

Submission Federal Court of Australia Artificial Intelligence Project Group

To

FEDERAL COURT OF AUSTRALIA

Law Society Contact

MICHAELA SPEERING
LAWYER ADVOCACY AND PROFESSIONAL DEVELOPMENT
mspeering@lawsocietywa.asn.au

Date

11 JUNE 2025

The Law Society of Western Australia

Level 4, 160 St Georges Terrace, Perth WA 6000 | **Postal:** PO Box Z5345, Perth WA 6831 or DX 173 Perth
Phone: (08) 9324 8600 | **Fax:** (08) 9324 8699 | **Email:** info@lawsocietywa.asn.au | **Website:** lawsocietywa.asn.au

Table of Contents

The Federal Court of Australia – Artificial Intelligence Consultation	2
Introduction	2
Generative AI in the legal profession	3
<i>The need for clear consistent application of generative AI principles</i>	3
<i>Encouraging innovation and ethical use of the beneficial elements of generative AI</i>	4
<i>Access to Justice</i>	5
<i>Preserving the integrity of court proceedings</i>	5
<i>Adaptability to change</i>	6
<i>The importance of evidence-based regulation</i>	6
The Supreme Court of Western Australia Consultation Questions	7
1. How is the legal profession currently using generative AI and what are the expected future applications?	7
2. Should there be a formal AI practice direction for the legal profession?	8
(a) who should it apply to?	8
(b) should any practice direction separately address lawyers and non-lawyers?	8
(c) what form should any practice direction take (e.g. guidelines, proscriptive policy, practice note) 8	
(d) what specific topics should any practice direction address?	8
3. Are there particular areas of legal practice where the use of generative AI should be restricted or prohibited?	9
4. Should legal professionals using generative AI be required to disclose its use?	9
5. What steps should legal professional take to verify generative AI assisted work	10
6. What safeguards should be in place to ensure the accuracy and ethical use of AI-generated legal content?	10
Final comments	11
Appendix A: Questions from the Law Society Survey on the use of generative AI in the legal profession (March 2025)	13
Appendix B Summary of data received from the Law Society survey (May 2025)	14

The Federal Court of Australia – Artificial Intelligence Consultation

The Federal Court of Australia has requested input on the development of Guidelines or Practice Notes in relation to the use of generative Artificial Intelligence.

Introduction

The Law Society of Western Australia is the peak professional association for lawyers in Western Australia. Established in 1927, the Law Society (the Society) is a not-for-profit association dedicated to the representation for its members and the enhancement of the legal profession through leadership and advocacy on law reform, access to justice and the rule of law.

On 11 April 2025, the Society made a submission to the Supreme Court of Western Australia on the use of generative artificial intelligence (AI) in legal proceedings. That submission was in response to the Supreme Court of Western Australia's Artificial Intelligence Practice Direction Consultation Note. The questions raised in the Practice Direction Consultation Note are set out in this submission and the responses have been adapted for the federal jurisdiction.

The Society's submission sets out general principles which the Society urges the Court to adopt in relation to the use of generative artificial intelligence (AI) in legal proceedings. The Society acknowledges that this submission has been informed by contributions from members of the Society's Technology and Law Committee and Courts Committee.

On 14 March 2025, the Society commissioned a survey of local legal practitioners to collate data about the Western Australian legal profession's views on generative AI, the current use of generative AI tools by lawyers and the general concerns of practitioners in terms of future use. The Society received a range of responses and comments of which several have been included in this submission. Few practitioners strongly advocated for complete prohibition of AI use by the legal profession in contentious matters. Others praised the effectiveness of AI in guiding logical thought processes and claimed that lawyers should be able to use AI freely, subject to the legal professional conduct rules. The Society's responses to the Supreme Court of Western Australia's consultation questions have also been shaped using the responses of legal practitioners to this survey.

The Society received a total of 128 anonymous responses to the survey from a variety of practitioners across private practice, government and community legal centres. The largest cohorts of respondents reported having between 11 to 19 years' post-admission experience, followed by lawyers of 20 – 31 years' post-admission experience. Over 90% of respondents practise in the Perth metropolitan area.

The Society encourages the Court to consider evidence-based submissions prior to determining whether or not to publish any form of practice direction or guidance. The Society notes the media statements by The Hon Chief Justice Debra Mortimer¹ setting an expectation that legal practitioners and litigants make use of generative AI in a responsible way consistent with their existing obligations to the Court and making disclosures of use if required by a Judge or Registrar. Conversely, the Supreme Court of New South Wales has adopted a proscriptive approach having issued 'Practice Note Gen23 – Use of Generative Artificial Intelligence'² which contains strict prohibitions and restrictions on the use of generative AI in legal proceedings in that state.

¹ <https://www.fedcourt.gov.au/news-and-events/media-statement>

² https://supremecourt.nsw.gov.au/documents/Practice-and-Procedure/Practice-Notes/general/current/PN_SC_Gen_23.pdf

If the Court elects to issue a form of guidance for court-users, the Society advocates for the Court to adopt a balanced principles-based approach which enables the judiciary, legal practitioners, self-represented litigants and other court-users to utilise the benefits of generative AI while ensuring the integrity of evidence, submissions and other documents filed in court proceedings.

Generative AI in the legal profession

The use of generative AI in the legal profession presents positive opportunities to improve access to justice and efficiency in court proceedings. Access to this technology also raises serious ethical and risk management issues for court-users, the judiciary and legal practitioners. The Society acknowledges the growing adoption of generative AI tools in the legal profession, as well as the concerns raised by regulators and the courts on the potential for misuse by legal practitioners and self-represented persons in legal matters.

The fundamental starting position is that human oversight is essential in all use of AI. AI is merely another form of tool available to the legal profession, similar to legal databases and document management systems, all of which require professional oversight.

The application of generative AI tools in any legal setting does not alter the professional obligations of legal practitioners to uphold their duties to the court, clients and other practitioners. Generative AI tools cannot be a replacement for the experience of a legal practitioner whose professional expertise and independent reasoning must be applied to each legal matter in practice.

The Society acknowledges there are divergent views within the profession about the use of generative AI, as well as a range of responses by the various states and territories of Australia to the use of generative AI in legal proceedings. This presents several key issues for the Court to consider:

The need for clear consistent application of generative AI principles

The Society is concerned about the disparate response to the issue of generative AI across Australian jurisdictions and the potential for differing procedures within state and territory jurisdictions. The lack of consistency in approach creates difficulties for legal practitioners seeking to comply with their professional obligations and with Court directions in multiple jurisdictions.

The Society submits that a best practice approach to the use of generative AI should be consistently applied across Australian courts, tribunals, commissions and any other bodies exercising judicial or quasi-judicial jurisdiction at a federal level. The Society promotes a nationally consistent approach to the use of generative AI; however, the Society does not support the proscriptive formal practice direction approach of the Supreme Court of New South Wales. The Society encourages collaboration at a national level to ensure consistent application of principles across federal, state and territory jurisdictions.

A guidance-based approach can sit alongside existing professional obligation, allowing for a coherent and responsive regulatory framework that prevents confusion and inconsistency for legal practitioners practising across multiple jurisdictions and in a variety of practice areas.

“Lawyers already have a set of professional standards that they need to meet. Those obligations are largely worded in a general sense for good reason. Adding extra layers of prescriptive regulation doesn’t assist.”

Managing Partner/Legal Practice Director
11-19 years PAE

Encouraging innovation and ethical use of the beneficial elements of generative AI

The Society cautions against a proscriptive practice direction which attempts to place defined restrictions on the use of generative AI tools. Rather than attempting to control the use of rapidly changing technology, the Society submits that the Court should allow for and promote efficient, ethical and responsible use of generative AI tools in court proceedings.

When properly reviewed and verified by legal practitioners, generative AI assisted legal work can enhance the quality of materials presented to the Court. Generative AI tools can currently be usefully applied by legal practitioners to:

- improve the structure and quality of draft documents prepared by practitioners;
- identify key issues and evidence to ensure focus on determinative aspects of a case;
- enhance document organisation to arrange complex factual matrices into coherent summaries;
- ensure documents in procedural matters follow consistent and compliant formats; and
- assist research and citation with proper verification. Research tools can be applied to identify relevant authorities that might have been overlooked.

These tasks can be undertaken in a way that ensures a ‘human-first’ approach to legal reasoning and strategic considerations remains at the forefront, with generative AI serving to enhance rather than replace a legal practitioner’s professional expertise.

“The Supreme Court practice directions require us to have regard to the overriding objective of proportionality of the time and money expended on legal work. There is ample evidence that the use of AI would assist us to achieve this in our practices.”

Senior Associate
11-19 years PAE

Proper review and verification of generative AI-assisted legal work necessarily requires principals, legal practice directors and senior practitioners to maintain sufficient oversight over the legal work undertaken by junior practitioners and non-legal staff. The professional and ethical obligations to adequately supervise junior practitioners using generative AI tools exists within the current regulatory framework without additional limitations being imposed by the Court.

“Generative AI whilst improving is generally unsuitable for any involved or nuanced legal practice. It is useful as a tool particularly for mundane tasks, subject to strict oversight by a competent practitioner”.

Managing Partner/Legal Practice Director
20-30 years PAE

Access to Justice

The adoption of a flexible approach by the Court towards generative AI recognises the potential for AI tools to address persistent access to justice challenges, which have a direct impact on court efficiency and judicial workload. The benefits of generative AI in this context include:

- reduced legal costs for clients, with less time spent on time-consuming tasks such as document review, legal research and drafting;
- expanded access to legal services by reducing costs and increasing efficiency, enabling legal practitioners to represent a broader client base;
- access to additional resources for community legal centres to assist in preparing time-efficient quality submissions and advising a greater number of vulnerable clients;
- the potential to 'level the playing field' for legal practitioners practising in rural, remote and regional areas, who can utilise AI tools to assist clients from diverse backgrounds; and
- more efficient court processes through AI generated preparation of focused submissions, organised evidence and clear articulation of issues for determination.

From a litigation perspective, these improvements lead to less self-represented litigants, potentially reduce the need for additional case management hearings, increase streamlining of proceedings and allow judicial officers to allocate their limited time more effectively. Lower legal costs enable more people (not just litigants) to access affordable legal advice and representation across all areas of practice.

A proscriptive approach to generative AI usage carries a risk of creating an uneven playing field between well-resourced larger firms and government lawyers on one side and less well-resourced firms and self-represented litigants on the other. The Society submits that the focus of the Court should be on the outcome of generative AI use, not the particular tool or application used by legal practitioners.

"I appreciate that we cannot ignore the ongoing use of AI in our legal profession and the use of AI by law firms who have sufficient resources to implement tools, train staff and maintain software to protect data privacy/confidentiality. However, I do have serious concerns for small firms/sole practitioners who don't have the same resources available to them."

Managing Partner/Legal Practice Director
20-30 years PAE

Preserving the integrity of court proceedings

The Society recognises that along with the benefits of generative AI come serious challenges, particularly in high-risk environments such as litigation. A major concern identified by courts is the occurrence of hallucinations in AI-generated court documents, particularly witness statements, expert reports and submissions. The Society submits that this is potentially a greater area of concern with respect to self-represented litigants who do not have the same professional obligations and duties as legal practitioners.

It is unavoidable that additional Court resources will need to be applied to the detection of false, ambiguous or misleading content. The Society supports increased government assistance to ensure all courts and tribunals exercising federal jurisdiction have the appropriate resources to assist judicial officers and tribunal members to identify issues in evidence or documents submitted during legal proceedings.

The Society submits a proscriptive practice note potentially creates further work for judicial officers. If the Court is required to undertake its own enquiries as to whether evidence and documents submitted in legal proceedings are inconsistent with the Court's practice direction, this will lead to increased Court workload and delays.

The Society notes that regulatory bodies are already dealing with practitioners who have been referred for submitting false citations and unverified submissions in court proceedings.

"I think a balanced combination is required – to suit the audience needs. Self-rep'd (sic) will need different language than lawyers ."

Lawyer/Solicitor
6-10 years PAE

Adaptability to change

AI technology is evolving at an unprecedented pace. A guidance-based approach allows the Court to set and maintain standards of integrity in legal proceedings while accommodating innovations that will potentially significantly improve the quality of materials before the Court and increase efficiency in court proceedings. The Society cautions that a proscriptive practice direction carries the potential risk of impeding innovation and/or becoming out of date very quickly.

The Society submits that a restrictive approach to the use of generative AI that applies only to those practising in a court setting – but not to lawyers providing advice or services in other contexts (including other contentious contexts, like arbitration proceedings) – creates an artificial and unhelpful division between legal practitioners. The Society further submits that all legal practitioners should have the ability to access the same AI technology for the benefit of their clients.

Whatever form of publication the Court decides to issue, there will be a need to periodically review the guidance on the use of generative AI in the future. A more restrictive practice direction will likely require ongoing amendments to vary the range of restriction as the capacity and capability of AI technology develops

"Given the rapidly changing nature of AI – any prescriptive rules made today may well be redundant tomorrow."

Managing Partner/Legal Practice Director
11-19 years PAE

The importance of evidence-based regulation

The Society and legal regulatory bodies are aware that use of generative AI has potential to impact all areas of legal practice beyond litigation and non-contentious court proceedings. The Law Society of New South Wales, the Victorian Legal Services Board and Commissioner and the Legal Practice Board of Western Australia have issued a joint Statement on the Use of Generative AI in Legal Practice³. The Statement emphasises the professional obligations of lawyers to maintain client confidentiality, to provide independent advice, to deliver legal services honestly, competently and diligently, to charge costs that are fair, reasonable and proportionate and to be transparent about the use of AI in disclosure to clients, and where necessary to the court and other practitioners.

³ <https://www.lpbwa.org.au/artificial-intelligence-joint-statement>
Submission – Federal Court of Australia – Artificial intelligence
The Law Society of Western Australia

The Society notes that different forms of submission and guidance have been published by the Law Council of Australia⁴, the Legal Practitioners' Liability Committee⁵ and Law Institute of Victoria⁶, as well as Guidelines for Litigants produced by the Supreme Court of Victoria⁷ and the AI Companion Guide published by the Queensland Law Society⁸. The Society is actively working to create local resources that will assist members and the broader Western Australian legal profession to embrace the benefits of generative AI usage safely and contend with the challenges that arise.

The Supreme Court of Western Australia Consultation Questions

1. How is the legal profession currently using generative AI and what are the expected future applications?

54% of respondents to the Society's survey questions reported currently using AI platforms and tools in legal practice. Irrespective of the area of law, respondents are predominantly using AI in legal research, practice management, business development and legal document creation (including chronologies), summaries of advice and general correspondence (letters, emails etc).

The survey respondents practising in litigation and dispute resolution reported using AI in all facets of legal drafting. The main uses of AI were reportedly for research notes and advice, chronologies, pleadings, affidavits and witness statements. A smaller number of respondents reported using AI for minutes of orders and initiating proceedings. Less common responses included use of AI for drafting contentious litigation documents. No practitioners reported using AI to produce expert reports.

A minority of respondents (37%) indicated that their firms and organisations are providing education and training for future use and/or trialling generative AI products. 24% reported that internal AI tools and programs are being developed in their firms and organisations.

"I use it sparingly for legal and other research but only with generic prompts that do not contain any client information".

Managing Partner/Legal Practice Director
20-30 years PAE

"In addition to Google searches, also using ChatGPT to perform Google-like deep-dive searches to point me in the right direction of applicable sections of legislation and applicable cases. I then find the actual legislation or cases to check the results (because ChatGPT is renowned to be unreliable)."

Senior Associate
11-19 years PAE

⁴ <https://lawcouncil.au/resources/submissions/safe-and-responsible-ai-in-australia>

⁵ <https://lplc.com.au/resources/lij-article/managing-the-risks-of-ai-in-law-practices>

⁶ https://www.liv.asn.au/web/resource_knowledge_centre/artificial_intelligence_hub/web/content/resource_knowledge_centre/ai-hub.aspx

⁷ <https://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation>

⁸ <https://www.qls.com.au/Content-Collections/FAQs/AI-Companion-Guide>

2. Should there be a formal AI practice direction for the legal profession?

- (a) who should it apply to?**
- (b) should any practice direction separately address lawyers and non-lawyers?**
- (c) what form should any practice direction take (e.g. guidelines, proscriptive policy, practice note)**
- (d) what specific topics should any practice direction address?**

The majority of survey respondents (81%) supported the Supreme Court of Western Australia developing some kind of direction to govern the use of AI. The most popular choice for the format of a practice direction (50%), was the publication of AI guidelines taking a principles-based approach and providing standards designed to ensure the use of AI is ethical, accountable and transparent. Only eighteen legal practitioners supported a proscriptive policy informing court users when and how they can (and can't) use AI and twelve supported a formal practice direction. Seven respondents proposed there be separate practice directions for lawyers and non-lawyers.

The Society does not support publication of a proscriptive practice direction along the lines of the New South Wales Supreme Court Practice Direction. The results of the Society's survey indicate that practitioners are already using generative AI to produce legal documents in ways that are restricted under the New South Wales Practice Direction. There is no evidence to suggest there is a widespread problem with WA practitioners doing so in a way that is irresponsible or unethical.

If the Court determines that a form of practice direction is needed, the Society encourages the Court to take a similar principle-based approach to that of the Supreme Court of Victoria. The Victorian Supreme Court's Guidelines for Litigants address the benefits and risks of generative AI use for lawyers and self-represented parties and provides:

- explanations of the different types of AI, the distinction between closed and open platforms and the risks associated with AI use
- a warning to all parties and practitioners of the need to exercise caution when using generative AI tools for particular purposes, such as the preparation of affidavits, witness statements and other evidence
- reminders to legal practitioners of their professional obligations, in particular, the duty to the Court.

The Society submits that any guidance on generative AI published by the Court should apply to all court-users including legal practitioners, self-represented litigants, witnesses, experts and the judiciary. A guidance approach, as opposed to a proscriptive approach, allows the Court to recognise issues, develop ongoing guidance to inform all court-users and adapt to rapid changes in technology. The flexibility of a guidance approach will enable the Court to develop more specific directives if the future evidence demonstrates a need for more detailed guidelines in particular types of litigation.

“All guidelines and policies should begin with the distinction between public AI (no confidentiality protection, more risk of hallucination) vs AI by legal platforms (better security with links to reliable sources).”

Partner
11-19 years PAE

3. Are there particular areas of legal practice where the use of generative AI should be restricted or prohibited?

The Society does not support formal restriction or prohibition by the Court or any other body in any particular area of legal practice. Such restriction has the potential to stifle innovation, delay improvement in access to justice and discourage efficiency in the ethical delivery of legal services.

A formal prohibition on the use of generative AI which applies to some areas of legal practice but not others creates issues for legal practitioners in firms and organisations that deal with a range of practice areas and/or a mix of legal and non-legal work.

The Society submits that a more appropriate response to these concerns is to provide ongoing professional development and support to legal practitioners and education to the public about the benefits and risks of generative AI tools across all areas of legal practice. The Society would be happy to assist the Court with this, if helpful.

“We can’t allow a situation:

- 1. where the use is prohibited so that conscientious firms don’t use it but bad firms do, and*
 - 2. Where other industries are using it and law firms can’t.”*
- It has the potential to decrease legal costs, which can enhance access to justice.”*

Managing Partner/Legal Practice Director
31+ years PAE

4. Should legal professionals using generative AI be required to disclose its use?

The Society submits that mandatory disclosure of use of generative AI is problematic for several reasons.

In large-scale and complex litigation, disclosure of every use of generative AI tools in the pre-litigation phase, during case management and at trial may create a significant administrative burden and expense which offsets the cost and timesaving efficiency provided by the AI tools.

The Society is concerned about the potential for AI-generated legal work to be perceived in a different light to other evidence to which the disclosure does not apply. The use of generative AI tools should not of itself arouse suspicion about the credibility of a witness’s evidence or of the practitioner providing a mandatory disclosure. The Society submits that this is a more appropriate matter for cross-examination of witnesses and experts, where relevant, rather than a requirement for disclosure.

The requirement to disclose generative AI use assumes that court users share an equal knowledge and similar experience with generative AI. The initial results of the Society’s survey indicate that many practitioners are not familiar with AI and perhaps are unaware that they already access AI tools in every day legal practice. In litigation, the consequences of failing to disclose generative AI use could be significant for a legal practitioner who has taken steps to verify AI-generated legal work but who erroneously fails make a disclosure.

It is unclear whether any sanction would apply to a self-represented litigant who fails to make a disclosure about using AI in their documents.

“None required. Lawyers already have those obligations embedded into their conduct rules”.

Managing Partner/Legal Practice Director
11-19 years PAE

5. What steps should legal professional take to verify generative AI assisted work

The Society supports the proposition that a qualified legal practitioner must take ultimate responsibility for any document submitted to the Court regardless of how AI has been used in generating that document. The accuracy, relevance and propriety of all pleadings, affidavits, submissions, citations, witness statements and expert reports relied upon by a represented party remains the responsibility of the legal practitioner.

The Society cautions against requiring specific identification and verification of every use of generative AI in court documents which will add an unnecessary administrative burden and cost to legal proceedings.

The Society supports the statement in the Supreme Court of Victoria’s Guidelines for Litigants that ‘the act of signing a document that is filed with the Court is a representation that the document is considered by those preparing it to be accurate and complete. Reliance on the fact that a document was prepared with the assistance of a generative AI tool is unlikely to be an adequate response to a document that contains errors or omissions.’⁹ The Society further submits that the mere inclusion of a statement of disclosure provides no protection for the Court against a party or legal practitioner filing inaccurate or misleading documents.

“We really need to be mindful in reviewing and removing anything or any tones in the language that is not consistent with our practice conduct rules or with the integrity we hold as individuals, as practitioners or as a profession that might otherwise cause public confusion or risk diminishing the standing of the law in the eyes of the community.”

Managing Partner/Legal Practice Director
6-10 years PAE

6. What safeguards should be in place to ensure the accuracy and ethical use of AI-generated legal content?

In the Society’s survey, human verification of generative AI-assisted work was the most popular response to this question. The less popular options included a written acknowledgement on each document that a senior practitioner has reviewed any content generated using AI and statements embedded in Court documents identifying any content generated using AI. Several respondents felt that no additional safeguards required as practitioners are already subject to conduct rules covering their obligations.

“It’s fundamental that a senior lawyer within the firm stands behind the work.”

Managing Partner/Legal Practice Director
31+ years PAE

⁹ <https://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation> para. 9

The Society submits that the existing regulatory framework, including professional conduct rules, under the Uniform Law provides sufficient safeguards against the misuse of AI by legal practitioners. There are already well-documented examples of practitioners within Australia and overseas who have been referred to regulatory bodies for disciplinary proceedings for filing court submissions and citations generated by AI which were found to be false. The joint Statement issued by the Legal Practice Board, the Law Society of New South Wales and the Victorian Legal Services Board and Commissioner is a useful aid to practitioners who are unsure of their obligations. The Statement sets out the duties of practitioners and the specific Conduct Rules which apply to those duties in the context of use and reliance on AI tools.

The Court has an existing right to refer practitioners to the Legal Practice Board's Legal Services and Complaints Committee for breach of duty to the Court. The Society submits that this framework provides sufficient oversight of legal practitioners. The Court maintains control over case management directions that apply to all parties, and which may include directions in particular cases. The Society submits that the Court should not seek to interfere with the risk assessment and practice management undertaken by legal practitioners, which can be more appropriately dealt with by the Legal Practice Board.

"The Supreme Court should not issue a publication and it would interfere with the legal profession's freedom to adopt a practice methodology of their choice. However, professional misconduct rules could be expanded for abusing or misusing AI i.e. sanction for presenting fake caselaw to the court."

Lawyer/Solicitor
11-19 years PAE

With respect to self-represented litigants, the Court provides existing guidance on court processes and procedures for self-represented parties and court users. These guidelines can be updated to include additional guidance and awareness of risks in using generative AI for the benefit of unrepresented parties. Two survey respondents suggested that warnings could be published on the eCourts portal prior to documents being lodged.

"I think simply a warning on eCourts lodgement pages reminding users that AI generated content can be unreliable, that it is no replacement for legal advice, and that every statement derived from an AI source must be checked for accuracy."

Senior Associate
11-19 years PAE

Final comments

The comments received from Western Australian legal practitioners in response to the Society's survey demonstrate that legal practitioners currently have an understanding of the risks and the benefits of generative AI, but there is scope and appetite to provide education and assistance with the ethical use of generative AI.

The Society's preference is for the Court to issue guidance on the use of generative AI, rather than a formal practice direction. The Society submits that the Court's focus should remain on encouraging the ethical and responsible use of generative AI in court proceedings rather than taking a restrictive and prohibitive position that dictates the use of these tools by the legal profession and other court-users. A flexible, principles-based approach will best serve the interests of justice, support court efficiency and allow the Court to adapt more effectively to rapid changes in technology.

"It's not going away, and eventually (or already) it is going to help us to add more value to our clients. The profession needs to get to grips with how to use generative AI effectively and ethically. I'm keen to continue using it, but I'd like to understand more of the risks about data security, privilege and confidentiality - however it is hard for me to understand the technical aspects."

Sole Principal
6-10 years PAE

"I think we are frankly past the point of prevention. The Courts should focus on developing and promoting best practice guidelines so risks can be minimised."

Graduate
<5 years PAE

"It is imperative that benefits to clients from better and cheaper access to justice that AI will provide are not ignored because of techno-pessimism. Equally risks must not be ignored because of techno-optimism."

Managing Partner/Legal Practice Director
6-10 years PAE

The Society welcomes the opportunity to further discuss these issues with the Court's AI Project Group and to aid the Court in the development of any future practice directions.

Appendix A: Questions from the Law Society Survey on the use of generative AI in the legal profession (March 2025)

1. What is your role?
2. How long have you been practising law?
3. What is your primary area of legal practice?
4. What type of practice do you work in?
5. Where is your practice based the majority of the time?
6. Do you currently use AI platforms and tools in your legal practice?
7. What is your firm/organisation's current approach to AI?
8. If your firm/organisation is currently using AI, in what areas is AI used?
9. Which of the following AI programmes or tools does your firm/organisation use?
10. If you use AI for contentious/litigation document creation, which documents do you use it for?
11. Does your firm/organisation have policies for using generative AI?
12. Is your firm/organisation developing and/or designing its own AI tools or programs internally?
13. Has your firm/organisation provided training in the use of generative AI tools?
14. Do you agree that a formal practice direction to regulate the use of AI should be developed by the Supreme Court?
15. If the Supreme Court was to issue a publication on generative AI which approach would be more effective?
16. In addition to any publication from the Supreme Court, what safeguards do you think should be in place to ensure the accuracy and ethical use of AI-generated legal content?
17. How can the Law Society support members in the use of generative AI?
18. What do you consider are the main barriers to adoption of generative AI in the legal profession?
19. How comfortable are you in utilising generative AI in your legal practice whether now or in the future)?
20. Is there anything further you would like to add about the use of generative AI by the legal profession?
21. Would you like to be contacted about the Law Society's work in relation to generative AI in the future?

Appendix B Summary of data received from the Law Society survey (May 2025)

Overview of Respondents

Total Responses: 128

Sole Practitioners	18.90%
Managing Partners/Legal Practice Directors	18.11%
Partners	8.66%
General Counsel	6.30%
Senior Associates	16.54%
Lawyers/Solicitors	27.56%
Graduates	0.79%
Paralegals	1.57%
Academics	1.57%

Size of Practice

Sole practice	31%
Small practice	22%
Medium practice (5 -10 principals)	8%
Large practice (11+ principals)	12%
Government	19%
In-house Corporate	3%
Community Legal Centre	4%

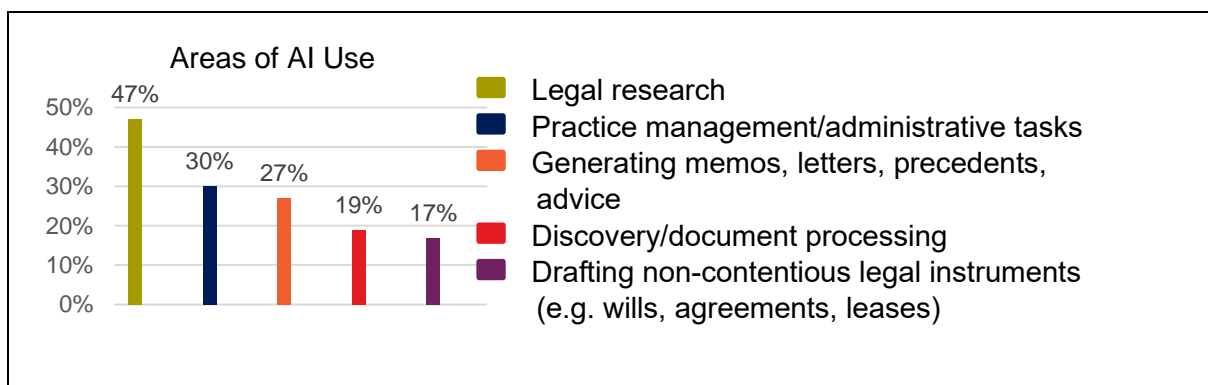
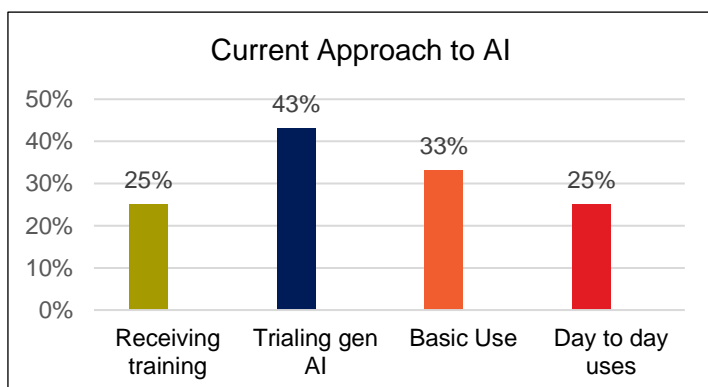
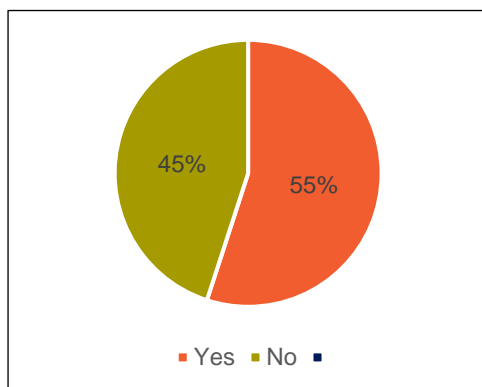
Level of Experience

More than 20 years	42%
11-19 years	26%
6-10 years	17%
Less than 5 years	13%

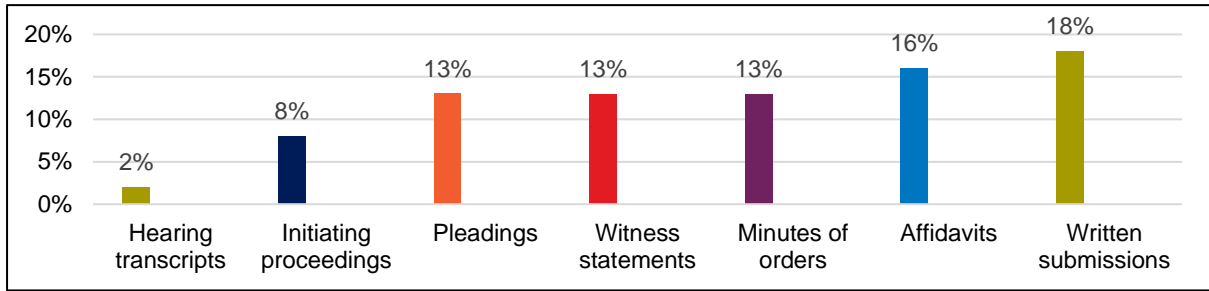
Location

City	73%
Perth metro area	18%
Country	4%
National/multiple locations	5%

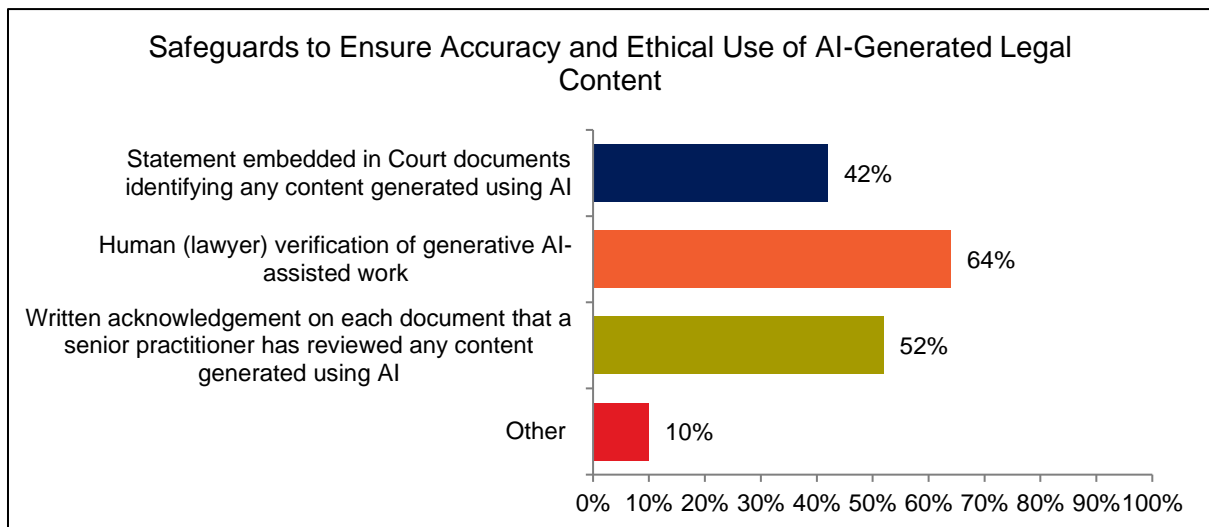
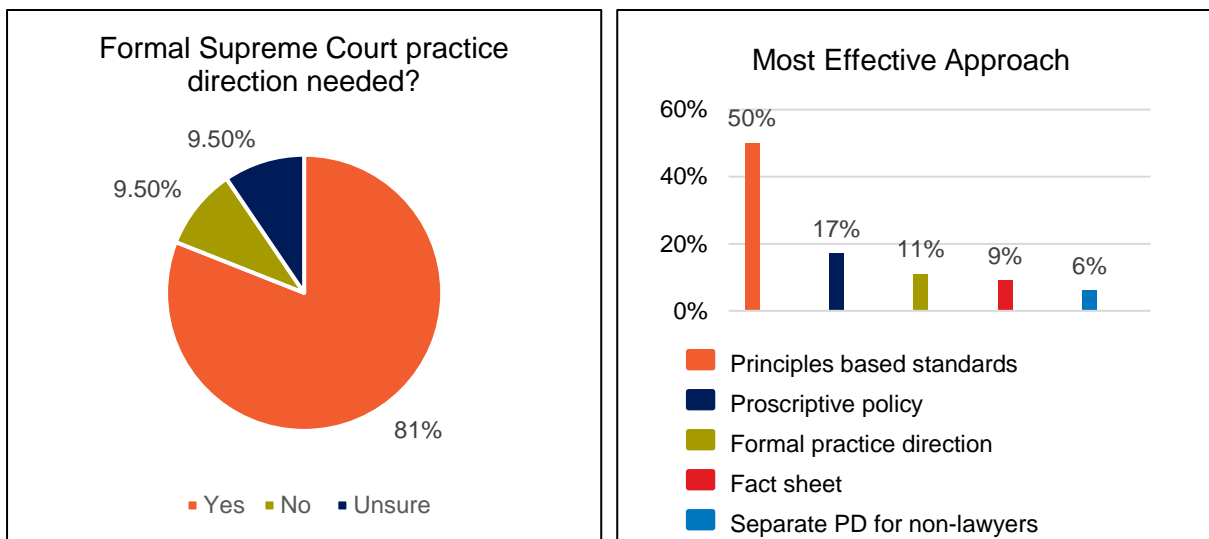
Current use of AI in the WA Legal Profession



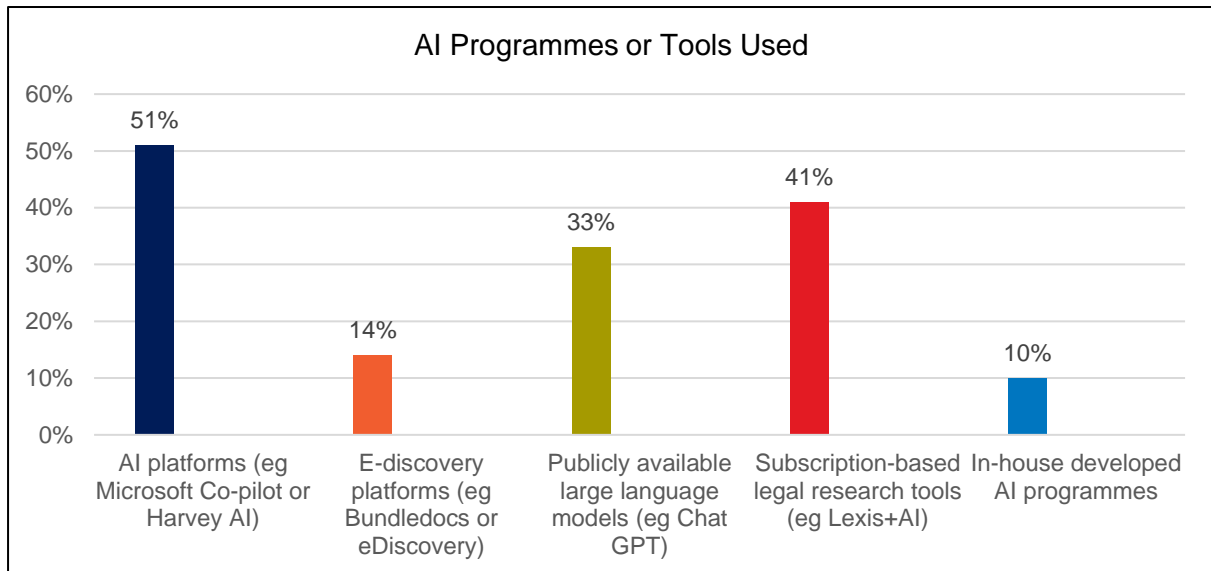
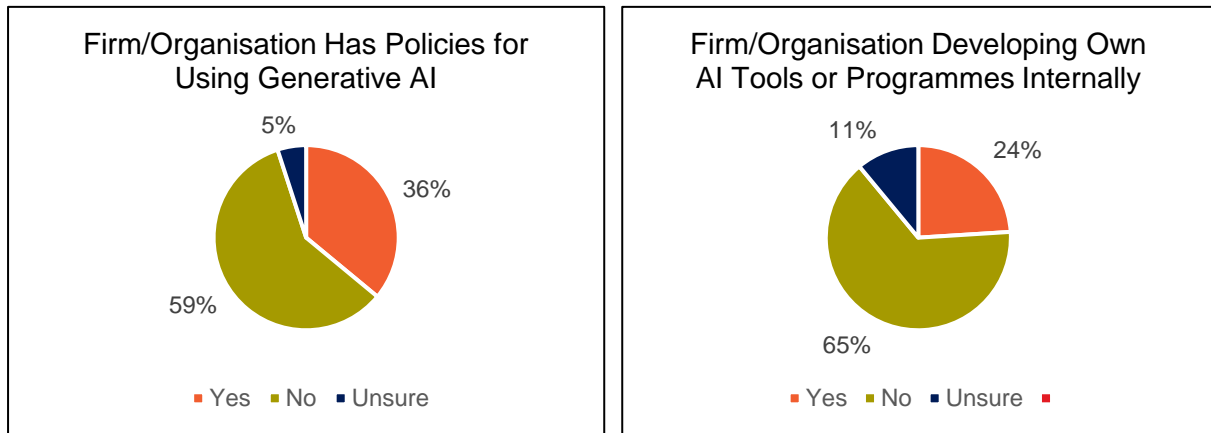
AI Use in Litigation



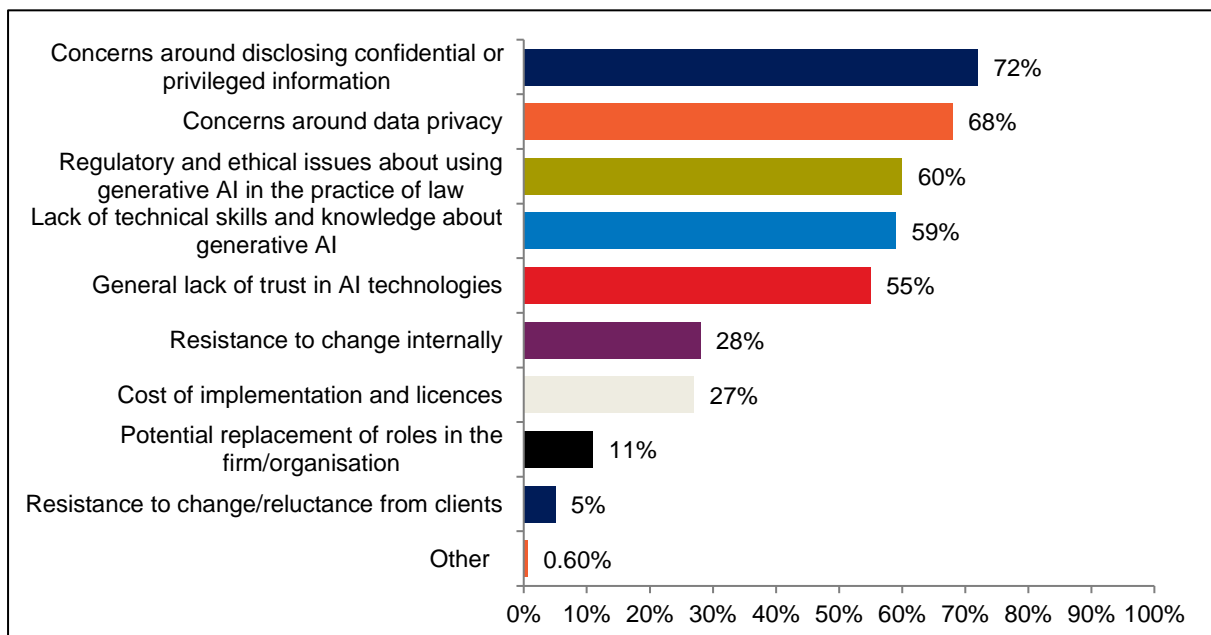
Regulation of AI in the Legal Profession



Generative AI Tools and Programmes



Barriers to Adoption of Generative AI



Data analysis from the 2025 Use of Generative AI Survey

General note: 128 responses were ultimately received to the survey but not everyone answered every question. The percentages expressed in each dot point reflect the percentage of those who responded to that question (which ranged from 67 to 127).

Who responded to the Generative AI Survey?

- **Role** - From the 127 responses received, 18% were sole practitioners, 18% were managing partners or legal practice directors, 8% were partners, 6% General Counsel, 16% senior associates, 27% lawyers/solicitors and less than 2% were either graduates, paralegals or legal academics.
- **Level of PAE** - From 127 responses, 13% had less than 5 years PAE, 17% had between 6 and 10 years PAE, 26% had between 11 and 19 years PAE, 42% had over 20 years PAE (of which 17% had over 31 years PAE).
- **Areas of Practice** - Of the respondents, 23% primarily practised in litigation and dispute resolution, 15% in commercial and corporate, 15% in government and administrative law, 12% practised in family law, 5% property law, 5% employment law and 6% private client (including estate planning and succession).
- **Size of practice** – 31% were sole practitioners, 22% came from a small practice (less than 4 principals), 8% came from medium practice (between 5-10 principals), 12% came from large practices (more than 11 principals), 19% came from government, 4% came from the community legal centre sector and 3% inhouse legal.
- **Location of practice** - 73% of the respondents practiced predominantly in the city, 18% in the Perth metropolitan area, 4% in the country (the balance were national or mixed).

Using Generative AI

- **Current use** - When asked whether they currently use AI platforms and tools in their legal practice, 54% of respondents said they do and 45% said they do not. No respondents said they were unsure.
- **Approach to Generative AI** – Of those who were using generative AI, 25% of respondents reported actively using AI in their day-to-day business (this could be for business-related functions including marketing and not necessarily for legal service delivery), 33% reported using AI in a basic sense (e.g. Google search engines), 43% reported they were trialling generative AI products and planning to use it in the future and 25% were receiving training and education for generative AI products.
- **Tasks** - Of those who did use AI, 47% used it for legal research, 30% used it for practice management or administrative tasks, 27% used it for legal document generation (e.g. memos, letters, precedents, advice etc), 19% used it for discovery/document processing and 17% for drafting non-contentious legal instruments (e.g. agreements, wills, leases etc).

AI Tools being used – 51% were using Microsoft Co-Pilot or Harvey AI, 40% reported using subscription based legal research tools (e.g. Lexis AI), 32% used publicly available large language models (e.g. ChatGPT), 13% were using E-Discovery platforms (e.g. Bundledocs or eDiscovery), 10% had inhouse developed AI programs and 12% did not know what AI tools were being used.

- Use in litigation – For respondents who use AI in litigation, generative AI was used to create the following documents (in order of most to least popular) - research notes and advice (45%), chronologies (29%), written submissions (18%), affidavits (16%), minutes of orders (13%), witness statements (13%), pleadings (13%), initiating proceedings (8%), hearing transcripts (2%). Others reported using generative AI to test the logic in documents or to generate letters, transcripts for witness statements.

AI Governance and In-practice support and training

- Inhouse Policies - 60% of respondents said they did not have any existing policies (however 23% reported they are designing or developing their own AI tools or programs compared with 66% who are not).
- Inhouse Training – 60% of respondents reported their firm had not provided any in-house training on the use of AI. 35% of respondents had been provided with training (and of that 30% had taken up the opportunity to participate in the training).

Regulation of AI in the legal profession

- SCWA Practice Direction - 81% of respondents agreed that a formal practice direction to regulate the use of AI should be developed by the Supreme Court. 9% disagreed and a further 9% were unsure.
- SCWA Publication – When asked what the most effective approach would be if the Supreme Court did issue a publication on generative AI, 50% of respondents said AI Guidelines (taking a principles-based approach and providing standards designed to ensure the use of AI is ethical, accountable and transparent), 17% said a proscriptive policy informing court users when and how they can (and can't) use AI, 11% favoured a formal practice direction, 9% said a fact sheet to help court users understand how to use AI safely and 6% said a separate practice directions for lawyers vs non-lawyers.
- Additional safeguards – When asked what safeguards (in addition to any publication from the Supreme Court) should be in place to ensure the ethical and accurate use of AI-generated legal content, 64% said a human verification of generative AI-assisted work, 52% said a written acknowledgement of each document that senior practitioner has reviewed any content generated using AI and/or a statement embedded in court documents identifying any content generated using AI, 42% said a statement embedded in Court documents identifying any content generated using AI.

Support from Law Society

- When asked how the Law Society can support its members in the use of generative AI, 79% said through CPD on ethical issues, 76% said practical training on AI use, applications and tech tools, 78% said risk management best practice tips, 75% said publishing guidelines and model policies for members, 56% said cybersecurity information and education, 48% said through lobbying the courts to produce consistent, proportionate guidance on AI and 19% said through connecting legal firms/organisations with AI providers.

Barriers to adoption of generative AI

- When asked what they considered to be the main barriers to adoption of generative AI in the legal profession, 72% said concerns about disclosing confidential or privileged information, 68% said data privacy concerns, 60% said regulatory and ethical issues about using generative AI in the practice of law, 59% said lack of technical skills and knowledge about generative AI, 55% said general lack of trust in AI technologies, 28% said resistance to change internally, 27% said cost of implementation and licences, 11% said potential replacement of roles in the firm/organisation, 5% said resistance to change/reluctance from clients.

Comments from respondents (sample taken from survey)

"My family members are doctors and they use AI to great effect in their daily practice, saving thousands of hours each year and ensuring they can spend their time assisting more patients. There are clear and established ways to protect the confidentiality of their patients, so there is no reason why legal practitioners could not do the same. As is often the case, the legal professional is falling behind other professions in embracing technology due to its resistance to change generally, and reluctance to accept anything other than perfection. The supreme court practice directions require us to have regard to the overriding objective of proportionality of the time and money expended on legal work. There is ample evidence that the use of AI would assist us to achieve this in our practices. I am grateful to the Law Society for the work that is being done in this space."

"It's not going away, and eventually (or already) it is going to help us to add more value to our clients. The profession needs to get to grips with how to use generative AI effectively and ethically. I'm keen to continue using it, but I'd like to understand more of the risks about data security, privilege and confidentiality - however it is hard for me to understand the technical aspects. Plain English CPD seminars on these topics would be welcomed."

"Lawyers already have a set of professional standards that they need to meet. Those obligations are largely worded in a general sense for good reason. Adding extra layers of prescriptive regulation doesn't assist. Given the rapidly changing nature of AI - any prescriptive rules made today may well be redundant tomorrow."

"It is imperative that benefits to clients from better and cheaper access to justice that AI will provide are not ignored because of techno-pessimism. Equally, risks must not be ignored because of techno-optimism."

"I think that AI can be a good use to produce first drafts of documents however should not be relied on with 100% faith. I have generated first drafts using the AI technology in LEAP and this was helpful to create a framework to which I could then expand on."

"It's going to happen. We can't allow a situation 1. where the use is prohibited, so that conscientious firms don't use it but bad firms do, and 2. where other industries are using it, and law firms can't. It has the potential to decrease legal costs, which can enhance access to justice."

"Any rules about the use of AI should apply to the courts. Are decision written by AI or the evidence evaluated by AI or the transcripts reviewed by AI for themes or subjects, are the transcripts reproduced in shorter form by AI et al"

“Generative AI whilst improving is generally unsuitable for any involved or nuanced legal practice. It is useful as a tool particularly for mundane tasks, subject to strict oversight by a competent practitioner.”

“I have been using generative AI as a lawyer for about 3 years now, on a regular basis. Generative AI is most effective in guiding one's logical thought process. It is less effective when the lawyer uses it to "generate documents". Lawyers who use generative AI to "generate legal documents" are at risk if they rely too heavily on the AI and not on their own expertise. The Law Society and the Supreme Court should not interfere with the profession's entitlement to adopt a practice methodology of their choice. Lawyers who want to use AI should be entitled to use it freely, subject to the legal professional conduct rules.”

“I do not think that AI will take over legal roles. I believe that humans/lawyers will still need to consider all the minutiae that is part legal work, and to provide oversight and editing in order for our work to have the rigor and integrity that is required of the profession. Nonetheless, there are voices in the community that believe that AI may take over the profession...perhaps they do not understand exactly what it is that lawyers do?”

“All guidelines and policies should begin with the distinction between public AI (no confidentiality protection, more risk of hallucination) vs AI by legal platforms (better security with links to reliable sources)”

“I appreciate that we cannot ignore the ongoing use of AI in our legal profession and the use of AI by law firms who have sufficient resources to implement tools, train staff and maintain software to protect data privacy/confidentiality. However, I do have serious concerns for small firms/sole practitioners who don't have the same resources available to them.”