USE OF GENERATIVE ARTIFICIAL INTELLIGENCE (GEN AI)

This Procedural Direction applies to:	All Tribunal proceedings
Commencement Date:	7 April 2025
Notes:	This Procedural Direction is based on Supreme Court Practice Note SC Gen 23 – Use of Generative Artificial Intelligence (Gen AI) issued by the Chief Justice of New South Wales on 28 January 2025. Some modifications have been made to accommodate the particular types of proceedings determined by the NSW Civil and Administrative Tribunal (NCAT).
	You should ensure that you are using the current version of this Procedural Direction. A complete set of Procedural Directions and Guidelines is available on the Tribunal website at www.ncat.nsw.gov.au

Commencement

1. This Procedural Direction was issued on 7 March 2025, commences on 7 April 2025 and will apply to all proceedings from that date.

Introduction

2. Generative AI (**Gen AI**) is 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.

3. Gen AI may take the form of generic large language model programs such as Chat-GPT, Claude, Grok, Llama, Google Bard/Gemini, Co-Pilot, AI Media or Read AI or more bespoke programs specifically directed to lawyers such as Lexis Advance AI, ChatGPT for Law, Westlaw Precision, AI Lawyer, Luminance and CoCounsel Core. These examples are not intended to be exhaustive. Such programs may use "chatbots" and prompt requests and refined requests from the users of such programs.

4. This Procedural Direction applies to both closed-source and open-source large language model Gen AI.

5. Gen AI is capable of being used to assist parties and their representatives with various tasks, including drafting documents and summarising information. This Procedural Direction is directed to the circumstances where such use is acceptable.

6. For the avoidance of doubt, for the purposes of this Procedural Direction, Gen AI does 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, and nothing in this Procedural Direction is intended to preclude or apply to the use of:

    (a) search engines such as Google which produce a list of websites that match search criteria but which do not produce an apparently personalised textual answer in response to a specific prompt;

    (b) dedicated legal research software which uses AI or machine learning to conduct searches across material comprising legislation or subordinate legislation, judgments of courts or tribunals, and/or books or articles written for a legal audience.

7. Parties and their representatives should be aware of limits, risks and shortcomings of any particular Gen AI program which they use. These may include:

    (a) the scope for "hallucinations", that is, the generation of apparently plausible, authoritative and coherent responses but which are in fact inaccurate or fictitious. Examples include false citations and fabricated legislative, case or other secondary references;

    (b) the dependence of Gen AI on the quality and reach of underlying data sets, including the possibility that that underlying database(s) may include misinformation or selective or incomplete data, data that is not up to date or data that is not relevant in New South Wales or Australia;

    (c) the scope for biased or inaccurate output including by reason of the nature or limitations of the underlying data sets;

    (d) the fact that any search requests via a chatbot or interactions or prompts within a Gen AI program may, unless disabled, be automatically added to the large language model database, remembered and used to respond to queries from other users;

    (e) the lack of adequate safeguards, to preserve the confidentiality, privacy or legal professional privilege that may attach to information or otherwise sensitive material submitted to a public Gen AI chatbot; and

    (f) the fact that data contained in a Gen AI data set or database may have been obtained in breach of copyright.

8. Parties and their representatives should also be aware that data entered into Gen AI programs may be used to train the large language model, potentially making confidential information available to others.

General prohibition

9. The following categories of information or material must not be entered into any Gen AI program:

   (a) information subject to non-disclosure, non-publication or other form of confidentiality orders made by the Tribunal;

   (b) to the extent not covered by paragraph (a) above, information or material created or obtained in connection with Tribunal proceedings that is the subject of a statutory prohibition or restriction upon publication or disclosure;

   (c) material produced in compliance with any summons issued by the Tribunal;

   unless the person responsible for the conduct of the proceeding is satisfied that the information:

   (i) will remain within the controlled environment of the technological platform being used and that the platform is the subject of confidentiality restrictions on the supplier of the relevant technology or functionality to ensure that the data is not made publicly available and is not used to train any large language models;

   (ii) is to be used only in connection with the relevant Tribunal proceedings (unless otherwise required or permitted by law to be disclosed);

   (iii) is not used to train the Gen AI program and/or any large language model.

10. Nothing in paragraph 9 or in this Procedural Direction is intended to detract or derogate from, or to relieve any person from, statutory obligations, including (without limitation) obligations set out in s 101 of the *Guardianship Act 1987* (NSW), ss 64 and 65 of the *Civil and Administrative Tribunal Act 2013* (NSW) and clause 7 of Schedule 5D to the Health Practitioner Regulation National Law (NSW).

11. Subject to paragraphs 9 and 10, and for the avoidance of doubt, a Gen AI program may be used for any of the following purposes:

    (a) the generation of chronologies, indexes and witness lists;

    (b) the preparation of briefs;

    (c) the summarising or review of documents and transcripts;

    (d) the preparation of written submissions or summaries of argument (subject to paragraphs 16 to 18 below).

Statements, affidavits, statutory declarations and other evidentiary material

12. Gen AI must **not** be used in generating the content of statements, affidavits, statutory declarations, character references or other material that is intended to reflect the evidence of the maker of the statement, or deponent of the affidavit, or a witness' evidence and/or opinion, or other material tendered in evidence or used in cross examination.

13. Statements, affidavits, statutory declarations and character references should contain and reflect a person's own knowledge, not AI-generated content.

14. Gen AI must not be used for the purpose of altering, embellishing, strengthening or diluting or otherwise rephrasing a witness's evidence when expressed in written form.

15. In exceptional cases, leave may be sought for the use of Gen AI in the preparation or generation of an attachment, annexure or exhibit (however described) to a statement, affidavit, statutory declaration, character reference or similar. Any application for leave must identify:

    (a) the use or proposed use of Gen AI;

    (b) the Gen AI program that has been or will be used (including the relevant version);

    (c) whether it is a closed-source or open-source program and or contains privacy and/or confidentiality settings; and

    (d) the benefit to be derived from the use or proposed use of Gen AI in the preparation of the attachment, annexure or exhibit.

Written submissions and summaries of argument

16. Where Gen AI has been used in the preparation of written submissions or summaries of argument, parties or their representatives must verify in the body of the submissions or summaries, that all citations, legal and academic authority and case law and legislative references:

    (a) exist,

    (b) are accurate, and

    (c) are relevant to the proceedings,

    and make similar verification in relation to references to evidence in written submissions or summaries of argument to evidence (whether the evidence be contained in statements, affidavits, statutory declarations, character references or transcript).

17. Such verification must not be solely carried out by using a Gen AI tool or program.

18. Any use of Gen AI to prepare written submissions or summaries of argument does not qualify or absolve the author(s) of any professional or ethical obligations to the Tribunal or the administration of justice.

Expert Reports

19. Expert reports are required to state the opinion or opinions of the expert, and his or her reasoning process. Unless otherwise directed by the Tribunal, the following paragraphs 20 to 24 apply to expert reports covered by NCAT Procedural Direction 3 – Expert Evidence.

20. Gen AI must not be used in drafting or preparing the content of an export report (or any part of an expert report) without leave of the Tribunal.

21. Any application for leave should identify:

    (a)   the use or proposed use of Gen AI;

    (b)   the Gen AI program (including the version) that has been or will be used and whether it is a closed-source or open-source program or contains privacy and or confidentiality settings;

    (c)   the benefit derived from the use or proposed use of Gen AI in the preparation of the expert report;

    (d)   any documents which have been submitted, or it is proposed to submit, to the Gen AI program for the purposes of generating any aspect of the expert report.

22. Where Gen AI is used for any purpose in preparing an expert report for the assistance of the Tribunal, the expert witness should:

    (a)   disclose in the report what part(s) of it was prepared using Gen AI or drawing upon Gen AI produced material and the Gen AI program, (and version) that was used;

    (b)   keep records and identify in an annexure to the report a record of how the Gen AI tool or program was used (for example any prompts used, any default values used, and any variables set), except where the Tribunal grants leave to dispense with this requirement (for example, where the Tribunal determines this to be voluminous or unnecessary); and

    (c) if the use of Gen AI is regulated or addressed by any relevant code of practice or principles that bind or apply to the expert, identify that fact and annex to the report a copy of the relevant code(s) or principle(s).

    (d) Examples of the above use of Gen AI may include experts using software that uses Gen AI to analyse sound, graphic or video data, or to interrogate very large data sets, or to conduct statistical analysis.

23. Parties or their representatives should draw the requirements of this Procedural Direction to the attention of experts when instructing them.

24. Expert reports prepared between the date of issue of this Procedural Direction and the date of its commencement must identify which, if any, part or parts of the report has or have relied upon Gen AI in the preparation of its content.

Review

25. Due to the rapidly evolving nature of Gen AI, this Procedural Direction will be periodically reviewed.

Compliance and Other Matters

26. This Procedural Direction is made by the President under s 26 of the *Civil and Administrative Tribunal Act 2013*.

27. Words used in this Procedural Direction have the same meaning as defined in the *Civil and Administrative Tribunal Act 2013* and the Civil and Administrative Tribunal Rules 2014.

Armstrong J
President
Issued: 7 March 2025