

# More NCAT changes for briefs to expert: Commences on 7 April 2025 | Artificial Intelligence

## Background

Generative Artificial Intelligence is novel tool that uses large language models to create text, images or video content based on user inputs, and data held within a broader 'training data set'.

On 7 March 2025, J Armstrong issued '*Procedural Direction 7*' regarding the use of Generative Artificial Intelligence (**Gen AI**) technology in NSW Civil and Administration Tribunal proceedings (**NCAT**). This direction follows the Supreme Court Practice Note Gen 23 which came into effect on 3 February 2025.

The provisions of NCAT Procedural Direction 7 will [take effect on 7 April 2025](#).

## Key Changes – What is allowed?

1. Preparation of chronologies, indexes, briefs and witness lists;
2. Preparation of written submissions, where 'authenticated' by the author. Authentication requires verification that the content and legal authorities exist, are accurate, and are relevant to the proceedings;
3. Summarising or review of documents and transcripts.

## What is not allowed?

1. Entering any information subject to implied (Harman) undertaking, subject to non-publication or sensitive material subject to client confidentiality;
2. Using Gen AI to produce affidavits, witness statements or other submissions used to reflect a witness' evidence;
3. Using Gen AI to draft, produce or embellish an expert report without leave of the court.

## Expert Reports - Implications for Strata Managers

Under the current guidelines, the use of Gen AI to draft or prepare any part of an expert report is prohibited without prior approval of the court/tribunal. This is a key distinction for strata managers based in New South Wales, whereby other Australian jurisdictions simply require exercising caution, without necessitating the need for express approval of the court.



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For strata managers and others who engage or brief experts in respect of generating an expert report for use in NCAT, the requirements of NCAT Procedural Direction 7 must be drawn to their attention when providing instructions.

An expert seeking to utilise Gen AI must apply for leave of the Tribunal, describing the proposed usage, specific program, confidentiality settings, presumed benefits and documents to be submitted into the software.

Assuming leave is granted, experts are required to maintain records of how Gen AI was used, including details in an annexure specifying the prompts used, which parts of the report was AI generated, settings of the software and any other default values.

### **Key Takeaways**

For prospective users, it is vital to recognise that the use of Gen AI software does not abdicate them from the responsibilities and inherent consequences that could arise in relation to the content it produces. Practitioners who choose to use Gen AI will need to exercise sound judgement and professional skills in reviewing the final product of any submissions being handed to the court.

Recent cases involving the misuse of Gen AI such as *Valu v Minister for Immigration and Multicultural Affairs (No 2)* [2025] FedCFamC2G 95 serve as a worthy reminder that it does not contain the appropriate safeguards to protect the confidentiality, privacy and privilege of materials entered into it.

If you have any queries about expert evidence or NCAT proceedings please feel free to reach out to our team of specialist Strata Lawyers.

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