



Guidance Note: Use of Generative Artificial Intelligence in Commission cases

Introduction

1. This Guidance Note explains what you must do if generative artificial intelligence (**GenAI**) is used in preparing an application to the Fair Work Commission (**Commission**) or any other document to be lodged in a Commission case.
2. The Commission's [Artificial intelligence transparency statement](#) outlines how the Commission itself may use artificial intelligence (**AI**).
3. Because GenAI is developing at a rapid pace, this Guidance Note will be amended from time to time. You are responsible for keeping up to date on its requirements.
4. Definitions are at the end of this Guidance Note.

Commencement date

5. This Guidance Note commences on [insert] 2026.

Application

6. This Guidance Note applies when GenAI is used in writing, creating, modifying or otherwise preparing an application to the Commission or any other document to be lodged in a Commission case.

Requirements when GenAI is used in preparing a document

7. Requirement 1

If you use GenAI in preparing any document that is to be lodged in a Commission case, you must **state in the document** that **GenAI was used** in preparing the document.

8. Requirement 2

If you use GenAI in preparing any document that is to be lodged in a Commission case, you must **check** the document and make any necessary changes so that all details in the document are **correct and relevant** to the case. You must also **state in the document** that you have done this.

In checking the document you must ensure that:

- all references to facts or evidence in the document are correct and the facts or evidence exist
- all cases, legislation, textbooks and articles referred to in the document exist and stand for the legal positions attributed to them, and
- all extracts or quotes in the document are correct and are attributed to the right source.

9. Requirement 3

If the document is your witness statement or declaration then you must **check** the document and make any necessary changes so that the statement or declaration is based on your **own knowledge** and is **true** to the best of your knowledge.

You must also **declare in the document** that the statement or declaration is based on your own knowledge and is true to the best of your knowledge.

10. As well as the above requirements, you **should not** give **personal information** about another person involved in the case or **confidential information** about the case, to public GenAI or to any GenAI that may not keep the information secure from disclosure.
11. If you do not comply with the above requirements this may affect your case. This might include:
 - your documents being given less weight by the Commission or being disregarded by the Commission
 - the Commission ordering you to pay costs incurred by another party, or
 - your case being dismissed.
12. The following sections of this Guidance Note explain the reasons for the above requirements, and tell you how you can comply with them.

Reasons for the requirements—limitations of GenAI

13. GenAI utilises Large Language Models to analyse large databases of training information and identify and mimic patterns in that data, to generate an output that can be indistinguishable from human-created material. GenAI outputs can contain new and original material. GenAI can be distinguished from traditional and predictive AI models, which rely on machine learning and use predefined rules and algorithms.
14. As GenAI can quickly analyse large amounts of information and generate written material, it can improve efficiency and assist with preparation of submissions and other documents required in Commission cases. GenAI can also support access to justice for self-represented litigants by helping them to express themselves more clearly.
15. However, material generated by GenAI may be inaccurate, incomplete, out of date or just made up.
16. The Commission applies the Fair Work Act in cases in the national workplace relations system. When generating an output, GenAI may apply laws or cite cases from a different Australian jurisdiction or from overseas, or refer to laws that have since changed or cases that have since been overturned.
17. Use of GenAI is not a substitute for legal advice or research. GenAI may make up fake cases, citations and quotes, or refer to laws, articles or legal texts that do not exist. GenAI may generate incorrect or misleading information about the law or how it might apply in your case. GenAI may get facts wrong and confirm that information or evidence is true if asked, even when it is not. Fake material generated by GenAI can look as though it has been taken from a real source even when it has not.
18. Due to the way that GenAI interprets data, it will generate a written output that the model predicts to be the most likely combination of words based on text in its source information. GenAI is not capable of reasoning, nor does it 'understand' information and data as a human would. For example, GenAI does not understand unique fact situations, cultural and emotional factors, or the broader social and legal context of a particular case. The source information that GenAI interprets may not be reliable and the output may be biased.
19. GenAI collects and retains user data, including conversation history and prompts (short instructions) given to it. Even if conversations are deleted, information given to GenAI may be stored in the training database. This can include documents or photos uploaded to GenAI.

20. Any personal, confidential or legally privileged information given to GenAI could become publicly known.
21. Giving GenAI information that is subject to a Commission order prohibiting or restricting publication, might breach the order and be an offence under the Fair Work Act.
22. There is also a risk that GenAI outputs will contain plagiarised material or other persons' intellectual property.

How to comply with requirement 1—you must state in the document that GenAI was used in preparing the document

23. If you use GenAI in writing, creating, modifying or otherwise preparing a document that is to be lodged in a Commission case, you must state in the document that GenAI was used in preparing the document. This tells the Commission and all of the parties to the case that you have used GenAI.
24. Telling the Commission you have used GenAI will not change how the Commission treats the merits of your document, provided you comply with the requirements in this Guidance Note. Not telling the Commission you have used GenAI might result in your document being given less weight or being disregarded, you being ordered to pay costs, or your case being dismissed.
25. If the document is a Commission form or template that includes a section on use of GenAI, you can comply with this requirement by completing that section of the document. Otherwise, you can comply by stating in the document:
'GenAI was used in preparing this document.'

How to comply with requirement 2—you must ensure that all details in the document are correct and relevant to the case, and state in the document that this has been done

26. As well as complying with requirement 1, if you use GenAI in writing, creating, modifying or otherwise preparing a document that is to be lodged in a Commission case, before the document is lodged with the Commission you must check all details in the document and make any necessary changes so that all of the details are correct and relevant to the case.
27. In checking the details in the document you must ensure that:
 - all references to facts or evidence in the document are correct and the facts or evidence exist
 - all cases, legislation, textbooks and articles referred to in the document exist and stand for the legal positions attributed to them, and
 - all extracts or quotes in the document are correct and are attributed to the right source.
28. You cannot check whether the details of a document are correct and relevant by asking GenAI. You must do this by looking at sources of information known to be correct. Sources of information known to be correct include:
 - for legal principles and discussion of Commission decisions—[Commission case law Benchbooks](#) and legal text books
 - for Commission decisions—[Find decisions and orders](#)
 - for Court decisions—[Austlii](#), and
 - for Commonwealth legislation—the [Fair Work Act 2009](#) and other legislation published on the [Federal Register of Legislation](#).

29. After checking the document and making any necessary changes, you must state in the document that you have done this. If the document is a Commission form or template that includes a section on use of GenAI, you can do so by completing that section of the document. Otherwise, you can do so by stating in the document:

'All details in this document have been checked and they are correct and relevant to the case.'



Giving false or misleading information is a serious offence.

A person who knowingly gives false or misleading information to the Commission is guilty of an offence. The punishment is imprisonment for up to 12 months. See section 137.1 of the *Criminal Code*.

How to comply with requirement 3—the witness/declarant must ensure that the statement or declaration is based on their own knowledge and is true, and must declare that in the statement or declaration

30. The Commission recommends that you do not use GenAI to create the content of witness statements or declarations. Witness statements and declarations must reflect the witness's or declarant's own knowledge, not AI-generated content.
31. As well as complying with requirements 1 and 2, if GenAI is used in editing, modifying or otherwise preparing a witness statement or declaration then the witness/declarant must check the document and make any necessary changes so that the statement or declaration is based on their own knowledge and is true to the best of their knowledge.
32. After checking the document and making any necessary changes, the witness/declarant must declare in the document that the statement/declaration is based on their own knowledge and is true to the best of their knowledge. If the document is a Commission form or template that includes a section on use of GenAI, the witness/declarant can do so by signing the declaration in the document. Otherwise, the witness/declarant can do so by including the following declaration in the document and signing the declaration:

'This statement/declaration is based on my own knowledge and is true to the best of my knowledge'.



False or misleading evidence

A witness commits an offence if they give sworn or affirmed evidence in a case before the Commission and the evidence is false or misleading. The punishment is imprisonment for up to 12 months. See section 678 of the Fair Work Act.

You should not give personal information about another person involved in the case or confidential information about the case to public GenAI or to any GenAI that may not keep the information secure from disclosure

33. Before using GenAI in preparing a document in a Commission case, you should understand the GenAI's privacy policies and your own privacy obligations. Everyone involved in a Commission case must maintain the confidentiality of confidential information they obtain in the course of the case.
34. Because information provided to some GenAI may become public, you should not give personal information about another person involved in a Commission case or confidential information, to public GenAI (such as ChatGPT, Claude, CoPilot or Gemini) or to any GenAI that may not keep the

information secure from disclosure. The Commission also recommends that you do not give your own personal information to public GenAI.

35. Examples of personal information are:

- name, private contact details, home address and signature
- race, colour, age
- health information
- employment history
- financial information
- membership of a professional association or trade union, and
- opinions or claims about an individual—such as a claim they have engaged in some kind of misbehaviour or misconduct.

36. Examples of confidential information are:

- information from settlement discussions in a Commission conference
- information or a document that is subject to a Commission order prohibiting or restricting publication
- legal or financial advice, and
- information obtained in employment and covered by a confidentiality term in an employment contract.

37. One way to reduce the risk of giving personal information to GenAI, is to ensure you do not give GenAI the names of any individuals or any other details that could be used to identify them.

Additional obligations of legal practitioners and paid agents

38. The standard for responsible use of GenAI in Commission cases is more onerous for a legal practitioner. In addition to complying with the requirements in this Guidance Note, a legal practitioner must maintain high ethical standards and comply with their professional obligations in any use of GenAI in a Commission case. If a legal practitioner fails to do so, a complaint may be made to their legal services regulator.

39. In addition to complying with requirements 1 and 2, a legal practitioner or paid agent who uses GenAI in preparing any document that is to be lodged in a Commission case, must include in the document hyperlinks to all case law referred to in the document.

Definitions

40. In this Guidance Note:

document means any record of information, including a written document, a photograph and anything from which sounds, images or writing can be reproduced. It includes Commission forms, Commission template documents, submissions, chronologies, declarations, witness statements, statements of agreed facts and other evidentiary materials.

Fair Work Act means the *Fair Work Act 2009* (Cth).

generative artificial intelligence (GenAI) is an AI tool that uses models to learn patterns from existing data and to generate new text, images, audio and other material in response to a user's prompts.

ChatGPT, Claude, CoPilot and Gemini are examples of GenAI.

'GenAI' does not include:

- e-discovery software or predictive analytics software, or
- a search engine or dedicated legal research software that identifies existing content in response to a user's search query.

paid agent means an agent who charges or receives a fee to represent a person in a Commission case.

personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a) whether the information or opinion is true or not, and
- b) whether the information or opinion is recorded in a material form or not.

public GenAI means GenAI available to the general public and includes ChatGPT, Claude, CoPilot and Gemini.

use GenAI does not include using GenAI only to check spelling or grammar in a document or to format a document.

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