



President's statement

Exposure draft of the Commission's Guidance Note: Use of Generative Artificial Intelligence in Commission cases—opportunity to comment

Justice Hatcher, President

Melbourne, 24 March 2026

[1] The Fair Work Commission has today published an exposure draft of the Commission's *Guidance Note: Use of Generative Artificial Intelligence in Commission cases* (GenAI Guidance Note) on our website.

[2] The draft GenAI Guidance Note sets out 3 requirements that apply when a person uses generative artificial intelligence (GenAI) in preparing an application to the Commission or any other document to be lodged in a Commission case. In broad terms:

- Requirement 1 is to state in the document that GenAI was used.
- Requirement 2 is to check the document and ensure that all details in the document are correct and relevant to the case, and to state in the document that this has been done. Requirement 2 also lists certain details (such as references to facts and case law) that must be included in the checking of the document.

In addition, if the document is prepared by a legal practitioner or paid agent, they must include hyperlinks to all case law referred to in the document.

- Requirement 3 applies (in addition to requirements 1 and 2) if the document is a witness statement or declaration. It requires the witness/declarant to check the document and ensure it is based on their own knowledge and is true to the best of their knowledge. The witness/declarant must also declare this in the statement/declaration.

[3] It is envisaged that these 3 requirements will be given effect in the *Fair Work Commission Rules 2024* and through new 'Use of GenAI' sections to be added to all Commission forms and the Commission's *Outline of submissions* and *Witness statement* template documents.

[4] An example of what a Use of GenAI section in a Commission form may look like, is published with the draft GenAI Guidance Note.

[5] The draft GenAI Guidance Note explains how to comply with the above requirements. If the document concerned is a Commission form or template document containing a Use of GenAI section, the user will be able to disclose their use of GenAI and

confirm that they have checked the document by completing that section of the form or template.

[6] In addition to the 3 requirements above, the draft GenAI Guidance Note recommends that a person preparing a document to be lodged in the Commission, does not give personal or confidential information to a public GenAI tool or to any GenAI tool that may not keep the information secure from disclosure.

Background

[7] The Commission is experiencing unprecedented growth in its workload, particularly in lodgments of unfair dismissal applications and applications for the Commission to deal with general protections disputes. By the end of financial year 2025/26, it is likely that the Commission's total workload will have increased by over 70% in the space of 3 years.

[8] Historically, there was a clear correlation between the number of dismissal-related applications to the Commission and the state of the labour market. However, that correlation has broken down over the past few years and this has broadly coincided with the introduction of popular GenAI tools. The Commission has also found widespread use of AI-generated language in the applications being lodged. It may reasonably be inferred that the increase in the Commission's workload over the past 3 years is principally the result of the increasing use of GenAI tools by potential litigants.

[9] This GenAI-driven growth in workload is disrupting the work of the Commission in a number of ways, and it has become necessary for the Commission to reform its procedures to respond to it. The GenAI Guidance Note is one of the initiatives the Commission is putting in place to do this.

[10] GenAI tools can assist potential litigants to decide whether to make an application to the Commission, but can also give potential litigants unrealistically optimistic predictions of their prospects of success and likely compensation. This may encourage unmeritorious applications to the Commission.

[11] GenAI tools can assist litigants to produce applications, responses, submissions, witness statements and other documents to be lodged in Commission cases, but the material generated by GenAI tools can be inaccurate, incomplete, out of date, or just made up. This can include GenAI tools generating spurious legal arguments and references to legislation, case law, reference materials and facts that do not exist or are not relevant to a case. This may impose a significant time and cost burden on the other parties to a case and on the Commission.

[12] The GenAI Guidance Note is intended to assist in dealing with some of the problems that use of GenAI can create for the parties to a case and the Commission.

Comment on the draft GenAI Guidance Note

[13] Interested persons are invited to comment on the draft GenAI Guidance Note.

[14] A particular issue on which the Commission invites comment, is whether the GenAI Guidance Note should require everyone who uses GenAI in preparing a document to be lodged in the Commission, to include hyperlinks to any case law referred to in the document. Including hyperlinks to case law can assist the person using GenAI, other parties and the Commission, to confirm the case law exists and to obtain access to it. At present this requirement is confined to legal practitioners and paid agents, because of a concern that unrepresented individuals may have difficulty including hyperlinks in documents.

[15] Comments may be made by email to consultation@fwc.gov.au by **4:00 pm (AEST) on Friday 10 April 2026**.

PRESIDENT