matters that may more appropriately be conducted by way of electronic hearing are listed. We suggest the framework would benefit from express reference to those proceedings that should *not* be conducted remotely or by audio link alone.

[6] See, for example, *R v Knight (No 1)* [2023] NSWSC 195 [20]–[31], which involved sentencing proceedings involving an accused and deceased from the same Indigenous community in Bourke. The Crown opposed the accused's application to attend the sentencing proceedings via AVL on the basis that the accused should be on Country for the proceedings, citing Indigenous cultural values. Although Yehia J found in favour of the applicant, her Honour contemplated circumstances where a person may be required to be on Country for sentencing proceedings, such as matters in the Walama List which are being conducted pursuant to a restorative or therapeutic justice model.

Principle 5

This principle is currently expressed in the negative as follows:

> The most appropriate form of proceeding for a particular participant should not be assumed on the basis that a participant has a particular attribute.

Our members suggest that the principle would promote a more balanced assessment that is reflective of current practice, by the inclusion of the following qualification, or similar:

> However, if a particular participant has a particular attribute this should be taken into account when determining the appropriate form of proceeding.

This suggestion is intended to ensure factors such as age, disability and Aboriginal and/or Torres Strait Islander heritage are appropriately taken into consideration. Notably, audio visual technology is utilised in a number of Indigenous court lists, such as the Indigenous List in the Federal Circuit and Family Court of Australia, the Aboriginal Tenancy List in the NSW Civil and Administrative Tribunal and the Walama List in the NSW District Court. The ability to virtually attend proceedings in these lists facilitates access to justice for Aboriginal and Torres Strait Islander persons living in regional and rural communities and encourages their participation in proceedings.

Principles 9 and 10

These principles are concerned with the use of fit for purpose technology and access to equipment to ensure the appropriate quality and scope of service consistent with its public importance. However, neither principle encompasses the concept of online court technology also capturing processes that may technically fall outside of court proceedings, but which may be critical to the efficient resolution of a dispute.

For example, in our members' experience, online court removes the incidental opportunity to settle a matter outside of a hearing. We suggest Principle 10 may be expanded to include access to quarantined spaces in the online environment, such as virtual "break-out rooms" or "advocate rooms" to enable consultations that will not be recorded as part of proceedings.

Principle 12

Under this principle, courts and tribunals are encouraged to develop materials to assist participants in accessing and participating in online hearings. Our family law practitioner members have noted significant variations in applying online hearing practices as between different registries within the Federal Circuit and Family Court of Australia. This inconsistency creates planning and costing difficulties, particularly for those in regional, rural, and remote areas who regularly appear across multiple registries. We suggest that this principle is extended to promote internal consistency and certainty in respect of online hearing practice through harmonised procedural and guidance materials within a particular jurisdiction.

THE LAW SOCIETY
OF NEW SOUTH WALES

Thank you for the opportunity to comment. Questions at first instance may be directed to Sonja Hewison, Policy Lawyer, at (02) 9926 0219 or sonja.hewison@lawsociety.com.au.

Yours sincerely,



Jennifer Ball
President