

# UNSW AI Institute Symposium 2024

## GenAI in the courtroom: Fact v Fiction [2024] GenAI 1

- **The research:** Tracking the rising use of generative artificial intelligence (GenAI) in legal proceedings since November 2022, and its impact on courts and tribunals across multiple jurisdictions.
- Creating a dataset of 'GenAI cases' from Australia, New Zealand, the UK, the US, Canada, and India, sourced from public and subscription legal information collections and databases.

- **Research limitations:** We have excluded cases testing GenAI-related copyright and intellectual property issues.
- Additionally, GenAI use in legal proceedings may not always be apparent, or relevant to the issues being considered, and may not be captured in official records.
- Consequently, actual levels of GenAI use may be significantly higher.

- **Initial observations:** This trend is bigger than just 'that ChatGPT lawyer' (the US case of *Mata v Avianca*).
- Over 90+ 'GenAI cases' have been identified from November 2022 (ChatGPT's public release) to date.
- These are legal cases involving GenAI use by parties or others in formal proceedings, where the use is confirmed, openly referenced or suspected by a court or tribunal.
- Australian cases are more than 20% of the dataset.

- **Recurring issues illustrating the potential of misuse of GenAI in legal proceedings include:**
  - fake law, i.e. GenAI invented cases, citations and statutory references;
  - inaccurate summaries and fallacious arguments presented to courts and tribunals;
  - incorrect research of legal and other 'facts';
  - drafting prolix or legally incorrect documents;
  - 'flooding' courts or tribunals with large volumes of documents created using GenAI.

### Takeaways to date:

- **IF GenAI is used in legal proceedings in a way that meets court protocols, rules of evidence, professional and ethical standards, etc., the use may be OK.**
- **BUT in many of the sampled cases, GenAI use failed to meet these requirements.**
- **This suggests that more GenAI guidance and education is needed for parties involved in legal proceedings, to encourage the responsible adoption of GenAI, and to support and protect due process and the proper administration of justice.**

- **Impact & external engagement:** We are planning several articles to share research outcomes and recommendations.
- **Target audiences:** Judicial officers, legal professionals, legal academics, law students/future lawyers.
- **Purpose:** Informing best practice GenAI use in legal proceedings, and supporting responsible adoption of GenAI by the legal profession.

'... generative AI and large language models create output that is not the product of reasoning and nor are they a legal research tool. Generative AI does not relieve the responsible legal practitioner of the need to exercise judgment and professional skill in reviewing the final product to be provided to the court.'

Re *Dayal* [2024] FedCFamC2F 1166, 15

Case	Year	Country	State / Territory / Region	Court or tribunal	Judge / Member / Commissioner	Citation	Link	Matter type	User class 1- Lawyer 2- Plaintiff 3- Expert 4- Judge / Member	SRL (Y/N)	Main issues	Summary of outcome) - Include costs orders, other sanctions or contempt, i.e. what courts have done	GenAI product (if available)	Type of use (eg drafting, research, fake case citations, fallacious)	Approximate date/period of use	Sentiment of Court/Trib towards GenAI use (Positive/ Neutral/ Negative/ Other)	GenAI guidance in place at time of use (Y/N)	Powers relied on	Include in OS journal article (Y/N)	Include in Oz journal article (Y/N)	Additional
<i>Luck v Principal Registrar and Chief Executive Office of the Federal Court of Australia</i>	2024	Australia	Victoria	Federal Court	Wheelerhan J	<i>Luck v Principal Registrar and Chief Executive Office of the Federal Court of Australia</i> [2024] FCA 1256	<a href="#">Link to Case Summary</a>	Abuse of process	2	Y	Applicant lodged documents in the Federal Court of Australia (the Rejected Documents) seeking judicial review under the Administrative Decisions (Judicial Review) Act 1977 (Cth) and s 33B of the Judiciary Act 1903 (Cth) of decisions made by an officer of the Supreme Court of Victoria not to accept for filing an application for leave to appeal to the Victorian Court of Appeal, and denying the applicant's fee waiver application. No decision was initially made to accept or reject the Rejected Documents. Applicant commenced proceedings seeking remedies in relation to the absence of a decision. A Registrar of the Court then refused the Rejected Documents for filing under r 2.26 of the Federal Court Rules 2011 (Cth) on the basis that they were an abuse of the Court's process. Applicant sought to shift the basis of this judicial review proceeding to impugn the Registrar's decision.	Court held that the Registrar's decision was not affected by any error and the Rejected Documents represented an attempt to abuse the Court's processes. Proceeding permanently stayed as an abuse of process.	Unknown	Drafting Research Fake case citations	Jul-24	Negative	N	NA	Y	Y	"In the follow proceeding, Registrar not abuse of pro... On 15 July 2024 Application for constitutional Documents, the State of Victoria. The her affidavit application to the body of the applicant in the proceedings the her the prepari prospect the documents v applicant in it picked up by
<i>Martin v Hawaii</i>	2024	USA	Hawaii	United States District Court, D. Hawaii		<i>Martin v. Hawaii</i> , No. CV 24-00234 MWJS-WRP, 2024 WL 3817013 (D. Haw. Aug. 20, 2024)	<a href="#">Link to Case Summary</a>	Criminal	2	Y	Martin, proceeding pro se, removed his state court criminal prosecution for driving without insurance from the State of Hawaii District Court of the Third Circuit to this Court. ECF No. 1. In an order dated July 24, 2024, Court concluded that Martin's notice of removal was untimely, and, in any case, that the Court lacked jurisdiction over Martin's state prosecution. The Court summarily remanded the case back to state court. Martin moved for reconsideration of the remand order.	Martin failed to identify any basis for the reconsideration and the motion was denied. The Court noted "... that many of the citations and quotes in Martin's submissions appear to be fictitious" and "It is possible that Martin used an artificial intelligence (AI) product to generate his briefs. If so, he is cautioned that he is required to confirm the accuracy of all case citations and quotes before submitting them. In addition, in future submissions in which he has made use of AI, he must submit a declaration that he has used AI and provide the source of the AI-generated content."	Unknown	Fake case citations	July-August 2024	Negative	Y	District of Hawaii, General Order 23-1, In Re: Use of Unverified Sources (Nov. 14, 2023).	Y	N	As a final ma Martin's subn PageID.145 ( F.3d 1338 (11 United State defendant is proceedings protection of 845 (2d Cir. 1



# **UNSW AI Institute Symposium 2024**

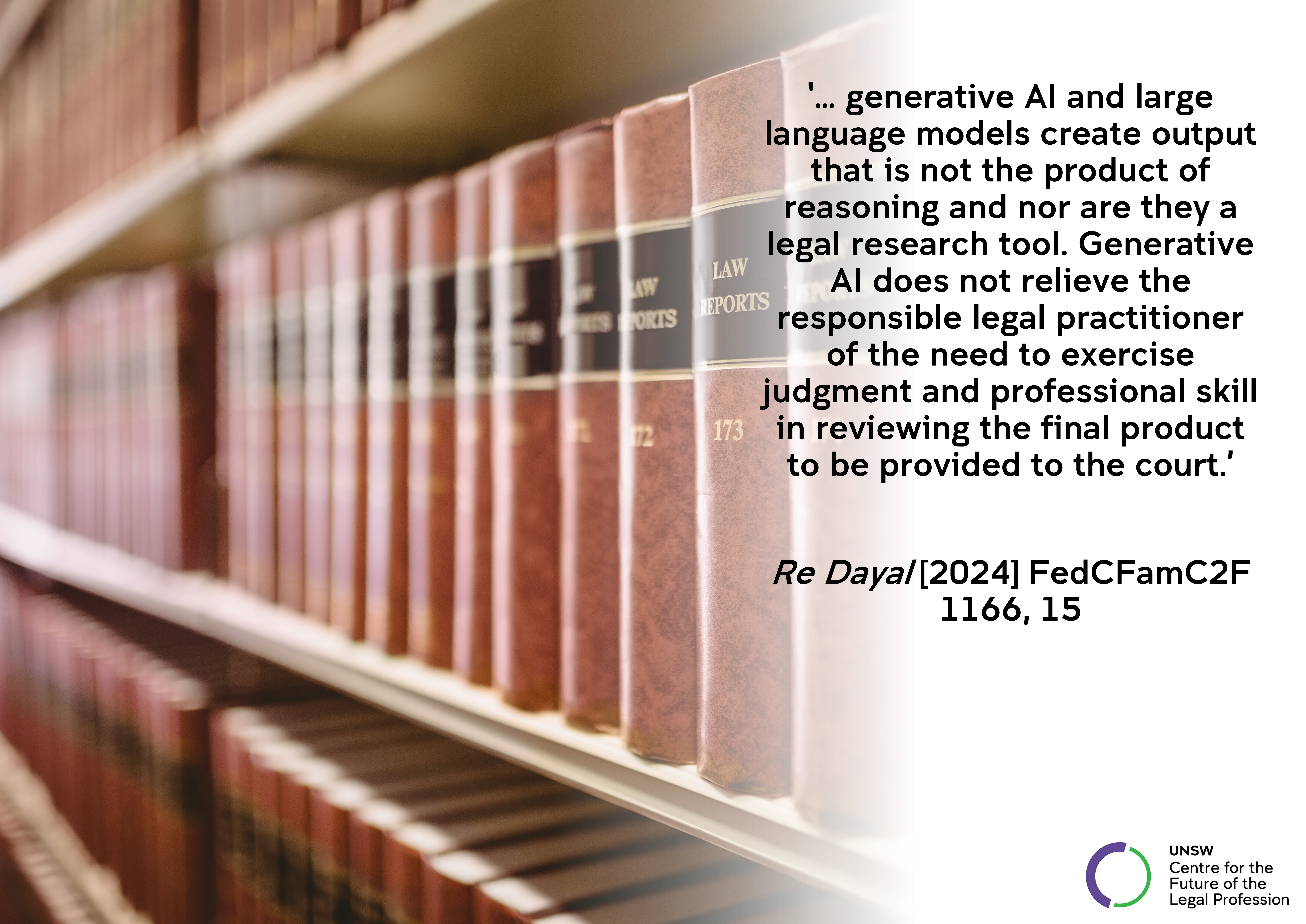
## **GenAI in the courtroom: Fact v Fiction [2024] GenAI 1**

**Researcher:** Vicki McNamara, Senior Research Associate, Centre for the Future of the Legal Profession, UNSW Law & Justice

**Contact:** [v.mcnamara@unsw.edu.au](mailto:v.mcnamara@unsw.edu.au)

## The research

- Tracking the rising use of generative artificial intelligence (GenAI) in legal proceedings since November 2022, and its impact on courts and tribunals across multiple common law and hybrid jurisdictions
- Creating a dataset of 'GenAI cases' from Australia, New Zealand, the UK, the US, Canada, and India



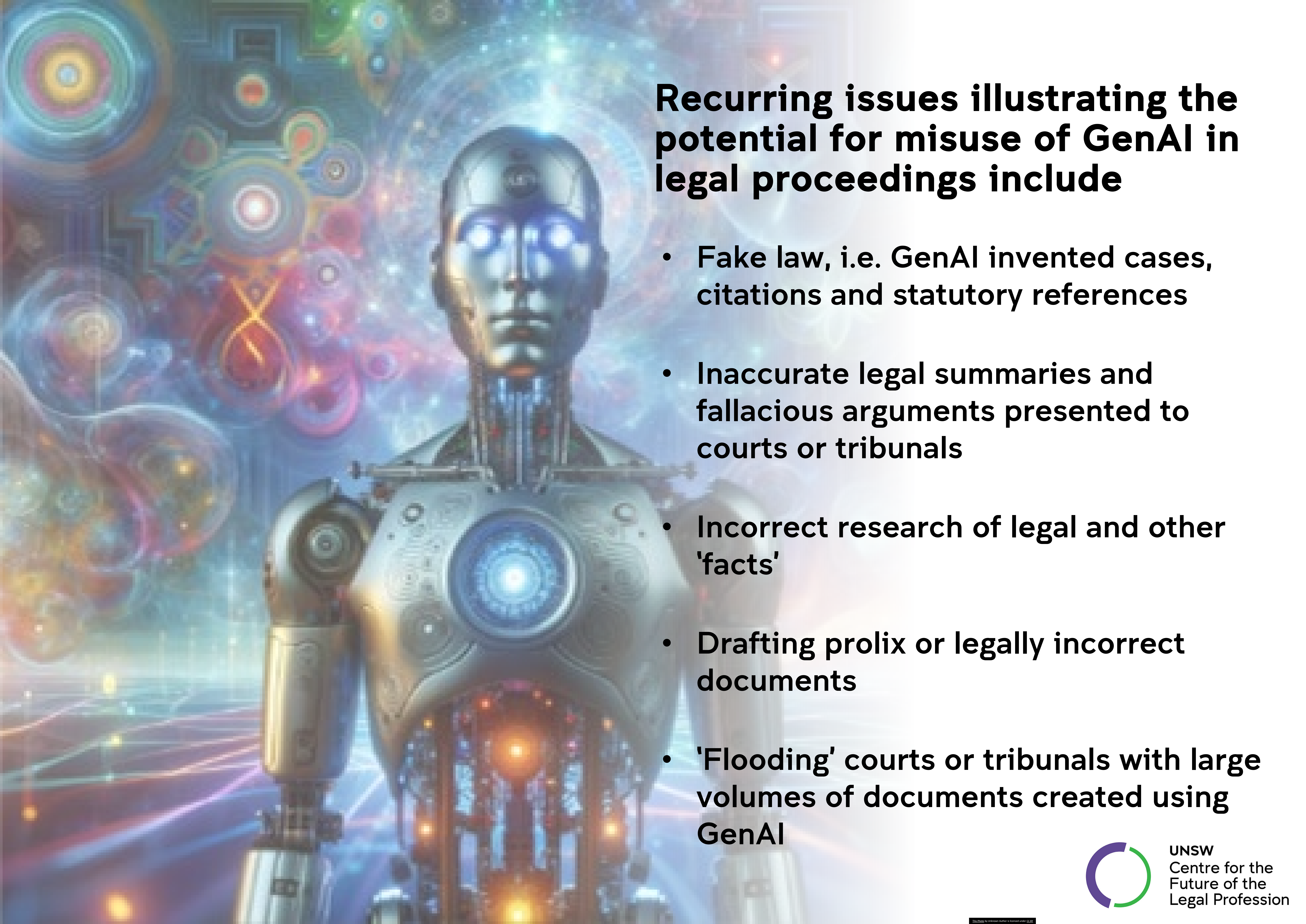
**'... generative AI and large language models create output that is not the product of reasoning and nor are they a legal research tool. Generative AI does not relieve the responsible legal practitioner of the need to exercise judgment and professional skill in reviewing the final product to be provided to the court.'**

***Re Dayal* [2024] FedCFamC2F  
1166, 15**



## Some initial observations

- This trend is bigger than just 'that ChatGPT lawyer' (the well known US case of *Mata v Avianca*)
- Over 90+ 'GenAI cases' have been identified since November 2022, following the public release of ChatGPT
- These are legal cases involving GenAI use by parties or others in formal proceedings, where the use is confirmed, openly referenced or suspected by a court or tribunal
- Australian cases are more than 20% of the sample



## **Recurring issues illustrating the potential for misuse of GenAI in legal proceedings include**

- **Fake law, i.e. GenAI invented cases, citations and statutory references**
- **Inaccurate legal summaries and fallacious arguments presented to courts or tribunals**
- **Incorrect research of legal and other 'facts'**
- **Drafting prolix or legally incorrect documents**
- **'Flooding' courts or tribunals with large volumes of documents created using GenAI**

## Takeaways to date

- **IF** GenAI is used in legal proceedings in a way that meets court protocols, rules of evidence, professional and ethical standards, etc., the use may be OK
- **BUT** in many of the sampled cases GenAI use failed to meet these requirements
- This suggests that more GenAI guidance and education is needed for parties involved in legal proceedings, to encourage the responsible adoption of GenAI, and to support and protect due process and the proper administration of justice

# Impact & external engagement

- We are planning several articles to share research outcomes and recommendations
- Target audiences - Judicial officers, legal professionals, legal academics, law students/future lawyers
- Purpose - Informing best practice GenAI use in legal proceedings, and supporting responsible adoption of GenAI by the legal profession



## **Data sources - Public and subscription legal information collections and databases**

- AUSTLII
- BAILII
- BarNet Jade
- CANLII
- CaseBase via Lexis Advance (UNSW subscription)
- Find Case Law (National Archives UK)
- Google Scholar (Case law)
- ICLR (UNSW subscription)
- Indian Kanoon
- Justia
- Manupatra (UNSW subscription)
- NSW Caselaw
- NZLII
- PACER
- Supreme Court of India / Judgements
- vLex Justis (UNSW subscription)
- Westlaw AU (UNSW subscription)
- Westlaw International (UNSW subscription)
- Westlaw US (UNSW subscription)
- WORLDLII

## **Research limitations**

- We have excluded cases testing GenAI-related copyright and other intellectual property issues
- Additionally, GenAI use in legal proceedings may not always be apparent, or relevant to the issues being considered, and may not be captured in official records
- Consequently, actual levels of GenAI use may be significantly higher

# Contact us



**Centre for the Future of the  
Legal Profession, UNSW Law &  
Justice**

**Email:** [cflp@unsw.edu.au](mailto:cflp@unsw.edu.au)

**Website:** [Centre for the Future  
of the Legal Profession | Law &  
Justice | UNSW Sydney](https://www.unsw.edu.au/centre-for-the-future-of-the-legal-profession)



UNSW  
Centre for the  
Future of the  
Legal Profession